

In the Matter Of:
WIENER vs AXA EQUITABLE LIFE INSURANCE

CV-106-RJC-DSC

SANFORD ROBBINS

January 27, 2020

O = overruled
S = sustained



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Robbins

those policies were previously in place with
AXA Equitable or any of the AXA affiliates?

A. I was aware that they were
previously in place because I was told that.

Q. Do you in your professional work,
do you work with AXA?

A. I do.

Q. Do you place policies with them?

A. I do.

Q. I guess more broadly, are you
familiar with AXA's underwriting policies and
procedures?

A. Completely.

Q. Are you familiar with other
companies' underwriting policies and
procedures?

A. Yes.

Q. Do you find that AXA's underwriting
policies and procedures differ from any other
companies that you're aware of, significantly?

MR. CASSOT: Objection to the
form.

MR. TRAYNUM: That's just an
objection for the record. A judge will

S
OBJECTION
relevance
(see dkt 72)



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Robbins

decide whether that objection stands.

So we will need your answer regardless.

Now, whether or not anyone hears that will depend on what the judge has to say.

A. I do find their underwriting tougher than the average company.

Q. What do you mean by "tougher"?

A. When applying for life insurance they are more likely to provide lower or not as favorable rating classifications as other companies might provide on the same insured.

Q. Is there anything about that that you believe is inappropriate?

A. No. I don't believe there is anything inappropriate.

Q. Now, in terms of what you were tasked to do or -- that's the wrong word.

Tell me what you understood the Wieners were asking you to do when you were referred to them or they were referred to you.

A. I believe they were asking me to secure insurance for them to replace the policies that they could not reinstate.



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Robbins

something in. Is that related to Mr. Wiener?

A. It's exactly the same thing you had already. There's no other -- there was nothing else.

Q. Okay. So I have right now as Exhibit B is every document that you're aware of that you have related to Mr. Wiener's file?

A. That's correct.

Q. Let's go through these and we may be done.

The first page of Exhibit B -- and, again, these are three separate pages. I don't mean to suggest that this is all one documents. These are three separate documents; is that accurate?

A. That's correct.

Q. And I've just attached them together and labeled them as Exhibit B for convenience.

So the first page of Exhibit B, can you tell me what that is, what that communication is?

A. This a declination of an application, something called an informal



1 Robbins

2 application to John Hancock which they advised

3 Mr. Wiener's been declined.)

4 Q. What is the difference between an

5 informal application and a formal application?

6 A. Informal applications, the insured

7 does not sign an application for it to be

8 issued. It's only used for the purpose of

9 underwriting to get a decision. And then once

10 a decision is reached, the insured has an

11 option to accept at that pricing or not.)

12 Q. This first page, do you know who

13 carrier this is?

14 A. John Hancock.

15 Q. Are you familiar with John

16 Hancock's underwriting procedures? ○
Objection

17 A. I am. Foundation;
relevance

18 Q. In terms of an informal

19 underwriting procedure, are you familiar with

20 what process they go through in order to

21 obtain an informal decision? ○
Objection

22 A. I am. Foundation;
relevance

23 Q. What is that process? ○
objection

24 A. They review the medical records

25 only and determine based upon the medical Foundation;
relevance



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Robbins

records whether they would approve, if they take it to the next step, which is to review the records from the Medical Information Bureau and the prescription records.

Q. So if I understand what you're saying, based on an informal review that's based on -- do you understand when they say "attending physician statement," is that medical records?

A. Yes.

Q. To your understanding?

A. That's what that is.

Q. So those are the medical records from the physician. Those aren't MIB records?

A. That's correct.

Q. So this decision was based on the medical records received from the physician?

A. Correct.

Q. And based on what your understanding is they would not have done an MIB request at the informal stage; is that correct?

A. That's correct.

Q. So any of the decisions made by

○
Objection
Foundation
Lack of
personal
knowledge

○
Objection
Foundation;
Lack of
personal
knowledge



1 Robbins
2 John Hancock were made based on the physician
3 records, not on anything they obtained from
4 the MIB, as far as you understand it?
5 A. That's correct.
6 Q. The second page, can you tell me
7 what carrier that would be?
8 A. Principal Life.
9 Q. Are you familiar with Principal's
10 underwriting processes?
11 A. Yes, I am.
12 Q. Are you familiar with how the
13 Principal would have undertaken -- first of
14 all. I apologize. What was John Hancock
15 underwriting's decision?
16 A. They declined him.
17 Q. Based on what?
18 A. His medical records.
19 Q. So then the second page then is the
20 Principal -- I'll ask that first. Do you have
21 an understanding as to what the Principal's
22 decision was with respect to its informal
23 review?
24 A. It's exactly the same as John
25 Hancock, how they review things. They don't

○
Objection
Foundation;
lack of
personal
knowledge

○
Objection
Foundation;
relevance

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Objection
Foundation;
relevance

○
Objection
23:24-24:6
Foundation; lack of
personal
knowledge; n
responsive



1 Robbins

2 go through the Medical Information Bureau
3 records until -- or the prescription records
4 until an application has been submitted for
5 legal reasons. They're not allowed to do
6 that.

7 Their approval -- just so you know,
8 is a Table 4 rating, which is 200 percent of
9 the rate of standard. It's basically double
10 the standard rate.)

11 Q. So in other words, twice as much,
12 costs twice as much.)

13 A. Costs twice as much.)

14 Q. As you understood it, what was the
15 reason that was given for that rating?

16 A. The atrial fibrillation and
17 whatever they say here. The -- I can't even
18 say the word -- gammopathy,

19 G-A-M-M-O-P-A-T-H-Y.

20 Q. And actually its the monoclonal
21 gammopathy; is that right? If you look under,
22 quote, "tentative NT/Table 4 (due to history
23 of atrial fibrillation and monoclonal
24 gammopathy), " correct?

25 A. That's correct.



1 Robbins
2 And I remember this in speaking
3 with Principal, just to make this completely
4 clear. They believe they would have been able
5 to improve the rating once we received the
6 other records from the doctors and the
7 colonoscopy from 2013.
8 Q. Okay. As far as you know, were
9 additional records provided to the Principal?
10 A. They were not provided to Principal
11 based upon my conversations with Carolyn
12 because the cost would have been too high even
13 at a Table 2 or Table 3 rating.
14 Q. So even if there was an
15 improvement, there was a decision made to
16 not --
17 A. Correct.
18 Q. -- provide additional records to
19 the Principal?
20 A. Yes.
21 Q. But it's your understanding that,
22 in fact, Mr. Wiener based on the Principal,
23 the Principal was willing to offer insurance.
24 It was just at a very high rate?
25 A. Yes.

○
Objection
25:2-25:7
Hearsay

○
Objection
Hearsay

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Robbins

Q. So he was insurable, per the Principal?

A. Yes.

Q. Also on this documents it says, "All quotes are tentative and based on information received" -- I'm looking in the bold face at the middle of the page on the Principal one.

A. Yes.

Q. It says, "All the quotes are tentative and are based on information received. This case will be fully underwritten with an MIB check upon receipt of a formal application packet." Correct?

A. That basis substantiates exactly what I told you as to their rules and process for approving insurance.

Q. So, in other words, again, they would not have done an MIB check until they've already done the record review and already made a determination that they would make a tentative offer?

A. That's correct.

Q. And then the final one is April 9,

○
Objection
Foundation;
improper
characterization;
lack of personal
knowledge;
hearsay

1 Robbins

2 2014.

3 And just, again, do you know the
4 date -- and going back to the very first page,
5 and I apologize for moving us all over the
6 place, but do you know the approximate date of
7 the John Hancock decision? There's nothing on
8 that page.)

9 A. It had to be April 2014.)

10 Q. Okay.)

11 A. Because they all came at the same
12 time.)

13 Q. And then the Principal decision,
14 that's dated April 15, 2014. Does that sound
15 about right to you?

16 A. Yes.)

17 Q. And then the Security Mutual Life
18 is April 9, 2014?

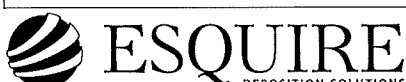
19 A. Yes.)

20 Q. So that's about when you would have
21 received their decision?

22 A. Yes.)

23 Q. Are you familiar with Security
24 Mutual's underwriting processes?

25 A. Extremely.)



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Robbins

Q. Are they similar to John Hancock and the Principal's?

A. They are not.

Q. How are they different?

A. I have a certain classification with Security Mutual because of my years doing this. So when I submitted the application to Security Mutual, I had Malcolm sign an MIB authorization disclosure which went with this application, and they pulled the Medical Information Bureau file prior to the real application.

Q. Okay.

A. This decision of Table 4 was based upon the Medical Information Bureau coding.

Q. And they were willing to offer a Table 4?

A. Yes.

Q. So, again, is that the same issue where the rate would have been twice as high?

A. Correct.

Q. But nonetheless he was insurable?

A. Correct.

Q. Per Security Mutual?

○
OBJECTION
l. 11-16
foundation,
lacks personal
knowledge

○
Objection

Foundation; lack of
personal knowledge;
improper
characterization;
improper expert
testimony



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Robbins

A. That's correct.

Q. When you say that they pulled the Medical Information Bureau records, did they also pull medical records?

A. Yes.

Q. And do you know if the medical records in this case were reviewed by Security Mutual?

A. They were.

Q. So in addition to the MIB, they also reviewed medical records?

A. Yes.

Q. When it says "minimum Table 4 to possible decline range, subject to the usual age/amount requirements to include the following," and then it list four things after that, what did you understand that to mean?

A. It means the same things as the other applications that they will have to -- a real application has to be submitted. They have to pull the prescription records. They have to supply the case to reinsurance, because unlike John Hancock and Principal, Security Mutual will not hold the paper or

Objection

Foundation; lack of personal knowledge; hearsay; improper characterization

Objection; foundation



1 Robbins

2 A. My role as a broker is to advocate
3 on the role of the insured, which is different
4 than an agent.

5 Q. Right.

6 A. Correct.

7 Q. Because the agent --

8 A. Works for the insurance carrier.

9 Q. And as the advocate for the
10 insured, in your career and your experience
11 how many carriers would you say you've placed
12 policies with in your career?

13 A. 25.

14 Q. And how long have you been a life
15 insurance agent?

16 A. 37 years.

17 Q. In your experience do any of those
18 insurance companies make their decisions
19 strictly on MIB codes in terms of underwriting
20 decisions without reviewing medical records?

21 A. Some companies make decisions on
22 MIB codes and won't even look at medical
23 records if an MIB code is that bad. I've had
24 many insureds over the years receive declines
25 before I even submit the business once they

○
OBJECTION
foundation,
lacks
personal
knowledge
relevance
(see dkt. 71)



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Robbins

review the MIB code.

Q. Do you know if the MIB itself has rules that prevent that type of conduct on behalf of insurers?

MR. CASSOT: Objection to form.

Q. The question is if you know.

A. I don't know.

Q. Is John Hancock one of those companies that will do that, as far as you know?

A. I don't know.

Q. Well, to the extent that you've received the three documents that we have, do those documents indicate to you that the three informal underwriting the decisions that were made concerning the application made by Mr. Wiener were based on medical record reviews?

A. I believe all three were based on medical record reviews.

Q. And at least two of those did offer insurance but at a high rate?

A. Correct.

Q. I have no further questions, sir.
Thank you.

○
Objection
Foundation; lack of knowledge; non-responsive
○
Objection
Improper characterization



1 Robbins

2 BY MR. TRAYNUM:

3 Q. Mr. Robbins, my name is Kerry
4 Traynum.

5 A. Hi.

6 Q. I'm counsel for Malcolm Wiener in
7 this case. I have a few questions to start
8 off with and then I might want to take a break
9 and come back and ask a few more.

10 Just now you were talking about
11 that some companies will review MIB codes and
12 make a decision based on that. Can you
13 explain when you've seen that happen in the
14 past?

15 A. I've seen it happen where there's
16 been -- the MIB has been coded for alcohol
17 abuse, suicide attempts, heart attacks that
18 have not been disclosed, and previous
19 underwriting decisions of ratings and
20 declines.

21 Q. If you would explain what you mean
22 by that very last category?

23 A. The Medical Information Bureau
24 keeps records of all applications and
25 decisions that are reached on each

OBJECTION
p. 34:15-35-7
foundation,
lacks personal
knowledge
relevance
(see dkt. 71)

○



1 Robbins

2 application. So when an insured is declined
3 or rated on a previous application the Medical
4 Information Bureau knows this, and the
5 insurance company uses that information to aid
6 them in the decisionmaking process of a new
7 application.

8 Q. Now, you mentioned that you -- we
9 have these three written. And you said that
10 you recall receiving other writings back
11 regarding Mr. Wiener at some point. You just
12 don't have them anymore.)

13 Do you recall how many companies
14 that you reached out to on behalf of Mr.
15 Wiener?)

16 A. I believe it was eight.)

17 Q. Do you remember any of the other
18 companies' names?)

19 A. I believe at the time I went to
20 Voya, U.S. Life -- which is also AIG --
21 Prudential, Nationwide. I'm not sure about
22 the others.)

23 Q. You're not sure if there were any
24 others?)

25 A. I'm not sure.)



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Robbins

Q. Just from your memory do you recall

any decisions or the substance of any

communications you received back from these

four companies that you've identified?

A. I believe there was nothing

favorable.

Q. Do you recall if any of these had

received medical records or reviewed MIB

codes?

A. None of them reviewed MIB codes.

All of them received medical records.

Q. What was the process by which these

companies, as well as the three in the

exhibits, received the medical records?

A. The medical records were sent

electronically to Christina Torres who is on

this e-mail. And she then, based upon the

companies I advised her to go to, submits the

file electronically to the carriers for

underwriting review.

Q. Does Ms. Torres procure those

medical records directly from the physician?

A. I do.

Q. Okay. If you'll look back at B, on

Objection
Foundation; lack of
personal knowledge



1 Robbins

2 page 3, Security Mutual Life?

3 A. Yes.

4 Q. Mr. Cassot asked you some questions
5 about the minimum Table 4 to possible decline
6 range. Is it fair to say this was not a final
7 decision for coverage?

8 A. It was not a final decision.

9 Q. Were any of these three -- well,
10 the John Hancock was the decline.

11 A. Correct.

12 Q. That was final.

13 A. That was final.

14 Q. And then the Principal, that was a
15 preliminary decision, correct?

16 A. It was a preliminary decision. And
17 all the other companies that I've provided to
18 you were also declines.

19 Q. Okay. So out of the seven we've
20 identified, we had two preliminary decisions,
21 not final, and then the rest were declines?

22 A. Correct.

23 Q. Have you ever known of a company
24 who will decline to undertake an underwriting
25 decision based on any information they



1 Robbins
2 received regarding potential insured?

3 A. I don't understand the question.
4 So I think we need to rephrase that.

5 Q. In your experience have you ever
6 known of a company rather than to undertake
7 underwriting -- to undertake to make an
8 underwriting decision, instead of doing that
9 will just decline to make an underwriting
10 decision, to undertake that process?

11 A. I don't think that -- I don't think
12 that could happen that way because I think the
13 insurance company has to review something to
14 make a decision that they don't want to see
15 it. A company will not decline to underwrite
16 a piece of business without a reason.

17 Q. Earlier you talked about when you
18 were talking about the Security Mutual, that
19 upon -- I think you said you had the MIB
20 waiver.

21 A. I believe they pulled the Medical
22 Information Bureau records.

23 Q. And I want to get your phrasing
24 right, that they declined or they issued --
25 excuse me. They issued this decision before



1 Robbins

2 you ever sent the business?

3 A. They issued that decision before
4 they pulled the pharmacy records and received
5 a real application.

6 MR. CASSOT: Objection.

7 Q. Did you ever have any
8 communications with any of the insurers you
9 contacted on behalf of Mr. Wiener regarding
10 MIB codes?

11 A. I don't recall exactly what
12 happened, but I do recall that in speaking
13 with the insurance carriers I was told that
14 the Medical Information Bureau file had a
15 coding in it that created an underwriting
16 issue.

17 Q. When you say "underwriting issue,"
18 what do you mean by that?

19 A. Meaning to issue the policy at
20 standard without a rating.

21 Q. Just for the record and for my
22 information, what do you mean by when you say
23 for "standard without a rating"?

24 A. A standard policy would be the rate
25 that a typical person would obtain if they

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OBJECTION
foundation,
lacks personal
knowledge
relevance
(see dkt. -

○
OBJECTION
foundation,
lacks personal
knowledge
relevance
(see dkt. 73)



ESQUIRE
DEPOSITION SOLUTIONS

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Robbins

were healthy. And someone that's Mr. Wiener's age, that would be the goal.

There are better classifications such as "preferred," but it would be unrealistic to think that someone at that age would obtain that.

Q. Just so I'm understanding it, so there was some type of feedback from at least one of the companies?

A. I think it was Security Mutual, but I'm not sure --

Q. Okay.

A. -- that advised me that there was a potential issue.

Q. And ultimately they came back with a decision minimum Table 4 to possible decline range, pending these four other --

A. Yes.

Q. -- bullet points.

What does minimum Table 4 -- is that the double the standard?

A. That's double the standard as the best rate possible.

Q. Do you have any idea what in a

S
OBJECTION
foundation,
lacks personal
knowledge
relevance
(see dkt. 73)

O
OBJECTION
foundation,
lacks personal
knowledge
relevance
(see dkt. 73)
undisclosed
expert opinion



1 Robbins

2 dollar amount that would have equated to for
3 the amount of insurance Mr. Wiener was
4 seeking?

5 A. The standard rate was approximately
6 400,000 per 10 million, and equated to an
7 extra 400,000 per year.

8 MR. TRAYNUM: Let's take a short
9 break.

10 (Recess.)

11 Q. Mr. Robbins, we're back on the
12 record. You're still under oath. I just have
13 a few follow-up questions.

14 You mentioned that Mr. Wiener
15 provided an MIB waiver that you provided to
16 Security Mutual.

17 A. He signed a HIPAA form --

18 Q. Okay.

19 A. -- which allows the company to
20 secure records.

21 I'm not even 100 percent sure that
22 Security Mutual pulled the MIB, but I do
23 recall that I had a conversation with the
24 underwriter there because I know them so well,
25 and I just don't recall the details.

1 Robbins

2 Q. Do you recall the name of that
3 underwriter?

4 A. Keith Brown.

5 Q. And this HIPAA form, would that
6 have been something that Mr. Wiener provided
7 to you not -- as part of enabling you to
8 obtain his records to provide the companies?

9 A. It was a package I would have given
10 him to sign.

11 Q. My more specific question is: This
12 was not something that you did specifically
13 for Security Mutual that you can recall?

14 A. No. No. I don't think I did
15 something specific for Security Mutual.

16 Q. And you mentioned earlier when we
17 were first talking about John Hancock and
18 going through your familiarity with their
19 underwriting guidelines and processes, that
20 they looked at physicians' records and not MIB
21 codes because of legal concerns?

22 A. Right. You can't -- some companies
23 believe they can't pull the Medical
24 Information Bureau records until a signed
25 application is presented.)



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Robbins

Q. So a formal application?

A. Correct.

Q. But not all companies operate like that?

A. Not all companies do that.

Q. And you also mentioned that the MIB database or the information available from the MIB would include other -- history of other declines?

A. Yes, 100 percent of those.

Q. So depending on the order in which the -- the responses you got back from -- that Mr. Wiener got back from the MIB, would that -- or from the different companies, would that be available from the MIB?

A. No. That's why these are all informal. That's one of the reasons I do informals, because it doesn't affect or hurt the client's or insured's MIB record. Once a real application is submitted, by law they're required to file the codes with the MIB.

Q. They're required by law to file the MIB codes?

A. They're required to notify the MIB

OBJECTION
foundation,
lacks personal
knowledge



1 Robbins

2 of their decisions.

3 Q. Okay.

4 A. And how the MIB codes it, I don't
5 know.

6 Q. In terms of the decision -- let me
7 ask you this. Are you familiar in any way
8 with AXA's decisions regarding Mr. Wiener's
9 life insurance?

10 A. I'm not.

11 Q. Do you know if that would have been
12 reported to the MIB?

13 A. I don't know how -- I don't know if
14 a reinstatement form was used for AXA. If a
15 reinstatement form was used for AXA, it
16 definitely was reported to the MIB. If it was
17 simply too late to reinstate, then it probably
18 wouldn't be.

19 MR. TRAYNUM: That's all the
20 questions.

21 BY MR. CASSOT:

22 Q. Just a couple of follow-ups.
23 How do you know that MIB gets
24 reports of underwriting decisions?

25 A. I've seen it my entire career.

○
OBJECTION
foundation,
lacks personal
knowledge
relevance
(see dkt. 72)



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Robbins

Q. What's the code?

A. I have no idea what the codes are.

Q. What is it that you see that causes you to believe that --

A. I don't see anything. I hear the insurance company tell me that the MIB was coded for this or coded for that. I never know what the code is or what it means.

Q. Okay. And somebody has told you the MIB has coded a decline?

A. Many times.

Q. Okay.

A. I'm not talking specifically about Mr. Wiener. But many times, at least 50 in my career, I've heard that and seen it.

Q. And when someone is coded for a decline, does that make it an automatic decline for subsequent carriers?

A. It makes it a harder underwriting process because they need to do the research as to why the decline occurred.

Q. And that would include reviewing MIB codes, correct?

A. It would involve reviewing MIB

OBJECTION
foundation,
lacks personal
knowledge
undisclosed
expert opinion





12-12-2017

Attn: D. BARRY BOYD, M.D., MS
Re: **WIENER vs AXA EQUITABLE LIFE INSURANCE**
Deposition of D. Barry Boyd, MD, MS, taken on 12/08/2017
Your Case Number 1:16-cv-04019-ER
Our Reference Number 742105

Dear Sir or Madam:

Please be advised that the transcript in the above-referenced matter is available for reading and signature. Enclosed you will find a condensed copy of the transcript, a Declaration under Penalty of Perjury Certificate and Errata pages to note any necessary changes or corrections to the transcript. The Original transcript has already been released to the custodial party.

The witness should complete the following steps within 60 days of the date of this memorandum:

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Enclosures

Cc: All Counsel present

Ref: 742105

1 Reference No. : 742105

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3 Case: WIENER vs AXA EQUITABLE LIFE INSURANCE
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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

D. Barry Boyd, MD, MS

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign) _____

(Print Name) _____ Notary Public,

in and for the State of _____



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Case: WIENER vs AXA EQUITABLE LIFE INSURANCE

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D. Barry Boyd, MD, MS



Page 25

1 manager or the assistant manager, a senior member who
 2 is in the, you know, clerical staff.
 3 Q. Now, this record request comes in through a
 4 vendor, who then apparently does a copying of the
 5 records at your office location. Is that something
 6 you are familiar with?
 7 A. No.
 8 Q. Okay. Do you have any idea the actual
 9 mechanism by which your records were forwarded to AXA
 10 for review?
 11 A. No.
 12 Q. Have you had an opportunity to evaluate those
 13 records that were forwarded and that AXA relied upon
 14 for reviewing your records?
 15 A. Yes.
 16 Q. Were those your records?
 17 A. Yes.
 18 Q. Were those complete records for the time
 19 period that was requested?
 20 MR. REILLY: Objection.
 21 THE WITNESS: Yes.
 22 BY MR. CASSOT:
 23 Q. There was nothing missing from that time
 24 period?
 25 MR. REILLY: Objection.

Page 26

1 You can answer.
 2 THE WITNESS: I can't completely answer that
 3 because the medical records of Mr. Wiener were
 4 beyond my records. And I can't answer that every
 5 single bit of information that was collected for
 6 him medically was present. That would be
 7 difficult for me to answer without going through
 8 the entire....
 9 BY MR. CASSOT:
 10 Q. Well, I'm going to provide you what has been
 11 marked Exhibit 63 in this litigation.
 12 MR. CASSOT: We have been just using the same
 13 records over and over again. Do you guys need
 14 copies? Do you have them?
 15 MR. REILLY: I believe we have copies.
 16 THE WITNESS: I think I have this in here.
 17 BY MR. CASSOT:
 18 Q. Well, I just want to make sure. So that's
 19 part what have we are going to do today, is we're
 20 going to make sure that whatever was provided and
 21 marked as Exhibit 63 is, in fact, a clear and accurate
 22 copy of the records that you had in your possession
 23 concerning Malcolm Wiener on those dates.
 24 MR. REILLY: This could be off the record.
 25 THE WITNESS: These are actually right here.

Page 27

1 (Off the record from 1:39 to 1:40 p.m., as
 2 exhibits are organized.)
 3 BY MR. CASSOT:
 4 Q. So, Doctor, I have just handed you what has a
 5 hand-marked Exhibit 63. And it looks like in your
 6 records you have an actual copy of the Plaintiff's
 7 Exhibit 63.
 8 A. Right.
 9 Q. Can you just real briefly -- I'm going to
 10 assume and I think everybody can agree that what I
 11 handed you as Exhibit 63 and the 63 that is in your
 12 binder is the same?
 13 A. Yes.
 14 Q. Okay. Now, that's one less copy to get rid
 15 of.
 16 So the records have on the front right corner
 17 a date of 1-18-14. Do you have any idea what that
 18 date is related to?
 19 A. Presumably, when the records were copied.
 20 Q. Well, I'm going to ask you -- and if you had
 21 an attorney representing you here today they would
 22 tell you not to presume.
 23 MR. REILLY: Or speculate. So you either
 24 know our don't know.
 25 THE WITNESS: I don't know.

Page 28

1 MR. CASSOT: If you know, you know. And if
 2 you don't, there is no harm in not knowing.
 3 THE WITNESS: I'm not sure.
 4 BY MR. CASSOT:
 5 Q. So this front page, it says parameds.com. Is
 6 parameds.com in any way related to your practice?
 7 A. No.
 8 Q. Do you recognize parameds as a vendor that
 9 obtains medical records from medical practices?
 10 A. No.
 11 Q. Okay. All right. The next page says, Record
 12 PDC received for this applicant was illegible when
 13 they were copied at the medical facility.
 14 Do you have any knowledge of what that sheet
 15 means other than the plain language of what it says?
 16 A. No.
 17 Q. We're going through to the following pages
 18 and I'm just going to ask you to just thumb through
 19 and confirm that every page that is contained in
 20 Exhibit 63 is a page that would have been contained in
 21 your medical records as of January 18, 2014.
 22 A. Yes.
 23 MR. REILLY: Objection.
 24 Go ahead and look at it and see if you can
 25 answer.

OBJECTION
p. 25:18-26:8
relevance



OBJECTION
relevance

Page 29

1 THE WITNESS: Presumably, assuming they
2 copied everything in that time period, I would
3 say yes, but I can't assume that.
4 BY MR. CASSOT:
5 Q. Okay. Have you -- since this litigation
6 began in 2015, have you done any research of
7 Mr. Wiener's -- or any review of Mr. Wiener's original
8 records to determine whether any pages were missing
9 from Exhibit 63?
10 A. I reviewed the records, but did not look for
11 that particular issue. I was not thinking there was
12 something missing from this.
13 Q. Okay. Certainly, though, with respect to the
14 review, as you sit here today, you are not aware of
15 anything that jumps out at you and causes you to
16 believe, wow, they missed this page?
17 A. No.
18 Q. So as you sit here today, would you be
19 comfortable saying yes, this is a complete copy of
20 Mr. Wiener's records for the past five years as of 21
21 January 18, 2014?
22 MR. REILLY: Objection.
23 You can answer.
24 THE WITNESS: Yes.
25 BY MR. CASSOT:

Page 31

1 regarding the patient's medical history, his immediate
2 history, his previous history, current complaints in
3 the context of his past history, features of his
4 examination relevant to the current complaints, and
5 then both current testing and follow-up testing
6 necessary to manage the patient's medical condition.
7 Q. Okay, now --
8 A. And provide a record for future physicians to
9 be able to access so that they have an understanding
10 of the continuity of the patients.
11 Q. Okay. In addition to future patients, so in
12 other words, the continuity being if you were to
13 retire or the patient were to transfer care, a
14 physician looking at your record would be able to
15 piece together the history of the patient that the
16 doctor can refer to. Correct?
17 A. Correct.
18 Q. Okay, so -- and then also an additional group
19 of people, you have indicated that there could be
20 requests -- if there is an adverse outcome, there
21 could be requests of records which would be evaluated
22 to assess potential exposure that the practice or you
23 may have?
24 MR. REILLY: Objection.
25 THE WITNESS: Correct.

Page 30

1 Q. All right. So some of my questions are going
2 to seem incredibly self-evident, especially to you as
3 a physician, but I do have to create a record for some
4 of this.
5 What is the purpose of you charting a
6 patient's visit? You take notes on a patient's visit,
7 correct?
8 A. Yes.
9 Q. What is the purpose of doing that?
10 MR. CASSOT: And if you need to take a call
11 at any point, we can will go off the record. Are
12 you good? Do you need to take it?
13 THE WITNESS: Yeah, it's an emergency, but I
14 can just text it. I apologize.
15 MR. CASSOT: We will go off the record. Do
16 whatever you need to do.
17 (Off the record from 1:45 to 1:46 p.m., as a
18 break is taken.)
19 BY MR. CASSOT:
20 Q. So in terms of where I left off was, You do
21 medical charting of a patient visit, correct?
22 A. Correct.
23 Q. What is the purpose of charting a patient's
24 visit?
25 A. It's to provide a record of information

Page 32

1 BY MR. CASSOT:
2 Q. And then another group of people who might
3 rely on the records are insurance companies who are
4 looking for authorization for, for example, additional
5 procedures, medical procedures, those types of things,
6 correct?
7 A. Correct.
8 Q. In terms of -- is your practice audited by
9 any type of billing agency -- and by that I mean
10 insurance companies, Medicare, Medicaid, or anything
11 like that -- to ensure practice compliance with
12 billing guidelines?
13 A. They are subject to that.
14 Q. Okay. When you say subject to that, that
15 means that at any time any one of those agencies with
16 presumably fair notice can come in and do an audit of
17 your medical records?
18 A. Correct.
19 Q. So based on what we have just covered, would
20 you agree it's very important for you as a
21 practitioner to make sure that your medical records
22 are accurate?
23 A. Correct.
24 MR. CASSOT: Okay, let's go ahead and take
25 that break because I have got to see what my



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Page 33
1 client wants to talk to me about. All right?
2 MR. REILLY: Okay.
3 (Off the record from 1:48 to 1:57 p.m., as a
4 break is taken.)
5 BY MR. CASSOT:
6 Q. We were talking about charting. With respect
7 to your personal practice of charting -- and I don't
8 want to be unfair because I know we were just having a
9 little bit of a discussion off the record and I don't
10 want it to appear like I have taken advantage of that.
11 So when you are doing charting, in 2000 --
12 let me direct your attention. If you look at the
13 bottom right-hand corner of the pages, I believe they
14 are Bates numbered on yours too.
15 A. Right, yeah.
16 Q. If you go to 2428, I believe that's where
17 your handwritten notes start.
18 A. (Seeking the correct page.) One more.
19 Q. Okay. 2428 is pretty much where the
20 handwritten notes start on Exhibit 63. Everything
21 prior to that are laboratory results. So let me
22 actually back up a little bit. The laboratory results
23 from Greenwich Hospital laboratory, are they forwarded
24 to you on a regular basis?
25 A. Yes.

Page 34
1 Q. Okay. So, for example, if you look at 2427,
2 which is the prior page, I know that's not the entire
3 lab report, but just by virtue of that page, it has
4 administrative service date 3-2-11. What is that
5 date? Is that the date that the lab was done?
6 A. Yeah. Exactly.
7 Q. Okay. And then is it forwarded to you --
8 well, how long after the lab is done is it forwarded
9 to you?
10 A. It's usually within two to three days.
11 Q. Okay, and when you're looking at the labs, do
12 you review the labs with your patients on a regular
13 basis?
14 A. Frequently.
15 Q. And do you point out -- just speaking from
16 personal experience, my doctor will either say all
17 your labs are normal or this one is a maybe a little
18 not normal or whatever. Is that how you approach it
19 as well?
20 A. Yeah.
21 Q. So looking at, for example -- just by way of
22 example, the AXA 2427 and going down to albumin, 3.2
23 with an L next to it. What does that indicate to you
24 as a practitioner with respect to albumin?
25 A. As a physician, it is slightly below normal,

Page 35
1 but then within the context of the others, I would say
2 we will follow up and repeat it and see.
3 Q. Okay. Would you have called out albumin as
4 something that you would be following with Mr. Wiener?
5 A. Yeah.
6 Q. Okay. Would you have had a discussion with
7 Mr. Wiener as to what albumin levels mean?
8 A. I may or may not have. I would ask him about
9 his diet and how is he feeling and make sure there is
10 no circumstances that are different.
11 Q. Okay. But that is something that you would
12 have continued to monitor?
13 A. Yeah.
14 Q. Okay. Now, then going to the next page,
15 2428, can you -- it appears to me that there is at
16 least two different people are handwriting on this
17 page, maybe more. Can you identify which portion of
18 this would be written by you.
19 A. The less legible. So here is what happens,
20 the past medical history generally is fixed based on
21 the prior history.
22 Q. Okay.
23 A. And so that remains there.
24 Q. So what does that mean, exactly?
25 A. And the medications are filled in by the

Page 36
1 nurse. So what happens is this is prepared prior to
2 the visit by the nurse, who puts in what his medical
3 history was, and this, and then records the vital
4 signs.
5 So you can see the nurse will do that, put in
6 the vital signs. And then I will put in my,
7 essentially, discussion with the patient about what
8 his symptoms are, how he is feeling, his physical
9 examination, and then the current symptoms with the
10 impression and plan.
11 Q. Okay, so if -- and I'm not sure that it is,
12 but I think this might be the first handwritten notes
13 that we have. If this is the first handwritten note
14 that we have and it has under past medical history
15 memory loss, the nurse would have actually obtained
16 that from a prior note which we would not have?
17 A. Right.
18 Q. Do you know when the first time a reference
19 to memory loss showed up in one of Mr. Wiener's
20 records?
21 A. Again, this is a past medical complaint that
22 he always was concerned about that extended back even
23 into the early 2000s.
24 Q. Okay, now, HPI, above that, I'm going to ask
25 you to do --



Page 37

1 A. An impossible job?
2 Q. -- ask you to read your handwriting and tell
3 me what the HPI says there.
4 A. Recurrent night sweats. Let's see. Hourly.
5 Hourly. Changed multiple times. Associated with
6 urinary frequency. Episodes of urinary incontinence.
7 Associated with difficulty with sleep. Vivid dreams.
8 Still with fatigue. Notes -- this is my eyes now.
9 Notes he was seen for --
10 MR. REILLY: These are simple magnifying
11 glasses if you want to try them.
12 THE WITNESS: No. No, it's not even that.
13 Oh, seen by -- and that's a physician, I
14 think, in New York. Willy Nadler (ph).
15 W. Nadler for back pain. Treated with local
16 steroids one week. With marked nasal congestion.
17 Continued memory difficulty. Daughter with --
18 there is something regarding his daughter. Not
19 to his physical health.
20 BY MR. CASSOT:
21 Q. But to hers?
22 A. Yeah.
23 Q. We don't need to discuss that.
24 A. All right, so -- and then the impression down
25 below is urinary frequency. Follow up with UA, urine

Page 38

1 culture. Follow-up PSA. Follow-up treatment based on
2 that. Really, essentially, that's what it is
3 implying. And --
4 Q. What's number 2?
5 A. Yeah, that's what I'm getting. AFib.
6 History. This one says history. And I'm just
7 describing the medicines. He's on blood pressure
8 medicine Norvasc, amlodipine. And then basically the
9 medications.
10 And then memory loss associated with fatigue.
11 Adult insomnia. Question: multifactorial. And then
12 again that's medication he is on. Therefore
13 intention. Follow up with -- and that's with the --
14 there is a doctor in New York for neuropsych testing.
15 Q. Do you know if he ever followed up for the
16 neuropsych eval?
17 A. I think he was being seen there by -- and
18 Carolyn might know that. Dr.?
19 Q. Unfortunately, Ms. Wiener's deposition has
20 been taken. And I might have missed that opportunity
21 to ask that question so I'm going to just leave it at
22 that.
23 A. The answer is yes, by the way.
24 Q. And did you get any of the reports from the
25 neuropsychologist concerning --

Page 39

1 A. Yes.
2 Q. Are they included in your records?
3 A. No.
4 Q. And why is that?
5 A. They are in the records, but they weren't
6 copied. Part of the reason why I answered that way is
7 they are not my records. They are in the records of
8 correspondence that were sent to me, but they are in
9 our records -- they are in my records.
10 Q. Okay, are there any other records of any
11 other physicians that were in your records that were
12 not copied as far as you know?
13 MR. REILLY: Objection.
14 THE WITNESS: Yes. Yes, sure.
15 BY MR. CASSOT:
16 Q. Who else's?
17 A. David Blumenthal.
18 Q. Okay.
19 A. Which I have brought his notes.
20 Q. Yeah, I saw that.
21 A. I think there are some other physicians in
22 New York as well.
23 Q. Okay.
24 A. You know, I think you just mentioned you are
25 going to be taking his deposition.

Page 40

1 Q. Okay. All right, so I don't think it's
2 necessary to read every single page of this, but is
3 there -- at any point, did Mr. Wiener's concerns of
4 memory loss ever abate with respect to the treatment
5 notes that are in front of us?
6 MR. REILLY: Objection. What do you mean
7 abate?
8 BY MR. CASSOT:
9 Q. Is there any point in which you were treating
10 Mr. Wiener during the time frame that these notes
11 cover where you did not acknowledge memory loss as
12 part of your impression and plan?
13 MR. REILLY: Objection.
14 BY MR. CASSOT:
15 Q. We can go through it day by day. So let's do
16 that.
17 The first note I showed you was 24288. The
18 date was 4-29-11. Would you agree that memory loss
19 was part of your impression and plan?
20 A. Yes.
21 Q. And, in fact, you had underlined memory loss,
22 correct?
23 A. Um-uh.
24 Q. What is the reason for underlining that?
25 A. Well, that's just another way of highlighting

OBJECTION
foundation



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Page 49

1 THE COURT REPORTER: MPH?
2 THE WITNESS: MTHFR. MTHFR gene with
3 positive homozygous, H-O-M-O-Z-Y-G-O-U-S. I'm
4 not sure I can make out the next words.
5 BY MR. CASSOT:
6 Q. Okay. I want to go down under review of
7 symptoms. You had circled loss of fatigue. Was there
8 a reason you had circled loss of fatigue -- I'm sorry,
9 not loss of fatigue. You had circled fatigue. Is
10 there a reason that you circled fatigue?
11 A. Well, it's a common complaint. You know, it
12 had been one of the complaints that he had, mild
13 fatigue.
14 Q. Okay. Chest pain, that's circled obviously
15 because of the discussion in the HPI?
16 A. Okay.
17 Q. Mental status change under neurological, you
18 had that circled. Why is that circled?
19 A. Related to the memory.
20 Q. Okay. And what's next to that handwritten?
21 It looks like --
22 A. Occasional instability.
23 Q. -- instability. That goes to the gait?
24 A. Yes. Yeah, that's right.
25 Q. And then psychiatric, you have confusion and

Page 50

1 memory loss circled.
2 A. Right. Well, he had moments where the
3 confusion would concern him.
4 Q. Okay. In terms of when you do the review of
5 symptoms, is that your objective evaluation of the
6 patient or is that just patient complaint?
7 A. All patient complaints.
8 Q. So in other words --
9 A. Those are his symptoms.
10 Q. Those are his symptoms as reported to you?
11 A. Yeah, they are not documented medical
12 conditions. They're symptoms.
13 Q. Okay. So how would a patient report to you
14 gout?
15 A. That would -- down there where it says gout?
16 Q. Um-uh.
17 A. Podedk (ph) would be a classic symptom of a
18 large swelling with pain in the great toe.
19 Q. So that would actually -- rather than saying
20 gout, if we were reporting based on the patient's
21 symptom it would be pain in great toe, correct?
22 A. Yeah, and then you put gout as a potential,
23 right.
24 Q. Okay. Would you ever circle something in the
25 review of symptoms that you did not think was present?

Page 51

1 MR. REILLY: Objection.
2 THE WITNESS: No.
3 BY MR. CASSOT:
4 Q. It looks like on -- well, it continues on.
5 The two 1612 goes on to page 2452. And if you look
6 under Impression and plan, it has chest pain
7 underlined and then your handwriting under 1. And
8 then two says memory loss, slash, and then what is
9 after that?
10 A. That's the history of possible CVA.
11 Q. What does history CVA mean in layman's terms?
12 A. Well, question stroke. But I think that that
13 has been noted that there is subsequently no evidence
14 by scanning for that.
15 Q. Is that noted in your record?
16 A. Well, I think what we have noted is that
17 there is no further indication that he had that.
18 Q. Can you show me where in the record it says
19 that, where in the record that is in front of us?
20 A. Well, the record does not show that in any of
21 the medical history. Subsequent history is absent
22 from the history.
23 Q. So explain what you mean by what you just
24 said.
25 A. There is no documentation of a stroke.

Page 52

1 Q. In the subsequent history.
2 A. Yeah. Yeah, so the subsequent notes, really
3 it's absent from there.
4 Q. Correct.
5 A. Because you did not identify it by scan or
6 CT.
7 Q. But on number 2, it says memory loss, slash.
8 That's history of stroke, correct?
9 A. Yeah. And again we are not always perfect,
10 so that is the issue, right.
11 Q. Doctor, I'm not here to criticize anybody.
12 I'm just here to understand what is in the medical
13 record.
14 So in terms of what is in the medical record,
15 on February 16, 2012, what you wrote in the record was
16 memory loss, history of stroke. Correct?
17 A. Right.
18 Q. Okay. And so when you are talking about a
19 history of stroke, that's not discussing what goes on
20 in the future. That's discussing what happened in the
21 past?
22 A. Right.
23 Q. Okay, so based on an objective review of this
24 entry on this medical record is it reasonable to
25 understand if I read this medical record, that you



Page 53

1 were his treating doctor since 1998 and you wrote down
2 memory loss, history of stroke, that Mr. Wiener did
3 have a history of a stroke?
4 MR. REILLY: Objection.
5 THE WITNESS: There is a difference between a
6 legal and a medical record. Let me explain.
7 MR. CASSOT: Actually, let me stop you right
8 there.
9 And I would like you to read back the
10 question.
11 MR. REILLY: He was answering the question.
12 MR. CASSOT: Not necessarily.
13 THE WITNESS: I'm answering the question.
14 MR. REILLY: Well, he should be allowed to
15 answer the question. Then if you want to repeat
16 it or rephrase it, we will.
17 MR. CASSOT: We will see.
18 MR. REILLY: I would like the witness to
19 finish the answer.
20 Go ahead.
21 THE WITNESS: We are actually -- we have had
22 recent coding discussions regarding what we put
23 in the chart. The chart indicates what we
24 suspect may be going on. And we put that down
25 even if it's not definitive.

Page 54

1 So if we are concerned about that, we would
2 place that as possible. I didn't put in the word
3 possible. I should have, because that was an
4 error.
5 But the following discussion under that
6 indicates repeat neuro evaluation, needs follow-
7 up MRI, in other words, the testing to identify
8 whether or not that is true.
9 BY MR. CASSOT:
10 Q. Um-uh. Is any of that -- any of the follow-
11 up testing or anything in the records that were
12 produced to AXA? Any records indicating that stroke
13 had been ruled out? Was that produced?
14 A. Well, I have a CT scan report that I can get
15 that was negative.
16 Q. Okay, were any of the records that were
17 produced to AXA -- I want you to assume that was
18 produced to AXA as Exhibit 63.
19 A. No.
20 Q. Is there anything in Exhibit 63 that rules
21 out the history of stroke?
22 MR. REILLY: Objection.
23 THE WITNESS: It was not -- as far as I can
24 see, you did not receive that information.
25 BY MR. CASSOT:

Page 55

1 Q. Okay, so I want to go back to the original
2 question that I asked that Mr. Wiener's counsel had
3 asked that you be able to finish your answer. Now I'm
4 going to ask you to answer my question, which was,
5 Would an objective reading of this medical record
6 advise the reader that in your belief Mr. Wiener had a
7 history of stroke?
8 MR. REILLY: Objection. Objective reading of
9 Exhibit 63?
10 THE WITNESS: The single note, yeah.
11 MR. REILLY: Of Exhibit 63.
12 THE WITNESS: I answered yes.
13 BY MR. CASSOT:
14 Q. Oh, you answered yes?
15 A. Yeah. Reading that single note, yes.
16 Q. Okay, reading that single note. All right.
17 And there is nothing in this record that was
18 provided that indicates that the history of stroke
19 was, in fact, ruled out?
20 A. Right.
21 Q. What is the next line? I couldn't even make
22 that out. Number 3, I think.
23 A. The next line?
24 Q. Yes.
25 A. Oh, you mean --

Page 56

1 Q. 2452.
2 A. -- the next diagnosis.
3 Q. Yes, the next, under impression.
4 A. Homozygous MTHFR gene mutation.
5 Q. Okay, what is that?
6 A. It's a metabolic gene involved in the
7 conversion of an enzyme -- of a compound called
8 homocysteine into methionine, which is an amino acid
9 that requires the addition of a single carbon methyl
10 group that takes -- that's added to homocysteine to
11 make methionine.
12 Q. Okay.
13 A. It requires folic acid as a cofactor that
14 binds and is able to supply the methyl, single carbon
15 methyl group. People who have a defect in that
16 conversion have been hypothesized to have higher
17 cardiovascular risks because it leads to excessively
18 high levels of that homocysteine because of the lack
19 of conversion to methionine.
20 Q. So you give him a vitamin B12 shot?
21 A. You give folic acid, actually. It turns out
22 that it's a hypothesis and not proven.
23 Q. But because it's a hypothesis and you don't
24 want to risk it, you go ahead and treat for it anyway?
25 A. Sometimes people overtreat it so that it

OBJECTION/MOVE
TO STRIKE
p. 53:11-20
counsel colloquy

OBJECTION/MOVE
TO STRIKE
p. 53:21-54:8
non-responsive

MOVE TO STRIKE
counsel's objection

MOVE TO
STRIKE
counsel's
objection



Page 65

1 might be esophageal reflux.
2 Q. Okay. Is there any -- was there any follow-
3 up that you can recall concerning a GI assessment for
4 esophageal spasm?
5 A. I think if he recurred, we were planning on
6 doing that when he had it.
7 Q. Okay. Then number 2, his memory loss remains
8 intermittent, bothersome. And you indicated strongly
9 recommend he follow-up with a sleep study as
10 discussed.
11 A. Yes.
12 Q. And was there a sleep study done?
13 A. He had that done in New York, yeah.
14 Q. And did the sleep study resolve in any way
15 his memory loss issues?
16 A. I think he actually -- I think they tried to
17 use a BIPAP and he had trouble. But I could be wrong
18 -- no, no. I'm sorry.
19 And, again, to simply answer, you know, to
20 add something that is in the chart, not this
21 information, but is in the bigger chart information
22 from New York and his mental status testing, despite
23 his memory loss, he never had evidence clinically of
24 difficulty during conversations or any of the -- that
25 indicated any memory issue.

Page 66

1 And he was tested and always had a completely
2 normal mental status exam with excellent recent acute
3 and remote memory. So there was never any findings of
4 this. It was his own sense that he kept reporting he
5 was bothered by.
6 Q. Okay. And those were reports that you
7 continued to include within your medical records?
8 A. Because he always said, you know, I'm just
9 bothered by this. Remember, in his 70s, he was
10 extremely highly functional -- continued to travel,
11 participated in meetings. He was doing things that
12 most 50-year-olds might have difficulty with. So he
13 held himself to an extremely high standard.
14 Q. I hope what you are saying is that people who
15 are 70 shouldn't be president, because that would be
16 really helpful right now, but I don't think that's
17 what you mean.
18 A. Well, I think nobody here would argue that
19 that's not a memory issue. But that's an example of
20 not admitting. There is somebody who should admit, I
21 can't remember.
22 Q. Yeah.
23 A. So that's the difference between humility,
24 self-understanding, and the opposite.
25 Q. This divergence, we need to bring this back

Page 67

1 into the issues.
2 MR. REILLY: I'm not sure if I should be
3 objecting or not.
4 THE WITNESS: And, fortunately, we are not
5 deposing him.
6 MR. CASSOT: How much fun could that be.
7 BY MR. CASSOT:
8 Q. All right, so now moving on to the real
9 issues that bring us here today. Moving on to the
10 next encounter, September 26, 2012.
11 Now, you continue to reference the history of
12 monoclonal gammopathy, but that's -- as I understand
13 your prior testimony, that is because he would have
14 had a finding of monoclonal gammopathy, but you
15 believe that resolved.
16 A. Yes. But, again, past medical history --
17 Q. Is recorded?
18 A. -- is past medical history.
19 Q. Correct.
20 A. Yes.
21 Q. So I'm just trying to understand why it
22 continues to show up. It shows up because it was in
23 the past.
24 A. That's why he still is listed as having had a
25 tonsillectomy. It may be there. I'm not sure.

Page 68

1 Q. He may not want to make that representation
2 until --
3 A. But if you put in surgical history, even a
4 tonsillectomy at the age of five will show up in your
5 80s.
6 Q. Okay. All right. Let's see if there is
7 anything else I need to ask you about on that.
8 Then I don't really care about his sebaceous
9 cyst. (After perusal of records.) All right, so I
10 think we are pretty much done with the medical
11 records. Let me ask you, then, a couple of other
12 questions.
13 Have you done any epidemiology research?
14 A. Not formally, but I lecture in the school of
15 epidemiology or the section of public health at Yale.
16 Q. Okay.
17 A. And I do participate in research articles
18 where we review epidemiology. So, you know, it's part
19 of my interest, but....
20 Q. Sure.
21 A. The answer is: I don't sit down and formally
22 do the epidemiologic research per se.
23 Q. Okay. Have you ever done any research with
24 respect to patient mortality? All-cause mortality,
25 for example?



OBJECTION/MOVE
TO STRIKE
non-responsive

Page 69

1 A. Yes, certainly.
2 Q. In what context?
3 A. Well, usually within the context of what's
4 called global burden of disease, origins of modern
5 mortality in terms of noncommunicable disease that has
6 accelerated the last 70 years and the causation for
7 that.
8 Q. Okay. Have you done any research concerning
9 the relationship between serum albumin's and all-cause
10 mortality risk?
11 A. No, but I'm familiar with it.
12 Q. How are you familiar with it?
13 A. I have reviewed some of the research on that.
14 Q. What research did you review?
15 A. There is -- there are articles indicating a
16 potential association between levels of albumin and
17 outcome and all-cause mortality. There are also
18 articles arguing that the exact definitive nature of
19 this remains unclear.
20 Q. Okay. And, again, I think we kind of covered
21 this earlier. You are not in a position as a medical
22 doctor to have an opinion with respect to whether an
23 insurance company's reliance on various labs is
24 appropriate in the underwriting process?
25 A. Correct.

Page 70

1 MR. REILLY: Objection.
2 BY MR. CASSOT:
3 Q. Put differently, you are not an expert in
4 insurance underwriting?
5 A. No, but I do have a perspective on using
6 values clinically, which is the most relevant
7 understanding in individuals how that impacts on
8 long-term outcome.
9 Q. And that's an understanding of the clinical
10 use of these.
11 A. Correct. Correct.
12 Q. And you would acknowledge that the clinical
13 environment is different from the underwriting
14 environment?
15 A. Right.
16 MR. CASSOT: All right, let's take a break,
17 because I may not have any more questions. I
18 just want to confer with my client and then I may
19 be done. And then Brian can go and then he will
20 be your witness.
21 MR. REILLY: All right.
22 (Off the record from 3:01 to 3:13 p.m., as a
23 break is taken.)
24 MR. CASSOT: The record should reflect that I
25 have completed my questioning of Dr. Boyd.

Page 71

1 MR. PALMERI: And I have no questions.
2 MR. REILLY: Okay, I have questions.
3 CROSS EXAMINATION
4 BY MR. REILLY:
5 Q. Doctor, if there was actually a true and
6 actual history of stroke from Malcolm Wiener, would it
7 be expected that any reasonable practitioner would
8 have noted either CVA or stroke in the history in the
9 medical records?
10 A. Yes.
11 Q. And is that noted in any of Mr. Wiener's
12 medical documents in your file prior to that one
13 single entry?
14 MR. CASSOT: I object to the form.
15 THE WITNESS: No.
16 BY MR. REILLY:
17 Q. Is it noted anywhere in Mr. Wiener's medical
18 records that is Exhibit 63 after that one single entry
19 that says CVA?
20 A. No.
21 Q. Does any other document in Exhibit 63
22 indicate that Malcolm Wiener had a stroke or a CVA
23 other than that one writing?
24 A. No. No.
25 Q. Is there any evidence within Exhibit 63 that

Page 72

1 Mr. Wiener had a stroke between his last visit in
2 January 2012 and that visit where CVA is written?
3 A. No.
4 Q. What kind of record or test would constitute
5 medical proof of a stroke or CVA?
6 A. A neurologic exam showing focal
7 abnormalities, which he did not have (and I noted
8 multiple times that he had no focal findings), a scan.
9 And he had a negative CT scan, which I also noted.
10 And for the purposes of understanding how the
11 record is generated, on occasion we think, could it
12 have been? And instead of saying -- they always tell
13 us never write rule out. That is a wrong diagnosis.
14 You put that in if you think that may be part of it
15 and then you go on to follow up. And that is really
16 what that is meant to indicate.
17 Q. When you say that was what it was meant to
18 indicate, what are you referring to?
19 A. There is a possibility that we need to --
20 instead of saying rule out, because we don't put those
21 in records anymore, we say question. And I should
22 have put a question mark there. Possible CVA. But I
23 did not.
24 Q. All right, so I just want this to be very
25 clear. I'm looking at the page of Exhibit 63 marked

OBJECTION
foundation,
undisclosed
expert opinion





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Transcript of Hallie Hawkins, Corporate Designee

Date: August 24, 2017

Case: Wiener -v- AXA Equitable Life Insurance Company, et al.

LEGEND
DESIGNATIONS BY COUNSEL

Plaintiff: Text in yellow

Defendant: Text in blue

Both Parties: Text in green

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MALCOLM H. WIENER,)
Plaintiff,) Civil Action No.
VS) 1:16-CV-04019-ER
AXA EQUITABLE LIFE INSURANCE)
COMPANY, DAVID HUNGERFORD, AXA)
ADVISORS, LLC, and AXA NETWORK,)
LLC,)
Defendants.)

DEPOSITION OF: AXA EQUITABLE
BY AND THROUGH ITS
DESIGNATED REPRESENTATIVE
Hallie Hawkins
DATE: August 24, 2017
HELD AT: Morrison Mahoney LLP
One Constitution Plaza
Hartford, Connecticut

Reporter: Robin Balletto, RMR, LSR #230

1 okay? I know you're in a different role right now, so
2 I want you to think about that perspective.

3 A I understand.

4 Q Thanks. So can you describe the
5 reinstatement process for me?

6 A From what aspect?

○
OBJECTION
p. 18:4-21:21
relevance

7 Q From your role as chief underwriter, like
8 when you would get involved, the beginning, and how
9 you moved through reinstatements?

10 A A case would be referred to me, I would
11 review the application, any possible MIB codes.

12 Q Go ahead.

13 A And then I would make a decision on whether I
14 needed to order an attending physician's statement or
15 not.

16 Q So let's break that down a little bit. How
17 does a case get referred to you?

18 A It depends on when the policy was issued.

19 Q Okay. So what are the different categories
20 of policies that could be issued timing wise?

21 A It depends. The timing is more in
22 correlation with the system that is stored in -- some
23 of our policies have been in force for a long time, so
24 they are on a legacy system.

25 Q And if they're not on a legacy system, where

1 are they stored?

2 A They're stored on our current system, which
3 is called N like Nancy, B like boy, A like Ann.

4 Q You said that it depends on if they're on the
5 legacy system or this newer system how a case is
6 referred to you?

7 A Yes.

8 Q So can you describe just the differences?

9 A The legacy system is in something called AWD.

10 Q What does that stand for?

11 A I don't know.

12 Q So if a case is referred to you and it's a
13 legacy, an older policy, is this AWD system something
14 that notifies you?

15 A The paid change person generally, and I don't
16 remember on this case, but they generally would send
17 you an e-mail saying you have a case in AWD, and then
18 we would go in there and look at it.

19 Q What's a paid change person, or who?

20 A That would be -- in this case it was Sandra
21 Huffstedler.

22 Q So that's a job role?

23 A I don't know her exact title, but she works
24 in that department.

25 Q Was this case -- was this instance in the

1 A No.

2 Q So they're not underwriters, correct?

3 A No, they're not.

4 Q But do you work with them?

5 A Yes.

6 Q In connection with reinstatements?

7 A And pay changes.

8 Q Okay. What sort of tools do you use to
9 evaluate reinstatement applications, and by tools I
10 mean like do you have a software program that you use,
11 or a computer system? Like how do you --

12 A I read the records.

13 Q Okay. What about like manuals or guidelines?

14 A After I review the records, I check our
15 underwriting manual. There's also a life underwriting
16 release.

17 Q Are there only -- is there only one life
18 underwriting release in force at a time? Like would
19 you only look at one particular, the latest one, or do
20 you have a series of underwriting releases that you
21 look at?

22 A I don't quite understand the question.

23 Q So a life underwriting release, what is that?

24 A Okay. So it is guidance on how to handle
25 situations that are not included in the underwriting

○
OBJECTION
relevance
p. 22:8-23:1

1 manual.

2 Q And does that get updated?

3 A Yes, it does.

4 Q Where do you access the underwriting manual
5 and the life underwriting release?

6 A The underwriting manual is on a -- I'll do
7 the life underwriting release first. The life
8 underwriting release is kept in a database called
9 SharePoint.

10 Q And the manual?

11 A The manual is a manual called, at the time on
12 Mr. Wiener's --

13 Q Reinstatement.

14 A -- reinstatement, was a manual called Gen Re,
15 and that's a web based.

16 Q So you would go to a specific website to
17 access it?

18 A Well, it's saved for me, but yes, correct.

19 Q Can you explain the impact of reinsurance in
20 a reinstatement application?

21 MR. CASSOT: Object to the form.

22 BY MS. GUERTIN:

23 Q Do you understand what I'm asking?

24 A I can't -- it would depend on the case.

25 Q Okay. How about, what does FAC reinsurance

1 Q Could you estimate how many you were working
2 on at a given time?

3 A I could for this one case.

4 Q Okay.

5 A I was working on one at that time.

6 Q Okay. So is that typical?

7 A Yes.

8 Q So generally speaking, you would be working
9 on one reinstatement at a time?

10 A Yes.

11 Q You didn't have like a case load of multiple
12 reinstatements you were working on at once?

13 A I did not have a case load of multiple
14 reinstatements I was working on at once.

15 Q How long does the reinstatement process
16 usually take?

17 A There is no way to quantify that. It just
18 depends. A lot of it depends on how long it takes to
19 get the records from the attending physician.

20 Q So that's the bottleneck, usually, the
21 records?

22 A That's correct.

23 Q When you're evaluating a reinstatement, who
24 do you typically speak with about the reinstatement?

25 A I don't understand your question.

S
OBJECTION
relevance
p. 26:1-29:20

1 MR. CASSOT: You beat me to it. Object
2 to the form.

3 BY MS. GUERTIN:

4 Q So you reach out to the physician, correct,
5 to request records?

6 MR. CASSOT: Object to the form. Go
7 ahead.

8 THE WITNESS: I do not.

9 BY MS. GUERTIN:

10 Q You do not?

11 A No.

12 Q Who does?

13 A The pay change person assigned to the case,
14 and they may use a vendor.

15 Q Can you give me an example of a vendor?

16 A I don't know the one that they use, but
17 there's four or five vendors.

18 Q Is Parameds a vendor?

19 A Yes, that's correct.

20 Q Do you talk to -- do you reach out to the
21 policyholder at all?

22 A No.

23 Q Do you reach out to their financial advisor
24 that works for AXA?

25 A I could.

1 would also depend on the medical history of the
2 proposed insured.

3 Q So how do you know -- what sort of training
4 do you have to know what you're looking at in the
5 medical records?

6 A I have been through medical training for most
7 of my career. We are trained on everything that a
8 medical person would need. We are trained on cancers,
9 cardiac disease, hematology, neurology. Medical
10 directors actually do the training for us. In
11 addition I've taken courses.

12 Q And do you have to take continuing education
13 courses?

14 A We have courses every year. It's not
15 required, but we do do it. AXA requires it.

16 Q Do you have any certifications?

17 A Yes, I do.

18 Q What are those?

19 A I have an FLMI, which is a Fellow of the Life
20 Management Institute, and I also have an FALU, which
21 is Fellow of the Academy of Life Underwriting.

22 Q How did you get those certifications?

23 A I studied.

24 Q So is there a program that you had to take?

25 A It is self-study. There's manuals that we

1 read, and then we have to -- once a year they have a
2 test.

3 Q So you sat for two tests?

4 A No.

5 Q Just one test?

6 A No. For the FLMI it's ten tests, and for the
7 FALU it's an additional four, so you have to have --

8 Q Fourteen tests.

9 A Pretty much, yes.

10 Q And when did you get those certifications?

11 A I received my FALU in 2008, and my FLMI was
12 before that, I would say, I think, 2007. I could be
13 off a little bit by a year on the FLMI.

14 Q That's fine. Don't worry about that. And do
15 you need to take any courses to maintain those
16 certifications?

17 A No.

18 Q After you've done your review of a
19 reinstatement application, say you deny the
20 reinstatement application, can that decision be
21 appealed by the insured?

22 A No. We don't have a formal appeal process.

23 Q So do clients ask for reconsideration
24 anyways, even though there's no formal appeal process?

25 A I suppose they could informally.

1 application.

2 Q If you just turn the page. At the top of the
3 page there's a reference to "paid up extended term."
4 Do you know what that term means?

5 A Only at a high level.

6 Q Can you tell me?

7 A A person can have a whole life policy, and
8 it's a non-forfeiture benefit on the policy.

9 Q What does that mean?

10 A That would mean if you had a policy, you
11 could convert it to term and you wouldn't have to pay
12 the premium anymore for a certain number of years.

13 Q So meaning they've already paid for the whole
14 policy essentially?

15 A Not exactly correct.

16 Q Okay. Can you clarify?

17 A If there's cash value in the policy, and they
18 don't want to pay a premium anymore, there's a
19 non-forfeiture benefit in some policies, and I don't
20 know by policy, but where you can actually not want to
21 pay the premium anymore, and they will determine a
22 death benefit, and they will turn the policy into a
23 term policy.

24 Q You can put that aside. I'm going to show
25 you what has previously been marked as Hungerford

1 Exhibit 31. Take a look at that. Do you recognize
2 this document?

3 A Yes, I do.

○
OBJECTION
p. 40:24-43:12
relevance

4 Q What is it?

5 A It's a life underwriting release.

6 Q And is this a document that you refer to in
7 your line of work?

8 A There's a more current version, I believe.

9 Q Okay. So this is an older version?

10 A That's correct.

11 Q Was this version in force at the time that
12 Mr. Wiener's 2013 termination and reinstatement were
13 being processed?

14 A I believe it was a 2011 document.

15 MS. GUERTIN: Let's go to that one.

16 (Plaintiff's Exhibit 52, Life
17 underwriting release Bates stamped AXA001498 through
18 1502: Marked for Identification.)

19 BY MS. GUERTIN:

20 Q All right. Let me show you what's been
21 marked as Plaintiffs' Exhibit 52. Do you recognize
22 this document?

23 A Yes, I do.

24 Q Is this the more current life underwriting
25 release you just referenced?

1 sentence says, Non-medical age and amount underwriting
2 requirements. Can you explain what those terms mean?

3 A Yes. Age and amount underwriting
4 requirements are what we obtain on new business.

5 Q Okay.

6 A And they give you some examples here, which
7 would be an inspection report, a motor vehicle record,
8 and financial data.

9 Q What kind of an inspection report?

10 A An inspection report is where we call the
11 client, we ask questions, and then we contact a third
12 party who knows about the client's financial history,
13 and we could also do a search, a record search, a
14 non-medical record search.

15 Q What kind of a third party would you reach
16 out to about the financial history?

17 A I would not do that. Our vendor does that.

18 Q Your vendor?

19 A Yes. We have a vendor that does those for
20 us.

21 Q Okay. Who is that vendor?

22 A We have a couple of them.

23 Q Okay. Do you know why a financial history is
24 important?

25 MR. CASSOT: One thing is clear, when

1 you read the sentence you left out the part that
2 says, "Generally should not be requested unless
3 the risk presented." So these are things that are
4 done in new business, not in reinstatements.

5 MS. GUERTIN: Okay.

6 MR. CASSOT: So you're welcome to
7 continue this line of questioning, but just so
8 we're clear, these things are not done in
9 reinstatements.

10 THE WITNESS: That's correct.

11 Generally, yes.

12 BY MS. GUERTIN:

13 Q Okay, good. So then what do you request for
14 reinstatements if you're not looking for non-medical
15 age and amount underwriting requirements?

OBJECTION
relevance

16 A Generally I would ask for an attending
17 physician's statement.

18 Q Is then the next sentence where it says,
19 "Medical requirements, however, should be consistent
20 with the reinstatement guidelines outlined in this
21 document and those normally requested for new
22 business, e.g., blood/urine, APS's, et cetera, if
23 warranted." So what does it mean if warranted?

24 A I can give you an example.

25 Q Sure.

1 certain amount of time, and that differs by policy.
2 The premium would be waived while the person was
3 disabled.

4 Q And then LTCS?

5 A I believe that stands for the long-term care
6 supplement.

7 Q Do you know what that entails?

8 A Yes, I do.

9 Q Can you explain?

10 A It's a rider on a policy, and the rider
11 allows for the death benefit to be accelerated if the
12 individual needs a long-term care.

13 Q Underneath that section there's a section for
14 a number of days 121 to 180; do you see that?

15 A Yes, I do.

16 Q And here it splits, under age 70, and age 70
17 and up. Do you know why there is a split there?

18 A I did not write the guideline.

19 Q Okay. My question is, do you know why there
20 is a difference between people under age 70 and people
21 over age 70?

22 A May I read it for a moment?

23 Q Yes.

24 A I don't know for 100 percent sure.

25 Q Okay. What do you know about it?

1 A Generally as people get older their mortality
2 risk increases.

3 Q So it has something to do with their
4 mortality risk?

5 A That's correct.

6 Q Is there a difference in the analysis, in the
7 underwriting analysis that you do, for someone that's
8 70 and up and is applying new business application
9 versus a reinstatement application?

10 MR. CASSOT: Object to the form.

11 THE WITNESS: He objected, didn't he?

12 MR. CASSOT: But you still can answer.

13 BY MS. GUERTIN:

14 Q If you understand.

15 A I'm sorry, because he did I lost my train of
16 thought. Can you ask me again?

17 MR. CASSOT: I warned you about that.

18 BY MS. GUERTIN:

19 Q So if someone over 70 applies for a life
20 insurance policy and you do an underwriting review, is
21 there a set of guidelines that you look at to
22 determine whether to approve that application?

OBJECTION
relevance

S

23 A Yes.

24 Q And is that the same set of guidelines that
25 you would look at to determine if someone over the age

1 BY MS. GUERTIN:

2 Q So if they had a rating E, D, C, V, or any of
3 these others, they could be issued that sort of
4 policy?

5 A New business.

6 Q Now, walk me through how you would use this
7 with respect to a reinstatement?

8 A The same basic concept, but I would have to
9 compare the current assessment with what the policy
10 was issued at.

11 Q Okay. And if you refer back to this exhibit
12 we were looking at before, 52, and the table that's on
13 page 1500.

14 A Yes.

15 Q So is this what you would look at to
16 determine whether reinstatement could be approved?

17 A Yes.

18 MR. CASSOT: I should state that classes
19 and tables are essentially the same thing. The
20 terms are used interchangeably.

21 BY MS. GUERTIN:

22 Q Classes and tables. I'm sorry, I don't
23 understand what that means.

24 A I just said table B and C, it is also called
25 class B and C. The terms are used interchangeably.

1 Q Okay. So on page 1500 of Exhibit 52 there's
2 a section there that says current assessment. So when
3 it says same rating as original, does that mean, for
4 example, that at the inception of the policy they
5 might have been a B, and now they're still a B?

6 A Uh-huh.

7 Q So you would approve the reinstatement
8 according to this?

9 A That's correct.

10 Q If the policy was in force for five years or
11 less?

12 A Yes.

13 Q Do you recall when you looked at Malcolm
14 Wiener's reinstatements if he had the same rating at
15 the time of the reinstatement as he did when the
16 policy incepted?

17 A He did not.

○
OBJECTION
relevance

18 Q Do you recall the -- can you speak
19 specifically about that from your memory, like what
20 was his rating when the policy incepted, and what it
21 was when you looked at it?

22 A From my recollection when the policy was
23 incepted it was rated as standard non-tobacco rate.

24 Q Okay. So would that be on Exhibit 53 in the
25 100 to 140?

1 committee.

2 Q Are the people on the medical team medical
3 professionals?

4 A They're doctors.

○
OBJECTION
relevance

5 Q Doctors, okay. So then -- so these are
6 guidelines that AXA has created to change the
7 guidelines that Gen Re puts out?

8 A Or add to.

9 Q Or add to, okay.

10 A Because perhaps information was missing or
11 not addressed in the Gen Re guideline.

12 Q When would you refer to this document?

13 A Whenever I evaluated an individual who is age
14 70 and up.

15 Q For new business?

16 A For any type of business.

17 Q So it could be reinstatements as well?

18 A That's correct.

19 Q At the top it says, Senior Applicant Medical
20 Checklist. When they use the term applicant, does
21 that only apply to new business?

22 A No.

23 Q So that applies to reinstatements as well?

24 A Yes. An application is filled out for a
25 reinstatement.

1 Q I see. Did you review this in connection
2 with Malcolm Wiener's reinstatement?

3 A Yes, I did.

4 Q So just to go over it again. You mentioned
5 low hemoglobin. Where is that on this list?

6 A That would be under 14, under two red flags.

7 Q It says, Male hemoglobin less than 13?

8 A I'm going from memory, it was 12.5.

○
OBJECTION
p. 71:1-72:23
relevance

9 Q You said low serum albumin?

10 A His, going from memory once again, was 3.5.

11 That's number 2 on the first.

12 Q Memory loss?

13 A Yes. I would have considered that number
14 six.

15 Q On this top part, Mild or worse dementia?

16 A Yes.

17 Q Those are the ones you could recall?

18 A He also had a gait, he was noted to have gait
19 instability by his physician.

20 Q Where would that --

21 A I don't think that one was on here.

22 Q Okay. It references falls, but not gait
23 instability, correct?

24 A I believe there was a fall in the records
25 going from memory, but I can't say 100 percent sure

1 A Yes.

2 Q And they don't make decisions based off of
3 those?

4 A No. It's just an alert that you need to
5 investigate further.

6 Q So when we're talking about medical
7 insurability for a reinstatement, can you explain like
8 what the difference is between medical insurability
9 for a reinstatement versus new business?

10 MR. CASSOT: Object to the form.

11 BY MS. GUERTIN:

12 Q What is the difference between the two?

13 A Essentially I go through the same process and
14 come up with the same rating, but based on less
15 evidence.

16 Q This is for a reinstatement?

17 A Right. Less medical evidence, because I'm
18 not getting the Paramed and the labs, and there's a
19 two-table tolerance. So if Mr. X was standard, and
20 now he's a table B for reinstatement only, we would
21 allow the standard, but if it was new business, Mr. X
22 also applied for new business at the same time, then
23 he would be issued a table B policy.

24 Q In your hypothetical he was standard when he
25 applied for the first policy?

1 A That's correct. At issuance, yes.

2 Q So for --

3 A And that assumes that it's more than five
4 years ago. I should clarify.

5 Q So for reinstatement you said you rely on
6 less evidence.

7 A That's correct.

8 Q Can you elaborate again on that? What do you
9 mean by that?

10 A If we go back to --

○
OBJECTION
relevance
p. 79:5-80:4

11 Q Exhibit 52.

12 A Yes, Exhibit 52, 99, 1499. If you read the
13 first sentence under general overview, "Non-medical
14 age and amount underwriting requirements, e.g.,
15 inspection reports, motor vehicle records, financial
16 data, et cetera, generally should not be requested
17 unless the risk presented suggests a necessity for
18 these requirements. Medical requirements, however,
19 should be consistent with the reinstatement guidelines
20 outlined in this document, and those normally
21 requested for new business if warranted."

22 Q Okay. So essentially all of the things
23 detailed there would be required for new business, but
24 for reinstatements only the APS?

25 A And depending on the case we could request

1 grandfathered?

2 A I'm not 100 percent sure, but it may mean
3 that this policy was issued before the IRS regulation
4 went into effect.

5 Q Would that impact your decision about
6 reinstatement at all?

7 A No.

8 Q Do you know if reinsurance was involved in
9 the decision to reinstate in 2007?

10 A I do not know.

11 Q Can you tell by looking at that?

12 A I cannot tell.

13 (Plaintiff's Exhibit 57, Reinstatement
14 Application for Life Insurance Bates stamped
15 MHW-001042 through 1045: Marked for Identification.)

16 BY MS. GUERTIN:

17 Q I'm showing you what's been marked as
18 Exhibit 57. This is a copy of the 2008 reinstatement
19 application. Do you recognize this document?

20 A I viewed it first during discovery.

OBJECTION
relevance

21 Q During your prep for today?

22 A That's correct.

23 Q You've referenced on a few occasions that you
24 would refer to the application, and if there were any
25 yes answers, then you would look to the details; is

Transcript of Hallie Hawkins, Corporate Designee
Conducted on August 24, 2017

1 that accurate? Objection
86:23-87:16 ○

2 A That is correct. Relevance; lack of personal
knowledge

3 Q So if we look at this one as an example, here

4 we have a few yes answers; is that correct?

5 A Yes, it is.

6 Q So why don't you walk me through what you

7 would do in this case?

8 A I would make sure that all of the questions

9 are answered, I would make note of any yes questions,

10 and then I would read the details.

11 Q And what do the details here tell us?

12 A Would you like me to read them?

13 Q Yes, please.

14 A "Four incidents of atrial fibrillation all of

15 which self-corrected by arrival or shortly after

16 arrival at hospital. Doctor prescribed beta blocker."

17 Q So in this case, with these details, what

18 would you do next?

19 A I would determine whether I needed an

20 attending physician's statement or not.

21 Q Would you in this case?

22 A It would depend. I don't know what the death

23 benefit was associated with this reinstatement.

24 Q So the value of the death benefit would

25 dictate if you get the attending physician's

1 your evaluation of reinstatement?

2 A No.

3 Q Do you have any knowledge about the
4 difference between the 2008 reinstatement and the 2013
5 reinstatement?

6 A I do not.

7 MS. GUERTIN: Now would be a good time
8 for a brief break.

9 (Recess: 11:57 p.m. to 12:14 p.m.)

10 BY MS. GUERTIN:

11 Q Do you know when these policies were
12 reinsured?

13 A At issue.

14 Q At issue, okay. So would reinsurance have
15 been consulted for every reinstatement?

16 A No.

17 Q Why not?

18 A It would depend on which policies were being
19 reinstated.

20 Q Why?

21 A Only policies that had facultative
22 reinsurance on them would need to have reinsurance
23 consulted.

24 Q Okay. So were all three of these policies
25 facultatively reinsured?

1 A No.

2 Q Do you know which ones were?

3 A Not off the top of my head.

4 MS. GUERTIN: Let's mark this.

5 (Plaintiff's Exhibit 59, Document Bates
6 stamped AXA001644 through 1654 with attached document:
7 Marked for Identification.)

8 BY MS. GUERTIN:

9 Q If you look at what's just been handed to you
10 as Exhibit 59. Do you recognize this document?

11 A Yes, I do.

12 Q And can you tell me what this document
13 represents? Feel free to flip through it if you need
14 to.

15 A This is the Gen Re Source Life Underwriting
16 Manual, the AXA version.

17 Q And is it the entire manual?

18 A No, it is not.

19 Q Selected sections of the manual?

20 A That is correct.

21 Q Did you pick the sections to be included
22 here?

23 A Yes.

24 Q And how did you choose those sections?

25 A These are the sections that I utilized in the

S
OBJECTION
p. 95:5-96:3
relevance

1 evaluation of Mr. Wiener's risk.

2 Q For the 2013 reinstatement?

3 A That is correct.

4 Q Can we look at this also with respect to the
5 2008 reinstatement application specifically regarding
6 atrial fib. So you testified, let me get it up to --
7 so just going back to that, the 2008 reinstatement
8 application talks about four incidents of atrial
9 fibrillation. So where in this manual does it talk
10 about atrial fibrillation?

11 A It is on page 1646 and 1647.

12 Q So can you tell me, what does this -- can you
13 explain what this tells us here?

14 A Okay. There's different kinds of atrial fib.
15 There is, the first category is prior atrial
16 fibrillation when the person has been in sinus rhythm
17 for more than a year.

18 Q What does that mean, in sinus rhythm?

19 A They haven't had any episodes of atrial fib.
20 At least no known episodes of atrial fib, I should
21 say.

22 Q So that's one category?

23 A That's correct.

24 Q The next category?

25 A Is if they're currently in atrial

1 fibrillation, or they have been in atrial fibrillation
2 during the last year.

3 Q And then is there another category?

4 A Yes. There is chronic atrial fibrillation.

5 Q Okay.

6 A And that is on page 1647.

7 Q How do you --

8 A I'm not done. There is one more category.

9 The paroxysmal atrial fibrillation is the other one.

10 Q And that's PFA for short?

11 A PAF.

12 Q PFA.

13 A That's correct.

14 MR. REILLY: What's at the top of the
15 page cut off?

16 BY MS. GUERTIN:

17 Q Can you tell what's at the top of the page
18 1647 cut off? Is it the same as what appears at the
19 bottom?

20 A I believe it is.

21 Q So how would you --

22 A Oh, I know what it says now. It says, Others
23 rate as chronic.

24 Q Under current atrial fibrillation?

25 A No. On the top of page 1647.

1 (Plaintiff's Exhibit 60, Reinstatement
2 of Life Insurance Bates stamped AXA000310 and 311:
3 Marked for Identification.)

4 BY MS. GUERTIN:

5 Q Showing you what's been marked as Exhibit 60.
6 Do you recognize this document?

7 A Yes, I do.

8 Q And what is it?

9 A It is the reinstatement for application that
10 I reviewed.

11 Q So you've seen this before?

12 A Yes, I have.

13 Q Can you walk me through what you did once you
14 received this application?

15 A Okay. I check the name to make sure that the
16 system was correct, I looked at the occupation.

17 Q Why would you look at the occupation?

18 A There are certain occupations that can be
19 rated, dangerous occupations.

20 Q Is historian a --

21 A No, it's not.

22 Q Not a dangerous occupation.

23 A No, but I still review it on every case.

24 MR. CASSOT: Can we go off the record
25 for just a second?

1 MS. GUERTIN: Sure.

2 (Off-the-record discussion.)

3 (Plaintiff's Exhibit 61, Reinstatement
4 Application for Life Insurance CT Form: Marked for
5 Identification.)

OBJECTION
relevance

6 BY MS. GUERTIN:

7 Q Back on the record. Showing you what's been
8 marked as Exhibit 61. Is it your understanding that
9 this is the Connecticut form that was submitted by
10 Mr. Wiener in connection with his 2013 reinstatement?

11 A It is my understanding.

12 Q And the one that we were just looking at
13 that's marked as Exhibit 60 was originally submitted
14 on a New York form; is that correct?

15 A That's what it looks like.

16 Q So when you took a look at this
17 reinstatement, you were looking at Exhibit 61,
18 correct?

19 A That is correct.

20 Q So now you left off saying you would look
21 at -- you would verify that the information is
22 correct.

23 A Yes.

24 Q And then what would you do?

25 A I would check the occupation, as I previously

1 A It says that he's having recurrent night
2 sweats, it says that he's having a urinary retention
3 problem, it seems like, difficulty with sleep, he's
4 having vivid dreams, he's still fatigued. It's also
5 noting memory loss, atrial fibrillation, hypertension,
6 benign prostatic hypertrophy, sleep apnea, history of
7 sinusitis, a mitral valve prolapse. It's telling me
8 he's had a surgical history of an appendectomy and a
9 tonsillectomy.

10 Q Let's stop right there. Can you tell --
11 well, do you know what PMH means?

12 A Past medical history.

13 Q Okay. So now would those items that are
14 listed there be the doctor's diagnosis, or would that
15 be something that the patient told their doctor?

16 A It could be either.

17 Q How would you know?

18 A I wouldn't know. I wasn't a party to the
19 conversation.

20 Q So it doesn't specify here?

21 A It does not.

22 Q So it's possible that Mr. Wiener might have
23 reported that he had AFib, but that might not be the
24 doctor's diagnosis?

25 MR. CASSOT: Objection.

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THE WITNESS: I wouldn't know.

OBJECTION
relevance



BY MS. GUERTIN:

Q What did you say BPH stands for?

A Benign prostatic hypertrophy.

Q And what is that?

A It's basically an enlargement of the prostate
so it's difficult for the person to urinate.

Q And what is MUP?

A It's MVP, mitral valve prolapse.

Q What's that?

A It's one of the valves that's in your heart,
and it's kind of flappy, floppy.

Q When it shouldn't be?

A Yes.

Q So did any of this information impact your
assessment?

A Yes.

Q How so?

A The memory loss, the sleep apnea, the atrial
fibrillation, and the hypertension notation just
alerted me to the fact that I would have to keep an
eye on his blood pressure through the rest of the
review of the APS.

Q And then it looks like, what does habit/SH
mean?

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Q Not yet?

○
Objection

A And then the memory loss, and the

Non-responsive

intermittent AFib, atrial fibrillation. 10/28/13,
page 2468, diagnosis, atrial fibrillation, Patient
with MGUS, chronic memory, difficulties AFib with
concerns with difficulty with episodic memory issues.

Q Can you tell me what the -- under diagnosis
it says atrial fibrillation, primary encounter
diagnosis. What does that mean?

A I'm not sure what the doctor meant here.

Q Does the pulse rate have anything to do with
AFib?

A It can.

Q And what correlation?

A So it's very rarely caught when they listen
to the pulse, but it would be irregular and elevated.

Q And what's an elevated pulse?

A Depending on the person's baseline, but
generally somebody who has a pulse over 100, but it's
depending on the person.

Q Here in the paragraph at the bottom of this
page, kind of in the first third it says, "He has had
one occurrence with AFib with PR to 90." Does that
indicate -- do you see that?

A Yes, I do.

1 Q Is PR pulse rate?

2 A No, it's not.

3 Q What is it?

4 A If we could go back to the EKG, I could show
5 you what it means.

6 Q Okay, sure.

7 A It's not related to this, but it would be a
8 way for me to show you what PR means.

9 Q Okay. What page are you looking at?

10 A I am looking at page 2453. When you look at
11 an EKG, you see this first little --

12 Q Bump?

13 A Yes. The beginning of the bump is P, and the
14 end of the bump is R, and a measurement of that helps
15 determine if the person has atrial fib. It's not on
16 this EKG.

17 Q Okay. But it's a measurement that they can
18 take?

19 A Yes.

20 Q So here they're saying recurrence of AFib
21 with PR to 90. What does that mean?

22 A I need to read it for a second.

23 Q Sure.

24 A This is speculation on my part, but I believe
25 that the PR measurement, because I can't see the EKG

1 which is zero risk factors, which is a flat extra of
2 \$2 per thousand of coverage. So that's different than
3 a table rating.

4 Q What does that mean?

5 A Okay. So instead of it being a percentage,
6 so a one table rating is 25 percentage extra on the
7 premium.

8 Q Okay.

9 A This is a flat extra. So for every thousand
10 dollars of premium, we would add \$2 -- I mean, every
11 thousand dollars of death benefit, we would have \$2 to
12 the premium per thousand.

13 Q I see. So then did he have any of these risk
14 factors for progression for MGUS to myeloma?

15 A From what I saw, he did not, other than the
16 anemia, but his hemoglobin was not below 10, and I
17 considered him asymptomatic even though I wasn't 100
18 percent sure he was asymptomatic, because he had only
19 had a -- the recurrent respiratory infection, so I
20 gave him the benefit of the doubt.

21 Q Back up a little bit, sorry. We were talking
22 about this risk factors section here, and then you
23 started to talk about the hemoglobin. Did you jump
24 back up to the top of the page?

25 A Yes. That's required criteria, I'm sorry.

1 Q Okay. So required criteria, serum M protein,
2 what's that?

3 A It's a protein that they -- in the SEP panel
4 that they use.

5 Q Was that involved here?

OBJECTION
relevance

6 A No.

7 Q So you said asymptomatic?

8 A He wasn't 100 percent asymptomatic, but I
9 considered him asymptomatic, because I wasn't sure
10 what was causing those recurrent respiratory
11 infections.

12 Q Okay. And then anemia, is that what you --
13 did you consider him anemic?

14 A No, I did not, because his hemoglobin was
15 greater than ten.

16 Q So you're saying under the MGUS rating you
17 gave him the zero risk factor, which would give you
18 the \$2 per thousand of coverage?

19 A Yes, I did.

20 Q So how did that play into the assessment of
21 the reinstatement application?

22 A That would have been equal to about 15 debits
23 or a half a table.

24 Q So the dollar values that are listed here --

25 A There's a conversion.

1 ROUGH ASCII -- NOT CERTIFIED

2 NOTICE

3 This transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT.

4 It contains raw output from the court reporter's

5 stenotype machine translated into English by the court

6 reporter's computer, without the benefit of proofreading.

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14 attorneys in their case preparation and is not to be

15 construed as the final transcript. It is not to be read

16 by the witness or quoted in any pleading or for any other

17 purpose and may not be filed with any court.

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<p>LEGEND</p> <p><u>DESIGNATIONS BY COUNSEL</u></p> <p>Plaintiff: Text in yellow</p> <p>Defendant: Text in blue</p> <p>Both Parties: Text in green</p>

1 DEPOSITION OF HALLIE HAWKINS, VOLUME 2

2 OCTOBER 25, 2017

3

4 (Commenced: 11:17 a.m.)

5 THE VIDEOGRAPHER: Here begins Tape

6 Number 1 in the videotape deposition of Hallie

7 Hawkins, Volume 2, in the matter of Malcolm H.

8 Wiener plaintiff versus AXA Equitable Life

9 Insurance Company et al. defendants in the

10 United States District Court Southern District

11 of New York, Case Number 116-CV-04019-ER.

12 Today's date is October 25, 2017. The time on

13 the video monitor is 11:17 a.m. The

14 videographer today is Kristin Zarnestske

15 representing Planet Depos. This video

16 deposition is taking place at the firm of

17 Morrison & Mahoney at One Constitution Plaza,

18 Hartford, Connecticut. Would counsel present

19 please identify themselves for the record.

20 MR. REILLY: Lawrence Reilly for the

21 plaintiff.

22 MS. BIKAKIS: Nicole Bikakis the

23 plaintiff.

4 here is that --

5 Q Answer the question that I posed to you first,
6 and then I'll ask you to explain.

7 A All right. Can you ask me one more time?

8 Q Yes. When you say that it could lead to a
9 decline or that it generally leads to a decline, that
10 implies that it might not lead to a decline; isn't that
11 correct?

12 A Yes.

13 Q So tell me circumstances under which it would
14 not lead to a decline.

15 A If somebody had a low albumen, but the next
16 value came up, then we probably would not decline. So for
17 example, if somebody was at 3.6 and five months later they
18 went back to the doctor and they were now at 3.9, we
19 wouldn't decline.

20 Q So a low albumen level that then goes up, you
21 would not decline?

22 A Yes, but if albumen levels are trending down, we
23 would decline.

24 Q Okay. Do you remember what the date of the last
25 albumen reading was --

1 A No.

2 Q -- that you had in your records when you made
3 your decision on reinstatement of Malcolm Wiener's
4 policy?

5 A No.

6 MR. REILLY: Why don't we just take
7 a moment break. I need to get some documents,
8 and we're probably better doing that off the
9 record.

10 THE VIDEOGRAPHER: The time is 11:30
11 a.m. We're going off the record.

12 Off the record: 11:30 a.m to 11:35
13 a.m.

14 THE VIDEOGRAPHER: The time is 11:35
15 a.m. We're back on the record.

16 BY MR. REILLY:

17 Q Ms. Hawkins, we took a few minutes off the
18 record to get deposition exhibits in front of you?

19 A Yes.

20 Q So you have in front of you Gary boid's records
21 which are marked as Exhibit 63?

22 A 63 is correct.

23 Q We have in front of you the AXA document
24 concerning what is this?

25 A That's the underwriting manual.

S
OBJECTION
relevance
13:23-14:3

1 Q Underwriting manual Exhibit 59 and that's only
2 excerpts right?

3 A Only excerpts that's correct.

4 Q And your notes that's marked Exhibit 62 it looks
5 like?

6 A Yes, that's correct.

7 Q So I think the last question I had asked you
8 pertained to the date of the last albumen level test --

9 A Yes.

10 Q -- that you based your reinstatement evaluation
11 on. Tell us the date of that and tell us where you're
12 finding that, please?

13 A Exhibit -- Plaintiff's Exhibit 63 in laboratory
14 results dated May 8, 2013, the serum albumen is reported
15 at 3.5.

16 Q Okay. And according to Exhibit 59, what is the
17 level that they're looking for?

18 A I'm reading number 2, albumen 3.8 or less.

19 Q And is that a decline or red flag or concern?

20 A It's usually a decline.

21 Q What was the date that you were performing your
22 analysis for the reinstatement application?

23 A I don't remember.

24 Q Can you give me some rough idea?

25 A It was -- not really. It was either late 2013

1 or early 2014, but I cannot remember at this time.

2 Q Okay. So I believe the policies were terminated
3 in December of 2013. So would that indicate that your
4 reinstatement analysis was performed in the early months
5 of 2014?

6 A To the best of my memory, but I can't remember
7 right now.

8 Q Okay. All right. So the documents will advise
9 us about that maybe as we go along. So you were relying
10 on an albumen test that was from May of 2013?

11 A Yes.

12 Q If you knew that an applicant for reinstatement
13 was taking testosterone supplements, would that affect
14 your analysis on any of these points including albumen
15 levels?

16 A We have guidelines regarding testosterone, but I
17 don't have them in front of me.

18 Q Do you know what they are?

19 A Not off the top of my head I don't.

20 Q I think I just asked you this. Are you aware of
21 of any context between testosterone levels and albumen
22 levels?

23 A No, I'm not.

24 Q Do you know if the guidelines speak to that at

13 tests.

14 Q But on a new application, I understood you to
15 say that you would send out somebody for an insurance
16 examination?

17 A That's for new business only. We don't require
18 that on a reinstatement.

19 Q Okay. So if a person is applying for a
20 reinstatement, is there any circumstance under which AXA
21 would require them to have any kind of blood test at
22 all?

23 MR. CASSOT: Object to the form.

24 A Not that I -- not to my knowledge. Wait can you
25 say that one more time? I'm sorry?

22

1 MR. REILLY: Can you read that back?

2 (The last question was read
3 by the Court Reporter.)

4 A Not from a vendor, so where we were talking
5 about where the examiner goes out.

6 BY MR. REILLY:

7 Q I don't understand your answer.

8 A Okay. We were talking a about the difference
9 between new business and pay change which --
10 reinstatement, I'm sorry.

11 Q Reinstatement, thank you.

12 A Yes. All right. For new business only, we send
13 an examiner out, but we do not do that for reinstatement.

14 So it's two different --

15 Q I understand that.

16 A -- requirements. Okay.

17 Q So my question is: Is there any circumstance
18 when there is a reinstatement application where AXA would
19 require a blood test whether it's done by a vendor or done
20 by the doctor or done by the man on the moon, it doesn't
21 matter, any circumstances?

22 A I can't speak for every Underwriter at AXA, but
23 we're not supposed to. Can I say that an Underwriter at
24 AXA has never -- has ever sent somebody out? Yes, they
25 could have, but I would not.

23

1 Q And you train --

2 A And that is not the guideline.

3 Q You train underwriters?

4 A Right, but some have been there before I started
5 training, so...

6 Q I guess let's just to bring this home.

7 A Yes.

8 Q If you have blood tests from somebody applying

9 for a reinstatement and that blood test is a year old, and
10 you've told me that if -- if their albumen level dipped
11 below the acceptable level, but then subsequently came up
12 to the acceptable level, that you would not decline?

5
OBJECTION
relevance
23:8-24:24

13 A I may not decline, yes.

14 Q So if the only data that you have is a year old,
15 do you do anything to find out what the current numbers
16 are?

17 A No.

18 Q Because the person could be in perfect health,
19 right?

20 MR. CASSOT: Object to the form.

21 BY MR. REILLY:

22 Q And you don't know?

23 MR. CASSOT: Object to the form.

24 BY MR. REILLY:

25 Q Is that correct?

24

1 MR. CASSOT: Object to the form.

2 A I can't read the future. I only have the
3 evidence as presented in front of me.

4 BY MR. REILLY:

5 Q Right. I'm not asking you to read the future.

6 I'm asking you to read the present when you are there

7 reading the records. So if the record that you have is a
8 year old, do you do anything to update the data in that
9 record to find out what the actual current medical status
10 of that person is?

11 A No.

12 Q So if the data that you get from the doctor is a
13 one-year-old or 17-month-old blood lab, that's what you're
14 going to rely on?

15 A Yes.

16 Q Even though their numbers, at the moment that
17 you're actually performing your analysis, the numbers
18 might be stellar, they might be above all levels that are
19 required, it doesn't matter to you?

20 MR. CASSOT: Object to the form.

21 A I have no idea if that happened or not. There's
22 no way I could read that, know the future.

23 BY MR. REILLY:

24 Q Okay. Well, let's get into that. In this
25 particular case, you knew the name and address of Malcolm

25

1 Wiener's treating physician, right?

2 A I knew it was Dr. Barry Boyd, yes.

3 Q And I think the reinstatement application
4 provided you with Mr. Boyd's address in Greenwich. Do you

19 where an underwriter makes a mistake in reading or
20 interpreting medical records?

21 MR. CASSOT: Object to the form.

22 A We talk to the underwriter. We let them know
23 about the mistake so it's not repeated.

24 BY MR. REILLY:

25 Q How often does the audit procedure find mistakes

46

1 by underwriters?

2 A Our -- I don't have exact numbers, but our
3 accuracy rate for the month of August was 98.4 or 5
4 percent. And we reviewed 3 -- I'm sorry, 240 --
5 approximately 240 cases

6 Q And that's all new business, right?

7 A Yes.

8 Q I guess we should clarify. When you say the
9 accuracy rate was 98.4 or 5 percent, that is the auditors
10 reviewing the medical records to see if they agree with
11 the underwriter's review of the medical records?

12 A That is correct.

13 Q At any point are the doctors who created those
14 medical records contacted to see whether they agree with
15 the auditors or the underwriters?

16 A Definitely not.

17 Q And you said definitely not. Why is it
18 definitely not?
19 A Well, because we don't want to go back and talk
20 to a doctor after we've already -- most of these cases
21 have been issued. So most of the time when somebody makes
22 a mistake, it's in favor of the client. So for example,
23 somebody -- we issued a policy at our best class, and they
24 should have been standard. So we don't want to take the
25 policy back from the client, either, because we rated it

47

1 at the wrong rate. So we would definitely not contact the
2 doctor.

3 Q Okay. Do you know if AXA has ever been
4 contacted by an insured where the insured asked them to
5 contact the treating doctor?

6 A I can't answer that question.

7 Q Would you feel that an underwriter appropriately
8 contacted the doctor if the client contacted the company
9 or the company's agent and encouraged them to contact the
10 treating doctor?

11 A I can't answer for every underwriter. So I
12 don't know.

13 Q But how about for you? Do you think it would be
14 appropriate for you to contact the treating doctor under

OBJECTION
relevance
foundation



15 those circumstances?

16 A If the agent contacted me?

17 Q Right.

18 A Is that what you're asking me?

19 Q Well, the first question would be: If the

20 client contacted either AXA directly or the agent and

21 encouraged AXA to reach out directly to the treating

22 physician, do you think it would be appropriate for the

23 underwriter to then contact the treating physician?

24 A No.

25 Q Even though the client has consented to it and

48

1 encouraged it?

2 A Because we cannot identify over the phone that

3 Mr. Smith is really Mr. Smith. So we don't know if the

4 person giving permission is Mr. Smith.

5 Q So you're saying you think that somebody could

6 fraudulently contact AXA and ask you to contact a

7 stranger's treating physician in connection with their

8 application for reinstatement of their life insurance

9 policy?

10 A Yes.

11 Q Has that ever happened?

12 A I don't know, but people commit fraud all the

13 time.

14 Q And AXA can't concede of any fraud prevention

15 steps that they might take to ensure that that hasn't

16 happened?

17 MR. CASSOT: Object to the form.

18 A A written request.

19 BY MS. BIKAKIS:

20 Q A written request from the client?

21 A With his signature.

22 Q So if the client submitted something in writing

23 encouraging that to happen, let's say writing or an email,

24 would you then deal it appropriate to reach out to the

25 treating physician?

49

1 A Only in writing, not in email.

2 Q Has AXA ever advised their clients that they

3 would accept such a request from the client?

4 A That's generally worked out between the agent

5 and the client.

6 Q Do the agents know that they're supposed to

7 encourage clients to put that in writing?

8 MR. CASSOT: Object to the form.

9 A If they call the underwriter, the underwriter

10 would tell them to have Mr. Smith send a letter?

20 Q Okay, of unknown significance reported by a
21 doctor, and you don't know how long he's had it. Did I
22 interpret that correctly?

23 A Yes.

24 Q I'll be an underwriter by the time this is done.

25 Next is 347 SZ#.

59

1 A That is a cerebral incident.

2 Q What is a cerebral incident?

3 A It could be a transient ischemic attack. It
4 could be a cerebral vascular accident or what you might
5 call a stroke.

6 Q And tell me again what does S mean.

7 A That means that I suspected he had a stroke or
8 some type of cerebral vascular accident, but I didn't have
9 enough information in file. It's equivalent to the K. I
10 don't know the exact details.

11 Q Z you say reported by a doctor?

12 A Yes.

13 Q Pound # means you don't know when it happened?

14 A Or if there was more than one. I just didn't
15 have enough detail. So the pound # means we don't have
16 enough details to tell you more basically.

17 Q We'll come back to that.

18 What does 157 KZ# mean?
19 A I'm going from memory, but I think it's related
20 to the MUGIS, the mono COLONAL gammopathy
21 g-a-m-m-o-p-a-t-h-y of uncertain significance.
22 Q Back to 208 SZ#, you did not remember that?
23 A No, I do. That's a memory loss suspected.
24 Q Would you agree with me that as a result of
25 these MIB codes that you reported, that Mr. Wiener has

60

1 been rendered uninsurable?
2 A No.
3 Q You disagree?
4 A Yes.
5 Q Why?
6 A Because any other insurance company that he goes
7 to has to investigate all these codes, which means that
8 they need to get these records from whoever his attending
9 physicians is.
10 Q Where are you getting that? Says who? Who says
11 they have to investigate further?
12 A The MIB rules and regulations. It's in the MIB
13 handbook. It's clearly states you can't make an
14 underwriting decision based off the codes.
15 Q Did Mr. Wiener have any MIB codes when you --

S
Objection
60:24-61:14
Improper expert opinion
Speculation
Foundation
Lack of personal
knowledge

16 pardon me. Withdrawn.

17 Did Mr. Wiener have any MIB codes prior to your
18 reporting of these codes?

19 A I don't know.

20 Q And is it your belief that these codes were
21 entered -- withdrawn -- -- when did you enter these in

22 you're saying please report these, and the date of the

23 email is March 12 of 2014?

24 A I didn't report them, so I don't know what day

25 they were reported. That's the day that I asked that they

61

1 be reported.

2 Q Okay. Do you know what materials were sent off
3 to the reinsurance company in connection with her Mr.
4 weiner's application for reinstatement?

5 A I do not. Somebody else did that for me.

6 Q Do you have any idea what records are supposed
7 to be sent?

8 A The attending physician statement from Dr. Boyd
9 and also Exhibit 61, the reinstatement application for
10 life insurance.

11 Q Anything else?

12 A I can't speak to what else was in the file at
13 this time, but everything in the file -- most of these

14 things in the file should have been sent.

15 Q Are your notes sent over to the reinsurer?

16 A No.

17 Q Are your MIB codes sent or over to the

18 reinsurer?

19 A No. They check them themselves.

20 Q Do you ever speak with the reinsurance people

21 about a reinstatement application?

22 A I have not.

23 Q Did you in Malcolm's case?

24 A Not to the best of my recollection.

25 Q What was the name of the reinsurance company for

62

1 Malcolm's policies? Do you know?

2 A I believe it was RGA, but I'd have to review the

3 records to confirm that.

4 Q Do you know if all three policies were

5 reinsured?

6 A I believe only one was, but I don't have my

7 notes in front of me. There's a -- in the evidence,

8 there's a screen shot with that information.

9 Q And do you know if you had any communication

10 with RGA or any reinsurance company concerning Malcolm

11 Wiener's application?

8 Q Miss Hawkins, I want to pick up close to where
9 we LEFT off, and that is with the submission of Mr.
10 Wiener's medical records to the reinsurance company. Do
11 you recall testifying about that?

12 A Yes. I had asked that they be sent to
13 reinsurance.

14 Q I'm showing you Exhibit 61 which Again is
15 Mr. Wiener's reinstatement application, the second page of
16 which contains the authorization to obtain health
17 insurance. Is there anything in that document that
18 authorized AXA to send Mr. Wiener's personal medical
19 information to a reinsurer?

○
OBJECTION
relevance

20 A I need to review it.

21 Q Please.

22 A Right here it says, "I/we understand that the
23 information obtained will be used by the company's to
24 determine my, r, eligibility for life insurance coverage
25 and such other uses specified in accordance with the

65

1 underwriting practices attached to this application."

2 THE VIDEOGRAPHER: Excuse me. You need your mic
3 on.

4 THE WITNESS: do you need me to
5 repeat it?

6 THE VIDEOGRAPHER: No.

7 BY MR. REILLY:

8 Q And you believe that authorized sending

9 Mr. Wiener's medical documents to a third-party company?

10 A Yes.

11 MR. CASSOT: Object to the form.

12 BY MR. REILLY:

13 Q But you do not read the HIPAA authorization as

14 allowing you to pick up the phone and call Dr. Boyd?

15 A That's correct.

16 Q Let me show you Exhibit 59 which contains I
17 think the second page AXA document 001645. It's called
18 the senior applicant medical checklist ages 70 and up.
19 Were you a part of the process whereby this list was
20 created?

21 A No.

22 Q Do you know when that was instituted?

23 A I don't know exactly when.

24 Q Give me your best understanding about when it
25 was instituted.

○
OBJECTION
relevance

66

1 A Somewhere between 2010 and 2012.

2 Q Was there anything like the senior checklist in
3 place before 2010, 2012?

21 A Usually it is put in the system and somebody in
22 pay change alerts me that the case is in the system.

23 Q All right. And has it been assigned to you or
24 do you get to choose which one you want to look at?

25 A No, it's assigned.

72

1 Q Who assigns it to you?

2 A The pay change representative.

3 Q And do we know who that is in this case?

4 A Sandra [HRUF].

5 Q So once the matter is assign to you, you're
6 alerted electronically, some kind of e-mail or?

7 A Yes correct.

8 Q Equivalent of email?

9 A Uh-huh.

10 Q Do you look at a paper file or electronic
11 file?

12 A In this case I believe it was electronic.

13 Q All right. When is your decision due from
14 underwriting on that reinstatement application?

15 A We don't have a due date. I am supposed to
16 review the reinstatement application and notify the pay
17 change rep of what I need. And then they handle it until
18 the requirement of what I need comes back. And then I'm

○
OBJECTION
relevance
72:13-73:13

19 supposed to review it and let the pay change rep know my

20 decision.

21 Q Okay. So in this case, you use the phrase what

22 you need?

23 A Right.

24 Q In this case, what did you need?

25 A The doctor's records.

73

1 Q Okay. And you people call that the --

2 A APS.

3 Q -- attending physician statement, APS?

4 A Yes, that's correct.

5 Q In this this case the APS was a photocopy of

6 Dr. Boyd's records, correct?

7 A I'm not sure how they got it, but it looks like

8 a photocopy.

9 Q Okay. What else could it be?

10 A I don't know, but it could have been

11 electronically --

12 Q Okay. It's a copy?

13 A Right.

14 Q All right. There are times when an APS comes to

15 you in the forms of an actual letter written by the

16 doctor; is that correct?

1 say assessment and then list impairments.

2 Q So you're looking for other data in the records

3 to support the conclusion that this is an actual medical

4 diagnosis as opposed to what the patient said?

5 A I could, yes, but sometimes we don't know.

6 Q Do you just assume that everything that is not

7 in quotes and not directly ascribed by the doctor to the

8 patient, do you assume that everything else is from the

9 doctor?

10 A Yes.

11 Q Have you ever had occasion to consider an

12 application either a new business or reinstatement where

13 you saw preexisting MIB codes and then you looked at the

14 medical records and disagreed with MIB codes?

15 A Yes.

16 Q How often does that happen?

17 A Very rarely.

18 Q If a patient is -- withdrawn.

19 If a client is reported to the MIB has having

20 had a stroke, does that render that client uninsurable?

21 A No.

22 Q Does it render the client practically

23 uninsurable?

24 A No.

25 Q Can you envision a circumstances where a life

S
Objection
Improper expert opinion
Foundation

S
Objection
Improper expert opinion
Foundation

1 insurance company would issue a life insurance policy to

2 someone who has reported to have a stroke?

3 A Yes.

4 Q Have you ever seen that?

5 A Yes.

6 Q Which company were you with?

7 A If -- we can actually insure somebody who's had

8 a stroke after a certain amount of time.

9 Q What time?

10 A I'd have to look at the manual.

11 Q Take a look at the documents in front of you and

12 tell me if you can answer that question.

13 A I just need a moment. Yes, I can answer that

14 question.

15 Q Please.

16 A I am looking at exhibit --

17 Q Exhibit 59?

18 A Exhibit 59.

19 Q And the page is what?

20 A And page number AXA 1649. Depending on the type

21 of of stroke, at age -- after one year they could have a

22 rating of -- a table rating.

23 Q Which would be plus points on that table that we

24 looked at earlier, right?

25 A Plus debits, yes, that's correct.



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Transcript of Sandra Huffstetler

Date: August 30, 2017

Case: Wiener -v- AXA Equitable Life Insurance Company, et al.

LEGEND
DESIGNATIONS BY COUNSEL

Plaintiff: Text in yellow

Defendant: Text in blue

Both Parties: Text in green

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MALCOLM H. WIENER,
Plaintiff,
vs. Case No. 1:16-cv-04019-ER
AXA EQUITABLE LIFE INSURANCE
COMPANY, DAVID HUNGERFORD, AXA
ADVISORS, LLC, AND AXA NETWORK, LLC,
Defendants.

DEPOSITION OF: SANDRA HUFFSTETLER
DATE: August 30, 2017
TIME: 11:10 a.m.
LOCATION: 15720 Brixham Hill Avenue
Suite 300
Charlotte, North Carolina
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

1 said? I'm sorry.

2 THE WITNESS: If the form was in good
3 order.

4 MR. CASSOT: In good order. Thank you.

5 BY MS. GUERTIN:

6 Q. If it wasn't, what would you do?

7 A. We would write out for the omitted
8 information.

9 Q. Like reach out to the client?

10 A. Yes. We would mail a letter to the
11 customer.

12 Q. What does AWD stand for, if you know?

13 A. I don't know.

14 Q. Do you know what it is?

15 A. Yes. Our imaging workflow system.

16 Q. Is it a computer program of some sort?

17 A. Yes, it's on the computer.

18 Q. Okay. And how do you use that system?

19 A. That's where we -- that's where we get
20 all of our requests in the system and how we process
21 and move work between the reinstatement area and the
22 Underwriting Department, and we add our notes and
23 comments for each case.

24 Q. So it's between departments?

25 A. Yes.

1 Q. Do you know what TAI stands for?

2 A. No.

3 Q. Okay. Do you know what that is?

4 A. Yes.

5 Q. Can you describe it for me?

6 A. That shows whether a policy is reinsured
7 or not. It's a reinsurance system.

8 Q. Reinsurance info?

9 A. Yes.

10 (Previously Marked Exhibit No. 60, 12-18-13 AMIRA
11 Reinstatement Application, was referenced)

12 BY MS. GUERTIN:

13 Q. Great. I'm going to show you what was
14 previously marked as Plaintiff's Exhibit 60. Take a
15 look at this for me.

16 A. Okay.

OBJECTION
relevance
p. 17:13-19:9

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. Okay. Can you tell me what it is?

20 A. It's our Reinstatement Application, the
21 AMIRA form.

22 Q. And just for the record, this is the
23 application dated December 18th, 2013.

24 Can we go off the record for a second?

25 (Off-the-record discussion)

1 BY MS. GUERTIN:

2 Q. So what we just discussed is that this
3 Reinstatement Application is the New York form. Is
4 that correct?

5 A. Yes.

6 Q. And that Mr. Wiener later filled out a
7 form dated December 23rd. That was the Connecticut
8 form. Correct?

9 A. Correct.

10 Q. And these are substantially the same, so
11 I'm going to ask you some questions about this
12 because this is what we have today in front of us.
13 Okay?

14 A. Okay.

15 Q. Did you review this Reinstatement
16 Application?

17 A. Yes.

18 Q. Okay. And can you tell me what you --
19 MR. CASSOT: Hold on a second. Is
20 anybody on the phone?

21 I just got a text from Eileen that they
22 all lost the connection.

23 (A break transpired)

24 BY MS. GUERTIN:

25 Q. So back to Exhibit 60, we are looking at

1 this Reinstatement Application. What did you -- you
2 said you reviewed it. Correct?

3 A. Correct.

4 Q. Okay. What did you review?

5 A. I reviewed the policy numbers and the
6 insured's name and compared it in our system to make
7 sure that it was the correct policy numbers being
8 requested and that the form was completed accurately
9 and all details were provided.

10 Q. Okay. And was everything accurate, to
11 your recollection?

12 MR. CASSOT: Object to the form.

13 BY MS. GUERTIN:

14 Q. Do you recall if you needed to reach out
15 for additional information?

16 A. I don't recall.

17 Q. Besides the fact that the form is wrong.

18 A. I don't recall.

19 Q. When you get an application like this do
20 you have to input information into a system?

21 A. No.

22 Q. No? Okay. What did you do with the
23 application at that point?

24 A. I actually -- I believe I would have
25 forwarded it to Underwriting.

○
OBJECTION
relevance
p. 19:19-20:3

1 application.

2 A. Correct.

3 (Previously Marked Plaintiff's Exhibit No. 52, Life
4 Underwriting Release No. 11-05, was referenced)

5 BY MS. GUERTIN:

6 Q. So let me show you what has previously
7 been marked as Plaintiff's Exhibit 52.

8 MS. GUERTIN: And for the benefit of my
9 client, this is tab 22 in your binder, Carolyn.

10 BY MS. GUERTIN:

OBJECTION
relevance
p. 46:3-47:11

11 Q. Do you recognize this document?

12 A. No.

13 MR. CASSOT: The entire document, or do
14 you want to go to a specific page and ask if she
15 recognizes that page?

16 BY MS. GUERTIN:

17 Q. Okay. Do you recognize -- on the second
18 page of the document do you recognize the table
19 that's included there?

20 A. Yes.

21 Q. Okay. Is this table what was in effect
22 at the time of Malcolm Wiener's reinstatement
23 application?

24 A. Yes.

25 Q. Okay. How would you have seen this

1 table if you did not receive this Life Underwriting
2 Release?

3 A. We have a service operation procedure
4 manual.

5 Q. What is that?

6 A. It's -- how do I explain? It just shows
7 us how to process reinstatements.

8 Q. Okay. And that's not the documents that
9 we were previously looking at as Exhibit 50 or 51?

10 A. No.

11 Q. But it would contain this chart.

12 A. Yes.

13 Q. Okay. You have never seen this Life
14 Underwriting Release before?

15 A. No.

16 Q. Okay. So it's not something you would
17 refer to?

18 A. No.

19 Q. But looking at the chart, it seems -- is
20 it accurate to say the difference between this chart
21 and the previous chart we were looking at is that
22 this one does have riders and features in certain
23 rows?

24 A. Yes.

25 Q. Okay. So in this case, do you recall --

1 65 percent.

2 Q. 65 percent maybe? Okay. Can you
3 recall -- Okay. That's fine.

4 Do you know -- not with respect to this
5 exhibit that's in front of you, but do you know what
6 "Paid up extended term" means?

7 A. It's a whole life policy that has value
8 that when a policy is not paid it can go under --
9 the value on the policy can purchase additional
10 insurance to keep the policy in force under the paid
11 up extended term.

12 Q. Do you know which, if Malcolm Wiener's
13 policies were paid up extended term or non-paid up
14 extended term?

15 A. They were non.

16 Q. They were non-paid up extended term.
17 And how does whether they were paid up extended term
18 or non-paid up extended term policies impact
19 reinstatement?

20 A. I mean, based on our guidelines, they
21 could be reinstated.

22 Q. Could they not be reinstated if they
23 were paid up extended term?

24 A. Yes.

25 Q. So can you describe the difference for

1 me?

2 A. So if you have policy premiums that were
3 past due five years or more, we couldn't reinstate
4 them, even if it was a under PUXT.

5 Q. Paid up extended term. Okay.
6 (Plaintiff's Exhibit No. 69, December 2013 Email
7 Chain Between Henry Lewer, Toniann Fragala and
8 Others, was marked)

OBJECTION
relevance
p. 53:5-56:24

9 BY MS. GUERTIN:

10 Q. I'm going to show you what has been
11 marked as Exhibit 69. This is an email chain that
12 is Bates numbered AXA 002559 through 2561.

13 MS. GUERTIN: And this is under tab 5 in
14 your binder, Carolyn.

15 BY MS. GUERTIN:

16 Q. Take a minute. Do you recognize this
17 email chain?

18 A. Yes.

19 Q. Okay. If you look on the second page of
20 the document, there is an email from Henry Lewer.
21 It's the one dated December 23rd, 2013 at 11:17 a.m.
22 Do you see that?

23 A. Uh-huh.

24 Q. He is emailing you. And it says:
25 "Sandra, please submit for scan and initial review

1 A. Correct.

2 MS. GUERTIN: Okay. So Robert, just to
3 clarify, is Hallie Hawkins --

4 MR. CASSOT: Yes.

5 MS. GUERTIN: She is prepared to talk
6 about the differences between those two.

7 MR. CASSOT: Auto, facultative and
8 impact of reinsurance.

9 MS. GUERTIN: Okay. On reinstatement.
10 Good. Thank you.

11 BY MS. GUERTIN:

12 Q. When you say in this email "APP file,"
13 A-P-P, what does that mean?

14 A. We order the original application file
15 that we originally received as part of new business
16 in order to look for the reinsurance information,
17 the reinsurance company's name, the reinsurance file
18 number.

19 Q. I see. Okay. Just going back to the
20 previous email that we were looking at from earlier
21 that same day, who tentatively declined the request?

22 A. The underwriter.

23 Q. The underwriter Hallie Hawkins?

24 A. Yes.

25 Q. And she communicated that to you?

1 A. Yes.

2 Q. Okay. Did you have any role in
3 determining whether these policies would be
4 reinstated or not?

5 A. No.

6 (Plaintiff's Exhibit No. 74, February 2014 Email
7 Chain Between Toniann Fragala, Sandra Huffstetler
8 and Others, was marked)

9 BY MS. GUERTIN:

10 Q. I'm going to show you what has been
11 marked as Plaintiff's Exhibit 74, which is an email
12 chain Bates numbered AXA 002287 through 2289. Do
13 you recognize this email --

14 A. Yes.

OBJECTION
relevance, hearsay
p. 81:6-82:11

15 Q. -- or these emails? The email from
16 David Hungerford on the first page to yourself, he
17 says: "I received a call from Mr. Wiener's office
18 indicating that they were unaware of the medical
19 information submitted by his doctor for the
20 reinsurance and wanted to get a copy of the doctor's
21 notes. They felt the notes may not reflect
22 Mr. Wiener's true medical condition. Let me know if
23 you can release them to the insured or owner." Can
24 you explain what this email meant to you?

25 A. It sounded like he was wanting us to

1 release the medical records that we had obtained for
2 reinstatement consideration to the client.

3 Q. Okay. His statement about the fact that
4 they felt the notes might not reflect his true
5 medical condition, did that impact, to your
6 knowledge, the assessment of the reinstatement
7 application?

8 A. I don't know.

9 Q. Okay. Did it affect how you handled the
10 processing of the reinstatement?

11 A. No.

12 Q. Did you reach out to anyone other than
13 the primary care physician for medical records in
14 this case?

15 MR. CASSOT: Objection to the form.

16 BY MS. GUERTIN:

17 Q. Let me rephrase it. Did you receive
18 medical records from any other doctors for this
19 case?

20 A. No.

21 Q. Did you request any medical records for
22 this case?

23 A. No.

24 Q. Okay. Your email in response at the
25 top, you indicate you regret that we would not

1 release these medical records. What do you mean by
2 that?

3 A. We wouldn't send the medical records
4 that we had obtained from Dr. Boyd to the client.

5 Q. Why not?

6 A. Because those were obtained at AXA's
7 expense for reinstatement consideration. And that
8 is something that he can go to his doctor to obtain.

9 Q. How did you know that that should be the
10 response?

11 A. I believe there may be a job aid that
12 says that we don't release medical records.

OBJECTION
relevance
p. 82:24-83:21

13 Q. A job aid?

14 A. Job aid.

15 Q. Oh. Job aid. What is that? Like a
16 guideline of some sort?

17 A. Yeah, procedures.

18 Q. Would you have said this without there
19 being some sort of procedure?

20 A. I wouldn't have said that unless I knew
21 for sure.

22 (Plaintiff's Exhibit No. 75, 3-5-14 Letters to
23 Malcolm Wiener from Sandra Huffstetler, was marked)

24 BY MS. GUERTIN:

25 Q. Let me show you what has been marked as

1 reinstatement?

2 A. I don't recall why I would have sent it.

3 Q. Were you instructed to send it?

4 A. No.

5 Q. Is it part of your job duty to -- job
6 duties to, you know, keep in touch with an agent in
7 a situation like this?

8 A. Yes.

9 Q. And do you know who did make the
10 decision? The underwriter?

11 A. Yes.

12 (Plaintiff's Exhibit No. 79, Advice Of Underwriting
13 Decision, was marked)

14 BY MS. GUERTIN:

15 Q. I'm going to show you what has been
16 marked as Exhibit 79. This is a letter with Bates
17 numbers AXA001023 through 1024. Do you recognize
18 this letter?

19 A. Yes.

OBJECTION
relevance
p. 94:15-96:20

20 Q. What is this?

21 A. This is the Advice Of Underwriting
22 Decision that is letting the insured know that their
23 reinstatement has been declined.

24 Q. Do you know who Richard Jaegar, M.D. is?

25 A. He is one of our medical directors.

1 Q. Do you know what medical directors do?

2 A. No.

3 Q. Okay. Did you speak to him at all?

4 A. No.

5 Q. Do you know why he sent this letter?

6 Him, specifically, I mean.

7 A. He didn't send the letter. His
8 signature is on these letters.

9 Q. What do you mean by that?

10 A. Well, I typed the letter up, and his
11 name is embedded in this letter.

12 Q. Is it like a template letter that you
13 use?

14 A. Yes.

15 Q. And you said you typed it?

16 A. Yes.

17 Q. Okay. How did you know what to put in
18 this letter?

19 A. Well, I put -- the only thing I put in
20 the letter is the insured's information, address,
21 date, insured's name, the application file; that it
22 was a reinstatement, and the specific information
23 received from Dr. Barry Boyd which would have come
24 from the underwriter.

25 Q. Okay. So this part that's in italics

1 here is the part that you added to the letter?

2 A. Yes.

3 Q. Okay. And that information came from
4 Hallie Hawkins?

5 A. Yes.

6 Q. And was it something that was
7 communicated to you via the AWD system or orally?
8 How did you get that?

9 A. I don't recall if it was AWD or email or
10 both.

11 Q. Okay. And you did not consult with
12 Dr. Jaegar?

13 A. No.

14 Q. Is his name on all AUDs?

15 A. Yeah. For requests that are declined
16 due to medical reasons, yes.

17 (Plaintiff's Exhibit No. 80, MIB Search Response,
18 was marked)

19 BY MS. GUERTIN:

20 Q. All right. I'm going to show you what
21 has been marked as Plaintiff's Exhibit 80. This is
22 a document Bates numbered AXA000543. Do you
23 recognize that document?

24 A. Yes.

25 Q. What is it?

1 A. It's an MIB Search Response where we
2 have gone out to see if there is any MIB codes.

3 Q. Did you perform this search?

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OBJECTION
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4 A. I don't recall.

5 Q. And what does this show?

6 A. It shows that there was no MIB for the
7 information that we entered, the insured's name,
8 date of birth.

9 Q. Okay. And does the date that appears at
10 the top of the page where it says: "Confidential -
11 July 22, 2008," is that, to the best of your
12 knowledge, when that search was run?

13 A. I'm not sure.

14 Q. Have you ever seen a screen like this
15 before?

16 A. Uh-huh.

17 Q. That's a yes?

18 A. Yes. I'm sorry.

19 Q. That's okay. When we talked earlier
20 about MIB codes and the email -- maybe we should
21 just pull it out, the email where Hallie Hawkins
22 sent you a number of MIB codes --

23 A. Uh-huh. Yes.

24 Q. -- here we go. That's Exhibit 71. Is
25 this the screen? In Exhibit 80, is that what it

1 would look like when you were putting those in, or
2 no?

3 A. No. Uh-uh.

OBJECTION
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4 Q. That's something different?

5 A. When we enter it, it is different, yeah.

6 This is the result you would get. That would show
7 these if you got results back (indicating.)

8 Q. Okay. Just to clarify, Exhibit 80 would
9 be the result if you inputted -- you might get these
10 MIB codes back as a result of that search?

11 A. Yes. Yes.

12 MS. GUERTIN: Okay. Why don't we take a
13 short break.

14 (Break In Proceedings)

15 BY MS. GUERTIN:

16 Q. Just a couple of follow-up questions for
17 you. Do you know if Dr. Jaegar reviewed this file
18 at all?

19 A. No.

20 Q. You don't know?

21 A. I don't know.

22 Q. Okay. And then with respect to Exhibit
23 71 where Hallie Hawkins sent you MIB codes, is it
24 your understanding that these are codes that she
25 generated?

1 A. Yes.

2 Q. Okay. From her review of the records?

3 A. Yes.

4 Q. Okay. And she was asking you to report

5 them to MIB. Correct?

6 A. Correct.

7 Q. Okay. Is there anything that you did to

8 verify the accuracy of these codes?

9 A. No.

10 Q. Okay. You just took this and inputted

11 it. Correct?

12 A. Yes. Yes. And we would get an error in

13 the MIB system, on their website, if these codes

14 were not correct; if there was something wrong with

15 them.

16 Q. Okay. So do you know the date when you

17 inputted those codes into MIB?

18 A. No.

19 Q. Would that be memorialized anywhere?

20 A. When you get a response back. I don't

21 remember if I actually captured the screenshot of

22 the MIB when I entered it, the confirmation.

23 Q. Okay. If you had captured that

24 screenshot, where would that be?

25 A. It should be in the AWD case.

1 Q. Okay. Do you know if the Reinsurance
2 company would have seen the MIB codes that you
3 inputted into the MIB system?

4 A. They would not have.

5 Q. Why not?

6 A. Because the MIB codes would have been
7 entered after the final decision had been made.

8 Q. Why is that the case?

9 A. Because entering the -- because that's
10 the procedure. The AUD and the MIB codes are the
11 last thing we do before we decline the case in AWD.

12 Q. Okay. So you don't enter those codes
13 until the very end, essentially.

14 A. Correct.

15 Q. Until after you receive the assessment
16 from Reinsurance, even.

17 A. Correct.

18 Q. Okay. Now, when you say that the system
19 would kick back an inaccurate code to you, you're
20 not saying that it does some sort of medical
21 analysis?

22 A. No.

23 Q. Okay. So it's relying on you or the
24 underwriter and their assessment of the medical
25 conditions. Correct?

1 A. Correct.

2 Q. Okay. It's only verifying if those
3 codes are -- those codes exist somewhere.

4 A. Correct.

5 Q. Okay. And do you know when this -- when
6 this reinstatement application first came in, do you
7 know if there were any MIB codes associated with
8 Malcolm Wiener?

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OBJECTION
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9 A. I don't recall.

10 Q. Okay. Is there something you can look
11 at that would tell us if that was the case?

12 A. You can look in the AWD case.

13 Q. Not in the notes, but somewhere else?

14 A. Let's see. There is no indication of
15 MIB codes.

16 Q. Okay. Does it state that there are no
17 MIB codes, or is it just silent on the issue?

18 A. It's silent on the issue.

19 Q. Okay. You mentioned that there is more
20 to the AWD than just these notes. Correct?

21 A. Correct.

22 MS. GUERTIN: Okay. Can we just go off
23 the record for a second?

(Off-the-record discussion)

24
25 BY MS. GUERTIN: