

IN THE CIRCUIT COURT
FOR SOMERSET COUNTY, MARYLAND

[REDACTED]

Plaintiff

vs.

19-C-06-011011

KENISHA KELLY, et al.

Defendants
-----/

Deposition

of

[REDACTED]

DATE: Friday, April 1, 2006

TIME: 1:15 p.m.

LOCATION: [REDACTED]
[REDACTED]

115 Broad Street
Salisbury, Maryland 21803

Reported by: David M. Schafer, AA, CCR

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ON BEHALF OF THE PLAINTIFF(S)

Rodney Gaston, Esquire
Miller & Zois
Suite 1001
7310 Ritchie Highway
Glen Burnie, Maryland 21061

ON BEHALF OF THE DEFENDANT(S:)

[REDACTED]

Vorhis, Douse & Mason
115 Broad Street
Salisbury, Maryland 21803

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C-O-N-T-E-N-T-S

Witness: [REDACTED]

EXAMINATION BY:

Mr. Gaston 4

EXHIBITS:

No. 1 - List of Items to be Produced .. 10

No. 2 - Records of Payment to First-Party 14
Med Pay Coverage

No. 3 - Insurance Policy 15

No. 4 - Letter to Donna Dennis from ... 21
Nicole Paxson, dated June 28,
2006

No. 5 - Maryland Jury Instruction 28

No. 6 - Burden of Proof Standard 28

No. 7 - Medical Records 44

1 P-R-O-C-E-E-D-I-N-G-S

2

3 having first been duly sworn, testified as follows:

4

EXAMINATION

5

BY MR. GASTON:

6

Q Please state your full name, sir.

7

A

8

Q Sir, my name is Rodney Gaston. I'm an

9

attorney and represent [REDACTED] in a case

10

that's currently pending in the Circuit Court for

11

Somerset County against Allstate Insurance Company.

12

Have you ever had your deposition taken

13

before?

14

A Yes.

15

Q I just want to review some of the rules.

16

The court reporter is taking down your testimony.

17

The court reporter can't take down a nod of the head

18

or a shake of the head, so I'd ask that all your

19

responses be verbal.

20

And if there is a question that I ask you

21

that you don't understand, just stop me and say, Mr.

1 Gaston, I don't understand, and I'll try to rephrase
2 it so you do understand it.

3 If at any name during the deposition you
4 need to take a break, just let me know.

5 Sir, what's your business address?

6 A 7067 Columbia Gateway Drive, Columbia,
7 Maryland 21046.

8 Q Can you tell me a little about your
9 education? Did you graduate from high school?

10 A Yes.

11 Q What year?

12 A 1981.

13 Q Do you have any college education?

14 A Yes.

15 Q What does that consist of?

16 A A four-year college degree; graduated in
17 1986 from Western Maryland College, which has now
18 changed its name to McDaniel College.

19 Q Any education after your four-year
20 undergraduate degree?

21 A Yes.

1 Q What did that consist of?

2 A I've got two insurance related
3 designations; Chartered Property Casualty
4 Underwriters, also known as CPCU; and SCLA, Senior
5 Claim Loss Associate.

6 Q These titles, did you obtain these by
7 attending courses or did you have to take a test in
8 order to obtain the certifications?

9 A Yes. The CPCU, you can do it without
10 going to class, you can do self-study, but you have
11 to pass -- at the time that I did it you had to pass
12 ten closed-book exams. And the SCLA was more of an
13 open-book, self-study type thing.

14 Q Were these given by a particular
15 university or --

16 A No. I'm sorry. I didn't mean to
17 interrupt.

18 Q That's okay. Through your employer?

19 A They are both through independent
20 education facilities within the insurance industry.
21 My employer paid the tuition and exam fees and

1 books, but they were not the actual facilitator.

2 Q All right. Any other post-graduated
3 education?

4 A No.

5 Q Can you tell me a little about your work
6 history? I understand you are employed with
7 Allstate. When did you obtain employment with
8 Allstate?

9 A February 1991.

10 Q Have you been employed continuously with
11 Allstate from that date forward?

12 A Yes.

13 Q Can you tell me what your duties were at
14 Allstate when you first started in 1991, up to
15 today's date? I don't need a day-by-day; you can
16 brief.

17 A I appreciate that. When I first started
18 I was a personal lines claim representative, which
19 mainly consisted of liability investigations and
20 smaller level types of injury cases and a little bit
21 of homeowner liability, but anything that would go

1 to a higher level, so to speak, or would take a long
2 time to resolve would get transferred to a casualty
3 unit, which I work for now. But I did the personal
4 lines thing for probably roughly five to seven
5 years.

6 And then I've worked casualty. When I
7 say casualty, I mean claims involving injury where
8 someone is alleging or the possibility that an
9 Allstate insured might be liable or like a
10 first-party uninsured, under-insured motorist case.

11 Q Okay. And you've been in the casualty
12 unit for the last ten years?

13 A You know, I would range it between seven
14 and ten, maybe seven and eleven. I'm not sure. I
15 don't remember exactly when I was moved from
16 personal lines to casualty.

17 Q Okay. Can you give me an idea of roughly
18 how many claims you've adjusted over the last ten to
19 sixteen years with Allstate?

20 A No.

21 Q Thousands? Would it be in the thousands?

1 A I don't know that it's that high, but I
2 suppose it's in the low -- high hundreds, low
3 thousands, you know. It's a very, very broad
4 estimation, you know.

5 Q All right. Did any of these claims
6 involve claims for reimbursement for medical
7 expenses or personal injury benefits?

8 A No.

9 Q Have you ever taught any seminars?

10 A No seminars, no.

11 Q Have you ever engaged in any supervisory
12 duties during your employment with Allstate?

13 A No.

14 Q Do you have any persons that ever worked
15 under you at Allstate?

16 A I'm sorry.

17 Q Anyone that's ever worked under you at
18 Allstate?

19 A No.

20 Q And you've been designated by Allstate's
21 attorney as the adjuster and corporate

1 representative by Allstate. And do I understand
2 that by being the adjuster and corporate
3 representative that you have the decision-making
4 authority with respect to this case whether to make
5 a settlement offer and accept a settlement and pay
6 the claim that's being presented by [REDACTED]

7 A For the under-insured motorist element of
8 this claim, yes, and that's the only element that I
9 have anything to do with.

10 MR. GASTON: Okay. I'm going show you
11 what's marked as Exhibit 1.

12 (Exhibit No. 1 marked)

13 BY MR. GASTON:

14 Q This is a list of items that I asked you
15 to bring with you to your deposition today. And I'm
16 wondering if you could tell me how many of those
17 items you were able to bring with you today.

18 THE WITNESS: Do we have everything?

19 [REDACTED] We've got --

20 MR. GASTON: Let's go down the list one
21 by one.

1 [REDACTED] Yeah. And I'm going to
2 comment on some of them.

3 MR. GASTON: Okay. No. 1 is the entire
4 Allstate claims file pertaining to the claim made by
5 [REDACTED] for monetary benefits arising out of a
6 automobile collision that occurred on March 10,
7 2004, under Claim Number 2225655774-01.

8 [REDACTED] Number 1 is good enough.

9 MR. GASTON: Okay.

10 [REDACTED] Let me tell you what
11 we've got here. We've got this, we've got the
12 policy and we've got this. Okay.

13 Now what I'm going to represent to you is
14 that this represents the policy -- the file purged
15 of attorney matters, correspondence, so on and so
16 forth, because that's absolutely privileged.

17 We also have excluded proprietary
18 information; we have also excluded materials which
19 we contend are trade secrets or which, you know,
20 would be proprietary.

21 BY MR. GASTON:

1 Q [REDACTED] can you or your attorney
2 define what you mean by proprietary information, not
3 the exact item but identify the group or what that
4 information would contain so we all know what we are
5 talking about?

6 [REDACTED]: We are talking about
7 methodologies, materials that would relate to
8 methodologies used by Allstate in evaluating claims.
9 The reason is because if this information were
10 disseminated to the public and to the plaintiffs'
11 bar especially, it would give insights into the
12 thought processes of Allstate as to how it evaluates
13 claims, techniques used, things of this nature.

14 MR. GASTON: Does that include the
15 training manuals that we've asked for?

16 [REDACTED]: Yes, the training
17 manual, absolutely.

18 MR. GASTON: Okay. So it's my
19 understanding you are refusing to provide the
20 training manuals.

21 [REDACTED]: Absolutely, uh-huh.

1 MR. GASTON: Are you also refusing to
2 provide anything that identifies the policies that
3 Allstate implements when evaluating the claims such
4 as the one that [REDACTED] has brought against
5 Allstate?

6 [REDACTED] Policies? The policy is
7 this.

8 MR. GASTON: No, insurance policies,
9 corporate policies regarding how claims are to be
10 handled.

11 [REDACTED] Absolutely.

12 MR. GASTON: All right. Would it be fair
13 to say that these items have been identified by
14 Allstate in the event that the Court determines that
15 they are to be turned over to counsel?

16 [REDACTED] They have been
17 identified by me.

18 MR. GASTON: By the attorney for
19 Allstate. Okay.

20 MR. GASTON: That takes care of Item 1.

21 Let's go to Item 2. Copies of letters

1 Allstate sent to [REDACTED], her attorneys, any
2 medical providers that are entitled Explanation of
3 Medical Bill Payment under Claim 2225655774-01.

4 [REDACTED] That would be the pile
5 here. I believe that's it.

6 MR. GASTON: Sir, can you mark this as
7 Exhibit 2.

8 (Exhibit No. 2 marked)

9 BY MR. GASTON:

10 Q What I've asked the reporter to mark are
11 documents your attorney handed me as Exhibit 2.
12 What's contained in Exhibit No. 2?

13 A I believe it's records of payments made
14 to the first-party med pay coverage.

15 Q Can you tell me under the medical pay
16 portion of the policy what is the amount of money
17 Allstate has paid under that portion of the policy
18 in this case?

19 [REDACTED] That should be in here,
20 but basically they paid \$10,000.

21 BY MR. GASTON:

1 Q Is that correct, [REDACTED]

2 A Yeah, I believe so.

3 MR. GASTON: Okay. I'll mark the policy
4 as the next exhibit.

5 (Exhibit No. 3 marked)

6 BY MR. GASTON:

7 Q [REDACTED] could you identify Exhibit
8 No. 3?

9 A This looks like a copy of [REDACTED]
10 Allstate insurance policy that was in effect on the
11 date of the auto accident.

12 Q Okay. Would this be the policy that
13 provided coverage to [REDACTED] for injuries
14 arising out of the automobile collision of March 10,
15 2004?

16 A Yes.

17 Q Go to Item No. 3. Do you have a complete
18 list of codes with corresponding explanation that
19 Allstate used in denying any medical payments in
20 Claim 2225655774-01?

21 [REDACTED]: Let me answer that one

1 partly and then I'll let him answer.

2 I was somewhat confused about this. But
3 Exhibit 2 does contain some of this information, and
4 I'll just give you an example. There were a couple
5 instances in here where the same bill was submitted
6 twice and it was noted. There is a code that there
7 was a double billing for the same charge. I offer
8 that as an example. That's part of Exhibit 2.

9 MR. GASTON: Do you have a complete list
10 of the codes?

11 [REDACTED] Allstate has a complete
12 list of the codes, but I regard that -- I'm not -- I
13 assume they have a whole list of codes. I don't
14 know. I didn't even ask for it.

15 THE WITNESS: It's an internal, that's an
16 internal thing.

17 BY MR. GASTON:

18 Q Well, [REDACTED] is it correct that
19 Allstate does has a complete list of the codes and
20 that they have not been provided today?

21 [REDACTED] They have not been


1 provided. And let me say this. I was limiting that
2 to the medical payments. Maybe that was too broad
3 of an interpretation. This shows which ones were
4 paid and which ones were not paid. I don't know
5 what you are driving at.

6 MR. GASTON: It's easy. There is a code
7 here -- there are codes here, for example, on Page
8 5, Explanation 4, 4.1X regarding CPT, ACP, CS
9 procedure code bill was a duplicate of a procedure
10 previously billed.

11 What I asked for was a list of all the
12 codes that Allstate has that's used.

13 THE WITNESS: You mean like right here?

14 MR. GASTON: All of the codes and for a
15 list of them and what they mean. I'm asking if you
16 provided that list.

17  Well, okay. I'm going
18 to object to that. That's not reasonably calculated
19 to lead to the discovery of admissible evidence in
20 the UIM case. What you have there is the medical
21 payments log, in essence, which has which ones were

1 paid, which ones were not paid and why they weren't
2 paid or why they were paid.

3 MR. GASTON: Item 4, copy of the medical
4 payment log sheet. Is that the same as Exhibit 2?

5 [REDACTED] Log sheet.

6 BY MR. GASTON:

7 Q [REDACTED] is that the same as contained
8 in Exhibit 2?

9 A Yes.

10 Q Item No. 5. All letters sent to any
11 person by Allstate when Allstate determined that the
12 medical treatment rendered by any medical provider
13 to [REDACTED] was not causally related to the
14 injury she sustained in the automobile collision
15 that occurred on March 10, 2004, or that the cost
16 for the medical treatment was unreasonable.

17 Do you have --

18 [REDACTED] There are no such
19 letters that I'm aware of.


20 BY MR. GASTON:

21 Q Is that correct, [REDACTED]

1 A Yes.

2 Q A copy of Allstate's -- we already went
3 over No. 6. I'll just go over it again. A copy of
4 Allstate's policies, procedures, training manuals it
5 provided to any Allstate employee/adjuster that
6 delineates the procedures and considerations that
7 Allstate employees are to follow when conducting a
8 determination whether a medical bill is causally
9 related to an accident wherein an Allstate insured
10 is requesting monetary benefits under an automobile
11 policy issued by Allstate and in particular under
12 the policy of insurance that's attached to
13 Allstate's Motion to Intervene.

14 And I believe we've already addressed
15 that. And I can ask you or ask your attorney to
16 respond. Have you produced those documents, Mr.

17  Just have you produced them?

18  No.

19 MR. GASTON: Is the reason the same
20 reason you placed on the record earlier?

21  Yeah.

1 MR. GASTON: Okay.

2 [REDACTED]: Proprietary, trade
3 secrets.

4 BY MR. GASTON:

5 Q Number 7. A copy of any recorded
6 statement that Allstate has that was made by [REDACTED]
7 [REDACTED]. Is there any such statement, [REDACTED]

8 A Not that I'm aware of.

9 Q Copies of any letter that Allstate
10 generated to any person wherein it permitted the
11 plaintiff, [REDACTED] to accept the sum of
12 \$12,000 from Defendant Kelly's liability carrier and
13 where Allstate waived subrogation against Defendant
14 Kelly.

15 A I'm currently handing this to Mr. Gaston.

16 MR. GASTON: I'll have this marked as the
17 next exhibit, please.

18 (Exhibit No. 4 marked)

19 BY MR. GASTON:

20 Q This letter is No. 4. Is that the letter
21 when Allstate allowed [REDACTED] -- I'm sorry --

1 is this the letter when Allstate agreed to waive
2 subrogation rights against Kenisha Kelly?

3 A Correct.

4 Q And do you have a letter that identifies
5 that Allstate allowed [REDACTED] to accept the
6 \$12,000 payment from Ms. Kelly?

7 [REDACTED] That's the same thing,
8 isn't it?

9 MR. GASTON: The letter says, "We have
10 offered \$4,000 of our Under-Insured coverage on top
11 of your \$12,000 offer that has currently been
12 rejected."

13 [REDACTED] Maybe I gave you the
14 wrong letter. Oh, I'm sorry. Excuse me. That was
15 supposed to be the letter. Sorry.

16 MR. GASTON: That's it. That's the same
17 one I've got here.

18 [REDACTED] Wait a minute. Doesn't
19 that say we --

20 MR. GASTON: We've allowed you to accept
21 the --

1 [REDACTED] We waive our subrogation
2 rights.

3 MR. GASTON: Let me ask it in another
4 way.

5 [REDACTED] Yeah.

6 BY MR. GASTON:

7 Q [REDACTED] on behalf of Allstate do you
8 agree that Allstate has allowed [REDACTED] to
9 accept \$12,000 from Kenisha Kelly's liability
10 carrier and that Allstate has waived its right to
11 subrogation against Ms. Kelly?

12 A Yes.

13 Q With respect to the value of the
14 under-insurance policy that is contained in Exhibit
15 No. 3 --

16 A Uh-huh.

17 Q -- does Allstate agree that the value of
18 the under-insurance policy is \$100,000?

19 A Let me take a quick look at it.

20 Q Sure.

21 A \$100,000 per person.

1 Q And do you agree that in accordance with
2 the terms of the policy and applicable law that
3 because [REDACTED] has received the sum of \$12,000
4 from Ms. Kelly's liability carrier that Allstate's
5 obligation would be reduced by that \$12,000 amount?

6 A I believe so.

7 Q And if we do some simple subtraction,
8 that means that the total amount of benefits,
9 monetary benefits available to [REDACTED] under the
10 Allstate policy under the under-insured portion of
11 the Allstate policy is \$88,000?

12 A Well, yeah, assuming the injury value
13 were to amount to that, yes.

14 Q Right. And in the event that the Court
15 or jury awards any amount of sum to [REDACTED]
16 Allstate's obligation to pay would not begin until
17 the verdict exceeded the sum of \$12,000?

18 A Yes.

19 Q Okay. Because Allstate has not filed an
20 Answer to [REDACTED] Amended Complaint alleging a
21 breach of contract, I have to ask you some questions

1 regarding a defenses that Allstate intends to raise
2 in the case.

3 [REDACTED] You filed an Amended
4 Complaint?

5 MR. GASTON: Off the record.

6 (Discussion off the record)

7 BY MR. GASTON:

8 Q [REDACTED] before we took the break I
9 indicated that I needed to ask you as Allstate's
10 corporate representative what defenses Allstate
11 intends to raise with respect to [REDACTED] claim
12 for breach of contract under the under-insured
13 portion of the policy that is currently at issue in
14 the Circuit Court for Somerset County. You can
15 answer the question or with the assistance of the
16 attorney, he can assist you. I need to know what
17 defenses you intend to raise and what are the
18 factual basis for those defenses.

19 [REDACTED] Okay. First of all, I
20 think that's a little broader than the scope of the
21 Deposition Notice, but the essential -- well, let me

1 say what we're not disputing first of all. The
2 contract is the contract that's in effect. There's
3 no policy defense being raised in the sense that she
4 didn't he pay the premium, that the premium had
5 lapsed, it wasn't during the right policy period,
6 you know, things of that nature.

7 The Maryland law, which is confused,
8 which in this case is interspersed with Virginia
9 law, is that this is a contract action but the case
10 is to be tried as a tort action. So we have raised
11 tort defenses, the standard tort defenses of the
12 fact that under-insured motorist did not commit the
13 wrongs alleged, that the plaintiff was
14 contributorily negligent, that the plaintiff assumed
15 the risk.

16 We've also raised a contractual defense
17 that the defendant is not indebted as alleged,
18 meaning we don't owe as much money as you guys say
19 we owe.

20  do you want to add to that?

21 THE WITNESS: No, I don't think I need to

1 add to that.

2 BY MR. GASTON:

3 Q Okay. Can you tell me all factual
4 reasons why you believe from a factual standpoint
5 that Ms. Kelly did not operate her vehicle in a
6 negligent fashion and cause the collision?

7 A No.

8 Q Do you have any factual reasons or any
9 facts that would suggest that [REDACTED] operated
10 her vehicle in a negligent fashion and contributed
11 to the automobile collision?

12 A No.

13 Q Do you have any factual basis to claim
14 that [REDACTED] assumed the risk of her injuries
15 arising out of the automobile collision?

16 A No.

17 Q Are you in agreement that [REDACTED] can
18 dismiss with prejudice her cause of action against
19 Ms. Kelly and that that will have no affect on her
20 current breach of contract action against Allstate?

21 A Other than the credit.

1 Q Excluding the credit.

2 A Then I would be in agreement with that.

3 Q Okay. Does Allstate claim, other than
4 the \$12,000 credit that [REDACTED] received from
5 Ms. Kelly's liability carrier, is Allstate claiming
6 any other credit due them, either under the contract
7 or any applicable law?

8 A The only possible other credit would be
9 if we ever found out she was in the course of
10 employment, any monies received under Worker's
11 Compensation, which I don't foresee.

12 Q Okay.

13 A I don't foresee any of that.

14 Q Okay.

15 A And I don't have any factual evidence to
16 that effect, but if by some chance it comes up, that
17 could cause another additional credit.

18 Q And specifically with respect to the
19 \$10,000 that Allstate paid out either to [REDACTED]
20 or on behalf of [REDACTED] medical providers, is
21 Allstate claiming any type of credit against the

1 judgment that may be entered in court on the breach
2 of UM, under-insurance contract?

3 A No.

4 Q Okay. Do you agree that under the terms
5 of the contract that [REDACTED] would be entitled
6 to collect from Allstate those damages that she
7 would be entitled to collect from Ms. Kelly as a
8 result of Ms. Kelly's negligence in causing the
9 automobile collision?

10 A To the policy limit, assuming that a jury
11 decided.

12 [REDACTED] And less the \$12,000
13 credit.

14 MR. GASTON: I understand. I'll have you
15 mark this as the next exhibit.

16 (Exhibit Nos. 5 and 6 marked)

17 BY MR. GASTON:

18 Q I show you what's been marked as Exhibit
19 No. 5, and I'll ask with respect to the damages that
20 [REDACTED] is able to obtain under Maryland law, do
21 you agree that Exhibit No. 5, which is the Maryland

1 Pattern Jury Instruction with respect to
2 compensatory damages, outlines those damages,
3 assuming, of course, she can prove them in court?

4 [REDACTED] If she can prove them.

5 A That appears correct.

6 Q Do you also agree that with respect to
7 the burden of proof as outlined in Exhibit No. 6,
8 which is Burden of Proof - Preponderance of Evidence
9 Standard, that that is the standard that would be
10 applicable to [REDACTED] in proving her damages in
11 a court of law in the State of Maryland?

12 [REDACTED] We have not designated
13 him as an expert in the field of law. I will agree
14 that that is the Pattern Jury Instructions which
15 would be appropriate at the trial of this case.

16 MR. GASTON: That's fine.

17 BY MR. GASTON:

18 Q Now, [REDACTED] have you conducted,
19 under [REDACTED] first-party benefits, an
20 evaluation with respect to the medical bills and
21 medical reports she had submitted to Allstate for

1 this claim?

2 [REDACTED] There's two first-party
3 portions of the policy. Which one are you talking
4 about?

5 BY MR. GASTON:

6 Q Under the under-insured portion of the
7 policy.

8 A I've looked at it.

9 Q Okay. Does Allstate claim that any of
10 the treatment that [REDACTED] received from Doctor
11 Louis Oechsli, who is a chiropractor, was not
12 causally -- that the injuries he treated her for
13 were not causally related to the accident?

14 A We intend to make that argument at trial,
15 I believe. I'd like to have [REDACTED] make
16 that argument at trial.

17 Q I need to know if you have any medical
18 factual basis to contend that the treatment that
19 Doctor Oechsli provided to [REDACTED] was for
20 injuries that were not causally related to the
21 automobile collision.

1 [REDACTED] Okay. You are getting
2 into attorney work product here, and I'm going to
3 instruct him not to answer. What evidence I will
4 submit is a matter of trial tactics and that is
5 attorney work product, so we're not getting into
6 that.

7 MR. GASTON: Allstate has not identified
8 any medical expert to testify in the case at bar; is
9 that correct?

10 [REDACTED] That is correct.

11 MR. GASTON: Would it be fair to say that
12 Allstate then has no testimony from any medical
13 doctor that they will call in the case at bar to try
14 to explain to the jury that [REDACTED] injuries
15 were not causally related -- that [REDACTED]
16 injuries that she sustained in the automobile
17 collision, that she was treated for by Doctor
18 Oechsli were not causally related to the accident?

19 [REDACTED] We have identified as
20 fact witnesses any healthcare provider that ever
21 treated or examined the plaintiff during her

1 lifetime and reserve the right to rely upon any
2 records of those experts -- or of those healthcare
3 providers. And it's a matter of what the jury
4 chooses to believe. The jury is entitled to believe
5 all, part or none a witness's testimony. If Doctor
6 Oechsli says everything is related to the accident,
7 the jury can choose to disbelieve that. The jury
8 can also choose to believe information contained in
9 medical records which tend to show that the
10 plaintiff may have had preexisting conditions, by
11 way of example, or may have had other situations
12 which give rise to her subjective complaints.

13 So with that explanation I instruct him
14 not to answer.

15 BY MR. GASTON:

16 Q Do you have any opinions from any doctor,
17 are you aware of any opinions from any doctor in
18 this case that any of the injuries that [REDACTED]
19 sustained in the automobile collision that she
20 received treatment for by Doctor Oechsli were not
21 causally related to the automobile accident?

1 ██████████ Objection for the same
2 reasons. We are not offering any expert testimony.

3 MR. GASTON: As to her medical treatment
4 or condition?

5 ██████████ We have not designated
6 an expert, that's correct.

7 MR. GASTON: Okay.

8 BY MR. GASTON:

9 Q Is it fair to say that Allstate initially
10 conducted an investigation into ██████████ claim
11 for injuries under the medical expense payment
12 portion of the policy?

13 A I have no comment on the medical payment
14 portion of the handling of this claim.

15 ██████████ Again, let me state for
16 the record that the person who did this -- actually,
17 the two people that did this have ceased to be
18 employed by Allstate as of 31 December 2006. We do
19 not know their whereabouts. We cannot read their
20 minds and say why they did what they did. You have
21 the log showing what they paid and what they didn't

1 pay. That's the best we can do at this point.

2 MR. GASTON: Well, that's the reason that
3 I sent a letter of April 5, 2007 to [REDACTED]
4 asking him to designate an adjuster and corporate
5 representative for the purpose of deposition, and I
6 specifically said that both individuals, more
7 importantly, the corporate representative, should be
8 able to fully answer the plaintiff's Interrogatories
9 and be able to speak intelligently on the terms of
10 the insurance policy in question. This applies to
11 both the under-insured terms of the policy, as well
12 as the medical benefits expense coverage under the
13 policy. I intend to elicit testimony, among other
14 things, from both witnesses as to what actions that
15 Allstate took with respect to the claim [REDACTED]
16 made under her medical benefits expense coverage.
17 I'm also requesting the witnesses to bring with them
18 all the documents contained in the medical benefits
19 file that specifically includes any and all payments
20 made to the providers under the policy.

21 BY MR. GASTON:

1 Q [REDACTED] it's my understanding you are
2 unable to provide testimony with respect to the
3 actions that Allstate took regarding the claim [REDACTED].
4 [REDACTED] made under the medical benefits expense
5 coverage of her policy, except for the documents
6 that you ave provided today, is that correct?

7 [REDACTED] Let me interject. We
8 can say what actions they took, what they paid and
9 what they didn't pay. That's reflected in Exhibit
10 No. 2.

11 Why they did what they did is in the
12 minds of the people that did it, and they are no
13 longer employed by Allstate. They were employed in
14 an office which Allstate has closed. We simply
15 don't have access to their brains.

16 A Well, it's two separate matters. If you
17 want to talk about the actual coverage in the
18 policy, that's one thing. The specific handling of
19 the med pay claim on this particular claim by those
20 med pay adjusters is something else.

21 Q All right. Let's go question by question

1 and I'll see what answers you have for us. It's my
2 understanding that under the med pay portion of the
3 policy that Allstate, under the terms of the
4 policy -- and I'm reading from a letter of March 12,
5 2004 that says to [REDACTED] that she has benefits
6 available to pay reasonable and necessary expenses
7 for medical, hospital, chiropractic, X-ray,
8 professional nursing, etc., etc., incurred and
9 resulting from the auto accident. Subject to these
10 conditions coverage is limited to \$10,000 for up to
11 three years, whichever comes first. We review all
12 medical bills to ensure that the treatment and
13 charges meet these criteria.

14 [REDACTED] is that your understanding of
15 the language of the policy as it applies to [REDACTED]
16 [REDACTED] claim for med pay benefits?

17 A Yes, that's the general language.

18 Q Okay. And in accordance with your review
19 of the file, Allstate has accepted under those terms
20 of the policy and has paid up to \$10,000 of the
21 medical bills that were generated from providers who

1 treated [REDACTED] for injuries that she sustained
2 in this collision?

3 A I'll concede that they paid it. And
4 settling, settling a portion of the claim just means
5 they settled a portion of the claim. And trying to
6 punish us for that, I don't think that's realistic
7 or fair.

8 Q In your review of her claim for
9 under-insured benefits have you also conducted an
10 evaluation into the reasonableness of the bills for
11 treatment [REDACTED] incurred as a result of
12 injuries she sustained in the collision?

13 A I didn't do the initial evaluation;
14 somebody else did. I looked it over and I'm fine
15 with it and concur with it, but I didn't conduct the
16 initial evaluation of this case.

17 Q Okay. Then do you, when you say you
18 concur, do you agree that when Allstate paid \$10,000
19 of [REDACTED] initial bills that the medical
20 treatment were for injuries caused by the accident
21 and they were reasonable and necessary?

1 [REDACTED] No. I object. There's
2 two different coverages.

3 A I wasn't referring to the med pay claim
4 adjusters when I said I concurred. You asked me
5 about evaluating the under-insured motorist bodily
6 injury claim, and that's what I concurred with. You
7 are trying to inject the med pay.

8 Q Then I'm glad you brought that to my
9 attention, because I did misunderstand your answer.

10 With respect to the request for benefits
11 made by [REDACTED] under the under-insured portion
12 of the policy that you investigated, can you tell me
13 what, if any, of the bills Allstate admits were
14 causally related, reasonable and necessary?

15 [REDACTED] Which one are we under
16 now?

17 MR. GASTON: Under-insured motorist
18 policy.

19 A You're asking me to go over line by line?

20 Q Yeah. I want to know which bills
21 Allstate claims are unreasonable, unnecessary or not

1 related.

2 [REDACTED] I'm going to instruct
3 him not to answer. I know we have a longstanding
4 dispute on this.

5 It is the plaintiff's job to prove that
6 these bills are fair, reasonable and necessary with
7 respect to injuries that the plaintiff claims to
8 have sustained as a result of the negligence of an
9 uninsured or under-insured motorist; namely, Kenisha
10 Kelly.

11 This is a jury trial. The jury is
12 entitled to believe all, part or none of the
13 testimony of any witness; it can disregard any bill
14 which is tendered. This is a matter of proof.

15 At this point it is the position of
16 Allstate that none of the bills are causally related
17 to the accident or fair, reasonable and necessary.

18 It is my intention to review the bills at
19 a later time and offer stipulations concerning
20 certain ones.

21 BY MR. GASTON:

1 Q [REDACTED] your attorney just told me
2 that Allstate's claiming that none of the bills for
3 the treatment [REDACTED] incurred arising out of
4 this automobile collision were causally related and
5 none of them are reasonable and necessary. I need
6 to know the factual basis for this contention. I
7 know the attorney can say something. But what I'm
8 asking now is why does Allstate believe that and
9 what are the facts that Allstate is relying upon
10 when we go to trial and in the event I decide to
11 call you as a witness to explain to the jury why
12 Allstate claims that none of the bills are causally
13 related and none of the bills are reasonable and
14 necessary, I need to know the factual basis for that
15 contention.

16 [REDACTED] Objection. I instruct
17 him not to answer. I will make the contentions.
18 The jury will have to decide what is fair,
19 reasonable and necessary and what is causally
20 related to the accident. You offer your proof,
21 we'll offer our proof, and the jury will decide.

1 This case is tried as a tort case of
2 ██████████ versus Kelly. The jury has to decide what
3 injuries Kelly's negligence caused and return a
4 verdict based on that, just as though it were a
5 straight tort case.

6 BY MR. GASTON:

7 Q ██████████, are you familiar with the
8 Virginia laws that apply to this claim?

9 A I'm --

10 ██████████ First of all, let me say
11 he's not a lawyer, he's not designated as an expert
12 in the field of law.

13 BY MR. GASTON:

14 Q ██████████ this is a contract that arose
15 under Virginia law. Do you agree with that?

16 A Yes.

17 Q And you are the corporate representative
18 that's been brought here today for the deposition,
19 correct?

20 A Yes.

21 Q The reason I'm asking this question is

1 that under Virginia law, its unfair claims
2 settlement practice statute, 38.2-510, No. 14
3 indicates, it says no person should commit or
4 perform with such frequency as to indicate a general
5 business practice any of the following: Failing to
6 promptly provide a reasonable explanation of the
7 basis in the insurance policy in relation to facts
8 or applicable law for a denial of a claim.

9 That's the reason I'm asking the
10 question, because under Virginia law, as I read it,
11 Allstate can't simply deny the claim and fail to
12 provide the insured in a first-party case of the
13 basis for the denial, which is what happened here.

14 And I understand your attorney has told
15 you not to answer, but I wanted to let you know that
16 this is part of the basis for my question, is that I
17 understand Virginia law is when a person makes a
18 claim, a first-party claim such as in this, that
19 they have to provide the factual basis for their
20 denial, and right now I don't have any.

21 I'll just ask you in light of the law

1 I've explained to you whether you intend to answer
2 the question or not.

3 [REDACTED] I instruct him not to
4 answer it. It's not part of this lawsuit; it's not
5 reasonably calculated to lead to admissible evidence
6 in this lawsuit.

7 MR. GASTON: I'm going to reserve the
8 right to reconvene the deposition pending the
9 Court's ruling on the failing to answer my
10 questions. I'll see if I can go forward with any
11 other questions. I don't think so because of the
12 failure to answer. Hang on one second.

13 BY MR. GASTON:

14 Q Are you aware that [REDACTED] has made a
15 claim for lost wages in the case?

16 A Yes.

17 Q Do you agree or disagree with the claim
18 for lost wages?

19 [REDACTED] I'm going to instruct
20 him not to answer. That is a matter of proof at
21 trial and which is under my control. But I would

1 note that she didn't make a claim for lost wages
2 under her PIP coverage, whatever that other coverage
3 is.

4 BY MR. GASTON:

5 Q The total value of the med pay coverage
6 under the policy, which is Exhibit 3, would you
7 agree it's \$10,000?

8 A Yes.

9 Q Do you have any photographs of [REDACTED]
10 [REDACTED] car or any of the cars in this case?

11 [REDACTED] No.

12 MR. GASTON: No?

13 [REDACTED] No.

14 THE WITNESS: And I believe the other
15 insurer settled the property damage, but I could be
16 wrong.

17 MR. GASTON: Okay. But as far as -- I'm
18 just -- have you looked through the file and there's
19 no photographs?

20 [REDACTED] No, there are no
21 photographs. No photographs. We have looked for

1 that.

2 MR. GASTON: Let me mark as the next
3 exhibit documents that [REDACTED] provided to me
4 that were paperclipped by a big paperclip and see if
5 we've got everything.

6 (Exhibit No. 7 marked)

7 BY MR. GASTON:

8 Q We asked in Interrogatory No. 9 to list
9 any persons you intend to call as witnesses at trial
10 and testimony you intend to elicit from each
11 witness. I'll ask if you can answer that question
12 today.

13 [REDACTED] He's not going to answer
14 it because I'm going to tell him not to. That's
15 violation of work product. Who I call as a witness
16 is known only to me.

17 BY MR. GASTON:

18 Q Do you have any demonstrative evidence
19 that you intend to bring to court and introduce at
20 trial?

21 [REDACTED] Do you have a definition

1 of demonstrative evidence?

2 MR. GASTON: Anything you want to show
3 the jury.

4 [REDACTED] I'm not going to tell
5 you what exhibits I intend to offer.

6 MR. GASTON: I'll ask if you can tell me
7 what exhibits you intend to bring to trial.

8 [REDACTED] I reserve the right to
9 bring any medical record, any -- I'm talking about
10 as direct evidence. I will not even begin to
11 address impeachment evidence. But any medical
12 record created by any healthcare provider who has
13 ever treated or examined the plaintiff in her
14 lifetime.

15 I also reserve the right to produce
16 records relating to the plaintiff's claim for
17 neurotoxic injury caused by sick building disease.

18 And if I can find out any other records
19 about her, I'm going to introduce those.

20 MR. GASTON: Any charts, diagrams that
21 you have made relative to this case?

1 [REDACTED] Me?

2 MR. GASTON: The defendant has, any
3 charts, diagrams that you've prepared in this case.

4 [REDACTED]: I have not prepared any
5 charts or diagrams. I'm not aware that Allstate has
6 prepared any charts or diagrams.

7 MR. GASTON: That's all the questions I
8 have.

9 Again, because of the refusal I reserve
10 the right to reconvene the deposition pending the
11 Court's ruling on [REDACTED] refusal to answer the
12 questions.

13 [REDACTED] He will read and sign.
14 Mr. Schafer should retain the exhibits and provide
15 copies.

16 MR. GASTON: Fine.

17

18

19

20

21

[REDACTED]
Date signed: _____

Schafer Reporting Company
P.O. Box 1140
Salisbury, Maryland 21802
Telephone: 410-742-1440

April 18, 2006

[REDACTED]

vs.

KENISHA KELLY, et al

Notice to: [REDACTED]

The enclosed transcript of your deposition in the above-captioned case is submitted to you on April 18, 2007 for your signature and any corrections or other changes you wish to make. All corrections and other changes will become part of your sworn testimony.

After you have read the transcript, sign it and, if you are making changes, attach to the transcript a separate correction sheet stating the changes and the reason why each change is being made. Return the signed transcript and any correction sheet to David M. Schafer, using the enclosed, self-addressed postage-paid envelope no later than 30 days after the date stated above.

If you fail to return the signed transcript and any correction sheet within the time allowed, the transcript may be used as if signed by you.

David M. Schafer

1 STATE OF MARYLAND

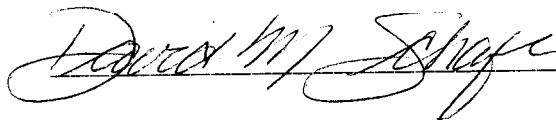
2 COUNTY OF WICOMICO; SS:

3 I, David M. Schafer, a Notary Public in
4 and for the State of Maryland, County of Wicomico,
5 do hereby certify that the witness named herein
6 personally appeared before me at the time and place
7 herein set out; and, after having first been duly
8 sworn by me, was interrogated by counsel.

9 I further certify that the examination
10 was recorded stenographically by me and then
11 transcribed in a true and accurate manner.

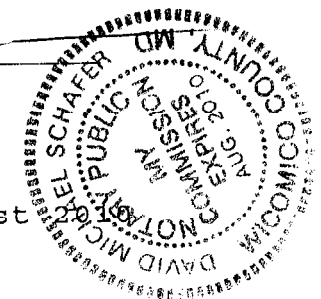
12 I further certify that I am not related
13 to, nor employed by counsel or the parties in this
14 case; and I have no interest, financial or
15 otherwise, with the outcome of this matter.

16 As witness, my hand and Notarial Seal,
17 this 18th day of April 2007, at Delmar, Maryland.

18 

19 David M. Schafer

20 My Commission expires August



21