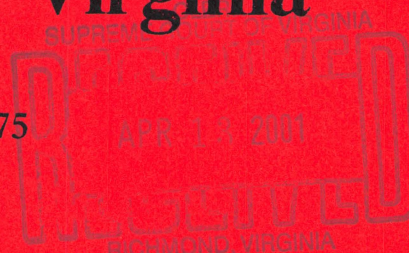


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IN THE  
**Supreme Court of Virginia**

RECORD NO. 002675



**VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY,**

*Appellant,*

v.

**DORSEY W. ROHRBAUGH,**

*Appellee.*

---

RECORD NO. 002459

**RALPH D. LOMBARD,**

*Appellant,*

v.

**DORSEY W. ROHRBAUGH,**

*Appellee.*

---

**JOINT APPENDIX**

---

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Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.  
3920 University Drive  
Fairfax, Virginia 22030  
(703) 385-1000

*Counsel for Appellant,  
Virginia Farm Bureau Mutual  
Insurance Company*

Quentin R. Corrie  
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(703) 222-2200

*Counsel for Appellant,  
Ralph D. Lombard*

Steven M. Frei  
Holly Parkhurst Essing  
Hall & Sickels, P.C.  
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(703) 925-0500

*Counsel for Appellee,  
Dorsey W. Rohrbaugh*



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V I R G I N I A

CIVIL INTAKE

99 JUN 25 AM 8:18

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX, VA  
JUN 25 1999  
CIRCUIT COURT  
FAIRFAX, VA

DORSEY W. ROHRBAUGH,

Plaintiff

v.

RALPH D. LOMBARD

12921 Colby Drive

Woodbridge, VA 22192,

Defendant.

ALSO SERVE:

Virginia Farm Bureau

Mutual Insurance Company

Registered Agent;

Richard D. Mattox, Jr.

12580 West Creek Pkwy.

Goochland, VA 23238

Pursuant to 38.2-2206,

Virginia Code, 1950,

(as amended)

Law No. 181346

1468561  
8/11/95

### MOTION FOR JUDGMENT

COMES NOW Plaintiff Dorsey W. Rohrbaugh ("Plaintiff"), by counsel, and moves this Court for judgment against the Defendant Ralph D. Lombard ("Defendant") in the amount of Five Hundred Thousand Dollars & 00/100 [REDACTED] and in support thereof

REVL JUL 26 1999

states as follows:

A 1. At all times relevant herein Plaintiff was and is a resident of the [REDACTED] Commonwealth of Virginia.

A 2. At all times relevant herein Defendant was and is a resident of the County of Prince William, Commonwealth of Virginia.

A 3. Venue in this jurisdiction is proper, convenient and appropriate.

A 4. This Court has jurisdiction over the subject matter of this action and the parties hereto.

A 5. On or about [REDACTED] Plaintiff was operating his automobile in a northerly direction on Chain Bridge Road at or near its intersection with Route 50.

A 6. At the aforesaid time and location, Plaintiff's automobile had been brought to a complete stop as required by the traffic control devices as well as traffic conditions then and there prevailing.

D 7. At the aforesaid time and location, Defendant, suddenly and without warning, while Plaintiff was stopped as stated above, allowed his automobile to collide with the rear of Plaintiff's with great force and violence.

D 8. At the aforesaid time, date and location, Defendant's actions were negligent in numerous ways, including, but not limited

44V L JUL 26 1999



to: (a) failing to pay full time and attention to driving; (b) failing to keep a proper lookout; (c) failing to keep the vehicle under proper control; (d) failing to maintain a proper distance between vehicles; (e) failing to operate the vehicle in a safe manner under the conditions then and there prevailing; (f) failing to obey other vehicle laws of the Commonwealth of Virginia.

9. As a direct and proximate result of the aforestated collision, Plaintiff was caused to suffer serious and permanent injuries, has suffered and will in the future suffer pain of the body and mind; has incurred and will incur in the future medical and other related expenses; and has been deprived of earnings and earning capacity.

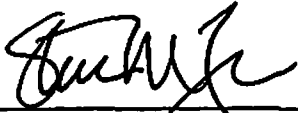
WHEREFORE, Plaintiff DORSEY W. ROHRBAUGH moves this Court for judgment against Defendant RALPH D. LOMBARD in the amount of Five Hundred Thousand Dollars & 00/100 (\$500,000.00), plus interest from the date of collision, together with any costs which this Court deems appropriate.

A TRIAL BY JURY IS DEMANDED.

DORSEY W. ROHRBAUGH  
By Counsel

APVL JUL 26 1999

HALL & SICKELS, P.C.



---

STEVEN M. FREI, ESQ. (VSB #32211)  
Counsel for Plaintiff  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190  
(703) 925-0500



V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
COURT SERVICES  
JUL 12 2011 2:45  
CLERK OF COURT

DORSEY W. ROHRBAUGH, )  
 )  
Plaintiff, ) At Law No. 181346  
 )  
v. )  
 )  
RALPH D. LOMBARD, )  
 )  
Defendant. )

ANSWER AND GROUNDS OF DEFENSE

COMES NOW defendant, RALPH D. LOMBARD, through counsel, and for his Answer and Grounds of Defense to the Motion for Judgment filed by the plaintiff, states as follows:

1. The defendant lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph one (1) of the Motion for Judgment.
2. The defendant denies the allegations contained in paragraph two (2) of the Motion for Judgment.
3. The defendant admits the allegations contained in paragraph three (3) of the Motion for Judgment.
4. The defendant admits the allegations contained in paragraph four (4) of the Motion for Judgment.
5. The defendant admits that the plaintiff was operating a motor vehicle at or about the time and place as alleged.
6. The defendant admits that the plaintiff's vehicle came to a stop, but denies all remaining allegations contained in paragraph six (6) of the Motion for Judgment.

ORIGINAL

7. The defendant admits the occurrence of a collision between the vehicles operated by the parties, but denies all remaining allegations contained in paragraph seven (7) of the Motion for Judgment.

8. Defendant denies each and every specific allegation of negligence contained in paragraph eight (8) of the Motion for Judgment.

9. The defendant lacks sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph nine (9) of the Motion for Judgment and, accordingly, denies the same and demands strict proof thereof.

10. The plaintiff's injuries, if any, were caused by his sole or contributory negligence.

11. The defendant intends to rely upon the defenses of sudden emergency, unavoidable accident, and such other defenses as may become known through the course of discovery.

WHEREFORE, defendant moves that the Motion for Judgment filed against him herein be dismissed with an award of costs incurred in his behalf.

RALPH D. LOMBARD  
By Counsel

ANDERSON & CORRIE

By: 

Nic B. Kuvshinoff, VSB #41627  
Counsel for Defendant  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033  
(703) 222-2200

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing, Answer was  
mailed, postage prepaid, this 12<sup>th</sup> day of July, 1999, to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231

  
\_\_\_\_\_  
Nic B. Kuvshinoff



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,

Plaintiff,

v.

RALPH D. LOMBARD,

Defendant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

At Law No. 181346

**RESPONSE OF VIRGINIA FARM BUREAU  
MUTUAL INSURANCE COMPANY**

COMES NOW, Virginia Farm Bureau Mutual Insurance Company, by counsel, and in and for its Response to the Motion for Judgment filed herein, states the following:

1. Virginia Farm Bureau Mutual Insurance Company admits the allegations set forth in paragraphs one (1), two (2), three (3), four (4) and five (5).
2. Virginia Farm Bureau Mutual Insurance Company neither admits nor denies the allegations set forth in paragraph six (6) having insufficient information or knowledge to know whether or not such facts or allegations exist or are true but where relevant and material to this lawsuit, strict proof is demanded.
3. Virginia Farm Bureau Mutual Insurance Company denies the allegations set forth in paragraphs seven (7), eight (8), including all subparts, and nine (9) as pled and demands strict proof thereof.
4. By way of further Response to the Motion for Judgment, Virginia Farm Bureau

Mutual Insurance Company states the following:

(a) It denies that Ralph D. Lombard committed any act or made any omission constituting negligence in this case and demands strict proof of all elements of injury, liability and damages.

(b) It denies that the plaintiff was injured in the manner or to the extent alleged and demands strict proof of all elements of injury, liability and damages.

(c) It will rely upon the defenses of contributory negligence, assumption of the risk, negligence of others, unavoidable accident sudden emergency, failure to mitigate damages and all other defenses as they become known before and during trial.

(d) It denies that it is liable to plaintiff in any amount or under any theory of law and demands strict proof thereof.

(e) It will rely upon all contractual defenses set forth in the policy of insurance as well as those set forth in Virginia Code §38.2-2206.

(f) It denies that the necessary prerequisites have not been satisfied by plaintiff to create a UM/UIM claim and demands strict proof and satisfaction of all prerequisites.

(g) It denies all remaining allegations set forth in the Motion for Judgment not specifically addressed above and demands strict proof thereof.

(h) It will rely upon the statute of limitations if applicable to the facts and circumstances surrounding this accident.

WHEREFORE, having fully responded, Virginia Farm Bureau Mutual Insurance Company, by counsel, moves to be dismissed from this action with its costs expended in

this behalf.

**VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY**  
By Counsel

TRICHILO, BANCROFT, McGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road  
Suite 400  
P.O. Box 22  
Fairfax, Virginia 22030  
(703) 385-1000 (phone)  
(703) 385-1555 (fax)



Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Virginia Farm Bureau Mutual Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Response was mailed first class, postage prepaid on this 28<sup>th</sup> day of July, 1999 to Steven M. Frei, Esquire, Hall & Sickels, P.C., 12120 Sunset Hills Road, Suite 150, Reston, Virginia 20190; and to Ralph D. Lombard, 12921 Colby Drive, Woodbridge, Virginia 22192.



Steven W. Bancroft

VIRGINIA:

FILED  
COURT SERVICES

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH

JOHN T. REY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Plaintiff,

Law No. 181346

RALPH D. LOMBARD

Defendant.

MOTION TO QUASH

COMES NOW Allstate Insurance Company, by counsel, and files this Motion to Quash the Subpoena served upon Allstate Insurance Company and to Quash the Notice of Deposition, which seeks to depose a corporate representative of Allstate Insurance Company on May 8, 2000, at 10:00 a.m., at Plaintiff's counsel's office.

The case involves a personal injury action filed by the Plaintiff against the Defendant. The Defendant is insured by Allstate Insurance Company. Defense counsel has retained Bruce Ammerman, M.D., as an expert witness to testify at the trial.

Plaintiff's counsel has apparently come into possession, in the course of another case, of documents allegedly prepared by Allstate Insurance Company pertaining to payments made to Bruce Ammerman, M.D. The Plaintiff's subpoena and Notice of Deposition seeks to have a representative of Allstate Insurance Company explain, in conjunction with the case at bar, the documents prepared by another individual at another time in another case.

Allstate Insurance Company moves to quash the subpoena and Notice of Deposition on several grounds. Pursuant to Rule 4:1(b)(4)(A)(i), a party may, through Interrogatories, require another party to identify testifying expert witnesses and "to state the subject matter on which the

randt, Jennings, Roberts,  
Davis & Snee, PLLC  
SUITE 200  
1585 ARLINGTON BOULEVARD  
FALLS CHURCH, VIRGINIA 22042  
(703) 538-2500

expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and the summary of the grounds for each opinion." Any additional information regarding expert witnesses must be obtained by Order of the Court. Since Bruce Ammerman, M.D., has been retained as an expert witness in this case, the information sought by the plaintiff in the course of the deposition exceeds the discoverable expert witness information.

The second ground for quashing the subpoena and Deposition Notice is that, if the documentation at issue pertains to other cases, it is not only irrelevant to the case at bar as it does not concern the plaintiff or the defendant, but, more importantly, if it pertains to treatment rendered by Dr. Ammerman to other patients or individuals, there are privacy requirements of the physician/patient privilege that may be violated should the requested information be divulged.

The documentation also appears to be entitled "IRS Payments List." To the extent that the documentation indicates certain payments have been reported to the IRS as having been made to Dr. Ammerman, the doctor, himself, may have a personal privacy interest in quashing the subpoena and Deposition Notice and, because he is not before the Court to address the issue and could possibly be prejudiced by further disclosure of the information, the Court should be hesitant to permit the deposition to proceed.

WHEREFORE, for the reasons stated herein, Allstate Insurance Company, by counsel, respectfully moves this Honorable Court to quash the subpoena served on it by plaintiff's counsel in this case and to quash the Deposition Notice pursuant to same.

randt, Jennings, Roberts,  
Davis & Snee, PLLC  
SUITE 200  
585 ARLINGTON BOULEVARD  
JLLS CHURCH, VIRGINIA 22042

(703) 536-2500

ALLSTATE INSURANCE COMPANY  
By Counsel



SLENKER, BRANDT, JENNINGS & JOHNSTON

By: 

William M. Dupray, Esquire  
Virginia State Bar No. 35908  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042  
(703) 536-2500  
Counsel for Defendant Allstate Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via facsimile and by first-class mail, postage prepaid this 5th day of May, 2000, to:

Steven M. Frei, Esquire  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
Counsel for Plaintiff

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Fairfax, Virginia 22033-4904  
Counsel for Defendant Ralph D. Lombard

Steven W. Bancroft, Esquire  
TRICHILO, BANCROFT, McGAVIN, HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
Counsel for Virginia Farm Bureau Mutual Insurance Company

  
William M. Dupray

Brandt, Jennings, Roberts,  
Davis & Snee, PLLC  
SUITE 200  
6565 ARLINGTON BOULEVARD  
FALLS CHURCH, VIRGINIA 22042

(703) 536-2500

5250

VIRGINIA

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

FILED  
MAR 23 PM 1:53  
JUDITH FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

DORSEY W. ROHRBAUGH,

Plaintiff

v.

RALPH D. LOMBARD

12921 Colby Drive  
Woodbridge, VA 22192,

Defendant.

Law No. 181346

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
ALLSTATE INSURANCE COMPANY'S  
MOTION TO QUASH NOTICE OF DEPOSITION**

COMES NOW the Plaintiff, Dorsey W. Rohrbaugh (Plaintiff) and files this Memorandum in Opposition to the Motion to Quash the Subpoena of an Allstate corporate designee, and in support thereof, states as follows:

**I. FACTUAL BACKGROUND**

Plaintiff was injured in an automobile collision on August 11, 1995. Defendant in the case is insured by Allstate Insurance Company (Allstate), and Allstate is providing the defense in this case. During the course of this case, the Defendant (as well as the underinsured carrier) has identified Bruce Ammerman, M.D., as an expert witness. Further, Dr. Ammerman examined Plaintiff on two separate occasions, the first in April of 1999 and more recently in May of 2000.

During the course of discovery in another personal injury case that is in this Court, Pamela Stroud v. Debra Consentino, Law No. 177798, Circuit Court of Fairfax County, and pursuant to a

proper subpoena request (attached as Exhibit A), Allstate provided computerized printouts of various payments it had made to Dr. Ammerman. Dr. Ammerman was the defense expert witness in the Stroud case, as well. Of significance is the fact that the subpoena request in Stroud limited itself to payments made to Dr. Ammerman as a result of Rule 4:10 examinations (See Exhibit A attached).

During the *de benne esse* deposition of Dr. Ammerman in the Stroud case, he was presented the exact documentation that is attached to the subpoena request in the present case. A copy of the subpoena request and Notice of Deposition in this case is attached as Exhibit B.

Dr. Ammerman was questioned concerning the documentation:

Q You asked me, Doctor, for some — some support, I guess, for the figure that I just mentioned to you of 1998 being approximately \$105,000 from the one company, and I am going to provide you documents that were given to me pursuant to a subpoena and ask you to take a look at them if you would.

\* \* \* \* \*

A --- and this, indeed — as far as I'm concerned, they are charges for medical or health care services. I see patients — who is this from? This is Allstate. I send them bills all the time for patients I treat. I don't know how much of this is from doing medical/legal work and how much is (sic) this is for patients I treat who have been in accidents or operated on.

*De Benne Esse Testimony of Bruce J. Ammerman, M.D., Thursday, March 9, 2000*  
Page 36, Line 16 through Page 37, Line 17, portion of transcript is attached as Exhibit C

In light of Dr. Ammerman's inability (or unwillingness) to testify concerning which of the payments on the Allstate printout were for medical/legal work and which were for actual care and treatment, Plaintiff issued the subpoena request presently before this Court. Allstate is the creator of the information and certainly is the only source (besides Dr. Ammerman) that can provide explanation concerning the payments.

## II. ARGUMENT

**A. Dr. Ammerman's previous sworn testimony that he is unable to differentiate which payments are for medical services and which payments are for medical/legal services results in the Allstate representative being the only individual that could answer these questions.**

The sworn testimony of Dr. Ammerman quoted immediately above, makes clear that he is either unwilling or unable to differentiate between payments reflected in the documents that were for patient care or for medical/legal work. Hence, the only remaining source of information to supply answers to those questions would be the creator of the information. This is obviously an Allstate Insurance representative.

**B. Plaintiffs right to impeach Dr. Ammerman's testimony by establishing his bias is absolute in Virginia.**

There can be no legitimate argument that the financial payments made by Allstate and other insurance companies to Dr. Ammerman for performing medical/legal work, is not evidence pertinent to his bias. The right of Plaintiff to impeach Dr. Ammerman's testimony by establishing his bias is absolute in Virginia. Whitaker v. Commonwealth, 217 Va 966, 234 S.E. 2d 79 (1979). Further, the cross-examination of Dr. Ammerman for the purpose of establishing bias is always relevant. Norfolk and Western Railway v. Sonney, 236 Va 482, 374 S.E. 2d 71 (1988). In fact,

[On] cross-examination great latitude is allowed . . . [T]he general rule is that anything tending to show the bias on the part of a witness may be drawn out.

Kirk v. Commonwealth, 21 Va App 291, 299, 460 S.E. 2d 166 (1995), quoting Henning v.

Thomas, 235 Va 181, 188, 366 S.E. 2d 109, 113 (1988). If cross-examination at trial is allowed

to establish bias of a witness, then certainly it should not be that a party is precluded in discovery from obtaining information necessary to establish such a bias. To preclude the discovery of this evidence would place Plaintiff in a position that if the witness denied the bias at trial (or as in this case, states that he is unable to determine from the information what is medical/legal and what is not) Plaintiff would have no extrinsic evidence with which to impeach the witness. Further, it is important to remember that bias, unlike some other areas of impeachment (i.e., prior inconsistent statements) **IS NEVER COLLATERAL**. Thus, Plaintiff would **NEVER** be precluded from introducing extrinsic evidence to impeach a witness if the bias is denied. Norfolk and Western Railway v. Sonney, 236 Va 482, 374 S.E. 2d 71, (1988); See also, FRIEND, *The Law of Evidence in Virginia*, Chapter 4, (the Michie Company, 4<sup>th</sup> Ed. 1993); McCormick on Evidence, Section 47 (West Publishing Co., 3<sup>rd</sup> Ed. 1984).

Plaintiff's counsel has personal knowledge and experience from other cases that Dr. Ammerman regularly conducts Rule 4:10 examinations on plaintiffs at the request of defendants. Dr. Ammerman is obviously paid to conduct these examinations, write reports and testify regarding the examinations. The amount of compensation Dr. Ammerman receives from these activities is certainly fertile ground for evidence to be used in establishing his bias.

The testimony that is sought pursuant to the subpoena at issue is to determine, accurately, the amount of money Dr. Ammerman has been paid by Allstate to conduct either Rule 4:10 examinations or provide other forensic/medical services to Allstate. Again, Dr. Ammerman has denied that he has the ability to make this distinction, which leaves us with no other alternative but to question an appropriate Allstate representative concerning these figures, forms and documents.



### **III. CONCLUSION**

The law in Virginia is clear that the bias of a witness is always relevant. Equally clear under Virginia law is the fact that bias is never a collateral matter and the plaintiff would never be precluded from introducing extrinsic evidence to impeach a witness if the bias is denied.

In the present case, Dr. Ammerman, in previous sworn testimony, has indicated he is unable to determine from a payment spreadsheet from Allstate what work he performed was medical/legal. In light of his inability or unwillingness to provide testimony concerning these services the only entity able to provide that information is Allstate.

An insurance company's financial payments to Dr. Ammerman for medical/legal services is evidence of bias. Plaintiff should be able to determine the precise nature and amount of the payments Dr. Ammerman has received. Otherwise, there would be no way for Plaintiff to develop extrinsic evidence to refute Dr. Ammerman's statement that he is unable to determine from the schedules how much money he makes doing medical/legal work. He should not be able to forestall plaintiff's right to present this evidence by simply refusing to answer the question.

WHEREFORE, for all the reasons stated above, it is respectfully requested that the Court deny Allstate's Motion to Quash the properly served subpoena. Further, in recognition that this deposition was originally scheduled for May 8, 2000, and further, that trial of this matter is scheduled to begin next week, on June 7, 2000, if the Court denies the Motion to Quash the subpoena, as requested, that the Court order Allstate designee's deposition be scheduled for 10:00 a.m. on Monday, June 5, 2000.


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 25<sup>th</sup> day of May 2000, copies of the foregoing Plaintiff's Memorandum in Opposition to Allstate Insurance Company's Motion to Quash was forwarded by U.S. mail, postage prepaid, to:

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033  
(Counsel for Ralph D. Lombard)

Steven W. Bancroft, Esq.  
TRICHILO, BANCROFT, et. al.  
4117 Chain Bridge Road  
Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

William M. Dupray, Esq.  
BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042

  
\_\_\_\_\_  
Steven M. Frei

VIRGINIA:

FILED  
CIVIL INTAKE  
IN THE CIRCUIT OF FAIRFAX COUNTY  
99 DEC 15 AM 9:28

PAMELA STROUD

Plaintiff,

v.

DEBRA COSENTINO

Defendant.

JUDITH L. ROY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

AT LAW NO. 177798

**REQUEST FOR SUBPOENA DUCES TECUM**

COMES NOW the Plaintiff, PAMELA STROUD, by counsel, pursuant to Rule 4:9 (c) of the Rules of Practice of the Supreme Court of Virginia, and requests the Clerk of this Court to prepare and issue subpoenas to the below-named persons and institutions to produce the following requested documents:

**ALLSTATE INSURANCE COMPANY**

SERVE: Registered Agent  
Edward R. Parker  
5511 Staples Mill Road  
Richmond, VA 23228

**STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.**

SERVE: Registered Agent  
Brian K. Carlson  
1500 State Farm Blvd.  
Charlottesville, VA 22909

**GEICO INSURANCE COMPANY**

SERVE: Registered Agent  
Eugene Miller, Esq.  
4103 Chain Bridge Road  
Suite 401  
Fairfax, VA 22030

EXHIBIT

A

**USAA INSURANCE COMPANY**

**SERVE:** Registered Agent  
Lee Ann Ned  
5800 N. Hampton Blvd.  
Norfolk, VA 23502

**BRAULT, PALMER, et al.,**  
**SERVE:** Edward H. Grove, III, Esq.  
(or any other officer/director)  
10533 Main Street  
Fairfax, VA 22030

The above-named persons and/or entities are requested to produce for inspection and copying the following: **BEGINNING JANUARY 1, 1995 TO PRESENT**, any and all medical reports resulting from examinations conducted pursuant to Rule 4:10 of the Rules of the Virginia Supreme Court, invoices, billing records, payments, receipts, Federal or State Income Tax Documents (Including, but not limited to Federal Form 1099) in their/its possession that reflect or relate in any way to examinations conducted by or payments made to **WASHINGTON NEUROSURGICAL ASSOCIATES, P.C. and/or BRUCE J. AMMERMAN, M.D., TAX ID NO. 52-1074671**

In lieu of a personal appearance, copies of such records may be sent to the law office of Hall and Sickels, P.C., 12120 Sunset Hills Road, Suite 150, Reston, Virginia 20190-3231, on or before **JANUARY 5, 2000**, at 10:00 a.m., with reasonable costs for photocopying to be charged to the law firm of Hall and Sickels, P.C. Pursuant to Section 8.01-413 of the Code of Virginia, we ask that any bill which you submit for this reproduction include the number of pages in your response, as that statute stipulates a maximum copying and search fee in this regard.

PAMELA STROUD  
By Counsel

HALL & SICKELS, P.C.

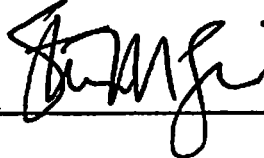


STEVEN M. FREI, ESQ. (VSB #32211)  
Counsel for Plaintiff  
2120 Sunset Hills Road  
Suite 150  
Reston, VA 20190  
(703) 925-0500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed on the 15th day of December, 1999, first class U.S. Mail, postage prepaid to:

August W. Steinhilber, III, Esq.  
BRAULT, PALMER, GROVE, ZIMMERMAN,  
WHITE & STEINHILBER  
10533 Main Street  
Fairfax, Virginia 22030



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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED  
CIVIL INTAKE

00 APR 25 PM 2:02

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

RALPH D. LOMBARD )

Defendant. )

Law Number: 181346

TO: Allstate Insurance Company  
SERVE: Registered Agent  
Edward R. Parker, Esq.  
5511 Staples Mill Road  
Richmond, Virginia. 23228

**SUBPOENA REQUEST**

The Clerk of said Court will please summon the following witness on behalf of the Plaintiff, Dorsey W. Rohrbaugh, to appear before a notary public or other officer authorized by law to administer oaths in the Commonwealth of Virginia, at 10:00 a.m., on the 8th day of May, 2000, for deposition at the law offices of Hall & Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150, Reston, Virginia, 20190:

The Allstate corporate designee and/or the person most knowledgeable of the attached information as described below: Allstate Insurance Companies IRS Payments List and Payment Detail for TIN Number 521074671; Washington Neurosurgical Associates, P.C., and Bruce Ammerman, M.D., for the period beginning January 1, 1995 to December, 31, 1999.

Said deposition shall continue day-to-day until completed.

EXHIBIT

B

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS P.C.



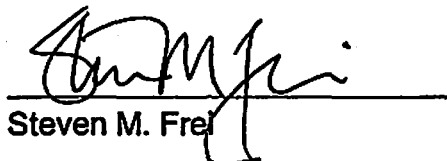
Steven M. Frei, Esquire, VSB #32211  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, VA 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)



Steven M. Frei

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

**DORSEY W. ROHRBAUGH**

**Plaintiff,**

**vs.**

**RALPH D. LOMBARD**

**Defendant.**

**Law Number: 181346**

**TO: Allstate Insurance Company**  
**SERVE: Registered Agent**  
**Edward R. Parker, Esq.**  
**5511 Staples Mill Road**  
**Richmond, Virginia 23228**

**NOTICE OF DEPOSITION**

**PURSUANT to Rule 4:5(b) of the Rules of Practice of the Supreme Court of Virginia,**  
**please take notice that on the 8th day of May, 2000, at 10:00 a.m., at the law office of Hall**  
**& Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150,**  
**Reston, Virginia, Steven M. Frei, Esq., will take the deposition of the Allstate corporate**  
**designee and/or the person most knowledgeable of the attached information as described**  
**below:**

**Allstate Insurance Companies IRS Payments List and**  
**Payment Detail for TIN Number 521074671, Washington**  
**Neurosurgical Associates, P.C., and Bruce Ammerman, M.D.,**  
**for the period beginning January 1, 1995 to December, 31,**  
**1999.**

for the purpose of discovery or for use as evidence, or both, before an officer authorized to administer oaths. If for any reason the taking of said testimony be not commenced, or if commenced, be not completed, the taking of same shall be continued at the same place from day-to-day and time-to-time, until completed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS, P.C.



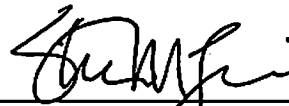
STEVEN M. FREI, ESQ. (#32211)  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

  
\_\_\_\_\_  
Steven M. Frei

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAMELA STROUD,

Plaintiff,

-vs-

DEBRA COSENTINO,

Defendant.

AT LAW NO. 177798

Washington, D.C.

Thursday, March 9, 2000

Video Deposition, de bene esse, of

DR. BRUCE J. AMMERMAN

a witness, called for examination by counsel on behalf of the Defendant, pursuant to notice, taken in the offices of WASHINGTON NEUROSURGICAL ASSOCIATES, P.C., Suite 352, 3301 New Mexico Avenue, Washington, D.C., beginning at 2:22 o'clock p.m., before SUSAN K. GREEN, a Certified Verbatim Reporter and a Notary Public in and for the District of Columbia, and before WILLIAM SALE, Video Operator, when there were present on behalf of the respective parties:

EXHIBIT

C

1           9 A       I don't know if that's correct at all. Can  
2 you give me a little more details? Because I see patients  
3 who are injured, I send bills off to insurance companies  
4 for motor vehicle accidents and they pay me.

5                       So how much is coming from patients I'm  
6 treating or how much is coming from patients I'm seeing, I  
7 certainly can't tell.

8                       MR. STEINHILBER: I assume my objection can be  
9 continuing?

10                      MR. FREI: It can be.

11                      MR. STEINHILBER: Thank you. Or, you will  
12 recognize it as being continuing?

13                      MR. FREI: I will.

14                      MR. STEINHILBER: Thank you.

15                      BY MR. FREI:

16                      Q       You asked me, Doctor, for some -- some  
17 support, I guess, for the figure that I just mentioned to  
18 you of 1998 being approximately \$105,000 from the one  
19 company, and I am going to provide you documents that were  
20 given to me pursuant to a subpoena and ask you to take a  
21 look at them if you would. . .

22                      (Mr. Frei handed documents to the witness for  
23 his examination.)

1 A Sure; thanks.

2 (Pause.)

3 Okay, I have them here.

4 Q Have you seen those before I just handed them  
5 up to you.

6 A I saw it earlier today when Mr. Steinhilber  
7 showed it to me. He said he had it --

8 Q Right.

9 A -- and this, indeed -- as far as I'm  
10 concerned, they are charges for medical or health care  
11 services. There are charges up and down for medical and  
12 health care services. I see patients -- who is this from?  
13 This is Allstate. I send them bills all the time for  
14 patients I treat. I don't know how much of this is from  
15 doing medical/legal work and how much is this is for  
16 patients I treat who have been in accidents or operated  
17 on.

18 (The witness returned the documents to Mr.  
19 Frei.)

20 Q I understand that.

21 Was I correct with my figure?

22 A Whatever the bottom line figure is that they  
23 said, I certainly would not debate it.



Law Number: 181346

RALPH D. LOMBARD

## 30

 VIRGINIA

PTN  
6-2-00

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

DORSEY W. ROHRBAUGH,

Plaintiff

v.

RALPH D. LOMBARD

12921 Colby Drive  
Woodbridge, VA 22192,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Law No. 181346

**ORDER**

Upon consideration of Defendant Allstate Insurance Company's Motion to Quash, and Plaintiff's Memorandum in Opposition thereto, it is hereby,

ADJUDGED, ORDERED AND DECREED that said motion be and hereby is DENIED;  
it is further,

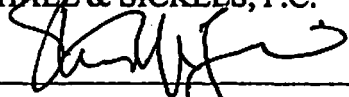
ADJUDGED, ORDERED AND DECREED that the deposition shall be conducted on  
~~Monday, June 5, 2000~~ <sup>Tuesday 6</sup>, 2000, beginning at 10:00 a.m. in the office of Hall & Sickels, P.C.

ENTERED this 2<sup>nd</sup> day of <sup>June</sup> ~~May~~, 2000.

  
\_\_\_\_\_  
Judge, Fairfax County Circuit Court

I ASK FOR THIS:

HALL & SICKELS, P.C.



STEVEN M. FREL, ESQUIRE (VSB#32211)

12120 Sunset Hills Road, Suite 150

Reston, Virginia 20190

*Counsel for Plaintiff*

SEEN AND Objected To for all reasons stated at hearing:

ANDERSON & CORRIE



QUENTIN R. CORRIE, ESQUIRE

12600 Fair Lakes Circle

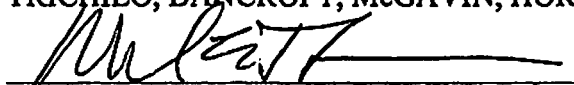
Suite 220

Fairfax, Virginia 22033

*Counsel for Defendant Ralph D. Lombard*

SEEN AND objected to for reasons stated at hearing.

TRICHILO, BANCROFT, McGAVIN, HORVATH & JUDKINS, P.C.



STEVEN W. BANCROFT

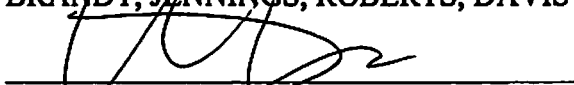
4117 Chain Bridge Road, Suite 400

Fairfax, Virginia 22030

*Counsel for Defendant Virginia Farm Bureau Mutual Insurance Co.*

SEEN AND objected to

BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC



William M. Dupray, Esq.

6565 Arlington Boulevard, Suite 200

Falls Church, Virginia 22042

*Counsel for Defendant Allstate Insurance Company*

SEEN AND \_\_\_\_\_:

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ORIGINAL

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COURT SERVICE

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JOHN T. FREY

CLERK, CIRCUIT COURT  
FAIRFAX, VA

CLERK  
SUPREME COURT OF VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,

Plaintiff,

vs.

RALPH D. LOMBARD,

Defendant.

D A Y O N E

Fairfax, Virginia

Wednesday, June 7, 2000

The trial commenced at 10:00 o'clock, a.m.

BEFORE:

The Honorable Dennis J. Smith, Judge

APPEARANCES:

FOR THE PLAINTIFF:

STEVEN M. FREI, ESQ.  
8221 Old Courthouse Road  
Suite 300  
Vienna, Virginia 22182-3829

Reported by: Billy L. Williams

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(703) 471-7603  
46441 Springwood Court, Sterling, Virginia 20165

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AT 181346 RICHMOND, VIRGINIA

FOR THE DEFENDANT:

QUENTIN R. CORRIE, ESQ.  
Of: Anderson & Corrie  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033

STEVE W. BANCROFT, ESQ.  
Of: Trichilo, Bancroft, McGavin, Horvath & Judkins  
4117 Chain Bridge Road  
Suite 400  
Fairfax, Virginia 22030-0022

- - -

C O N T E N T S

WITNESS:

Dorsey W. Rohrbaugh	
DIRECT . . . . .	54
CROSS . . . . .	90
Terry Rohrbaugh	
DIRECT . . . . .	107
CROSS . . . . .	127
REDIRECT . . . . .	144
Richard Lee Gaertner, M.D. (De Bene Esse)	
DIRECT . . . . .	157
CROSS (by Mr. Corrie). . .	198
CROSS (by Mr. Bancroft). .	215
REDIRECT . . . . .	222
Charles Citron	
DIRECT . . . . .	229, 232
VOIR DIRE . . . . .	231
CROSS . . . . .	250

- - -

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46441 Springwood Court, Sterling, Virginia 20165

## E X H I B I T S

<u>EXHIBIT</u>	<u>FOR IDENT.</u>	<u>IN EVID.</u>
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## PLAINTIFF'S

Exhibit No. 1 . . . . .	154 . . .	154
Exhibit No. 2 . . . . .	154 . . .	154
Exhibit No. 3 through 9 . . . . .	256 . . .	---

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## P R O C E E D I N G S

(Thereupon, the court reporter was sworn.)

THE COURT: Good morning, the case of Dorsey Rohrbaugh versus Ralph Lombard.

MR. FREI: Correct, sir.

THE COURT: Are there any preliminary matters?

MR. BANCROFT: Judge, nothing that we have to, I think, address right now, but at some point in time, Dr. Bruce Ammerman will be testifying in this case. And apparently, Judge Ney made a ruling yesterday that may have some relevance to the issues in this particular case. Mr. Frei has informed myself and Mr. Corrie this morning that Judge Ney ruled a particular way as far as his ability to ask Dr. Ammerman a particular question concerning money that he has received from a company, now, the company being an insurance company. And we would like to get a little guidance on that.

I don't think that issue is going to surface today, but I think it's very likely that it will come up tomorrow. It may come up late

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1       today. So, I just want to bring that to the  
2       Court's attention. I think we need to get a  
3       little guidance on that eventually before Dr.  
4       Ammerman actually testifies, but nothing urgent  
5       right now.

6               THE COURT: All right.

7               MR. FREI: I don't know if you want any  
8       more information about it right now or not,  
9       Judge.

10              THE COURT: I think we can deal with  
11     that as it comes up.

12              MR. FREI: Okay. That's fine.

13              THE COURT: We won't have that issue  
14     until he testifies. We can talk about it later.

15              MR. CORRIE: Your Honor, please, I  
16     think there's one other small issue and I guess  
17     it's a matter of procedure. The plaintiff will  
18     show Dr. Gaertner's video deposition, and there  
19     were a few objections raised. Do you want to  
20     have those raised now or during the course of the  
21     showing and the video stopped so Your Honor can  
22     rule?

23              THE COURT: If we can get them worked

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1 out in advance of the video being shown, I'd  
2 rather do it that way, but what I'm going to  
3 direct is that no one make any reference to the  
4 objective two portions of his testimony in  
5 opening statement. And we'll deal with it prior  
6 to the time of the showing of the video.

7 MR. FREI: I don't think -- I mean, I'm  
8 going to have a couple of witnesses before lunch.  
9 My suspicion is that we'll -- Gaertner will  
10 probably be shown right after lunch, so maybe we  
11 can deal with it when we talk during lunch.

12 THE COURT: Okay. Let me get it  
13 straight, now. Mr. Bancroft, you represent  
14 Virginia Farm?

15 MR. BANCROFT: Correct.

16 THE COURT: All right. Do you want me  
17 to just say you're here on the behalf of the  
18 defendant?

19 MR. BANCROFT: That's correct, Judge,  
20 if you would please.

21 MR. FREI: Can I ask, I guess, a point,  
22 too, about procedure from the Court with respect  
23 to how counsel is going to be allowed to

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1 participate? Is the Court going to allow them to  
2 both question witnesses as opposed to having one  
3 lawyer question a witness?

4 I know that the law in Virginia allows,  
5 obviously, a UIM carrier catalyst, State Farm and  
6 the other case which I can't think -- Cuffy, I  
7 think, may be the other case, allows the UIM  
8 carrier to participate. What both those cases  
9 made clear is that it's really up to the Court to  
10 figure out the logistics.

11 And it's always my position, Judge,  
12 that only one lawyer should be able to actually  
13 question the witness. If Mr. Bancroft wants to  
14 ask Mr. Corrie, or point out other questions he  
15 would like to have directed at the witness, I  
16 think that's fine. I don't think they get two  
17 bites of the apple at each witness.

18 THE COURT: Well, let me put it this  
19 way. I'm not going to allow two bites of the  
20 apple. I'll allow them to each ask questions,  
21 but I trust them both not to be cumulative, and  
22 I'll step in if necessary to prevent cumulative  
23 testimony. We're not going to go over the same

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1 territory over and over again.

2 MR. FREI: And how about voir dire?  
3 Three strikes, not six?

4 MR. BANCROFT: Well, there's only one  
5 defendant, so there's only going to be three  
6 defense strikes.

7 MR. FREI: Okay. All right. One  
8 argument, not two.

9 THE COURT: One argument, not two.

10 MR. FREI: Right.

11 THE COURT: Is that acceptable?

12 MR. FREI: That's fine, Judge.

13 THE COURT: But as far as the  
14 questioning, they can each ask questions, but I  
15 trust them not to be cumulative. Are we ready to  
16 proceed then?

17 MR. FREI: Yes, sir.

18 MR. BANCROFT: Yes, sir.

19 THE COURT: Let's bring the jury in.

20 (Jury enters.)

21 THE COURT: Good morning, my name is  
22 Dennis Smith, and I'll be the judge that will be  
23 presiding over the trial of this case. Each side



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46441 Springwood Court, Sterling, Virginia 20165

\* \* \*

1 have what is called the burden of proof.

2 In other words, it is my obligation, as  
3 Mr. Rohrbaugh's lawyer, to prove certain things  
4 to you that occurred in this case before we're  
5 entitled to recover.

6 There is a difference in burdens of  
7 proof in our court system. There is the criminal  
8 burden of proof which is, as some of you may  
9 know, beyond a reasonable doubt. In other words,  
10 you can't have any reasonable doubt in your mind  
11 if you're going to send someone to jail or  
12 convict them of a crime.

13 In a civil case, that burden is not as  
14 high. It's basically a burden that says it's the  
15 preponderance of the evidence, and what that  
16 really means is that it's more likely so this  
17 happened than it didn't, 51 percent.

18 Now we think -- I think, that the  
19 evidence you're going to hear is going to be far  
20 more than that. I think we're well over half a  
21 glass full with respect to evidence in this case.

22 It's going to allow you to come back  
23 and return a verdict in our favor, but that's the

\* \* \*

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46441 Springwood Court, Sterling, Virginia 20165

\* \* \*

1           A.   Houses, and I built all the way up to  
2           McLean, and joined a CIA building. I bought a  
3           piece of ground and developed it.

4           Q.   But did you have a company that you  
5           started?

6           A.   Yes, I did.

7           Q.   What was the name of it?

8           A.   Rohrbaugh Builders, Incorporated.

9           Q.   And is it -- as the business went on,  
10          did anybody else join you in that business?

11          A.   Yes, my two sons, later, when they got  
12          big enough to work.

13          Q.   And when you say you were in this  
14          business, did you hire people to do the work? Or  
15          did you do the work?

16          A.   I done a lot of it. I designed my  
17          houses and a lot of the stuff. And then when my  
18          sons came along, of course, they were better  
19          active in it than I was. And which we're still  
20          in it.

21          Q.   Okay. How long have you been in your  
22          own business? How many years, approximately?

23          A.   Forty years.

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1           Q.    Now is it -- back in 1995 when this  
2 collision occurred, were your sons pretty much  
3 running the business and you were just kind of  
4 overseeing stuff?

5           A.    Yes.

6           Q.    And you pretty much retired back in  
7 1995 from the day-to-day sorts of things of the  
8 business?

9           A.    Yes, I was still here and there on the  
10 jobs, you know.

11          Q.    Back in 1995, where did you live?  
12 Where did you have a house?

13          A.    Great Falls, and I had a place in  
14 Orlando, Florida, in Inverness.

15          Q.    How long have you had the place down in  
16 Florida?

17          A.    Well, I had a place for 22 years in  
18 Orlando, and then they -- it's bad to say. Well,  
19 they tore my place up there when I was up here,  
20 from the -- Boone High School was right close  
21 there. And they just broke the glasses out, and  
22 stole my stuff out.

23          Q.    There was some vandalism at your other

\*           \*           \*

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46441 Springwood Court, Sterling, Virginia 20165

\* \* \*

1        what happened after that.

2            A.     Well, I heard brakes squealing, and I  
3        hit my brakes, and by that -- he hit me behind  
4        and drove my car 23 feet. And when I got out, he  
5        said -- well, his car hit the back of mine and  
6        glanced over, and the front end went over the  
7        curb right there.

8            Q.     Okay.

9            A.     And --

10          Q.     Just a second, okay? You said that it  
11        pushed you -- or after he hit you, you went 23  
12        feet?

13          A.     That's right.

14          Q.     How do you know 23 feet?

15          A.     I had 50-foot tape I always kept in my  
16        car because you always, here and there, needed  
17        them. And I measured from where my glass -- he  
18        knocked -- brake -- broke all the glass out  
19        behind my Lincoln. And I measured from where  
20        that glass all laid out of my rear end of my car  
21        and measured it up myself. And it was 23 feet.

22          Q.     Now, you had mentioned a Lincoln. Were  
23        you driving the big, full-sized Lincoln Town Car?

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1           A.    Lincoln Continental.

2           Q.    And you said you had your foot -- when  
3 you heard the tires squealing, you had your foot  
4 on the brake?

5           A.    Yes.

6           Q.    Did you keep your foot on the brake  
7 from the time you got hit until the time you  
8 stopped?

9           A.    Well, that was so quick, I aimed to  
10 hold my foot on it, and I think I did.

11          Q.    Okay.

12          A.    And not only that but, when I got out,  
13 the light was still green -- or still red.

14          Q.    So, after the collision occurred, you  
15 get out of your car, you look up, and the light  
16 was  
17 still --

18          A.    Still red.

19          Q.    Okay. After the collision occurred,  
20 after you'd been hit, what did you do?

21          A.    Well, I got out --

22          Q.    You've already told us you measured the  
23 distance, so you don't have to tell us that

✱           ✱           ✱  
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\* \* \*  
1 certain degree. I mean, the gentleman was at  
2 that time 74 years of age. So, you know, I  
3 wasn't overly impressed with the fact that they  
4 were present.

5 Q. Were the changes that you saw, these  
6 degenerative changes or arthritic changes that  
7 you saw, something that you expected to see when  
8 you held the X-rays up? Or --

9 A. I was not surprised, given his age.

10 Q. After taking a history and examining  
11 Mr. Rohrbaugh and looking at the X-rays, did you  
12 develop any sort of a treatment plan for Mr.  
13 Rohrbaugh?

14 A. Well, I was more concerned about the  
15 findings and the changes in his neck, his  
16 cervical spine, than I was in his lower back or  
17 lumbar spine.

18 Q. And why is that?

19 A. Well, he was much more symptomatic in  
20 the neck, and the changes were more pronounced.  
21 So given that, I ordered a magnetic resonance  
22 imaging study of his cervical spine. And  
23 basically, that's a study where you're put into a

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\* \* \*

1 cord itself.

2 And if it's narrowed to the point where  
3 it's actually pinching it, that's called  
4 stenosis, or narrowing. This is a -- this is  
5 actually his MRI from 1995, and this is a side  
6 view, i.e., his right, the side view. And best  
7 seen in any three views across here is the brain.  
8 That's this material here.

9 And then extension of the brain is the  
10 spinal cord, coming down. The black is the  
11 vertebral bones, and then the reddish gray, if  
12 you will, are the disc spaces. If one looks at  
13 this and were to count down, this is vertebral  
14 body two, that's three, four, five, six, and  
15 seven.

16 At five and six, and six and seven, you  
17 can see that there is a defect pressing on the  
18 spinal cord. I call it a bite out of the apple.  
19 It looks like somebody's taken a bite out of an  
20 apple there.

21 Q. I mean, what is causing that defect or  
22 bite out of the apple?

23 A. That's caused by a herniated disc.

\* \* \*

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1                               \*               \*               \*  
2       Azzam does, and "fusion," i.e., the bone put in  
there until it becomes solid; done by myself.

3               Q.     Is this surgery that is something that  
4       you discussed with Mr. Rohrbaugh then on June  
5       18th?

6               A.     Yes, sir; I did.

7               Q.     Okay. And what, if any, decisions were  
8       made about whether or not Mr. Rohrbaugh was going  
9       to have the surgery?

10              A.     He decided to go through with it, and  
11       he elected at that time to use the cadaver graft  
12       for the bone bank graft, rather than his own hip.

13              Q.     Was that your recommendation? Or does  
14       it matter?

15              A.     It doesn't really matter. Older  
16       people, perhaps it's easier on them because their  
17       pain is significant for several weeks afterwards.

18              Q.     Did Mr. Rohrbaugh have the surgery that  
19       you just described?

20              A.     Yes, sir; he did.

21              Q.     Do you remember when he had it?

22              A.     He had the surgery on the 29th of July,  
23       1998.

                             \*               \*               \*

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\* \* \*

1 of stirred up a little bit the muscles with the  
2 fall. I thought he was going on to fusing  
3 satisfactorily. I thought, in a couple of more  
4 weeks, he was going to go on to, I think, a full  
5 recovery.

6 Q. The -- this barnyard incident at all,  
7 do you think that in any way interfered with his  
8 recovery from the -- at least with respect to the  
9 fusing of the bones?

10 A. It may have prolonged it a couple of  
11 weeks.

12 Q. I placed in front of you before we  
13 began today, Doctor, a number of exhibits. Take  
14 a look at those for me for a minute if you would,  
15 please.

16 A. (Witness examining document.)

17 Q. And ask you just to review for a  
18 moment, and then I'll ask you a collective set of  
19 questions about all of them.

20 A. Okay.

21 Q. Beginning with Exhibit Two and moving  
22 through the rest of the exhibits, take a look at  
23 those and then I'm going to ask you some

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1 questions about them.

2 A. All right.

3 (Witness examining document.)

4 Q. Did you have a chance to do that?

5 A. Yes, I have.

6 Q. Okay. Could you just generally  
7 describe for me what was reflected by Exhibits  
8 Two through -- I believe it's Nine?

9 A. They're bills that were submitted by a  
10 variety of people, starting with the  
11 neurosurgeon, for a variety of radiology charges  
12 for the CAT scan, and plain films, and  
13 myelograms, et cetera; hospital bills all broken  
14 down, physical therapy bills, and bills for  
15 myself.

16 Q. I'm going to ask you at certain points  
17 in the future here, during your testimony,  
18 Doctor, about what your medical opinions are  
19 about certain things regarding Mr. Rohrbaugh.  
20 The basis on which you need to provide that  
21 testimony, according to the law, is to a  
22 reasonable degree of medical probability. I  
23 don't want to have to say that every time I ask

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1       you a question. So when I ask your opinion,  
2       please remember and keep in mind that is the  
3       standard in which you need to render your opinion  
4       to, okay?

5               So with respect to the exhibits that  
6       you just reviewed, Dr. Azzam's bill, the various  
7       radiographic studies, myelograms, CAT scans,  
8       MRIs, physical therapy bills, your bill, in your  
9       opinion, are those bills for care and treatment  
10      ones that are reasonable and customary as to the  
11      amount of the charges?

12             A.    Yes.

13             Q.    And do you have an opinion as to  
14      whether the various bills that you just reviewed,  
15      that I showed you as exhibits, are ones that were  
16      medically necessary to care for Mr. Rohrbaugh?

17             A.    They were.

18             Q.    And do you have an opinion whether the  
19      charges, that are reflected by those exhibits,  
20      are bills that were incurred by Mr. Rohrbaugh as  
21      a result of medical treatment made necessary by  
22      the automobile collision that he had in August of  
23      1995?

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1 A. Yes.

2 Q. I want to talk a little bit, Doctor,  
3 and explore some of your opinions as to what  
4 caused certain of Mr. Rohrbaugh's medical issues  
5 that you provided some testimony about today.

6 And I'd like to start first of all with  
7 respect to the herniated disc that you talked  
8 about, specifically the C5/6 disc, and the C6/7  
9 disc. And I'll ask you first, in your opinion,  
10 were the herniation of those discs at the C5/6  
11 level and C6/7 level caused by the automobile  
12 collision that Mr. Rohrbaugh was in, in August of  
13 1995?

14 A. I believe they were, yes.

15 Q. And can you just relate to us a little  
16 bit about what it is that leads you to form and  
17 make that opinion regarding the discs?

18 A. Well, Mr. Rohrbaugh had no previous  
19 history of problems with his neck, to the best of  
20 my knowledge. And therefore, it was directly  
21 related, proximity-wise, to the accident and his  
22 presentation.

23 Q. Does -- are you aware of whether Mr.

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1       Rohrbaugh ever had a previous -- I'll call them  
2       problems or complaints, of any discomfort between  
3       his shoulder blades -- and when I say previous or  
4       before, I mean to the date of this collision?

5             A.     It was my understanding that he did.

6             Q.     And did you consider that in forming  
7       your opinion concerning the causation element of  
8       his disc?

9             A.     Yes.

10            Q.     How about his low back? In your  
11       opinion, were the complaints that he had about  
12       his low back ones that were caused by the  
13       automobile collision in 1995?

14            A.     I believe they were, yes.

15            Q.     And again, with respect to your -- to  
16       that issue, are you aware of any previous  
17       problems that Mr. Rohrbaugh may have had in his  
18       low back?

19            A.     It is my understanding, on maybe one or  
20       two occasions, he had some low back pain years  
21       prior; yes.

22            Q.     Are you aware of whether he ever had  
23       any physical therapy, or treatment, or care other

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1       than perhaps some MRI's or CAT scans, or  
2       something like that?

3           A.     I understand he did not have any  
4       treatment for it.

5           Q.     Okay. Now the degenerative changes  
6       that you spoke about earlier, just so the ladies  
7       and gentlemen of the jury are clear, it is not  
8       your opinion that those changes were caused by  
9       the collision, right?

10          A.     That's correct. They were pre-  
11       existing.

12          Q.     Can you explain to me the interaction  
13       of trauma like this very collision that Mr.  
14       Rohrbaugh was in and how it may affect someone  
15       that has a spine that's in a condition that Mr.  
16       Rohrbaugh's was, that meaning in a degenerative  
17       stage?

18          A.     Well, I mean, trauma can do this  
19       whether you have that or not. Just because he  
20       had arthritis or degenerative changes in his back  
21       does not mean that he had herniated discs. And I  
22       believe that the herniated disc resulted from the  
23       injury, and the degenerative changes were

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1 present, and really of no consequence to anything  
2 prior to that.

3 Q. The surgery that was done by yourself  
4 and Dr. Azzam, do you have an opinion, Doctor,  
5 whether that surgery was made necessary by the  
6 automobile collision in August of 1995, the  
7 injuries that he (inaudible)?

8 A. I believe it was, yes.

9 Q. And the surgery went, according to your  
10 testimony, pretty well. I mean, he recovered  
11 fairly well from the surgery. In spite of that  
12 recovery, is there any permanent injury, in your  
13 opinion, that Mr. Rohrbaugh has sustained as a  
14 result of this neck injury and resulting surgery?

15 A. Well, any time you have surgery,  
16 there's a permanency. In other words, you're  
17 never 100 percent. There's no such thing as 100  
18 percent.

19 Q. So is it your opinion that he did  
20 sustain permanent damage then?

21 A. There's always permanency, yes.

22 MR. FREI: Doctor, I thank you for your  
23 testimony today. And if you would answer the

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ORIGINAL

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED 258  
COURT SERVICES  
00 SEP 12 PM 3:32  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

DORSEY W. ROHRBAUGH,

Plaintiff,

vs.

LAW NO. 1813346

RALPH D. LOMBARD,

Defendant.

CLERK  
SUPREME COURT OF VIRGINIA  
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RICHMOND, VIRGINIA

DAY TWO

Fairfax, Virginia

Thursday, June 8, 2000

The trial commenced at 9:50 o'clock, a.m.

BEFORE:

The Honorable Dennis J. Smith, Judge

APPEARANCES:

FOR THE PLAINTIFF:

STEVEN M. FREI, ESQ.  
8221 Old Courthouse Road  
Suite 300  
Vienna, Virginia 22182-3829

Reported by: Billy L. Williams

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FOR THE DEFENDANT:

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 4117 Chain Bridge Road  
 Suite 400  
 Fairfax, Virginia 22030-0022

- - -

## C O N T E N T S

WITNESS:

Ralph D. Lombard

DIRECT. . . . . 263  
 CROSS . . . . . 270  
 REDIRECT. . . . . 277

Bruce J. Ammerman, M.D.

DIRECT. . . . . 329  
 CROSS . . . . . 355  
 REDIRECT. . . . . 375  
 RECROSS . . . . . 378

John Bruno, M.D.

DIRECT. . . . . 379  
 CROSS . . . . . 392

- - -

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## E X H I B I T S

<u>EXHIBIT</u>	<u>FOR IDENT.</u>	<u>IN EVID.</u>
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## PLAINTIFF' S

Exhibit Nos. 2 through 9 . . .	262 . . . .	262
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## DEFENDANT' S

Exhibit No. 1. . . . .	346 . . . .	353
Exhibit No. 2. . . . .	346 . . . .	353
Exhibit No. 3. . . . .	348 . . . .	353
Exhibit No. 4. . . . .	348 . . . .	353

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\* \* \*

1 THE COURT: Okay.

2 MR. BANCROFT: My first witness would  
3 be Dr. Bruce Ammerman.

4 MR. CORRIE: Let me bring to the  
5 Court's attention, I'm not sure, but Your Honor  
6 may recall a subject raised in a ruling  
7 yesterday.

8 THE COURT: I do. Approach the Bench.

9 MR. FREI: Here's what happened, Judge.  
10 You dealt with, in connection with Dr. Gordon, I  
11 believe, previously, with Chuck Sickles and  
12 myself. That happened in this case, too.

13 THE COURT: I'm familiar with what  
14 happened --

15 MR. FREI: Okay. You talked to Judge  
16 Ney.

17 THE COURT: Yes.

18 MR. FREI: Okay.

19 THE COURT: I just didn't find out --

20 MR. FREI: Do you have any questions  
21 about what his ruling was?

22 THE COURT: -- what he said. He  
23 doesn't know what the conclusion of the

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1 deposition was, but he said at the deposition  
2 that the representative couldn't identify what  
3 was there, and his determination was that there  
4 would be a certain amount that would be allowed  
5 to be stated as the amount paid.

6 MR. FREI: And there couldn't be any  
7 waffling on it about why some of it is this, and  
8 some of it is that, I can't tell, that's the  
9 reason --

10 THE COURT: Right.

11 MR. FREI: Basically what he said was,  
12 you either take the Allstate rep back to a  
13 terminal and let me Mr. Frei determine which are  
14 first-party benefits and which are liability  
15 payments, or you're going to live with that  
16 number. That's basically what he wrote.

17 MR. BANCROFT: I will live whatever  
18 Judge Ney's ruling was, obviously, I'm not  
19 intimately involved in that aspect, but I want to  
20 make sure that there is a number addressed. I  
21 know what his testimony will be, since he's  
22 testified under oath to Mr. Frei about this.  
23 Very simply, he does not know.

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1           So the dilemma that we sort of have is  
2           that no one is saying Dr. Ammerman knows. He's  
3           testified under oath that he does not know what  
4           that number reflects. He's not going to sit here  
5           and dispute the number. He's just going to say,  
6           "I have no idea what makes that number."

7           MR. FREI: But that's specifically what  
8           Judge Ney wasn't allowing.

9           THE COURT: Exactly. What I view it  
10          as, it is a problem that has been brought on by  
11          Allstate. They would agree to come to a  
12          deposition to testify as to what these things  
13          mean and they send somebody who doesn't know what  
14          they mean, that's their problem.

15          MR. BANCROFT: It's one of the reasons  
16          I don't represent Allstate, but what I'm saying,  
17          Judge, is that I realize the dilemma that has  
18          caused, but I'm not sure how that should impact  
19          Dr. Ammerman, who has been very candid about this  
20          from the very beginning that he doesn't have any  
21          idea what these codes mean, no idea.

22          MR. FREI: Just so the Court is clear,  
23          I'm not going to ask him about codes or anything,

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1 but what the purpose was, and I'm going to say  
2 that in 1999, I think I should be allowed to say  
3 insurance company, which maybe it's an argument  
4 we need to have outside the presence of a jury.

5 MR. BANCROFT: Yes, we do.

6 (Thereupon, the bench conference  
7 was concluded.)

8 THE COURT: If the jury would please go  
9 with the Court's security officer, we will be  
10 with you in a few minutes.

11 (Thereupon, the jury exited the  
12 courtroom.)

13 MR. CORRIE: Before Mr. Frei makes his  
14 argument, I want to point out one other thing, I  
15 think, to the Court.

16 I think Dr. Ammerman, as I understand  
17 his knowledge about the subject, it goes beyond  
18 this sort of secondary issue, and the secondary  
19 issue in my mind is what comprises the payments  
20 that make up the amount of money. He doesn't  
21 know. But he's even going to say -- if a figure  
22 is mentioned to him of, say, didn't you receive  
23 \$100,000 in 1995 from this company, he's going to

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1 say, "I have no idea," and I'm not sure, even in  
2 light of Judge Ney's ruling, that that is really  
3 proper, because I don't think Counsel is going to  
4 bring in a representative to put on evidence that  
5 that number is accurate.

6 It is almost an uncertainty upon an  
7 uncertainty. I just want to make that  
8 representation, that that is going to be his  
9 response.

10 THE COURT: Mr. Frei?

11 MR. FREI: The documents I have, Judge,  
12 were produced pursuant to a subpoena where I  
13 specifically asked for payments made to the  
14 Doctor for doing 410 examinations, period, and I  
15 got a list from Allstate a mile long.

16 Now, the Court was exactly right when  
17 it said, what Dr. Ammerman said to me when I got  
18 those documents and I questioned him about them  
19 in a separate case was that, "Geesh, I don't  
20 dispute the number. \$105,000 may be the number,  
21 but I don't know which of these payments were  
22 maybe for me treating people and which of these  
23 payments were for me doing what I will call

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1 generically as forensic work."

2 So that's why I wanted to take the  
3 Allstate rep's deposition so I could then say,  
4 "Well, guess what, I do now, and this is the  
5 number."

6 What Judge Ney said to Mr. Dupray, who  
7 was representing Allstate with respect to this  
8 deposition, was, "Look, you either let Mr. Frei  
9 sit at a terminal with this rep and sort that  
10 number out, or you're going to have to live with  
11 the fact that he's going to say you got paid  
12 \$108,000 from this company last year," period,  
13 and Dr. Ammerman can't say, "Well, I don't  
14 dispute the number, but I did this and I did  
15 that," and Mr. Bancroft and Mr. Corrie can't say,  
16 "Well, isn't it true, Doctor, that some of that  
17 may have been for treatment."

18 And that's specifically what Judge Ney  
19 isn't allowing, and now they're coming here and  
20 saying, "Geesh, we don't know if that's true or  
21 not." Well, it's too late for all of that.

22 THE COURT: I understand that. The  
23 issue that I sent the jury out on is the

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1 mentioning of insurance. Why do you need to  
2 mention insurance?

3 MR. FREI: Because I think it's  
4 inappropriate to bias. What the law in Virginia  
5 says is that the mention of insurance for  
6 liability reasons isn't appropriate. Well, I  
7 don't -- whether I agree with that or disagree  
8 with that --

9 THE COURT: Hold on, Mr. Frei.

10 MR. FREI: Okay.

11 THE COURT: Why can't you say he  
12 receives \$108,000 in 1995 for work in connection  
13 with defense of actions.

14 MR. FREI: Because it's this defendant.  
15 In this case it's Allstate. It happens to be  
16 this defendant, a representative of this  
17 defendant.

18 You won't let me say insurance, that's  
19 the problem, because in reality he got a heck of  
20 a lot more than \$105,000 for doing that work. I  
21 just don't have yet State Farm's, or GEICO's, or  
22 everybody else's.

23 That's the problem, because that's not

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1 an accurate representation of what he really gets  
2 for doing that kind of work. That's my problem  
3 with that.

4 I know we don't have this rule of  
5 evidence in Virginia, but if you look at the  
6 Federal Rule of Evidence 404 that talks about,  
7 hey, you can't have liability insurance, there's  
8 a specific exception in 404 in the last sentence  
9 that says, "Unless it goes to establish the bias  
10 of a witness." That's the last sentence in Rule  
11 404 of Federal Rules.

12 That's exactly what we're trying to do  
13 here, and I think it goes directly to his bias.

14 I'm not bringing it up for purposes of  
15 establishing how much liability insurance there  
16 is, it's not my purpose to try and establish if  
17 there's any liability insurance at all that  
18 applies to this case, but it goes to his bias.

19 THE COURT: Wait. Wait. How do we  
20 broach this to the jury without telling them what  
21 difference it makes who Allstate is? I mean you  
22 said the big key here is that Allstate is the  
23 insurance company in this. That's what you want

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1 to convey to the jury; therefore, you have to  
2 convey to the jury that there is insurance  
3 involved in this case.

4 MR. FREI: Right. Just so the Court is  
5 clear, I mean I am not trying -- that is why I  
6 brought it up now. I mean I don't want to ask  
7 the question and then have this discussion at the  
8 Bench when it was too late.

9 My point is, the way I would phrase the  
10 question would be something along the lines of,  
11 isn't it true that this insurance company that  
12 hired you today has paid you \$108,000 --

13 THE COURT: Well, that's tantamount to  
14 telling the jury that there's insurance. I mean  
15 there's no way that that is not doing that. He's  
16 hired by an insurance company and the jury has to  
17 assume from that that the insurance company is  
18 involved in the case.

19 MR. FREI: And he is hired --

20 THE COURT: Why else would they be  
21 paying for his services?

22 MR. FREI: Well, I don't disagree with  
23 you, Judge. I just don't think it's improper,

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1       because it doesn't go to me interjecting  
2       insurance for the purposes of trying to tell this  
3       jury that there is liability insurance.

4               That's what all of Virginia decisions  
5       are about. It goes to the fact that I'm trying  
6       to establish this witness's bias, and that's a  
7       big distinction.

8               We don't have the evidentiary rule in  
9       Virginia. It's specifically set forth in the  
10      federal law, which I had mentioned previously,  
11      and I don't think it's inappropriate, and that's  
12      why I say that.

13              I guess the -- although I will  
14      arguendo, I guess say if I'm not allowed to do  
15      that, at least I should be able to say a  
16      representative of this defendant.

17              MR. BANCROFT: Your Honor, first of  
18      all, I want to make sure that the Court  
19      understands the underinsured motorist carrier in  
20      this case that brings me before Your Honor is not  
21      Allstate.

22              It is Virginia Farm Bureau, and we have  
23      an interest by statute in this particular case,

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1 in that there is no evidence, whatsoever, before  
2 Your Honor or anywhere else that Dr. Ammerman has  
3 ever been hired before or has ever done work for  
4 Virginia Farm Bureau prior to this particular  
5 matter.

6 It would be unfair and would be  
7 prejudicial to our interests, Judge, to, first  
8 off, make any type of suggestion whatsoever that  
9 Dr. Ammerman --

10 THE COURT: Well, hold on. Hold on.  
11 Let me get it clear here. Virginia Farm had an  
12 option. Virginia Farm's option in this case was  
13 to come in as a party on its own or stand for the  
14 defendant.

15 MR. BANCROFT: That's correct.

16 THE COURT: Virginia Farm chose the  
17 option to stand for the defendant; therefore, as  
18 far as I'm concerned, Virginia Farm's interests  
19 are the same as the defendant's.

20 MR. BANCROFT: Yes. That's fine. I  
21 understand what the Court --

22 THE COURT: So don't be talking about  
23 any conflict here. That's not what we're doing.

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1 MR. BANCROFT: I'm not saying that  
2 there's a conflict, but I think the Court has to  
3 look beyond -- I mean we're into an extremely  
4 sensitive area here, and if Mr. Frei brings up  
5 insurance there is no question that the law in  
6 Virginia is that to interject insurance into a  
7 case is improper, for whatever reason. There  
8 is --

9 THE COURT: Maybe it's time that law  
10 got changed.

11 MR. BANCROFT: Well, Judge, you know --

12 THE COURT: I know that there are  
13 people around the state who are looking at how to  
14 deal with the issue and want to come up with a  
15 comprehensive way of dealing with it, because  
16 it's a game that we play. I've said it  
17 repeatedly.

18 The jurors know about insurance. They  
19 know people have to have insurance. They know  
20 people don't come in here with no liability  
21 insurance, and it's a game that we play.

22 It's the same thing with medical  
23 insurance. They know there's medical insurance.

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1 A question we always get from the jury repeatedly  
2 is, how much of these were covered by the medical  
3 insurance. They always want to know that. They  
4 always assume that it's there.

5 So it's a game that we play that, to  
6 me, just interferes with the administration of  
7 justice, and maybe we need to find a way to sort  
8 it out. I'm not sure that this court is the  
9 place to do that, though, Mr. Frei. That's my  
10 problem.

11 MR. FREI: Or you could make law,  
12 Judge.

13 THE COURT: Well, if I was writing the  
14 appellate opinion it might be a different issue,  
15 but I'm just trying the case, and I have to go  
16 with what the Supreme Court tells me.

17 MR. FREI: Well, I'm not --

18 MR. BANCROFT: Well, here's my --

19 MR. FREI: I'm sorry, Steve.

20 MR. BANCROFT: Well, here's my  
21 position, Judge. I don't think that Mr. Frei  
22 should be able to reference anything about  
23 Allstate or insurance in this particular case and

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1 interject insurance into this case. My  
2 understanding of the law in Virginia, as it is  
3 right now, is that that is improper to interject  
4 insurance into the case.

5 If he wants to bring to Dr. Ammerman's  
6 attention the fact that in a particular year for  
7 forensic purposes there is 105,000, or whatever  
8 that number is, of charges from his office,  
9 that's one thing, but now to try to take it the  
10 next step and try to suggest that that particular  
11 number was paid by a particular company, or a  
12 representative of a particular company, or go yet  
13 even further and suggest insurance, I think that  
14 is improper.

15 I think that the impeachment tool that  
16 I think brings us to this point right now is to  
17 merely bring to the attention of the trier of  
18 fact the issue that this doctor has on previous  
19 occasions been hired or retained to perform  
20 certain forensic services similar to what he's  
21 doing here, and that's where the impeachment or  
22 the bias is permitted.

23 To go further and to bring other issues

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1       into this case I think is improper, Your Honor,  
2       and I think that we are entering into the realm  
3       of a mistrial if we do that, based upon the  
4       present posture of the law.

5               For those reasons, Judge, I would  
6       object to any reference to insurance, or  
7       representatives, or anything of that nature.

8               If Mr. Frei wants to ask that question  
9       about the number, then that's one thing, but to  
10      go any further than that I think is improper and  
11      goes beyond the scope of any attempt to show  
12      bias, or prejudice, or impeachment purposes of  
13      the Doctor.

14              THE COURT: Mr. Corrie?

15              MR. CORRIE: I adopt that position. I  
16      don't think this is the case, frankly, and my  
17      objection is an exception, that the Doctor ought  
18      not to even be asked the question about the  
19      amount of money, and I say it for this reason.

20              I did attend the deposition yesterday.  
21      I left when they were -- I knew it was going to  
22      take a good bit of time to try and reach a judge  
23      and get a ruling on the last issue.

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1 THE COURT: It wasn't yesterday. It  
2 was two days ago.

3 MR. CORRIE: I'm sorry. Two days ago.  
4 What became clear from that deposition is that if  
5 there was more time before this trial Mr. Frei  
6 very well can go to an Allstate office, have a  
7 person there in front of a computer screen, which  
8 would it require to do this, and it make take  
9 hours to do it, could get the answers to the  
10 questions that he wants, and that would --

11 THE COURT: Well, hold on a second, Mr.  
12 Corrie. Let me be clear here, because I looked  
13 at these documents, and I want to be clear about  
14 this.

15 MR. CORRIE: Yes, sir.

16 THE COURT: These documents have right  
17 in them codes, and it's my understanding that at  
18 the deposition the witness supplied by Allstate  
19 couldn't even say what those codes were.

20 MR. CORRIE: Oh, I don't think that's  
21 true. I think --

22 MR. FREI: It's true for some of them.

23 MR. CORRIE: -- 99 percent of what she

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1       said, she brought a ledger sheet and a coding  
2       sheet with her and told her. The difference was,  
3       she said -- she told Mr. Frei under oath that a  
4       lot of those things had been mis-coded, because  
5       it all depended on whether or not an adjuster was  
6       given a taxpayer I.D. number, and if for some  
7       reason somebody was just lazy or they didn't get  
8       the taxpayer I.D. number, it went into a certain  
9       IRS box.

10               THE COURT: Did she have any evidence  
11       of that other than just speculation that that  
12       could happen?

13               MR. CORRIE: She had information from  
14       the home office, from the attorneys at the home  
15       office that that --

16               THE COURT: That in this case this was  
17       inaccurate, or that it happens that sometimes  
18       they are inaccurate?

19               MR. CORRIE: That it's inaccurate on  
20       their sheets. I mean I guess if you say --

21               THE COURT: That it can be inaccurate  
22       because of that, not that there were specific  
23       areas on this one.

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1 MR. CORRIE: I don't know how to answer  
2 that. I don't really exactly remember.

3 THE COURT: All right. Now, she  
4 indicated that she knew what these codes were.

5 MR. CORRIE: Yes.

6 THE COURT: Well, what were the codes?  
7 Were some of these codes total for company code  
8 ten, total for company code sixty?

9 MR. CORRIE: Yes. She said that was a  
10 certain region of the country. She said one was  
11 Roanoke, one was Atlanta, one was Texas, one  
12 was -- she went through the whole thing.

13 What she couldn't do is have a computer  
14 screen immediately in front of her that went down  
15 each claim number. You have to go back to the  
16 claim number for each and every case, and you  
17 then have to be able to differentiate by an  
18 internal computer code whether or not that was  
19 first pay, Med pay, or whether it was a third-  
20 party liability case, and it wasn't printed out  
21 on the sheet.

22 All she was saying was, if you want to  
23 make that determination you can either look at

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1 each claim file or you can go back to the  
2 computer and go into each claim file and see how  
3 that adjustor coded it, because that would then  
4 allow you to come up with an accurate figure as  
5 to what payments were made for actual medical  
6 care and what payments were made for, if you want  
7 to call it, forensic services.

8 But I mean she went through and  
9 explained. There were like seven or eight  
10 columns across the top of what all that stuff  
11 meant and what interpretation meant.

12 THE COURT: And she knew what the CPU  
13 code was that's on here, which is the third  
14 column in on the document?

15 MR. CORRIE: Can you give me some  
16 examples? I'm trying to do this.

17 THE COURT: Eighteen, one. Eighteen  
18 seems to be the primary one.

19 MR. CORRIE: Yes, Your Honor.

20 MR. FREI: Maybe I can help explain  
21 what the real difficulty was.

22 MR. CORRIE: I guess my -- my point is  
23 this. Let's assume this case weren't coming up

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1       for trial for another 30 days.

2               Mr. Frei could go to the computer  
3       screen with an Allstate rep, and it's not printed  
4       out, and that's what the subpoena was for, it was  
5       for a person to come and explain the printout,  
6       but he now wants to go behind the printout, go  
7       into a computer system and have somebody query it  
8       and pull out certain data that's available, go to  
9       a deposition, have the person put under oath,  
10      have the computer screen there, have it go on for  
11      hours and hours while they plug in each and every  
12      claim number and pull out whether it's third-  
13      party claim or it's a first-party claim, and then  
14      Mr. Frei can go back later with a calculator what  
15      each of those respective amounts are, and then  
16      have evidence that could come before a court in a  
17      trial such as this.

18              What we are doing is saying to Dr.  
19      Ammerman, who -- these aren't even his sheets --  
20      "Hey, isn't this your figure? But you're not  
21      allowed to not only" -- and he says, "No. I  
22      don't know if that figure is accurate."

23              And then he's not even allowed to say,

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1 "Whatever figure I was paid was for two different  
2 categories of things." I mean we're putting an -  
3 - we're speculating two-fold for this jury, and  
4 all it --

5 THE COURT: Did she explain the  
6 difference between non-employee compensation or  
7 health care services in the description?

8 MR. CORRIE: Yes, and that's what she  
9 was trying to explain that was, number one,  
10 erroneously coded, because it all was taxpayer  
11 I.D. related.

12 THE COURT: Okay.

13 MR. CORRIE: What she was saying was --

14 THE COURT: I understand that. They  
15 all do have taxpayer I.D. numbers on them,  
16 although some of them were --

17 MR. CORRIE: That's Dr. Ammerman's  
18 taxpayer I.D. number.

19 THE COURT: So what do we --

20 MR. FREI: They're all payments to him,  
21 there's no question about that.

22 THE COURT: Right.

23 MR. CORRIE: What she's saying is --

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1           THE COURT: It would seem -- what would  
2 make sense, and I could be totally wrong, but  
3 what would make sense to me is when they talk  
4 about medical or health care services, they're  
5 talking about something that's paid pursuant to a  
6 first-party policy.

7           When they talk about non-employee  
8 compensation, they're talking about services that  
9 they are paying in defending an action.

10          MR. CORRIE: That was my first  
11 impression when I read the form, and I thought  
12 that was a logical one, and we went to the  
13 deposition and it's 100 percent wrong.

14          MR. FREI: That's not what she said.  
15 I'll be happy to tell the Court exactly what she  
16 did say, and I don't know why we're talking about  
17 it, because they had an opportunity fix this, and  
18 they elected not to, which is why he said you  
19 could use the number.

20          THE COURT: Well, I'm talking about,  
21 I'm trying to see if there is some way that we  
22 can handle this without mentioning insurance.

23          MR. CORRIE: Well, let me just put my

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1 last objection on the record. The prejudice of  
2 the manner or any manner of raising this far  
3 outweighs any probative value as it relates to  
4 impeaching any witness in this case, for the  
5 reasons I stated.

6 THE COURT: Thank you, Mr. Corrie.

7 MR. FREI: If you look at the box  
8 description, Judge, on the -- first of all, I  
9 misspoke. When I was talking about the Federal  
10 Rule, I think I said 404.

11 It is 411, where the last sentence of  
12 the rule says, "This does not require the  
13 exclusion of evidence of insurance against  
14 liability when offered for another purpose such  
15 as proof of agency, ownership, or control, or  
16 bias, or prejudice of a witness." So it's 411,  
17 not 404. Sorry.

18 Now, to look at the subpoenaed  
19 documents, the box description, Mr. Corrie is  
20 right. Your thought was my thought when I got  
21 the description. That's not what she said. She  
22 said what happens when the claims adjustor enters  
23 the information, if they don't have the taxpayer

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1 I.D. number it automatically defaults to non-  
2 employee compensation.

3 At that point I said to her, "Well then  
4 which of these payments on these forms were for  
5 medical expense first-party benefits, and which  
6 of these payments were for liability payments?"

7 She said, "I can't tell by looking at  
8 the form." I said, "Well, how do you tell," and  
9 after, believe me, a long and sordid discussion,  
10 there's basically one way to do it, and it's very  
11 simple.

12 When the claims adjustor enters on her  
13 computer screen, and the Allstate witness  
14 absolutely testifies there's no question that it  
15 would be on the screen, a code, it would be, and  
16 I might forget these letters, but it was like  
17 CP04. Whenever you saw a payment to Dr. Ammerman  
18 for CP04 it would be for a first-party benefit,  
19 i.e., Med pay, or PIP, or something else like  
20 that. Whenever you saw AA93, that was forensic  
21 work. Okay? At that point I said --

22 THE COURT: Did she say they have these  
23 codes?

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1 MR. FREI: They absolutely have them in  
2 their computer screens. All she had to do was be  
3 at her terminal --

4 THE COURT: Would it just give you a  
5 printout of the documents that were supplied in  
6 response to --

7 MR. FREI: She didn't print them out,  
8 and I offered Friday after Judge --

9 MR. CORRIE: That's not --

10 MR. FREI: That's absolutely correct.

11 MR. CORRIE: That's correct, but you're  
12 representing that there's a button they can push  
13 that's going to print all this out.

14 MR. FREI: They can go --

15 MR. CORRIE: That's not the testimony.

16 MR. FREI: Here's what I'm  
17 representing.

18 MR. CORRIE: She has to go --

19 MR. FREI: Excuse me. I'll let you  
20 talk. Let me finish.

21 MR. CORRIE: Well, don't  
22 misrepresent --

23 THE COURT: No, no. Stop.

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1 MR. FREI: I'm not misrepresenting  
2 anything.

3 THE COURT: Stop. Stop. You will get  
4 an opportunity to respond, Mr. Corrie.

5 Go ahead, Mr. Frei.

6 MR. FREI: She said if she was sitting  
7 at a terminal she could punch in the claim  
8 numbers that are on this form and find a screen  
9 that would have the codes that would indicate  
10 whether it was a PIP payment or a liability  
11 payment, plain and simple.

12 THE COURT: But she'd have to go  
13 through each one.

14 MR. FREI: She'd have to enter the  
15 codes, and at that point -- and actually, on  
16 Friday, after Judge Ney ordered this deposition,  
17 because he's the one who heard the motion, which  
18 is why I called him after the deposition, I told  
19 Mr. Dupray, I said, "If this deposition needs to  
20 be at an Allstate office so we have access to a  
21 terminal, I'm happy to go there," and he elected  
22 to bring her to my office, and maybe hoping that  
23 I wouldn't discover that there was some way to

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1 get it, and then she says, "I don't have it."

2 "That's why we called Judge Ney, and  
3 what Judge Ney then said was, "Look, you're  
4 either going to go sit at that screen, pull up  
5 that screen, find those codes, and tell Mr. Frei  
6 which is Med pay, and PIP, and which is not, or  
7 you're going to be stuck with that number, and  
8 you're not going to be able to waltz around it,"  
9 and Mr. Dupray said, "Okay. We'll live with the  
10 number."

11 THE COURT: That's what I understood --

12 MR. FREI: That's exactly what  
13 happened.

14 THE COURT: -- Judge Ney's ruling to  
15 be.

16 Mr. Corrie, you wanted to correct  
17 something you thought was --

18 MR. CORRIE: No, Your Honor, proceed.  
19 It was that you had to sit at the screen and plug  
20 in each and every claim number for hours to get  
21 the printout, and my only -- and I apologize to  
22 the Court for my reaction and my behavior.

23 THE COURT: That's all right. I

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1 understand. I don't mean to say that Allstate is  
2 doing all this out of bad faith.

3 I do think Allstate could probably, if  
4 their computer system is anything like current  
5 databases, figure out a way to query that  
6 information out in a relatively short period of  
7 time, and create one query so they could do it in  
8 every case they're ever asked for it.

9 Let me ask this. Give me a case that  
10 says that the injection of insurance is improper  
11 when it comes in on the issue of violence, or  
12 give me a case that says the injection of  
13 insurance is absolutely improper other than a co-  
14 defendant case.

15 MR. BANCROFT: Well, Judge, I didn't  
16 think we were going to be at this particular  
17 thing, because as of yesterday I don't have that  
18 case.

19 There's cases that exist, Your Honor,  
20 that suggest that by interjecting insurance into  
21 the case the prejudicial impact of that outweighs  
22 any probative value except under some very, very  
23 rare circumstances.

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1           Now, what we have here is that we are  
2 asking a doctor something about income that he  
3 has generated, and I shouldn't even say income,  
4 it's what it is, it's gross income to his medical  
5 practice, that he has received over a certain  
6 period of time. Fine. I object to that.

7           I don't think that is relevant in this  
8 particular case, but I understand Judge Ney's  
9 ruling, and I'm not going to dispute that. I  
10 object to it. I don't think it's the correct  
11 ruling.

12           But right now, Judge, that's where  
13 we're at. Now, what Mr. Frei wants to do is  
14 build the next step, and that was never the issue  
15 in this particular case.

16           What was the issue in this particular  
17 case has been and always has been the amount.  
18 Can he come up -- can he ask him about that  
19 amount, because up to this point in time no one,  
20 as I understand it, has been able to fully  
21 identify each specific thing.

22           THE COURT: I think Judge Ney ruled on  
23 that.

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1 MR. BANCROFT: Right.

2 THE COURT: He said the amount comes  
3 in.

4 MR. BANCROFT: Right.

5 THE COURT: The question is: How do we  
6 frame that amount so that it makes any sense in  
7 the case? Can we do it in any way without  
8 mentioning the insurance company?

9 MR. BANCROFT: Absolutely.

10 THE COURT: How?

11 MR. BANCROFT: I think that the  
12 question could be asked, isn't it true, doctor,  
13 that for your forensic legal services in the year  
14 1999 you were paid \$105,000. Did we interject  
15 insurance? No.

16 MR. FREI: The problem with that, it's  
17 not an accurate figure, because there's just one  
18 company. It's the representative of this  
19 defendant that paid him \$105,000, and nobody  
20 else, so that's not an accurate statement.

21 MR. BANCROFT: Well, I'll go the next  
22 step. It's not an accurate statement to say it  
23 was \$105,000 generated.

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1                   MR. FREI: But that's their own  
2 problem. They created that problem

3  
4                   MR. BANCROFT: Right.

5                   THE COURT: Let me ask you this. Do  
6 you have evidence of other insurance companies?

7                   MR. FREI: Yes. I've got some from  
8 Nationwide, but I don't have all the others  
9 because these guys, they're just doing their job,  
10 I don't have any problem with it, make me come in  
11 here every time and try to get the information,  
12 and then when we do get an order like Your Honor  
13 issued in Gobie (phonetic), they called that  
14 afternoon and settled the case so they don't have  
15 to produce it. So this game goes on. It's just  
16 about time that it's stopped, I think.

17                   The comment about this probative versus  
18 prejudicial, I mean there's no question in  
19 Virginia that anything tending to show bias on  
20 the part of the witness can be drawn out. There  
21 are plenty cases cited in that, Norfolk and  
22 Western Railway versus Sunny, 236, Virginia 482,  
23 and Henny versus Thomas, 235, Virginia 181.

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1 I mean all of those cases unequivocally  
2 stand for the proposition that that kind of  
3 information -- what more better evidence of bias  
4 can there be than this guy who gets paid this  
5 money to testify over and over for these people?

6 There are Virginia cases, although I  
7 don't have them, but I'd be happy to take a break  
8 and get them, where there has -- now, granted,  
9 and I want to be fair about this, there have been  
10 circumstances where claims adjustors for the  
11 insurance company have been on the stand.

12 THE COURT: Well, that's different.

13 MR. FREI: Right.

14 THE COURT: There's always been a  
15 distinction in Virginia law --

16 MR. FREI: Right.

17 THE COURT: -- between inadvertent  
18 mentioning of insurance and purposeful injection  
19 of insurance into the trial. They have even gone  
20 that far in distinguishing in voir dire whether  
21 it was purposeful or not, making a determination  
22 as to whether there was an intent just to find  
23 the bias of the jurors or the intent was rather

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1 to interject insurance into the trial.

2 MR. BANCROFT: Judge, the only cases  
3 that I'm aware of, and I don't pretend to know  
4 each and every one of these cases, but I have  
5 read all the cases in this area.

6 I didn't do it today and I didn't do it  
7 yesterday, but I've done it in the past, the only  
8 cases that I'm aware of where insurance was  
9 permitted was when an insurance adjustor or a  
10 representative of the insurance company was  
11 actually testifying in a case dealing with an  
12 issue that insurance was, in fact, very probative  
13 on.

14 I am not aware of any case in Virginia,  
15 federally or from state court, that has ever  
16 permitted for impeachment bias purposes the  
17 interjection of insurance for a medical expert,  
18 an engineer, a liability expert, an accident  
19 reconstructionist, or anything else.

20 It is when the issue of insurance has  
21 come up as to who the person may have worked for,  
22 who his employer was, things of that nature, I am  
23 not aware of any case that allowed -- that has

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1       ever allowed in Virginia the interjection of  
2       insurance for impeachment of an expert witness  
3       that was merely retained, and not a direct  
4       employee of the company.

5               MR. FREI: Does the Court care to hear  
6       any more?

7               THE COURT: On the insurance issue I'll  
8       let you go last, since it's your motion to inject  
9       it.

10              MR. FREI: Your Honor, I would just --  
11       well, on the insurance issue I guess all I can  
12       say is that I think what Mr. Bancroft says is  
13       right, that the only Virginia cases I'm aware of  
14       where insurance has been allowed to be mentioned,  
15       and it is specifically mentioned in the context  
16       of establishing the bias of a witness, is when a  
17       claims rep would take the stand and maybe  
18       contradict factually something that had been told  
19       to him either by the injured party or somebody  
20       else who has then come to the stand.

21              There are two or three, and maybe even  
22       more, two or three that I can think of right now  
23       specifically where the Supreme Court of Virginia

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1 has said, where the trial court prohibited that  
2 kind of question and said, "Look, it clearly goes  
3 to the bias of this witness that they work for  
4 this insurance company; you should have been  
5 allowed to bring that out," and the cases were  
6 remanded. There's no real difference in this  
7 case except that the "employee," "agent,"  
8 "representative," and in this instance it's a  
9 doctor who is getting paid by the insurance  
10 company.

11 Now, I know they're not an employee,  
12 and I understand the legal distinction between  
13 the two, but what better evidence of bias can  
14 there be than how much money this doctor gets  
15 paid from the insurance company that has hired  
16 him in this case year-end and year-out to perform  
17 these sorts of services?

18 The Federal Rules acknowledge it, and  
19 it's about time Virginia acknowledged it, too, if  
20 they don't already. It's my position it's  
21 allowed in Virginia now.

22 (Pause.)

23 THE COURT: I don't know what I'm going

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1 to do yet. I'm going to take a recess and decide  
2 it, but I've drafted possible instructions in the  
3 event that I do allow the mentioning of the  
4 insurance.

5 And I want you to look at it to see --  
6 again, I haven't decided what I'm going to do,  
7 but I want you to look at this to see if I do  
8 give -- obviously, if I allow testimony I need to  
9 give a strong cautionary instruction. I want you  
10 to take a look at this instruction.

11 All right. The Court will stand in  
12 recess.

13 (Thereupon, a short break was  
14 taken, after which the following  
15 proceedings were had:)

16 THE COURT: Let me provide a possible  
17 alternative. Why can't the issue be framed in  
18 terms of the witness providing forensic services  
19 for defendants and from one source having  
20 received, from just one source, having received  
21 \$108,000 in 1995? Why can't it be framed that  
22 way?

23 MR. FREI: If it would be limited to as

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1 a representative for this defendant, I'm okay  
2 with that, but because it's not an accurate  
3 statement with respect to everything else.

4 THE COURT: Once we say as "a  
5 representative of this defendant," we might as  
6 well just say "insurance." I mean I'm not going  
7 to be that transparent. Obviously, this  
8 defendant didn't pay him \$108,000 in 1995 to do  
9 anything.

10 MR. FREI: I said representative.

11 THE COURT: The jury --

12 MR. FREI: I said representative.

13 THE COURT: But the jury is going to  
14 know that. They are representing the defendant  
15 in what? They are representing the defendant in  
16 this, the jury is going to know that. I mean  
17 that would be a masquerade really that would be  
18 seen through immediately by the jury, I think.

19 MR. FREI: It's already masquerade,  
20 though, Judge.

21 MR. BANCROFT: Yes, but it's a  
22 masquerade, Judge, on both sides, too. I mean  
23 when we start talking about medical payments

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1 coverage, and health insurance, and Medicaid, and  
2 things of that nature --

3 THE COURT: Well, the whole thing is  
4 ridiculous, and I've said that before. They go  
5 in there assuming that there's medical insurance,  
6 and not concerned with any liens that might be  
7 against the medical insurance.

8 They assume that the defendant has  
9 liability coverage, and what about the defendants  
10 who don't. It's just not fair.

11 I mean there's a basic unfairness in  
12 the system to expect the jury to disregard  
13 something that is common knowledge. So you're  
14 better off just dealing with it head on. The  
15 question is, can I frame something that is  
16 appropriate.

17 The law seems to indicate to me that  
18 where appropriate cautionary instruction is  
19 given, where it's inadvertently given, there's no  
20 question in that circumstance it's not anything  
21 that requires a mistrial, but the problem is here  
22 that we're deliberately injecting it into the  
23 trial.

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1 MR. FREI: It's not going to be  
2 accidental.

3 THE COURT: Right. There's no question  
4 that this is not inadvertent mentioning.

5 MR. FREI: Let the record reflect it  
6 would not be accidental.

7 MR. BANCROFT: I'll even agree with  
8 that, Judge.

9 MR. CORRIE: Does Your Honor intend to  
10 give this before the subject or at the end of it  
11 with all the instructions?

12 THE COURT: I will give it at the  
13 beginning. Before Dr. Ammerman even testifies  
14 I'll tell them -- do you want to wait until after  
15 he testifies?

16 MR. BANCROFT: Well, no. I'm just  
17 saying that it shouldn't be given at all.

18 THE COURT: I understand, but if I gave  
19 it, would it be -- would you want it before or  
20 after?

21 MR. BANCROFT: I think it would have to  
22 be given before.

23 MR. CORRIE: I do, too. May I offer my

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1 version of this, which I know will be rejected,  
2 but at least it will be on the record. I'm only  
3 doing this because I'm not waiving my objection.

4 THE COURT: I understand that. I don't  
5 mean for anyone to waive their objections.

6 MR. CORRIE: I offer the following as  
7 an instruction. "The cross examination of Dr.  
8 Ammerman will include questions regarding  
9 payments made to him by an insurance company  
10 which covers the defendant. You may not consider  
11 the mere asking of such questions as evidence of  
12 the truth of such payments, and may only consider  
13 his answers as evidence of possible bias on the  
14 part of Dr. Ammerman. The fact of the existence  
15 of any insurance in this case is not to be  
16 considered by you in any way in determining  
17 whether the defendant was negligent or that any  
18 negligence of the defendant proximately caused  
19 any injury to the plaintiff or the amount of any  
20 judgment you might award."

21 THE COURT: Well, if I give that  
22 instruction, though, doesn't that leave open the  
23 issue of the amount, and isn't the amount

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1 something that's determined by Judge Ney's order?

2 MR. CORRIE: I'm not sure, because the  
3 question can be asked that, is this amount --  
4 well, has this amount been paid, and I'm telling  
5 you, Dr. Ammerman is going to say, "I don't have  
6 a clue. I don't have any idea."

7 I mean it's like any other cross  
8 examination of a witness. Just because you ask  
9 the question doesn't mean it's the truth, and if  
10 he's got an Allstate rep under subpoena that's  
11 going to come in and then verify that that is the  
12 truth, I think it's just the mere asking of a  
13 question that we already know in advance what the  
14 answer is going to be, and that is, "I don't  
15 know." If he admits it, then I guess he's bound.

16 MR. FREI: I don't need an Allstate rep  
17 under oath. I've got documents pursuant to the  
18 subpoena. If he denies the amount, I can impeach  
19 him with the materials that I have. I don't need  
20 anybody --

21 THE COURT: I had thought Judge Ney's  
22 ruling anyway resolved that by saying --

23 MR. FREI: It does.

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1 THE COURT: -- that this is the amount.

2 MR. FREI: So I don't know why we're  
3 talking about it.

4 THE COURT: Yes. I think Judge Ney's  
5 ruling resolved that issue, whether he needed  
6 anyone from Allstate to be here, because Judge  
7 Ney ruled that the amount was \$108,000, and that  
8 was the amount that was going to be used, with  
9 the alternative being that they could go back to  
10 the Allstate office and sit down and figure it  
11 out.

12 MR. FREI: Just in fairness to counsel,  
13 the \$108,000 figure was just a figure that we  
14 were using that was rounded off. The actual  
15 figures are a little different, but the gist of  
16 what you're saying is correct.

17 MR. CORRIE: Just for the benefit of  
18 the Court, I understand when Your Honor was out  
19 of the presence that Judge McWeeny ruled on this  
20 issue and did not allow any of this to come in --

21 MR. FREI: No.

22 MR. CORRIE: -- on this same issue.

23 MR. FREI: Not the same issue. Judge

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1 McWeeny quashed the subpoenas to allow me to get  
2 the information. He didn't have any rulings at  
3 all in response to this.

4 MR. CORRIE: I thought I asked you --

5 MR. FREI: No. I was talking about --

6 THE COURT: No. He didn't allow the  
7 information to be produced.

8 MR. FREI: Right.

9 MR. CORRIE: I'm sorry.

10 MR. FREI: I'm sorry if I misspoke.

11 THE COURT: Well, we're going into  
12 uncharted waters here, but I'm going to let him  
13 do it. I think it's appropriate under the  
14 circumstances of this case. With the ruling of  
15 Judge Ney being what it is, I think it's  
16 appropriate to proceed on that basis.

17 I don't think there's any other way to  
18 make any sense of it. I'll note your exceptions  
19 to it, and maybe we'll get some determination  
20 from the Supreme Court as to what the appropriate  
21 way to handle these things is.

22 We are dealing with an issue here of  
23 potential witness bias that the Supreme Court has

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1 repeatedly said is of the greatest concern for  
2 the trier of fact, and it's something where the  
3 person attacking the bias of the witness should  
4 be allowed great latitude.

5 In this circumstance, I think it is  
6 necessary for the jury to be informed of  
7 insurance; however, I will give them the  
8 cautionary instruction. Bring the jury back.

9 MR. BANCROFT: For the record, Your  
10 Honor, I want to continue my objection, but I  
11 also, by allowing insurance to be interjected in  
12 this instance on the issue of bias, likewise, I  
13 think that the same argument can be made in this  
14 case as it relates to Dr. Gaertner, so that we  
15 can make a determination how much money Dr.  
16 Gaertner has been paid by the health insurance  
17 company or by Medicaid in this particular case  
18 over the course of time.

19 I think that same door is open because  
20 it now addresses the issue of contracts that he  
21 might have, that is, Dr. Gaertner might have with  
22 a particular health insurance --

23 THE COURT: Dr. Gaertner is the

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1       treating physician, isn't he?

2               MR. BANCROFT: Yes, sir.

3               THE COURT: That's a different issue.  
4       It's a different issue. He's not called in as a  
5       forensic person with no interest other than to  
6       prepare for litigation.

7               This is somebody who is providing  
8       treatment, and it's a different issue. It also  
9       involves the collateral source rule, which is a  
10      different issue as well, although related. I  
11      don't deny related.

12              Let me be clear to all of you, so you  
13      can go back and talk to your compadres. I'm  
14      making this ruling in the context of this case  
15      and the prior ruling of Judge Ney.

16              This is not -- I don't think I'd be  
17      prepared to do this under other circumstances  
18      necessarily, but under the circumstances of this  
19      case I think it's appropriate.

20              MR. FREI: There are two things I want  
21      to make sure of, Judge, so I don't get in  
22      trouble.

23              First of all, however I decide to

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1 phrase the question to Dr. Ammerman, it's  
2 allowable for me to say the word that the  
3 insurance company for this defendant has paid,  
4 just so I don't get myself into trouble. The  
5 other is that based on Judge Ney's ruling --

6 THE COURT: The answer is yes, you can  
7 say that.

8 MR. FREI: Okay. The other thing is,  
9 based on Judge Ney's ruling I would like counsel  
10 to instruct Dr. Ammerman, if he decides --  
11 whatever he decides to answer that he can't go  
12 into this, well, yes, but some of them were for  
13 Med pay and some of them were for treatments.  
14 Judge Ney's order specifically does not allow  
15 that.

16 THE COURT: That's my understanding of  
17 Judge Ney's order.

18 MR. BANCROFT: Unfortunately, Judge,  
19 this is the dilemma, is that we talk about  
20 committing misleading information to the jury --

21 THE COURT: Mr. Dupray had the option  
22 under Judge Ney's ruling and Mr. Dupray chose not  
23 to go back to the office and sit down and figure

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1 out which-was which.

2 MR. BANCROFT: But why should Dr.  
3 Ammerman be somehow impacted negatively for  
4 something---

5 THE COURT: He's not impacted  
6 negatively. He's not impacted negatively. The  
7 presentation of the evidence on the part of the  
8 plaintiff has been hindered by a choice made by  
9 the defendant.

10 The defendant's representatives have  
11 decided not to go through the effort of making a  
12 full disclosure of this information, thereby  
13 precluding them from contradicting anything that  
14 Dr. Ammerman might say, and it's appropriate  
15 under those circumstances to say that Dr.  
16 Ammerman cannot contradict it.

17 MR. BANCROFT: Okay. So Dr. Ammerman  
18 is just going to have to --

19 THE COURT: Live with the \$108,000  
20 number.

21 MR. BANCROFT: Well, I think we need to  
22 make sure of that. How many times is Mr. Frei  
23 going to be able to bring up insurance?

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1 THE COURT: Just the one series of  
2 questions.

3 MR. BANCROFT: One time.

4 THE COURT: The one -- the question,  
5 isn't it true that in 1995 --

6 MR. CORRIE: For three or four years  
7 worth of payments.

8 THE COURT: -- you were paid \$108,000  
9 by the insurance company which covers the  
10 defendant?

11 MR. BANCROFT: Okay. And is he going  
12 to be able to bring this up in closing argument?

13 MR. FREI: I don't know why not.

14 THE COURT: In bias, yes. In bias, but  
15 only in reference to Dr. Ammerman's testimony --

16 MR. FREI: Credibility.

17 THE COURT: -- only in talking about  
18 credibility of Dr. Ammerman's testimony, not with  
19 regard to anything else.

20 MR. FREI: That's all I intend to do.

21 (Thereupon, the jury re-entered  
22 the courtroom.)

23 THE COURT: All right.

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1 (Thereupon, the witness was sworn.)

2 THE COURT: Do you want to do it now,  
3 or do you want to wait until after you finish  
4 your direct examination?

5 MR. BANCROFT: Why don't you do it now,  
6 Your Honor? And then can we just have a brief  
7 moment with Dr. Ammerman at the Bench?

8 THE COURT: Sure.

9 Ladies and gentlemen, the cross  
10 examination of Dr. Ammerman will ask questions  
11 intended to elicit evidence regarding payments  
12 made to Dr. Ammerman by a liability insurance  
13 company which provides coverage to the defendant.

14 You may only consider this as evidence  
15 of possible bias on the part of Dr. Ammerman.  
16 The fact of the existence of any liability  
17 insurance in this case is not to be considered by  
18 you in any way in determining whether the  
19 defendant was negligent, whether any negligence  
20 of the defendant proximately caused any injury to  
21 the plaintiff, or the amount of any judgment you  
22 might ultimately award.

23 MR. BANCROFT: Can we just approach for

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1 a moment, Judge --

2 THE COURT: Sure.

3 MR. BANCROFT: -- and can Dr. Ammerman?

4 THE COURT: If you would come up,  
5 Doctor.

6 (Thereupon, there was had a  
7 discussion at the Bench, which  
8 was reported, but not  
9 transcribed, by the reporter.)

10 THE COURT: Could Counsel approach the  
11 Bench for one other issue, one other quick issue?

12 (Thereupon, there was had a  
13 discussion at the Bench, which  
14 was reported, but not  
15 transcribed, by the reporter.)

16 MR. BANCROFT: Are we ready, Judge?

17 THE COURT: We're ready.

18 MR. BANCROFT: Thank you.

19 Thereupon

20 BRUCE JORGE AMMERMAN, M.D.  
21 was called as a witness and, after having been  
22 duly sworn, was examined and testified as  
23 follows:

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## 1 DIRECT EXAMINATION

2 BY MR. BANCROFT:

3 Q. Dr. Ammerman, would you tell the ladies  
4 and gentlemen of the jury your full name, please?

5 A. Sure. It's Bruce Jorge Ammerman.

6 Q. Dr. Ammerman, what do you do for a  
7 living?

8 A. I'm a physician. I am a neurosurgeon.

9 Q. Briefly, Dr. Ammerman, to become a  
10 neurosurgeon what type of educational background  
11 do you have?12 A. I did undergraduate work at Case  
13 Western Reserve University in Cleveland, Ohio.  
14 After three years of college I left to begin  
15 medical school at George Washington.16 After one year of medical school,  
17 having taken my last year of college in absentia,  
18 I did go back and graduate college, continued  
19 medical school, and graduated in 1972.20 I then spent one year as an intern at  
21 G.W. Hospital in surgery, and the next four years  
22 as a resident in neurological surgery, and I  
23 completed my formal neurosurgical training in

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1 1977.

2 Q. Now, Dr. Ammerman, since 1977 have you  
3 been a practicing neurosurgeon in the Washington  
4 area?

5 A. Yes, sir.

6 Q. Are you board certified, Doctor?

7 A. Yes, sir.

8 Q. Briefly, what does it mean to become  
9 board certified, or what does it take to become  
10 board certified in the field of neurosurgery?

11 A. It's actually a process that begins  
12 during the residency training program when the  
13 physician who is learning to be a neurosurgeon  
14 takes during that training program a standard  
15 written examination given by the American Board  
16 of Neurological Surgery, the American Board are  
17 the folks who credential all our training  
18 programs in this country, pass that exam,  
19 complete the training program, and then practice  
20 in the community of his or her choice, practicing  
21 neurosurgery, training and operating on patients.

22 You are then permitted to sit through  
23 the oral exams. The year I was eligible the

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1 orals were given in Memphis. I flew to Memphis,  
2 sat through the orals, they were satisfactorily  
3 completed, and I was granted board certification.

4 Q. Now, at the current time, Dr. Ammerman,  
5 do you hold any teaching positions in the field  
6 of neurosurgery?

7 A. Yes, sir.

8 Q. Where?

9 A. The George Washington University, in  
10 the School of Medicine, Department of  
11 Neurosurgery. I'm a clinical professor of  
12 neurosurgery. I've been teaching there for  
13 almost 23 years.

14 Q. Now, in addition to being board  
15 certified in your teaching position, Dr.  
16 Ammerman, do you hold any positions at any of the  
17 hospitals in the Washington, D.C., area  
18 specifically addressing your field of  
19 neurosurgery?

20 A. Yes, sir.

21 Q. What positions do you hold?

22 A. In addition to GW, as I mentioned, I'm  
23 Chief of Neurosurgery at Sibley Hospital.

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1           Q.    Now, to become Chief of Neurosurgery at  
2   Sibley Hospital, how does that come about?

3           A.    Hard work. Basically, through spending  
4   regular time at the hospital over the years, and  
5   being chosen, based upon, I would presume, my  
6   abilities administratively as well as a  
7   physician. I've been doing that for probably  
8   pretty close to ten years.

9           Q.    In other words, Doctor, this isn't  
10   something that you politic for, this is something  
11   that you are chosen for, correct?

12          A.    Correct.

13          Q.    Now, can you tell the ladies and  
14   gentlemen of the jury briefly what the field of  
15   neurosurgery includes as it relates to the neck  
16   and the low back, which are the issues in this  
17   particular matter?

18          A.    Sure. Among the other areas that  
19   neurosurgeons deal with is, obviously, the spine,  
20   the nerves which exit the spine, or the spinal  
21   cord, which sits in the middle. So as  
22   neurosurgeons, and certainly for most  
23   neurosurgeons, the most common thing that we will

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1        treat, be it medically or surgically, will be  
2        conditions that affect the spine, either disc  
3        disease arthritic conditions of the spine, or  
4        trauma.

5                Those are probably the -- broken bones,  
6        that sort of thing -- three most common, and, of  
7        course, we also treat other conditions, but those  
8        are by far the most common. In a typical  
9        neurosurgeon's practice that will be the most  
10       common thing he or she will operate on.

11               MR. BANCROFT: At this time, Judge, I  
12       would ask that Dr. Ammerman be declared an expert  
13       in the field of neurosurgery.

14               MR. CORRIE: No questions, Judge.

15               THE COURT: He will be so received.

16               MR. BANCROFT: Thank you, Judge.

17               BY MR. BANCROFT:

18               Q.     Now, Dr. Ammerman, let's go back in  
19       time a little bit. Did there come a time when  
20       you were asked to examine the plaintiff in this  
21       particular case, Mr. Rohrbaugh, by the defense,  
22       and pursuant to a court order?

23               A.     Yes, sir.

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1           Q.    Can you tell the ladies and gentlemen  
2 of the jury how many times you have actually  
3 examined Mr. Rohrbaugh as it relates to the  
4 injuries claimed in this lawsuit?

5           A.    On two occasions.

6           Q.    Can you tell the ladies and gentlemen  
7 of the jury when those two occasions were?

8           A.    Initially, I saw Mr. Rohrbaugh April  
9 28, 1999, and then May 9th of this year, which  
10 was about a month ago.

11          Q.    Now, in addition to actually having an  
12 opportunity to examine Mr. Rohrbaugh personally,  
13 did you also receive records and diagnostic tests  
14 that you had an opportunity to review, Doctor?

15          A.    Yes, sir.

16          Q.    What was the history that you obtained  
17 from Mr. Rohrbaugh, as it relates to the issues  
18 in this particular case?

19          A.    Basically, that he had been involved in  
20 a motor vehicle accident on August 11, 1995, he  
21 was driving a Lincoln, stopped, wearing his seat  
22 belt, struck from behind by an automobile. He  
23 was pushed into the intersection. He was not

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1 unconscious.

2 He told me he went forward and  
3 backward. Developed aching of his neck, back,  
4 and right arm. He told me that he had been  
5 treated subsequently by orthopedist, Dr.  
6 Gaertner, and Dr. Azzam, that he had had physical  
7 therapy.

8 He told me he was taking, when I saw  
9 him, a year ago, Coumadin, which is a blood  
10 thinner, a pill to help his memory, and  
11 medication for a tremor he has, and vitamins.

12 He told me that he felt better. He had  
13 less pain in his neck and arm, but he did note  
14 some stiffness about his right arm and lower  
15 back. That was basically the salient features.

16 Q. Now, Dr. Ammerman, I am going to be  
17 asking you some questions concerning your  
18 opinions and conclusions, and instead of  
19 prefacing each and every one of them with the  
20 phrase "To a reasonable degree of medical  
21 certainty or probability," I would ask that you  
22 render your opinions to that standard whenever  
23 you respond concerning certain opinions that you

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1 hold. Okay?

2 A. Yes, sir.

3 Q. Now, Doctor, in that area do you have  
4 an opinion -- you mentioned these tremors that  
5 Mr. Rohrbaugh has. Do you have an opinion,  
6 Doctor, as it relates to this particular motor  
7 vehicle accident, whether the tremors are in any  
8 way related to the accident?

9 A. Yes, sir.

10 Q. What is that opinion?

11 A. They're not.

12 Q. Now, you also mentioned, Dr. Ammerman,  
13 the issue of memory deficits or some memory  
14 problems that Mr. Rohrbaugh might suffer from.  
15 Do those memory problems, in your opinion, have  
16 any relationship, whatsoever, to the motor  
17 vehicle accident in question in this case?

18 A. They don't. Just like the tremors,  
19 they all pre-date it.

20 Q. Now, can you tell the ladies and  
21 gentlemen of the jury what your findings were,  
22 based upon your examinations, those two, of Mr.  
23 Rohrbaugh, as it relates to his neck and his low

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1 back?

2 A. Okay. I'll limit it to those areas, in  
3 the interest of time. He had a well-healed  
4 incision in the front from the surgery that Dr.  
5 Azzam did.

6 I asked him, basically with my hands on  
7 his neck, to put his chin on his chest, to put  
8 his head backwards, and then to turn to the right  
9 and turn to the left. He had mild restriction of  
10 doing so, not a lot, but some, and he said the  
11 area was a bit tender or sore.

12 I examined his lower back, the lumbar  
13 spine, basically put him through the same  
14 routine, bend all the way forward, bend all the  
15 way back, bend to the right, bend to the left,  
16 and again there were mild restrictions. There  
17 was no tenderness. It didn't bother him. There  
18 was no muscle spasm.

19 I examined his strength, the power in  
20 his arms and legs. That was normal. Actually, I  
21 can go through the rest of this, but it was  
22 totally normal.

23 Q. Now, during the history taking from Mr.

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1       Rohrbaugh, was there any mention, Dr. Ammerman,  
2       about any prior problems with neck or low back  
3       complaints by him?

4             A.     I don't believe he-- and I think he  
5       was there with his sons when I first saw him. I  
6       don't believe there was.

7             Q.     Now, Dr. Ammerman, after reviewing the  
8       medical records in this particular case and the  
9       diagnostic tests, what, if any, evidence is there  
10      of some prior complaints of neck or low back  
11      concerns by Mr. Rohrbaugh?

12            A.     I believe when he saw Dr. Simsarian,  
13      who is a medical neurologist, a specialist in the  
14      nervous system, but not a surgeon, in June of  
15      1995, which would pre-date the accident, he told  
16      Dr. Simsarian that he had pain in his right arm,  
17      at times it tingled, it was from about his elbow,  
18      down, but also his arm -- this is the arm, this  
19      is the forearm -- that about 25 years prior to  
20      this, which would be about 1970 or so, that Mr.  
21      Rohrbaugh had seen an orthopedic surgeon, he had  
22      had weakness in his triceps muscle, which is a  
23      muscle that gets its nerve impulse from C7, C7

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1       nerve group.

2               Apparently a surgery of some sort, and  
3       I can't comment on it, had been suggested, but  
4       not undertaken.

5               Q.    Dr. Ammerman, as a board-certified  
6       neurosurgeon, that data that you were able to  
7       glean from the record, is that important to you  
8       in trying to establish causation in this case?

9               A.    Yes, sir.

10              Q.    Why?

11              A.    Well, basically, one of the questions  
12       is, did the patient previously have any symptoms  
13       compatible with nerve irritation or a pinched  
14       nerve, which he was eventually operated on for  
15       arthritis of his neck.

16              If we just take those two sentences, it  
17       describes two things. One is that there are  
18       symptoms of tingling, which we see with nerve  
19       irritation, almost like that falling asleep  
20       feeling when you lay on your elbow, that went  
21       down the arm.

22              We also see the patient describing that  
23       many years before that there was weakness in his

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1 right triceps. The right triceps muscle, to be  
2 injured in and of itself, and there is no history  
3 of this, would be extremely unusual.

4 Typically with weakness of the triceps,  
5 it's due to the fact there's a pinched nerve in  
6 the neck. I would point out that it was many  
7 years before this, and subsequent to this, Dr.  
8 Azzam operated on that specific nerve for the  
9 arthritis there.

10 Q. Dr. Ammerman, you have had an  
11 opportunity to review the records. Are these the  
12 types of things that you as a neurosurgeon look  
13 to, previous medical records, in an effort to  
14 assist you in rendering opinions concerning  
15 causation?

16 A. Sure.

17 Q. Now, do you have an opinion, Dr.  
18 Ammerman, after you've conducted your medical  
19 examinations of Mr. Rohrbaugh, and you've had an  
20 opportunity to review the medical records on Mr.  
21 Rohrbaugh, and in addition, look at diagnostic  
22 tests --

23 A. Yes, sir.

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1           Q.    -- do you have an opinion, Dr.  
2    Ammerman, as to what caused or required Mr.  
3    Rohrbaugh to have surgery in July of 1998 to his  
4    neck?

5           A.    Yes, sir.

6           Q.    What is it?

7           A.    Cervical spondylosis, or cervical  
8    arthritis, arthritis in the neck, a long-standing  
9    arthritis in the neck.

10          Q.    Do you have an opinion, Dr. Ammerman,  
11    that the surgery that was ultimately conducted  
12    and the treatment and care that was rendered to  
13    Mr. Rohrbaugh after that surgery, is it related  
14    to the motor vehicle accident in question in this  
15    lawsuit, which occurred on August 11, 1995?

16          A.    Yes, sir.

17          Q.    It is your opinion that it is not  
18    related, is that correct?

19          A.    That is correct.

20          Q.    Now, in the low back, Dr. Ammerman, do  
21    you have an opinion regarding the low back as to  
22    whether or not there is any condition in the low  
23    back that can be related to the motor vehicle

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1 accident in question in this lawsuit?

2 A. The answer is no, other than a muscle  
3 strain, which certainly can be, but as far as the  
4 degenerative changes that we see in the low back  
5 or that we saw in the neck, the answer is no,  
6 those are long-standing changes.

7 Q. Now, what, if any, injury did Mr.  
8 Rohrbaugh sustain, in your opinion, Dr. Ammerman,  
9 as a result of this rear-end accident that he had  
10 on August 11, 1995, as it relates to his neck?

11 A. I believe he basically he had a  
12 muscular strain, a muscle strain, whatever term,  
13 cervical strain, one wishes to use.

14 Q. Now, in treating a muscle strain or a  
15 soft tissue strain, what is the appropriate kind  
16 of treatment for that type of condition, in your  
17 opinion, Doctor?

18 A. Well, it varies a little bit with the  
19 patient and the severity, so I think it's really  
20 more of a range, but it could be anywhere from a  
21 few days, to a few weeks, to occasionally several  
22 weeks, to even a few months. It really varies  
23 with the patients. Typically, it's a month, six

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1 weeks, in that general ball park.

2 Q. Doctor, would it be appropriate to take  
3 some X-rays, and even go so far as to have an MRI  
4 scan or a CT scan to treat or care for someone  
5 with a soft tissue strain of the neck or the  
6 back?

7 A. It would be some -- let me break it  
8 out. You've asked me several questions. It  
9 would certainly be appropriate to treat the  
10 patient, whether it's with medication, or heat,  
11 or therapy, things of that nature. One will  
12 frequently get an X-ray, if there's a concern.

13 MRI scan? It really depends on the  
14 patient's symptoms and how they respond, so you'd  
15 have to individualize that.

16 Q. Do you have an opinion, Doctor, that  
17 the medical costs and treatment associated with  
18 the surgery in July of 1998 were reasonable and  
19 necessary charges associated with the motor  
20 vehicle accident?

21 A. Yes, sir.

22 Q. What's your opinion?

23 A. They were not.

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1           Q.    Do you have an opinion, Dr. Ammerman,  
2           whether or not any of those charges associated  
3           with the surgery of Mr. Rohrbaugh in July of 1998  
4           were excessive?

5           A.    They were.

6           Q.    Can you explain that further?

7           A.    Yes.  I'd be glad to.

8           MR. BANCROFT:  May I approach, Your  
9           Honor?  Could I have exhibits, I believe, 7, 8,  
10          and 9, all three of them?

11          THE COURT:  The last three should be 7,  
12          8, or 9.

13                   (The documents referred to above  
14                   were previously marked for  
15                   Identification as Plaintiff's  
16                   Exhibit Nos. 2, 7, 8, and 9.)

17          BY MR. BANCROFT:

18          Q.    Let me show you, Dr. Ammerman, what has  
19          already been marked as plaintiff's exhibit number  
20          two, and ask if there are any changes on that  
21          statement that you find to be excessive.

22          A.    Yes, sir.

23          Q.    The surgery, the discectomy, was July

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1        29, 1998. The charge for a single level, that is  
2        to take out one disc, was \$7,000. That's high.  
3        I think my own charges are around \$4,900. I may  
4        be a little less than some, a little more than  
5        others, but to give you a feel, and I think  
6        that's pretty typical in the community.

7                Typically, when we do a second level,  
8        that is, you've gone there, you've done the work,  
9        you've exposed the field, and you take out a  
10       second disc, that's billed anywhere from 20 to 25  
11       percent of the cost of the first.

12               It is more surgery, it's obviously not  
13       an entirely separate operation, so that if, for  
14       example, one were to charge \$5,000 to do the  
15       first, one might charge \$1,000, \$1,500, \$1,200,  
16       something like that, to do the second, in that  
17       general ball park.

18               The first discectomy was charged at  
19       \$7,000, which is a true discectomy. The second  
20       discectomy was charged as if it were an  
21       absolutely separate operation at another \$7,000.  
22       It was \$14,000 for that operation, which is  
23       easily twice what it would be going in this

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1 community. That was just for the discectomy.

2 Q. Thank you, Doctor.

3 A. Sure.

4 Q. Doctor, if you could --

5 MR. BANCROFT: I'd like to have these  
6 marked, Judge. I'd like to have these marked as  
7 defendant's --

8 THE COURT: Mark it as defendant's one.

9 MR. BANCROFT: -- one, and I would also  
10 like to have this marked as defendant's two.

11 THE COURT: Mark the second X-ray as  
12 defendant's two.

13 MR. BANCROFT: This would be two.

14 (Thereupon, the documents  
15 referred to above were marked for  
16 Identification as Defendant's  
17 Exhibit Nos. 1 and 2.)

18 BY MR. BANCROFT:

19 Q. Now, Dr. Ammerman, let me show you what  
20 has been marked as defendant's exhibit number  
21 one.

22 MR. CORRIE: Could you just tell me  
23 which one number one is?

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1 MR. BANCROFT: Yes. This is an X-ray,  
2 dated September 18, 1995.

3 MR. CORRIE: Okay.

4 BY MR. BANCROFT:

5 Q. Can you tell the jury what that X-ray  
6 is?

7 A. Yes. It's an X-ray, a lateral X-ray,  
8 that was taken from the side of the lumbar spine,  
9 which basically shows a great deal of arthritis  
10 degenerative change actually at a couple of the  
11 vertebrae, the bones.

12 Actually, the arthritic spurs are so  
13 big they bridge, they're called bridging  
14 osteophytes, that are actually going from one to  
15 the other and join together.

16 Q. Is that the neck or the low back,  
17 Doctor?

18 A. This is the lower back, sir.

19 Q. Okay.

20 MR. BANCROFT: Let me show you what we  
21 will have marked as defendant's three. This is  
22 an X-ray of the neck, I believe, of September 18,  
23 1995.

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1 (Thereupon, the document referred  
2 to above was marked for  
3 Identification as Defendant's  
4 Exhibit No. 3.)

5 BY MR. BANCROFT:

6 Q. Can you identify that exhibit, Doctor?

7 A. Yes. This is a lateral view of the  
8 neck, that is, it's taken this way, which again  
9 shows a great deal of arthritis really affecting,  
10 at least I can see, five of the seven bones in  
11 the neck, especially worse at C6/C7, and  
12 C5/C6.

13 Q. Okay.

14 MR. BANCROFT: Lastly, if I could have  
15 this marked as the ones before.

16 (Thereupon, the document referred  
17 to above was marked for  
18 Identification as Defendant's  
19 Exhibit No. 4.)

20 BY MR. BANCROFT:

21 Q. This is a September 18, 1995, X-ray of  
22 the neck as well.

23 A. Yes. This is an oblique view, that is,

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1       rather than taken from the side, the patient's  
2       head is turned slightly, and the X-ray is taken,  
3       which then shows the opening called the foramen,  
4       where the nerve comes out the spine on each side,  
5       and then you can see if there is any bony  
6       spurring or something else that could pinch the  
7       nerve as it's coming out.

8               In other words, you're looking for  
9       arthritis. Again, this shows arthritis, which  
10      can pinch nerves between C5/C6, and worse at  
11      C6/C7.

12             Q.    Lastly, let me show you what is marked  
13      as defendant's exhibit number two, and that is an  
14      MRI scan for 5/19/95, correct?

15             A.    Yes. This is a lateral view, again,  
16      from the side, of the MRI scan, the Magnetic  
17      Resonance Imaging scan, of Mr. Rohrbaugh, which  
18      again shows degenerative changes at C5/C6 and  
19      worse at C6/C7. It really shows more of what  
20      these all showed.

21             Q.    Now, if I may, Your Honor, would it be  
22      of assistance, Dr. Ammerman, for you to briefly  
23      review some of these scans to the jury to assist

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1           themain better understanding your testimony --

2           A.     I'll be glad to do so, if you wish.

3           Q.     -- if that would be okay, Judge?

4           THE COURT:   Could you step down, step  
5           around?

6           MR. BANCROFT:   If you could take --  
7           well, I'll take -- this will be a little awkward.

8           BY MR. BANCROFT:

9           Q.     Would you put up the X-ray of the neck,  
10          Dr. Ammerman, and then if you would be kind  
11          enough to explain what those two X-rays in  
12          September of 1995 reveal, keeping in mind they  
13          were taken several months after the accident,  
14          about a month after the accident.

15          A.     Let me first start with the lateral.  
16          That's taken, the way you're looking at me,  
17          across this way, and what we see, we see the very  
18          bottom of the skull, and then the bones of the  
19          neck, the cervical spine, of which there are  
20          seven, and these are labeled four, five, six,  
21          seven.

22                   What we see that is of significance,  
23          when we start between C6 and C7, there's an

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1       irregularity to the disc space, which should be  
2       nice and smooth across.

3               You see that it's real white along the  
4       edges, that is the laying down of calcium, so it  
5       stops more X-ray, and I think if you look, you  
6       see a spur, like a little beak of a bird, between  
7       six and seven, and you see some at five and six.

8               You see calcification between three and  
9       four, and maybe a little bit between four and  
10      five. So these are fairly advanced wear-and-tear  
11      changes that take many, many years to develop.

12              If we then turn the neck a little to  
13      the side to look at the openings, the foramen,  
14      what one sees is, first, I'll show you the normal  
15      view of the foramen.

16              This black area means that there is  
17      nothing inside the opening, that is, there are no  
18      arthritic spurs, because if there's arthritic  
19      spurring in there, it will look white, and you'll  
20      see little peaks.

21              You can see a little bit at five and  
22      six, but I think you can see all this, like  
23      little pieces of gravel, and that's at six/seven,

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1 and that's the one that's most involved with  
2 arthritis.

3 Q. Now, can you correlate these X-rays  
4 with the MRI scan of October 5, 1995, taken a  
5 month later?

6 A. I think so. Let me do it this way.  
7 Let me take this down, and we can sort of do this  
8 backwards, but that's intentional so we are both  
9 looking in the same general direction. If we'd  
10 look between, this is C6/C7, and the normal disc,  
11 let's go down to the thoracic region, sort of  
12 concave, here's it's rather irregular.

13 There is some very slight pushing  
14 backward, which is arthritic spur, and actually  
15 you can see the spur from the front here on this  
16 view, I need other views to show more, but they  
17 basically show the same thing.

18 Q. Now, on this, where it's marked as  
19 defendant's exhibit number two, the MRI scan,  
20 which would have been taken approximately two  
21 months post-accident, does it show, Dr. Ammerman,  
22 any type of indentation of the cord?

23 A. This view here, and there are other

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1 views that show it better, shows that that bone  
2 spurs back to the cord, yes, sir, at six/seven.

3 Q. That bone spur is the bone spur that is  
4 reflected on the X-ray.

5 A. Yes.

6 Q. In your opinion, Dr. Ammerman, is  
7 that -- do you have an opinion, Dr. Ammerman,  
8 whether or not the bone spur and that indentation  
9 in the spinal cord is in anyway related to the  
10 motor vehicle accident?

11 A. Oh, it's not. It's long-standing. It  
12 takes years.

13 Q. Thank you.

14 MR. BANCROFT: At this time, Your  
15 Honor, I would move into evidence defendant's  
16 exhibits one, two, three, and four.

17 MR. FREI: No objection, Judge.

18 THE COURT: One, two, three, and four  
19 will be admitted.

20 (Thereupon, the documents  
21 referred to above and marked for  
22 Identification as Defendant's  
23 Exhibit Nos. 1, 2, 3, and 4, were

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1                                   received in Evidence.)

2                                   BY MR. BANCROFT:

3                                   Q. Now, Dr. Ammerman, after you finish  
4                                   here today where will you be going?

5                                   MR. FREI: Objection. I don't know the  
6                                   relevance of that, whatsoever. He's here to  
7                                   render his opinions about Mr. Rohrbaugh's  
8                                   condition. Where he goes when he leaves here  
9                                   doesn't have anything to do with anything.

10                                  THE COURT: What's it offered for?

11                                  MR. BANCROFT: Well, it's going to come  
12                                  up. I'll just wait, Judge.

13                                  BY MR. BANCROFT:

14                                  Q. Are you being paid, Dr. Ammerman, for  
15                                  being here today and taking yourself out of the  
16                                  office?

17                                  A. Yes, sir.

18                                  Q. What is your rate for being out of the  
19                                  office?

20                                  A. I black out a half a day, which I think  
21                                  I will be a little off on today, and I charge  
22                                  \$2,000 for a half-a-day that I'm not seeing  
23                                  patients and I'm not operating.

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1           Q.     Now, in the course, Doctor, of your  
2           regular week, how many days a week are you  
3           actually in surgery?

4           A.     It varies really week to week. I'm  
5           operating this afternoon. That will be my  
6           seventh case this week. So this week is a busy  
7           week.

8                     MR. BANCROFT: Thank you. That's all I  
9           have, Your Honor.

10                    THE COURT: Thank you. Cross  
11           examination?

12                    MR. FREI: Thank you, Judge.

13                             CROSS EXAMINATION

14                    BY MR. FREI:

15                    Q.     Before we get too far I think there is  
16           actually something that we agree on, Doctor, and  
17           that's that the defense exhibits one, two, three,  
18           and four, that you just talked about and showed  
19           to the jury, show degenerative arthritic changes  
20           in his spine that certainly predated the date of  
21           this accident in August of 1995, right?

22                    A.     Yes.

23                    Q.     Now, I want to talk a little bit

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1       about -- well, let me kind of start and go  
2       backwards, forwards. You testified about Dr.  
3       Azzam's fees for the discectomies being  
4       excessive, \$7,000 grand a level, you went through  
5       all that stuff with us, right?

6             A.    I believe \$14,000 for two discectomies  
7       is excessive, yes, sir.

8             Q.    Right. Now, you saw Mr. Rohrbaugh  
9       twice, which you testified to, on April 28th of  
10      1999, and then again on May 9th of 2000, right?

11            A.    Yes, sir.

12            Q.    You wrote two separate reports in  
13      connection with those examinations, right?

14            A.    Yes, sir.

15            Q.    Okay. In the first report that you  
16      wrote, the one on April 28th of 1999, at the time  
17      you wrote that report did you have all of the  
18      medical records, and bills, and exhibits, and MRI  
19      scans, and same information that you had, at  
20      least medical record wise, before you saw him a  
21      second time this year?

22            A.    I don't know. I mean I have a whole  
23      stack. I've gotten a bunch more records. Which

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1       ones I have -- I know anything I reference there,  
2       obviously, I had. I can't answer your other  
3       question, because I don't know.

4           Q.     All right. Well, in your April 28,  
5       1999, report, you certainly had Dr. Azzam's  
6       records, right?

7           A.     Yes.

8           Q.     Okay. Do you know if you had his bill?

9           A.     I don't know. I know I had it by the  
10       time I saw the patient the second time.

11          Q.     The reason I ask is that in the first  
12       report you don't say anything about the surgery  
13       fees being excessive, do you?

14          A.     I do not, which leads me to believe  
15       that I probably didn't have it, but I can't tell  
16       you.

17          Q.     Well, isn't it true, Doctor, that just  
18       a couple of months ago you -- the surgery was at  
19       Reston Hospital, right?

20          A.     It was at Reston Hospital Center in  
21       July of 1998.

22          Q.     Isn't it true that in another case in  
23       this Court just a couple of months ago you

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1 testified in another case I was involved in, the  
2 case, I'll reference it to you, so you might  
3 remember it, Pamela Straugh versus Deborah  
4 Concertino, Mr. Steinhilber was the defense  
5 lawyer in the case, Dr. Schuler performed the  
6 surgery, it was a fusion, an anterior cervical  
7 discectomy with a fusion. Does that ring any  
8 bells to you at all?

9 A. The name is anything that is familiar,  
10 but you put your hand back here, and that's not  
11 where the surgery would be.

12 Q. Okay. There was litigation in that  
13 case, too, as you recall, right?

14 A. I assume if I was called to testify,  
15 there was litigation.

16 Q. In that case, do you remember  
17 testifying in that case, too, that Dr. Schuler's  
18 fees were excessive, too?

19 A. If that's the case I'm thinking of,  
20 that was the highest fee that I had ever seen in  
21 a spinal operation in 23 years. So if that's the  
22 one, yes, sir, I did.

23 Q. Well, I don't know if it's the one or

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1 not. All I'm asking --

2 A. I have a feeling that's the one.

3 Q. All I'm asking about is that in a  
4 previous case, that also involved an anterior  
5 cervical discectomy, you took issue with some  
6 other surgeon's charges as well, not Dr. Azzam's,  
7 correct?

8 A. I believe Dr. Schuler, I don't have  
9 the -- if I had the operation I could tell you  
10 exactly, but if that's the one I'm thinking of --

11 Q. It was a six/seven fusion, took the  
12 disc out, iliac crest bone graft.

13 A. I believe there was more than that,  
14 but, indeed, if that's the one I'm thinking of,  
15 that was absolutely out of line.

16 Q. All right. Now, in your review of any  
17 of the MRIs, or the CAT scans, or the CT  
18 myelograms that were done, any of the  
19 radiographic studies that you had, did you find  
20 any evidence of any disc bulging or herniation in  
21 Mr. Rohrbaugh's cervical spine at the C5/6, C6/7  
22 level?

23 A. I saw no evidence of herniation,

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1 anything I would call herniation. No, sir.

2 Q. You reference in your May 9, 2000,  
3 report on the second page, I'll give you a second  
4 to get there --

5 A. Got it. Second page?

6 Q. Second page, at the top. I think, let  
7 me check just to make sure -- defense exhibit  
8 two, which you reviewed and talked to the jury  
9 about, is an MRI that was taken on 5 October,  
10 1995, right?

11 A. Yes.

12 Q. Okay. I just want to make sure we were  
13 talking about the same film. In your report you  
14 state, and I'll read it verbatim, "Cervical MRI,  
15 10/5/95, revealed at C6/7 there's a moderate to  
16 severe spinal stenosis and cord compression  
17 secondary to a combination of spondylosis and  
18 disc protrusion, which is diffused, but more  
19 prominent on the right than the left." Did I  
20 read that accurately?

21 A. You're quoting what I'm quoting, which  
22 is the radiologist. That is not my  
23 interpretation. You're just reading -- I quoted

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1           what the radiologist wrote.

2           Q.    Okay. Here's my question to you.

3           A.    Okay.

4           Q.    Did I read it accurately?

5           A.    You read what the radiologist  
6 described, yes, sir.

7           Q.    That was the October 5, 1995, MRI that  
8 we were just talking about, correct?

9           A.    Yes, sir.

10          Q.    I know you may have a different reading  
11 of it, but the radiologist says that the cord  
12 compression is secondary to spondylosis as well  
13 as disc protrusion, right?

14          A.    That was what the radiologist read on  
15 that film. Of course, that's not what Dr. Azzam  
16 saw at surgery.

17          Q.    It's in your report, correct?

18          A.    Yes. In fact my report says, on that  
19 same page, that the only thing found at surgery  
20 was arthritis. Yes, sir.

21          Q.    All right. Between the first time you  
22 saw Mr. Rohrbaugh in April of 1999 and the second  
23 time that you saw him in May of 1999, what

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1 additional records or information were you  
2 provided?

3 A. I'd only brought part of what I had,  
4 because I couldn't carry it all. I have a whole  
5 bunch more records. I can't tell you which  
6 additional ones came. Some were duplicates.  
7 Anything that I reference in my second report  
8 from last month, and since then, but I can't tell  
9 you specifically record for record.

10 Q. So you don't know, or you can't tell.

11 A. I can't tell I think is more accurate.

12 Q. Let's talk for just a second, Doctor,  
13 about what I guess your role was in conducting  
14 the examination, just so the ladies and gentlemen  
15 of the jury understand a little bit. You'd agree  
16 with me that you're not Mr. Rohrbaugh's treating  
17 physician in any regard.

18 A. Correct.

19 Q. You don't provide him any care or  
20 treatment, correct?

21 A. Correct. I do not.

22 Q. You haven't followed his care with  
23 respect to being his physician. You haven't had

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1 any follow-up visits, you haven't tracked his  
2 care with respect -- other than reviewing the  
3 records, about what happened to him before or  
4 after, things like that, other than the records,  
5 correct?

6 A. I haven't treated him. I've tracked  
7 all of this, but I have not treated him.

8 Q. Okay. Have you ever had any  
9 discussions before writing your reports and  
10 forming your opinions with Dr. Ficanin?

11 A. I have spoken to no other physician  
12 about this patient.

13 Q. You haven't talked to Dr. Simsarian.  
14 You made reference to one of his records.

15 A. Right. I haven't talked to any of the  
16 physicians. I relied upon their records.

17 Q. Right. Again, the same answer would be  
18 true about Dr. Gaertner, you haven't talked to  
19 him, correct?

20 A. Still the same answer.

21 Q. Dr. Azzam.

22 A. Correct.

23 Q. Or any of the physician therapists,

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1 right?

2 A. I have the records, relied upon the  
3 records.

4 Q. Now, Dr. Simsarian's note, which Mr.  
5 Bancroft pointed out to you, the June 5, 1995,  
6 note, you made specific reference to, correct?

7 A. I did, yes. He asked me and I  
8 referenced it, yes.

9 Q. Okay. You would agree with me, would  
10 you not, that the primary reason, in fact, the  
11 chief complaint reason that Mr. Rohrbaugh was  
12 seeing Dr. Simsarian was for a tremor and memory  
13 loss, right?

14 A. Yes.

15 Q. You'd also agree with me, would you  
16 not, that this problem he had in his right arm  
17 was mainly from the elbow, down, right?

18 A. Well, I have to take a slight exception  
19 with you, and that's the anatomy. Anatomically,  
20 as a first-year medical student will learn, this  
21 is the arm, this is the forearm, this is the  
22 extremity.

23 So assuming Dr. Simsarian was accurate

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1 in what he wrote, and I'm going to assume he was,  
2 I have no reason to doubt it, he says he has pain  
3 in his right arm. That's here. Anatomically,  
4 from the elbow to the shoulder is the arm.  
5 Tingling feeling, he talks about numbness, and  
6 the tingling feeling is mainly from the elbow  
7 down. So you've got pain here and tingling here,  
8 that's how I interpret it.

9 Q. Okay. Well, let me read the sentence  
10 just so everybody knows what it says --

11 A. Sure.

12 Q. -- exactly. It says, "He has a pain in  
13 his right arm, with a numb, tingly feeling,  
14 mainly from the elbow, down."

15 A. Right.

16 Q. That's what the sentence says, right?

17 A. Two complaints, pain in the arm,  
18 tingling from the elbow, down.

19 Q. It's your perception that there are two  
20 complaints. It's your interpretation, you just  
21 said that.

22 A. That's how anatomy is taught. The arm  
23 is where the arm is. He describes them below

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1       that. I'm not trying to debate you. That's the  
2       forearm. That's below the elbow.

3             Q.    It's not the arm.

4             A.    That is not the arm. No, sir.

5             Q.    Okay. Would there be any other  
6       interpretation that you would ascribe to this  
7       note?

8             A.    That's how I was taught when I took  
9       anatomy 30 years ago, that the arm is between the  
10      shoulder and the elbow, and the forearm is  
11      between the elbow and the wrist.

12            Q.    All right. There are not periods or  
13      anything in that sentence, right? The part  
14      about, mainly from the elbow, down, comes after a  
15      comma, right? He doesn't end the sentence and  
16      then talk separately about some problems below  
17      the elbow, does he?

18            A.    He describes two things in that note,  
19      as I interpret it, pain in the arm and numbness,  
20      distally.

21            Q.    Okay. I don't mean to argue with you,  
22      but my question was: He doesn't stop the  
23      sentence and talk about what you are describing

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1 as the arm, meaning above the elbow, and then  
2 start again and talk about this problem, as  
3 you're describing it, the forearm, below the  
4 elbow. It's all in the same sentence, correct?

5 A. Sure. It describes two different  
6 complaints in one sentence. That's okay.

7 Q. Okay. Let's talk a little bit, Doctor,  
8 about the work in connection that you're doing in  
9 this case, about examining an individual such as  
10 Mr. Rohrbaugh in the context of doing it on  
11 behalf of a defendant, to come here and provide  
12 testimony about what either an injury is or is  
13 not. Okay?

14 A. Sure.

15 Q. It's not the first time you've done it,  
16 right?

17 A. No.

18 Q. You do it a fair amount. Whatever you  
19 want to quantify as fair, I'll live with.

20 A. I probably go to court two or three  
21 times a month in a situation like this, or on  
22 behalf of a patient of my own.

23 Q. Certainly, you testify on behalf of

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1 patients of your own, right?

2 A. Of course I do.

3 Q. You're going to go after this  
4 proceeding to testify on behalf of one of your  
5 patients, aren't you?

6 A. Actually, I'm going to go after this  
7 one, although, I won't get to my 12:15 surgery,  
8 I'm going to go to Sibley and operate.

9 Q. You've testified on behalf and have  
10 been retained on behalf of -- well, who retained  
11 you in the case, first of all? Was it Mr. Corrie  
12 or Mr. Bancroft?

13 A. I think it was Mr. Corrie.

14 Q. Okay. But certainly before this  
15 proceeding today, Mr. Corrie has retained you  
16 over the past ten years to review and examine  
17 individuals such as Mr. Rohrbaugh and offer  
18 testimony and opinions in that regard, right?

19 A. I have. Yes, sir.

20 Q. The same would be true of Mr.  
21 Bancroft's office, whether it was him, or Julia  
22 Judkins, who is a lawyer in his office, or Steve  
23 Horvath, or Mr. Trichilo, you've been retained by

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1       their office in the past --

2           A.     Sure.

3           Q.     -- to do the same sort of things,  
4       correct?

5           A.     I've worked with them, I've worked  
6       against them. Yes, sir.

7           Q.     You testified, and again, I'm talking  
8       about in circumstances such as this, as  
9       testifying for a defendant, having been hired to  
10      testify on behalf of a defendant in a case in  
11      Montgomery County, in Maryland --

12          A.     Sure.

13          Q.     -- in the Superior Court of D.C. on  
14      behalf of defendants --

15          A.     Sure.

16          Q.     -- in the Federal District Court in the  
17      District of Columbia on behalf of defendants,  
18      correct?

19          A.     Absolutely. Over the last 20 years,  
20      I'm sure I have.

21          Q.     In Prince William County, out in  
22      Manassas, in Virginia here, correct?

23          A.     Yes.

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1 Q. In Arlington County.

2 A. I suspect so.

3 Q. The city of Alexandria.

4 A. Sure.

5 Q. Certainly, in this court, correct?

6 A. The same place I've testified for my  
7 own patients.

8 Q. I understand that, but I'm not talking  
9 about your own patients. You're a treating  
10 physician for your own patients, right? I mean  
11 you've got a medical, legal, ethical obligation  
12 to help them in that regard, don't you?

13 A. Well, I don't get in a lengthy debate  
14 about a medical obligation in that regard as far  
15 as testifying for, but some of these patients are  
16 patients I haven't treated.

17 They're patients who were referred to  
18 me from other sources, including lawyers like  
19 yourself, and asked to render an opinion, but  
20 I've done so. I'm glad to do so. I take the  
21 time.

22 Q. Right. I understand that. Prince  
23 George's County --

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1           A.     Sure.

2           Q.     -- in the State of Maryland.  Baltimore  
3 City?

4           A.     I believe so, yes.

5           Q.     In fact, if I was to say to you that  
6 since about 1994 or so, right around there, more  
7 than a hundred times you've testified on behalf  
8 of defendants in these various jurisdictions that  
9 we've just talked about.  Not plaintiffs, not  
10 patients of your own, but solely defendants,  
11 correct?

12          A.     Six years, it probably comes out to  
13 that number, if I go to court two or three times  
14 a month, and probably two times out of three it's  
15 for a defense, one out of three is for my own  
16 patients, something like that, that's probably  
17 what it comes out to.

18          Q.     But again, you keep throwing in your  
19 own patients.  I'm talking about defendants, just  
20 like you're here for today.

21          A.     I'm just trying to figure out the  
22 numbers.  I'm not debating with you.  I suspect  
23 you're probably right.

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1           Q.    Okay.  In fact, you would consider,  
2                wouldn't you, doing these kinds of examinations  
3                on plaintiffs who were involved in litigation for  
4                defense lawyers part of your practice, is that  
5                correct?

6           A.    I evaluate patients for defense  
7                lawyers, for plaintiff's lawyers, mostly for  
8                physicians, all of the above, and some that are  
9                none of the above, you know, for disability and  
10              other stuff.  Sure.  As a neurosurgeon, I do  
11              that.

12          Q.    Okay.  I'm not talking about other  
13                physicians, I'm not talking about the plaintiff's  
14                lawyers, I'm talking about defendants, as part of  
15                your practice.

16          A.    That is a part of my practice, as are  
17                all the other things I mentioned.

18          Q.    All right.  In fact, Doctor, Allstate  
19                Insurance Company, who is the insurance company  
20                for the defendant in this case, has paid you in  
21                1999, \$104,971, right?

22          A.    I don't know that that is right.  If  
23                that's what the form says -- I don't know one way

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1 or the other.

2 Q. Would you like to look at it to verify  
3 it?

4 A. I would have no way to verify it.

5 Q. I would represent to you that that's  
6 what the figure is.

7 A. If that's what they say, I have no way  
8 of agreeing or disputing it. I don't know. I  
9 don't have the information in front of me. I  
10 would not dispute what they are saying, if that's  
11 what they say. I don't know its veracity, that's  
12 all.

13 Q. Okay. Would you like to look at it  
14 just to confirm it?

15 A. I didn't print it, I'm not going to  
16 know how to read it.

17 Q. Well, I will proffer to the Court and  
18 to you that it's produced pursuant to a subpoena  
19 to Allstate Insurance Company.

20 A. I'm just saying that unless it's  
21 something that comes out of my office, I can't  
22 interpret it. I'm not debating with you.

23 Q. Okay.

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1           A.    It may be absolutely accurate, but I  
2    can't say about its veracity one way or the  
3    other, because we didn't produce it, and I don't  
4    know what's in it.

5           Q.    In 1998, if I told you that Allstate  
6    Insurance Company had paid you \$106,520, the same  
7    answer, I'm assuming.

8           A.    Without showing the cases, I would not  
9    know one way or the other, or whether they were  
10   for -- in what capacity I received those monies.

11          Q.    Well, what do you mean in what  
12   capacity? Can we approach about this, Judge? I  
13   mean you were paid by Allstate Insurance Company  
14   in 1998 \$106,520, right?

15          A.    If you say so. I'm saying that that  
16   could be for various things.

17          Q.    Well then I'll make the same offer to  
18   you, would you like to verify that number? I  
19   will represent to you that that's what this  
20   document says. I know it didn't come from your  
21   office. It came from Allstate.

22          A.    It may be. If that document breaks out  
23   patients I've treated, so be it, I don't know.

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1 I'll accept the number, because I don't know.

2 Q. All right. But you have no reason to  
3 dispute what's been given to you by Allstate,  
4 correct?

5 A. I have absolutely no reason to dispute  
6 that.

7 Q. The final thing, Doctor, I guess I  
8 would ask you is that all of the X-rays that we  
9 talked about, that you testified about, one  
10 through four, were all X-rays or MRI scans that  
11 were done after this collision, right?

12 A. Yes, sir.

13 Q. Did you have a chance to review any  
14 MRIs or X-rays that were taken before this  
15 collision that showed anything with respect to  
16 Mr. Rohrbaugh's neck?

17 A. I don't have any X-rays before.

18 Q. Okay. No further questions.

19 MR. FREI: Thank you, Judge.

20 THE COURT: Redirect?

21 MR. BANCROFT: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BANCROFT:

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1           Q.    Dr. Ammerman, you've been asked a  
2           series of questions about various jurisdictions  
3           where you have been called upon to testify in  
4           litigation matters such as this around the D.C.  
5           area, up in Montgomery County, et cetera.

6                     My question to you is, Doctor, in those  
7           same jurisdictions, that is, Montgomery County,  
8           Charles County, Maryland, Baltimore City, Howard  
9           County, the District of Columbia, Arlington  
10          County, City of Alexandria, Prince William  
11          County, and Fairfax County, have you likewise  
12          testified in those same jurisdictions on behalf  
13          of people like Mr. Rohrbaugh who are plaintiffs?

14          A.    Of course.

15          Q.    In fact, Dr. Ammerman, have you ever  
16          testified for Mr. Frei, the plaintiff, in this  
17          case?

18          A.    Yes, sir.

19          Q.    When you presented a bill to Mr. Frei,  
20          did he not pay it?

21          A.    I don't know, but I assume he did.

22          Q.    I mean did he contest it?

23          A.    No.

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1 Q. Did he bring out in that case any  
2 evidence that other plaintiff's cases that you  
3 had testified in?

4 A. I don't recall that he did.

5 Q. Dr. Ammerman, as a board-certified  
6 neurosurgeon, who is chief of neurosurgery at  
7 Sibley Hospital, have you told the ladies and  
8 gentlemen of the jury the truth in this case?

9 A. Yes, sir.

10 Q. Have you shaded it, changed it, or  
11 altered it in any shape or fashion, because you  
12 are being reimbursed for time out of the office  
13 here today?

14 A. Of course not.

15 MR. BANCROFT: That's all I have.  
16 Thank you, Judge.

17 THE COURT: Thank you.

18 MR. FREI: I have a follow-up.

19 THE COURT: Well, I don't know that you  
20 the right to follow-up.

21 MR. FREI: Well, it goes directly to  
22 what he brought up about my case that Dr.  
23 Ammerman testified in. That's something I didn't

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1 bring up in cross examination --

2 THE COURT: I'll allow --

3 MR. FREI: -- and I certainly should  
4 have a chance to respond to that.

5 THE COURT: -- it, but limit it to  
6 that.

7 MR. FREI: I'll be happy to.

8 RECROSS EXAMINATION

9 BY MR. FREI:

10 Q. Dr. Ammerman, do you remember the one  
11 case in fifteen years that you've testified for  
12 me?

13 A. I can't tell how many years, but I  
14 recall the case. It was a gentleman who worked  
15 in a bike shop.

16 Q. Right. He had a herniated disc at a  
17 rare level.

18 A. L2/3. I remember the case.

19 Q. L2/3. Less than five percent. Took  
20 interoperative photos, right?

21 A. Always do.

22 Q. I didn't send Mr. Palmer to you, did I?  
23 He was being treated by you, and I got you as a

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1 result of you being the treating physician,  
2 right?

3 A. I think that's how we were involved  
4 with you. You did well with me.

5 Q. No further questions. Thank you.

6 MR. BANCROFT: That's all I have.

7 THE COURT: May this witness be  
8 excused?

9 MR. BANCROFT: Yes.

10 THE COURT: You are free to go, Doctor.

11 THE WITNESS: Thank you, Your Honor.  
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\* \* \*

1 instruction 12?

2 THE COURT: I did all the instructions  
3 that were handed up.

4 MR. FREI: Okay. Then I'm ready.  
5 Sorry, Judge, I just missed one. I am ready.

6 This is the portion of the trial, I  
7 guess, where it will be the final -- to use my  
8 play analogy, concluding act, I guess. It's  
9 where we, as the lawyers, have an opportunity now  
10 to argue to you what we think the evidence in the  
11 case that you heard from that witness stand  
12 proves.

13 Before I get into that really, the one  
14 thing I wanted to talk about that the Judge  
15 discussed with you just before we started for  
16 this afternoon's session is the issue about Dr.  
17 Gaertner's bill, just so you understand how that  
18 happened.

19 When he was going through the bills,  
20 you may recall that during his testimony, because  
21 it took him a while that he was going through it,  
22 he noticed on Dr. Azzam's bill -- and it's  
23 exhibit two, which you will have back in the jury

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1 room with you -- some codes, and we looked at the  
2 codes, and they were odd to him, but he didn't  
3 really know because he didn't have them all with  
4 him, but they were for the fusing of the neck.

5 You may recall, Dr. Gaertner said that  
6 he's the one who -- he, meaning Dr. Gaertner --  
7 did the fusing, and Dr. Azzam actually removed  
8 the disc. And Dr. Azzam had charges on his bill  
9 for the fusion.

10 So after the deposition, Dr. Gaertner  
11 called me and said, "I went back and looked at  
12 the codes. These charges shouldn't have been on  
13 there."

14 So the bill that you have has been  
15 reduced to take those charges out so it's not  
16 improperly inflated. That's the explanation for  
17 why we needed to put in that substituted bill,  
18 just so you know.

19 Now, there are two parts to any trial  
20 of this type. One part is that it is necessary  
21 for me as the plaintiff, as I discussed with you  
22 during my opening statement, to prove to you that  
23 there was negligence in this case; in other

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1 words, in this circumstance, that Mr. Lombard  
2 allowing his vehicle to run into the rear of Mr.  
3 Rohrbaugh's vehicle was negligent.

4 Mr. Corrie, in his opening statement,  
5 said he didn't really have any disagreement with  
6 how I explained the accident happened, and you  
7 heard Mr. Lombard and Mr. Rohrbaugh both explain  
8 how the accident happened.

9 The Judge just read you some  
10 instructions about the liability aspect of this  
11 case, and I don't want to discount it just  
12 because it's a rear-ender. I want to make sure  
13 you understand what Mr. Lombard's duties were and  
14 are, and why I feel that he violated those  
15 duties. He has a number of duties, not just one;  
16 he has a number of them.

17 He has to keep a proper lookout. Okay?  
18 You'll see that in instruction 12. Keeping a  
19 proper lookout means he has to use ordinary care;  
20 in other words, what we all would expect as  
21 drivers, ordinary drivers on the road, to look in  
22 all directions, not just left or right, front or  
23 back, but all directions for vehicles and

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1 conditions that would affect his driving.

2 Now, you may recall, he said he knew  
3 Mr. Rohrbaugh was in front of him. You may also  
4 recall when he testified, that he said he made a  
5 decision as he went to work this way every day,  
6 depending upon the traffic, whether he was going  
7 to turn right on Route 50 or go straight over 50.  
8 That goes to "What are the conditions that are  
9 out there?" Okay?

10 He has an obligation to take all that  
11 information in, just as we do, and make  
12 decisions. The problem that resulted in this  
13 case was that he wanted to get into that right-  
14 hand lane and couldn't do it, and the reason he  
15 couldn't do it is there was another car there.

16 He was checking to make sure that he  
17 had cleared the car, and, in fact, he had cleared  
18 the car, when he looks back and Mr. Rohrbaugh is  
19 stopped at the light. He can't stop in time, and  
20 he hits him.

21 There are a couple of things about  
22 that. Number one is he was clear to the right.  
23 His testimony is that he cleared the car when he

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1 looked back forward. All he had to do was pull  
2 into the right-hand lane; he wouldn't have hit  
3 him. That's ordinary care.

4 All he had to do is maintain a  
5 sufficient distance between his vehicle and Mr.  
6 Rohrbaugh's for the conditions that were then and  
7 there, presenting heavy traffic in rush hour,  
8 going to work, so he had time to do that. He  
9 didn't do that.

10 It was not intentional. It was  
11 unfortunate. It was an accident. He couldn't  
12 stop in time, and he ran into the rear of Mr.  
13 Rohrbaugh's vehicle.

14 The ordinary care -- and when you read  
15 the instruction, in addition to just keeping this  
16 lookout obligation, it also imposes on you the  
17 obligation to react as ordinary people would  
18 react.

19 I mention that only because he could  
20 have gotten over to the right, and he didn't. In  
21 addition to those duties, he has the duty not to  
22 follow vehicles too closely, and you know why he  
23 has that duty, because if you do follow vehicles

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1 too closely when you conduct what are regular,  
2 ordinary driving, looking over your shoulder,  
3 turning on your blinker, making sure you're okay,  
4 occasionally we have to divert our eyes from  
5 where we are going.

6 The reason the law says don't follow  
7 too closely is so when you come back, you have  
8 time to do something if something has changed  
9 ahead of you after you looked away. It's pretty  
10 simple. If he doesn't do that, he's negligent.

11 Mr. Rohrbaugh is lawfully stopped,  
12 stopped at the light, and he gets struck from  
13 behind. Then Mr. Lombard is negligent, unless  
14 there's something else out there that says he  
15 wasn't negligent. That's how the accident  
16 happened.

17 He ran into the back of Mr. Rohrbaugh's  
18 car. He violated, in my view, a number of his  
19 legal duties with respect to his driving conduct  
20 in that regard, and ran into the rear of Mr.  
21 Rohrbaugh's vehicle. He ran into the rear of his  
22 vehicle, by his own admission.

23 Now, after the collision occurred, what

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1       happened? Where I believe the meat of this case  
2       really revolves around, and that what happened  
3       after the collision is in two aspects, one with  
4       respect to Mr. Rohrbaugh's physical condition and  
5       his injuries, and the other being what happened  
6       after with Mr. Lombard, regarding the traffic  
7       matter.

8               Mr. Lombard received a traffic citation  
9       for inattention as a result of the collision. He  
10      went to court and pled guilty. That's an  
11      admission.

12             Another admission he made was that  
13      after the wreck he went up to Mr. Rohrbaugh and  
14      apologized. You don't apologize for things that  
15      are not our fault, typically.

16             All of those things I think lead to the  
17      conclusion that he made a mistake, that he ran  
18      into the back of Mr. Rohrbaugh's vehicle, and  
19      that's what the law calls negligence, because  
20      you're not exercising your ordinary care when  
21      you're driving a car.

22             Mr. Rohrbaugh did not, no question, go  
23      to the hospital after the wreck, or get carted

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1 away in an ambulance. There's no question about  
2 that.

3 You have heard, as I told you you  
4 would, an opening statement. I told you that  
5 this is not a case where we were ever attempting  
6 to say that Mr. Rohrbaugh's preexisting, clearly  
7 preexisting degenerative arthritis was caused by  
8 this collision. You have heard doctor after  
9 doctor come in here and say, "Well, no, he had  
10 this for 20 or 30 years before the wreck." Well,  
11 so what?"

12 We are not here requesting that you  
13 compensate him for his arthritis. That's not why  
14 we're here. We're here requesting that you  
15 compensate him for the discs that were ruptured  
16 in his neck as a result of this collision and the  
17 surgery that he had to undergo as a result of it.  
18 Okay? That's my duty to prove that to you. So  
19 how do I do that?

20 Well, unlike the defense in the case, I  
21 get the treating doctor. I don't have the  
22 opportunity to select who does the surgery, who  
23 doesn't do the surgery, where he goes, where he

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1       doesn't go.

2               Dr. Gaertner is the gentleman who  
3 followed Mr. Rohrbaugh's care. From almost  
4 immediately after this collision, within a month,  
5 he sees him. Every X-ray, except the one low-  
6 back X-ray, was taken after this collision.

7               Dr. Gaertner, on the videotape, and I  
8 know it was a little difficult to see, but it's  
9 one of the defense exhibits -- I forget which  
10 one -- the MRI that was taken in September, after  
11 the August accident, pointed out to you on the X-  
12 ray where the disc bulges and herniations were,  
13 and that those were causally related to the  
14 collision, and those are the things that  
15 ultimately resulted in Mr. Rohrbaugh needing to  
16 have the surgery.

17              Now, did Dr. Gaertner run away from the  
18 fact that he had arthritis? Of course not. If  
19 you remember Dr. Gaertner's testimony, he said  
20 there are three things, three things, about the  
21 fact that there can be this narrowing in the  
22 spinal column.

23              We know he had arthritis. No question

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1 about it. Okay? It can be. I said, what was  
2 it? I said genetic, and he corrected me and  
3 said, "You mean congenital." I said, "Right.  
4 Congenital." That's one way.

5 The other way is just deterioration.  
6 And the other way is a combination, and the  
7 combination was the degeneration, which we knew  
8 was there, in conjunction with the bulging disc,  
9 which is exactly what he testified about. He  
10 explained it.

11 He pointed to it during the course of  
12 the videotaped deposition, and it showed you how  
13 they were bulged, and how they push on the nerve  
14 roots, and why that caused Mr. Rohrbaugh the  
15 problems that he had. He was pretty clear about  
16 it, and he had possession, because I showed it to  
17 him, of all of the records.

18 He knew that before this collision Mr.  
19 Rohrbaugh had occasional low back pain. He  
20 testified to it, that he knew about it. He had  
21 seen -- we heard a lot about Dr. Simsarian's  
22 note, which I'll talk about in a minute. He had  
23 seen Dr. Simsarian's note. He knew about that.

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1                   With all of that knowledge and  
2 information, and in spite of the cross  
3 examination by both lawyers for the defense, his  
4 opinion was pretty clear.

5                   He has arthritis. He was hit in this  
6 wreck, hit hard by the defendant's own admission.  
7 It herniated these two discs, herniated, or  
8 ruptured, bulged them, and that's why the surgery  
9 was necessary. It's causally related to the  
10 collision, pretty clear and pretty simple, by Dr.  
11 Gaertner.

12                  Dr. Gaertner has no dog in this fight.  
13 I mean he is the treating physician for Mr.  
14 Rohrbaugh. He saw him a number of times, had  
15 plenty of opportunities to provide him care,  
16 worked with the neurosurgeon in the case. The  
17 outcome is of no consequence to him.

18                  Now, what do we get in contravention to  
19 that, medically? Well, first we get, I guess --  
20 and I might not take them in order, but let's  
21 start with Dr. Ammerman. He saw Mr. Rohrbaugh a  
22 couple of times, examined him a couple of times,  
23 wrote a couple of reports.

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1           Dr. Ammerman says, "Well, yes, he has  
2       preexisting arthritis." We know that, Doctor.  
3       In all of the surgery, in all of the problems,  
4       and everything he has, it doesn't have anything  
5       to do with his car wreck. It's as a result of  
6       his preexisting arthritis.

7           But what's interesting is that he has  
8       to ignore or be selective about what he either  
9       believes or refuses to reject in reaching that  
10      conclusion. I'll point out one that I went over  
11      with him, because I thought it was kind of  
12      interesting. He didn't say anything in his  
13      direct examination about disc bulges, nothing.

14           So I asked him, I said, "Well, did you  
15      see any disc bulges?"

16           "Well, no, I didn't see any."

17           I said, "In your report do you remember  
18      that the 10/5/95 MRI" -- the same one that Dr.  
19      Gaertner used, and the same one that the defense  
20      has marked as an exhibit in this case -- in his  
21      report, it says a C6/C7, there is a minor to  
22      severe spinal stenosis -- okay, we know that --  
23      arthritis, and cord compression secondary to a

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1 combination of spondylosis, arthritis, and disc  
2 protrusion, which is diffused more prominent on  
3 the right than the left, exactly what Dr.  
4 Gaertner said. It's a combination of the two.  
5 The disc protrusions were caused by the wreck.

6 What does Dr. Ammerman do with it?  
7 "Well, I didn't see that. I disagree. I  
8 disagree with what the radiologist concluded."

9 Why does he have to disagree with it?  
10 Because if he doesn't, he can't support his  
11 opinion, because it says they are herniated  
12 discs. He doesn't even call them herniated  
13 discs. He just ignores them, and it's a  
14 preexisting condition, it's arthritis. It's how  
15 he can reach his conclusion.

16 Is there another interpretation that he  
17 makes? I'm going to refer you back to Dr.  
18 Simsarian's note, and you may remember the  
19 exchange I had with him about the arm, how only  
20 above the elbow was the arm now, I guess, and  
21 below the elbow is the forearm, and the fact that  
22 I was reading the sentence about what Mr.  
23 Rohrbaugh was evidently relating to Dr. Simsarian

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1       that his pain was mainly from the elbow down,  
2       that this pain in the arm was mainly from the  
3       elbow down, is what it says right in the report.

4               Well, did he read the whole sentence?  
5       No, he wants to chop the sentence up. Well, the  
6       pain in his right arm, numb, tingling feeling  
7       mainly from the elbow, down. He wants to  
8       disassociate mainly from the elbow, down, because  
9       if he doesn't, it's exactly what Dr. Gaertner  
10      says it is, maybe tennis elbow.

11             Assuming -- and maybe the most  
12      aggravating part of all of this for me, is that  
13      assuming it's even accurate, Mr. Rohrbaugh is not  
14      seeing Dr. Simsarian for anything other than  
15      memory and tremors.

16             So is it surprising that there may be a  
17      mistake in the history? Trust me, I've beat my  
18      brains out trying to figure out what Mr.  
19      Rohrbaugh may have been relating to Dr. Simsarian  
20      about his arm. And the best that we can  
21      reconstruct, as you've heard from him as well as  
22      his son, is that about 20 or 25 years ago he had  
23      that thing on his elbow and he had to have an

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1 operation on it. I mean that's all I could come  
2 up with.

3 Mr. Rohrbaugh wasn't seeing Dr.  
4 Simsarian, a neurologist, because he had a neck  
5 problem. He wasn't seeing Dr. Simsarian because  
6 he had a back problem.

7 Dr. Ammerman, himself, said from the  
8 stand that the main reason he was there was for  
9 tremor and memory loss. We never made a claim in  
10 this case for tremor or memory loss, but Dr.  
11 Ammerman feels compelled to render the opinion,  
12 "Well, no, there's no connection between this  
13 automobile collision and his memory or tremors."

14 Well, who said there was? We never  
15 claimed that his dementia had anything to do with  
16 this collision. Again, it's his effort to pile  
17 on.

18 What else? Well, he writes two  
19 reports. In the first report he didn't say  
20 anything about excessive fees. So in April of  
21 1999, surgery had already been done, bills were  
22 out; he had been supplied the records. There's  
23 nothing in the report about excessive fees.

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1                   Now he writes another report in May of  
2                   2000. Now the fees are excessive. Two months  
3                   ago, in this courthouse, he testified against  
4                   another neurosurgeon that his fees were  
5                   excessive.

6                   Well, I don't know when he became the  
7                   end-all, be-all with respect to what can or  
8                   cannot be charged for fees, but I guess it's his  
9                   standard practice to testify in cases like this  
10                  that regardless of what the bill is, it's  
11                  excessive. I don't know when he reached that  
12                  conclusion, because he didn't reach it after the  
13                  first report, because it's not in there, but it  
14                  appears in this report.

15                  Again, you have an instruction about  
16                  the credibility of witnesses. Take a look at  
17                  that and examine it, because that's what this  
18                  case is about.

19                  Who do you believe medically really  
20                  best relates what the real condition that Mr.  
21                  Rohrbaugh had in this case was, and what is the  
22                  credibility by which that person relates that  
23                  information to you? Do they include it all, or

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1 do they just want to pick and choose what  
2 information they want to use to reach their  
3 conclusion?

4 Are we done with Dr. Ammerman's  
5 credibility? No. Why not? He travels all over  
6 the Metropolitan area to testify for defendants,  
7 over a hundred times that he at least  
8 acknowledged that he's testified for defendants.  
9 Does he testify for his own patients? Of course  
10 he does, just like Dr. Gaertner does.

11 If that person happens to be a  
12 plaintiff in a litigation, so be it. He  
13 acknowledges that this one company, Allstate  
14 Insurance Company in this case, okay, who hired  
15 him, paid him -- I don't want to miss the  
16 number -- \$104,971 in 1999 alone. In 1998, they  
17 paid him \$106,520.

18 I'd be selective, too, when I was  
19 trying to decide how to reach my opinion in  
20 cases. Credibility, motivation, bias, those are  
21 things you need to look at when you're examining  
22 his opinion.

23 Are we done? No. We've got Dr. Bruno.

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1       What about Dr. Bruno? Review the records. What  
2       did Dr. Bruno tell us? Well, before I start that  
3       actually, even Dr. Ammerman was forced to  
4       acknowledge Mr. Rohrbaugh was injured. He just  
5       wants to cut it off in this sort of vague period  
6       of time, "Four, six, eight weeks, maybe two  
7       months, and then this musculo-ligamentous injury  
8       should be over."

9               We know it wasn't over, but that's  
10       where he conveniently cuts it off, and he does  
11       that by either including or excluding whatever he  
12       needs to that's part of the records that he had  
13       to reach that conclusion.

14              Now, Dr. Bruno. Review the records,  
15       that's what he said. Mr. Rohrbaugh has  
16       preexisting arthritis. No kidding. For 20 or 30  
17       years. No kidding. What else did he tell us  
18       that was helpful? Here's a surprise. He said he  
19       had a musculo-ligamentous strain. Shock.

20              Did he talk about herniated discs?  
21       Well, I don't know, you know, if it's herniated,  
22       and bulged, and I even said to him, "I don't want  
23       to use the words. I don't want to put words in

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1        your mouth. I'm not going to pull out Webster's  
2        and try and twist what you say later. Did you  
3        see any?" "No." Imagine that.

4                Does he do it often? He set up his own  
5        business. He sets up his own business,  
6        incorporates a business to examine plaintiffs.  
7        He calls it IME Virginia, Limited, March of 1999.  
8        Credibility. Bias. Motivation. Very important.

9                Finally, the last doctor that they  
10       brought to you, Dr. Citron, did he care -- did  
11       any of these doctors care for Mr. Rohrbaugh,  
12       treat him, examine him? No. None of them.

13               Dr. Ammerman did. That's not fair.  
14       Dr. Ammerman did examine him a couple of times,  
15       but none of them talked to his doctors. Dr.  
16       Bruno talked about some confidentiality thing he  
17       thought he had. That's obviously not -- he's got  
18       all the record and the X-rays. Confidentiality?  
19       Didn't talk to him.

20               Dr. Citron comes in, a neuro-  
21       radiologist, okay, doesn't treat people, doesn't  
22       care for people, sits in a room and looks at X-  
23       rays, and consults with the physicians, all

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1 right?

2 What did he tell us? Mr. Rohrbaugh has  
3 preexisting degenerative arthritis. Revelation.  
4 We know that. And it's bad. Really? We know  
5 that. We never denied that. And it narrowed his  
6 spinal canal. Really? We knew that. We  
7 admitted that.

8 Did he tell you anything about the disc  
9 bulges? Anything? Nothing. Did he talk about  
10 how the two would work in combination maybe, a  
11 compression of the canal, but then you put the  
12 ruptured disc into it and then you've got a  
13 problem? Did he testify about that? No. Why  
14 not? Well, it doesn't help him reach his  
15 conclusion, does it? So that's mysteriously  
16 void.

17 But here, I think, is the most  
18 interesting thing of all about Dr. Citron. Do  
19 you remember when I asked him, I said to him,  
20 "Doctor, how long ago were you hired?"

21 Remember what he said? "I don't know  
22 exactly, but it was about three weeks." Remember  
23 that? It was about three weeks. Okay? I'm

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1 going to give him a month, just to be fair to  
2 him. His name as an expert witness, along with  
3 another doctor, Dr. Citron --

4 MR. BANCROFT: Your Honor, I'm going to  
5 object. I see what --

6 THE COURT: Objection sustained. There  
7 is no evidence in the case --

8 MR. FREI: It's part of the pleadings  
9 in the case.

10 THE COURT: Confine your argument to  
11 evidence in the case.

12 MR. FREI: Okay. Fine, Judge. Thank  
13 you.

14 Well, Dr. Citron, again, completely  
15 ignores the combination of the disc bulge in  
16 conjunction with the spinal narrowing, the  
17 preexisting arthritis, which we knew about, and  
18 discounts it. He ignores it. He talks about he  
19 has bridging osteophytes and things like that.  
20 Well, we know that. No question about it. I  
21 don't have any difficulty with that.

22 We never ran from that. We never hid  
23 from that. I told you up front you were going to

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1 hear a lot about that, but that's not what it's  
2 about.

3 What it's about is that Mr. Rohrbaugh  
4 got hit hard. He had continuing ongoing  
5 symptoms. He sees Dr. Gaertner. Dr. Gaertner  
6 says, "Well, you need to have surgery."

7 And remember, Mr. Rohrbaugh's son took  
8 the stand and said, "We have some relatives who  
9 have had some surgeries, neck and back, and they  
10 didn't have very good results. So Pop decided he  
11 was going to live with it as long as he could."  
12 Well, when it got to the point where he couldn't  
13 take it any longer he had the surgery.

14 Was there any break in the continuity  
15 of his symptoms during that three-year period?  
16 No. Did it gradually get worse, and worse, and  
17 worse? Yes. Was that what was expected by Dr.  
18 Gaertner? Yes.

19 And he had the surgery, and you know  
20 what? He got better. That's a good thing. I  
21 mean now his right arm symptoms, and his hand,  
22 when he couldn't hold onto things and stuff, it's  
23 fine. It's better. That's good.

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1                   Now, he still has problems. I mean he  
2 still has the pain and stiffness in his neck, and  
3 he still has the pain and stiffness in his back.  
4 So is he okay? No. Is he as good as he was  
5 before this wreck? No. Has he lost the ability  
6 to do some things as frequently as he did before,  
7 play golf, hunt, fish? Yes. Does he still do  
8 those? Yes, but he pays the price.

9                   When you take away the retirement years  
10 of a gentleman, the years that they really have  
11 the opportunity to enjoy themselves, and that is  
12 somehow impaired as a result of a mistake, an  
13 accident, you've taken away the most valuable  
14 years of their lives. You can't get them back.

15                  He was 75 years old when this wreck  
16 happened. You heard him testify that he was just  
17 getting out of the business, because of the  
18 vandalism of the place. He had a place at  
19 Inverness.

20                  He's 80 now. The life expectancy chart  
21 says he's going to live nine more years. That's  
22 what the chart says. Those are pretty valuable  
23 years to have to endure the sorts of things that

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1 Mr. Rohrbaugh has had to endure as a result of  
2 this collision.

3 You'll get an instruction, and you've  
4 already been read an instruction, about the kinds  
5 of damages that Mr. Rohrbaugh had claimed, bodily  
6 injuries that he sustained, physical pain, the  
7 anguish that he had suffered in the past and can  
8 suffer in the future as a result of his injuries.

9 Disfigurement or deformity, the scar:  
10 Disfigurement and deformity is not significant in  
11 this case, I will grant that, but he has it.

12 The inconvenience of medical expenses:  
13 Is he inconvenienced by it? Sure. It affects  
14 him every day. It's hard for him to get in and  
15 out of cars. You heard his son testify about how  
16 he saw the changes affect him just during the  
17 last five years.

18 So those things are significant. I'm  
19 not going to dwell on them. I'm not going to try  
20 and exaggerate them, but they're there, and I  
21 want you to remember them, because that's really  
22 what we're talking about in this case, besides  
23 the medical bills and things like that, is that

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1       this is a gentleman who, for the remainder of his  
2       life, is going to have this permanent injury.

3               It's going to debilitate him, and our  
4       system compensates people for those kinds of  
5       mistakes, assuming we prove what we need to  
6       prove. I throw that out as a caveat, because  
7       that's a burden that in this case I willingly  
8       accept, and I don't think we've had any  
9       difficulty establishing those facts.

10              Now, the law, when I filed my suit,  
11       also makes me put a number in there. In other  
12       words, when I file suit, I have to say to give  
13       him "X" dollars. I have to do that. That's what  
14       the law makes me do.

15              The number I put down in this case is  
16       \$500,000. Is that enough? I don't know. Is it  
17       too much? Well, I don't know. If you think we  
18       proved our case, that's for you to decide.

19              When you add the bills up in the case  
20       they're going to be a little over \$13,000, or  
21       something like that. You can add those up. I  
22       don't know what they are exactly, but they're  
23       somewhere around there.

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1           But again, that's not what this case is  
2 about. This case is about his loss in enjoyment  
3 of life for the last five years and for the next  
4 ten years going forward.

5           So I'd like you to consider the  
6 evidence that's been presented. I'd like you to  
7 consider the evidence that came from the mouths  
8 of the witnesses. I'd like you to consider any  
9 motivation or bias that the evidence that you  
10 received may have come with, and sort through it.

11           I think if you do that and consider  
12 that evidence and where it comes from, and the  
13 circumstances under which it is given, you'll  
14 conclude that Mr. Lombard made a mistake and he  
15 was negligent, and that Mr. Rohrbaugh sustained  
16 some herniated discs in his neck as a result of  
17 that, in combination with his degenerative  
18 arthritis, no question, caused him to endure  
19 these problems.

20           The law, although it's fraught with its  
21 problems, also has remedies for situations like  
22 that. The Judge read you the instruction that if  
23 you find the plaintiff had a condition before the

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1 accident that was aggravated as a result of the  
2 accident or that the preexisting condition made  
3 the injury he received in the accident more  
4 severe or more difficult to treat, that if you  
5 find for Mr. Rohrbaugh, he can recover for that,  
6 not for the preexisting condition.

7 I'm not asking you to compensate for  
8 the fact that he's got arthritis, but read  
9 instruction, it's ten here -- I don't know what  
10 it is for the Judge -- but read it, because the  
11 law acknowledges that, that we're going to have  
12 people like this. Okay? Does that mean we just  
13 throw him off and discard him because there's  
14 maybe two explanations for it? No.

15 So I think if you do that, consider the  
16 evidence, apply the instructions and the law that  
17 you're going to be given in the case, that you'll  
18 return a verdict for Mr. Rohrbaugh, and I'd ask  
19 you to do that in the amount that I've sued for,  
20 \$500,000.

21 Thank you.

22 THE COURT: Thank you, Mr. Frei.

23 Mr. Bancroft.

\* \* \*

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----	X
	:
DORSEY W. ROHRBAUGH,	:
	:
Plaintiff,	:
	:
vs.	: LAW NO. 1813346
	:
RALPH D. LOMBARD,	:
	:
Defendant.	:
	:
-----	X

PARTIAL TRANSCRIPT

Fairfax, Virginia

Thursday, June 8, 2000

The trial commenced at 9:50 o'clock, a.m.

BEFORE:

The Honorable Dennis J. Smith, Judge

APPEARANCES:

FOR THE PLAINTIFF:

STEVEN M. FREI, ESQ.  
8221 Old Courthouse Road  
Suite 300  
Vienna, Virginia 22182-3829

Reported by: Billy L. Williams

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FOR THE DEFENDANT:

QUENTIN R. CORRIE, ESQ.  
Of: Anderson and Corrie  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033

STEVEN W. BANCROFT, ESQ.  
Of: Trichilo, Bancroft, McGavin, Horvath & Judkins  
4117 Chain Bridge Road  
Suite 400  
Fairfax, Virginia 22030-0022

- - -

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## P R O C E E D I N G S

...

MR. BANCROFT: Can we just approach for a moment, Judge --

THE COURT: Sure.

MR. BANCROFT: -- and can Dr. Ammerman?

THE COURT: If you would come up, Doctor.

(Thereupon, the following Bench conference was held:)

MR. BANCROFT: Just so we don't belabor this in getting into insurance or -- he is under oath to tell the truth. He cannot -- he cannot tell the truth that that number -- what that number is, what it represents. All he can say is that "I don't know."

THE COURT: Well, he's just going to ask him on the basis of him paying -- being paid \$108,000 by Allstate Insurance and that's --

MR. FREI: Right.

THE COURT: And he's -- he's not going to break it down in any way.

MR. FREI: Right.

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1 THE COURT: And the -- the object of  
2 the instruction was to prevent Dr. Ammerman from  
3 then saying, "I don't know how much of that is  
4 this, and how much of that is that." So all it  
5 is is just that this is the global number, and  
6 that's the number that is provided in the  
7 documents by Allstate.

8 MR. BANCROFT: If the number is  
9 provided by Allstate --

10 DR. AMMERMAN: I -- I don't know the  
11 number. I'm not going to disagree with anybody,  
12 but I can't testify that that's it exactly or  
13 what --

14 THE COURT: Well, he'll show you the  
15 documents with the numbers in it.

16 DR. AMMERMAN: I -- I understand that,  
17 sir. But I didn't prepare it, and my office  
18 didn't. So -- so all I'm saying is that it may  
19 be absolutely accurate, or it may not be. I'm  
20 not relying on anything that --

21 THE COURT: Well, you can -- you can  
22 answer it by saying that "If Allstate says that's  
23 how much I've been -- or if the insurance company

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1 says that's what I was paid, then I guess" --

2 MR. FREI: "Then I can't dispute it."

3 THE COURT: -- "I can't dispute it."

4 DR. AMMERMAN: I'll accept that.

5 MR. BANCROFT: Okay.

6 THE COURT: Okay.

7 (Thereupon, the Bench conference  
8 ended.)

9 THE COURT: Just a moment.

10 (Pause.)

11 THE COURT: Could Counsel approach the  
12 Bench for one other issue, one other quick issue?

13 (Thereupon, the following Bench  
14 conference was held:)

15 THE COURT: I just want to be clear  
16 with you, Mr. Bancroft, because I know you  
17 were -- I know Mr. Frei was on this other case  
18 when we got Dr. Ammerman's -- the records, but --  
19 what I did in that case, I put some statements on  
20 the record in that case regarding insurance  
21 doctors or doctors who work for insurance  
22 companies, the practices in these -- in these  
23 cases.

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1 I did not mean that in any way as  
2 directed at Dr. Ammerman, who I believe is one of  
3 the straightest doctors we have here testifying.  
4 There are other doctors who I might not be able  
5 to say that with, with a straight face.

6 But he does testify a lot. And as a  
7 result of that, I extended it to him.

8 MR. BANCROFT: Yes.

9 THE COURT: But I want to be clear  
10 that -- that -- that I did not make the remarks  
11 in the other case -- I don't know how much  
12 knowledge you have of the --

13 MR. BANCROFT: I don't have --

14 THE COURT: -- other case.

15 MR. FREI: Well, the other --

16 THE COURT: I did not make the remarks  
17 in the other case indicating that Dr. Ammerman  
18 was one of the people who I -- who I had some  
19 serious concerns about their --

20 MR. FREI: Yes, and --

21 THE COURT: -- testimony.

22 MR. FREI: Just so the record is clear,  
23 since the Court mentioned it, the other case was

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1 not even Dr. Ammerman. It was Dr. Ian Gordon. I  
2 don't know if the Court remembers that.

3 THE COURT: Was it?

4 MR. FREI: Yes. It was not even Dr.  
5 Ammerman --

6 MR. BANCROFT: All right.

7 MR. FREI: -- just so you know.

8 THE COURT: Okay.

9 MR. FREI: But that's not even the  
10 issue here for --

11 THE COURT: Right.

12 MR. BANCROFT: Okay.

13 (Thereupon, the Bench conference  
14 ended.)

15 MR. BANCROFT: Are we ready, Judge?

16 THE COURT: We're ready.

17 MR. BANCROFT: Thank you.

18 Thereupon

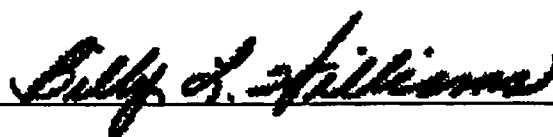
19 BRUCE JORGE AMMERMAN, M.D.  
20 was called as a witness and, after having been  
21 duly sworn, was examined and testified as  
22 follows:

23 ...

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CERTIFICATE OF REPORTER

I, Billy L. Williams, do hereby certify that the testimony of the witness in the foregoing trial was taken by me and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the requested excerpt of testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Billy L. Williams, Court Reporter

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48

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,  
Plaintiff,

LAW NO. 181346

VERSUS

RALPH D. LOMBARD,

FINAL ORDER  
JURY TRIAL

THIS CAUSE came on for trial upon the pleadings filed by the parties herein and  
UPON CONSIDERATION of the evidence presented, the argument of counsel, the rulings of the Court  
and the verdict of the jury, it is,

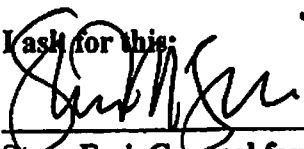
ADJUDGED, and ORDERED that judgment be and is hereby entered in favor of the Plaintiff  
DORSEY W. ROHRBAUGH, against the Defendant RALPH D. LOMBARD in the sum of \$ 125,000.00  
plus interest at the rate of \_\_\_\_\_ and the Plaintiff's costs expended herein.

It is further ADJUDGED, and ORDERED that in the event no appeal is timely filed, the Clerk of  
the Court be, and hereby is authorized to destroy or return to the parties, if requested, all exhibits in  
this case, whether identified or admitted, forty-five (45) days after this Order becomes final.

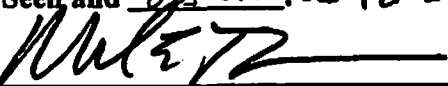
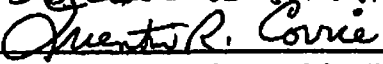
AND THIS CAUSE IS ENDED

Entered on June 8, 2000.

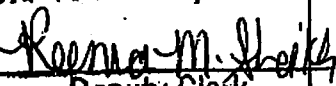
  
JUDGE DENNIS J. SMITH

I ask for this:  
  
Steve Frei, Counsel for Plaintiff

Seen and Objected to for all reasons as previously objected to during trial.

  
Steve Bancroft, Counsel for Defendant  
Objected to for all reasons objected to during trial  
  
Richard Corrie, Counsel for Defendant

A COPY TESTE:  
JOHN T. FREY, CLERK

BY:   
Deputy Clerk

Date: 6-15-00  
Original retained in the office  
the Clerk of the Circuit Court  
Fairfax County, Virginia

C  
VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )  
Plaintiff )

Law No. 181346

v. )


RALPH D. LOMBARD )  
Defendant. )

**SUSPENDING ORDER**

It is ORDERED that the Final Order be suspended for twenty-one (21) days from the date so that the parties may submit an agreed Amended Final Order, if they should so desire. This tolls the running of the twenty-one (21) day provision in Rule 1:1, thus allowing a total of forty-two (42) days for the entry of an Amended Final Order.

It is further directed that a copy of this Order be mailed forthwith to all counsel of record and to all unrepresented parties.\*

ENTERED June 8, 2000.

  
Judge Dennis J. Smith

AS A COPY OF THIS ORDER HAS BEEN MAILED TO ALL COUNSEL, ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.

A COPY TESTE:  
JOHN T. FREY, CLERK  
BY: Reena M. Shick  
Deputy Clerk  
Date: 6-15-00  
Original retained in the office of  
the Clerk of the Circuit Court of  
Fairfax County, Virginia

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	At Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.	)	

MOTION TO DECLARE A MISTRIAL,  
SET ASIDE THE VERDICT AND GRANT A NEW TRIAL

COMES NOW the Defendant, Ralph P. Lombard, by counsel, and hereby moves the court to declare a mistrial, set aside the verdict and grant a new trial as to all issues on the following grounds:

1. The trial court improperly allowed one of the defendant's experts, Dr. Bruce Ammerman, to be cross-examined by plaintiff's counsel on the issue of insurance payments for the alleged purpose of showing bias, which deliberately injected and emphasized insurance coverage to the jury and resulted in prejudicial error.

2. The motions judge improperly ruled by telephone the day before trial that Dr. Ammerman, not a party to the proceedings, if questioned at trial regarding monetary payments made to him by Allstate, must agree that the entirety of such



payments were for forensic work and no part represented monies received for medical care.

#### BACKGROUND RULING

On June 2, 2000, Judge Ney overruled Allstate's motion to quash a subpoena request and Notice of Deposition of an Allstate corporate designee for certain payment information made to Dr. Bruce Ammerman. See Exhibits A and B. Judge Ney ordered that an Allstate designee appear for a deposition on June 6, 2000. On that day at the end of the deposition an impasse arose as to whether plaintiff's counsel was allowed to accompany the designee to an Allstate office and continue questioning her before a computer monitor as individual claim files were queried regarding a breakdown of payments made to Dr. Ammerman essentially in categories of (1) treatment, or (2) forensic work.

Judge Ney apparently ordered<sup>1</sup> that either (1) an Allstate designee must appear at one of their offices in front of a monitor and answer questions asked by plaintiff's counsel, or (2) Dr. Ammerman, if allowed to be cross-examined at trial on the subject, would be bound by the total payments figure as representing work done exclusively for forensic purposes.

---

<sup>1</sup> Defense counsel continues to object to that ruling and requests that a written order be entered such that a record can be made of the precise ruling as well as counsel's objection.

(hereinafter sometimes referred to as "insurance payments").

### TRIAL

Over objection of defense counsel as to the manner and existence of Dr. Ammerman being questioned regarding "insurance payments," the court at trial fashioned its own cautionary jury instruction of this issue which it gave immediately before Dr. Ammerman testified.<sup>2</sup> It also allowed plaintiff's counsel to cross-examine Dr. Ammerman by identifying Allstate Insurance Company and the totality of its various payments to him as representing forensic work, which included, for example, approximately \$105,000.00 for calendar year 1999. After both sides introduced evidence, the jury returned a verdict in plaintiff's favor in the amount of \$125,000.00 without interest.

### ARGUMENT

It has long been and remains the rule that bringing to the jury's attention that the defendant carries insurance indemnifying him against loss is prejudicial error. 23 Michie's Jurisprudence, Automobiles, Section 100 and cases cited therein (1986).

The policy underlying this rule is to ensure that a jury does not award damages unrelated to any finding of fault because

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<sup>2</sup> See Exhibit C.

it is aware that insurance coverage exists and that the insurer, rather than the named defendant, would pay the damages award Speet v. Baca, 237 Va. 290, 294, 295 (1989). There are a very limited number of circumstances where the court allows the mention of insurance as constituting a waiver of this preclusionary rule, such as where the insurer is the named defendant in a direct action authorized by the insurance policy. Willard v. Aetna, 213 Va. 481, 483 (1973). Or, when the mention of insurance by a witness is inadvertent, rather than deliberate, there is no reversible error where the court properly instructed the jury and there was otherwise a fair trial and substantial justice was done. Id.; Simmons v. Boyd, 199 Va. 806 (1958); Hope Windows, Inc. v. Snyder, 208 Va. 489 (1968); Davis v. Maynard, 215 Va. 407 (1975); State Farm Mutual Insurance Co. v. Futrell, 209 Va. 266 (1968).

In the instant case the mention of insurance was not only intentional, but also aggravated. It is a long-standing rule in personal injury cases in Virginia that any comment deliberately made informing the jury that a defendant is insured against the accident constitutes reversible error. Forsberg v. Harris, 238 Va. 442 (1989). Where a jury is told that the defendant is employed by an insurance company, the risk of prejudice to the defendant far outweighs the slight relevance of the defendant's

occupation as a means of evaluating his credibility. Id. at 444. This is precisely the objection raised by defendant's counsel in the instant case before the court's ruling when I stated "the prejudice of any manner of raising this [insurance payments] far outweighs any probative value as it relates to impeaching any witness in this case." Partial transcript, p. 25.

The Supreme Court of Virginia has even repeatedly held that it is error not to grant a mistrial when plaintiff's counsel has raised directly or indirectly the insurance issue on voir dire. Davis v. Maynard, supra; Travellers v. Lobello, 212 Va. 534 (1972); Hope Windows, supra. The older cases hold that the mention of insurance constitutes reversible error requiring a new trial, when the comment probably has misled or prejudiced the jury (Rinehart & Dennis Co. v. Brown, 137 Va. 670 (1923)) and cannot be cured by an instruction for them not to consider the same in arriving at a verdict. Lanham v. Bond, 157 Va. 167 (1931). There is no longer a need to prove actual prejudice to the defendant, before requiring a new trial if the reference to the defendant's possible insurance coverage is intentional. Forsberg v. Harris, supra; Davis v. Maynard, supra.

In a trilogy of cases where the admissibility of insurance has been raised in the context of showing the bias, interest,

credibility or prejudice of a witness, the holdings applied to the facts of the instant case demand that a mistrial be declared due to reversible error. In Highway Express Lines v. Fleming, 185 Va. 666 (1946) and John Doe v. Simmers, 207 Va. 956 (1967), the Supreme Court upheld the admission of evidence that a witness called to testify as to prior inconsistent statements by a party or a party's witnesses on questions of liability could mention insurance because in each case the examined witness was a regular, paid employee of an insurance company. Accord, Sullivan v. Rixey, 241 Va. 512 (1991). However, where the bias or interest in the outcome of a case of a witness who is not an employee of the insurance company is involved, the Supreme Court has clearly held that the injection of insurance into the case is improper! Averett, supra. Dr. Ammerman is not a regular, paid employee of Allstate and plaintiff's counsel conceded on the record that Dr. Ammerman does forensic work for many insurance companies, just as the Roberts agency made appraisals of automobiles in Averett for many insurance companies. Partial transcript, p. 33.

Furthermore, the error in the instant case was compounded by the ruling by telephone by the motions judge the day before trial where he imposed upon the parties and the underinsured carrier the limitations upon the use of the data provided by

Allstate in response to a subpoena in an unrelated case. Defendant's counsel objected also to this ruling at trial because the effect of it was to mislead the jury on the true amount of money spent on forensic work relative to the amount spent on medical care.

The problem presented by the motion judge's ruling is that it essentially imposed a severe sanction against the defendant and underinsured carrier in the nature of an evidentiary ruling due to a non-party's (i.e. Allstate's) actions. As a starting point, it must be noted that the Rules of the Supreme Court of Virginia in this regard did not provide the authority for the ruling of the motion's judge, since almost all sanctions therein provided apply to failures by a party. Notwithstanding that observation, the underlying authority of any court would be to make such orders as are just, after reasonable notice to all parties and all person affected thereby.

Clearly, Dr. Ammerman was never notified before trial of the matters involved, nor the impact upon the substance of his expected testimony in theses areas as they relate to the accuracy of the numbers put forth by Allstate, Secondly, imposing the sanction of forcing Allstate to elect to live with the "total dollar accumulated" as representative only of Dr. Ammerman's forensic income from Allstate or to continue the

deposition to an Allstate office in front of a computer monitor to "pull up" each claim file over an extended time was unjust and unfair to the defendant and the underinsured carrier, each of whom represent separate and distinct interests from Allstate. The net effect was to compel Dr. Ammerman to admit to the truth of a statement regarding income that was inaccurate and he could not in honesty do, but attempted to do so at trial in light of the rulings made prior to and during trial.

While a trial judge may exercise a sound judicial discretion in ruling upon evidentiary matters including the cross-examination of witnesses, a decision will be disturbed where it appears that such discretion has been abused or some injustice has been done. Shifflett v. Com., 212 Va. 741 (1972); Butler v. Parrocha, 186 Va. 426 (1947). It is a fundamental premise of the law that a jury understand and, if necessary, be instructed on the statements and questions of counsel. The questions, for example, that a lawyer asks are not evidence, and a lawyer's question during cross-examination that contains an assertion of a fact does not provide evidence of that fact. When combined with the misleading nature of the information presented regarding monetary payments to Dr. Ammerman regarding forensic work, the questions asked by plaintiff's counsel specifically related to insurance resulted in substantial and


irreversible prejudice to the defendant which was not cured by the court's cautionary instruction. Carter v. Shoemaker, 214 Va. 16 (1973). Without waiving its objection to this entire issue and its foreseeable highly prejudicial effect, defense counsel offered a cautionary instruction based upon the evidence and the potential for prejudice to the defendant, which the court refused.<sup>3</sup>

Respectfully submitted,

RALPH P. LOMBARD  
By Counsel

ANDERSON & CORRIE

By:

  
Quentin R. Corrie, VAB #14140  
12600 Fair Lakes Circle, #220  
Fairfax, Virginia 22033  
(703) 222-2200  
Counsel for Defendant

---

<sup>3</sup> See Exhibit D.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Declare Mistrial, Set Aside the Verdict and Grant a New trial was mailed, postage prepaid, this 27<sup>th</sup> day of May, 2000, to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231  
Counsel for Plaintiff

Steven Walter Bancroft, Esquire  
TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030-0022

  
Quentin R. Corrie

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

Law Number: 181346

RALPH D. LOMBARD )

Defendant. )

TO: Allstate Insurance Company  
SERVE: Registered Agent  
Edward R. Parker, Esq.  
5511 Staples Mill Road  
Richmond, Virginia. 23228

**SUBPOENA REQUEST**

The Clerk of said Court will please summon the following witness on behalf of the Plaintiff, Dorsey W. Rohrbaugh, to appear before a notary public or other officer authorized by law to administer oaths in the Commonwealth of Virginia, at 10:00 a.m., on the 8th day of May, 2000, for deposition at the law offices of Hall & Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150, Reston, Virginia, 20190:

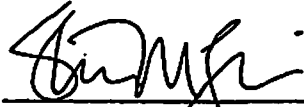
The Allstate corporate designee and/or the person most knowledgeable of the attached information as described below: Allstate Insurance Companies IRS Payments List and Payment Detail for TIN Number 521074671, Washington Neurosurgical Associates, P.C., and Bruce Ammerman, M.D., for the period beginning January 1, 1995 to December 31, 1999.

Said deposition shall continue day-to-day until completed.



DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS P.C.



Steven M. Frei, Esquire, VSB #32211  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, VA 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)



Steven M. Frei

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

Law Number: 181346

RALPH D. LOMBARD )

Defendant. )

TO: Allstate Insurance Company  
SERVE: Registered Agent  
Edward R. Parker, Esq.  
5511 Staples Mill Road  
Richmond, Virginia 23228

**NOTICE OF DEPOSITION**

PURSUANT to Rule 4:5(b) of the Rules of Practice of the Supreme Court of Virginia, please take notice that on the 8th day of May, 2000, at 10:00 a.m., at the law office of Hall & Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150, Reston, Virginia, Steven M. Frei, Esq., will take the deposition of the Allstate corporate designee and/or the person most knowledgeable of the attached information as described below:


Allstate Insurance Companies IRS Payments List and Payment Detail for TIN Number 521074671, Washington Neurosurgical Associates, P.C., and Bruce Ammerman, M.D., for the period beginning January 1, 1995 to December, 31, 1999.



for the purpose of discovery or for use as evidence, or both, before an officer authorized to administer oaths. If for any reason the taking of said testimony be not commenced, or if commenced, be not completed, the taking of same shall be continued at the same place from day-to-day and time-to-time, until completed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS, P.C.

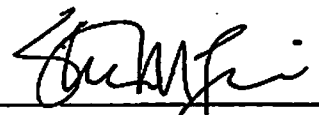
  
STEVEN M. FREI, ESQ. (#32211)  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

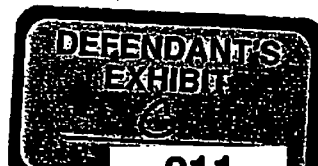
Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

  
Steven M. Frei

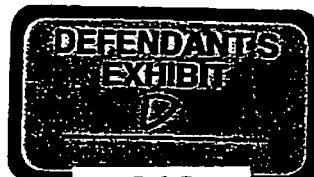
Ladies and gentlemen, the cross examination of Dr. Ammerman will ask questions intended to elicit evidence regarding payments made to Dr. Ammerman by a liability insurance company which provides coverage to the defendant. You may only consider this as evidence of possible bias on the part of Dr. Ammerman. The fact of the existence of any liability insurance in this case is not to be considered by you in any way in determining whether the defendant was negligent, whether any negligence of the defendant proximately caused any injury to the plaintiff, or the amount of any judgment you might ultimately award.

Partial Transcript, Page 51-52



The cross examination of Dr. Ammerman will include questions regarding payments made to him by an insurance company which covers the defendant. You may not consider the mere asking of such questions as evidence of the truth of such payments, and may only consider his answers as evidence of possible bias on the part of Dr. Ammerman. The fact of the existence of any insurance in this case is not to be considered by you in any way in determining whether the defendant was negligent or that any negligence of the defendant proximately caused any injury to the plaintiff or the amount of any judgment you might award.

Partial Transcript, Page 42



**V I R G I N I A:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**DORSEY W. ROHRBAUGH,**

**Plaintiff,**

**v.**

**RALPH D. LOMBARD,**

**Defendant.**

**RECEIVED**

JUN 26 2000

Trichillo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

**At Law No. 181346**

**SUPPLEMENTAL MOTION TO DECLARE A MISTRIAL,  
SET ASIDE THE VERDICT AND GRANT A NEW TRIAL**

The Averett case should include the following citation:

**Averett v. Shircliff, 218 Va. 202 (1977).**

Respectfully submitted,

RALPH P. LOMBARD  
By Counsel

ANDERSON & CORRIE

By:

Quentin R. Corrie, VAB #14140  
12600 Fair Lakes Circle, #220  
Fairfax, Virginia 22033  
(703) 222-2200  
Counsel for Defendant




CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Supplemental Motion to Declare Mistrial, Set Aside the Verdict and Grant a New trial was mailed, postage prepaid, this 23rd day of June, 2000, to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231  
Counsel for Plaintiff

Steven Walter Bancroft, Esquire  
TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030-0022

  
\_\_\_\_\_  
Quentin R. Corrie

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,

Plaintiff,

v.

RALPH D. LOMBARD,

Defendant.

\*  
\*  
\*  
\*  
\*  
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At Law No. 181346

**VIRGINIA FARM BUREAU'S MOTION TO**  
**SET ASIDE JURY'S VERDICT AND**  
**MOTION FOR NEW TRIAL**

COMES NOW, Virginia Farm Bureau Mutual Insurance Company, by counsel, and moves this Honorable Court to set aside the jury's verdict and for a new trial on the grounds that the deliberate injection of insurance during the cross-examination of Dr. Bruce Ammerman and in plaintiff's closing statement was reversible error and only served to improperly and unduly influence the jury in the plaintiff's favor and in support thereof, states as follows:

**I. INTRODUCTION**

During the trial of this personal injury action, this court, over strenuous objections of defense counsel, authorized plaintiff's counsel to deliberately inject the issue of insurance into this case. Prior to the direct examination of Dr. Bruce Ammerman, a medical expert retained on behalf of the defendant, this court, after hearing argument of counsel, specifically allowed plaintiff's counsel to disclose to the jury, during cross-examination, that

the defendant had liability insurance with Allstate Insurance Company and that defendant's insurer had paid Dr. Ammerman certain monetary sums in 1998 and 1999.

The erroneous injection of insurance and improper cross-examination of Dr. Ammerman proceeded as follows:

**Q. In fact, Doctor, Allstate Insurance Company, who is the insurance company for the defendant in this case, has paid you in 1999, \$104,971, right?**

**A. I don't know that that is right. If that's what the form says—I don't know one way or the other.**

**Q. Would you like to look at it to verify it?**

**A. I would have no way to verify it.**

**Q. I would represent to you that that's what the figure is.**

**A. If that's what they say, I have no way of agreeing or disputing it. I don't know. I don't have the information in front of me. I would not dispute what they are saying, if that's what they say. I don't know its veracity, that's all.**

**Q. Okay. Would you like to look at it just to confirm it?**

**A. I didn't print it, I'm not going to know how to read it.**

**Q. Well, I will proffer to the Court and to you that it's produced pursuant to a subpoena to Allstate Insurance Company.**

**A. I'm just saying that unless it's something that comes out of my office, I can't interpret it. I'm not debating with you.**

**Q. Okay.**

**A. ~~It may be absolutely accurate, but I can't say about its veracity one way or the other, because we didn't produce it, and I don't know what's in it.~~**

Q. In 1998, if I told you that Allstate Insurance Company had paid you \$106,520, the same answer, I'm assuming.

A. Without showing the cases, I would not know one way or the other, or whether they were for—in what capacity I received those monies.

Q. Well what do you mean in what capacity? Can we approach about this, Judge? I mean you were paid by Allstate Insurance Company in 1998 \$106,520, right?

A. If you say so. I'm saying that that could be for various things.

Q. Well then I'll make the same offer to you, would you like to verify that number? I will represent to you that that's what this document says. I know it didn't come from your office. **It came from Allstate.**

A. It may be. If that document breaks out patients I've treated, so be it, I don't know. I'll accept the number because I don't know.

Q. **All right. But you have no reason to dispute what's been given to you by Allstate, correct?**

A. I have absolutely no reason to dispute that.

(See Attachment 1, pgs. 96-99).

This court also authorized plaintiff's counsel to deliberately inject insurance in closing argument. Plaintiff's counsel improperly injected insurance into this case yet again and misdirected the jury as follows:

Are we done with Dr. Ammerman's credibility? No. Why not? He travels all over the Metropolitan area to testify for defendants, over a hundred times that he at least acknowledged that he's testified for defendants. Does he testify for his own patients? Of course he does, just like Dr. Gaertner does.

**If that person happens to be a plaintiff in a litigation, so be it. He acknowledges that this one company, Allstate Insurance Company in this case, okay, who hired him, paid him—I don't want to miss the number—\$104,971 in 1999 alone. In 1998, they paid him \$106,520.**

I'd be selective, too, when I was trying to decide how to reach my opinion in cases. Credibility, motivation, bias, those are things you need to look at when you're examining his opinion.

(See Attachment 2, p. 19).

After deliberations, the jury returned its verdict in favor of the plaintiff in the amount of \$125,000.00. Virginia Farm Bureau moves to set aside the jury's verdict and for a new trial on the grounds that this court erred by deliberating allowing the injection of insurance in this case and ignoring well-established precedent prohibiting such disclosure. This case does not fit within the limited exception to the general rule barring evidence of liability insurance. Moreover, any cautionary instruction did not cure the error, but only emphasized the issue of insurance to the jury.

The jury was also misdirected and misled by the plaintiff's counsel's improper cross-examination of Dr. Ammerman and statements made in closing argument regarding the amount of money Dr. Ammerman was paid by Allstate in 1998 and 1999. The jury was left with the false impression that such income was generated solely from defense work since Dr. Ammerman was unfairly prohibited from explaining the various sources from which he derived this revenue, including payment from med-pay or PIP for treatment of his own patients or for peer review examinations. Dr. Ammerman was not impeached by legitimate means and unfairly sanctioned by this court since he was barred from explaining the various sources from which he derived this income. The actions or inactions of Allstate should not have been attributed to Dr. Ammerman who is neither its agent, employee, or representative.

As a consequence, the jury was improperly and unduly influenced in favor of the

plaintiff and any determination it made on the issues of liability and damages have been unfairly prejudiced. Defendant was prevented from having a fair trial on all issues. The end result was that the jury returned with a verdict which now exposes the defendant to personal liability.

Virginia Farm Bureau was served as the underinsurance motorist carrier in this case and is obligated to pay any judgment amount in excess of the defendant's liability limits with Allstate within its policy limits and has the right to pursue its subrogation interests against the defendant to recover any sums it pays to plaintiff. The defendant's policy limits with Allstate totaled \$50,000.00 and he now faces personal exposure for the excess amount. It was improper to prejudice the separate rights of the named defendant, Mr. Lombard, and the UIM carrier, Virginia Farm Bureau, merely because the liability insurer failed to provide certain information that was ordered.

This court is authorized to award defendant a new trial in the attainment of justice pursuant to Virginia Code §8.01-383 and since the defendant did not receive a fair trial, Virginia Farm Bureau respectfully requests that this court set aside the jury's verdict and grant a new trial on all issues.

## II. ARGUMENT

- A. THE JURY'S VERDICT SHOULD BE SET ASIDE AND A NEW TRIAL GRANTED BECAUSE UNFAIR PREJUDICE RESULTED TO THE DEFENDANT DUE TO THE DELIBERATE INJECTION OF INSURANCE THROUGH PLAINTIFF'S COUNSEL'S IMPROPER CROSS-EXAMINATION OF DR. BRUCE AMMERMAN AND CLOSING ARGUMENT WHICH WAS SANCTIONED BY THIS COURT.

When it appears, in a personal injury case that the subject of casualty or liability insurance is brought to the jury's attention several times, neither accidentally nor incidentally, but deliberately, then a verdict for the plaintiff should be set aside and a new trial awarded. Irvine v Carr, 163 Va. 662, 177 S.E. 208 (1934). It has been a long-standing rule in this Commonwealth that in a personal injury action any comment deliberately made to inform the jury that a defendant is insured against the accident constitutes reversible error. Medina v. Hegerberg, 245 Va. 210, 427 S.E.2d 343 (1993); Hope Windows, Inc. v. Snyder, 208 Va. 489, 158 S.E.2d 722, 725 (1968). See Forsberg v. Harris, 238 Va. 442, 384 S.E.2d 90 (1989) (judgment for the plaintiff was reversed and the case remanded for a new trial since the trial court erred by failing to grant defendant's motion to set aside the jury's verdict in a personal injury case; the trial court erred in permitting plaintiff to mention that the defendant was employed by an insurance company); Davis v. Maynard, 215 Va. 407, 211 S.E.2d 32 (1975) (the court reversed and remanded finding that the trial court committed reversible error by failing to grant a mistrial where plaintiff's counsel's questions during voir dire about employment by insurance companies was to inform the jury that the defendant was insured).

Where the injection of insurance is for the jury's "collateral consideration," which has

nothing to do with the defendant's possible liability to the plaintiff, the court has repeatedly held that it is reversible error not to grant a new trial. Speet v. Bacaj, 237 Va. 290, 377 S.E.2d 397 (1989). This is based on the belief that the mention of insurance will improperly and unduly influence the jury in the plaintiff's favor. The well-established principle that the issue of insurance is not probative on whether or not the defendant is negligent or whether defendant's negligence proximately caused any damages to plaintiff or what a fair verdict might be in a case was directly violated. Highway Express Lines, Inc. v. Fleming, 185 Va. 666, 672, 40, S.E.2d 294 (1946); Rinehart & Dennis Co. v. Brown, 137 Va. 670, 120 S.E. 269 (1923).

The policy underlying this well-established precedent is to ensure that a jury does not award damages unrelated to any finding of fault because it is aware or influenced that insurance coverage exists and the insurer rather than the named defendant would pay the damages awarded. Medina v. Hegerberg, 245 Va. 210, 427 S.E.2d 343 (1993). Such injection or comment of insurance constitutes reversible error if the court finds that the comment probably has misled or prejudiced the jury. Medina, supra; Rinehart & Dennis Co. v. Brown, 137 Va. 670, 120 S.E. 269 (1923).

In Lanham v. Bond, 157 Va. 167, 160 S.E. 89 (1931), a personal injury case, the plaintiff disclosed insurance to the jury in opening and during cross-examination of a witness. In that case, the court discussed the prejudice which inures to the defendant when insurance is deliberately injected into a case and stated as follows:

The reception of such evidence sometimes has a subtle influence that will act



unconsciously upon the mind, and hence not be removed by instructions. The subject of the casualty insurance was brought to the attention of the jury not accidentally, nor incidentally, but deliberately. Not once but several times.

The court held that there was reasonable probability that the jury was influenced by the purposeful injection of insurance to the prejudice of the defendant and reversed and remanded for a new trial. Id.

Similarly, in this case, the plaintiff was unfairly allowed to obtain the advantage of having the jury's attention called to the fact that the defendant was insured, a wholly collateral subject, which was likely to have influenced the mind of the jury panel in this case. Additionally, any cautionary instruction given to the jury did not cure the resulting prejudice by the deliberate injection of insurance into this matter. Where sufficient prejudice is found, neither a cautionary instruction nor remittitur is an appropriate remedy. Instead, the only remedy is reversal and a new trial. See Rinehart & Dennis Co. v. Brown, 137 Va. 670, 120 S.E. 269 (1923). See also Lanham v. Bond, 157 Va. 167, 160 S.E. 89 (1931).

B. THE JURY'S VERDICT SHOULD BE SET ASIDE AND A NEW TRIAL GRANTED SINCE REVERSIBLE ERROR WAS COMMITTED IN AUTHORIZING PLAINTIFF'S COUNSEL TO INJECT INSURANCE INTO THIS CASE DURING CROSS-EXAMINATION OF DR. AMMERMAN UNDER THE SPECIOUS GUISE OF BIAS.

The Virginia Supreme Court has held that under certain, limited circumstances the mention of insurance may be proper in a personal injury action where there is some adequate reason for injecting the issue. These rare circumstances have only involved cases in which witnesses examined were actual employees of the defendant's insurance company and called to testify as to prior inconsistent statements made by the plaintiff or plaintiff's

witnesses on questions of liability. Sullivan v. Rixey, 241 Va. 512, 403 S.E.2d 346 (1991); Highway Express Lines, Inc. v. Fleming, 185 Va. 666, 40 S.E.2d 294 (1946). See also John Doe v. Simmers, 207 Va. 956, 960, 154 S.E.2d 146 (1967). In those very limited cases, the court held that it was not error to permit the cross-examination of these witnesses on the issue of insurance for the purpose of showing their bias or interest and their relationship to the insurance companies.

In Fleming, supra, the defendant appealed a jury verdict in favor of the plaintiff in a personal injury asserting that the trial court erred in allowing a defense witness, who was an employee of defendant's insurer, to be questioned about who employed him. The court, finding no error, explained that in this limited circumstance, the evidence was admissible on the issue of the interested bias of the witness. The adjuster had been called by the defendant and contradicted the testimony of five of the plaintiff's witnesses from statements he had previously taken from them. Since there was a conflict in the testimony, the court held that the jurors were entitled to know the witness's interest or bias in relation to the party ultimately liable. Id.

Here, the very limited circumstances of injecting insurance into a case do not apply. Unlike the cases of Fleming and Sullivan in which the court carved out a narrow exception to the admissibility of insurance because of bias, Dr. Ammerman is not an employee or agent of the defendant's insurer and as such this exception is not applicable to this case. The court has held that it is not permissible to inject insurance when a witness is not regularly employed by the defendant's insurer. See Averett v. Shircliff, 218 Va. 202, 237

S.E.2d 92 (1977).

In Averett, the proffered evidence was that the Roberts Agency, who employed two of the defendant's witnesses, made auto appraisals for many insurance companies, including the defendant's insurer. The plaintiff unsuccessfully argued that he should be permitted to cross-examine these defense witnesses to show this relationship. The court clearly held that the trial court committed no error and stated that "to have permitted plaintiff to show the witnesses were employed by defendant's insurer to appraise plaintiff's auto would have improperly injected the question of insurance in the case." Id.

Similarly, although Dr. Ammerman had been retained by the defendant's insurer to perform defense examinations in the past, he was never a regular employee, agent, or representative of defendant's insurer, and therefore, it was error to allow him to be cross-examined in this case regarding his relationship with Allstate Insurance Company. Dr. Ammerman performed two (2) physical examinations of the plaintiff pursuant to Rule 4:10 of the Supreme Court Rules. Written reports were filed and discovery was supplemented on behalf of the defendant, Mr. Lombard, and the UIM carrier, Virginia Farm Bureau. At no time was Dr. Ammerman hired by Virginia Farm Bureau in this case and certainly he was not a regular employee of that company. Dr. Ammerman was a retained medical expert employed on behalf of Mr. Lombard to examine the plaintiff and report back to the parties his findings. Dr. Ammerman did what the Rule required pursuant to the Orders of this court and to now punish him, Mr. Lombard, and Virginia Farm Bureau because of unidentified payment figures from Allstate was prejudicial and not in the furtherance of justice.

This court erred in permitting plaintiff's counsel to question Dr. Ammerman about the revenue he received from Allstate Insurance Company in 1998 and 1999. All parties and the court acknowledged and recognized that it was unknown as to what portion of these total sums could be attributed to any defense examinations performed by Dr. Ammerman. It was also undisputed that Dr. Ammerman received payment from Allstate Insurance Company from various sources including first-party actions, i.e. med-pay and PIP, as well as defense examinations. However, Dr. Ammerman was prohibited from mentioning the various sources from which this income was derived.<sup>1</sup> Therefore, the disclosure of these total sums to the jury had no probative value since it was unknown whether 75% of the sum or 10% of the sum was for defense examinations. As a result, the jury was misled and misdirected by being given a false impression that all these sums were for defense work only.

Moreover, this court erred by prohibiting Dr. Ammerman from explaining the various sources from which he derived this income. This court unfairly sanctioned Dr. Ammerman for Allstate's failure to comply with a prior court order. Allstate's actions or inactions should not be attributable to Dr. Ammerman, Mr. Lombard, or the UIM carrier. This court could have held Allstate in contempt which would have been the appropriate sanction instead of punishing Dr. Ammerman and others for apparent inaction by Allstate.

The end result was that the defendant did not receive a fair trial and instead was unfairly prejudiced since his expert witness was improperly impeached and the jury given

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<sup>1</sup>As a result of a verbal order by Judge R. Terrence Ney made in a telephone conference when Allstate through its designated representative was unable to explain the payment figures made to Dr. Ammerman.

the false impression that Dr. Ammerman earned hundreds of thousands of dollars from Allstate by solely doing defense work for them. The injury was compounded during closing statements when the plaintiff's counsel was allowed once again to emphasize the sum of money Dr. Ammerman received from Allstate, the insurance company for Mr. Lombard, without disclosing that this sum was received for various reasons, including payment from med-pay, PIP, and first-party actions. Clearly, the prejudicial affect of the questions posed to Dr. Ammerman outweighed any probative value, and therefore, the evidence should have been excluded.

The evidence of collateral facts, from which no fair inference can be drawn, tends to divert the jury from the issues before the court, to mislead the jury, and to excite prejudice. Cherry v D.S. Nash Constr. Co., 252 Va. 241 (1996) (because of the admissibility of evidence which should not have been received at trial, the trial court's judgment was reversed and the case remanded for a new trial). Similarly, in this case, any disclosure of sums paid to Dr. Ammerman from Allstate were collateral facts, from which no fair inference could be drawn, which only resulted in misleading, misinforming, and exciting prejudice to the jury.

- C. THE JURY'S VERDICT SHOULD BE SET ASIDE AND A NEW TRIAL GRANTED SINCE REVERSIBLE ERROR WAS COMMITTED BY PERMITTING THE INJECTION OF INSURANCE AND IMPROPER CROSS-EXAMINATION OF DR. BRUCE AMMERMAN WHICH SERVED TO PREJUDICE THE SEPARATE RIGHTS OF VIRGINIA FARM BUREAU, THE UNDERINSURANCE CARRIER.

Pursuant to Virginia Code §38.2-2206(F), Virginia Farm Bureau, as the underinsurance carrier, has the right to file pleadings and take other action allowable by law

in the defendant's name or in its own name. This statute gives both the defendant and UM/UIM carrier the right to participate in the defense of a personal injury action; however, neither the defendant nor insurer has any right to bind the other to any position or course of action in connection with the case. State Farm v. Beng, 249 Va. 165 (1995); State Farm v. Cuffee, 248 Va. 11 (1994). Each is entitled to control his or its own actions but not the actions of the other. Cuffee, 248 Va. at 14.

In State Farm v. Cuffee, supra, the Virginia Supreme Court reversed and remanded a personal injury action in favor of the plaintiff because the trial court improperly limited the uninsured motorist carrier's ability to defend the case when the uninsured motorist admitted liability. The court held that Virginia Code §38.2-2206(F) requires protection of the rights of both the uninsured motorist and insurer, notwithstanding that the effort might result in difficulties in the court below. Id.

In State Farm v. Beng, supra, the court specifically addressed the rights of the UIM carrier and held that the same rationale set forth in Cuffee applied in an UIM situation. In Beng, the defendant prejudiced the rights of State Farm, the underinsurance motorist carrier, by confessing judgment in an amount exceeding his policy limits. The trial court held that the UIM carrier was barred from defending against the liability claims and could only defend on damages. The Virginia Supreme Court reversed and remanded judgment in favor of the plaintiff finding that the UIM carrier's rights were prejudiced since it was denied its ability to appear and defend the litigation on all issues despite the course of action chosen by the defendant.

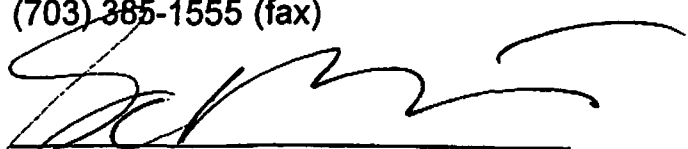
In this case, this law firm was not retained as co-counsel for the defendant or to represent the defendant, but instead was hired by Virginia Farm Bureau, the plaintiff's carrier, pursuant to Virginia Code §38.2-2206(F), to protect its rights as the underinsurance carrier. Under the Beng and Cuffee cases, authored by Chief Justice Carrico, any action taken by the defendant cannot bind the underinsurance motorist carrier, and certainly any inaction on the part of the defendant's insurer, Allstate, cannot bind Virginia Farm Bureau. Virginia Farm Bureau's rights remain separate and apart, and this court erred by allowing the injection of insurance in this case as well as the improper cross-examination of Dr. Bruce Ammerman which only served to prejudice the rights of Virginia Farm Bureau, as well as defendant Ralph Lombard.

### III. CONCLUSION

For the foregoing reasons, Virginia Farm Bureau Mutual Insurance Company, by counsel, respectfully requests that this Honorable Court set aside the jury's verdict and award a new trial on both issues of liability and damages.

**VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY**  
By Counsel

TRICHILO, BANCROFT, McGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road  
Suite 400  
P.O. Box 22  
Fairfax, Virginia 22030  
(703) 385-1000 (phone)  
(703) 385-1555 (fax)

Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Melissa Hogue Katz, Esquire  
Virginia State Bar No. 31820  
Counsel for Virginia Farm Bureau Mutual Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion to Set Aside Jury's Verdict and Award New Trial was mailed first class, postage prepaid on this 27<sup>th</sup> day of June, 2000 to Steven M. Frei, Esquire, Hall & Sickels, P.C., 12120 Sunset Hills Road, Suite 150, Reston, Virginia 20190; and to Quentin R. Corrie, Esquire, Anderson & Corrie, 12600 Fair Lakes Circle, Suite 220, Fairfax, Virginia 22033. *AND HAND CARRIED. SWB*

Steven W. Bancroft



VIRGINIA

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

DORSEY W. ROHRBAUGH,

Plaintiff

v.

RALPH D. LOMBARD

12921 Colby Drive  
Woodbridge, VA 22192,

Defendant.

Law No. 181346

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE  
MOTIONS OF DEFENDANT LOMBARD AND  
VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY  
FOR MISTRIAL, TO SET ASIDE THE VERDICT AND FOR A NEW TRIAL**

Both the Defendant and the underinsured carrier have filed motions seeking a new trial on the grounds that this court erred in allowing plaintiff's counsel to present to the jury facts relevant to the issue of the bias of Dr. Ammerman, an expert witness identified by both defendant and the underinsured carrier and paid by Allstate, the defendant's insurance company. This court properly permitted plaintiff's counsel to cross-examine Dr. Ammerman concerning his lucrative relationship with Allstate evinced by the large sums of money he received from Allstate insurance company over a two year period.

**I. FACTUAL BACKGROUND**

Plaintiff was injured in an automobile collision on August 11, 1995. Suit was initially filed in May 1997, was nonsuited, and this action was filed in June 1999.

Included in the refiled action was the underinsured carrier, Virginia Farm Bureau Mutual Insurance Company (UIM carrier). Defendant's insurer is Allstate, the coverage under the Allstate policy is \$50,000 and Allstate provided the defense of this matter. At trial, when questioned by your honor, counsel for the UIM carrier specifically stated he did not want to be identified as a separate entity and requested he be identified simply as assisting in the defense.

During the course of this case, both the Defendant and the UIM carrier identified Bruce Ammerman, M.D. as their expert witness. Pursuant to the provisions of Rule 4:10, Dr. Ammerman examined Plaintiff on two separate occasions, the first in April of 1999 in connection with the nonsuited action and again in May of 2000 with respect to this action.

On April 25, 2000 plaintiff filed a request for a witness subpoena for a Rule 4:5(b)(6) deposition of the Allstate corporate designee most knowledgeable about the Allstate IRS Payments List and Payment Detail for Dr. Ammerman. [Exhibit 1].<sup>1</sup> The deposition was noticed for Monday, May 8, 2000. On the Friday before the scheduled deposition, plaintiff's counsel received a call from William Dupray, Esquire who had been engaged by Allstate in connection with opposing the subpoena. Mr. Dupray

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<sup>1</sup> In connection with another action filed in this court, *Pamela Stroud v. Debra Consentino*, Law No. 177798, plaintiff had obtained in response to a proper subpoena, computerized printouts of various payments Allstate had made to Dr. Ammerman. The subpoena request in *Stroud* limited itself to payments made to Dr. Ammerman as a result of Rule 4:10 examinations.

requested, and plaintiff's counsel agreed, to a postponement of the deposition to give Mr. Dupray time to file a motion to quash. A motion to quash was filed on May 5th and a notice of the motion was filed May 22<sup>nd</sup> setting it for hearing on June 2, 2000. Trial of the matter was to begin June 7, 2000.

On June 2, 2000, Judge Ney heard and appropriately denied the motion to quash. Plaintiff's counsel had been able to show that the information he was seeking was not obtainable from Dr. Ammerman, who, less than three months earlier during the taking of his *de bene esse* deposition in connection with the *Stroud* case, was either unwilling or unable to testify concerning which of the payments on the Allstate printout were for medical/legal work and which were for medical care. Judge Ney ordered that the deposition of the Allstate designee proceed on June 6, 2000.

On the afternoon of June 2<sup>nd</sup> plaintiff's counsel faxed a letter to Mr. Dupray expressing his concern that the information he would seek from the designee might well involve the designee's need for computer access and offered to hold the deposition at a local Allstate location. [Exhibit 2]. Mr. Dupray's response was that the deposition was noticed for plaintiff's counsel's office and that was where the deposition would take place.

The deposition was attended by Mr. Quentin R. Corrie-representing the defendant, Mr. Dupray-representing Allstate, and plaintiff's counsel. Mr. Steven W. Bancroft-counsel for the UIM carrier, although noticed, elected not to attend. A telephone call was placed to Mr. Bancroft's office before the deposition began and plaintiff's counsel

was advised no one for the UIM carrier would be appearing. During the deposition the Allstate designee testified that she could not tell by looking at the printout whether the payments made by Allstate to Dr. Ammerman were for medical care or, conversely, were made in connection with legal proceedings. She further testified that if she had access to an Allstate computer she would be able to identify whether a payment was for medical care or for legal matters. Counsel for Allstate refused to agree to moving the deposition to a location where the witness could obtain the information from the computer. While the deposition was still in progress plaintiff's counsel called Judge Ney, who was on the bench. Plaintiff's counsel then indicated he would leave the deposition open until he could get a ruling from Judge Ney. [Exhibit 3]. Mr. Corrie, counsel for the defendant, advised counsel he was leaving, that they should do whatever they wanted, but he had other things to do. [Exhibit 3].

Judge Ney called counsel back later that afternoon and spoke with plaintiff's counsel and Mr. Dupray. Upon hearing what had transpired at the deposition, Judge Ney remarked that it had been clear that the designee was supposed to provide the information as to how much of the payments made to Dr. Ammerman were for medical care and how much were for legal work. He indicated he would order Allstate to arrange for plaintiff's counsel to go to a local Allstate location where he could observe an operator obtain the requested information. Mr. Dupray offered the alternative solution of simply agreeing that Allstate had paid Dr. Ammerman \$104,971 in 1999 and \$106,520 in 1998.

Mr. Dupray's proposal was acceptable to plaintiff's counsel so long as 1) Dr. Ammerman was not permitted to explain that some of the payments were for medical care and some for legal work but that he could not say how much was for which; and, 2) counsel for the defendant and the UIM carrier were not allowed to address those matters. Judge Ney ordered that plaintiff's counsel could use the total amounts as money received from Allstate and neither the witness nor counsel would discuss the allocation of the money. The basis for this ruling was that this was the precise dilemma plaintiff had been attempting to avoid by deposing the Allstate designee, i.e., Dr. Ammerman's inability to testify about how much money he earned for legal work. Mr. Corrie, having elected to leave the deposition, and Mr. Bancroft, having elected never to attend the deposition in the first place, were advised of this ruling.

At trial this Court allowed the plaintiff to bring out on cross-examination the amount of money Dr. Ammerman received from Allstate. This Court's ruling was predicated upon the posture of the case in the context of Judge Ney's orders. Because Allstate is an insurance company, and only for that reason, was there a mention of insurance. A cautionary jury instruction was given prior to Dr. Ammerman's testimony. [Exhibit 4]. The defendant and the UIM carrier both seek a new trial incorrectly asserting that the mention of insurance under these circumstances was error.

## ARGUMENT

The right of Plaintiff to impeach Dr. Ammerman's testimony by establishing his bias is absolute in Virginia. *Whitaker v. Commonwealth*, 217 Va 966, 234 S.E.2d 79 (1979). Further, the cross-examination of Dr. Ammerman for the purpose of establishing bias is always relevant. *Norfolk and Western Railway v. Sonney*, 236 Va 482, 374 S.E.2d 71 (1988). In fact,

**The bias of a witness, like prejudice and relationship, is not a collateral matter. The bias of a witness is always a relevant subject of inquiry when confined to ascertaining previous relationship, feeling and conduct of the witness . . . . [O]n cross-examination great latitude is allowed and . . . the general rule is that anything tending to show the bias on the part of a witness may be drawn out.** 235 Va. at 188, 366 S.E.2d at 113 (emphasis in original) (quoting *Henson v. Commonwealth*, 165 Va. 821, 825 -26, 183 S.E. 435, 437 (1936)).

*Norfolk & Western Railway Co. v. Sonney*, 236 Va. 482, 488, 374 S.E.2d 71 (1988).

While the rule in Virginia is that the deliberate mention of insurance as a collateral matter for improper purposes is reversible error, *Davis v. Maynard*, 215 Va. 407, 408, 211 S.E.2d 32 (1975), that is not the circumstance under which insurance was mentioned here. The reference to insurance was neither a collateral consideration nor for an improper purpose. It is important to remember the well-established legal principle that bias is never collateral.

The cases cited by defendant where insurance was injected as a collateral issue for an improper purpose are inapposite. We are not dealing with a situation where insurance was gratuitously mentioned to the jury in opening statement or on voir dire simply to

inform the jury of the existence of the defendant's insurance coverage. *See Forsberg v. Harris*, 238 Va. 442, 384 S.E.2d 90 (1989)[plaintiff's counsel opening noted that defendant was employed by an insurance company]; *Davis v. Maynard* 215 Va. 407,408, 211 S.E.2d 32, 32-33 (1975)[on voir dire plaintiff's counsel discussed with one of the jurors his knowledge gained from working for an underwriting company that defendant's counsel represented insurance companies]; *Hope Windows v. Snyder*, 208 Va. 489, 493, 158 S.E.2d 722, 725 (1968)[the effect of the plaintiff asking the jury panel on *voir dire* whether any of them worked for an insurance company was to suggest that defendants were insured].

The mention of insurance here is likewise not analogous to the circumstances under which insurance was interjected in *Forsberg v. Harris, supra*. The mention of the fact that Dr. Ammerman annually received significant sums from the defendant's insurance company did not "inject a collateral consideration having nothing to do with" the defendant's "possible liability to" the plaintiff. *Forsberg v. Harris* 238 Va. at 444. Counsel for the plaintiff in *Forsberg* stated in opening that defendant was employed by an insurance company. Whether the defendant in *Forsberg* was employed by an insurance company obviously had nothing to do with whether he was negligent, whether his negligence was a proximate cause of the Harris' injuries or the extent of Harris' injuries. On the other hand, Dr. Ammerman performed two physical examinations of Mr. Rohrbaugh and Dr. Ammerman's testimony addressed the injuries sustained by Mr. Rohrbaugh. Defendant procured Dr. Ammerman's testimony for the sole purpose of

minimizing the extent of the injuries sustained by the plaintiff which, if believed by the jury, would necessarily influence the damages awarded for those injuries, and ultimately the defendant's "possible liability to" the plaintiff. Clearly the fact that Dr. Ammerman is routinely employed by this insurance company and receives in excess of \$100,000 per year from this one insurance company is plainly relevant to his bias and thus, by legal definition in the Commonwealth, is not a collateral matter. *Goins v. Commonwealth*, 251 Va. 442, 465, 470 S.E.2d 114 (1996); *Norfolk & Western Railway Co. v. Sonney*, *supra*, at 488, *Henning v. Thomas*, 235 Va. 181, 188, 366 S.E.2d 109 (1988).

It was within this Court's discretion to decide whether particular questions could be asked about the bias of the witness. *Shanklin v. Commonwealth*, 222 Va. 862, 864, 284 S.E.2d 611, 612 (1981); *and see, Norfolk & Western Railway Co. v. Sonney*, 236 Va. 482, 488, 374 S.E.2d 71, (1988). Dr. Ammerman's association with Allstate bears directly on the weight to be given to his testimony. *See Sullivan v. Rixey*, 241 Va. 512, 515, 403 S.E.2d 346 (1991). The obvious reason the defendant and the UIM carrier offered Dr. Ammerman's testimony was because it was adverse to the plaintiff's claim of injury.

In consistent recognition that, "[t]he bias of a witness, like prejudice and relationship, is not a collateral matter," the Supreme Court held a trial court erred in refusing to allow defendants to cross-examine the plaintiff's expert doctor concerning the doctor's relationship with an organization named Professional Medical Witnesses. *Henning v. Thomas*, 235 Va. 181, 188, 366 S.E.2d 109 (1988). There plaintiff argued



that the defendants simply wanted to infer the expert was a "doctor for hire." The Supreme Court noted that was precisely what the defendants wanted to do, and had every right to do - to show the bias, prejudice or relationship to the jury. *Henning*, 235 Va. at 188-189. This Court correctly allowed the plaintiff to show the jury the potential for bias and prejudice resulting from the relationship of Dr. Ammerman to the insurance company defending the action.

Affirming that a party, "has a right to establish facts and circumstances tending to show the interest, bias or prejudice of a hostile witness," the Supreme Court held the trial court erred by preventing a plaintiff from showing that a hostile witness, whose testimony was adverse to the plaintiff, was employed as an insurance adjuster for the defending insurance company. *Sullivan v. Rixey*, 241 Va. 512, 514, 403 S.E.2d 346 (1991). The bias, interest and prejudice of Dr. Ammerman as a result of his long standing and extremely profitable relationship with Allstate is not a collateral matter and bears directly upon the weight to be given to his testimony. *Sullivan*, 241 Va. at 514-515. *Accord, Highway Express Lines v. Fleming*, 185 Va. 666, 673, 40 S.E.2d 294 (1946).

Both defendant and the UIM carrier place great reliance on *Averett v. Shircliff*, 218 Va. 202, 237 S.E.2d 92 (1977), a property damage case in which the Virginia Supreme Court simply held that it was not error to have excluded evidence that the witnesses were employed by an agency which performed appraisals for defendant's insurer because this would improperly inject the question of insurance. *Averett* does not

compel the result advocated by the defendant and UIM carrier, as it does not hold that it would have been reversible error to have allowed cross-examination on the issue and there was no discussion as to whether allowing such cross-examination would have been an abuse of discretion. Moreover, this is not a mere property damage case, but a case involving significant personal injuries, where the probative value of the revelation of Dr. Ammerman's relationship with Allstate and his resulting bias and prejudice clearly outweighs any prejudice to the defendant resulting from the disclosure.

While it is true that Dr. Ammerman is not *per se* an employee of Allstate, it cannot be disputed that he is paid a substantial income by Allstate for the work he does for them. As a result of his relationship with Allstate, he reaps a generous income, far in excess of what most people earn in a year on a full time job. Dr. Ammerman would not receive that kind of compensation if his testimony did not meet the needs of Allstate. Although defendants like to characterize the medical exams performed at their behest as independent medical exams (IME), IME is a misnomer. There is nothing independent about these examinations. Even Rule 4:10 which authorizes these examinations, recognizes these exams are anything but "independent." Nowhere in Rule 4:10 will you find the word "independent". The doctor is selected by the insurance company and, as with Dr. Ammerman, is routinely used in an attempt to minimize the injuries and the amount of treatment which was necessitated by the injuries. Dr. Ammerman is not hired by Allstate to be impartial, but to advance the position of Allstate. However, if the jury is perpetually kept in the dark as to his association with Allstate, the myth that this is an

impartial and “independent” doctor is perpetuated to the great prejudice of injured individuals.

The Federal Rules of Evidence specifically address this issue by allowing evidence of insurance when offered for the purpose of proof of agency, ownership, or control, or bias or prejudice of a witness. FRE 411. The rule protects the fundamental right of a party to cross-examine a witness to show bias. As noted by the eminent Virginia authority on evidence, “so absolute is this right to cross-examine for bias that it takes precedence over other rules of evidence and even over statutory enactments.” Charles E. Friend, *The Law of Evidence in Virginia* § 4-6, p.129 (5th ed. 1999). Friend further notes that the modern trend of the cases recognizes that the prohibition against mentioning insurance is not a hard and fast rule where a fair trial and substantial justice are done. *Id.*, §12-8, p. 411. An appropriate cautionary jury instruction was given here. *Id.*; *Medina v. Hegerberg*, 245 Va. 210, 213, 427 S.E.2d 343 (1993).

The UIM carrier attempts to distant itself from Dr. Ammerman’s employment as an expert for the defendant, but it must be remembered the UIM carrier designated Dr. Ammerman as its own expert; and, even more importantly, the UIM carrier expressly advised the Court that it did not wish to retain a separate presence from the defendant, but rather chose to proceed at trial as “assisting with the defense.”

The UIM carrier asserts the plaintiff was simply using a specious ploy when it sought and obtained permission to show Dr. Ammerman’s relationship with Allstate as

relevant to the issue of his bias. This argument is unworthy of response.

Defendant correctly notes that an insurance company may waive an objection to the mention of insurance and cites *Willard v Aetna*, 213 Va. 481, 483 (1973). A subsequent case is even more instructive. *Medina v. Hegerberg, supra*, involved defendant's testimony concerning the plaintiff's threat that if the defendant's insurance company did not pay to have her car fixed the way she wanted, she would start complaining about her back. At trial the plaintiff objected to this evidence. In determining that it was not error to allow the evidence, the Supreme Court reviewed the general rule precluding mention of insurance and noted that the rule was not absolute. *Medina*, 245 Va. at 213. Since the evidence was introduced by the defendant, there was a waiver of any claimed prejudice. *Id.*, at 214. In addition, the mention of insurance was not made for an improper purpose, i.e., to intimate that the defendant was insured, but rather to infer that the claim of back injury may have been contrived. *Medina*, at 214.

Here Allstate, the insurance company first in line to pay any judgment up to its policy limits, agreed to the mention of insurance, thus there was a waiver. Moreover, the mention of insurance was not for the improper purposes of showing the defendant was insured, but rather to inform the jury of Dr. Ammerman's status as a "hired gun" earning substantial sums from the insurer in exchange for his testimony. Clearly the evidence of his ongoing relationship and bias were proper matters for consideration by the jury in order that they might properly assess the weight to be given to his testimony. *Henning v. Thomas*, 235 Va. at 189-190.

The defendant waived any objection to the restrictions placed on Dr. Ammerman, involving his telling the jury that not all of the money which he received from Allstate was for his defense work for Allstate. The waiver was made in two different and binding ways: 1) Allstate's counsel represented to Judge Ney that it would agree to the restriction instead of complying with Judge Ney's order that it provide the information sought by plaintiff's counsel as to the break down of how much of the income received was attributable to forensic work rather than medical care. Allstate had every opportunity to provide the information sought by plaintiff's counsel to ascertain how much of the total amounts paid to Dr. Ammerman were in connection with his legal work for Allstate. Allstate clearly can bind itself and when it acts on behalf of its insured it binds them also; and 2) Defendant's counsel waived any right to object when he simply abandoned the deposition session on June 6<sup>th</sup> with his remarks that he would let counsel "do whatever you're doing. I'm going to excuse myself, because I have a bunch of other things." [Exhibit 3].

Clearly Judge Ney had the discretion to order Allstate to comply with his previously issued order and to adopt the alternative course of action proposed by Allstate. Allstate cannot now be heard to complain, through its counsel defending its insured, that Judge Ney erred in ordering that which Allstate invited the judge to order. It is axiomatic that a party cannot complain of invited error. *Edmiston Homes, Ltd. v. McKinney Group*, 241 Va. 263, 268, 401 S.E.2d 875 (1991); citing *Godsey v. Tucker*, 196 Va. 469, 476, 84 S.E.2d 435, 439 (1954).

The defendant raises the interesting comment that Allstate is not a party and its actions cannot bind the defendant. However, Allstate is the defendant's insurer, Allstate paid Dr. Ammerman for his testimony to be used in connection with the defendant's case, and, importantly, Allstate pays defendant's counsel. Defendant's argument in support of its Motion for New Trial omits any reference to the part Allstate's counsel played in the events leading up to the mention at trial of Dr. Ammerman's relationship with Allstate. It ignores the fact that Dr. Ammerman conveniently could not separate out the medical care versus forensic work from the income totals for the years 1998 and 1999. And it fails to mention that in spite of the understanding made clear at the hearing before Judge Ney on June 2<sup>nd</sup>, that plaintiff's counsel was trying to ascertain the breakdown of the amounts received by Ammerman for his defense work as opposed to his medical work, Allstate provided a witness who was only able to tell plaintiff's counsel how it would be possible to obtain the breakdown, but who confirmed that she could only do so at her office, the very option plaintiff had requested and Allstate had refused.

Defendant waived any right to object to Judge Ney's ruling as his counsel, with full knowledge that plaintiff's counsel would ask Judge Ney to order Allstate to allow the deposition to proceed at an Allstate location, simply left the deposition proceedings advising that he had other things to do, and that he would just let them do whatever they were going to do. Similarly, counsel for the UIM carrier waived any right to protest Judge Ney's ruling as he did not even bother to participate in the deposition proceedings.

The jury was not misled, as claimed by the defendant and the UIM carrier, as to the amount of money paid to Dr. Ammerman for forensic work relative to the amount paid for medical care. Plaintiff's counsel simply had Dr. Ammerman admit to the actual amounts he received from Allstate. Plaintiff's counsel did not attribute that amount to forensic work. It is appropriate to note that contrary to the court's orders, Dr. Ammerman still managed to let the jury know that he received money from Allstate in exchange for his services in different capacities and that he treated patients for whom Allstate was the insurance provider. [Exhibit 5].

The UIM carrier argues that jury was misled as they were not told how much of Dr. Ammerman's income from Allstate was for defense work. The argument ignores the fact that Dr. Ammerman could not or would not provide that information and Allstate did not do so, even though ordered to do so. Allstate was playing loose and free with the discovery process, was finally caught, and an appropriate resolution of the matter was reached. How much of the income that Dr. Ammerman's received from Allstate was attributable to his defense work was the information plaintiff had made every effort to ascertain, but those efforts had been stymied by the only people in a position to produce the information.

The UIM carrier astoundingly expresses a sudden concern about the possibility of personal exposure of the defendant for the amount of the judgment in excess of the Allstate coverage. This from the very UIM counsel who refused to offer any UIM money in settlement of the case. Obviously the UIM carrier has no standing to argue on

behalf of the defendant.

In support of its argument that the UIM carrier's rights cannot be prejudiced by the actions or inactions of the defendant, the UIM carrier relies on *State Farm Mut. Auto. Ins. Co. v. Beng*, 249 Va. 165, 455 S.E.2d 2 (1995), and *State Farm Mutual Automobile Insurance Co. v. Cuffee*, 248 Va. 11, 444 S.E.2d 720 (1994). These cases are not dispositive as the defendants in both *Beng* and *Cuffee* assumed positions contrary to that of the UIM carrier. Here the UIM carrier and defendant were uniformly aligned at the express election of the UIM carrier's counsel.

The UIM carrier's argument that Virginia Code § 38.2-2206 protects it from actions or inactions by the defendant which prejudice its rights must fall on deaf ears as the UIM carrier did not show up at the deposition to protect its rights, but rather by his absence abandoned them. It cannot now be heard to complain that it was not present and its rights were prejudiced.

### CONCLUSION

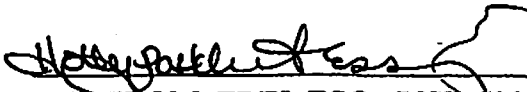
This Court properly allowed the cross-examination of the defendant's and the UIM carrier's expert witness on his relationship with Allstate Insurance Company to show his bias. Showing bias on cross-examination is never a collateral matter. Showing Dr. Ammerman's bias, arising out of his long-standing and very lucrative arrangement with the insurance company, did not inject insurance for an improper purpose. It was within the sound discretion of this court to determine the allowable extent of the cross-



examination to show the bias. The cautionary instruction given was appropriate and ensured the defendant a fair trial.

The plaintiff respectfully request that the motions of the defendant and the UIM carrier for mistrial, to set aside the verdict and for a new trial be denied.

DORSEY W. ROHRBAUGH  
By Counsel

  
STEVEN M. FREI, ESQ. (VSB #32211)  
Holly Parkhurst Essing, Esq. (VSB #17538)  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
(703) 925-0500  
Counsel for Plaintiff

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30<sup>th</sup> day of June 2000, copies of the foregoing Plaintiff's Memorandum in Opposition to Defendants' Motions for New Trial were faxed and sent by U.S. mail, postage prepaid, to:

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033  
(Counsel for Ralph D. Lombard)

Steven W. Bancroft, Esq.  
TRICHILO, BANCROFT, et. al.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

  
Holly Parkhurst Essing

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

Law Number: 181346

RALPH D. LOMBARD )

Defendant. )

TO: Allstate Insurance Company  
SERVE: Registered Agent  
Edward R. Parker, Esq.  
5511 Staples Mill Road  
Richmond, Virginia. 23228

**SUBPOENA REQUEST**

The Clerk of said Court will please summon the following witness on behalf of the Plaintiff, Dorsey W. Rohrbaugh, to appear before a notary public or other officer authorized by law to administer oaths in the Commonwealth of Virginia, at 10:00 a.m., on the 8th day of May, 2000, for deposition at the law offices of Hall & Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150, Reston, Virginia, 20190:

The Allstate corporate designee and/or the person most knowledgeable of the attached information as described below:  
Allstate Insurance Companies IRS Payments List and  
Payment Detail for TIN Number 521074671, Washington  
Neurosurgical Associates, P.C., and Bruce Ammerman, M.D.,  
for the period beginning January 1, 1995 to December, 31,  
1999.

Said deposition shall continue day-to-day until completed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS P.C.



Steven M. Frei, Esquire, VSB #32211..  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, VA 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

  
Steven M. Frei

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

Law Number: 181346

RALPH D. LOMBARD )

Defendant. )

TO: Allstate Insurance Company  
SERVE: Registered Agent  
Edward R. Parker, Esq.  
5511 Staples Mill Road  
Richmond, Virginia 23228

**NOTICE OF DEPOSITION**

PURSUANT to Rule 4:5(b) of the Rules of Practice of the Supreme Court of Virginia, please take notice that on the 8th day of May, 2000, at 10:00 a.m., at the law office of Hall & Sickels, P.C., The Reston Executive Center, 12120 Sunset Hills Road, Suite 150, Reston, Virginia, Steven M. Frel, Esq., will take the deposition of the Allstate corporate designee and/or the person most knowledgeable of the attached information as described below:

Allstate Insurance Companies IRS Payments List and Payment Detail for TIN Number 521074671, Washington Neurosurgical Associates, P.C., and Bruce Ammerman, M.D., for the period beginning January 1, 1995 to December, 31, 1999.

for the purpose of discovery or for use as evidence, or both, before an officer authorized to administer oaths. If for any reason the taking of said testimony be not commenced, or if commenced, be not completed, the taking of same shall be continued at the same place from day-to-day and time-to-time, until completed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS, P.C.



STEVEN M. FREI, ESQ. (#32211)  
Counsel for Plaintiff  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
(703)925-0500

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 2000, a true copy of the foregoing was mailed, first class, postage pre-paid, to:

Quentin R. Corrie, Esq.  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033-4904  
Counsel for Defendant

Steven W. Bancroft, Esq.  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

  
\_\_\_\_\_  
Steven M. Frei

LAW OFFICES

# HALL & SICKELS, P.C.

RESTON EXECUTIVE CENTER  
12120 SUNSET HILLS ROAD • SUITE 150  
RESTON, VIRGINIA 20190-3231

ROBERT T. HALL •  
CHARLES W. SICKELS •  
HOLLY PARKHURST LEAR \*\*\*  
DONNA MILLER ROSTANT \*\*  
STEVEN M. FREI \*\*\*

\*Admitted in VA & DC  
\*\*Admitted in N.C. & VA  
\*\*\*Admitted in VA

TELEPHONE  
(703) 925-0500

TELECOPIER  
(703) 925-0501

June 2, 2000

William M. Dupray, Esq.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, VA 22042

**VIA FACSIMILE & REGULAR MAIL**  
**(703) 536-2200**

**Re: Rohrbaugh v. Lombard, Law 181346, Circuit Court of Fairfax County**

Dear Bill:

I attempted to return your call today regarding the deposition of the Allstate corporate designee. You were not in so I left you a voice mail message. I hope you received my message.

I began thinking as I headed back to the office that given the information I am going to be asking the designee about it probably makes more sense to take the deposition at this persons location. This way he/or she will have appropriate computer access which will undoubtedly be needed to answer some of my questions. The Order signed today scheduled the deposition on Tuesday morning at 10:00 a.m. in my office. If it is necessary to go to a local Allstate office to take the deposition I am willing to do so. All I am interested in is getting the information. I have other trial preparation matters scheduled for later on Tuesday so I have to stick to the time (or earlier if you want).

Finally, on May 5, 2000 when you first contacted me about this subpoena I agreed to move the date from its originally scheduled time (May 8<sup>th</sup>) so you could file and have your motion heard. In our conversation I expressed my concern that Messers. Corrie and Bancroft would have to agree to waive any scheduling order restrictions (assuming the court denied your motion) as well as the fact that the trial date was June 7-8, 2000 and this would need to be resolved by this date. I forwarded you a letter by facsimile and regular mail on May 5, 2000 confirming this conversation.

Allstate has known for almost a month now that I intended to ask questions regarding the previously produced forms. Today when you were arguing before Judge Ney you indicated to him that you were not certain that Allstate even had a person in this area that could answer the questions. Obviously, it is impossible for me to travel

HALL & SICKELS, P.C.

William M. Dupray, Esq.

June 2, 2000

Page 2

anywhere on Tuesday to take a deposition. Since you were aware of the trial date in this matter, and considering my agreement to move the originally scheduled date for this deposition so your motion could be heard, I expect that the person deposed on Tuesday will be fully prepared to answer my questions regarding the materials. If this is not the case I need to know immediately so I can consider my options.

Please let me hear from you so I know how we are going to proceed with this matter.

Very truly yours,

HALL & SICKELS, P.C.

A handwritten signature in black ink, appearing to read "Steven M. Frei", is written over the typed name.

Steven M. Frei

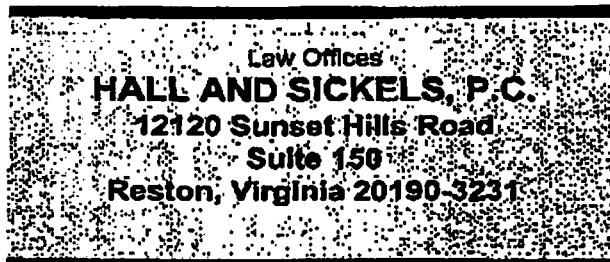
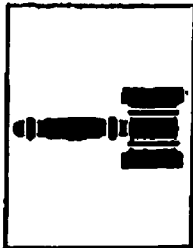
SMF:asd



## TRANSMISSION MESSAGE CONFIRMATION REPORT

NAME: HALL AND SICKELS PC  
 TEL : 7039250501  
 DATE: 06/02'00 17:15

TRANSMIT: 7035362600			DURATION	PAGE	SESS	RESULT
TYPE : MEMORY TX	MODE	E -192	00'45	03	326	OK



## FACSIMILE COVER SHEET

DATE: June 2, 2000  
 TO: William M. Dupray, Esq.  
 COMPANY NAME:  
 FAX NUMBER CALLED: 703-536-2200  
 FROM: Steven M. Frei

This facsimile consists of 3 pages, including this cover sheet. If you do not receive all pages in legible form, please call Heather at (703) 925-0500.

## Special Instructions:

Our Client Name: Dorsey W. Rohrbaugh

Our Client Number: 4437

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1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - X  
4 DORSEY W. ROHRBAUGH,

5 Plaintiff,

6 vs.

At Law No. 181346

7 RALPH D. LOMBARD,

8 Defendant.  
9 - - - - - X

10 Reston, Virginia

11 Tuesday, June 6, 2000

12 Deposition of PAMELA RYDELL, called for examination  
13 by counsel for the plaintiff, pursuant to notice, at the  
14 office of Steven M. Frei, Esq., Hall and Sickels, P.C.,  
15 12120 Sunset Hills Road, Suite 150, Reston, Virginia  
16 20190, before Carol A. Lowe, a Registered Professional  
17 Reporter and a Notary Public in and for the State of  
18 Virginia, beginning at 10:10 a.m., when were present on  
19 behalf of the respective parties:  
20  
21  
22

1 FOR THE PLAINTIFF:

2 STEVEN M. FREI, Esq., Hall and Sickels, P.C.,  
3 12120 Sunset Hills Road, Suite 150, Reston,  
4 Virginia 20190.

5 FOR THE DEFENDANT:

6 QUENTIN R. CORRIE, Esq., Anderson & Corrie,  
7 12600 Fair Lakes Circle, Suite 220, Fairfax,  
8 Virginia 22033.

9 FOR ALLSTATE INSURANCE COMPANY:

10 WILLIAM M. DUPRAY, Esq., Brandt, Jennings,  
11 Roberts, Davis & Snee, PLLC, 6565 Arlington  
12 Boulevard, Suite 200, Falls Church, Virginia  
13 22042.

1 mean --

2 MR. FREI: Well, they're the creators of the  
3 information. So if they make mistakes, I think it's  
4 their own problem.

5 But if we were sitting at a monitor as I  
6 offered last Friday and again yesterday, she could punch  
7 in a claim number, find out if the payment was AA 93  
8 which would then tell me that the payment on this form  
9 was for forensic work, however we want to describe that,  
10 and I'd have that information. And without that she  
11 can't tell me that information.

12 MR. DUPRAY: Right.

13 MR. FREI: So, you know, I know of only one of  
14 two things to do, either move over to some terminal  
15 where she can answer those questions or, I guess, we  
16 could try to get Judge Ney on the phone if you're  
17 unwilling to do that. I just don't know how else I'm  
18 going to get those answers.

19 MR. DUPRAY: Well, your -- first of all, she  
20 was subpoenaed to come here for a deposition. Whether  
21 you offered or not is irrelevant. The subpoena is to  
22 come here.

1           The subpoena is to, based on Judge Ney's  
2   ruling, explain this form which she has done to you.  
3   She's explained the form. He didn't say know everything  
4   about every claim number on the form.

5           MR. FREI: We can have that discussion with  
6   Judge Ney if we need to.

7           MR. DUPRAY: I understand. I understand. And,  
8   moreover, it would be our position that it would be  
9   highly burdensome for her to go through every claim to  
10   do that on the computer especially since some of them  
11   are not even recoverable as we sit here. You'd have to  
12   wait several days.

13          MR. FREI: Well, we could certainly go through  
14   the ones that were, I guess.

15          MR. DUPRAY: Well --

16          MR. FREI: But you're telling me basically  
17   you're not going to do that.

18          MR. DUPRAY: Absolutely not.

19          MR. FREI: Well, then let me see if I can get  
20   Judge Ney on the phone.

21          MR. DUPRAY: That would be fine.

22          MR. CORRIE: I'll tell you what. I'm going to

1 let you guys do whatever you're doing. I'm going to  
2 excuse myself, because I have a bunch of other things.

3 MR. DUPRAY: Fine.

4 MR. FREI: Fine.

5 (A short recess was taken.)

6 BY MR. FREI:

7 Q. I might have skipped a line, the payment type.

8 A. Okay.

9 Q. I was looking back through my notes. And I  
10 didn't see anything where I had you explain what payment  
11 type was.

12 A. All right. One second here.

13 Q. 9M is what they all say.

14 A. Okay. That is the IRS form on which the  
15 payment will be reported. 9M is Form 1099  
16 Miscellaneous.

17 Q. You already told me that you're not aware of  
18 any computerized form that could be generated that would  
19 just pull out the AA 93 information.

20 A. No.

21 MR. FREI: Okay. While we were off the record  
22 I attempted to place a call to Judge Ney to get a ruling

1 regarding, I guess, moving this deposition to a location  
2 where the information at least that's available by  
3 computer monitor or screen could be gathered to  
4 differentiate payments that are reflected on the  
5 subpoena forms that are for forensic work and by that  
6 meaning basically work that Dr. Ammerman did that's  
7 reflected in these forms that was done on behalf of  
8 defendants examining plaintiffs in a litigation whether  
9 it be reviewing records, meeting with lawyers,  
10 testifying at trial, conducting examinations or anything  
11 of that nature versus other payments which Dr. Ammerman  
12 has indicated may appear on this form that are for  
13 first-party benefits, in other words, payments that  
14 Allstate made to its own insureds or to the doctor on  
15 behalf of its insureds for med pay or PIP payments.

16 Judge Ney was, not surprisingly, unavailable.  
17 And I've left a message for him to call myself and  
18 Mr. Dupray who is here with the Allstate representative  
19 to discuss that subject.

20 And to that extent I would request that the  
21 deposition remain open until we've had a chance to talk  
22 to Judge Ney about that issue.

1 MR. DUPRAY: I would object to it going  
2 forward. We've been here an hour and 45 minutes  
3 approximately from a ten o'clock start time if, in fact,  
4 we started at that time.

5 Ms. Rydell has patiently answered all of the  
6 questions that were propounded to the best of her  
7 knowledge. She's answered every question about the  
8 columns and the information set forth on the form.

9 Anything beyond that is beyond the scope of the  
10 subpoena that was ruled on by the judge. It was a very  
11 simple purpose for this deposition which is set forth in  
12 the subpoena and the request.

13 So anything beyond anything at this office  
14 would be beyond the scope. And anything beyond the  
15 information already provided would be beyond the scope.

16 It would involve considerable cost, time and  
17 burden on Allstate representatives and certainly bears  
18 no relevance to this case which is set for trial  
19 tomorrow.

20 So I don't know if those objections need to be  
21 stated on the record, but we do object to renoticing or  
22 resetting this. That's it.



1 MR. FREI: So we're clear, I'm not renoticing  
2 or resetting. I'm specifically leaving it open pending  
3 a ruling from Judge Ney. Thank you.

4 (At 11:50 a.m. the taking of the deposition  
5 was recessed to reconvene sine die.)  
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Ladies and gentlemen, the cross examination of Dr. Ammerman will ask questions intended to elicit evidence regarding payments made to Dr. Ammerman by a liability insurance company which provides coverage to the defendant. You may only consider this as evidence of possible bias on the part of Dr. Ammerman. The fact of the existence of any liability insurance in this case is not to be considered by you in any way in determining whether the defendant was negligent, whether any negligence of the defendant proximately caused any injury to the plaintiff, or the amount of any judgment you might ultimately award.

Partial Transcript, Page 51-52

1 interpret it. I'm not debating with you.

2 Q. Okay.

3 A. It may be absolutely accurate, but I  
4 can't say about its veracity one way or the  
5 other, because we didn't produce it, and I don't  
6 know what's in it.

7 Q. In 1998, if I told you that Allstate  
8 Insurance Company had paid you \$106,520, the same  
9 answer, I'm assuming.

10 A. Without showing the cases, I would not  
11 know one way or the other, or whether they were  
12 for -- in what capacity I received those monies.

13 Q. Well, what do you mean in what  
14 capacity? Can we approach about this, Judge? I  
15 mean you were paid by Allstate Insurance Company  
16 in 1998 \$106,520, right?

17 A. If you say so. I'm saying that that  
18 could be for various things.

19 Q. Well then I'll make the same offer to  
20 you, would you like to verify that number? I  
21 will represent to you that that's what this  
22 document says. I know it didn't come from your  
23 office. It came from Allstate.

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1           A.    It may be. If that document breaks out  
2 patients I've treated, so be it, I don't know.  
3 I'll accept the number, because I don't know.

4           Q.    All right. But you have no reason to  
5 dispute what's been given to you by Allstate,  
6 correct?

7           A.    I have absolutely no reason to dispute  
8 that.

9           Q.    The final thing, Doctor, I guess I  
10 would ask you is that all of the X-rays that we  
11 talked about, that you testified about, one  
12 through four, were all X-rays or MRI scans that  
13 were done after this collision, right?

14          A.    Yes, sir.

15          Q.    Did you have a chance to review any  
16 MRIs or X-rays that were taken before this  
17 collision that showed anything with respect to  
18 Mr. Rohrbaugh's neck?

19          A.    I don't have any X-rays before.

20          Q.    Okay. No further questions.

21               MR. FREI: Thank you, Judge.

22               THE COURT: Redirect?

23               MR. BANCROFT: Yes, Your Honor.

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002459

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
COURT SERVICES  
00 SEP 12 PM 3:32  
JONNY FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

-----x

DORSEY W. ROHRBAUGH,  
Plaintiff,

RECEIVED  
NOV 01 2000  
RICHMOND, VIRGINIA

-vs-

RALPH D. LOMBARD,  
Defendant.

SUPREME COURT OF VIRGINIA  
At Law No. 181346

-----x

Wednesday, July 12, 2000  
Fairfax, Virginia

The above-entitled matter came on to be heard before THE HONORABLE DENNIS J. SMITH, JUDGE, in and for the Circuit Court of Fairfax County, in the courthouse, Fairfax, Virginia, commencing at approximately 9:30 o'clock a.m., when there were present on behalf of the respective parties:

**Appearances:**

**On Behalf of the Plaintiff:**

STEVEN M. FREI, ESQUIRE  
Hall & Sickels  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190  
(703) 925-0500

**On Behalf of the Defendant:**

QUENTIN R. CORRIE, ESQUIRE  
Anderson & Corrie  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033  
(703) 222-2220

**On Behalf of Virginia Farm Bureau:**

STEVEN W. BANCROFT, ESQUIRE  
Trichilo, Bancroft, McGavin,  
Horvath, & Judkins  
4117 Chain Bridge Road  
Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000

\* \* \* \* \*

**CASAMO & ASSOCIATES**

Alexandria (703) 313-4800

Culpeper (540) 825-7482

P R O C E E D I N G S

(Whereupon, the court reporter  
was duly sworn by Judge Smith.)

THE COURT: Mr. Corrie?

MR. CORRIE: Thank you, Your Honor.

Let me take the first approach with  
this. I am Rick Corrie, and I represent the named  
Defendant in this case.

I am really not going to repeat the  
things that are in the brief, but I would like to  
highlight some other areas that I think might be  
of some interest to the Court.

And as I mentioned the first and second  
day of trial, I think there were three basic areas  
of error in this case.

The first area of error occurred by  
Judge Ney's ruling, not in one sense, the Friday  
before trial, but in particular the Tuesday, June  
6th of 2000, the actual day before trial.

At that deposition, starting at ten  
o'clock, the Allstate designee, Pamela Rydell, was  
put under oath, asked a series of questions for

1     about an hour and a half or so; answered a great  
2     number of them, but the bottom line, as I recall,  
3     it seems to me, focused on the area of can you,  
4     from what you have with you today, differentiate  
5     what I will call "forensic payments," from the  
6     total breakout, meaning medical payments coverage,  
7     or otherwise.

8                     At about eleven fifty at that deposition  
9     -- and I think this is verified by the transcript  
10    which I obtained, on page fifty-eight -- there was  
11    an attempt at the end to get Judge Ney on the  
12    phone for a telephone ruling, and a call was  
13    placed.

14                    My recollection was it was about that  
15    time, because he could not be reached, that I left  
16    the deposition, thinking, I think, as any  
17    reasonable person would have, that there is really  
18    no point in just sitting in somebody's office the  
19    remainder of the day, waiting for the possibility  
20    of a return phone call.

21                    That's not meant as criticism to anyone,  
22    but it's meant as a statement of the events that

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1       were occurring at the time, and I think reasonable  
2       conduct.

3               I would also point out that we never  
4       received, or at least I never received, and it's  
5       not on any copy, that Mr. Frei, and probably  
6       properly so, had notified Mr. Dupree, who was  
7       Allstate's attorney for that, that there was the  
8       possibility that this deposition was going to  
9       involve a computer terminal, and querying  
10      information from it, and things of that nature,  
11      which rightfully, perhaps, he brought to Mr.  
12      Dupree's attention.

13              Certainly, it was never brought to my  
14      attention. I'm not on the carbon copy. Mr.  
15      Bancroft isn't either. I think it's Exhibit 2 in  
16      Mr. Frei's brief.

17              And more than anything, it's meant as  
18      background that perhaps had we known that, that  
19      maybe this deposition should have been convened at  
20      an Allstate office, or maybe more of us than  
21      realized should have known that a computer  
22      terminal was the possibility that was going to be

1 necessary at that deposition.

2 THE COURT: Well, let me ask you this;  
3 if the subpoena request says that they want  
4 someone from Allstate to appear, the corporate  
5 designee and/or the person most knowledgeable of  
6 the attached information as described below,  
7 Allstate Insurance Company's IRS payments list,  
8 and payment detail for TIN Number, doesn't that  
9 indicate that someone should be produced who could  
10 answer all questions regarding those documents?

11 MR. CORRIE: Definitely, but what I'm  
12 saying --

13 THE COURT: So if they didn't have  
14 anyone who could answer it without a computer  
15 terminal, why wouldn't it involve that?

16 MR. CORRIE: But what I'm saying in  
17 advance was, how was I supposed to guess that it  
18 would actually take a computer terminal?

19 I thought somebody could come there with  
20 these printouts who was knowledgeable --

21 THE COURT: But as I understand the  
22 situation though, Mr. Frei guessed it, and he said

1 if we need to go to a computer terminal let's do  
2 it, and Mr. Dupree said, we don't need to do that;  
3 they can answer these questions without it.

4 MR. CORRIE: Well, that may very well  
5 be, but maybe he guessed, based on prior  
6 conversations with Mr. Dupree, that none of us  
7 knew anything about.

8 I have no idea. All I'm saying is who  
9 had a crystal ball present that said you would  
10 need a computer terminal for sure?

11 For all I know, she could have brought a  
12 disk, and used his computer terminal, if that's  
13 what it required.

14 All I thought, as a reasonable person,  
15 we're going to a corporate designee's deposition;  
16 a person knowledgeable is supposed to be there;  
17 we're going to go through a regular deposition  
18 under oath; questions are asked, questions are  
19 answered, and he gets whatever it is he needs.

20 And all I'm pointing out is I don't  
21 think there was any reasonable basis to assume  
22 that, in fact, by necessity, a computer terminal

1        hooked into Allstate would be necessary.

2                THE COURT: All right now let's assume  
3        that's correct. Ultimately, the motion gets  
4        before Judge Ney.

5                Judge Ney indicates you have two  
6        options.

7                MR. CORRIE: Correct.

8                THE COURT: You go to the computer  
9        terminal to get the information, or live with the  
10       hundred and eight thousand -- hundred and four  
11       thousand dollars.

12               MR. CORRIE: Correct.

13               MR. FREI: That's not what happened.  
14       That is an issue that's been confused in this case  
15       from the beginning.

16               Judge Ney's ruling was, take Mr. Frei to  
17       a terminal, and let him see those numbers.

18               At that point, Dupree said, I don't want  
19       to do that, and Dupree offered to Judge Ney, how  
20       about if I agree that Dr. Ammerman, or that we  
21       stick -- Allstate is stuck with that hundred and  
22       eight thousand dollar number?

1                   And then Judge Ney said, is that what  
2                   you want to do, Mr. Dupree? So that was Judge --  
3                   Judge Ney ruled that after being offered that  
4                   option by Mr. Dupree.

5                   And that's a distinction that needs to  
6                   be made.

7                   THE COURT: Okay.

8                   MR. FREI: That wasn't his initial  
9                   determination.

10                  MR. CORRIE: And I was not privy to  
11                  this, and I don't dispute whatever it is he has  
12                  just represented. That may very well be exactly  
13                  what the scenario back and forth --

14                  THE COURT: Here is how I understand the  
15                  procedural aspects, at this point.

16                  They are at the deposition, and they  
17                  said they are going to get to speak to Judge Ney.  
18                  They are waiting, and admittedly, it may have been  
19                  a long time. I don't know how long it was.

20                  But you decide that you are not going to  
21                  wait anymore, and you leave.

22                  MR. CORRIE: Well --

1 THE COURT: Then why aren't you stuck  
2 with whatever happened at that deposition, and  
3 subsequent proceedings?

4 MR. CORRIE: Because I think any  
5 reasonable -- the court reporter left; the  
6 parties, within seconds or minutes after I left,  
7 left.

8 How was there to be some assurance --  
9 I've been in many cases where there is an attempt  
10 to get the Federal Court, to get the State Court  
11 Judges. Judges are busier, probably, than  
12 attorneys, or at least as busy. They are very  
13 busy.

14 I mean, who is to say that there was  
15 going to be a connection; that there was going to  
16 be a ruling?

17 I thought there would be a phone call  
18 later that day, if they were going to have a  
19 telephone conference, frankly.

20 I don't think the conduct I demonstrated  
21 was unusual.

22 In fact, the court reporter demonstrated

1 the same conduct, and both of the attorneys  
2 demonstrated the same conduct.

3 They all left.

4 So I mean, all I can say is that I think  
5 the conduct that I exhibited is a reasonable  
6 attorney's conduct, under the circumstances, and  
7 if they were going to get the Judge on the line  
8 later it should have been with the presence of a  
9 court reporter; counsel should have been notified,  
10 and the ruling made.

11 But we are past that, because that  
12 occurred.

13 And later, I would like to read, for the  
14 record, my -- obviously subject to Mr. Frei's  
15 correction, and we can all agree on whatever Judge  
16 Ney ruled.

17 I tried to do the best I can  
18 reconstructing all of this, based on what I've  
19 been told.

20 The error that I believe resulted from  
21 that is that, first of all, the figure became  
22 extremely misleading and prejudicial.

1           Now I tried to point out in my brief,  
2           and like every other attorney, I do the best I can  
3           -- I could be wrong, but to my knowledge, Rule 4  
4           of the Supreme Court Rules is virtually universal  
5           in dealing with sanctions imposed upon parties.

6           And yes, indeed, there is a big  
7           distinction in this case, I believe, on who is a  
8           party.

9           Allstate is not a party, and they are  
10          not to be considered a party, and I will address  
11          that in a second.

12          But I don't think Rule 4 allowed the  
13          sanction that Judge Ney ruled, under those  
14          circumstances, to be proper.

15          If the Court utilizes its inherent power  
16          to sanction a witness, i. e., the Allstate  
17          designee, without notice to the counsel, but  
18          certainly without notice to Dr. Ammerman, perhaps  
19          the remedy, or the sanction, under the  
20          circumstances --

21          THE COURT: How does Dr. Ammerman have  
22          any standing to be involved in this, in any way?



1 MR. CORRIE: Because he's the one who,  
2 based on that ruling, was compelled to answer a  
3 question that he knew was untruthful.

4 He told everyone it was untruthful, and  
5 that at best, he couldn't answer the question, and  
6 then was sort of put into a box at the trial, on  
7 cross-examination, of how do I answer this?

8 THE COURT: The question wasn't  
9 untruthful.

10 The question was did he receive this  
11 amount of money from the insurance company in the  
12 course of a year?

13 MR. CORRIE: For forensic work.

14 MR. FREI: No, that was not --

15 THE COURT: The question was not  
16 forensic work. As I recall, the question was not  
17 forensic work.

18 MR. FREI: It's in Mr. Bancroft's --

19 THE COURT: The question was, did you  
20 receive a hundred and four thousand dollars from  
21 this insurance company, or a hundred -- whatever  
22 the amount was -- from this insurance company; not

1 for forensic work, but just in general.

2 Because I understood Judge Ney's ruling  
3 to be that Allstate, and its attorneys, would not  
4 be permitted, or no attorneys would be allowed to  
5 quibble with a breakdown of the amount, because  
6 the breakdown was not provided.

7 MR. CORRIE: Well, then I stand  
8 corrected, if that's the way it was.

9 But be that as it may, it still is  
10 misleading, because the argument led --

11 THE COURT: Well, let me meet that head  
12 on, Mr. Corrie.

13 MR. CORRIE: Right.

14 THE COURT: It's misleading, in the  
15 sense that there is a way to break it down, but  
16 who has that information to break it down?

17 The insurance companies and the doctors.

18 We have doctors continually being  
19 deposed here, with regard to how much money they  
20 make doing this work.

21 And doctors who are in this court two,  
22 three, four times a month testifying, say we have

1 no idea. We don't know. There is no way we can  
2 figure that out.

3 The insurance companies don't provide  
4 the breakdown in a way that breaks it down in that  
5 way for anyone to understand.

6 So who has the information to break it  
7 down?

8 Does that mean it's the Plaintiff's --  
9 how does the Plaintiff possibly break it down?

10 So by the insurance companies and the  
11 doctors not providing the information, the  
12 Plaintiff is prevented from putting on a valuable  
13 piece of evidence, with regard to bias of the  
14 witness.

15 MR. CORRIE: Well, I take a slightly  
16 different tact.

17 I think the remedy, under the  
18 circumstances, the sanction against Allstate, the  
19 sanction that could be against Dr. Ammerman, the  
20 sanction that could be against any witness who  
21 refuses to provide the information, is perhaps  
22 maybe a five thousand dollar a day fine, until

1 they walk into a deposition, under oath, and  
2 provide that information.

3 Or a hundred thousand dollars a day.

4 THE COURT: In this case, what happened  
5 was, according to Mr. Frei -- and I haven't heard  
6 any contradiction of it -- is Mr. Dupree offered  
7 this sanction, and Judge Ney said, well, if that's  
8 what you want, then that's what you get.

9 So if they offered the sanction as a  
10 possible resolution of the issue --

11 MR. CORRIE: But it's a sanction imposed  
12 upon Allstate that bore substantial consequences  
13 upon the insured, as well as Dr. Ammerman.

14 And the net result was to mislead the  
15 jury.

16 How did it affect the insured?

17 Throughout the Plaintiff's brief he  
18 wants to keep saying that, for example,  
19 independent medical exams aren't independent  
20 medical exams.

21 They could be called defense  
22 examinations.

1                   And he says the reason that, by stating  
2                   independent medical exams, it misleads the jury  
3                   that Allstate is not behind all of this, and they  
4                   are not independent.

5                   Well, he could have asked. He could  
6                   have said to the Court, as I've seen --

7                   THE COURT: I'm not concerned about  
8                   that.

9                   MR. CORRIE: All right. The --

10                  THE COURT: And let me make it clear;  
11                  the fact that Dr. Ammerman is paid this much money  
12                  does not make his testimony incredible, nor -- I  
13                  mean, it's certainly something the jury can  
14                  consider in determining the credibility of it.

15                  But there are other doctors who testify  
16                  more than Dr. Ammerman in this court, who --

17                  MR. CORRIE: Correct.

18                  THE COURT: -- get up there and give  
19                  testimony, and their testimony is not necessarily  
20                  incredible because of the amount of work they do  
21                  in this area.

22                  That doesn't make it incredible.

1 But the question is, is it something  
2 that juries should be allowed to consider in  
3 weighing the credibility of the testimony?

4 MR. CORRIE: You have to also remember,  
5 at least one, if not both of our hands, were tied  
6 behind our back.

7 We couldn't then go back to Dr. Ammerman  
8 and say, well, this isn't all for forensic work.

9 If we actually broke it down, for all I  
10 know, it could have been thirty-one thousand,  
11 which is a total different picture you give to the  
12 jury.

13 THE COURT: It could have been; it could  
14 have been.

15 But when you ask the witness, and the  
16 witness says, I don't know, I can't break it down,  
17 and the insurance company says, I don't know, I  
18 can't break it down, the information is in their  
19 possession and control.

20 They can produce it, and avoid the  
21 problem, or they can live with not breaking it  
22 down.

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1 MR. CORRIE: I agree, Your Honor, and I  
2 guess the difference I have is the manner in which  
3 they should be forced to break it down.

4 I believe the sanction, as appropriate,  
5 is the contempt power of the Court, criminally, or  
6 financially to them, to force them to come in and  
7 produce the records; make a computation; tell what  
8 is truthful.

9 Not for sort of a figure to be arrived  
10 at by default, that is done by Allstate, that is  
11 not a party to this case.

12 As I said, the Plaintiff's brief keeps  
13 talking about, you know, Allstate should be held  
14 to this, because they paid the first fifty  
15 thousand of coverage, or provided it to the  
16 insured.

17 Well, that's not where the potential in  
18 this case could be, and in fact, in reality,  
19 turned out to be.

20 The insured has exposure beyond fifty  
21 thousand. He's got subrogation exposure. He's  
22 got exposure beyond if there is no insurance

1 coverage.

2 I don't believe a reasonable reading of  
3 Rule 4, and the cases, suggests that almost  
4 universally Allstate is interchangeable with the  
5 Defendant as a party.

6 In fact, in Rule 4, in the discovery  
7 portion, Rule 4:1(b)2 talks about, as we all know  
8 -- and I don't have it here to read -- you can  
9 find out insurance coverage, for example.

10 But that Rule clearly goes on to say  
11 that nothing regarding insurance is then allowed  
12 to be introduced into evidence.

13 And there is a reason for the Rule.

14 I realize that Your Honor stated, when  
15 you were considering this, on page fourteen, "I  
16 know that there are people around the state who  
17 are looking at how to deal with the issue, and  
18 want to come up with a comprehensive way of  
19 dealing with it, because it's a game we play."

20 "I've said it repeatedly. The jurors  
21 know about insurance; they know people have to  
22 have insurance. They know people don't come in



1 here with no liability insurance, and it's a game  
2 that we play."

3 "It's the same thing with medical  
4 insurance. They know there is medical insurance.  
5 The question we always get from the juries  
6 repeatedly is, how much of these were covered by  
7 the medical insurance?"

8 "They always want to know that; they  
9 always assume that it's there, so it's a game that  
10 we play that, to me, just interferes with the  
11 administration of justice, and maybe we need to  
12 find a way to sort it out."

13 I guess my problem is there are many  
14 things that a jury would like to know, or a jury  
15 assumes; medical insurance, liens, liability  
16 insurance, attorneys' fees, costs.

17 I tried a case in here last week, in a  
18 motor vehicle accident before Judge Klein, where a  
19 person lost their kidney.

20 One of the questions back from the jury  
21 was, may we consider the Plaintiff's -- and it was  
22 a minimum liability case; it was only on damages

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1 -- may we consider the amount of the attorneys'  
2 fees and costs in this case in making our award?

3 The costs were substantial, by bringing  
4 in all these experts.

5 I guess my point to all of this is --  
6 and they were properly instructed by Judge Klein,  
7 no, you may not consider that.

8 Now I don't know whether the jury,  
9 because of the low value of it, cranked that into  
10 their figure, or they didn't put that into the  
11 figure.

12 I don't know whether juries, when they  
13 make an award, necessarily include an assumption  
14 that a third, or some other percentage, is for  
15 attorneys' fees.

16 But I do suggest that maybe there are  
17 some games we should play, for their value.

18 Under those circumstances, the jury, I  
19 believe, was properly instructed when the question  
20 was raised.

21 And I think they probably made the right  
22 decision, whatever it was back there.

1 I think we sometimes assume that while  
2 juries know about certain issues, I'm not so sure  
3 we know the assumptions they make about issues.

4 When a person fills out the box to DMV  
5 it says, do you have insurance; what is the name  
6 of it; is it certain coverage?

7 But you can put a box in there that says  
8 I have no insurance. People are familiar with  
9 that, too. They make all kinds of assumptions.

10 I think people make assumptions that  
11 there might be insurance, and it might be a  
12 certain amount of coverage, and then they make  
13 decisions based upon all of that.

14 But I still don't believe that that is  
15 -- I still believe that that is an inviolate issue  
16 in Virginia that's not to be touched; not to be  
17 interjected --

18 THE COURT: Well, let me respond to that  
19 this way, Mr. Corrie, based on your reference to  
20 what I said.

21 I can't speak for the rest of the state;  
22 I can only speak for Fairfax juries. That's where

1 my experience is.

2 Fairfax juries are extremely  
3 intelligent. They are very bright. We are the  
4 most well-educated county in the country, by most  
5 measures.

6 We had seven jurors here in a case last  
7 week. I went back to talk to them after the case  
8 was over, and the case was non-suited, so it was a  
9 final order.

10 I went back and talked to them, and we  
11 got into the discussion of intelligence. I said,  
12 "Fairfax jurors are very intelligent."

13 And they said, we've already talked  
14 about that. They said, do you know, that of the  
15 seven people we have on this jury, no one here has  
16 less than a Master's Degree?

17 So we do not have people who do not know  
18 these things, and to ask them -- and this is the  
19 tension you get into.

20 The idea behind insurance was, don't  
21 inject it in the case, because even when  
22 instructed, it's difficult for the jury to say,

1 forget it.

2 MR. CORRIE: Right.

3 THE COURT: And here we have a situation  
4 where--- at least in Fairfax -- where jurors are  
5 coming in, and their knowledge base is so great,  
6 that they are not going to forget it, and we don't  
7 instruct them, at all.

8 In fact, I think Judge Klein has taken  
9 to telling them at the beginning of the case,  
10 occasionally, insurance has nothing to do with  
11 this case; forget it; just put it out of your  
12 mind; it's gone, as a prophylactic measure.

13 Because they are considering it.

14 MR. CORRIE: So that's a blanket  
15 instruction.

16 THE COURT: He's done it; he's done it.

17 And I can tell you that the problem we  
18 have is the tension between that, and the issue of  
19 the bias that witnesses might have.

20 And you talk about who are parties, or  
21 who are not, I mean, realistically, the Defendant  
22 is the party -- I mean, legally, the Defendant is

1 a party.

2 Realistically, the insurance company is  
3 also a party.

4 The contract to do the work is not  
5 between the Defendant and the doctor, it's between  
6 the insurance company and the doctor.

7 The doctor is called to testify at trial  
8 on the basis of the insurance company saying we  
9 are going to pay your bill.

10 So for the jury not to know that this  
11 doctor generates a substantial amount of income --  
12 I can tell you there is one doctor in this court  
13 who gave varying estimates on how much income he  
14 generated, and ultimately, at one trial, it was  
15 established that he earned, I think, two hundred  
16 and forty thousand dollars, from doing medical  
17 examinations and testifying in cases, in one year.

18 When you have that kind of money  
19 involved the potential for bias is great.

20 And the juries should know about it.

21 It doesn't mean the jury has to  
22 disregard it; it doesn't make the testimony

1     incredible.

2                     But for the jury to make a fair  
3     assessment of what this doctor is saying, and  
4     balance it against another doctor's testimony,  
5     they need to know what these doctors' personal  
6     interests are.

7                     And if the doctor is being called to  
8     testify, pursuant to the contract he has with an  
9     insurance company, which pays him a hundred  
10    thousand dollars, or whatever amount of money each  
11    year, the jury should know that to be able to  
12    assess the credibility.

13                    Just as the same issue is raised with  
14    regard to Plaintiffs' doctors.

15                    If someone makes a hundred thousand  
16    dollars testifying for Plaintiffs in the course of  
17    a year, I would allow that in, too.

18                    I think it's something that juries  
19    should know in order to assess the credibility.

20                    And it is a difficult balance to strike,  
21    but in striking it, I came down on this ruling on  
22    the side of allowing the jury to know about the

1 bias.

2 And particularly, under the  
3 circumstances of this case, where the question was  
4 asked of the people who had the information, break  
5 it down for me, and they couldn't break it down,  
6 or they wouldn't break it down.

7 So either way, it really created the  
8 problem.

9 If the insurance company just would have  
10 said, this is how much we paid for medical  
11 insurance, I'm sure we could have found a -- this  
12 is how much we paid for forensic work -- we could  
13 have handled it that way.

14 But they didn't, and neither did Dr.  
15 Ammerman.

16 And I don't know what kind of business  
17 records he keeps, but I was involved in a law  
18 practice for a long time, and we always had  
19 breakdowns of where our income came from.

20 I'm sure that -- I would assume that his  
21 practice does, too.

22 So in any event --



1 MR. CORRIE: I understand.

2 THE COURT: -- even if he doesn't, the  
3 insurance company has it.

4 MR. CORRIE: I understand Your Honor's  
5 interest in the issue, and you stated that during  
6 the trial, also, to show the bias of a witness.

7 And I guess, on that issue, I would  
8 refer to the case of Averett versus Shercliff, to  
9 Your Honor, which I'm sure you are familiar with.

10 It's 218 Virginia 202. I cited it; Mr.  
11 Bancroft cited it.

12 I think it's quite analogous, frankly,  
13 to this case.

14 A non-employee of an insurance company,  
15 who does work for multiple insurance companies,  
16 obviously receives multiple amounts of income from  
17 each of them.

18 And in that case the issue was,  
19 specifically, bias.

20 And the Court, to me, clearly said we  
21 haven't reached that point, at least in the  
22 Supreme Court of Virginia, to allow someone who is

1 an expert witness, who is a non-employee of an  
2 insurance company, but receives substantial income  
3 from four or five major insurance companies, we  
4 are not going to allow that to come in as being  
5 identified with insurance.

6 And I still believe that that's the  
7 prevailing law in Virginia.

8 A couple other things, one of which  
9 obviously I've already mentioned; I don't think  
10 there is this identity of interest between  
11 Allstate and the named insured, and that the sins  
12 of Allstate, regardless of their not doing  
13 something that they could have done, should be  
14 visited upon an expert witness, as well as a named  
15 party, who has a different interest.

16 I guess I at least follow very, very --

17 THE COURT: Well, there wasn't -- see,  
18 it's Allstate, but it's counsel.

19 MR. CORRIE: But the sins of Allstate,  
20 and Allstate's counsel, shouldn't be visited upon  
21 the named Defendant, or a witness in the case.

22 I think that, as I said before, I think

1     there are other sanctions.

2                   They could have been brought in and  
3     fined a huge amount per day until they get this  
4     computer terminal up and running in a way that it  
5     should have been immediately, and give us real  
6     information.

7                   That would have at least solved the  
8     first issue.

9                   The second issue, I still believe was  
10    reversible error, because even with a cautionary  
11    instruction, I think the only -- even if they had  
12    been given accurate numbers, I think the only  
13    thing it did was reemphasize insurance to the  
14    jury.

15                   Under the Shercliff case, I just don't  
16    think the Court, at least the Supreme Court of  
17    Virginia, has reached that point, that they  
18    believe bias is such an overwhelming factor that  
19    it outweighs almost anything, including insurance.

20                   I believe that the trend to mention  
21    insurance in every case, whether this is an issue  
22    or not, I don't think has even been recognized by

1 the Federal Rules, let alone the State of  
2 Virginia.

3 I still believe it's a subject that,  
4 while juries, admittedly, are extremely  
5 intelligent, but that doesn't necessarily mean the  
6 assumptions they make are true.

7 I mean, it isn't any different than  
8 people in states who started getting no-fault  
9 insurance.

10 People made all sorts of assumptions  
11 that this was a good way to go, or that juries in  
12 other issues were awarding attorneys' fees, or  
13 not.

14 I don't know that they really are.

15 I think we sometimes make assumptions  
16 that yeah, a lot of these issues are going around  
17 in their heads, and certainly, they are aware of  
18 certain things.

19 But they are aware of a lot of things.

20 THE COURT: I can tell you, anecdotally,  
21 that jurors always ask about insurance in  
22 questions.

1                   Not in every case, but in many cases  
2 they ask about insurance.

3                   Sometimes they ask about the limits of  
4 the insurance; sometimes they ask about what  
5 health insurance has been paid.

6                   Often, when we go back into the jury  
7 room the notes are there, and the notes indicate  
8 some mathematical formula that they have used to  
9 figure out how much of the medical bills were  
10 paid.

11                  There are many things we have to  
12 indicate, anecdotally, that the jurors are talking  
13 about insurance back in the jury room.

14                  And we also have, in addition to that,  
15 hard evidence, in the form of questions that they  
16 ask.

17                  They are not going to be asking  
18 questions about insurance unless they are talking  
19 about insurance back there.

20                  MR. CORRIE: But how far do we extend  
21 it?

22                  Do we now give them an instruction on

1 insurance in every case, and do we now instruct  
2 them on attorneys' fees and costs; all the things  
3 we know they are back there thinking about?

4 They have asked the questions  
5 repeatedly.

6 THE COURT: Well, I don't know what the  
7 answer is. I mean, my inclination would be that  
8 we need to look at the collateral source rule, as  
9 well.

10 We need to revise it, and give the jury  
11 the hard and fast instructions, and say look, this  
12 is -- you don't consider the payments made on  
13 behalf of the Plaintiff, because the Plaintiff  
14 paid for this insurance, and the Defendant should  
15 not get the benefit of it.

16 You also should not consider any  
17 insurance on the part of the Defendant, because  
18 it's irrelevant to your decision as to how much  
19 would be a fair compensation to the Plaintiff in  
20 the case.

21 And I'm not sure exactly what the  
22 instruction should be, but it has to be a

1 comprehensive solution, because it's not fair to  
2 do it one side or the other.

3 But we do need a comprehensive solution  
4 to it, because I do think it's creating problems,  
5 and jurors are considering things, or potentially  
6 considering things, that they shouldn't be  
7 considering.

8 And we are not addressing it head on; we  
9 are just letting it go on.

10 Again, as I've said repeatedly, this is  
11 probably not something which comes best from a  
12 trial court. The comprehensive solution is  
13 something that comes best, either from the  
14 legislature, or from the Supreme Court.

15 But it's something that needs to be  
16 comprehensively addressed.

17 Let me ask this, just getting back to  
18 one other point; Mr. Corrie, you are here on  
19 behalf of the Defendant, but which insurance  
20 company -- you are also Allstate, are you not?

21 MR. CORRIE: I don't represent Allstate,  
22 but they are the insurance company for my client.

1 THE COURT: Right.

2 MR. CORRIE: And to clarify --

3 THE COURT: I understand you represent

4 --

5 MR. CORRIE: The insured.

6 THE COURT: Right.

7 MR. CORRIE: And that's actually the

8 ethical aspect.

9 I mean, I don't walk close to the line,  
10 let alone cross it, because here's my point on the  
11 issue of experts; I'm not so sure -- I know what  
12 Your Honor is saying is generally accurate, that  
13 the employment aspect of the expert, or at least  
14 the payment, is usually made by Allstate.

15 But in any given case, if I think an  
16 expert is necessary, whether they give me approval  
17 or don't give me approval -- perhaps that's why I  
18 don't do sustained levels of work for them -- I do  
19 what is ethically right.

20 And that is, I'm going to get the  
21 expert, whether it's my client's cost --

22 THE COURT: And that's exactly the way

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1     you should approach it.

2                     And I think if this were a case where  
3     this expert were being paid by the Defendant, and  
4     not by the insurance company, it might have been a  
5     different circumstance.

6                     But there was no proffer to me, at the  
7     time, that this expert was being paid by the  
8     Defendant.

9                     MR. CORRIE: Oh, I'm not going to  
10    proffer that in this case, but I'm just saying, as  
11    a general proposition, I don't therefore think  
12    that every instance, for such a rule, that the  
13    insurance company is responsible for the payment  
14    of that expert, should therefore, by implication,  
15    somehow get back to the jury, too, because that's  
16    what they are going to think.

17                    THE COURT: No, but I think it's  
18    disingenuous to say that Allstate is not involved  
19    in this case, when they contract with someone to  
20    come in and give testimony in the case.

21                    MR. CORRIE: No, I agree.

22                    THE COURT: So they are involved in the

1 case, and it was exactly that -- it wasn't exactly  
2 that, but it was partially that which drove my  
3 decision.

4 They are the insurance company involved  
5 in this case, and they were the ones who paid this  
6 guy a certain amount of money last year; by Judge  
7 Ney's ruling, a hundred and four thousand dollars.

8 MR. CORRIE: Right. I guess two last  
9 points; one, the implication, at least in Mr.  
10 Frei's brief, is that somehow Allstate controls  
11 this case, and therefore there is an identity of  
12 interest, and any sanction, or any adverse ruling  
13 that accrues, by virtue of their role, should  
14 accrue to my client, and be a detriment to him.

15 I submit that's not the case.

16 Lastly, I'd like to, very briefly, cite  
17 an order that I hand wrote, because I did not have  
18 an opportunity or the time to have it typed, which  
19 I think might reflect Judge Ney's ruling.

20 It's obviously subject to counsel  
21 negotiating, and getting it properly stated.

22 At least I want it on the record.

1                   "Order; this cause having come on to be  
2       heard at approximately blank p.m., on June 6,  
3       2000, by the Plaintiff, by counsel, who placed a  
4       telephone call to Judge Ney's chambers at  
5       approximately eleven fifty a.m., at a deposition  
6       of Allstate's designee in this matter, Pamela  
7       Rydell."

8                   "And the Court, having called  
9       Plaintiff's counsel at the approximate time  
10      mentioned herein above, and Plaintiff's counsel  
11      having called Allstate's attorney, in a telephone  
12      conference therein resulted in the following  
13      ruling; that Allstate could elect either of the  
14      following options."

15                  "One; allow Plaintiff's counsel to sit  
16      at an Allstate terminal with the Allstate  
17      designee, and continue the deposition to query  
18      various claims and matters provided in documents  
19      earlier provided by Allstate, in response to a  
20      subpoena, for payments made to Dr. Ammerman."

21                  "Or two; Allstate must be bound by its  
22      total payments made to Dr. Ammerman, as

1     representing monies received for forensic  
2     purposes, rather than broken down into payments  
3     for medical care, forensic purposes, or  
4     otherwise."

5             "And that Dr. Ammerman may not deny or  
6     dispute the totality of the payments as being for  
7     forensic purposes, and may not be questioned as to  
8     whether some of those monies received was for  
9     treatment rendered."

10            "Counsel for Allstate elected option  
11     two, therefore the Court hereby orders that at  
12     trial, scheduled to commence on June 7, 2000,  
13     option two shall be the procedure followed."

14            "Entered this blank day 2000."

15            I realize I might be wrong about the  
16     offering of the options, but it ended up with two  
17     options; an option apparently Judge Ney offered  
18     which was one, and then Allstate offered two, and  
19     then accepted it.

20            Thank you.

21            THE COURT: Thank you.

22            Mr. Bancroft?

1 MR. BANCROFT: Yes, Your Honor.

2 Your Honor, I think that, to begin my  
3 comments -- and again, I will rely for the most  
4 part on what has already been included in the  
5 brief that has been submitted -- but I think what  
6 we need to do is we need to look first, and accept  
7 the fact, that the general rule in the  
8 Commonwealth of Virginia, through established case  
9 law, is insurance is not mentioned in trial.

10 I mean, that's the general rule.

11 Now there are certainly some exceptions.  
12 I would suggest that those are rare exceptions,  
13 but there are some exceptions to that general  
14 rule.

15 But when we look and start with the  
16 general rule, we have to then look as to what  
17 happened here in this particular case.

18 No question insurance got interjected  
19 into this case.

20 No question that the interjection of  
21 insurance was intentional.

22 THE COURT: No question to either one.

1 MR. BANCROFT: And we discussed all of  
2 that at length, on the record.

3 But then we went the next step.

4 Not only did we interject insurance  
5 intentionally, we then went the next step, and  
6 that is that intentional interjection of insurance  
7 was then applied to a non-party, Dr. Ammerman, and  
8 most importantly, a named Defendant in the case,  
9 Mr. Lombard.

10 Because it was allowed to be asked, of  
11 Dr. Ammerman, that not only was he paid a certain  
12 sum of money by Allstate Insurance Company, but  
13 Mr. Frei was then also permitted to go the next  
14 step, and that is, to identify that insurance  
15 company, Allstate, as the Defendant's insurance  
16 company.

17 Now everyone noted exception; everyone  
18 objected to all of that, but that, Your Honor,  
19 that two-step process of interjecting insurance in  
20 this case, I think, unquestionably, is error.

21 First off, I think it's error to bring  
22 insurance into the case.

1 I think we have to look at what the  
2 Supreme Court has done in this area, over the  
3 course of time.

4 And we mentioned this at the trial, and  
5 Your Honor has mentioned it just recently, and  
6 that is; was this the right forum?

7 Was this the right place to try to  
8 change what is well-established precedent, under  
9 Virginia law?

10 My position was it is not.

11 Your Honor decided, as you indicated,  
12 with words to the effect that we were going to  
13 charter new waters, or charter something along  
14 that line.

15 I can't remember exactly what you said.

16 THE COURT: I think I may have said  
17 something like, we are venturing into unchartered  
18 waters, or something like that.

19 MR. BANCROFT: Unchartered waters, okay;  
20 it was something like that.

21 But in any event, I submit, Your Honor,  
22 that there were three interested entities in this

1 particular case.

2           You've got Mr. Lombard, the named  
3 Defendant; you have the Underinsured Motorist  
4 Carrier, my client, Virginia Farm Bureau, and you  
5 have the Plaintiff, Mr. Rohrbaugh.

6           Those are the three legally interested  
7 parties in this particular lawsuit.

8           While Allstate might be off on the  
9 horizon, and they may have a financial interest,  
10 or stake in this case, the three legal, identified  
11 interests in this case, were Mr. Rohrbaugh, my  
12 client, as the UIM carrier, and Mr. Lombard.

13           What happened in this particular case is  
14 a non-party, a non-legal interested party, did  
15 something that Judge Ney found to be  
16 unconscionable, to the extent that he wanted to  
17 sanction that entity, and that's fine.

18           And I'm not going to complain about  
19 that.

20           But what the effect of that sanction  
21 was, is that it impacted a witness in this  
22 particular case; it impacted the named Defendant,



1 Mr. Lombard, and it impacted my client, the UIM  
2 carrier, the Underinsured Motorist Carrier, Farm  
3 Bureau.

4 And we didn't do anything wrong.

5 I didn't do anything wrong.

6 Mr. Corrie didn't do anything wrong.

7 Mr. Lombard didn't do anything wrong.

8 Dr. Ammerman didn't do anything wrong.

9 It was the order that Judge Ney had  
10 against Allstate, that Allstate's rep, and  
11 Allstate's lawyer, Mr. Dupree, didn't satisfy.

12 But yet the cause and effect of all of  
13 that was the prejudicial impact of insurance being  
14 interjected into this case that impacted the three  
15 people, the three entities in this case that had a  
16 real, true, legal interest, by statute.

17 It was my client, Mr. Lombard, and Mr.  
18 Rohrbaugh.

19 And I submit to Your Honor that --

20 THE COURT: We went through this a  
21 little bit at trial.

22 Remember, one of the things we talked

1 about, I think briefly, was that you did not  
2 choose to take a separate position in this case.

3 So under statute you had the right to do  
4 that, and you didn't do that, so your interest was  
5 unified with the Defendant's interest.

6 MR. BANCROFT: And I disagreed with that  
7 position when the Court brought it up, and I  
8 disagree with it now.

9 And I think Your Honor, the case that we  
10 need to take a look at -- in 1972, when all of  
11 this underinsured motorist stuff started coming to  
12 be, there was a lot of confusion in trials.

13 I, myself, you know, when I first  
14 started practicing, it was always an issue. How  
15 do we do it?

16 What do we do?

17 Do we identify ourselves?

18 How do we identify ourselves?

19 Well, the Supreme Court has given us  
20 guidance in this area, and the case that we need  
21 to look at is the case of Travelers versus  
22 Lobello.

1           And in that case there was the following  
2 scenario; Travelers was the Underinsured Motorist  
3 Carrier in the case.

4           Their lawyer got up, and they identified  
5 themselves, I'm a lawyer for Travelers Insurance  
6 Company. I'm the Underinsured Motorist Carrier.  
7 My insured is the Plaintiff, Mr. Rohrbaugh, in  
8 this particular case.

9           And the Supreme Court said, whoa, whoa,  
10 whoa, whoa. You can't be doing all that kind of  
11 stuff.

12           And what the Supreme Court said in that  
13 case -- and I think it's very important, because I  
14 know the Court has experienced this in the years  
15 that its been on the bench -- and that is, people  
16 like myself come in and say that we are assisting  
17 the defense.

18           And the reason why we do it that way is  
19 because what the Supreme Court said, in the  
20 Travelers/Lobello case -- and by the way, the  
21 citation on that, Judge, is 212 VA 534, 1972.

22           And what the Supreme Court said,

1     verbatim, and I quote, "The attorney for Travelers  
2     should have been allowed to tell the jury, without  
3     identifying himself as insurance counsel, only  
4     that he was present in court to assist Sheldon" --  
5     he was the named Defendant -- "in his defense."

6             "This would have sufficiently explained  
7     the attorney's presence, and would have prejudiced  
8     neither Cox, or any of the other litigants."

9             The Supreme Court has told us, that work  
10    and live in the defense world, that when we come  
11    into court, like I did in the Rohrbaugh/Lombard  
12    case -- and I filed my Answer exclusively on  
13    behalf of Virginia Farm Bureau, and not as counsel  
14    or co-counsel for Lombard -- I have every right,  
15    every right to walk into court and tell the ladies  
16    and gentlemen of the jury, and tell Your Honor,  
17    that I am here to assist in the defense, period;  
18    that I am not obligated to identify myself as the  
19    Underinsured Motorist Carrier, Virginia Farm  
20    Bureau Insurance Company, and I have a contract  
21    with Mr. Rohrbaugh.

22             In fact, the Supreme Court is suggesting

1       that's not the way to do it.

2               The way to do it is exactly as Travelers  
3       versus Lobello suggests, and that is for me to do  
4       exactly what I did, and exactly what I've been  
5       doing for twenty-one years.

6               And I think I have every right to do  
7       that.

8               And I have every right to do that,  
9       Judge, because I have a separate and distinct  
10      statutory right as the Underinsured Motorist  
11      Carrier in this case.

12              And what happened in this case, when the  
13      insurance and everything got interjected into this  
14      case, my rights, my independent, separate and  
15      distinct rights for Mr. Lombard, became affected  
16      and impacted, as did Mr. Lombard, himself.

17              Because Mr. Lombard was now identified  
18      to this jury as having insurance with Allstate,  
19      the same insurance company that has paid Dr.  
20      Ammerman these certain fees over the course of two  
21      years, and my hands are tied.

22              I couldn't get up and say, well,

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1 Dr. Ammerman, wait a minute. I'm Virginia Farm  
2 Bureau. I'm the Underinsured Motorist Carrier in  
3 this case.

4 What evidence is there that I have paid  
5 you a penny in this case?

6 I wasn't allowed to do that.

7 THE COURT: Did you call him as a  
8 witness?

9 MR. BANCROFT: I called him as a  
10 witness.

11 I called him as an expert, because I  
12 have every right -- I have to list the potential  
13 experts I'm going to call in this case.

14 But how can I be impacted, Judge, with  
15 the fact that Allstate did something wrong a day  
16 or two days before, and now I'm living with that  
17 at trial?

18 This whole thing about this deposition,  
19 let's talk about this just for a minute.

20 When this motion was filed by Mr. Frei  
21 someone from my office attended that motion, the  
22 Friday before this all happened, which was, I

1 think, June 2.

2 And at that particular motion we  
3 objected to the deposition of the Allstate rep.  
4 We noted our exception to it.

5 And Judge Ney said, you don't really  
6 have any standing. You don't have any right to  
7 object.

8 Well, we noted our objection anyway,  
9 Judge.

10 The deposition went forward.

11 Did I attend the deposition?

12 No.

13 Why should I attend that deposition,  
14 when at that point in time, the only thing that  
15 was ordered was a claim rep from Allstate was  
16 going to explain this data sheet, to explain this  
17 hundred and four, hundred and five, or a hundred  
18 and six thousand dollars?

19 THE COURT: Well, a witness who you  
20 intended to call at trial.

21 MR. BANCROFT: Well, I know, but Judge

22 --

1 THE COURT: So I mean, you were on  
2 notice that this was going to be used against your  
3 witness, at least there was going to be an attempt  
4 to use it against your witness.

5 Why shouldn't you attend it? Because  
6 this is something that's going to attack your  
7 witness, potentially.

8 That would seem to me to be essential to  
9 attend --

10 MR. BANCROFT: But I can't do anything  
11 about it. I can't do anything about it. The  
12 information that Allstate was ordered to produce  
13 had -- I had no way to rebut it.

14 I had no way to change it.

15 It was either going to be X, X, and X,  
16 or whatever.

17 But now it gets even more interesting,  
18 because there was objection made to that  
19 deposition even happening.

20 But now it gets more interesting,  
21 because once no one from my office attends that  
22 deposition, then a new issue surfaces at that



1 deposition.

2 And the new issue that surfaces at that  
3 deposition is now we are going to sanction  
4 Allstate.

5 Fine, Judge Ney, you can sanction  
6 Allstate, but why is my client being sanctioned,  
7 and why is Mr. Lombard being sanctioned in this  
8 particular case?

9 And I go back to what I said earlier;  
10 what did we do wrong?

11 What did I do wrong?

12 If I attended that particular deposition  
13 what am I going to be able to do, as it relates to  
14 Mr. Dupree, and Allstate?

15 I can do nothing, because Judge Ney has  
16 already told me I don't even have any standing in  
17 this case.

18 He said that in open Court.

19 THE COURT: Well, I can't account for --

20 MR. BANCROFT: Well, I know, but see  
21 this is where the problem is though, Judge.

22 And Your Honor knows very well, as a

1 practicing lawyer for many years, the Court speaks  
2 through its written orders.

3 We didn't have a written order in this  
4 particular case.

5 I was never given the opportunity to  
6 participate in --

7 THE COURT: Well, let me suggest this;  
8 before I sign a final order in this, I want an  
9 order from Judge Ney incorporating his rulings.

10 MR. BANCROFT: Absolutely; I agree. In  
11 fact, I think that's suggested in some of the  
12 briefs, that we need an order.

13 THE COURT: We do need it.

14 MR. FREI: Just so the Court is clear  
15 about it, Judge, and we can get Mr. Dupree if we  
16 need to, about this, when Judge Ney made his  
17 ruling, I said to Judge Ney then, Judge, would you  
18 write that down so I can come and get it, because  
19 I know I'm going to need it tomorrow morning for  
20 trial.

21 Judge Ney's specific words to me and Mr.  
22 Dupree were, "If there is any problem with the

1 ruling anybody in this courthouse knows where my  
2 chambers are. They can call me about it in the  
3 morning, and I would be happy to tell them what  
4 happened."

5 THE COURT: I understand.

6 MR. FREI: We don't have any trouble  
7 getting the order, but --

8 THE COURT: I understand.

9 MR. FREI: -- just so the Court  
10 understands, I did request a written order.

11 THE COURT: And I think it is necessary  
12 in this case, since that proceeding was not on the  
13 record, in the sense that there was a court  
14 reporter there.

15 MR. FREI: I don't have any objection.

16 THE COURT: So we do need a written  
17 ruling from Judge Ney.

18 MR. BANCROFT: But now we get to the  
19 point where the actual ruling is made; where the  
20 sanction is imposed against Allstate.

21 But in reality, what really happens is  
22 that Dr. Ammerman gets sanctioned, which in turn

1 sanctions Virginia Farm Bureau, which in turn  
2 sanctions the named Defendant, Mr. Lombard, after  
3 we have already been told we don't really have a  
4 dog in that particular fight.

5 We can certainly participate, but we  
6 don't have any real standing.

7 So I'm trying to figure out what it is  
8 that suddenly and mysteriously occurred with  
9 Allstate not doing what it was supposed to do, and  
10 suddenly, that gives Your Honor the ability and  
11 the right to bring in insurance into this  
12 particular case.

13 And then, in return, my hands are tied  
14 in that I can't go back to Dr. Ammerman and have  
15 him express and explain what it is that's involved  
16 in this particular case, or then, turn around and  
17 attempt to identify me as the Underinsured  
18 Motorist Carrier, and I represent -- in reality, I  
19 have a client here, and that's Mr. Rohrbaugh; I  
20 have a contract with him, when the Supreme Court  
21 has said I can't do those kinds of things.

22 So I think, Your Honor, what we've done

1 here is that the three really true interested  
2 parties became affected and impacted by the acts  
3 and omissions of Allstate, who really truly is not  
4 the legal party in this case.

5 But the end result was that our rights  
6 got affected, or impacted, or prejudiced, because  
7 of the insurance that came into this particular  
8 case.

9 And we go back to the general rule, I  
10 mean, we might think that the rule should be  
11 changed, and maybe it should, but I'm trying to  
12 apply the rules, and trying to apply the  
13 principles that the Supreme Court has said I've  
14 got to live with.

15 And there was no indication, no thought,  
16 no suggestion, whatsoever, in this particular  
17 case, the day we walked into court and started  
18 this trial, that insurance was going to be  
19 interjected into this particular case, as a result  
20 of Judge Ney's ruling.

21 I mean --

22 THE COURT: I don't understand that, Mr.

1 Bancroft.

2 MR. BANCROFT: How did we know?

3 How did I know?

4 How could I have known?

5 How did anybody in this case know?

6 How did Your Honor know that insurance,

7 as a result of Judge Ney's ruling the previous

8 Friday, that he was ordering a deposition --

9 THE COURT: Well, you wouldn't know from  
10 that, but you would know from Judge Ney's ruling  
11 at the time of the deposition.

12 MR. BANCROFT: Well --

13 THE COURT: His ruling on the  
14 deposition, that you have two choices, whether it  
15 was by consent, or not, but the determination that  
16 there were two options.

17 MR. BANCROFT: Right.

18 THE COURT: One was to go back and  
19 complete the deposition at a computer terminal,  
20 where the information could be provided.

21 And the second was to live with a fact  
22 in the case that Dr. Ammerman received a hundred

1 and four thousand dollars from the insurance  
2 company.

3 I mean, all of that, coupled with the  
4 fact they even wanted to take the deposition,  
5 leads, in my mind anyway, would be leading towards  
6 injection of the insurance into the case.

7 MR. BANCROFT: Well, but again --

8 THE COURT: I mean, remember; I asked  
9 counsel if we could reach a stipulation as to how  
10 -- as to a way to present this to avoid putting  
11 insurance in the case, and no stipulation could be  
12 reached.

13 And then I wound up being put in the  
14 position of having to make a decision one way or  
15 the other.

16 MR. BANCROFT: What I'm trying to figure  
17 out is how -- I can't do anything to affect  
18 Allstate, or Mr. Dupree.

19 And yet Mr. Dupree can somehow rise to  
20 the level, and the authority, of impacting me in  
21 this particular case, when I've been told by a  
22 Circuit Court Judge I've got no standing affecting

1 Allstate.

2 THE COURT: I don't know anything about  
3 that, Mr. Bancroft.

4 MR. BANCROFT: Well, I know, but I'm  
5 just trying to --

6 THE COURT: All I know is I made my  
7 decision based upon the ruling that Judge Ney had  
8 made.

9 Now if that ruling is improper, then  
10 it's improper, but at the time it was argued to  
11 me, at the time of trial, none of this was  
12 presented regarding this.

13 I went on the assumption that this is a  
14 correct and proper ruling from Judge Ney, and how  
15 do we effectuate it?

16 And based upon that, I made my rulings.

17 MR. BANCROFT: Just to continue, Judge  
18 --

19 THE COURT: So basically, what I'm  
20 saying, Mr. Bancroft; I'm not going to go behind  
21 Judge Ney's ruling.

22 If you want to take it up with him, and



1 he wants to tell me he's wrong in that, then you  
2 know, maybe I will reconsider on the basis of  
3 that.

4 But I'm not going to decide right now  
5 that Judge Ney was wrong in what he did. You can  
6 go argue that to Judge Ney.

7 MR. BANCROFT: Well, I understand, but  
8 we were -- it's like a Catch 22; I can't --

9 THE COURT: You can argue to me what I  
10 did, so let's go on the assumption that Judge  
11 Ney's ruling is proper and correct.

12 MR. BANCROFT: Okay.

13 THE COURT: How do you effectuate it,  
14 and why was I wrong in effectuating it in the way  
15 I did?

16 MR. BANCROFT: Because the ruling was  
17 against Allstate --

18 THE COURT: The ruling --

19 MR. BANCROFT: -- the Allstate lawyer.  
20 The ruling was not against --

21 THE COURT: The ruling was a procedural  
22 ruling, with regard to the conduct of the case.

1 All parties, presumably, were properly  
2 Noticed and before the Court at the time the  
3 ruling was made.

4 MR. BANCROFT: Well, how can -- if I had  
5 an inkling, whatsoever, that Judge Ney was going  
6 to make a ruling, and that the Allstate lawyer was  
7 going to be making a concession, or a stipulation,  
8 or agreement, that was going to materially impact  
9 this particular case that was going to trial the  
10 next day, I can guarantee you, everybody in my  
11 office would have been at that deposition.

12 THE COURT: I understand that, Mr.  
13 Bancroft.

14 MR. BANCROFT: And --

15 THE COURT: But let me, in fairness, let  
16 me say, and I don't mean this to be critical of  
17 you, at all, because I don't deny that this was  
18 something unusual that happened; very unusual, and  
19 very unusual in the stipulation that was entered  
20 into, or the consent that was entered into to the  
21 sanction.

22 But if you are Noticed for a deposition,

1 you take the risk of everything that might happen  
2 at that deposition, if you don't appear.

3 And if something might happen which  
4 winds up with an adverse procedural ruling, then  
5 you decided not to appear.

6 I mean, does that mean that the Court  
7 then has to say, well, we know you weren't there,  
8 but you know, we're going to reconsider everything  
9 now because now you're here?

10 MR. BANCROFT: Judge, if we are making a  
11 new ruling, I mean, we aren't -- you know, we deal  
12 with the issue of foreseeability constantly.

13 Okay?

14 I ask the Court; a deposition is going  
15 to take place of an Allstate rep, and this  
16 Allstate rep -- I've got to assume -- is going to  
17 come up with these breakdowns that everyone is so  
18 interested in knowing.

19 And I've been told by Judge Ney I don't  
20 really have a big interest here; I can't even  
21 object to all of this stuff.

22 Fine.

1                   Now how am I supposed to know that  
2 something is going to go astray in that particular  
3 deposition, and now there is going to be a new  
4 request made to Judge Ney; a new motion; a new  
5 issue?

6                   Because now, we are being asked to  
7 affect the procedural aspects of this case going  
8 to trial the next day.

9                   That's not what the motion was.

10                  That's not what the issue was on Friday.

11                  That's not what the Notice of Deposition  
12 suggested.

13                  THE COURT: If your argument is a lack  
14 of Notice of the appearance before Judge Ney --

15                  MR. BANCROFT: Absolutely.

16                  THE COURT: -- then you need to take  
17 that up with Judge Ney; that's what I'm saying.

18                  MR. BANCROFT: Well, but I can't take it  
19 up with Judge Ney, because we don't have a written  
20 order to take up with Judge Ney.

21                  THE COURT: Well, take it up at the time  
22 that he does the written order.

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1                   Set it for his calendar; let his hear  
2                   it, and you can argue that at that time, too.

3                   MR. BANCROFT: Absolutely.

4                   THE COURT: If he wants to vacate his  
5                   ruling, and say it was an improper ruling, then  
6                   I'm in a totally different procedural footing than  
7                   I am now.

8                   MR. BANCROFT: Yes, Your Honor.

9                   THE COURT: But until he says that, I'm  
10                  not going to look behind it.

11                  MR. BANCROFT: Okay, but I --

12                  THE COURT: I wasn't there. I don't  
13                  know the circumstances under which he had the  
14                  hearing, and I'm not going to try -- and without a  
15                  record, I'm not going to try and look behind it.

16                  MR. BANCROFT: But the first point I'm  
17                  making in all of this is that I think that order  
18                  is an error by Judge Ney, and that it materially  
19                  impacts what happened here.

20                  But again, Your Honor, I think what we  
21                  need to do is we need to keep in mind the general  
22                  rule; the rare exceptions to that general rule,

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1 and who really were the interested parties in this  
2 particular case.

3 THE COURT: But you know, the general  
4 rule -- the case law says, it is a general rule,  
5 but it also says it's not hard and fast.

6 MR. BANCROFT: Right, and I'm not saying  
7 --

8 THE COURT: And the bottom line is, do  
9 substantial justice in the case.

10 And what I'm faced with at the time of  
11 trial is the tension between the issue of bias,  
12 which the Supreme Court has said is never  
13 collateral, and you have to allow wide latitude to  
14 attack on it.

15 And on the other hand, the issue of  
16 injection of insurance.

17 And it was my determination, under the  
18 circumstances of this case, that substantial  
19 justice could not be done without allowing the  
20 insurance issue to come in in the form of how much  
21 money Dr. Ammerman received from the insurance  
22 company.

1                   MR. BANCROFT: And my position is,  
2 Judge, is that by Your Honor making that decision,  
3 certain rights in this particular case,  
4 unfortunately, I think became overlooked, and not  
5 protected, to further the ends of justice.

6                   And that is, my client, and that is Mr.  
7 Lombard, as the named Defendant.

8                   And those --

9                   THE COURT: Well, Mr. Lombard was  
10 represented.

11                  MR. BANCROFT: That's correct.

12                  THE COURT: And Mr. Corrie again, made  
13 what I don't think is an unreasonable  
14 determination, that he was no longer -- it would  
15 be no longer fruitful to stay there, and left the  
16 deposition.

17                  So we get back to the same issue, and  
18 that's, again, not one I'm going to look behind.

19                  MR. BANCROFT: Right, and I'm not really  
20 talking about the deposition any more, Judge.

21                  What I'm talking about is what happened  
22 at trial, and the real litigants, the real

1 parties, the real legal entities that were here,  
2 and that had a real stake in this action, that  
3 were represented by counsel, that did try the case  
4 in front of that jury of seven, Your Honor.

5 Those people got affected dramatically  
6 by Your Honor's decision to allow insurance to  
7 come into this particular case.

8 THE COURT: Well, that is if you assume  
9 the jury did not do what I instructed them to do.

10 MR. BANCROFT: Well, that's true, but I  
11 think that there is law out there, Judge, that  
12 when we are talking about a sensitive issue, and I  
13 understand the Supreme Court's position on  
14 allowing cross-examination, and bringing out  
15 prejudicial bias information, and I don't disagree  
16 with it.

17 And I follow it routinely in my cases.

18 But I am also well-aware of the  
19 balancing test that must be applied to whenever we  
20 are talking about interjecting certain evidence  
21 into a case.

22 Because even though evidence might be

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1 relevant, and while it might be material, and it  
2 might speak to bias, or it might speak to  
3 prejudice, we have to look to the prejudicial  
4 impact, and the effect that that evidence might  
5 have on the minds of this particular jury.

6 And I think that's where the Supreme  
7 Court has positioned itself over the course of  
8 many years, in saying that we really need to keep  
9 insurance out of cases, and that we really don't  
10 want to be opening up this Pandora's box.

11 For those reasons, Judge, and for the  
12 cases that the Supreme Court has firmly held that  
13 contention, and that belief, that I think we  
14 violated.

15 And for those reasons, Judge, I would  
16 respectfully request, when we put in perspective  
17 the real interested parties here, and the fact  
18 that I was separate and distinct from Mr. Lombard,  
19 basically by dictum of the Supreme Court, in the  
20 Travelers case, that my rights were impacted  
21 unfairly, and that a fair and just result,  
22 unfortunately, could not be had by this jury that

1 was so poisoned and tainted by the mention of  
2 insurance, over the course of time, throughout  
3 this case.

4 So for those reasons, Judge, and for the  
5 reasons more specifically set forth in the brief,  
6 and the cases that I cited to Your Honor, I would  
7 respectfully request, on behalf of Virginia Farm  
8 Bureau, as the Underinsured Motorist Carrier, that  
9 the jury verdict in this particular case be  
10 vacated, and that this case be declared a  
11 mistrial, and that a new trial be granted on all  
12 issues.

13 Thank you.

14 THE COURT: Thank you, Mr. Bancroft.

15 Mr. Frei?

16 MR. FREI: Thank you, Judge.

17 THE COURT: Why doesn't Averett control  
18 this case?

19 MR. FREI: Averett doesn't control the  
20 case, Judge, because what the Supreme Court of  
21 Virginia didn't say in that case, is that had the  
22 Judge allowed it, it would have been an abuse of

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1 his discretion.

2 That's clearly not said.

3 In other words, the cross-error on  
4 appeal by the Plaintiff in that case, but you  
5 should have been -- you should have allowed me to  
6 inquire into this auto repair dealership -- I  
7 can't remember the name, but the auto repair  
8 dealership company's relationship with the  
9 insurance company.

10 And the Supreme Court in that case said  
11 no, the Judge's ruling keeping it out wasn't  
12 improper, because it might -- it would have  
13 injected the insurance -- the insurance issue into  
14 the case.

15 THE COURT: They reversed him on that.

16 MR. FREI: Pardon me?

17 THE COURT: That was reversed on that  
18 issue, wasn't it?

19 MR. FREI: No, it wasn't. It was a  
20 cross-error assigned by the Plaintiff on the  
21 appeal.

22 THE COURT: Well, hold on.

1 MR. FREI: All right.

2 THE COURT: That's not what I remember.

3 MR. FREI: I might have it backwards  
4 myself.

5 THE COURT: So give me a second. I  
6 thought the trial Judge was reversed on that  
7 issue.

8 MR. FREI: Well, there was an  
9 instruction issue that the case was reversed on,  
10 Judge.

11 THE COURT: I think he was reversed on  
12 that, too, so give me a second.

13 MR. FREI: Okay.

14 (Whereupon, the Court examined  
15 documents.)

16 MR. BANCROFT: The second to the last  
17 paragraph in the opinion, Judge, I think sets out  
18 what the Court's ruling is.

19 MR. FREI: Yeah, head note three, "The  
20 Plaintiff assigns as cross-error the refusal of  
21 the trial court to allow him to cross-examine  
22 Defendants' witnesses, for the purpose of showing

1 they were employed by the insurance company."

2 THE COURT: Okay; go ahead. I agree.

3 MR. FREI: Okay? And I think that's a  
4 clear distinction, and that's why I don't think  
5 Averett necessarily controls the determination  
6 that the Court made in this case.

7 It's obviously limited to that case.

8 I am not going to restate all the  
9 arguments made in my brief.

10 THE COURT: How about Travelers versus  
11 Lobello?

12 MR. FREI: Travelers versus Lobello, if  
13 you look at it, was not an underinsured case.

14 It was an --

15 THE COURT: Uninsured.

16 MR. FREI: -- uninsured case, where the  
17 Defendant in the case chose to represent himself.

18 So I don't think that controls either.

19 Just like we had to have two cases, Bing  
20 and --

21 THE COURT: Well, but don't we have --

22 MR. FREI: -- Cuffy, for U, and UIM,

1     that's why I don't think that Travelers case  
2     matters either.

3                 THE COURT:   Don't we have a similar  
4     circumstance in that there was a third-party  
5     involved in this case, who is prejudiced as a  
6     result of the ruling?

7                 Isn't it similar in that way?

8                 MR. FREI:   I don't think so.   I'm not  
9     sure who you are referring to as the prejudiced  
10    third-party in the Travelers case.

11                THE COURT:   In the Travelers case it was  
12    --

13                MR. FREI:   Correct.

14                THE COURT:   -- Cox, one of the other  
15    Defendants.

16                MR. FREI:   Right, but I don't understand  
17    how he would be -- how Cox -- who is Cox analogous  
18    to, Mr. Lombard?

19                THE COURT:   No, Virginia Farm Bureau.

20                MR. FREI:   Right.

21                I don't see how there is any prejudice  
22    that results -- first of all -- well, I won't

1 address that now.

2 I don't understand how there is any  
3 prejudice obviated to Virginia Farm Bureau, in  
4 this case, when they identified Dr. Ammerman as  
5 their expert.

6 My recollection is Mr. Bancroft called  
7 and questioned Dr. Ammerman; Mr. Corrie didn't  
8 even do it.

9 Although I --

10 THE COURT: I think that's correct.

11 MR. FREI: It's his witness, I mean,  
12 it's his control of that expert witness in the  
13 matters that were raised against his witness,  
14 therefore, I think the statements, to a great  
15 extent -- how can he claim against cross-  
16 examination of his own witness?

17 THE COURT: Okay; go ahead.

18 MR. FREI: I'm going to incorporate the  
19 arguments I made in the brief, and not restate  
20 them.

21 I think the Court is more than aware of  
22 what the legal arguments in this case are.

1 I do want to take a moment to address  
2 the circumstances about what happened with Judge  
3 Ney, and the deposition on that day, only because  
4 I was the one that was there.

5 And I don't take issue with Mr. Bancroft  
6 not being there.

7 I don't take issue with the fact that  
8 Mr. Corrie left. That's fine. I don't have any  
9 objection to that.

10 But I've sat here now for forty-five  
11 minutes, and heard them argue about stuff that  
12 occurred at a deposition they weren't even at.

13 They don't even know what happened.

14 And I think it's absurd to come and take  
15 the position before this Court, that because I  
16 made the decision to either leave, or not attend,  
17 and something bad happened during the course of  
18 that deposition, that I should be able to come  
19 into this court, after the fact, and request  
20 relief.

21 That's just not what we do.

22 Contrary to what Mr. Corrie said, if you



1 look at page fifty-eight of the brief that I  
2 attached, Mr. Corrie left before we even tried to  
3 reach Judge Ney the first time.

4 THE COURT: Regardless, I --

5 MR. FREI: Sure.

6 THE COURT: -- as I've indicated, Mr.  
7 Frei, I am not going to get into what happened  
8 before Judge Ney.

9 MR. FREI: Well --

10 THE COURT: You all can take that up  
11 with him.

12 MR. FREI: Okay.

13 THE COURT: But --

14 MR. FREI: I bring it up only in the  
15 context that Mr. Corrie read a proposed order  
16 which set conditions that were not accurate  
17 representations.

18 THE COURT: Ultimately, Judge Ney is  
19 going to enter an order, hopefully, which will  
20 reflect what his rulings were.

21 MR. FREI: Okay. The only other legal  
22 point I guess I would raise, unless the Court has

1 specific questions for me, is that when you look  
2 at all of the cases that talk about the  
3 interjection of insurance, in the context of it  
4 being done in a deliberate manner, or repeatedly,  
5 where clearly counsel has ignored an order from  
6 the court, so-to-speak, they always involve the  
7 injection of the issue of insurance for a  
8 collateral purpose.

9 That's what all of the cases say, and  
10 clearly, the exceptions are made in the case that  
11 the insurance can be injected if it's not for --

12 THE COURT: Where do we draw the line?  
13 I mean, where do we draw the line on the bias  
14 issue?

15 Suppose the evidence had been not that  
16 Dr. Ammerman received a hundred plus thousand  
17 dollars in a year from the insurance company --

18 MR. FREI: Right.

19 THE COURT: -- but that Dr. Ammerman  
20 received two hundred and fifty dollars.

21 Do we say then that we inject insurance  
22 for the two hundred and fifty dollars, to show

1 bias?

2 Or is it a reasonable amount, or is it  
3 something that has to be substantial?

4 MR. FREI: No, I don't think the amount  
5 matters.

6 I think if counsel wants to make a  
7 determination that somehow the fact that he made  
8 two hundred and fifty dollars from an insurance  
9 company that hired the doctor in this case, is  
10 somehow evidence that may look him -- pose him to  
11 be biased or prejudiced in the eyes of the jury,  
12 then go ahead.

13 As a practical matter, that's not going  
14 to happen.

15 THE COURT: I don't see it that way. I  
16 see it as a balancing test.

17 MR. FREI: Well --

18 THE COURT: I think the amount does play  
19 into it.

20 I think it if had been two hundred and  
21 fifty dollars, or five hundred dollars, I think  
22 the balance on the prejudice would have weighed in

1 favor of the Defendants in preventing the mention  
2 of insurance.

3 But I will put right on the record, to  
4 be clear, the amount played into it.

5 If it wasn't a substantial amount, as it  
6 was in this case, a hundred and eight thousand  
7 dollars, I don't think the balancing test would  
8 have come out the same way.

9 MR. FREI: I understand. I respectfully  
10 disagree with that.

11 I guess that's why the Court has  
12 discretion about whether or not it --

13 THE COURT: Well, do you disagree it's a  
14 balancing test? I have to balance the prejudices  
15 here.

16 There's two different --

17 MR. FREI: You clearly have to weigh the  
18 prejudice --

19 THE COURT: So in doing that, why  
20 shouldn't I consider what the amount is?

21 MR. FREI: I don't say that you can't.  
22 Your question -- I understood your question to be

1 is that a bright line test.

2 THE COURT: No, I don't think it's a  
3 bright line test; I think it's a balancing. I  
4 think it's a balancing.

5 MR. FREI: I understood the question to  
6 be this is two hundred and fifty dollars, is that  
7 -- can -- is that allowed?

8 I say yes.

9 You say it's a balancing test, I mean, I  
10 agree that you have to weigh the prejudice that  
11 could occur from the injection of the issue of  
12 insurance into the case, against the Supreme  
13 Court's clear law in this -- in many cases, about  
14 allowing broad discretion with respect to bias and  
15 interest.

16 I don't disagree with that.

17 But when you think about it, prejudice  
18 goes both ways.

19 What if five people on that jury were  
20 Allstate insureds?

21 I don't know that, because I'm not  
22 allowed to ask that in voir dire.

1                   They may sit there and think, oh, no,  
2                   that's my insurance company; there go my premiums.

3                   Who knows?

4                   We don't know.

5                   And all this speculation about whether  
6                   they consider attorneys' fees, and insurance, we  
7                   know they do.

8                   We know they do. We know --

9                   THE COURT: We know from their questions  
10                  there are certainly jury panels that do.

11                  MR. FREI: Pardon me?

12                  THE COURT: We know from questions that  
13                  we get --

14                  MR. FREI: Of course.

15                  THE COURT: -- that there are certainly  
16                  jury panels that are talking about it.

17                  MR. FREI: And they consider it,  
18                  irrespective of this Court's clear instructions to  
19                  them to not consider it.

20                  THE COURT: Well, I would hope that  
21                  that's not the case, and I think the law is that  
22                  we assume that they followed my instructions.

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1           MR. FREI: That's what we do, but we  
2 know that doesn't happen, because we get these  
3 questions back.

4           The damage instruction says this is what  
5 you shall consider.

6           THE COURT: But we don't instruct them  
7 on the insurance issue.

8           MR. FREI: I understand.

9           THE COURT: We get the question, and  
10 then we tell them not to consider it.

11          MR. FREI: Yeah, and I heard your  
12 comment about what Judge Kline may or may not do  
13 occasionally.

14          I have never been in front of him when  
15 that's happened, but maybe that's a way to handle  
16 it.

17          I don't know, with respect to that  
18 broader range question, how to handle it.

19          What I do know, in the context of this  
20 case, the fact that Dr. Ammerman makes that kind  
21 of money from the insurance company involved in  
22 this case, is clearly evidence of the fact that he

1 may be biased toward providing them testimony that  
2 is favorable to the position that they want.

3 And that's what this jury was allowed to  
4 hear.

5 And again, just one more comment, since  
6 it was discussed at length. The -- and I think I  
7 made it clear, initially, when Mr. Corrie was  
8 speaking I heard the word, "sanction," a hundred  
9 times.

10 It wasn't a sanction that Judge Ney  
11 imposed.

12 It was an order he made at the request  
13 of the counsel, and hopefully, his order will  
14 clear that up.

15 THE COURT: Thank you, Mr. Frei.

16 Anything further?

17 MR. CORRIE: I have nothing further.

18 MR. BANCROFT: The only thing that I  
19 would mention, Judge, is we have made some  
20 comments here today, and I think it's important.

21 That is; when I call up an expert, and I  
22 say to Dr. Ammerman, or whoever it might be, you



1 know, I'd like for you to conduct a medical  
2 examination in this particular case, the insurance  
3 company is not engaging that doctor.

4 If that bill isn't paid, I can tell you,  
5 and I have done it, my door gets knocked on; not  
6 the insurance company's door.

7 Because I'm the one that has contacted  
8 that expert. I'm the one who has talked to that  
9 expert. I'm the only one who has communicated  
10 with that expert.

11 It's not the insurance company.

12 And we have made a couple --

13 THE COURT: You may have the ultimate  
14 responsibility.

15 MR. BANCROFT: No question.

16 THE COURT: But as indicated by  
17 evidence, and the evidence that was accepted as a  
18 result of Judge Ney's ruling, Dr. Ammerman did  
19 receive a hundred plus thousand dollars from  
20 Allstate last year.

21 And from other cases I've had, other  
22 experts, I mean, there is no question they get

1     paid from the insurance company.

2                 MR. BANCROFT: Right, right, but --

3                 THE COURT: It may be your ultimate  
4     responsibility.

5                 MR. BANCROFT: No question.

6                 THE COURT: But I think --

7                 MR. BANCROFT: But I think what's  
8     important --

9                 THE COURT: You couldn't dispute that  
10    the doctor is first looking to the insurance  
11    company.

12                MR. BANCROFT: Yes, but I think the most  
13    important thing is that the insurance company is  
14    not hiring the doctor; I am.

15                And if the insurance company -- and I've  
16    had this happen -- where the insurance company has  
17    gone bankrupt, and can't pay the doctor's bill,  
18    then who winds up paying it?

19                Trichilo, Bancroft pays that bill, and  
20    that has happened.

21                And it will happen, I suspect, in the  
22    future.

1 I want the record to be straight, that  
2 Dr. Ammerman was not hired by Virginia Farm Bureau  
3 Insurance Services.

4 He was retained by me.

5 I was the one that contacted him. I was  
6 the one that made the arrangements with him to  
7 come to court, and the time that he submitted, by  
8 way of his participation at trial, that bill comes  
9 to me, in my name.

10 THE COURT: Well, can't that be elicited  
11 in response to the questions asked?

12 I mean, if the questions are asked, how  
13 much do you get paid by the insurance company, and  
14 then you say, were you hired by the insurance  
15 company in this case?

16 You can ask those questions.

17 MR. BANCROFT: Well, you know, we can  
18 look back and think about a lot of questions that  
19 we could have asked.

20 [Laughter]

21 THE COURT: I've never been involved in  
22 a trial where I couldn't.

1           MR. BANCROFT: But in any event, I want  
2 the record to reflect that in this case, as in all  
3 cases, that's really how it is, because we've made  
4 some comments that the insurance company hired Dr.  
5 Ammerman in this case, and that's really not  
6 accurate.

7           THE COURT: Okay; thank you.

8           I am not going to reconsider my ruling.  
9 It's going to stand, but I will suspend the order  
10 for an additional thirty days, to allow you to get  
11 an order from Judge Ney.

12           I don't want the order to be final in  
13 the case, to have to be appealed before Judge  
14 Ney's ruling is made, or ruling is memorialized in  
15 a written form.

16           So I will suspend the order for an  
17 additional thirty days.

18           MR. BANCROFT: Please note my exception.

19           THE COURT: But based on Judge Ney's  
20 ruling, I am -- my ruling, I'm convinced, was  
21 correct, under the circumstances, so it stands.

22           MR. CORRIE: Note my exception.

1                   MR. BANCROFT: Yes, and I note my  
2 exception, as well.

3                   THE COURT: Thank you.

4                   MR. FREI: Thank you, Your Honor.

5                   - - - - -

6                   (Whereupon, at approximately 10:58  
7 o'clock a.m., the hearing in the above-entitled  
8 matter was concluded.)

9                   \* \* \* \* \*

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DJ's  
7/12/00

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff )

Law No. 181346

v. )


RALPH D. LOMBARD )

Defendant. )

SUSPENDING ORDER

It is ORDERED that the Suspending Order entered on June 8, 2000 suspending entry of the Final Order is suspended further from July 14, 2000, for an additional 30 days.

ENTERED July 12, 2000.

  
Judge Dennis J. Smith

AS A COPY OF THIS ORDER HAS BEEN MAILED TO ALL COUNSEL, ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.

Cat sent @ to 3 act up 7/11/00  
no env. 7/12/00

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,

Plaintiff

v.

At Law No. 181346

RALPH D. LOMBARD,

Defendant

**ORDER**

On June 6, 2000, pursuant to Court Order, the deposition of Pamela Rydell, an Allstate Insurance Company corporate designee, was being conducted at the office of Counsel for Plaintiff. The Allstate designee was to provide testimony regarding certain financial matters that pertained to payments made by Allstate Insurance Company to Bruce J. Ammerman, M.D., which payments were reflected in documents attached to the subpoena.

During the course of the deposition a dispute arose regarding whether it would be appropriate to recess the deposition and reconvene it at a location where the deponent would have access to an Allstate Insurance Company computer to obtain certain financial information regarding Bruce J. Ammerman, M.D., an expert medical witness identified by both the Defendant and the underinsured carrier in this case. It was clear from the deponent's testimony during this deposition, that without access to the Allstate computer she would not be able to determine which payments on the attachment to the subpoena were made by Allstate to Dr. Ammerman for "forensic medical/legal" purposes and which payments were made to Dr. Ammerman in the circumstance where he was acting as a medical provider.

Because the dispute could not be resolved between counsel, a telephone conference call to Judge Ney was suggested as a resolution to this issue. Whereupon Counsel for Defendant Lombard occurred between Counsel for Plaintiff, Counsel for Allstate Insurance Company and the indicated he had other matters to attend to and could not stay for the call. This occurred at approximately 11:40 a.m. Judge Ney was not available at this time. Subsequently at approximately 4:00 p.m., Plaintiffs

Counsel was able to make contact with Judge Ney at which time Counsel for Allstate was reached on his cell phone.

~~Honorable R. Terrance Ney~~. The purpose of the conference call was to have Judge Ney hear argument and make a ruling on whether the deponent should be required to access an Allstate Insurance Company computer and answer Plaintiff's questions regarding payments Allstate had made to Dr. Ammerman.

After consideration of the matter, Judge Ney ordered that the Allstate corporate designee was required to make herself immediately available at an appropriate computer terminal where she could answer the questions of Plaintiff, as same pertained to the financial information of Dr. Ammerman. After the Court made this ruling and of his own initiative, Counsel for Allstate Insurance Company offered as a compromise that rather than have the corporate designee go through this process, it would agree to simply accept the numbers reflected on the attachment to the subpoena as accurate.

Counsel for the Plaintiff then indicated to the Court that the entire reason the deposition was being taken was to separate out the "forensic medical/legal" payments made by Allstate to Dr. Ammerman from the payments that related to circumstances where Dr. Ammerman was being paid for providing actual medical care to Allstate insureds. This information was needed for possible cross-examination of Dr. Ammerman as evidence of his potential bias. Because Allstate's proposal would prohibit Plaintiff from distinguishing which payments made to Dr. Ammerman by Allstate were for "forensic medical/legal" work, as opposed to actual treatment of patients, Plaintiff indicated that he could not agree to such a proposal unless it was further agreed that: one, when asked about this financial information at trial, Dr. Ammerman would be prohibited from attempting to explain that the payments reflected in the attachment to the subpoena included both payments for "forensic medical/legal" work, as well for his actual treatment of individuals, and thus he could not say how much he received for doing "forensic medical/legal" work from looking at the attachment to the subpoena; and two, that Counsel for



the Defendant and the underinsured carrier not be allowed to ask any questions of Dr.

Ammerman that would attempt to elicit this information. Counsel for Allstate agreed to these conditions and, whereupon, this Court

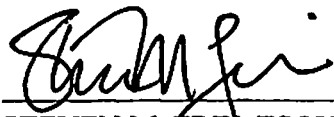
ORDERED that the financial information reflected on the attachment to the subpoena issued to Allstate Insurance Company and pertaining to payments made to Dr. Bruce J. Ammerman will be accepted as true and accurate and, further, that neither Dr. Ammerman, Counsel for Defendant or Counsel for the underinsured carrier will be allowed at trial to attempt to distinguish between which payments on said financial materials were for "forensic medical/legal" work and which were for actual treatment of Allstate insureds.

ENTERED this 21<sup>ST</sup> day of July, 2000.

  
\_\_\_\_\_  
Judge, Fairfax County Circuit Court

I ASK FOR THIS:

HALL & SICKELS, P.C.

  
\_\_\_\_\_  
STEVEN M. FREI, ESQUIRE (VSB#32211)  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
Telephone: (703) 925-0500  
Counsel for Plaintiff

SEEN:

ANDERSON & CORRIE

*Objection as follows:* (1) Objection as to ruling beyond scope of legal authority

  
RICK CORRIE, ESQUIRE

12600 Fair Lakes Circle

Suite 220

Fairfax, Virginia 22033

Counsel for Defendant

(2) Objection as to failure to raise timely motion subject matter of argument

(3) Objection to evidence as stated as to occurrence at deposition.

(4) Lack of due process

(5) Objection as to matters raised by counsel for Farm Bureau which are irrelevant based on opening

(6) Objection that no ruling should be made in drafting this order & no oral argument.

TRICHILO, BANCROFT, MCGAVIN, HORVATH & JUDKINS, P.C.

*objected to:*

*See attached SWB*

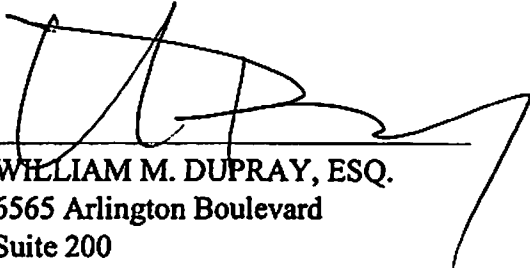
STEVEN W. BANCROFT, ESQUIRE

4117 Chain Bridge Road, Suite 400

Fairfax, Virginia 22030

Counsel for Virginia Farm Bureau Mutual Insurance Co.

SLENKER, BRANDT, JENNINGS & JOHNSTON



WILLIAM M. DUPRAY, ESQ.

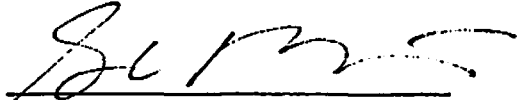
6565 Arlington Boulevard

Suite 200

Falls Church, VA 22042

Counsel for Allstate Insurance Company

OBJECTED TO BY VIRGINIA FARM BUREAU INSURANCE COMPANY ON THE GROUNDS THAT THEY WERE NOT PROPERLY NOTICED FOR THE NEW MATTERS ADDRESSED WITH THE COURT IN THE TELEPHONE CONFERENCE CALL OF JUNE 6, 2000 REGARDING MATTERS MATERIAL TO THE UNDERINSURED MOTORIST CARRIER AS WELL AS THEIR DESIGNATED EXPERT BRUCE J. AMMERMAN, M.D. WHO WAS ALSO NOT REPRESENTED, NOR GIVEN NOTICE OF THE CONFERENCE CALL. COUNSEL FOR ALLSTATE INSURANCE COMPANY, WHO WAS NOT A PARTY TO THE LAW SUIT WAS ALLOWED TO ENTER INTO AN AGREEMENT REGARDING PAYMENTS MADE BY ALLSTATE TO BRUCE J. AMMERMAN, M.D. FOR FORENSIC/LEGAL WORK WITHOUT AGREEMENT OR AUTHORITY FROM VIRGINIA FARM BUREAU INSURANCE COMPANY OR ITS COUNSEL. THE INDEPENDENT RIGHTS OF THE UNDERINSURED MOTORIST CARRIER WERE ADVERSELY AFFECTED BY COUNSEL FOR ALLSTATE'S AGREEMENT AND WAS BARRED FROM PROPERLY QUESTIONING ITS DESIGNATED MEDICAL EXPERT, BRUCE J. AMMERMAN, M.D. AT TRIAL REGARDING THE PAYMENTS MADE TO HIM BY ALLSTATE FOR FORENSIC/MEDICAL WORK. INSTEAD OF ISSUING A SANCTION TO ALLSTATE INSURANCE COMPANY OR ITS COUNSEL, THE COURT ALLOWED ALLSTATE AND ITS COUNSEL TO EFFECTIVELY SANCTION THE UNDERINSURED MOTORIST CARRIER, VIRGINIA FARM BUREAU INSURANCE COMPANY, BRUCE J. AMMERMAN, M.D. AND DEFENDANT, RALPH LOMBARD. ALLSTATE INSURANCE COMPANY AND ITS COUNSEL WERE ALLOWED TO ADVERSELY AFFECT THE RIGHTS OF THE UNDERINSURED MOTORIST CARRIER WITHOUT DUE PROCESS.



Steven W. Bancroft, Esquire  
Counsel for Virginia Farm Bureau  
Mutual Insurance Company

RECEIVED

JUL 26 2000

V I R G I N I A:

Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	At Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.	)	

**MOTION TO RECONSIDER ORDER  
STATED IN TELEPHONE CONVERSATION OF JUNE 6, 2000**

COMES NOW the Defendant, Ralph P. Lombard, by counsel, and hereby moves the court to reconsider its order originally stated in a telephone conversation of June 6, 2000<sup>1</sup>, and to vacate the same and, thereafter, in addition either (1) declare a mistrial, set aside the verdict and grant a new trial as to all issues<sup>2</sup>, or (2) refer the matter back to Judge Smith for his reconsideration to declare a mistrial, set aside the verdict and grant a new trial as to all issues on the following grounds:

1. On June 2, 2000, this court over objection by, inter alia, counsel for Defendant Lombard ordered that the deposition of a designee of Allstate Insurance Company proceed at 10:00

<sup>1</sup> Entered in written form recently and enclosed herewith as Exhibit A.

<sup>2</sup> Defendant Lombard's Motion to Declare a Mistrial, Set Aside the Verdict and Grant a New Trial is enclosed herewith as Exhibit B, which Motion was orally denied by the trial judge, Judge Smith, on July 12, 2000, who then referred all counsel to Judge Ney regarding entry of a written order for the June 6<sup>th</sup> verbal ruling.

a.m. on June 6, 2000, with the Allstate designee to provide testimony regarding financial payments to Dr. Bruce J. Ammerman contained in certain documents generated by Allstate.

2. Prior to noon at the conclusion of all other questions other than the specifics regarding differentiating payments for "forensic payments" v. those for "medical care" which could only be answered by reconvening to a location with an Allstate computer for the designee to query each claim file, a dispute arose between plaintiff and Allstate's designee regarding whether the Allstate designee must reconvene to an Allstate location and continue to answer questions at a terminal. A telephone conference call was made to resolve the matter but the Court was unavailable at that time. Thereafter, counsel and the court reporter left the deposition location. Later in the afternoon the court was available and plaintiff's counsel and Allstate's counsel had a telephone conference resulting in Exhibit A. After counsel reached the judge late in the afternoon, no notice of the telephone proceeding was given to counsel for the Defendant, counsel for Farm Bureau or Dr. Ammerman.

3. ~~At trial, which commenced on June 3, 2000, the trial~~  
Judge stated he was bound by the ruling reflected in Exhibit A<sup>3</sup>

---

<sup>3</sup> which was communicated to the trial judge verbally

and would not modify it. Presumably based upon it, he then ruled that Dr. Ammerman could be specifically questioned during cross-examination (and mentioned during his closing argument) by plaintiff's counsel regarding payments made to him by Allstate Insurance Company (that is, by referring to Allstate by using its specific name).<sup>4</sup>

5. The telephone ruling (embodied in Exhibit A) constituted reversible error because it exceeded the court's authority under Virginia law and imposed a penalty upon and affected the substantial rights of the Defendant, the underinsured motorist carrier and Dr. Ammerman for the actions of a non-complying, non-party witness! Furthermore, the ruling was rendered without notice to counsel for Defendant, counsel for the underinsured carrier and Dr. Ammerman.

6. The deposition of the Allstate designee was noticed pursuant to Rule 4:5(b) coupled with a subpoena request.

7. Under Rule 4:12(a)(1) the Court ordered the deposition of a non-party (Allstate Insurance Company) on June 2, 2000, and presumably pursuant to Rule 4:12(a)(2) rendered by telephone his ruling in Exhibit A. However, Rule 4:12 requires that ~~reasonable notice be given to all parties and all persons~~ affected thereby. Failure to give reasonable notice to the

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<sup>4</sup> Before Dr. Ammerman testified, Judge Smith read to the jury the cautionary instruction contained as an enclosure to Exhibit B.

Defendant, Farm Bureau and to Dr. Ammerman constituted lack of due process. Furthermore, notice of the deposition for earlier in the day did not and could not suffice as some form of continuing notice since none of the three above-referenced entities would be on reasonable notice that a possible resolution of a dispute between a non-party witness and the plaintiff would or legally could impose sanctions upon parties or non-parties who played no role in Allstate's possible non-compliance!

8. Under Rule 4:12(g) if a deponent fails to answer a question(s) after being ordered to do so by the court, the failure may be considered a contempt of that court. For example, in the instant case the court could have imposed a per diem monetary penalty until the designee appeared at a computer terminal to answer questions.

9. For the most part the sanctions in Rule 4 of the Rules of the Supreme Court of Virginia (just as Rules 26 through 37 of the Federal Rules of Civil Procedure) are directed to the discretion of a judge in determining sanctions, if any, imposed upon a litigant (i.e. party) who fails to comply with discovery requirements. Woodbury v. Courtney, 239 Va. 651 (1990).

10. There are no known Virginia cases specifically applying Rule 4:12 sanctions to a non-party and by its language

it refers to contempt as the appropriate and only sanction. Rule 4:12 (b)(1). Clearly, the broad discretion in determining sanctions to be imposed under Rule 4:12 (b)(2) only applies by the express language used therein to a party who fails to obey an order, not a non-party deponent! Federal Rule of Civil Procedure 37 is the comparable rule and decisions construing it clearly differentiate between parties and non-parties. In Re Application of Sumar, 123 FRD 467(SD NY 1988) the Court stated that Rule 37 (and, it is argued, by analogy to Rule 4:12) does not authorize sanctions for failure of a non-party witness to comply with a subpoena duces tecum. In Patton v. Aerojet Ordnance Co., 765 F. 2d 604 (6<sup>th</sup> Cir. Tenn. 1985) the general rule is that one party to litigation will not be subjected to sanctions for failure to cooperate in discovery because of a failure of another to comply with discovery, absent a showing that the party controlled the actions of the non-complying respondent.

11. The issuance of the subpoena in this case when coupled with the Notice of Taking Deposition of a non-party is similar to Federal Rule of Civil Procedure 45 (a)(1)(c). Clearly, the failure by a person to obey a subpoena served under that rule is punishable by contempt. F.R. Civ. P. 45(e). Under Virginia law the Court's power to punish is also for contempt for any



disobedience. Code of Virginia of 1950, as amended, Sections 8.01-407; 18.2-456(5) and cases cited therein.

12. Allstate Insurance Company was not a party in this case, either by definition under Virginia law or otherwise. Under Section 8.01-5B an insurance company by merely issuing to a party a policy or contract of liability insurance may not be joined in the action as a party. If the cause of action is on the policy itself (not the underlying tort), then the insurance company becomes a party defendant. 10A Michie's Insurance, Section 60, et. seq.

13. As the court stated in Patton, supra, it is not fair nor just to subject a party (Defendant Lombard) to sanctions for a failure by another to comply with discovery, absent a showing that the defendant controlled the actions of the non-complying respondent (i.e. Allstate). Furthermore, a third person (such as Dr. Ammerman) is not and should not be bound by an order compelling discovery where (1) he was not a party to the case, (2) he received neither notice of the motion nor opportunity to object or to be heard. Fischer v. McGowan, 585 F. Supp. 978 (DC RI 1985). Lastly, as with Allstate neither Farm Bureau, nor Dr. Ammerman should be bound by the ruling since they, as Allstate, had no control over the actions of Allstate.

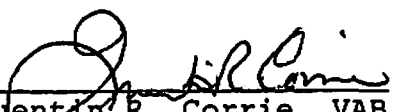
WHEREFORE, the above premises considered, Defendant, Ralph Lombard, by counsel, respectfully requests that this Court reconsider the Order stated in the telephone conversation of June 6, 2000, vacate the same, and declare a mistrial in the matter tried before Judge Smith or, alternatively, refer the matter to him for reconsideration.

Respectfully submitted,

RALPH P. LOMBARD  
By Counsel

ANDERSON & CORRIE

By:

  
Quentin R. Corrie, VAB #14140  
12600 Fair Lakes Circle, #220  
Fairfax, Virginia 22033  
(703) 222-2200  
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Reconsider Order was mailed, postage prepaid, this 25<sup>th</sup> day of July, 2000, to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231  
Counsel for Plaintiff

Steven Walter Bancroft, Esquire  
TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030-0022

  
Quentin R. Corrie

*2*  
VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,

Plaintiff

v.

At Law No. 181346

RALPH D. LOMBARD,

Defendant

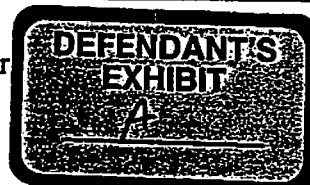
**ORDER**

On June 6, 2000, pursuant to Court Order, the deposition of Pamela Rydell, an Allstate Insurance Company corporate designee, was being conducted at the office of Counsel for Plaintiff. The Allstate designee was to provide testimony regarding certain financial matters that pertained to payments made by Allstate Insurance Company to Bruce J. Ammerman, M.D., which payments were reflected in documents attached to the subpoena.

During the course of the deposition a dispute arose regarding whether it would be appropriate to recess the deposition and reconvene it at a location where the deponent would have access to an Allstate Insurance Company computer to obtain certain financial information regarding Bruce J. Ammerman, M.D., an expert medical witness identified by both the Defendant and the underinsured carrier in this case. It was clear from the deponent's testimony during this deposition, that without access to the Allstate computer she would not be able to determine which payments on the attachment to the subpoena were made by Allstate to Dr.

Ammerman for "forensic medical/legal" purposes and which payments were made to Dr.

Ammerman in the circumstance where he was acting as a medical provider.



Because the dispute could not be resolved between counsel, a telephone conference call to Judge Ney was suggested as a resolution to this issue. Whereupon Counsel for Defendant Lombard occurred between Counsel for Plaintiff, Counsel for Allstate Insurance Company and the ... and he had other matters to 370 and could not stay for the call.

time counsel for Allstate was reached on his cell phone.

~~Honorable R. Terrance Ney~~. The purpose of the conference call was to have Judge Ney hear argument and make a ruling on whether the deponent should be required to access an Allstate Insurance Company computer and answer Plaintiff's questions regarding payments Allstate had made to Dr. Ammerman.

After consideration of the matter, Judge Ney ordered that the Allstate corporate designee was required to make herself immediately available at an appropriate computer terminal where she could answer the questions of Plaintiff, as same pertained to the financial information of Dr. Ammerman. After the Court made this ruling and of his own initiative, Counsel for Allstate Insurance Company offered as a compromise that rather than have the corporate designee go through this process, it would agree to simply accept the numbers reflected on the attachment to the subpoena as accurate.

Counsel for the Plaintiff then indicated to the Court that the entire reason the deposition was being taken was to separate out the "forensic medical/legal" payments made by Allstate to Dr. Ammerman from the payments that related to circumstances where Dr. Ammerman was being paid for providing actual medical care to Allstate insureds. This information was needed for possible cross-examination of Dr. Ammerman as evidence of his potential bias. Because Allstate's proposal would prohibit Plaintiff from distinguishing which payments made to Dr. Ammerman by Allstate were for "forensic medical/legal" work, as opposed to actual treatment of patients, Plaintiff indicated that he could not agree to such a proposal unless it was further agreed that: one, when asked about this financial information at trial, Dr. Ammerman would be

prohibited from attempting to explain that the payments reflected in the attachment to the subpoena included both payments for "forensic medical/legal" work, as well for his actual treatment of individuals, and thus he could not say how much he received for doing "forensic medical/legal" work from looking at the attachment to the subpoena; and two, that Counsel for

the Defendant and the underinsured carrier not be allowed to ask any questions of Dr.

Ammerman that would attempt to elicit this information. Counsel for Allstate agreed to these conditions and, whereupon, this Court

ORDERED that the financial information reflected on the attachment to the subpoena issued to Allstate Insurance Company and pertaining to payments made to Dr. Bruce J. Ammerman will be accepted as true and accurate and, further, that neither Dr. Ammerman, Counsel for Defendant or Counsel for the underinsured carrier will be allowed at trial to attempt to distinguish between which payments on said financial materials were for "forensic medical/legal" work and which were for actual treatment of Allstate insureds.

ENTERED this 21<sup>st</sup> day of July, 2000.

  
\_\_\_\_\_  
Judge, Fairfax County Circuit Court

I ASK FOR THIS:

HALL & SICKELS, P.C.



\_\_\_\_\_  
STEVEN M. FREI, ESQUIRE (VSB#32211)  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
Telephone: (703) 925-0500  
Counsel for Plaintiff

SEEN:

ANDERSON & CORRIE

*Object to as follows: (1) Objection as to ruling beyond scope of legal authority*

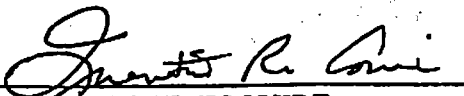
*(2) Objection as to failure to receive finding of material subject matter of argument*

*(3) Objection to statements as stated as to occurrence at deposition.*

*(4) Lack of due process*

*(5) Objection as to matters raised by counsel for Farm Bureau which are irrelevant based on response*

*(6) Objection that no ruling allowed to occur in drafting this order & no oral argument.*

  
RICK CORRIE, ESQUIRE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033  
Counsel for Defendant

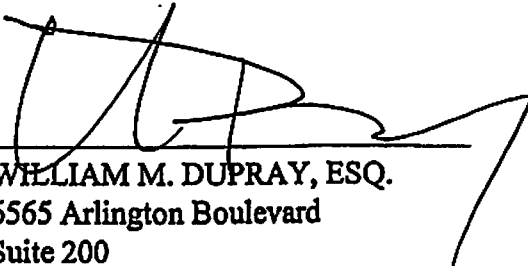
TRICHILO, BANCROFT, MCGAVIN, HORVATH & JUDKINS, P.C.

*objected to:*

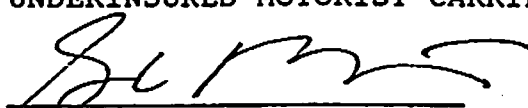
*See attached SW3*

STEVEN W. BANCROFT, ESQUIRE  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
Counsel for Virginia Farm Bureau Mutual Insurance Co.

SLENKER, BRANDT, JENNINGS & JOHNSTON

  
WILLIAM M. DUPRAY, ESQ.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, VA 22042  
Counsel for Allstate Insurance Company

OBJECTED TO BY VIRGINIA FARM BUREAU INSURANCE COMPANY ON THE GROUNDS THAT THEY WERE NOT PROPERLY NOTICED FOR THE NEW MATTERS ADDRESSED WITH THE COURT IN THE TELEPHONE CONFERENCE CALL OF JUNE 6, 2000 REGARDING MATTERS MATERIAL TO THE UNDERINSURED MOTORIST CARRIER AS WELL AS THEIR DESIGNATED EXPERT BRUCE J. AMMERMAN, M.D. WHO WAS ALSO NOT REPRESENTED, NOR GIVEN NOTICE OF THE CONFERENCE CALL. COUNSEL FOR ALLSTATE INSURANCE COMPANY, WHO WAS NOT A PARTY TO THE LAW SUIT WAS ALLOWED TO ENTER INTO AN AGREEMENT REGARDING PAYMENTS MADE BY ALLSTATE TO BRUCE J. AMMERMAN, M.D. FOR FORENSIC/LEGAL WORK WITHOUT AGREEMENT OR AUTHORITY FROM VIRGINIA FARM BUREAU INSURANCE COMPANY OR ITS COUNSEL. THE INDEPENDENT RIGHTS OF THE UNDERINSURED MOTORIST CARRIER WERE ADVERSELY AFFECTED BY COUNSEL FOR ALLSTATE'S AGREEMENT AND WAS BARRED FROM PROPERLY QUESTIONING ITS DESIGNATED MEDICAL EXPERT, BRUCE J. AMMERMAN, M.D. AT TRIAL REGARDING THE PAYMENTS MADE TO HIM BY ALLSTATE FOR FORENSIC/MEDICAL WORK. INSTEAD OF ISSUING A SANCTION TO ALLSTATE INSURANCE COMPANY OR ITS COUNSEL, THE COURT ALLOWED ALLSTATE AND ITS COUNSEL TO EFFECTIVELY SANCTION THE UNDERINSURED MOTORIST CARRIER, VIRGINIA FARM BUREAU INSURANCE COMPANY, BRUCE J. AMMERMAN, M.D. AND DEFENDANT, RALPH LOMBARD. ALLSTATE INSURANCE COMPANY AND ITS COUNSEL WERE ALLOWED TO ADVERSELY AFFECT THE RIGHTS OF THE UNDERINSURED MOTORIST CARRIER WITHOUT DUE PROCESS.

  
Steven W. Bancroft, Esquire  
Counsel for Virginia Farm Bureau  
Mutual Insurance Company



V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff,	)	
v.	)	At Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.	)	

MOTION TO RECONSIDER AND VACATE ORDER

COMES NOW, Virginia Farm Bureau Mutual Insurance Company, by counsel, and moves this Honorable Court to reconsider its Order dated July 21, 2000 and to vacate the same for improper sanctioning the underinsured motorist carrier, Virginia Farm Bureau Mutual Insurance Company, defendant Ralph D. Lombard, and Bruce J. Ammerman, M.D. by barring certain testimony and evidence at the trial of this tort case held on June 7 and 8, 2000, and in support thereof, states the following:

I. INTRODUCTION.

Plaintiff brought suit alleging injuries as a result of an automobile accident on August 11, 1995. Suit was initially filed, nonsuited, and again filed in June of 1999. In the refiled action the underinsured carrier, Virginia Farm Bureau Mutual Insurance Company (Virginia Farm Bureau) was served as the UIM carrier. Allstate Insurance Company (Allstate) is the defendant's liability insurer.

The Defendant and Virginia Farm Bureau identified Bruce J. Ammerman, M.D. as one of their designated expert witnesses. Plaintiff's counsel obtained documents apparently prepared by Allstate pertaining to

payments made to Dr. Ammerman from Allstate for the calendar years 1998 and 1999. The Plaintiff filed a Rule 4:5(b)(6) notice of deposition for an Allstate corporate designee most knowledgeable about these alleged payments to Dr. Ammerman by Allstate. A Motion to Quash the deposition of the Allstate corporate representative was filed by William Dupray, Esquire as counsel for Allstate. On June 2, 2000 Judge Ney heard argument on the Motion to Quash, denied it and ordered the deposition to take place. Allstate, the defendant, and Virginia Farm Bureau, by counsel, all objected to the taking of the deposition and so noted their exception to the denial of the Motion to Quash.

The deposition of the Allstate corporate representative proceeded forward as required by the Court on June 6, 2000, at 10:00 a.m. The scope of the Allstate designee deposition was to provide testimony regarding certain financial matters that pertained to annual payments made by Allstate Insurance Company to Bruce J. Ammerman, M.D. that were reflected in documents attached to the actual subpoena. At all times relevant to this matter, Allstate Insurance Company was not a party and did not in any way participate in the actual trial proceedings. The deposition of the Allstate representative was attended by William Dupray, Esquire, on behalf of Allstate, Quentin R. Corrie, Esquire, on behalf of defendant Lombard, and Steven M. Frei, Esquire, on behalf of the plaintiff Rohrbaugh. Counsel for Virginia Farm Bureau, Steven W. Bancroft, Esquire, was not in attendance due to the limited scope of the deposition notice, conflict in his schedule and confirmation that Quentin

R. Corrie, Esquire, would be in attendance. The purpose of the deposition of the Allstate representative was to determine the payments made by Allstate Insurance Company to Bruce J. Ammerman, M.D. for the years 1998 and 1999 for forensic medical/legal services. The end product of this deposition was to merely separate out the payments for forensic medical/legal payments to Dr. Ammerman versus payments made to Dr. Ammerman for medical care and treatment to Allstate insureds. After approximately one hour and forty-five minutes of questioning, an impasse arose due to the Allstate representative being unable to testify what portions of the payments made by Allstate Insurance Company to Dr. Ammerman were for medical care, as opposed to forensic medical/legal services. The Allstate corporate representative testified that she had access to a computer where she may be able to identify whether a payment was made for medical purposes or for legal proceedings, but that computer was in the Allstate office. The deposition was conducted at the offices of Steven M. Frei, Esquire. In an effort to resolve this dispute, Mr. Frei attempted to telephone Judge Ney, but was unable to reach him at that time. Mr. Frei then requested that the deposition of the Allstate representative be left open until he heard back from Judge Ney. Mr. Duprey objected to leaving the deposition open and he and the Allstate representative, along with the court reporter, left the proceeding. Mr. Corrie left the proceeding shortly after Judge Ney was not able to be reached for the telephone conference.

Later that afternoon, Judge Ney became available and a telephone conference call was conducted with Mr. Frei and Mr. Dupray about the dilemma that surfaced at the deposition of the Allstate representative. Neither Mr. Corrie nor Mr. Bancroft were notified of this telephone motion/hearing with Judge Ney. As referenced in the Order of July 21, 2000, Judge Ney, after hearing argument by counsel for Allstate and counsel for plaintiff, ordered that the Allstate corporate designee must make herself immediately available at an appropriate computer terminal where she could answer the questions of Mr. Frei in reference to the Allstate payments to Dr. Ammerman. Subsequent to the Court's ruling, counsel for Allstate moved the Court to accept a compromise that it would simply accept the specific numbers reflected on the attachment to the subpoena as being accurate. Counsel for plaintiff then moved the Court to expand on the compromise of Allstate to include agreement by Allstate that when asked about his financial information at trial, Dr. Ammerman would be barred from explaining that the payments reflected in the attachment to the subpoena included both payments for forensic medical/legal work as well as actual treatment of individuals and further limiting Dr. Ammerman by not allowing him to explain what he actually received for doing forensic medical/legal work. To complicate matters further, counsel for plaintiff further moved the Court that counsel for defendant Lombard and counsel for the underinsured motorist carrier, Virginia Farm Bureau, would also be barred from asking Dr. Ammerman to explain what the annual payments consisted of from Allstate and what

portion was for treatment of Allstate insureds or for forensic medical/legal work. Without authority from defendant, his counsel, or the underinsured motorist carrier and its counsel, Allstate Insurance Company through its counsel agreed to these new conditions requested by counsel for plaintiff Rohrbaugh. A simply deposition of a non-party on a limited issue was allowed to be converted to a sanction against the defendant, Ralph Lombard, and the underinsured motorist carrier, Virginia Farm Bureau, without any notice or input by them. The Order which came from the telephone conference with Judge Ney was not reduced to writing until July 21, 2000. It is uncontroverted that at no time did Allstate or William Dupray, Esquire, ever contact, consult with, or communicate with counsel for the defendant or the underinsured motorist carrier about making this compromise request or agreeing to the further requests of plaintiff's counsel to limit questioning and testimony of a designated expert witness at the trial of the case. As a direct result of the verbal Order of Judge Ney, the rights of defendant, Mr. Lombard, and the underinsured motorist carrier, Virginia Farm Bureau, were adversely affected during the trial of the case.

The trial of this case commenced on June 7 and 8, 2000, with a jury with Judge Smith presiding. The Court, over strenuous objections of counsel for defendant and counsel for the underinsured motorist carrier, predicated on Judge Ney's verbal Order, authorized Mr. Frei to deliberately interject the issue of insurance into this case during cross-examination of Dr. Ammerman. Prior to the direct examination of

Dr. Ammerman, the Court prohibited Dr. Ammerman from doing anything other than accepting the gross figures for the years 1998 and 1999 that were paid to him by Allstate. Dr. Ammerman was not allowed to explain the various reasons why those monies were paid to him by Allstate and further, counsel for the defense was prohibited from asking Dr. Ammerman to explain these payments. This prohibition was imposed by Judge Smith as a result of Judge Ney's previous verbal Order on the afternoon of June 6, 2000. The effect of this prohibition denied Dr. Ammerman the right to accurately explain what the payments consisted of and further restricted counsel for plaintiff from eliciting relevant and material evidence to the trier of fact regarding the make-up of the gross numbers. The actual effect of the Order rendered by Judge Ney resulted in Dr. Ammerman being forced under oath to state something he knew was not true and to prohibit counsel for the defense as officers of the Court from clarifying, misleading incorrect evidence before the trier of fact.

## **II. LEGAL ARGUMENT.**

### **A. THE VERBAL ORDER OF THE COURT IS CONTRARY TO THE VIRGINIA SUPREME COURT RULES.**

The Allstate corporate designee deposition was taking place pursuant to Virginia Supreme Court Rule 4:5(b)(6). Any deficiencies or failures to abide by the Rules in this deposition is governed by Rule 4:12. Under Rule 4:12 a party who believes that a person (whether a party or a non-party) is not answering a proper question in a deposition must first move the Court for an order compelling discovery. (Rule 4:12(a)(2)) After an Order compelling a deponent is issued, and if the deponent still refuses

to answer, the Court may hold the deponent in contempt (Rule 4:12(b)(1)), and after a hearing, may assess costs and fees against the deponent and/or the attorney advising the deponent not to answer. (Rule 4:12(a)(4))

Nothing in the Rules permits a Court to enter an Order against a defendant for underinsured motorist carrier as a sanction when a non-party deponent fails to properly answer questions in a deposition. In fact, the Rules specifically address when and how a Court may sanction a party by deeming the disputed facts as established:

"Sanctions by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a party fails to obey an order to provide or permit discovery...[the Court may enter]...An order that the matters regarding which the order was made or any other designated facts shall be taken as established for the purposes of the action..."  
[Emphasis Supplied] Rule 4:12(b)(2).

Nothing in Rule 4:12(b)(2) or any other Rule of Court allows for a sanction to be imposed against a party defendant or underinsured motorist carrier when it is imposed as a result of a non-party witness failing or refusing to answer questions in a Court-ordered deposition. This type of result is contrary to the Rules of Court. If the Allstate representative could not or would not answer questions in the Court-ordered deposition, the proper remedy under the Rules of Court is to sanction Allstate and its counsel. Instead, when counsel for Allstate made its compromise ~~motion and counsel for plaintiff further motioned~~ the Court on the proper sanction to be imposed against Allstate, the real parties in interest

that would be affected by this Order were never consulted or noticed. At trial, the real parties of interest and Dr. Ammerman were forced to accept the imposed sanction of the Court. (See Exhibit A).

- B. THE CONFERENCE CALL HEARING CONDUCTED BY JUDGE NEY AND THE RESULTANT ORDER WERE IMPROPER AS DEFENSE COUNSEL REPRESENTING THE INTERESTED PARTIES IN THE LITIGATION WERE NOT PROPERLY NOTICED.

When the deposition of the Allstate representative ended and counsel for Allstate, the deponent, court reporter and Mr. Corrie left the law offices of Steve Frei, Esquire. No one knew if the deposition would be reconvened or where. There is no question that the scope and purpose of the deposition of the Allstate representative was to glean certain facts in order to break down the computer data of Allstate to determine what Dr. Ammerman was paid in certain years for forensic medical/legal work. When the Court became available several hours after the questioning of the Allstate representative ended, no attempt was made to give notice to attorneys Corrie or Bancroft who represented the real parties in interest in the litigation, even though new matters were addressed and ultimately ruled upon by the Court. It would be inconceivable by counsel for a party or interested party in the litigation process to foresee that a ruling by the Court imposing a sanction against them would occur when a non-party failed to properly answer questions or give information in a Court-ordered Rule 4:5 deposition. Clearly, new matters surfaced during the conference call with the Court which materially affected the rights of the interested parties to the litigation process including one of their designated medical experts, Bruce J. Ammerman, M.D. The lack of



notice to this hearing and the new matters addressed violated due process rights of the named defendant Ralph Lombard, Virginia Farm Bureau Mutual Insurance Company as the statutory underinsured motorist carrier, and the expert witness, Bruce J. Ammerman, M.D. *Commission of Fisheries v. Hampton Roads Oyster Packers and Planters Ass'n*, 109 Va. 565, 585, 64 S.E. 1041, 1048 (1909).

C. A NON-PARTY CANNOT STIPULATE OR AGREE THROUGH ITS COUNSEL, TO FACTS WHICH BECOME BINDING ON THE REAL PARTIES OF INTEREST IN THE LITIGATION PROCESS.

Allstate Insurance Company was never a party to the litigation process in this case. Nevertheless, its counsel, William Dupray, Esquire, made a compromise offer to the Court and then further agreed or stipulated to additional matters requested in the Motion of Steve Frei, Esquire, counsel for plaintiff, without any legal right, approval, or authority by the real parties of interest to the litigation. This unauthorized stipulation or agreement that was approved by the Court contained provisions which prevented and limited the counsel for the defense in this case from disputing certain facts that were known to be untrue and were misleading to the trier of fact. At no time was counsel for the underinsured motorist carrier ever consulted or contacted by Allstate or its counsel about the stipulation or agreement regarding these new matters addressed in the telephone conference with Judge Ney. The Court-ordered deposition of Allstate was requested in this case and over the objection of counsel for the underinsured motorist carrier, it was allowed to proceed forward. At all times in this litigation process,

including trial, Virginia Farm Bureau Insurance Company participated in the case in a manner consistent with the Virginia Supreme Court Rulings and § 38.2-2206 of the Code of Virginia. Since Virginia Farm Bureau has separate and independent rights by statute when served as an underinsured motorist carrier, they are a party of interest to the litigation process and must be given notice of all hearings and motions. Without any authority, Allstate through its counsel was allowed to stipulate or agree to new matters in the conference call with the Court that in turn became binding on the parties of interest at trial. This same unauthorized stipulation and agreement approved by the Court was then imposed by the trial judge against the defendant Ralph Lombard, underinsured motorist carrier, Virginia Farm Bureau, and one of their designated experts, Bruce J. Ammerman, M.D.

In the context of the litigation process, a stipulation or binding agreement is defined as follows:

"An agreement, admission, or concession made by parties in a judicial proceeding or by their attorneys, relating to business before the Court". (Own Emphasis Added) *Barron's Legal Dictionary*, Third Edition, 1991.

"The name given to any agreement made by the attorneys on opposite sides of a cause (especially if in writing), regulating any matter incidental to the proceedings or trial, which falls within their jurisdiction. Voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate need ~~for proof or to narrow range of litigable~~ issues . . . and agreement, admission or confession made in a judicial proceeding

by the parties thereto or their attorneys." (Own Emphasis Added) *Black's Law Dictionary*, Fifth Edition, 1979.

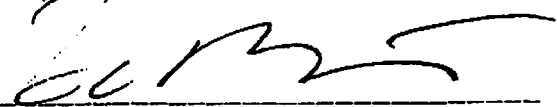
In this case, the agreement or stipulation entered into by counsel for Allstate, a non-party, and subsequently approved by the Court was not between the parties or opposing counsel in the case, nor was it voluntary. It was an unauthorized, unapproved agreement or stipulation by a non-party that should have had no binding legal affect on the defendant or the UIM carrier in the course of this proceeding. In fact, even a stipulation by a defendant in a pending lawsuit is not binding on the UIM carrier because of the separate and distinct rights given to the UIM carrier by statute and case law. See, *State Farm v. Beng*, 249 Va. 165, 169-170 (1995) and *State Farm v. Cuffee*, 248 Va. 11, 14-15 (1994).

WHEREFORE, for the foregoing reasons, the underinsured motorist carrier, Virginia Farm Bureau Mutual Insurance Company, by counsel, requests this Honorable Court to reconsider its June 6, 2000 verbal Order and to vacate the written Order of July 21, 2000 for the reasons set forth in this Motion as well as oral argument that is hereby requested on behalf of Virginia Farm Bureau Mutual Insurance Company.

Respectfully submitted,

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY,  
By Counsel,

TRICHILO, BANCROFT, McGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000 (telephone)  
(703) 385-1555 (facsimile)

---

Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Defendant, Virginia Farm  
Bureau Mutual Insurance Company

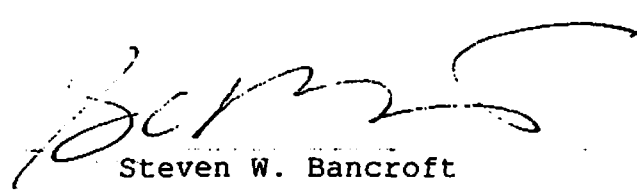
CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing **Motion to Reconsider and Vacate Order** was furnished via facsimile and mailed first-class, postage prepaid on this 27<sup>th</sup> day of July, 2000 to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231  
(facsimile 703-925-0501)

William M. Dupray, Esquire  
BRANDT, JENNINGS, ROBERTS,  
DAVIS & SNEE, P.L.L.C.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042  
(facsimile 703-536-2200)

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033-3810  
(facsimile 703-222-0321)

  
Steven W. Bancroft

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

RALPH D. LOMBARD )

Defendant. )

**RECEIVED**

JUL 31 2000

Law Number: 181346 Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANT VIRGINIA FARM BUREAU MUTUAL INSURANCE  
COMPANY'S MOTION TO RECONSIDER AND VACATE ORDER**

Plaintiff, by counsel, files this Memorandum in Opposition to Defendant Virginia Farm Bureau Mutual Insurance Company's Motion to Reconsider and Vacate Order, and in support thereof states as follows:

**I. INTRODUCTION**

It is remarkable that counsel for Virginia Farm Bureau Mutual Insurance Company (hereinafter UIM) can recite six pages of facts regarding what he believes occurred prior to the circumstances that resulted in the telephone conference with Your Honor. It is remarkable because neither he, nor anyone from his office, bothered to attend the deposition of the Allstate designee. In fact, his office was contacted before the deposition began and Plaintiff was specifically told that no one would be attending. This absence is explained by counsel for UIM on page two of his memorandum that he elected not to attend nor send anyone else from his office. Counsel for UIM felt that given what he believed to be the limited scope of the deposition and the fact that Mr. Corrie would be attending, that he did not need to appear to protect his interests.

Unfortunately, for counsel for UIM, certain things occurred in the deposition that were not anticipated by him. He should not be heard at this late date to complain about those matters when he chose not to attend the deposition in the first instance. By not attending the deposition, counsel for UIM clearly waived any rights he had to object to matters he now raises.

Further, there is one glaring mis-statement of fact in UIM's Introduction. He states that a call was made to Judge Ney and he was not able to be reached. The UIM carrier states that it was after this first failed attempt to reach Judge Ney that Mr. Corrie left the deposition. **THIS IS NOT TRUE!** Mr. Corrie left the deposition **BEFORE** any call was placed to Judge Ney and the transcript of the Allstate designee bears this fact out. (Exhibit 1)

MR. FREI: So, you know, I know of only one of two things to do, either move over to some terminal where she can answer those questions or, I guess, we could try to get Judge Ney on the phone if you're unwilling to do that. I just don't know how else I'm going to get those answers.

MR. DUPRAY: Well, your - - first of all, she was subpoenaed to come here for a deposition. Whether you offered or not is irrelevant. The subpoena is to come here. The subpoena is to, based on Judge Ney's ruling, explain this form which she has done to you. She's explained

the form. He didn't say know everything about every claim number on the form.

MR. FREI: We can have that discussion with Judge Ney if we need to.

MR. DUPRAY: I understand. I understand. And, moreover, it would be our position that it would be highly burdensome for her to go through every claim to do that on the computer especially since some of them are not recoverable as we sit here. You'd have to wait several days.

MR. FREI: Well, we could certainly go through the ones that were, I guess.

MR. DUPRAY: Well - -

MR. FREI: But you're telling me basically you're not going to do that.

MR. DUPRAY: Absolutely not.

MR. FREI: Well, then let me see if I can get Judge Ney on the phone.

MR. DUPRAY: That would be fine.

MR. CORRIE: I'll tell you what. I'm going to let you guys do  

---

whatever you're doing. I'm going to excuse  
myself, because I have a bunch of other things.

**MR. DUPRAY: Fine.**

**MR. FREI: Fine.**

**(A short recess was taken.)**

**As can be seen from the above transcript, Mr. Corrie left the deposition when he learned that Plaintiff intended to call Judge Ney. [Rydell deposition, p. 58, L. 22; p. 59, L. 1-4] It was after Mr. Corrie left that a recess was taken in the deposition to attempt to contact Judge Ney. [Rydell deposition p. 59, L. 21-22; p. 60 L. 1-22]**

**Plaintiff points this out to the Court only because both Defendant Lombard and counsel for UIM state that Mr. Corrie did not leave the deposition until after an attempt was made to call Judge Ney. THIS IS NOT TRUE. As the transcript above reveals, there was no recess in the deposition taken to call Judge Ney until AFTER Mr. Corrie left the deposition.**

**The importance of this fact is that counsel for UIM did not attend the deposition and was relying on Mr. Corrie. Mr. Corrie left the deposition before it was concluded. Had either bothered to attend or stay to the conclusion of the deposition, they would have been aware of the planned telephone conference call later in the afternoon.**

**There is no question that when the parties left the deposition of Ms. Rydell that the deposition was being left open for the purpose of obtaining Judge Ney's ruling. Equally clear was the fact that there was not going to be any re-noticing or re-setting this deposition.**



MR. FREI: ... And to that extent I would request that the deposition remain open until we've had a chance to talk to Judge Ney about that issue.

Rydell deposition, p. 60, L. 20-22

MR. FREI: So we're clear, I'm not renoting or resetting. I'm specifically leaving it open pending a ruling from Judge Ney. Thank you.

Rydell deposition, p. 62, L. 1-3

## II. ARGUMENT

### A. This Court's Order is not Contrary to the Rules of Court

UIM argues that this court could not order what it did. The error of this argument is that the predicate upon which it is based is not correct. This is not a case where the deponent was refusing to answer a question. The issue was should she be required to go to a computer to gather information or have it available to answer questions. Neither the deponent or counsel refused to allow her to answer questions.

Further, this was not a circumstance where anyone failed to obey any order of the Court. In fact, when the Court made its Order, counsel for Allstate **OFFERED** the compromise. The Court did not require this. It only ordered it after it was suggested by Allstate. Had counsel for Lombard stayed at the deposition, or counsel for UIM attended in the first instance, they would have been aware of this call and, assuming they had a problem with Allstate's offer of compromise to Judge Ney's ruling, could have objected at that time. However, having made decisions to leave, and not attend the deposition, respectively they waived this right.

---

**B. When the Recess of the Deposition Occurred all that Attended or Stayed to the Conclusion of the Deposition were Aware that a Conference Call was Going to Occur**

Mistakenly, UIM argues that after the original recess of the deposition no one knew when or where it would reconvene. INCORRECT. When counsel for Allstate (the only counsel remaining at the deposition) left, it was known that a call was going to occur at approximately 3:30 p.m. In fact, because Allstate's counsel was going to be traveling, his cell phone number was obtained so he could be reached.

UIM counsel's argument that it was not foreseeable this issue might arise, should fall on deaf ears. Things happen all the time in deposition that are unexpected. When he chose not to attend the deposition, he assumed all the risks associated with his non-attendance. He was properly noticed for the deposition in the first instance and had he appeared, he would have been involved in the subsequent telephone conference.

Similarly, UIM's argument in part C of its memorandum, that it should have been contacted by Allstate's counsel before he offered the compromise is absurd.

This conclusion would mean that UIM's counsel could choose not to attend a properly noticed deposition and then, if something arose during that deposition that potentially had an adverse affect on his client, he could require other counsel to contact him before doing anything else. The complete silliness associated with this procedure is apparent on its face. If you do not attend the deposition to raise proper and timely objections, the result is at UIM counsel's risk.

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### III. SUMMARY

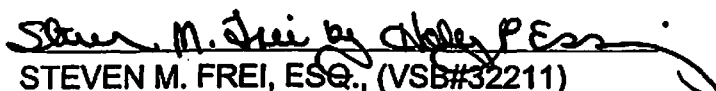
UIM counsel did not attend this deposition. There is no question it was properly noticed. His arguments now made, that "had I been there" I would have objected, were effectively waived when he chose not to attend.

Further, this Court's Order is not a sanction as argued by UIM.

WHEREFORE, for all the reasons stated above, Defendant Virginia Farm Bureau Mutual Insurance Company's Motion to Reconsider and Vacate Order, should be dismissed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS, P.C.

  
STEVEN M. FREI, ESQ., (VSB#32211)  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
*Counsel for Plaintiff*

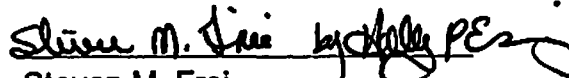
# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the <sup>4th</sup> 28 day of July 2000, copies of the foregoing Plaintiff's Memorandum in Opposition to Defendant Virginia Farm Bureau Mutual Insurance Company's Motion to Reconsider and Vacate Order, was sent via first class mail, postage prepaid, to:

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033  
(Counsel for Ralph D. Lombard)

Steven W. Bancroft, Esq.  
TRICHILO, BANCROFT, et. al.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau Mutual Insurance Co.)

William M. Dupray, Esq.  
BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC  
6565 Arlington Boulevard, Suite 200  
Falls Church, Virginia 22042  
*Counsel for Defendant Allstate Insurance Company*

  
Steven M. Frei

COPY

1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - x  
4 DORSEY W. ROHRBAUGH,

5 Plaintiff,

6 vs.

At Law No. 181346

7 RALPH D. LOMBARD,

8 Defendant.  
9 - - - - - x

10 Reston, Virginia

11 Tuesday, June 6, 2000

12 Deposition of PAMELA RYDELL, called for examination  
13 by counsel for the plaintiff, pursuant to notice, at the  
14 office of Steven M. Frei, Esq., Hall and Sickels, P.C.,  
15 12120 Sunset Hills Road, Suite 150, Reston, Virginia  
16 20190, before Carol A. Lowe, a Registered Professional  
17 Reporter and a Notary Public in and for the State of  
18 Virginia, beginning at 10:10 a.m., when were present on  
19 behalf of the respective parties:  
20

21  
22  
EXHIBIT

## 1 FOR THE PLAINTIFF:

2 STEVEN M. FREI, Esq., Hall and Sickels, P.C.,  
3 12120 Sunset Hills Road, Suite 150, Reston,  
4 Virginia 20190.

## 5 FOR THE DEFENDANT:

6 QUENTIN R. CORRIE, Esq., Anderson & Corrie,  
7 12600 Fair Lakes Circle, Suite 220, Fairfax,  
8 Virginia 22033.

## 9 FOR ALLSTATE INSURANCE COMPANY:

10 WILLIAM M. DUPRAY, Esq., Brandt, Jennings,  
11 Roberts, Davis & Snee, PLLC, 6565 Arlington  
12 Boulevard, Suite 200, Falls Church, Virginia  
13 22042.  
14  
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21

22

1 mean --

2 MR. FREI: Well, they're the creators of the  
3 information. So if they make mistakes, I think it's  
4 their own problem.

5 But if we were sitting at a monitor as I  
6 offered last Friday and again yesterday, she could punch  
7 in a claim number, find out if the payment was AA 93  
8 which would then tell me that the payment on this form  
9 was for forensic work, however we want to describe that,  
10 and I'd have that information. And without that she  
11 can't tell me that information.

12 MR. DUPRAY: Right.

13 MR. FREI: So, you know, I know of only one of  
14 two things to do, either move over to some terminal  
15 where she can answer those questions or, I guess, we  
16 could try to get Judge Ney on the phone if you're  
17 unwilling to do that. I just don't know how else I'm  
18 going to get those answers.

19 MR. DUPRAY: Well, your -- first of all, she  
20 was subpoenaed to come here for a deposition. Whether  
21 you offered or not is irrelevant. The subpoena is to  
22 come here.

1           The subpoena is to, based on Judge Ney's  
2 ruling, explain this form which she has done to you.  
3 She's explained the form. He didn't say know everything  
4 about every claim number on the form.

5           MR. FREI: We can have that discussion with  
6 Judge Ney if we need to.

7           MR. DUPRAY: I understand. I understand. And,  
8 moreover, it would be our position that it would be  
9 highly burdensome for her to go through every claim to  
10 do that on the computer especially since some of them  
11 are not even recoverable as we sit here. You'd have to  
12 wait several days.

13           MR. FREI: Well, we could certainly go through  
14 the ones that were, I guess.

15           MR. DUPRAY: Well --

16           MR. FREI: But you're telling me basically  
17 you're not going to do that.

18           MR. DUPRAY: Absolutely not.

19           MR. FREI: Well, then let me see if I can get  
20 Judge Ney on the phone.

21           MR. DUPRAY: That would be fine.

22           MR. CORRIE: I'll tell you what. I'm going to



1 let you guys do whatever you're doing. I'm going to  
2 excuse myself, because I have a bunch of other things.

3 MR. DUPRAY: Fine.

4 MR. FREI: Fine.

5 (A short recess was taken.)

6 BY MR. FREI:

7 Q. I might have skipped a line, the payment type.

8 A. Okay.

9 Q. I was looking back through my notes. And I  
10 didn't see anything where I had you explain what payment  
11 type was.

12 A. All right. One second here.

13 Q. 9M is what they all say.

14 A. Okay. That is the IRS form on which the  
15 payment will be reported. 9M is Form 1099  
16 Miscellaneous.

17 Q. You already told me that you're not aware of  
18 any computerized form that could be generated that would  
19 just pull out the AA 93 information.

20 A. No.

21 MR. FREI: Okay. While we were off the record  
22 I attempted to place a call to Judge Ney to get a ruling

1 regarding, I guess, moving this deposition to a location  
2 where the information at least that's available by  
3 computer monitor or screen could be gathered to  
4 differentiate payments that are reflected on the  
5 subpoena forms that are for forensic work and by that  
6 meaning basically work that Dr. Ammerman did that's  
7 reflected in these forms that was done on behalf of  
8 defendants examining plaintiffs in a litigation whether  
9 it be reviewing records, meeting with lawyers,  
10 testifying at trial, conducting examinations or anything  
11 of that nature versus other payments which Dr. Ammerman  
12 has indicated may appear on this form that are for  
13 first-party benefits, in other words, payments that  
14 Allstate made to its own insureds or to the doctor on  
15 behalf of its insureds for med pay or PIP payments.

16 Judge Ney was, not surprisingly, unavailable.  
17 And I've left a message for him to call myself and  
18 Mr. Dupray who is here with the Allstate representative  
19 to discuss that subject.

20 And to that extent I would request that the  
21 deposition remain open until we've had a chance to talk  
22 to Judge Ney about that issue.

1 MR. DUPRAY: I would object to it going  
2 forward. We've been here an hour and 45 minutes  
3 approximately from a ten o'clock start time if, in fact,  
4 we started at that time.

5 Ms. Rydell has patiently answered all of the  
6 questions that were propounded to the best of her  
7 knowledge. She's answered every question about the  
8 columns and the information set forth on the form.

9 Anything beyond that is beyond the scope of the  
10 subpoena that was ruled on by the judge. It was a very  
11 simple purpose for this deposition which is set forth in  
12 the subpoena and the request.

13 So anything beyond anything at this office  
14 would be beyond the scope. And anything beyond the  
15 information already provided would be beyond the scope.

16 It would involve considerable cost, time and  
17 burden on Allstate representatives and certainly bears  
18 no relevance to this case which is set for trial  
19 tomorrow.

20 So I don't know if those objections need to be  
21 stated on the record, but we do object to renoticing or  
22 resetting this. That's it.

1 MR. FREI: So we're clear, I'm not renoticing  
2 or resetting. I'm specifically leaving it open pending  
3 a ruling from Judge Ney. Thank you.

4 (At 11:50 a.m. the taking of the deposition  
5 was recessed to reconvene sine die.)  
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VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

vs. )

RALPH D. LOMBARD )

Defendant. )

**RECEIVED**

JUL 31 2000

Trichilo, Bancroft, McGavin,  
Law Number: 181346  
Brown & Judkins, P.C.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT LOMBARD'S  
MOTION TO RECONSIDER THE ORDER OF JUNE 6, 2000**

Plaintiff, by counsel, files this Memorandum in Opposition to the Motion to Reconsider that has been filed by counsel for Defendant Lombard, and in support thereof states as follows:

**I. COUNSEL FOR DEFENDANT LOMBARD AND THE  
UIM CARRIER WAIVED THEIR RIGHT TO OBJECT  
TO ANY RULING MADE BY JUDGE NEY**

It seems absolutely incredible to counsel for Plaintiff that counsel for Defendant Lombard argues that he or counsel for the UIM carrier had any right to be involved in the telephone conference call between Plaintiff's counsel and Counsel for Allstate. Especially, in light of the fact that counsel for Defendant Lombard abandoned the deposition in question and counsel for the UIM carrier never bothered to attend in the first place.

A complete recitation of the facts regarding this ruling is critical for this court to know. During the course of this case, both the Defendant and the UIM carrier identified Bruce Ammerman, M.D. as their expert witness. Pursuant to the provisions of Rule

4:10, Dr. Ammerman examined Plaintiff on two separate occasions, the first in April of 1999 and again in May of 2000.

On April 25, 2000, Plaintiff filed a request for a witness subpoena for a Rule 4:5(b)(6) deposition of the Allstate corporate designee most knowledgeable about the Allstate IRS Payments List and Payment Detail for Dr. Ammerman. [Exhibit 1].<sup>1</sup> The deposition was noticed for Monday, May 8, 2000. On the Friday before the scheduled deposition, plaintiff's counsel received a call from William Dupray, Esquire, who had been engaged by Allstate in connection with opposing the subpoena. Mr. Dupray requested, and plaintiff's counsel agreed, to a postponement of the deposition to give Mr. Dupray time to file a motion to quash. A motion to quash was filed on May 5<sup>th</sup> and a notice of the motion was filed May 22<sup>nd</sup> setting it for hearing on June 2, 2000. Trial of the matter was to begin June 7, 2000.

On June 2, 2000, Judge Ney heard and appropriately denied the motion to quash. Plaintiff's counsel had been able to show that the information he was seeking was not obtainable from Dr. Ammerman, who, less than three months earlier during the taking of his *de bene esse* deposition in connection with the *Stroud* case, was either unwilling or unable to testify concerning which of the payments on the Allstate printout

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<sup>1</sup>In connection with another action filed in this court, *Pamela Stroud v. Debra Consentino*, Law No. 177798, plaintiff had obtained in response to a proper subpoena, computerized printouts of various payments Allstate had made to Dr. Ammerman. The subpoena request in *Stroud* limited itself to payments made to Dr. Ammerman as a result of Rule 4:10 examinations.

were for medical/legal work and which were for medical care. Judge Ney ordered that the deposition of the Allstate designee proceed on June 6, 2000.

On the afternoon of June 2<sup>nd</sup>, plaintiff's counsel faxed a letter to Mr. Dupray expressing his concern that the information he would seek from the designee might well involve the designee's need for computer access and offered to hold the deposition at a local Allstate location. [Exhibit 2]. Mr. Dupray's response was that the deposition was noticed for plaintiff's counsel's office and that was where the deposition would take place.

The deposition was attended by Mr. Quentin R. Corrie-representing the defendant, Mr. Dupray-representing Allstate, and plaintiff's counsel. Mr. Steven W. Bancroft-counsel for the UIM carrier, although noticed, elected not to attend. A telephone call was placed to Mr. Bancroft's office before the deposition began and plaintiff's counsel was advised no one for the UIM carrier would be appearing. During the deposition, the Allstate designee testified that she could not tell by looking at the printout whether the payments made by Allstate to Dr. Ammerman were for medical care or, conversely, were made in connection with legal proceedings. She further testified that if she had access to an Allstate computer she would be able to identify whether a payment was for medical care or for legal matters. Counsel for Allstate refused to agree to moving the deposition to a location where the witness could obtain the information from the computer. Counsel for Plaintiff then advised all present he was going to call Judge Ney. Mr. Corrie, counsel for the defendant, advised counsel he was leaving, that they should do whatever they wanted, but he had other things to do.

[Exhibit 3, pages 58 - 59]. Mr. Corrie made this decision before any attempt to contact Judge Ney was made. While the deposition was still in progress, plaintiff's counsel called Judge Ney, who was on the bench. Plaintiff's counsel then indicated he would leave the deposition open until he could get a ruling from Judge Ney. [Exhibit 3, pages 60 - 62].

Judge Ney's law clerk called counsel back later that afternoon and spoke with plaintiff's counsel and Mr. Dupray. Mr. Bancroft, counsel for the UIM carrier, and Mr. Corrie, counsel for Defendant Lombard, waived any right they had to participate in this call. Mr. Bancroft never bothered to attend the deposition in the first place and Mr. Corrie made a decision to abandon the deposition before it was concluded. They made these decisions of their own choice. Upon hearing what had transpired at the deposition, Judge Ney remarked that it had been clear that the designee was supposed to provide the information as to how much of the payments made to Dr. Ammerman were for medical care and how much were for legal work. He indicated he would order Allstate to arrange for plaintiff's counsel to go to a local Allstate location where he could observe an operator obtain the requested information. Mr. Dupray offered the alternative solution of simply agreeing that Allstate had paid Dr. Ammerman \$104,971.00 in 1999 and \$106,520.00 in 1998.

Mr. Dupray's proposal was acceptable to plaintiff's counsel so long as 1) Dr. Ammerman was not permitted to explain that some of the payments were for medical care and some for legal work but that he could not say how much was for which; and, 2) counsel for the defendant and the UIM carrier were not allowed to address those



matters. Judge Ney ordered that plaintiff's counsel could use the total amounts as money received from Allstate and neither the witness nor counsel would discuss the allocation of the money. The basis for this ruling was that this was the precise dilemma plaintiff had been attempting to avoid by deposing the Allstate designee, i.e., Dr. Ammerman's inability to testify about how much money he earned for legal work. Mr. Corrie, having elected to leave the deposition, and Mr. Bancroft, having elected never to attend the deposition in the first place, were advised of this ruling. Had either bothered to attend and protect their interests (or not leave in Mr. Corrie's case) they could have voiced any objection they may have had to this decision. However, to come in after the fact, and after the trial, and now claim prejudice, under these circumstances is highly inappropriate.

## **II. THIS COURT'S ORDER WAS NOT A "SANCTION"**

Counsel for Allstate argues that this Court's order regarding the financial payments made to Dr. Ammerman somehow constitute a sanction. Nothing could be further from the truth.

First, Dr. Ammerman was an expert identified by both the Defendant and the UIM carrier. This Court ordered that Plaintiff be allowed to determine which payments made to the Defendant's and UIM's expert (Dr. Ammerman) were for "forensic medical/legal work" as opposed to actual medical treatment. Rather than go through this exercise, however, counsel for Allstate volunteered to the Court that it would agree that the total payments made to Dr. Ammerman were as reflected on the attachment to the subpoena. Plaintiff requested the two conditions to such an agreement as

discussed above to which counsel for Allstate also agreed. The Court then modified its previous ruling to coincide with the offers made by counsel for Allstate. In other words, the Court ordered what Allstate requested. It is inconceivable that giving someone what they asked for can now be called a sanction.

Second, there is no prejudice that resulted to anyone as a result of this Court's ruling. At trial, Dr. Ammerman was asked by Plaintiff's counsel if in a certain year he received payments in the amount reflected on the payment sheets. Plaintiff's counsel did not attempt to insinuate or imply in any way that the amounts were anything other than total payments received by Dr. Ammerman from Allstate.

Q. In fact, Doctor, Allstate Insurance Company, who is the insurance company for the defendant in this case, has paid you in 1999, \$104,971, right?

A. I don't know that is right. If that's what the form says-I don't know one way or the other.

Q. Would you like to look at it to verify it?

A. I would have no way to verify it.

Q. I would represent to you that's what the figure is.

A. If that's what they say, I have no way of agreeing or disputing it. I don't know. I don't have the information in front of me. I would not dispute what they are saying, if that's what they say. I don't know its veracity, that's all.

Q. Well, I will proffer to the Court and to you that it's produced pursuant to a subpoena to Allstate Insurance Company.

A. I'm just saying that unless it's something that comes out of my office, I can't interpret it. I'm not debating

with you.

Q. Okay.

A. It may be absolutely accurate, but I can't say about its veracity one way or the other, because we didn't produce it, and I don't know what's in it.

Q. In 1998, if I told you that Allstate Insurance Company had paid you \$106,520, the same answer, I'm assuming.

A. Without showing the cases, I would not know one way or the other, or whether they were for-in what capacity I received those monies.

Q. Well what do you mean in what capacity? Can we approach about this, Judge? I mean you were paid by Allstate Insurance Company in 1998 \$106,520, right?

A. If you say so. I'm saying that could be for various things.

Q. Well then I'll make the same offer to you, would you like to verify that number? I will represent to you that's what this document says. I know it didn't come from your office. It came from Allstate.

A. It may be. If that document breaks out patients I've treated, so be it, I don't know. I'll accept the number because I don't know.

Q. All right. But you have no reason to dispute what's been given to you by Allstate, correct?

A. I have absolutely no reason to dispute that.

Again, there is no dispute by any party that Dr. Ammerman did, in fact, receive the payments he was asked about at trial. There is also no claim that the payment information is not accurate. In other words, the information was accurate and truthful

and certainly relevant to Dr. Ammerman's potential bias.

Finally, and this matter cannot be stressed enough, Defendant's counsel and the UIM carrier have waived their right to raise these arguments. Again, when counsel for Defendant left the deposition, he stated,

MR. FREI:                So, you know, I know of only one of two things to do, either move over to some terminal where she can answer those questions or, I guess, we could try to get Judge Ney on the phone if you're unwilling to do that. I just don't know how else I'm going to get those answers.

MR. DUPRAY:           Well, your - - first of all, she was subpoenaed to come here for a deposition. Whether you offered or not is irrelevant. The subpoena is to come here. The subpoena is to, based on Judge Ney's ruling, explain this form which she has done to you. She's explained the form. He didn't say know everything about every claim number on the form.

MR. FREI:                We can have that discussion with Judge Ney if we need to.

MR. DUPRAY:           I understand. I understand. And, moreover, it would be our position that it would be highly burdensome for her to go through every claim to do that on the

computer especially since some of them are not  
recoverable as we sit here. You'd have to wait  
several days.

MR. FREI: Well, we could certainly go through the ones that  
were, I guess.

MR. DUPRAY: Well --

MR. FREI: But you're telling me basically you're not going to do  
that.

MR. DUPRAY: Absolutely not.

MR. FREI: Well, then let me see if I can get Judge Ney on the  
phone.

MR. DUPRAY: That would be fine.

MR. CORRIE: I'll tell you what. I'm going to let you guys do  
whatever you're doing. I'm going to excuse  
myself, because I have a bunch of other things.

MR. DUPRAY: Fine.

MR. FREI: Fine.

(A short recess was taken.)

When Defendant's counsel chose to leave the deposition, everything that happened  
thereafter was at his own peril. Of course, counsel for UIM never appeared at the  
deposition in the first instance and similarly has no basis to argue about this Court's  
ruling.

WHEREFORE, for all the reasons stated above, Defendant Lombard's Motion to Reconsider Order Stated in Telephone Conversation of June 6, 2000, should be dismissed.

DORSEY W. ROHRBAUGH  
By Counsel

HALL & SICKELS, P.C.

*Handwritten signature: Steven M. Frei*  
STEVEN M. FREI, ESQ., (VSB#32211)  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 28<sup>th</sup> day of July 2000, copies of the foregoing Plaintiff's Memorandum in Opposition to Defendant Lombard's Motion to Reconsider Order Stated in Telephone Conversation of June 6, 2000 was sent via first class mail, postage prepaid, to:

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle, Suite 220  
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(Counsel for Ralph D. Lombard)

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*Counsel for Defendant Allstate Insurance Company*

Steven M. Frei by [Signature] Esq.  
Steven M. Frei

01/05/19

ALLSTATE INSURANCE CO.  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR ( TAX YEAR: 1995 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
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TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
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521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951204263	0302/9767623203
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521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6940183889	0315/1767515041
521074671	10	18	01	9M	3,125.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6840920828	0317/1765991377
521074671	10	18	01	9M	240.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903446972	0327/9766728603
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521074671	10	18	01	9M	75.00	BOX 7 - NONEEMPLOYEE COMPENSATION	2342362395	0523/2769707828
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521074671	10	18	01	9M	325.00	BOX 7 - NONEEMPLOYEE COMPENSATION	2342362395	0623/8770707791
521074671	10	18	01	9M	400.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6840931247	0705/4768742092

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EXHIBIT



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TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
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521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342380140	0803/4771531651
521074671	10	18	01	9H	475.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902355597	0811/2771947622
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521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903013260	1011/1773470953
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521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902449531	1016/9773477019
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521074671	10	3	01	9H	600.00	BOX 7 - NONEMPLOYEE COMPENSATION	2890548163	0821/0659652021
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521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902476435	1218/2775400283
521074671	10	18	01	9H	625.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902804453	1221/4775409319
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521074671	20	22	01	9H	135.04	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0808/0138822975
521074671	20	22	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0822/0138827799
521074671	20	22	01	9H	203.20	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0926/0139291173
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521074671	22	22	01	9H	375.00	BOX 7 - NONEMPLOYEE COMPENSATION	6430110657	0912/0139285179
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37,562.99

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521074671	10	18	01	9M	125.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903010837	0627/7779400369
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 3301 NEW MEXICO AVE NW 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	100.00-	BOX 7 - NONEMPLOYEE COMPENSATION	1253752123	0801/3779344992
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050926916	0805/0786022857
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902576044	0809/1779499234
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951626309	0812/2785952765
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951626309	0812/3785952774
521074671	10	18	01	9M	560.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4950647264	0813/9785954736
521074671	10	18	01	9M	625.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951927855	0815/5785962116
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050926916	0820/0786036483
521074671	10	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3901966295	0822/8779541732
521074671	10	18	01	9M	2,250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3901966295	0828/3779551524
521074671	10	18	01	9M	1,475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902355597	0829/1779557077
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051228163	0910/9788334813
521074671	10	18	01	9M	775.00	BOX 7 - NONEMPLOYEE COMPENSATION	4951857110	0912/6789328449
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051077248	0916/9788360346
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342932395	0918/9789365646
521074671	10	18	01	9M	900.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951626309	0919/6789374241
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841915982	0919/6789510627
521074671	10	18	01	9M	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841090084	0923/3789513345
521074671	10	18	01	9M	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903474850	0926/7778794642
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841437012	1002/8789526881
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902858061	1025/8783367551
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951822502	1028/9770021883
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051105270	1105/7788425497
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132536022	1107/2786706425
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342932395	1108/1770125311
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4950647264	1111/1770127813
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343304487	1115/1770166243
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902858061	1121/4783434997
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841915982	1122/6770866623
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841437012	1127/4770871294
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343175226	1203/7770204187
521074671	10	18	01	9M	225.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051470286	1212/8788459337

ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- OTHER THAN PRE-PAID ( TAX YEAR: 1996 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	1,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902596207	1216/9783492669
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952817477	1218/0770240754
521074671	10	18	01	9H	1,950.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841427757	1218/1772153956
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132536022	1226/5786775509
521074671	10	3	01	9H	69.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	1752856623	0219/2643863915
521074671	10	18	01	9H	125.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902381221	0104/4775429758
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902601529	0105/0775429803
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902601529	0105/1775429812
521074671	10	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902476435	0105/7775429794
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6840873563	0122/9775548162
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050668336	0122/977817836
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902601529	0129/5776887263
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	7080499944	0212/1778017294
521074671	10	18	01	9H	200.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841822998	0219/0776956113
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903278905	0227/8776959425
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903278905	0227/9776959425
521074671	10	18	01	9H	50.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902804453	0315/3777013263
521074671	10	18	01	9H	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	7080499944	0320/0781528932
521074671	10	18	01	9H	425.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902381221	0320/6777020706
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902381221	0320/7777022542
521074671	10	18	01	9H	125.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841822998	0326/0777034296
521074671	10	18	01	9H	525.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902576044	0327/5777037338
521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902335433	0327/8777037293
521074671	10	18	01	9H	1,800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902335433	0327/9777037293
521074671	10	18	01	9H	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132278310	0329/2778997997
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902381221	0401/0777067803
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902381221	0401/1777067803
521074671	10	18	01	9H	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952440270	0411/1781625466
521074671	10	18	01	9H	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	7080499944	0417/1781638426
521074671	10	18	01	9H	1,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	7080499944	0417/2781638426
521074671	10	18	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342362395	0418/8781664517
521074671	10	18	01	9H	562.50	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050461962	0423/1782097885

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ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR ( TAX YEAR: 1996 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AKNERHAN  
 3301 NEW MEXICO AVE NW 352  
 WASHINGTON

DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952344142	0425/9781685226
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342989742	0502/3782151768
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342362395	0509/8782168877
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952344142	0509/9782167482
521074671	10	18	01	9M	400.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841193839	0523/4778612068
521074671	10	41	01	9M	65.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6870564470	0226/9929434455
TOTAL PAYMENTS FOR COMPANY CODE: 10					36,527.75			
521074671	20	22	01	9M	1,800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0604/0140809194
521074671	20	22	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0912/0019354032
521074671	20	22	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	1022/0019368756
521074671	20	22	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	1210/0020425311
521074671	20	22	01	9M	56.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0228/0140436927
521074671	20	22	01	9M	65.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0312/0140442534
521074671	20	22	01	9M	65.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0419/0140790393
521074671	20	22	01	9M	65.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6430183522	0509/0140798763
TOTAL PAYMENTS FOR COMPANY CODE: 20					2,501.00			
521074671	60	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051389049	0529/0782714565
521074671	60	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342798183	0603/9782262063
521074671	60	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342798183	0604/1782268255
521074671	60	18	01	9M	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902966245	0605/3779318118
521074671	60	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343010464	0614/3782319366
521074671	60	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342798183	0620/5782268255
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343010464	0702/2785769813
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342499543	0709/1785782197
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951883660	0711/6705789631
521074671	60	18	01	9M	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841808568	0822/4785358702
521074671	60	18	01	9M	209.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903257255	0823/9779543325
521074671	60	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902893258	1009/1779638329
521074671	60	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903464208	1011/2779639229
521074671	60	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051389049	1016/9788388795

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ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR ( TAX YEAR: 1996 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW 352  
 WASHINGTON

DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051762757	1022/8788393646
521074671	60	18	01	9H	1,800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903257255	1025/2783366426
521074671	60	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902893258	1029/1783372618
521074671	60	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051600239	1029/3788399136
521074671	60	18	01	9H	325.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902966245	1106/5783386145
521074671	60	18	01	9H	485.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342631666	1106/7770120559
521074671	60	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050920174	1121/2788441706
521074671	60	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050920174	1122/2788443083
521074671	60	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343106189	1203/3770204142
521074671	60	18	01	9H	510.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841398221	1210/4788456592
521074671	60	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902812159	1210/4783504495
521074671	60	18	01	9H	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951883660	0129/0777949227
521074671	60	18	01	9H	133.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952543149	0205/4777975156
521074671	60	18	01	9H	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902288509	0213/7776945727
521074671	60	18	01	9H	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951883660	0215/6778027986
521074671	60	18	01	9H	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951883660	0216/3778027986
521074671	60	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343132581	0321/2781532091
521074671	60	18	01	9H	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951733246	0322/1781534665
521074671	60	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951733246	0322/2781534665
521074671	60	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343132581	0328/5781580043
521074671	60	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051389049	0409/9782082009
521074671	60	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343320665	0417/6781638201
521074671	60	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902960248	0502/8779249655
TOTAL PAYMENTS FOR COMPANY CODE: 60					11,853.00			
TOTAL PAYMENTS FOR TIN NUMBER: 521074671					50,881.75			



01/05/15

ALLSTATE INSURANCE CO.  
IRS PAYMENTS LIST- OTHER THAN PRIOR TAX YEAR: 1997 )  
PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
BRUCE AMMERMAN  
3301 NEW MEXICO AVE NW STE 352  
WASHINGTON

DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841459065	0102/3772169283
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342380140	0103/4770097051
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343044109	0103/9789949233
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952409846	0107/1789954651
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952817477	0114/1770553306
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902934011	0116/7786890043
521074671	10	18	01	9M	1,900.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951822502	0122/9770575572
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952409846	0124/5770065362
521074671	10	18	01	9M	247.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904083742	0124/5786905028
521074671	10	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952101609	0129/8770076927
521074671	10	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	4132536022	0130/6786831822
521074671	10	18	01	9M	50.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903474850	0130/8786917358
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951927855	0210/2762845157
521074671	10	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902803596	0212/2786943224
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343044109	0212/8762854085
521074671	10	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841621978	0213/3774194778
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841621978	0213/4774194787
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953283778	0213/7762862239
521074671	10	18	01	9M	875.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343175226	0214/7762864732
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842228923	0217/2773500968
521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6840890740	0217/7774198144
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952284561	0218/5762858439
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342752256	0220/5762877269
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050885054	0224/7762885396
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6481408885	0225/2770218614
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952284561	0227/0762897501
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051546747	0303/6763296163
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050885054	0304/0762928884
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342380140	0306/1762936624
521074671	10	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952101609	0317/8762962652
521074671	10	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952284561	0325/3766147365
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133327876	0327/2771848019

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ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- OTHER THAN PRIOR ( TAX YEAR: 1997 )  
 PAYMENT DETAIL FOR TIN NUMBER 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLATH/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952054873	0327/5766156275
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952054873	0328/9766162998
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	4133143091	0401/9771853239
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903653479	0403/5787050387
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051856179	0416/2772093557
521074671	10	18	01	9H	77.50	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051077248	0417/0772094448
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051211284	0421/7772096374
521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051669218	0502/4765345924
521074671	10	18	01	9H	435.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133327876	0506/6771905088
521074671	10	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952739622	0512/6766583775
521074671	10	18	01	9H	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051541094	0513/4765352251
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051211284	0513/8765352197
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	2342752256	0515/2766594008
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903653479	0515/3772557867
521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952537166	0515/4766593837
521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903366924	0515/8772557759
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133143091	0516/4771914502
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952409846	0521/1766606698
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903866733	0523/3772571826
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952739622	0610/6766624563
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051077248	0611/2765372996
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953283778	0612/3766631709
521074671	10	18	01	9H	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342989205	0612/5766631637
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343207912	0612/6766630053
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343207912	0616/4766634697
521074671	10	18	01	9H	1,600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952054873	0617/5766638594
521074671	10	18	01	9H	2,200.00	BOX 7 - NONEMPLOYEE COMPENSATION	4133327876	0626/1771948297
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841459065	0626/3766987317
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902858061	0701/7772653492
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841459065	0702/1766993392
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951857110	0708/3769848039
521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6851835261	0710/1767619801

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ALLSTATE INSURANCE CO.  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR ( TAX YEAR: 1997 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841705525	0725/2767013894
521074671	10	18	01	9H	1,800.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841705525	0725/3767013894
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842152354	0804/3767023794
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902816473	0806/1765113463
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902980022	0806/3765114435
521074671	10	18	01	9H	200.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902980022	0806/4765114444
521074671	10	18	01	9H	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952537166	0812/8769988007
521074671	10	18	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051890731	0814/4769737537
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343207912	0814/6769991634
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951965103	0822/3770004162
521074671	10	18	01	9H	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342752256	0825/3770006322
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842152354	0904/5462594708
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842120427	0908/5462597876
521074671	10	18	01	9H	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841655225	0908/9462597507
521074671	10	18	01	9H	700.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132707425	0911/8765012636
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902980022	0915/4765193401
521074671	10	18	01	9H	200.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841605071	0917/3462627738
521074671	10	18	01	9H	700.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051378190	0922/4461963835
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951857110	1003/4463231854
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343233553	1007/0463236741
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903089070	1007/9765248355
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903455354	1009/5765251109
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903653479	1010/7765253305
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343233553	1014/9463647996
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342989205	1021/7463660164
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051966481	1022/1463687461
521074671	10	18	01	9H	50.00	BOX 7 - NONEMPLOYEE COMPENSATION	6851835261	1027/8462192561
521074671	10	18	01	9H	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	4131934376	1029/4460012518
521074671	10	18	01	9H	2,775.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132707425	1029/8460011627
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	4131934376	1030/6460013157
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902980022	1031/6767067075
521074671	10	18	01	9H	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842612340	1103/6462669381

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ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR TAX YEAR: 1997 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841731349	1104/3462670866
521074671	10	18	01	9M	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903217408	1107/1767100807
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011574537	1111/6462058461
521074671	10	18	01	9M	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	3904036849	1112/0767107098
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011574537	1113/7462058461
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011574537	1114/2462084471
521074671	10	18	01	9M	800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903089070	1118/6767115072
521074671	10	18	01	9M	300.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902596207	1118/7767114064
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952820828	1124/2465532065
521074671	10	18	01	9M	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841823906	1201/8462691287
521074671	10	18	01	9M	650.00	BOX 7 - NONEMPLOYEE COMPENSATION	6851835261	1202/2462225087
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904036849	1208/6767148309
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904036849	1211/2767154807
521074671	10	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841823906	1223/4465953697
521074671	10	18	01	9M	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841823906	1223/5465953706
521074671	10	18	01	9M	575.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903254195	1229/5767201238
521074671	10	18	01	9M	25.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842631381	1231/0465981543
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011574537	1231/1462150729
521074671	10	18	01	9M	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051691006	1231/4464177052
TOTAL PAYMENTS FOR COMPANY CODE: 10					46,019.50			
521074671	60	18	01	9M	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841398221	0106/4788998005
521074671	60	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343106189	0122/5770574465
521074671	60	18	01	9M	162.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952847797	0131/0762826563
521074671	60	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952847797	0131/1762826563
521074671	60	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952021633	0212/3762853104
521074671	60	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952405190	0218/8762858486
521074671	60	18	01	9M	325.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952021633	0224/7762883497
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841900976	0225/4774228447
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952405190	0306/9762935076
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952773597	0310/1762940989
521074671	60	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952162262	0311/1762947217

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ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- OTHER THAN PRIOR YEAR ( TAX YEAR: 1997 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952021633	0408/2766204326
521074671	60	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952138972	0410/2766209537
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952405190	0512/0766583748
521074671	60	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902911795	0515/0772557579
521074671	60	18	01	9M	800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342631666	0515/1762906762
521074671	60	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902893258	0515/8772557552
521074671	60	18	01	9M	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952162262	0520/0766604034
521074671	60	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902813447	0609/3772596045
521074671	60	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343270001	0617/7766637487
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343270001	0626/7766653822
521074671	60	18	01	9M	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903059123	0708/8765062964
521074671	60	18	01	9M	125.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952203447	0711/5769856364
521074671	60	18	01	9M	475.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952203447	0715/1769881375
521074671	60	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902985096	0724/8765092709
521074671	60	18	01	9M	550.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902877012	0728/3765097578
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902889561	0729/5765101367
521074671	60	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902889561	0729/6765101376
521074671	60	18	01	9M	1,850.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902893258	0731/4765106983
521074671	60	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952405190	0811/3769984074
521074671	60	18	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952405190	0813/6769989123
521074671	60	18	01	9M	325.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841900976	0818/0767037951
521074671	60	18	01	9M	825.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841900976	0818/1767037969
521074671	60	18	01	9M	825.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841900976	0818/3767037969
521074671	60	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841900976	0819/3767038662
521074671	60	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902985096	0820/6765153927
521074671	60	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952021633	0905/2770025582
521074671	60	18	01	9M	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841738690	0908/8462597606
521074671	60	18	01	9M	900.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952165828	0915/2770037588
521074671	60	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842335918	0923/4463007493
521074671	60	18	01	9M	1,900.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4951733246	1002/8463228263
521074671	60	18	01	9M	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952549229	1021/4463660389
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952667591	1021/9463660434

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ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- OTHER THAN PRIOR ( TAX YEAR: 1997 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9M	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903017311	1028/4767062809
521074671	60	18	01	9M	35.00	BOX 7 - NONEMPLOYEE COMPENSATION	4133390239	1029/6460011897
521074671	60	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841738690	1103/4462669219
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903017311	1107/8767100753
521074671	60	18	01	9M	475.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903279499	1113/4464125095
521074671	60	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343080632	1119/1465524352
521074671	60	18	01	9M	2,000.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952667591	1215/8465561702
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902985096	1216/3767164716
521074671	60	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051931303	1218/6464170095
521074671	60	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343255481	1229/3465578109
521074671	60	18	01	9M	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842335918	1229/7463899555
521074671	60	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952549229	1230/2465581898
521074671	60	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841738690	1231/6465980499
521074671	60	18	01	9M	2,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051389049	1231/7464177358
TOTAL PAYMENTS FOR COMPANY CODE: 60					25,107.00			
TOTAL PAYMENTS FOR TIN NUMBER: 521074671					71,126.50			

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ALLSTATE INSURANCE CO.  
 IRS PAYMENTS LIST- PRIOR YEAR ( THE YEAR: 1990 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMHERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- TO	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342909205	0102/6465584292
521074671	10	18	01	9M	74.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051482687	0109/4464184738
521074671	10	18	01	9M	1,075.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842152354	0112/1465989463
521074671	10	18	01	9M	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841785154	0115/2465993639
521074671	10	18	01	9M	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903222655	0115/5767226105
521074671	10	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903222655	0116/4767228967
521074671	10	18	01	9M	4,135.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051211284	0127/9464199363
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952501923	0130/6465626817
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904105313	0203/6466846344
521074671	10	18	01	9M	15.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842631381	0204/8466014069
521074671	10	18	01	9M	35.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842631381	0210/0466019424
521074671	10	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842631381	0216/7466024446
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904105313	0219/0466898544
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952977693	0224/7465662655
521074671	10	18	01	9M	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953604964	0227/5465670512
521074671	10	18	01	9M	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6041731349	0304/3466042329
521074671	10	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903222655	0304/9466917957
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953604964	0309/0465686973
521074671	10	18	01	9M	300.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841823906	0310/2466048701
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051856179	0310/4469470807
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051727842	0313/3469474389
521074671	10	18	01	9M	600.00	BOX 7 - NONEMPLOYEE COMPENSATION	6042152354	0316/1466053228
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051610774	0317/4469476162
521074671	10	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902907280	0320/3469570221
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343338790	0320/7465708312
521074671	10	18	01	9M	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904098798	0324/9469573965
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903089070	0326/8469579122
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903842494	0331/0469606797
521074671	10	18	01	9M	1,450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132707425	0331/7469363311
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903434888	0331/7469606707
521074671	10	18	01	9M	275.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903749160	0331/9469606716
521074671	10	18	01	9M	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4272947954	0403/1465322581

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ALLSTATE INSURANCE CO. OF ILL.  
 IRS PAYMENTS LIST- PRIOR YEAR ( YEAR: 1998 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	850.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953604964	0406/0465733098
521074671	10	18	01	9M	700.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903579088	0406/4469616823
521074671	10	18	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343233553	0407/1465735096
521074671	10	18	01	9M	1,225.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903483331	0408/6469616787
521074671	10	18	01	9M	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903222655	0413/5469625418
521074671	10	18	01	9M	99.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842545581	0417/6469832364
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343338790	0422/2470980395
521074671	10	19	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952820828	0422/5470980566
521074671	10	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051541094	0424/0469525626
521074671	10	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953437366	0424/3470980893
521074671	10	18	01	9M	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842269570	0427/1470290653
521074671	10	18	01	9M	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842474989	0427/5470290329
521074671	10	18	01	9M	300.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842474989	0427/6470290329
521074671	10	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904036849	0427/8469645659
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903842494	0504/3469656675
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903579088	0507/8469664604
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952874841	0513/0473233572
521074671	10	18	01	9M	2,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903089070	0513/2469675899
521074671	10	18	01	9M	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	2593308246	0518/5468023517
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952558162	0520/2473246667
521074671	10	18	01	9M	1,500.00	BOX 7 - NONEMPLOYEE COMPENSATION	4953437366	0526/9473254236
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904323932	0529/9469720575
521074671	10	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842269570	0601/9472323465
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051966481	0602/3472690503
521074671	10	18	01	9M	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050882465	0610/4472695939
521074671	10	18	01	9M	1,150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051856179	0610/5472696506
521074671	10	18	01	9M	922.50	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051077248	0615/2472698333
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904036849	0615/7472124295
521074671	10	18	01	9M	2,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903254195	0617/2472132449
521074671	10	18	01	9M	200.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903297334	0618/4472134699
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4131934376	0622/0472593897
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903313660	0624/0472346253

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ALLSTATE INSURANCE CO. OF ILL.  
 IRS PAYMENTS LIST- PRIOR YEAR ( YEAR: 1978 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE ANMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	1,000.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842526623	0629/3472349655
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953938371	0707/1473322348
521074671	10	18	01	9H	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051364216	0709/5472716963
521074671	10	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903532285	0713/2474026562
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842607266	0715/7472364020
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903532285	0721/3474043266
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051981399	0721/6472745322
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842152354	0722/1472369329
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842152354	0722/2472369338
521074671	10	18	01	9H	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051924373	0722/9472747077
521074671	10	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903443434	0728/1474053238
521074671	10	18	01	9H	700.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842856632	0728/6472375521
521074671	10	18	01	9H	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903362725	0729/7474055236
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904275124	0814/8476282808
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903222655	0817/3476287182
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904275124	0818/7476289063
521074671	10	18	01	9H	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903362725	0820/7476292762
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903222655	0821/7476294778
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903443434	0824/1476295732
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051981399	0824/4472771485
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	4051556589	0824/5474578487
521074671	10	18	01	9H	675.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842607266	0827/4474583806
521074671	10	18	01	9H	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953938371	0828/2476414271
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904036849	0902/7476311518
521074671	10	18	01	9H	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4071505707	0903/8475942104
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904128679	0908/3476316675
521074671	10	18	01	9H	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953567295	0909/8476429526
521074671	10	18	01	9H	1,100.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903222655	0910/2476342676
521074671	10	18	01	9H	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056894	0915/6474597117
521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952685932	0915/8476437446
521074671	10	18	01	9H	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051921924	0918/8475648785
521074671	10	18	01	9H	252.50	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903810251	0921/5475682301

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ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- PRIOR YEAR ( YEAR: 1998 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AKMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051169144	0923/4475652349
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133164881	0924/5475958601
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902934011	0925/4476362917
521074671	10	18	01	9M	800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902816473	0928/0476366364
521074671	10	18	01	9M	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133123002	0928/1475981308
521074671	10	18	01	9M	425.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6841390468	0929/7475689735
521074671	10	18	01	9M	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953283778	1002/1476468343
521074671	10	18	01	9M	2,150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952284561	1002/4476468253
521074671	10	18	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953938371	1009/7476481852
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052075340	1013/3475665849
521074671	10	18	01	9M	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903431611	1014/2477047709
521074671	10	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952537166	1026/6476503785
521074671	10	18	01	9M	300.00	BOX 7 - NONEEMPLOYEE COMPENSATION	3903810251	1102/9477700776
521074671	10	18	01	9M	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904128679	1104/3477102069
521074671	10	18	01	9M	300.00	BOX 7 - NONEEMPLOYEE COMPENSATION	3903577926	1106/8477106299
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051989541	1110/3477766827
521074671	10	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904321415	1112/3477113868
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343338790	1116/6780774858
521074671	10	18	01	9M	1,075.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051411702	1117/3477772659
521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903449779	1117/6477119016
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4071505707	1118/8477728748
521074671	10	18	01	9M	550.00	BOX 7 - NONEEMPLOYEE COMPENSATION	4954026457	1119/5780782445
521074671	10	18	01	9M	600.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6842269570	1120/3781180389
521074671	10	18	01	9M	575.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051989541	1120/7477776277
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904064130	1123/1477809541
521074671	10	18	01	9M	1,025.00	BOX 7 - NONEEMPLOYEE COMPENSATION	4051636340	1124/7781182252
521074671	10	18	01	9M	100.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6841785154	1125/0781183476
521074671	10	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842362706	1130/3781185843
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842099067	1130/5781185762
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842099067	1130/6781185771
521074671	10	18	01	9M	900.00	BOX 7 - NONEEMPLOYEE COMPENSATION	6842102748	1202/7781185519
521074671	10	18	01	9M	200.00	BOX 7 - NONEEMPLOYEE COMPENSATION	2343151698	1208/2780807456

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ALLSTATE INSURANCE CO.  
 IRS PAYMENTS LIST- PRIOR YEAR ( TAX YEAR: 1998 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE ANKHEMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052035559	1211/2479549448
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133164881	1216/0477753822
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4071505707	1216/9477753759
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904064130	1221/3780029442
521074671	10	35	82	9H	750.00	BOX 7 - NONEMPLOYEE COMPENSATION	3998749090	1023/*947645954
521074671	10	35	82	9H	217.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842695278	1230/*995002076
TOTAL PAYMENTS FOR COMPANY CODE: 10					63,910.00			
521074671	60	18	01	9H	2,075.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952021633	0107/9465588882
521074671	60	18	01	9H	625.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952301950	0108/5465591024
521074671	60	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952165828	0112/7465594876
521074671	60	18	01	9H	810.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902813447	0121/4767233629
521074671	60	18	01	9H	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342798183	0130/5465625017
521074671	60	18	01	9H	2,625.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952301950	0202/6465623928
521074671	60	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953986973	0202/9465627474
521074671	60	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343131187	0204/0465633819
521074671	60	18	01	9H	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953436426	0209/4465638139
521074671	60	18	01	9H	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842133446	0217/5466026624
521074671	60	18	01	9H	475.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841851113	0223/0466032087
521074671	60	18	01	9H	125.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841851113	0223/9466031133
521074671	60	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051720219	0225/5469460925
521074671	60	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953436426	0227/4465670521
521074671	60	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343267221	0304/9465680268
521074671	60	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842133446	0309/0466046388
521074671	60	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903737520	0310/6469547307
521074671	60	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903737520	0311/6469550016
521074671	60	18	01	9H	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841881326	0316/8466053183
521074671	60	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343131187	0317/6465700212
521074671	60	18	01	9H	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343217044	0327/5465721182
521074671	60	18	01	9H	300.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842682285	0427/2470291067
521074671	60	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842682285	0505/4470298771
521074671	60	18	01	9H	2,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903279499	0507/2469534374

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ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- PRIOR YEAR ( YEAR: 1998 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE ANMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9M	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952138972	0518/0473240295
521074671	60	18	01	9M	600.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842617026	0526/6470317563
521074671	60	18	01	9M	750.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952203447	0529/5473261913
521074671	60	18	01	9M	550.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952203447	0605/9473271849
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903228892	0615/8472125744
521074671	60	18	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841881326	0618/3472340529
521074671	60	18	01	9M	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343292344	0622/0473298309
521074671	60	18	01	9M	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	3903493223	0709/6474024789
521074671	60	18	01	9M	2,100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051389049	0716/1472743612
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842047422	0729/5472377051
521074671	60	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842047422	0825/9474580953
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953031680	0828/2476413731
521074671	60	18	01	9M	800.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842133446	0914/2474594795
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903676181	0915/4476348742
521074671	60	18	01	9M	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902812159	0916/1476351613
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4050658337	0916/3475647228
521074671	60	18	01	9M	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953127025	0917/3476442972
521074671	60	18	01	9M	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952235266	0917/6476443431
521074671	60	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952235266	0917/7476443431
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051931303	0921/7475650216
521074671	60	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903676181	0922/1476359065
521074671	60	18	01	9M	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842617026	0924/3475687269
521074671	60	18	01	9M	2,400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902813447	0925/3476364897
521074671	60	18	01	9M	1,625.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842175439	0928/1475689843
521074671	60	18	01	9M	2,050.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842175439	0928/6475689897
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903628042	0930/5476369865
521074671	60	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952415958	1002/6476467515
521074671	60	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952415958	1005/1476469315
521074671	60	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952549229	1005/2476469486
521074671	60	18	01	9M	225.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343106187	1006/4476470404
521074671	60	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952755164	1019/7476492364
521074671	60	18	01	9M	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2342705858	1021/1476495703

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ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- PRIOR YEAR ( TIN YEAR: 1998 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 0000

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9M	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903916348	1022/9477080361
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903237380	1111/3477110997
521074671	60	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903237380	1119/8477805194
521074671	60	18	01	9M	750.00	BOX 7 - NONEEMPLOYEE COMPENSATION	3903916348	1124/4477812601
521074671	60	18	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952567080	1130/0780792615
521074671	60	18	01	9M	2,200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903628042	1130/2477317119
521074671	60	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952851377	1130/6780792633
521074671	60	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842116326	1130/7781185789
521074671	60	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953127025	1215/3780821046
521074671	60	18	01	9M	650.00	BOX 7 - NONEEMPLOYEE COMPENSATION	3903493223	1231/8780066585
TOTAL PAYMENTS FOR COMPANY CODE: 60					42,610.00			
TOTAL PAYMENTS FOR TIN NUMBER: 521074671					106,520.00			

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ALLSTATE INSURANCE CO.  
 IRS PAYMENTS LIST- CURRENT YEAR ( TAX YEAR: 1999 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE WIKERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9M	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052353366	0915/1771173676
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4071503707	0916/0774205704
521074671	10	18	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842102746	0920/0773957709
521074671	10	18	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842431550	0929/4773963464
521074671	10	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842598431	0929/7773967152
521074671	10	18	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952733241	0930/7775201662
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903828592	1001/1774050454
521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953610046	1004/9772476192
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052171065	1011/9773261208
521074671	10	18	01	9M	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4134210337	1027/6776321344
521074671	10	18	01	9M	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952495620	1101/1775236933
521074671	10	18	01	9M	800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903711806	1108/0774607925
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6841923466	1108/9776084292
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903924970	1110/3774891072
521074671	10	18	01	9M	700.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903584008	1110/8774091337
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4342770253	1112/5774703366
521074671	10	18	01	9M	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903532285	1115/2774854654
521074671	10	18	01	9M	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6843061539	1117/6776094606
521074671	10	18	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903688051	1122/3774901683
521074671	10	18	01	9M	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903730731	1122/4774903645
521074671	10	18	01	9M	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904321415	1124/3774906670
521074671	10	18	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051796374	1129/2776285172
521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842299997	1129/4778504742
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903448797	1129/6774908145
521074671	10	18	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903552737	1129/9774908037
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904152364	1209/3774920196
521074671	10	18	01	9M	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052020925	1215/5776299095
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052224708	1221/6777263616
521074671	10	18	01	9M	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052442169	1222/9777265911
521074671	10	18	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052171065	1229/9777270445
521074671	10	41	01	9M	20.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904399329	0916/2818355816
521074671	10	18	01	9M	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842362706	0104/3781215273

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ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- CURRENT YEAR ( YEAR: 1999 )  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC

DROLE AMMERMAN

3301 NEW MEXICO AVE NW STE 352

WASHINGTON

DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904128679	0104/4780067557
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903655086	0104/5780067683
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056894	0105/2781216875
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842799740	0105/8781216992
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056894	0106/6781217847
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903449779	0112/4780064693
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842362662	0112/6781362441
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842656933	0115/1783620469
521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4071505707	0121/5783164718
521074671	10	19	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903431611	0125/4783422316
521074671	10	19	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903003595	0127/6783425448
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903655086	0128/6783427396
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903792129	0128/7783427878
521074671	10	19	01	9H	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952101609	0201/7787548357
521074671	10	12	01	9H	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051364216	0201/8782864874
521074671	10	18	01	9H	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	1952685932	0204/0787554873
521074671	10	18	01	9H	175.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902862989	0210/4786638829
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903655086	0211/1786611628
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904321415	0217/8786621654
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952333077	0219/7787577004
521074671	10	18	01	9H	2,072.50	BOX 7 - NONEMPLOYEE COMPENSATION	3903810251	0222/6786254706
521074671	10	18	01	9H	1,100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842526623	0222/5786253284
521074671	10	18	01	9H	200.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842799740	0222/6786254922
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	3902862989	0223/7786628323
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343151698	0224/7787584591
521074671	10	19	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343151699	0224/8787534591
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056894	0225/7786259189
521074671	10	18	01	9H	175.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842212752	0301/0786261915
521074671	10	18	01	9H	83.23	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952538162	0301/4787592025
521074671	10	18	01	9H	325.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953311298	0302/4787594761
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133627428	0303/3786483126
521074671	10	18	01	9H	50.00	BOX 7 - NONEMPLOYEE COMPENSATION	3904228957	0305/5786645981

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ALLSTATE INSURANCE CO  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMMERMAN  
 3201 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL-- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	800.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842431550	0308/5786268908
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842778923	0308/9796269043
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051543447	0311/9786194982
521074671	10	18	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953692622	0312/8787615391
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842656933	0315/5706277602
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952493932	0316/7787616937
521074671	10	18	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3704321415	0318/6786662739
521074671	10	18	01	9H	50.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2243175226	0318/6787620429
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952739622	0319/9787628956
521074671	10	16	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842273414	0319/8786302271
521074671	10	18	01	9H	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903449779	0323/1786668722
521074671	10	18	01	9H	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3704386715	0323/9786669354
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953016227	0324/0787630221
521074671	10	18	01	9H	850.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703460757	0325/9786672531
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051543447	0329/0786227022
521074671	10	18	01	9H	650.00	BOX 7 - NONEMPLOYEE COMPENSATION	4051636340	0402/0786615073
521074671	10	18	01	9H	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703460957	0409/5786707271
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842293414	0413/0786323167
521074671	10	18	01	9H	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953777536	0421/1787660614
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3704396715	0422/2786720105
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703447401	0426/7786722895
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703449777	0427/3786724605
521074671	10	18	01	9H	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703584080	0427/4786724591
521074671	10	18	01	9H	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953777536	0428/9787660669
521074671	10	18	01	9H	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953311290	0429/7787670271
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703449779	0504/8786739554
521074671	10	18	01	9H	2,150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3703449779	0504/9786730563
521074671	10	18	01	9H	15.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051875864	0510/7786178206
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952784214	0512/5788036877
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133667428	0512/6770482622
521074671	10	16	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842973221	0513/9788761152
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051453577	0514/9772623178

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ALLSTATE INSURANCE CO  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC

GROSS AMERICAN

3301 NEW MEXICO AVE NW STE 352

WASHINGTON

DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051665091	0517/3772625223
521074671	10	18	01	9H	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904132364	0517/8788762351
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2692674069	0518/1707366251
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052245257	0518/3772625583
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051453597	0519/9772627005
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6343778328	0524/1783493823
521074671	10	18	01	9H	1,225.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953995776	0524/4772176618
521074671	10	18	01	9H	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904228757	0524/3788760927
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	2613441960	0526/1772321032
521074671	10	18	01	9H	675.00	BOX 7 - NONEMPLOYEE COMPENSATION	2613441860	0526/2772321023
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903792129	0527/4788774262
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952784214	0528/2788071158
521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902862987	0601/0788776155
521074671	10	18	01	9H	425.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903099326	0601/7788774352
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133164861	0602/5770455490
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952859073	0603/6772188777
521074671	10	18	01	9H	850.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952874841	0604/5772188786
521074671	10	18	01	9H	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4752874841	0604/6772188773
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903792129	0605/0771061842
521074671	10	18	01	9H	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2343175226	0609/2772194492
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6943044055	0609/3771065514
521074671	10	18	01	9H	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954402978	0610/0772340211
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	2692674068	0611/1771764832
521074671	10	18	01	9H	675.00	BOX 7 - NONEMPLOYEE COMPENSATION	2613441960	0611/2772324623
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904226757	0614/0771068988
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904386713	0614/3771068932
521074671	10	18	01	9H	800.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051989541	0614/3772667127
521074671	10	18	01	9H	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903460557	0614/7706707271
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133275639	0616/0770468859
521074671	10	18	01	9H	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842371350	0616/1770553891
521074671	10	18	01	9H	900.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904321415	0616/1771070941
521074671	10	18	01	9H	75.00	BOX 7 - NONEMPLOYEE COMPENSATION	6942431550	0616/2770553910

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ALLSTATE INSURANCE CO  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE AMERMAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	10	01	9H	1,300.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841785154	0616/7770553792
521074671	10	18	01	9H	350.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842533933	0616/7770553736
521074671	10	18	01	9H	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842293414	0616/9770553802
521074671	10	18	01	9H	150.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903730731	0618/7771073945
521074671	10	18	01	9H	475.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4733633055	0622/5772206503
521074671	10	18	01	9H	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953796158	0622/8772206490
521074671	10	18	01	9H	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903460957	0623/0771972096
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133171777	0623/4770475366
521074671	10	18	01	9H	375.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953796158	0624/3772206377
521074671	10	18	01	9H	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953796158	0624/4772206490
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904306715	0627/5771082551
521074671	10	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011513327	0630/4772206472
521074671	10	18	01	9H	75.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133687428	0630/7770500422
521074671	10	18	01	9H	625.00	BOX 7 - NONEMPLOYEE COMPENSATION	4953795776	0630/7772215395
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842973221	0701/1771336295
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952679975	0701/9771719409
521074671	10	18	01	9H	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903449797	0702/3771087105
521074671	10	18	01	9H	625.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052245257	0702/9772683793
521074671	10	18	01	9H	2,000.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842770829	0706/0770571963
521074671	10	18	01	9H	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6410269019	0706/5770572602
521074671	10	18	01	9H	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133191777	0712/0770510007
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4133191777	0712/9770510007
521074671	10	18	01	9H	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842973221	0713/0771095646
521074671	10	18	01	9H	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051570044	0723/4772701543
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	7240340542	0726/0772287197
521074671	10	18	01	9H	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	7240340542	0726/1772237206
521074671	10	18	01	9H	385.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903730731	0726/4771125472
521074671	10	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953016327	0727/7772246716
521074671	10	18	01	9H	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6011513329	0802/8772707672
521074671	10	18	01	9H	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904275124	0804/4771134787
521074671	10	18	01	9H	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4052035556	0805/8772710316
521074671	10	18	01	9H	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051665091	0805/9772710476

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ALLSTATE INSURANCE CO  
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WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE T. HERNAN  
 3301 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	10	10	01	9M	450.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842371350	0606/1770621517
521074671	10	10	01	9M	1,200.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056094	0806/4770621463
521074671	10	10	01	9M	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953635055	0606/9772250059
521074671	10	10	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842371350	0809/7770622853
521074671	10	10	01	9M	375.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841621978	0811/5770624121
521074671	10	10	01	9M	3,200.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842056094	0818/6770631165
521074671	10	10	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903682061	0823/6771152193
521074671	10	10	01	9M	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903552937	0939/6771153718
521074671	10	10	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903380088	0907/2771165441
521074671	10	10	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903730731	0907/3771165463
521074671	10	10	01	9M	175.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842558431	0913/0773951148
521074671	10	41	01	9M	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3961375246	0621/3819891522
TOTAL PAYMENTS FOR COMPANY CODE: 10					77,640.83			
521074671	60	10	01	9M	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051479824	0723/2773247582
521074671	60	10	01	9M	1,400.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842277801	1005/1773972703
521074671	60	10	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953390250	1006/7775207296
521074671	60	10	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953390250	1006/8775207296
521074671	60	10	01	9M	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954016599	1019/7775222911
521074671	60	10	01	9M	2,350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953653608	1025/9774695151
521074671	60	10	01	9M	525.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904110123	1101/3774877129
521074671	60	10	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051479824	1109/0776260774
521074671	60	10	01	9M	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953417079	1111/4775250046
521074671	60	10	01	9M	500.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952938075	1118/5774737118
521074671	60	10	01	9M	185.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	6842908839	1118/9776095695
521074671	60	10	01	9M	100.00	BOX 7 - NONEMPLOYEE COMPENSATION	4954024841	1119/0774739404
521074671	60	10	01	9M	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952779404	1202/1775268343
521074671	60	10	01	9M	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953705796	1202/0775268352
521074671	60	10	01	9M	250.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954024841	1224/1774772047
521074671	60	10	01	9M	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	6841965483	0120/2783623871
521074671	60	10	01	9M	25.00	BOX 7 - NONEMPLOYEE COMPENSATION	4953127025	0125/0787533523
521074671	60	10	01	9M	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954413374	0129/0787545225

01/05/19

ALLSTATE INSURANCE CO  
 IRS PAYMENTS LIST- CURRENT YEAR ( TAX YEAR: 1999 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

PAGE 7

WASHINGTON NEUROSURGICAL ASSOCIATES PC  
 BRUCE ANDERMAN  
 3001 NEW MEXICO AVE NW STE 352  
 WASHINGTON DC 20016 3622

TAX-IG NUMBER	COMPANY CODE	CFU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	PH	500.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4051942169	0222/1762877706
521074671	60	18	01	PH	700.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952507128	0301/9787591989
521074671	60	18	01	PH	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	4954413874	0301/9787591135
521074671	60	18	01	PH	650.00	BOX 7 - NONEMPLOYEE COMPENSATION	6041965483	0309/2786268728
521074671	60	18	01	PH	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953176634	0311/5787611744
521074671	60	18	01	PH	35.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953757912	0324/6787629502
521074671	60	18	01	PH	1,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952251377	0325/1787632777
521074671	60	18	01	PH	250.00	BOX 7 - NONEMPLOYEE COMPENSATION	4952507128	0325/3787631265
521074671	60	18	01	PH	850.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4132585490	0406/0787631927
521074671	60	18	01	PH	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953770408	0412/7787651003
521074671	60	18	01	PH	350.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953757912	0423/8787663104
521074671	60	18	01	PH	550.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953117077	0429/9787671279
521074671	60	18	01	PH	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3903482143	0510/2786785673
521074671	60	18	01	PH	530.00	BOX 7 - NONEMPLOYEE COMPENSATION	4954309895	0511/5788055797
521074671	60	18	01	PH	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954714334	0516/0772171902
521074671	60	18	01	PH	750.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953390250	0521/9772176465
521074671	60	18	01	PH	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952370250	0524/1772179427
521074671	60	18	01	PH	400.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953176634	0524/7772170391
521074671	60	18	01	PH	300.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952622604	0527/3798089938
521074671	60	18	01	PH	2,000.00	BOX 7 - NONEMPLOYEE COMPENSATION	4132585490	0607/5770544063
521074671	60	18	01	PH	125.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3904032400	0609/1771064883
521074671	60	18	01	PH	385.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953757912	0611/2772179387
521074671	60	18	01	PH	100.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954714284	0611/2772341557
521074671	60	18	01	PH	150.50	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952047797	0628/3772352235
521074671	60	18	01	PH	450.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953704549	0701/1772217091
521074671	60	18	01	PH	675.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952162262	0701/3772215612
521074671	60	18	01	PH	650.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954873338	0702/0772219627
521074671	60	18	01	PH	2,000.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4134069519	0702/1770567047
521074671	60	18	01	PH	150.00	BOX 7 - NONEMPLOYEE COMPENSATION	6042707405	0715/4770551159
521074671	60	18	01	PH	25.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952826155	0726/7772233302
521074671	60	18	01	PH	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4954873338	0727/4772246906
521074671	60	18	01	PH	200.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	3902877012	0809/2771130367

01/05/1

ALLSTATE INSURANCE COMPANY  
 IRS PAYMENTS LIST- CURRENT YEAR ( TAX YEAR: 1999 )  
 PAYMENT DETAIL FOR TIN NUMBER: 521074671

PAGE

8

WASHINGTON NEUROSURGICAL ASSOCIATES PC

BRUCE WINNERMAN

3301 NEW MEXICO AVE NW STE 352

WASHINGTON

DC 20016 3422

TAX-ID NUMBER	COMPANY CODE	CPU CODE	APPL- ID	PAYMENT TYPE	PAYMENT AMOUNT	BOX DESCRIPTION	CLAIM/POLICY NUMBER	ACCOUNT NUMBER
521074671	60	18	01	9H	600.00	BOX 7 - NONEMPLOYEE COMPENSATION	6842279801	0810/3770622864
521074671	60	18	01	9H	400.00	BOX 7 - NONEMPLOYEE COMPENSATION	6342325877	0810/9770622831
521074671	60	18	01	9H	175.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4953705796	0909/0772301214
521074671	60	18	01	9H	600.00	BOX 6 - MEDICAL OR HEALTH CARE SERVICES	4952779404	0910/8772302681
TOTAL PAYMENTS FOR COMPANY CODE: 60					27,330.50			
TOTAL PAYMENTS FOR TIN NUMBER: 521074671					104,971.33			

LAW OFFICES  
**HALL & SICKELS, P.C.**

RESTON EXECUTIVE CENTER  
12120 SUNSET HILLS ROAD • SUITE 150  
RESTON, VIRGINIA 20190-3231

ROBERT T. HALL •  
CHARLES W. SICKELS •  
HOLLY PARKHURST LEAR \*\*\*  
DONNA MILLER ROSTANT \*\*  
STEVEN M. FREI \*\*\*

\*Admitted in VA & DC  
\*\*Admitted in N.C. & VA  
\*\*\*Admitted in VA

TELEPHONE  
(703) 925-0500

TELECOPIER  
(703) 925-0501

June 2, 2000

William M. Dupray, Esq.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, VA 22042

**VIA FACSIMILE & REGULAR MAIL**  
**(703) 536-2200**

**Re: Rohrbaugh v. Lombard, Law 181346, Circuit Court of Fairfax County**

Dear Bill:

I attempted to return your call today regarding the deposition of the Allstate corporate designee. You were not in so I left you a voice mail message. I hope you received my message.

I began thinking as I headed back to the office that given the information I am going to be asking the designee about it probably makes more sense to take the deposition at this persons location. This way he/or she will have appropriate computer access which will undoubtedly be needed to answer some of my questions. The Order signed today scheduled the deposition on Tuesday morning at 10:00 a.m. in my office. If it is necessary to go to a local Allstate office to take the deposition I am willing to do so. All I am interested in is getting the information. I have other trial preparation matters scheduled for later on Tuesday so I have to stick to the time (or earlier if you want).

Finally, on May 5, 2000 when you first contacted me about this subpoena I agreed to move the date from its originally scheduled time (May 8<sup>th</sup>) so you could file and have your motion heard. In our conversation I expressed my concern that Messers. Corrie and Bancroft would have to agree to waive any scheduling order restrictions (assuming the court denied your motion) as well as the fact that the trial date was June 7-8, 2000 and this would need to be resolved by this date. I forwarded you a letter by facsimile and regular mail on May 5, 2000 confirming this conversation.

Allstate has known for almost a month now that I intended to ask questions regarding the previously produced forms. Today when you were arguing before Judge Ney you indicated to him that you were not certain that Allstate even had a person in this area that could answer the questions. Obviously, it is impossible for me to travel

EXHIBIT

HALL & SICKELS, P.C.

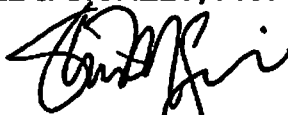
William M. Dupray, Esq.  
June 2, 2000  
Page 2

anywhere on Tuesday to take a deposition. Since you were aware of the trial date in this matter, and considering my agreement to move the originally scheduled date for this deposition so your motion could be heard, I expect that the person deposed on Tuesday will be fully prepared to answer my questions regarding the materials. If this is not the case I need to know immediately so I can consider my options.

Please let me hear from you so I know how we are going to proceed with this matter.

Very truly yours,

HALL & SICKELS, P.C.

A handwritten signature in black ink, appearing to read "Steven M. Frei", written over the typed name.

Steven M. Frei

SMF:asd

## TRANSMIT MESSAGE CONFIRMATION REPORT

NAME: HALL AND SICKELS PC  
 TEL : 7039250501  
 DATE: 06/02'00 17:15

TRANSMIT: 7035362600			DURATION	PAGE	SESS	RESULT
TYPE : MEMORY TX	MODE	E -192	00'45	03	326	OK



## FACSIMILE COVER SHEET

DATE: June 2, 2000  
 TO: William M. Dupray, Esq.  
 COMPANY NAME:  
 FAX NUMBER CALLED: 703-536-2200  
 FROM: Steven M. Frol

This facsimile consists of 3 pages, including this cover sheet. If you do not receive all pages in legible form, please call Heather at (703) 925-0500.

## Special Instructions:

Our Client Name: Dorsey W. Rohrbaugh

Our Client Number: 4437

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL AND SUBJECT TO ATTORNEY-CLIENT, WORK-PRODUCT, OR OTHER LEGAL PRIVILEGE. THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED AS RECIPIENT. IF THE READER OF THIS COMMUNICATION IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CONTACT US IMMEDIATELY AT: (703) 925-0500.



COPY

1

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - X

4 DORSEY W. ROHRBAUGH,

5 Plaintiff,

6 vs.

At Law No. 181346

7 RALPH D. LOMBARD,

8 Defendant.

9 - - - - - X

10 Reston, Virginia

11 Tuesday, June 6, 2000

12 Deposition of PAMELA RYDELL, called for examination  
13 by counsel for the plaintiff, pursuant to notice, at the  
14 office of Steven M. Frei, Esq., Hall and Sickels, P.C.,  
15 12120 Sunset Hills Road, Suite 150, Reston, Virginia  
16 20190, before Carol A. Lowe, a Registered Professional  
17 Reporter and a Notary Public in and for the State of  
18 Virginia, beginning at 10:10 a.m., when were present on  
19 behalf of the respective parties:

20

21

22

EXHIBIT

3

1       FOR THE PLAINTIFF:

2               STEVEN M. FREI, Esq., Hall and Sickels, P.C.,  
3               12120 Sunset Hills Road, Suite 150, Reston,  
              Virginia 20190.

4       FOR THE DEFENDANT:

5               QUENTIN R. CORRIE, Esq., Anderson & Corrie,  
6               12600 Fair Lakes Circle, Suite 220, Fairfax,  
              Virginia 22033.

7       FOR ALLSTATE INSURANCE COMPANY:

8               WILLIAM M. DUPRAY, Esq., Brandt, Jennings,  
9               Roberts, Davis & Snee, PLLC, 6565 Arlington  
10              Boulevard, Suite 200, Falls Church, Virginia  
              22042.

1 mean --

2 MR. FREI: Well, they're the creators of the  
3 information. So if they make mistakes, I think it's  
4 their own problem.

5 But if we were sitting at a monitor as I  
6 offered last Friday and again yesterday, she could punch  
7 in a claim number, find out if the payment was AA 93  
8 which would then tell me that the payment on this form  
9 was for forensic work, however we want to describe that,  
10 and I'd have that information. And without that she  
11 can't tell me that information.

12 MR. DUPRAY: Right.

13 MR. FREI: So, you know, I know of only one of  
14 two things to do, either move over to some terminal  
15 where she can answer those questions or, I guess, we  
16 could try to get Judge Ney on the phone if you're  
17 unwilling to do that. I just don't know how else I'm  
18 going to get those answers.

19 MR. DUPRAY: Well, your -- first of all, she  
20 was subpoenaed to come here for a deposition. Whether  
21 you offered or not is irrelevant. The subpoena is to  
22 come here.

1           The subpoena is to, based on Judge Ney's  
2   ruling, explain this form which she has done to you.  
3   She's explained the form. He didn't say know everything  
4   about every claim number on the form.

5           MR. FREI: We can have that discussion with  
6   Judge Ney if we need to.

7           MR. DUPRAY: I understand. I understand. And,  
8   moreover, it would be our position that it would be  
9   highly burdensome for her to go through every claim to  
10   do that on the computer especially since some of them  
11   are not even recoverable as we sit here. You'd have to  
12   wait several days.

13          MR. FREI: Well, we could certainly go through  
14   the ones that were, I guess.

15          MR. DUPRAY: Well --

16          MR. FREI: But you're telling me basically  
17   you're not going to do that.

18          MR. DUPRAY: Absolutely not.

19          MR. FREI: Well, then let me see if I can get  
20   Judge Ney on the phone.

21          MR. DUPRAY: That would be fine.

22          MR. CORRIE: I'll tell you what. I'm going to

1 let you guys do whatever you're doing. I'm going to  
2 excuse myself, because I have a bunch of other things.

3 MR. DUPRAY: Fine.

4 MR. FREI: Fine.

5 (A short recess was taken.)

6 BY MR. FREI:

7 Q. I might have skipped a line, the payment type.

8 A. Okay.

9 Q. I was looking back through my notes. And I  
10 didn't see anything where I had you explain what payment  
11 type was.

12 A. All right. One second here.

13 Q. 9M is what they all say.

14 A. Okay. That is the IRS form on which the  
15 payment will be reported. 9M is Form 1099  
16 Miscellaneous.

17 Q. You already told me that you're not aware of  
18 any computerized form that could be generated that would  
19 just pull out the AA 93 information.

20 A. No.

21 MR. FREI: Okay. While we were off the record  
22 I attempted to place a call to Judge Ney to get a ruling

1 regarding, I guess, moving this deposition to a location  
2 where the information at least that's available by  
3 computer monitor or screen could be gathered to  
4 differentiate payments that are reflected on the  
5 subpoena forms that are for forensic work and by that  
6 meaning basically work that Dr. Ammerman did that's  
7 reflected in these forms that was done on behalf of  
8 defendants examining plaintiffs in a litigation whether  
9 it be reviewing records, meeting with lawyers,  
10 testifying at trial, conducting examinations or anything  
11 of that nature versus other payments which Dr. Ammerman  
12 has indicated may appear on this form that are for  
13 first-party benefits, in other words, payments that  
14 Allstate made to its own insureds or to the doctor on  
15 behalf of its insureds for med pay or PIP payments.

16 Judge Ney was, not surprisingly, unavailable.  
17 And I've left a message for him to call myself and  
18 Mr. Dupray who is here with the Allstate representative  
19 to discuss that subject.

20 And to that extent I would request that the  
21 deposition remain open until we've had a chance to talk  
22 to Judge Ney about that issue.

1 MR. DUPRAY: I would object to it going  
2 forward. We've been here an hour and 45 minutes  
3 approximately from a ten o'clock start time if, in fact,  
4 we started at that time.

5 Ms. Rydell has patiently answered all of the  
6 questions that were propounded to the best of her  
7 knowledge. She's answered every question about the  
8 columns and the information set forth on the form.

9 Anything beyond that is beyond the scope of the  
10 subpoena that was ruled on by the judge. It was a very  
11 simple purpose for this deposition which is set forth in  
12 the subpoena and the request.

13 So anything beyond anything at this office  
14 would be beyond the scope. And anything beyond the  
15 information already provided would be beyond the scope.

16 It would involve considerable cost, time and  
17 burden on Allstate representatives and certainly bears  
18 no relevance to this case which is set for trial  
19 tomorrow.

20 So I don't know if those objections need to be  
21 stated on the record, but we do object to renoticing or  
22 resetting this. That's it.

1 MR. FREI: So we're clear, I'm not renoticing  
2 or resetting. I'm specifically leaving it open pending  
3 a ruling from Judge Ney. Thank you.

4 (At 11:50 a.m. the taking of the deposition  
5 was recessed to reconvene sine die.)  
6  
7  
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19  
20  
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22



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH

**Plaintiff,**

**vs.**

**RALPH D. LOMBARD**

**Defendant.**

**Law Number 181346**

## ORDER

For the reasons stated in the Court's Opinion Letter of August 2<sup>nd</sup>, 2000, a copy of which is attached hereto and made a part of this Order, it is hereby

**ORDERED** that the Motions to Reconsider the Court's ruling of June 6, 2000 are **DENIED**.

Entered this 2<sup>nd</sup> day of August 2000.

**Judge R. Terrence Ney**

**Endorsement of this Order by counsel of record for the parties is waived in the discretion of the Court pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.**



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

(703) 246-2221

Fax: (703) 385-4432

F. BRUCE BACH  
MICHAEL P. McWEENEY  
MARCUS D. WILLIAMS  
STANLEY P. KLEIN  
ROBERT W. WOOLDRIDGE, JR.  
ARTHUR B. VIEREGG  
JANE MARUM ROUSH  
M. LANGHORNE KEITH  
DENNIS J. SMITH  
DAVID T. STITT  
LESLIE M. ALDEN  
KATHLEEN H. MACKAY  
JONATHAN C. THACHER  
HENRY E. HUDSON  
R. TERRENCE NEY  
JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

JAMES KEITH  
BURCH MILLSAP  
BARNARD F. JENNINGS  
THOMAS J. MIDDLETON  
THOMAS A. FORTKORT  
QUINLAN H. HANCOCK  
RICHARD J. JAMBORSKY  
JACK B. STEVENS  
J. HOWE BROWN  
RETIRED JUDGES

August 2, 2000

Steven M. Frei, Esquire  
Hall & Sickels, P.C.  
12120 Sunset Hills Road, Suite 150  
Reston, Virginia 20190

Quentin R. Corrie, Esquire  
Anderson & Corrie  
12600 Fair Lakes Circle, Suite 220  
Fairfax, Virginia 22033

Steven W. Bancroft, Esquire  
Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030

William M. Dupray, Esquire  
Brandt, Jennings, Roberts, Davis & Snee, PLLC  
6565 Arlington Boulevard, Suite 200  
Falls Church, Virginia 22042

Re: *Dorsey W. Rohrbaugh vs. Ralph D. Lombard*  
At Law Number 181346

Dear Counsel:

Statement of Facts

This is a personal injury action arising out of an automobile accident. The defendants include the plaintiff's uninsured motorist carrier.

**RECEIVED**

AUG 07 2000

Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

On June 2, 2000, the Friday before trial, the plaintiff moved the Court to compel the defendant's insurance carrier – Allstate Insurance Company – to produce a corporate designee who could testify regarding payments made by Allstate to the defendants' expert witness in this case, Dr. Bruce Ammerman, and differentiate between payments made for medical services and those made for "forensic services". The plaintiff wanted to demonstrate that Dr. Ammerman was regularly employed by Allstate as an expert witness – forensic witness – and might be biased in favor of Allstate's insured. The motion to compel was resisted by both defendants and by Allstate's counsel. The motion, after argument, was granted by the Court.<sup>1</sup>

The deposition of Allstate's corporate designee took place on June 6, 2000 at the office of counsel for the plaintiff. In attendance were counsel for the plaintiff, counsel for the defendant, and counsel for Allstate. Counsel for the UM carrier elected not to attend.

At the deposition it became clear that the designee could not decipher the computer records without a computer terminal. Counsel for the plaintiff requested that one be made available to the witness by Allstate at one of its offices in the area but counsel for Allstate resisted this suggestion. It was agreed that the dispute would be put to Judge Ney who had ordered that the deposition be taken. At this point counsel for the defendant advised that he had other matters to attend to and left the deposition.

Later that afternoon a conference call was held between plaintiff's counsel, Allstate's counsel, and Judge Ney. After hearing argument, Judge Ney ordered that Allstate provide a computer terminal to the witness. Counsel for Allstate then offered to stipulate to the accuracy of the total amount of payments on the computer records, and further agreed not to challenge at trial any differentiation of them. In other words, Allstate's counsel agreed that counsel for the plaintiff could demonstrate, without more, that Dr. Ammerman had been paid in excess of \$100,000 by Allstate for each of the two years – 1998 and 1999 – preceding the trial.

This testimony was challenged at trial and the trial judge<sup>2</sup> held that he would not disturb either Judge Ney's ruling or the agreement of plaintiff's counsel and counsel for Allstate about the payments made by Allstate to Dr. Ammerman. Judge Smith cautioned the jury that the issue of the payments made was only to show bias and could not be considered for any other purpose.

The jury returned a verdict for the plaintiff. Counsel for the defendant and the UM carrier have filed motions to set aside the verdict and order a new trial on the basis that the testimony permitted of Dr. Ammerman by virtue of the Court's ruling of June 6, 2000, the

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<sup>1</sup> The Honorable R. Terrence Ney

<sup>2</sup> The Honorable Dennis J. Smith.

agreement of plaintiff's counsel and counsel for Allstate, and the trial court's ruling at trial admitting the evidence, were error.<sup>3</sup> The motions are denied.

### Analysis

First, the ruling rendered by the Court – Judge Ney – in the telephone conference between counsel for the plaintiff and counsel for Allstate Insurance Company addressed only one issue, namely whether the Allstate's corporate designee was required to locate an Allstate computer terminal in order to differentiate between payments made to the defendants' expert witness, Bruce Ammerman, M.D. for medical services performed by Dr. Ammerman or "forensic services" performed by him, both of which were paid by Allstate.<sup>4</sup> The Court had ordered Allstate to make such a differentiation. At the deposition the designee testified that it was not possible to determine from the computer printouts alone the nature of the payments made. The only question presented was whether the designee would be ordered to use a computer terminal to do so. The Court so ordered.

Second, given the late hour and the fact that the trial was the next day, *counsel for Allstate* offered to stipulate to the accuracy of the total amount of payments, and then further agreed not to attempt to differentiate between the services for which they were made.

Third, at trial the next day, the trial judge – Judge Smith – did not disturb either Judge Ney's ruling or the agreement of counsel made the day before, but specifically cautioned the jury that the mention of payments made by Allstate Insurance Company – again, the defendant's carrier – to Dr. Ammerman was for the sole purpose of attempting to demonstrate bias on the part of Dr. Ammerman.

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<sup>3</sup> Procedurally, these motions represent another bite at the apple as Judge Smith has already denied defendants' motions for a new trial. Although those motions were grounded on these identical allegations, they went further in that their gravamen rested upon the assertedly improper introduction of the fact of insurance into the trial proceedings before a jury. Those efforts having failed, what is sought to be done by these motions is, in effect, to undo the underlying ruling – the order compelling discovery and its progeny compelling the use of a computer in order to make the compelled discovery meaningful – and thereby undo the agreement of counsel that permitted the fact of prior payments by Allstate to the defendants' expert witness to be admitted into evidence in order to show his bias, all subject, of course, to the trial judge's approval. That approval was obtained only with the cautionary instruction to the jury. Put differently, if the order compelling discovery as to Allstate's payments to Dr. Ammerman had not been granted, then the use of the computer would not have been ordered, and then the agreement of Allstate's counsel to stipulate to the fact of the payments would not have occurred, and the issue of insurance would never have been injected into the trial. It remains the opinion of the Court that the underlying ruling was correct, and, without the further ruling compelling the use of a computer, the initial ruling would have been meaningless. What flowed from that was the agreement of counsel as to the fact and description of the fees paid to Dr. Ammerman. The trial judge, with the use of the cautionary instruction, ruled that the fruits of the compelled and agreed upon discovery were admissible. It is the Court's opinion that his ruling at the end of the process – as this Court's ruling at the beginning of it – were in both instances correct.

<sup>4</sup> As stated, the reason for the inquiry was an effort by plaintiff's counsel to show bias on the part of Dr. Ammerman.

Fourth, counsel for the defendant and the uninsured motorist carrier were both properly noticed for the deposition of the Allstate designee. One chose not to attend and another chose to leave the deposition before it concluded, but not before the dispute which led to the conference call had begun. As a result, their complaints about the Court's ruling ordering the use of the computer terminal come too late. They were not present to object to the Court, and they were also not present to object to the agreement.

Finally, the Court's ruling as to the computer terminal was not in any manner a sanction but rather an order compelling discovery. While the details of the written Order of July 21<sup>st</sup>, 2000 reflect the agreement between counsel for plaintiff and Allstate as to the limitations placed on Dr. Ammerman's testimony insofar as a differentiation of the payments made to him by Allstate, those terms were not ordered by the Court. They resulted solely from the agreement between counsel when faced with the consequences of the Court's order compelling discovery by the use of a computer terminal.

For these reasons, the motions are denied.

An Order is enclosed.

Very truly yours,



R. Terrence Ney

RTN/kp  
Enclosure  
cc: Honorable Dennis J. Smith

VIRGINIA :

FILED

DEPT. SER.

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

00 AUG 10 PM 3:28

DORSEY W. ROHRBAUGH, JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Plaintiff )

v. )

Law No. 181346

RALPH D. LOMBARD, )

Defendant.)

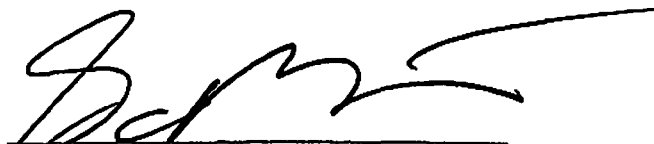
**VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY'S  
NOTICE OF APPEAL**

COMES NOW, VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY, by counsel, and pursuant to Virginia Supreme Court Rule 5:9 and files its notice to appeal this matter to the Virginia Supreme Court.

Virginia Farm Bureau Mutual Insurance Company will be filing a transcript of the proceedings and certifies that a transcript has been ordered from the court reporter who reported the case.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
By Counsel

TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000  
(703) 385-1555 (fax)

  
Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Virginia Farm Bureau  
Mutual Insurance Company


**CERTIFICATE OF MAILING**

I hereby certify that a true copy of the foregoing **Notice of Appeal** was mailed, first class postage prepaid on this **9<sup>th</sup>** day of **August, 2000** to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231

William M. Dupray, Esquire  
BRANDT, JENNINGS, ROBERTS,  
DAVIS & SNEE, P.L.L.C.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042  
Counsel for Allstate

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033-3810

  
Steven W. Bancroft

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH )

Plaintiff, )

v. )

RALPH D. LOMBARD )

Defendant )

Law No. 181346

**RECEIVED**

**AUG 14 2000**

Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

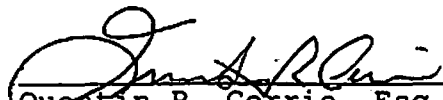
NOTICE OF APPEAL

COMES NOW the Defendant, Ralph Lombard, by counsel, and hereby appeals from the final order entered on June 8, 2000, which was suspended by order entered June 8, 2000, and again on July 12, 2000, suspending from July 14, 2000 for an additional 30 days the finality of the order entered on June 8, 2000, in this matter and states further as follows:

- 1) a copy of this Notice of Appeal is hereby mailed this date, August 11, 2000, to all Counsel of record; and,
- 2) a transcript of testimony, argument and rulings in this matter will be filed and counsel hereby certifies that a copy of the transcript has been ordered from the court reporter(s) who reported this case.

RALPH D. LOMBARD  
By Counsel



  
Quentin R. Corrie, Esq. (VSB#14140)  
ANDERSON & CORRIE  
12600 Fair Lakes Circle #220  
Fairfax, VA 22033

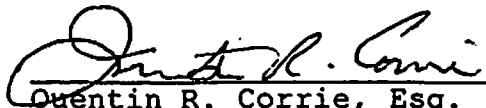
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11<sup>th</sup> day of August 2000, copies of the foregoing Defendant's Notice of Appeal from the final order entered on July 12, 2000, was sent via first class mail, postage prepaid, to:

Steven M. Frei, Esq.  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road, Suite 150  
Reston, VA 20190-3231  
(Counsel for Dorsey W. Rohrbaugh)

Steven W. Bancroft, Esq.  
TRICHILO, BANCROFT, et. al.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau mutual Insurance Co.)

William M. Dupray, Esq.  
BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC  
6565 Arlington Boulevard, Suite 200  
Falls Church, Virginia 22042  
(Counsel for Defendant Allstate Insurance Company)

  
Quentin R. Corrie, Esq. (VSB#14140)  
ANDERSON & CORRIE  
12600 Fair Lakes Circle #220  
Fairfax, VA 22033

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff	)	
	)	
v.	)	Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.)	)	

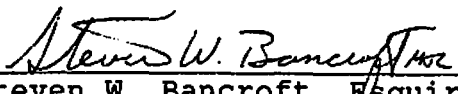
**VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY'S  
AMENDED NOTICE OF APPEAL**

COMES NOW, VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY, by counsel, and pursuant to Virginia Supreme Court Rule 5:9 and files its notice to appeal this Court's June 8, 2000 Final Order (which due to suspending orders became final on August 13, 2000), Judge Ney's August 2, 2000 Order Denying Defendants' Motion to Reconsider, Judge Smith's Denial of Defendants' Motion for a New Trial, Judge Ney's July 21, 2000 Order regarding his June 6, 2000 decision concerning Dr. Ammerman, and all other appealable orders to the Virginia Supreme Court.

Virginia Farm Bureau Mutual Insurance Company will be filing a transcript of the proceedings and certifies that a transcript has been ordered from the court reporter who reported the case.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
By Counsel

TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000  
(703) 385-1555 (fax)

  
Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Virginia Farm Bureau  
Mutual Insurance Company

**CERTIFICATE OF MAILING**

I hereby certify that a true copy of the foregoing **Notice of Appeal** was mailed, first class postage prepaid on this **17<sup>th</sup> day of August, 2000** to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231

William M. Dupray, Esquire  
BRANDT, JENNINGS, ROBERTS,  
DAVIS & SNEE, P.L.L.C.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042  
Counsel for Allstate

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033-3810

  
Steven W. Bancroft

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
COURT SERVICES  
AUG 11 PM 3:52

DORSEY W. ROHRBAUGH )

Plaintiff, )

v. )

RALPH D. LOMBARD )

Defendant )

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

Law No. 181346

**RECEIVED**

AUG 17 2000

Trichilo, Bancroft, McGavin,  
Horvath & Judkins, P.C.

AMENDED NOTICE OF APPEAL

COMES NOW the Defendant, Ralph Lombard, by counsel, and hereby appeals to the Virginia Supreme Court from the final order entered on June 8, 2000, which was suspended by order entered June 8, 2000, and again on July 12, 2000, suspending from July 14, 2000 for an additional 30 days the finality of the order entered on June 8, 2000, in this matter and states further as follows:

- 1) a copy of this Amended Notice of Appeal is hereby mailed this date, August 11, 2000, to all Counsel of record; and,
- 2) a transcript of testimony, argument and rulings in this matter will be filed and counsel hereby certifies that a copy of the transcript has been ordered from the court reporter(s) who reported this case.

RALPH D. LOMBARD  
By Counsel

*Quentin R. Corrie*

Quentin R. Corrie, Esq. (VSB#14140)

ANDERSON & CORRIE

12600 Fair Lakes Circle #220

Fairfax, VA 22033

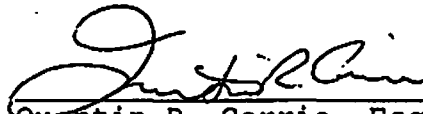
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11<sup>th</sup> day of August 2000, copies of the foregoing Defendant's Notice of Appeal from the final order entered on July 12, 2000, was sent via first class mail, postage prepaid, to:

Steven M. Frei, Esq.  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road, Suite 150  
Reston, VA 20190-3231  
(Counsel for Dorsey W. Rohrbaugh)

Steven W. Bancroft, Esq.  
TRICHILO, BANCROFT, et. al.  
4117 Chain Bridge Road, Suite 400  
Fairfax, VA 22030  
(Counsel for Virginia Farm Bureau mutual Insurance Co.)

William M. Dupray, Esq.  
BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC  
6565 Arlington Boulevard, Suite 200  
Falls Church, Virginia 22042  
(Counsel for Defendant Allstate Insurance Company)

  
Quentin R. Corrie, Esq. (VSB#14140)  
ANDERSON & CORRIE  
12600 Fair Lakes Circle #220  
Fairfax, VA 22033

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff,	)	
v.	)	At Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.	)	

**NOTICE OF FILING TRANSCRIPTS**

COMES NOW, Virginia Farm Bureau Mutual Insurance Company, by counsel, and hereby certifies that on September 12, 2000, the original transcripts of the June 7 - 8, 2000 trial and July 12, 2000 motion were filed with the Clerk of the Circuit Court of Fairfax County, Virginia.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY,  
By Counsel,

TRICHILO, BANCROFT, McGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000 (telephone)  
(703) 385-1555 (facsimile)

Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Defendant, Virginia Farm  
Bureau Mutual Insurance Company



CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing Notice of Filing Transcripts was mailed first-class, postage prepaid on this 12<sup>th</sup> day of September, 2000 to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231

William M. Dupray, Esquire  
BRANDT, JENNINGS, ROBERTS,  
DAVIS & SNEE, P.L.L.C.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033-3810

---

Steven W. Bancroft

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

DORSEY W. ROHRBAUGH,	)	
	)	
Plaintiff,	)	
v.	)	At Law No. 181346
	)	
RALPH D. LOMBARD,	)	
	)	
Defendant.	)	

SUPPLEMENTAL NOTICE OF FILING TRANSCRIPT

COMES NOW, Virginia Farm Bureau Mutual Insurance Company, by counsel, and hereby gives notice that on the 30<sup>th</sup> day of October, 2000, it filed a partial transcript of the proceedings of June 8, 2000, which was previously untranscribed. The transcript consists of two bench conferences concerning and involving Dr. Ammerman just before his testimony. The original transcript of the trial omitted these bench conferences.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY,  
by Counsel

TRICHILO, BANCROFT, MCGAVIN,  
HORVATH & JUDKINS, P.C.  
4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030  
(703) 385-1000 (telephone)  
(703) 385-1555 (facsimile)



Steven W. Bancroft, Esquire  
Virginia State Bar No. 18447  
Counsel for Defendant, Virginia Farm  
Bureau Mutual Insurance Company

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing **Supplemental Notice of Filing Transcript** was mailed first-class, postage prepaid on this 30<sup>th</sup> day of October, 2000 to:

Steven M. Frei, Esquire  
HALL & SICKELS, P.C.  
12120 Sunset Hills Road  
Suite 150  
Reston, Virginia 20190-3231

William M. Dupray, Esquire  
BRANDT, JENNINGS, ROBERTS,  
DAVIS & SNEE, P.L.L.C.  
6565 Arlington Boulevard  
Suite 200  
Falls Church, Virginia 22042

Quentin R. Corrie, Esquire  
ANDERSON & CORRIE  
12600 Fair Lakes Circle  
Suite 220  
Fairfax, Virginia 22033-3810



---

Steven W. Bancroft

**VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY'S**  
**ASSIGNMENTS OF ERROR**

1. The trial court erred in authorizing Rohrbaugh's counsel to purposefully and deliberately inject the issue of liability insurance into this personal injury action during the cross-examination of Dr. Bruce Ammerman, one of the defense experts, and in Rohrbaugh's closing statements which prejudice not only the defendant but the separate legal rights of Virginia Farm Bureau.
2. The trial erred in allowing a non-party to the law suit, Allstate Insurance Company, to make a stipulation binding on the defendant Lombard, the under-insurance motorist carrier, Virginia Farm Bureau, and a defense medical expert when the defense did not consent to nor did it have knowledge or notice of the stipulation.

**ASSIGNMENTS OF ERROR OF RALPH D. LOMBARD**

1. The trial court denied Lombard's request for a mis-trial and a new trial after permitting plaintiff's counsel to improperly inject the question of insurance into the case in an attempt to show possible bias by a witness who is not a regular, paid employee of the insurance company.
2. The trial court abuses its discretion in disallowing a jury instruction offered by the defendant's counsel that would properly have warned the jury against taking an assertion of fact contained in the plaintiff's counsel's question as evidence of that fact.