Larson Ex. 1

In The Matter Of:

Safelite Group, Inc. et al vs.
Michael Rothman et al

Brian O'Mara
February 22, 2016

Shaddix & Associates
9100 West Bloomington Freeway
Suite 122
Bloomington, MN 55431

Min-U-Script® with Word Index

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

v. Case No. 15-cv-1878

Michael Rothman, in his official capacity as
Commissioner of the Minnesota Department
of Commerce,

Defendant.

Deposition and Exhibits of BRIAN O'MARA, taken in the above-entitled matter, pursuant to Notice, before Lisa M. Hutton, court reporter and notary public, at Fredrikson & Byron, 220 South 6th Street, Suite 4000, in the City of Minneapolis, State of Minnesota on the 22nd day of February, 2016, commencing at approximately 9:00 a.m.

* * *

APPEARANCES:

Oliver J. Larson, Assistant Attorney General, Bremer Tower, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101-2128, appeared for and on behalf of the Defendant,
e-mail: Oliver.larson@ag.state.mn.us

Danielle R. Sassoon, Attorney at Law, Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, NY 10022, appeared for and on behalf of the Plaintiffs.
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Richard D. Snyder, Attorney at Law, Fredrikson Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402, appeared for and on behalf of the Plaintiffs.
e-mail: rsnyder@fredlaw.com

Also appearing: Cynthia Elliott, VP and general counsel for Safelite Group, Inc.

WHEREUPON, the following proceedings were duly had and entered of record, to wit:

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1 BRIAN O'MARA,
2 a witness in the above matter, after having
3 been first duly sworn, testified under oath
4 as follows:
5 EXAMINATION
6 BY MR. LARSON:
7 Q. Would you state your name for the record?
8 A. Brian O'Mara.
9 Q. And would you spell that just to make sure
10 we've got the spelling correct?
11 A. B-R-I-A-N, O- apostrophe - M-A-R-A.
12 Q. Mr. O'Mara, my name is Oliver Larson. I'm the
13 attorney with the Minnesota Attorney General's
14 office, and I represent Mr. Rothman in this
15 matter. In terms of the deposition today, I
16 don't really have any admonitions for you.
17 All I'm going to tell you is if you need to
18 take a break at any point, just let me know
19 and we'll accommodate you.
20 A. Okay.
21 Q. Can we start by just having you describe what
22 your educational background is since high
23 school?
24 A. I have a degree in business administration. I
25 have taken courses in Six Sigma, ISO

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1 certification in process design. That's
2 pretty much it.
3 Q. Who's your current employer?
4 A. Safelite Solutions.
5 Q. How long have you worked for Safelite
6 Solutions?
7 A. I am in my 25th year.
8 Q. Now, I know that there are different
9 Safelite-related entities. Those 25 years,
10 have you spent all 25 years with Safelite
11 Solutions?
12 A. No. Safelite Solutions was formally
13 introduced into the company structure in the
14 early 2000s. I can't tell you the specific
15 date. But traditionally, I was employed by
16 Safelite Auto Glass as the parent company.
17 (Statute 486.10 complied with.)
18 Q. (By Mr. Larson) So getting back to your
19 employer. So you worked for Safelite Auto
20 Glass then for a period of time before
21 Safelite Solutions was formed; is that
22 accurate?
23 A. Correct.
24 Q. When you started at Safelite Auto Glass, what
25 was your job title?

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1 A. I think it was manager of call center
2 operations.
3 Q. Before coming to Safelite, who were you
4 employed by?
5 A. Comp-U-Card International.
6 Q. Comp-U-Card?
7 A. Comp-U-Card, C-O-M-P, hyphen, U hyphen,
8 C-A-R-D.
9 Q. What kind of work did you do for Comp-U-Card?
10 A. Contact Center, architecture, and operations.
11 Q. Let me break that down. When you say contact
12 center, what's a contact center?
13 A. Contact center is probably the more current
14 and up-to-date term for call centers. Back in
15 the '80s and '90s, call centers focused
16 strictly on telephones. Today contact centers
17 involve chat, it involves e-mail or online
18 activities, and so it's not just the
19 traditional phone call anymore. It's a
20 contact center, meaning a conversation or a
21 transaction coming via multiple channels.
22 Q. Now, did Comp-U-Card, did they provide
23 customer service services to third parties or
24 were you working for their own customers?
25 A. They provided services to third parties.

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1 Q. And in what industry?
2 A. Credit card.
3 Q. When you joined Safelite Auto Glass, maybe in
4 kind of just narrative fashion, maybe you can
5 describe what your job responsibilities were?
6 A. To develop the absolute best service
7 experience in the industry.
8 Q. At that time that you joined Safelite Auto
9 Glass, was it already providing third-party
10 administrative services to insurance
11 companies?
12 A. No.
13 Q. When did that start?
14 MS. SASSOON: Objection,
15 foundation.
16 A. It -- I'm guessing it would have been
17 somewhere around '94 or '95, somewhere in
18 there.
19 Q. (By Mr. Larson) When you joined Safelite Auto
20 Glass, then what was the contact center that
21 Safelite Auto Glass had? What was it doing?
22 A. It was answering calls on behalf of the retail
23 operation. And this is going to date me a
24 little bit, but it goes back in the days of
25 Yellow Pages versus everybody looking

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1 information up online. So customers would
2 locate the Safelite ad in the Yellow Pages,
3 call the appropriate 800 number, and then
4 inquire as to where the closest service
5 location would be.
6 Q. And were you involved from the beginning then
7 in Safelite's operations in terms of providing
8 third-party administrative services to
9 insurance companies?
10 A. Yes.
11 Q. And I think you testified you thought that
12 started in -- around 1994 or thereabouts?
13 A. Yes.
14 Q. What is your current job title at Safelite
15 Solutions?
16 A. Vice president of client service delivery.
17 Q. And how long have you held that position?
18 A. I think that title -- the responsibilities
19 have been the same for probably 10 or 15
20 years. The title recently changed though.
21 Within the last three years.
22 Q. I'm more interested in your job
23 responsibilities than your title. So you are
24 telling me then that you've done more or less
25 the same thing for Safelite Solutions for the

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1 last 10 to 15 years; is that right?
2 A. Yes.
3 MS. SASSOON: Objection, form.
4 Q. (By Mr. Larson) And prior to doing what you
5 do now and what you've done for the past 10 to
6 15 years, what was different about what you
7 were doing before that?
8 A. I would say the biggest difference was around
9 the complexity and the strategy. As I said
10 earlier, when I was hired, I was hired as
11 manager of call center operations. It has
12 transformed into contact centers. Mainly
13 because of the need to serve the millennials
14 and customers who choose to be served along
15 channels that are different than what the baby
16 boomers grew up with. So scale and complexity
17 are probably the biggest changes.
18 Q. Let me ask you this, other than -- well,
19 strike that. So one of the things that
20 Safelite Solutions does for its insurance
21 clients is that it handles calls from their --
22 from their customers who have a need for auto
23 glass repair or auto glass replacement; is
24 that right?
25 A. Yes.

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1 Q. And I'm familiar with the fact that one of the
2 ways that those insurance customers would
3 reach Safelite is by telephone; is that right?
4 A. One of the ways, yes.
5 Q. How else do your insurance customers reach
6 Safelite, other than by telephone?
7 A. Online through hand-held applications, through
8 IVR technology, and through e-mail.
9 Q. When you say "online," is that like a web
10 portal that Safelite runs?
11 A. Correct.
12 Q. Does that involve any voice contact with the
13 individual?
14 A. Only if the policyholder has a need or needs
15 assistance, and then in the spirit of
16 providing service and making sure that they
17 don't feel like they are on an island all by
18 themselves, we will be there to assist them.
19 Q. So if I had the need for an auto glass
20 replacement for my windshield, would it be
21 possible for me to have that claim processed
22 by Safelite without ever speaking physically
23 to somebody at Safelite?
24 A. Depends on your insurance company.
25 Q. Are there some insurance companies that

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1 require in-person telephone contact or some
2 other kind of contact?
3 A. Yes.
4 Q. How common is that?
5 A. Fairly common.
6 Q. Meaning that it's fairly common insurance
7 company require some kind of voice contact
8 with the insured client?
9 A. I would say the answer is yes, but that trend
10 is changing. It used to be -- in the '90s, it
11 used to be an absolute requirement. But as we
12 have transitioned, as the industry has
13 transitioned from call centers to contact
14 centers, the whole term of contact infers to
15 the fact that there is more self-service
16 capability available than ever before to the
17 policyholder in the spirit of allowing
18 policyholders to conduct business in a way
19 that's most convenient for them.
20 Q. Okay. There was also something you mentioned,
21 hand-held applications. What is that?
22 A. If you have an Android phone, just like almost
23 every other industry that exists today, you
24 can do business over your phone. Whether it's
25 your banking -- insurance is becoming the same

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1 way.
2 Q. And IVR, what is that?
3 A. Interactive voice response units. It is a
4 telecommunications technology that allows
5 voice recognition and interactive voice
6 responses without actually having to speak to
7 a live voice.
8 Q. Is that through an Internet portal, or how is
9 that handled?
10 A. It's through telecommunications and CTI
11 technology, computer telephony integration,
12 where the computer system, which typically is
13 the recipient of any documentation of the
14 claim, is being fed by the voice response
15 unit.
16 Q. I guess I'm just kind of trying to figure out
17 physically what happens. Is there a system
18 that you get into by dialing a phone number,
19 or is there a system that you get onto by
20 getting on the Internet, or is there some
21 other way I can get into that system?
22 A. Well, the way you phrased the question was a
23 little bit obscure. You can get the phone
24 number by going online, okay. But ultimately
25 you are going to be in an IVR by dialing the

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1 phone.
2 Q. Okay. Let's go ahead and mark --
3 MR. LARSON: Do you happen to know
4 what number we are on? Because I don't.
5 MS. SASSOON: What exhibit are we
6 on?
7 MR. LARSON: The next Exhibit
8 number for our deposition purposes? If not, I
9 can start with 200 because we know that we are
10 not to 200.
11 MS. SASSOON: I'll send an e-mail.
12 Let's see if I can get a quick response.
13 MR. LARSON: I don't think we are
14 even to 100. Let's start by marking this as
15 Exhibit 100, then we'll go from there.
16 (Exhibit 100 marked.)
17 Q. (By Mr. Larson) Mr. O'Mara, I'm handing you
18 what we've marked as Exhibit 100. Have you
19 seen this document before?
20 A. I'm going to have to read through it. Yes.
21 Q. And it's my understanding, Mr. O'Mara, that
22 you've been designated to be Safelite's
23 corporate designee on topics two through ten;
24 is that also your understanding?
25 A. Let me just make sure I understand what two

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1 through ten are.
2 MS. SASSOON: This should be
3 Exhibit 63.
4 A. Yes, that is correct.
5 (Exhibit 63 marked over 100.)
6 Q. (By Mr. Larson) All right. Just for the
7 record, we've re-marked Exhibit 100 as Exhibit
8 63 so we are sequential with the other
9 deposition exhibits that we have used. Let's
10 just go ahead and just go through this in
11 order, Mr. O'Mara, and start with --
12 A. It's O'Mara.
13 Q. O'Mara. I'm sorry. Let's start with topic
14 number 2.
15 A. Okay.
16 Q. Topic number 2, the Commissioner has asked for
17 Safelite to designate a witness to testify on
18 any alleged adverse impact on plaintiffs or
19 their affiliates caused by providing the
20 disclosure provided by Minn Stat. 72A.201,
21 subdivision 6(14)." Are you familiar with
22 that Minnesota statute?
23 A. Yes.
24 Q. Are you familiar with the language of that
25 statute?

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1 A. Generally, yes.
2 Q. When is the first time that you personally
3 became aware of this Minnesota statute?
4 A. Specifically? I can't tell you specifically
5 when.
6 Q. Was it before this litigation was filed?
7 A. No, I believe it was prior to that.
8 Q. Sorry, just for clarify, what you are
9 testifying to is you believe you were familiar
10 with the statute prior to the initiation of
11 this litigation; is that your testimony?
12 A. No, no, I'm sorry, no.
13 Q. Okay.
14 A. That's not the case.
15 Q. So let me then re-ask the question. Did you
16 become familiar with the statute after this
17 litigation was initiated?
18 A. No, I believe I was familiar with it before.
19 Q. Okay. When is your best guess, if you have
20 one, as to when you first encountered the
21 statute?
22 A. I would say it would have been in proximity to
23 when it became a statute, because of the way
24 we track state by state the legislative
25 requirements for call technique and script

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1 compliance.
2 Q. Can you tell me what, if any, adverse impact
3 Safelite believes is caused by having to
4 provide the mandatory disclosure required by
5 Minnesota Statute 72A.201?
6 A. It provides a negative connotation relative to
7 the service and experience that the
8 policyholder is receiving by making this
9 disclosure. It indirectly implies that
10 without this disclosure there may be cause for
11 concern. It would almost be like if the
12 Chamber of Commerce of Minnesota was trying to
13 attract business, and they were required to
14 disclose that x number of deaths occur every
15 year in the 10,000 lakes. It's really
16 irrelevant, and it causes an unnecessary
17 concern for the objective at hand.
18 Q. Has Safelite ever had anybody on the telephone
19 complain about having received this notice?
20 A. Complained about receiving this notice?
21 Q. Yes.
22 A. Define "complain."
23 Q. Have they ever voiced concerns about having
24 received this notice?
25 A. Voiced concerns? Yes.

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1 Q. In what context?
2 A. Asking for interpretation. Why should I be
3 worried about this? Is there a specific
4 reason? Asking for clarification as to what
5 it means. This is a legal statute
6 representation or terminology that the general
7 public doesn't understand, which is all the
8 more reason why I believe it causes harm.
9 Because most people are afeared -- are
10 afeared -- most people are afraid of legal
11 terminology in a context that they don't
12 understand.
13 Q. Have you ever had or has Safelite ever had
14 somebody who contacted it and refused to
15 proceed with the call after having been read
16 this language?
17 MS. SASSOON: Objection,
18 foundation.
19 A. I don't know the answer to that question.
20 Q. (By Mr. Larson) How about has anyone who's
21 contacted Safelite refused to select a
22 Safelite or affiliated glass provider after
23 being -- or sorry, not after, but as a result
24 of having been read this admonition?
25 MS. SASSOON: Objection,

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1 foundation.
2 A. Have they refused to select a Safelite
3 location based upon the expression of this
4 terminology? I don't know the answer to that.
5 Q. (By Mr. Larson) You are not aware of any
6 incidents of that occurring?
7 A. No, I'm not. I think that would -- you are
8 asking me to get inside the minds of every
9 single person that hears this statement and
10 understand how they are responding to it and
11 whether or not it has an impact on the
12 decisions they make? I'm not qualified to do
13 that.
14 Q. So you don't know whether this admonition
15 that's provided by the statute actually has
16 any impact on the decisions that people who
17 contact Safelite make?
18 MS. SASSOON: Objection,
19 form.
20 A. All I know is that there have been concerns
21 raised relative to the interpretation and what
22 the impact of this statement might be. How
23 they made the final decision, I do not have
24 knowledge of that, no.
25 Q. (By Mr. Larson) How often does somebody who

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1 contacts Safelite ask for further explanation
2 of this statutory required disclosure?
3 MS. SASSOON: Objection,
4 foundation.
5 A. I don't know. We answer millions of calls a
6 year across multiple states. I don't have
7 access to the specific numbers that that would
8 imply here.
9 Q. (By Mr. Larson) Well, you said, though, that
10 you are familiar that at least some people
11 have expressed concern about having received
12 this; is that right?
13 A. That's correct.
14 Q. And how did that come to your attention?
15 A. Through either monitoring of phone calls or
16 through direct feedback from the coaching
17 staff. Typically what you are looking at is
18 scripting. We try to identify areas that are
19 causing the policyholder concern, stress,
20 anxiety, and in working in conjunction with
21 the insurance company, we try to modify the
22 scripting to put them at ease.
23 And because in this claims
24 process, this is really the moment of truth
25 between the insurance company and their

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1 policyholder. Policyholders don't understand
2 claims, and as a result -- they have gone
3 through a traumatic loss, whether it be a
4 piece of glass or any other kind of claim, and
5 so there's a little anxiety that already is
6 inherent in the process.
7 And so working with the insurance
8 companies, we try to identify points in the
9 phone call that either the policyholders are
10 asking questions or there is hesitation or
11 concern, and we try to modify those call
12 techniques to put the policyholder at ease.
13 Q. Have you personally monitored any calls?
14 A. All the time.
15 Q. And in any of calls that you've personally
16 monitored, has somebody who has contacted -- a
17 policyholder that contacted Safelite expressed
18 concern after having read this statutory
19 disclosure?
20 A. Yes.
21 Q. And what did they say?
22 A. They asked for clarification. What exactly
23 does that mean? I can't tell you -- I mean, I
24 didn't record the conversation verbatim. But
25 it was more around "I don't understand why you

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1 are reading me this and why you are telling me
2 this. Is there something that I should be
3 concerned about?"
4 Q. Did the policyholder refuse to proceed with
5 any of the calls that you monitored?
6 A. No.
7 Q. Was the service representative on the phone
8 able to explain to the policyholder why they
9 were reading the mandated language?
10 MS. SASSOON: Objection,
11 foundation.
12 A. The only response that we are qualified and
13 permitted to give is we are required to do it.
14 I mean, so I mean, we are required by your
15 insurance company to make you aware of, you
16 know, this terminology, you know.
17 Q. (By Mr. Larson) Let's turn to topic three.
18 Topic three, the Commissioner is asking for
19 Safelite to designate a witness to testify on
20 the manner by which scripts used by plaintiffs
21 in their interactions with Minnesota insureds
22 are developed and approved by insurance
23 company clients.
24 Could you describe for me in
25 general fashion how the scripts that Safelite

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1 uses for various insurance customers are
2 created?
3 A. There is one of two ways. Either the
4 insurance company can provide the initial
5 draft of the scripting that they would like
6 used, or based upon the definition and the
7 requirements of the insurance company's
8 program, they can ask me to draft the initial
9 version of the script and submit it to them
10 for review and approval.
11 Q. What's the breakdown there? How often is it
12 the insurance company providing a draft, and
13 how often is it Safelite providing an initial
14 draft?
15 A. I would say Safelite's probably providing the
16 initial draft -- and this is just speculation,
17 I've never looked at it this way -- maybe 60
18 percent, 70 percent of the time.
19 Q. And you said that you personally are usually
20 responsible for putting together the initial
21 draft?
22 A. Typically.
23 Q. Is there any language that Safelite tries to
24 ensure appears in all of the scripts with all
25 of its customers?

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1 A. You must honor and offer preference.
2 Q. I'm sorry, say that again?
3 A. You must honor and offer preference. So give
4 the policyholder the opportunity to state a
5 preference, and honor it. If it is for a
6 specific line of shop, typically what we do is
7 we try to inform them of the features and
8 benefits of -- that are available within the
9 industry. But in the end, the governing rule
10 is you must honor and offer preference.
11 Q. I've seen some language in various scripts
12 that seems to be consistent from company to
13 company. It's referred to as the "O&A" or
14 "offer and acceptance language." Are you
15 familiar with that?
16 A. Yes.
17 Q. Is that language that is typically drafted by
18 Safelite or by the insurance company?
19 A. Typically? What I -- I'm not sure what
20 typically means. In many cases an insurance
21 company may ask for an existing script or a
22 shell of a script that is currently being used
23 by their peers today, and we will provide that
24 upon request. I don't know if it's typical.
25 I don't know how else to answer that question.

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1 Q. Let's take a look at a couple of scripts then.
2 A. Do you want me to keep this?
3 Q. Yeah, you might want to put it somewhere where
4 it's easily accessible for you. Let's go
5 ahead and mark this as Exhibit 64.
6 (Exhibit 64 marked.)
7 Q. (By Mr. Larson) All right. I've put in front
8 of you Exhibit 64. Are you familiar with this
9 document?
10 A. Generally, yes.
11 Q. What is it?
12 A. It is the script for the American Family
13 Insurance program.
14 Q. I want to start by just looking at the top.
15 There's a box there that says "standard policy
16 and procedure"; do you see that?
17 MS. SASSOON: I just want to
18 clarify, you said it's a script for American
19 Family in effective 2013, right?
20 A. I'm sorry?
21 MS. SASSOON: I just want to
22 clarify that it's a particular version of --
23 MR. LARSON: I'm going to get into
24 that, yeah.
25 A. Yes.

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1 Q. (By Mr. Larson) So looking at the standard
2 policy and procedure language at the top; do
3 you see that?
4 A. Yes.
5 Q. So one of my questions is, can you explain for
6 me what these different boxes mean?
7 A. Well, the subject is the insurance provider.
8 The version would be the -- I believe, and I'm
9 not certain on this one -- but I believe it
10 would represent the version that has gone into
11 implementation over the life of the program.
12 The draft date would be the date that this
13 version was initially drafted. The
14 implementation date would be the date that it
15 became active within our systems. The
16 approval date is the date that there was
17 consensus between the insurance company and
18 Safelite Solutions. And then I'm not really
19 familiar with what the expiration date is
20 there.
21 Q. And then there's also a notation right below
22 that, it said, "Added statement to inform
23 shops calls are recorded 12/28/11" and "Added
24 Arizona law statement to F&B 08/26/11"; do you
25 see that?

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1 A. Yes.
2 Q. I take those just to be notations about some
3 of the changes that have been made from
4 version to version; is that accurate?
5 A. I believe so, yes.
6 Q. So you'll see down at the bottom that there's
7 some bates numbers; do you see those?
8 A. Yes.
9 Q. So if we turn to Safelite MN10, and you see
10 there is a part of the script that starts with
11 the number 16; do you see that?
12 A. Yes.
13 Q. And it's my understanding -- and you can tell
14 me if I'm correct on this or not -- my
15 understanding is that this represents scripted
16 language that the Safelite customer service
17 representative would read if they were put
18 into contact with a non-network shop to
19 perform the work for the policyholder; is that
20 right?
21 A. I'm not sure if this is the current script. I
22 understand that it has an implementation date
23 of May the 13th, but -- and this may have been
24 the current script on May the 13th, but I
25 don't know if this is for the current script

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1 that's used today.
2 Q. Yeah. I'm not asking whether it's the current
3 script. I acknowledge there may be more
4 recent versions of the script, I'm just
5 saying -- let's assume that what we are
6 talking about is when this script was actually
7 in effect. My understanding is that this is
8 the language that -- the scripted language
9 that will be read by the customer service
10 representative to a non-network shop. Is that
11 accurate?
12 A. At the time --
13 MS. SASSOON: Objection, form.
14 A. At the time that this script was active, this
15 would have been the terminology, yes.
16 Q. (By Mr. Larson) And I've also seen this type
17 of language captioned with an abbreviation
18 called O&A; is that offer and acceptance?
19 A. Yes.
20 Q. And I've also noticed that, you know, the
21 scripts, in general, do vary from insurance
22 company to insurance company. But this
23 language seems to be pretty consistent from
24 insurance company to insurance company, which
25 is what I was trying to get into with the

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1 questions before I showed this to you.
2 So what I'm asking is, is this
3 type of language that we see in the scripts,
4 or is this language drafted by Safelite or
5 this language drafted by an insurance company?
6 MS. SASSOON: Objection, form.
7 A. I don't -- you are asking me a question that I
8 would have to go through each program to
9 determine who drafted what. I don't -- I'm
10 not qualified to answer that.
11 Q. (By Mr. Larson) So as we look here then at
12 this offer and acceptance language in Exhibit
13 64 on page Safelite MN10, you can't tell me
14 who drafted this language; is that your
15 testimony?
16 A. Not for this specific program, no. I would
17 have to go back and take a look at the history
18 of it.
19 Q. Have you seen the language like this in other
20 scripts?
21 A. Yes.
22 Q. Is there any insurance -- strike that. Let's
23 take a look -- let's mark one more exhibit
24 here.
25 (Exhibit 65 marked.)

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1 Q. (By Mr. Larson) Do you recognize what I've
2 put in front of you as Exhibit 65?
3 A. Yes.
4 Q. What is it?
5 A. It is the American Family script that was
6 implemented on the 17th of January, 2015.
7 Q. All right. If we can turn to in Exhibit 65 to
8 page Safelite MN25?
9 A. Okay.
10 Q. And there we also see some language with the
11 number 16. That's similar to what we saw as
12 element 16 of Exhibit 64. Do you see that?
13 A. Yes.
14 Q. And in Exhibit 65, however, there is a caption
15 at the top of item 16 that says, "Skip if MN"
16 and go to hand off to the shop in close call."
17 What does what mean?
18 A. It means you don't use this terminology if the
19 claim is in the state of Minnesota.
20 Q. And why's that?
21 A. Because the insurance company has asked us to
22 change the language or the approach relative
23 to the state of Minnesota.
24 Q. So American Family asks that this language not
25 be read for Minnesota customers; is that

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1 right?
2 A. That's my understanding, correct.
3 Q. Okay. All right. We can put those aside for
4 a minute.
5 A. Those being?
6 Q. The Exhibit 64 and 65.
7 A. Okay.
8 Q. All right. I'm going to skip a little bit
9 ahead, and then we'll return to some scripting
10 issues. Why don't we turn in Exhibit 63 and
11 look at topic number 6. And the topic number
12 6, the Commissioner has asked Safelite to
13 "produce a witness to testify to plaintiff's
14 processes and procedures for disciplining
15 their employees who deviate from approved
16 scripts when handling calls with Minnesota
17 insurance." Can you describe in general
18 fashion how Safelite insures that its customer
19 service representatives are staying on script?
20 A. There are multiple ways. And it does not just
21 apply to Minnesota. Script adherence is a
22 requirement of employment within the Safelite
23 Solutions contact centers.
24 Upon hiring as part of
25 orientation, every person we employ signs

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1 documentation that states that they will be
2 scripted "offer and honor preference" as a
3 condition of their employment.
4 Throughout the course of their
5 career with Safelite, we will -- we will
6 monitor phone calls, our quality assurance
7 team will monitor phone calls, insurance
8 companies will monitor phone calls, insurance
9 companies will request recorded phone calls,
10 and if at any point during their employment
11 they are found to not be adhering to the
12 offering and the honoring of preference, it is
13 grounds for termination of employment.
14 The first time that an individual
15 is found to be in violation, they will be
16 placed on a final written warning. And the
17 reason we place them on a final written
18 warning versus terminating them on the first
19 inferences -- first occurrence is it may be
20 because the policyholder made a statement and
21 the CSR just simply wasn't listening versus a
22 deliberate intent to move the business to a
23 Safelite location or an affiliate location for
24 that matter.
25 So first infraction, final written

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1 warning. Second infraction, termination of
2 employment regardless of your tenure with the
3 company.
4 Q. The customer service representatives, are they
5 physically on a Safelite site or some of them
6 work from home?
7 A. No, they are all physically on-site for
8 security and customer service reasons.
9 Q. On say an average weekday, how many people --
10 how many customer service representatives are
11 on-site?
12 A. A single site or all sites?
13 Q. Well, how many sites are there?
14 A. There are four.
15 Q. Where are the sites located?
16 A. Two are located in Columbus, Ohio. One is in
17 Hiawatha, Iowa. And the other is on Chandler,
18 Arizona.
19 Q. How do calls get directed, or how is a
20 decision made on where to direct calls to the
21 various call centers?
22 A. The calls all reside within the network cloud.
23 They are distributed to facility based on the
24 skillset and the certification of the CSRs in
25 that facility. And they are routed according

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1 to the first available service representative.
2 That way the policyholder never has to suffer
3 the inconvenience of having to hold prior to
4 getting their call answered.
5 Q. So let's say you had a policyholder from
6 Minnesota. Could they be routed to any of the
7 four different call centers?
8 A. Yes.
9 Q. Would it depend at all on which insurance
10 company they were with?
11 A. No.
12 Q. Let's try, if we can take the four call
13 centers collectively. I'm just trying to get
14 a sense of scale here. So again, the average,
15 you know, kind of workday, how many customer
16 service representatives are operating between
17 the four call sites?
18 A. Just in the Safelite Solutions area or in
19 Safelite Solutions and Safelite retail?
20 Q. Let me ask you this, so what's the distinction
21 that you are making there?
22 A. One group, Safelite Solutions group, handles
23 calls on behalf of insurance companies. The
24 other group handles calls on behalf of
25 Safelite Auto Glass.

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1 Q. Okay. I'm not interested in the second group
2 of calls, but let me ask you this, do the same
3 customer service representatives handle both
4 kinds of calls?
5 A. Never.
6 Q. Okay. So let's focus then just on the
7 Safelite Solutions, where they are providing
8 third-party administrative services.
9 A. Okay.
10 Q. In terms of scale and on an average day, how
11 many customer service representatives are
12 working?
13 A. Average day? If you take the average day --
14 and we are open 24 hours a day, 365 days a
15 year. Monday has a 17 percent higher call
16 volume than the average day of the week. You
17 are probably looking at 600 people a day.
18 Q. And how many calls, on average, is each person
19 handling during a day?
20 A. It's difficult to answer that question because
21 there is a large mix of schedules. A person
22 can work an eight-hour schedule all the way
23 down to a three-hour schedule. So number of
24 phone calls on average? How would you like me
25 to blend that for you?

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1 Q. Let me strike the question. I'm just trying
2 to get a sense of scale. Maybe, do you have a
3 sense of how many calls a day, third-party
4 administrative type calls?
5 A. I think it would be more appropriate for me to
6 tell you the average number of calls I expect
7 them to take per hour, that way it doesn't
8 matter how many hours they work in a day.
9 Q. That's fine.
10 A. Typically they will answer eight to ten calls
11 per hour.
12 Q. Now, say that there are people at Safelite who
13 then monitor the calls; is that right?
14 A. Correct.
15 Q. How do they engage in monitoring?
16 A. Multiple ways. They can sit side by side with
17 the individual and review phone calls. They
18 can sit away from the individual and silently
19 monitor. They can review tapes of phone
20 calls. Or they can hold calibration sessions
21 with the insurance companies listening to
22 phone calls.
23 Q. What's a calibration session?
24 A. A calibration session is when the insurance
25 company is on one end of the line, we are on

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1 the other end of the line, we are listening to
2 the same call, and we are evaluating it for
3 quality and script adherence and then
4 comparing notes to make sure that we are all
5 listening for the same levels of compliance.
6 Q. Is that done with live calls, or is that done
7 with recordings?
8 A. Both.
9 Q. How many people at Safelite are tasked with
10 monitoring phone calls?
11 A. Define tasked.
12 Q. Well, let's start with just how many people
13 have as part of their job responsibility to
14 monitor calls?
15 A. That's still a little vague for me because I
16 believe that in any service-oriented business,
17 every person in the company all the way up to
18 the CEO should be monitoring phone calls in
19 order to understand the level of service they
20 are offering our customers. And in our
21 company, that happens. How frequently? The
22 CEO doesn't report to me, it's the other way
23 around. So I couldn't tell you how often he's
24 doing that. But we provide that access to all
25 of our executives, to listen to the phone

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1 calls and make sure that in the spirit of
2 Safelite we are offering the very best
3 possible service through the people we employ.
4 Q. Do you have any sense of how many calls a day
5 are monitored?
6 A. I would say 100 or more.
7 Q. 100 or more?
8 A. That would be a guess.
9 Q. Are there any people who are primarily tasked
10 with monitoring calls?
11 MS. SASSOON: Objection, form.
12 A. The coaching staff is responsible for
13 listening to each of their associates on a
14 weekly basis. The quality assurance team is
15 responsible for randomly monitoring the staff.
16 My managers are responsible for doing monthly
17 audits where they evaluate call quality. I
18 listen to calls randomly while doing e-mail,
19 et cetera.
20 Once again, in the spirit of the
21 culture of providing a strong policyholder
22 service, I'm a big advocate of listening to as
23 many calls as physically possible.
24 Q. (By Mr. Larson) You personally, how many
25 calls do you listen to in a week?

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1 MS. SASSOON: Objection, form.
2 A. Oh, I don't know that you can put me on a
3 weekly measurement because of my travel
4 schedules, et cetera. I try to listen to
5 calls as much as I possibly can, but it
6 doesn't -- I could not say that I've listened
7 to them every single week.
8 Q. (By Mr. Larson) Would it be considered a
9 violation for a customer service
10 representative to tell a policyholder that
11 they will be balance billed if they select a
12 non-preferred vendor rather than they may be
13 balanced bill if they select a preferred
14 vendor?
15 MS. SASSOON: Objection,
16 foundation.
17 A. Depends on what the script says.
18 Q. (By Mr. Larson) So if there was a script, and
19 the language in the script said that the
20 admonition was that the policyholder might be
21 balance billed if they select a non-preferred
22 vendor, and what the customer service
23 representative in fact told the policyholder
24 is that they would be balance billed if they
25 selected a non-preferred vendor, would that be

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1 considered going off script?
2 MS. SASSOON: Objection, form and
3 foundation.
4 A. First of all, there's no scripts that use the
5 word "might," I can tell you that. It
6 probably either says "may" or "will." I doubt
7 if there's a script out there that has the
8 word "might" in it. I could be wrong. But I
9 would find that hard to believe.
10 If they were to deviate with --
11 from the script, depending upon what happened
12 in the phone call, they may be placed on
13 corrective action depending upon whether or
14 not it negatively influenced the decision or
15 the direction of the policyholder. So there
16 is a difference between a person who is
17 unscripted, who changes intent, and a person
18 who changes content.
19 The people know that they are
20 required to offer and honor preference. If
21 they modify a -- the script through what I
22 will consider general conversation versus
23 script adherence, and they do not change the
24 intent of the script, we would coach them, but
25 there would be no disciplinary action. If

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1 they change the intent, then it would be
2 grounds for termination of employment.
3 Q. (By Mr. Larson) All right. Why don't we take
4 a short break and then come back.
5 (A short recess was taken.)
6 MR. LARSON: Back on the record.
7 We've been joined by Mr. Kipker
8 who's going to be your next deponent. I don't
9 have an objection to that, and I don't know if
10 I can object. He's a party witness, he can be
11 here. I just want to be clear that I doubt
12 any of my folks will want to attend the other
13 deposition by other Department of Commerce
14 folks, but I assume there will be no objection
15 if that occurs?
16 MS. SASSOON: Well, this is a
17 30(b)6 deposition, and so he's our corporate
18 designee. So I haven't thought through
19 whether a different rule will apply in that
20 instance. I mean, you are saying that they
21 are not going to come anyway, so I don't know
22 if we need to get into it.
23 MR. LARSON: What's the basis for
24 him being here, other than he's a party
25 witness, as my people are. I mean, that's

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1 fine. There's no reason to attend
2 depositions, you know. There's no
3 exclusionary rule in deposition unless
4 somebody moves the Court for one. We've got a
5 situation where I have a witness sitting here,
6 it's to his advantage, and that's fine. But
7 then, you know, I tell my people that they can
8 do the same thing, and then I get an objection
9 for it.
10 MR. SNYDER: Do you want to rule
11 that we sequester the witnesses then?
12 MR. LARSON: I don't. I think
13 it's fine for the witnesses to attend, but
14 what I'm saying is what's good for the goose
15 is good for the gander. If we are going to
16 have witnesses attending the depositions,
17 that's fine.
18 MR. SNYDER: Your point is -- if
19 we do a 30(b)6 of the State, you know, then we
20 would certainly apply the same rule. But if
21 it's not a 30(b)6, would the same rule apply?
22 I mean, I think that's what she's saying.
23 MR. LARSON: I don't think there's
24 any reason to distinguish between a regular
25 deposition and 30(b)6 deposition. I think if

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1 you have a -- the general rule is parties can
2 attend depositions unless there's a motion
3 with the Court.
4 MS. SASSOON: Do you know what
5 rule that is?
6 MR. LARSON: It's just the general
7 practice. Nobody has done it. I don't think
8 I've actually seen a party go in and try and
9 get the witness actually excluded. I've seen
10 parties litigate the issue of whether a
11 witness can actually attend, and the courts
12 have always held that it's a public proceeding
13 and witnesses can come in.
14 MS. SASSOON: Is that your
15 understanding of the law of Minnesota as well?
16 MR. SNYDER: Well, no. I mean, I
17 think it typically is -- the rule is to
18 sequester witnesses. So I mean, you are
19 looking at a situation where you're going to
20 be -- you know, if the Commissioner, who's not
21 going to be deposed, wants to sit in, that's
22 one thing. But other actual witnesses sitting
23 in I think is a different matter for yours.
24 So I mean, I think we are willing
25 to have Mr. Kipker leave then and proceed if,

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1 you know, we have the same agreement for the
2 State's witnesses.
3 MR. LARSON: That's fine. I'm
4 fine excluding the witnesses if that's your
5 preference. I'm fine having the witnesses
6 here if that's your preference. It's just
7 whatever we are going to do, we are going to
8 do for both sides. So you guys make the
9 decision on whether you want him here or not.
10 MS. SASSOON: Okay. So why don't
11 we agree that the witnesses cannot attend the
12 depositions and --
13 MR. LARSON: That's fine.
14 (Mr. Kipker left the room.)
15 Q. (By Mr. Larson) All right. We are back on
16 the record. And I want to return to
17 discussion of balance billing and scripting.
18 Are you aware of any insurance companies that
19 have in their script language that if a
20 policyholder selects a non-preferred shop,
21 that they will be balance billed?
22 MS. SASSOON: Objection,
23 foundation. I would ask that this term
24 "balance billing" isn't in the scripts and
25 hasn't been defined. So if you want to use it

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1 as a shorthand, just so that you kind of
2 establish with the witness first what it is
3 that you referring to.
4 Q. (By Mr. Larson) Do you have an understanding
5 what balance billing is?
6 A. I know what my understanding of balance
7 billing is, I don't know what yours is.
8 Q. Why don't you tell us your understanding of
9 what balance billing is?
10 A. In the event that the glass shop charges more
11 than what the insurance company believes to be
12 reasonable and customary, the policyholder
13 will or may be responsible for the difference.
14 Q. Okay. So with that understanding, are you
15 aware of any scripts that Safelite uses for
16 its insurance clients, that script language,
17 that the policyholder will be balance billed
18 if they do not select a preferred vendor?
19 A. Yes.
20 Q. Which insurance companies?
21 A. You asked me if I was aware of one, not which.
22 I'm aware of one, and that would be one of the
23 Triple A groups.
24 Q. And is that true -- is that a script that's
25 read in Minnesota?

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1 A. I believe so, yes.
2 Q. Okay. Why don't we go ahead and mark another
3 exhibit here then.
4 (Exhibit 66 marked.)
5 Q. (By Mr. Larson) So I've placed in front of
6 you Exhibit 66. Are you familiar with it?
7 A. I'm going to have to read through it just to
8 make sure that it's all mine. Yes, I'm
9 familiar with it.
10 Q. And Exhibit 66 is a copy of a declaration that
11 you signed and that Safelite put into this
12 case on the preliminary injunction motion; is
13 that your understanding?
14 A. Yes.
15 Q. So I think you probably also found what I'm
16 going to turn your attention to, which is if
17 we look at page 3 running on to page 4, do you
18 see -- I guess it's paragraph 6 --
19 A. Yep.
20 Q. -- of your declaration. Do you see that?
21 A. Yes, I do.
22 Q. And I'm not trying to embarrass you, I'm just
23 trying to figure out the answer to this. So
24 if we turn on to page four, it says, "None of
25 the scripts tell policyholders that they

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1 necessarily will be balance billed for any
2 difference." And that seems to be different
3 than what you just testified to.
4 MS. SASSOON: Objection, form.
5 Q. (By Mr. Larson) So can you tell me whether
6 this statement in the declaration is accurate
7 or not accurate?
8 A. It is accurate because none of the scripts use
9 the term "balance billed."
10 Q. So the distinction that you are making in your
11 declaration here is that because the scripts
12 don't use the word "balance bill," that -- all
13 right. You know what, strike that question.
14 You can stick to that answer if you want to.
15 Let's look at the next sentence
16 though, it says there, "Accordingly, the
17 examples the defendant cites in his brief
18 reflect statements by customer service
19 representatives that are not consistent with
20 the insurance company's scripting"; is that
21 statement in your declaration accurate?
22 A. Accordingly the defendant cites -- can I see
23 those examples?
24 Q. Well, this is your declaration, right?
25 A. The examples. I guess --

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1 MS. SASSOON: The witness is
2 entitled to ask to see the brief. It's been
3 almost a year since he submitted this
4 declaration. So if you want to ask about
5 those examples --
6 Q. (By Mr. Larson) Well, let me ask you this.
7 You were aware that he cites examples of
8 people using language, correct?
9 A. Yes.
10 Q. Okay. And presumably, you read either the
11 brief or those scripts before you executed
12 this affidavit, correct?
13 MS. SASSOON: Objection, form.
14 A. I would believe so, yes.
15 Q. (By Mr. Larson) Okay. I mean, do you recall
16 seeing scripts that were put in front of you
17 where people -- sorry, strike that. Do you
18 recall seeing transcripts provided to you in
19 this case in which Safelite customer service
20 representatives had gone off script?
21 MS. SASSOON: Objection, form.
22 A. At the time that I signed this?
23 Q. (By Mr. Larson) Yes.
24 A. That was a long time ago, I don't recall
25 exactly what was in front of me at that time,

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1 no.
2 Q. Well, let me show you an example then.
3 A. Okay.
4 MR. LARSON: Mark this as Exhibit
5 67.
6 (Exhibit 67 marked.)
7 Q. (By Mr. Larson) So I've put in front of you
8 what was Exhibit 67. It is a copy of a
9 transcript of a telephone call between
10 Safelite Solutions, a policyholder with the
11 initials K.B. and Lisa R. who works for Rapid
12 Glass. Have you seen this transcript before?
13 MS. SASSOON: Can we just clarify
14 too, this was an exhibit attached to TJ
15 Patton's affidavit in the preliminary
16 injunction --
17 MR. LARSON: Correct.
18 MS. SASSOON: -- motion. Thanks.
19 A. Okay.
20 Q. (By Mr. Larson) The question is, have you
21 seen this document before?
22 A. I believe so, yes.
23 Q. Why don't we turn to page 12 of the document.
24 A. Okay.
25 Q. If you look there, I think you can see that

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1 this was a call that involved a Triple A
2 policyholder; do you see that?
3 A. Yes.
4 Q. And I want to focus your attention at the top
5 there, B.C. who is the Safelite customer
6 service representative says, "I have to inform
7 you of this since you're disagreeing with our
8 rates, ma'am. So, (K.B.) just make sure it
9 doesn't exceed that cost. Because if it does
10 exceed that, you would be required to pay the
11 difference out of pocket"; do you see that?
12 A. Uh-huh.
13 Q. Is that a yes?
14 A. Yes.
15 Q. Is that language in the AAA script?
16 MS. SASSOON: Objection,
17 foundation.
18 A. Is it in the AAA script? I would have to go
19 through the AAA script.
20 Q. (By Mr. Larson) We can put that in front of
21 you. Let me ask you this, if you were
22 monitoring a call for this customer service
23 representative and they said this thing in the
24 telephone call, would you take any action
25 against the customer service representative?

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1 MS. SASSOON: Objection, form,
2 foundation.
3 A. Depends on what the script says.
4 MR. LARSON: Let's go ahead and
5 mark Exhibit 68.
6 (Exhibit 68 marked.)
7 Q. (By Mr. Larson) Can you tell what Exhibit 68
8 is?
9 A. Exhibit 68 is a script for Auto Club Group.
10 Q. And Auto Club Group -- sorry strike that.
11 Auto Club Group and AAA are the same entity,
12 correct?
13 A. I believe so, although I am not 100 percent
14 positive. Because they go under multiple
15 names.
16 Q. Where in this script would there be language
17 concerning possible balance billing issues?
18 MS. SASSOON: Objection, form.
19 The words "balance billing" don't appear in
20 this script, so maybe make the question a
21 little clearer.
22 A. It would be -- I don't know, the pages aren't
23 numbered, so.
24 Q. (By Mr. Larson) There's some Roman numerals
25 there?

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1 A. Yeah, it would be -- I'm not familiar with my
2 Roman numerals. Is that 13? Is that what it
3 is?
4 Q. VIII?
5 A. Yes.
6 Q. Yes, so I'm there. It says "VIII. O&A skip
7 if state is Minnesota, MN"; do you see that?
8 A. Yes.
9 Q. Okay. So let me ask you this, is there any
10 language in this part of the script that is
11 consistent with the language that Safelite
12 customer representative B.C. read in that
13 transcript Exhibit 67 that we just saw?
14 MS. SASSOON: Objection, form and
15 foundation.
16 A. I don't know if I can draw a correlation
17 between the two because I don't know the date
18 of the call that you are referring to in the
19 transcript.
20 Q. (By Mr. Larson) Well, let me ask the question
21 this way then. If you were monitoring the
22 call that's at Exhibit 67, and you picked up
23 the transcript that's Exhibit 68 to determine
24 whether the customer service representative
25 was on script or off script when they read

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1 that language that we looked at on page 12,
2 what would your determination be? Would you
3 determine that they were on script or off
4 script?
5 MS. SASSOON: Objection,
6 foundation. And just to be clear, nothing has
7 been been established to ensure that this is
8 the script governing the call because again,
9 the transcript is undated.
10 A. Okay. Let me take a look. They were
11 scripted.
12 Q. (By Mr. Larson) What's your basis for saying
13 that?
14 A. If you take a look at the script under the
15 section labeled Roman Numeral VIII, section C,
16 "If the insured elects to continue with shop
17 of preference," which in the case of this
18 phone call they did -- although I am not aware
19 of the date of this call. But in the event
20 that they did, "Before I could connect you to
21 the shop, I need to ask you a few questions."
22 I must inform you that Auto Club Group is
23 willing to pay reasonable and customary price
24 of - blank - to have the work completed, -
25 blank - of which is your deductible. This

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1 does not include sales tax or cost of molding.
2 If required, however, those additional costs
3 would be covered. Therefore, if you still
4 wish to use that shop, Auto Club Group will
5 require you to pay any other differences."
6 And once again, it's a little
7 vague for me because the call itself isn't
8 dated. So I'm trying to put two and three
9 together as if they are corresponding.
10 Q. Let's turn to your declaration, which is
11 Exhibit 66. We are back on the paragraph six,
12 last sentence there in paragraph six it says,
13 "Accordingly, the examples that the defendant
14 cites in his brief reflect statements by
15 customer service representatives that are not
16 consistent with the insurance company
17 scripting." I mean, that statement was true
18 when you put it in your declaration, correct?
19 MS. SASSOON: Objection, form and
20 foundation. You've not shown the witness the
21 brief.
22 A. Well, once again, you are now asking me to --
23 and I can take the time if you would like.
24 Q. (By Mr. Larson) No, I'm not asking about the
25 script. I'm just asking about the

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1 declaration. I'm asking you, when you signed
2 this declaration and you put that in your
3 declaration, was it true?
4 A. You are asking me to reference, if I'm not
5 mistaken, this call. Am I correct?
6 MS. SASSOON: I think you are
7 confusing the witness.
8 MR. LARSON: No.
9 A. 67?
10 Q. (By Mr. Larson) Look, I'm just asking a much
11 more basic question. You signed an affidavit.
12 You put a statement in there saying that
13 people were off script. You must have seen
14 something --
15 MS. SASSOON: Objection.
16 Q. (By Mr. Larson) -- that suggested to you that
17 people were off script, correct?
18 MS. SASSOON: Objection, form,
19 foundation.
20 A. I'll go back to my previous comments. People
21 can be off script without changing the intent
22 of the call. So for example, a person,
23 although the script may require them to ask
24 what is the date of loss, a CSR may say "When
25 did the damage occur?" Are they technically

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1 off script? The answer is yes. Had they
2 changed the intent of the call? The answer is
3 no. And so when I signed this document, I am
4 admitting to the fact that they may not have
5 been 100 percent scripted. I am not admitting
6 to the fact that they were changing the intent
7 of the conversation.
8 MS. SASSOON: Counsel, this is one
9 of our corporate representatives, this is a
10 30(b)6, so I'm entitled to interject.
11 MR. LARSON: No, you are not.
12 Look, there's no question pending, all right?
13 MS. SASSOON: We are allowed to
14 correct the testimony because it's the
15 testimony of the company.
16 MR. LARSON: You can do that at the
17 end of deposition. If you want to correct
18 testimony, that's fine.
19 Q. (By Mr. Larson) Look, here's my question.
20 MS. SASSOON: I'm in the middle of
21 speaking. The script you put in front of him,
22 I think you are confusing him because you are
23 jumping around between a lot of documents.
24 The section that you went to says "skip if
25 state is Minnesota." So I just want to point

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1 that out so that we are clear about all this
2 mixing of documents.
3 MR. LARSON: That's fine.
4 Q. (By Mr. Larson) Looking at paragraph six
5 again, in your declaration, tell me where I'm
6 going wrong here. I read paragraph six, it
7 says, "Consistent with this possibility."
8 He's talking about balance billing. "Many of
9 the scripts that Safelite Solution uses
10 advises policyholders that they" -- and this
11 is in quotation, your quotation -- "may be
12 responsible for any difference between the
13 price established by their insurance company
14 and the price charged by the non-network
15 shop." It goes on to say, "But none of the
16 scripts tell policyholders that they
17 necessarily will be balance billed for any
18 difference. Accordingly, the examples the
19 defendant cites in his brief reflects
20 statements by customer service representatives
21 that are not consistent with insurance company
22 scripting."
23 So I mean, I read this to mean
24 that you went and looked at some brief, and
25 what you saw, what was in the brief was not

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1 consistent with the scripting; is that not the
2 case? Did you not go and look?
3 MS. SASSOON: Objection, form and
4 foundation.
5 A. No, that's not correct. You are making
6 assumptions that are incorrect. When I looked
7 at the documents at the time of this, this
8 does not specifically state what part of the
9 document may have been unscripted.
10 Q. (By Mr. Larson) So you were talking about
11 something other than balance billing and in a
12 paragraph addressed to balance billing?
13 MS. SASSOON: Objection, form.
14 A. Once again, balance billing is your term. I
15 disclosed in this that we were not unscripted
16 because we do not use the term balancing
17 billing.
18 Q. (By Mr. Larson) All right. Well, I don't
19 think we are going to get anywhere on this,
20 but we'll see what happens. Answer me this,
21 does Safelite ever discipline an employee for
22 going off script on the issue of balance
23 billing?
24 MS. SASSOON: Objection, form.
25 A. You are using the term "balance billing," and

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1 I assume that you are referring to the
2 scripting reflected to being responsible for
3 the difference; is that correct?
4 Q. (By Mr. Larson) Let me ask the question a
5 different way. Has Safelite ever disciplined
6 an employee for telling a policyholder that
7 they would be responsible to pay -- sorry
8 strike that. Has Safelite ever disciplined a
9 customer service representative for telling a
10 policyholder that they would be balance billed
11 by a non-preferred shop?
12 MS. SASSOON: Objection, form.
13 A. I can't specifically cite an example, no. Do
14 I believe they have, yes.
15 Q. (By Mr. Larson) In all the calls that you've
16 monitored, have you ever as a result of that
17 monitored, taken action against a customer
18 service representative as a result of
19 something that the customer service
20 representative said about the possibility of
21 balance billing?
22 A. Me personally?
23 Q. Yes.
24 A. No, because they have always typically been in
25 compliance with scripting. You are asking me

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1 a question --
2 Q. There's no question pending.
3 MS. SASSOON: If he wants to
4 complete his answer --
5 MR. LARSON: He did complete his
6 answer.
7 MS. SASSOON: Did you complete
8 your answer?
9 A. I don't think so, but that's a -- that's up to
10 you guys to decide.
11 MS. SASSOON: Well, if you are
12 still responding to the question pending, then
13 I think the witness should be allowed to
14 complete his testimony.
15 A. You are asking me for a period that covers
16 upwards of 20 years. The answer is yes.
17 Specifically, I cannot state, but we have a
18 history of holding people accountable for
19 offering and honoring preference.
20 Q. (By Mr. Larson) Did you review the
21 transcripts that were attached to Mr. Patton's
22 declaration?
23 A. Mr. Patton?
24 Q. TJ Patton?
25 A. I don't know. I would have to see it.

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1 Q. The one transcript that we put in front of
2 you, you indicated that you had seen that
3 before?
4 A. Which one?
5 Q. It would be Exhibit --
6 MS. SASSOON: 67.
7 Q. (By Mr. Larson) 67.
8 A. Yes, I believe I had seen this one before.
9 Q. Did you do anything to follow up on any of the
10 transcripts that you saw as part of this case?
11 A. No.
12 Q. Did you investigate whether any of the
13 customer service representatives who handled
14 those calls were still working for Safelite?
15 A. No.
16 Q. Did you go and compare the scripts that would
17 have been used at the time of those calls with
18 what was said in the transcripts?
19 MS. SASSOON: Objection,
20 foundation. We don't know the dates of these
21 calls.
22 A. Could you repeat your question? I'm sorry.
23 Q. (By Mr. Larson) Yeah, did you do anything to
24 go -- to take the transcripts that you were
25 seeing and compare them to the scripts that

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1 were being used with that insurance company at
2 the time the cause were made?
3 MS. SASSOON: Objection,
4 foundation.
5 A. No, I did not.
6 Q. (By Mr. Larson) Did anyone at Safelite do
7 that?
8 A. I don't know.
9 Q. Did you direct anybody at Safelite to do that?
10 A. No.
11 Q. Did you review any scripts for any insurance
12 companies before executing -- or strike that.
13 Did you review any scripts in connection with
14 executing the declaration that we put in front
15 of you?
16 MS. SASSOON: Objection, form.
17 A. Did I review any scripts? Specifically as a
18 result of this? This case or --
19 Q. (By Mr. Larson) Let me strike the question.
20 A. I review scripts all the time.
21 Q. Okay. So let's take a look at Exhibit 66
22 again. This is your declaration.
23 A. Uh-huh.
24 Q. And in connection with making this
25 declaration, did you go and review any

Page 63

1 scripts?
2 A. No.
3 Q. So returning then to paragraph six. How is it
4 that you were able to attest that the
5 statements that you were seeing were not
6 consistent with company scripting if you
7 weren't looking at any scripts?
8 MS. SASSOON: Objection, form.
9 A. Well, depends on what -- once again, I don't
10 have the documents in front of me that you are
11 asking me to compare, these, quote, examples.
12 Many times I would know just simply based upon
13 my knowledge of the scripts whether or not we
14 were in compliance or noncompliance.
15 Q. (By Mr. Larson) But you've been testifying to
16 me that you need to know what the date of the
17 call was in order to determine whether the --
18 what the applicable script is, right?
19 MS. SASSOON: Objection, form.
20 A. That is because scripts have many versions and
21 iterations over the life of a program. There
22 may be terminology that was in place on one
23 date that is not in place on a secondary date.
24 Without understanding the exact date of the
25 call and matching it against the script itself

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1 or my knowledge of the script in place at that
2 time, it's hard for me to make a determination
3 if they were in compliance or noncompliance.
4 Q. (By Mr. Larson) But you were able to make the
5 determination when you signed that
6 declaration, right?
7 MS. SASSOON: Objection, form.
8 A. I believe so.
9 Q. (By Mr. Larson) And you did it without having
10 to look at any scripts?
11 A. I don't recall at the time.
12 Q. So are you testifying that you did or did not
13 look at scripts?
14 MS. SASSOON: Objection, form.
15 A. I may have. I just don't remember. I mean,
16 it was a year ago.
17 Q. (By Mr. Larson) Let's turn to the 30(b)6
18 deposition notice. It's Exhibit 63. Looking
19 at topic nine. It says "Plaintiffs' methods
20 for setting compensation of their employees to
21 handle contact with insureds or with
22 independent auto glass service providers,
23 including whether any portion of the
24 compensation paid is conditioned upon success
25 in referring insured to a particular provider

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1 or class of provider, or in obtaining an
2 agreement from a service provider to pricing
3 terms."
4 Let me break that down a little
5 bit. Why don't we just start with, in the
6 narrative fashion, could you describe for me
7 how the compensation of customer service
8 representatives is determined?
9 A. It's a very simple formula. They are paid on
10 their call quality and their adherence to
11 telephone statistics and the service they
12 provide to the policyholders. Nothing more.
13 Q. Are they paid then on an hourly basis?
14 A. Hourly, yes.
15 Q. Are they paid -- is there any component of a
16 week-to-week that varies, depending on the
17 quality of their call handling?
18 A. No.
19 Q. What is the method then for either increasing
20 or decreasing the compensation of a customer
21 service representative?
22 A. Two-fold. The more programs that they are
23 certified and proficient to handle, the more
24 money they can make. And second is their
25 annual performance reviews. Those are the

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1 only two ways that a representative -- a
2 representative's wages can be adjusted.
3 Q. Are there any benchmarks established for the
4 customer service representatives in terms of
5 how successful they are in referring business
6 to a Safelite Auto Glass provider?
7 A. Not for the customer service representatives,
8 no.
9 Q. Well, okay. For the people who handle
10 third-party administrative claims, is there
11 any incentive for them to refer business to
12 Safelite Auto Glass?
13 MS. SASSOON: Objection, form.
14 A. There are absolutely no incentives for the
15 CSRs to distribute business to Safelite Auto
16 Glass.
17 Q. (By Mr. Larson) Are there any targets for how
18 much -- how much business the customer service
19 representatives should be able to refer to
20 Safelite Auto Glass?
21 A. No.
22 Q. I've seen something in the documents where
23 there's an 87 percent target, at least, for
24 customer service representatives to refer
25 business to Safelite Auto Glass. Are you

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1 familiar with that at all?
2 MS. SASSOON: Objection, form and
3 foundation.
4 A. I'm not familiar with the term "target," no.
5 Q. (By Mr. Larson) Okay. You are familiar with
6 the 87 percent percentage, aren't you?
7 MS. SASSOON: Objection, form.
8 A. I'm familiar with the 87 percent, but you are
9 alluding to the fact that it is a target or a
10 goal, and that's not the case.
11 Q. (By Mr. Larson) What is it?
12 A. It is an output of the script that the
13 insurance company has asked us to follow.
14 Q. What happens if you don't achieve 87 percent?
15 MS. SASSOON: Objection, form.
16 A. The insurance company needs to change the
17 script.
18 MR. LARSON: All right. Let's go
19 ahead and mark this as Exhibit 69.
20 (Exhibit 69 marked.)
21 Q. (By Mr. Larson) Can you tell us what Exhibit
22 69 is?
23 A. It looks like a document that may be part of
24 one of our training programs.
25 Q. Have you ever seen this document before?

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1 A. Yes.
2 Q. How is this document used?
3 A. I believe it's used as part of new hire or
4 program training.
5 Q. So there's a reference here to something
6 called a KPI, what is that?
7 A. Key performance indicator.
8 Q. And how does Safelite use key performance
9 indicators?
10 A. How does Safelite use them? It is a
11 reflection of the individual's performance in
12 areas that are controllable by the CSR.
13 Q. So you talked about an annual performance
14 review?
15 A. Uh-huh.
16 Q. Would the CSRs, or customer service
17 representative's ability to hit the key
18 performance indicators be something that would
19 be reflected in their annual performance
20 review?
21 MS. SASSOON: Objection, form.
22 A. Can you repeat the question? I'm sorry.
23 Q. (By Mr. Larson) Yes, so with respect to
24 customer service representatives, you
25 indicated that they go through an annual

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1 review process, correct?
2 A. Correct.
3 Q. Would there be discussion at the annual review
4 about whether they are hitting their key
5 performance indicators?
6 A. Yes.
7 Q. If you turn to page Safelite MN477. There's a
8 list of different key performance indicators;
9 do you see that?
10 A. Yes.
11 Q. And one of the key performance indicators is
12 something called insurance appointment rate 87
13 percent; do you see that?
14 A. Yes.
15 Q. And if we turn further into the document, it's
16 Safelite MN483. There's a discussion of the
17 appointment rate key performance indicator; do
18 you see that?
19 MS. SASSOON: Objection, form.
20 A. Yes.
21 Q. (By Mr. Larson) So what this is indicating is
22 that the customer service representatives
23 should strive to schedule the insured with a
24 Safelite shop 87 percent or more of the time;
25 is that right?

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1 A. No.
2 Q. What's wrong with that statement?
3 A. What this states is that if the policyholder
4 does not have a shop of preference, or if the
5 policyholder has a preference for Safelite, we
6 would like to see the CSR complete the
7 transaction 87 percent of the time.
8 Q. When you say "complete the transaction," what
9 does that mean?
10 A. Schedule an appointment.
11 Q. So the expectation then is if -- or at
12 least -- well, let me ask you this. You said
13 you didn't like to call this a target or a
14 goal; what is this?
15 MS. SASSOON: Objection, form.
16 A. It's an expectation based upon the scripting
17 that this should be the output.
18 Q. (By Mr. Larson) What's the difference between
19 a goal, a target, and a key performance
20 indicator?
21 A. Because there are many -- the biggest
22 difference is this is a general number. But
23 then there are also programs, specific
24 numbers, that you are not speaking to right
25 now where this number would be far lower based

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1 upon the design of the program or the script
2 in play.
3 In this situation, once again, a
4 policyholder -- and this is where I don't
5 think you have a thorough understanding of our
6 business. An "opportunity" -- which is the
7 word that's used in this document. "An
8 opportunity is defined as a customer who has
9 stated no preference or has a preference for a
10 Safelite location through the scripting."
11 So they have cleared that
12 preference hurdle that says I don't care where
13 I go, or I would like to use Safelite because
14 of your brand and top of mind awareness of who
15 they are as a company. In those two
16 instances, we expect the CSR to complete the
17 transaction of scheduling an appointment 87
18 percent of the time.
19 Q. And that would be an issue that would be
20 evaluated at the annual performance review of
21 the customer service representative, correct?
22 MS. SASSOON: Objection, form.
23 A. No, no. You are making an assumption. If you
24 look at MN0000470, okay, the bottom statement
25 very clearly states, "Not all statistics are

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1 considered KPIs or key performance
2 indicators." The reason that that is, is that
3 statistic of 87 percent, which you are quoting
4 on MN0000477, okay? The reason that that 87
5 percent is not a key performance indicator is
6 that it is script dependent.
7 Q. (By Mr. Larson) All right. Well, let's turn
8 to page 477 then.
9 A. 477. Okay.
10 Q. And at the top of the page 477 it says, "There
11 are several statistics/KPIs, including our
12 stat sheet, including one of them being
13 insurance appointment rate, 87 percent"?
14 A. Correct.
15 Q. Are you saying that insurance appointment rate
16 is not in fact an KPI?
17 MS. SASSOON: Objection,
18 foundation. You are misstating the document.
19 A. If you refer to MN0000470, not all statistics
20 are KPIs. So the 87 percent may be a
21 statistic that we track, but it is not a key
22 performance indicator of the performance of
23 the individual. Because if the output of a
24 script only generates a 68 percent insurance
25 appointment rate, we could not negatively hold

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1 a CSR responsible for performance they can't
2 control. Because they must first and foremost
3 offer and honor preference.
4 Q. (By Mr. Larson) Well, let me ask you this,
5 turning back to page 477 then. Which of these
6 things are statistics and which of these
7 things are KPIs?
8 A. ACW is a KPI. Other time is a KPI. Those are
9 probably the only two KPIs here because they
10 are not script related. ACW represents after
11 call work. It is the percentage of time that
12 you take yourself out of the cue in order to
13 handle the next available phone call. So that
14 is something within the discipline and control
15 of the CSR. Other time is miscellaneous time,
16 once again, which is a telephone statistic.
17 All of these other statistics as
18 listed here are reflective of scripting and
19 program design, which means that while there
20 may be numbers listed here for general
21 purposes, it does not mean that these are
22 required in order to achieve an acceptable
23 performance rating.
24 Q. Okay. Turn back then to the deposition
25 notice, topic 10?

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1 A. Which? I'm sorry.
2 Q. Exhibit 63.
3 A. All right.
4 Q. And this is the topic that asks some questions
5 about the management reports that are attached
6 as an exhibit to the topic. So if you would
7 just flip through that exhibit, I'm just going
8 to ask you some questions about these
9 management reports.
10 A. Okay.
11 Q. There is something here called a call center
12 performance report. What is that?
13 A. That is specifically relating to call
14 statistics. It is the -- it's really a
15 reflection of the volume of phone calls coming
16 in, the speed in which they are handled, and a
17 breakdown of the call types within that call
18 volume.
19 Q. Well, what kind of call types could there be?
20 A. It could be a claim, a new claim. It could be
21 a follow-up call to a claim where the
22 policyholder may not have had enough
23 information on the first call, so they had to
24 call us back.
25 Many times policyholders, believe

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1 it or not, won't know the year, make, and
2 model of their vehicle. You know, my wife
3 couldn't tell you what she's driving. She
4 knows that it's nice and it runs, but I don't
5 know if she could tell you much more about
6 that.
7 So there's a variety of reasons.
8 People may call in and end up with us
9 misdirected because they are going through an
10 IVR at the insurance company and they select
11 the wrong prompt or they make the wrong choice
12 and it directs the call to us, only for us to
13 have to redirect them back to their insurance
14 company. So that all plays into a breakdown
15 of the various call types that could be
16 received.
17 Q. There is something you called ASA in seconds,
18 what is that?
19 A. Average speed of answer.
20 Q. And there's something called TTL program, what
21 is that?
22 A. Total program claims.
23 Q. What kind of information would be provided on
24 that subject?
25 A. Hypothetically we received 1,000 calls today,

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1 and out of the 1,000 calls that we received,
2 we generated 400 claims.
3 Q. There is a -- and then there is indication in
4 here that the call center performance report
5 is distributed monthly; is that right?
6 A. Yes, yes. I'm sorry, yes.
7 Q. Is that actually, in fact, what's going on?
8 A. It could be more frequent than monthly, but
9 probably at the broadest range it would be
10 monthly, yes.
11 Q. Do Safelite clients, could they call in and
12 ask for one prepared on a more regular basis
13 or an ad hoc basis?
14 A. Oh, they can, yeah, sure.
15 Q. Is that something that you would handle or
16 somebody else would handle?
17 A. My staff.
18 Q. Okay. There is something here called a claim
19 distribution report. What is that?
20 A. That is a breakdown of -- if you refer back to
21 my example where I said we generated 400
22 claims, okay, this would be a distribution of
23 those claims, and how they were assigned.
24 Q. So let's just go through the bullet points
25 there. One of them says "Safelite total

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1 numbers of claims and percent," what does that
2 mean?
3 A. So let's go back to my example. Of the 400
4 let's say that Safelite got 200 of them. So
5 the number there would be Safelite 200 which
6 represents 50 percent of the total claims.
7 Q. So let me stop you there. When you say
8 "Safelite" what you mean is that the
9 policyholder -- an appointment was scheduled
10 for the work done at a Safelite Auto Glass
11 facility, right?
12 A. Correct.
13 Q. And so the next one --
14 A. I'm sorry, just for clarification, it doesn't
15 necessarily have to be a facility because we
16 offer mobile service as well.
17 Q. Okay. The work was going to be performed by
18 Safelite?
19 A. Yes.
20 Q. So there's also something here called network
21 total number of claims and percent, what is
22 that?
23 A. That would be -- there's various terms that
24 are used here. Sometimes it is referred to as
25 an "approved provider" within a program.

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1 Sometimes it is referred to as an "affiliate
2 shop." Sometimes it's referred to as a
3 "network shop." This would -- once again,
4 going back to the original denominator of 400
5 that I used in the previous example, we would
6 now total the number that qualified under this
7 network and what percent does it represent of
8 the denominator.
9 Q. Let me ask you this, where was this data being
10 pulled from?
11 MS. SASSOON: Objection, form.
12 A. Where was it being pulled from? It's being
13 pulled from the Safelite data warehouse.
14 Q. (By Mr. Larson) So the Safelite data
15 warehouse is able to, for instance,
16 distinguish which claims are going to be
17 served by Safelite, which claims are going to
18 be served by network shops, and which claims
19 are going to be served by somebody who's not
20 in network or not Safelite, correct?
21 A. Yes.
22 Q. The next line here says, "O&A, total number of
23 claims and percent." What does that mean?
24 A. The number -- I believe -- I'm a little vague
25 on this, I haven't seen that category in a

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1 long time. But I believe what it's referring
2 to is the number of times O&A was offered as a
3 percentage of the phone calls or the claims
4 created.
5 Q. And the O&A, that's that offer and acceptance
6 language we've seen in some of the scripts?
7 A. Yes.
8 Q. And typically, that would only be read if
9 there's contact between the Safelite customer
10 service representative and a non-network shop,
11 correct?
12 A. Can you repeat that?
13 Q. Yeah. Typically the O&A language, the offer
14 and acceptance language, would only be read
15 where there's contact between the Safelite
16 customer service representative and a non
17 network glass shop?
18 A. For the purpose of this program, the answer is
19 yes. I don't know if insurance companies,
20 when they are speaking to their
21 policyholders -- I don't know what insurance
22 companies are saying. They could be doing the
23 exact same thing.
24 Q. I'm not asking about the insurance, I'm just
25 asking what Safelite is doing when it's

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1 doing -- reading the O&A language. I want to
2 make sure you understand that.
3 A. Okay.
4 Q. There's another line here, "not assigned
5 number and percent"; what does that mean?
6 A. Once again, we'll go back to the original
7 denominator of 400. "Not assigned," means
8 that a claim was actually opened, but at the
9 time of the phone call, the policyholder chose
10 not to select a shop for whatever reason.
11 Many times it's because it may be a spouse's
12 car, and the person calling in the claim says
13 "I'm going to need to check with my spouse. I
14 don't know when he's available or when she's
15 available to have the work performed. I don't
16 know when the vehicle is going to be
17 available." So the claim is opened, they have
18 notified us of the loss, but they are not
19 obligated to choose a shop on that phone call.
20 Q. And there's a line here that says, "Number of
21 repairs, qualified and the percent." What
22 does that mean?
23 A. This is a repair versus replacement. So many
24 times with a windshield, the damage can
25 actually be repaired versus the windshield

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1 actually having to be replaced. So to
2 calculate this number, it would be that 400
3 claims, then broken down to the number of
4 those claims that are windshield, then broken
5 down by what percentage of those windshield
6 could actually be repaired versus having to be
7 replaced based upon the severity of the
8 damage.
9 Q. All right. Moving to the next report it says,
10 "state report." What is the state report?
11 A. I believe it is just a breakdown of the total
12 volume or the total volume of claims broken
13 across -- "broken across," that's bad
14 terminology. Reflected by state, I guess.
15 Q. And again, that data is being pulled from
16 Safelite's data warehouse; is that correct?
17 A. It doesn't need to be necessarily for the
18 purposes of this report. The answer would be
19 yes, but being that a claim is filed with the
20 insurance company, they would also have access
21 to this information because they have a
22 breakdown of all of their internal claims.
23 Q. There is something called a GAI report; what
24 is that?
25 A. Reflects guaranteed average invoice.

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1 Q. And what is a guaranteed average invoice?
2 A. It is the average price or the average
3 severity or expense that the insurance company
4 is going to pay for the claims that were
5 filed.
6 Q. And I've seen some contracts between Safelite
7 and its insurance clients. And at least some
8 of those contracts include provision -- and
9 I'll characterize this, but what appears to be
10 going on is that Safelite is providing a
11 guarantee as to what the average cost of
12 each --
13 MS. SASSOON: Objection.
14 Q. (By Mr. Larson) What the claims are going to
15 be?
16 MS. SASSOON: I think we are
17 straying beyond topic ten and the limited
18 purpose for which you were going to cover in
19 this line of questioning.
20 MR. LARSON: That's fine, you can
21 answer.
22 A. I'm not sure you actually asked me a question.
23 Q. (By Mr. Larson) Okay. I've looked through
24 some of the Safelite contracts with its
25 insurance clients, and one of the things I've

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1 seen in there occasionally, not in all of
2 them, is that Safelite will occasionally in
3 some of these contracts guarantee essentially
4 an average claim, cost per claim, that comes
5 in. Is that something that Safelite does for
6 some of its insurance companies?
7 MS. SASSOON: Objection.
8 A. Is that something -- yes.
9 Q. (By Mr. Larson) And then what happens in this
10 case if the average claims is higher than
11 what's guaranteed in the contract?
12 MS. SASSOON: Objection. You told
13 me you weren't going to be asking about these
14 topics at this deposition. So I just want to
15 be clear on where you're going with this.
16 MR. LARSON: Well, it goes to --
17 well, I'm not going to ask many more
18 questions, so let's get the answers out and
19 then --
20 MS. SASSOON: Rick, are you
21 comfortable with this?
22 MR. SNYDER: Well, I think the
23 objection is that it doesn't seem to be one of
24 your topics that you've asked the company to
25 produce a witness to speak on.

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1 MR. LARSON: Right. You can
2 object to it, and the impact of that is that
3 the company is not bound by the answer, but
4 he's still required to answer the question.
5 MS. SASSOON: Okay. So I'll renew
6 my objection, that this is not within the
7 scope of the 30(b)6 topics. But you can
8 answer.
9 A. Can you repeat the question again?
10 Q. (By Mr. Larson) Yeah. What happens when --
11 strike that -- what happens if the average
12 claim cost exceeds what Safelite has
13 guaranteed to its insurance clients?
14 A. I think that would depend on each insurance
15 program and the way the contracts are written.
16 Q. In general what happens?
17 MS. SASSOON: Objection, I also
18 think this is beyond the scope of this
19 witness. There is no foundation that this is
20 his area of knowledge or expertise, so.
21 MR. LARSON: If he doesn't know,
22 he can say he doesn't know.
23 A. I can't speak to it with certainty.
24 Q. (By Mr. Larson) Do you have any sense of what
25 happens?

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1 A. In some cases, but not in general, no.
2 Q. In the cases that you are familiar with, what
3 happens when the average costs exceeds the
4 cost that was guaranteed by Safelite?
5 MS. SASSOON: Objection,
6 foundation.
7 A. Either -- it really -- well, it really
8 depends. Because the reason that it's such a
9 vague question that you are asking me is when
10 we go into a program with an insurance company
11 and a GAI is established, the scripting has
12 got to support the GAI. In other words, if
13 the script does not align with the expected
14 business outcome, because the CSR can only
15 read the -- and apply the script. The CSR
16 doesn't have the ability to deviate beyond the
17 script.
18 So if the insurance company
19 provides us a script that does not generate
20 the GAI, the insurance company in many cases
21 will be responsible for that because it's
22 their script, it's their program. Some
23 programs, the insurance company would accept
24 full responsibility. Some are a
25 collaborative. You are asking me a question

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1 that's very broad. I'm not sure I'm qualified
2 to answer it in specifics.
3 Q. (By Mr. Larson) Let me ask you a couple of
4 related questions that might be simpler. What
5 you are testifying to is that there is a
6 relationship between the guaranteed average
7 invoice and the scripting language; is that
8 right?
9 MS. SASSOON: Objection, form,
10 foundation. Beyond the scope of the 30(b)6.
11 A. There can be, yes.
12 Q. (By Mr. Larson) Meaning that, as I take it --
13 I think what you are trying to tell me is that
14 the scripts have to be written in a way that
15 would allow Safelite to achieve the guaranteed
16 average invoice, if there is one?
17 MS. SASSOON: Same objections.
18 A. The scripts typically support the design of
19 the program and the objectives that the
20 insurance company may have, yes.
21 Q. (By Mr. Larson) All right. Let's move to the
22 next report here. It says, "Executive
23 summary." What is the -- I mean, I can see
24 what it reads here, but maybe just kind of in
25 a simple form tell me what is the executive

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1 summary?
2 A. It is basically a report back to the insurance
3 company summarizing how their program is
4 performing.
5 Q. Are they provided with any kind of analysis
6 that maybe where they stand in the industry or
7 whether they are high or low on particular
8 issues?
9 A. Yes.
10 Q. So there is something here called a cycle time
11 report, what is what?
12 A. Cycle time is an insurance industry term that
13 measures the cycle or the elapsed time from
14 the moment the claim is reported until the
15 policyholder is made whole. And it can also
16 impact shops.
17 Q. All right. So can we back up then? I just
18 want to ask a general question based on what
19 you told me. So you have this, what you call
20 the Safelite data warehouse. What is that?
21 A. In my non-technical terminology, it is the
22 place where all of the data is stored within
23 our IT function.
24 Q. Is that outsourced in any way or do you guys
25 run that for yourselves?

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1 A. It's all internal.
2 Q. Let me ask you this, would there be a way of
3 querying your database -- if I gave you the
4 following task, if I said I wanted to find
5 just claims involving people -- claimants from
6 Minnesota and a particular insurance company
7 that ultimately were placed with a non-network
8 shop, would there be a way of querying the
9 database to pull that type of information?
10 A. It would be cumbersome. And I'm not sure that
11 it would be all inclusive, but there may be a
12 way.
13 Q. When you say it's cumbersome; what's the basis
14 for saying that'll be cumbersome?
15 A. Well, typically the data is by -- sorted by
16 insurance provider. And then how that
17 information is broken down, I think it would
18 have to be a segregation by provider into an
19 accumulation of total records. And there's
20 hundreds of providers, so that would be the
21 difficulty.
22 Q. So would it make it easier then if we were to
23 limit it just to one provider or set of
24 providers, would that make the task easier?
25 A. Probably.

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1 Q. And I guess what I'm getting at here -- and
2 there's no point in me hiding this. What
3 we've been told is it's very difficult for
4 Safelite, for instance, to pull call
5 recordings that are related to Minnesota, or
6 pull call recordings which ultimately the
7 account was placed with a third-party shop.
8 So that's what I'm interested in knowing. It
9 seems to me, based on what I'm seeing here,
10 that there's at least some ability to break
11 down your records by Minnesota, or by whether
12 the -- whether the claim eventually got placed
13 with a third-party shop or not?
14 MS. SASSOON: Objection to form.
15 A. Is that a question?
16 Q. (By Mr. Larson) The question is where am I
17 wrong about that? What are the obstacles to
18 pulling information that way?
19 A. Well, because you are confusing terminology.
20 All of your questions to date relative to this
21 document have been around the data warehouse.
22 Recorded calls don't reside within the data
23 warehouse.
24 Q. So the data warehouse, though, could generate
25 for me a claim number or something like that

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1 that could then be used to search for
2 recordings?
3 A. Yes.
4 Q. Okay. So the data warehouse could give me
5 the -- if I asked for, you know, a particular
6 insurance company, claimants from Minnesota,
7 that got placed with a third-party shop, the
8 system could generate for us a list of those
9 claims?
10 A. I believe so.
11 Q. Okay. And then the way that you organize then
12 the recordings, you could tie out the claim
13 numbers to recordings; is that accurate?
14 A. No, not necessarily. There would have to be
15 an identifier in the record that allows me to
16 make a one-to-one match. And that may not
17 always be the case.
18 For example, if you take the state
19 of Minnesota call volume populations, that has
20 been recorded, for example -- let's say you
21 called in on your cell phone to report the
22 call, to report the claim. But the phone
23 number in the record is your home phone. If
24 we were trying to do an inquiry on the phone
25 number, we may not be able to find the match.

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1 And there are only certain data fields that
2 allow us to complete that query or that
3 search. And so it does not necessarily mean
4 that I would be able to give you a one-to-one
5 representation of calls to claims.
6 Q. So there must be some kind of data that's
7 associated with the different call recordings,
8 correct?
9 A. Data that's associated with it?
10 Q. Identifying data?
11 A. Yes, and phone number would be one of them.
12 Q. What other identifying data is associated with
13 each recording?
14 A. Insurance company. Time of day. Day of the
15 week, date. Those tie back.
16 Q. What about the name of the insured?
17 A. No, from the name you would get the phone
18 number, and from the phone number you would do
19 the query.
20 Q. Okay.
21 A. So that's why it's not necessarily one-to-one
22 relationship. There might be additional ways,
23 but the most common is based upon phone
24 number.
25 Q. Okay. So and tell me if I'm wrong here, what

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1 I'm hearing you say is that a task like this
2 could be done, but you would not be able to
3 guarantee you would be pulling 100 percent
4 recordings because there could be mismatches
5 between the data warehouse and the identifying
6 information associated with the call
7 recordings; is that right?
8 A. And it would be very time consuming and
9 cumbersome, yes.
10 Q. What would make it time consuming or
11 cumbersome?
12 A. Well, the fact that in order for us to know
13 what we are sending you, we would once again
14 have to do a query. And this isn't a query
15 where you can just say all phone numbers, you
16 run it again, all phone numbers in the data
17 warehouse, run them again. You have to run
18 them one at a time. Phone number, search.
19 Phone number, search. Phone number, search.
20 So this isn't something where you just
21 basically say give me all and assume that they
22 are a match. It doesn't work that way.
23 Q. Okay. So let me ask you this then, if we
24 scale it down and we agreed to limit in some
25 fashion the scope of it -- so I'm not sending

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you out searching for a million telephone numbers, I'm sending you out searching for 100 telephone numbers or 200 telephone numbers.
I think what you are telling me, and tell me if I'm wrong, is it's possible that we could take again these kind of things, like a Minnesota claim that got placed with a non-network shop, generate some phone numbers, run that against the recordings, and we would get some recordings. Maybe not all of the recordings, but we would get some recordings; is that accurate?
A. Yes.
Q. Okay.
MS. SASSOON: Should we take a break?
MR. LARSON: Yeah, why don't we take a break.
(A short recess was taken.)

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Q. (By Mr. Larson) All right. So we are moving away from the 30(b)6 part of the deposition and more just to the general deposition here. So I want to start by, again, just discussing with you the issue of balance billing. Let me ask you this, are you aware of any instance which any Minnesota policyholder has actually been balance billed by their auto glass provider?
A. In over 25 years, yes, I've heard of it from policyholders. But I mean, being that we are covering a period of 20 years, or 15, 20 years, I could not state specifics, no.
Q. When you say -- you say you had contact with customers, insurance customers?
A. Insurance customers had called into the contact center and made reference to the fact that the shop that they had selected was going to charge them x amount more, yes.
Q. Okay. Let's break that down. When you say "insurance customer," are you referring to the policyholder?
A. Policyholders, yes.
Q. Okay. And so you are aware of calls that Safelite has received from policyholders in

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which they have indicated what?
A. That the shop that they selected was going to charge them out-of-pocket expense that they were not expecting to incur.
Q. So was this before or after the fact?
MS. SASSOON: Objection, form.
A. I don't remember. They may have been calling us prior, they may have been calling us after. I don't know.
Q. (By Mr. Larson) Well, what reason would a policyholder have to call you up and tell you that they had been balance billed?
A. In some cases in --
MS. SASSOON: Objection, foundation.
A. In the situations where I know that it happened before the policyholder was actually calling in, asking if we could find them a shop that would not charge more than the insurance company was willing to pay.
Q. (By Mr. Larson) Okay. So this was a situation that you are familiar with where at least the work had not yet been done?
A. In that situation, correct, that I just stated.

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Q. Okay. What, if anything, -- was it a specific call that you recall or --
A. Yes, yes. It was a phone call.
Q. And was it a phone call that you took or a phone call that you monitored?
A. It was a phone call that was brought to my attention, and as a result of that phone call, it's one of the reasons why I collaborated with the insurance companies to determine whether or not we needed to bring clarity, the phone call, for the policyholder during the first notice of loss.
Q. When did this phone call occur?
A. I don't know. It would have been phone calls. I typically don't make recommendations around program design unless it's happening on a somewhat frequent basis. And it would have been late '90s, early 2000s.
Q. Do you recall anything else about these phone calls?
A. It was just inconvenient for the policyholder. The policyholder was stressed, and in the spirit of wanting to provide a world class claims experience, they have already been through the traumatic situation of having, you

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1 know, their vehicle damaged, vandalized, or
2 whatever may have happened to the vehicle. We
3 want the claims process to be very smooth,
4 convenient, and stress free.
5 Q. Are you familiar with calls -- strike that.
6 Are you familiar with Alpine Glass?
7 A. Personally, no. I know the name, that's all I
8 know.
9 Q. Are you familiar with Mike Reid (phonetic)?
10 A. No.
11 Q. Have you ever had contact with anybody from
12 Alpine Glass or Mike Reid?
13 A. Not that I'm aware of, but it's possible over
14 my 24 plus years with the company, they may
15 have called me. But I would not have
16 recognized them as anybody --
17 Q. Have any independent glass shops in Minnesota
18 contacted you to let you know that they do not
19 engage in balance billing?
20 A. No.
21 Q. Have you ever monitored any calls in which
22 the -- a representative of the independent
23 glass shop is on the phone with the
24 policyholder at the time of the call?
25 A. Yes.

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1 Q. And in any of those calls, has the
2 representative of the independent glass shop
3 indicated that they do not engage in balance
4 billing?
5 MS. SASSOON: Objection, form.
6 A. I wouldn't say they used the term "balance
7 billing." It's a very disruptive and chaotic
8 call for the policyholder, because in many
9 cases these glass shops behave
10 unprofessionally. We are simply relaying the
11 script as required by our insurance clients,
12 and you get these interjections from the shops
13 who -- and sometimes have even used profanity
14 in the conversation as if there is some motive
15 to what's going on in the context of the call.
16 And it -- it puts the policyholder in a very
17 bad situation because they don't understand
18 the industry. They don't understand the laws.
19 They don't understand the policyholders.
20 A personal experience in auto
21 glass claim may be once every seven years,
22 maybe. And so there it's unchartered waters
23 for them, and they are speaking to a
24 representative who's trying to process their
25 claim and assist them and educate them on what

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1 they are entitled to as a policyholder. And
2 then you have somebody else, you know,
3 speaking over here who's basically, you know,
4 combative or argumentative or, you know,
5 creating a debate. And it's just a bad
6 experience for the policyholder, which is
7 unfortunate because our entire model is built
8 around delivering on that policyholder
9 experience. And in those situations, it's
10 unfortunate that it gets interrupted the way
11 it does.
12 Q. (By Mr. Larson) Well, let me ask you this,
13 have you ever monitored a call in which there
14 was a representative in the independent class
15 shop on the call, and on the call the
16 representative said that the policyholder
17 would have no out-of-pocket costs for the
18 work?
19 A. Yes.
20 Q. And have you ever monitored a call in which
21 that happened and the customer sales
22 representative, a customer service
23 representative of Safelite, nonetheless, still
24 instructed or still advised the policyholder
25 that they would be responsible for balance

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1 billing issues?
2 MS. SASSOON: Objection, form.
3 A. Possibly. I can't state specifically, but
4 that -- that may have occurred, especially if
5 the insurance program's script requires us to
6 at least make them aware. And I think the
7 question would become did we say it before or
8 after. And I don't know the answer to that
9 specifically, unless you had a specific call
10 you were referencing.
11 Q. (By Mr. Larson) Well, we can take a look at a
12 couple of calls. But let me ask you this,
13 would you think it's appropriate for a
14 customer service representative, Safelite, to
15 tell a policyholder they might be balance
16 billed after the representative at the shop
17 had said in the very same call that they would
18 not have any out-of-pocket expense?
19 MS. SASSOON: Objection, form.
20 A. Do I think it's appropriate?
21 Q. (By Mr. Larson) Do you think it's
22 appropriate?
23 A. If it's used in the educational and
24 informative sense for which it was designed,
25 yeah, I think it's appropriate.

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1 Q. Well, you've talked about not wanting to
2 increase the stress or confusion of the
3 policyholder. I mean, isn't it confusing to
4 the policyholder to be told by the shop doing
5 the work, "You are not going to have to pay
6 anything out of pocket," and then being told
7 by Safelite that they might be billed
8 something out of pocket?
9 MS. SASSOON: Objection, form.
10 A. I think the answer to your question is in the
11 how. You know, the one thing that scripts and
12 transcripts of phone calls don't reflect is
13 the tone, the attitude, the volume of the
14 interaction. I think if you are providing a
15 public or policyholder service in the spirit
16 of just creating an awareness due to the lack
17 of experience, I think it is more times than
18 not viewed favorably by the policyholder that
19 their insurance company or insurance company
20 representative is taking the time to inform
21 them as to how this entire process works so
22 that way there are no surprises. I don't
23 think it's necessarily a negative unless it is
24 done in a combative or argumentative way.
25 Q. (By Mr. Larson) Let's take a look at Exhibit

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1 67. Take a look at page 11. And you can see
2 here there is a -- it's a call between a
3 policyholder with the initial K.B., a Safelite
4 representatives, with the initials B.C. and
5 Lisa R., who's Lisa Rose R. of Rapid Glass.
6 And I want to focus your attention on page 11
7 about four lines down there's a line that
8 starts "Lisa R., no, we do not agree." Do you
9 see that?
10 A. Yes.
11 Q. And it says, "No, we do not agree to those
12 rates, but we do guarantee to the client if
13 there are any pricing differences, she would
14 not be getting a bill from Rapid Glass. We
15 would work directly with the insurance
16 company." Do you see that?
17 A. Yes.
18 Q. And if we turn to -- if we look down then, a
19 few lines down, there is a line from B.C.
20 where it says, "B.C., Okay. And so." Do you
21 see that line?
22 A. Yes.
23 Q. And it reads, "Okay, and so (K.B.) since the
24 shop has disagreed to our pricing, I must
25 inform you that AAA is willing to pay no more

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1 than $337 and 30 -- or excuse me, 30 cents to
2 have the work completed. And that price does
3 not include sales tax or the cost of molding
4 if requires. Therefore, if you still wish to
5 use this shop, just confirm with them that the
6 price -- what the price will be, and make sure
7 it does not exceed three $337.30." Do you see
8 that?
9 A. Yes, I do.
10 Q. A mean, given that Lisa R. already told the
11 policyholder that she's not going to be
12 receiving a bill for whatever is done, do you
13 view it as appropriate for Safelite then to
14 tell her then that she needs to make sure that
15 the bill isn't going to exceed $337.30?
16 MS. SASSOON: Objection form.
17 A. Okay. I'm going to have to go back through
18 this call. The reason being is you're making
19 reference that this has been stated to the
20 policyholder. This is a conversation that's
21 taking place between us and the shop, and I
22 just need to make sure in this phone call that
23 the policyholder is on the line at this point
24 in time. Because many times these dialogues
25 take place with the policyholder not on the

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1 line.
2 Q. (By Mr. Larson) Okay. Well, if you look on
3 page 11, three or four lines up from what I
4 just pointed to, do you see where it says
5 "initials, K.B. insured"?
6 A. Yes, I see it now.
7 Q. So she's on the call at this time, correct?
8 A. Yep, she is.
9 Q. So again, is it appropriate for Safelite to be
10 telling a policyholder that they need to make
11 sure that the price doesn't exceed what the
12 insurance company has set if the independent
13 glass shop has already represented to the
14 policyholder they are not going to receive a
15 bill?
16 A. Yes.
17 MS. SASSOON: Objection, form.
18 Q. (By Mr. Larson) You consider that to be
19 appropriate?
20 A. Yes.
21 Q. Do you think that's potentially confusing to
22 the customer?
23 MS. SASSOON: Objection, form,
24 foundation.
25 A. No, I think it's just a confirmation, and once

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1 again, creating the awareness that while it's
2 being said, it doesn't necessarily mean that
3 that is going to be the case. And you need
4 to -- what's the term, buyer beware? I think
5 this is just making them aware that if it does
6 in fact happen, you are responsible.
7 Q. (By Mr. Larson) You said you wanted to reduce
8 the stress on the calls. Do you think that's
9 conflicting information? Is it increasing or
10 decreasing the stress on the policyholder?
11 A. I think policyholders trust their insurance
12 company to provide them with guidance and
13 education. And I believe that this provides
14 them with peace of mind that they fully
15 understand how this claim is going to be
16 handled.
17 Q. But Safelite isn't their insurance company, is
18 it?
19 A. We represent their insurance company via the
20 script that the insurance company has
21 designated to us.
22 Q. Meaning Safelite's not the insurance company,
23 is it?
24 MS. SASSOON: Objection, form.
25 Q. (By Mr. Larson) You are saying that -- strike

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1 that. What you've just told me or just
2 testified to is that you think that customers
3 get comfort by what they are being told by
4 their insurance company?
5 MS. SASSOON: Objection, form.
6 Q. (By Mr. Larson) But Safelite is affiliated
7 with the competitor on the line. It's not the
8 insurance company, it's the competitor of the
9 shop that's on the line, correct?
10 MS. SASSOON: Objection,
11 argumentative.
12 A. First of all, I never said that the
13 policyholder gets conflicting information from
14 their insurance company, I never stated that.
15 What I stated is that in a three-way phone
16 call, a conflict can arise when the
17 representative is informing the policyholder
18 of the features, benefits, right and
19 entitlements, while a glass shop is
20 interjecting and creating disruption in the
21 phone call. I never stated that the insurance
22 company is creating the conflict.
23 Q. (By Mr. Larson) Well, who's creating the
24 disruption in this call? Lisa R or the
25 Safelite representative?

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1 MS. SASSOON: Objection, form,
2 foundation.
3 A. You are assuming that there is disruption in
4 that phone call. As I stated earlier, I would
5 have to actually listen to the call, listen to
6 the phone, listen to the volume, listen to the
7 emotion associated with the call, in order to
8 determine whether there's any disruption
9 taking place in this call whatsoever. That
10 disruption word is yours, not mine.
11 Q. (By Mr. Larson) Well, Safelite has an
12 incentive, does it not, to see that calls --
13 to see that work is performed not by
14 independent glass shops but instead by
15 Safelite or network providers, correct?
16 MS. SASSOON: Objection,
17 foundation.
18 A. Safelite has an incentive. You would have to
19 describe the incentive to me, what are you
20 referring to.
21 Q. (By Mr. Larson) Well, Safelite Solutions and
22 Safelite Auto Glass are part of the same
23 company, correct?
24 A. They operate under the same parent, correct.
25 Q. Right. So the parent company benefits when

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1 Safelite Solutions is able to convince
2 policyholders to use Safelite Auto Glass to
3 perform the work rather than an independent
4 glass shop, correct?
5 A. Safelite benefits when Safelite Solutions
6 properly executes the program designs of the
7 insurance companies.
8 Q. Safelite -- I'm going to ask you this,
9 Safelite Auto Glass, the parent company, is
10 that the name of the parent company?
11 A. Safelite Group.
12 Q. Safelite Group is the parent company?
13 A. I believe so, yes.
14 Q. Okay. So Safelite Group makes more money when
15 work it performed by Safelite Auto Glass than
16 when work is performed by an independent glass
17 shop, correct?
18 MS. SASSOON: Objection,
19 foundation.
20 A. Not necessarily.
21 Q. (By Mr. Larson) What do you mean "not
22 necessarily"?
23 A. In GAIs, for example, okay, there are times
24 where because of the GAI, Safelite may not
25 make anything. So I mean, you are asking the

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1 questions as if it's an absolute, and my
2 response is that the margins, or any money
3 made, differs by program, differs by price of
4 the programs, differs by terms and conditions
5 of the program, differs based upon the amount
6 of expense sunk into the program. You are
7 asking me for a blanket statement against a
8 lot of variables that are reflected in the
9 business model by company.
10 Q. Does Safelite Solutions, is it profitable on
11 its own?
12 A. I believe so, yes.
13 Q. Do you know one way or the other?
14 A. Yes, it is.
15 Q. Okay. Did there come a period of time in
16 early 2015 when Safelite stopped reading
17 language on balance billing issues to
18 Minnesota insureds?
19 A. I believe so, yes. For some insurance
20 companies, I'm not sure if it did for all.
21 Q. Is there any adverse impact on Safelite's
22 business as a result of not reading the
23 balance billing language?
24 MS. SASSOON: Objection,
25 foundation.

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1 A. I don't -- I haven't looked at the statistics
2 to tell you what's happened to Safelite's
3 business since we stopped doing it.
4 Q. (By Mr. Larson) So as you sit here today, you
5 are not aware -- strike that. As you sit here
6 today, you don't know whether or not the
7 cessation of reading balance billing type
8 language in scripts has adversely impacted
9 Safelite's business; is that fair?
10 MS. SASSOON: Objection, form.
11 A. I think it's fair. I don't -- I think there's
12 some confusion relative to the importance of
13 the data. I don't look at a lot of data
14 necessarily based upon law, state by state by
15 state. I look at adherence to the scripts,
16 adherence to the program designs, and if I'm
17 doing that, once again, all the data is an
18 output. So I don't get hung up on the numbers
19 as much as I do script adherence and
20 compliance to program designs.
21 Q. (By Mr. Larson) That's fine. I think what
22 you are telling me is it's not your job to
23 look at the finances and see if the scripts
24 are having an impact on Safelite's finances,
25 is that what you are telling me?

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1 A. Correct.
2 Q. Whose job would that be?
3 A. I think it would probably be the
4 responsibility of the finance department as
5 well as whoever the individual is that's
6 responsible for that insurance company account
7 relationship.
8 Q. What about the insurance companies? The
9 insurance companies who, starting in early
10 2015, stopped reading balance billing type
11 language to its policyholders? Are you aware
12 of any adverse impact on those insurance
13 companies?
14 MS. SASSOON: Objection,
15 foundation.
16 A. No, I'm not, but I haven't inquired either.
17 Q. (By Mr. Larson) Other than these calls that
18 you described to me in which policyholders
19 complained about either balance billing or the
20 prospect of balance billing, have you done
21 any -- you personally, have you done any other
22 investigation into whether balance billing
23 occurs in Minnesota?
24 A. The only -- no, I haven't done any
25 investigation. But things have been brought

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1 to my attention, such as invoices that have
2 been submitted where there are statements of
3 the fact -- at the bottom of the invoice, for
4 example, that, you know, the policyholder or
5 the customer may or will -- or I don't know
6 exactly what the language is -- be responsible
7 for any difference that the insurance company
8 may not be willing to pay.
9 Q. Did you contact any of those shops to see
10 whether they are, in fact, engaged in balance
11 billing?
12 A. No, I did not.
13 Q. Do you know if anybody else at Safelite did
14 that?
15 A. No, I do not.
16 Q. Are you aware whether anybody else at Safelite
17 has ever investigated the preference of
18 balance billing in Minnesota?
19 MS. SASSOON: Objection, form.
20 A. Can you repeat the question? Sorry.
21 Q. (By Mr. Larson) Are you aware of whether or
22 not anybody else at Safelite has investigated
23 the preference of balance billing in
24 Minnesota?
25 A. No, I'm not -- I wouldn't know.

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1 Q. If a policyholder is put in touch with
2 Safelite and it does not want to have their
3 claim handled through Safelite, what other
4 options do they have?
5 MS. SASSOON: Objection,
6 foundation.
7 A. Does not want to have their claim handled
8 through Safelite? Explain to me what you mean
9 by claim handled? You mean the phone call? I
10 mean, what is it that you are referring to?
11 Q. (By Mr. Larson) Any part of it. They just
12 don't want to interact with Safelite and they
13 want to deal with their insured directly?
14 MS. SASSOON: Same objection.
15 A. Well, I mean once again, it depends on which
16 part of the transaction you are referring to.
17 If you are referring to if they don't want
18 Safelite to do the work, then Safelite doesn't
19 do the work.
20 Q. (By Mr. Larson) Strike that. I don't want to
21 talk about the work, I was probably confusing
22 on that. I want to talk about the third-party
23 administrator portion of this.
24 A. Okay.
25 Q. So somebody contact Safelite, finds out that

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1 Safelite is a third-party administrator,
2 doesn't to want deal with Safelite. What
3 options do they have?
4 A. It depends on the program. At the beginning
5 of the phone call we disclose who we are and
6 say who Safelite Solutions is. We disclose in
7 almost all cases, if not all cases, our
8 relationship with Safelite Auto Glass. It's
9 in a prerecorded announcement, so every
10 policyholder calling in should hear it. If
11 they don't want to do business with us, they
12 can hang up and call back to the insurance
13 company and speak to an agent or another claim
14 representative within the insurance industry.
15 How they do that, I don't
16 specifically know. But it's not uncommon for
17 policyholders to reach out specifically to
18 their insurance agent anyway, because more
19 times than not, that's where the initial
20 relationship was founded. Somebody sold you a
21 policy, and as a result, you know me, you may
22 contact me first anyway.
23 So I can't give you specifics as
24 to what they end up doing, but there's
25 multiple avenues that they can take.

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1 Q. In your experience, do most of the insurance
2 companies that Safelite deals with allow
3 policyholders to submit claims through their
4 insurance agent?
5 A. Most? Was that the term you used?
6 Q. Yes, that's the question, yeah.
7 A. I wouldn't say "most." I would say there are
8 plenty that do, but I couldn't -- I wouldn't
9 define it as most.
10 Q. Does Safelite as a TPA, does it handle calls
11 that come in from insurance agents?
12 A. Yes.
13 Q. And is there a set policy on how Safelite
14 deals with those calls?
15 A. Yeah. Typically most insurance companies,
16 when it comes to a call received by an
17 insurance agent, most and possibly all -- I
18 would have to go through and really analyze
19 it -- but most, even though the agent is
20 calling it in, still require us to speak to
21 the policyholder in order to offer honor
22 preference and discuss with them the features
23 and benefits.
24 The agent really places the call
25 as a courtesy in respect to their policyholder

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1 to get the ball rolling. But most insurance
2 companies, if not all, require us to speak to
3 the policyholder when it comes to that
4 critical question of offering and honoring
5 preference.
6 Q. So returning to my original question then, if
7 I'm a policyholder and I don't want to deal
8 with Safelite, and what you are telling me is
9 that even if I contact my insurance agent, I'm
10 still going to have to be put on the phone
11 with Safelite. What are my other avenues then
12 if I just don't want to deal with Safelite?
13 MS. SASSOON: Objection, form.
14 A. Well, a couple of things. First of all, the
15 insurance company always has the authority to
16 say to the policyholder, "Have the work
17 performed and submit the bill to us." I mean,
18 it's no different than if you were in an
19 automobile accident, your insurance company
20 may say to you, "Get me two or three
21 estimates, and, you know, we are going to let
22 you go wherever you want." So that avenue is
23 always open to the policyholder.
24 There are other times when the
25 insurance agent may end up giving us a certain

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1 amount of information, educating the
2 policyholder as to what's going to happen, and
3 then putting the policyholder on the phone as
4 a way of holding their hand and comforting
5 them and letting them know that they are going
6 to see -- they are going to be by their side
7 to see them through the transaction.
8 There are a lot of different
9 avenues that they can take. I can't speak to
10 exactly which one is more frequent than
11 another, but if a policyholder does not want
12 to speak with Safelite, there are avenues for
13 them to avoid that.
14 Q. (By Mr. Larson) How would the policyholder
15 get ahold of their insurance company directly?
16 A. It's typically on their insurance claim card.
17 Q. My understanding, and tell me if I'm wrong
18 though, is if I have an auto glass claim and I
19 call the number that's on the back of my
20 insurance card, if Safelite is TPA for that
21 insurer, I'm going to get put through to
22 Safelite, correct?
23 A. If they select that prompt. But you can
24 select any prompt off of their IVR or their
25 automated attendant that is not glass related

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1 and it will get you to a claims
2 representative --
3 Q. So --
4 A. -- of the insurance company.
5 Q. So I would have to --
6 A. A representative of the insurance company.
7 Q. So I would have to call the insurance company
8 and input something into their automated call
9 system other than the fact that I want my auto
10 glass claim handled in order to reach the
11 insurance company about getting my auto glass
12 claim handled?
13 MS. SASSOON: Objection, form.
14 A. I think you are complicating it. In most
15 cases, there will be a prompt for a collision,
16 there will be a prompt for property, there may
17 be a prompt for auto glass, and there will be
18 a prompt if you wish to speak with a claims
19 representative. So it's not as if you are
20 being routed through this maze. At the very
21 beginning, you can select to speak with a
22 claims representative if you so choose.
23 Q. (By Mr. Larson) If a policyholder calls, is
24 connected to Safelite, and wants to talk to
25 the insurer directly, and tells Safelite that,

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1 what does Safelite do?
2 A. We typically, in most cases, have a back line
3 into the insurance company, that is what is
4 referred to as "priority queued." So it is an
5 800 number that we would transfer to. And
6 because that policyholder has already gone
7 through one set of service levels, meaning as
8 they came through the automated attendant or
9 the IVR -- they may have spent, let's just say
10 hypothetically, 20 seconds getting to a live
11 voice in my operation, which is four rings on
12 the household telephone. Rather than them
13 having to do that again, we would transfer
14 that call to an 800 number in the insurance
15 company's claims area. And even if there's
16 calls holding in that area, our call moves to
17 the front of the pack so that the policyholder
18 isn't inconvenienced and ends up with a
19 negative impression of the claims experience.
20 Q. I'm going to ask just a few more questions
21 about this mandatory disclosure that Minnesota
22 requires.
23 MR. SNYDER: Are you going back to
24 the 30(b)6 now?
25 MR. LARSON: No, this is outside

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1 the 30(b)6.
2 Q. (By Mr. Larson) Are you aware of any
3 documents at Safelite discussing the impacts
4 of this admonition on either Safelite or its
5 insurance clients?
6 MS. SASSOON: Objection, form.
7 A. I'm sorry, can you clarify for me? Am I aware
8 of any documents?
9 Q. (By Mr. Larson) E-mails, memos,
10 correspondence, any documents that you are
11 aware of in which somebody at Safelite is in
12 some way dealing with the issue of this
13 mandatory Minnesota disclosure?
14 MS. SASSOON: Objection, form.
15 A. I'm not sure I completely understand the
16 question, but I'll answer it as best I can. I
17 was made aware via e-mail that there was an
18 issue in Minnesota around the offering
19 honoring of preference or -- not -- I'm sorry,
20 not the honoring of preference, but this
21 terminology around fair and reasonable
22 pricing, and the policyholder being
23 responsible for the difference. Beyond that,
24 no, I don't recall anything else.
25 Q. (By Mr. Larson) All right. Let me see if I

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1 can ask a better question because I think I
2 might have confused you here. I'm really
3 talking about the mandatory language that
4 Minnesota requires be read to policyholders,
5 and that language is this language that
6 Minnesota law gives you the right to go to any
7 glass vendor you choose and prohibits me from
8 pressuring you to choose a particular vendor.
9 So that's the language that I'm talking about.
10 And all I'm trying to figure out is are there
11 any documents at Safelite suggesting the
12 average impact of this disclosure on either
13 Safelite's business or on its insurance
14 client's business?
15 A. I'm not familiar with any documents off the
16 top of my head that would refer to adverse
17 conditions. I'm familiar with documents that,
18 you know -- and it may have come from Cindy or
19 even somebody from our legal team, I don't
20 know, that made me aware that --
21 MS. SASSOON: Just don't share
22 anything privileged about attorney/client
23 communications.
24 A. Yeah. I mean, that this terminology exists.
25 And I mean, that would be all. I'm not

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1 familiar with anything around adverse
2 conditions.
3 Q. (By Mr. Larson) You personally never
4 corresponded with anybody, and in the course
5 of that correspondence discussed adverse
6 impacts created by this disclosure; is that
7 right?
8 A. I don't believe so. Because at the end of
9 day, it's -- I mean, for me, it's always been
10 around policyholder preference. And the
11 script is the script. And if an insurance
12 company changes their script for whatever
13 reason, the outputs are the outputs based upon
14 the script. So I really don't have an opinion
15 one way or the other relative to adverse.
16 Because if it's what the insurance company
17 wants, it's their program, that's what we
18 implement.
19 Q. I'll talk to you just a little bit about
20 regulatory compliance. Who at Safelite
21 Solutions handles regulatory compliance of
22 scripting?
23 A. Regulatory compliance.
24 Q. Do you understand what I mean when I say
25 "regulatory compliance"?

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1 A. State by state statutes that exist?
2 Q. Correct.
3 MR. SNYDER: Again, this is still
4 the individual testimony?
5 MR. LARSON: Yeah, this is just
6 individual testimony.
7 MS. SASSOON: Okay.
8 A. I would be responsible for that in
9 collaboration with our legal team.
10 Q. (By Mr. Larson) Okay. Do the insurance
11 companies have any kind of input into
12 regulatory compliance issues?
13 A. Oh, sure, sure. If an insurance company comes
14 up or has a question or has an interpretation
15 of something, there will be a dialog that
16 exists between the two companies and a
17 decision is made whether or not we, you know,
18 are in compliance, or whether adjustments need
19 to be made.
20 Q. All right. Let's mark another exhibit here.
21 (Exhibit 70 marked.)
22 Q. (By Mr. Larson) So I've placed in front of
23 you as Exhibit 70 a different declaration in
24 this case from you. Do you see that?
25 A. Yes.

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1 Q. And the only reason I'm actually putting it in
2 front of you is I just had a couple of basic
3 questions about paragraph three there. Do you
4 see that?
5 A. Yes.
6 Q. Can you just -- in paragraph three you lay out
7 the different Safelite-related entities. Can
8 you just take me through and explain how these
9 different entities relate to one another, and
10 which company is eventually underneath which
11 company?
12 A. Sure. The Safelite Group -- which isn't
13 actually listed here -- is the parent.
14 Safelite Auto Glass is the retail area of the
15 business. Could be brick and mortar, could be
16 mobile, but they are the service provider.
17 Q. All right. Let me stop you there. If you
18 know, is Safelite Auto Glass then separately
19 incorporated from Safelite Group?
20 A. Separately incorporated? I don't know.
21 Q. Okay. And then what about Safelite Glass
22 Corp., what is their relationship to Safelite
23 Group?
24 A. Safelite Glass Corp. manufactures after-market
25 windshields in our manufacturing plant in

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1 North Carolina. The relationship between
2 Safelite Glass Corp. and Safelite Auto Glass
3 is because we manufacture our own windshields,
4 not for all year, makes, models, vins,
5 et cetera, but because we do manufacture, we
6 provide that glass to Safelite Auto Glass for
7 fulfillment purposes.
8 Q. And again, do you know whether Safelite Glass
9 Corp. is separately incorporated from Safelite
10 Group?
11 A. I do not know.
12 Q. What about Service Auto Glass, what is its
13 role in the Safelite Group?
14 A. So Service Auto Glass services the wholesale
15 market, and Service Auto Glass will sell the
16 product manufactured by Safelite Glass Corp.
17 as well as glass products manufactured by
18 other manufacturers. And they serve the
19 wholesale marketplace.
20 Q. And again, do you happen to know whether it's
21 a separately incorporated entity?
22 A. I don't know.
23 Q. And then the last one here is Safelite
24 Solutions and Alliance Claims Solution. My
25 first question is are those two different

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1 entities, or just different names for the same
2 entity?
3 A. At the time that this was taken, they were two
4 different entities. Because Alliance Claims
5 was an acquisition that was made, it has since
6 been -- what's the term, eliminated. That
7 brand has been eliminated, and it is all now
8 part of Safelite Solutions.
9 Q. And do you know whether Safelite Solutions is
10 separately incorporated from Safelite Group?
11 A. I do not know.
12 Q. Okay. Does Safelite Solutions have any
13 competitors in the third-party administrator
14 industry?
15 A. Yes.
16 Q. Who are those?
17 A. All inclusive or just an example?
18 Q. Why don't you give me the top five?
19 A. Links Services. Qwest. Harmon Solutions
20 Group. First Notice Systems. Possibly Glass
21 America, possibly.
22 Q. Do any of those entities you just listed also
23 have, you know, sort of a retail side auto
24 glass servicing affiliate?
25 MS. SASSOON: Objection,

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1 foundation.
2 A. Yeah, yes.
3 Q. (By Mr. Larson) Which ones?
4 A. I would assume Gerber as well as Glass
5 America.
6 Q. What about Harmon, are there other Harmon
7 affiliated glass shops?
8 MS. SASSOON: Objection,
9 foundation.
10 A. I believe structurally they separated the two
11 years ago. But I -- I really don't spend a
12 lot of time analyzing the structure of our
13 competitors.
14 Q. (By Mr. Larson) Do you know where Links is
15 headquartered?
16 A. No.
17 Q. Do you know whether it's headquartered in
18 Minnesota?
19 A. Pardon me?
20 Q. Do you know if it's headquartered in
21 Minnesota?
22 A. No, I don't know.
23 Q. What about Qwest; do you know where Qwest is
24 headquartered?
25 A. I believe it's Michigan.

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1 Q. What about Harmon Solutions; do you know where
2 they are headquartered?
3 A. Used to be in Wisconsin, but it may have moved
4 to Springfield, Ohio. But I can't state that
5 with certainty, so.
6 Q. Well, First Notice Systems, do you know where
7 they are headquartered?
8 A. No.
9 Q. What about Glass America?
10 A. No.
11 Q. What about Gerber, do you know where they are
12 headquartered?
13 A. No.
14 Q. Do you know of any third-party administrator
15 that is a competitor of Safelite that's a
16 headquartered in Minnesota?
17 A. No.
18 Q. Are you aware of any information concerning
19 what impact auto glass claims have on
20 insurance premiums?
21 MS. SASSOON: Objection, form.
22 A. No.
23 Q. (By Mr. Larson) I have a couple documents I
24 just need to put in front of you, more just to
25 get them authenticated.

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1 (Exhibit 71 marked.)
2 Q. (By Mr. Larson) Can you tell me what Exhibit
3 71 is?
4 A. It appears to be a training manual for our
5 computer system, which is known as SV2.
6 Q. And what would this document be used for?
7 A. To train the CSRs on systems navigation.
8 Q. Is this -- to your knowledge, is this still
9 the document that's used to train people at
10 Safelite today?
11 A. I don't know.
12 Q. As part of the document requests that went out
13 in this case, we asked for training materials.
14 Are you aware of whether this document has
15 been updated at all?
16 A. I'm assuming -- and it's only an assumption --
17 that if this document was originally from
18 2012, I would assume that somewhere in here
19 there's been some tweaks.
20 Q. Do you know who at Safelite would have went
21 and located this document to produce it in
22 this case?
23 A. Who would have located the document? I'm
24 assuming it would have been probably Kelly
25 Easter, would be my guess.

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1 Q. I should ask the question a better way, was it
2 a task that was sent to you and delegated, or
3 a task that somebody else in Safelite had?
4 A. I was most likely copied on it, and I
5 delegated it.
6 Q. Okay. I mean, I would like to get whatever
7 the most recent version of this is. I mean,
8 did you make an effort to give us the most
9 recent version or --
10 A. I just asked that the materials be submitted.
11 You know, I did not actually review it prior
12 to it being released, so. It may be the most
13 recent version.
14 Q. Okay.
15 MS. SASSOON: We can confirm that
16 for you.
17 MR. LARSON: That's fine.
18 Q. (By Mr. Larson) And I only printed one copy
19 of this because I'm literally going to ask no
20 questions on this. So let's mark this as 72.
21 (Exhibit 72 marked.)
22 Q. (By Mr. Larson) Can you describe for us what
23 Exhibit 72 is?
24 A. I believe that this is an explanation of the
25 process that we would go through when the

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1 system is not up and running. The traditional
2 SV2 system, that is.
3 Q. And again, do you know whether this is the
4 most recent version of this document or not?
5 A. I do not, no.
6 Q. Okay. All right. We can put those aside.
7 MR. LARSON: All right. I
8 probably could have a little bit more
9 questioning, but why don't you give me like a
10 5-minute break because then I'll be better
11 organized. I don't think I have more than 5,
12 10 minutes.
13 MS. SASSOON: Great.
14 (A short recess was taken.)
15 Q. (By Mr. Larson) All right. I just want to
16 ask you a couple of questions about auto glass
17 types. I saw in one of the documents, and
18 I'll show it to you in a minute here, some
19 kind of difference between regular glass and
20 premium glass. Do you have any understanding
21 of that?
22 A. Not in those terms, no.
23 Q. Okay. Well, let's put this --
24 (Exhibit 73 marked.)
25 Q. (By Mr. Larson) So I've put in front of you

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1 Exhibit 73. Again, it looks like a PowerPoint
2 presentation maybe called "Complete the part
3 selection worksheet." Have you seen that
4 document before?
5 A. I don't recall. Parts of it look familiar,
6 yes.
7 Q. Okay.
8 A. But I don't remember the document in its
9 entirety.
10 Q. It appears to be some training materials; is
11 that fair?
12 A. Correct.
13 Q. All right. And if we turn to page -- Safelite
14 611?
15 A. 611, yes.
16 Q. Yeah, so there's a description in that
17 document about, you know, basically
18 interpreting the codes for different pieces of
19 glass. And it's -- at least what this
20 represents is that the last digit in the
21 identification code is either an N for no or a
22 Y for yes as to whether the glass is premium
23 or not premium; do you see that?
24 A. Yes.
25 Q. Do you have any understanding of this issue?

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1 A. I think it would -- I can't necessarily speak
2 to how it's being trained here, but I can tell
3 you that the difference between premium and
4 non premium may be an indicator of whether or
5 not it's an after-market part versus original
6 equipment.
7 Q. Original equipment is also sometimes referred
8 to as OEM; is that correct?
9 A. Correct.
10 Q. Does Safelite or its insurance clients have a
11 policy or preference on whether to use OEM
12 glass?
13 A. If they do, it is built into the system, and
14 the system will identify that based upon the
15 insurance company.
16 Q. Is there a preference or general preference on
17 the part of Safelite or its insurance clients
18 not to use OEM glass because of its cost?
19 A. No, there would not be a preference. Many
20 insurance companies, the policyholder will
21 purchase an endorsement that entitles them to
22 certain levels of -- I don't know. I don't
23 even know the proper term. That entitled them
24 to OE versus an after-market part. And
25 there's also endorsements that are sold around

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1 that. I can't -- from our perspective, we
2 simply apply whatever insurance company rule
3 they ask us to apply.
4 Q. If you can turn to page 616 of Exhibit 73.
5 It's a little confusing here because it looks
6 like this is a PowerPoint with maybe an
7 overlay on it. But I really want to ask you
8 just with the bottom, the part that's not
9 obscured. It says, "When you select the
10 branded part in the system, when you access
11 the claim in SV2, you will see the part number
12 ending in OEM. It is very important to only
13 choose a branded part if it is the only
14 available option or the customer specifically
15 requests it." So are you telling me that
16 that's not true with respect to all insurance
17 companies?
18 A. What's not true?
19 Q. Well, strike that. I read this to mean that
20 there is a preference on the part of Safelite
21 and its insurance companies not to use OEM
22 glass unless the customer specifically
23 requests it or unless it's the only available
24 part. Am I misreading this?
25 A. The only exception would be if there are rules

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1 baked into the system that would override
2 this. In other words -- and I said it
3 earlier, there are rules established with
4 insurance companies where, for example, an
5 insurance company, if a vehicle is two years
6 or younger, they may want OE put in every
7 time. And we will do it. And the system will
8 reflect it and guide the CSR as such.
9 Now, if you are looking at a 1975
10 Cutlass Supreme, does the insurance company
11 want OE in there? Probably not. And OE is
12 probably not even available. So the system is
13 conducive to whatever the needs or the
14 requests of the insurance company would be.
15 And if not, if it does not specify, then these
16 rules would apply.
17 Q. Okay. So unless there's a specification that
18 OEM glass be used, the general or typical
19 preference is to use non-OEM glass; is that
20 fair?
21 A. I think so, yes.
22 Q. Is that because non-OEM glass would typically
23 be lower in cost?
24 A. Not necessarily. It may mean it's more
25 acceptable.

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1 Q. Okay.
2 A. Which means you can service the policyholder
3 quicker and get them through this negative
4 experience as quickly as possible. For us,
5 it's all about the policyholder experience and
6 reducing the amount of time that they have to
7 spend on this nuisance claim.
8 Q. Well, looking back then at page 616 though, I
9 mean, my understanding -- and tell me if I'm
10 wrong -- is that when the customer service
11 representative is looking up the glass part --
12 at least if they are using a Safelite shop --
13 they are able to determine whether that
14 particular piece of glass is in stock or not
15 in stock, correct?
16 A. For a Safelite location?
17 Q. Yes.
18 A. That's correct.
19 Q. And in fact, if we look at this page 616, and
20 we look up, you know, the example that's given
21 there are two identical pieces of glass --
22 A. Actually, let me correct that. It's not that
23 it tells them necessarily it's in stock, it
24 tells them what the soonest appointment time
25 that the customer can achieve. So virtual is

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1 the wrong word. But the way our system works
2 is the system identifies where the part may
3 be. It also identifies what the distribution
4 channels are to get that part from its
5 origination to the location of service.
6 And it quantifies the amount of
7 time that it's going to take for that, and it
8 recommends a scheduled appointment to the
9 policyholder knowing that the piece of glass
10 and the technician that are going to be doing
11 the work are both present and can be present
12 at that point of the recommended appointment.
13 Q. Well, let me ask you a couple of questions
14 looking back on page 616 here. There's -- the
15 part, that's partially obscured here, but if
16 you look at the far right it says warehouse
17 QTY, which I understand is warehouse quantity,
18 correct?
19 A. Yes.
20 Q. So what this is suggesting, that when the
21 customer service representative pulls up this
22 page, they are able to determine that there
23 are five non-branded versions of this
24 windshield and two branded versions of this
25 windshield in the warehouse, correct?

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1 A. If they pull up this page.
2 Q. Okay.
3 A. This isn't a page -- this is a page that they
4 would potentially be doing a query on, if I'm
5 not mistaken versus -- if you want to think of
6 it as the fast track of a phone call, if you
7 do not state a preference relative to OE and
8 there is not an insurance company rule in
9 place relative to OE, the CSR may not even see
10 this page. It just simply may move them to
11 the scheduling phase of the transaction.
12 Q. Well, let me ask the question in a different
13 way. The last line on this sheet it says, "It
14 is very important to only choose a branded
15 part if this is the only available option or
16 the customer specifically requests it." Is it
17 your testimony that the cost advantage of
18 non-OEM parts is not a reason why that
19 instruction is being given?
20 MS. SASSOON: Objection, form.
21 A. It is my testimony that it is not a
22 consideration from my perspective when
23 selecting the part. Is it a consideration
24 from the insurance company's perspective? You
25 would have to ask them. We are following

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1 their rules and their guidelines.
2 Q. (By Mr. Larson) But I mean, this document,
3 though, is not an insurance company document,
4 this is Safelite's document, correct?
5 MS. SASSOON: Objection, form.
6 A. Correct, it is Safelite's document.
7 Q. (By Mr. Larson) So I mean, are there other
8 versions of this document for different
9 insurance companies?
10 A. No. This document reflects the way the
11 insurance companies have asked us to conduct
12 business. The motive behind it, you would
13 have to ask the insurance company.
14 Q. So you have no sense of whether this is
15 motivated by cost savings or not?
16 MS. SASSOON: Objection, form.
17 A. No, I do not.
18 Q. (By Mr. Larson) All right. I have a set of
19 interrogatory responses here. This will be
20 74.
21 (Exhibit 74 marked.)
22 Q. (By Mr. Larson) So I've placed in front of
23 you what we've marked as Exhibit 74, which is
24 Safelite's responses and objections to
25 defendant's first set of interrogatories; do

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1 you see that?
2 A. Yes.
3 Q. And if you take a look at the very last page,
4 it looks like -- it's my understanding that
5 you are the person that verified these
6 interrogatory responses, correct?
7 A. Yes.
8 Q. Okay. I just want to ask you a couple of
9 quick questions about a couple of the
10 responses. So if you turn to interrogatory
11 number 3, and interrogatory number 3 reads,
12 "Identify all instances that plaintiffs are
13 aware of in which a Minnesota auto glass
14 services provider collected payment from an
15 insured customer for the difference between
16 the amount an insurance company paid and the
17 amount the glass services provider charged."
18 A. I'm sorry, I'm on the wrong page.
19 Q. Page 5?
20 A. Okay. Thank you, could you repeat that,
21 just --
22 Q. I will.
23 A. Thanks.
24 Q. So we are looking at interrogatory number 3.
25 A. Okay.

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1 Q. And it reads, "Identify all instances that
2 plaintiffs are aware of in which a Minnesota
3 auto glass servicess provider collected
4 payments from an insured customer for the
5 difference between the amount the insurance
6 company paid and the amount the glass services
7 provider charged." Do you see that?
8 A. Yes.
9 Q. And you can look through the responses if you
10 want, but there's -- there's nothing in
11 response in which Safelite identified any
12 instance in which that actually occurred. And
13 so my question for you is, as you sit here
14 today, are you aware of any instances in which
15 a Minnesota auto glass services provider
16 collected payment from an insured customer for
17 the difference between the amount the
18 insurance company paid and the amount the
19 glass service provider charged?
20 A. No. As stated in previous testimony, I'm only
21 aware of the instances where it was brought to
22 my attention -- or our attention, excuse me,
23 by the policyholder that they were going to be
24 charged the difference, or the bottom of the
25 invoices where that disclaimer, or whatever

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1 you want to call it, was provided.
2 Q. If we can turn -- sorry, to the next page,
3 page 6. It's part of the answer to the same
4 interrogatories. And if you see the first
5 full paragraph down maybe one, two, three,
6 four, five, six lines. There is a sentence
7 that starts, "Safelite is aware that many," do
8 you see that sentence?
9 A. Yes.
10 Q. And it reads, "Safelite is aware that many
11 such non-network shops explicitly provide on
12 their invoices that if the insurance company
13 does not meet full payment of the invoice, the
14 customer will be liable for the full amount of
15 balance." And the question for you is how
16 many such shops is Safelite aware of?
17 MS. SASSOON: Objection,
18 foundation.
19 A. Yeah.
20 MR. SNYDER: You are asking him
21 how many is he aware of? This isn't the
22 30(b)6.
23 Q. (By Mr. Larson) Right. I'm just asking how
24 many are you aware of?
25 MS. SASSOON: Can you restate the

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1 question in full?
2 Q. (By Mr. Larson) Sure. My question is how
3 many -- strike that. To your knowledge, how
4 many Minnesota non-network shops explicitly
5 provide on their invoices that if the
6 insurance company does not make full payment
7 of the invoice, the customer will be liable
8 for the full amount of balance?
9 MS. SASSOON: Objection,
10 foundation.
11 A. I don't know.
12 Q. All right. One more document very quickly,
13 and then we are done.
14 (Exhibit 75 marked.)
15 Q. (By Mr. Larson) So I've placed in front of
16 you as Exhibit 75, what appears, to me at
17 least, to be a PowerPoint presentation. Are
18 you familiar with this document?
19 A. Not completely, no.
20 Q. It appears to be some training materials; is
21 that fair?
22 A. Yes.
23 Q. And again, do you know whether this is the
24 most recent version of this document?
25 A. I do not know.

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1 Q. Okay.
2 MR. LARSON: That's all the
3 questions I have.
4 MS. SASSOON: I don't have
5 anything. We will read and sign.
6 (Deposition ended at 12:30 p.m.)
7 * * *
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VERIFICATION OF DEPONENT TO TRANSCRIPT
I, BRIAN O'MARA, do hereby verify that I have read the foregoing transcript consisting of the preceding 143 pages and do further verify that it is a true and complete transcript of the testimony given by me on February 22, 2016, (except for the following, stating page and line number and the reason for the change)
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

_____

Dated this _____ day of _____ 2016.

_____
NOTARY PUBLIC
LISA M. HUTTON COURT REPORTER

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STATE OF MINNESOTA)
) SS.
COUNTY OF GOODHUE)

Be it known that I took the deposition of BRIAN O'MARA on February 22, 2016, at Fredrikson & Byron, 220 South Sixth Street, Minneapolis, MN 55402;

That I was then and there a notary public in and for the County of Goodhue, State of Minnesota, and that I was duly authorized to administer the oath.

That the witness before testifying was first duly sworn to testify the truth and nothing but the truth;

That the testimony was recorded by myself and transcribed into a computer-aided transcript and that the deposition is a true record of the testimony given by the witness to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the cost of the original transcript has been charged to the party noticing the deposition, unless otherwise agreed to by Counsel, and that the copies have been made available to all parties at the same cost, unless agreed to otherwise by Counsel;

That the reading and signing of the deposition by the witness was not waived, and that the original transcript is retained by Mr. Larson.

WITNESS MY HAND AND SEAL THIS _____ 2016

_____
LISA M. HUTTON

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SHADDIX & ASSOCIATES
9100 WEST BLOOMINGTON FREEWAY
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Bloomington, Minnesota 55431
952-888-7687 (800)952-0163
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February 27, 2016

Danielle R. Sassoon, Esquire
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022

Re: Safelite vs. Commissioner Rothman
BRIAN O'MARA

Dear Ms. Sassoon:

A copy of the above-referenced deposition is enclosed along with the reading and signing certificate. When the witness has completed the reading and signing, please return all but your copy of the executed certificate to me for proper distribution.

In accordance with the Rules of Civil Procedure, if I do not receive the executed certificate within thirty (30) days of the date hereon, I will send the unsigned original transcript to the attorney who took the deposition for proper filing.

Should you have questions, please do not hesitate to contact my office.

Sincerely,

SHADDIX & ASSOCIATES

Lisa M. Hutton
Court Reporter

cc: Oliver Larson, Esquire
Enclosure

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Larson Ex. 2

In The Matter Of:

Safelite Group, Inc. et al vs.
Michael Rothman, et al

Andrew Kipker
February 22, 2016

Shaddix & Associates
9100 West Bloomington Freeway
Suite 122
Bloomington, MN 55431

Min-U-Script® with Word Index

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Safelite Group, Inc., and Safelite Solutions, LLC,
Plaintiffs,
v. Case No. 15-cv-1878
Michael Rothman, in his official capacity as Commissioner of the Minnesota Department of Commerce,
Defendant.

Deposition and Exhibits of ANDREW KIPKER taken in the above-entitled matter, pursuant to Notice, before Lisa M. Hutton, court reporter and notary public, at Fredrikson & Byron, 220 South 6th Street, Suite 4000, in the City of Minneapolis, State of Minnesota on the 22nd day of February, 2016, commencing at approximately 1:25 P.m.

* * *

APPEARANCES:

Oliver J. Larson, Assistant Attorney General, Bremer Tower, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101-2128, appeared for and on behalf of the Defendant,
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Danielle R. Sassoon, Attorney at Law, Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, NY 10022, appeared for and on behalf of the Plaintiffs.
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Richard D. Snyder, Attorney at Law, Fredrikson Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402, appeared for and on behalf of the Plaintiffs.
e-mail: rsnyder@fredlaw.com

Also appearing: Cynthia Elliott, VP and general counsel for Safelite Group, Inc.

WHEREUPON, the following proceedings were duly had and entered of record, to wit:

I N D E X

WITNESS	PAGE
ANDREW KIPKER	
Examination by Mr. Larson	4, 39
Examination by Ms. Sassoon	38

30(b)6 portion, 4
regular deposition portion, 24

NO EXHIBITS

ANDREW KIPKER,
a witness in the above matter, after having been first duly sworn, testified under oath as follows:
EXAMINATION
BY MR. LARSON:
Q. Good afternoon. My name is a Oliver Larson. I'm with the Minnesota Attorney General's Office. I represent Commissioner Rothman in this matter. It's Kipker, correct? I'm pronouncing that correctly?
A. Yes.
Q. Okay. Good. Mr. Kipker, could you for the record just give us your name and the spelling of your last name?
A. Andy, last name Kipker, K-I-P-K-E-R.
Q. And I'm not going to give you really any admonitions before we start other than if you need to take a break, just tell me and that's what we'll do.
Could you tell us just what your educational background is since high school?
A. Since high school? I graduated in '85. Went to Wittenberg University. Graduated with an accounting degree. Then started at Deloitte

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1 Touche in '89, worked there for seven years,
2 until '96, then I started with Safelite in
3 '96.
4 Q. When you started at Safelite, what was your
5 job title?
6 A. Controller of network operations.
7 Q. And which of the Safelite entities did you
8 work for?
9 A. It would be our Safelite Solutions entity.
10 Q. What is your current title?
11 A. Vice president of claims management services.
12 Q. Could you just walk me through then the
13 different positions that you've held at
14 Safelite from the time you were hired until
15 where you're at now?
16 A. So from 1996 to 1999 I worked as the
17 controller of network operation. And then
18 from 1991 to 2001 I worked as director of
19 financial planning and analysis. And then
20 from 2001 to 2004 I worked as assistant vice
21 president of client services. And then from
22 2004 to present its vice president of claims
23 management.
24 Q. So correct me if I'm wrong here, but it looks
25 like you started out on the financial side and

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1 you've moved to a really different role now at
2 Safelite; is that fair?
3 A. Probably more like it all consolidated
4 together, so.
5 Q. Okay. What are your day-to-day job
6 responsibilities then today?
7 A. Today I have responsibility for our -- I
8 manage our network for our glass shops that we
9 manage for our insurance companies. I also
10 have responsibility for all of the audited
11 billing and payment of invoices. I also have
12 responsibility for a lot of our management
13 reporting that we do for our clients. And the
14 last is our fraud division.
15 Q. When you say the "network," what are you
16 referring to?
17 A. Safelite Solutions manages a network of shops
18 for our insurance companies, and we -- they
19 sign a contract with Safelite Solutions, and
20 we manage them as certain SLAs, and ensure
21 that they are performing high-quality work for
22 our insurance companies.
23 Q. What's an SLA?
24 A. Promoters for our customer service --
25 Q. I'm just asking what the initials are?

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1 A. Service level agreements.
2 Q. Okay. What kind of auditing or quality
3 control do you do for shops that are in your
4 network?
5 A. A variety of things. We manage their
6 warranty, how much their warranty percentages
7 are. We manage their insurance coverage
8 requirement. We manage their installation
9 standards and their NPS, customer satisfaction
10 scores. Primarily four things.
11 Q. Again, what's NPS?
12 A. Net promoter score. It's a customer service
13 indicator. Measures promoters and contractors
14 and the era for the driver score, where they
15 measure. That's -- Safelite Solutions
16 measures all things that way.
17 Q. This NPS score, how was that developed?
18 A. It was independent Safelite adopted. It's
19 been created for several years. I'm not sure
20 who adopted it.
21 Q. You have phone calls where you follow up with
22 customers, or visit them, or how do you
23 collect the data that allows you then to
24 determine what the quality of work has been?
25 A. I understand. We send e-mails to customers

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1 who choose to give us their e-mail address,
2 then they get a survey, and then they complete
3 the survey.
4 Q. Okay. You say that you oversee the auditing
5 and payment of invoices; is that right?
6 A. Yes.
7 Q. So these would be -- if I understand
8 correctly, these are the invoices that come in
9 from the service shops to Safelite, ultimately
10 for payment by the insurance companies; is
11 that right?
12 A. That's one aspect of it. We have multiple,
13 different types of invoices. But yeah, that's
14 one type of it.
15 Q. What other types of invoices then are you
16 handling?
17 A. So we handle all the Safelite store invoices.
18 All the non-Safelite store invoices. And then
19 any of our non-glass invoices that we have.
20 Some other business lines that we handle too.
21 Q. I don't want you to get into too much detail,
22 but I'm trying to figure out what other kinds
23 of non-invoice details?
24 A. Taking a first notice of loss for an insurance
25 company. We are -- they outsource their calls

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1 to us in our contact center, and we take the
2 call for them. So we would bill them for that
3 service.
4 Q. Okay. So this would involve both some
5 accounts receivable and accounts payable type
6 work then?
7 A. Yes.
8 Q. We talked about management reporting to
9 clients. What kind of reporting are you
10 responsible for to Safelite's clients?
11 A. Primarily it's just reports that our clients
12 request or that they want for their programs.
13 So.
14 Q. And the clients are typically going to be
15 insurance companies, correct?
16 A. Right. Insurance, fleets, rental car, those
17 types of --
18 Q. Again, I don't want to get into too much work,
19 but just what kind of work is Safelite doing
20 for fleet services or rental cars?
21 A. So fleet companies outsource their calls.
22 They have customers that they outsource --
23 they manage the programs, they outsource their
24 calls to us so we end up handling their glass
25 claims for them.

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1 Q. So, and you might have a fleet of cars, there
2 is glass damage to it, and that needs to be
3 replaced, and Safelite would assist with
4 dealing with that; is that right?
5 A. Yes.
6 Q. Okay. You also mentioned -- referenced a
7 fraud division. What's involved in that?
8 A. So we created a fraud team probably about ten
9 years ago or so. And it handles -- it works a
10 lot with our insurance company's special
11 investigation units or SI units. And
12 primarily looks for unusual billing practices,
13 things of that nature. And works with our
14 insurance partners to identify trends and
15 things that are going on in the glass
16 industry.
17 Q. Okay. All right. So we have a set of
18 exhibits somewhere around here for you.
19 A. Okay.
20 Q. I think it's probably this set. And I'm
21 guessing it's in reverse order, meaning low
22 numbers are on the bottom, high numbers are on
23 the top.
24 MS. SASSOON: What are you looking
25 for, 63?

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1 Q. (By Mr. Larson) Yeah, let's start with the
2 30(b)6 notice, which is Exhibit 63. Mr.
3 Kipker, have you seen Exhibit 63 before?
4 A. Yes.
5 Q. And Exhibit 63 is Defendant Rothman's Rule
6 30(b)6 Deposition. So it's my understanding,
7 at least, that you've been designated to be
8 Safelite's corporate designee with respect to
9 topic one; is that also your understanding?
10 A. Yes.
11 Q. So why don't we start by asking some questions
12 on that. So topic one seeks a witness to
13 testify about "Any evidence the plaintiffs
14 possess that any glass services provider in
15 Minnesota engages in the practice of balance
16 billing its insured customers for the
17 difference between the amount an insurance
18 company pays and the amount the glass services
19 provider charges."
20 So let me just start with that
21 basic question. What evidence, if any, does
22 Safelite have that any glass services provider
23 in Minnesota is engaging in the practice of
24 balance billing?
25 A. We would -- I mean, today, we don't get really

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1 any of that information today, so.
2 Q. Are you aware -- or is Safelite aware of any
3 instance in which a Minnesota policyholder has
4 actually been balance billed in the last ten
5 years?
6 A. Anecdotally, yes.
7 Q. When you say "anecdotally," what do you mean?
8 A. Just examples here and there.
9 Q. Okay. Can you give me those examples?
10 A. Just one off the top.
11 Q. Okay. What is that one example?
12 A. It was via a customer that came through one of
13 our insurance companies, Horace Mann and --
14 Q. You called him what?
15 A. The insurance company is Horace Mann. And it
16 was an insurance company.
17 Q. I'm sorry, I was getting confused. There's an
18 insurance company called Horace Mann?
19 A. Yes.
20 Q. So there was an insurance company called
21 Horace Mann, and there was a customer -- a
22 policyholder, was it?
23 A. Yes, it came to our attention from our
24 insurance client that a -- one -- a shop was
25 going after a policyholder for the difference.

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1 Q. Okay. And who at Horace Mann talked to you
2 about that?
3 A. I would have to go back. I don't know the
4 name off the top, but we can find it.
5 Q. Was it a person who talked to you?
6 A. No, it was just an e-mail that I received.
7 Q. Okay. So you received an e-mail from -- what
8 from a manager who worked for Horace Mann?
9 A. I got copied from an internal person at
10 Safelite.
11 Q. Okay. So the mechanics were there, and the
12 e-mail came into Safelite, not to you, and
13 then you were copied on it?
14 A. Yes.
15 Q. And were you copied by the person at Horace
16 Mann, or did the person at Safelite distribute
17 it to you?
18 A. Person at Safelite.
19 Q. Okay. And what was the content in the e-mail?
20 A. Horace Mann just let us know that one of their
21 customers was being threatened to go after
22 additional moneys from a shop in Minnesota.
23 Q. Did he give you any other information beyond
24 that?
25 A. We really don't get involved in it after that.

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1 So it's typically between Horace Mann and the
2 customer.
3 Q. Did they give you the name of the shop?
4 A. Lakeside Glass.
5 Q. Did they give you the name of the customer?
6 A. I don't remember it.
7 Q. To be clear, are you testifying that the name
8 wasn't in an e-mail, or you once knew the name
9 but no longer recall?
10 A. The name is in the e-mail. I don't remember
11 it.
12 Q. Okay. When was this?
13 A. I don't recall the exact date. It was 2015
14 sometime.
15 Q. Did you or anybody at Safelite follow up on
16 that?
17 A. No.
18 Q. Do you know what the -- what the result was,
19 whether the person actually ended up getting
20 balance billed?
21 A. No.
22 Q. So other than this contact that Safelite
23 received from Horace Mann, is Safelite aware
24 of any other instances in which a Minnesota
25 customer or policyholder has been actually

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1 balance billed by a glass services provider?
2 A. Typically that doesn't come to our attention.
3 So I'm not aware of any other case at this
4 point in time.
5 Q. Have you or anyone else at Safelite done any
6 investigation into whether balance billing is
7 a practice employed by any Minnesota auto
8 glass service providers?
9 MS. SASSOON: Objection, form.
10 A. Not an investigation.
11 Q. (By Mr. Larson) Okay. I see you are
12 qualifying that. Have you done something
13 short of an investigation?
14 A. Well, just knowing the Minnesota market,
15 it's -- in the Minnesota market today, a high
16 percentage of the shops bill at what the
17 insurance companies' rates are at today. So
18 there is -- it's a very minimal amount that
19 would actually be collecting additional moneys
20 from the insured. So there's not very many
21 examples out there. I can't think of them.
22 Q. Okay. I'm really trying to get into the issue
23 of what efforts, if any, Safelite has put into
24 investigating this issue. So let me ask that
25 question. What efforts, if any, has Safelite

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1 undertaken to determine whether glass shops in
2 Minnesota engage in the practice of balance
3 billing?
4 MS. SASSOON: Objection, form.
5 A. We don't currently do any investigation into
6 that.
7 Q. (By Mr. Larson) Has Safelite ever done any
8 investigation?
9 A. Not --
10 MS. SASSOON: Objection, form.
11 A. Not that I'm aware of.
12 Q. (By Mr. Larson) Are you familiar with Alpine
13 Glass?
14 A. Yes.
15 Q. Have you ever had any contact with Mike Ried
16 or anybody else who works for Alpine Glass?
17 A. Yes.
18 Q. As best you can, can you tell me, you know,
19 how many times you've been in touch with Mr.
20 Ried and how that contact was -- took place?
21 A. Not lately. Probably for the first ten years,
22 since about 2004 through 2014, maybe once or
23 twice a year.
24 Q. And in a typical situation, how would the two
25 of you communicate with one another?

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1 A. Usually it stems from Mike Ried sending an
2 e-mail to our insurance company saying they
3 were not being paid. And then the insurance
4 company would get us involved, and we would
5 work with Mike to determine what invoices may
6 or may not be being paid. It's a very small
7 number, but that's definitely what it was.
8 Q. Was there a typical explanation for why
9 invoices weren't getting paid?
10 A. He didn't have the right VIN number. He
11 didn't get coverage. He didn't call in the
12 claim correctly. There were a lot of things.
13 He didn't follow the program right with -- so.
14 Q. What about on the subject of balance billing,
15 did you and Mr. Ried ever communicate on the
16 subject of balance billing?
17 A. I do remember a call we had, yes.
18 Q. And roughly speaking, when -- to the best of
19 your recollection, when did that call takes
20 place?
21 A. It's hard for me to estimate. Two, three
22 years ago maybe.
23 Q. And in substance -- again, to the best of your
24 recollection, what did the two of you discuss
25 in that call?

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1 A. Hard to say, other than I think he claimed he
2 didn't balance bill, or he doesn't balance
3 bill I think is what he said to us, so.
4 Q. Okay. I mean, did you do anything with that
5 information?
6 A. No.
7 Q. Have you received any correspondence from
8 Alpine Glass or from anyone else in which they
9 indicated that they don't engage in the
10 practice of balance billing?
11 A. Not that I remember.
12 Q. Is that something that typically you would
13 see, or would somebody else at Safelite
14 generally handle that kind of correspondence?
15 A. Typically it wouldn't come to us. It would
16 typically go to the insurance companies.
17 Q. I see. If it had been directed either by the
18 insurance company or by the independent glass
19 shop to Safelite, I mean, who do you think at
20 Safelite would have received that kind of
21 correspondence?
22 A. Difficult to say.
23 Q. Have you ever had any contact with insurance
24 companies in discussing the fact that they had
25 received notice from a glass service provider,

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1 that that provider does not engage in balance
2 billing?
3 MS. SASSOON: Objection,
4 foundation.
5 A. I'm not sure I understand the question.
6 Q. (By Mr. Larson) Yeah. You indicated that if
7 an independent glass shop was to make a
8 complaint or to instruct somebody that they
9 don't engage in balance billing, that
10 typically that correspondence would be sent to
11 the insurance company, not to Safelite,
12 correct?
13 A. Correct.
14 Q. So what I'm trying to figure out is if that
15 happened, had there been any instances in
16 which the insurance company then came to
17 Safelite to have a discussion about the
18 contact it had received on that issue?
19 A. Not that I'm aware of.
20 Q. Are you familiar with Rapid Glass or Rick
21 Rosar?
22 A. I am.
23 Q. Have you had any contact personally with
24 Mr. Rosar?
25 A. I don't remember any if I did. It wasn't

Page 20

1 memorable.
2 Q. To the best your recollection, have you ever
3 discussed the issue of balance billing with
4 Mr. Rosar or anyone else at Rapid Glass?
5 A. Not that I'm aware of.
6 Q. To the best of your knowledge, has Safelite
7 ever received any correspondence from Rapid
8 Glass or Mr. Rosar in which one of these
9 entities indicated that Rapid Glass does not
10 engage in the practice of balance billing?
11 A. The only thing I remember is Rapid Glass did
12 send letters at one time, but I don't remember
13 what they said, so.
14 Q. Okay. When you say you don't know what they
15 said, did the letters touch upon the issue of
16 balance billing at all?
17 A. I don't remember.
18 Q. Okay. In terms of the balance billing
19 language that Safelite customer service
20 representatives used with policyholders, what,
21 if anything, did Safelite tell the
22 policyholders about the potential for being
23 balance billed?
24 MS. SASSOON: Objection,
25 foundation.

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1 A. I'm not sure. I'm not -- I don't get involved
2 in the scripts very much. I'm sure it's
3 different.
4 Q. (By Mr. Larson) Do you have any knowledge
5 about whether Safelite ever tells any
6 policyholders that they will be balance billed
7 if they select any non-network shop?
8 A. Not that I'm aware of. I know it depends on
9 what the insurance policy says, but I'm not
10 sure what the difference there is, so.
11 Q. Do you not know one way or the other?
12 A. I don't know one way or the other.
13 Q. Are you aware of any documents in Safelite's
14 possession that discuss whether Minnesota auto
15 glass services engage in the practice of
16 balance billing?
17 A. Define "documents."
18 Q. Anything written?
19 A. No.
20 MS. SASSOON: Sorry, by
21 "documents," you meant document Safelite
22 produced or something like invoices? Would
23 that --
24 MR. LARSON: The question I asked
25 was any documents in their possession. But we

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1 can add the caveat, that we are certainly
2 aware of the invoices that you provided to us
3 in discovery.
4 Q. (By Mr. Larson) So with that caveat, other
5 than the invoices that you provided to us in
6 discovery, are you aware of any other
7 documents that discuss or touch upon the issue
8 of balance billing?
9 A. Not that I'm aware of.
10 Q. Have you ever monitored or otherwise listened
11 to any of the calls between Safelite customer
12 service representatives and policyholders?
13 A. Not monitored, no.
14 Q. Have you ever listened to any of the calls?
15 A. I've listened to a call.
16 Q. You say "a call," just one?
17 A. Over time I've listened to calls, yes.
18 Q. Okay. How often do you listen to calls?
19 A. Once a year maybe.
20 Q. What would cause you to listen to a call?
21 A. Typically it's around -- fraud related. So
22 there's something that's going on, whether a
23 shop, it looks like a shop may be
24 impersonating the customer, or -- so there's
25 times where we have to -- we typically review

Page 23

1 those or understand whether there's any
2 fraudulent activity going on.
3 Q. Do you have any responsibility for taking
4 disciplinary actions against customer service
5 representatives who vary from the approved
6 scripts?
7 A. No.
8 Q. Did you ever actually see any of the approved
9 scripts?
10 A. No.
11 Q. Are you aware that Minnesota has a statute
12 that requires a mandatory disclosure be
13 provided by Safelite's customer service
14 representatives to Minnesota?
15 MS. SASSOON: We are not in the
16 30(b)6 now?
17 MR. LARSON: Oh, yes, we are out
18 of the 30(b)6.
19 MS. SASSOON: Do you have any
20 other questions on the 30(b)6 topic?
21 MR. LARSON: No. If I go back to
22 it, I'll let you know.
23
24
25

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1 Q. (By Mr. Larson) So let me restate my
2 question. Are you aware that there's a
3 Minnesota statute that requires a statutory
4 disclosure be made to Minnesota policyholders
5 by Safelite customer service representatives?
6 A. I'm aware.
7 Q. When did you first become aware of that?
8 A. I don't know.
9 Q. Was it prior to the initiation of this
10 lawsuit?
11 A. I think I knew about it before then.
12 Q. Is there anybody at Safelite that you've
13 discussed that disclosure with?
14 A. No.
15 Q. Are you aware of any adverse impact on
16 Safelite caused by Safelite representatives
17 having to read that disclosure to
18 policyholders?
19 MS. SASSOON: Objection,
20 foundation.
21 A. No.
22 Q. (By Mr. Larson) Have you had any discussions
23 about that disclosure with any insurance
24 company?
25 A. No.

Page 25

1 Q. Are you familiar at all with Safelite's
2 processes for disciplining its customer
3 service representatives?
4 A. No.
5 Q. Are you involved in any of the regulatory
6 compliance efforts with respect to scripting?
7 A. No.
8 Q. Do you have any regulatory compliance role at
9 Safelite?
10 A. Define "regulatory compliance."
11 Q. Making sure that Safelite's doing what's
12 required by various, you know, federal or
13 state statutes or rules?
14 A. There's certain states that require payment,
15 timing of payments. So there are certain
16 requirements. So yeah, we do make sure that
17 we are in compliance with every state, so.
18 Q. Okay. Other than making sure that the
19 invoices are paid as required by local
20 statutes, are there any other regulatory
21 compliance efforts that you are involved in?
22 A. Not that I'm aware of.
23 Q. Are you aware of what the methods are that
24 Safelite uses to compensate its customer
25 service representatives?

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1 A. No.
2 Q. Are you familiar with the contracts and the
3 terms of the contracts between Safelite and
4 its insurance industry clients?
5 A. Yes.
6 Q. Is that part of your role at Safelite?
7 A. Yes.
8 Q. Do you participate in the negotiation of that
9 at all?
10 A. Yes.
11 Q. And what is your role in negotiating the terms
12 of those contracts?
13 A. Our role primarily is one of support for our
14 strategic account team who primarily leads the
15 contract negotiations, and we provide guidance
16 around financial requirements and service
17 level requirements, things of that nature.
18 Q. Just in practice, what does that mean? What
19 are you doing to assist them and putting into
20 those contracts?
21 A. I don't know how else to say this. Just, we
22 are negotiating the terms of the contract with
23 the --
24 Q. Let me put the question this way. If you can
25 give me some examples of the type of

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1 information you would furnish to this
2 strategic negotiation team when they are
3 setting up these contracts?
4 A. So an example would be an insurance company
5 wants to enter into a long-time agreement with
6 Safelite, and they want to -- Safelite to
7 provide services to them. And we would in
8 turn provide maybe some financial -- what our
9 pricing would be associated with that --
10 Q. Okay.
11 A. -- from that point on.
12 Q. Now, I've seen some of the different contracts
13 between Safelite and its insurance industry
14 clients. And I've seen in some of those
15 contracts that there's -- you know, I don't
16 know what they call it, a guaranteed invoice
17 rate or something like that. Are you familiar
18 with that?
19 A. Guaranteed average invoice?
20 Q. Yes.
21 A. Is that what you are saying?
22 Q. Yes. Are you familiar with that concept?
23 A. Yes.
24 Q. And in practice, how does that work?
25 A. At a highest level, it takes account

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1 historical information from an insurance
2 company over the past year, and provides some
3 assumptions for the next year, and we come to
4 a guarantee that they would -- Safelite
5 Solutions would actually guarantee that amount
6 for the next, give or take, 12 months.
7 Q. And then what happens if at the end of the day
8 Safelite doesn't hit that target?
9 MS. SASSOON: Objection, form.
10 A. Hit the what?
11 Q. (By Mr. Larson) The guaranteed average
12 invoice target?
13 MS. SASSOON: Objection, form.
14 A. There's a lot of different things that could
15 happen, so. It's -- we can either -- we would
16 either be financially responsible for that
17 difference, or we could either -- based on
18 some of the assumptions that were made, it
19 might have been changed because of some
20 economic factors. So we would be -- there
21 might be some terms that we would negotiate
22 with the insurance company, or we could
23 potentially move it to the next year, it
24 depends. So we could either pay it out, or we
25 could -- depending on what happens, we would

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1 negotiate with the insurance company for the
2 next year.
3 Q. (By Mr. Larson) Are you aware of who --
4 strike that. Does Safelite Solutions have any
5 competitors?
6 A. Yes.
7 Q. And I don't need you to identify every
8 competitor, but if you could name what you
9 view to be the primary competitors of Safelite
10 Solutions?
11 A. Just glass claims?
12 Q. Yeah, just handling -- let me be clear what
13 I'm looking for. Who Safelite's competitors
14 would be in what's referred to the "TPA," or
15 "third-party administrator," for glass claims,
16 you know, that industry?
17 A. For just glass claims?
18 Q. Yeah.
19 A. So probably would say Links Solara is a
20 competitor. Harmon -- I guess actually
21 it's -- yeah, it's still Harmon is a
22 competitor. Qwest is a competitor. Gerber
23 National Glass Services is a competitor.
24 Strategic Claim Services is a competitor.
25 That's probably it.

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1 Q. Do you know where any of those entities are
2 headquartered?
3 A. Gerber is out of Chicago. SCS is out of
4 Massachusetts. Harmon is in either Wisconsin
5 or Columbus. I don't know where Links is at.
6 Q. You mentioned Qwest, I don't know if you
7 know --
8 A. Qwest is in Michigan.
9 Q. Okay. I had asked Mr. O'Mara some questions
10 about the organization of Safelite. Maybe you
11 can answer them, maybe you can't. I'm trying
12 to figure out just physically -- not
13 physically, I guess from a legal standpoint,
14 what the relationship is between the different
15 Safelite entities. So there is the parent
16 company, which is Safelite Group, Inc.,
17 correct?
18 A. Correct.
19 Q. Is that a publicly traded entity?
20 MS. SASSOON: Objection,
21 foundation.
22 A. Safelite Group is owned by companies that are
23 publicly traded, but Safelite Group is not.
24 Q. (By Mr. Larson) And I see on the caption of
25 this case that Safelite Solutions is organized

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1 as a limited liability company; is that right?
2 MS. SASSOON: Objection,
3 foundation.
4 A. Yes, Safelite Solutions, LLC.
5 Q. (By Mr. Larson) Okay. Do you know -- and if
6 you don't know, you don't know -- but do you
7 know whether Safelite Solutions is
8 independently incorporated from Safelite
9 Group?
10 A. I don't know what "independently incorporated"
11 means.
12 Q. It means that it's a separate entity, legally
13 speaking?
14 MS. SASSOON: Objection, form.
15 A. I don't know if I want to answer that
16 question.
17 Q. (By Mr. Larson) If you don't know, you don't
18 know.
19 A. I don't know.
20 Q. What about -- I'm just going to ask you a
21 couple of questions on the same entities, and
22 you can tell me that you don't know if you
23 don't. Safelite Glass Corp., do you know if
24 they are separately incorporated?
25 A. So can I just explain what I think Safelite is

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1 and maybe we can go from there?
2 Q. Sure.
3 A. So you have Safelite Group, and you have
4 Safelite Retail Fulfillment Organization. You
5 have Safelite Glass Corp., which I think you
6 just mentioned, which is our manufacturing.
7 And then you have Safelite Solutions. So
8 those are kind of our three entities under the
9 Safelite Group. I don't know if they are
10 separately incorporated, I don't know exactly
11 that term, but it's kind of how you view
12 Safelite.
13 Q. Let me ask the question a little bit
14 differently. You don't have any knowledge
15 about the way these different entities are set
16 up legally?
17 A. I don't.
18 Q. Okay. Are you familiar with the financial
19 performance of Safelite Solutions?
20 A. Yes.
21 Q. Does it turn a profit?
22 MS. SASSOON: Objection, form.
23 A. How do you mean?
24 Q. (By Mr. Larson) Well, I mean, we can be more
25 specific, but does it generate a net operating

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1 income that is positive?
2 MS. SASSOON: Objection to form.
3 A. Maybe a better way to say it is our revenues
4 out -- exceed our expenses, is that what you
5 are saying?
6 Q. (By Mr. Larson) That's one way of saying it,
7 yes?
8 A. Yes.
9 Q. So if Safelite Solutions was to be cleaved off
10 from the rest of the Safelite entities, it
11 would be able to operate at a profit on its
12 own?
13 MS. SASSOON: Objection,
14 foundation and form.
15 A. Yes.
16 Q. (By Mr. Larson) Okay. Do you have any
17 knowledge about what the impact is on
18 insurance premiums of auto glass claims?
19 MS. SASSOON: Objection, form.
20 A. No.
21 Q. (By Mr. Larson) All right. I'm going show
22 you a couple documents, you are probably going
23 to tell me you don't know anything about them,
24 but while I have you here --
25 A. Okay.

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1 Q. So if you would put this stack in front of
2 you. And I'm going to be looking at Exhibit
3 69. Have you ever seen Exhibit 69 before?
4 A. No.
5 Q. All right. I take it you had no involvement
6 in creating this document?
7 A. Just looking at it real quick. It's a big
8 document. No.
9 Q. Okay. Put that away. Turn to document 71 and
10 I'll ask you essentially the same question.
11 A. 71.
12 Q. Have you ever seen this document before?
13 A. No.
14 Q. To your knowledge, did you have any
15 involvement in preparation of this document?
16 A. I'll just flip through it a little bit. I
17 would say no. Yeah, no.
18 Q. All right. Turn to the exhibit -- probably
19 the next one there, 73, same question. Have
20 you ever seen this document before?
21 A. No.
22 Q. Did you have any involvement, to your
23 knowledge, in the preparation of this
24 document?
25 A. No.

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1 Q. Last one, Exhibit 75. Again, have you ever
2 seen this document before?
3 A. No.
4 Q. Did you have any involvement in the
5 preparation of this document, to the best of
6 your knowledge?
7 A. No.
8 Q. Okay. All right. I'm going to circle back if
9 we can go back to Exhibit 63, which is the --
10 it's the 30(b)6 notice.
11 A. 63.
12 Q. And I'm actually going to ask you some
13 questions about topic ten, although I
14 acknowledge that you are not the corporate
15 designee on that topic. And let's see if it's
16 not bound by your answers. What topic ten
17 seeks is just some information about some of
18 the reporting capability that Safelite has,
19 and my understanding from at least your
20 testimony is that you're responsible for at
21 least some of the reporting that goes out
22 between Safelite and its insurance clients; is
23 that right?
24 A. Yes.
25 Q. Okay. So if you turn to Exhibit 1 in this

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1 document, you'll see there's a series of
2 reports there?
3 A. Am I still under 30(b)6?
4 Q. No.
5 A. This is a personal.
6 Q. It's just personal. I'm asking about your
7 personal knowledge on this subject.
8 A. Okay.
9 Q. Are you familiar with any of these reports?
10 A. Yes.
11 Q. Are you responsible for generating any of
12 these reports?
13 A. My group is.
14 Q. Okay. And that's really what I'm asking,
15 which of these reports is your group
16 responsible for generating?
17 A. The fourth one down, GI report. The fifth one
18 down, the executive summary. And the sixth
19 one down, which is the cycle time report.
20 MR. LARSON: All right. Why don't
21 we take a break. I don't know if I need to
22 ask him any questions about this, but I'll
23 take a moment and we'll see.
24 MS. SASSOON: Okay.
25 (A short recess was taken.)

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1 Q. (By Mr. Larson) All right. So Mr. Kipker,
2 I'm going to ask you just a couple of
3 questions, and I think we are actually going
4 to be done here. If you can take a look at,
5 you know, the 30(b)6, that page that I showed
6 you, there is something called the GAI report.
7 And I think as we've already discussed, GAI
8 means guaranteed average invoice; is that
9 right?
10 A. Correct.
11 Q. Okay. My question on the GAI, and you can
12 tell me if you know or you don't know, and I'm
13 trying to figure out what's included in the
14 GAI. So is it -- is that supposed to be an
15 average that includes only the invoices that
16 come from network shops, or would that include
17 invoices that come from any source?
18 A. It depends on the program.
19 Q. Okay. So at least with some programs, what
20 Safelite is a guaranteeing is that across all
21 invoices, even if they are out of network,
22 that the average invoice is going to be at a
23 certain level; is that right?
24 MS. SASSOON: Objection, form.
25 A. So I guess the other way to say that would be

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1 so the GAI can include network invoices or all
2 invoices in a guarantee, basically.
3 Q. (By Mr. Larson) And that depends on the
4 insurance company and the contract; is that
5 right?
6 A. That depends on the insurance company and the
7 contract.
8 Q. And with respect to at least some of the
9 insurance companies, it would include all
10 invoices, not just network invoices; is that
11 your testimony?
12 A. Correct.
13 Q. Okay.
14 MR. LARSON: That's actually all
15 the questions I have.
16 MS. SASSOON: Okay. I just have
17 one question.
18 EXAMINATION
19 MS. SASSOON:
20 Q. Back on the subject of your 30(b)6 topic,
21 topic one, you were asked the question about
22 what documents Safelite has that show evidence
23 of balance billing, and I think there might
24 have been some confusion, so I just want to
25 ask you that question again. What documents

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1 does Safelite have that show evidence of
2 balance billing?
3 A. So, yeah, as I mentioned before, the invoices
4 that we received from the glass shops that
5 actually state that the glass shop reserves
6 the right to collect any balances due from the
7 policyholder, we do receive those invoices,
8 and which obviously we are educating the
9 policyholders up front to ensure they
10 understand that they may be responsible for
11 the difference. So we do receive that
12 information from the invoices, from the shops.
13 MS. SASSOON: Okay. That's it.
14 MR. LARSON: Just one follow up.
15 EXAMINATION
16 BY MR. LARSON:
17 Q. Outside of the invoices, are you aware of any
18 other documents that Safelite has that would
19 evidence balance billing?
20 A. No other documents that I'm aware of.
21 MR. LARSON: Okay. That's it.
22 MS. SASSOON: Read and sign.
23 (Deposition ended at 2:23 pf.)
24 * * *
25

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1 VERIFICATION OF DEPONENT TO TRANSCRIPT
2 I, ANDREW KIPKER, do hereby verify that I have read
3 the foregoing transcript consisting of the preceding
4 39 pages and do further verify that it is a true and
5 complete transcript of the testimony given by me on
6 February 22, 2016, (except for the following,
7 stating page and line number and the reason for the
8 change)
9 1.
10 2.
11 3.
12 4.
13 5.
14 6.
15 7.
16 8.
17 9.
18 10.
19 _____
20 Dated this _____ day of _____
21 2016.
22
23 _____
24 NOTARY PUBLIC
25 LISA M. HUTTON COURT REPORTER

Page 41

STATE OF MINNESOTA)
) SS.
COUNTY OF GOODHUE)

Be it known that I took the deposition of ANDREW KIPKER on February 22, 2016, at Fredrikson & Byron, 220 South Sixth Street, Minneapolis, MN 55402;

That I was then and there a notary public in and for the County of Goodhue, State of Minnesota, and that I was duly authorized to administer the oath.

That the witness before testifying was first duly sworn to testify the truth and nothing but the truth;

That the testimony was recorded by myself and transcribed into a computer-aided transcript and that the deposition is a true record of the testimony given by the witness to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the cost of the original transcript has been charged to the party noticing the deposition, unless otherwise agreed to by Counsel, and that the copies have been made available to all parties at the same cost, unless agreed to otherwise by Counsel;

That the reading and signing of the deposition by the witness was not waived, and that the original transcript is retained by Mr. Larson.

WITNESS MY HAND AND SEAL THIS _____ 2016

_____

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Court Reporter
SHADDIX & ASSOCIATES
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reporter@janetshaddix.com

February 27, 2016

Danielle R. Sassoon, Esquire
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022

Re: Safelite vs. Commissioner Rothman
ANDREW KIPKER

Dear Ms. Sassoon:

A copy of the above-referenced deposition is enclosed along with the reading and signing certificate. When the witness has completed the reading and signing, please return all but your copy of the executed certificate to me for proper distribution.

In accordance with the Rules of Civil Procedure, if I do not receive the executed certificate within thirty (30) days of the date hereon, I will send the unsigned original transcript to the attorney who took the deposition for proper filing.

Should you have questions, please do not hesitate to contact my office.

Sincerely,

SHADDIX & ASSOCIATES

Lisa M. Hutton
Court Reporter

cc: Oliver Larson, Esquire

A

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account (2) 26:14;27:25
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Larson Ex. 3

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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Marty Fleischhacker

March 8, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of MARTY FLEISCHHACKER, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Basswood Conference Room, Minneapolis, Minnesota, commencing at 8:30 a.m., Tuesday, March 8, 2016.

* * *

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The Videographer: Mr. Don Carl

P R O C E E D I N G S

Whereupon, the video deposition of MARTY FLEISCHHACKER was commenced at 8:30 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International Incorporated. Today's date is Tuesday, March 8th, in the year 2016. The time is now approximately 8:30 a.m. We are at 4000 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, Minnesota, to take the video deposition of Mr. Marty Fleischhacker in the matter of Safelite Group and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MR. LEFKOWITZ: Jay Lefkowitz here for the Safelite Plaintiffs.

MS. SASSOON: Danielle Sassoon, also for the Safelite Plaintiffs.

MR. LARSON: Oliver Larson, the Attorney General's Office, on behalf of the Commissioner.

THE VIDEOGRAPHER: Would the court reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. FLEISCHHACKER: Yes, I do.

* * *

MARTY FLEISCHHACKER,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MR. LEFKOWITZ:

Q. Good morning. I'm Jay Lefkowitz.
A. Good morning.
Q. A pleasure to see you again. Can you state your name for the record?
A. Martin Fleischhacker.
Q. And are you aware that we're here in connection with a case captioned Safelite Group and Safelite Solutions versus Lori Swanson and Michael Rothman, which is pending here in Federal Court in Minnesota?
A. Yes, sir.
Q. I'm going to refer to Safelite throughout the course of the day, and if I just refer to Safelite without any modifier, will you

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1 understand that I'm referring to both of the
2 plaintiffs in this case, Safelite Group and
3 Safelite Solutions?
4 A. Yes, sir.
5 Q. And if I refer to Safelite Solutions,
6 I want you to understand that I'm referring to the
7 claims management business. Okay?
8 A. Yes, sir.
9 Q. And if I refer to Safelite AutoGlass,
10 will you understand that I'm referring to the
11 vehicle glass repair and replacement business?
12 A. Yes.
13 Q. And --
14 A. You may have to remind me at some
15 point in time.
16 Q. I'm happy to do that.
17 A. Thank you.
18 Q. And if I refer to either Commerce or
19 DOC, will you understand that I'm referring to the
20 Minnesota Department of Commerce?
21 A. Yes.
22 Q. Have you ever been deposed before?
23 A. Yes.
24 Q. How many times?
25 A. Four or five, I -- I can't recall.

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1 I've been deposed before, probably less than a half
2 dozen times.
3 Q. Have all of them been in connection
4 with your current work?
5 A. No.
6 Q. In what context have you given
7 testimony in a deposition?
8 A. A friend of mine got hit by a car, we
9 were riding bikes, and I was a right alongside of
10 him. Thankfully, I didn't get hit. And, then, I
11 had a dispute with an ex-girlfriend over the sale
12 of a house. Otherwise, I think they were all in
13 connection with my duties at Commerce.
14 Q. Have you ever testified at trial or in
15 a court hearing?
16 A. ALJ proceedings, you know,
17 administrative law, but off the top of my head I
18 can't recall any others.
19 Q. Okay.
20 A. There -- yeah, I did -- there was a
21 criminal case down in -- in Olmsted County, down by
22 Rochester, where I had to testify in a case. The
23 law enforcement called me as a witness related to
24 whether somebody had valid insurance or not.
25 Those are the only ones I can recall.

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1 There might have been other ones, but none -- none
2 come to mind.
3 Q. Okay. So you've taken an oath of
4 office -- an oath, sorry, that requires you to tell
5 the truth just like you were testifying in court.
6 Do you understand?
7 A. Yes, sir.
8 Q. I need you to give verbal answers as
9 opposed to just nodding so that the court reporter
10 can take down a verbatim transcript. Okay?
11 A. Yes.
12 Q. And if you don't understand any
13 questions at all that I ask, just ask me to clarify
14 and I'll do that. All right?
15 A. I appreciate that.
16 Q. If you need a break at any point in
17 time, let me know. If you need to revise one of
18 your answers because you realized you made a
19 mistake or something, just tell us right away. Is
20 that all right?
21 A. Okay.
22 Q. Is there any reason why you're not
23 able to give truthful and accurate answers to the
24 questions that I'm going to ask you today?
25 A. I'm running on about three-and-a-half

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1 hours sleep because of people sick at my house, but
2 I think I can still give truthful answers.
3 Q. If at any point during the course of
4 the day you find that you're too tired to continue
5 or to give accurate answers, will you please let us
6 know right away so we can recess the deposition?
7 A. Sure.
8 MR. LEFKOWITZ: Okay. Let me take --
9 have 25. And has this been previously marked? I
10 don't think so. What exhibit are we up to?
11 MS. SASSOON: One oh three.
12 THE COURT REPORTER: One oh three.
13 (Whereupon, Deposition Exhibit No. 103
14 was marked for identification, and a copy is
15 attached and hereby made a part of this deposition.)
16 BY MR. LEFKOWITZ:
17 Q. Is this a copy of your LinkedIn
18 profile?
19 A. It appears to be.
20 Q. Is this --
21 A. I'm not sure if it's the current one,
22 but, yeah.
23 Q. Well, let's take a look. Is all the
24 experience that's listed there accurately reflect
25 your educational and professional background?

A. Yeah. This -- this is my -- the current one, I believe, yep. I -- sorry. I thought it said acting at the top, but it doesn't, it says assistant commissioner.
Q. Okay. And when were you graduated from Hamline School of Law?
A. 2002 or 2003, I can't -- I can't recall.
Q. And do you still maintain an active law license?
A. No.
Q. When did you begin work at DOC as a senior inves -- enforcement investigator?
A. Um, I think it was '99, '98 or '99. I think it was '99.
Q. Okay. Can you describe your job responsibilities?
A. Maybe it was ninety -- it says '98 here.
Q. Correct.
A. Yeah, I don't recall, '98 or '99, one of the two.
Q. Okay. Can you describe your job responsibilities as a senior enforcement investigator?

A. Oh, when -- when I was a senior enforce --
Q. Yeah.
A. Yeah, investigate complaints, but I also -- insurance complaints primarily, but I did handle other things as well, and that -- that position, when -- for that time period, it's -- I was a CCL, or Commerce consumer liaison, and then an investigator, and eventually a senior investigator, you know, at the end of that time period. So it wasn't -- so it wasn't for that whole time period. But, you know, basically respond to consumer complaints and written complaints, and, then, I also was engaged in proactive investigations of insurance companies on the market conduct team.
Q. And who did you report to?
A. Initially to -- a few different times I think I reported to Mike Letourneau, and then at some point Nancy Link in the middle of that time period, and then eventually Paul Hanson.
Q. And did anyone report to you?
A. I think I had some examiners. I guess technically they probably reported to me because I supervised their work, but they were -- they were

contract employees during that time period.
Q. Okay.
A. And I was a lead -- lead, too. So, you know, I would have a lot of people come and ask me questions who were state investigators.
Q. And when you moved on to your next position, which was audit director, what were your responsibilities there?
A. There I had a team of employees that I supervised their -- their work, and I know the composition of the team changed at some point, but there were some -- it was about half a dozen employees, and they were engaged in investigations beyond just insurance, some debt collector work, there was real estate, you know, mortgage. I can't remember the makeup of my teams, but there were -- there were various industries we regulate.
Q. And then in 2012, you were promoted to director of investigations; is that right?
A. Correct.
Q. And what is -- what kind of job description did you have at that point?
A. Then I had -- one more level up, and I had some -- the people who were audit directors, they reported to me. So I think there were two or

three audit directors that reported to me, and they each had a team of investigators.
Q. And now you're working as the Acting Assistant Commissioner of the Enforcement direction -- Division; is that right?
A. No, not currently.
Q. Oh, no? What is your current --
A. It's the one at the very top there. It's actually Assistant. I was Acting for a time period, and then my boss, who was the assistant commissioner, took off and went to the UN; and -- yeah, and I then was promoted to her position.
Q. And what are your responsibilities as the Assistant Commissioner of the Enforcement Division?
A. So I still have all of the audit directors with the investigation teams reporting to me, I have the fraud unit, so that's the licensed peace officers, and, then, investigate insurance fraud, and I have the market conduct section, it's only a couple employees, then, but they do have a lot of contractors working for them, the proactive insurance company investigations, and, then, finally, the securities division reports to me as well, securities director.

Q. And who do you report to?
A. I report to Anne O'Connor, who is the Deputy Commissioner, Chief of Staff.
Q. Do you have the authority to commence an investigation on your own?
A. Yes.
Q. Do you have the authority to commence enforcement actions on your own?
A. I'm not sure what you mean by enforcement actions on my own.
Q. Is there a difference between an investigation and an enforcement action?
A. I -- I'm not sure how you -- how you're defining enforcement action. Enforcement action, I think of something where you're -- you're offering a -- a consent order or going to a hearing or --
Q. So that's different --
A. Yeah.
Q. -- from just doing an investigation, right?
A. Yes.
Q. And do you have the authority to commence an enforcement action on your own?
A. Typically I would, but there are

certain instances where I talk to my boss before doing things, yeah, or I might be asked to consult with the -- either the AG's office. But, more typically, it would be the general counsel, and, then, you know, together we decide on the best course of action.
Q. And who is the general counsel?
A. There isn't one right now.
Q. How many investigations have you worked on during your time at DOC?
A. I -- I don't know, probably at least hundreds. I'm guessing, I don't know.
Q. Does your office have any set of guidelines or best practices for DOC employees to follow when conducting investigations?
A. Um, written guidelines?
Q. Written or verbal?
A. I'm not aware of any written guidelines. We're in the process of drafting those, but I don't -- I don't know that anyone actually sat me down and said, you know, here's -- here's the exact way you do an investigation. It depends on the investigation.
Q. How many investigators work for you right now?

A. I'd have to look at an org chart to know exactly how many. My guess is somewhere around 20.
Q. And have you ever --
A. Twenty formal investigators, but, you know, it depends how you, you know, define it and whether you talk about reporting directly to me. Reporting directly to me, I don't know, I guess everybody could be an investigator, but the supervisors, they guide investigations but mostly they don't conduct the investigations.
I'm not trying to avoid your question. I just want to make sure I'm --
Q. Sure.
A. -- answering it accurately.
Q. I guess what I'm trying to find out is in your position as the Assistant Commissioner For the Enforcement Division, have you ever given any guidance at all to all of these investigators who work for you in terms of how to go about conducting an investigation to make sure it's done accurately and fairly?
A. Yeah, yes, I have.
Q. What kind of guidance have you given them?

A. It's -- it's, you know, mentoring from -- from day one as I -- as I -- you know, whether I was a supervisor or -- or an investigator. I was an investigator before I started working at the Department of Commerce, and I -- I give people direction. They need to be ethical, they need to be fair, they need to be complete, they need to not, you know, take a side, you know, don't believe what your first impressions are, you know, rely on what you obtain for evidence rather than -- you know, what you can actually point to rather than, you know, speculation.
Q. So when you say fair, you mean they should remain neutral until an investigation is concluded?
A. I think they should remain neutral at all times, even after it's concluded.
Q. When you say they shouldn't take a side, does that mean that they should try to find unbiased sources to rely on?
A. I think they should remain unbiased. It's hard to tell who -- who is biased and who is not and what's -- you know, what motivation is behind what people tell you. So I -- I tell people to gather all the facts they can and at the end of

1 day make an assessment based on their own judgment,
2 and I help them with that based on the information
3 we've obtained.
4 Q. But sometimes you can tell if someone
5 is biased --
6 A. Oh, yeah.
7 Q. -- in terms of your investigation,
8 right?
9 A. And you give it proper weight based on
10 their bias.
11 Q. How do you insure when you're
12 conducting an investigation that the evidence that
13 you're looking at isn't just kind of cherry-picked,
14 how do you insure that it's -- you're looking at a
15 fair sample of evidence?
16 A. Um, try to look at as much information
17 as you can, I guess, within time constraints, but
18 it's not always easy to tell.
19 Q. Are there any rules that you're aware
20 of within the Department that govern confidentiality
21 of information collected during an investigation?
22 A. There are data practices rules.
23 Q. And is it appropriate to share
24 nonpublic information concerning pending
25 investigations with third parties?

1 A. Can you ask that question again? I
2 guess I -- I'm not a data practices expert. I go
3 to our data practices expert, but I'll try to
4 answer it.
5 Q. Well, when you conduct an
6 investigation, is it generally considered to be a
7 confidential investigation?
8 A. Yes.
9 Q. And --
10 A. During the time of the investigation,
11 yes.
12 Q. And does that mean that it's not
13 appropriate to just share information relating to
14 your investigation with the public?
15 A. Just to do a press release or
16 something about the facts during the middle of an
17 investigation? No, I don't think that would be
18 appropriate.
19 Q. What about your deliberative processes,
20 when you're working on an investigation and you're
21 considering whether to take action against some
22 target of your investigation and you're discussing
23 it, obviously, with your staff, is it appropriate
24 to share that information with third parties?
25 A. So, can you be more specific? What

1 specific information? Because, you know, if I'm,
2 like, sitting at the table with somebody discussing,
3 you know, some issue, yeah, you may have to share
4 some investigate -- well, if somebody made a data
5 practices request, no, I couldn't give it to them.
6 But during the investigation there may be times
7 when, you know, it's something that I can't
8 necessarily, you know, just ship off it to somebody
9 in the public, where I need to ask a witness, you
10 know, about a document or something that otherwise
11 would be confidential.
12 Q. Right. But let's just say you're
13 investigating me for some potential breach of some
14 insurance regulation in the state of Minnesota and
15 you're conducting the investigation and you're
16 looking into my practices and my background and
17 considering whether you're going to bring some
18 enforcement action, is it appropriate for you to
19 share that information with some third party who is
20 not in your employ?
21 A. It depends who the third party is.
22 Q. Give me an example of a -- when would
23 it be appropriate, which type of third party would
24 be appropriate to share that with?
25 A. One example is, you know, I'm

1 investigating an insurance company and they have
2 terminated one of their agents, and so I'm
3 investigating their agent, and I need to know, you
4 know, about whether the agent told them something
5 or whether it's consistent with something that the
6 agent has, you know, done something like that
7 and -- and, you know, it's kind of the crux of what
8 I'm looking at, I might have to talk to the
9 insurance company and say, you know, what did you
10 do to look at this or do you have any records
11 related to this person's activity or something like
12 that, so --
13 Q. Well, isn't that really in the nature
14 of fact-finding?
15 A. But --
16 Q. As opposed to sharing your deliberative
17 process as to whether you're thinking of bringing
18 an enforcement proceeding or not?
19 A. Not necessarily, because, you know,
20 I'm -- I'm -- I might say to them, look, you know,
21 whether we move forward with this or not hinges on
22 this certain issue and so we're discussing the
23 deliberative process, my decision making and what
24 I'm looking at if they don't understand, and it
25 happens a lot with insurance companies. I don't

1 know how much it happens, whether it happens a lot,
2 but it has happened in the past where I'm asking
3 them questions or other times when they take a
4 statement from somebody and I don't understand
5 their statement. So, you know, we'd have to get
6 into the details of what the person said versus
7 what they might have taken, a statement. So there
8 could be instances.
9 Q. Do you have any view as to what
10 confidential information entails within the
11 Department of Commerce?
12 A. There are different levels of -- of
13 confidential information inside the Department of
14 Commerce. I have a general sense.
15 Q. Can you tell me what you believe
16 confidential information to be?
17 A. Typically, investigative data is
18 confidential, data about individuals is confidential.
19 Q. And is there a restriction on use of
20 confidential information?
21 MR. LARSON: Are you asking about
22 legally or just Department policy?
23 MR. LEFKOWITZ: Department policy.
24 MR. LARSON: You can answer.
25 BY MR. LEFKOWITZ:

1 Q. Is there a restriction on the use of
2 confidential information?
3 A. Typically, you know, you can't
4 disseminate confidential information.
5 Q. I assume, but please tell me if I'm
6 right, that some of your investigations are
7 initiated because you receive a complaint from
8 someone in the public; is that right?
9 A. Correct.
10 Q. And if someone files a complaint, is
11 it appropriate to share your conclusions about the
12 evidence before any action is taken?
13 A. My conclusions about the evidence?
14 Yes, I -- yeah, I've had lots of instances where
15 people will supply things to me and they just think
16 it's the best evidence and they're, you know,
17 getting ready to call the governor and their
18 legislator and the commissioner and everybody else,
19 and I say, you know, I'm sorry, I've looked at the
20 evidence and, you know, it's happened, you know,
21 lots of times, where people give me something they
22 just think is the best evidence in the world and I
23 say, sorry, it's not good evidence, I can't do
24 anything with it, it's -- it's inconsistent with --
25 with -- with what you're telling me it is. So,

1 yeah, I do have to share that, unfortunately, with
2 a lot of people.
3 Q. What if it's the other way around,
4 what if someone brings you evidence, raises a
5 complaint, brings the evidence of some misconduct
6 by a third party and you look at it and you say,
7 boy, this is really problematic, I'm going to --
8 I'm going to take action against that third party,
9 is it appropriate for you to tell the complainant
10 that you're going to take action against the third
11 party before you've even notified the third party?
12 A. Um, you know, I -- it depends, you
13 know, what action is. You know, moving further
14 with more investigation, I guess I'd have to know,
15 you know, what specifically is said to the person
16 because, you know, a lot of people read different
17 things different ways based on -- I'm very --
18 Q. Well, I'll be very clear.
19 A. Sure.
20 Q. Let's say I make a complaint to you
21 about Mr. Larson and you look at the complaint and
22 you say, boy, this is problematic, I'm going to
23 issue some C&D against him. Would it be
24 appropriate to tell that to me, as the complainant,
25 before you've even notified Mr. Larson?

1 A. Notified? You mean made a referral to
2 the AG's office?
3 Q. Yeah, told Mr. Larson that he's the
4 subject of this investigation?
5 A. Now I'm really confused. So you're --
6 you're saying I'm investigating him or --
7 Q. Yeah.
8 A. -- he's my lawyer.
9 Q. No. I'm just saying -- I'm trying to
10 understand, Mr. Fleischhacker, if your office
11 treats any information as truly confidential or if
12 you're comfortable just sharing it willy-nilly with
13 the public?
14 A. Typically, you would not share that
15 information.
16 Q. Okay.
17 MR. LEFKOWITZ: Let me have 31.
18 (Whereupon, Deposition Exhibit No. 104
19 was marked for identification, and a copy is
20 attached and hereby made a part of this deposition.)
21 MR. LEFKOWITZ: This is the next
22 exhibit.
23 THE COURT REPORTER: One oh four.
24 MR. LEFKOWITZ: One oh four, I'm going
25 to show you, Mr. Larson --

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(Discussion off the record.)
BY MR. LEFKOWITZ:
Q. Have you ever seen this document before?
A. Um, I believe I have.
Q. Is this the Code of Ethics for employees in the executive branch?
A. Is this limited to the executive branch?
Q. You think it may be broader?
A. It might be broader.
Q. Does it cover the Department of Commerce?
A. That would be in the executive branch.
Q. Well, this Code of Conduct, you think, just covers Minnesota employees; is that right?
A. Just covers?
Q. It covers Minnesota employees, correct?
A. It covers Minnesota employees, I think, yes.
Q. Okay. Now I want to show you another document.
MS. SASSOON: Previously marked as Exhibit 86.
BY MR. LEFKOWITZ:

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Q. Do you see on this Minnesota Statutes 43A.38 paragraph (b) there's a definition of confidential information?
A. Yes.
Q. Given that definition, can you give me your understanding of what the term confidential information means?
MR. LARSON: I'm sorry. Are you asking him for a legal opinion on this?
MR. LEFKOWITZ: No.
BY MR. LEFKOWITZ:
Q. Just asking him as a investigator and as an enforcement director how -- what you understand the phrase confidential information to mean?
A. It's defined, it's defined right there (indicating).
Q. Can you read the definition, please?
A. It "means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business."

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Q. Looking at that definition, Mr. Fleischhacker, have you ever shared confidential information with nongovernmental parties?
A. So it looks like this is referring to, you know, use of the confidential information. I'm not sure that that's the definition that's used, you know, throughout Minnesota statutes. I'd have to do a search or talk to my lawyers about that. But, you know, in Subd. 3, I guess it's talking about the use of confidential information, it looks like to get a -- you know, like an economic benefit or something for myself.
Q. We can get to that in a moment, I'm asking you a different question.
It says here that "Confidential information means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business." That is the definition of confidential information; is that correct?
A. For this statute.

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Q. Correct.
A. I don't know if that's the same in all statutes, yeah.
Q. I'm just asking a simple question. Is that the definition for this statute of confidential information?
A. Yes, sir.
Q. And have you ever shared confidential information as defined in this statute with nongovernmental actors?
A. "...may provide unfair economic advantage or adversely affect the competitive position of an individual or a business." I don't recall any -- releasing any such information --
Q. Okay.
A. -- specifically.
Q. All right.
A. I mean, I -- you know, I -- I gave you some examples where I might release some confidential information and could that, you know, adversely affect the agent who has stolen money, that, you know, I'm asking the company whether he stole money, I guess it could. I don't know. I guess I'd have to parse it out for the specific situation, but I -- I can't remember any specific

1 instances.
2 Q. You don't think you ever have shared --
3 A. I don't recall --
4 Q. -- confidential information?
5 A. -- any, I don't recall any such
6 instances.
7 (Whereupon, Deposition Exhibit No. 105
8 was marked for identification, and a copy is
9 attached and hereby made a part of this deposition.)
10 BY MR. LEFKOWITZ:
11 Q. Mr. Fleischhacker, this is a
12 declaration you submitted in connection with this
13 litigation; is that correct?
14 A. Correct.
15 Q. Did you volunteer to submit this
16 declaration or did someone ask you to submit it?
17 A. I had a discussion with my attorneys
18 about what was needed to support our case -- or we
19 were discussing the case and -- and --
20 MR. LARSON: Marty, you shouldn't say
21 anything other than you had a discussion with me
22 about --
23 THE WITNESS: I had a --
24 MR. LARSON: -- the deposition.
25 THE WITNESS: -- discussion with

1 Oliver, and it resulted in this, yes.
2 BY MR. LEFKOWITZ:
3 Q. Did you draft the declaration yourself?
4 A. No.
5 Q. Did you verify every sentence in the
6 declaration before you signed it to make sure it
7 was true?
8 A. I discussed every sentence in here
9 with my attorneys before I signed this, yes.
10 Q. Did you verify it yourself to make
11 sure that it was all true?
12 A. Yes. I believe it's all true.
13 Q. And you submitted the declaration
14 under penalty of perjury, right?
15 A. Correct, sir.
16 Q. Would you take a look at paragraph 3?
17 Am I correct that the Department has received
18 complaints from repair shops and trade associations
19 concerning the practices of Safelite and insurers?
20 A. Yes.
21 Q. And those complaints fell into three
22 primary categories; is that right?
23 A. Um, yes.
24 Q. And one was that there were complaints
25 that insurers were not paying fair and reasonable

1 rates?
2 A. Yes.
3 Q. Another was that Safelite was acting
4 as an adjuster?
5 A. Yes.
6 Q. And a third was that insurers and
7 Safelite were steering insureds to use affiliated
8 shops; is that correct?
9 A. Yes.
10 Q. And are those the same types of
11 complaints that led the Department of Commerce to
12 take actions against auto glass insurers and
13 Safelite in 2014?
14 A. I'm not sure if all those were alleged
15 in -- in the complaints, but the complaints
16 resulted in the actions, yes.
17 Q. And the Department received those
18 types of complaints over the course of several years?
19 A. I -- I'm not exactly sure about
20 Safelite specifically, but I've received glass
21 complaints since I started at Commerce virtually.
22 Q. When do you first recall receiving
23 these types of complaints from repair shops or
24 trade associations?
25 A. Probably back in -- like I say, almost

1 since I started I heard about, you know, free
2 steaks and, you know, the battle between the
3 insurers and the glass companies, you know, both
4 pointing the finger that the other one is doing
5 something wrong, from free steaks to rebates to --
6 you know, they run the gamut. It's broader than
7 these three categories back and forth, yeah.
8 Q. And how many of these types of
9 complaints has DOC received since you've been
10 working at the agency?
11 A. I -- I'd have no idea. For the
12 longest time -- one person was handling these
13 types -- at first they were distributed, and then
14 they all went to one person, and then they -- I
15 think the law changed, and they were redistributed
16 among investigators.
17 Q. What's the magnitude we're talking
18 about here?
19 A. I have no idea. I'd have to do a
20 search through our database to find out.
21 Q. More than ten?
22 A. Like I say, I -- I don't know. I --
23 you know, it's one person worked on them pretty
24 much solely for years. I mean, she did many other
25 things, but I know that she got all the complaints,

but I think that I even took an action, you know, years ago, and I know one of my coworkers took an action years ago, like back in '02. So, you know, I know that they've been since -- virtually since I started at Commerce, but I have no -- no idea how many complaints have actually come in number wise.
Q. How many of these complaints resulted in an enforcement action or a settlement by the DOC?
A. Like I say, they weren't all my cases, so I don't know. I know at least a few of them, I think. I think there was at least a few years ago and then AAA.
Q. What was the last one that you remember prior to AAA?
A. Um, I know there was one on -- one with respect to State Farm. There may have been a Progressive file. You know, there may have been others, too, that I don't know about. Recently I think we signed one with USAA, too, come to think of it.
Q. How long ago was that one?
A. That one probably within the last year. It was within the last year, because I remember I had a discussion with the company's attorney, he pulled me aside last April. So it had

to be after last April, but I think we settled that one, I guess. I'm not a hundred percent sure, but I'm pretty sure we settled it.
Q. Okay. We'll come back to your declaration later.
(Whereupon, Deposition Exhibit No. 106 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: It's 106.
BY MR. LEFKOWITZ:
Q. I've just handed you a letter from Glenn Wilson to David Tomassoni and Tom Rukavina, dated June 17th, '09; is that correct?
A. That's what it appears.
Q. And --
A. Let me -- let me just make sure if it was signed by Wilson, yep, Commissioner Wilson. Excuse me.
Q. And was he the Commissioner of DOC at the time?
A. I believe so.
Q. And the recipients of this letter were members of the Minnesota Legislature; is that right?
A. Correct.

Q. And is Mr. Wilson writing here in response to a request from Mr. Tomassoni and Rukavina regarding how auto claims were being handled in their districts?
A. Yeah. It looks like it's a response to a request.
Q. Now, can you read the last paragraph to yourself, because I want to ask you some questions about it?
A. The one right above his signature?
Q. Ah, yeah.
A. Okay.
Q. You were working in the Department of Commerce at the time that Mr. Wilson was the Commissioner; is that right?
A. Yes, sir.
Q. Commissioner Wilson here says that DOC does not hear consumers complaining that auto glass work is not being performed or that repairs are shoddy; is that correct?
A. That's what he wrote.
Q. To your knowledge, was that a true statement when he wrote that in 2009?
A. I don't know.
Q. Do you have any reason to believe that

he was not telling the truth?
A. No.
Q. Do you know if that is still true today?
A. Consumers themselves directly, I would say that's probably accurate.
Q. In fact, Commissioner Wilson goes on to say that "This suggests that consumers are pleased with the way the market is operating." Do you see that?
A. I do see that.
Q. Can you recall the Department of Commerce taking any enforcement actions against auto glass insurers or Safelite under Commissioner Wilson?
A. I don't recall.
Q. Now, when did Mr. Rothman replace Mr. Wilson as commissioner?
A. I'm not sure exactly what year that occurred, probably shortly after this, maybe around two thousand -- no, twenty -- probably 2010.
Q. I thought it was 2011.
A. Yeah. It would have been the 2010 election for the governor. So 2011, you're right.
Q. And the DOC has taken enforcement

actions against insurer -- auto glass insurers and Safelite under Commissioner Rothman; is that correct?
A. Action against auto insurers? Yes.
Q. And Safelite, correct?
A. Against Safelite directly? Yeah. We -- we've filed the -- the administrative action, yes.
Q. Do you know why Commissioner Rothman is more receptive to the complaints of the auto glass repair shops than Commissioner Wilson was?
A. I don't know that Commissioner Rothman is any more receptive than Commissioner Wilson was. Commissioner Wilson was -- you brought him evidence, and he was tough. So I don't know what his position was on -- was on this. I -- I know Commissioner Wilson was -- was pretty tough on companies, so --
Q. Do you have any view about what's changed in the marketplace since Commissioner Rothman took over from Commissioner Wilson?
A. I'm not sure what's changed in the marketplace.
Q. Do you have any understanding of what's changed in terms of what's led the Department to change its enforcement decisions?

A. You know, I -- glass claims are probably like my least favorite thing to deal with, because, you know, the laws changed, the -- you know, they're complicated. You know, I've had trouble getting -- you know, I actually hope that, you know, your client would be more helpful to me so I could get to the bottom of, you know, what's accurate in the marketplace, but --
What was your question, again? I want to make sure I'm answering your question.
Q. The question is what you understand has changed that has caused Commissioner Rothman to take a very decidedly different approach to this than Commissioner Rothman?
A. Commissioner --
Q. I mean than Commissioner Wilson?
A. Yeah. What -- when the -- when we were provided with some information about how, you know, insurance companies were losing arbitrations, substantial arbitrations, and my understanding was around 2000 the law changed from -- from -- the Supreme Court said that -- was it 2000, 2010, I don't remember what year, but at some point the Supreme Court said, yeah, you can consolidate these claims, the -- the glass providers, you know, the

glass companies can consolidate claims.
So I think there was some change in that respect, and when we got some data that showed the insurance companies were losing the -- these, you know, larger arbitrations consistently, that caused us to take a little deeper look. Otherwise, you know, I don't know that, you know, much had changed at all; and, you know, I wasn't the supervisor at that time, so I don't know what -- what or how people were making decisions above me before I got there. That was -- for me, personally, that was a concern of mine that caused me to take a look deeper.
Q. What's your understanding of Safelite's business?
A. You know, I -- it's a large, complicated company. I think they manufacture glass and they install and they handle claims. Are you talking about as a whole?
Q. Yes. I'm just asking what your understanding is?
A. Yeah, that's -- you know, that's the -- the basic part I'm familiar with in general, that they manufacture glass, they sell it wholesale, they sell it retail to customers, I

think both at freestanding locations and they do a mobile service. I think they contract with other providers and outside areas, and, like I say, they also handle claims. I think they are now starting to handle just general P&C claims, as well as administrating -- you know, acting as glass administrator, I think they call themselves.
Q. What's a P&C claim?
A. I'm sorry. Property and casualty, homeowners, and I -- I guess I should qualify, homeowners storm loss claims I think I've seen some information.
Q. Do you have any concerns with any of Safelite's business practices?
A. I don't really know anything about their glass manufacturing, you know, other than what we've had in litigation. I think that kind of summarizes what some of the issues are with -- with Safelite.
Q. Well, I'd like you to tell us in your own words if you have any issues or concerns with Safelite's business practices, what they are?
A. I'd like to know how Safelite calculates the glass prices that they -- you know, insurers that T.J has reached out to. He tells me

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1 that it's not really clear how these prices are
2 arrived at, and so, you know, it would help us to
3 shake out what's an accurate price if we -- if we
4 had that information, and, you know, from the
5 arbitrations I've seen and my understanding is that
6 Safelite was related to some of those arbitrations
7 and the arbitrator found completely against the
8 insurance company's position.
9 So, yeah, I have concerns about how
10 Safelite calculates its prices and whether it's --
11 I don't remember the verbiage in the statute, but
12 geographically based. I'm concerned about what
13 Safelite tells consumers, whether they're pressuring
14 consumers to -- or deceiving consumers or coercing
15 consumers. You know, I guess it would depend on
16 the call what -- you know, what -- what my concern
17 would be, but, you know, those types of things.
18 You know, my affidavit laid out a few issues, too,
19 so --
20 Q. Feel free to amplify if there are any
21 other areas of concerns you have?
22 A. Yeah, whether they're paying --
23 whether they have the fair and reasonable rates,
24 whether they mislead clients on -- or glass
25 customers about warranties, and whether Safelite is

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1 acting as an unlicensed adjuster in Minnesota
2 negotiating and paying claims. I think that's a
3 fair summary.
4 Q. Are you aware of any instances where
5 Safelite Solutions recommended a shop that didn't
6 follow adequate safety standards?
7 A. Didn't follow adequate safety
8 standards? Like they had grease on the floor so
9 their employees would fall down or something like
10 that? I guess I've never been in a Safelite shop.
11 I don't know anything about their safety procedures.
12 Q. So you're not aware of any instances,
13 then, where Safelite Solutions recommended a shop
14 that did not follow adequate safety standards; is
15 that right?
16 A. Adequate safety standards? I guess
17 I'm not sure what you mean by safety standards.
18 Q. Sir, let me be very clear. I'm asking
19 you a yes or no question, are you aware. If the
20 answer is yes, then, I'm going to ask you to tell
21 me the instances that support your conclusion that
22 it's yes. If you're not aware, there may be a
23 million reasons where why you're not aware, and
24 that's fine. I'm not asking you to justify all
25 that, I'm just asking you, are you aware of any

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1 instances where Safelite Solutions recommended a
2 shop that did not follow adequate safety standards?
3 A. I know I attended a -- an arbitration
4 where American Family's glass manager out of
5 Madison was sitting at the table, and he said that
6 he had defective installations of glass, he said
7 that there were instances of defective installation
8 of glass by Safelite. So that would be a safety
9 concern of mine for consumers, yes, where they had
10 to have warranty work done.
11 Q. And what did you do to investigate
12 whether that was truthful and accurate?
13 A. I was part of the arbitration. I -- I
14 listened to the person, and I, you know, gave the
15 information to T.J, but, you know, I --
16 Q. Did your office do any follow-up to
17 ascertain if that allegation was accurate or
18 truthful?
19 A. No.
20 Q. No.
21 A. Not that I can recall. T.J may have,
22 but not that I recall specifically.
23 Q. Are you aware of any circumstances or
24 instances where Safelite Solutions recommended a
25 shop that did not perform quality work?

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1 A. You know, I bought a vehicle, and when
2 I was driving the vehicle home there was a rainstorm
3 and I had water coming down on my -- my dashboard,
4 and I asked the person -- they replaced the
5 windshield, and I asked them who replaced it, and
6 he said he thought it was Safelite. So that's the
7 only instance I'm aware of.
8 Q. Who said he thought it was Safelite?
9 A. Whoever -- there was somebody in the
10 garage that day, and I asked him who replaced it,
11 and they said Safelite, they said they thought it
12 was Safelite. That's the only instance that I'm
13 aware of.
14 Q. And did you ever verify whether or
15 not, in fact, it was Safelite?
16 A. No. That was my own personal claim,
17 and I didn't want to -- no, I did not.
18 Q. Did you file a complaint --
19 A. No, I did not.
20 Q. -- against Safelite --
21 A. No, I did not.
22 Q. -- at the time?
23 A. No, I did not, sir.
24 Q. Do you have any reason to question
25 Safelite AutoGlass's qualifications to perform auto

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1 glass repair?
2 A. No.
3 Q. Are you aware of any instances where
4 Safelite AutoGlass -- you may have answered this
5 already, but I just want to make sure we're talking
6 about Safelite AutoGlass -- did not follow adequate
7 safety standards?
8 A. Safelite AutoGlass? Remind me who
9 Safelite AutoGlass is.
10 Q. The actual glass repair company as
11 opposed to the Safelite Solutions?
12 A. So Safelite Solutions is the one that
13 does the installation.
14 Q. No. AutoGlass repair does the
15 installation.
16 A. And so ask me your question again.
17 Q. I think the only -- you told me the
18 only instance, I just want to verify this, where
19 you are aware of any substandard performance was
20 your personal situation where some garage attendant
21 told you he thought it was Safelite that had
22 performed the glass repair and you're not sure if
23 that's correct?
24 A. Yeah, and --
25 Q. Is that an accurate statement?

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1 A. Well, the -- the American Family
2 person I just told you about was talking about
3 Safelite installations that they had to have warranty
4 work done on.
5 Q. And you said you didn't do anything to
6 check whether that was an accurate statement or not?
7 A. I said I didn't personally. I don't
8 know if T.J did.
9 I believe that I also saw -- I did, I
10 saw some other stuff on -- on a Web site about
11 Safelite have -- people having to get their windows
12 fixed after some -- on rip-off dot-com or
13 complaints dot-com, or one of those, yeah, there
14 were some complaints on there as well, but I don't
15 recall Minnesota specific ones.
16 Q. Okay. And even as to the ones that
17 were not Minnesota specific, I assume you didn't do
18 any investigation of your own to ascertain the
19 veracity of those comments; is that correct?
20 A. No. I've just given you my personal
21 information.
22 Q. Do you know where Safelite is
23 headquartered?
24 A. I know they have some operations in
25 Ohio. I think they might be domiciled in Delaware.

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1 Q. Are you aware that Safelite is the
2 largest provider of vehicle glass repair services
3 in Minnesota with its headquarters out of state?
4 A. I think I read that in the filing
5 documents early on, yeah.
6 Q. Are you aware that Safelite operates
7 nationwide?
8 A. Yes.
9 Q. And that, in fact, Safelite is the
10 country's largest Nationwide auto glass repair
11 business?
12 A. I think they reach 96 percent if -- I
13 don't know if that's your handiwork or somebody
14 else's. But, yeah, I think that's what it said at
15 some point in documents that I read. I was kind of
16 surprised they reached that many people.
17 Q. Do you think Safelite is taking
18 business away from the independent glass shops in
19 Minnesota?
20 A. That's what they allege.
21 Q. Do you think that's accurate?
22 A. Um, I don't -- you know, I, frankly,
23 don't have any instances of it, so I don't have
24 personal knowledge that it's happened, but
25 that's -- like I say, that's what they allege.

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1 Q. Do you think Safelite is driving down
2 the price of automotive glass repair in Minnesota?
3 A. Did you say driving down the cost?
4 Q. The price.
5 A. The price? Probably one of the
6 factors related to the price in Minnesota. There
7 are many other repair facilities, yeah.
8 Q. But Safelite being in Minnesota has an
9 impact on driving down the prices?
10 A. Oh, I'm sure it does.
11 Q. And do you think lower prices are a
12 good thing for consumers?
13 A. Yes.
14 Q. Do you think that Safelite is harming
15 the local indigenous Minnesota businesses?
16 A. Yeah. I -- I don't know which -- like
17 I said, you know, they -- they allege that -- I
18 think some companies allege, but I don't know that
19 they're Minnesota businesses. I guess I -- I don't
20 know where any of the businesses here are
21 incorporated, whether it's, you know, Harmon Glass
22 or Alpine or any of the -- I don't know where
23 they're domiciled. They -- I don't know if they do
24 work outside of Minnesota, either.
25 MR. LEFKOWITZ: All right. Let's take

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1 a -- just a five-minute break.
2 THE WITNESS: Sure.
3 THE VIDEOGRAPHER: Going off the video
4 record. The time is now approximately 9:28 a.m.
5 (Break from 9:28 to 9:36.)
6 THE VIDEOGRAPHER: We're back on the
7 video record. The time is now approximately 9:36
8 a.m.
9 (Whereupon, Deposition Exhibit No. 107
10 was marked for identification, and a copy is
11 attached and hereby made a part of this deposition.)
12 THE COURT REPORTER: It's No. 107.
13 BY MR. LEFKOWITZ:
14 Q. Mr. Fleischhacker, I've just handed
15 you a copy of the Minnesota Department of
16 Commerce's Responses to Plaintiffs' First Set of
17 Interrogatories and Requests For Admissions. Do
18 you see that?
19 A. Yes, sir.
20 Q. And if you look at page 10, you
21 certified under penalty of perjury that the
22 Commissioner's responses are true and correct; is
23 that -- is that right?
24 A. Yes.
25 Q. And does that mean that you reviewed

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1 this document for accuracy before you signed that
2 certification?
3 A. Yes.
4 Q. Can you take a look at Interrogatory
5 No. 4 on page 4? And do you see in the answer
6 there, the second paragraph it says, "Commissioner
7 Rothman states that the Department has not received
8 any complaints directly from consumers regarding
9 Safelite's auto glass claims administration
10 practices"?
11 A. Yes.
12 Q. Is that an accurate statement?
13 A. Yes, at that time. I don't know about
14 subsequent to it.
15 Q. That's executed on December 21st, 2015;
16 is that correct?
17 A. Yes.
18 Q. So it was true as of that date?
19 A. Yes.
20 Q. Are you aware of any complaints
21 directly from consumers regarding Safelite's auto
22 glass claims administration practices since
23 December 21st, 2015?
24 A. I'm not aware of any.
25 Q. So that means that the complaints that

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1 the Department of Commerce did receive came from
2 glass repair shops and trade associations, correct?
3 A. Yes, and possibly their attorney, too.
4 I don't -- I -- I don't recall exactly where they
5 came from. But, yes, it would encompass those
6 three groups.
7 Q. Three meaning potentially their --
8 their agents, the glass repair shops --
9 A. Yes.
10 Q. -- the trade association, and their
11 agents?
12 A. Correct.
13 Q. But not consumers?
14 A. Correct.
15 Q. And those glass shops and trade
16 associations compete with Safelite, right?
17 A. Um, I don't know that any of them
18 manufacture glass or do other types of claims. But
19 as far as the installation of glass, that portion
20 of the business, I'm aware that there's competition
21 there.
22 Q. Competition between Safelite and these
23 independent glass shops in Minnesota, correct?
24 A. Glass shops, I'm not sure what you
25 mean by independent glass shops. But the glass

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1 shop independent of Safelite?
2 Q. Correct.
3 A. Yes, yes.
4 Q. Can I ask you to look at Interrogatory
5 No. 8 now, that's just a couple pages on? And this
6 might be the complete answer to the first question
7 we were talking about. Do you see here on the
8 answer where it says, "Answering subject to these
9 objections, since 2010 the Department has been
10 contacted by Rapid Glass, Alpine Glass, and Chuck
11 Lloyd on behalf of industry clients"?
12 A. Yes.
13 Q. And, specifically, has the Department
14 of Commerce communicated with Mike Reid from Alpine
15 Glass?
16 A. Yes.
17 Q. And with Rick Rosar from Rapid Glass?
18 A. I'm not a hundred percent sure on --
19 on Rick Rosar. I've heard his name, but I -- I
20 don't remember personally ever talking to him. I
21 may have, I just don't at this moment recall it,
22 but I remember his name. So maybe T.J has talked
23 to him.
24 Q. And are you aware that Chuck Lloyd
25 represents both Alpine Glass and Rapid Glass?

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A. Yes.
Q. Now, aside from Alpine Glass and Rapid Glass, are you aware of any other glass shops that have complained about Safelite to the DOC since 2010?
A. I don't recall any others.
Q. And in 2014, the DOC opened an investigation into Safelite Solutions and some of the insurance companies like USAA, American Family, and AAA; is that correct?
A. Correct.
Q. I'd like you to tell me a little bit about your role in these investigations. Did you decide which companies to investigate?
A. I think they were the ones that we received arbitration award documents on. So, yes.
Q. And did you compile evidence for the DOC and its investigations?
A. I may have compiled some, but I -- I can't recall.
Q. Did you review evidence for the DOC and its investigations?
A. Yes.
Q. Did you personally correspond with Safelite?
A. I don't recall if I personally talked

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to anybody from Safelite. I don't -- I think there was a meeting, I don't remember being involved in that meeting. I may have talked to one of their lawyers at one point. I -- you know, I -- I can't recall. If you have a document that would refresh my memory, I'd be more than happy to confirm it or --
Q. Did you correspond with the insurance companies?
A. Yeah, I've had discussions with insurance companies or their lawyers, agents.
Q. What about the glass shops, the complainants, did you regularly correspond with them?
A. I'm not sure what you mean by regularly. Have I corresponded with them? Yes, I have.
Q. What about Chuck Lloyd, did you correspond with Chuck Lloyd?
A. I've talked to Chuck Lloyd.
Q. In connection with this investigation?
A. Oh, in connection with this one? Yes.
Q. Did you provide the glass shops, Alpine and Rapid, with updates during the pendency of your investigations in 2014?
A. I may have. I don't -- I don't recall.

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Q. Did you decide whether to take enforcement actions against the insurance companies and Safelite?
A. At the end of the day, yeah, it was my decision.
Q. Can you describe T.J Patton's role in those investigations?
A. He was the primary investigator.
Q. What did that mean, what did that entail?
A. T.J had already had an investigation going of AAA, and so these allegations were added to his file. So he was the boots on the ground guy, just having discussions with the company, you know, making data requests. He was the main -- main investigator on the file. He would have been doing the investigative work on the file primarily.
Q. Do you know --
A. Trace -- Tracy Brown was another person related to AAA, but I'm not sure if Tracy did anything. If any -- T.J would have been the lead person, regardless, on anything.
Q. Do you know if he provided the glass shops with updates during the pendency of the investigation?

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A. I'm not sure.
Q. What about Pam Gergen, what was her role in these investigations?
A. She's T.J's supervisor.
Q. And do you know what her role was?
A. Supervise, review his -- his work, but as far as how extensively they discussed this file, I -- you know, I really couldn't tell you specifically what -- what she did with respect to this.
Q. Do you know --
A. I know that she reviewed some of the documentation and some of his conclusions at some point.
Q. Do you know whether she supervised his investigative methods?
A. I'm not sure. She's his supervisor, I would assume she did.
Q. Did you supervise his investigative methods at all?
A. Um, some of T.J's investigation, he would come to me directly, yes.
Q. What steps did you take to insure that he was getting accurate and fair and impartial information in connection with his investigation?

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A. I asked T.J to get as much information about these claims as he could from the shops that were complaining, the insurers that were handling the claims, and from Safelite about their -- you know, what they -- they did in the process and how these, you know, claims were handled from their respect.
Q. But what did you do, if anything, to insure that he was conducting the investigation fairly?
A. I -- again, I asked T.J to get information from all sides before he made any decisions; and, as I recall, we were able to get information from the shops. You know, statutorily the insurers are required to provide us information, and they did; and I don't think Safelite gave him anything. So he had to rely on what he -- what he had or they gave him very limited information.
Q. And what he had came from two competitors of Safelite, Rapid and Alpine?
A. And the insurance company.
Q. And the insurance company.
What was Commissioner Rothman's role in these investigations?
A. I don't know that he had any role in

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these investigations.
Q. Did you consult with him in connection with this investigation?
A. I'm sure I mentioned it to him during our -- our meetings, but, you know, he -- I don't think he got into the -- the weeds on this at all. I mean, just the idea that we had these, you know, what I thought were huge arbitrations and some write-ups by arbitrators that seemed pretty unfavorable to the insurance companies with some of these write-ups that -- about my concerns, but, you know, there would have just been a few -- a few sentences and we'd have moved on to -- to other things.
Q. Did he decide whether to take enforcement action against the insurance companies and Safelite?
A. No.
Q. You never asked him for authority to go ahead with that?
A. I don't ever recall any type of statement. He's a decision-maker. That would be odd if I did that.
Q. I'd like to go back to the declaration. Do you still have that?

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A. Should have everything here.
MS. SASSOON: It's Exhibit 105.
BY MR. LEFKOWITZ:
Q. Yes, Exhibit 105. Can you take a look at it and read to yourself paragraph 5? I want to ask you a couple questions. Just let me know when I can ask.
A. Okay.
Q. Mike Reid contacted you in the summer of 2013; is that right?
A. Some -- yeah, around that time frame.
Q. Was that by telephone?
A. I believe it was by telephone. They may have come in for a meeting, maybe -- maybe he came in for a meeting. I -- I, frankly, don't recall.
Q. What companies was Mike Reid complaining about?
A. Was he complaining about? Primarily he was complaining about Safelite, but, you know, with respect to the -- their work for insurers and I don't remember all the insurance companies he was complaining about. I know AAA was one of them, though.
Q. And these complaints that he was

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making, were they similar to the kinds of complaints that the Department had heard previously?
A. Correct.
Q. And the Department had previously not taken any action in response to those types of complaints, correct?
A. I don't -- you know, I don't think that is correct. I'd have to go back and see, you know, those earlier actions back in early 2000s, but there had been a -- quite a time period that passed when others were handling those types of claims, where there was no action taken.
Q. Are you aware of any action previously taken against Safelite?
A. No. In Minnesota?
Q. In Minnesota?
A. No.
Q. In the summer of 2013, Mike Reid provided information that was new to you; is that correct?
A. Correct.
Q. And one piece of new information was that Safelite warned customers that they might be balance billed; is that correct?
A. Correct.

Q. Was that information new just to you or new to the Department of Commerce?
A. I don't know if it was new to the Department, it was new to me.
Q. Do you know if the Department of Commerce had ever been informed of this prior to this conversation with Mr. Reid?
A. You know, I'm sure at some point we were, but I think he gave us recordings at -- with this particular complaint where there were some things, you know, to back it where it wasn't just -- you know, we get complaints every day. There are a couple people in particular that forever are contacting me and saying, Marty, go investigate this, you know, and they give you nothing, okay, and that's how a lot of these glass claims for years came in, we don't like this or we don't like that; and, you know, I have a pretty good relationship with the insurance companies, okay. I've been dealing with the same attorneys for -- forever, including the one that represented Safelite, and he represented State Farm, you know, in 2000. So, yes, we'd heard them over the years, but, yeah, I think it was the arbitrations and the -- the recordings, I think, that gave us some

pause.
Q. And the second new piece of information you learned was that Mike Reid had won some pricing arbitrations --
A. Yeah.
Q. -- against insurance companies?
A. I'm sorry, I didn't mean to talk over you. Yes, sir.
Q. And the fact that Mike Reid won arbitrations was a new fact that justified opening an investigation; is that correct?
A. Yes. They were substantial, as I recall, like six figures or approaching that, yeah.
Q. Had you ever before or subsequently opened up an investigation based on the outcome of a pricing arbitration?
A. A pricing arbitration? You know, I don't know that that's the -- I wouldn't classify this as a pricing arbitration. It's a substantial loss that an insurance company had that, you know, was of concern for us. I wouldn't say that it was strictly based on price. It was the fact that, you know, it was a substantial a hundred percent loss. So I just want to make sure that I'm answering your question.

Q. Had you ever before opened up an investigation based on the outcome of an arbitration?
A. Yes.
Q. Can you tell me the circumstances?
A. There -- I think we've had a few where they were unpaid arbitrations, as -- as, you know, somebody got a -- an award and it wasn't paid within a sufficient time. I know there were some arbitrations -- there's an appraisal clause, which is essentially an arbitration. I opened some files when I was, you know, only with the Department a few years, to determine whether -- there were some allegations that insurance companies weren't operating fairly either during the appraisals or arbitrations. I know I opened up those files, and there may be another -- you know, I don't open the files, so I don't always see -- especially in -- I used to read every complaint that comes into the Department. I don't have that luxury anymore, I can't. So, yeah, I mean, I don't get it down to the -- the level of that granularity anymore, so --
Q. But you didn't open up this investigation because there was a question of whether the arbitration award was going to be paid or not, right?

A. I think that was one -- you know, one of the -- I think that at some point they -- the glass vendor had said -- I don't think that was the main reason, but I think they had said there were some delays in some of these payments, too. It seemed to me that was one of the allegations, too, that there were some delays made. But maybe it wasn't -- maybe it wasn't this one, maybe it was some other one. The main -- the main reason was because of, you know, the size of the arbitration award, and I think it was -- they were a hundred percent wins.
Q. How many recordings did Mike Reid provide you with?
A. I don't recall.
Q. Are you aware that he provided you with recordings?
A. I -- I know we had recordings, and I think they came from him, but I think we also had some from another vendor.
Q. Did you ever ask him for the methodology he used to select those recordings?
A. I don't -- I did not.
Q. How many arbitration awards did Mike Reid provide you with?

A. I don't recall.
Q. Did you ever ask him for the methodology he used to select those awards?
A. Um, I asked him for some -- I asked if they were recent awards, and he said they were the most recent awards, I think, I think that's what he told me.
Q. You also received call recordings from Rapid Glass, correct?
A. I can't remember if that's who it was, but we received them from another company. It could have been Rapid Glass.
Q. Well, in your affidav -- in your declaration you say it was Rapid Glass. Is that accurate?
A. Yeah. Then -- then it would be accurate.
Q. How many recordings did you receive from Rapid Glass?
A. I don't recall exactly. I think they were on a CD, though. There were quite a few of them.
Q. And did you ever inquire into the methodology Rapid Glass used to select those call recordings?

A. I didn't personally.
Q. Did Rapid Glass send you any arbitration awards?
A. Not that I recall.
Q. Taking a step back, do you think paragraph 5 of your declaration is a complete and accurate description of how your investigation into Safelite and the insurers began?
A. To the best of my recollection.
Q. Are there any important facts that you left out about how this investigation began?
A. Not that I can recall.
Q. Did Mike Reid ever repair your car?
A. Yeah, yes, he did.
Q. When was that?
A. I remember it was during the summer, but I don't exactly remember when it was.
Q. The summer of which year?
A. I think it was twenty -- 2013 or maybe it was 2014. I can't -- the years are -- I've moved and all kinds of stuff. So I can't remember when I sold the -- I didn't live in my current house, so I can't recall.
Q. I can refresh your recollection, if you'd like?

A. That would be helpful.
Q. You know, we'll come back to that in little bit.
You didn't mention anything in your declaration about the fact that Mike Reid repaired your car; is that correct?
A. Correct.
Q. You don't think that had anything to do with the initiation of your investigation?
A. Um, I guess it helped to convince me that the -- the recordings that he provided me, it helped me to confirm that there was some accuracy to them.
Q. Any reason why you decided to leave that fact out of your declaration?
A. What was the question, again?
Q. Is there any reason why you decided to leave out the incident where Mike Reid repaired your own car from your declaration, which you described how the investigation began?
A. No.
Q. Now, beyond the material you got from Rapid and Alpine Glass, am I correct that the DOC conducted its own investigation?
A. Yes.

Q. Can you describe the evidence that DOC collected in the course of its investigation of Safelite and the insurance companies?
A. I think I already referred to it early on, but, you know, when you asked me what T.J obtained, I -- I think that he tried to obtain what he could from the glass companies, from the insurers, who -- files that were related to the claims, and I think he tried to get the information from Safelite that he could so that he, you know, could get all the information he could.
Q. Did DOC review all of the documents it received?
A. I don't know if T.J received all the documents. That would be typical that you do, but I don't know that he -- he did.
Q. You don't know that he reviewed or receive -- you had said received, you mean reviewed?
A. Reviewed, yeah.
Q. You don't know for a fact whether he reviewed all of them?
A. No, I don't.
Q. Do you know --
A. He's a pretty thorough investigator,

but I don't know that for a fact, no.
Q. Do you know if the DOC listened to all of the call recordings it received?
A. I don't know that.
Q. Did you instruct T.J to reach out and talk to a wide variety of glass shops across the state of Minnesota in connection with this investigation?
A. I don't recall that.
Q. Are you aware of any glass shops other than Rapid and Alpine that were contacted and consulted during this investigation?
A. No.
Q. Have you ever heard of the term balance billed?
A. Yes.
Q. What is your understanding of the meaning of balance billed?
A. If a vendor bills more than what the insurance company will pay, the insured has to pay the balance, the difference. I don't know, that's my definition, that's an understanding of it.
Q. Do you have an understanding of the phrase network or non-network shops?
A. Yes.

Q. Can you describe what a non-network shop is?
A. It's affiliated shop that -- a non -- non-network would be a company -- or a shop that the insurer doesn't have some sort of agreement with.
Q. Do you know whether under Minnesota law if an insurance company doesn't pay a shop in full for a job whether that shop has the right to try to seek the balance from the customer?
A. Um, yes.
Q. Yes, they have the right?
A. Yes.
Q. So you're not aware of anything in Minnesota law that prevents a company from issuing a balance bill?
A. I'm not aware of anything. There -- there may be some agreements between insurance companies and shops that prohibit it, but in the law itself I'm not aware of anything.
Q. Do you know whether the Department of Commerce has ever issued a public statement in which it has declared that balance billing is unlawful in Minnesota?
A. I'm not aware of any such statement.

Q. Are you aware of any enforcement action ever taken by the Department of Commerce against a shop that balance billed?
A. No.
Q. Let's go back to your declaration again.
A. Sure.
Q. I'd like to know what the basis was for your conclusion that Safelite Solutions was, quote -- and I'm just quoting from your declaration.
A. Where --
Q. Mis --
A. Where -- where are you?
Q. Paragraph 8, where you said --
A. Oh.
Q. "-- Safelite Solutions was misleading insureds about the risk of being balance billed by Alpine Glass and Rapid Glass if the insured used those shops." I want to know what the basis for your conclusion was?
A. The -- the recordings that I -- that I heard -- and I think it was from both, you know, Rapid and Alpine, they specifically said just the opposite during the -- during the recorded conversations where they said, no, we don't balance

bill, don't worry, you're not going to be balance billed; and at some point I was informed, but I don't remember by whom, that Rapid had sent out some letters, and possibly even Alpine, to Safelite saying we don't balance bill, and I know they had made statements in some of those conversations where they said we don't balance bill.
Q. So let me try to understand this. The glass shops like Rapid and Alpine have the ability to tell their side of the story on these telephone calls, they're participants in these calls?
A. Yes.
Q. And so consumers can weigh the statements made by the glass shops against the statements made by Safelite and make their own credibility determinations; is that right?
A. Yes.
Q. And is it your understanding that Safelite was telling the customer that there was a possibility that they could be balance billed if they chose Rapid Glass or Alpine Glass?
A. I remember some of the recordings where they said you will be balance billed, and that, according to the companies, was not accurate in any instance.

Q. But you will be balance billed only if you don't -- if the insurance company doesn't pay, correct?
A. No. They -- the -- Safelite had said you will be balance billed. I don't think that they -- I'd have to go back and look at -- you know, the whole statements, wherever they -- what they are, I'd have to go find the recordings. But I remember somewhere it said you will be balance billed.
Q. And on those calls --
A. Even when the person was on the phone from one of these companies saying you will not be balance billed.
Q. Do you think Safelite was required to trust Rapid Glass's and Alpine Glass's statements about balance billing?
A. Were they required to --
Q. Sure. Were they required to trust that?
A. There should be some basis for you saying that, you know, you will be balance billed. So, you know, to make it an accurate statement when you've been told you won't be balance billed and you're still making that statement that you will be

balance billed, I -- there's -- there's some concern for me as a regulator in -- in whether that's giving accurate information to the consumers, yeah, and whether that's coercive or misleading or -- yes, it raises some real questions.
Q. What if the statement had been you may be balance billed?
A. Well, you know, again, if -- if the consumer is on the phone and the company says, you know, you may be balance billed, okay, and then the company says you won't be balance billed, and then they make the statement you may be balance billed, and the customer says now I'm confused, and then the company says again you may be balance billed, I remember there were multiple times when that happened. Yeah, that would be, again, an issue, and whether it's, you know, coercive, dishonest, deceptive.
Q. You acknowledge that Minnesota law doesn't prevent balance billing; is that correct?
A. Correct.
Q. And so if a company says you may be balance billed and another company on that same call says you won't be balance billed, are you suggesting that one of those two companies is

breaking the law?
MR. LARSON: Object to the extent it calls for a legal conclusion.
BY MR. LEFKOWITZ:
Q. In your view, as the regulator, do you believe that one of those two companies is breaking the law?
A. Based on the -- the -- the call in its totality, possibly. I think we're talking about two different laws.
Q. Which laws are we talking about?
A. You're talking about whether there's a -- you know, a balance billing law or not, you know, that wouldn't be a violation. But, again I said to you whether it's, you know, dishonest, deceptive, misleading, those types of things, you could possibly be in violation of -- of the insurance laws.
THE WITNESS: And I'm sorry if I'm moving around too much.
BY MR. LEFKOWITZ:
Q. In the course of your investigation, has any consumer reported to you that he or she felt misled or deceived on a call with Safelite?
A. T.J conducted the investigation, and

he would have talked to the consumers, but I don't recall any.
Q. I'm going to go back to the interrogatory responses. Do you have those?
A. Yes, 107?
Q. Yes. Do you think T.J should have spoken to consumers to understand whether they felt pressured or deceived or misled?
A. You know, some -- some of the calls did have -- I know I heard -- at least one call sticks in my mind where this, you know, woman was getting pretty hot that she was going to get balance billed, and the company was saying, no, we're not; and so, you know, those types of statements got at least this one person hot.
Would it be helpful to your investigation? Yeah.
Q. So you think it would have been helpful to the --
A. Help --
Q. -- investigation --
A. Help --
Q. -- to talk --
A. Helpful --
Q. -- to consumers?

A. -- to talk to consumers, yes, sir.
Q. And you didn't talk to any of the consumers on your own?
A. Um, not during the investigation, no.
Q. Okay. Do you see interrogatory number 2?
A. Yes, sir.
Q. This interrogatory asks whether the Department of Commerce contends that no Minnesota glass shop has balance billed a customer in the last five years; is that correct?
A. We contend that no auto glass repair shop -- that's what the interrogatory is, correct.
Q. And that's the Department of Commerce's position, correct, that no auto glass repair shop has ever balance billed a customer in Minnesota?
A. We could not find one.
Q. And the Department's response goes on to list the facts it believes that supports its contention, right?
A. Yes.
Q. Okay. And in -- and what the answer says is that the Commissioner relied upon the investigation of this issue, "which included

interviews by Mr. Fleischhacker and Mr. Patton of persons knowledgeable in the industry, including Rick Rosar, Lisa Rosar, Mike Reid, and" Mike "Schmaltz, each of whom stated that they are not aware of any auto glass repair shops in Minnesota that balance bill insureds for auto glass claims"; is that correct?
A. Correct.
Q. The first piece of evidence that the DOC mentions is interviews. Other than the identi -- the individuals identified in that response, who else did you interview about the prevalence of balance billing in the auto glass industry?
A. I talked to some insurance company representatives and -- at some point, and I remember talking to Chuck Lloyd at one point as well, because I knew he represented lots of companies in the industry, and asked him if -- you know, if anybody had ever been aware of balance -- excuse me, balance billing in the glass industry, and not one person had found that they were, and I, you know, looked at the documentation by Safelite and, you know, attorneys like you. I figured if there was any rock to be unturned you would have

done it, too, and nobody could -- that I talked to at all could tell me that anyone had ever been balance billed.
Q. So other than Mr. Lloyd who else -- and the people in the interrogatory response, who else did you interview? I'd like to know the names of the people you interviewed.
A. I don't recall. I know I spoke to Elaine Love at one point, I think I asked Elaine Love from Farmers, you know, have you ever been -- known of a balance billing? I think I, you know, probably talked to Vickie Rislow, I've talked to her at American Family several times about, you know, these types of things, and those are the, you know, two off the top of my head that I probably would have talked to.
Q. So, to be clear, other than the people in the interrogatory response, these two individuals from the insurance companies, and Mister -- the lawyer for the -- for Mr. Reid, they told you that they were not personally aware of any instance of balance billing, right?
A. Correct.
Q. Do you know if they had a basis for knowing whether or not balance billing ever

occurred outside their personal knowledge?
A. You know, this glass stuff has been going on for years, and they're tuned into, you know, these glass arbitrations and, you know, Vickie Rislow sat on the no-fault insurance -- or -- yeah, no-fault insurance task force with me and represented a group of companies. So, yeah, these are knowledgeable people that know what's going on in this, you know, glass industry business, had been going on for, you know, 15 years, 13 years, yes. I, you know, believe she would have a good idea if anyone had been balance billed.
Q. But you didn't --
A. Whoever I talked to.
Q. But you didn't actually go and talk to any of the other glass shops around the state of Minnesota other than Rapid and Alpine to inquire about their practices?
A. I had asked T.J, you know, whether he had found anything, and he said, no, he had looked into that issue.
Q. Do you know which other glass shops he communicated with, if any?
A. No.

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Q. Then the second piece of evidence you talk about is arbitration testimony by Mike Hendricks; is that correct?
A. Which paragraph are you looking at here?
Q. Interrogatory number 2 on page 3.
A. Okay. Yes, I see that now.
Q. And to be clear, here you're talking about the testimony by a single insurance company representative in a single arbitration; is that right?
A. Um, well, he was -- at the time he was talking about claims in general, and, you know, that's -- you know, depending on their volume of business for the year. But, you know, American Family is one of the top three or four insurers, probably, in Minnesota.
Q. Well, you said you obtained arbitration testimony. Are you telling me now that you obtained arbitration testimony from American Family representative Mike Hendricks in a variety of --
A. Oh, no.
Q. -- arbitrations?
A. No, no, I'm sorry, I'm sorry, it's this one, this one.

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Q. A single arbitration?
A. A single arbitration, I'm sorry.
I'm not sure that he was just talking about those claims, I think it was a general question, you know, general questions, not just related to that specific -- those specific glass claims that were being arbitrated that day.
Q. Correct. And in that arbitration that day, the insurance company witness said he could not recall an example where a customer was balance billed off the top of his head, right?
A. Yes.
Q. And you believe that supported your conclusion that balance billing has never occurred in Minnesota, correct?
A. Well, based on the other information in the file from T.J, it didn't form all the basis.
Q. I think you may have answered this, but let me just confirm. Did the Department review any telephone calls where glass repair shops other than Alpine Glass or Rapid Glass told consumers that they did not engage in balance billing?
A. Repeat the last --
Q. Are you aware --
A. Uh-huh.

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Q. -- of any recordings that the Department listened to involving glass repair shops other than Alpine and Rapid in which those glass shops said they didn't engage in balance billing?
A. I don't recall any others.
Q. Now, aside from the three things we've just talked about, the interviews you conducted, the arbitration testimony, and the call recordings, is the Department of Commerce aware of any other evidence to support its contention that balance billing has never happened?
A. Again, I don't recall everything in T.J's file to support that allegation, but off the top of my head I don't recall anything else.
Q. Did you ever perform a survey?
A. No.
Q. Did you ever subpoena any glass shops?
A. Did I?
Q. Yes.
A. No.
Q. Did the Department subpoena glass shops in an attempt to learn about billing -- balance billing practices?
A. I don't recall.
Q. Did you ever commence a formal

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investigation into the prevalence of balance billing?
A. Um, I -- I know that T.J had done some investigation in that area, that's what he told me; and so, yeah, I don't -- extensively, off the top of my head I don't recall.
Q. Do you know how many glass shops there are in Minnesota?
A. No.
Q. Approximately?
A. No.
Q. Do you think there are more than a hundred?
A. Firms that install glass?
Q. Individual shops around the state of Minnesota that repair and replace glass, auto glass?
A. More than 100?
Q. Yes.
A. Yes.
Q. More than 1000?
A. That I don't know.
Q. Okay. Do you know if the Department of Commerce is aware of the billing -- the balance billing practices of every glass shop in Minnesota?
A. No.
Q. Do you know if the Department of

1 Commerce is familiar with the balance billing
2 policies of any glass shops in Minnesota?
3 A. Yes.
4 Q. Which ones?
5 A. You know, the ones that we have --
6 Alpine and -- and whoever Chuck Lloyd represents.
7 We've been told none of them, none of them balance
8 bill. But as to other ones, I don't know what else
9 is in T.J's investigation file.
10 Q. But you haven't subpoenaed them,
11 even -- well, even Rapid and Alpine, you haven't
12 subpoenaed them, correct?
13 A. No.
14 Q. So you're just --
15 A. Not that I'm aware.
16 Q. So you're just relying on what they've
17 told you?
18 A. Yes.
19 Q. So you actually don't know as a matter
20 of fact whether there may be glass shops in
21 Minnesota that do, in fact, balance bill?
22 A. I'm not aware of any.
23 Q. But it's possible that there are some
24 that do, you haven't conducted a complete
25 investigation, right?

1 A. I have not called every shop in
2 Minnesota to determine whether they've ever balance
3 billed, that's correct.
4 Q. I'd like to move on to Interrogatory
5 No. 10. Is it the Department's position that any
6 communication by Safelite to a insured customer in
7 Minnesota suggesting that the customer will be or
8 may be balance billed is misleading?
9 A. Okay, ask your question again. I'm
10 sorry.
11 Q. Is it the Department's position that
12 any communication by Safelite to an insured
13 customer in Minnesota suggesting that the customer
14 will be or may be balance billed is misleading?
15 A. Will be or may be that every single
16 one? No. But you're asking me two different
17 questions there.
18 Q. Okay. Explain -- what are the two
19 questions you think I'm asking?
20 A. Saying that they will be balance
21 billed when you're -- when you're -- when Safelite
22 knows they won't, that -- that's a problem. Saying
23 that they may be over and over again when they know
24 that they won't, that's -- that's an issue. So
25 this statement was made with respect to this

1 lawsuit and the individual calls that we were
2 talking about.
3 Q. So it's your contention, then, that
4 any communication by Safelite to an insured
5 customer suggesting that the customer will be
6 balance billed is misleading; is that correct?
7 A. Could be misleading.
8 Q. Could be but may not be?
9 A. May not be, in certain instances.
10 Q. And a communication by Safelite to an
11 insured customer suggesting that the customer may
12 be balance billed, you're saying that's also
13 misleading?
14 A. It could be misleading.
15 Q. And whether or not it's misleading in
16 your view is dependent on whether or not the glass
17 shop on the phone says to the customer we don't do
18 that?
19 A. Or whether they have information that
20 the glass shop has written the company a letter or
21 something to that effect saying we do not do it, we
22 don't balance bill.
23 Q. And it's your view that if the glass
24 shop says we don't balance bill, then, Safelite is
25 obligated to believe that that's a true statement?

1 A. If they're -- if it's a misleading or
2 inaccurate statement, yeah, it can be a violation
3 of law.
4 Q. If what's a misleading or inaccurate
5 statement?
6 A. If the insurance company has
7 information that these vendor -- that these
8 companies don't balance bill, then, yes, it can be
9 a violation of law.
10 Q. Okay. We're not -- we're not
11 understanding each other.
12 A. We're not tracking, we're not tracking
13 each other.
14 Q. So let me try to break this down for
15 you.
16 Is it your contention that when
17 Safelite's representatives are on a phone call and
18 they say to a customer you may be balance billed
19 and Alpine Glass or Rapid Glass is on that phone
20 call and says to the customer we don't balance bill
21 that Safelite is required to accept that statement
22 as true?
23 A. I guess I'm not really sure.
24 Q. Well --
25 A. I don't know what they, you know,

1 accept or --
2 Q. Let me -- let me --
3 A. Yeah.
4 Q. Let me try to make it very, very
5 clear.
6 A. Yeah. I guess I'm missing the point
7 on this question here.
8 Q. Safelite is competitor of, let's say,
9 Alpine Glass, correct?
10 A. Correct.
11 Q. Competitors are vying with each other
12 for business, correct?
13 A. Typically.
14 Q. Is one competitor obligated, in your
15 view, to accept everything his competitor says as
16 simply true?
17 A. I guess it's -- you know, we're not
18 necessarily talking about the -- the glass -- I
19 don't know how the company -- but my understanding
20 is the claims handling section of the company is
21 different from the competitor section of the
22 company. So, you know, I'm not -- we're not -- I'm
23 not talking about competitors here, and you're
24 talking about competitors.
25 Q. Okay. Let's make it even more

1 simple --
2 A. Okay.
3 Q. -- Mr. Fleischhacker. Two people are
4 on the phone.
5 A. Yeah.
6 Q. I say it's red, you say it's blue. Do
7 I have to agree that it's blue just because you say
8 it's blue?
9 A. No.
10 Q. Okay. So Safelite is on a phone call
11 and is talking to a customer and says to the
12 customer you may be balance billed, it's a
13 possibility, and then Alpine Glass says to the
14 customer you won't be balance billed. Are you with
15 me so far?
16 A. Yes.
17 Q. My question is, the Safelite person on
18 that phone call, does he have to simply say to
19 himself, well, the Alpine person has said it won't
20 happen, so, therefore, I have to agree it won't
21 happen and I have to retract my statement, I have
22 to accept that as true, I'm asking you, does a --
23 does he have to accept that as being a truthful
24 statement just because it is uttered?
25 A. No.

1 Q. Now, I'd like to look at Request for
2 Admission No. 1, which is on the next page, page 8,
3 and it says here, "the Commissioner states that
4 Minnesota law contains numerous provisions precluding
5 deceptive or unfair trade practices that could
6 reasonably be applied to bar the practice of
7 balance billing." Do you see that?
8 A. Yes.
9 Q. And you're the regulator for the
10 Department of Commerce, and you verified this
11 response, correct?
12 A. Correct.
13 Q. So can you describe all of the
14 provisions of Minnesota law that you believe could
15 be applied to bar the practice of balance billing?
16 MR. LARSON: Object to the extent it
17 calls for a legal conclusion.
18 BY MR. LEFKOWITZ:
19 Q. You can answer.
20 A. Remind -- re --
21 Q. I'd like you to describe all of the
22 provisions that you believe could be applied to bar
23 the practice of balance billing.
24 A. I've described some earlier today.
25 Q. Well, it --

1 A. You know, if you know that there's not
2 going to be balance billing taking place and you
3 say that the person is going to be balance billed,
4 yeah, I think that that could fall under some of
5 the insurance deceptive trade practices.
6 Q. So let me ask you a question. If I --
7 if I tell a customer I will never balance bill you
8 and then I send that customer a bill for the
9 balance, that would be -- that would have been a
10 deceptive statement, correct?
11 A. Correct.
12 Q. What if I reserved the right to
13 balance bill in my contract with the insured, I
14 reserve the right, I say in the contract when I
15 repair your car I have the right to balance bill
16 you if I choose to do so, is that deceptive?
17 A. If they balance bill the person?
18 Q. Yeah, after they've --
19 A. Yeah, it's deceptive.
20 Q. After they've reserved the right to do
21 it?
22 A. If they've told you that they're not
23 going to balance bill you.
24 Q. No. If they told you that they might
25 and you sign a contract in which you agree that

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they might balance bill you and then they do?
A. Is that a deceptive practice? No.
Q. What if they sign a contract with you in which they reserve the right to balance bill you and then they choose not to balance bill you, anything wrong with that?
A. No. You know, I -- I'd have to look at what the -- the contract terms say, too, you know, with respect to the -- the insurance company. But as to the -- if you're just talking about the glass company.
Q. Uh-huh.
A. Yeah, then, I think my answers are good.
Q. Okay. Look at Request for Admission No. 5 over on the last page.
A. All right.
Q. It says, "Admit that there are some Auto Glass Repair Shops in Minnesota that reserve the right to Balance Bill their customers." Do you understand what that request is asking?
A. "Admit that there are some Auto Glass Repair Shops in Minnesota that reserve the right to balance bill their customers." Yes, I think I do.
Q. And you denied that, correct?

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A. Yes.
Q. So you denied that there are any repair shops in Minnesota that reserve the right to balance bill their customers?
A. Yes.
Q. What does it mean in your understanding to reserve the right to do something?
A. Um, if you have a clause in your agreement or, you know, otherwise tell the person that, you know, I -- I may balance bill you, I have the ability if your insurer doesn't pay the difference that I can balance bill you.
Q. And you deny that there were any glass shops in Minnesota that reserved the right to balance bill their customers and then you referred us to the objections and responses to Interrogatory 2; is that correct?
A. That's correct.
Q. And so in support of your denial, you referred back to the three things that we walked through earlier, right, the interviews, the arbitration testimony, and the call recordings?
A. Yes.
Q. And it was based on those three things that you denied that there were any glass shops in

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Minnesota that reserved the right to balance bill?
A. Yeah, and I had a discussion with T.J at some point, you know, about whether he'd found any evidence of it, and he said no. So, yeah.
Q. But you weren't aware that T.J had even talked to other repair shops?
A. I can't remember what I was aware of at the time. You know, this is a long time ago, and I have to oversee many investigations at the end of the day.
Q. Have you ever looked at language in Minnesota glass shop invoices to ascertain whether, in fact, they do reserve the right to balance bill?
A. I don't recall if I looked at any invoices. I'm sure I've seen some -- some along the way.
Q. All right. This has been previously marked as Exhibit 47. Have you ever seen this document before, Mr. Fleischhacker?
A. I don't recall seeing this one.
Q. This is an invoice from a shop called Lake Side Glass; is that correct?
A. That's what it appears.
Q. And if you look at the top of the invoice, Lake Side Glass has an address in

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Minnesota; is that correct?
A. Yes.
Q. Do you know where Merrifield, Minnesota, is?
A. Never heard of Merrifield before.
Q. That makes two of us, but I will try to find it on a map.
But this is a Minnesota glass shop has a federal tax ID number and an address in Minnesota, correct?
A. That's what it appears.
Q. And this looks like it's a repair invoice for work done on a 2012 Ford Focus; is that correct?
A. Um, yes.
Q. It looks like it's about a 600 and something dollar repair, plus labor and tax; is that right?
A. Correct.
Q. And can you read the bottom of the invoice?
A. The last sentence?
Q. The last two -- yeah. Well, you could read the whole thing if you'd like. It says -- let me read it out loud and tell me if I've reading it

accurately. "In the event the above named Insurance Company does not make timely and/or full payment of this Invoice according to its terms, I here by accept responsibility for such payment and agree to pay all charges reflected on this Invoice to Lake Side Glass." Is that correct?
A. That's what it says.
Q. So that means that if the insurance company doesn't pay the bill, the customer is agreeing to be responsible for payment, correct?
A. Yes.
Q. So this is an example of a Minnesota glass shop invoice reserving the right to balance bill, correct?
A. In the event that the above named insured does not make timely and/or full payment of this invoice according to its terms, I hereby accept responsibility for such payment and agree to pay all charges reflected. It says that they will pay all charges reflected on here, yes.
Q. I'd like to provide you with another document. This one I don't think has been marked, right?
(Whereupon, Deposition Exhibit No. 108 was marked for identification, and a copy is

attached and hereby made a part of this deposition.)
THE COURT REPORTER: It will be 108.
BY MR. LEFKOWITZ:
Q. Take your time to look at this, if you'd like. I can't tell, it looks like it's identical on both sides. I think that's correct. So I think you only have to look at one of the sides. Have you ever seen this document before?
A. I don't recall seeing this document.
Q. You don't recall reviewing this in the course of your investigation?
A. This specific one?
Q. Correct.
A. No.
Q. This is an invoice from another glass repair shop in Minnesota, Stillwater, Minnesota. Do you see that?
A. Yes.
Q. And it refers to a replaced windsh --
A. I see it's an invoice, I don't know if it's from a shop. It's -- whatever is it at the top is cut off. It could be some guy doing it in his garage for all I know.
Q. Are you aware that the Department of Commerce actually produced this document to us in

litigation here?
A. I'm not aware of that, no.
MR. LEFKOWITZ: Oliver, I'd like to just ask you on the record if you could get us a complete copy of this document when you get a moment?
MR. LARSON: What you have is what I have.
MR. LEFKOWITZ: Well, you don't have an original document here? This just looks like there may be more on the top here. Certainly the word invoice looks like it's cut off a little bit. So if you could go back and look and see if --
MR. LARSON: I'll look.
MR. LEFKOWITZ: -- you have a complete copy?
MR. LARSON: But my understanding of this document it would have come from an insurance company, and we would have received it in exactly the form that you're looking at now.
MR. LEFKOWITZ: Okay.
MR. LARSON: So you can talk to your insurance friends about how to get a copy of it.
MR. LEFKOWITZ: Well, if you could let us know where you received this document, if you

have a record of, that would be great.
MR. LARSON: I -- I will look at the document. I'm not going to go on an expedition trying to find out what this document is.
BY MR. LEFKOWITZ:
Q. Can you read the bottom, near the customer signature here, Mr. Fleischhacker, where it says statement of authorization and satisfaction?
A. "Replacement or repair has been made to my satisfaction and I hereby authorize the above insurance company to pay direct in full to the above listed firm for said installation. If for any reason the insurance company does not pay for these repairs or replacements, the below signed agrees to pay for said repairs or replacement."
Q. So, once again, this means that if the insurance company doesn't pay the bill the customer is responsible for payment, correct?
A. If -- you know, that's the customer's signature at the bottom. Assuming that's the customer's signature, yeah, that's what it appears.
Q. And so --
A. It's kind of weird. It looks like -- it doesn't look like the same name at the top that it does at the bottom to me, but that's -- that's

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1 fine. You know, assuming that it is, then, I would
2 say you're -- you're correct.
3 Q. And certainly that statement, "If for
4 any reason the insurance company does not pay for
5 these repairs or replacements, the below signed
6 agrees to pay for said repairs or replacement,"
7 that is certainly another example of a reservation
8 of the right to balance bill, correct?
9 A. Yeah, I'm not sure by whom, but, yeah,
10 whose -- you know, whose -- if this is, like I say,
11 some legit place or some guy in his garage.
12 Q. Okay. Let's give you another
13 document.
14 (Whereupon, Deposition Exhibit No. 109
15 was marked for identification, and a copy is
16 attached and hereby made a part of this deposition.)
17 THE COURT REPORTER: One oh nine.
18 BY MR. LEFKOWITZ:
19 Q. This looks like an invoice related to
20 a company called Nancy's Auto Glass. Do you see
21 that?
22 A. Yes.
23 Q. And does that appear to you to be an
24 auto glass shop in the state of Minnesota?
25 A. Yeah. I've never heard of them. I've

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1 never heard of -- you know, any of these companies,
2 but, you know, I -- yes.
3 Q. You don't deny that --
4 A. I --
5 Q. -- Richfield --
6 A. I don't --
7 Q. -- is a city in --
8 A. No.
9 Q. -- Minnesota?
10 A. No, no.
11 Q. Correct?
12 A. No, I don't deny that. Just Nancy's
13 Auto Glass never -- never heard of them.
14 Q. Okay. And have you ever seen this
15 document before?
16 A. You know, I don't recall seeing this
17 one, either.
18 Q. You don't recall ever reviewing it in
19 the course of your investigation?
20 A. This specific document? No, I don't.
21 Q. You don't recall T.J ever talking to
22 you about this document in the --
23 A. No.
24 Q. -- course of his investigation?
25 A. No, sir.

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1 Q. This document was also produced to us
2 by the Department of Commerce.
3 A. Okay.
4 Q. And I'd like to draw your attention to
5 the bottom of the invoice, and it's a little
6 smaller language, but tell me if I'm -- if I'm
7 reading this correctly. "In the event that the
8 above-named insurance company does not make timely
9 and/or full payment of this invoice according to
10 its terms, I hereby accept responsibility for such
11 payment and agree to pay all charges reflected on
12 this invoice to Nancy's Auto Glass subject and
13 according to all terms and conditions on this
14 invoice." Do you see that?
15 A. My eyes aren't as good as yours. I --
16 it's a little blurry to me, but I -- I think I can
17 make that out. I'm not disagreeing with you. I
18 think, you know, I -- you probably have better eyes
19 than I got.
20 Q. Okay.
21 A. So that's pretty small print.
22 Q. So this --
23 A. But --
24 Q. And this has a customer signature, she
25 wrote her name, but that's her signature, Alondra

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1 Yanez, which tracks the name on the top?
2 A. It looks like somebody printed Alondra
3 Yanez. I -- yeah, I don't know if she signed it.
4 Q. This appears to be another example of
5 a Minnesota glass shop reserving the right to
6 balance bill; isn't that correct?
7 A. I'm not sure to balance bill, but the
8 person does agree that they will -- will pay the --
9 any unpaid charges, yeah.
10 Q. Isn't that what we've -- what you've
11 agreed balance billing means?
12 A. The person could be subject to the
13 full invoice, yes, yeah. They may not even have
14 insurance coverage at all. Yes, they would be on
15 the hook.
16 Q. Okay. Now, in your response to the
17 request for admission, which you've submitted and
18 certified under penalty of perjury that they were
19 all true and correct and accurate, you denied that
20 there were any glass shops in Minnesota that
21 reserved the right to balance bill their customers,
22 and you gave at the time, I assume it was your
23 truthful and accurate explanation, which was that
24 your conclusion was based on three things: your
25 investigation, your interviews, the arbitration

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1 awards.
2 In light of the documents that we've
3 just looked at, would you like to revise the
4 Department of Commerce's response to the RFA in
5 which you stated under penalty of perjury that no
6 Minnesota glass shops reserve the right to balance
7 bill?
8 A. Yeah, based on the information in
9 Interrogatory 2, yes, I -- I think it's accurately
10 answered. You know, I didn't -- I didn't see
11 these, I don't recall ever seeing these.
12 Q. The question is not whether or not you
13 had a good faith basis for believing that this was
14 true at the time, December 21st, 2015, that you
15 wrote it, I'm not suggesting, Mr. Fleischhacker,
16 that you were aware of these other invoices when
17 you signed this certification. I'm asking you now,
18 as of March --
19 MS. SASSOON: Eighth.
20 BY MR. LEFKOWITZ:
21 Q. -- 8th, 2016, whether in light of the
22 evidence the documents, including documents
23 produced by the Department of Commerce reflecting
24 the balance billing reservation of rights in at
25 least three invoices from three different glass

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1 shops, whether it is still your position under oath
2 that there are no auto glass repair shops in
3 Minnesota that reserve the right to balance bill
4 their customers?
5 A. The -- well, two of the examples, I
6 don't know what other one is, but, you know, with
7 respect to two examples here, yeah, it looks like
8 they have the ability to hold the customer
9 responsible for the full bill.
10 Q. Okay. So, in other words, it is
11 accurate now to state that there are at least some
12 auto glass repair shops in Minnesota that reserve
13 the right to balance bill their customers?
14 A. To hold them responsible for any or
15 all of the bill.
16 Q. Correct. Which is balance billing,
17 correct?
18 A. It doesn't say balance billing on
19 here.
20 Q. No.
21 A. But it says that they can hold the
22 responsible -- the client responsible -- the
23 customer responsible for the whole bill in the
24 event that for whatever reason this bill is not
25 paid by an insurance company.

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1 Q. Before we move on and just given the
2 clarification to this last request for admission,
3 I'd like to ask you just to take a few minutes and
4 look through the rest of this document and let me
5 know whether there's anything else in this document
6 that you verified that in light of subsequent
7 information that may have come to your attention
8 since you signed it, whether it needs to be
9 modified, and we'll take a few minutes so you can
10 read that.
11 A. You want me to read this Exhibit 107
12 from --
13 Q. Yeah.
14 A. -- front to back?
15 Q. It's -- it's about eight -- ten pages
16 long, but the last page is very short, it's just
17 your certification, and we've already covered page
18 nine. So, yes, I'd like you to look through this
19 and I'd like to know whether or not in light of all
20 the information you have as of March 8th, 2016,
21 whether all of your answers other than the one that
22 we've just modified, Request For Admission No. 5,
23 are accurate and true and correct?
24 MS. SASSOON: I'm just going to add
25 that the -- on the third invoice, the phone number

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1 at the top corresponds to Apple Glass, which is a
2 glass shop in Minnesota.
3 MR. LEFKOWITZ: Thank you for that
4 clarification.
5 (Reporter's Note: The witness is
6 reading Exhibit No. 107 for one minute.)
7 THE WITNESS: So you want these one by
8 one or you want just a batch response or how --
9 BY MR. LEFKOWITZ:
10 Q. If you don't have any changes at all
11 to any of the other answers other than the one that
12 we just covered on balance billing, you can just
13 give me a single answer and say thumbs up --
14 A. Okay.
15 Q. -- everything is completely accurate
16 and true and correct. If you want to make any
17 modifications, then, I suggest we do it very
18 carefully as to where there should be any
19 modifications.
20 (Reporter's Note: The witness is
21 reading Exhibit No. 107 for two minutes.)
22 THE WITNESS: So number 3, you know,
23 I'll just stop at that one. You know, I would say
24 that -- well, let me see, Interrogatory Response 2.
25 So, you know, based on the documents you gave me, I

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1 think that for number 3 that we know of three
2 potential -- two and possibly three potential
3 companies that reserve the right to hold their
4 clients responsible for the whole bill.
5 MR. LEFKOWITZ: Okay.
6 (Reporter's Note: The witness is
7 reading Exhibit No. 107 for six minutes.)
8 THE WITNESS: So your -- your
9 question, again, was any modifications to these
10 answers based on what I've heard here today?
11 BY MR. LEFKOWITZ:
12 Q. Or any other information you have? In
13 other words, I'd like to ascertain whether or not
14 we can rely as of today on all of the interrogatory
15 responses and responses to the requests for
16 admissions as truthful and accurate statements by
17 the Department of Commerce. We have modified a
18 couple of them in light of some particular
19 information about balance billing that we've looked
20 at today. I'm not aware of whether there's any
21 other information that you're aware of that now
22 calls into question the accuracy of any of the
23 other answers. And so I'm just asking you, as long
24 as we're covering this document now, I'd like to
25 close it out and make sure we know if it's

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1 completely accurate --
2 A. Sure.
3 Q. -- and we can rely on it?
4 MR. LARSON: I'm going to make an
5 objection here. I mean, you can ask him to his
6 personal knowledge as he sits here, but the
7 interrogatory is directed to the Commissioner. So
8 there would be an obligation to speak for people
9 other than himself. So, I mean, he doesn't have
10 access to talk to T.J or Pam or anyone else right
11 now.
12 MR. LEFKOWITZ: But he certified this
13 on behalf of the State, on before of the Department
14 in the first instance.
15 MR. LARSON: I get that.
16 MR. LEFKOWITZ: Obviously, if he has
17 more information now, I'm not holding him to what
18 other people have.
19 MR. LARSON: That's all I want to make
20 clear. It's fair to ask him whether he knows of
21 anything in here that's inaccurate.
22 MR. LEFKOWITZ: Right.
23 MR. LARSON: I don't want it to be
24 seen as a revision of the interrogatory, because
25 that would require us to do some investigation.

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1 THE WITNESS: That's what I was trying
2 to ascertain by my question.
3 MR. LEFKOWITZ: Well, we -- with
4 respect to the two things that he's already
5 addressed, I think the interrogatory is now or the
6 request for admission is revised because the person
7 who signed and verified it under penalty of perjury
8 that it was true and correct has now acknowledged
9 that in two respects at least it's not accurate,
10 and he's corrected that.
11 MS. SASSOON: And we'd ask you to
12 submit --
13 MR. LARSON: Hold on.
14 MS. SASSOON: -- revised --
15 MR. LARSON: Hold on. Only one
16 attorney is allowed to speak at a deposition, so --
17 and I think we're talking about semantics.
18 I agree with you that you can take it
19 for whatever it's worth, it's a party admission,
20 okay. So he's said whatever he's said here and you
21 can take it for what it's worth as a party
22 admission and you can make whatever legal arguments
23 are available to you on that basis.
24 All I want to make clear is I think
25 it's fair to ask him whether he personally knows of

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1 anything that's inaccurate in this, and that's a
2 fair question for him to answer, but it's not the
3 same as us supplementing the interrogatory, that's
4 a different issue.
5 MR. LEFKOWITZ: I've just asked him
6 whether there's anything else that he wants to
7 correct or modify here?
8 THE WITNESS: At this very moment?
9 BY MR. LEFKOWITZ:
10 Q. Correct, based on what you know today?
11 (Reporter's Note: The witness is
12 reading Exhibit No. 107 for four minutes.)
13 (Whereupon, Deposition Exhibit No. 110
14 was marked for identification, and a copy is
15 attached and hereby made a part of this deposition.)
16 THE WITNESS: So, you know, getting
17 back to this No. 10 here, "Identify the precise
18 words of any State auto glass communication with a
19 consumer that the State," so the precise word of
20 any auto glass -- I'm guessing you mean provider,
21 communication with a consumer that the State has
22 identified as an untruthful or misleading
23 communication, as well why the words have been
24 identified as untruthful, unlawful, any consumers
25 who have been harmed.

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1 I mean, you've showed me examples
2 where potentially somebody, you know, holds some --
3 on the hook for the whole thing, but I'm still not
4 aware of any communications in 10 -- I mean, excuse
5 me, any balance billing in 10, where any customers
6 have been balance billed or harmed.
7 BY MR. LEFKOWITZ:
8 Q. Well, let me ask you it this way.
9 Let's say a customer goes and has his or her repair
10 work done at one of the shops, like this shop here,
11 and signs a certification at the end that says I
12 hereby accept responsibility for payments and agree
13 to all charges, you know, in the event that the
14 insurance company doesn't pay them, so there's been
15 a reservation of the right to balance bill and an
16 acknowledgement by the customer of that right to
17 balance bill, and then Safelite says to the
18 customer on the phone, I just want you to know you
19 may be balance billed. I guess the question is, do
20 you consider that to be misleading?
21 A. You know, in that -- still, it --
22 we're still not aware of any instance where anyone
23 has been balance billed.
24 Q. That's not what -- I understand that,
25 Mr. Fleischhacker.

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1 A. Yeah.
2 Q. And I'm not trying to change that
3 answer by any means. What I'm asking you is, in a
4 situation, Fact A is the customer signs a contract
5 in which he acknowledges that the glass shop has
6 the right legally to balance bill, and we've
7 already ascertained that there's no Minnesota law
8 that prevents --
9 A. Uh-huh.
10 Q. -- such a contract.
11 A. Uh-huh.
12 Q. And then the Safelite representative
13 says to the customer you may be balance billed,
14 which is, of course, just what the customer has
15 acknowledged might happen. Is it misleading to say
16 to the customer you may be balance billed?
17 A. There may not be a balance bill
18 provision for every single shop. So to say that
19 you should read your invoice to see if you're
20 responsible in total for this bill and be aware
21 that we will pay this amount and anything over that
22 amount you may be billed for, you know, that kind
23 of statement, yes. But, you know, I --
24 Q. Yes what? Yes, that's not misleading,
25 correct?

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1 A. To tell somebody, yes, you should
2 check your invoice and see if you're responsible
3 for the total bill.
4 Q. Let me ask it this way. Let's assume
5 hypothetically, Mr. Fleischhacker, that you were
6 the customer that signed a contract with a glass
7 shop and in your contract it said if for any reason
8 the insurance company does not pay for these
9 repairs or replacements the employee signed agrees
10 to pay for said repairs or replacements.
11 A. Yes.
12 Q. Say you had signed such a contract.
13 A. Uh-huh.
14 Q. And then I said to you,
15 Mr. Fleischhacker, I just want you to know you may
16 be balance billed. Am I misleading you by saying
17 you may be balance billed?
18 A. If I signed that statement --
19 Q. Correct.
20 A. -- there? No, I don't think you are.
21 Q. Okay. So anything else you want to
22 modify or change or clarify in the interrogatory
23 responses or requests for admissions or else I'm
24 happy to move -- move on.
25 A. All right. You know, number 3 and

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1 number 4 on here, you know, may be -- I guess the
2 answers are still correct. "Admit that the State
3 has no evidence demonstrating that no Auto Glass
4 Repair" shops, it says "Ships," but I think you
5 meant shops "in Minnesota Balance Bill their
6 customers." No, I'm still not aware of any shops
7 that balance bill.
8 Number 4, "Admit that there are some
9 Auto Glass Repair Shops in Minnesota that Balance
10 Bill their customers." No I'm not aware. I mean,
11 what you showed me here today suggests that, you
12 know, the customers are completely on the hook for
13 that bill, so --
14 Q. Okay.
15 A. So with those couple caveats,
16 otherwise I -- I don't have anything further to
17 sway my --
18 Q. Great, all right. The next exhibit
19 I'll show you is Exhibit 110.
20 MS. SASSOON: That was previously
21 marked as 87.
22 MR. LEFKOWITZ: Oh, I'm sorry. Let's
23 just change it. It was previously marked as 87,
24 the same document, Oliver.
25 BY MR. LEFKOWITZ:

Q. And what I've handed to you are a copy of Minnesota Statute 72A.201, Regulation of Claims Practices. And do you see that?
A. Yes.
Q. Have you ever seen this statute before?
A. Yes, sir.
Q. And this is a copy of the Minnesota statute governing regulations of claims practices, correct?
A. Yes.
Q. If you look at page 7, I think this is the subsection that DOC relied upon to take action against insureds who warned about the risks of balance billing, but I'd like you to tell me if that's correct?
A. What are you referring to on page --
Q. I'm looking at on page 7 where it says -- where is this? Sorry, it's page 5, subsection 6. It says, "In addition to the acts specified in subdivisions 4, 5, 7, 8, and 9, the following acts...constitute unfair settlement practices." Do you see all that?
A. Yeah. I see subdivision 6.
Q. Correct. And if you look down further, on the next page, or two pages over, at Subd. (16),

is a paren and then a little 16, and it says, "engaging in any...practice of intimidation coercion, threat, incentive," and so on. Do you see that?
A. Paragraph (16)?
Q. Yes.
A. Yes.
Q. Is it the Department's position that warning about the risk of balance billing is a coercion, threat, incentive, or inducement under this statute?
A. It can be.
Q. Would you agree with me that the language here says nothing about balance billing?
A. In general, it talks about acts or practices.
Q. Does it say balance billing?
A. Use the word balance billing there?
Q. Yes.
A. No, the word balancing billing is not there.
Q. And before 2014, had the Department of Commerce ever interpreted the statute to bar companies from warning about the risks of balance billing?

A. Bar companies from -- I'm not aware of that.
Q. But today the Department's position is that insurers and Safelite should be barred from warning customers about balance billing; is that correct?
A. In certain situations, yes.
Q. At least barred from warning customers about balance billing without evidence that a specific shop engages in balance billing, right?
A. Repeat the question. I'm sorry, it sounds like you started halfway through the question --
Q. Well --
A. -- on the second part.
Q. -- the Department of Commerce's position is that insurers and Safelite should be barred from warning customers about balance billing without evidence that a specific shop engages in balance billing?
A. If there is no evidence of balance billing, you should not be repeating, you know, in certain instances again and again that you will -- you will be balance billed when you know there's no evidence of balance billing.

Q. So the Department is applying this statute to restrict Safelite and the insurers' speech?
A. No, I don't believe that.
Q. Well, let me ask you. When you communicate to someone on a telephone about the potential for balance billing, are you engaging in speech?
A. Yes.
Q. Okay.
(Reporter's Note: Ms. Sassoon sneezes.)
THE WITNESS: Bless you.
BY MR. LEFKOWITZ:
Q. What's the purpose of the restriction here? What is the State try -- Why does the State want to stop Safelite from warning about balance billing, in your view?
A. There were what I believe were coercive or intimidating or deceptive statements made during certain telephone conversations where the -- specifically, the company was told we're not balance billing, and the company, it sounded like, was trying to coerce the customers into using a different vendor.
Q. So your purpose here is to try to

1 protect consumers; is that right?
2 A. Consumer protection.
3 Q. And you think that restricting
4 Safelite's speech here protects consumers?
5 A. Um, in certain instances, yeah. I
6 mean, it -- you know, insurance agents sell
7 products all the time, and, you know, in the vast
8 majority of instances they -- they don't engage in
9 deceptive, dishonest practices, but in certain
10 instances they do; and if your client engages in
11 those practices occasionally, yeah, those times
12 there should be some -- consumers shouldn't be
13 misled or deceived or coerced.
14 Q. Has the Department ever considered
15 other ways that it could protect consumers that
16 wouldn't restrict Safelite's speech?
17 A. Has it ever considered? I mean, the
18 Department negotiates these types of matters, you
19 know, continuously with companies trying to -- you
20 know, we try to find resolutions to -- to problems.
21 Q. Let me be a little more direct. Has
22 the Department ever considered trying to simply
23 outlaw balance billing, making balance billing
24 illegal?
25 A. No.

1 Q. If balance billing were illegal, there
2 would be no need for Safelite to engage in this at
3 all, right, but the Department hasn't considered
4 that?
5 A. No.
6 Q. Has the Department ever considered
7 using its own speech to educate consumers about
8 balance billing practices?
9 A. Um, I'm sure investigators have talked
10 to companies numerous times about you know their
11 responsibility for bills and what the insurance
12 company's responsibility is.
13 Q. Yeah, but we're talking about
14 consumers --
15 A. Yeah. I'm talking about --
16 Q. -- who we are trying to protect.
17 So have you ever thought about using
18 the Department's ability to speak to make things
19 clear directly to the consumers you're focused on
20 protecting so that you won't have to infringe on a
21 private company's speech?
22 A. Again, we -- we reach agreements with
23 companies, you know, all the time in different
24 types of matters where we think there's a deceptive
25 speech occurring, and the company will come in and

1 they'll negotiate with us and say, hey, can we add
2 a banner to the top of our Web site to tell people
3 that there's no problem? So, in that instance,
4 yes, we're communicating through an enforcement,
5 you know, negotiated matter, whatever.
6 Q. But in those situations you're
7 negotiating to have the company engage in something
8 additional speech. What I'm asking is have you
9 ever considered having the Department of Commerce,
10 for example, go out on its Web site or in the
11 newspapers or in the Internet or in any way to
12 educate consumers about the risks of balance
13 billing, the consequences of balance billing so
14 that the consumers would be protected by you?
15 A. You're talking about some sort of mass
16 communication?
17 Q. Sure.
18 A. We do have stuff -- I don't know about
19 balance billing in particular, but we have stuff
20 about auto, you know, claims and things like that
21 on our Web site to help people. I don't know
22 what's in there. I can't recall what's in there.
23 Q. Before you took the enforcement action
24 against Safelite, did you personally consider that
25 type of communication by the Department of Commerce

1 directly to consumers?
2 A. You know, I've seen the amount of hits
3 on our Web site. So, no, I didn't consider, you
4 know, putting out a bulletin and thinking that
5 that's going to have any, you know, mass effect
6 on -- on anything.
7 Q. Okay. Are you aware of any specific
8 instance where Safelite warned a customer about the
9 risk of balance billing by a glass shop and in
10 response that customer canceled his or her job with
11 the shop?
12 A. I think that we did get some of those
13 examples, but, you know, it's been so long I
14 can't -- I can't recall. But, you know, that --
15 that -- just because a shop alleges that that's
16 what occurred, I mean, there's no -- it's -- that's
17 a difficult investigation to -- to determine.
18 Q. Are you aware of any such instances as
19 you sit here today where you could tell me the name
20 of the shop or the name of the customer?
21 A. As I sit here today? I can't tell you
22 a specific shop or a specific customer today.
23 Q. Now, and I think you said, I just want
24 to make clear, that DOC never received any
25 complaints from customers directly concerning the

1 warnings that Safelite gave regarding the risk of
2 balance billing; is that correct?
3 A. Nobody communicated it to the
4 Department of Commerce, correct.
5 MR. LEFKOWITZ: I think the tape is
6 running out now. So why don't we take a break.
7 THE VIDEOGRAPHER: Going off video --
8 MR. LEFKOWITZ: Off the record.
9 THE VIDEOGRAPHER: Going off video
10 record. The time is now approximately 11:33 a.m.
11 (Break from 11:33 to 11:41.)
12 THE VIDEOGRAPHER: We're back on the
13 video record. The time is now approximately
14 11:41 a.m.
15 BY MR. LEFKOWITZ:
16 Q. I'd like to go back, the same document
17 we were just looking at, page 7, I think we were
18 looking under 14, towards the bottom it talks about
19 this statement, an advisory that Minnesota law
20 requires. Do you see that?
21 A. Yes. Paragraph 14?
22 Q. Correct.
23 A. The last sentence?
24 Q. Yeah.
25 A. In parentheses, yes.

1 Q. And this subsection provides --
2 A. I mean quotation marks.
3 Q. Correct. This subsection provides
4 that if an insurer recommends a vendor the insurer
5 has to read that advisory; is that correct?
6 A. Yes.
7 Q. What's the purpose of requiring the
8 insureds to read this advisory?
9 A. What's the purpose of the insured, did
10 you say?
11 Q. Yes. What's the purpose of requiring
12 the insurers to read this advise --
13 A. Oh, the insurer.
14 Q. Yeah.
15 A. Insurer.
16 Q. I'm sorry.
17 A. Let the insured know that they have
18 the right to choose a shop, and that, you know,
19 they -- it's an independent right of theirs.
20 Q. So, again, to protect consumers?
21 A. Yes.
22 Q. And are you aware, other than in the
23 auto glass industry, of any other industries where
24 the Department of Commerce requires businesses to
25 read such an advisory?

1 A. Well, it looks like just a few
2 paragraphs down there, Minnesota law gives you the
3 right to choose a -- any rental company, and I
4 thought there was one also for just regular
5 repairs, yeah, paragraph 7 as well. So we're
6 looking at paragraph 17 and paragraph 7. Is it
7 paragraph 7? Yeah, paragraph 7, "You have the
8 legal right to choose a repair shop to fix your
9 vehicle." So there -- there's a couple examples.
10 Q. All right. And do you see the second
11 half of that advisory which begins with the word
12 prohibits?
13 A. Are we back to --
14 Q. Yeah.
15 A. -- 14 now?
16 Q. Yes.
17 A. Okay, "and prohibits me --" yes.
18 Q. If that language were removed from the
19 advisory, it would still state "Minnesota law gives
20 you the right to go to any glass vendor you choose";
21 is that correct?
22 A. That's what it would say then.
23 Q. And so consumers would still be
24 informed that they have freedom of choice; is that
25 correct?

1 A. It would say what it says.
2 Q. Well, do you think that the second
3 half of the advisory is necessary for consumers to
4 understand that they have the right to select any
5 glass vendor that they want?
6 A. "...and prohibits me from pressuring
7 you to choose a particular vendor." You know, I
8 don't know. Insureds get confused about whether
9 they're supposed to use the construction company of
10 their homeowners insurance. I would just tell you
11 that's what consumers have expressed to me before.
12 I know we have this argument come up with body
13 shops, you know, whether the consumer knows they
14 have the -- the right to choose. So, you know, I
15 don't know if they would know that that alone gives
16 them the right to choose.
17 Q. So you're --
18 A. It might be that, you know, your right
19 to choose the company that I, you know, am
20 suggesting to you or -- or, you know, but it -- it
21 might lead the consumer to ask more questions.
22 Q. So you think that the simple statement
23 "Minnesota law gives you the right to go to any
24 glass vendor you choose" is a vague statement?
25 A. For certain people, yes.

Q. Do you consider it vague to you? Do you understand what that means?
A. I would consider it, but there are many times when I read stuff that consumers call me about and they have no understanding, and, you know, using me as a benchmark is -- is not a good one.
Q. Could you understand that it means you could choose any glass shop --
A. "Minnesota law gives you the right to go to any glass vendor you choose," yes, I would understand that.
Q. Have any consumers ever complained to the Department about insurers failing to read the required advisory?
A. Not that I'm aware of.
Q. And what about failing to read the second half of the advisory?
A. Complain to us --
Q. Yes.
A. -- that that hadn't gotten read to them? No, I'm not aware of any such complaints.
Q. Would you agree with me that the statute doesn't specify when the insurer must read the required advisory?

A. It says, "If the insurer recommends a vendor, the insurer must also provide the following advisory."
Q. Correct. Does that in any way say when in the course of a conversation the advisory must be made?
A. I thought I just -- I thought I just answered that question.
Q. Well, I'm not sure I understand, then.
There's, obviously, a conversation between the insurer and the insured, and at some point during the conversation Minnesota law requires that this advisory be given, and I'm asking you, does it say in the statute when during the conversation that has to be made?
A. At the time the insurer recommends a vendor if that should occur.
Q. Before, after? We're having a conversation, I can -- I can tell you something at the end of a sentence, I can tell it to you at the beginning of a sentence, I'm still telling it to you in connection with what I'm saying more broadly, and I'm asking you, as you read the statute, do you see any indication as to when in the conversation it should be made?

A. For sure if the insurer has recommended a vendor, they should be making that statement thereafter.
Q. Okay. The Department has taken the position that the advisory has to be made before describing the features and benefits of network shops; is that correct?
A. Yeah. I don't recall if that's the exact wording of our allegations, but, you know -- I'd have to see, you know, a document where we --
Q. I'll show you something to refresh yours recollection.
A. Yeah.
Q. Would you agree that a insurer could describe the features and benefits of network shops without going ahead and recommending a vendor?
A. You know, as a general practice, yeah, I would say, as long as there's no violation of any other law, yeah, or steering or something like that.
Q. Right.
A. You know, yeah, subject to that. But, you know, like here there's an exclusion in paragraph 16 for, you know, talking about your warranty. Yeah, you can talk about your warranty. The fact that Safelite wants to talk about, you

know, anywhere you go in the country for your warranty, hey, you're good to go, yeah, knock yourself out.
Q. So do you know when the Department determined that the advisory had to be read by an insurer before describing the features and benefits of the network shop?
A. Again, you know, I -- it's a -- I'm not exactly sure how we phrase that. So you might be interpreting something different than I would.
Q. I'm going to go back to that in a few minutes. I'm going to find the right document, I don't want to hold things up. So I'll refresh your recollection on that, and why don't we move on to another subject for the time being. Why don't you put this aside and save it for when we come back to this.
I want to walk through your interactions with the glass shop representatives that we discussed earlier today, Mike Reid, Rick Rosar, and Chuck Lloyd, in particular. Do you recall the very first time you met Mike Reid?
A. No.
Q. How would you describe your relationship with him?

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A. I think it's changed over time. Initially when I met him, he was extremely agitated and unhappy and frustrated, you know, with -- with the Department, and I -- you know, I -- I think I've spoken to him or gotten letters from him or something over the years, and I wouldn't say they were friendly. It wasn't a friendly type correspondence. There was -- there was some frustration and anger that -- you know, why aren't you doing your job, basically, and, you know, I think that continued probably about until the time when, you know, I got my -- you know, when -- they either came in or he called me on the phone, about the time when I got my windshield replaced, my own, and -- you know, and I saw or I experienced what I thought was personally a course of practice.

Q. How is your relationship with him now?

A. I -- I'd say he's much friendlier to me, but as far as my -- every day in my job, you know, I'm -- I -- I don't have a job like yours where I'm typically representing a client who -- you know, you've been very successful, I've seen you with your cases, so you probably have clients who like you. I deal with consumers that --

Q. I hope.

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A. Well --

Q. Occasionally.

A. At least until they get your bill, but -- I'm kidding, okay. But -- but you know how it is. Oftentimes, you know, I -- I can just tell you, I -- at the end of the day on a lot of complaints, when you go in, the insurance company is not happy or whoever you're investigating and whoever is complaining isn't happy, and when you're finished with it usually people are still unhappy, because you try to find somewhere in the middle and they're still unhappy. Sorry about that.

So, with Mr. Reid, you know, I -- I have no idea. I would -- you know, he probably wants me to, you know -- like all complainants, they want me to do everything that they ask, and that's not my job. My job is to, you know, try to look at things independently, try to help, you know, facilitate when there are ripples in -- in the -- you know, problems in the industry, try to work those out, everybody goes on their merry way, as much as possible.

Q. Did you ever meet with him in person?

A. I think I have once, once -- oh, I know he was at the arbitration that I was at, and

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he may have been at a meeting at the Department once or -- I remember there was one -- one -- seems to me there was one meeting with a bunch of glass industry people, I have no idea who was there, and it seemed like after a while all those same people came in and -- or a good portion of them came in, and they were still angry.

Q. Did you ever meet with Rick Rosar?

A. I don't remember ever meeting with Rick Rosar. I'm not saying I didn't, but I can't remember him at all or -- or talking to him off the top of my head. I may have, but, you know, I talk to so many people.

Q. What about Chuck Lloyd?

A. Chuck, yeah.

Q. Have you met with Chuck Lloyd?

A. Yeah, yeah. Chuck was on the task force with me for the last eight -- eight months or so.

Q. In your discussions with Reid and Rosar and Lloyd, did they ever tell you that Safelite was harming the businesses of Minnesota glass shops?

A. I don't recall talking to Rosar, as I stated. As far as Mike Reid, yeah, I think he said

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that Safelite was engaged in very aggressive steering, and it was impacting his business.

Q. Did he ever ask you to open an investigation of Safelite?

A. I'm sure he asked me on numerous times to open investigations of the insurance companies, which would include looking into Safelite's practices.

Q. Did he ever tell you that he thought Safelite was driving down the price of auto glass repair?

A. I don't recall him making that -- that statement. I'm -- I know that he expressed concern about the -- you know, where Safelite gets their -- how they determine their glass prices and the fact that they offer substantially less than his price. But I don't remember him saying specifically that it -- I don't know why he would say that. I don't know that that's relevant to the complaints he was making.

Q. All right. Let's have tab -- I'm going to hand to you what's been previously marked as Exhibit 26.

A. We're going back to this --

Q. Yeah.

A. -- statute.
Q. I want to close that out.
A. Sure.
Q. And if you look at page 3?
A. Okay.
Q. In the middle of the page there is it is so -- IT IS FURTHER ORDERED, it says, "shall cease and desist from informing insureds about any alleged benefits of using Respondents' preferred glass vendors prior to stating the required advisory."
A. Uh-huh.
Q. So do you see the order that is being imposed here by the Department?
A. Yeah. This is negotiated language, but, yeah, I understand it.
Q. Yeah, I mean, I have other -- I have other documents if you want to see that this is the position that the Department is taking.
A. Okay.
Q. You didn't negotiate this with Safelite, did you?
A. No.
Q. Okay, didn't think so.
So, would you agree with me that

the -- and let me just show you one other document here. This is a document --
MR. LEFKOWITZ: Has this been previously marked?
MS. SASSOON: Yes, 91.
BY MR. LEFKOWITZ:
Q. Ninety-one, I don't think we have to take a lot of time with it, but if you look at the -- this is a memorandum to you from T.J Patton, and you read up here it talks about, again, the Department's position as to when this advisory has to be given.
A. Yeah. I don't know --
Q. Is it still the position of the Department that the advisory has to be given prior to describing the feature and network -- benefits of network shops as opposed to simply in connection with a recommendation of a vendor?
A. Yeah. I mean, this is T.J's write-up, and so T.J doesn't set the Department policy, and it looks like he has it in quotations here, but I think he misquoted the law. Before recommenda -- recommending a vendor, I don't even see that in here.
Q. No. That's --

A. No.
Q. -- the reason for my question.
A. Yeah, no.
Q. So what I want to know is --
A. I think T.J misquoted it, and then probably, you know, he used his own misquote when he was negotiating with the insurance company, and the insurance company probably went with the language.
Q. So you don't know how the Department came up with its view that the advisory had to be read before describing the features and benefits of a network shop?
A. No, probably a mistake, I'm guessing.
Q. You don't -- it didn't publish that determination anywhere?
A. Well, it's published in an order.
Q. Well, not more broadly than that?
A. No, no. But, again, this is a negotiated settlement that --
Q. So is that still -- is Mr. Patton's what you called erroneous reading of the statute, is that still the Department's policy here?
A. Yeah. I mean, I don't know that he -- he's a young lawyer, he's a smart guy, but, you

know, however that got to be misquoted -- I don't know, I've never talked to T.J about -- about this that I can recall. I remember discussing with him the fact that insurers should be given this warning if they recommend a vendor, but I don't remember the timing issue coming up. So that really -- I don't recall that hitting our radar, but, I mean, the law is what it is, and it doesn't say before. So I would say the law is what it is.
Q. Thank you. Let's go to Exhibit 45. I'm going to hand you an e-mail exchange --
A. Are we through with this?
Q. Yeah, we're done with that now. Thank you very much, Mr. Fleischhacker.
And this is Exhibit 45, and this is a series, I guess, a couple of e-mails, you start at the very end it's an e-mail from Mike Reid, I believe, to you, and then a response from you to him, and then an e-mail again from him to you.
A. Uh-huh.
Q. Is that correct?
A. Yes.
Q. And this took place in kind of July and -- I guess July and August of 2013; is that right?

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A. It refreshes my memory as to when I had my car repaired, yes.
Q. And how did -- how did you seek out Mike Reid or -- in the first place?
A. How did I seek him out?
Q. Yeah.
A. I didn't seek him out. He came in alleging certain practices were taking place, and I said, hey, you know what, I just had a truck hit my window recently, fine, replace my window, and let's see what happens when I get mine replaced.
Q. Okay.
A. Which is not atypical for me.
Q. And did you -- you don't -- did you -- do you recall meeting with Mike Reid in connection with this incident?
A. No. He was on the phone, I think, when I -- I seem to recall he was on the phone when I made my call.
Q. And did he, in fact, perform the repair, did his company perform the repair?
A. Yes.
Q. And were you satisfied with the work they did?
A. Beautiful work.

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Q. So you're a satisfied Alpine Glass customer?
A. I was satisfied with that job, yeah.
Q. Okay. Now, Mike says, "I wanted --" on the back of the page, "I wanted to follow up on your experience...As you recall...there was heavy persuasion to scare you the customer." Do you read that?
A. Uh-huh.
Q. And you were on a three-way call in connection with the glass work that Mike Reid performed for you, correct?
A. I think that's typically how he does it, but, yes, I was.
Q. Do you know who participated in the call?
A. He and I and somebody from Safelite, I -- I believe.
Q. Did you identify yourself on the call as a employee of the Department of Commerce?
A. No. That would be -- ah, no, I did not. I was a consumer.
Q. And what was said on that call that caused you concern?
A. I -- -- you know, I'd like to -- if

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you have it here, I could read a transcript or listen to the call. You know, I could refresh my memory, it's been a long time, but I was feeling like I was being pressured not to use him and -- and I don't recall exactly what was said to me, but I remember thinking if -- if, you know, I were somebody who didn't know the true facts of, you know, what -- what the law allows me to do, that I would be persuaded to ask a lot more questions and possibly ask for options beyond Mr. Reid's company.
Q. Reid told you that your call was actually one of the better ones. That's what he says in that e-mail?
A. Uh-huh.
Q. Correct?
A. Uh-huh.
Q. Do you believe that to be a true statement at the time?
A. Do I --
Q. Did you believe at the time when he told that you that it was a true statement?
A. I -- I had no way of knowing.
Q. Do you believe it to be true today?
A. Um, again, I don't really remember the -- all of the phone calls I've listened to,

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but, I mean, I remember hearing some that sounded better, some that sounded worse, and -- and so I don't know where it falls, fits in.
Q. Do you know if the Department, under your supervision when you were doing this investigation and getting access to all these recordings, ever did an actual analysis of -- you know, quantitative analysis of all the calls that you got and reviewed to ascertain trends among these calls, do anything like that?
A. I -- I know that T.J listened to lots of the calls and -- but as far as any, you know, more in-depth analysis, no, we don't have the staff to sit down and do a -- you know, a huge analysis of all the calls. I think one of the documents you gave me said we received thousands of calls, I couldn't remember how many, but -- if that's accurate.
Q. Is it fair to say that the repair work that Mike Reid performed on your vehicle led to your having a meeting with -- with him?
A. I don't recall that.
Q. Well, let's take a look on page 1 of this e-mail.
A. Uh-huh.

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Q. He's talking to you on the last page about the experience that you had?
A. Uh-huh.
Q. And he says, Please let me know now that you've experienced it yourself I'm wondering if you would be willing to give me and a couple of others time to have a short meeting to discuss these issues, and then you say, "I would be willing to meet with you."
A. Yeah.
Q. So --
A. Yep.
Q. Don't you think it's fair to say that the repair work that Mike Reid performed on your vehicle ultimately led to your having a meeting with him?
A. My experience, my -- my personal experience with that, yeah, I think that I was much more open to -- to meeting with him at that point.
Q. And that meeting ultimately led you to open an investigation into Safelite and the insurers; is that right?
A. I'm not sure if it was based on that meeting or some further information about the -- you know, the arbitrations that we had and those

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types of things. It was in about that time frame, but I don't know that I agree with the statement exactly the way you just made it.
Q. And you said you were going to have one of your investigators pull some files to look into this matter further. Was that T.J Patton you were referring to there?
A. I don't know if I -- there was anyone, you know, en -- envisioned at that time, but it may have been T.J, it might have been Tracy if we were talking about AAA, because we were already investigating them for some other matters.
Q. Do you know what files you had them pull?
A. No. I don't even know if I ever did have them pull some files.
Q. Do you know why you thought it was better to wait until you had reviewed those files to meet with Mike Reid?
A. Like I say, I'm not sure which files I was referring to there.
Q. And you're not even sure if you actually ever reviewed those files?
A. No.
Q. But you did go ahead and have a

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meeting with Mike Reid anyway?
A. Yeah, I did. Well, actually, I say, yeah, I did, but, you know, I don't actually remember if I did. It might have been a phone call, it might have been the arbitration I attended that they were involved in. I -- I actually don't remember sitting back down with him and having another meeting as I sit here today, I don't. If you have something that shows that I met with him, but I don't recall another -- actually another meeting. I don't even think he lived in Minnesota, I think he lived somewhere else.
Q. At this point, did you believe Mike Reid to be a reliable source of information for the DOC?
A. When you say "at this point," which point are you talking about?
Q. The point July 30th or August 5th when you're conferring with him about having a meeting with him?
A. Yeah. I think that -- personally I started believing some of the things he was saying, where in the past, yeah, I didn't think that I necessarily signed on with -- with some of the allegations he was making.

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Q. And you asked him at this point to perform work for a friend of yours; is that right?
A. So she could try another company and see if the experience was the same, correct.
Q. So you -- you referred business to Mike Reid; is that right?
A. Um, yeah, I guess at the end of the day, yeah, I did.
Q. And who is this friend of yours?
A. It's my girlfriend. She also had a broken windshield.
Q. Must be something in the --
A. It happens a lot here because of the stuff they put on the roads.
Q. You asked Mr. Reid for his experience with American Family, which is another insurance company?
A. Yeah.
Q. Right?
A. Yeah.
Q. Why did you ask him about his experience with American Family?
A. That's who she had for an insurer.
Q. Did you consider at the time that as an owner of an independent glass shop Mike Reid

might be biased against insurance companies?
A. Oh, there's no doubt about it.
Q. What was that?
A. There's no doubt about it.
Q. Okay.
A. I believe that he has bias against the insurance companies.
Q. Mike Reid in his e-mail at the top says that American Family steers customers, he says, "They steer just as bad as they utilize Safelite." Do you see that, the second paragraph, top of the page?
A. Yeah.
Q. Did he provide you with any evidence of his assertion?
A. I don't -- I don't recall.
MR. LEFKOWITZ: All right. Why don't we take a -- is this a good time for a short break? Let's go off the record.
THE VIDEOGRAPHER: Going off video record.
MR. LEFKOWITZ: 12:15 now.
THE VIDEOGRAPHER: The time is now approximately 12:12.
(Break from 12:12 to 12:48.)

THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 12:48 p.m.
You understand you're still under oath?
THE WITNESS: Yes, sir.
THE VIDEOGRAPHER: You may begin.
BY MR. LEFKOWITZ:
Q. Good afternoon, Mr. Fleischhacker. I want to hand you another document, which is a collection of some additional e-mails from the summer and fall of 2013, between you and Mr. Reid.
A. All right.
Q. And page 2 talks about having a -- having work done on a windshield by Alpine for someone named June. Is June the girlfriend you referred to --
A. Correct.
Q. -- previously?
And so she was the one you referred to Alpine Glass for repair work?
A. Uh-huh.
Q. And it says here in the -- in the e-mail, "Mike - Please remind me which are the worst companies doing steering or is it just Safelite in general?" Do you see where you wrote

that?
A. Yep.
Q. And where did you get the idea that Safelite in general steers customers?
A. From Reid.
Q. Okay. And then you say, "It would help me if I had copies of any letters you sent to AAA" or American Family "or Safelite concerning the fact that you don't balance bill." Why did you request any letters from Alpine saying Alpine doesn't balance bill?
A. Excuse me. I thought he told me that he informed the company several times that he doesn't balance bill, including all the recordings, and it was my impression from what he said that he had written a letter. I don't know if that was accurate, though.
Q. So in your e-mail you say it would help you --
A. Uh-huh.
Q. -- to get those letters. What were you trying to accomplish that you needed help?
A. It would help me to understand, you know, what the situation was, whether, in fact -- they were alleging that they'd informed the company

several times. So I didn't have any information from him to -- you know, to show that, and maybe he was getting me the recordings, maybe he'd already gotten them, but he was alleging that he'd informed the company numerous times.
He -- Mike Reid was also at some point representing some other glass company or glass companies, he told me, as far as the communications with me. So I think he was going to get me some letters that some other company had sent, too.
Q. And you said here in your e-mail that "It was sad that even though I told June she wouldn't have to pay," and you go on.
A. Yep.
Q. "...and she knows what I do for a living." Did June participate in a three-way call with Safelite?
A. Yes.
Q. And did you participate in that call as well?
A. I was sitting there.
Q. You were listening in on the call?
A. I was sitting there listening, yeah. I don't remember if I participated at all.
Q. And why did you tell June she wouldn't

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have to pay anything for her windshield?
A. Because Mike Reid said that he'd be on the call making clear to the company, just like he always does, that the -- what he told me that he always does, that he informs the company that there will be no balance billing.
Q. And what did Safelite say to her in that call?
A. I don't recall.
Q. Well, you said Safelite had her afraid that she would have to pay something?
A. That's a different thing than knowing what they said. I don't recall. I just remember her response to me that -- you know, she asked me several times after the call and during -- you know, right about the time of the end of the call whether she's going to have to balance bill.
So whatever they said to her, and I don't remember the exact verbiage, but she believed that I didn't know what I was talking about and she was going to have to pay something out of pocket, even though he said she wasn't going to have to.
Q. So she had two companies who are competing with each other for her business, and one of them told her that she might have to be -- pay a

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balance bill and the other told her that she wouldn't?
A. Uh-huh, and she believed that Safelite -- I think her perception was Safelite was her insurance company. I don't think she fully understood what Safelite was.
Q. On page 1 of this e-mail, it says here, "Marty, Safelite attempts to steer every job they can regardless of the insurer."
A. When you say page 1, do you mean --
Q. The first page of the e-mail, the first -- the first page, yeah, no, that's --
A. Or do you mean the back page?
Q. No the front, the front page.
A. Okay, okay.
Q. You're looking at it that way, the bottom e-mail.
A. So where are you, which --
Q. The bottom e-mail, Mike Reid to you, "Marty, Safelite attempts to steer every job," do you see that?
A. Yeah.
Q. Did you ask him for any evidence to substantiate that assertion?
A. I don't recall if I asked him for

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anything to -- I know that he supplied us with -- with recordings. I don't recall specifically asking him myself.
Q. And you knew he was biased against Safelite, right?
A. Yep.
Q. But you believed that statement nonetheless?
A. No. I knew I wasn't going to be in -- conducting the investigation. So I, you know, told T.J, you know, gather the information, like I say, from everybody you can and see how it shakes out at the end.
Q. So T.J really --
A. At this -- at this point in time, October, you know, this was still early on in this -- this thing. I don't think we had anything except for what we got from Reid. I didn't -- it wasn't -- at the end of the day, I believe the little bit I knew, you know, I -- I understood that, but I -- I didn't have really anything to go on at this point.
Q. So during this time you weren't asking Mike Reid to substantiate the assertions he was making?

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A. I don't recall what I asked him for.
Q. Do you believe today as you sit here that Safelite steers -- attempts to steer every job they can regardless of the insurer?
A. I don't know that I have -- I don't have sufficient information to, you know, accept or deny that, agree or deny it.
Q. Did you --
A. I could say probably not. I mean, there's lots of -- I'm sure Safelite does a great job with, you know, the -- the -- you know, as far as with his customers, I don't know, I don't know. But as far as overall, I'm sure Safelite does not try to steer every job. But, again, I don't have sufficient information enough about Safelite's.
Q. Did you accompany June to get her windshield repaired?
A. Did I accompany? I think they -- you know, I don't remember repairing it. I think -- I know that I was there when call was made, but I don't recall when the repair was made, if it was the same time or shortly thereafter or if they were just scheduling -- I don't recall being there when her windshield was replaced, but I might have been, I don't recall.

Q. Do you know if she was pleased with the repair job?
A. That I don't know.
Q. At the beginning of this e-mail it says -- from Mike, Chuck and I want to meet with you to discuss the issues. Do you see that?
A. Which one, the 5:48?
Q. The first e-mail.
A. Oh, yeah, yeah, "Chuck and I would like to meet with you," yes.
Q. And it's talking about setting up a meeting in October, on October 16th; is that right?
A. Yes.
Q. And Mike Reid offered to fly from Seattle to attend the meeting?
A. Yes.
Q. Do you remember whether that meeting took place?
A. I don't recall.
MR. LEFKOWITZ: Here you go, here's a new exhibit to mark.
THE COURT REPORTER: One ten.
(Whereupon, Deposition Exhibit No. 110 was marked for identification, and a copy is attached and hereby made a part of this deposition.)

BY MR. LEFKOWITZ:
Q. This is an e-mail from Mike Reid to you dated October 31st. Does this refresh your recollection --
A. Yes.
Q. -- at all?
A. Yes.
Q. Mike is thanking you for meeting with him and Chuck --
A. Uh-huh.
Q. -- a couple weeks ago, right?
A. Uh-huh, yes.
Q. Do you recall who was present at the meeting?
A. No. Like I say, I -- excuse me -- didn't even remember whether the meeting took place, but apparently it did.
Q. Now that you're recollecting that the meeting did take place, do you recall whether you discussed Safelite at the meeting?
A. I don't recall what we discussed at the meeting.
Q. Did you ever tell Chuck Lloyd, in words or substance, that you were short-staffed?
A. Um, I don't recall telling him. We

are, but I don't recall telling him that.
Q. Do you recall ever telling Chuck Lloyd that you wanted him to funnel complaints from the glass industry shop for you?
A. Telling him that I want him to funnel complaints -- what was the last part of that?
Q. From the glass shop industry for you?
A. From the glass shop industry? I -- I may have asked him for some complaints, but I don't recall asking him that. Yeah, I'm -- I wouldn't doubt that I asked Chuck to -- you know, if he had some complaints to send them to me, yeah. We were still in -- we're still in the investigative stage of this file.
Q. Did you ever say that you wanted Mike Reid to find or give you evidence of illegal conduct by Safelite?
A. To give me illegal -- evidence of illegal conduct? That would sound strange if I asked him in that way. But whether I would say go ahead and send me the complaints, you know, that would be something I would say to just about anybody.
Q. Do you ever recall saying that you wanted to slap Safelite with a cease and desist order?

A. Slap them with a cease and desist order? I don't recall saying that.
Q. Did you ever say that you wanted to get Safelite out of Minnesota?
A. No, no, I don't remember saying anything like that. Do you have some document where I said --
Q. Yeah.
A. -- these things?
Q. I'll see if I can refresh your recollection --
A. Yeah.
Q. -- a little bit.
A. Yeah, let me -- let me see that, please.
(Whereupon, Deposition Exhibit No. 111 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. LEFKOWITZ:
Q. So what I'm handing you is a transcript of a telephone call that took place in November, November 7th, 2013, among Rick Rosar, Mike Schmaltz and Mike Reid.
A. Okay.
Q. And this is a transcript of that -- of

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that call.
A. Uh-huh.
Q. And I'll just go through some things.
A. Sure.
Q. If you'll look at the first thing Mike Reid says at the top, on the first page of it, or I guess it's the -- maybe the second page of the document, it says, yeah, "He is, and he came about because I had sent him many complaints on steering," and you can keep reading it to yourself, but he says, "I kept on calling him and finally he said, alright, if this is what you are saying let's assume my windshield and I'll call in a claim and he was shocked with what he heard."
Do you understand Mike Reid to be talking about you in this paragraph?
A. I'm still -- you said at the top of page 2.
Q. Yeah, let me -- let me take a look here. How is yours -- oh, I guess it's this, page 1, sorry (indicating).
A. Oh. "He is, and he came about because I had sent him many complaints on steering and they said there's no basis for them to take any action and I got pissed off so I kept on calling him and

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finally he said, alright, if this is what you are saying let's assume my windshield and I'll call in a claim and he was shocked with what he heard." Okay. That's Mike Reid's statement.
Q. And do you understand that he's referring to you?
A. I -- I don't understand necessarily, but if -- if he's -- if it is me, I mean, if he's talking about me, that I'm -- I said I'd call in my windshield, then, yeah.
Q. He represented in his -- he testified that he was referring to you --
A. Okay, then --
Q. -- when he testified --
A. Yeah.
Q. -- about this.
A. If that's what he testified to, then, yeah, I'd say he was referring to me.
Q. And you said you recalled that Mike Reid had sent in many complaints about steering; is that right?
A. He sent in complaints. You know, I don't know when -- this was November. I don't remember, you know, when those came in.
Q. In fact, it came in over a period of

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several years, correct?
A. Yeah, him and many other people.
Q. And isn't it true that the Department had told Mike Reid that there was no basis to take any action?
A. Um, I don't -- Where does he say that I said that?
Q. Second line, "I had sent him many complaints on steering and they said there's no basis for them to take any action."
A. Right, yeah. I don't remember using that exact verbiage, but I probably told him we closed the file on the matter.
Q. But you finally agreed to call in a claim to see for yourself?
A. Yes.
Q. And it says that you were, quote, shocked by what you heard. Is that true?
A. Shocked? No, I wouldn't say I was shocked.
Q. What did you hear?
A. Pardon?
Q. What did you hear? He's saying that you were shocked by what you heard. And I'm asking you what you heard on that call that --

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A. I don't remember exactly what I heard. I asked if he had a transcript of the call I'd be happy to look at it to refresh my memory, but --
Q. We're referring to the call, I think, that you --
A. No. I --
Q. -- had when you made your --
A. Yeah, but I don't remember --
Q. You don't remember?
A. -- what they said on the call, but I know I wasn't like shocked. I mean, I've been shocked a few times in my life, this wasn't one. But I was, you know, surprised that much of what he told me did occur.
I think surprised is probably a better word there. I can't help what -- I don't know what Mike means by shocked.
Q. All right. Look at the bottom line on that page where Mr. Schmaltz says, "Coincidentally, a couple of years ago, have...had a meeting almost like within the next day with the Commerce Department."
A. So where is this one now?
Q. Start reading there and read on the next page.

A. Oh, "a couple years ago we had had a meeting almost like within the next day with the Commerce Department, with almost the same kind of thing, and walked away from the same, you know, kind of feeling, wow, this is going anywhere, they are never going to do anything with it."
Q. And, then, go down about three or four more lines, and then Schmaltz in a big paragraph where he says, "Yeah, he was there and Marty attended, together with Pam Gergen."
A. "...and there was another director of enforcement."
Q. Yep.
A. And, "I've got their names down in my notes here someplace."
Q. You --
A. "But, the three of them had all, ah, three people plus ah, the Commissioner." I don't remember the Commissioner ever being there, but --
Q. Do you recall a meeting with Mike Schmaltz and Pam Gergen?
A. No.
Q. You don't recall this at all?
A. I remember meeting several times, you know, with the glass people. They were always

happy with us, but I don't remember who was there, other than representatives of a glass, I think, association.
Q. All right. Let's skip over to -- go over a couple more pages, page 4, over to page 4, and you see at the very top of the page it says Rick Rosar and then Mike Reid is the next entry?
A. Yes.
Q. At the bottom of the Mike Reid it says, "Ah, but he's already talking about doing a cease and desist order, that's what he told us."
A. Uh-huh.
Q. Do you see that?
A. Yes.
Q. So, is that correct, that you were already talking about doing a cease and desist order in, I guess, October of 2013?
A. Um, you know, when people asked me what -- what we're -- you know, what -- what potentially can be done with companies, I mean, I go through the -- the whole list of things. But I don't think it's likely that I said, oh, we're going to issue a cease and desist order at that time. And I don't -- is he even talking about me here or is he talking about T.J? He's only saying

"he," so I don't know who he's talking about here.
Q. Yeah, he represented that he was talking about you --
A. Oh.
Q. -- in his deposition.
A. Yeah.
Q. And then Schmaltz says, "Well, I think Marty is somebody who is, you know, based on his history more likely to do something than others." Do you see that?
A. Yes.
Q. And Schmaltz refers to getting a fine against Progressive. Do you know what fine he's referring to?
A. Um, like I said, you know, when we began this today, I think -- I thought Progressive was penalized at some -- some point in the past.
Q. Do you have an understanding as to why Mike Schmaltz thought Wilson wasn't going to help them?
A. "...got that fine against Progressive it was when Glen" [sic] "Wilson was still...Commissioner and Wilson wasn't about to help us." I don't know, it's confusing, because it says that he was the commissioner then, but then it

says he wasn't going to help them. So I guess I'm not sure.
Q. Do you believe that Commissioner Wilson was less receptive than Commissioner Rothman to the complaints of the independent glass shops?
A. Um, yeah, I really couldn't say. I never sat down and asked Commissioner -- you know, Wil -- Commissioner Wilson apparently was at this meeting. So that was their impression of what he said, I guess. But as far as what his actual impressions are, I -- I don't know. I never asked -- I just know what Glenn Wilson told me, you know, at various times when we were taking action and, you know, when he -- when we presented information to him, you know, that he specifically asked for, then he -- you know, it's not something typical where you go to the Commissioner and ask them their opinion on things. This one, apparently, he was at the meeting.
Q. You never had a conversation with Commissioner Wilson about the auto glass issues?
A. I don't recall ever having a conversation with him, no.
Q. Turn to the next page. In the middle of the page there is an entry where Mr. Reid is

1 talking about where he started this crusade?
2 A. "So, I kind of started this crusade on
3 my own," that -- that paragraph.
4 Q. Yep.
5 A. "...and I told Chuck I want to keep it
6 small because I don't want to have a bunch of other
7 shops going" on "-- going in on it unless they want
8 to also pay the bill to have Chuck do this, then
9 I'm more than happy...But, the way it started, it
10 was you know (and I've got to talk to Chuck about
11 it) because the way it started it was...the deal
12 between me and Marty and then Chuck got involved
13 with it and I never knew that the entire glass
14 industry knows about it." Okay.
15 Q. So Mike Reid said he had a deal with
16 you, right?
17 A. With me?
18 Q. Yes.
19 A. "The way it started, it was you know
20 (and I've got to talk to Chuck...) because the way
21 it started it was just the deal between me and
22 Marty." No, I think he's saying, you know, it was
23 the situation between me and Marty, and then Chuck
24 got involved. There's no -- I don't think he means
25 it in the sense of he and I have, you know, worked

1 out some kind of contract or agreement.
2 I -- I don't know what his -- his
3 intention was there. I had no agreement with him
4 or no deal with him.
5 Q. Well, I think when Mike Reid testified
6 he said that the deal was that they would limit
7 what they were filing, the amount of complaints,
8 and they would just focus on the complaints that
9 they were bringing forward, that they were -- that
10 the three of them, Reid and -- and -- and Lloyd and
11 Rosar were going to kind of funnel things to you
12 for this investigation. Does that refresh your
13 recollection?
14 A. That that was my agreement with them
15 that just they were going to send it to me?
16 Q. Correct.
17 A. No, no. I didn't have any deal with
18 them to specifically pull just a company's -- a
19 couple company's complaints. I said any -- that --
20 that would not be the way we would do our business.
21 We're interested in everything we can get both from
22 Safelite -- or I should say from Safelite, from the
23 insurers, and from, you know, the glass industry.
24 Q. Let's turn to page 7.
25 A. I do remember Mike saying, hey, do --

1 do me a favor, you know, I'm the guy that's pulling
2 all this stuff together, just, you know, communicate
3 with me. I -- I never -- I never agreed to that,
4 either. I said, look, whoever talks to me, they
5 talk to me. I don't make deals with people. We're
6 not in -- we don't have a horse in the race.
7 Q. Okay. Do you see on the page 7, about
8 five lines down from the top there's a sentence
9 that begins, "Mike can just say if you...come up
10 with anything that's really, really, really good
11 sends it to Mike Schmaltz, don't send it to
12 Commerce. You know, we don't want to bother them."
13 A. Yeah.
14 Q. And Rick Rosar is discussing the kind
15 of information that should be sent to the
16 Department of Commerce, right?
17 A. Um, is that who is making that
18 statement? Yeah.
19 Q. Were you aware that Mr. Rosar and
20 Mr. Reid were only sending you what they considered
21 to be the really, really good evidence?
22 A. No.
23 Q. Did you think --
24 A. They sent us thousands of recordings,
25 apparently, according to these documents, so, no.

1 Q. So you were not aware that they were
2 culling the information and just sending you the
3 best evidence possible?
4 A. I assumed that they were, but I don't
5 remember ever having a conversation that said, hey,
6 only send me that.
7 Q. Look down to the middle of the page
8 and it says -- you see where Rick Rosar says,
9 "Yeah, he wants illegal conduct"?
10 A. Uh-huh.
11 Q. Did you ever tell Mike Reid or Rick
12 Rosar, in words or substance, that you wanted them
13 to collect illeg -- evidence of illegal conduct by
14 Safelite?
15 A. Evidence of illegal conduct? No, I
16 would not have used that term. I don't believe I
17 would have used that term. I would have said, you
18 know, you send -- the same thing I say to
19 everybody. You think you have some information
20 where somebody is violating the law, fine, send it
21 to me, but don't send me a bunch of crap.
22 Q. Okay. And, then, read what Mike Reid
23 says next about his discussions with you?
24 A. "He knows the whole thing, how
25 unethical Safelite is and he's had enough of it and

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he wants to go after a couple insurance companies which I think are Farmers and Progressive and then he wants to get Safelite out of Minnesota." Okay.
Q. So did you tell Mike Reid, in words or substance, that you wanted to get Safelite out of Minnesota?
A. No.
Q. So you believe Mike Reid lied about this statement?
A. I don't know if he lied. You know, I don't know how -- how he perceives things that I say, so I can't say whether he was lying, but I didn't tell him I wanted Safelite out of Minnesota.
Q. Do you believe that he's a trustworthy individual?
A. I don't know him well enough to know if he's a trustworthy individual.
Q. And did you say that if I, quote, slap them with a cease and desist order it's going to cause massive chaos?
A. No, I don't believe that I said that.
Q. So, again, Mike Reid is just making this stuff up?
A. I'm not saying that he's making it up, but I didn't say that I'll slap them with a cease

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and desist order and it's going to cause massive chaos.
Q. But you understand that Mike Reid is talking about you in this paragraph?
A. Uh-huh, uh-huh.
Q. And he's talking about you in the paragraph about saying "he wants to get Safelite out of Minnesota," you understand he's referring to you?
A. Yeah, I understand what he's saying.
Q. You just don't think he's accurate?
A. No. That may be his impression.
Q. Can you think of anything you may have done or said to give him that impression?
A. No. I mean, I usually walk through the -- you know, what -- what the -- I don't recall these conversations, okay. But, no, I don't recall anything of the sort. If you have something that I've said to him, I'll be happy to take a look at it and -- and give you my assessment of it, but, no.
Q. You don't recall the conversations at all, but you don't think he's telling the truth when he reports them; is that right?
A. Well, he says, "after a couple" of "insurance companies which I think are Farmers and

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Progressive," Farmers doesn't use Safelite, that I'm aware of, and Progressive, I have no idea if they use Safelite. So, you know, there are other things in here, too, that --
Q. Is it possible that you said these things that he's attributing to you?
A. No, I do not believe so.
Q. Do you think he's just making it up, then?
A. I think that he's getting excited that Commerce is finally looking at what's going on, and I think he's trying to get his -- the other people here excited about things. But, again, that's all speculation. I don't know. I don't know what he's trying to do.
Q. All right. Let's look at Exhibit 7, put that away.
A. Was this 111?
Q. Yeah. You can just put that away.
A. All right.
Q. This is an e-mail chain --
A. Uh-huh.
Q. -- April 2014?
A. Yes.
Q. And do you see how Mike sends you a

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note that says, "I am doing a pretty good job" of "having the glass companies go through me and not filing complaints on their own"?
A. Uh-huh.
Q. "I can't control everyone," right, you see that?
A. Uh-huh.
Q. Did you tell Mike Reid to have the glass companies go through him before filing complaints with the DOC?
A. No.
Q. Did you rely on Mike Reid to serve as a funnel for complaints to the Department?
A. Did I rely on him? No.
Q. He says at the end of that first paragraph, "I will continue to have everyone flow through me but there are a few that are frustrated and are bypassing me."
A. Uh-huh.
Q. Do you see that?
A. I do.
Q. Were you pleased that he was coordinating everything for your investigation?
A. Was I pleased? I didn't even know if this was accurate. I -- no, I'm not -- again, this

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is stuff he independently did. It's nothing that I have an agreement with him. You know, I can't control how people send these things in; and if somebody wants to compile complaints and send them to me, it does happen.
Q. When you responded to his e-mail, did you tell him, hey, this is not the way I conduct my investigations, I don't just rely on interested parties to funnel information to me?
A. No, I don't tell him what our investigative techniques. I got our investigator going to American Family. You know, he can send me whatever he wants, okay. I mean, I -- I had somebody text me at eleven o'clock last night about some fraud that's going on at a company. I don't -- you know, and it's some conversation that they had with another person at a title company.
You know, I take the evidence that I get, and they can provide it any way they want, but at the end of the day, you know, we should assess what information is provided to us and then we'll move forward from there.
Q. But you were really just relying on information provided by two of Safelite's competitors?

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A. I was not. T.J Patton, who had the file, maybe -- maybe T.J was, but I wasn't relying on anything. At the end of the day --
Q. You were relying on T.J?
A. Well, at the end of the day we're relying on what -- whatever we have, yes.
Q. But you were happy to use Mr. Reid to get access to attend a arbitration that you otherwise weren't invited to; is that correct?
A. I don't need his permission to attend an arbitration.
Q. Are you aware of whether arbitrations are considered confidential?
A. When I showed up I said can I be here, and they said yeah.
Q. Did anyone ask you how you learned about the arbitration?
A. I don't recall anybody asking me that question.
Q. If someone had, would you have told them that you learned about it from Mike Reid?
A. Yeah, or Chuck. I don't remember who -- who told me about it, but I assume it was one of those two.
Q. Take this document, I don't think

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we've --
(Whereupon, Deposition Exhibit No. 112 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: One twelve.
THE WITNESS: Thank you.
BY MR. LEFKOWITZ:
Q. This is an e-mail from Mike Reid to you on April 17th, 2014; is that right?
A. April 17, 2014, correct.
Q. And he's forwarding to you an exchange between him and an American Family employee, right?
A. Yes.
Q. And it looks like Mike Reid is complaining to you that American Family would not agree to his pricing, correct?
A. Um, "requesting that we discuss an agreement and her response denying that request. This is a perfect example of how insurers that utilize Safelite as their tpa refuse to make agreements when losing in arbitration multiple times...We have won two arbitrations...and have filed a third for" 425. "They are reluctant to...have a conversation...These arbitrations hurt our business financially as they are very expensive

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and we have to wait" for "years for them to become large enough to pursue. Alpine Glass has now won 9 arbitrations and have lost 0 and have settled multiple times with the same insurer after filing (Progressive 6 times in the last few years). Let me know if you have any questions." Okay, yes, it is what it is.
Q. And as a result that they are not agreeing to his pricing Reid was saying he was repeatedly taking American Family to arbitration, right?
A. Correct.
Q. And this was one category of complaints that the glass shops were making to you during this time period, right?
A. That's correct.
Q. And the Department took action in response to complaints like this, right?
A. I'm not sure what you're talking about.
Q. Was this one of the issues that you reacted to when you were taking action against Safelite and the insurers?
A. What action are you talking about?
Q. You took enforcement action against

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1 the insurers?
2 A. American Family?
3 Q. Against Safelite, against other
4 insurers, correct?
5 A. We didn't do anything with respect to
6 American Family.
7 Q. So you took no action at all in
8 response to complaints about arbitrations?
9 A. I -- you know, maybe T.J contacted
10 them about it, but we have not taken any sort of
11 administrative action at this point against the
12 company. We investigate. There's another law that
13 says that you have to -- if -- you know, they're
14 doing these arbitrations, you know, they've gotten
15 an agreement from their insured with respect to the
16 claim payments. So if you have to continually
17 litigate for, you know, monies that are already
18 due, yeah, that gets to be a problem. And what did
19 he say, he won six -- nine times here and lost
20 zero. Yeah, I mean, it's a concern for us. Why is
21 this taking place? You know, there's this
22 disconnect between the prices paid and the prices
23 awarded, and, you know, these are no-fault
24 arbitrations.
25 Q. Didn't you say earlier this morning,

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1 Mr. Fleischhacker, that the two main issues that
2 triggered your investigation here were, one, the
3 question about balance billing statements, and, two,
4 the large arbitration awards that were being won?
5 A. Not so -- yeah, they -- they were
6 winning awards time and time again, yeah.
7 Q. Correct. And those were the things
8 that instigated you to do your investigation?
9 A. Some of the things, yes.
10 Q. Do you see how it says here --
11 A. But you said, you know, taking action,
12 and that's different than, you know, investigating,
13 in my mind.
14 Q. You said -- it says here, he's telling
15 you that these arbitrations are hurting our
16 business financially.
17 A. Uh-huh.
18 Q. Do you see that?
19 A. Uh-huh.
20 Q. Do you think it's the Department's job
21 to protect Mike Reid's business from being hurt
22 financially?
23 A. No.
24 Q. Did you ever tell Mike Reid that it
25 wasn't your job to help his business?

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1 A. Did I ever tell him that it wasn't my
2 job to help his business? I don't know that I
3 specifically said that to him. But it's not my job
4 to help his business, my job is to protect
5 consumers, and, you know, if there's any illegal
6 insurance activity, to look into it, yeah.
7 Q. But you were getting these complaints
8 not from consumers but from Mike Reid and Rick
9 Rosar and Chuck Lloyd, people who were interested
10 parties and competing with Safelite, and I guess my
11 question is, did you ever say to them, hey, my job
12 isn't to protect your business?
13 A. I -- I don't know that I used those
14 exact words.
15 Q. Any words to that effect at all?
16 A. I possibly did, but I just don't
17 recall.
18 Q. So you have no recollection of ever
19 saying anything like that?
20 A. At this very moment, no, I don't
21 recall it. But, you know, is it something I could
22 have said? Yeah. I mean, I've definitely said
23 that to businesses in the past that, you know, I --
24 my -- my job is not to protect your business
25 interest, okay, I'm sorry, but it's to -- to

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1 determine whether there's a violation of law or not.
2 Q. I'm glad to hear that you've said that
3 to other businesses. My question is --
4 A. I don't remember saying to this
5 specific one, but if I did say it to him, it
6 wouldn't be out of the ordinary.
7 Q. Do you ever recall responding in any
8 of the many e-mails they sent to you and saying
9 that in an e-mail to them?
10 A. No. I mean, I don't think I responded
11 to a lot of these e-mails.
12 Q. Exhibit 76, this is a letter from
13 Chuck Lloyd to you in June of '14 enclosing claim
14 calls and an arbitration award. Do you see that?
15 A. Uh-huh, yes.
16 Q. And he said he represents Alpine
17 Glass; is that right?
18 A. Yes.
19 Q. That's Mike Reid's shop, correct?
20 A. Correct.
21 Q. And Mr. Lloyd is sending you evidence
22 for your investigation, right?
23 A. Correct.
24 Q. Did you rely on the evidence provided
25 by Mr. Lloyd in the course of your investigation?

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A. I'm sure we did cite some of the information. I don't know if it came from prior or this request, so I guess I can't say for sure.
Q. Did you --
A. Oh, this is USAA, this isn't even AAA. Um, yeah, I'm sure that T.J used some of that information in his USAA investigation.
Q. Did Mr. Lloyd serve as a conduit of communications between glass shops and the Department?
A. You know, I don't know that. Did he talk to the Department, have discussions with me? Yeah. Did he serve as a conduit? I guess I'm not aware of that.
Q. Did you ever tell Chuck Lloyd that you wanted him to funnel complaints from the glass shop industry for you?
A. You know, again, like everybody, I say, yeah, send me what -- send me whatever you want to send me and I'll assess it.
Q. Do you know what Mike Reid wanted from the Department of Commerce in connection with the investigation you were conducting?
A. I don't -- I don't know what he wanted. I could speculate, but I don't -- I don't

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know specifically what he wanted. I guess I never asked him what he wanted because that's not really of concern to me.
Q. Did you think he wanted any personal benefit from your investigation?
A. A personal benefit or an industry-wide benefit? I'm sure that any, you know, thing he -- that we did I'm sure he thought it would personally -- the fact that I'm even looking at it is probably something he's happy about.
Q. Do you know if he wanted the Department to force the insurers to pay Alpine Glass's prices?
A. I'm sure he did. Ah, yes, yes, I'm sure he did. I'm sure that -- I don't think that's the only thing he wanted.
Q. Here's another exhibit. This is a e-mail exchange between Mr. Patton and Mr. Reid and it copies you as well.
A. Uh-huh.
Q. And you see how it says here, "I am hopeful that the settlement proposal proposed to AAA has some benefit to the glass industry as we have provided a lot of information to help with the investigation," do you see that?
A. Uh-huh, yes.

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Q. Do you agree with Mike Reid that the glass shops provided a lot of information to help with the investigation?
A. Well, he provided thousands of calls. So, yeah, I think he did provide a lot of information. I don't know that it was completely helpful with the investigation, but I would say certain parts of it helped T.J do his investigation.
Q. And when he's talking about the glass shops, he's principally talking about what he provided and what Mr. Rosar and what Mr. Lloyd provided, right?
A. I don't know who he's talking about there.
Q. Are you aware of information you got from other glass shops?
A. I -- I didn't -- you know what, I don't know why T.J got all of his information. I'm sure he's referring to the information that he's provided here, yeah, but I don't think that he knows about other information we would -- we would have had.
Q. Do you think that the Department provided a benefit to the glass industry in connection with the settlement of AAA -- with AAA?

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A. Say that again? I get -- I'm trying to get --
Q. Do you think that the Department provided a benefit to the glass industry in connection with the settlement with AAA?
A. Provided a benefit? I guess I don't know. I don't know if it benefited them in any way.
Q. Exhibit 80. This is an e-mail chain. It starts with a -- it starts with an e-mail from you to Mike Reid asking for some information and asking him and Chuck to provide some information to you and T.J. Do you see that?
A. Um, yes, yes, I do see that.
Q. Which insurers are you referring to here?
A. Have told me for years that certain glass companies like yours are way out side of the norm for pricing and that the only way the small subset of Minnesota glass vendors win arbitration is because plaintiffs' attorneys buy into their arguments at arbitration. Does Chuck have any information that he can provide to T.J and me about national glass prices and how Chuck's clients compare to those numbers? I know that he can't

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1 discuss that with you, but T.J and I would sure
2 like that information if he can provide it. We are
3 requesting that some individual insurers provide us
4 their information as well. So what was your
5 question? Sorry.
6 Q. Well, first of all, which insurers are
7 you referring to here? You say various insurers.
8 I'm curious as to which insurers?
9 A. I just remember over the years
10 insurers have told me that glass pricing in
11 Minnesota is way outside the norm. Pete Thrane
12 from -- with AAA specifically told me, you know,
13 numerous times, "Marty, these guys are way, you
14 know, outside the norm."
15 Q. And those insurers told you that
16 certain glass shops are way outside the norm?
17 A. Yes.
18 Q. Any particular glass shops you
19 remember him referring to?
20 A. I don't recall, but Alpine was
21 probably mentioned several times by various
22 insurers. I would say that that -- that would be
23 accurate.
24 Q. And those insurers also told you that
25 the glass shops only won these arbitrations because

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1 the arbitrators are plaintiffs' attorneys?
2 A. That's one of the allegations, yeah.
3 Q. And you wanted to investigate those
4 assertions, right?
5 A. I did.
6 Q. So you asked Chuck if he could provide
7 you and T.J any national glass pricing information,
8 right, national pricing data, correct?
9 A. Yeah. I -- my understanding was that
10 NAGS -- and I don't get it, but I was trying to get
11 a handle on it, NAGS was the national glass
12 association. They -- they put out the prices. So
13 I figured that that's, you know, the kind of data
14 that they would have to show Chuck to show that,
15 you know, maybe there was some, you know, glass
16 pricing data, because everybody said -- I'll tell
17 you specifically. Insurers have told me that our
18 prices by far were the highest in the country, but
19 they never, that I can recall, provided me with a
20 good set of data to show that, whether our prices
21 were higher or not.
22 Q. So you were looking for Chuck to give
23 you actual data, not his opinions?
24 A. If he had something about national
25 glass pricing data, yeah.

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1 Q. You knew he was an interested party?
2 A. Yeah.
3 Q. He had an axe to grind here?
4 A. Yeah, I definitely knew that.
5 Q. When he responds, does he have any
6 national pricing data for you?
7 A. I don't recall what his response was.
8 Apparently not, according to the first sentence
9 there in the second paragraph. Do you want me to
10 keep reading?
11 Q. Well, he certainly, I agree with you,
12 doesn't have any national pricing data. He goes on
13 to provide a lot of additional information. Do you
14 know if you read the rest of the e-mail when you
15 received it?
16 A. I -- you know what, I don't really
17 recall how in-depth I read this e-mail.
18 Q. He gives a variety of explanations
19 without data as to why Minnesota glass prices are
20 higher. Do you see this?
21 A. Yeah.
22 Q. He talks about colder winters?
23 A. Yep.
24 Q. Well-educated workforce?
25 A. Not having -- well, I don't know.

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1 Here, you know, we don't have deductibles, so, you
2 know, that affects the marketing and the -- you
3 know, the way --
4 Q. Was this persuasive to you?
5 A. You know, I don't -- I don't remember
6 this, so, I -- you know, this is, again, one of
7 those things that you were talking about before.
8 This -- this is biased, and you know what, I was
9 looking for specific data to determine whether
10 insurers are being fleeced by this small handful of
11 companies or whether, you know, insurers are
12 feeding me a line of baloney.
13 Q. Mr. Lloyd here says that Safelite
14 obstructs "most every investigation that ultimately
15 does get started." Do you see that?
16 A. Where -- where does he say that?
17 Q. Oh, I've got to find it now, it's such
18 a long e-mail. The first big paragraph, third or
19 fourth line from the bottom.
20 A. On what page?
21 Q. The first page of the --
22 A. Oh.
23 Q. The big -- the big answer that he
24 gives you.
25 A. The perfect storm paragraph there or

about Arkansas. "Our winters are harsh," that's the one? "We also have a fairly well educated workforce generally and a very competitive market for glass replacement technicians specifically."
Q. Go down about four more lines.
A. Okay. So, Safelite, let's see, "They are often seen as non-urgent, they are" also "often industry driven rather than consumer driven and the insurers have Safelite to carry their water and obstruct most every investigation that ultimately does get started."
Do you want me to read further?
Q. Did --
A. Minnesota has --
Q. No.
Did Mr. Lloyd ever provide you with any evidence that Safelite had obstructed an investigation?
A. You know, I don't recall anything along those lines, and I don't think that I asked him for it.
Q. Do you agree that Minnesota has been virtually the only state that has been active in regulating the behaviors that drive down reimbursements?

A. Um, my personal opinion? No. I think there are other states that have looked at, you know, glass issues. "...virtually the only state that has been active in regulating the behaviors that drive down reimbursements." Yeah, I take that as, you know -- actually, you know, I really don't know what he means by that, "active in regulating the behaviors that drive down reimbursements - first with Commissioner Jennings issuing the bulletin...then with...Bernstein being active...and TPA practices and now with your office investigating the behaviors." I don't know.
Q. You had said, Mr. Fleischhacker, that you wanted to know if insurance companies were getting fleeced by a few shops?
A. Uh-huh.
Q. Did you ever reach a conclusion about this?
A. No.
Q. What did you do to verify or investigate that issue?
A. I mean, one of the things was we tried to get a lot of data from your client, who has lots and lots of pricing data. We never got that. That's one of the attempts that I made.

Q. How many of the individual glass shops did you subpoena as part of your investigation?
A. I don't recall how many. Glass shops you know, that they -- they kind of have a horse in the race. Knowing what's actually paid for claims is different than always knowing what's being billed for claims, too.
I -- you know, I do have people send me that kind of information, you know. I'll ask them what do you charge, and they'll send me their charge to make sure that I know about the high-end price, but they don't tell me what they get reimbursed and those types of things. So it's a complicated process to get accurate information from anybody.
Q. If you look at the bottom paragraph, the second paragraph on that page where it says, "Second, the market pricing"?
A. Uh-huh.
Q. And two lines down Lloyd says to you, "You've seen the scripting; the shop has to either agree to the price or the hard sell is given," and then he says, "...no one in Minnesota goes after the customers," right?
A. Yes.

Q. Did you take that to mean that no glass shops in Minnesota engage in balance billing?
A. Again, you know, I don't know how closely I read this. How do I take it today? Yeah, that -- that's why -- how I read it today.
Q. Did Mr. Lloyd ever provide you with actual evidence about the balance billing practices of Minnesota glass shops?
A. I remember Chuck telling me that nobody balance bills, but I guess I don't remember if I got specific information from him about that.
Q. As an investigator, do you differentiate between looking at documents and data and that kind of evidence from getting statements from interested parties?
A. Yeah.
Q. You do?
A. Yeah.
Q. Chuck Lloyd also told you that there are, quote, stories of Safelite showing up on-site to steal jobs. Did he ever provide you with any actual evidence of those stories?
A. I don't recall seeing any. He may have, I just don't recall it at the moment. It would have probably gone to T.J if -- if we received

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any.
Q. He also in the next page, in the paragraph that begins "Third," tells you that insurers were trying to drive down glass repair prices at the direction of Safelite?
A. Where do you see that one?
Q. The paragraph that begins "Third."
A. Oh, "Third," I gotcha, I got it. I thought you said the third paragraph. I was looking at "It will also be --" so "Third."
"I've given you previously the exhibits we received from AAA Insurance showing that the insurance companies, through the TPAs, are sharing reimbursement data." Yes, I remember that. "To further highlight this issue, I'm sending you a series of charts that Safelite puts together to send to insurance companies. You will note the level of information that is being provided. You will also note that there is a striking similarity to what many insurers reimburse for glass replacement. Both Safelite and the insurers try to claim that the insurers come up with their reimbursement rates independently. These charts show how ridiculous that claim is. The rates being set have nothing to do with market data and

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everything to do with the insurers trying to drive down the price on whim," slash, "the direction of Safelite." Okay.
Q. Did he ever provide you with evidence which, in your mind, actually proved that Safelite was trying to drive down glass repair prices in Minnesota?
A. He gave me some charts, as I recall, that gave -- you know, I wasn't exactly sure what they were, but they -- they -- and this is going off memory a long time ago, but it seems to me that they were the prices the various companies were paying for glass, and either Chuck suggested it or, you know, it -- it appeared that -- no. Chuck suggested that, I think, the way it was, that the chart showed that by, you know, changing your price X amount you could save some -- some portion of -- of the bill.
So, you know, at the end of the day, I -- you know, I guess that would support his contention here that they're trying to show insurers how much they can save by adjusting their prices, yeah.
Q. Do you think it would be a bad thing if the price of glass repair went down in Minnesota?

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A. Savings to consumers I think are good, but, you know, if -- if you have a -- a -- a group that is, you know, engaged in antitrust activity where they're, you know, sharing information to drive competitors out of the market, I think that would be unhealthy.
So saving is one thing, but, you know, moving into an area and trying to drive prices to levels that are unsustainable to get people out of the market, yes, I mean, that would be a concern for me. I -- you know, I don't know what's going on here, but I think that was Chuck's point.
Q. Do you have authority in your office to bring antitrust claims?
A. Um, no, I don't.
Q. Are you aware of whether the state of Minnesota has brought antitrust claims against the insurers or Safelite?
A. No, I'm not.
Q. But you think that reducing the price of glass repair might not be a good thing, is that what you were saying?
A. No, no, I'm not -- I think that any time consumers can save I think it's a good thing.
Q. Okay.

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A. But if you're, you know, illegally engaged in some activity, like compiling prices, you know, I would have some concerns about that.
Q. But you're not aware of any antitrust violation?
A. No, I'm not. I'm not aware of any investigations. I don't know if this is an antitrust violation or not.
Q. Page 3 of this e-mail Mr. Lloyd says, "If you want to get the inside scoop," and then he refers you to an ex-insurance company official; is that right?
A. Um, "His name is Brad Boardman. He was with Kemper/Unitrin for...25 years...ran their glass...He worked very closely with Safelite and may have some useful information (I have not yet talked to him; we exchanged emails and I got his permission to send along his contact information...His contact information is as follows." Yes, that's what it appears.
Q. Did you ever speak with that official?
A. I never did, not that I recall.
Q. After that very, very long e-mail that he sent you, in which he begins by saying he doesn't have any of the data that you asked him

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for, you sent him just a note and you said, "Thanks, Chuck"; is that right?
A. Yeah.
Q. Did you ask him any follow-up questions about the assertions he made?
A. No, I didn't.
Q. You didn't ask him to provide any evidence to support his claims?
A. I was looking for objective evidence at this point about glass pricing, and, you know, whether T.J followed up on any of these things, I -- I don't know, but, you know, I -- I was looking specifically for objective evidence of what Minnesota's prices were to see whether, you know, these guys were way out, way out there or -- or not is what I recall at this -- you know, at the present time about what I was trying to get at back then.
Q. All right. I'm going to hand you a document, which has not yet been marked as an exhibit.
(Whereupon, Deposition Exhibit No. 113 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: It's 113.
BY MR. LEFKOWITZ:

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Q. This is an e-mail from Mike Reid to you and T.J Patton in October, October 9th. Do you see the first sentence here?
A. Yeah.
Q. "I left you a message last week in regards to American Family. I know you are still trying to work something out" with "them --" or I guess he left out the with, "so I am hoping that this" case -- "that this issue can worked in."
A. "So I am hoping that this issue can worked in."
Q. I think he's -- he leaves words out every now and then.
A. Yeah, yeah, I don't know.
Q. What were you working out at this time with American Family?
A. I wasn't working anything out at this time with American Family. I know that at one point he had asked me to -- he said, "Look, I've -- you know, I am a preferred provider with certain insurance companies, so my prices have to be reasonable." I said, "Okay." And -- and he said, "Can you ask American Family to meet with me and see if I can work out a deal with them instead of going through these endless arbitrations?" I said,

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"Fine."
So I called Vickie Rislow and said, Vickie, you know, what about these arbitrations, are you -- you know, do you want to talk to this guy and see if you guys can work something out, because apparently he can, you know, get into some range of pricing that certain insurers can agree to. Whether it's true or not, I don't know. I think that's what he's referring to here, but I'm guessing at this point.
Q. Were -- were you in the process at this time of negotiating a settlement with American Family?
A. No.
Q. Mike Reid is complaining to you here again about insurers not paying his prices, correct?
A. Um, I flew out to Madison to meet with them. Yeah, I don't know -- he is complaining about -- What was your question, again? I'll try to answer it.
Q. Well, that's good.
I was asking you whether or not he's complaining here that these -- being forced to arbitrate is -- is hurting his business and the insurers aren't paying his prices, isn't that what

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he's complaining about here?
A. I think he's saying that they are paying his prices, but he's being forced to arbitrate to get it.
Q. Got it. And that the arbitrations are dramatically affecting his business?
A. I think that's one of the takeaways.
Q. He says, "the legal fees and the lack of cash flow dramatically affects my business."
A. Yeah, that's what I said, it's one of the takeaways from this, so --
Q. Did you ever tell him in response to this that it wasn't your job to help his business financially?
A. No, not that I recall. I don't even know if I responded to this at all. I don't even know if I read it.
Q. When you're investigating a company and negotiating with them over settlement --
A. Uh-huh.
Q. -- is that something that you consider confidential?
A. As to third parties?
Q. Yeah.
A. Ah, yes, yes.

Q. I want to show you a document which you may never have seen.
MS. SASSOON: Previously marked as Exhibit 77.
THE WITNESS: Do you want to mark this or --
MR. LEFKOWITZ: No, we don't need to.
THE WITNESS: Oh.
BY MR. LEFKOWITZ:
Q. If you look at this, this is an e-mail from T.J, who --
A. Yeah.
Q. -- is your employee who is running this investigation, and he's telling Chuck about the status of various investigations here. One, an investigation with AAA where there's a settlement offer that's been made but discussions are underway, and another in which he tells him about an investigation into American Family, which evidently you weren't even aware of?
A. No, I didn't say I wasn't aware of it, but I said -- you asked me, I think, if there was a settlement being negotiated with them.
Q. Uh-huh, okay. Is this appropriate to share this kind of confidential information with a

third party?
A. "...let Mike know...that the Department has completed its investigation of AAA." I -- you know, I -- I don't even know that that was accurate at that point.
Q. Do you see, Mr. Fleischhacker, how at the bottom of this page the e-mail to T.J Patton is an e-mail from Chuck Lloyd basically asking for an update on investigations?
A. "I hope things --" yes.
Q. And the companies being investigated are not Chuck Lloyd's clients, he's not writing as a representative of the companies being investigated, right?
A. A representative of the companies being investigated?
Q. Correct.
A. Correct.
Q. He's just looking for information about the status and -- of investigations into companies that are competing with his clients. Is it appropriate for T.J Patton, who works in your office, to be sharing this kind of confidential information?
A. You know, I would advise against this

type of a communication. I -- you know, whether it's -- you know, a settlement offer has been issued and discussions between the Department and attorneys are underway, no, I would not want my investigators to be talking to the -- to an attorney for a resp -- a complainant about this.
Q. And --
A. Yes.
Q. And later in the e-mail he is also providing Mr. Lloyd with information about internal deliberations with the Attorney General about action that might or might not be initiated against Safelite. Do you see that in the last paragraph?
A. Uh-huh, "Marty and I have attempted to push this process along, but, thus far," have "been unsuccessful. I am pushing for a C&D against Safelite for failing to comply with the Department's subpoenas and engaging in unlicensed activity." Yeah, that -- I would have to say no.
Q. Yeah. I mean, can you think of any proper governmental purpose for Mr. Patton to be sharing that confidential information with Mr. Lloyd?
A. I would not -- to this level of detail, I -- I would not recommend that we engage in these conversations.

Q. All right.
A. To say we're trying to work something out, you know, something along those lines, the file is still opened is the way I would like it phrased. Yeah, but, no.
MR. LEFKOWITZ: All right. Let's take a -- go off the record for about five minutes.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 2:06 p.m.
(Break from 2:06 to 2:13.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 2:13 p.m.
BY MR. LEFKOWITZ:
Q. Can we go back to your declaration? It's the document that we looked at at the very beginning of the day that's 15 pages long or whatever. It says declaration of Marty Fleischhacker.
A. Got it.
Q. And can you turn and read to yourself paragraph 15?
A. Paragraph 15, sure. Yes.
Q. This paragraph discusses negotiations with AAA over the Consent Order; is that right?

A. Um, yes.
Q. And it says that "AAA offered to terminate its relationship with Safelite Solutions as an inducement to lessen the penalties that might otherwise be imposed by the Department on AAA."
A. Um, yes.
Q. So AAA offered to terminate its relationship with Safelite, correct?
A. Yes.
Q. But wasn't the reason AAA made that offer, wasn't it to lessen the penalties that would otherwise be imposed by Commerce?
A. The way the discussion went was Pete Thrane several time had -- had brought -- several times had brought --
THE WITNESS: I -- I can go into this, right, Oliver?
MR. LARSON: Discussion with Pete Thrane?
THE WITNESS: Yes.
MR. LARSON: Yeah. He's not your counsel, so, yes.
THE WITNESS: Okay. Um, but, I mean, this -- it's okay to do it here? Okay. I'm just making sure I can go back into --

MR. LARSON: It's a closed file, so there's no --
THE WITNESS: Okay.
MR. LARSON: -- data --
THE WITNESS: Okay.
MR. LARSON: -- practices concern.
THE WITNESS: All right. So the way it went, we had several discussions about the fact that I think we offered 300 or 350 or 250, whatever the amount was and -- Do you want me to wait?
MR. LEFKOWITZ: Nope, go ahead.
THE WITNESS: So you can do whatever you're doing?
MR. LEFKOWITZ: Go right ahead.
THE WITNESS: Okay. So we had discussions about that, the high -- the high penalty, okay, and he was concerned about that. The other thing that he was concerned about is he said, look, you know what, in -- with this instance here, I think we can agree that, you know, Safelite -- your concerns are with the Safelite -- the way Safelite is handling the claims, correct? And we said, yes, we're concerned about these phone calls and all that kind of stuff. He said, how about if we -- we do this, all right? We can

lessen the penalty and we can do away with -- with any further investigation of this thing and -- and just get it done, they're gone, all right, we just take them out of -- they'll -- they'll stop being our vendor, we'll move on to somebody else or we'll just handle them ourselves.
BY MR. LEFKOWITZ:
Q. So is it correct that AAA would not have offered to terminate its relationship with Safelite, if they hadn't, then the Department would have imposed greater penalties?
A. Um, that I don't know.
Q. But you don't mean to suggest, do you, that AAA just said, hey, we want to just stop doing business with Safelite?
THE VIDEOGRAPHER: You don't have your microphone on.
BY MR. LEFKOWITZ:
Q. You're not suggesting, are you, that AAA's decision to terminate its relationship with Safelite was independent of trying to avoid penalties from the Department of Commerce, are you?
A. I don't know what all their motivations are. I mean, I can't tell you the number of times when -- when I've negotiated with a

company and they can show that somebody else is the bad player and not the company, they're more than willing to -- you know, it can be their best producer for a company. I've been surprised sometimes, you know, their best -- their best producer, and, you know, they produce a ton of money for the company, and the first thing they do is say, you know what, what can we do to work this thing out, let's start with a good faith thing here and we're just going to get rid of that producer.
Q. But you say in your --
A. Yeah.
Q. -- declaration, it's not mine, that they did it as an inducement to lessen the penalties?
A. I'd say that was one reason, yes.
Q. I think you have this document, this is this Memorandum of Violations.
A. The T.J document?
Q. Yes. It's Exhibit 91. If you can't find it, I can give you another version of it.
A. I should -- you're right, I should have it here. You know how it is, you're looking for something and you go right by it twice or something. Yeah, that is strange that I don't -- no, I don't have it here.

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(Reporter's Note: The court reporter hands the witness Exhibit No. 91.)
THE WITNESS: But I do now, yep.
BY MR. LEFKOWITZ:
Q. All right. This is a Memorandum of Violations from T.J Patton to you and Pamela Gergen; is that right?
A. Ah, yes.
Q. Is this a form of memorandum that's typically prepared in the Department?
A. Yes.
Q. And what's the purpose of a Memorandum of Violations?
A. To give some background on the reason they're suggesting that action be taken, the investigator.
Q. Does a Memo of Violations need to be prepared before enforcement action can be taken?
A. In the typical case, yeah, yeah.
Q. And who generally drafts them?
A. The investigator.
Q. And who reviews them?
A. The supervisor, and I usually review them as well.
Q. How about the Commissioner?

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A. No.
Q. This Memorandum of Violation relates to Alpine's and Rapid Glass's complaints against AAA; is that right?
A. Does it say Rapid in here? Oh, yeah, I see Rapid now, yeah.
Q. Did you --
A. But --
Q. Go ahead.
A. No, no, go ahead.
Q. Did you have any involvement in drafting this memorandum?
A. No, I don't -- I don't recall being involved. I mean, you know, I review them. Do I make notes on there? But, nah, typically I wouldn't do that on -- this is a memo to me, to explain it, so I don't believe so.
Q. Do you concur with its conclusions and its analysis?
A. Do you want me to go paragraph by paragraph? How should I attack this?
Q. Well, I tell you what, why don't I ask you some questions about it and then I can ask you that as I wrap up and maybe you'll have read it while we're going through it.

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A. Sure.
Q. Look on page 1 where it says Alpine's complaint "is a microcosm of the ongoing battle between automobile insurers and auto glass shops," do you see that?
A. Yes.
Q. Do you agree with that statement?
A. No, I don't agree. I don't even know what he means by that.
Q. Okay. If you look down to the paragraph at the bottom of the page, he says that -- he refers to Safelite and a direct competitor of Alpine, and Rapid Glass, and other Minnesota glass shops. Do you agree with his conclusion that Safelite is a direct competitor of Alpine, Rapid Glass, and other Minnesota glass shops?
A. Safelite Solutions, I mean, somewhere in the Safelite -- you know, again, I don't know whether Safelite AutoGlass and Safelite Solutions, so I want to be, you know, a little careful, I'm under oath, but -- and, you know, Safelite has some portion of the company that -- that installs and sells retail glass. So, in that sense, yes, they're a direct competitor.

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Q. And if you move on to page 4, he has a paragraph here where he talks about the methodology of the investigation.
A. Uh-huh.
Q. Do you see that?
A. Uh-huh.
Q. I'd like you to read that paragraph and ask you, to the best of your knowledge, if this accurately reflects the methodology the Department used to review the AAA call report recordings?
A. I read it. Now, what -- what was your question?
Q. To the best of your knowledge, does this accurately reflect the methodology used by the Department to review AAA call recordings?
A. Yeah, I wouldn't know. I would have to say that's what T.J said he did.
Q. Okay. Turn to page 8. T.J's conclusion is that "AAA's auto glass claim handling constitutes at least 34 violations of Minnesota insurance law." Do you see that?
A. Oh, at the bottom of the page, I'm sorry, I was looking up at the top, Safelite. "AAA's auto glass claim handling constitutes at least 34 violations of Minnesota insurance law.

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Considering the egregious conduct," yeah, I agree that he wrote that.
Q. Do you agree with his conclusion?
A. That -- I don't know if I agree with his conclusion. I mean, I'd have to go back and look at this, but I -- you know, these are allegations. So, yeah, 34 allegations, violations.
Q. This is a conclusion that they violated Minnesota insurance law at least 34 times. He actually says he tallied the violations in as conservative a manner as possible. Do you see that?
A. No. "Considering the egregious conduct of AAA in auto glass claims." No, I don't see that. Where does he say this?
Q. Keep reading.
A. Oh, "in as conservative a manner as possible," okay. That's what he alleges, yeah.
Q. So he's writing this to you, you're his supervisor, or you're his supervisor's supervisor, and I guess this is a prerequisite to making a determination to proceed with an enforcement action. So I'm asking you as his ultimate supervisor, did you agree with his conclusions?

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A. Yeah. I mean, these aren't findings of fact, they're not conclusions of law, these are allegations that he's going to go back and discuss with the company and he's going to get their side of it and we are going to see where we go from there. So, yes, that's -- that's what this is.
MR. LEFKOWITZ: Here's another document now.
(Whereupon, Deposition Exhibit No. 114 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: One fourteen.
BY MR. LEFKOWITZ:
Q. This is a letter from this gentleman you referred to earlier, Peter Thrane?
A. Yes.
Q. And it concerns a proposed Consent Order between AAA and the Department?
A. All right.
Q. And Mr. Thrane represents AAA; is that right?
A. That's correct.
Q. And he's writing on behalf of AAA in response to these allegations that we were just discussing; is that right?

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A. Yes, I believe. I haven't reviewed it, but that looks like what it is on first impression.
Q. If you look at the first paragraph under -- on page 2, under Glass Allegations?
A. Yes.
Q. So Mr. Thrane says did AAA proactively address the Department's concerns by terminating Safelite as its claims administrator, right?
A. "Auto Club has proactively addressed Commerce's concerns regarding the key glass elements of" this "Consent Order." Yeah, that's what he says.
Q. And he also says that they've eliminated the elements of the script relating to balance billing and warranties, correct?
A. Where do you see that?
Q. Why don't you read that whole paragraph, and then I can ask you about it?
A. Okay. I was scanning down. Oh, I -- I -- I see it.
Q. Take your time --
A. I see it.
Q. -- and read it.
A. I'm sorry, I moved on, but, yeah, now

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I see it, "pertaining to balance billing and warranty have been eliminated," yep, there you go.
Q. And that was also in response to concerns raised by the Department, right?
A. Yes.
Q. And do you see where Mr. Thrane says that the "Auto Club undertook these actions as a accommodation to Commerce, without any admission of wrongdoing," and that, in fact, he believes it was "in compliance with Minnesota law"?
A. Yes, I see that.
Q. Let's go to a document that's been previously marked as Exhibit 26.
A. What's it look like?
Q. You don't have it yet.
A. Oh.
Q. I have to give it to you.
MS. SASSOON: Previously marked as Exhibit 94.
(Discussion off the record.)
BY MR. LEFKOWITZ:
Q. This has previously been marked as Exhibit 94. This is an e-mail chain between you and your investigator, Mr. Patton. Do you see this?
A. Yes.

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Q. And on page 1 it -- you say, "TJ - Have you had any discussions with Auto Owners? Have you requested any and all information about the Safelite program." Do you see that?
A. Yes.
Q. What is Auto-Owners?
A. It's an insurance company.
Q. And you ask whether T.J had requested information about the Safelite program from that company, right?
A. Yes.
Q. What was the Safelite program from Auto-Owners?
A. Um, you know, I guess I don't exactly know what the Safelite program was. I heard that they were going to be like acting as staff adjusters, and that's what I wanted to know what -- what they were doing or whether it was just they were working as, you know, the TPAs, because I'd never -- I don't remember where I got the information, but somebody said, hey, by the way, now, Safelite engages in, you know, just like staff adjuster activity. So I wanted to know what -- whether it was the same or not or what.
That's what I recall at this point.

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At that point I don't re -- I don't know -- yeah, I -- I don't recall what it was in response to, but I think that's what it was.
Q. All right. And then you say, "I'm concerned that Safelite isn't cooperating with our subpoena but is nonetheless expanding their presence in our state." Do you see that?
A. Yes.
Q. So as of December of '14, you were concerned that Safelite was expanding its presence in Minnesota. Why were you concerned that Safelite was expanding its presence in Minnesota?
A. I -- I guess I don't know what -- at this point what -- what that pertained to. I was -- I don't know.
Q. Do you have any reason to think or to explain to us why you wanted to prevent Safelite from expanding its presence in Minnesota?
A. I think you put words in my mouth there. I didn't say that I didn't want Safelite to expand in our state. I was concerned about the fact that they weren't cooperating in providing us information. I figured Safelite would be elated to give us information to show us how bad these other players are, and then when they shut T.J down and

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didn't provide information.
Q. I assumed you'd be concerned about any company that wasn't cooperating, in your view, with a subpoena, right?
A. Well, that's what I just said.
Q. But you're talking about something beyond that here, you're saying, "but it is nonetheless expanding its presence in our state."
A. Yeah.
Q. And I'm trying to understand why you were concerned about Safelite expanding its presence in Minnesota?
A. I didn't know what they were doing, and if they were going into a whole another area where they needed to get licenses from our Department, I wanted to know about it.
Q. Uh-huh. Do you see at the top of that page T.J refer -- in an e-mail to you says, "sooner or later, we'll need to pursue a C&D against the elephant in the room"?
A. Okay, I see that.
Q. Did the Department of Commerce have a strategy of going after companies that used Safelite -- Safelite as their TPA one by one?
A. It looks like T.J here is

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misunderstanding what I'm asking for.
Q. Do you want to explain that?
A. It -- you know, again I was looking to find out what other programs Safelite was getting involved in in Minnesota, and I think T.J's response to me has to do with Safelite -- it looks like he's assuming Safelite is just expanding their TPA business, and I was just trying to figure out what they were doing.
Q. Okay. Did the Department eventually decide that it needed to issue a CI -- a C&D directly against Safelite?
A. You know, I think we did send something over to the AG's to consider on that. I don't think it was -- I don't think anything was ever issued, but I think we did send something over to the AG's to consider.
Q. You already have -- this is 26, this is the Consent Order. Do you have this Consent Order?
A. Oh, oh, that one?
Q. You should. I think I asked you about it earlier today.
A. The AAA?
Q. Yeah.

A. Yes.
Q. This is the Consent Order entered into by the Department and AAA, correct?
A. Yes.
Q. And what was your role in the negotiation of it?
A. Um, I guess I -- I don't recall. I don't think I had much of a direct role. You know, I might have had a couple conversations with Pete Thrane just about disputed issues. But I think T.J did most of the -- he's handled most of the discussions on these to try to resolve these -- these types of issues.
Q. Do you know if Safelite was included in any discussions with the Department concerning the terms of this Consent Order before it was signed?
A. I'm sure they weren't.
Q. So they didn't have an opportunity to review the Consent Order, obviously, before it was signed, either?
A. No. I don't know that I can legally do that.
Q. Did you ever consider giving Safelite an opportunity to participate in discussions

concerning the dissent order -- the Consent Order?
A. I can't recall.
Q. You said you didn't think you could do it legally. What do you mean by that?
A. You know, they're an agent of the insurer, but I don't know that I could -- the insurers made a decision to terminate their agreement with the company. I guess it wouldn't be my place to get in the middle of a contractual dispute between, you know, an insurer that decided to terminate their relationship with the company.
Q. But you were taking action against AAA --
A. AAA.
Q. -- and it was clearly going to have an impact on Safelite, and you didn't think that Safelite should have an opportunity to be notified of this?
A. I took -- we took an action against Auto Club, and Auto Club's action had a negative impact on --
Q. Well --
A. -- your client.
Q. Isn't it true that this is a Consent Order in which you signed it, correct, this is your

signature, and among the provisions in this are provisions that directly affect Safelite, correct?
A. There -- yeah, Safelite is mentioned in this Order, correct.
Q. And you didn't think it was appropriate to share that information, share the impact of this agreement with Safelite before you signed it?
A. What was your question, again?
Q. I'm asking if you thought that it was appropriate to share the information about Safelite that was in this agreement with Safelite before you signed it?
A. I did not feel I needed to. Safelite is not a party to this action.
Q. Right. But --
A. Safelite wasn't signing this agreement.
Q. Correct. But you could have just told them about it, kind of the way T.J Patton told Mr. Lloyd about things that were going on that were of interest to Mr. Lloyd's clients?
A. No.
Q. Why not?
A. I would not have done that.
Q. And why not?

A. You know, that -- that's an issue between, you know, Safelite -- yeah, Safelite and AAA.
Q. You didn't -- You said you didn't negotiate the provisions in the Consent Order; is that right?
A. I think I said I don't really recall what my -- you know, at some point I, obviously, had a discussion with Pete Thrane about the fact that they were going to cut Safelite loose, but -- you know, terminate their agreement with them. But other than that, you know, I -- I probably had some discussions with him. But was I the -- the main negotiator on this? No, I don't think so.
Q. Do you know who proposed including the provision regarding Safelite in this Consent Order?
A. I think there are a couple of them, correct?
Q. I'm referring to the provision on page 3 that "Respondents shall cease and desist from using Safelite," and I'm wondering if you know who proposed including this provision in the Consent Order?
A. I've already told you that it's -- AAA said we'll get rid of Safelite and that will do

the -- take care of the -- the matter. So, you know, when they say that, then, it has to be in the agreement.
Q. And it's your testimony that they just came up with this on their own, that they proposed this on their own?
A. That's what I recall.
Q. And you were having that discussion with which individual when they made that proposal?
A. Pete Thrane, as I recall, made that proposal to me.
Q. Where were you at the time?
A. I think we were talking on the phone.
Q. Do you know when?
A. No.
Q. This Consent Order also prohibits AAA from informing insureds about the features and benefits of network shops before stating the required advisory; is that correct?
A. I --
Q. This is page 3, it's the next paragraph down, the middle paragraph on page 3 of the Consent Order.
A. The middle paragraph?
Q. Yes.

A. Says, "Respondents shall cease and desist from" insure "-- informing insureds about any alleged benefits of using Respondents' preferred glass vendors prior to stating the required advisory," that's what it says.
Q. And this is the reference to the Minnesota law that we looked at --
A. Yeah.
Q. -- earlier today that you agree doesn't actually require that?
A. That's what I said I believe earlier today.
Q. Okay. And it says here "Respondents shall cease and desist from informing insureds that they may not receive a proper warranty from and/or may be balance-billed by non-preferred glass" providers "unless Respondents have specific information proving the assertion(s) to be true for a certain vendor"; is that correct?
A. "Respondents shall" not "cease and desist from informing insureds they may not receive a proper warranty from and/or may be balance-billed by non-preferred glass vendors, unless Respondents have specific information proving the assertion(s) to be true for a certain vendor." That's what it

says.
Q. Okay. Did you -- Do you recall attending a meeting with Safelite representatives in January of 2015?
A. Safelite representatives in January of 2015? No.
Q. You don't recall a meeting where the Department gave Safelite a copy of the Consent Order for the first time?
A. No.
Q. You don't recall telling Safelite that it planned to enter into similar consent orders with other insurance companies in the future?
A. I wasn't at that meeting, as far as I can recall.
(Whereupon, Deposition Exhibit No. 115 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: One fifteen.
BY MR. LEFKOWITZ:
Q. This is a letter from Thomas McCormick to T.J Patton --
A. Uh-huh.
Q. -- dated June 5th, 2014.
A. Correct.

Q. Do you see how Mr. McCormick represents Safelite in connection with an administrative subpoena that was served by the DOC?
A. I'll take your word for it, yes.
Q. Are you aware or were you aware that the Department threatened Safelite with a cease and desist order banning Safelite from doing business in Minnesota in June of 2014?
A. Yeah. I remember discussing the C&D with T.J at some point, but I don't remember it being at this point.
Q. Did you approve of the decision to threaten Safelite with a C&D order?
A. To threaten? No, I don't approve of threats to anybody. I -- you know, I may have said, you know, you can discuss that with them. I know we have C&D powers, among other actions, that are available to us.
Q. Do you believe that telling a company that is not providing information in response to a subpoena that you're going to file a cease and desist action to prevent them from doing business in the State is an appropriate response?
A. I guess I would, you know, discuss with the company, me personally, you know, all of

the options that are available to us. I mean, you have to figure out some answer when you're not getting a response.
Q. Do you know if T.J Patton discussed all of the options with Safelite before threatening to file a cease and desist action against them --
A. I don't --
Q. -- to prevent them from doing business in the State?
A. I don't know.
Q. Why did the DOC decide not to issue the C&D order?
A. I don't recall.
(Whereupon, Deposition Exhibit No. 116 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: One sixteen.
BY MR. LEFKOWITZ:
Q. Are you aware, Mr. Fleischhacker, that the Department commenced an action against Safelite in the Minnesota Office of Administrative Hearings?
A. Yes.
Q. And is this a copy of the Recommended Order from the administrative action?
A. Yes.

Q. And Judge James LaFave, is he an independent administrative law judge?
A. He's an administrative law judge, yes.
Q. Now, the Department filed the administrative action against Safelite on April 27th, 2015, correct?
A. Something -- let's see, when -- does it say the exact date here? It was somewhere in that time frame.
Q. It says it on page 3.
A. Yeah, there it is at the bottom of page -- page 2 there, yeah.
Q. Page 2, page 3, yeah, okay.
I'll represent to you that this lawsuit, the one we're here for today, was filed by Safelite on April 7th, 2015. It's about two-and-a-half weeks before the Department filed its administrative action.
What role did the lawsuit that we're here about today play in the Department's decision to file the administrative action?
A. I don't know that it had any -- anything to do with the administrative action. I think it had been pending for a while, that, you know, the attorneys run on a dime.

Q. The Department in the administrative action alleges that Safelite violated the law by engaging in unlicensed insurance adjusting, failure to provide fair and reasonable payments to auto glass companies, and failing to respond to the subpoenas from the Department; is that correct?
A. I think that those were -- without reading this, I -- I'm not going to dispute it.
Q. Would you like to read it?
A. No. If you just want to point it out where the -- where they are, but I -- I believe you.
Q. Why don't you look on page 3, in the paragraph that begins On April 27th, 2015?
A. Page 3, okay, the Department filed a notice for -- "The Department alleges that Safelite has violated the law by...engaging in 'unlicensed insurance adjusting'" activity, "failing to provide fair and reasonable payments to auto-glass companies; and...failing to respond to Department subpoenas." There you go.
Q. And Safelite moved for summary disposition of those three charges; is that correct?
A. Yes, sir.
Q. And do you know how Judge LaFave

decided this matter?
A. I do not think it was very favorable for the State.
Q. Why don't you take a look at page 7, and does it say here in the Judge's words that "The record evidence belies the Department's assertion that Safelite 'is negotiating and settling on behalf of its insurer clients, who have no part in the process of auto glass claims settlement'"?
A. That's what it says.
Q. Do you disagree with Judge LaFave's ruling?
A. "The record evidence belies the Department's assertion that Safelite is --" no, I don't agree with him at all.
Q. Did Judge LaFave find in favor of the Department of Commerce on any of the three claims that the Department brought?
A. I don't believe so.
Q. So Judge LaFave recommended that Safelite's motion for summary disposition be granted in full; is that right?
A. Um, I don't recall the exact verbiage.
Q. Well, we can take a look, if we want.
A. "In sum --" the last sentence is, "In

sum --"
Q. Yeah.
A. "-- and based on the foregoing" reason, "the Administrative Law Judge recommends that the" Department "grant Safelite's motion for Summary Disposition."
Q. So is that correct, then, that he recommended in favor of Safelite on all three claims?
A. I believe so.
Q. I want to go back and ask you a couple questions about something we talked briefly about earlier. You had mentioned that you were at an arbitration?
A. Yes, sir.
Q. And I want to hand you a document that's previously been marked as Exhibit 78, and this is a e-mail --
A. Uh-huh.
Q. -- chain where Mike Reid is telling you when the next arbitration is going to be scheduled, and he says, "I talked to Chuck Lloyd (my attorney) and he says you are totally welcome to attend --"
A. Uh-huh.

Q. "-- although they are not public hearings?"
A. Okay.
Q. And you attended that arbitration, right?
A. Yes.
Q. And you learned about it from Mike Reid, correct?
A. I think I said it was Mike or Chuck Lloyd, I don't recall.
Q. And --
A. It wasn't the company, I know that.
Q. But Chuck Reid said you were totally welcome to attend?
A. Mike, Mike Reid said I was welcome to attend, yeah. I think they actually invited me. They -- they requested that I attend, and I said if I could get a chance I will, if I don't I won't.
Q. Why did you want to attend the arbitration?
A. Um, you know, there's a track record of a company that has to pay substantial arbitration awards. So, you know, the allegations were that -- for me personally, the allegations were that -- that, you know, there was this huge disconnect

between the -- the two parties. So I wanted to see what was going on there.
Q. All right.
A. And it wasn't that far from the Department, three miles -- two miles away, three miles away.
Q. I'd like to show you the arbitration award in that matter.
(Whereupon, Deposition Exhibit No. 117 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: One seventeen.
BY MR. LEFKOWITZ:
Q. This is an arbitration between Alpine Glass and American Family Insurance. Do you see that?
A. Yes.
Q. And turn the page to page 3, right there in front of you, and you see in the middle of page it says it was heard by an arbitrator on February 12, 2014, and that Martin Fleischhacker was present?
A. Correct.
Q. This is the arbitration that Mike Reid and Chuck Lloyd invited you to attend, correct?

A. Um, yes.
Q. Okay. Do you recall that the attorneys for both sides denied that they invited you to attend the arbitration?
A. I don't recall that.
Q. And the attorney for Alpine at this arbitration was Chuck Lloyd, correct?
A. Correct.
Q. It says here, "Mr. Fleischhacker introduced himself in advance of the hearing, asked no questions, made no comments...was present for the entire hearing and played no role in the actual hearing other than as an observer." Do you see that?
A. Yes. And, then, the next sentence says, "There were no objections lodged by anyone as to his presence at the hearing."
Q. Correct.
A. Yeah.
Q. Did you tell the Arbitrator who had invited you to the hearing?
A. I -- I don't recall that.
Q. Do you think you should have told that to the Arbitrator when he had been misled by Mr. Lloyd?

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1 MR. LARSON: Objection, assumes facts
2 not in evidence.
3 BY MR. LEFKOWITZ:
4 Q. Well --
5 A. Yeah. I don't think -- I mean, you
6 look at Mike's e-mail there -- I don't recall,
7 frankly, but I -- you know, you look back at
8 Exhibit 78, "Marty, The next scheduled arbitration
9 is against American Family...I talked to Chuck
10 Lloyd...and he says you are totally welcome --"
11 that doesn't mean he -- he asked me to come "-- to
12 attend although they are not public hearings.
13 There is a chance that...American Family...might
14 object," blah-blah-blah. So I don't know that
15 Chuck answered wrongly there.
16 Q. Are you suggesting, Mr. Fleischhacker,
17 that you weren't invited to this arbitration by
18 Mr. Lloyd or his client?
19 A. No. I -- Mike Reid, I think right
20 here, on January 13 is inviting me to it
21 (indicating).
22 Q. Okay. And when the attorneys for both
23 parties, which means Mr. Reid's attorney, denied
24 that he had requested or invited someone from the
25 Department to be present, that was not an accurate

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1 statement. I'm just asking you whether you thought
2 at all about correcting that at the time?
3 MR. LARSON: Objection, again, it
4 assumes facts not in evidence.
5 BY MR. LEFKOWITZ:
6 Q. You can answer the question.
7 A. I -- I -- you and I are having a
8 disconnect here. I'm not -- I'm not following you.
9 Q. Well --
10 A. I never -- you know, I don't recall
11 who invited me, okay. But, you know, it appears
12 from this e-mail of Reid's that he's the one
13 inviting me. He's the one who talked to Chuck
14 Lloyd, not me, so he's saying that Chuck told him
15 that. I don't know if that's true or not.
16 So how would I be able to tell
17 whether -- it appears that Chuck didn't tell me.
18 You know, I don't recall if it was Chuck or him.
19 So at this point I can't say that that's --
20 Q. And you never --
21 A. -- right or wrong.
22 Q. And you never thought it was
23 appropriate for you to tell the Arbitrator who had
24 invited you to this arbitration?
25 A. I don't remember being asked.

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1 Q. That's not my question,
2 Mr. Fleischhacker. You're a public official in the
3 state of Minnesota.
4 A. Uh-huh.
5 Q. I'm asking you whether you thought it
6 was appropriate to tell the Arbitrator why an
7 outsider was at this arbitration, when the subject
8 had already come up?
9 MR. LARSON: Again, objection, that
10 assumes facts not in evidence.
11 THE WITNESS: No, no. I -- you know,
12 we -- we regulate the business of insurance in
13 Minnesota and -- and have any -- I can go to an
14 insurance company or -- or an agent and look in
15 their safe, okay, they -- they can't -- I can bring
16 them in and have them testify under oath, I can
17 call them on the phone and they have to provide me
18 with evidence.
19 So simply they're saying right here,
20 look, I sat down, I was an observer, I didn't try
21 to influence anything, nothing. I just wanted to
22 find out how these things happened, to find out,
23 you know, who is giving what evidence here just as
24 an independent observer. I was trying not to
25 influence this in any way, I would guess. I seem

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1 to be -- you know, recall I was answering e-mails
2 during the middle of this thing. So I was
3 watching -- or maybe it was on a break, I don't
4 recall.
5 MS. SASSOON: That exhibit that we
6 were just talking about was previously marked as
7 52. Previously we marked that.
8 MR. LEFKOWITZ: And this is a new
9 exhibit which has not yet been marked.
10 MR. LARSON: I thought we marked this
11 yesterday.
12 MR. LEFKOWITZ: Did we mark --
13 MS. SASSOON: Exhibit 95.
14 MR. LEFKOWITZ: Oh, oh, I'm sorry, 95.
15 There you go. I apologize.
16 BY MR. LEFKOWITZ:
17 Q. This is a document titled Auto Glass
18 Pricing Study. Do you see that?
19 A. Yes.
20 Q. Have you ever seen this document
21 before?
22 A. I think I have seen this before.
23 Q. It says it was mandated by the
24 legislature --
25 A. Yeah.

Q. -- in 2000?
A. Yeah.
Q. Prepared for the Department of Commerce?
A. Yeah.
Q. And the purpose of the study was to determine the range of pricing that auto glass companies charge insurance companies for glass kits and labor?
A. Yeah.
Q. And the results of the study were used by DOC for dispute resolution between glass companies and insurance companies, right?
A. Yeah, I think that was part of the reason, yep.
Q. Do you know if DOC ever used this study for that purpose?
A. Um, I'm sure we did, but I -- you know, that was 16 years ago, 15, 16 years ago. I don't really recall what we did with this document.
Q. Did you --
A. If anything.
Q. Did you use it in the course of your investigation of Safelite and the other insurers?
A. I don't know that I was investigating

Safelite back in 2000, 2001.
Q. I'm asking if you used the document in the last two years when you were investigating Safelite?
A. No.
Q. Take a look at page 9. It has some findings with respect to a -- in the preferred network. It says the average kit charge is $19 and change, and the labor charge is 40. Do you see that?
A. Yes.
Q. And if you look on the next page, it shows something similar for the independents, but it shows that it's $5.73 more for --
A. On the next page? My next page is blank.
Q. How did this not get copied properly?
MS. SASSOON: There's lots of different page numbers.
THE WITNESS: Oh, wait. What -- what page are you referring to?
BY MR. LEFKOWITZ:
Q. I'm looking at page -- oh, Exhibit 9, page 10.
A. Oh, I'm sorry. When I turned the

page, I accidentally turned two pages.
Q. There you go, okay.
A. One page, okay.
Q. Do you see now the independents, it talks about how their charges are more than the preferred contractor?
A. Yes.
Q. Do you understand that to mean that shops that have not agreed to be an insurance company preferred network have higher charges on average than the ones that are within a preferred network?
A. It seems reasonable, yep.
MR. LEFKOWITZ: All right. Let's take a five-minute break.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 3:07 p.m.
(Break from 3:07 to 3:15.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 3:15 p.m.
BY MR. LEFKOWITZ:
Q. Mr. Fleischhacker, I'd like you to go back to the letter from Commissioner Wilson to Mr. Tomassoni, which we discussed earlier. Do you

have that in front of you?
MS. SASSOON: Exhibit 106.
THE WITNESS: Yes.
MR. LEFKOWITZ: Exhibit 106, thank you.
BY MR. LEFKOWITZ:
Q. And do you see on page 2 it says, "As we have discussed before, Minnesotans already pay more for auto glass coverage than residents of any other state in our region"?
A. Yes.
Q. So Commissioner Wilson believed that Minnesotans pay more for glass coverage than residents of other states in the region. Do you have any reason to disagree with his view?
A. No.
Q. Do you believe that's still true today?
A. I don't know.
Q. Do you agree with Commissioner Wilson that higher repair costs means higher insurance costs?
A. Possibly.
Q. Why don't you flip back to the November 11th letter that Mr. Crane sent on behalf

of AAA, which we looked at --
A. Mr. Thrane?
Q. Yes.
MS. SASSOON: Exhibit 114.
BY MR. LEFKOWITZ:
Q. Do you have that right in front of you? Take a look at page 7.
A. Got it.
Q. Do you see where Mr. Thrane is telling you that glass shops in Minnesota charge the highest out-of-network prices in the country?
A. Which paragraph is that?
Q. I don't have the document, I'll have to find that document. I'll tell you in a second.
A. Oh, yeah. "As we discussed during our meeting, glass shops in Minnesota charge the highest out-of-network prices in the country, costs that are ultimately paid by Minnesota consumers." Yes, I see that statement.
Q. Do you have any evidence to suggest that Mr. Thrane's statement is incorrect?
A. I don't know if it's correct or not.
Q. So is that a, no, you don't have any evidence to suggest that it's not correct?
A. Correct or incorrect, yes.

Q. Well, I just asked you -- I get to ask the questions, you get to answer them. Okay?
I just want to know, do you have any information or evidence to suggest that it's incorrect?
A. No.
Q. Thank you.
A. Sorry, I didn't mean to --
Q. No. It's just --
A. -- rephrase your question.
Q. -- fine.
A. But I -- I --
Q. It moved things along --
A. Got -- I got --
Q. -- so Mr. Larson --
A. I got there.
Q. -- can go do his moot court.
A. I would love to get out of here, too, thank you, and I know you would.
Q. Mr. Thrane also told you in his letter that higher glass repair costs are ultimately paid by Minnesota consumers in the form of auto insurance premiums. Do you agree with that statement?
A. Um, yeah. I mean, assuming it's not a

Wisconsinite that's getting their glass repaired here. But, yes, I would say in the vast majority he's talking about Minnesotans.
Q. You said that T.J was the lead in negotiating the Consent Order; is that right?
A. You know, I'm not sure. Tracy could have been involved in this, too. They were both in this -- you know, they had both taken part in the -- in the investigation, and I don't know what part Pam played. Sometimes Pam will get involved, sometimes she -- she won't. I guess I don't know at this point who, but I thought it was T.J just from -- you know, off the top of my head.
Q. And throughout the course of the day today you talked about how T.J was the one who was taking the lead on conducting the investigation. You were relying on him; is that right?
A. Yeah, yeah. He -- he and Tracy both, but I think it was mainly -- mainly T.J, but I know they were working on -- I mean, they're on the tops of these letters and stuff; and I -- I do remember at one point during a conversation with Pete Thrane, as well, where he said, hey, you know, it's really enjoyable discussing with this T.J, you know, he's a great guy and he has -- he's reasonable to deal

with, blah-blah-blah. So, yeah.
Q. How long had T.J been working for you before you entrusted him with this investigation?
A. At this point, I don't -- I don't recall how long he'd been with us.
Q. You don't know when he started working for you?
A. No. We've had quite a bit of turnover, and I don't -- I don't recall. He's a young lawyer, smart guy.
Q. I'd like to hand you Plaintiffs' First Set of Requests For Production of Documents.
MS. SASSOON: Exhibit 101.
BY MR. LEFKOWITZ:
Q. And ask you if you recognize this document?
A. Yes.
Q. This is the -- a copy of the document in which the Plaintiffs served document requests on the Department in this action; is that right?
A. Yes.
Q. Do you believe that the Department has produced all of the documents in its possession that are responsive to these requests?
A. I don't know. I don't know what was

provided in response to these requests.
Q. Can you tell me what personal involvement you had in responding to the document requests here?
A. You know, I'm sure -- usually our -- our, you know, legal team gets involved -- they don't want the -- somebody who is invested in it to, you know, be pulling these documents. Usually they'll work with IT to do -- you know, independently they'll put a hold on our files and then they'll do document searches that are in compliance with this. So probably didn't have a lot to do with this.
Q. Did you personally review any of your files or records to look for responsive documents?
A. You know, I remember doing it at one point, but I can't remember how involved it was. It was a while back, it seems.
Q. So you can't really describe the steps that were taken to produce documents, even your own documents, in response to this document request?
A. I don't recall off the top of my head, no.
Q. Did you have any meetings with anyone to prepare for this deposition?
A. Um, yeah. I met with -- with our

attorney.
Q. On how many occasions?
A. Um, one day, one time in the afternoon a few days ago, and, then, you know, this morning we sat down for a few minutes before we walked up here. I was working downstairs and we -- we met for --
Q. Was anyone else present in either of those two meetings?
A. I think T.J walked in for one of the two meetings, the one that occurred the other day, but just for like a couple minutes.
MR. LEFKOWITZ: All right. Oliver, am I correct that there are still a few additional documents that are responsive to the document requests that relate to Mr. Fleischhacker that --
MR. LARSON: We don't know.
MR. LEFKOWITZ: -- have not yet been produced?
MR. LARSON: We've had a -- we've had another set of e-mails. I anticipate that the vast majority and, in fact, maybe all of the e-mails have already been produced, but I cannot say that with a hundred percent assurance without looking at the e-mails, which is the task that is in front of

me. So it is possible that there will be some e-mails involving Mr. Fleischhacker that were not otherwise captured in our efforts and that may be produced I would estimate next week.
MR. LEFKOWITZ: So we will be happy, consistent with our agreement, to recess the deposition now. I hope that we don't have to continue it. If we do, we'll do it potentially even by telephone to make it easier for everybody present, unless we absolutely have to do it in person. But, hopefully, we'll be -- we'll be done and the documents --
MR. LARSON: And that's fine, and we've agreed that --
MR. LEFKOWITZ: -- won't cause us to have to come back and do another deposition.
MR. LARSON: Yeah. We've agreed that we would produce Mr. Fleischhacker a second time if necessary if there are substantive e-mails that are -- are subsequently produced.
MR. LEFKOWITZ: Okay. We have no further questions at this time.
MR. LARSON: Oh, actually, I do have one question I need to just clarify, because I think there -- there may be some errors here.

EXAMINATION
BY MR. LARSON:
Q. Mr. Fleischhacker, you testified at a couple of different points about having seen a document which suggested that some of these independent glass shops had produced hundreds or thousands of recordings. Do you recall that testimony?
A. Yes.
Q. As you sit here today, do you actually have any personal knowledge about how many recordings the independent glass shops actually produced?
A. No. I was just reference -- if the document that I looked at that said thousands was accurate, then -- then it is. I mean, it was a CD. So I have no idea how many were on there.
Q. And you could mistaken in that; is that -- is that accurate?
A. Yeah. I -- again, I was just going off what the documents said. It -- I don't recall there being thousands, but if the document was correct, there would be, but otherwise it was -- whatever was on the CD was what was produced, no

1 idea how many that is.
2 MR. LARSON: Okay. That was the only
3 questions I had.
4 MR. LEFKOWITZ: All right.
5 THE VIDEOGRAPHER: Going off the video
6 record. The time is now approximately 3:26 p.m.
7 Thank you.
8 (Whereupon, the deposition of MARTY
9 FLEISCHHACKER was adjourned at 3:26 p.m.)
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1 I, MARTY FLEISCHHACKER, do hereby
2 certify that I have read the foregoing deposition
3 and found the same to be true and correct except as
4 follows, (noting the page and line number of the
5 change or addition as desired and the reason why):
6 Page Line Correction
7 ____ ____ _____
8 ____ ____ _____
9 ____ ____ _____
10 ____ ____ _____
11 ____ ____ _____
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24
25 Date: MARTY FLEISCHHACKER

1 STATE OF MINNESOTA)
2 COUNTY OF DAKOTA) ss. CERTIFICATE
3 BE IT KNOWN that I, Jean F. Soule, Registered
4 Professional Reporter, took the foregoing deposition of MARTY FLEISCHHACKER;
5 That the witness, before testifying, was by me
6 first duly sworn to testify the whole truth and nothing but the truth relative to said cause;
7 That the testimony of said witness was recorded
8 in shorthand by me and was reduced to typewriting under my direction to the best of my ability;
9 That the foregoing deposition is a true record
10 of the testimony given by said witness;
11 That the reading and signing of the foregoing
12 deposition by the said witness were not waived by the witness and respective counsel;
13 That I am not related to any of the parties
14 hereto, nor an employee of them, nor interested in the outcome of the action;
15 That the cost of the original has been charged
16 to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;
17 WITNESS MY HAND AND SEAL this 14th day of March,
18 2016.
19 JEAN F. SOULE, Notary Public, RPR
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24
25

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Larson Ex. 4

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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T.J Patton

March 7, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of T.J PATTON, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Basswood Conference Room, Minneapolis, Minnesota, commencing at 8:49 a.m., Monday, March 7, 2016.

* * *

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The Videographer: Mr. Don Carl

P R O C E E D I N G S

Whereupon, the video deposition of T.J PATTON was commenced at 8:49 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International, Incorporated. Today's date is Monday, March 7th in the year 2016. The time is now approximately 8:49 a.m. We are at 4000 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, Minnesota, to take the video deposition of Mr. Theodore J. Patton in the matter of Safelite Group and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MS. SASSOON: Danielle Sassoon from Kirkland & Ellis, representing the Plaintiffs.

MR. STODDARD: Thayne Stoddard from Kirkland & Ellis, representing the Plaintiffs.

MR. LARSON: Oliver Larson, the Attorney General's Office, on behalf of the Commissioner.

MR. SNYDER: Richard Snyder is also present --

THE VIDEOGRAPHER: Would the --

MR. SNYDER: -- for Plaintiffs.

THE VIDEOGRAPHER: I'm sorry.

Would the court reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. PATTON: I do.

THE VIDEOGRAPHER: You may begin.

* * *

T.J PATTON,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MS. SASSOON:

Q. Can you please restate your name for the record?

A. Theodore J. Patton.

Q. And you're aware we're here in connection with the case Safelite versus Swanson and Rothman in the United States District Court for the District of Minnesota, right?

A. I am.

Q. Going forward, if I refer to Safelite

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1 Solutions, will you understand that I'm referring
2 to Safelite's claims management business?
3 A. Yes, I will.
4 Q. And if I refer to Safelite AutoGlass,
5 will you understand that I'm referring to Safelite's
6 vehicle glass repair and replacement services
7 business?
8 A. Yes, I will.
9 Q. And if I refer to the DOC or Commerce,
10 you'll understand that I'm referring to the
11 Minnesota Department of Commerce?
12 A. Okay.
13 Q. And that's your employer?
14 A. Yes, it is.
15 Q. Have you ever been deposed before?
16 A. No.
17 Q. Have you ever testified at a trial or
18 a court hearing?
19 A. No.
20 Q. Okay. So I'm going to just go over
21 some preliminaries just to make sure today goes as
22 smoothly as possible in terms of getting all the
23 stuff down on the record, so --
24 MR. LARSON: Danielle, just real
25 quick, I might be able to save you some time. T.J

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1 has practiced as an attorney for a while. He has
2 actually sat in on many depositions. So you might
3 be able to truncate some of your preliminaries, or
4 not. It's up to you.
5 MS. SASSOON: Okay, thanks.
6 BY MS. SASSOON:
7 Q. Have you ever taken a deposition?
8 A. Yes.
9 Q. You understand that the oath you just
10 took requires you to tell the truth as if you're
11 testifying in court, right?
12 A. I do.
13 Q. And just make sure you please respond
14 verbally and loudly with no uh-huhs, yeses,
15 nodding, so that we can make a good record.
16 A. Remind me if I slip, but I'll do my
17 best.
18 Q. Okay. And please let me finish my
19 whole question before you start to answer, again,
20 for purposes of a clean record.
21 A. Okay.
22 Q. So the video is not going to pick up
23 noddings or uh-huhs. So if I ask you, for example,
24 a yes or no question, you'll answer with a yes or
25 no.

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1 A. I will.
2 Q. If you're capable of that.
3 Just let me know if I ask you a
4 question that requires you to speculate, otherwise
5 I'll assume you're not guessing. Is that fair?
6 A. Fair enough.
7 Q. And let me know if you need a break.
8 I'd just ask you that you finish any question
9 that's pending before we take a break.
10 A. Okay.
11 Q. And Oliver might object, but I ask you
12 to still answer the question unless there's an
13 attorney-client privilege issue at stake. Okay?
14 A. All right.
15 Q. Any reason why you can't give full,
16 complete and truthful answers today?
17 A. There is not.
18 Q. Okay. So, Mr. Patton, do you have a
19 law degree?
20 A. I do.
21 Q. Where did you get your law degree?
22 A. The University of Iowa.
23 Q. And can you tell me about your
24 educational history starting with college?
25 A. I went to undergrad at the University

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1 of Vermont in Burlington, Vermont. I was there from
2 2001 to 2005, majoring in history and political
3 science, and I was awarded a Bachelor of Arts.
4 Q. And then did you go straight to law
5 school?
6 A. I worked for a period of time before
7 returning to school. I went to the University of
8 Iowa from 2006 to 2010. I was a dual degree
9 student. I got a Master's in urban and regional
10 planning, which was awarded in 2009, and a J.D.,
11 which was awarded in 2010.
12 Q. And what were you doing that year you
13 worked in between law school and college?
14 A. For a period of time during my
15 undergraduate years and for a year after, I worked
16 for Enterprise rental car, in their corporate
17 accounts department.
18 Q. What did you do after you graduated
19 law school professionally?
20 A. I worked for two different places
21 prior to joining the Department of Commerce. I
22 worked for a company called CPA Global in their
23 office here in Minneapolis, Minnesota, and I worked
24 for a law firm called Gregerson, Rosow, Johnson &
25 Nilan.

1 Q. What year did you move to Minnesota?
2 A. I moved to Minnesota in 2010.
3 Q. And what did you do for CPA Global?
4 What is CPA Global?
5 A. CPA Global is an international
6 corporation that employs contract attorneys for a
7 variety of functions, both eDiscovery tasks and
8 more substantive legal work. They have insurer
9 clients, and so I worked for their insurer clients
10 doing insurance defense litigation.
11 Q. What kind of insurance defense
12 litigation?
13 A. A whole range.
14 Q. Did that include automobile insurance
15 clients?
16 A. Yes, in some cases.
17 Q. And from working at CPA Global, did
18 you become familiar with how to conduct eDiscovery?
19 A. Yes.
20 Q. And at the law firm, did you continue
21 to do insurance client defense work?
22 A. Yes, I did. I would estimate that
23 75 percent of my practice at the law firm was
24 insurance defense litigation. The other quarter
25 was approximately spit -- split between the firm's

1 five municipal clients and its surety clients.
2 Q. So when you say insurance defense, who
3 were the plaintiffs in those cases, insureds?
4 A. The plaintiffs in those cases were
5 largely personal injury plaintiffs, and so my firm
6 represented insurance company defendants.
7 Q. Why did you switch over to the
8 Department of Commerce?
9 A. I don't have one definitive answer for
10 that, but I wanted a change, and it seemed like an
11 interesting opportunity.
12 Q. And what was your first position at
13 the Department of Commerce?
14 A. I started in January 2014 at the
15 Department of Commerce as an investigator.
16 Q. Is that your current position?
17 A. No. Approximately October 2014, I was
18 promoted to a senior investigator, which is my
19 current title.
20 Q. And how did the responsibilities
21 differ between being an investigator and a senior
22 investigator?
23 A. I don't think there's a clear answer
24 to that, other than I think generally senior
25 investigators handle larger and more complex

1 investigations than do investigators.
2 Q. Who do you report to at the Department
3 of Commerce?
4 A. My direct supervisor is Pamela Gergen,
5 and that's G-E-R-G-E-N.
6 Q. Do you have other indirect supervisors?
7 A. There are now three other audit
8 directors within the Division of Enforcement, which
9 is the division I work for. They may be considered
10 indirect supervisors.
11 Q. Do you have anyone working beneath
12 you?
13 A. No.
14 Q. What is the Division of Enforcement?
15 A. The Division of Enforcement is one
16 division of the Minnesota Department of Commerce,
17 and its responsibility is for investigating the
18 markets that the Commissioner of Commerce is
19 responsible for.
20 Q. How many divisions are there in the
21 Department of Commerce?
22 A. I do not know the answer.
23 Q. And do you know what markets the
24 Commissioner of Commerce is responsible for?
25 A. I believe there are 23, and I don't

1 think I can get you anywhere near naming them all,
2 but I can give you some, insurance being my -- my
3 primary responsibility in the Division of
4 Enforcement, but it also regulates real estate,
5 mortgage, credit repair, debt settlement services,
6 gold bullion, banking.
7 Q. Do you have an understanding of how
8 the commissioner decides which markets to focus on
9 or prioritize in investigations?
10 A. I do not.
11 Q. Do you have discretion to focus on
12 certain areas?
13 A. My -- my investigations are assigned
14 to me, so I do not.
15 Q. Who assigns your investigations to
16 you?
17 A. I don't know that there's a clear
18 answer to that, but the typical chain is is that
19 when the Department receives a complaint, it would
20 then be reviewed by my supervisor, Pamela Gergen,
21 who would then assign out investigations to her
22 team. Her team is comprised of seven investigators,
23 including myself.
24 Q. Do you have an understanding whether
25 any investigations get started without a complaint?

A. Yes, they do. The Divis -- Division of Enforcement both does reactive investigation, meaning we've received a complaint either from insurers, insureds or other interested parties. We also engage in proactive investigations, whether that's deciding that we're going to look into insurance agencies, for example, on my team or whether one of the other enforcement teams does the same thing with mortgage originators, for example.
Q. Do you have a sense of what percentage is reactive versus proactive?
A. Any -- any number I gave you would be a guess.
Q. And of the complaints that the Department receives with respect to insurance cases, do you have a sense of how many complaints are coming in from insurers, insureds, or other parties?
A. I do not.
Q. Do you receive a lot of complaints from insureds?
A. I'm not sure how to classify a lot, but from my perspective, yes.
Q. Can you describe your job responsibilities as a senior investigator?

A. To investigate assigned complaints.
Q. And how do you go about doing that?
A. Well, I think it's very similar to any litigation case. When you receive the complaint, you try and develop a strategy for gathering information. So there's a period of time where my role as an investigator is to request information from various parties, obtain information, interview witnesses, we take statements under oath, take sworn statements.
Q. Is your law license a requirement for the position?
A. No, it is not.
Q. How many ongoing investigations do you have at any given time on average?
A. Approximately 100 investigations per year is how many I would be assigned. As to how many are ongoing at any one time, I think it would vary, and a range would be somewhere between 25 and 40 open and active investigations.
Q. How do you close an investigation?
A. It depends on what the determination is. So, for example, if I as the investigator assigned to the file does not believe that there is actionable conduct, I would write a letter

explaining that reasoning to the involved parties. If I, as the investigator, found that there was actionable conduct, we have internal processes for making a recommendation to our superiors. So I would write a memorandum and a proposed settlement offer to my supervisor, who would then review it.
Q. When you say sometimes when you think there's no actionable conduct you would write a letter explaining the reasoning to the involved parties, do you mean within the Department of Commerce or someone else?
A. No. It would be to the complainant or complainants and respondent or respondents.
Q. So when you receive a complaint that initiated an investigation, do you inform the respondent or respondents of the investigation?
A. It's within my discretion as the investigator when the Department notifies, for example, a respondent or respondents.
Q. What types of considerations go into that discretionary judgment?
A. If the complaint is serious enough and provides enough support for the allegations that it makes, there are several instances where strategically it's important for the Department to

hold off on notifying a respondent. So it depends, I would say, in the seriousness of the allegations and the evidence supporting those allegations.
Q. Do you generally give respondents an opportunity to offer their prospective before making a final recommendation?
A. I can't think of a time where a named respondent was not given an opportunity to respond either in writing or in a sworn statement or through counsel.
Q. What about an implicated party who was not actually named as a respondent?
A. There's only one instance I can think of, and that's this matter.
Q. One instance where you did not give them an opportunity to weigh in, is that what you mean?
A. Yes.
Q. But there was never another time in all your experience at the Department of Commerce where you decided not to give an implicated party an opportunity to respond before making a recommendation?
A. I wouldn't characterize it in that way, but in my two years and three months at the

1 Department of Commerce, this is the only instance
2 in which a party, as you say, may be implicated
3 that did not provide a formal response, be sworn,
4 take and give sworn testimony or through counsel
5 respond.
6 Q. Going back to these letters you said
7 you'll send to the parties when you decide not to
8 take any action, can you make that decision
9 yourself or do you need to get sign-off?
10 A. To some degree it's a judgment call
11 based on investigative experience. So, in some
12 cases, yes. Again, if the seriousness of the
13 allegations in my opinion require it, I would bring
14 in my supervisors prior to closing a file.
15 Q. And about what percentage of the time
16 do you decide that no action is warranted in an
17 investigation?
18 A. Any response I gave on that would be
19 an approximation. Is that okay?
20 Q. Sure.
21 A. With each investigator it would vary.
22 With respect to mine, I would say it's relatively
23 close to 50/50.
24 Q. Are you evaluated by your superiors
25 based on the number of investigations that do

1 result in action?
2 A. I've never had a formal valuation
3 done, so it's unclear to me as to how my superiors
4 evaluate enforcement investigators.
5 Q. While an investigation is ongoing, is
6 the subject of the investigation public?
7 A. The Department treats all open
8 investigations as -- as private and nonpublic, civil
9 investigative data.
10 Q. So can you expound upon what that
11 means? Does that mean you're not supposed to
12 discuss it outside of the Department?
13 A. Case specifics, confidential
14 information is not supposed to be discussed outside
15 the Department generally.
16 Q. What constitutes confidential
17 information?
18 A. It would be defined by the Data
19 Practices Act.
20 Q. Do you have an understanding of what
21 that definition is roughly?
22 A. I'd have to see the statute.
23 Q. So in the day-to-day performance of
24 your job, you don't have an understanding of what
25 information is confidential and what's not?

1 A. Generally I treat all case information
2 as confidential.
3 Q. And that means you think it's your
4 responsibility not to share case information beyond
5 the Department; is that right?
6 A. I'm not sure I understand the question.
7 Q. You said, "Generally I treat all case
8 information as confidential." And that's
9 information while an investigation is ongoing?
10 A. Yes.
11 Q. And that's all information about the
12 case while it's ongoing?
13 A. Yes. There's an exception where we
14 would provide a respondent's response to the
15 complainant, which is something that happens
16 occasionally, I don't know a percentage. But other
17 than that, generally I treat all case information
18 as confidential.
19 Q. Does that include keeping information
20 confidential from the complainant as you continue
21 your investigation?
22 A. Yes and no. I mean no to the fact
23 that I often will keep complainants apprised of
24 where things stand in the process. But, again,
25 with respect to specifics or data that a respondent

1 provides, that would be generally kept confidential.
2 Q. What do you mean by "where things
3 stand in the process"?
4 A. Well, again, our investigations of
5 files go through a process of collecting information.
6 So when we get to a point of collecting information
7 sufficient to make a determination or recommendation
8 as an investigators, there have been times where
9 I've let complainants know that I'm prepared to
10 make a recommendation to my superiors.
11 Q. And do you think that's appropriate?
12 A. I have no reason to believe it is not.
13 Q. So you think it's appropriate to share
14 tentative conclusions about the evidence with
15 complainants?
16 A. I do not share tentative evidence with
17 complainants.
18 Q. That's not what I asked. I said do
19 you think it's appropriate to share tentative
20 conclusions about the evidence with complainants?
21 A. I cannot recall a time where I've done
22 that. I intend to share with complainants when it
23 goes from gathering information being completed to
24 making my recommendation. So I may inform a
25 complainant I have gathered the evidence, I'm

1 making my recommendation.
2 Q. Are your recommendations sometimes
3 rejected by your superiors?
4 A. I cannot recall a time where my
5 recommendations have been sent back and said
6 rejected in whole. There are many times where it
7 is reviewed and revised by my superiors.
8 Q. So you will share your recommendations
9 with complainants before your superiors have had a
10 chance to review them?
11 A. The complainants do not know what my
12 recommendation is. So the complainants may know
13 I'm prepared to give a recommendation as, again,
14 where things stand in the process of an
15 investigation, but they do not know what my
16 recommendations are.
17 Q. Is that because, again, you think your
18 conclusions about the evidence would be confidential
19 before any enforcement action is taken?
20 A. I think that my recommendations about
21 the evidence would be confidential, and I also do
22 not have the authority to issue a settlement offer
23 or make conclusions. I simply make recommendations
24 to my superiors.
25 Q. On the subject of settlement offers,

1 does the Department of Commerce sometimes engage in
2 settlement discussions with respondents?
3 A. I would approximate that somewhere
4 between 90 and 100 percent of my files result in
5 settlement negotiations.
6 Q. And while those negotiations are
7 underway, is the fact that settlement discussions
8 are taking place confidential?
9 A. The subject matter of those settlement
10 negotiations is treated as confidential. As to
11 whether settlement negotiations are underway, I
12 have in various files notified a complainant
13 that -- that settlement discussions have occurred.
14 Q. Do you think that's appropriate?
15 A. I have no reason to understand
16 otherwise.
17 Q. Even though the settlement discussions
18 are not public?
19 A. Again, the subject matter of the
20 settlement discussions are not disclosed.
21 Q. But you are free to disclose to third
22 parties the fact that settlement discussions are
23 taking place?
24 A. Again, I have no reason to understand
25 differently.

1 Q. Do you think the respondent who is
2 engaged in settlement discussions with the
3 Department of Commerce would want it publicized
4 that discussions are taking place before it becomes
5 public?
6 A. I -- I would only be speculating. I
7 don't know the answer.
8 Q. Isn't the fact alone of a settlement
9 discussion sensitive information that suggests
10 wrongdoing by the respondent?
11 MR. LARSON: Object to the question as
12 being argumentative.
13 THE WITNESS: Again, I -- I have no
14 reason to understand that notifying a complainant
15 of where things stand procedurally in the process
16 is problematic.
17 BY MS. SASSOON:
18 Q. When you decide that action should be
19 taken when you conclude an investigation, does that
20 always culminate in writing a memorandum to your
21 superiors?
22 A. I can't say assertively that in every
23 case there's been a memorandum on my files prior to
24 a settlement offer being authorized by my
25 superiors, but that is the general process for us

1 to pass essentially a case summary, a recitation of
2 the statutes, and how those may apply to the case
3 to our superiors so that they can make a
4 determination.
5 Q. So you try to include the most relevant
6 evidence summarized in that memo?
7 A. Yes.
8 Q. And your best legal analysis?
9 A. I don't know if it would be
10 characterized that way, as, for example, on our
11 team of seven enforcement insurance investigators,
12 we're apprised of the involved insurance statutes,
13 we list those, and we indicate why we think they
14 may apply. So if the question -- if you believe
15 that that's legal analysis, then, yes.
16 Q. Is Marty Fleischhacker one of your
17 supervisors?
18 A. He is the Assistant Commissioner for
19 Enforcement, so he is responsible -- he is the
20 senior officer of the Enforcement Division of the
21 Department of Commerce.
22 Q. So does he supervise you?
23 A. So my boss, Pamela Gergen's supervisor
24 in the past was a director of enforcement, which is
25 currently vacant. So the four audit directors,

including my boss, Pamela Gergen, report to Marty Fleischhacker as the Assistant Commissioner of Enforcement.
Q. Do you ever work directly with Marty?
A. It depends on how you characterize that. Right? It's my boss's boss. If he asks me to do something, I try and accommodate that request, but generally workflow goes through my superior, Pamela Gergen.
Q. Does Mr. Fleischhacker ever give you investigation assignments?
A. It's changed over time. But when I first started with the Department, yes, that was somewhat common.
Q. Do you ever interact directly with the Attorney General's Office in the context of your day-to-day job responsibilities?
A. If a matter has been referred to the Attorney General's Office on behalf of the Commissioner and an assistant attorney general is assigned to the case, there are plenty of occurrences where I would have day-to-day contact with a representative of the Attorney General's Office.
Q. How often are your matters referred to

the Attorney General's Office?
A. I could only give you an approximation. Is that okay?
Q. Sure.
A. Of the 100 investigative files per year that I've had during my time at the Department of Commerce, I would estimate approximately 10 per year are referred to the Attorney General's Office.
Q. What does that indicate when something is referred to the Attorney General's Office?
A. I'm not sure exactly that I understand your question, but I think typically when matters are referred from the Commissioner of Commerce to the Attorney General's Office, it would indicate that a settlement has not been reached by the parties or the Commissioner determined that no settlement offer would be issued, and we would move to the Attorney General's Office for administrative proceedings.
Q. When you refer a matter to the Attorney General's Office, is that publicized?
A. Not to my knowledge, no.
Q. Is that confidential information?
A. As to the subject matter of the case, absolutely, yes.

Q. Is the fact that you referred a case to the Attorney General's Office something you consider to be confidential information?
A. There have been times when I've notified a complainant that the matter was referred to the Attorney General's Office, and I have no reason to believe that that's problematic.
Q. That's not what I asked you. I asked if the fact that you referred a case to the Attorney General's Office was something you consider to be confidential information, yes or no?
A. No.
Q. Even though it's nonpublic information, as you just told me?
MR. LARSON: Object, argumentative, also not a fair characterization of prior testimony.
THE WITNESS: I'm sorry. Could you repeat the question pending?
BY MS. SASSOON:
Q. You believe that the fact that a case is referred to the Attorney General's Office is not confidential information even though it's not public information?
A. I apologize. I don't understand the question.

Q. I asked you if you think the fact that a case is referred to the Attorney General's Office, whether that was considered confidential information, you said no. Is that your testimony?
A. Yes.
Q. And I'm asking whether that's your view even though you also said that those referrals are not public information?
MR. LARSON: I'm going to object, mischaracterizes the testimony.
THE WITNESS: I'm -- I'm -- remain confused, I apologize.
BY MS. SASSOON:
Q. Is it your testimony that the referral of a case to the Attorney General's Office is not public information?
MR. LARSON: Object to the extent it calls for a legal conclusion.
THE WITNESS: I have no reason to understand that me notifying a complainant that a case has been referred to the Attorney General's Office is problematic.
BY MS. SASSOON:
Q. That's not the question.
A. Please repeat the question.

Q. Is it your testimony that the referral of a case to the Attorney General's Office is not public information?
MR. LARSON: Object to the extent it calls for a legal conclusion.
THE WITNESS: I -- I don't know.
BY MS. SASSOON:
Q. You're an investigator who routinely refers cases to the Attorney General's Office, and it's your testimony that you don't make a judgment about whether that's confidential information or not?
MR. LARSON: I'm going to object, argumentative.
THE WITNESS: We have staff that determines, for example, the proper government data practices. So that -- that's not me, no.
BY MS. SASSOON:
Q. So is it your testimony that you don't need to be aware of what information about your cases is confidential?
MR. LARSON: Object, argumentative.
THE WITNESS: Again, I treat all evidence from a case as confidential, as a general rule.

BY MS. SASSOON:
Q. But the Department of Commerce's internal recommendations you don't treat as confidential?
A. Again, the subject matter of any recommendation or referral is kept confidential. As to where things stand in the process, I've testified that I have no reason to know that that's problematic.
Q. What do you mean by "the subject matter of any recommendation or referral"?
A. For example, the contents of my recommendation to my superiors or the contents of the referral memo to the Attorney General's Office, would be the subject matter, a summary of the subject matter of the case.
Q. Isn't it true that when something is referred to the Attorney General's Office that indicates that the Department of Commerce thinks administrative action is necessary?
A. Yes.
Q. Does that constitute subject matter of a case?
A. I suppose. I -- I don't know.
Q. You don't know? So you're drawing a

line between subject matter and case status, but you don't know what subject matter means?
A. There are several instances where when we refer something to the Attorney General's Office that they review the file and say no action is warranted. So there's no blanket rule as to we -- excuse me, when the Department refers a file to the Attorney General's Office that administrative action results.
Q. I'm not asking about what the Attorney General decides to do.
A. Okay.
Q. I'm asking about what the Department of Commerce's referral means, and that means that it's your office's view that administrative action should be taken; is that fair?
A. In my experience with my files, yes.
Q. So the bare fact that a referral has been made to the Attorney General's Office alone indicates the Department of Commerce has made a judgment about the case; is that fair?
A. It may.
(Whereupon, Deposition Exhibit No. 86 was marked for identification, and a copy is attached and hereby made a part of this deposition.)

BY MS. SASSOON:
Q. You've been handed what's been marked as Exhibit 86. Have you seen this before?
A. No.
Q. And this is the Code of Ethics for Employees in the Executive Branch under the Minnesota Statutes.
A. Okay.
Q. Do you see that?
A. Yes.
Q. Are you an employee in the executive branch of Minnesota?
A. Yes.
Q. But you've never viewed the statutory code of ethics?
A. No.
Q. Turning to Subdivision 1(b), where it says Confidential Information, do you see that?
A. Yes, I do.
Q. And confidential information is defined to mean "any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely

1 affect the competitive position of an individual or
2 a business."
3 Do you agree with that definition of
4 confidential information?
5 MR. LARSON: I object to the extent it
6 calls for a legal conclusion.
7 THE WITNESS: I mean, you -- you read
8 it verbatim, so --
9 BY MS. SASSOON:
10 Q. Is this consistent with your
11 understanding of the meaning of confidential
12 information?
13 A. Yes.
14 Q. And do you think it would be
15 appropriate to share confidential information that
16 might provide an unfair economic advantage to a
17 nongovernmental party?
18 MR. LARSON: Object to the extent it
19 calls for a legal conclusion.
20 THE WITNESS: Can you please repeat
21 the question?
22 MS. SASSOON: Can you please reread
23 the question?
24 THE COURT REPORTER: Sure.
25 (Whereupon, the court reporter read

1 back the following question: "And do you think it
2 would be appropriate to share confidential
3 information that might provide an unfair economic
4 advantage to a nongovernmental party?")
5 THE WITNESS: No, I do not.
6 BY MS. SASSOON:
7 Q. And just to be clear, as a Minnesota
8 Department of Commerce employee, you are bound by
9 this Code of Ethics; is that correct?
10 MR. LARSON: Objection to the extent
11 it calls for a legal conclusion.
12 THE WITNESS: Again, I had not seen
13 this prior to this morning, but I have no reason to
14 suspect that as a executive branch employee I would
15 not be bound by it.
16 BY MS. SASSOON:
17 Q. Looking down to Subdivision 3, where
18 it says use of confidential information?
19 A. Okay.
20 Q. Do you see it says, "An employee in
21 the executive branch shall not use confidential
22 information to further the employee's private
23 interest."
24 A. I see that, yes.
25 Q. Do you believe that you follow that

1 instruction in your day-to-day career?
2 A. Yes.
3 Q. And do you think it would be
4 appropriate to use confidential information to
5 further someone else's private interest?
6 A. Again, from the Subdivision 1 (b) that
7 you read, I do not.
8 Q. Do you believe you've ever shared
9 confidential information with nongovernmental
10 parties?
11 A. No, I do not.
12 Q. Do you believe you've ever shared
13 nonpublic information with nongovernmental parties
14 that they could use to their economic advantage?
15 A. No, I do not.
16 Q. Do you believe that there are sort of
17 best practices that should govern investigative
18 work in your job?
19 A. The enforcement division doesn't have
20 a best practices manual. I don't know how to
21 otherwise answer the question.
22 Q. Are there any policies and
23 procedures -- strike that.
24 Are there any written policies and
25 procedures that govern your investigative work?

1 A. For the Enforcement Division of the
2 Minnesota Department of Commerce, I'm aware of
3 none.
4 Q. How many investigations have you
5 worked on during your time at the Department of
6 Commerce?
7 A. Again, it's an approximation, but
8 approximately 100 per year.
9 Q. Do you think it's best when conducting
10 an investigation to use unbiased sources?
11 A. I'm not sure I understand the
12 question. We try and collect information from all
13 sources. So as to what the best source is, I don't
14 really understand.
15 Q. Do you try to collect information from
16 neutral sources?
17 A. I don't know if that exists in every --
18 in every case, but, yes, I think that would be fine.
19 Q. When evaluating a source, do you
20 consider whether the source might be biased?
21 A. I don't think there's any way around
22 that. I think that typically when I, as an
23 investigator for the Department of Commerce,
24 contact either a licensee or certificate holder
25 that the Commissioner regulates or they report

information to us, I think there would be a natural interest or bias.
Q. Do you take that into account when evaluating the evidence from a potentially biased source?
A. Yes.
Q. And do you try to find other sources that might not share that same bias?
A. I can only give you a generally right, but generally, yes.
Q. And is that because it's best to independently verify the information you receive from your sources?
A. Trying to verify the information from our sources is important, yes.
Q. Is it your view that you're supposed to remain neutral on the subject of an investigation until you reach your final conclusions?
A. Yes.
Q. Do you think it's best to review all the relevant evidence before reaching a conclusion?
A. All relevant evidence? I don't know if that's possible to collect, but if possible to collect and collected, yes.
Q. Do you think it's important to inquire

whether the information you're receiving from other parties is cherry-picked?
A. I don't understand the question.
Q. I'll rephrase. Do you think it's important to inquire whether the information you're receiving from other parties is handpicked?
A. Handpicked in what way? I'm not sure I understand still.
Q. Whether the source of information is only choosing to share certain documents with you and not others?
A. I think that's possible in certain cases. In many cases, there's one or a small number of allegations where the evidence available, the information available is quite limited.
Q. When did you first become familiar with Safelite?
A. As best that I can recall, it would have been around April 2014.
Q. And what were the circumstances in April 2014 by which you became familiar with Safelite?
A. I was asked to attend a meeting with the Commissioner of -- current Assistant Commissioner of Enforcement, Marty Fleischhacker.

At the time he was the Director of Enforcement. I was asked to attend a meeting with him where I first became familiar with Safelite. Again, that was around April 2014.
Q. Who else was at the meeting?
A. At the first meeting, as best I can recall, it was Marty Fleischhacker, myself and Lisa Pilot.
Q. Who is Lisa Pilot?
A. Lisa Pilot is an investigator on another team, but in certain respects she acts as Marty's assistant; and I believe, although I don't know for sure, that any open file on Safelite at that time were assigned to Lisa Pilot.
Q. And what was discussed at this meeting?
A. Marty asked me if I would take over the investigation of the two open files at that time from Ms. Pilot.
Q. And those were open Safelite investigation files?
A. No. They were file -- one file was on Auto Club Group, the other file was on American Family Mutual Insurance Company.
Q. And what did Safelite have to do with that?

A. Safelite is the processer at that time of both Auto Club Group and American Family Mutual Insurance Company's automobile glass claims.
Q. And what did Marty explain about the investigations?
A. I don't recall what Marty said about the investigations at that meeting, other than he had some concerns with the way that the claims were being handled.
Q. He had concerns about the way the claims were being handled by Safelite?
A. I don't believe he was specific as to what those concerns were or who was responsible for causing his concerns at that meeting.
Q. What did he say about Safelite at that meeting?
A. I do not recall.
Q. Well, you said you became familiar with Safelite in April 2014?
A. Yes.
Q. So what do you remember from that meeting with respect to Safelite?
A. That was the first time that I learned about Safelite being a processer of glass claims in Minnesota.

1 Q. Did Marty explain to you what had
2 instigated the investigation?
3 A. At that time, no.
4 Q. Did he at a later time?
5 A. I believe so, yes.
6 Q. And what did Mr. Fleischhacker explain
7 to you as the -- as what instigated the
8 investigation?
9 A. My understanding is that it was
10 personal experience between both himself and his
11 girlfriend. I don't remember who was insured by
12 which insurer, but I believe that both he and his
13 girlfriend filed a glass claim and they both became
14 concerned with how they were handled.
15 Q. And that's what Mr. Fleischhacker told
16 you?
17 A. Again, not at this meeting, but I
18 subsequently learned it at a time, I'm not sure
19 exactly at what point in the chronology I learned
20 that.
21 Q. But you learned that from
22 Mr. Fleischhacker himself?
23 A. Yes.
24 Q. And was it your understanding that
25 that was the entire basis for initiating these

1 investigations?
2 A. I don't know of any other basis upon
3 which those two investigative files were opened
4 other than Marty and his girlfriend's experience
5 with their glass claims.
6 Q. And what did he explain to you about
7 his experience with his glass claim that was
8 concerning to him?
9 A. I don't know which glass vendor his
10 girlfriend chose when filing her glass claim, but
11 it's my understanding that Mr. Fleischhacker chose
12 Alpine Glass as his glass vendor, and when he and
13 his girlfriend called to report their respective
14 claims, they were informed that they may be balance
15 billed for any difference in cost because they were
16 using -- they were choosing non-preferred vendors.
17 Q. And why was that concerning to
18 Mr. Fleischhacker?
19 A. I wasn't given further specifics, but
20 he thought that it was -- he felt coerced or as
21 though he was being provided with untrue information.
22 Q. Do you know in what way he felt
23 coerced?
24 A. I do not.
25 Q. And do you know in what way he thought

1 the information was untrue?
2 A. I do not.
3 Q. Do you know why in April 2014 the
4 investigations were transferred from Lisa Pilot to
5 you?
6 A. I do not.
7 Q. Marty did not explain that at the
8 meeting?
9 A. No.
10 Q. Can you tell me anything else you
11 remember from that April 2014 meeting?
12 A. I can't recall anything else from that
13 meeting.
14 Q. At some point did you develop an
15 understanding of which entities are competitors of
16 Safelite Solutions?
17 A. Yes, both with respect to acting as a
18 TPA and with respect to repairing or replacing
19 automobile glass.
20 Q. So with respect to both of those, can
21 you explain to me what you came to understand?
22 A. My understanding is with respect to
23 acting as a third-party administrator for glass
24 claims Safelite has competitors that include Harmon
25 Glass, Quest, LYNX.

1 Q. And these are the competitors you
2 identified that are competitors of Safelite
3 Solutions?
4 A. Yes.
5 Q. And was that always your understanding?
6 A. With respect to what part of the --
7 Q. Safelite Solutions?
8 A. -- chronology?
9 As, again, I didn't know Safelite
10 existed prior to --
11 Q. Once you --
12 A. -- April 2014.
13 Q. -- became familiar with Safelite?
14 A. I gained that knowledge over time. I
15 can't pinpoint a period of time in which I came to
16 learn that.
17 Q. Did you ever consider Alpine Glass a
18 competitor of Safelite Solutions?
19 A. I considered Alpine Glass a competitor
20 of Safelite's glass repair and replacement division.
21 Q. So that's a no, you've never
22 considered Alpine Glass a competitor of Safelite
23 Solutions?
24 A. No.
25 Q. Did you ever consider Rapid Glass a

1 competitor of Safelite Solutions?
2 A. With respect to being a TPA, no.
3 Q. Can you explain what you mean by "with
4 respect to being a TPA"? Safelite Solutions is a
5 TPA?
6 A. Yes, Safelite Solutions acts as a TPA
7 for several Minnesota insurer clients, and Alpine
8 Glass is a company which will repair or replace
9 damaged automobile glass. So I did not consider
10 Alpine Glass or Rapid Glass as a competitor of
11 Safelite Solutions, which processes glass claims.
12 Q. Did you ever tell your supervisors
13 that Alpine Glass was a competitor of Safelite
14 Solutions, as far as you can recall?
15 A. I do not recall saying that.
16 Q. Do you recall ever telling your
17 supervisors that Rapid Glass was a competitor of
18 Safelite Solutions?
19 A. No.
20 Q. In your view, has Safelite committed
21 violations of Minnesota law?
22 A. Yes.
23 Q. When did you come to that view?
24 A. I came to that view -- again, it's --
25 it's an approximation, it would have been in June

1 or July 2014, after the Department issued subpoenas
2 to Safelite and after I began reviewing claim call
3 recordings.
4 Q. What provisions of Minnesota law did
5 you conclude have been violated?
6 A. By?
7 Q. By Safelite?
8 A. With respect to the subpoenas, my
9 opinion is Safelite violated 45.027 Subd. 2. With
10 respect to the processing of glass claims, there
11 was some internal discussion as to the applicability
12 of Minnesota's TPA statute, which is 60A.23 Subd. 8
13 and the corollary Minnesota Administrative Rule 2767.
14 There was also a discussion involving both 72A.20,
15 Subd. 12(6) and (7), which have to do with the good
16 faith settlement of glass claims and the repeated
17 institution of litigation to recover amounts
18 ultimately recovered, and 72A.201, Subd. 6(7),
19 (14), (15) and (16).
20 Q. In your view, is Safelite harming the
21 Minnesota auto glass repair market?
22 A. With respect to -- to Safelite
23 operating stores to repair or replace glass, no, I
24 do not think they were harming the market.
25 Q. Do you think Safelite Solutions, in

1 your view, is harming the Minnesota auto glass
2 repair market?
3 A. Yes.
4 Q. How so?
5 A. I think any time you have consumers in
6 the marketplace who have potentially misleading
7 information, I think that is damaging.
8 Q. So you thought Safelite Solutions was
9 misleading customers?
10 A. Yes.
11 Q. Is there any other respect in which
12 you thought Safelite Solutions was harming the
13 Minnesota auto glass repair market?
14 A. I think there is potential harm with
15 respect to the data that Safelite provides to its
16 insurer clients in Minnesota.
17 Q. And what is the potential harm?
18 A. The potential harm is that the data
19 from what the Department has been able to gather
20 that is shared is self-limiting, self-limiting
21 meaning that the data is comprised of the invoices
22 and claims filed with Safelite's insurer clients,
23 not the market as a whole.
24 Q. And how does that potentially harm the
25 market?

1 A. Because the market has a wider range
2 of prices than what that would comprise.
3 Q. And so can you explain the potential
4 harm? Is the harm that it results in lower prices
5 in the market?
6 A. I don't know what the result is in the
7 market.
8 Q. So, then, what is the potential harm
9 to the market?
10 A. The potential harm is that you have
11 thousands of claimants filing claims and insurers
12 settling those claims with potentially improper
13 information as to the pricing of the different
14 geographic areas in Minnesota.
15 Q. And what is the harm, that they're not
16 paying enough for those claims?
17 MR. LARSON: I'm going to object,
18 asked and answered.
19 THE WITNESS: Again, the harm is that
20 we have Minnesota insurers potentially settling
21 thousands of claims each year with improper data.
22 BY MS. SASSOON:
23 Q. And I'd ask you to please explain how
24 you, then, conclude that that harms the market for
25 auto glass repair?

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A. Their perspective on what a fair and reasonable price in a geographic area is could be compromised by improper or faulty data sets.
Q. And can you please explain what you mean by compromised? Do you mean that the insurance companies Safelite represent are not reimbursing shops at high enough rate?
A. Yes, that's correct.
Q. And does that reflect conclusions you have drawn about what would be a fair and reasonable price for auto glass repair?
A. I've never conducted anything to determine what a fair and reasonable price for auto glass is.
Q. So you have drawn conclusions about the reimbursements made by insurance companies that they're improper but without having a view on what is a fair and reasonable price?
MR. LARSON: I'm going to object, it's argumentative.
THE WITNESS: Correct.
BY MS. SASSOON:
Q. Do you have a view on whether it's appropriate for a glass shop to charge different prices for the same work depending on whether a

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customer has insurance or not?
A. Please repeat the question, I didn't catch the first part.
MS. SASSOON: Can you please reread the question?
(Whereupon, the court reporter read back the following question: "Do you have a view on whether it's appropriate for a glass shop to charge different prices for the same work depending on whether a customer has insurance or not?")
THE WITNESS: I do not have a view on that, no.
BY MS. SASSOON:
Q. So you don't think it would be inappropriate for a shop to charge a customer paying with cash less than it would charge for the same work to a customer with insurance?
A. I -- I have no perspective on what shops charge and whether it's improper for them to charge one price when insurers are involved or another price when insurers are not involved.
Q. So if you heard that a glass shop was charging cash customers less for the same work that it was charging insurance customers you wouldn't have a view on whether that's appropriate?

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A. We do not -- the Department of Commerce does not regulate glass shops. I do not have a view on that.
Q. In determining what is a fair and reasonable price, would you think it's relevant what a shop charges when no insurance company is involved?
A. Relevant, yes, sure.
Q. But you ultimately have not formed a view about what would be a fair and reasonable price in Minnesota for auto glass repair work?
A. No.
Q. Going back to your testimony that it's your view that Safelite violated Minnesota law --
A. Okay.
Q. -- you mentioned a couple things, and I want to summarize, but I'm not trying to mischaracterize your testimony. I believe you said you think they mislead customers, you think they affect the market by how they reimburse glass shops. Is there anything else?
A. I think with respect to Safelite Solutions giving the proper statutory advisory, there is potential harm. I think, again, with respect to the data, there's potential for harm,

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and with respect to certain statements made in the claims calls to consumers there's potential for harm.
Q. And what is the potential harm you see for consumers?
A. With respect to what?
Q. Any of Safelite's actions?
A. Well, again, I think both the statutorily required advisory when a non-preferred shop is selected and some of the other comments made during the glass calls with respect to balance billing and warranties and just repetition of those points leads to the potential harm in mis -- misleading consumers.
Q. So you've referred to potential harm of misleading consumers. What evidence, if any, do you have of consumers actually being misled?
A. I don't have a number, for example, but I have examples where based on the comments made, particularly with balance billing, a consumer has then selected another shop, so went from their shop of choice to the selection of another shop based on the commentary made by Safelite Solutions.
Q. So you've seen instances where a customer expressed an interest in a particular shop

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and then ultimately chose another shop?
A. Yes.
Q. And what evidence do you have that the change in preference was not voluntary or, rather, was the result of being mislead?
A. In the examples that I can recall, the insured became -- or claimant became concerned about the fact that they would be billed for the work, and based on that concern selected a preferred shop.
Q. Did you talk to the claimant about the basis for his or her concern in any of those instances?
A. There was at least one instance where I did, yes.
Q. When was that?
A. I don't remember a time frame.
Q. Do you remember the name of the claimant?
A. I do not.
Q. Do you remember the insurance company involved?
A. I believe it was American Family.
Q. Do you remember what year this was in?
A. I think that it was around August or September of 2015. That's a best guess.

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Q. How did you get in touch with this claimant?
A. We received a -- I don't know if it would be considered a formal complaint, but I believed I received an e-mail from the owner of Alpine Glass, Mike Reid, that an instance such as this occurred, and he provided me with claim information, which I then followed up on, resulting in me talking with the claimant.
Q. What did the claimant say?
A. I do not recall.
Q. Do you recall whether the claimant said that he or she felt misled?
A. I do not recall.
Q. Do you recall whether the claimant said they felt pressure to choose a different shop?
A. Again, I -- I don't remember the substance of the call, I only remember the call occurring.
Q. So you have no recollection of a claimant ever telling you that he or she felt misled on a call with Safelite Solutions, do you?
A. Not that I can recall.
Q. So the only basis for your conclusion that customers feel misled by Safelite is your own

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interpretation of these call recordings that you've listened to; is that fair?
A. I think that's fair, yes.
Q. And have you analyzed how many times you've listened to a call where a customer changed his or her mind about what glass shop to go to?
A. I have not analyzed that in terms of coming up with specific numbers, no.
Q. So you don't know if it's happened more than five times?
A. I do not.
Q. And, again, you haven't spoken to any of those customers about why they switched shops?
A. I -- again, I recall one call with a claimant. I don't remember what transpired, what was discussed during that call.
Q. So you have no recollection of any customers explaining to you why they might have switched shops on a call with Safelite?
A. No.
MS. SASSOON: I can't remember what time we started. But should we take a break?
MR. STODDARD: About an hour and fifteen.
MS. SASSOON: All right, okay, let's

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break.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 9:57 a.m.
(Break from 9:57 to 10:08.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 10:08 a.m.
BY MS. SASSOON:
Q. When Mr. Fleischhacker turned over the investigation to you in April of 2014, did he give you any instructions about how to conduct the investigation?
A. As best I can remember, he and I worked together on drafting two requests, one to Auto Club Group and one to American Family and the first set of subpoenas to Safelite. So I think the most accurate answer to your question is is that he was very helpful in drafting the scope of the investigations.
Q. When you say you worked together on drafting two requests, you mean document requests?
A. Both requests for documents and for written statements from Auto Club Group and American Family, and a subpoena which requested both documents and interrogatory responses from

Safelite.
Q. And did you explain to any of these parties the basis for these requests?
A. I don't -- I don't recall doing so.
Q. And for these investigations, who did you identify as the complainant?
A. I don't recall if we identified anybody.
Q. Sitting here today, who would you characterize as the complainant for these investigations, would it be Alpine Glass?
A. Alpine Glass, Rapid Glass and -- and Mr. Fleischhacker's own personal experience, I think those are the three that I'm aware of.
Q. So the complainant -- putting aside Mr. Fleischhacker the complainants you're aware of are competitors of Safelite?
A. With respect to Safelite replacing and repairing auto glass, yes, but Alpine Glass and Rapid Glass don't act as TPAs in Minnesota.
Q. Over the course of your investigation, did you become aware of any instances where Safelite Solutions recommended a glass repair shop that did not follow adequate safety standards?
A. I do not recall.

Q. So you are not aware of any instance sitting here today where Safelite Solutions recommended a glass repair shop that did not follow adequate safety standards, correct?
A. Correct.
Q. And sitting here today, are you aware of any instances where Safelite Solutions recommended a shop that did not perform quality work?
A. I -- I do not recall, no.
Q. So you are not aware of any instance sitting here today where Safelite Solutions recommended a shop that did not perform quality work, right?
A. Correct.
Q. Do you have any reason to question Safelite AutoGlass's qualifications to perform auto glass repair?
A. I have no reason to question, no.
Q. At one point in time did you look into the quality of the glass that Safelite AutoGlass uses for its repairs and replacements?
A. I do remember a line of -- of questions both to the insurance companies and to Safelite in the subpoena sets that -- that inquired as to

aftermarket glass versus OEM glass and their differences.
Q. And do you remember learning that there really isn't a big difference between those two kinds of glass?
A. What I've learned about that is that for a layperson with respect to the quality of glass and glass repair, such as myself, I don't have a good understanding of -- of the differences other than typically original equipment manufactured glass would come from the actual manufacturer versus aftermarket glass, which would be made by a third party. With respect to their structural differences, I understand very little.
Q. Do you remember talking to some sources that told you there was no true difference in quality?
A. I remember attending an arbitration where testimony to that effect was given. I cannot remember whether the insurance companies responded in that manner, so --
Q. Are you aware of where Safelite is headquartered?
A. When the files first were transferred to me, no. But I subsequently learned that they're

headquartered out of Ohio, I believe.
Q. Did you become aware that Safelite is the largest provider of vehicle glass repair services in Minnesota?
A. I didn't know in Minnesota. I think I learned that relatively recently, since the litigation was commenced.
Q. During the course of your investigation, did you become aware that Safelite operates nationwide?
A. Yes.
Q. Did you become aware that Safelite is the country's largest nationwide auto glass repair business?
A. Yes.
Q. During your investigation, did you reach a conclusion about whether you think Safelite harms local Minnesota businesses?
A. No, I don't recall reaching such a conclusion.
Q. Do you have a view about that?
A. No.
Q. So you don't think that Safelite harms local Minnesota businesses?
A. My response was I don't have a view.

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I've -- I don't have a position or an understanding of that.
Q. Did you come to an understanding of whether your complainants, specifically Rapid Glass or Alpine Glass, had a view about whether Safelite was harming local Minnesota businesses?
A. I recall no conversation where it was -- where there was a distinction between Minnesota businesses or businesses that are not headquartered in Minnesota.
Q. Did you come to an understanding of whether Rapid Glass thought Safelite was harming its own business?
A. I don't remember a conversation to that point with Rapid Glass. I remember a conversation I had with Mike Reid of Alpine Glass where he made that assertion.
Q. So just to be clear, you remember a conversation with Mike Reid of Rapid Glass where he asserted that Safelite was harming his auto glass repair business?
A. Yes.
Q. Did he explain how or why?
A. I think this would have been around his most recent arbitration with The Auto Club

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Group, which was quite some time ago. I -- the only thing I remember from that other than he had that belief was that he used the example of how many techs he has now versus at some point in the past, and the number of techs had gone down.
Q. What do you mean the number of texts?
A. The number of either employees or contractors that he has to actually mobile out and repair or replace the glass had gone down in number over the past several years.
Q. Oh, tech, as in technicians?
A. Yes, sorry.
Q. Do you have a view about whether you think Safelite is driving down the price of automotive glass repair in Minnesota?
A. My personal view is yes, probably. I -- again, I have never done an analysis of glass pricing in Minnesota, but I -- I think yes.
Q. What is the basis for your view if you've never done a price analysis in Minnesota?
A. Only from speaking with the complainants and their take on what pricing has done over time.
Q. So the complainants told you that Safelite was driving down the price of glass repair

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in Minnesota?
A. Yes.
Q. Did you do anything to verify that certification?
A. We asked both American Family and Auto Club Group and subsequently USAA for information on how they established their pricing. But with respect to specifically Safelite and its impact on pricing, no.
Q. And did you form a view about whether it was a good or bad thing if prices for auto glass repair went down in Minnesota?
A. I mean, I think a clear argument would be lower prices for consumers are a good thing, right? So, but I don't -- I never came to a view about that with respect to the investigations.
Q. But it's your instinct that lower prices would be a good thing for consumers?
A. Assuming quality stays consistent, sure. Me, as a consumer, would like lower prices.
Q. Is the Department of Commerce -- are the investigations conducted by the Department of Commerce in part undertaken for the benefit of Minnesota consumers?
A. My understanding is that our -- our

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mission with the Department of Commerce is two-fold, one, to protect consumers, and, two, to insure fairness in the marketplace.
Q. Is one of those priorities paramount?
A. Not that I'm aware of.
Q. Are those two things that you should consider in any investigation?
A. Yes.
Q. With respect to the investigations at issue here, did you think one of your goals was to protect consumers?
A. Yes.
Q. Do you think the Minnesota auto glass repair market would be better off if Safelite were not doing business in Minnesota?
A. I have no opinion on that and no reason to believe one way or the other.
Q. Did you have an opinion on that at some point during the investigation?
A. Not that I recall, no.
Q. Did you ever threaten Safelite with action that would have stopped it from doing business in the state of Minnesota?
A. Yes.
Q. So in that instance, you thought it

would ultimately be beneficial to stop Safelite from doing business in the state of Minnesota, correct?
A. No. I -- that was not the basis for doing so, and I had no thought one way or the other.
Q. So you took action against Safelite to stop it from doing business in the state of Minnesota without a view about whether that was a --
A. Again, I --
Q. -- prudent decision?
A. I mean, just at a very rudimentary level, I don't take action, right? So we recommended that a cease and desist be issued against Safelite to the Attorney General's Office.
Q. And that cease and desist, had it been implemented, would have prevented Safelite from doing business in Minnesota, correct?
A. Yes.
Q. And you thought that was the appropriate course of action at the time?
A. Until Safelite complied with the jurisdiction of the Commissioner, yes.
Q. In April 2014, when you took over these investigations, did you consider Safelite one of the subjects of the investigation?

A. Again, I don't recall specifically when I became aware of how Safelite operated in Minnesota, both in terms of repairing or replacing glass or acting as a TPA for the insurance companies we had the open files on, I don't remember when in the chronology that happened.
Q. At some point in time did you consider Safelite a subject of your investigation?
A. Yes. At some -- at -- I don't remember the -- the month and year, but at a certain point an investigative file was opened on Safelite on its own.
Q. So you --
A. Safelite was the one respondent in a file.
Q. So create -- you created a Safelite file?
A. I did not. But, yes, a file was opened for the investigation of Safelite.
Q. Can you explain what it means for a file to be opened, is that a physical file?
A. Sadly, we're -- we're still in the 19th and 20th Century at the Department of Commerce. So, yes, there's -- there's a physical file that would be opened.

There's a person, Lisa Pilot, who we previously discussed, who acts in certain capacities as Mr. Fleischhacker's assistant, who is the person responsible for opening, assigning, designating a file in consultation with the four enforcement division supervisors.
Q. And so it's your understanding that there is a Safelite specific file?
A. Yes.
Q. Have you seen it?
A. Yes.
Q. Has it -- Are you aware whether it's been produced to us in this case?
A. I -- I have no knowledge that it has not. Everything that we have has been produced to the Attorney General's Office.
Q. Do you remember informing Safelite at any point that it was under investigation?
A. Well, they certainly received -- Safelite, that is, certainly received the subpoenas. Typically, a respondent would -- or party that the Department of Commerce is investigating would receive either a request for information or a subpoena, and that would be the first notification in many cases that the party or respondent would

have as to the Department investigating them.
Q. Does the DOC sometimes subpoena parties that are not under investigation?
A. Yes, depending on what information we believe is out there and who is the custodian of it.
Q. So a subpoena would not necessarily notify a party that they were under investigation, correct?
A. Correct, nor would a request for information.
Q. Did you explain to Safelite the basis for your subpoena?
A. There was at least one conversation I recall with an attorney out of Columbus, Ohio, where he asked the basis of the subpoena, and I did my best in trying to explain it to him. Yes, there's potentially two. I -- I only remember one off the top of my head.
Q. What do you remember explaining to him?
A. That as an entity which engages in insurance industry related practices in Minnesota, the Department's position was is that Safelite was subject to the responsibilities entrusted to the Commissioner of Commerce, and, therefore, because

of their role as a third-party administrator for various Minnesota insurers, that Safelite was subject to produce the information requested in the subpoena.
Q. So that seems to me an explanation of why Safelite had to comply with the subpoena. But did you explain why Safelite was being investigated?
A. I do not remember doing so, no.
Q. So you don't remember informing Safelite of any potential legal violations that you're investigating?
A. No, and when we sent the subpoenas, we -- there was no recommendation that I could have even come to at that point. They had just started.
Q. But they were under investigation at that point?
A. The Safelite specific file had not been opened at that point, but as the third-party administrator for the two Minnesota insurers where an investigation was opened, they were part of that file.
Q. Did you at any point inform Safelite that it was under investigation?
A. Not that I can recall, no.
Q. Why not?

A. I have no obligation to do so.
Q. I believe you testified earlier that you often do inform respondents that they're under investigation?
A. Often do, sure.
Q. So why didn't you do so here?
A. I am not under an obligation to do so.
Q. What was the basis for your judgment that this was not a case that called for informing Safelite of the investigation?
A. I don't remember specifically, but at that time I did not know whether a investigation of Safelite directly would ensue. At that time, we were simply trying to collect information about the practices of two Minnesota insurers, and Safelite had what we believed to be relevant information to those investigations.
Q. You said you did not inform Safelite at any point it was under investigation?
A. Correct.
Q. So why at no point did you inform Safelite that it was under investigation?
A. I didn't believe we ever reached a juncture where that was something that was necessary.
Q. Can you please elaborate again,

because you said sometimes you inform respondents that they're under investigation? So why in this case did you determine that it was unnecessary?
A. I -- I don't have a specific answer to your question.
Q. So you have no reason you can offer why you did not inform Safelite they were under investigation, other than that it was your prerogative to make that decision?
A. Other than the issuance of the subpoenas and Safelite's objections and my conversations with the attorney out of Columbus, Ohio, there was no other discussions had as to whether Safelite was under investigation directly. I had no obligation to, and I didn't see a benefit of doing or not doing it at that point in time.
Q. So at no point did you see a benefit of letting Safelite know it was under investigation, correct?
A. Correct.
Q. Does that mean at no point did you see a benefit of giving Safelite an opportunity to respond to the allegations against it?
A. To the best of my knowledge, no allegations were made against Safelite other than

its failure to respond to the cease and desist -- other than to respond to the subpoena sets. Excuse me.
Q. Let me rephrase.
At no point did you see a benefit of giving Safelite an opportunity to respond to the underlying bases of your investigation of it, correct?
A. Correct. The file with respect to Safelite remains open and ongoing.
Q. But as you testified earlier, the Department of Commerce has already taken some actions against other respondents that did implicate Safelite as a nonparty, correct?
A. Again, implicate a nonparty, we -- the -- the insurer companies that were under investigation that the Department took action against were notified of the allegations against it. Safelite was not a respondent nor a party to that.
Q. So it was not notified, correct?
A. Correct.
Q. What was Marty Fleischhacker's role in these investigations after April 2014?
A. The next instance I can recall where

1 Mr. Fleischhacker was involved would have been
2 after the subpoena response period from the
3 April 2014 subpoenas to Safelite were not responded
4 to, I then reached out to whatever number the
5 Department had on file and was eventually routed to
6 Attorney McCormick, who was representing Safelite
7 in their response, and a few days after that the
8 Department received a response from Safelite in the
9 form of objections to everything the Department had
10 asked for, and at that point I remember going to
11 Mr. Fleischhacker to inform him of that.
12 Q. And what was his response?
13 A. His response was that's improper and
14 informed them that we'll pursue a cease and desist
15 against the company until they respond.
16 Q. And did he explain the scope of the
17 cease and desist?
18 A. Um, no, not that I remember.
19 Q. Did you agree with his assessment of
20 the situation?
21 A. I don't remember disagreeing.
22 Q. And did you go back to Safelite and
23 threaten issuance of a cease and desist?
24 A. Yes.
25 Q. And what happened next?

1 A. There was a telephone call between
2 Attorney McCormick and I where he and I discussed
3 that. He again requested the bases for our
4 jurisdiction to receive the information. There was
5 a deadline, I seem to remember, about when the
6 Department wanted the information, after which we
7 would pursue the cease and desist. I don't recall
8 further communication past that point.
9 Q. And this was a cease and desist that
10 would have stopped Safelite from doing business in
11 Minnesota?
12 A. Yes.
13 Q. Did you think that was a proportional
14 response to the failure to respond to a subpoena?
15 A. Me personally, no.
16 Q. Why not?
17 A. I -- I think there's probably more
18 diplomacy which could have gone in on both sides.
19 I think there were other avenues, and I thought
20 that was a strong step to take at that time. I had
21 been on the file for approximately two months. We
22 received a very uncommon and very strong objection
23 to everything we were asking for, and based on my
24 experience at that time.
25 Q. When you say "a strong step to take at

1 that time," you mean a strong response to stop
2 Safelite from being able to do business in the state?
3 A. In an entirety, yes.
4 Q. Are you aware of any instance where
5 the Department of Commerce has issued such a cease
6 and desist against any party before?
7 A. We -- the Department has issued cease
8 and desists against entities or individuals from
9 doing business in Minnesota, yes.
10 Q. And what has --
11 A. That I'm aware.
12 Q. What has been the basis for those
13 cease and desist? Has it ever been a subpoena like
14 this one?
15 A. The closest that I am aware of is a
16 nonresident agency which failed to respond and in a
17 similar -- similarly strong, objected to our
18 ability to request the information, and it resulted
19 in first a cease and desist against that nonresident
20 agency from engaging in the insurance business in
21 Minnesota and then subsequent administrative action.
22 I believe it was a -- a civil penalty and revocation
23 of the nonresident agency license.
24 Q. Did you tell Mr. Fleischhacker that
25 you thought a cease and desist was too strong a

1 tep -- step to take at that time?
2 A. Well, I want to be clear that I didn't
3 think that a cease and desist was too strong. I
4 thought a cease and desist from all business in
5 Minnesota was too strong. So, no, I -- I did not.
6 Q. Did you tell him that you thought the
7 scope of the cease and desist was too strong a step
8 to take?
9 A. No.
10 Q. Did you recommend seeking a court
11 order to enforce the subpoena as a first step?
12 A. My memory is is that I put together a
13 referral memo to the Attorney General's Office
14 outlining the chronology of what had taken place,
15 that Safelite objected to everything we asked for,
16 and requested the C&D as instructed by
17 Mr. Fleischhacker.
18 Q. So no one ever contemplated seeking a
19 court order to enforce the subpoena, as far as
20 you're aware?
21 A. I do believe that the assistant
22 attorney general who the matter was assigned to at
23 that time did consider that, but how decisions were
24 ultimately made to not pursue that I do not know.
25 Q. And ultimately a cease and desist

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1 order was not implemented, correct?
2 A. The assistant attorney general the
3 matter was assigned to did not pursue a cease and
4 desist, no.
5 Q. Do you know why?
6 A. I do not.
7 Q. Were any additional actions taken to
8 enforce the subpoena?
9 A. There was a statement of charges,
10 which was subsequently filed in the Office of
11 Administrative Hearings, and Safelite's failure to
12 comply with subpoenas was one count of that
13 statement of charges.
14 Q. Who was Marty's -- sorry. What was
15 Mr. Fleischhacker's role in the investigation after
16 that time?
17 A. Could you be more specific as to after
18 what time?
19 Q. After 2014, in addition to his
20 involvement with the subpoenas, how else was
21 Mr. Fleischhacker involved in the investigation?
22 A. After I referred the cease and desist
23 memo to the Attorney General's Office, Auto Club
24 Group and American Family produced in rolling
25 productions the information that we had requested

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1 from those entities, and my focus was on reviewing
2 those responses and the information that we had
3 collected from them.
4 Most of fall 2014 was spent negotiating
5 a settlement with Auto Club Group; and with respect
6 to your question and Mr. Fleischhacker's involvement,
7 he would have become involved again during the
8 settlement negotiations with Auto Club Group.
9 Q. Did the two of you discuss settlement
10 strategy together?
11 A. I don't recall specific meetings, but,
12 yes, I believe so. With respect to the enforcement
13 division settling the matter, Mr. Fleischhacker
14 had -- was the ultimate decider of what was
15 sufficient in terms of the settlement conditions
16 for the Department.
17 Q. What was Pam Gergen's role in the
18 investigation?
19 A. So Ms. Gergen is, again, my direct
20 supervisor. She was kept apprised of where things
21 stood in these investigations, but she had very
22 little involvement.
23 Q. And by very little involvement, you
24 mean she wasn't reviewing evidence or --
25 A. She --

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1 Q. -- getting involved in the
2 negotiations?
3 A. She would have reviewed -- she did
4 review any memo that I wrote on these files. So
5 she would have reviewed my recommendations with
6 respect to settling with Auto Club Group. She was
7 involved in a few of the settlement meetings but
8 not every one. Beyond that, I don't recall her
9 being involved more than that.
10 Q. You said she reviewed your memos. Did
11 she give feedback on any of the memos?
12 A. So once my direct supervisor, Pamela
13 Gergen, reviews my memos, she would then make
14 comments on the memo to Mr. Fleischhacker. So it
15 wouldn't -- it's not as though Ms. Gergen would
16 then return the memo to me and say here's what I
17 think or here's my thoughts on this or here's what
18 I think we should do moving forward, she would make
19 those to Mr. Fleischhacker; and so I was not
20 involved in that process. I know the memos were
21 eventually provided to Mr. Fleischhacker. As to
22 what occurred in terms of communication between
23 them, I don't know.
24 Q. And as far as you're aware, was
25 Commissioner Rothman at all involved in the

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1 investigations?
2 A. I have no knowledge of Commissioner
3 Rothman being involved in these investigations, and
4 I've never had a conversation with Commissioner
5 Rothman about any of my investigations, including
6 this one.
7 Q. What's your understanding of the role
8 that he plays in the office?
9 A. Well, he is the Commissioner of
10 Commerce. So ultimately when a consent order, for
11 example, is reached with a party, it's signed on
12 his behalf. He's also the final decision maker
13 after a matter has gone through the administrative
14 law process. So with respect to enforcement of the
15 industries, he regulates those. Outside of that, I
16 have very little understanding of all the things
17 that he may be involved in.
18 Q. Can you describe in broad terms the
19 type of evidence you collected during the course of
20 the investigation of Safelite?
21 A. I don't believe that I've collected
22 any evidence from Safelite.
23 Q. I don't mean from Safelite. During
24 the investigation of Safelite, can you describe the
25 evidence you collected that related to that

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1 investigation?
2 A. Again, there's -- there's an
3 investigative file open with Safelite listed as the
4 respondent. I haven't collected any evidence from
5 Safelite in that case.
6 With respect to the file --
7 investiga -- investigative file with Auto Club
8 Group, American Family and USAA, the types of
9 evidence I've collected include scripting that
10 Safelite Solutions customer service representatives
11 use in the handling of those insurers' claims, I've
12 collected contracts between the insurers and
13 Safelite, I've requested -- I've requested and
14 received, collected claim files in certain
15 instances. The claim files themselves would
16 include all the documents of the claim file and the
17 recordings, if any. I've collected arbitration
18 opinions relevant to when an insurer and a glass
19 vendor go to arbitration. I can't think of any
20 other broad categories of the types of -- of
21 evidence that I've collected.
22 Q. And who were your sources of
23 information?
24 A. With respect to each of the categories
25 that I just named, almost entirely the insurers.

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1 Q. Who else?
2 A. The two glass vendors that you
3 previously mentioned, Rapid Glass and Alpine Glass,
4 both subsequently submitted claim information from
5 glass jobs that they had worked on during the time
6 frame at issue.
7 Q. And who are your points of contact at
8 Rapid Glass, would that be Rick Rosar?
9 A. Rick Rosar is the only person I can
10 recall ever having a conversation with from Rapid
11 Glass.
12 Q. And Alpine Glass, would that be Mike
13 Reid?
14 A. Yes; and same, I don't remember ever
15 having a conversation with anyone at Alpine Glass
16 other than Mike Reid.
17 Q. And was Chuck Lloyd another source of
18 information?
19 A. Chuck Lloyd is a source of information.
20 I believe the Attorney General's Office had an
21 affidavit from him.
22 Whether he was ever an information
23 source for me, I don't recall a time where he
24 provided me information, although I do -- now that
25 I'm thinking about it, I do believe he filed a

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1 complaint against Auto-Owners. So, other than the
2 complaint he filed against Auto-Owners, which was
3 in the fall 2015, I don't remember receiving
4 information directly from Mr. Lloyd.
5 Q. Anyone else? Did you talk to
6 J.T. Tumblin about this case?
7 A. Yes, I do recall having a phone
8 conversation with Mr. Tumblin.
9 Q. Do you remember how you were put in
10 touch with him?
11 A. I think that Mr. Tumblin's contact
12 information was given to me by Mr. Reid of Alpine
13 Glass.
14 Q. What about Brad Boardman?
15 A. Brad Boardman I had -- I also had a
16 phone conversation with. He was a former glass
17 manager for one of the insurance companies. We
18 don't have a file on that insurance company. I
19 think it was Kemper, but I -- I don't recall for
20 certain.
21 Q. How did you get in touch with him?
22 A. I don't remember. I don't remember
23 who provided me his contact information originally.
24 Q. Could it have been Chuck Lloyd?
25 A. Possibly. I -- I don't remember.

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1 Q. And what about a Mr. Gross?
2 A. I had a phone conversation with Paul
3 Gross. Paul Gross I believe runs a competing TPA
4 to Safelite; and as best I can remember, he
5 contacted me directly. I don't know how he got my
6 name or contact information.
7 Q. Anyone else?
8 A. I don't recall any.
9 Q. Did you talk to any other glass shop
10 owners?
11 A. I don't recall any, no.
12 Q. Do you recall speaking to any glass
13 shops that are a part of the insurance company's
14 network of providers?
15 A. No.
16 Q. Do you recall speaking to any
17 independent glass shops that typically agreed to
18 the pricing set by the insurance companies?
19 A. No.
20 Q. Who did you speak to to get a
21 perspective on the auto glass repair industry in
22 Minnesota?
23 A. Again, I -- I think almost all of my
24 information would have come from the insurers
25 themself and from Mike Reid and Rick Rosar.

Q. Did you have any conversations with anyone at the insurers themselves about the auto glass repair industry in Minnesota?
A. Yes. As part of the settlement negotiations, I remember with respect to Auto Club Group there was discussions as to the auto glass industry in Minnesota.
Q. Prior to settlement negotiations, were Rick Rosar and Mike Reid the only people you had conversations about to learn about the auto glass industry in Minnesota?
A. I think the conversation with J.T. Tumblin would have been before negotiations commenced. I don't remember the time frame with respect to Gross or Boardman, and I don't recall other conversations.
One thing that hasn't been discussed as an information was I attended an arbitration between Auto Club Group and Alpine Glass. I was invited by Mr. Reid, and the arbitrator requested permission from Auto Club Group, which was given, and I attended that. I think that arbitration was in May or June of 2014.
Q. In terms of conversations about how the auto glass industry operates in Minnesota, were

Mr. Reid and Mr. Rosar your primary sources of information prior to any settlement discussions?
A. Almost all of my information came from the insurers, and Mike Reid and Rick Rosar provided their perspectives on similar -- on similar issues.
Q. You're not answering my question. I asked in terms of conversations about how the auto glass industry operates in Minnesota, were Mr. Reid and Mr. Rosar your primary sources of information prior to any settlement negotiations?
A. Mike Hylar at The Auto Club Group and Sue Wagner at American Family were my primary information sources. Rick Rosar and Mike Reid to a much smaller extent provided information from their perspective as well.
Q. You told me that you did not have any conversations with people at the insurers. Are you changing your testimony?
A. No.
Q. Did you have conversations with Mike Hylar and Sue Wagner?
A. With respect to them producing responses to our requests for information I had conversations.
Q. Right, so that's not what I'm asking.

I'm asking in terms of conversations with people about how the auto glass industry operates in Minnesota, prior to settlement negotiations, were Mr. Reid and Mr. Rosar your primary source of information in that respect?
MR. LARSON: I'm going to object to the question as being compound and confusing.
THE WITNESS: From my perspective, my interactions with the insurers were my primary points of information. Mike Reid and Rick Rosar supplemented with their own perspectives.
BY MS. SASSOON:
Q. You are not asking [sic] my question --
MR. LARSON: You're asking two questions.
BY MS. SASSOON:
Q. -- so I'll keep asking it.
MR. LARSON: You're asking two questions. You're asking who did he have conversations with and what were his primary sources of information?
MS. SASSOON: No.
MR. LARSON: If you want to break those into two questions, he'll answer them.
BY MS. SASSOON:

Q. It's not two questions. I said in terms -- we're limiting ourselves to conversations that you had.
Within the universe of conversations you had about the auto glass industry in Minnesota on that topic, with respect to conversations, were Mr. Reid and Mr. Rosar your primary sources of information --
MR. LARSON: Object.
BY MS. SASSOON:
Q. -- on that topic?
MR. LARSON: It's a compound question. It's the same compound question you've been asking.
MS. SASSOON: It's not a compound question.
MR. LARSON: It is, because what you're saying is that the -- what you're saying is who did you have conversations with and were they the primary source of your information? The witness has said, no, they were not the primary source of information, he said it repeatedly.
If you want to ask him who he had conversations with, that's one question. If you want to ask him who his primary source of information are, that's a second question.

1 MS. SASSOON: You're misunderstanding
2 the question, but I can rephrase since you are
3 misunderstanding the question.
4 BY MS. SASSOON:
5 Q. On the topic of auto glass -- on the
6 topic of the auto glass industry in Minnesota, were
7 the conversations you had on that topic primarily
8 with Mr. Reid and Mr. Rosar?
9 A. If we're talking about telephone
10 conversations, they were -- I would not classify
11 them as primary, no. They were a point of
12 information, yes.
13 Q. Who else did you have conversations
14 with about the -- how the Auto Glass Industry
15 operates in Minnesota?
16 A. Again, with respect to the insurers
17 responding to the Department's request, I talked
18 with the two individuals I named at -- one at AmFam
19 and one at Auto Club Group.
20 Q. Did you conduct any interviews of
21 people at the insurance companies to gather
22 information about how the auto glass industry
23 operates in Minnesota?
24 A. No. We considered statements under
25 oath of the glass managers of those companies, but

1 they did not occur.
2 Q. Meaning you never requested statements
3 under oath of the glass managers of the insurance
4 companies?
5 A. No.
6 Q. No, you did not request those
7 statements under oath?
8 A. Correct, no, I did not request
9 statements under oath from the glass managers of
10 Auto Club Group or American Family.
11 Q. Did you request any statements under
12 oath from anyone at Safelite?
13 A. No. I would have no perspective as to
14 who to even request testimony from with -- within
15 Safelite.
16 Q. On top of the information you received
17 from the insurance companies, did you receive
18 evidence, including call recordings, from Alpine
19 Glass and Rapid Glass?
20 A. Yes. They have periodically provided
21 claim call recordings to the Department.
22 Q. Did you ask them to provide that
23 information?
24 A. In certain instances, they provided it
25 of their own volition, and certain instances I

1 believe I've requested it at various points in time.
2 Q. Did you have a sense of how they
3 gathered that evidence?
4 A. No.
5 Q. Did you have any understanding of how
6 they chose which call recordings to share with you?
7 A. No.
8 Q. Did you ever ask them?
9 A. No.
10 Q. Did you ever ask Mr. Lloyd for
11 assistance in gathering evidence?
12 A. Not that I can recall.
13 Q. Do you know if Mr. Fleischhacker asked
14 Mr. Lloyd for his assistance in gathering evidence?
15 A. Not that -- not that I'm aware of.
16 Q. What was your methodology for reviewing
17 the call recordings that you received?
18 A. With respect to the first round of
19 reviews that I did, I seem to recall American Family
20 producing 2500 or so recordings from an initial
21 request of three months of claim calls which we
22 narrowed to three randomly selected weeks. That
23 produced the 2500 claim calls. Initially I believe
24 I reviewed every 60th claim call. With respect to
25 Auto Club Group, I don't remember the numbers as

1 clearly, but it would have been a similar
2 methodology. It would have been however many the
3 number was, I would have picked a number where I
4 reviewed each interval.
5 Q. And what were you looking for when you
6 reviewed certain call recordings?
7 A. I was not looking for anything
8 specifically, particularly with the first round of
9 review as I didn't know what to expect. I did not
10 know what was contained in those calls.
11 Q. What did you learn that was notable in
12 your review of those calls?
13 A. I remember being surprised by the
14 duration of the calls, and I remember being
15 surprised by some of the repetition which occurred
16 during the calls.
17 Q. What do you mean by that?
18 A. With respect to the duration, I
19 remember being surprised because it took quite an
20 amount of time. I think we averaged maybe 12 up to
21 maybe even 30 minutes to -- for a insurer claimant
22 to file the glass claim over the telephone. So I
23 was surprised by that duration. With --
24 Q. And what about the repetition?
25 A. With respect to the repetition, I was

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1 surprised because I -- I didn't understand why that
2 was occurring.
3 Q. What repetition?
4 A. So for claim calls where a insured or
5 claimant would choose a shop that was not part of a
6 preferred network, depending on which insurer we're
7 talking about's program, once a non-program shop
8 was selected there were certain lines that would
9 get repeated with respect to checking with the
10 non-preferred shop about whether they offer a
11 warranty at all and what that -- what the scope of
12 any warranty they may offer includes, and there was
13 repetition with respect to a price was set -- a set
14 price was given by the Safelite Solutions customer
15 service representative, and it was referenced
16 repeatedly as to if the insured or claimant chose a
17 shop which charged more than whatever that set
18 price was that was stated, they would be liable for
19 the difference.
20 THE VIDEOGRAPHER: Approximately two
21 minutes left on this disc.
22 BY MS. SASSOON:
23 Q. How often was it the case that you
24 heard a claims call where an insured claimant chose
25 a shop that was not part of the preferred network?

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1 A. I think it's a very small number.
2 I -- any -- any approximation -- any number I gave
3 you would be an approximation, but I think it's
4 something like 5 percent where you have a claimant
5 or insured who chooses a shop that's both a
6 non-preferred shop and does not agree to the
7 pricing offered.
8 Q. So was it your understanding that many
9 non-preferred shops will agree to the pricing
10 offered by the insurance company?
11 A. I don't have a clear sense of what the
12 percentages are, but I know that there are some
13 non-preferred shops that do agree to the pricing
14 offered by the insurers.
15 Q. So those shops consider that pricing
16 fair and reasonable?
17 A. I don't know. I have -- I have no
18 knowledge of that. But they accept it, so that may
19 imply it.
20 Q. And putting aside this very small
21 number of calls where the customer chose a
22 non-preferred shop that also did not agree to the
23 pricing, did you have concerns about any of the
24 other call recordings?
25 A. Yes. I was concerned about where and

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1 when the statutory advisory was given. After I
2 began reviewing the first set of recordings that
3 the Department received during my involvement in
4 any type of -- any related files, it became
5 apparent that it wasn't being given consistently
6 prior to naming a shop or shops that were preferred
7 providers.
8 Q. We'll get back to that, but before the
9 tape is up, was that your only concern about these
10 other calls that you can think of today?
11 A. Yeah. I can't think of any other
12 examples of -- at this time.
13 THE VIDEOGRAPHER: Going off the video
14 record. The time is now approximately 11:00 a.m.
15 This is the end of disc number 1.
16 (Break from 11:00 to 11:09.)
17 THE VIDEOGRAPHER: We're back on the
18 video record. This is the beginning of disk
19 number 2. The time is now approximately 11:09 a.m.
20 BY MS. SASSOON:
21 Q. I want to go back to this first batch
22 of 2500 call recordings you said you received from
23 one of the insurance companies.
24 A. American Family.
25 Q. American Family. And you said you

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1 reviewed every 60th claim call. I just want to
2 make sure my math is roughly right. That would
3 mean you reviewed about 40 call recordings?
4 A. So that would have been the first
5 pass, right, where it would have been every 60th.
6 I certainly reviewed more than that subsequently.
7 Q. I'm just talking about this first
8 review that we were just talking about. In that
9 review of these 2500 recordings when you did every
10 60th, that would amount to reviewing about 40 calls?
11 A. Yes, I think that's accurate.
12 Q. And with respect to calls where you
13 said you were concerned about when the customer
14 service representative gave the advisory that's
15 required under Minnesota law, why were you concerned
16 about that?
17 A. In several instances, I realized that
18 the customer service representative from Safelite
19 Solutions was giving the name of a shop or a few
20 shops prior to the stated advisory.
21 Q. And was the advisory given right after
22 the customer service representative said the name
23 of some shops?
24 A. I don't -- I don't remember in every
25 case, but generally I believe that's true, yes.

Q. And do you know if the statute that sits out this mandatory advisory specifies when in a customer service conversation the advisory must be read?
A. So the statute at issue here would be 72A.201, Subd. 6(14), and my understanding of that part is that it requires that insurers provide claimants or insurers the chance to pick and prior to recommending preferred shops given the statutory advisory that insureds have the right to choose any shop they wish.
Q. To the best of your recollection, the statute states that it must be prior to recommending a shop?
A. Prior to recommending a shop, yes.
Q. On your recollection, that's in the text of the statute?
A. I think so, yes.
(Whereupon, Deposition Exhibit No. 87 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Eighty-seven.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. You've been handed Exhibit 87.

A. Yes.
Q. Is this the statute you were just referring to?
A. Yes.
Q. Can you show me where in the statute it says that the mandatory advisory must be stated prior to giving recommendation of a shop?
A. If you go to Subdivision 6, part (14) --
Q. What page is that in the --
A. It would be page 7 of the exhibit you just handed me.
Q. Uh-huh.
A. If you see (14) towards the top, go to the second paragraph, the second sentence of that second paragraph of (14), "This clause does not prohibit an insurer from recommending a vendor to the insured or from agreeing with a vendor to perform work at an agreed-upon price, provided, however, that before recommending a vendor, the insurer shall offer its insured the opportunity to choose the vendor. If the insurer recommends a vendor, the insurer must also provide the...advisory."
Q. So it says "the insurer must also provide the following advisory." So that's not the

same thing as offering the insurer an opportunity to choose a vendor; is that right?
A. Correct.
Q. And does it say here when the insurer must provide the advisory?
A. No.
Q. So in the text of the statute it doesn't state when the advisory must be given, correct?
A. Correct.
Q. So did you just remember the statute incorrectly?
A. Yes, I believe so.
Q. And were you remembering it incorrectly when you reviewed the call recordings?
A. No, I don't think so.
Q. But at the time you reviewed the call recordings you thought it was inconsistent with the statute to say the advisory later rather than sooner?
A. I remember from that time, it would have been probably July 2014, that -- that there were concerns that I had with the advisory being read.
Q. And what was the basis for those concerns if not in the text of the statute?

A. Again, so my -- I remember a concern as to whether the advisory was read as one, how -- whether the advisory was read in its entirety, or whether it was changed from the required language, and when it occurred in the claim call.
Q. So I'll ask you again, what was the basis for your concern about when the advisory occurred in the claim call?
A. So long as the insurance company provided the insured a chance to choose a shop, then, I would not have a concern.
Q. So even if the advisory came later, that's not inconsistent with the statute, correct?
A. Correct.
Q. You also said you had a concern about whether the advisory was read. Do you have a rough sense of how often in these call recordings that you listened to no advisory was read?
A. I don't have a sense of -- of the number, no. So if I -- if I reviewed 40 there were occurrences where that happened, I don't remember what the numbers broke down to.
Q. Do you have any recollection of the numbers with respect to whether the advisory was read in its entirety?

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A. I don't. I mean, there were instances where it wasn't read pursuant to the language required by that statute. The wording was somewhat changed or it wasn't read in its entirety, but I don't remember how often that happened of the ones that I sampled.
Q. So that was the first sample. What other call recording samples did you receive?
A. So, again, I don't remember the specific methodology for The Auto Club Group's first review. That would have been laid out in my memorandum for that case, but there were definitely subsequent reviews to the first one with American Family. I don't remember exactly when that took place chronologically.
Q. Those were subsequent reviews of the same 2500 calls or another set of calls?
A. I believe what happened with respect to subsequent reviews was we requested a supplement from the insurers to narrow the claim calls to those where pricing was not agreed to. So the subsequent reviews did not involve the entire universe of what had been previously provided, it was specific to instances where price wasn't agreed to, and I don't remember exactly at what point in

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time those occurred or how many total calls from those subsequent reviews I listened to.
Q. Do you remember how often in those calls the customer would change his or her mind about what shop to go to?
A. Again, I only remember that it did occur sometimes. I don't have a sense of either a percentage or a total number.
Q. In your view, were those instances where a customer changed his or her mind the worst examples of coercion on the part of the customer service representative?
A. Will you read back the question for me, please?
Q. I'll actually rephrase, because I'm worried worst -- the sense in which I'm using worst could be misunderstood, so --
In your view, were those instances when a customer changed his or her mind the best examples of coercion by the customer service representative?
A. From my perspective, the best answer to your question is that there were two instances that when they took place I would consider the best examples of coercion. The first is what you

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referenced in your question. The other is when the language about balanced billing was repeated several times.
Q. And where language was repeated several times but a customer stuck with his or her original shop of choice, you thought they had been coerced?
A. No.
Q. But yet you see that as one of the best examples of coercive conduct by a customer service representative?
A. Yes, because when that occurs, it has a higher likelihood, in my opinion, to lead to coercion with somebody else. So if similar conduct takes place on another claim call, I think it heightens the chance the insured would elect not their vendor of choice.
Q. But if a customer does not switch shops of choice, would you agree that they have not been coerced?
A. Yes.
Q. In, roughly, how many examples did you find where a customer switched shop, shop of preference?
A. Again, I -- I don't have an exact

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number.
Q. Would it have been more than five?
A. I don't know. I --
Q. So it could have been less than 5 times in 2500 calls?
A. It could have been.
Q. Could it have been two times or less?
A. Sure.
Q. So you don't remember specifically more than two instances where a customer changed shop of preference in all the calls you listened to?
A. I have no ability to recall a specific number of times I remember.
Q. So it's possible that it was two times or less?
A. Again, sure.
Q. So is it the case that the DOC did not listen to all the call recordings it received from the insurance companies?
A. To the best of my knowledge, it did not listen to all the recordings it received.
Q. How did you decide what was an appropriate sample set?
A. Just my experience when we're dealing with a lot of claims. I had to in some way choose

a random sample. I don't remember how every 60th became the number I used, just my experience.
Q. Do you know how many calls Safelite handles a day?
A. A day? No.
Q. How did you decide that 40 calls was enough to review?
A. Again, I -- I don't know what my thinking was at that time. I needed a random sample, and that was what it turned out to be.
Q. So you chose a methodology of every 60th call which created a random sample. Did you do any analysis of how many calls total was appropriate to review?
A. No.
Q. You also received some call recordings from Mr. Reid and Mr. Rosar, correct?
A. Yes.
Q. Do you remember how many?
A. I do not.
Q. Was it more than 100?
A. I don't think so.
Q. Was it more than 50?
A. Over the past few years it might be as many as 50. I -- I don't have a sense of that. I

think that the number of claims that they have informed the Department about would probably be around 50. But whether they provided the recordings in addition to just telling us about a claim, I don't know.
Q. With respect to the recordings that they provided you, did you listen to all of those?
A. I don't know for certain. I -- I don't know if it was every one they provided or a majority of what they provided.
Q. Did you have a methodology for reviewing the calls that Mr. Reid and Mr. Rosar sent you?
A. Initially, again, it was just a sampling. If they provided me ten, I'd listen to a handful. So I don't -- I don't recall any specific methodology being applied to the ones that they provided, nor do I remember exactly how many I listened to.
Q. Was it the case that sometimes they would send you one call recording at a time?
A. I don't know if it was ever that low. It could have been.
Q. And do you know how they chose which recordings to share with you?

A. I'd be guessing. My guess would be that the ones that upset them the most probably went to us.
Q. Did you ask them whether that was the case?
A. No.
(Whereupon, Deposition Exhibit No. 88 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MS. SASSOON:
Q. You've been handed Exhibit 88. Do you recognize this document? Is that your handwriting?
A. I believe it is, yes.
Q. This is an e-mail exchange between you and Dou Her, is that how you pronounce it?
A. She went by Dee. I'm not exactly sure how to appropriately pronounce her first name, but Dee was a Commerce intern during summer 2014.
Q. And did she assist with the investigation of the insurance companies and Safelite?
A. I think that she may have reviewed some of the recordings at a certain point in time and highlighted ones she thought I should listen to.

Q. And here in these e-mails of July of 2014, you and Dee refer to three spreadsheets. Do you know what those spreadsheets are?
A. The only memory I have of spreadsheets with respect to the American Family file or is this from Auto Club Group?
Q. It says, "Please make a list noting the timing of any bad conduct by AAA/Safelite on the recordings." I imagine these are claims calls from AAA?
A. Yeah. I don't remember any spreadsheets from The Auto Club Group file, but it's voluminous. I --
Q. Do you remember --
A. I don't -- I don't have any memory of a spreadsheet.
Q. Do you remember making spreadsheets to document the call recordings as you reviewed them?
A. I did not, no.
Q. Did you have any method of documenting your review of the call recordings?
A. Yes. There was -- there is a Word document that I used, you know, one, two, three, et cetera, where I would list the -- the name of the insured or claimant, the claim number, referral

number, the timing sequence of -- of events.
Q. And your analysis of the call, is that included on the doc?
A. There may be handwritten notes, you know, like this to the right (indicating).
Q. So how would you keep track of whether you thought a call was of concern or not?
A. Well, again, oftentimes it was the random sampling, right. So I had a Word document where I just created a new entry for each call that I listened to.
Q. And in that entry, would you document your --
A. I -- I --
Q. -- concern of the call?
A. Right. So I would write a note to myself to come back to it if I thought there were any concerns.
Q. Have you produced that document to us, to your knowledge?
A. I've produced everything that I have to the Attorney General's Office.
MS. SASSOON: Has that document produced -- been produced, Oliver?
MR. LARSON: Everything we've gotten

on that subject would have been produced. So I don't -- you know, I haven't gone looking for it.
MS. SASSOON: Have you seen that Word document?
MR. STODDARD: I've seen Word documents, I haven't seen Word documents that have those notes.
BY MS. SASSOON:
Q. Can you give an example of the kind of notes that you would write on this document?
A. It would look just like this (indicating), you know, 1 -- 1, 2, 3, basic -- basic details under the numerals, and if I had any concerns I would have written some handwritten notes to the right of it for me to come back to.
Q. So you would write the concerns by hand and not in the computer?
A. Usually I would go through to keep organized, put the basic info in, print it off, and then as I listened to it substantively I would write notes.
Q. Do you have still have those notes?
A. I would assume so. I mean, literally everything I have has gone to the Attorney General's Office.

MS. SASSOON: Can you please make sure we have that? Because I don't think we have that.
MR. LARSON: All I can do is represent that what we got from Commerce was produced. It's not my obligation to try and go through digging through the production and see what's in it.
MS. SASSOON: Right, but we have reviewed the production, and I don't think it's in there.
MR. LARSON: Well, the --
MS. SASSOON: We'll double check, and we'll let you know.
BY MS. SASSOON:
Q. So do you recall how many call recordings you got from AAA?
A. I don't, substantially less.
Q. Would you have used a similar methodology to review the recordings?
A. Again, yes. I don't remember what the interval was used with The Auto Club Group for my first review of their claim recordings, but it would have been similar methodology.
Q. Dee says here on page 2 of this e-mail, so the beginning of the e-mail chain, "You were right, the difference between what was billed

and paid is due to the auto glass shops turning down Safelite's rates. However, I only found 3 out of the entire sample."
Do you understand her to be saying that she only found three samples where a glass shop turned down the rates proposed by the insurance company?
A. I don't recall what it's in reference to.
Q. Do you have an understanding based on this e-mail back and forth?
A. I don't remember the spreadsheet. So I -- I apologize, I don't remember what it's in reference to with respect to the spreadsheets or -- or with the billing and paying.
Q. Dee was asked to review the calls reflected on the spreadsheets, correct? That's what I gather without even know what the spreadsheets are.
A. I think that --
Q. Is that your understanding?
A. I think that's true, yes.
Q. And she's telling you here on July 14th, 2014, that on the spreadsheets she only found three of something out of the entire sample.

1 Do you see where she says that, "I only found 3"?
2 A. Yes.
3 Q. And I'm trying to understand what that
4 three is, and she says, the different instances
5 where "the difference between what was billed and
6 paid is due to the auto glass shops turning down
7 Safelite's rates." Do you see that?
8 A. Yes.
9 Q. You were surprised that it was only
10 three, weren't you?
11 A. It appears I was from the subsequent
12 e-mails that are provided here.
13 Q. Do you remember why you were surprised,
14 you thought it would be more?
15 A. I -- I don't remember.
16 Q. And do you remember what these notes
17 are that you took on the side? Are these more
18 details on the three instances where the shop did
19 not accept the pricing?
20 A. Possibly. It would make sense.
21 Q. And the first example you have there
22 it says Rapid Glass, correct?
23 A. Ah, yes, I see where you're
24 referencing.
25 Q. And the second example also says Rapid

1 Glass, correct?
2 A. Yes.
3 Q. And during the investigation, did you
4 come to understand whether it was usually Rapid
5 Glass or Alpine Glass that was the shop not
6 agreeing to the insurance company's pricing?
7 A. I -- I don't have any knowledge of
8 Rapid Glass or Alpine Glass agreeing to insurance
9 company pricing.
10 Q. In fact, they typically did not agree
11 to insurance company pricing, is that your
12 understanding?
13 A. They have some companies where there
14 are pricing agreements. I think there are a couple
15 where they do agree, but largely, no, they -- my
16 understanding is they don't agree to insurer pricing.
17 Q. You said when you reviewed the calls
18 there was a very small number of examples where a
19 non-network shop declined the insurance company's
20 pricing, correct?
21 A. Yes.
22 Q. And was it usually the same shops that
23 were not agreeing to the insurance company pricing?
24 A. I don't remember which shops were
25 involved specifically.

1 Q. Did you do any analysis to figure out
2 which shops were not agreeing to the insurance
3 company pricing?
4 A. No.
5 Q. And did you do any analysis to
6 determine why they weren't agreeing to the insurance
7 company pricing?
8 A. No.
9 Q. Did you do any analysis of why most
10 shops were agreeing to the pricing?
11 A. No.
12 Q. Do you have a sense of how many call
13 recordings you received in total over the course of
14 this investigation from insurers?
15 A. I could estimate that it was somewhere
16 between 3000 and 3250.
17 Q. On top of the 40 calls you already
18 talked about reviewing, how many more calls than
19 that do you estimate that you reviewed?
20 A. I would estimate that I've reviewed
21 somewhere between 150 and 250 claim call recordings.
22 Q. And those are 150 to 250 unique
23 recordings or you reviewed some more than once?
24 A. Unique recordings, and there -- I can
25 recall times where I listened to a recording more

1 than once, but I'm speaking specifically of unique.
2 Q. So I'm sorry to keep asking these
3 questions, I'm just trying to understand. You --
4 A. It's your time, Counselor, ask away.
5 Q. You reviewed about 40 out of the 2500,
6 and then where did these additional 110 call
7 recordings you reviewed come from?
8 A. There would have been a sam -- an
9 initial sampling from Auto Club Group. I don't
10 remember what that initial sampling was in terms of
11 amount that I first reviewed. There's also --
12 there was an investigation on USAA's glass claims
13 practices, where I would have reviewed several; and
14 since my first review with respect to American
15 Family Auto Club Group and USAA, I've gone back and
16 reviewed a narrowed down set where -- which involve
17 instances where, excuse me, non-preferred shops
18 decline the pricing.
19 Q. And you identified that set by asking
20 for it from the insurers or getting it from another
21 source?
22 A. We asked for it from insurers, and
23 there were also instances where I asked for claims
24 data during specific periods from Mike Reid at
25 Alpine Glass and Rick Rosar at Rapid Glass, but I

1 don't remember what those date ranges were or what
2 prompted those requests at those specific times.
3 (Whereupon, Deposition Exhibit No. 89
4 was marked for identification, and a copy is
5 attached and hereby made a part of this deposition.)
6 THE WITNESS: Thank you.
7 BY MS. SASSOON:
8 Q. Do you recognize this as the
9 declaration you submitted in connection with this
10 litigation?
11 A. I do.
12 Q. Did Mr. Larson ask you to submit this
13 declaration?
14 A. Yes.
15 Q. And did you draft it or did someone
16 else draft it?
17 A. Someone else drafted it.
18 Q. Who drafted it?
19 A. I'm not a hundred percent certain, but
20 my understanding would be Mr. Larson.
21 Q. Did you review it before you signed it?
22 A. Yes.
23 Q. Did you add anything to it when you
24 reviewed it?
25 A. Not that I recall.

1 Q. And did he interview you before he
2 drafted it for purposes of drafting it?
3 A. Yes.
4 Q. And you said you verified every
5 sentence in the declaration to make sure it was
6 true?
7 A. Yes.
8 Q. On page 2, paragraph 4 you say, "I
9 have listened to the call recordings provided by
10 auto glass service providers." Isn't it the case
11 that you only listened to some of the call
12 recordings provided by the auto glass service
13 providers? Sorry --
14 A. Yes.
15 Q. -- strike that.
16 The auto glass service providers,
17 would that be Alpine Glass and Rapid Glass?
18 A. I mean, I think that could be Safelite
19 providing them through their insurer clients. I --
20 Q. Well, it says here, "I have listened
21 to...call recordings provided by auto glass service
22 providers, along with a sampling of calls...provided
23 by insurers."
24 A. Yes.
25 Q. So who are you referring to when you

1 say "auto glass service providers"?
2 A. My understanding is that that's Alpine
3 Glass and Rapid Glass.
4 Q. And my understanding what you wrote
5 here is that you listened to all the recordings
6 provided by them or am I --
7 A. I --
8 Q. -- misunderstanding that?
9 A. I don't see all anywhere in there.
10 Q. Well, you say, I listened to a
11 sampling of calls provided by insurers, correct?
12 A. Yes.
13 Q. And do you say you listened to a
14 sampling of the calls provided by auto glass
15 service providers?
16 A. It says, "I have listened to the call
17 recordings provided by auto glass service providers."
18 Q. Do you agree that suggests you
19 listened to all the call recordings provided by
20 auto glass service providers?
21 A. I don't know that that suggests.
22 Q. You don't say here that you listened
23 to a sampling of those calls, correct?
24 A. No, it does not say that.
25 Q. But you do say you listened to "a

1 sampling of calls...provided by insurers," correct?
2 A. Yep, yes.
3 Q. Did you listen to all the call
4 recordings provided by auto glass service providers?
5 A. Again, I do not recall. I don't
6 believe that I've listened to every single one.
7 Q. Here you say, "In total, I would
8 estimate that I reviewed at least 100 calls."
9 A. Yes.
10 Q. Do you think that's a better
11 approximation than 150 to 250?
12 A. No, I do not. This was -- I don't
13 remember what date. This was April 22, 2015. My
14 reviewing is ongoing. I've listened to more calls
15 since this was filed.
16 Q. Got it. So at the time this was
17 filed, you had reviewed about 100 calls; is that
18 fair?
19 A. Without getting into attorney-client
20 communication, it was asked of me how many I
21 approximated that I had listened to up until the
22 date that this was filed, and I believe that a
23 hundred, approximately, is accurate.
24 Q. Okay. Looking at paragraph 6?
25 A. Okay.

Q. You say that "Safelite Solutions was consistently negotiating directly with insureds and auto glass service providers to settle and adjust insurance claims."
A. Yes.
Q. Was this assertion part of the basis for the administrative action that the Department of Commerce initiated against Safelite?
A. Yes.
Q. And that was before Judge LaFave; is that right?
A. Yes.
Q. And are you aware that Judge LaFave disagreed with this assertion?
A. My understanding is Judge LaFave has submitted a recommended order to the Commissioner in which he did not believe that Safelite was adjusting.
Q. And so he made a finding that was inconsistent with what it says here in paragraph 6; is that fair?
A. Yes.
Q. And he determined that there was no evidence that Safelite was negotiating directly with insureds, right?

A. I didn't read the recommended order in its entirety, so I don't know that.
Q. But your understanding is that he didn't think there was sufficient basis to claim that Safelite was acting as an adjuster, right?
A. That's my understanding, yes.
Q. And are you aware that he recommended dismissing the entire administrative action against Safelite?
A. I believe that is true.
Q. Have you had any discussions with anyone at the Department of Commerce about Judge LaFave's recommendations on the administrative action?
A. My only communications with respect to the recommended order is with Mr. Larson and Mr. Tostengard.
Q. And what were those conversations?
MR. LARSON: Object, it's privileged.
BY MS. SASSOON:
Q. Do you have a personal view about whether you agree with the Administrative Law Judge's recommendations?
A. I do not agree with them.
Q. Do you know if Mr. Fleischhacker

agrees with them?
A. I do not know.
Q. Have you had any conversations with Mr. Fleischhacker about what Commissioner Rothman will do in response to the recommendations?
A. I don't believe so, no.
Q. Have you had any such conversations with anyone at the Department of Commerce?
A. Yes. My supervisor, Pam Gergen, and I had a conversation. She, again, as we've discussed previously is not in the loop, for lack of a better term, with where things stand in this case. I do my best to at least give her the highlights. When Mr. Tostengard provided us with a copy of the recommended order, I forwarded it to her, then had a subsequent meeting in her office, it lasted maybe five minutes, where I stated basically what you just did. My understanding was is that the Judge disagreed with the Department's positions.
Q. And what did Ms. Gergen say in response?
A. I think she was surprised, but I don't remember specifically what -- what she said or what her reaction was.
Q. Did she give a view about whether the

Department of Commerce should continue to pursue those allegations against Safelite?
MR. LARSON: Objection, calls for privileged information.
MS. SASSOON: If there was no attorney present, then --
MR. LARSON: It goes to litigation strategy, and that's what you're getting into now. So I'm going to instruct the witness not to answer.
BY MS. SASSOON:
Q. What's your understanding of the term balance billing?
A. My understanding of the term balance billing is when a insured or claimant has work performed at a shop, the shop charges an amount which the insurer finds to be above what's fair and reasonable for the geographic area in which the work occurred, and the insurance company would then remit payment to the shop where the work was performed, and that amount is less than what was billed by the shop for the work. The difference would be the potential of a balance bill where an insured or claimant would then be responsible for that amount.
Q. Turn back to that in a second, I just

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want to look at paragraph 7 of your declaration. It says, "the calls implied that Safelite Solutions was determining the amounts to be paid for the services in question without any consultation with the insurer." Was this another basis for the administrative action against Safelite?
A. Yes.
Q. And this, too, was something that the Administrative Law Judge determined did not have an evidentiary foundation?
MR. LARSON: You know, I'm going to object at this point. I mean, you indicated that we were not going to be -- when I deposed your folks --
MS. SASSOON: Oliver.
MR. LARSON: -- what you said is we would not get into -- you did not want to be getting into --
MS. SASSOON: Oliver, this is in his declaration in this case. So I'm allowed to ask about his declaration in the preliminary injunction hearing in the federal case, that's all I'm asking, and I won't go beyond that after this. I just have a couple more questions.
MR. LARSON: All right, that's fine.

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But, you know, the -- I thought we had an agreement we weren't going to get into this kind of discovery.
MS. SASSOON: I don't think this is relevant to our case.
MR. LARSON: If you've got two questions, I don't have an objection.
MS. SASSOON: Okay.
MR. LARSON: I don't want to be spending two hours here, though, going over this crap.
BY MS. SASSOON:
Q. Turning to paragraph 7?
A. Yes.
Q. I believe you just testified that this also was part of the basis of the allegations against Safelite in the administrative action; is that right?
A. Yes.
Q. And is it your understanding that the Administrative Law Judge disagreed with this assertion?
A. I don't know that specifically, no. I know that from the recommended order he disagreed with the Department's position, but I don't remember from my skimming of that recommended order

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what his position was on -- on the pricing and data.
Q. But he ultimately disagreed with any ultimate claims resulting from these factual assertions; is that fair?
A. I believe that's accurate, yes.
Q. Okay. Turning to paragraph 8, it says, "Where insureds expressed their intent to use a non-Safelite or insurer affiliated provider, Safelite Solutions consistently attempted to persuade the insured into using a Safelite Solutions or insurer affiliated provider by representing that the insured risked being balance billed for amounts the un-affiliated shop might charge beyond those deemed reasonable by Safelite." And you reached this conclusion based on your review of the claim recordings; is that right?
A. Yes.
Q. And, also, from conversations with Mr. Reid, for example? Is this something he complained about?
A. Mr. Reid would characterize it, most likely, as steering. The impact of this would be steering away from -- from his shop. But whether conversations with Mister -- Mr. Reid were involved in -- in paragraph 8, I don't -- I don't know that.

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Q. And where you say in paragraph 8 "Safelite Solutions consistently attempted to persuade the insured into using a Safelite Solutions...affiliated provider," would that include Safelite AutoGlass?
A. I don't know in every instance. I can recall instances where Safelite AutoGlass was not one of the ones listed by the customer service representative based on where the work was to be performed, but there were times when Safelite AutoGlass was one of the ones that were listed, yes.
Q. When you refer to using a Safelite Solutions affiliated provider, what shops would be Safelite Solutions affiliated providers?
A. I -- my understanding of this is insurer affiliated provider.
Q. So, then, are you saying they persuaded insurers into using a Safelite Solutions provider?
A. I'm sorry, I'm confused.
Q. You say here, "Safelite Solutions consistently attempted to persuade the insured into using a Safelite Solutions or" insured "-- insurer affiliated provider."
A. So that --

Q. So I understand what an insurer affiliated provider is. What is a Safelite Solutions provider?
A. A Safelite Solutions affiliated provider would be Safelite AutoGlass.
Q. So it's your understanding that Safelite AutoGlass is affiliated with Safelite Solutions?
A. Yes.
Q. It says at the end of this paragraph, "Many telephone calls involved efforts along these lines at least twice." Now, when you say many, wasn't it your testimony that there were very few calls that involved non-preferred shops that would not agree to the insurance company pricing?
A. So the universe of claims calls that I listened to that were produced, a small number involve an insured or claimant that selects a non-preferred shop and when that non-preferred shop declines the pricing offered.
Q. So when you say many calls, you mean many of that small universe of calls?
A. Yes.
Q. But that's not explained in this affidavit, right?

A. Further explained? No.
Q. Well, the fact that this is a small universe of calls where this takes place is not explained anywhere in the affidavit, correct?
A. I don't believe so.
Q. In the next paragraph you say, "Safelite...consistently used an un-affiliated shop's refusal to agree to Safelite Solution's" [sic] "quoted price in a further effort to convince insureds that they risked being balance billed." At the end you say, "This occurred even on calls in which the auto glass service provider specifically stated that the provider would not balance bill the insured."
So did these call recordings involve the customer service rep, the insured, as well as a representative from the non-preferred shop?
A. Yes.
Q. And you heard some calls where the representative from the non-preferred shop would tell the customer that there was no risk of being balance billed in that scenario?
A. There are many calls where the glass shop, a non-preferred glass shop is on the line, and the representative of that non-preferred glass

shop says, "Mr. or Mrs. Insured or Claimant, we do not balance bill."
Q. So on those calls the shop had an opportunity to explain to the customer their specific billing practices; is that right?
A. Their billing practices? I don't know if I would characterize it that way. They explain to them that that shop that they had chosen would not balance bill them.
Q. So on these calls the shop had an opportunity to explain their own practices with respect to balance billing; is that fair?
A. Their own practice was to not balance bill.
Q. So on these calls the shop had an opportunity to explain that that particular shop did not engage in balance billing, right?
A. Yes.
Q. And the customer heard that?
A. Assuming so, yes. I have no reason to believe the consumer didn't hear it, although the Safelite customer service representative and the representative of the non-preferred shop were usually talking over one another, and I don't think it resulted in a very clear presentation of the

information. But I have no reason to suspect specifically that they did not get it.
Q. In fact, you heard it when you listened to the call recordings, right?
A. Yes.
Q. So if you heard it, the customer probably heard it, too, right?
A. I -- I don't know if that's true. I don't know if the consumers reporting these calls are listening as closely as I am. I have no basis for -- for knowing that.
Q. Looking at paragraph 10 you said that "During the Department's investigation, I interviewed or discussed these issues with many different people who worked both for unaffiliated auto glass service providers and insurers."
When you say "these issues," are you referring to balance billing?
A. Yes. This -- this paragraph addresses balance billing issues.
Q. So who are the many different people you spoke to about balance billing issues?
A. It would have been conversations during the investigative process with representatives of USAA and their attorneys, Auto Club Group and

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1 their attorneys, American Family and their
2 attorneys, and the complainant shops.
3 Q. And what did representatives of these
4 different insurers tell you about balance billing?
5 A. We requested -- when the issue came up
6 during settlement negotiations with Auto Club
7 Group, Auto Club Group -- it was requested of them
8 that they provide us information on balance billing
9 if they're aware of it. They could provide no
10 examples.
11 Q. And you said you also spoke to the
12 complainant shops. Did you talk to anyone else
13 about balancing billing?
14 A. Not that I can recall.
15 Q. What did the complainant shops tell
16 you?
17 A. That their shops do not go balance
18 bill the consumers who came to them for the work to
19 be performed.
20 Q. And those shops are Alpine Glass and
21 Rapid Glass, right?
22 A. Yes.
23 Q. Did you talk to any other glass shops
24 in Minnesota?
25 A. Not that I recall, no.

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1 Q. Did you do a survey of Minnesota glass
2 shops' balance billing practices?
3 A. No.
4 Q. Do you know how many glass shops there
5 are in Minnesota?
6 A. I think it was referenced in -- in
7 some of the litigation materials, but I don't recall.
8 Q. Do you recall whether it's over 100?
9 A. Glass shops in Minnesota? I think it
10 was over a thousand, but I don't remember further.
11 Q. So over a thousand glass shops in
12 Minnesota and you spoke to two of those shops about
13 their balance billing practices, right?
14 A. Yes.
15 Q. And on that basis, you reached the
16 conclusion that it was misleading for Safelite to
17 warn customers that they might be balance billed in
18 Minnesota?
19 A. From the insurers responding that they
20 couldn't provide us any examples across their
21 thousands of claims in Minnesota each year and from
22 our conversations with the two complainant shops, I
23 concluded that, yes, it was misleading.
24 Q. Do you know the balance billing
25 policies of every glass shop in Minnesota?

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1 A. I do not, no.
2 Q. Does the Department of Commerce know
3 about the billing -- balance billing policies of
4 every glass shop in Minnesota?
5 A. No, but we've requested whether
6 Safelite has any knowledge of it happening and have
7 not gotten a response.
8 Q. So that's a no?
9 A. That is a no.
10 Q. Do you know the balance billing
11 policies of any shops in Minnesota other than Rapid
12 Glass and Alpine Glass?
13 A. No.
14 Q. Is it against the law to balance bill
15 in Minnesota?
16 MR. LARSON: I'm going to object to
17 the extent it calls for a legal conclusion.
18 BY MS. SASSOON:
19 Q. Do you have a view on whether it's
20 against the law to balance bill in Minnesota?
21 A. I do not believe it is against the law
22 in Minnesota.
23 Q. Would you agree that it's at least
24 possible that there are some glass shops in
25 Minnesota that do balance bill their customers?

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1 A. Possible, yes.
2 Q. And on what basis do you think an
3 insurance company would be aware of whether a glass
4 shop that is not within their preferred network of
5 providers balance bills customers?
6 A. I have no basis to know the answer to
7 that.
8 Q. Have you ever seen language in --
9 strike that.
10 Have you ever looked at invoices of
11 any Minnesota glass shops?
12 A. Over the two years or so that I've
13 investigated glass-related issues, I do believe
14 that Alpine Glass and/or Rapid Glass have provided
15 copies of some invoices. When that was or how many
16 it was, I do not remember.
17 Q. Have you seen invoices from any shops
18 aside from Alpine Glass or Rapid Glass?
19 A. Not that I can recall.
20 Q. Have you ever seen language in a
21 Minnesota glass shop invoice that reserves the
22 right to balance bill a customer?
23 A. Not that I can recall.
24 Q. If you did see that, would you
25 consider it relevant to the question of whether

1 shops balance bill in Minnesota?
2 A. Relevant? Sure.
3 Q. Would you consider it relevant if
4 glass shops in Minnesota reserve the right to
5 balance bill to whether Safelite was misleading
6 customers about balance billing, the risk of
7 balance billing?
8 A. Please repeat the question?
9 Q. Sure. If glass shops in Minnesota,
10 indeed, reserve the right to balance bill on their
11 invoices, would you consider that relevant to
12 whether it is misleading to tell customers about
13 the risk of being balance billed?
14 A. Relevant? Yes.
15 Q. In what way?
16 A. It's relevant because it's subject
17 specific, it's on point, and it -- and it opens the
18 possibility of it occurring.
19 Q. Would that potentially show that it's
20 not misleading to warn customers about the
21 possibility of balance billing?
22 A. Do I think that it shows that it's not
23 misleading? No, I do not, because of the way in
24 which it's used in the claim calls.
25 Q. If you were a customer for auto glass

1 repair in Minnesota and there was a risk of being
2 balance billed, would you want to know about it?
3 A. If there's a legitimate risk, yes.
4 Q. If shops were reserving the right to
5 balance bill a customer, would you want to know
6 that as a customer for auto glass repair?
7 A. If it doesn't take place, no.
8 Q. If a shop reserves the right to
9 balance bill a customer and it presented a potential
10 risk, would you want to know that as a customer for
11 auto glass repair?
12 A. Yes.
13 Q. And part of this investigation was
14 about protecting consumer interests, right?
15 A. Yes.
16 Q. Oh, I'm handing you what's previously
17 been marked as Exhibit 47.
18 A. Okay.
19 Q. Have you ever seen this before? I'll
20 represent that this is an invoice for auto glass
21 repair work from Lake Side Glass, which is a glass
22 repair shop in Minnesota. Is this the first time
23 you're seeing this document?
24 A. I don't remember seeing it previously.
25 Q. If you look at the top of the invoice,

1 you'll see Lake Side Glass is located in Minnesota,
2 right?
3 A. There is a P.O. box in Minnesota, yes.
4 Q. I just want to draw your attention to
5 the bottom of the invoice, that small print.
6 A. Okay.
7 Q. And if you will follow along you'll
8 see it says, "In the event the above named
9 Insurance Company does not make timely and/or full
10 payment of this Invoice according to its terms, I
11 here by accept responsibility for such payment and
12 agree to pay all charges reflected on this Invoice
13 to Lake Side Glass." Do you see that?
14 A. Yeah.
15 Q. And that asks for a customer signature
16 right above that statement, right?
17 A. There is no customer signature, but
18 there is a line for it, yes.
19 Q. So would you agree that if a customer
20 signed there they would be agreeing to potential
21 balance billing from Lake Side Glass?
22 A. Yes.
23 Q. And that means that if the insurance
24 company doesn't pay the bill the customer is
25 potentially responsible for payment to Lake Side

1 Glass, right?
2 A. Potentially, yes.
3 Q. So this would be an example of a
4 Minnesota glass shop invoice reserving the right to
5 balance bill a customer, right?
6 A. Yes. And I'm -- I'm assuming that the
7 glass shop here, Lake -- Lake Side Glass, would
8 need to go through this with the consumer to get
9 the consumer's signature, if that was their policy
10 or if they planned on enforcing it.
11 Q. Do you have any understanding whether
12 other glass shops in Minnesota have a similar policy?
13 A. I do not.
14 Q. Turning back to the declaration, back
15 to paragraph 10 --
16 A. Okay, hang on one second; okay,
17 paragraph 10.
18 Q. So you say, "Every person I spoke with
19 stated that they were not aware of any...glass"
20 shop "service provider in Minnesota that balance
21 billed their customers. Instead, the industry-wide
22 practice was...for the auto glass service provider
23 to write off the short pay, or take an assignment
24 of any insurance recovery or proceed to arbitration."
25 And I just want to confirm your understanding of

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1 industry-wide practice. Again, is that limited to
2 your conversations with the insurers and Rapid
3 Glass and Alpine Glass?
4 A. And my internal conversations within
5 the Department, yes.
6 Q. Turning to paragraph 14?
7 A. Okay.
8 Q. It says, "In response to this
9 litigation, the Department had certain recordings
10 transcribed," and, then, attached to your affidavit
11 are a number of call recordings?
12 A. Yes.
13 Q. Do you remember how -- were you
14 involved in selecting which call recordings would
15 be transcribed?
16 A. Yes.
17 Q. And how did you pick which ones to
18 transcribe?
19 A. I think it was a result of a
20 conversation with counsel.
21 Q. Did you think these call recordings
22 best illustrated the legal arguments that the
23 Department of Commerce was making in this case?
24 A. I thought that they were good
25 examples, yes.

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1 Q. And do you remember why you thought
2 they were good examples?
3 A. I -- I don't remember specifically
4 each -- each one as to why it was picked as a good
5 example.
6 Q. If you look, paragraphs 15 through 21,
7 it describes each call, and each call is either a
8 call with Rapid Glass or Alpine Glass. Do you see
9 that?
10 A. Yes.
11 Q. Do you remember if the call recordings
12 transcribed and attached here were ones that were
13 provided directly by Rapid Glass and Alpine Glass?
14 A. If Rapid Glass and Alpine Glass were
15 on the call, they were most likely produced by
16 Rapid Glass and Alpine Glass.
17 Q. So the calls that were chosen for
18 transcription were ones that had been provided
19 directly by Rapid Glass and Alpine Glass, most
20 likely?
21 A. I don't know that for sure, but it
22 makes sense to me that that is true.
23 Q. And so that would mean they would not
24 be calls that you listened to in your random
25 sampling of recordings provided by insurance

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1 companies, right?
2 A. That's correct.
3 Q. And so these weren't record -- these
4 recordings weren't transcribed to be a representative
5 sample, right, they were chosen to be the worst
6 examples of Safelite behavior?
7 A. I don't know that to be true. I don't
8 remember the conversation with counsel at the times
9 these were picked. They certainly are examples
10 that support the Department's positions on these
11 issues.
12 Q. Did you think, do you remember if you
13 had a view about whether in these calls Safelite
14 Solutions violated Minnesota law?
15 A. Again, I don't remember these calls
16 specifically, but -- so I can't -- I can't answer
17 your question.
18 Q. Do you remember if any of these
19 recordings involved an instance where a customer
20 chose to change shop --
21 A. I do not --
22 Q. -- choices?
23 A. I do not remember, no.
24 Q. Would you be surprised to hear that in
25 none of these does the customer change his or her

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1 mind about which shop to go to?
2 A. Would I be surprised? No.
3 Q. Why not?
4 A. Again, if you -- if we go back to your
5 line of questions as to how many I can recall, I
6 can't remember with any specificity how many calls
7 I remember listening to where a insured or claimant
8 ultimately chose a different shop. So, assuming
9 based on that limited memory that there are only a
10 few that I've listened to that -- where that
11 occurred, it stands to reason that of however many
12 are here, I don't know how many examples but a very
13 small number, there wouldn't be any.
14 (Whereupon, Deposition Exhibit No. 90
15 was marked for identification, and a copy is
16 attached and hereby made a part of this deposition.)
17 THE COURT REPORTER: It's 90.
18 THE WITNESS: Thank you.
19 BY MS. SASSOON:
20 Q. You've been handed what's been marked
21 as Exhibit 90.
22 A. Okay.
23 Q. Do you recognize this as your
24 handwriting?
25 A. Yes.

Q. And in the corner it says "TJP Notes." Does that mean these are your nort -- notes?
A. Yes. That's my practice for when I've written not off a computer printing.
Q. And do you know what these notes are about?
A. Across the top it says "Rapid Claims from May 2014," and I take that to mean Rapid Glass involved claims from May 2014. As to -- with respect to which insurer, I -- I do not remember.
Q. But would these be notes you took when listening to call recordings provided by Rapid Glass?
A. Yes, they appear to be.
Q. And when you were listening to these calls, were you looking for potential violations of Minnesota law?
A. If I heard something on the recording that I thought could be a potential violation, I attempted to record it in writing, yes.
Q. Turning to the second page, so the back of the first page, if you look where it says Karen Brown, do you see that?
A. Second from the bottom, yes.
Q. And do you see on the right-hand side there's a little box and it says 12:14?

A. Yes.
Q. Would 12:14 be the time in the -- the time in the call recording when certain statements were made?
A. I believe that's accurate.
Q. And when you write stay with current provider, question mark, what do you mean by that? Does that mean the customer ultimately stayed with the glass shop that they had chosen?
A. I believe that references a point in the claim call recording where a question was asked by a Safelite Solutions customer service representative to the insured or claimant as to whether they would like to stay with their current provider, and based on my notes here it appears that the answer was yes.
Q. And, then, you say underneath "coercion." What does that mean there?
A. Most likely it was a note to myself or a reference to myself that there's the potential for coercion from this call recording.
Q. And if you look at 13:22 you wrote again stay with current provider, question mark, yes. So the customer ultimately stayed with the non-preferred shop, is that what those notes

reflect?
A. From my notes, that that appears to be true, yes.
Q. And you still considered that coercion?
A. Based on the repetition of the question over and over again, yes.
Q. And is the same true of the next entry, if you look at the notes to the side?
A. Okay. So I'm looking at the notes to the side.
Q. And it says stay with shop and the customer said yes, is that what you see there?
A. I can't tell as there's a question mark after the yes, but --
Q. Is that after the yes or after the stay with shop?
A. To me, it looks like after the yes, but I don't -- I don't recall this.
Q. Okay. That's it about that.
MS. SASSOON: How long have we been going, about an hour?
THE VIDEOGRAPHER: An hour and five minutes.
MS. SASSOON: Okay. Should we take a break for lunch?

MR. LARSON: Sure.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 12:14 p.m.
(Break from 12:14 to 1:00.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 1:00 p.m.
You understand you're still under oath?
THE WITNESS: Yes.
THE VIDEOGRAPHER: You may begin.
BY MS. SASSOON:
Q. Do you remember the first inter -- interaction you had with Mike Reid of Alpine Glass?
A. I don't.
Q. Do you remember if it was after you took over the investigations in April 2014?
A. It would -- it would be after, yes.
Q. Did you ever meet him in person?
A. Yes. I -- I met him in person at the arbitration between Auto Club Group and Alpine Glass that I attended.
Q. And was that the first time that you met him in person?
A. As far as I can recall, it's the first and only time I've ever met him in person.

Q. How about Rick Rosar, have you ever met him in person?
A. I have not.
Q. And what about Chuck Lloyd, have you ever met him in person?
A. Yes.
Q. When?
A. The first time was during the arbitration I just referenced. Mr. Lloyd was on a task force formed by the governor, the no-fault task force. He was a representative on the task force, and I was a presenter at one of the task force meetings; and so those are the two times that I can recall meeting him in person.
Q. Turning back to Mike Reid, have you ever spoken to him on the telephone?
A. Yes.
Q. How often?
A. I can't remember the last time that we spoke, and any number I gave you in terms of how often it would be an approximation. Approximately once every few months I would either get a telephone call or e-mail from him.
Q. Were those e-mails about the investigations of Safelite and the insurance

companies?
A. There were instances where Mr. Reid called or e-mailed to ask for a status update as to where things stood procedurally.
Q. On those investigations?
A. On the investigations, yes, and --
Q. And you would tell him?
A. I would -- I would share where in the process the investigations were, yes.
Q. What about Mr. Rosar, did you ever talk to him on the phone?
A. I don't recall ever having done so. It may have happened once. I don't -- I don't recall.
Q. And what about Chuck Lloyd?
A. Mr. Lloyd and I have a -- have certainly exchanged e-mails, I believe. I don't know that I've ever talken with him on the phone.
(Whereupon, Deposition Exhibit No. 91 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Exhibit 91.
BY MS. SASSOON:
Q. You've been handed Exhibit 91. Do you recognize this?

A. Yes.
Q. Is this a memorandum you wrote to Marty Fleischhacker and Pam Gergen in July of 2014 outlining or providing a memorandum of violations?
A. Yes.
Q. And this was a Memorandum of Violations allegedly committed by The Auto Club Group?
A. Yes.
Q. Did you write this?
A. Yes.
Q. Did anyone else help you write it?
A. Not that I recall, no.
Q. Did anyone edit it before you submitted it to Mr. Fleischhacker and Ms. Gergen?
A. We don't have a editing process. It would have been straight from me to Ms. Gergen.
Q. And this reflected your views about The Auto Club Group investigation up to that point?
A. Yes.
Q. And you did your best to be accurate in this memo?
A. Yes.
Q. And everything you included in here you considered to be truthful?

A. Yes.
Q. Okay. So turning to the beginning of this memo it says, "Alpine Glass's...complaint against The Auto Club Group...is a microcosm of the ongoing battle between automobile insurers and auto glass shops in Minnesota."
So was the investigation of The Auto Club Group originating in part from a complaint filed by Alpine Glass?
A. Not to my knowledge, no.
Q. So what did you mean by Alpine Glass's complaint?
A. Between the time the files were transferred to me and when I wrote this, I learned that Mr. Fleischhacker had been involved in -- in investigating glass claims related issues for 10 to 15 years prior to this; and so this is after I had attended the arbitration between the The Auto Club Group and Alpine Glass and had received substantial documentation, and so it's simply a reflection of what I'd learned to date.
Q. So what did you mean by Alpine Glass's complaint?
A. I -- I don't know.
Q. And you said the investigation of Auto

1 Club Group had been going on for 10 to 15 years.
2 Had any enforcement action been taken against Auto
3 Club Group in those 10 to 15 years prior to this?
4 A. Not that I'm aware of.
5 Q. Do you know why not?
6 A. I've only been at the Department of
7 Commerce for a couple years. I -- I really have no
8 sense of why what was done and when prior to my
9 joining.
10 Q. How long does an investigation
11 typically last?
12 A. It's a fair question but a difficult
13 one to answer. There are several investigations
14 that I get each year which take a matter of weeks
15 to resolve. There are several investigations that
16 I get assigned each year which take one year or
17 longer.
18 Q. What about 10 to 15 years, is that
19 unusual in your experience?
20 A. I don't know of any that have been
21 ongoing for that period of time.
22 Q. Could that be explained by a decision
23 by the Department of Commerce not to take action on
24 a complaint for a long period of time?
25 A. I'm not aware of it. It could be.

1 Q. Have any enforcement action been
2 recommended against Auto Club Group prior to this
3 time in 2014?
4 A. With respect to glass?
5 Q. Correct.
6 A. Not that I'm aware of.
7 Q. And do you know why?
8 A. Do not.
9 Q. And do you know if the nature of the
10 complaints against Auto Club Group over those 10 to
11 15 years were similar to the ones you discussed in
12 your memo here?
13 A. I do not.
14 Q. You describe the complaint between
15 Alpine Glass and Auto Club Group as "a microcosm of
16 the ongoing battle between automobile insurers and
17 auto glass shops in Minnesota." What is the
18 ongoing battle between automobile insurers and auto
19 glass shops in Minnesota?
20 A. I think the most straightforward
21 answer is the determination of what constitutes a
22 fair and reasonable price in a geographic area for
23 glass repair and replacement.
24 Q. And what's your understanding of the
25 different positions in that battle?

1 A. There are several insurance companies
2 and many glass shops which believe that the prices
3 offered by the major insurers are fair and
4 reasonable for the geographic area, and there are a
5 small subset of shops that disagree.
6 Q. So the shops that disagree are in a
7 minority?
8 A. Yes.
9 Q. It says here, "Automobile insurers
10 argue that auto glass shops are attempting to price
11 gouge by charging unreasonable prices."
12 A. Yes.
13 Q. Is it your understanding that
14 automobile insurers believe that Alpine Glass and
15 Rapid Glass are among those attempting to price
16 gouge?
17 A. Yes.
18 Q. And did you investigate that
19 allegation?
20 A. Investigated it to the extent that we
21 asked for pricing data from Auto Club and American
22 Family to support their positions.
23 Q. What did you learn?
24 A. Auto Club Group provided us with a
25 comparison of where Minnesota glass prices are in

1 comparison to the other states. I believe -- this
2 was sometime ago, but my recollection is is that
3 Minnesota glass pricing is the highest in the
4 country; and Auto Club Group also informed us that
5 they had not conducted their own pricing survey,
6 that they relied on the data provided by Safelite.
7 American Family did claim to have
8 performed a survey, but the data provided was
9 something that Safelite provided it. So, with
10 respect to them being able to substantiate their
11 position, it remained very unclear to us whether
12 the pricing data was accurate.
13 Q. Did you ever come to understanding of
14 whether Alpine Glass generally charged higher
15 prices than other glass shops in Minnesota?
16 A. My understanding is that it does, yes.
17 Q. And what about with respect to Rapid
18 Glass, did you come to an understanding whether
19 Rapid Glass generally charged higher prices than
20 other glass shops in Minnesota?
21 A. I have no information as to Rapid
22 Glass's pricing, but I do believe it is higher than
23 most other glass shops.
24 Q. Did you come to a view about whether
25 it was appropriate for Alpine Glass to be charging

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1 higher prices than other shops in Minnesota?
2 A. No.
3 Q. Were you sympathetic to their effort
4 to keep charging prior higher prices in Minnesota?
5 A. Am I sympathetic to it? No.
6 Q. You said that you learned prices for
7 auto glass repair are higher in Minnesota than
8 elsewhere in the country. Did you come to an
9 understanding of why?
10 A. The Auto Club Group did provide some
11 justification for why it thought it was. That
12 included our -- our harsh weather, resulting in
13 more glass damage, and it result -- and it was
14 justified by a string of court decisions which
15 permitted glass shops to petition a district court
16 for consolidation of hundreds or, in some cases,
17 thousands of individual claims which the shop had
18 received an assignment of benefits and proceed to
19 consolidate at arbitration. Those arbitrations
20 have resulted in six-figure awards. So, from my
21 memory, those are the two justifications Auto Club
22 Group provided.
23 Q. So those arbitrations keep glass
24 prices higher in Minnesota based on your
25 understanding?

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1 A. That was a justification used by The
2 Auto Club Group as to why that was the case. I
3 have no concept of why that's the case, but the --
4 Q. So do you --
5 A. -- argument as to the harsh weather
6 certainly makes logical sense.
7 Q. Why does it make logical sense?
8 A. There's more glasswork being done in
9 Minnesota.
10 Q. Why does more glasswork mean higher
11 prices?
12 A. It doesn't necessarily, but --
13 Q. So, then --
14 A. -- the wind --
15 Q. -- how does that explain --
16 A. The windshield could be, for example,
17 more damaged, though, and by having a more damaged
18 window it's more likely that needs to be replaced.
19 The more replacements you have versus repair the
20 higher the cost.
21 Q. Why would it be higher cost if you
22 have to do more replacement?
23 A. Replacements are significantly more
24 expensive than repairs. The more chips you have,
25 the more likely it is you need to have it replaced.

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1 Q. But why would it cost more to replace
2 a windshield in Minnesota versus to replace a
3 windshield in Florida?
4 A. That I don't know.
5 Q. So, in fact, harsh weather doesn't
6 explain why a replacement would cost more in this
7 state versus another state, would it?
8 A. No, the actual glass itself, no. But
9 as to the -- no, it doesn't.
10 Q. Turning back to these arbitrations,
11 you said that was a justification that The Auto
12 Club Group offered for why prices were higher?
13 A. Yes.
14 Q. Did you agree with that?
15 A. I have no reason to disagree. I mean,
16 I think they were probably talking from an average
17 claim, glass claim perspective. If they average
18 more replacement versus repair, the amount would be
19 higher than if they average more repair than
20 replacement cost per claim, and let me also --
21 Q. But did you --
22 A. -- specify --
23 Q. -- form your own --
24 A. And let me specify, that's what they
25 were showing us, was that the average cost per

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1 glass claim in Minnesota as compared to other
2 states. So it wasn't divided out in between what
3 is the average repair rate versus other states,
4 what is the average replacement rate for other
5 states. I may have confused that, I apologize.
6 Q. And was it The Auto Club Group's view
7 that prices were in part higher because of laws
8 like these arbitration laws that protected
9 independent glass shops?
10 A. They used the consolidate arbitrations
11 as a -- as a reason for why the price per claim for
12 glass was higher in Minnesota.
13 Q. And Minnesota -- is it your
14 understanding that Minnesota is the only state that
15 has these laws requiring arbitration?
16 A. I have no idea what other states' laws
17 are with respect to arbitration.
18 Q. Do you have any understanding of
19 whether laws in Minnesota are more protective of
20 independent glass shops than in other states?
21 A. I have no concept of that.
22 Q. So did you form your own view about
23 why prices were higher in Minnesota than in other
24 states?
25 A. No.

Q. Did you think that was relevant to evaluating whether certain shops were price gouging automobile insurance companies?
A. I didn't investigate that. We don't regulate glass shops.
Q. But you do receive complaints from glass shops about insurance companies, right?
A. Yes.
Q. And would that information be relevant to investigating the claims at these glass shops?
A. Potentially. The statutes are with respect to insurers or insurers agents, not with respect to the conduct of glass shops. But if glass shops engaged in willful misrepresentation or what have you and we had evidence of that, then, it may support an investigator's recommendation, but that's all hypothetical. I didn't investigate it in this case.
Q. If a shop is price gouging customers, would you agree that that's not in the interest of consumers?
A. Again, we don't regulate glass shops. So I don't have an opinion as to glass shop pricing or what they're charging. But price gouging for consumers, if that is, indeed, what they're doing,

price gouging, that was the position of Auto Club Group here, that's not good.
Q. That's not good for consumers if --
A. If we're --
Q. -- there's price gouging?
A. -- talking about me as the consumer and a vendor is -- is price gouging me, no, that's not good.
Q. It says here, "Glass shops accuse automobile insurers of coercing customers into cut-rate work and shoddy parts." In your investigation, did you find evidence of cut-rate work?
A. I was simply repeating what the glass shops had reported to us. No, I don't recall any evidence as to the quality of the repair or replacement.
Q. In your investigation, did you find any evidence of glass shops referred by automobile insurers using shoddy parts?
A. Please repeat the question?
Q. In your investigation, did you find any evidence of glass shops referred by automobile insurers using shoddy parts?
A. I don't recall.

Q. So you don't recall finding any evidence of glass shops referred by automobile insurers using shoddy parts, do you?
A. No.
Q. So you did not, in fact, find any evidence of consumers being coerced into cut-rate work or shoddy parts, did you?
A. No.
Q. So did your investigation resolve any of the accusations described in the first paragraph of this memo?
A. No. In fact, I think you probably paid more attention to that paragraph than anyone has previously, so I appreciate it. Previously it probably went ignored.
It's no Justice Scalia dissent, I agree, but I do my best.
Q. Not many things are, so --
Turning to the third paragraph of this memo --
A. All right.
Q. -- you said here, "For AAA, the process works like this. AAA insureds are provided a number on the back of their AAA insurance card." Strike that. I'd actually like to just go back to

what you said about the first paragraph.
A. Okay.
Q. When you wrote it, did you intend for people to read it?
A. I would think so, yes.
Q. And when you wrote it, did you consider what you've described in this first paragraph to be relevant to the overall memo?
A. Yes, because unlike Marty, who had been involved in these for 15 years, my boss does not. My boss, Pam Gergen, has very little contact with these issues. So this background section was largely intended for her to get a sense of what the different positions are.
Q. So --
A. These aren't my -- these aren't -- I mean, that's why it's a background section, not my conclusions.
Q. But you did consider this important context?
A. It's important for context, yes.
Q. Even though you never reached any conclusions about the validity of any of the allegations described in this first paragraph?
A. Yes.

1 Q. Okay. So you say here, "For AAA, the
2 process works like this. AAA insureds are provided
3 a number on the back of their AAA insurance card.
4 When the insured calls the specified number and
5 chooses the applicable options, a representative
6 from Safelite Solutions---an affiliate of Safelite
7 Auto Glass...and a direct competitor of Alpine,
8 Rapid Glass...and other Minnesota glass
9 shops---answers the call."
10 So here isn't it true that you
11 describe Alpine and Rapid Glass as competitors of
12 Safelite Solutions?
13 A. Again, I was referring to Safelite's
14 glass repair and replacement arm.
15 Q. Safelite's glass repair and
16 replacement arm is not, in fact, part of Safelite
17 Solutions, is it?
18 A. I have no idea what the corporate
19 makeup of it is. My understanding is, no, it's a
20 separate division.
21 Q. And I'm just asking about what you
22 wrote here, and what you wrote here is that
23 Safelite --
24 A. And all I can do is tell you what I
25 meant by that, and I have tried to do that.

1 Q. But this --
2 A. I don't -- I don't view -- I do not
3 view Alpine Glass or Rapid Glass competitors of
4 Safelite Solutions the TPA. I do view Safelite
5 AutoGlass to be a competitor of Alpine Glass and
6 Rapid Glass.
7 Q. I'm not asking about your current
8 views. I'm asking you about what you wrote in this
9 memo in July of 2014 and just --
10 A. And that's --
11 Q. -- ask you --
12 A. -- what I tried --
13 Q. -- to confirm --
14 A. -- to convey there.
15 Q. -- that you wrote here --
16 A. Yeah.
17 Q. -- that Safelite Solutions is a direct
18 competitor of Alpine and Rapid Glass. Did you
19 write that?
20 A. That's what's written right there.
21 Q. And so did you believe that at the
22 time?
23 A. As intended by how I clarified, yes.
24 Q. So at the time you wrote that Safelite
25 Solutions was a direct competitor of Alpine and

1 Rapid Glass, but you didn't believe that?
2 A. In July 2014, it's very unlikely that
3 I un -- fully understood the various divisions of
4 Safelite Solutions or Safelite's corporation as a
5 whole. Safelite AutoGlass, the wing which repairs
6 and replaces glass, is a competitor of Alpine Glass
7 and Rapid Glass.
8 Q. But at the time, you informed Marty
9 Fleischhacker and Pamela Gergen that Safelite
10 Solutions was a direct competitor of Alpine and
11 Rapid Glass, right?
12 A. Asked and answered, I have no new
13 answer for this question. It's written right here,
14 you read it, I've tried to tell you what I meant by
15 it.
16 Q. Well, I'm a little confused. Did you
17 mean to say something different or you just didn't
18 understand the nature of Safelite Solutions'
19 business? Because you're saying two different
20 things. So I'm trying --
21 A. In July --
22 Q. -- to understand between --
23 A. -- of 2014 --
24 Q. -- those two different things --
25 A. -- Safelite and --

1 Q. -- what you're saying?
2 A. -- I had no communications except for
3 the objections to the subpoena. I did not know
4 Safelite Solutions corporate divisions or how it
5 was separated out. Safelite AutoGlass repair and
6 replacement practice is a direct competitor of
7 Alpine Glass and Rapid Glass.
8 Q. But at that time, in your mind, Rapid
9 and Alpine Glass you considered a competitor of
10 Safelite Solutions, didn't you?
11 A. With respect to any auto glass or
12 repair that Safelite Solutions did, as it turns out
13 Safelite Solutions is a different division which
14 doesn't and only does TPA work.
15 Q. But at the time you were under the
16 misimpression, in your view -- I'm not saying it's
17 a misimpression. Strike that, let me start over.
18 At the time, whether it was correct or
19 a misimpression, you were under the view that
20 Alpine and Rapid Glass were competitors of Safelite
21 Solutions, isn't that what you wrote here?
22 A. With respect to repair or replacement
23 of glass.
24 Q. So, yes?
25 A. With respect to repair or replacement

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of glass, yes.
Q. During your investigation, did you come across reports provided to AAA by Safelite that were pricing surveys?
A. Please repeat the question?
Q. During your investigation, did you review any surveys completed by Safelite that were provided to AAA?
A. I believe there was something referred to as a top 15 or top 20 report or both. I seem to remember having a copy of -- of each version. I don't know if there was a reduced version and a -- and a larger version or whether it was different points in time. I do recall seeing a top 15 and/or top 20 report, which I believe was provided by Safelite to Auto Club Group.
Q. And on your understanding, was that report provided by the auto glass repair arm of Safelite or the claims administrator arm of Safelite?
A. I do not know.
Q. Did you have an understanding at the time?
A. No.
Q. Do you think it was the glass repair shop that made this report for AAA?

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A. Again, I do not know.
Q. Who had the contracts with the insurance companies, Safelite AutoGlass shop or Safelite Solutions?
A. Safelite Solutions was in contract with Auto Club Group.
Q. And so, in your view, is it more likely that it was Safelite Solutions providing these reports?
A. I do not have a view. I do not know.
Q. You write here on page 2, I'm looking at the last paragraph.
A. Okay.
Q. The second sentence.
A. Uh-huh.
Q. "Multiple arbitrators have independently found that the 'survey' conducted by AAA is inadequate. The survey purported by AAA relies on reports generated by Safelite, who, again, is in direct competition with Alpine."
A. Okay.
Q. So there do you describe Safelite as a direct competitor of Alpine?
A. With respect to its glass repair and replacement.

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Q. Do you say that here?
A. It is not there. You just read it verbatim.
Q. So did you ever in this memo qualify that when you were describing Safelite as a competitor of Alpine that you only meant the glass repair arm of Safelite?
A. The answer is, clearly, it is not clarified there.
Q. And here specifically you were referring to the part of Safelite that generates the reports provided to AAA; is that right?
A. Yes.
Q. And you expressed at this point that you were somewhat confused about the different parts of Safelite. Had you had any conversations with anyone at Safelite at this point?
A. Only with respect to its objections to the subpoenas.
Q. Anything else?
A. Not that I recall.
Q. If you could turn to page 4, please?
A. Okay.
Q. Sorry. First to page 3?
A. Okay.

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Q. This is the section where you summarize the allegations against The Auto Club Group; is that right?
A. Numeral 1, yes.
Q. And those complaints as described in this memo were limited to complaints received from Alpine Glass and Rapid Glass, correct?
A. Again, Marty Fleischhacker's personal experience is what started this file.
Q. But as described here, the two complaints are complaints from Alpine Glass and Rapid Glass; is that right?
A. I think I've gotten confused. Can you repeat the question?
Q. This is a section entitled Allegations, right?
A. Yes.
Q. Is this the part of the memo where you summarize the allegations that have been made against The Auto Club Group?
A. Yes. It looks like it's in four parts, one with respect to Alpine Glass claims, one with respect to Rapid Glass claims, Safelite's responses to the Department, and Safelite's responses to the subpoena, appear to be the four

1 categories.
2 Q. Aside from complaints from Alpine
3 Glass and Rapid Glass, do you identify any other
4 complaints filed with the Department against --
5 A. Well --
6 Q. -- The Auto Club Group or Safelite?
7 A. -- I think this is why I'm confused.
8 I don't see here where we're -- I'm talking about
9 specific Alpine Glass or Rapid Glass complaints.
10 I'm talking about claims that involved Alpine Glass
11 or Rapid Glass.
12 Q. So were these not complaints made by
13 Alpine Glass and Rapid Glass?
14 A. I can't recall specifically, but this
15 appears to break it down by claims that involved
16 Alpine Glass as the glass shop and claims that
17 involved Rapid Glass.
18 Q. I'm just following the description
19 starting from the beginning of the memo that this
20 is Alpine Glass's complaint against The Auto Club
21 Group.
22 A. Okay.
23 Q. If that's not the case, then, let me
24 know.
25 A. Well, again, I'm trying to explain

1 what these sections, 1, 2, 3 and 4 under
2 Allegations on page 3 are. The -- with respect to
3 Alpine Glass, numeral 1, its violations, potential
4 violations that I found involving Alpine Glass as
5 the glass vendor on claims. Number 2 is Rapid
6 Glass with respect to times where Rapid Glass was
7 the glass shop for claims.
8 Q. Turning to 1, Alpine Glass, it says,
9 "It is alleged that, with respect to Alpine, AAA
10 engaged in unfair...claims practices by failing to
11 provide: (1) the required advisory before
12 recommending the use of AAA's network of preferred
13 providers."
14 There's no allegation here, is there,
15 that AAA failed to provide the advisory at all, is
16 there?
17 A. There doesn't appear to be, no.
18 Q. And the second is that AAA "coerced
19 insureds by informing them that they may not
20 receive a proper warranty and/or may be back
21 billed"; is that right?
22 A. Yes.
23 Q. You concluded that "AAA's practices
24 are systemic," is that right, that's in the third
25 paragraph?

1 A. Yes.
2 Q. And you thought this was shown by the
3 scripts, right?
4 A. Yes.
5 Q. The contract between AAA and Safelite?
6 A. Yes.
7 Q. And in that contract, "Safelite
8 guarantees low average invoices in exchange for its
9 compensation"; is that right?
10 A. Yes.
11 Q. Did you think there was something
12 wrong with guaranteeing low average invoices?
13 A. I think that that term is problematic,
14 yes.
15 Q. Why?
16 A. Because it does one of two things, it
17 seems to me. It provides incentive for Safelite
18 and its customer service representatives to attempt
19 to sway insureds to have more repairs than
20 replacements or to have replacements done at lower
21 priced glass shops.
22 Q. And what's the problem, in your view,
23 with having a replacement done at a lower priced
24 glass shop?
25 A. I'm saying that from my perspective,

1 Safelite customer service representatives shouldn't
2 really have an interest in what shop is selected
3 regardless of what the shop charges.
4 Q. Is it a problem for a customer to have
5 a replacement done at a lower priced glass shop?
6 A. No.
7 Q. In fact, that's probably better for
8 the customer, isn't it?
9 A. Maybe.
10 Q. So you didn't reach a conclusion that
11 this contract which guaranteed low average invoices
12 in exchange for Safelite's compensation was
13 necessarily bad for customers, did you?
14 A. I don't understand the question.
15 From my perspective, the guaranteed
16 average invoice is problematic in the contracts
17 between Safelite and insurers.
18 Q. Is it problematic for customers?
19 A. I don't know.
20 Q. So what makes it problematic? Is it
21 problematic for independent glass shops?
22 A. Under Minn. Stat. § 72A.201,
23 Subd. 6(16), providing inducement or incentives for
24 insureds to choose another place is problematic,
25 and I think that that clause in their contracts

1 goes to that issue.
2 Q. How so?
3 A. Because, again, it provides a
4 financial incentive for Safelite and its customer
5 service representatives to attempt to sway insureds
6 into either more repairs on average than replacements
7 or replacements at lower cost shops, i.e., the ones
8 that are not non-preferred, don't agree to pricing
9 shops.
10 Q. And under the statute you just cited --
11 A. Auto Club Group and/or its agents
12 should not be involved in anything that provides an
13 incentive or inducement for its insureds or
14 claimants to choose one shop --
15 Q. What's the --
16 A. -- over another.
17 Q. -- incentive being provided to the
18 claimant?
19 A. It's a financial incentive for, in
20 this case, Auto Club Group's agent, Safelite, to
21 meet its guaranteed average invoice established by
22 contract.
23 Q. What's the incentive or inducement
24 provided to the claimant?
25 A. There's no incentive or inducement

1 provided to the claimant to --
2 Q. And isn't --
3 A. With respect to --
4 Q. -- that the language of the statute?
5 A. I don't know.
6 Q. You were just quoting it.
7 A. I used incentive or inducement. I did
8 not, that I recall, use claimant. But I'm assuming
9 you have a copy of the statute, we can look at it.
10 Q. I'm just repeating your words to you.
11 A. Okay.
12 Q. You said moments ago Auto Club Group
13 and/or its agents should not be providing in
14 anything that provides an incentive or inducement
15 for its insureds or claimants.
16 A. Simply a mis -- misspeaking.
17 Q. So what did you mean to say?
18 A. I believe the guaranteed average
19 invoice is problematic. I believe it provides a
20 financial incentive for Safelite and Safelite's
21 customer service representatives to sway insureds
22 to more repairs versus replacements or having
23 replacements done at lower priced shops.
24 Q. And what provision of Minnesota law do
25 you think this violates?

1 A. 45, Subd. 7(a)(4), seventy -- 72A.20,
2 Subd. 18(b) would be two examples of where
3 dishonest practices would violate Minnesota law.
4 Q. And did you have any evidence that
5 customer service reps for Safelite --
6 A. We attempted to subpoena them,
7 Safelite objected.
8 Q. So that's a, no, you don't have any
9 evidence that customer service reps were trying
10 to --
11 A. That is a no.
12 Q. -- achieve certain incentives?
13 A. When we attempted to find out what the
14 financial compensation of Safelite customer service
15 representatives were, it was not provided and
16 previously objected to.
17 Q. Do you remember Mike Reid telling you
18 that customer service reps would get a bonus if
19 they referred a job to Safelite AutoGlass?
20 A. I don't.
21 Q. Turning to page 4?
22 A. All right.
23 Q. Do you describe here your methodology
24 for reviewing claim calls involving AAA?
25 A. Yes.

1 Q. And it says here you've reviewed a
2 total of 70 claim calls; is that right?
3 A. That's what it says, yes.
4 Q. And if you look at the next paragraph,
5 it says Violations?
6 A. Yes.
7 Q. And here does it describe your
8 conclusion that Safelite violated Minnesota law by
9 not providing the required advisory at a particular
10 time in the claim call?
11 A. Yes.
12 Q. At the bottom of page 4 it says, "Of
13 the 25 claims reviewed twice, nine claim recordings
14 attempted to coerce insureds by warning them that,
15 by choosing a non-network shop, the work may not be
16 warrantied and they may be back billed."
17 A. Okay.
18 Q. What was your basis for concluding
19 that this was an attempt to coerce insureds?
20 A. My perspective on listening to the
21 recordings.
22 Q. And what formed the basis of your
23 perspective?
24 A. Trying to put myself in the insured or
25 claimant's shoes and how I would feel if I were in

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that position.
Q. Did any insured or claimant tell you that they felt coerced?
A. Again, I don't remember interviewing claimants.
Q. And what was the basis for drawing a conclusion about the intent of the customer service rep attempting to coerce insureds?
A. I don't understand the question.
Q. You wrote here that in "nine claim recordings" the customer service rep "attempted to coerce insureds."
A. I don't see any reference to the customer service representative from where you were --
Q. Okay. So who was attempting to coerce insureds?
A. I mean, it would be Auto Club Group or its agent, in this case Safelite Solutions.
Q. And the agent would be the customer service rep, wouldn't it?
A. Yes.
Q. So what is the basis for concluding that the customer service rep was attempting to coerce insureds?

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A. Same response, my take on listening to the recordings.
Q. Do you consider Mike Reid a reliable source of information about the Auto Glass industry?
A. Yes.
Q. Did you consider him a reliable source of information about the conduct of Safelite?
A. I had no reason to suspect that it wasn't reliable. I don't know that I ever formed a position on his reliability of his thoughts on Safelite.
Q. Did you consider that as the owner of an independent glass shop Mr. Reid might be biased against insurance companies?
A. Yes.
Q. And what did you conclude?
A. There's a likelihood that he might be.
Q. Did you attempt to find another source of information to confirm Mr. Reid's representations that would not share that bias?
A. Yes. We requested substantial information from insurers and from Safelite.
Q. Did you interview anyone at the insurers?
A. We took no statements under oath from,

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for example, glass managers of Auto Club Group or American Family.
Q. Why not?
A. I don't know.
Q. Was that your decision to make?
A. I -- I don't have any reason to suspect that it -- that if I proposed it that it would be not okay.
Q. Why didn't you propose it?
A. I don't recall.
Q. Did you form a view about whether you think Mr. Reid in filing complaints with the Department of Commerce was acting in the interest of Minnesota consumers?
A. Possibly tangentially. He was complaining like all of our complainants in their own self-interest.
Q. So you understood that Mr. Reid's complaints were made in his own financial self-interest?
A. His own self-interest.
Q. Would that include his financial self-interest?
A. I don't know.
Q. He never told you that he had a

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financial self-interest in the investigation?
A. No.
Q. Handing you what's been previously marked as Exhibit 22 --
A. Okay.
Q. -- do you recognize this e-mail?
A. It looks like an e-mail between Rick Rosar of Rapid Glass and myself.
Q. Do you remember if Mr. Rosar ever told you that he had a financial interest in the investigation?
A. No, I don't recall.
Q. If you look at this e-mail, it's a chain between you and Mr. Rosar.
A. Okay.
Q. And at the bottom he shared some information about AAA; is that right?
A. He talks about his invoices being paid in full before and after Safelite's involvement.
Q. With AAA, right?
A. Ah, AAA, yes.
Q. In response, you asked him if he had filed an arbitration against AAA for the short pays Rapid had received; is that right?
A. That's what it says here.

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Q. And Mr. Rosar writes back, "No, I was waiting to see if once you completed your investigations, that it" might "bring them to the table and negotiate with me or if there was anything your department might do that would make them pay." Do you see that?
A. Yes.
Q. And so did Mr. Rosar inform you that he was interested in the DOC doing things that would make AAA pay him?
A. According to this e-mail.
Q. And he thought -- was it your understanding that he thought the investigation might help him bring AAA to the negotiation table?
A. From this top e-mail, I -- I would infer that.
Q. Do you remember him telling you that?
A. No.
Q. Do you remember responding to this?
A. Nope.
Q. But after reviewing this e-mail, is it your understanding that Mr. Rosar, in substance, informed you that he had a financial self-interest in the course of the investigation?
A. I suppose that can be inferred from

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this, yes.
Q. Do you think that's appropriate?
A. I don't see a problem in terms of what he says to me. He can say whatever he wants to me.
Q. And he was, in essence, informing you that he had a financial stake in the investigation; is that right?
A. No. That is not how I would characterize it, I do not see this e-mail indicating he had a financial stake in the investigation. What it seems to me is that if our Department found that Auto Club Group was doing something wrong, it may correct that conduct going forward.
Q. And if that was the conclusion of the Department of Commerce, he might downstream benefit financially from that; is that right?
A. Possibly.
Q. And, in fact, he told you this in response to a question from you about whether he had filed an arbitration against AAA; is that right?
A. Yes.
Q. And so --
A. We -- we were in the process of collecting arbitration opinions. If there was another arbitration coming up, we would have

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requested that arbitration opinion.
Q. And he told you he was waiting to make a decision about that based on the course of the investigation; is that right?
A. That's what it says.
THE WITNESS: I'd like to just refill my water glass.
MS. SASSOON: Of course.
THE WITNESS: I don't want -- I don't want --
MS. SASSOON: Thayne, will you do that?
THE WITNESS: We don't necessarily need to take a break.
THE VIDEOGRAPHER: I can get it.
THE WITNESS: Oh, that would be great. Thank you very much.
THE VIDEOGRAPHER: You're very welcome.
BY MS. SASSOON:
Q. I've handed you what's previously been marked as Exhibit 58.
A. Okay.
Q. Do you recognize this e-mail exchange between you and Mike Reid, with Mr. Lloyd and Mr. Fleischhacker cc'd, that Mr. Reid then forwarded to Mr. Rosar?

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A. Yes.
Q. In his e-mail on November 6, 2014, Mr. Reid informed you, didn't he, that he was hoping that the settlement negotiations with insurance companies would benefit him financially; is that right?
A. Mike wrote, "I am hopeful that the settlement proposal proposed to AAA has some benefit to the glass industry as we have provided a lot of information to help with the investigation. The biggest outcome would be if Commerce is able to take action against insurers like AAA that force small glass companies to have ongoing arbitration."
I apologize, I've forgotten the question.
Q. Did you have an understanding of whether Mr. Reid was communicating to you that he was hoping there would be a financial benefit to the glass industry emerging from settlement discussions with AAA?
A. I think that that clearly does so, yes.
Q. And he thought he was entitled to that, didn't he, based on this e-mail, because he had provided a lot of information to the Department

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of Commerce to help with the investigation; is that right?
A. I have no idea what he feels entitled to.
Q. Did he communicate to you that he thought he deserved a benefit in return for the help with the investigation that he provided to the Department of Commerce?
A. It looks like he says he's hopeful for certain outcomes.
Q. Did you agree that he should be entitled to a financial benefit from the settlement with AAA?
A. No, I don't agree; and I don't know of any response that I made to this e-mail which would in any way support such an idea.
Q. Did you communicate to Mr. Reid that you thought that was an inappropriate suggestion?
A. No.
Q. And, in fact, do you remember that after this date you continued to provide Mr. Reid updates about the investigation and the settlement discussions?
A. I provided Mr. Update -- Mr. Reid with updates as to where things stood procedurally

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process wise in the investigation after this e-mail, yes.
Q. And you did that even though Mr. Reid had informed you that he was hoping for a benefit to emerge for him from the settlement discussions; is that right?
A. Yes. His statements did not stop me from providing him with basic updates as to where things were in the process.
Q. Did you have an understanding as to what kind of benefit Mr. Reid wanted?
A. No.
Q. It says here, "The biggest outcome would be if Commerce is able to take action against insurers like AAA that force small glass companies to have ongoing arbitration."
Did you, in fact, take any action against AAA for forcing small glass companies to have ongoing arbitration?
A. I don't remember what the final terms of the consent order were, but I do believe it was listed as one of the allegations that AAA engaged in arbitration repeatedly and in some cases the plaintiff prevailed. I do not remember any administrative action after that was listed in the

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allegations to that point.
Q. Did it concern you that Mr. Reid might use the information you provided about the ongoing settlement discussions for more leverage in his arbitration disputes with the insurance companies?
A. I didn't consider it at the time, and I didn't provide him with any type of substance I thought would result in such.
Q. So you were not concerned that Mr. Reid might use information you provided about ongoing settlement discussions for more leverage in his arbitration disputes with the insurance companies?
A. No.
Q. Did you agree with Mr. Reid in his e-mail here that he had provided a lot of information to help with the investigation?
A. I don't recall proportionally how much of the information in my file he provided versus anyone else, but it was a small percentage, but if we asked him for information he provided it. So, in that respect, he was helpful.
Q. Do you think Mr. Reid ultimately benefited from the settlement with AAA?
A. My understanding is that he's either equally or more upset with Auto Club Group's

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current third-party administrator. So I -- I have no knowledge of him benefiting.
Q. Handing you what's been marked as Exhibit 56.
A. Okay.
Q. This is an -- includes an e-mail exchange between you and Mike Reid in July of 2014.
A. Okay.
Q. And also an e-mail on July 10th, 2014, to you and to Mr. Fleischhacker from Mr. Reid.
A. Okay.
Q. And, again, do you remember Mr. Reid communicating to you that he hoped "that DOC takes some type of action against AAA and uses them as an example to the many other insurers who utilize Safelite as their TPA"?
A. As in the e-mail exchange that we just discussed?
Q. No. This is a new e-mail exchange.
A. Okay. So what's the question?
Q. So page 2, direct your attention to the e-mail from Mr. Reid on July 10th, 2014, to you and Mr. Fleischhacker.
A. Okay.
Q. Where Mr. Reid said, "I am hoping that

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1 DOC takes some type of action against AAA and uses
2 them as an example to the many other insurers who
3 utilize Safelite as their TPA," do you remember
4 that he communicated that to you?
5 A. No.
6 Q. Do you have any reason to question
7 that you received this e-mail?
8 A. No.
9 Q. Did you agree that DOC should make an
10 example of AAA to the other insurers who utilize
11 Safelite as a TPA?
12 A. No.
13 Q. So you weren't concerned -- strike
14 that.
15 So you didn't want to send a bigger
16 message to all those insurers who were using
17 Safelite as a TPA?
18 A. That was never my intent.
19 Q. And in this e-mail Mr. Reid described
20 to you some of his frustrations with AAA, like the
21 fact that they forced his shop to serially
22 arbitrate against them; is that right?
23 A. That's what it says.
24 Q. And in your response on the first
25 page, on July 11, 2014, you wrote, "Mike, I can't

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1 imagine how frustrating AAA's conduct must be for
2 you." Do you see that?
3 A. Yes.
4 Q. Do you remember writing that?
5 A. No, but I -- I see it.
6 Q. So was it your view at the time that
7 AAA's conduct was extremely frustrating?
8 A. It doesn't have anything to do with my
9 view. It's simply trying to be empathetic to a
10 complainant.
11 Q. Was it your job to be empathetic to
12 complainants?
13 A. No, but we have many very unhappy
14 people which contact us, and we try and be kind to
15 them.
16 Q. So were you sympathetic to his
17 problems with AAA?
18 A. I was sympathetic to both sides. This
19 has been going on a long time very bitterly.
20 Q. So you were sympathetic to his
21 position?
22 A. Yes.
23 Q. And did you tell him that the DOC did
24 not intend to make AAA an example to other insurers
25 who use Safelite?

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1 A. Again, I don't remember this e-mail,
2 and I don't remember whether I responded.
3 Q. Isn't this your response right here,
4 on July 11th, 2014?
5 A. Oh, I apologize, I thought you meant a
6 subsequent response. I mean, I certainly don't
7 remember writing anything to that effect that
8 you're trying to make anyone an example.
9 Q. But you did tell him that the
10 Department was preparing to take action against
11 Safelite; isn't that right?
12 A. That appears to be the first sentence
13 of the second paragraph, yes.
14 Q. Did you consider that confidential
15 information?
16 A. No.
17 Q. Was the fact that the Department was
18 preparing to take action against Safelite public?
19 A. No.
20 Q. Did you consider it sensitive
21 information?
22 A. I don't know how that's defined.
23 Q. Did you think it was appropriate to
24 share that nonpublic information with Mr. Reid?
25 MR. LARSON: I'm going to object to

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1 the extent it calls for a legal conclusion.
2 THE WITNESS: Again, I have no
3 understanding of this being problematic or I
4 wouldn't have done it.
5 BY MS. SASSOON:
6 Q. So you did think it was appropriate to
7 share with Mr. Reid nonpublic information about
8 Safelite?
9 A. Again, I don't know of any reason that
10 it's problematic or I wouldn't have done it.
11 Q. Are you still of that view, that it
12 wasn't problematic?
13 A. Yes.
14 Q. Did you think it was appropriate to
15 update Mr. Reid about the materials received from
16 AAA, which you do in the second paragraph?
17 A. Yes.
18 Q. And you thought it was appropriate
19 even though, as you said earlier, you considered
20 Mr. Reid a biased party in this case?
21 A. Yes.
22 Q. In his response to you at the top of
23 the page Mr. Reid said, "You clearly updated me
24 last week on the progress with respect to Safelite,
25 Amfam and AAA," and, then, later he goes on to say,

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1 "Additionally, I have some ideas regarding the
2 claims process if a C & D is in fact issued. If
3 you wish to call me I can share with you some
4 alternatives to make it easy for the AG."
5 Do you remember if you, in fact,
6 called Mr. Reid about this topic?
7 A. I don't recall.
8 Q. And by a C&D, is he referring to a
9 cease and desist?
10 A. I would assume so.
11 Q. And had you informed Mr. Reid about
12 the fact that the DOC was contemplating a cease and
13 desist against Safelite?
14 A. Not that I recall, no.
15 Q. Do you think it would be appropriate
16 for him to give you his ideas about what to do if a
17 cease and desist was issued?
18 A. No.
19 Q. Do you think it would be appropriate
20 for him to call you to share alternatives that
21 would help the Attorney General?
22 A. I don't see any reason why he can't
23 share with the Department whatever he wishes.
24 Q. And you and Mr. Reid had a
25 relationship where he felt comfortable saying these

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1 things to you, right?
2 A. I can think of meeting the man in
3 person once and sporadically exchanging e-mails or
4 phone calls with him poten -- potentially once a
5 quarter. If he felt comfortable or not, I have no
6 idea, but this is what he did.
7 MS. SASSOON: I think we should take a
8 break.
9 THE VIDEOGRAPHER: Going off the video
10 record. The time is approximately 2:06 p.m.
11 (Break from 2:06 to 2:20.)
12 THE VIDEOGRAPHER: We're back on the
13 video record. The time is now approximately
14 2:20 p.m.
15 (Whereupon, Deposition Exhibit No. 92
16 was marked for identification, and a copy is
17 attached and hereby made a part of this deposition.)
18 THE COURT REPORTER: That will be
19 No. 92.
20 THE WITNESS: Thank you.
21 BY MS. SASSOON:
22 Q. You've been handed Exhibit 92. It's
23 an e-mail exchange from August 2014 with Mr. Rosar
24 about AAA. Do you recognize these e-mails?
25 A. I -- I do now that they're in front of

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1 me.
2 Q. Do you remember that in August of 2014
3 Mr. Rosar asked for an update about the AAA
4 investigation?
5 A. Prior to you showing me this I
6 wouldn't have been able to recall, but I -- I see
7 what was exchanged.
8 Q. And here he asks you for an update,
9 and that was followed by an explanation that his
10 "Cash flow is really difficult with all of these
11 short pays for the various insurers." Do you see
12 that?
13 A. Yes.
14 Q. Then he says, "Triple A alone owes me
15 over $80,000...and I need to decide how" am I
16 going "-- how I am going to collect." Do you see
17 that?
18 A. Yes.
19 Q. And so here in this e-mail Mr. Rosar
20 indicates that he wants to know what is going on
21 with the investigation so that he can decide how
22 he's going to proceed in his own matter for $80,000
23 from AAA; isn't that right?
24 A. It appears that way, yes.
25 Q. And so is it your understanding that

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1 he wanted to know what's going on in the
2 investigation because that would inform his own
3 litigation strategy with AAA?
4 A. I don't know. I -- I could infer it
5 from this.
6 Q. That is a reasonable inference from
7 what he said, right?
8 A. Yes.
9 Q. And in response you did give him an
10 update about the investigation; is that right?
11 A. It appears I did, yes.
12 Q. And you said, "My findings have been
13 submitted." At that point were your findings
14 public information?
15 A. No.
16 Q. Did you think it was appropriate to
17 share that with Mr. Rosar?
18 A. I'm unaware of any reason that this
19 would not be permitted, otherwise I wouldn't have
20 done it.
21 Q. And you said, "Once those findings are
22 submitted, the Department will move forward." What
23 did you mean by that?
24 A. Whatever it is the Department decides
25 as its next step, it hadn't been determined yet.

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Q. Did you think it was appropriate to give him an update even though he wanted it for his own financial purposes?
A. Um, I responded, so I must not have seen it as problematic.
Q. Sitting here today, are you given pause at all that you shared this information with him?
A. Well, I'm given pause any time I get an e-mail like this. I don't want to get an e-mail like this ever. But if he sends me that asking where things stand, I'll give him a process update, which I did.
Q. So even though it gives you pause, you're still inclined to give an update rather than saying you'll keep him informed another time?
A. I mean, that is what I did, yes.
Q. Then you said, "I apologize for how the short pays are affecting your business." Do you see that?
A. Yes, another attempt to be empathetic.
Q. Do you think that statements like that indicate that you are remaining neutral?
A. I -- I don't see it as anything other than me trying to empathetic to what he is

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complaining about.
Q. Do you think it's more important to be empathetic or to remain neutral in your role as a Department investigator?
A. I don't think this proves anything about being not neutral.
Q. Did you feel bad about how the insurance companies were affecting Mr. Rosar's business?
A. I -- I don't remember what my feelings were.
Q. The fact that you said "I apologize for how the short pays are affecting your business," does that indicate that you felt bad about how --
A. No.
Q. -- the short pays --
A. You could --
Q. -- were affecting his business?
A. -- subpoena, you know, all my e-mails, and I think you'd find similar statements in various context to other complainants.
Q. But you did want to help him by giving him information, right?
A. That was not my intent. My intent was not to help him, my intent was to try and provide

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him with a process update as to where the file stood.
Q. What was the purpose of giving him a process update?
A. I don't know.
Q. Why do you give complainants process updates?
A. It gives them a sense of where things stand in terms of chronology, I suppose.
Q. You wanted him to know that things were progressing?
A. I do not recall as to why I wrote what I wrote here.
(Whereupon, Deposition Exhibit No. 93 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Ninety-three.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. You've been handed Exhibit 93.
A. Yes.
Q. This is an e-mail exchange between you and Mr. Reid in July of 2014?
A. Yes.
Q. And at the bottom you wrote to let Mr. Reid know that you'd requested a new

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investigation be authorized per USAA. Do you see that?
A. Yes.
Q. And it says, "I wanted to let you know that follow our conversation this afternoon." Do you remember what conversation you had that afternoon?
A. I don't remember specifically what the conversation was, but I know that at some point in time Mr. Reid notified me that he was having the most trouble with the claims process of USAA.
Q. And --
A. So that may have been this conversation, it may have not, but that's what I recall with respect to having a conversation with Mr. Reid about USAA.
Q. And did that complaint prompt you to open a new investigation?
A. Yes.
Q. Did you do anything else to verify those complaints before you opened a new investigation?
A. The complaint was with respect to USAA's processing of -- of glass claims, and I requested the authorization for an investigative

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1 file after that conversation. So I -- I did
2 nothing to try and verify. That's what the
3 investigation is for, trying to verify what's being
4 alleged.
5 Q. How often do you request that a new
6 investigation be authorized?
7 A. I previously referenced both pro --
8 both proactive and defensive investigations that
9 the Department engages in. This is an incidence of
10 proactive, to some degree, as -- as there wasn't a
11 formal written complaint filed yet. It's relatively
12 uncommon from my experience, two years and three
13 months, at the Department of Commerce.
14 Q. And do you remember what came of that
15 investigation?
16 A. We requested a substantial amount of
17 documentation from USAA. Initially USAA failed to
18 respond to our request, which resulted in the
19 Attorney General's Office filing a statement of
20 charges against USAA for failing to respond.
21 Prior to the hearing, USAA agreed to a
22 consent order which included a civil penalty and a
23 cease and desist from further such failings, and
24 approximately a month or maybe a month and a half
25 after that Consent Order was entered into, USAA

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1 began to provide us with the information we
2 requested.
3 Q. And what happened after they gave you
4 the information you requested?
5 A. I took a sampling of the claims
6 recordings that were collected. I reviewed their
7 pricing data -- let me rephrase. I requested their
8 pricing data, they didn't have any; and we entered
9 into a period of settlement negotiations, which
10 resulted in a settlement, I'm guessing, November of
11 this past year, 2015.
12 Q. I'm handing you Exhibit 77.
13 A. All right.
14 Q. It's an e-mail exchange with Chuck
15 Lloyd.
16 A. All right.
17 Q. And do you see at the bottom he asked
18 you for any updates you can provide about the
19 investigations?
20 A. Okay, yes, I see that.
21 Q. And he also informed you about winning
22 an arbitration against American Family. Do you see
23 that?
24 A. Yes.
25 Q. And at the top you congratulate him on

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1 that victory. Do you see that?
2 A. Yes.
3 Q. Do you think that's remaining neutral?
4 A. It's simply being understanding of
5 their excitement over being awarded money in the
6 arbitration.
7 Q. And that was against American Family?
8 A. I don't know who this was.
9 Q. It says below another glass company
10 against American Family. Do you see that?
11 A. Oh, yes, yes.
12 Q. And American Family was under
13 investigation by you at that time, right?
14 A. In September of 2014, yes.
15 Q. So did you think it's appropriate to
16 congratulate him on a victory against the subject
17 of one of your investigations?
18 A. I have no reason to suspect that's
19 inappropriate.
20 Q. You also informed him that a
21 settlement offer had been issued to AAA. Do you
22 see that?
23 A. "I am hopeful that a deal will be
24 reached sometime in October. I will keep you
25 posted." Yes, I see that.

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1 Q. And was the settlement offer to AAA
2 public at that time?
3 A. No.
4 Q. And what about the fact that the DOC
5 and AAA's attorneys were in settlement discussions,
6 was that public?
7 A. No.
8 Q. Looking at the bottom you wrote, "The
9 attorney general continues to mull over the
10 appropriate action to initiate against Safelite.
11 Marty and I have attempted to push this process
12 along, but, thus far, we've been unsuccessful. I
13 am pushing for a C&D against Safelite for failing
14 to comply with the Department's subpoenas and
15 engaging in unlicensed activity." Do you see that?
16 A. Yes.
17 Q. And at the time were you pushing for a
18 cease and desist against Safelite for failure to
19 comply with the subpoena?
20 A. Yes.
21 Q. And was that -- even though you
22 thought that was a step too far, as you testified
23 earlier?
24 A. I was referring to the scope, the
25 scope of the C&D. I think it could have been more

1 narrow. So, yes, I thought it was appropriate.
2 Q. Do you think it was appropriate to
3 share that you and Mr. Fleischhacker were trying to
4 push through an action against Safelite but were
5 not finding success within the Department?
6 A. That we were trying to push the
7 process along? I see no issue with that.
8 Q. Why weren't you successful at that
9 time?
10 A. The time it takes for the Attorney
11 General's Office to assign an assistant attorney
12 general and to review the file and to come to its
13 own conclusion takes a substantial amount of time,
14 in my experience, somewhere between three and six
15 months on any given referral; and so the Department
16 is left in a position of trying to, for lack of a
17 better word, annoy or badger the Attorney General's
18 Office to try and figure out where it is in the
19 process.
20 Q. Do you think it was appropriate to
21 share this information about the internal dynamics
22 between the Department of Commerce and the Attorney
23 General?
24 A. Again, I have no reason to believe
25 it's problematic or I wouldn't have done it.

1 Q. Do you think it was appropriate to
2 inform Mr. Lloyd that while you wanted action to be
3 taken, the Attorney General was not moving quickly
4 enough?
5 A. Again, if I had thought it was
6 problematic I wouldn't have done it.
7 Q. And sitting here today, do you think
8 it was problematic?
9 A. No.
10 Q. You testified earlier that you weren't
11 looking to make an example out of Safelite; is that
12 right?
13 A. I remember my testimony being I wasn't
14 looking to make an example out of Auto Club Group,
15 but --
16 Q. Sorry, you're right. You weren't
17 looking to make an example out of Auto Club Group
18 to other people who were using Safelite as a TPA;
19 is that right?
20 A. I was not.
21 Q. Were you looking to stop insurance
22 companies from working with Safelite?
23 A. No.
24 Q. Were you concerned about Safelite
25 expanding its business in Minnesota?

1 A. No. It's already very large. I -- I
2 have no concept of whether it's getting larger or
3 smaller in Minnesota.
4 (Whereupon, Deposition Exhibit No. 94
5 was marked for identification, and a copy is
6 attached and hereby made a part of this deposition.)
7 THE COURT REPORTER: Exhibit 94.
8 BY MS. SASSOON:
9 Q. Do you recognize this e-mail?
10 A. I -- I don't remember the e-mail, but
11 I've now refreshed my memory, and this is an e-mail
12 exchange between Mr. Fleischhacker and myself in
13 December 2014.
14 Q. Do you remember having this exchange?
15 A. No.
16 Q. Do you remember Mr. Fleischhacker
17 expressing concern to you about Safelite expanding
18 the presence in the state of Minnesota?
19 A. I remember a complaint from Mr. Lloyd
20 against Auto-Owners in the fall of 2014 pertaining
21 to a inspection program that Auto-Owners was going
22 to implement with Safelite whereby if a shop
23 declined the price offered, Auto-Owners through its
24 agent, Safelite, was going to go out and inspect
25 the vehicle. So that was the gist of the complaint.

1 So I infer from this that that's what
2 Mr. Fleischhacker was referencing, was -- was that
3 complaint that we received from Mr. Lloyd about
4 Auto-Owners' new program.
5 Q. And Mr. Fleischhacker also expresses a
6 general concern about Safelite expanding their
7 presence in the state of Minnesota while also not
8 cooperating with the subpoena, do you see that?
9 A. I do. I see -- that's the last
10 sentence of his e-mail to me.
11 Q. Did you share that concern about
12 Safelite expanding its presence in Minnesota?
13 A. I don't -- I don't really understand
14 it. I have no concept of whether it's expanding or
15 decreasing its presence in Minnesota nor do I care.
16 Q. In response you wrote to
17 Mr. Fleischhacker, quote, Until we take action
18 directly against Safelite, the company will continue
19 to pitch new business in Minnesota, close quote.
20 Do you remember suggesting to
21 Mr. Fleischhacker that it was necessary to take
22 action directly against Safelite to prevent it from
23 pitching new business in Minnesota?
24 A. My -- my thought on the Safelite file
25 in general was we made a significant threat against

1 Safelite's presence in Minnesota. So if we were
2 going to make that threat and we believe there's
3 actionable conduct, to pursue it; and so I was
4 simply trying to refer back to Mr. Fleischhacker
5 that -- my opinion that it was time to move forward
6 with an administrative process with Safelite.
7 Q. So it was your view by this time, in
8 December of 2014, that action should be taken
9 directly against Safelite; is that fair?
10 A. Yes. I mean, again, the subpoena
11 responses still hadn't been addressed, and so all
12 the way back in June 2014 that was my position, and
13 that was just kind of hanging out there without any
14 forward progress; and so when I got this e-mail
15 from Mr. Fleischhacker, it appears that I very
16 directly stated that opinion.
17 Q. And, in part, it was your position
18 that action should be taken directly against
19 Safelite to prevent the company from pitching new
20 business in Minnesota, right?
21 A. What? I don't see anywhere in here
22 where I indicate I have any type of opinion on
23 whether Safelite pitches new business in Minnesota
24 or not.
25 Q. You said, quote, Until we take action

1 directly against Safelite, the company will continue
2 to pitch new business in Minnesota, close quote.
3 A. Yes. I didn't --
4 Q. Is it an implication of what you said
5 that if action is taken against Safelite they won't
6 be able to continue pitching new business in
7 Minnesota?
8 A. I have no reason to suspect that they
9 would be unable to pitch new business in Minnesota
10 or would have been.
11 Q. It says "Until we take action directly
12 against Safelite."
13 A. Yes.
14 Q. Doesn't that imply the situation will
15 change once action is taken against Safelite?
16 A. Possibly.
17 Q. Is that what you intended to
18 communicate?
19 A. I don't recall.
20 Q. If you took action against Safelite,
21 would it be able to pitch new business in Minnesota?
22 A. I see no reason why it wouldn't. It
23 seems to me that from the Department's perspective,
24 it may need to be licensed if it were to be --
25 Q. Isn't the action you were just

1 describing to me a cease and desist?
2 A. Right. I was trying to --
3 Q. And you said --
4 A. I was trying to explain what action I
5 foresaw against Safelite.
6 Q. So if the action you foresaw taking
7 directly against Safelite was a cease and desist,
8 that would, by its terms, prevent Safelite from
9 pitching new business in Minnesota, wouldn't it?
10 A. Until properly licensed.
11 Q. So I'll ask my question again.
12 If, as you suggest here, the
13 Department of Commerce took action directly against
14 Safelite in the form of a cease and desist, that
15 would prevent the company from pitching new
16 business in Minnesota while the cease and desist
17 was in place, right?
18 A. And my understanding of the
19 department's perspective is, yes, until they were
20 properly licensed.
21 Q. So that's a yes?
22 A. Yes.
23 Q. You say, "Actors, such as USAA, that
24 have used Safelite for a long period of time
25 present, in my opinion, the most urgent issue,"

1 slash, "issues." Do you remember what urgent
2 issues you were referring to?
3 A. No.
4 Q. Did you have particular concerns about
5 insurers that had used Safelite for longer periods
6 of time?
7 A. I don't remember specifically, no.
8 Q. Isn't that what you are communicating
9 in that sentence there?
10 A. Well, the sentence is the sentence,
11 right? I don't -- I don't recall what was meant by
12 that sentence.
13 Q. You also said, "It seems inefficient
14 to continue going after companies using Safelite as
15 a TPA one by one."
16 A. Yes, that's what it says.
17 Q. Do you remember what you were trying
18 to communicate there?
19 A. Again, I was trying to convey my
20 position that we had issues out there with Safelite
21 that had not been addressed, and so from my
22 perspective, it was time to move that along to try
23 and figure out whether the Department is misguided,
24 whether Safelite is misguided in their positions so
25 that we can resolve this issue, these issues.

Q. So you thought it was more efficient to go after Safelite directly rather than curbing its conduct through negotiations with individual insurers; is that fair?
A. No, because we were not trying to curb Safelite's conduct through its insurer clients, we were trying to curb the action of the insurer clients by going after the insurer clients.
Our action against Safelite was supposed to curb the actions we had problems with Safelite engaging in, which is why I wanted them -- the Department, the Attorney General's Office to pursue it and not have it just sit there.
Q. When you pursued settlements with companies using Safelite as a TPA, in your view, did that in an indirect way also get at what you considered Safelite's problematic conduct?
A. I'm not sure I know the answer to the question, other than to say we have tried to be very straightforward with the insurers that we've investigated using Safelite as a TPA to the extend that Safelite is the insurer client's agent and, therefore, if they're not appropriately monitoring their agent, that they, too, would be responsible for the conduct engaged in if that were, indeed, a

violation.
Q. And you thought engaging with the insurance companies one by one was an inefficient way to pursue Safelite; is that fair?
A. Well, my perspective is is that we were not trying to pursue Safelite through insurers. We were trying to curb insurers' conduct. But -- but if -- if that was what Mr. Fleischhacker was promoting in his e-mail, I was trying to rebut that by saying why don't we simply take these issues directly to where they be -- they may be most prevalent.
Q. So when you said getting an order to -- sorry. When you said it seems inefficient to continue going after companies using Safelite, in what way did you consider it inefficient?
A. Well, as you've pointed out by some of the other exhibits that we've previously discussed, I was getting infrequent, but frequent enough to be burdensome on my time, complaints from the industry, and I really didn't prefer to have the next ten years of my career investigating glass issues. And so when I see something that I consider a large-scale problem, I would like to try and address it in the most straightforward way, and I thought, and

continue to think, that that is a administrative process between the Department and Safelite.
Q. You say next, "Getting an order or two against companies using Safelite certainly builds a record of Safelite's conduct, but, sooner or later, we'll need to pursue a C&D against the elephant in the room." By C&D, did you mean cease and desist?
A. Cease and desist until complied with the subpoena and properly licensed.
Q. And what did you consider the elephant in the room?
A. Safelite in that context, I would think, would be the elephant in the room.
Q. And what makes Safelite the elephant in the room?
A. The fact that I continued to have more and more files of insurers in Minnesota using Safelite as a TPA.
Q. And you considered the fact that you had more and more files of insurers in Minnesota using Safelite as a TPA a problem?
A. No, not necessarily. I would -- I didn't think that was the most efficient way to address what we believed was primarily caused -- certain conduct was primarily caused by Safelite.

So I thought it was inefficient, and I didn't want to see us simply just have file after file without ever addressing the pending matter with Safelite.
I don't -- I don't control what gets assigned to me, right, we've already discussed this. But, as any employee, you can get frustrated with the work you're getting assigned, and I think that if you have a strategy or a seeming strategy that is inefficient you share that.
Q. Do you remember if Mr. Fleischhacker agreed with you?
A. I do not remember, no. I think the administrative complaint was issued a few months after this, so I -- I don't know what his response was or what the Attorney General's response was.
Q. And part of what made the investigative process inefficient was that Safelite, as Mr. Fleischhacker put it, was expanding its presence in Minnesota; is that accurate?
A. No, I don't know that that's accurate because I don't know if there's going to be any future issues with Auto-Owners using Safelite as a TPA. Auto-Owners may monitor its agents completely differently, Auto-Owners may draft a script that's completely different, Auto-Owners' glass program

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may be completely different, but it certainly presents the possibility.
Q. Handing you what's been previously marked as Exhibit 81.
A. All right.
Q. And here Chuck Lloyd is sending you a call recording between Rapid Glass and AAA and Safelite in May of 2015. Do you remember getting this e-mail?
A. I -- I have a rough recollection of this -- of this e-mail. There was a claim that claim calls with Auto Club Group claimants or insureds were being handled by Safelite Solutions following the January 2015 Consent Order between Auto Club Group and the Department of Commerce.
Q. And do you remember why you were flabbergasted?
A. The January 2015 Consent Order included a cease and desist from The Auto Club Group using Safelite as its TPA for certain circumstances. There were three or four exceptions to that. But with respect to glass claims, it included a cease and desist from Safelite processing Auto Club Group's glass claims.
Q. Did you think it was appropriate to

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tell Mr. Lloyd that you were flabbergasted?
A. I see no problem with that statement. If true, Auto Club Group would be violating the terms of the Consent Order. I think that is flabbergasting.
Q. And did you verify whether Safelite had, in fact, violated the terms of the Consent Order?
A. Safelite wasn't a party to the Consent Order. The Auto Club Group had, indeed, violated the terms of the Consent Order. It was fixed within a 24-hour period, and they apologized, The Auto Club Group, that is.
Q. Did you think it was appropriate to include a term in the Consent Order that did not include Safelite as a party that prevented The Auto Club Group from doing business with them?
A. It was appropriate based on how it was added to the Consent Order, negotiated into the Consent Order, rather.
Q. Was Safelite part of that negotiation?
A. No. They were not a party to the case.
Q. But the Consent Order affected Safelite's ability to do business in Minnesota with The Auto Club Group; is that right?

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A. Yes.
Q. And it actually prevented them from doing business with The Auto Club Group in Minnesota; is that right?
A. No. There were numerous exceptions which would permit them to do business in certain circumstances with The Auto Club Group in Minnesota.
Q. But barring those exceptions, they were otherwise prevented from doing business with The Auto Club Group in Minnesota, right?
A. Yes.
Q. And had you solicited their input on the terms of the Consent Order?
A. Safelite was not a party to the case, so --
Q. Well, did you have any due process concerns about --
A. That's not my -- that's not in my purview.
Q. Whose purview would that be in?
A. I have -- I have no idea, the Commissioner of Commerce, the Attorney General of the State of Minnesota, I suppose. We don't give nonparties to a case a chance to be involved.

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(Whereupon, Deposition Exhibit No. 95 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Exhibit 95.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. Do you recognize this?
A. No.
Q. This is a document called Auto Glass Pricing Study. Do you think you've ever seen this before?
A. I know that it's been referred to. I don't believe I've ever actually seen a copy. It was about the time I was getting out of high school.
Q. Have you ever asked for a copy?
A. No.
Q. But you've heard of it?
A. Yes.
Q. And that was prepared for the Minnesota Department of Commerce, right?
A. I suppose.
Q. That's what it says on the first page. Do you see that?
A. I see prepared for Minnesota

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Department of Commerce.
Q. And this is entitled an Auto Glass Pricing Study, right?
A. That's the title.
Q. And this is from fall of 2000 to spring 2001?
A. That's what the project number indicates.
Q. What have you heard about this study?
A. I do not recall anything specific about this study.
Q. Turning to the first page, and there are a lot of numbers, so it's this little 1 over here, the Background & Objective page. You're on it (indicating).
Now, do you see according to this background section this study was mandated by the Minnesota Legislature in 2000?
A. Yes.
Q. And do you see the purpose of the study was to determine the range of pricing that auto glass companies charge insurance companies for glass, kits and labor?
A. Yes.
Q. And it also says here that the results

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of this study were to be used by the DOC for dispute resolution between auto glass companies and insurance companies. Do you see that?
A. Yes.
Q. To your knowledge, has the DOC ever used this study for dispute resolution purposes?
A. Not during my time here, no, at the Department of Commerce.
Q. And do you know of any purpose for which the DOC has ever used the study?
A. No.
Q. Did the DOC, to your knowledge, reference this study in the course of its investigation of Safelite and other insurers?
A. No. The entire pricing structure of this would be completely outdated after the NAGS revamp in 2006. But to answer your question, no. I'm -- I'm unaware of this study, I've never used it, and I have no knowledge of anyone else ever referring to it, using it or having it be a tool in the investigations that I led.
Q. Turning to page 9.
A. Okay.
Q. The Analysis section.
A. Analytical Perspective, is that the

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right page?
Q. No. Actually, turn to page 7. It says Findings at the top.
A. Okay.
Q. Do you see it says Preferred Network, and it gives a number of average costs?
A. Yes.
Q. And you see these are average costs for preferred network shops?
A. Okay.
Q. And is it your understanding that a preferred network shop is a shop that has agreed to the insurance company's fair and reasonable pricing?
A. It's my understanding that preferred shops have agreed to the insurance company's pricing.
Q. And here the study finds the average kit charged for preferred shops was 1992, $19.92, right?
A. In 2001, yes.
Q. And in 2001, the study found the average labor charge for preferred network shops was $39.74?
A. That's what it says.
Q. I just want to turn to the next page,

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titled Independents?
A. Okay.
Q. And here the study found that the average kit charge was $25.65 for independent shops. Do you see that?
A. Yes.
Q. So that's higher than the average kit charge we saw in 2001 for preferred shops, right, that was $19.92?
A. Yep.
Q. And looking at the average labor charge, it says here -- I think that's a $53.55 average labor charge for independents in 2001. Do you see that?
A. It looks like $33.55 to me, but I -- I could be mistaken. That might be a five and I'm just partially blind.
Q. Well, it says $13.81 more than preferred contractors, right?
A. Yep.
Q. So, for this study in 2001, the study found that in Minnesota independent shops charged more on average for kit charges and labor charges than network shops, right?
A. Yes.

Q. Has the Department of Commerce proposed commissioning a similar study to get information about 2016 figures?
A. I have no knowledge of that.
Q. But in 2001, independents were charging more than network shops for auto glass repair, right?
A. That's what the study says.
Q. And do you have reason to believe that that wouldn't still be true today?
A. No, I have no reason to believe that -- that independents do not charge more than preferred network shops.
(Whereupon, Deposition Exhibit No. 96 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Ninety-six.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. Do you recognize this as a memo you circulated on March 6, 2015, to Mr. Fleischhacker and Ms. Gergen in support of a settlement offer with USAA?
A. Yes.
Q. And this was Exhibit --

THE REPORTER: Ninety-six.
BY MS. SASSOON:
Q. -- 96. And can you confirm that on the first page of this memo you repeat your description that Safelite Solutions, LLC was a direct competitor of Alpine and Rapid Glass and other Minnesota glass shops?
A. Yes, it's there. I thought it was so good the first time, why not do it again.
Q. So you still held that view in March of 2015; is that fair?
A. With respect to their replacement and repair of auto glass, yes.
Q. Does it specify with respect to their replacement and repair --
A. It does not.
Q. And I just want to clarify. On page 3 where you say, in the Allegations section, second paragraph, last sentence, "this investigation focused on instances where USAA insureds chose non-program shops and the shops declined USAA's pricing." Do you see that?
A. I do.
Q. And as we discussed earlier, there were instances where non-program shops accepted

USAA's pricing; is that right?
A. Yes.
Q. And these instances where the non-program shops declined USAA's pricing, you considered that a small universe of claims, right?
A. That's correct.
Q. And your concerns about coercion, though, were focused on just that universe of situations, right?
A. With respect to USAA, yes.
Q. And it says, "With respect to coercion, it should be noted that the investigator did not take issue with Safelite's handling of claim calls where the chosen shop accepts USAA's pricing"; is that right?
A. Correct.
Q. And why do you say only with respect to USAA?
A. I don't know. I mean, that -- that was my trying to make sure that my superiors knew that I was talking about it in the context of this case, the investigation of USAA and USAA's handling of its agent Safelite Solutions.
Q. So it was your conclusion that there were no areas of concern or legal violations in

claim calls not involving the small universe of cases where an insured chose a non-programmed shop that declined USAA's pricing, right?
A. In the claim call recordings that I listened to involving USAA claimants or insureds, I thought that they were compliant. So my sampling resulted in that conclusion in the USAA case.
Q. Do you remember what, if anything, was different between the USAA calls and the call recordings you listened to involving other insureds in that respect?
A. I just remember them being much faster in terms of the duration of the recordings, the types of information that you would expect on insurance company or its agent to collect in order to file a claim was what was asked for, and a referral number or claim number was given. I don't remember specifically the differences between the claim call recordings of USAA where a preferred shop or non-preferred shop or pricing was accepted versus the other companies.
Q. Do you recall hearing any call recordings involving USAA where the customer switched its shop of preference after talking to the customer service representative?

A. Again, I remember very few examples. I don't know the number, and I don't remember which insurer they were with respect to.
Q. So it's possible that there was no such example of USAA?
A. Possibly.
Q. And on the fourth page to the fifth page you summarize the call recordings that were most concerning to you; is that right?
A. I don't remember this section, but that is what it appears to be, yes.
Q. And unless I'm missing it, in none of these summaries do you assert that the customer was ultimately pressured to switch his or her shop of choice; is that right?
A. I don't see any instance in here where the insured chose a different shop after the scripting was read.
Q. Do you think a customer has been coerced if they ultimately stick with their original shop of preference?
A. Is it an active coercion by the insurer or its agent? Potentially. Is the insured coerced if they don't choose another shop? Probably no.

MS. SASSOON: How long have we been going?
THE VIDEOGRAPHER: Forty-six minutes.
BY MS. SASSOON:
Q. This is the last of these memos.
(Whereupon, Deposition Exhibit No. 97 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Ninety-seven.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. This is a memo -- strike that.
I've handed you Exhibit 97, and this is a memo you circulated on November 23rd, 2015, to Mr. Fleischhacker and Ms. Gergen, correct?
A. Yes.
Q. And did you draft this memo?
A. Yes.
Q. And this was in support of entering a Consent Order with USAA; is that right? I'm just reading from the top on the first page.
A. Yes, that's correct.
Q. I just want to confirm, again, here in November of 2015 you describe Alpine and Rapid Glass as competitors of Safelite Solutions, correct?

A. That's what it says.
Q. Okay.
(Whereupon, Deposition Exhibit No. 98 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Ninety-eight.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. Do you recognize this?
A. Yes.
Q. Is this a transcript of a call you had with Brad Boardman?
A. Yes.
Q. And do you know who transcribed this call recording?
A. The exceptional transcription services were the Word processing department of the Department of Commerce.
Q. And how often do you record your telephone calls?
A. Anything would be an approximation, 25 percent of the time.
Q. And when you don't record a call, do you take notes if it relates to an investigation?
A. No. That hasn't been my practice at

the Department of Commerce.
Q. If you have a call that relates to an investigation on which you find out useful information, how will you record that information if at all?
A. Just mentally.
Q. Why did you choose to recall -- Why did you choose to record your conversation with Mr. Boardman?
A. Mr. Boardman was -- again, we saw an e-mail exchange earlier. Mr. Lloyd referred Mr. Boardman's contact information to the Department. Mr. Boardman was a glass manager of an insurance company -- I don't recall which one, I think it's Kemper Insurance -- who during his long tenure at the insurance company switched to use Safelite to administer their glass claims. So that seemed to me to have the potential for important substance that he may inform me of.
Q. So you thought as someone who has been at an insurance company who was referred by Chuck Lloyd, he might have some useful insider perspective about Safelite?
A. He may have information as to how Safelite operates and how insurance companies

1 operate with Safelite as their agent, yes.
2 Q. So you interviewed Mr. Boardman, who
3 is referred by Chuck Lloyd, even though you decided
4 not to interview anyone at any of the insurance
5 companies that you actually subpoenaed; is that
6 right?
7 A. Yes.
8 Q. And at the bottom of page 1 it says
9 here that Mr. Boardman told you that he was
10 actually fired from Kemper Insurance, right?
11 A. The infamous reduction in force, it
12 appears.
13 Q. So, again, just to be clear, your one
14 insurance company source was someone referred by
15 Chuck Lloyd, who had actually been fired from his
16 job?
17 A. I wouldn't characterize it that way,
18 but that's some of the facts, right. He was with
19 Kemper Insurance for 28 years, and he ran their
20 glass program.
21 Q. Turning to page 7 -- and there are no
22 page numbers, so you'll just have to count.
23 A. That's terrific.
24 Q. The top of the page says "insurance
25 companies and their use of Safelite and how that

1 impacts consumers here in Minnesota."
2 A. Okay, yes.
3 Q. So looking from the bottom of page 6
4 to 7, you were explaining to Mr. Boardman some
5 information about the investigation, and you said,
6 quote, but we're looking into a number of insurance
7 companies and their use of Safelite and how that
8 impacts consumers here in Minnesota.
9 Would you say that a primary objective
10 of the investigation was looking at how the conduct
11 of these insurance companies and their agent
12 Safelite affected consumers in Minnesota?
13 A. Yes.
14 Q. Turning to page 12?
15 A. What do you see at the top of the
16 page?
17 Q. You said "Right," and then Boardman
18 said "Yeah."
19 A. Okay.
20 Q. And if you look at Mr. Boardman's long
21 statement there, do you see about three lines down
22 he says, "truly what Safelite's doing, I don't
23 think they're doing anything illegal and what they
24 are... or anything wrong, morally wrong, and the
25 fact that they have reached that point...not

1 necessarily a monopoly, but a dominant, dominant
2 force in the area of automobile glass."
3 A. I see that, yes.
4 Q. Did you give any weight to
5 Mr. Boardman's conclusions about Safelite not doing
6 anything illegal in Minnesota?
7 A. Yes.
8 Q. And what did you make of that?
9 A. One person's perspective who ran a
10 glass program with Safelite as TPA telling us that
11 he doesn't believe Safelite is doing anything
12 illegal.
13 Q. If you go down a few lines he says,
14 "you know, the better companies survive and the
15 competition's what it is, and that's how we are as
16 a nation."
17 A. Yes.
18 Q. Do you agree with his perspective that
19 it's the better companies that will survive in a
20 competitive marketplace?
21 A. Sometimes.
22 Q. What about in the case of Safelite in
23 Minnesota?
24 A. I have no opinion.
25 Q. Did you think it was important to form

1 an opinion about that for purposes of your
2 investigation?
3 A. No.
4 Q. Did you consider the fact that
5 Mr. Reid's and Mr. Rosar's complaints might simply
6 be originating from the fact that Safelite was a
7 better company that was doing a better job surviving
8 in the marketplace?
9 A. Maybe.
10 Q. Maybe you considered that?
11 A. I mean, that's one possibility, right.
12 Whether I considered that specifically, I -- I
13 don't recall.
14 Q. You don't recall ever considering that
15 perspective?
16 A. That Safelite's survival is simply
17 because it's a better company? No, I don't recall
18 considering that as a rationale as it pertained to
19 my investigations of various insurance companies
20 and, then, Safelite directly.
21 Q. Well, I asked did you consider the
22 fact that Mr. Reid's complaints might originate
23 from the fact that Safelite is simply outcompeting
24 it in the marketplace?
25 A. Not that I can recall, no.

Q. Instead, you thought his complaints originated from the fact that he was being mistreated by Safelite?
A. I'm sorry, whose complaints?
Q. Mr. Reid's.
A. I think Mr. Reid's complaints, the crux of them was that he continued to be short paid. Enough short pays equals tens, in some cases, hundreds of thousands of dollars. He consolidated the short pays into a consolidated arbitration and recovered nearly a hundred percent a few different times. So I -- I think that -- from my perspective, that was the crux of Mr. Reid's complaints.
Q. Was it meaningful to you that Mr. Reid was one of the few auto glass shop owners that was refusing to accept the insurance company's pricing?
A. That's meaningful, yes.
Q. In what way?
A. It's meaningful to remind myself, the investigator, the Department, that we're talking about a small subset of claims handling.
Q. Was it also a potential indication that his pricing was an outlier in terms of how high it was?
A. I think that that is a fair

characterization of Alpine Glass's prices, I think many insurers considered an outlier.
Q. Look at page 13, so that's the next page. Mr. Boardman told you "I never found any hardcore evidence of anything going on as far as steering goes."
A. I see that, yes.
Q. And what did you make of that information from Mr. Boardman?
A. Again, I think that's a meaningful statement from someone who ran a glass program for a long time. I -- I don't remember in the three decades that he was with Kemper or how long he was managing the glass program or how long Kemper utilized Safelite as its TPA, but that's a meaningful statement.
I -- you know, I preface that also by saying that one of the issues that the Department remains concerned with is the monitoring of insurer clients of its agent Safelite; and so Mr. Boardman and I discussed -- I seem to recall somewhere in this interview and I've discussed with others -- how few proportionally call recordings are reviewed by the insurer clients that were processed by Safelite, and I think he references that in here.

So it's balancing his position that steering isn't going on with the fact that very few calls are actually being monitored by insurance companies.
Q. Do you know how many calls are monitored by insurance companies?
A. With respect to Auto Club Group, I don't remember. American Family recently informed the Department that it reviewed -- it's approximately 1500 over a 17-state operating area or 19-state operating area; and considering the fact that they process 30,000 glass claims in Minnesota every year alone, it seems to me 1500 over a 17- or 19-state operating area versus 30,000 actually processed in Minnesota is a very small number.
Q. And that's 1500 a year?
A. Yes.
Q. And are you aware that Safelite also does its own call monitoring?
A. I would have no basis for being informed of that as Safelite has provided us no information.
Q. Turning to page 21?
A. With respect to USAA, I don't remember what their monitoring numbers were, but I would

posit that they were quite low.
Sorry, turning to page what?
Q. Twenty-one.
A. Okay. What's at --
Q. The top of the page you said "Hmm."
A. Sounds like something I might say. Okay.
Q. Okay. Looking at the bottom of the page, at what Mr. Boardman told you, he referred to Diamond, and he says, "Safelite had a lot of victories in their defense. Uhm, but uh, you know, it's... and that was one thing that Safelite would always... pass on to us and anybody complaining that you know, it was a tried... tried and tested scripting you know, in the courts... you know, and it passed that test you know."
Were you aware that courts had previously considered the legality of Safelite's scripting and, as Mr. Boardman said, it passed that test?
A. I recall being informed, I don't remember by who, of a Pennsylvania case that went on for some time. In fact, the more I think about it the more I think Mr. Iole of Jones Day provided us with a copy of the appellate decision involving

a Diamond, but I -- I don't remember specifics, and I really don't know what Pennsylvania or federal law is with respect to steering, or what the outcome of that case was, but --

Q. Did you consider it worth analyzing and looking into why the court determined that the scripting was perfectly legal?

A. Was it worth looking into more than I can recall or more than I did? Maybe. From our perspective, insurance is state regulated, insurance is regulated under Minnesota law here, and so reviewing things under Pennsylvania law doesn't do us much good.

Q. Do you know if Minnesota law is dissimilar from Pennsylvania law?

A. I know not one iota of information about Pennsylvania law.

MS. SASSOON: Let's take a break.

THE VIDEOGRAPHER: Going off the video record. The time is now approximately 3:22 p.m.

(Break from 3:22 to 3:33.)

THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 3:33 p.m.

(Whereupon, Deposition Exhibit No. 99

was marked for identification, and a copy is attached and hereby made a part of this deposition.)

THE COURT REPORTER: Ninety-nine.

BY MS. SASSOON:

Q. You've been handed Exhibit 99. Do you recognize this?

A. Yes.

Q. Is this a transcription of a phone call you had with J.T. Tumblin?

A. It is.

Q. Let me just go back and ask, do you remember when your phone call with Mr. Boardman was?

A. It would be a guess, approximately December 2014 or January 2015.

MR. LARSON: I mean, we've got copies of the recordings that were too big to e-mail you on Friday, so we'll give you the recordings themselves. They may indicate the date. I don't know, I haven't actually looked at them.

MS. SASSOON: Thanks.

BY MS. SASSOON:

Q. Do you remember when you spoke to J.T. Tumblin?

A. I think this, too, would be a guess,

and I would guess August or September of 2014.

Q. And you were put in touch with him by Chuck Lloyd or Mr. Reid, who was it?

A. I believe that Mike Reid provided us with Mr. Tumblin's contact info.

Q. And had Mr. Tumblin been fired from Safelite?

A. That I don't remember. He was no longer with Safelite. I don't remember if he was -- he, too, was fired or whether he left on his own accord.

Q. And I believe in your conversation with him he told you he was laid off for trying to get references from clients. Does that ring a bell?

A. It -- it doesn't, but I have no reason to believe that that is not true.

Q. And why were you interested in talking to Mr. Tumblin?

A. Again, this was a situation where Mr. Reid presented the Department with somebody that might have useful information.

Q. If you turn to the third page, middle of the page, you told Mr. Tumblin "our role is not to take sides, although...I do think that Mr. Reid from time to time because he submitted the

complaints, believes we have one side or the other and that's fine, because part of our mission statement is to protect the Minnesota marketplace and Minnesota consumers, but when it comes to investigation our role is to be neural."

Do you think that's an accurate statement about the role you're supposed to play in an investigation?

A. Yes, and I believe it's consistent with what I testified here earlier today.

Q. Which is that it's your role to remain neutral throughout an investigation?

A. Yes.

Q. Turning to page 4.

A. Okay.

Q. Mr. Tumblin in the middle of the page, that long paragraph, it says, "and I think the Mikes of the world if you will, kind of banded together and you know, and they think Safelite's this big huge, which they are, you know, David versus Goliath situation."

Did you understand him to be referring to Safelite as Goliath and the independent glass shops as David?

A. I don't recall this statement until

1 reading it again today. But, yes, I believe
2 that's -- that would be my interpretation of that
3 statement.
4 Q. And do you agree that this ongoing
5 battle, as you refer to it, between independent
6 shops and Safelite and the insurance companies is a
7 case of David versus Goliath?
8 A. Um, I -- I don't know if that's apt or
9 not. I think when you have insurers and Safelite,
10 those are very large entities. I think the
11 independent glass shops are smaller entities. So
12 David was the small guy, Goliath was the big guy.
13 So maybe it's apt.
14 Q. Do you have a special sympathy for the
15 small guy?
16 A. A special sympathy? No, I do not.
17 Q. Do you have a sympathy for the small
18 guy --
19 A. No.
20 Q. -- versus the big guy?
21 Looking from pages 4 to 5, do you
22 remember that you asked Mr. Tumblin about different
23 types of glass?
24 A. I see here that I did, yes.
25 Q. And was that because some independent

1 glass shops told you that Safelite was using lower
2 quality glass in its repairs?
3 A. I don't remember if this is -- if
4 that's because -- I asked these questions because
5 of that, but that's certainly one consideration,
6 that I have certainly heard that the independent
7 glass shops argue that Safelite uses -- I don't
8 want to say inadequate, lower quality glass and
9 adhesive.
10 Q. And if you look at page 5, Mr. Tumblin
11 told you, "it's just as good as...any other
12 glass...personally, it shouldn't be an issue, I
13 mean, uh, glass is glass." And you can flip
14 through more of the transcript, but do you remember
15 Mr. Tumblin telling you that there was no true
16 difference between different types of glass in
17 terms of quality?
18 A. Based on -- on reading this here
19 today, yes, I remember that.
20 Q. And did you ever reach that conclusion
21 yourself based on your investigation?
22 A. No. I -- I continue to be unclear as
23 to whether that's true or not.
24 Q. But you never reached a determination
25 to substantiate the claim that Safelite used lower

1 quality glass than other shops, did you?
2 A. No. Again, the investigation with
3 Safelite has resulted in no materials being
4 provided to the Department by Safelite.
5 Q. That's not what I asked.
6 A. Okay. What did you ask?
7 Q. I asked whether you ever reached a
8 determination to substantiate the claim that
9 Safelite used lower quality glass than other shops?
10 A. No, I never made such a determination.
11 Q. And if you look at page 6, the top of
12 the page starts with "And so."
13 A. Okay.
14 Q. If you look at the middle of the page,
15 Mr. Tumblin said to you about Safelite, "But I
16 would say we... they could probably offer it at a
17 better rate because they actually manufacture the
18 glass," end quote.
19 Do you remember Mr. Tumblin telling
20 you that Safelite could charge less for auto glass
21 repair because they manufacture the glass themselves?
22 A. Only because I'm reading it here right
23 now.
24 Q. Do you remember reaching that
25 conclusion yourself?

1 A. I don't know that I reached that
2 conclusion myself, but I was aware at the time that
3 this interview occurred that Safelite had a
4 manufacturing division which manufactured glass,
5 which had the potential to result in cost savings
6 for them when they went out to repair or replace
7 windshield glass.
8 Q. And do you think the cost benefits
9 that come from manufacturing glass yourself could
10 potentially be a benefit to consumers?
11 A. Yes, potentially.
12 Q. So Safelite's ability to charge lower
13 prices by manufacturing the glass itself could
14 ultimately result in cost savings for customers; is
15 that fair?
16 A. Based on -- depending on the quality
17 of the glass, yes.
18 Q. Turning to page 11, at the top you
19 say, "Yeah, we're confused up here, man."
20 A. Okay. I'm just glad I give good
21 markers for the Department --
22 Q. I know.
23 A. -- not providing page numbers,
24 brilliant quotes.
25 Q. So on page 11 Mr. Tumblin said to you

1 a few lines down, "well I know why Mike's in it,
2 for the money. He has this $2 million yacht that
3 he drives around... He's not some poor glass shop
4 owner, but hey good for him, he can afford it, go
5 for it."
6 Is the Mike he's referring to there
7 Mike Reid, based on your understanding?
8 A. Yes, based on my understanding.
9 Q. And did you agree with him that Mike
10 is in it for the money?
11 A. Mike runs a business. I'm assuming
12 any business owner is -- is in it for the money.
13 Q. And he considered Safelite a
14 competitor to his business, right?
15 A. Safelite AutoGlass? Yes.
16 Q. Did you know he had a $2 million yacht?
17 A. I did not, and I've never substantiated
18 this.
19 Q. Did you think Mr. Reid was assisting
20 the investigation because he was in it for the
21 money?
22 A. No, I never thought that.
23 Q. But you were aware that he saw
24 potential financial upside if the Department of
25 Commerce took action against the insurance

1 companies or Safelite, right?
2 A. Based on an e-mail which you provided
3 earlier today, yes, that appears correct.
4 Q. Were you also aware of that based on
5 common sense?
6 A. I -- I don't know.
7 Q. You were aware that Mr. Reid was in
8 litigation over payments with the insurance
9 companies, right?
10 A. At various points in time, yes. I
11 received copies of arbitration awards, and some of
12 those involved Alpine Glass.
13 Q. And so you were aware that Mr. Reid
14 had a significant financial stake in seeing that
15 the insurance companies modify their behavior with
16 respect to reimbursements, right?
17 A. I don't know if that's right or not
18 because he continued to win large arbitration
19 awards. So I'm not sure how the Department's
20 investigation of its administrative statutes would
21 impact his arbitration wins or losses.
22 Q. Do you remember Mr. Reid asking you to
23 do something about the fact that he had to serially
24 arbitrate against the insurance companies on a
25 case-by-case basis?

1 A. I do recall that.
2 Q. And that was because it was costly for
3 him to serially arbitrate his cases, right?
4 A. I believe he made reference to legal
5 fees. So, yes.
6 Q. So even though he was winning some
7 arbitrations, he informed you that he was hoping
8 the insurance companies would be incentivized to
9 simply reimburse him at higher rates rather than
10 having to arbitrate with them constantly, right?
11 A. Could you please reread the question?
12 MS. SASSOON: Will you reread the
13 question?
14 (Whereupon, the court reporter read
15 back the following question: "So even though he
16 was winning some arbitrations, he informed you that
17 he was hoping the insurance companies would be
18 incentivized to simply reimburse him at higher
19 rates rather than having to arbitrate with them
20 constantly, right?")
21 THE WITNESS: Based on the e-mail you
22 provided me today, you can infer that from it, sure.
23 BY MS. SASSOON:
24 Q. Can you turn to page 14, and the top
25 sentence says, "you could take yourself out of

1 those Safelite shoes for a minute."
2 A. I wonder what those shoes look like?
3 Okay.
4 Q. So here you asked Mr. Dublin to --
5 Tub -- Tumblin to take himself out of the Safelite
6 shoes to try to understand the Department's
7 concerns about Safelite, right?
8 A. That's what it says.
9 Q. And you said to him, "with this
10 general average invoice, because the more these
11 contracts that I subpoena and see, when we think
12 about the marketplace as a whole, we see this
13 general average invoice, and we're thinking to
14 ourselves, the only way that you can keep... setting
15 that amount lower and lower is by having more
16 windshields be repaired, or having more windshields
17 be replaced at lower and lower cost." Do you
18 remember saying that?
19 A. I didn't -- I didn't recall it until
20 you've provided me with a copy of it. I see that.
21 That's what I said.
22 Q. And was it your view that Safelite was
23 able to keep charging lower costs because of the
24 scale of the business?
25 A. My thoughts are that there could be

1 numerous factors which lead to that.
2 Q. And what factors are you communicating
3 here?
4 A. This statement refers to the use of a
5 general average invoice.
6 Q. And how does that enable Safelite to
7 charge lower costs?
8 A. It doesn't necessarily enable Safelite
9 to charge lower costs. I think that the use of a
10 general average invoice has the potential to result
11 in more windshields being repaired versus replaced
12 or having windshields replaced at a lower cost.
13 Q. What's your concern about having more
14 windshields repaired versus replaced?
15 A. Well, it depends on whether the repair
16 is appropriate for the situation. You asked as to
17 whether I got any sense of is Safelite using
18 inferior glass? Well, I don't have a clear
19 understanding of that yet to this day.
20 It's the same thing with repairs.
21 I've been told that if there's more than three
22 repair chips it shouldn't be repaired, it should be
23 replaced. If there's a crack in the line of sight
24 or near the edges, it should be replaced, not
25 repaired, so --

1 Q. And you were told that by Safelite's
2 competitors; is that right?
3 A. No. I -- to some degree, insurers
4 agree with those, particularly the line of sight
5 and around the edges of the windshield.
6 Q. Have you ever found an example where
7 Safelite AutoGlass inappropriately performed a
8 repair when it should have performed a replacement?
9 A. Again, no.
10 Q. Turning back to what you said here,
11 you said, "the only way that you can keep... setting
12 that amount lower and lower is by having more
13 windshields be repaired, or having more windshields
14 be replaced at lower and lower cost."
15 A. That's what I said.
16 Q. So were you suggesting here that
17 Safelite was able to charge lower prices because of
18 the scale of business and being --
19 A. That's not --
20 Q. -- able to replace a lot of
21 windshields?
22 A. I think we're talking past each other.
23 I -- that's not at all what I'm getting at when I
24 said this.
25 What I'm getting at is insurance

1 clients are going to want that guaranteed average
2 invoice amount each year to be lower and lower, and
3 the only way to do that are something that could be
4 problematic in the eyes of the Department. So it
5 has nothing to do with can Safelite perform the
6 glass repair for less and less, it's about what
7 that contractual clause does and what are the
8 pressures of insurance clients on that number?
9 Q. But you agree, don't you, that lower
10 costs, as long as safety is not compromised, are
11 better for consumers?
12 A. Well, again, I will say that lower
13 prices are better for consumers, but I think we need
14 to be really specific because what you're saying --
15 what I'll say, rather, is that if an insurance
16 company agrees with Safelite, or any other TPA,
17 that the TPA is going to provide all of its glass
18 claim processing for a set number, say it's $100
19 per claim, and the next year the insurance company
20 demands that that be $95 instead of $100, that's
21 different than what the consumer is paying. That
22 may or may not translate into higher market rates
23 for insurance as there's a great deal of competition
24 in the insurance marketplace.
25 Q. Do you agree that as a general matter

1 higher repair costs translate into higher insurance
2 costs?
3 A. It makes logical sense. I have no
4 basis for that belief other than it makes logical
5 sense, because insurers have to compete with each
6 other, and so if -- if one ends up as an outlier,
7 as maybe Mike Reid and Alpine Glass are, how does
8 that impact the business? I -- I don't know. It's
9 competitive.
10 Q. So the parallel to that would be that
11 as a general matter lower repair costs likely
12 translate into lower insurance costs, do you agree
13 with that?
14 A. Again, I have no basis for knowing
15 whether that's true or false. Insurance companies
16 have to compete with one another. Therefore, their
17 price is important; and as to whether they retain
18 insureds or not, and they're responsible under the
19 terms of the insurance contract for repairing
20 vehicles.
21 Q. Turning back again to what you said
22 here?
23 A. Yes.
24 Q. When you said "setting that amount
25 lower and lower is by having more windshields be

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1 repaired," again, you have no examples where a
2 windshield was inappropriately repaired rather than
3 replaced, correct?
4 A. Asked and answered. No, I do not.
5 Q. And when you said "or having more
6 windshields be replaced at lower and lower cost,"
7 you don't have an examples, do you, where a
8 windshield was replaced at such a low cost that it
9 compromised the quality or the safety of the glass,
10 do you?
11 A. Asked and answered. No, I do not.
12 Q. So, ultimately, you did not have any
13 concrete evidence to substantiate these potential
14 concerns you had expressed here about general
15 average invoice, did you?
16 A. I don't understand the question.
17 My -- my concerns about general
18 average invoice have not changed from when I first
19 learned about it to this very day.
20 Q. And what evidence did you collect or
21 do you have that substantiates that concern?
22 A. Again, Safelite has provided no
23 documentation. I do not have evidence as to how a
24 general average invoice has impacted the price of
25 glass replacement and repair in Minnesota.

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1 Q. I'm not asking about what Safelite
2 provided or didn't provide. I'm just asking what
3 evidence you have to substantiate your concern
4 about general average invoice?
5 A. I -- I don't know.
6 Q. You don't know what evidence you have
7 or you don't --
8 A. I believe that --
9 Q. -- have any evidence?
10 A. I believe that the guaranteed average
11 invoice cost in contracts between Safelite and
12 Minnesota insurers is problematic. I do not know
13 yet how the compensation of Safelite customer
14 service representatives are structured. We have
15 asked for it. I think that may go some of the way
16 in letting us know whether our concerns are
17 justified or not.
18 Q. Are you --
19 A. So do I --
20 Q. -- aware that Safelite's 30(b)(6)
21 witness in this case testified that customer
22 service reps are not compensated based on whether
23 they refer someone to a particular shop?
24 A. I have no knowledge of any testimony
25 given by other people in this case.

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1 Q. If Safelite, indeed, testified to the
2 fact that no customer service rep is compensated
3 based on their referral rates, would that affect
4 your view of general average invoicing?
5 A. Possibly. I would want documents
6 substantiate -- documents substantiating that.
7 Q. If that were substantiated --
8 A. But possibly --
9 Q. -- would that change your view about
10 general average invoice?
11 A. Possibly.
12 Q. And why is that?
13 A. Because it would take one avenue of
14 the department's concerns about guaranteeing
15 average invoice clauses out of the picture.
16 Q. And is that the primary area of
17 concern about guaranteed average invoice?
18 A. Whether it's the primary or not, I
19 don't know.
20 Q. What would be another area of concern
21 besides the compensation of customer service reps
22 with respect to guaranteed average invoice?
23 A. Data with respect to how over time,
24 maybe a ten-year period, numbers have shifted in
25 how many repairs and how many replacements are

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1 performed each year and at what cost, how often the
2 guaranteed average invoice is met for Minnesota
3 insurer clients and when it's not, what occurs.
4 How does that, if it does occur, impact future
5 guaranteed average invoice price sets?
6 There are -- there's a great deal of
7 information the Department does not have with
8 respect to guaranteed average invoice. I'm not in
9 a position to tell you what's primary or not.
10 There's various avenues the Department would like
11 to look into with respect to how that might play
12 out in the marketplace.
13 Q. But despite that lack of evidence, you
14 concluded in your Memo of Violations that the
15 guaranteed average invoice violated Minnesota law?
16 A. I do not remember concluding that a
17 guaranteed average invoice provision violates
18 Minnesota law. I remember using it as one example
19 of why the practices are systemic.
20 Q. Do you remember concluding that AAA's
21 conduct with respect to the general average invoice
22 amounted to dishonest and coercive practices in
23 violation of Minnesota law?
24 A. I don't. I just remember it as one
25 example of it.

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1 Q. Of violating Minnesota law?
2 A. Yes.
3 Q. So you did think the general average
4 invoice agreements violated Minnesota law, based on
5 the evidence that you did have at that time?
6 A. I think so still, yes.
7 Q. Even though you've told me you have no
8 data or information to substantiate your concerns
9 about general average invoicing?
10 A. Other than the clause itself, I have
11 not been able to gather other information about the
12 guaranteed average invoice.
13 Q. So based on the language of the clause
14 alone, you concluded that that was a violation of
15 Minnesota law?
16 A. Yes.
17 Q. Turning to page 18 and 19 of this same
18 call transcript with J.T. Tumblin?
19 A. Okay.
20 Q. If you look at the bottom of page 18,
21 I guess at the top of that page it says "different
22 states." Once you get there, I want you to look at
23 the bottom of the page.
24 A. Okay.
25 Q. Okay. Now, if you look, he starts

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1 talking on page 18 and then at the top of page 19
2 he says, "the... Minnesota group that's really...
3 gouging, I mean, at the end of the day, they're
4 gouging the consumer because eventually, you know,
5 the insurance company's gonna raise their rates,
6 you know, across the board, especially since they're
7 getting paid more than any other state in the
8 United States," and you said, "Right."
9 So, did you agree with Mr. Tumblin
10 that there was price gouging going on in Minnesota?
11 A. That's not an indication of my
12 agreement, it's simply an indication of me saying
13 something so that he could continue and know that
14 I'm still listening.
15 Q. Did you agree with Mr. Tumblin that
16 there was price gouging going on in Minnesota?
17 A. I have no basis to conclude that one
18 way or another.
19 Q. Were you interested in reaching a
20 conclusion about that?
21 A. I did not think that that was my
22 function, no.
23 Q. Turning to the next page, page 20?
24 A. Okay.
25 Q. In the middle of the page you say to

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1 Mr. Tumblin, "So because... so because of the large
2 percentage of glass claims that fall within the
3 values that they're used to...the small percentage
4 that don't, by arbitrating and paying the attorneys
5 and winning or losing, will often times, from what
6 we've seen, losing an arbitration, that's... that's
7 still worth it from a business perspective, because
8 of the massive percentage that fall below the value."
9 Do you remember what you were
10 communicating there?
11 A. No.
12 Q. Do you have an understanding reading
13 it today of what you're talking about?
14 A. I think from a business perspective it
15 makes sense for a company's insurers I mean by that
16 to continue arbitrating.
17 Q. And is that because so few glass shops
18 charge higher than the com -- insurance company's
19 reimbursement prices?
20 A. No. I believe I meant that so few
21 take it to consolidated arbitration.
22 Q. What about where you say "because of
23 the massive percentage that fall below the value,"
24 there are you referring to the fact that, as you
25 testified earlier, even non-network shops generally

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1 agree to the pricing set by the insurance company?
2 A. Yeah. I think the last clause of that
3 sentence refers to the large amount of shops which --
4 which accept the pricing.
5 Q. And that's what you state at the
6 beginning of your statement, too, right, the large
7 percentage of glass claims that fall within the
8 values that they're used to?
9 A. Yes.
10 Q. And so you recognize that it was only
11 a very small percentage of shops that refused to
12 agree to the pricing?
13 A. Asked and answered. Again, yes.
14 Q. Turning to page 22, the top of the
15 page says "I got you."
16 A. Okay.
17 Q. Looking at the middle of the page,
18 J.T. Tumblin said, "Now in the past, the scripts,
19 and I'm talkin' many years ago," get "a little more
20 aggressive, I guess, but by the same token...me as
21 a consumer, if I knew that XYZ Glass shop was going
22 to sue my insurance company and I didn't know about
23 it and could affect my claim, because it is on my
24 claim file... and charge an outrageous amount of
25 money, I would like to be informed."

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1 Do you remember Mr. Tumblin
2 communicating to you that he thought as a customer
3 he'd be interested in knowing that a glass shop
4 would be pursuing arbitration against his insurance
5 company for the balance of a bill?
6 A. Do I remember if a former Safelite
7 investigator said that? I didn't until you pointed
8 it out. In reading this, I believe that's true, yes.
9 Q. And in response you said, "There's no
10 question that there's an analysis...that should be
11 done by an insured of anything before filing a
12 claim and you're right, you know, the more
13 information that an insured has."
14 A. Yes.
15 Q. And Mr. Tumblin said, "You can make an
16 informed decision and yeah."
17 So did you agree that the more
18 information an insured has the more informed a
19 decision an insured can make?
20 A. Typically, it depends on how it's
21 conveyed.
22 Q. But, typically, you think a consumer
23 would want more information rather than less?
24 A. More information is typically a good
25 thing.

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1 Q. And, typically, an insured would want
2 to know about risks such as the possibility that a
3 glass shop would --
4 A. It depends on whether it's happening
5 in the marketplace.
6 Q. Sorry. I didn't get to finish my
7 question.
8 Typically, an insured would want to
9 know about risks such as the possibility that a
10 glass shop would pursue the insurer for money
11 beyond the reimbursement rate of the insur --
12 insurance company?
13 A. I apologize. I don't know that I
14 understand the question. Why --
15 Q. Typically, do you think an insured
16 would want to know about risks such as the
17 possibility that a glass shop would pursue the
18 insurance company for money beyond the
19 reimbursement rate of that company?
20 A. All I can do is tell you me, as a
21 consumer, is not interested in what the glass shop
22 does to settle the claim with the insurance company
23 after my windshield gets replaced or repaired.
24 (Whereupon, Deposition Exhibit No. 100
25 was marked for identification, and a copy is

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1 attached and hereby made a part of this deposition.)
2 THE COURT REPORTER: One hundred.
3 BY MS. SASSOON:
4 Q. Do you remember when you had a phone
5 conversation with Paul Gross?
6 A. I remember having the conversation. I
7 do not remember when it was.
8 Q. And Paul Gross worked for a competitor
9 of Safelite's; is that right?
10 A. I believe he worked for a competing
11 TPA.
12 Q. If you turn to page 4 --
13 A. Hey, page numbers.
14 Q. I know.
15 A. Okay.
16 Q. If you look at the top paragraph,
17 middle of that paragraph, do you remember that
18 Mr. Gross told you that in his view Safelite was
19 doing a, quote, pretty good job of abiding by the
20 law in its strictest terms, close quote?
21 A. I didn't remember it until you pointed
22 it out right now, but I see that, yes.
23 Q. Would you consider it meaningful that
24 a competitor of Safelite communicated that to you?
25 A. I consider that relevant, yes.

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1 Q. Looking at page 10 to 11?
2 A. Okay.
3 Q. Do you remember that you also asked
4 Mr. Gross about the difference between types of
5 glass and the quality of that glass?
6 A. I see that here on pages 10 and 11.
7 Q. And do you remember that Mr. Gross
8 told you that there was no real difference between
9 those different types of glass in terms of quality?
10 A. I'm happy to reread this, but I do not
11 recall what he said about the differences.
12 Q. If you just look at what he said on
13 page 11, for example, quote, the more you know
14 about glass, the less you'll buy into that
15 argument, end quote. Quote, there's no discernable
16 difference between their product and the Chinese
17 product, close quote. Quote, if a consumer doesn't
18 know any better, it tends to be an effective sales
19 pitch to give the consumer, so that you can try and
20 convince them that they should pay you more money,
21 close quote.
22 A. Okay, I see those.
23 Q. Does this refresh your recollection
24 that Mr. Gross informed you that there's no real
25 difference in the quality of glass even if that

1 glass costs different amounts of money?
2 A. His opinion, yes, that refreshes my
3 memory.
4 Q. And in his opinion some shops would
5 tell the consumer that different types of glass was
6 a different quality to get them to pay more money,
7 is that what he told you?
8 A. That's what it says.
9 Q. Turn to page 14?
10 A. Okay.
11 Q. Mr. Gross told you, "These... you
12 know, the glass retailers were out there gouging,
13 exploiting," and later he says "driving the cost of
14 insurance up for" everyone. Do you see that?
15 A. Yes.
16 Q. Do you remember if you agreed with
17 him?
18 A. I -- no, I don't remember whether I
19 agreed with him.
20 Q. Do you have a view about whether price
21 gouging, like he says, would drive the cost of
22 insurance up for everyone?
23 A. I don't have a perspective on that.
24 It makes logical sense, as I indicated.
25 Q. Did it fect your -- Did it affect your

1 thinking about this investigation that you had
2 numerous witnesses telling you about price gouging
3 by independent glass shops?
4 A. No, I don't believe it did.
5 Q. Why not?
6 A. We do not regulate glass shops, number
7 one; number two, Minnesota arbitrators have felt
8 differently repeatedly; and, number three, our job
9 as the Department of Commerce is to enforce
10 Minnesota's administrative laws and rules with
11 respect to insurance, and that's what we've and
12 continue trying to do.
13 Q. Look at page 17 at the bottom.
14 A. Okay.
15 Q. A few lines up you said, "What?! The
16 Department of Commerce and Departments of Insurance
17 all across the country and glass vendors and
18 insurers, we have big problem on our hands because
19 nobody can get along and there's no end in sight.
20 If you had a perfect outcome how is this issue
21 resolved?"
22 A. I see that, yes.
23 Q. And then you said, "Because I can tell
24 you...well obviously we have a Democratic Governor
25 and different parties."

1 Do you remember why you thought that
2 was relevant?
3 A. No.
4 Q. Do you have a view sitting here today
5 why it's relevant that you have a democratic
6 governor and different parties?
7 A. No.
8 Q. Do you have any idea why you would
9 have said that to Mr. Gross?
10 A. No.
11 Q. Did the policy views of the Department
12 of Commerce affect how you approach this
13 investigation?
14 A. No. But I would add I've been with
15 the Department of Commerce for two years and three
16 months, we've had the same commissioner the entire
17 time. I've -- anything I say with respect to how a
18 different commissioner approaches his duties is
19 completely speculative.
20 Q. Referring back just for a second to
21 the Memorandum of Violations that you wrote in
22 2014, you don't have to look at it, but I just want
23 to ask you if you remember how your supervisors
24 responded to the memo?
25 A. Which company are we referring to?

1 Q. This is the Memorandum of Violations,
2 there's only one Memorandum of Violations in this
3 stack of exhibits and --
4 A. You provided me with copies of
5 multiple --
6 Q. It's the only one entitled Memorandum
7 of Violations.
8 A. Oh.
9 Q. And the respondent is The Auto Club
10 Group.
11 A. Okay.
12 Q. Do you remember what steps were taken
13 next by your supervisors in response to the memo?
14 A. At some -- I don't remember
15 specifically. At some point in time following my
16 submission of Exhibit 91 to my superiors,
17 Mr. Fleischhacker decided that there was another
18 ongoing investigation with Auto Club Group by
19 another investigator, and he decided for efficiency
20 purposes that we would attempt to settle those
21 matters together. The other investigator and
22 myself prepared some examples for Auto Club Group
23 of our concerns, and there was approximately a
24 four-month negotiation period before a consent
25 order was arrived at in January of 2015.

Q. Were you involved in the settlement negotiations?
A. Actively.
Q. What role did you play?
A. I'm not sure what the different roles are. Do you have a sense of what the different roles would be?
Q. Did you help set the terms of the Consent Order?
A. I would say that while all the calls were Mr. Fleischhacker, I was the primary point of contact for negotiating the Consent Order.
Q. And was it your idea to include a provision that would restrict The Auto Club Group's ability to work with Safelite of Minnesota?
A. No. That was actually offered to the Department by The Auto Club Group.
Q. So it's your position that the Department of Commerce did not suggest to The Auto Club Group that that be a term of the settlement?
A. Correct.
Q. Were you involved in initiating the administrative action against Safelite?
A. I think the most appropriate answer is yes. I referred the request for a cease and desist

order to the Attorney General's Office sometime in June 2014. Then, as the matter continued being investigated, there were numerous conversations between Mr. Tostengard of the Attorney General's Office and myself and Mr. Fleischhacker, and ultimately a statement of charges was issued in the Office of Administrative Hearings.
Q. And was that administrative action initiated as a reaction to Safelite filing this federal action against --
A. No.
Q. -- the Department of Commerce?
A. No.
Q. Oh, sorry, that's mine. Go back to Exhibit 87, it should be in your pile.
A. Okay.
Q. This is, again, the Minnesota Statute 72A.201, and it's your view that Safelite has violated different provisions of this statute; is that right?
A. My position? Yes. It wasn't included in the administrative case.
Q. But in this case as a defense to Safelite's First Amendment claims it's the Department's position that Safelite violated the

statute; is that right?
A. I don't know what the Department's position is. It's -- it's my position that Safelite violated the statute.
Q. And what provision of this statute, in your view, has Safelite violated with the statements it makes about the possibility of balance billing?
A. 72A.201, Subd. 6(16).
Q. And --
A. And potentially 72A.201, Subd. 6(7).
Q. Sorry, Subd. 6(17) and Subd. 6(7), is that what you said?
A. Yes.
MR. LARSON: No. I think that -- I don't think that was your testimony.
BY MS. SASSOON:
Q. What subdivisions do you think the statements about balance billing violated?
A. 72A.201, Subd. 6(7); 72 -- 72A.201, Subd. 6(16).
Q. So let's look at each of those in turn. Turning to 72A.201, Subd. 6(7)?
A. Okay.
Q. Does this subdivision say anything about balance billing?

A. No. I'm referencing the third paragraph of this 6(7), "After an insured has indicated that the insured has selected a repair shop, the insured must cease all efforts to influence the insured's or claimant's choice of repair shop."
I believe that the language with respect to balance building -- billing has the potential for violating that clause of the statute.
Q. And after an insured has selected a repair shop, do you think that the insurance company has the prerogative to contact that shop to find out if it will agree to the company's pricing?
A. I see no reason why an insurance company can't ask a glass shop whether it agrees to pricing or not.
Q. And do you think the insurance company or its agent is then prohibited from informing the insured if the glass shop does not agree to its pricing?
A. It depends on how that is conveyed.
Q. But it's your testimony that an insurance company is not prohibited in all respects from informing the insured if the glass shop does not agree to its pricing, correct?

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A. It depends -- not prohibited per se, it depends on how that information is conveyed.
Q. Do you think the insurance company or its agent after an insured has selected a repair shop is entitled to share truthful information about that repair shop --
A. It depends on --
Q. -- with the insurance?
A. It depends on how the information is used. Under this subdivision that we're looking at, the insurance company must cease all efforts to influence the insured or claimant's choice of repair shop.
So if the message is conveyed, for example, repeatedly, I would take that to be an example of an effort to influence the repairs -- the insured or claimant's selection of a shop.
Q. And do you understand Subd. 6(7) to be a restriction on the speech that an insurance company or its agent can engage in?
A. I have no position on that. I wouldn't -- I have no position on First Amendment rights.
Q. Turning to Subd. 16, does this subdivision say anything about balance billing?

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A. No.
Q. And is it the Department of Commerce's position that warning about the risk of balance billing is a coercion, threat, incentive or inducement under the statute?
A. Again, I don't speak for the Commissioner, all I can do is give you my personal opinion.
Q. Is it your opinion that warning about the risk of balance billing is a coercion, threat, incentive or inducement under the statute?
A. Depending on how it's conveyed, yes.
Q. Before 2014, had the Department of Commerce ever interpreted the statute to bar companies from warning about the risks of balance billing?
A. To my knowledge, no.
Q. And what about Subd. 6(7), before 2014, had the Department of Commerce ever interpreted the statute to bar companies from warning about the risks of balance billing?
A. To my knowledge, no.
Q. And is your position that warning about the risks of balance billing is an effort to influence the insured's or claimant's choice of

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repair shop?
A. Depending on how it's conveyed.
Q. And do you believe Safelite at times conveyed the risk of balance billing in a way that constitutes an effort to influence insured's or claimant's choice of repair shop?
A. Absolutely, yes.
Q. And so is it your position that Safelite should be barred from warning consumers about balance billing?
A. If it is not occurring in the marketplace, yes.
Q. What if the Department of Commerce doesn't know if it's occurring in the marketplace?
A. I don't know a response to your question.
Q. What do you mean?
A. I -- I don't have a response to your question.
Q. Is that a yes or a no or an I don't know?
A. It's an I don't know.
Q. Is it your position that Safelite should be barred from warning consumers about balance billing if shops reserve that right on

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their billing invoices?
A. Again, it depends on whether it occurs in the marketplace.
Q. If all you know is that shops reserve the right to balance bill on their invoices, do you think Safelite should still be barred from warning customers about the risk of balance billing?
A. You provided me the statement at the bottom of the invoice today. Prior to today, the information that I had is we asked many parties, and no one has provided us an example of an insured or claimant being balance billed.
If it's not including -- if it's not occurring in the marketplace, my personal position is the repetitive nature of Safelite's customer service representatives with respect to the balance billing would be a violation of 72A.201, Subd. 6(7) and Subd. 6(16).
Q. I'm just asking you a hypothetical to understand your position about the statutes, so I'd appreciate a yes or no. What is your position --
MR. LARSON: Objection, calls for a legal conclusion, then.
BY MS. SASSOON:
Q. What is your position about whether

1 Safelite should be barred from warning customers
2 about balance billing if a shop reserves that right
3 on the billing invoice?
4 MR. LARSON: Again, object, it calls
5 for a legal conclusion. The witness is not here to
6 offer hypotheticals on legal impact of things that
7 aren't happening.
8 THE WITNESS: Am I being instructed
9 not to answer?
10 MR. LARSON: No. You can -- you
11 answer if you can.
12 THE WITNESS: Please reread the
13 question.
14 MS. SASSOON: Can you reread the
15 question?
16 (Whereupon, the court reporter read
17 back the following question: "What is your
18 position about whether Safelite should be barred
19 from warning customers about balance billing if a
20 shop reserves that right on the billing invoice?")
21 THE WITNESS: My personal position is
22 that Minnesota insurers and its agent Safelite
23 should be prohibited from informing insureds of
24 balance -- of the risk of being balance billed if
25 it's not occurring in the marketplace and doing it

1 in such a way that might try and influence them
2 after they've chosen a shop or in such a way that
3 could amount to coercion, incentive or inducement.
4 BY MS. SASSOON:
5 Q. So how does that position apply to the
6 question that I've just asked you?
7 A. I don't know. I don't know that I
8 understand the question.
9 Q. Is it your view that the warning
10 Safelite gives about balance billing is misleading
11 to customers?
12 A. The manner in which they convey that
13 information, yes.
14 Q. And that's based on your review of the
15 call recordings and not based on conversations with
16 customers, correct?
17 A. It's based on my review of the
18 recordings, yes.
19 Q. And not based on conversations with
20 customers, correct?
21 A. Correct.
22 Q. Do you think preventing Safelite from
23 warning about the risk of balance billing protects
24 customers?
25 A. If it's not occurring in the

1 marketplace and the language with which that
2 information is conveyed changes, yes, I think
3 there's an element of consumer protection.
4 Q. Has the Department of Commerce, to
5 your knowledge, ever considered other ways to
6 protect consumers that would not restrict Safelite's
7 speech?
8 A. I have no knowledge of that.
9 Q. Turning to the required advisory that
10 we've talked about today, and that's Subd. 13 --
11 sorry, 14 --
12 A. Six fourteen, I think.
13 Q. Yes, seven -- 72A.201, Subd. 6(14).
14 Do you have an understanding of what the purpose of
15 requiring insurers to read this advisory is?
16 A. Making sure that consumers are aware
17 of their right to choose a repair shop.
18 Q. Do you have reason to believe that
19 absent this advisory insurers don't know of their
20 right to choose a repair shop?
21 A. I have no knowledge of what consumers
22 are generally aware of.
23 Q. And looking at the statute, this
24 advisory must be given on top of the requirement
25 that before recommending a vendor the insurer shall

1 offer its insured the opportunity to choose a
2 vendor, correct?
3 A. Yes.
4 Q. Do you think both of those things, the
5 required advisory and the requirement that the
6 insurer offer its insured the opportunity to choose
7 the vendor, are necessary for consumers to know
8 that they can choose a repair shop?
9 A. It appears to be in the opinion of the
10 Minnesota Legislature.
11 Q. Do you think that makes sense?
12 A. I see no reason that that is not okay.
13 Q. Are you aware of any other industry
14 where a business is required to read an advisory
15 similar to this one?
16 A. I'm an insurance geek. I do not.
17 Q. In the insurance context, are you
18 aware of any other advisory that an insurer has to
19 read besides this one about auto glass repair work?
20 A. Yes. 72A.201, Subd. 6(7) does it
21 outside of only glass work.
22 Q. Can you explain that to me?
23 A. Six seven says, "You have the legal
24 right to choose a repair shop to fix your vehicle.
25 Your policy will cover the reasonable costs of

repairing your vehicle to its pre-accident condition no matter where you have" the "repairs made. Have you selected a repair shop or would you like a referral?"
Q. So this advisory does not refer at all to the insurance company being prohibited to do anything by Minnesota law; is that right?
A. No.
Q. Are you familiar with any advisory that requires an insurance company to disclose to a consumer what they're prohibited from doing under Minnesota law?
A. I cannot think of one off the top of my head.
Q. And can you think of any other required advisories besides these two that you've identified so far?
A. I cannot think of one off the top of my head.
MS. SASSOON: How long have we been going?
THE VIDEOGRAPHER: We've been going 56 minutes.
MS. SASSOON: Okay. Why don't we take a break.

THE VIDEOGRAPHER: Going off the video record. The time is now approximately 4:30 p.m.
(Break from 4:30 to 4:45.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 4:45 p.m.
BY MS. SASSOON:
Q. How long had you been at the Department of Commerce before you were put on the investigations in April of 2014?
A. Approximately two to three months.
Q. And what kind of training had you undergone in those two to three months?
A. Other than some human resource training, I do not recall any training that I had at the Department of Commerce.
Q. And was anyone actively supervising your conduct over the course of this investigation of the insurance companies and Safelite?
A. Pamela Gergen is my supervisor. As to what she does to supervise me in each case, you'd have to ask her.
Q. But you did say with respect to this case she was mostly out of the loop?
A. I believe that is correct, yes.

Q. Had you received any training at that point about the best way to collect evidence?
A. No.
Q. Any training at that point about the best way to conduct interviews?
A. No.
Q. How many cases had you closed by that point, in April of 2014?
A. I don't recall.
Q. And you were running this investigation without any other investigators, right?
A. Correct.
Q. What did you do prepare for your deposition?
A. I met with counsel, and I reviewed my affidavit, and I reviewed my electronic files.
Q. Was Marty Fleischhacker in your meeting with counsel to prepare for the deposition?
A. Technically speaking, there were two meetings. There was a meeting between myself and counsel and a meeting between Mr. Fleischhacker and counsel. I was brought in to assist with a few questions in Mr. Fleischhacker's preparation with counsel.
Q. So how long would you say you were in

Mr. Fleischhacker's meeting with counsel?
A. I would estimate that there were two occurrences, and the total time was approximately 15 minutes or less.
Q. And why were you asked to join the meeting?
MR. LARSON: Object as privileged.
BY MS. SASSOON:
Q. How long was your meeting with counsel?
A. Approximately an hour and a half.
Q. Was that just and you Mr. Larson?
A. It was, yes.
(Whereupon, Deposition Exhibit No. 101 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Exhibit 101.
THE WITNESS: Thank you.
BY MS. SASSOON:
Q. I've handed you Plaintiffs' First Set of Requests for Production of Documents in this case. Have you ever seen this before?
A. I believe the Attorney General's Office provided me with a copy of this request, yes.
Q. Did you help the Attorney General's Office collect documents responsive to these

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1 requests?
2 A. Yes.
3 Q. And what was your process for
4 collecting those documents?
5 A. I had previously produced my complete
6 file on these matters. I then also followed up
7 with other Department staff who had previously
8 worked on any glass-related matters that came up
9 prior to my time at Commerce, and telephone
10 conversations with counsel to provide any
11 information I had.
12 Q. So were you the point person between
13 the Attorney General's Office and Commerce for the
14 collection of documents?
15 A. Yes. I think that's accurate.
16 Q. Do you think DOC has produced all
17 documents in its possession that are responsive to
18 these document requests?
19 A. My understanding is that there are
20 e-mail search terms which remain outstanding on
21 Mr. Fleischhacker and Ms. Gergen's e-mails.
22 Q. When did you become aware that
23 Mr. Fleischhacker had not searched his e-mail for
24 responsive documents?
25 A. It's -- that task has been requested

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1 of him for several months, I think, and whether --
2 it has been done by Minnesota IT central staff, and
3 it was the results of those searches of his e-mail
4 were produced to Mr. Larson recently.
5 Q. Was your e-mail account searched to
6 respond to these document requests?
7 A. The most recent search by IT staff,
8 there was a litigation hold put on, I don't
9 remember exactly when, a long time ago, in
10 anticipation of any litigation; and Minnesota IT
11 central staff used search terms provided by
12 Mr. Larson to search the e-mails of myself,
13 Ms. Gergen and Mr. Fleischhacker. So, yes, my
14 e-mails would also be included in the search run by
15 Minnesota IT central staff.
16 Q. Were Lisa Pilot's e-mails searched?
17 A. That I don't know.
18 Q. Do you think she might have documents
19 relevant to -- or, sorry, responsive to these
20 requests?
21 A. I do not believe that she would, but I
22 can't with absolute certainty say that she doesn't.
23 Q. And were your hard copy documents in
24 your possession searched?
25 A. The hard copies were part of files

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1 that were then scanned in and put in our database,
2 and those were produced a long period of time ago
3 to the Attorney General's Office.
4 Q. What about any Word documents on your
5 computer that might be relevant and responsive to
6 these requests?
7 A. They would have been saved to my
8 electronic file, and copies of my electronics files
9 were also previously produced to the Attorney
10 General's Office.
11 Q. Okay.
12 (Whereupon, Deposition Exhibit No. 102
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 THE COURT REPORTER: One oh two.
16 THE WITNESS: Thank you.
17 BY MS. SASSOON:
18 Q. Do you recognize Exhibit 102?
19 A. Yes.
20 Q. Is this a letter you wrote to The Auto
21 Club Group in September of 2014 laying out potential
22 claims against it?
23 A. Yes.
24 Q. And did you draft this?
25 A. Yes.

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1 Q. And on this first page, does this set
2 out the methodology used to review calls from AAA
3 that form the basis for your investigative
4 conclusions?
5 A. I believe that is accurate, yes.
6 Q. And as stated here, the universe of
7 claims you reviewed was a total of 70 claims from
8 the insurance company, along with an additional
9 four call recordings provided by Rapid Glass; is
10 that right?
11 A. Yes, that's accurate.
12 Q. And one basis for your conclusion that
13 AAA had committed violations was the fact that ten
14 of those claim recordings suggested the use of
15 AAA's preferred providers before providing the
16 required advisory; is that correct? That's at the
17 bottom on the first page.
18 A. Yes.
19 Q. Did not conclude, however, that Triple
20 A had failed to provide the required advisory at
21 all; is that right?
22 A. I -- I don't recall, but I don't see
23 it listed here.
24 Q. Turning to the second page, that first
25 paragraph, the last line, it says, "Of the 29

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1 claims, 13 claim recordings attempted to coerce
2 insureds into using AAA's preferred providers by
3 warning them that, by choosing a non-network
4 vendor, the work may not be warrantied and/or they
5 may be balance-billed."
6 A. I see that, yes.
7 Q. Did you draw any conclusions about
8 whether those warnings were truthful or not
9 truthful?
10 A. No, I did not draw any conclusions as
11 to the veracity of those statements.
12 Q. And did you make any determinations
13 about whether on those calls the insureds
14 ultimately did switch shops from their initial
15 choice to another shop?
16 A. I don't recall any doing so, but I'm
17 not sure.
18 Q. Looking at the last page, page 3?
19 A. Okay.
20 Q. You say here, "AAA's general business
21 practices regarding automobile glass claims are
22 shown by," colon and number 2 is "the Master
23 Services Agreement between AAA and Safelite whereby
24 Safelite sets an average invoice target of $174.98
25 in exchange for its compensation, which can only be

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1 accomplished by swaying insureds to cheaper glass
2 shops, such as Safelite, or processing more claims
3 as repairs."
4 A. I see that.
5 Q. Did you have a specific concern about
6 referring insureds to, quote, cheaper glass shops?
7 A. I don't recall any.
8 Q. Did you see any harm to consumers from
9 going to, quote, cheaper glass shops?
10 A. I don't recall any.
11 Q. And after you sent this letter, do you
12 remember informing AAA that you wanted to reach a
13 settlement otherwise you would pursue administrative
14 action against it?
15 A. I don't remember precisely how that
16 was conveyed, but that was conveyed to Auto Club
17 Group, yes.
18 Q. And so when Auto Club Group proposed
19 certain terms for a Consent Order, that was in
20 response to a potential threat of administrative
21 action against them; is that fair?
22 A. Yes.
23 MS. SASSOON: Can we go off the record
24 for a second?
25 THE VIDEOGRAPHER: Going off the video

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1 record. The time is now approximately 4:57 p.m.
2 (Break from 4:57 to 4:58.)
3 THE VIDEOGRAPHER: We're back on the
4 video record. The time is now approximately
5 4:58 p.m.
6 BY MS. SASSOON:
7 Q. I'm showing you what's been marked,
8 previously been marked as Exhibit 80.
9 A. Okay.
10 Q. Do you recognize this e-mail?
11 A. No.
12 Q. And this is a chain that includes you,
13 Chuck Lloyd and Mr. Fleischhacker, November of 2014.
14 Do you see that?
15 A. I see that, yes.
16 Q. Here, this is pages 2 and 3, which
17 might be missing.
18 And do you see at the bottom of the
19 e-mail chain Mr. Fleischhacker asks Mr. Lloyd if he
20 has any information about national glass prices he
21 can provide because various insurers have told me
22 for years that certain glass companies are way
23 outside the norm for pricing, do you see that?
24 A. No.
25 Q. It's on the last page, page 4. Do you

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1 have page 4?
2 A. No.
3 Q. Sorry.
4 A. Can I give you -- I think that's a
5 duplicate page.
6 Okay. So looking at page 4, it
7 appears Marty is asking Mr. Lloyd as to the pricing
8 of his client. I don't see a specific client
9 listed, maybe his --
10 Q. Mike Reid is cc'd, so it seems to be
11 Alpine Glass.
12 A. Okay.
13 Q. Do you remember why you were
14 interested in knowing whether Mr. Lloyd's clients
15 were way outside the norm for pricing?
16 A. Ah, it wasn't -- it wasn't me making
17 the request. I -- I don't know why Marty sent this.
18 Q. Did you think it was relevant to your
19 investigation?
20 A. Again, I -- I didn't send this. I'm
21 not sure -- you'll have to ask Marty.
22 Q. But sitting here today, do you think
23 this question was relevant to the investigation?
24 A. I think all data we can gather with
25 respect to pricing is relevant, yes.

Q. And do you remember if at the time you were interested in finding out this information about the pricing of certain glass companies that was allegedly way outside the norm?
A. I don't recall anything specifically, no.
Q. You don't recall being interested in that question?
A. I recall us asking multiple individuals or companies for -- for pricing data. I think any pricing data that Mr. Lloyd could provide about his clients would be relevant and beneficial.
Q. What would make it relevant to the investigation?
A. It would help us understand exactly what was going on in the marketplace with respect to the other side's claims that in this case Alpine Glass is charging what may be considered above fair and reasonable prices for a geographic area.
Q. And if that were true, how was that relevant to your investigation of the insurance companies?
A. It's relevant as supporting information to the insurers' claims on pricing.
Q. Do you remember receiving this

response from Mr. Lloyd that's on pages 1 and 2?
A. No.
Q. Do you remember evaluating any of the representations in his e-mail here to see if they were truthful?
A. I remember sending out our request to Auto-Owners. I don't remember whether it was in response to this e-mail or whether it was in response to another letter that Mr. Lloyd sent in.
Q. Do you agree with the assertion that complaints about auto glass claims are most often industry driven rather than consumer driven?
A. I have no basis for forming an opinion.
Q. In your experience, have the complaints you've received about auto glass claims been industry driven or consumer driven?
A. Um, again, the complaints that I'm aware of are from Mr. Reid, Mr. Lloyd, and Mr. Fleischhacker. So, one was an internal Commerce employee and the other two were glass shops.
Q. So would that support a conclusion that these complaints are, typically, industry driven?
A. Ah, glass shop driven. My experience is that the complaints largely come from glass

shops.
Q. Glass shops that are competitors of Safelite AutoGlass?
A. Yes.
Q. And glass shops that don't want to agree to the pricing set by the insurance companies; is that right?
A. Yes.
Q. And those are the glass shops that are driving these complaints about insurance companies and Safelite?
A. That would be my personal perspective, yes.
Q. And at the same time there were no specific consumer complaints that drove the investigation; is that right?
A. Correct.
MS. SASSOON: Okay, I'm done.
THE VIDEOGRAPHER: This concludes the video deposition. The time is now approximately 5:04 p.m. Thank you.
(Whereupon, the deposition of T.J PATTON was concluded at 5:04 p.m.)

I, T.J PATTON, do hereby certify that I have read the foregoing deposition and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
____	____	_____
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Date: T.J PATTON

STATE OF MINNESOTA)
)ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN that I, Jean F. Soule, Registered Professional Reporter, took the foregoing deposition of T.J PATTON;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction to the best of my ability;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were not waived by the witness and respective counsel;

That I am not related to any of the parties hereto, nor an employee of them, nor interested in the outcome of the action;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 12th day of March, 2016.

JEAN F. SOULE, Notary Public, RPR

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Larson Ex. 5

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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Michael Schmaltz

January 11, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of MICHAEL SCHMALTZ, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Whitefish Conference Room, Minneapolis, Minnesota, commencing at 9:03 a.m., Monday, January 11, 2016.

* * *

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P R O C E E D I N G S

Whereupon, the video deposition of MICHAEL SCHMALTZ was commenced at 9:03 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International, Incorporated. Today's date is Monday, January 11th, in the year 2016. The time is now approximately 9:03 a.m. We are at 4000 U.S. Bank Plaza, Minneapolis, Minnesota, to take the video deposition of Mr. Michael Schmaltz in the matter of Safelite Glass, Incorporated and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MS. SASSOON: Danielle Sassoon, with Kirkland & Ellis, representing the Plaintiffs; and I'm here with my colleague, Chris Reigstad.

MR. LLOYD: Chuck Lloyd, I represent the Deponent, Mike Schmaltz.

MR. LARSON: Oliver Larson, with the Attorney Generals Office, on behalf of the Commissioner.

MS. SASSOON: And we have Rick Snyder from Fredrikson & Byron in the room, as well.

THE VIDEOGRAPHER: Would the court reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. SCHMALTZ: Yes.

THE VIDEOGRAPHER: You may begin.

* * *

MICHAEL SCHMALTZ,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MS. SASSOON:

Q. Will you state your full name, please?
A. Michael Schmaltz.
Q. And are you aware that we are here in connection with the case captioned Safelite Group, Inc. and Safelite Solutions, LLC versus Lori Swanson and Michael Rothman, in the U.S. District Court for the District of Minnesota?
A. Yes.
Q. My name is Danielle Sassoon, and I represent the plaintiffs. Going forward I will refer to them as Safelite. Is that okay?

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A. Yes.
Q. Where do you live, Mr. Schmaltz?
A. I live at 5365 Union Terrace Lane North, Plymouth, Minnesota.
Q. Have you ever been deposed before?
A. No.
Q. Have you ever testified at a hearing before?
A. Legislative hearings, I have testified at legislative hearings.
Q. Was that in your capacity as executive director of the Minnesota Glass Association?
A. To the best of my recollection, it was -- I was an employee of Harmon Glass at the time, and I was not executive director of the Glass Association when that occurred.
Q. Do you remember what your testimony was about?
A. It was regarding legislation that was being contemplated to prohibit incentives in the insurance -- between glass shops and the insurance industry.
Q. What was your position on that legislation?
A. We were trying to prevent the use of

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incentives.
Q. And do you remember what ended up happening?
A. A law was passed that did prevent the use of incentives.
Q. I have a few preliminaries to go over with you before we continue, call them the rules of the road. So during this deposition, I'll ask you questions, you'll provide answers, and the court reporter is going to take down what we both say.
A. May I -- may I just clarify? Something just occurred to me.
Q. Of course.
A. You asked if I'd testified at hearings. I have testified at arbitration hearings as well.
Q. And was that in your capacity as executive director of --
A. No.
Q. -- the Minnesota Glass Association? In what capacity were you testifying?
A. I was representing independent glass shop owners.
Q. As their lawyer or their lobbyist or --
A. No. I was rep -- I -- I'm not an attorney. I was representing them be -- because of

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my experience with -- and knowledge of -- of that area of the law and because of what the Minnesota low -- no-fault law allows.
Q. Got it, okay. I'll probably come back to that later. But, first, I just want to go over some of these preliminaries with you.
You just took an oath that requires you to tell the truth as if you were testifying in a court of law. Do you understand that?
A. Yes.
Q. It's important that you respond to my questions verbally and loudly so that the court reporter can take down your answers. Is that okay?
A. Yes.
Q. And I'd ask that you let me finish my whole question before you start to answer. Understood?
A. Yes.
Q. If I talk over you or you talk over me, I might ask the question again just so we have a clear record. Is that okay?
A. Understand, I understand.
Q. And the video will not pick up nodding or uh-huh. So I just ask that you give answers like yes or no or verbal answers as opposed to

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nodding your head. Is that okay?
A. Yes.
Q. So if I ask a question that you're capable of answering by saying yes or no, you'll do that? Is that okay?
A. Yes.
Q. If you don't understand a question, please let me know and I'll try to rephrase. Okay?
A. Yes.
Q. And if you don't tell me that you didn't understand the question, I'll assume that you did. Is that fair?
A. Say that again, if I --
Q. If you do answer and you don't ask me to rephrase, I will assume that you understood the question. Is that fair?
A. Yes.
Q. Will you tell me if I ask you a question that requires you to guess or to speculate?
A. Yes.
Q. If you don't tell me that the question requires you to guess or speculate, I will assume that it does not require you to do so. Is that fair?
A. Yes.

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1 Q. Once in a while I might, due to my own
2 ineptitude, ask a question that has a double
3 negative or that's a little unclear, so I might
4 rephrase and ask it again to avoid confusion. Is
5 that okay?
6 A. Yes.
7 Q. And if I cut you off in the middle of
8 an answer, will you let me know?
9 A. Yes.
10 Q. And if you don't let me know, I'll
11 assume that your answer was complete. Is that
12 fair?
13 A. Understand, I understand.
14 Q. Okay. And your attorney or Mr. Larson
15 may object to a question that I ask. But unless
16 you are instructed not to answer, I would ask that
17 you still answer my question. Okay?
18 A. Yes.
19 Q. Is there any reason at all why you
20 can't give full, truthful answers today?
21 A. No.
22 Q. Finally, if you need a break, just let
23 me know. I'll try to take a break about every hour
24 so that you can stretch your legs. I just ask that
25 if you'd like a break that first we answer any

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1 pending questions and then we can take a break.
2 A. Yes.
3 Q. Okay, great. Can you tell me what the
4 Minnesota Glass Association is?
5 A. The Minnesota Glass Association is a
6 trade association made up of both auto glass and
7 flat glass companies.
8 Q. What is flat glass?
9 A. People that install glass in
10 buildings, install or repair -- or replace glass in
11 buildings.
12 Q. What is your connection to the
13 Minnesota Glass Association?
14 A. At this point in time, I am -- I
15 essentially do a little volunteer work, assisting
16 them as they -- as I move away as executive
17 director.
18 Q. At one point were you executive
19 director of the Minnesota Glass Association?
20 A. Until I believe it was October of this
21 year.
22 Q. When did you start in that position?
23 A. Oh, to the best of my relection --
24 recollection, I started about 2006.
25 Q. If I refer to the Minnesota Glass

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1 Association as the MGA, will you understand what
2 I'm referring to?
3 A. Yes.
4 MR. LLOYD: And -- and -- and just so
5 the record is clear, you said "October of this year."
6 You meant October of 2015?
7 THE WITNESS: That is correct.
8 MR. LLOYD: Okay.
9 BY MS. SASSOON:
10 Q. So, just to be clear, you were
11 executive director of MGA until about October 2015?
12 A. Correct.
13 Q. And why did you leave that position,
14 did you resign?
15 A. Yes.
16 Q. Why did you resign?
17 A. Because I am 68 years old, and I'm
18 beginning a process of retiring.
19 Q. Who is your replacement as executive
20 director of the MGA?
21 A. There is no replacement as an
22 executive director.
23 Q. Will there be someone chosen to fill
24 that position?
25 A. At this point in time, I don't believe

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1 so. The -- go ahead.
2 Q. So what is the most senior position
3 right now at the MGA?
4 A. The most senior position would be the
5 board of -- the board of directors and the
6 president of the board of directors, is the way I
7 view it.
8 Q. Who is currently the president of the
9 board of directors?
10 A. Brad Hapka.
11 Q. Does Brad have any other jobs that you
12 are aware of?
13 A. Brad is the owner of an auto glass
14 company, Only 1 Auto Glass.
15 Q. Was Brad on the board of the MGA while
16 you were acting as executive director?
17 A. Yes.
18 Q. How many people are on the board of
19 the MGA?
20 A. Nine.
21 Q. And are the majority or all of those
22 people also employed in some capacity in auto glass
23 or flat glass work?
24 A. Yes.
25 Q. How were you chosen to be the

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1 executive director of the MGA back in about 2006?
2 A. I had been involved with the glass
3 industry for a number of years, and I was working
4 with -- for the association, running an
5 organization called the Glass Network; and because
6 of that affiliation and relationships within the
7 glass industry, I was selected for the position.
8 Q. What is the Glass Network?
9 A. The Glass Network doesn't exist any
10 longer. It was closed in 2007.
11 Q. What was the Glass Network?
12 A. It was a -- a company that was
13 organized to process auto glass claims in Minnesota.
14 Q. Did you found the Glass Network?
15 A. No, I did not find -- I did not.
16 Q. What are the criteria for membership
17 in the MGA?
18 A. Um, you have to be -- as this is
19 going -- this is not going from the bylaws, I don't
20 remember exactly what the bylaws say, but you have
21 to, essentially, be a company that's engaged in the
22 glass business, either as an auto glass company, a
23 flat glass company, manufacturers and sales
24 representatives.
25 Q. Is Rick Rosar a member of the

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1 Minnesota Glass Association?
2 A. Yes, he is.
3 Q. Is Lisa Rosar, as far as you know, a
4 member of the MGA?
5 A. Companies are members. If she -- so
6 as a -- if she -- as I -- Lisa and Rick as I -- I
7 don't know their exact -- other than husband and
8 wife, I understand, to the best of my knowledge,
9 that they run a glass company, and so they would
10 both be members if -- as I understand it.
11 Q. Are you aware whether Michael Reid is
12 a member of the MGA?
13 A. Yes, he is.
14 Q. Can a glass shop that is a member of
15 an insurance network become a member of the MGA?
16 A. Yes.
17 Q. Are there members of the MGA who work
18 at glass shops that are part of an insurance
19 network?
20 MR. LLOYD: Well, I'll object on the
21 grounds of foundation. You can answer if you know
22 whether they're members or not, but don't guess.
23 BY MS. SASSOON:
24 Q. As far as you know, are there any
25 members of the MGA who own or work at glass shops

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1 that are members of an insurance network?
2 A. I believe so. I don't -- I -- I --
3 from -- based on what I know, I haven't asked the
4 question to anybody specifically, but just based on
5 what I've understood over the years, I believe some
6 of them are.
7 Q. Can you name any glass shops that are
8 members of the MGA that you know are part of an
9 insurance network?
10 A. I believe that Brad Hapka may be on a
11 selective basis.
12 Q. Any other member that you can name
13 that you think is part of an insurance network?
14 A. At this point in time, no. I would
15 be -- I'd really have to sit down and think about
16 it, but I can't think of -- yeah, there may be, but
17 I can't think of any.
18 Q. So the only glass shop that you
19 think -- sorry, let me rephrase. The only glass
20 shop that you can name that you think might be a
21 member of an insurance network but that also is a
22 member of the MGA is one, and that's Brad --
23 A. Yes.
24 Q. Brad's shop?
25 How many auto repair glass shops are

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1 members of the MGA to the extent that you know?
2 A. There are about 35 members of the MGA,
3 and I believe -- it's roughly 80 percent of that
4 membership I believe are -- do auto glass repair
5 and replacement.
6 Q. Do you know how many auto glass shops
7 there are in Minnesota?
8 A. Based on what I know, I have not done
9 a formal study, but there are roughly, I believe,
10 about 300.
11 Q. And those are 300 distinct shops, but
12 among those they might operate hundreds of shops or
13 it's just 300 shops in all of the state of Minnesota?
14 A. I don't --
15 MR. LLOYD: Well --
16 THE WITNESS: I don't know.
17 MR. LLOYD: I want to object to the
18 question, because you used shops twice. Are you
19 talking about companies --
20 MS. SASSOON: That's what --
21 MR. LLOYD: -- versus locations?
22 MS. SASSOON: -- I'm trying to
23 understand.
24 BY MS. SASSOON:
25 Q. Are -- As far as you're aware, are

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there roughly 300 auto glass locations in Minnesota or 300 distinct auto glass companies?
A. Companies, and that is just an approximation.
Q. Do you have an approximation of how many of those glass shops are part of an insurance network?
A. I'd be guessing.
Q. What would be your best guess?
MR. LLOYD: I'll object to that.
THE WITNESS: I'd be guessing.
MR. LLOYD: Don't guess, I'll instruct you not to guess.
THE WITNESS: I'd be guessing.
BY MS. SASSOON:
Q. What is your best guess?
MR. LLOYD: Again, I'm instructing you not to guess.
MS. SASSOON: That's not a valid objection.
MR. LLOYD: You're -- you're not here to get him to guess at answers. You can ask him what he knows, and he's told you he doesn't know.
BY MS. SASSOON:
Q. If you were to guess, what would be

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the basis for your estimate of how many independent glass shops are in Minnesota?
A. I -- I heard -- I think I heard a couple of questions there. Please ask the -- rephrase or clarify.
Q. Sure. Do you have any knowledge or information by which you could estimate how many independent glass shops there are in Minnesota, and, if so, can you explain what that would be?
A. The only -- the only way I have a way of estimating a number of glass shops that -- really is in the metropolitan area, and I at one point several years ago asked the distributors in the Twin Cities how many shops they thought there might be in the metropolitan area, and they were -- the guesses ranged between 150 and 200 in the metropolitan area.
Q. And that was 150 to 200 glass shops in the metropolitan area?
A. Auto glass shops.
Q. Auto glass shops that are part of an insurance network or just total?
A. Total.
Q. Did they provide you any estimate of how many of those shops were not part of an

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insurance network?
A. No.
Q. Has anyone ever provided you an estimate of how many independent auto glass shops they believe to be in Minnesota?
MR. LLOYD: Can you define the term independent?
BY MS. SASSOON:
Q. Sure. What is your understanding of what an independent auto glass shop is?
A. An independent auto glass shop would be something that is owned by a -- it would be a small business that may operate anywhere from one to a couple dozen -- or a dozen, let's say, shops, and it would be probably family owned or owned by a couple of partners. That's what I would -- you know, that would be my understanding.
Q. And by your understanding, can an independent glass shop be part of an insurance network?
A. Yes.
Q. What's your understanding of the differences between preferred glass shops and non-preferred glass shops?
A. Preferred glass shop, my understanding

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would be a shop that has accepted -- is a member of a network and has agreed to perform work at the network's price.
Q. And what's your understanding of a non-preferred glass shop?
A. It would be someone who would be a member of a network that has not accepted the network's price.
Q. So what network would it be a part of, then?
A. It could be -- there are a number of networks that are operating out there, and it -- that may well vary from one shop to another. As I've talked to people, they are part of -- they -- they have been part of one network, not part of another network, selectively, and so it's just hard to keep track of.
Q. When you refer to a network, are you talking about an insurance network?
A. Third -- when we're talking about networks, when you use that term, I'm -- I think in terms of a third-party provider.
Q. What's --
A. That's what that means to me.
Q. What's your understanding of a

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1 third-party provider?
2 A. Claims -- a third-party provider would
3 be a claims manager, independent -- a business that
4 is taking first notice of loss and managing the
5 claim on behalf of an insurance company.
6 Q. Does the MGA have a view about the
7 benefits of a third-party provider?
8 A. The members of the MGA generally are --
9 are opposed to the role of third-party providers.
10 The MGA itself, we've discussed it. There's --
11 we've never adopted a formal position.
12 Q. Why, on your understanding, are
13 members of the MGA generally opposed to the role of
14 third-party providers?
15 MR. LLOYD: Well, I'm going to object
16 to foundation. Go ahead and answer if you know.
17 MS. SASSOON: I'll repeat the
18 question, which asks based on his understanding.
19 So there's no foundational issue.
20 BY MS. SASSOON:
21 Q. Why, on your understanding, are
22 members of the MGA generally opposed to the role of
23 third-party providers?
24 MR. LLOYD: Same objection. Go ahead
25 and answer.

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1 THE WITNESS: Okay. Um, number one,
2 they steer business away from the independent glass
3 shops.
4 BY MS. SASSOON:
5 Q. Why else, if any reason?
6 A. That would be the overwhelming driving
7 answer. They create a negative impression regarding
8 the independent glass shops in telephone calls.
9 Q. Anything else?
10 A. They artificially drive down pricing
11 as they bid for business between one another.
12 Q. Anything else?
13 A. Not at this time, I can't think of
14 anything else right now.
15 Q. How, in your view, do third-party
16 providers steer business away from independent
17 glass shops?
18 MR. LLOYD: Well, I'm going to object
19 to that because it misrepresents what his prior
20 answer was. You asked him why members of the MGA
21 were opposed to third-party providers, not what
22 Mr. Schmaltz's own views were.
23 BY MS. SASSOON:
24 Q. Is it your view that third-party
25 payers steer business away from independent glass

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1 shops?
2 A. Based on many conversations with
3 independent glass shops, yes.
4 Q. Why is that your view?
5 A. Because of the reasons I just told
6 you, because they are steering business away from
7 the independent shops, and because they work to
8 create a negative impression of those shops, and
9 because they are artificially driving down pricing.
10 Q. How, in your view, are they steering
11 business away? Is that purely from creating a
12 negative impression, in your opinion, of the
13 independent glass shops?
14 A. And this is based on what I've heard
15 from glass shops. They steal business, they
16 literally take business that was intended for a --
17 an independent glass shop and will steal it. They
18 keep customers who have requested an independent
19 glass shop from communicating with that glass shop.
20 They send installers out to jobs where an independent
21 glass shop has been scheduled to do work. They
22 badger customers by -- in violation of Minnesota
23 law. The state law requires that they -- once a --
24 a customer has indicated a preference for a given
25 shop that they are supposed to stop talking to that

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1 customer, trying to badger them -- or refrain from
2 getting them to use some other location.
3 Q. And your view that third-party
4 providers steal business, is that based purely on
5 these conversations with other glass shops?
6 A. No.
7 Q. What else is it based on?
8 A. Documented cases where -- I know of a
9 couple where the glass shop relayed -- went to the
10 third-party provider and connected with -- this is
11 going from memory, but this has been documented
12 in -- in letters, so I may not get every detail
13 correctly. But the glass shop went to the
14 third-party provider, Safelite in this particular
15 instance, notified them of the claim, got the
16 claim -- claim number and so forth, and then
17 Safelite -- and that would be the only way that
18 Safelite could have known about the job, and the
19 next thing they knew that Safelite was going out
20 attempting to do the job, a Safelite installer was
21 going out and attempting to do the work. I don't
22 remember exactly how that worked out, but that was,
23 to me, outright job theft.
24 I also saw another letter from an
25 insurance agent that essentially documented the

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1 same thing, where the insurance agent attempted to
2 get a particular shop, an independent shop as we
3 described it, to do a job, and the work was --
4 again, Safelite attempted to grab the work; and
5 there is a -- another -- a third instance I can
6 recall where a -- essentially the same thing played
7 out, where Safelite was involved, and the work was
8 directed -- you know, they attempted to do the work
9 that was supposed to be done by -- and in addition
10 to that the -- from what I've seen in the industry
11 news sources, glassBYTEs and so forth, I've seen
12 references to the same kind of thing happening.
13 Q. You've identified three cases that you
14 said documented, in your view, job theft by Safelite;
15 is that accurate?
16 A. Three that I can recall, correct.
17 Q. Can you recall any other documented
18 cases beyond those three today?
19 A. Not right now.
20 Q. Do you remember which glass shops you
21 believe Safelite took business away from in these
22 three cases?
23 A. Yes. In the first instance, the glass
24 shop was Glass Today.
25 Q. Is Glass Today a member of the MGA?

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1 A. Correct.
2 Q. What about the second instance?
3 A. The second one I -- I remember looking
4 at the letter that -- that I'm referring -- that
5 documented this was from an insurance agent and
6 from a non -- and it was related to a non-MGA shop.
7 In fact, I think it might have been out of state,
8 it may have been in Michigan; and the third
9 instance was with -- the owner of the shop was Jack
10 Beckman, and I cannot remember --
11 Q. Is he --
12 A. -- the name -- he's --
13 Q. -- in Minnesota?
14 A. Yes.
15 Q. So sitting here today, you can recall
16 two documented cases that you've seen of what you
17 consider job theft by Safelite in Minnesota?
18 A. Correct.
19 Q. Can you recall any other documented
20 cases in Minnesota --
21 A. No, I can't recall --
22 Q. -- beyond those two?
23 A. -- any others right now.
24 MR. LLOYD: Mike, just make sure she
25 answers -- finishes her question before you answer,

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1 even though you know where it's going, so the
2 record is clear.
3 THE WITNESS: I'm sorry, yes.
4 MS. SASSOON: Thank you. And it looks
5 like you got that down right.
6 BY MS. SASSOON:
7 Q. Safelite is a third-party provider; is
8 that correct?
9 A. Correct.
10 Q. And is it your view that Safelite
11 steals business from --
12 A. Yes.
13 Q. -- other auto glass providers?
14 A. Yes.
15 Q. Is one way that in your view Safelite
16 takes business from other glass shops by providing
17 lower pricing?
18 A. Um, I'm sure that -- that is a factor
19 that plays into this, yes.
20 Q. It's your understanding that Safelite
21 charges lower prices than many other glass shops in
22 Minnesota?
23 A. I think they match prices. Whether or
24 not they're lower, I don't always know what their
25 prices are, but I know that I've heard people say

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1 that even when they match the pricing they don't
2 get the work.
3 MR. LLOYD: To be clear there, there
4 was a lot of pronouns, "when they match the pricing
5 they don't get the work." Who is matching the --
6 who is matching whose price?
7 THE WITNESS: The independent glass
8 shops, when the independent glass shops match the
9 Safelite price.
10 MR. LLOYD: Oh.
11 BY MS. SASSOON:
12 Q. You also said that MGA members think
13 that Safelite creates a negative impression about
14 other glass shops on telephone calls. Do you agree
15 with that?
16 A. Yes.
17 Q. What's your understanding of how they
18 create a negative impression about independent
19 glass shops on these calls?
20 A. An example of that would be when
21 they -- they're on a third -- three-way call
22 between the glass shop, the Safelite third-party
23 administrator representative, and the policyholder.
24 They will imply that they don't have -- that the
25 glass shop's warranty is -- they're not going to

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have a warranty --
Q. How do they --
A. -- on the work.
Q. -- imply that?
A. By say -- telling the policyholder they won't get a warranty, there will be no warranty on the work, and they also do it by saying things like we don't have any -- your shop on -- any knowledge of your shop, your shop is not on file, implying that it's smaller, lesser than it may actually be.
Q. Is this understanding of yours based purely on these conversations you've had with glass shops?
A. Correct.
Q. Have you ever listened to recordings of these calls yourself?
A. One or two maybe over the years.
Q. You also said that members of the MGA believe Safelite artificially drives down prices. Do you agree with that?
A. Yes.
Q. How, in your view, does Safelite artificially drive down prices?
A. I believe they do it primarily by

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bidding against other third-party providers; and they essentially as a -- a network, they -- I think that so many of these networks have no role, no -- no -- they don't have any kind of skin in the game. In other words, they can drive down the price to -- they are after the claims management piece of the process, and if they can get the -- get the claims management bus -- piece by bidding a below market cost, that is one way they can do it. I think they -- that's -- that's really the -- the primary way I think they do that, is by -- you know, the big negative effect is competition between people who have no skin in the game.
Q. Why, in your view, is Safelite's reduction of the price of auto glass repair artificial?
A. I think they are -- they are using their market power and lower -- in the low price they have because of the volume that they're doing to -- I think they're driving it down in that way. It's -- I think that they are using it to take over the market and maybe bidding the price down below cost in order to capture market share.
Q. Is the MGA against free-market competition?

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A. No.
Q. How do you square that with taking issue with Safelite's reduction of prices of auto glass repair?
MR. LLOYD: Well, I'm going to object. I don't think the MGA has taken issue with it. Again, it goes back to individual members and then Mister --
MS. SASSOON: Now you're --
MR. LLOYD: -- Schmaltz is --
MS. SASSOON: -- testifying.
MR. LLOYD: No.
MS. SASSOON: And I've --
MR. LLOYD: You've misstated --
MS. SASSOON: -- been allowing you to do it. Then you can -- you can make an objection and you can make a form objection or foundation objection, but it's up to Mr. Schmaltz to let me know if he doesn't understand the question or to recharacterize my question.
MR. LLOYD: Actually, if I don't understand the question or you mischaracterize the testimony, you're going to hear from me; and you mischaracterized it, and that's the objection.
MS. SASSOON: Then make a form

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objection, but you can't continue testifying, that's not permissible.
MR. LLOYD: When you misstate the testimony, I'm going to --
MS. SASSOON: Then make --
MR. LLOYD: -- clarify it.
MS. SASSOON: -- your form objection.
BY MS. SASSOON:
Q. Mr. Schmaltz, do you take issue with the fact that Safelite is having an effect on price reduction of auto glass repair?
A. Do I take issue -- say -- I'm sorry, you're going to have to say that again. Let me --
Q. You said that Safelite is artificially reducing the price of auto glass repair. Do you take issue with the fact that, in your view, Safelite is artificially reducing the cost of auto glass repair?
A. I think the role of third-party providers overall in the market is what's artificially reducing the cost of glass repair and replacement.
Q. In your view, would auto glass repair in Minnesota be better off without Safelite?
A. Ah, yes.

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1 Q. So you would like to see Safelite no
2 longer doing business in Minnesota; is that fair?
3 A. When you say Safelite, I would think
4 the market in Minnesota would be better off if
5 Safelite as a third-party provider was not doing
6 business in Minnesota. Safelite AutoGlass
7 replacement shops have a right to be -- I don't see
8 any problem with those shops doing business in
9 Minnesota.
10 Q. But you do believe that Safelite as a
11 third-party payer should not be doing business in
12 Minnesota?
13 A. No. They violate the law.
14 Q. To put it another way, you think the
15 market for auto glass repair in Minnesota would be
16 better off without Safelite as a third-party payer?
17 A. Yes.
18 Q. Do you think Safelite harms local
19 competition?
20 A. Safe -- as a third-party provider --
21 I'd have to think about that a little bit. I don't
22 think Safelite AutoGlass shops harm competition any
23 more than any other shop does. As a third-party
24 provider, I think that they have a negative effect
25 on competition in Minnesota.

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1 Q. Do you think that that's, in part,
2 because it's a national company?
3 A. No.
4 Q. Why not?
5 A. I've seen -- I don't think the
6 national aspect of what they're doing, right off
7 the top of my head now, I -- I don't see where that
8 has an effect on it.
9 Q. Do you think it's, in part, because
10 Safelite has more market power than other
11 competitors in the Minnesota auto glass market?
12 A. No. I don't -- I don't know where
13 that's at right now in terms of market power in
14 Minnesota. I think -- you know, when you say
15 Safelite, it's -- you're -- we're always going back
16 and forth between Safelite auto shops and Safelite
17 as a third-party provider. So when you say
18 Safelite, you know --
19 Q. So you have no issue with the work --
20 sorry. Do you have any concerns about the work
21 performed by Safelite AutoGlass shops?
22 A. Historically, they do not have a good
23 reputation, but that's auto glass shops talking,
24 and --
25 Q. Can you elaborate on the reputation of

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1 Safelite AutoGlass shops?
2 A. I've heard many shops say they've had
3 to redo work that Safelite AutoGlass shops have
4 done.
5 Q. Do you remember which shops said this?
6 A. No, no. I just -- it's -- like I say,
7 I've never taken it -- you know, I've taken it with
8 a grain of salt, so I haven't tracked that, but
9 it's something I've heard, and some of it goes back
10 quite a few years ago.
11 Q. Do you have any concrete examples --
12 A. No.
13 Q. -- where another shop has --
14 A. No.
15 Q. I'm just going to finish my question.
16 A. I'm sorry.
17 Q. Do you have any examples where another
18 shop has had to redo the work performed by a
19 Safelite AutoGlass shop?
20 A. No.
21 Q. Do you have any concerns about the
22 pricing charged by Safelite AutoGlass shops?
23 A. I don't have any real knowledge in
24 that area.
25 Q. Do you have any knowledge of whether

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1 the price of auto glass repair in Minnesota is
2 higher than in other states in the United States?
3 A. Yes.
4 Q. What is your understanding of the
5 price of auto glass repair in Minnesota compared to
6 that in other states in the United States?
7 A. Based on what I've seen in -- in
8 testimony and in -- in submissions in hearings,
9 that it is higher in Minnesota than it is in other
10 areas.
11 Q. Do you have an understanding of why
12 the cost of auto glass repair is higher in
13 Minnesota than in other areas of the United States?
14 A. Yes.
15 Q. What is that understanding?
16 A. Um, first of all, the cost of labor in
17 Minnesota, my understanding, is higher than it is
18 in other parts of the country. That's one factor
19 that kicks in. That's -- the -- another -- another
20 factor would be the severe weather conditions. I
21 think that the quality of work that you would tend
22 to get in Minnesota is typically better than what
23 you would see in other parts of the country. I
24 think that commitment to safety and training has
25 always been strong here in Minnesota, and I

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1 think -- so those are the -- those are the things
2 that come to mind right off the top of my head.
3 Q. Is it your contention that the cost of
4 labor is higher in Minnesota than all other states
5 in the United States?
6 A. My -- my basis for saying that goes
7 back to a study that I read about a few years back,
8 and it was a -- it was based on something that came
9 from the Department of Labor, and it was
10 substantiated in conversations with glass shops as
11 they were very busy and trying to hire installers
12 and what they saw by comparison, what they saw in
13 other states. So that, I'm -- I don't have
14 current, you know, knowledge of that, but that is
15 something that I recall from the past, and I
16 understand in talking to people that they pay a
17 fair -- a pretty competitive rate.
18 Q. When you were at the MGA, do you
19 remember what the annual budget was?
20 A. Ah, yes. The annual budget for the
21 last year -- oh, gosh, I think the revenue for the
22 association was probably in the vicinity of $20,000.
23 Q. How does the MGA raise money?
24 A. Dues is one major factor. They do a
25 big glass tournament -- or a golf tournament, glass

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1 tournament, golf tournament every year, which is a
2 significant money raiser. Those are the two
3 biggest sources of revenue.
4 Q. Do you remember what portion of that
5 budget was spent on lobbying?
6 A. Oh, yes. Last year they -- there was
7 a lobbying expense -- now, this is going to sound
8 goofy. It was funded outside of the budget, about
9 $30,000.
10 Q. So that is $30,000 --
11 A. Right.
12 Q. -- on top of the 20,000 --
13 A. Correct.
14 Q. -- you've said is the budget?
15 A. Correct.
16 Q. Why didn't you include that in the
17 annual budget?
18 A. I -- it just didn't occur to me when I
19 was answering the earlier question.
20 Q. So the lobbying budget was more than
21 the entire annual --
22 A. Correct.
23 Q. -- budget combined?
24 A. Correct.
25 Q. Where did that money come from?

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1 A. From members that would directly
2 contributed to that.
3 Q. What were your daily responsibilities
4 when you were executive director of the MGA?
5 A. Primarily running the association. In
6 other words, I would -- you know, trying to
7 organize things like just the events that were
8 coming up, the board meetings, whenever we did
9 educational events, the golf tournament, trying to
10 see what we could do to build membership, making
11 sure the Web site was up to date.
12 Q. So did you --
13 A. It was more -- mostly administrative
14 work.
15 Q. The MGA has a Web site?
16 A. Yes.
17 Q. Did you review the content that went
18 up on the Web site?
19 A. Yes.
20 Q. Did you write the content that was on
21 the Web site?
22 A. A lot of it I did, but much of it came
23 from prior to my being involved in the creation of
24 the Web site. So we migrated it over when we --
25 when I took it over and -- from one provider to

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1 another.
2 Q. While you were executive director of
3 the MGA, did you have to be reappointed on any
4 consistent basis or you stayed there until you
5 decided to leave?
6 A. Mostly stayed there. I did have an
7 agreement with them.
8 Q. What is the Independent Glass
9 Association?
10 A. Ah --
11 MR. LLOYD: Objection, no foundation.
12 You can answer if you know.
13 BY MS. SASSOON:
14 Q. Do you know what the Independent Glass
15 Association is?
16 A. Ah, yes, I know a little bit about it.
17 Q. What do you know about it?
18 A. It's a national independent glass
19 association that is made up of independent glass
20 dealers around the -- the United States, with some
21 Minnesota members.
22 Q. What is, if any, the relationship
23 between the MGA and the Independent Glass
24 Association?
25 A. Not really very much. We have talked

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at times on different issues. We know we tend to look at things in the same way, but there is no formal relationship.
Q. What types of things do you look at in the same way?
A. Auto glass issues.
Q. What types of auto glass issues?
A. Steering, ah, third-party providers.
Q. So would you agree that the MGA and the Independent Glass Association are both interested in protecting independent glass shops?
A. Yes.
Q. Would it be accurate to say that the MGA is interested in certain lobbying activity against third-party providers?
A. No.
Q. Why not?
A. The activity has been more to insure that there's a level playing field.
Q. Between -- The MGA is interested in assuring a level playing field between who?
A. For the conduct -- the conduct of business.
Q. And how do you assure a level playing field for the conduct of business?

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A. The MGA over the years has worked to -- to see that laws were enacted to assure that independent shops had access to work that was available and could retain the work that they have obtained.
Q. So is it fair to say that the MGA is interested in protecting independent glass shops?
A. The MGA is -- yes, to the ex -- but to the extent that we're trying to maintain a level playing field; and so, yes, to the extent that others might cut into what an independent glass shop is doing, we would be opposed to anything that would prevent that.
Q. So is it fair to say that the MGA is interested in protecting independent glass shops' ability to conduct their business?
A. Yes.
Q. Do you know Gary Hart?
A. Ah, yes.
Q. Who is Gary Hart?
A. Gary Hart is, as I understand it, the executive director of the Independent Glass Association.
Q. And what's your relationship with Gary Hart?

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A. I -- I know who he is. I've talked to him on the phone a little bit, and we've had him in to present to the Minnesota Glass Association on one occasion -- two occasions.
Q. Do you remember what he presented about?
A. He presen -- Gary also has a business that -- that is a glass claims management system, and I remember him talking about that primarily in both cases.
Q. What would you say is the biggest challenge faced by glass shops that are members of the MGA?
A. Um, that's -- that's a pretty broad question, and it's going to differ greatly from one shop to another.
Q. Are there any --
A. I --
Q. -- common challenges facing the members of the MGA?
A. Yes, getting and retaining qualified installers, finding good systems to run their business, fighting with the weather, dealing with third-party providers. That's one of a range of issues that they have to deal with.

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MS. SASSOON: Do you want a short break? I'm at a natural break point, but --
THE WITNESS: If you are, why don't we do that.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 9:56 a.m.
(Break from 9:56 to 10:08.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 10:08 a.m.
BY MS. SASSOON:
Q. Is one aspect of the MGA's agenda to provide consumers with information about auto glass repair?
A. Very minor.
Q. But it is a aspect of what you do?
A. As I said, very minor.
Q. Is it something that you include on your Web site?
A. I'd have to go back and look.
Q. You mentioned earlier that Minnesota has higher standards of quality and safety. Is auto glass safety something that's important to the MGA?
A. Yes.

Q. Do you provide consumers with information about auto glass safety at the MGA?
A. Going back to the earlier question you answered, I believe there may be some information on the Web site. It's been a while since I've looked at that aspect of it.
Q. Do you think it's important not to compromise safety of auto glass repair?
A. Absolutely.
Q. Do you know what AGRSS is?
A. Yes, I do.
Q. What is that?
A. AGRSS is an acronym that stands for Auto Glass Replacement Safety Standard.
Q. Do you know what it means for a glass shop to be AGRSS registered?
A. Yes.
Q. What does that mean?
A. It means that the shop has agreed to follow the provisions of the safety standard, and beyond that it means they have ag -- they will -- they will follow certain procedures in terms of the installation of the glass, recordkeeping, and they will also submit to third-party -- independent third-party inspection of that process.

Q. Do you think it is important for glass shops to be AGRSS registered?
A. Yes.
Q. But you do not require that MGA members be AGRSS registered, do you?
A. We stopped doing that a couple of years ago.
Q. Why did you stop doing that?
A. We found that the cost -- members were trying to do what they could to increase membership in the MGA, and so we changed the requirement to require shops to guarantee that they would follow the standard if they became an MGA member.
Q. So you concluded that if you no longer required members to be AGRSS registered that the MGA would get more members?
A. That was what we were hoping to do.
Q. Did it work?
A. Not really.
Q. But you did decide that registering with the AGRSS safety standards was not a precondition to being part of the MGA?
A. Yes.
Q. Are you aware of any instances where an auto glass shop in Minnesota did not adhere to

adequate safety standards?
A. Yes.
Q. Can you tell me about those examples?
A. There is an example that -- where a young woman was killed in a vehicle accident, as I recall she was ejected from the vehicle because the windshield was not installed correctly, and it was -- that's -- yes, so that's what I --
Q. Are you aware of who did the auto glass installation in that --
A. No.
Q. -- case?
A. I do not know who did the installation in that case.
Q. Is that the only example you have that you can think of where a glass shop did not adhere to adequate safety standards?
A. Correct, yes.
Q. So you are not aware of any instance where a Safelite AutoGlass shop failed to follow adequate safety standards, are you?
A. Not in Minnesota.
Q. Are you aware of any instance where a Safelite shop failed to adhere to adequate safety standards outside of Minnesota?

A. I am aware of them through -- mainly just through what I recall reading in industry publications.
Q. What do you remember reading?
A. That there were -- there was -- there have been accidents where Safelite installed glass and there was an accident that resulted in an injury, but I -- it was, you know, like reading a newspaper.
Q. Do you remember what publication you read this in?
A. I'm pretty sure it was glassBYTEs.
Q. GlassBYTEs is a blog, isn't it?
A. Again, I -- yes, I -- to the best -- it is a -- I believe a daily -- no, I'm sorry. I just -- my recollection -- my knowledge of blog, what you mean by that, I read a lot on the Internet, but it's a -- a daily news release, if you will, that summarizes events in the auto glass industry. If you want to call that a blog, I guess, yes, that's what it is.
Q. Are you aware whether the author of the glassBYTEs blog has a particular viewpoint or agenda --
A. No.

Q. -- regarding the auto glass industry?
A. I don't believe they do.
MR. LLOYD: Again, Mike, you got to wait till she --
THE WITNESS: Yeah.
MR. LLOYD: -- asks her --
THE WITNESS: I'm sorry.
MR. LLOYD: -- complete question.
BY MS. SASSOON:
Q. Are you aware of a single instance where Safelite, the claims administrator, recommended a shop for auto glass repair that did not follow adequate safety standards?
A. No.
Q. Do you have any reason to question the qualifications of Safelite AutoGlass shops to perform auto glass repair?
A. That -- there are a couple of things that come to mind when you ask that question.
THE VIDEOGRAPHER: On your --
MS. SASSOON: Oh, sorry, am I good, higher? Is that okay?
THE VIDEOGRAPHER: Yep.
MS. SASSOON: Okay.
BY MS. SASSOON:

Q. Can you please tell me the reasons, if any, that come to mind why Safelite is not qualified to perform auto glass repair?
A. Okay. There are a couple of parts to this. Number one, Safelite is not AGRSS registered. There's another part to this. When you deal with Safelite Solutions, you may get a Safelite shop and you may get an independent shop that is part of their network.
Safelite does nothing to qualify members of their network, and so when you go to the -- Safelite Solutions and you are following their guidance or you go through their process, you may well get a shop that is totally unqualified because they're part of the Safelite network.
Q. Can you name a single shop that Safelite has recommended that is totally unqualified to perform auto glass repair work?
A. No.
Q. What is the basis, if any, for your assertion that if you go to Safelite Solutions you may well get a shop that is totally unqualified because they're part of the Safelite network?
A. Because the only thing that you have to do to get on the Safelite network is to tell

them you want to be on the network and to sign an agreement that you are a member of the network.
Q. What is the basis for your conclusion that that's the only thing you have to do to become part of the network?
A. Just my history and my knowledge -- I -- and as an example, a number of years ago we went out and -- in an arbitration -- in a series of arbitrations with Safelite -- or with Progressive Insurance, a number of affidavits were submitted by Safelite to support the pricing that's -- that Progressive was using. In those affidavits, a number of glass shops were identified, and when I looked at those glass shops, I -- having been at that point in time pretty familiar with the glass industry in the metropolitan area in particular, I shop -- I saw the names of shops that were totally unfamiliar to me, and they were shown as being shops with multiple locations throughout the cities.
When I saw that, I talked to some other members of the Glass Association about it. They were also unfamiliar with those locations, and so we -- what we did was decided to go out and see where they were and what was going on.
There were two companies in particular

that came to mind, and I can't remember the exact names of them, but I believe that it was probably submitted in the materials that we've provided. I believe one of them was National Auto Glass, the other was something like American Auto Glass, and each of them had multiple locations; and so when we went out and we started looking at them, we found that many of those locations were UPS postal boxes, so they'd rent a post office box so they would have an address in one part of the city and the same thing in another part of the city and they would have the same location, and, then, the other company, essentially, had the same kind of arrangement, and as I recall when we tracked them both back, we found that there was a home and there was a van parked out in front of the home with the name of one of those locations, and it appeared pretty obvious from that that whoever it was that was operating from that location had created two companies with phantom locations around the metropolitan area and had submitted them to Safelite as viable glass locations. Safelite, in turn, used those locations to support what it said -- what it gave to Progressive, who then said that supported their pricing in the marketplace.

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1 So it was pretty obvious to me at that
2 point that there was absolutely nothing that
3 Safelite was doing to qualify members of their
4 network. If they couldn't even qualify them
5 regarding their location, how could they qualify
6 them in other regards?
7 Q. I'm sorry, Mr. Schmaltz, but I don't
8 believe you answered my question about the -- your
9 knowledge of the conditions to join the Safelite
10 network. How do you know exactly what Safelite
11 requires to join its network?
12 A. It listed those locations in an
13 affidavit that it submitted to -- that was
14 submitted to support Progressive's position.
15 Q. Have you ever tried to join the
16 Safelite network?
17 A. I'm not a glass shop.
18 Q. Have you ever spoken to someone that
19 became a member of a preferred network administered
20 by Safelite?
21 A. Members of the Glass Association have
22 been -- have been parts of the Safelite network.
23 Q. Do you talk to them about what they
24 had to do to become a member of the network?
25 A. Yes.

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1 Q. And what did they tell you?
2 A. All you had to do was sign the paper.
3 Q. Do you know what the paperwork to
4 become a member of the network specified?
5 A. It's -- I've seen it, but it's been
6 too long to -- for me to -- I -- to really comment
7 on that.
8 Q. So you know you have to sign an
9 agreement to become part of the network?
10 A. Yes.
11 Q. But you don't actually know what is
12 required within that agreement?
13 A. I don't recall at this point in time.
14 I've seen parts of it over the years, but I don't
15 recall at this time.
16 Q. So just to be clear, yes or no, you
17 don't know at this time what the agreement to join
18 the network requires?
19 A. I do not know at this time.
20 Q. Also said that Safelite is not AGRSS
21 registered; is that correct?
22 A. That's correct.
23 Q. But isn't it true that some members of
24 the MGA -- of the MGA are not AGRSS registered?
25 A. At this point in time, yes.

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1 Q. Do you think those are reputable glass
2 shops that are part of the MGA but are not AGRSS
3 registered?
4 A. Yes.
5 Q. So you do not think that AGRSS
6 registration is necessary to be an auto glass shop
7 that performs quality work, do you?
8 A. I think it's better if they are
9 registered.
10 Q. But yes or no, you don't think that
11 AGRSS registration is necessary to be an auto glass
12 shop that performs quality work?
13 A. Yes.
14 Q. I think that's an instance of one of
15 my double negatives, so I'm just going to reask the
16 question.
17 Yes or no, do you think that AGRSS
18 registration is necessary to be an auto glass shop
19 that performs quality work?
20 A. My --
21 Q. A yes or no, please?
22 A. Yes.
23 Q. So you do think AGRSS registration is
24 necessary to be an auto glass shop that performs
25 quality work?

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1 A. No. Okay, I --
2 Q. Let me just ask --
3 A. I --
4 Q. -- the question one time --
5 A. I -- yeah.
6 Q. -- cleanly for the record.
7 Yes or no, do you think that AGRSS
8 registration is necessary to be an auto glass shop
9 that performs quality work?
10 A. I do no -- no.
11 Q. Thank you.
12 A. Yeah.
13 Q. Do you recall whether on your Web
14 site -- sorry. Do you recall whether on the MGA's
15 Web site the MGA provides consumer information
16 about their freedom to go to a glass shop of their
17 own choice?
18 A. I don't recall specifically. I think
19 it may be there.
20 Q. Okay. I'll show it to you.
21 (Whereupon, Deposition Exhibit No. 1
22 was marked for identification, and a copy is
23 attached and hereby made a part of this deposition.)
24 BY MS. SASSOON:
25 Q. Handing you what has been marked as

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1 Exhibit 1, and I'll represent to you that this is a
2 screenshot I took a few days ago from the MGA's Web
3 site. Does this look familiar to you?
4 A. Yes.
5 Q. What is it?
6 A. As you said, a screenshot from what it
7 says on the Web site.
8 Q. Do you remember if you wrote this?
9 A. No, I do not remember if I wrote it.
10 Q. Have you seen it before?
11 A. Yes.
12 Q. And is this a link on the MGA Web site
13 entitled Consumer Information?
14 A. It appears to be, yes.
15 Q. And is one thing communicated on this
16 sheet information about consumer's freedom to go to
17 a glass shop of their choice?
18 A. Yes.
19 Q. Why is that something the MGA wishes
20 to communicate to consumers, to the extent you're
21 aware?
22 A. Um, because once a -- a consumer has
23 made a decision regarding a shop that they prefer
24 to use, they will often be required to go through a
25 third-party administrator, where attempts may be

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1 made to get them to use someone else.
2 Q. Is it your view that consumers should
3 resist going to the shop recommended by Safelite?
4 A. No. I believe that the consumer
5 should make a choice, not be dissuaded in an unfair
6 manner from that choice.
7 Q. Are lower prices, in your view, better
8 for consumers?
9 A. Not -- no.
10 Q. Why not?
11 A. Because you may not get quality or
12 safety.
13 Q. If a consumer is getting quality and
14 safety, is a lower price better for a consumer?
15 A. If they are, yes.
16 Q. In your view, does the MGA have
17 consumer interests at heart?
18 A. Yes.
19 Q. How so?
20 A. Because we do require that the shops
21 that are part of the MGA be AGRS [sic] registered
22 because we have supported glass safety overall.
23 Q. You just said we require that the
24 shops that are part of the MGA be --
25 A. I --

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1 Q. -- AGRSS registered. Isn't that no
2 longer true?
3 A. Correct. I meant that they follow the
4 AGRSS standard.
5 Q. How do you --
6 MR. LARSON: Did you --
7 BY MS. SASSOON:
8 Q. -- know that they're --
9 MR. LARSON: I'm sorry. Did we mark
10 this as an exhibit or --
11 MS. SASSOON: Yes. I said I'm handing
12 you what's been marked as Exhibit 1.
13 MR. LARSON: Okay. So this is
14 Exhibit 1?
15 MS. SASSOON: Uh-huh.
16 BY MS. SASSOON:
17 Q. How do you know that the shops follow
18 AGRSS standards when they're not registered as such?
19 A. They -- they represent to the MGA
20 they -- that they are following the AGRSS standard.
21 Q. So they give you their word?
22 A. Yes.
23 Q. Do you do anything to check in on them
24 to make sure they're following safety standards?
25 A. Generally they're -- directly, no.

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1 They're following -- they attend -- attend safe --
2 training programs that we put on, for example, so
3 we know that they're actively engaged in -- in
4 training their employees in safe installation.
5 Q. The MGA does not visit the shops to
6 check on --
7 A. No.
8 Q. -- their compliance?
9 Is it a goal of the MGA to provide
10 customers with the lowest, most competitive pricing
11 on auto glass repair?
12 A. No.
13 Q. Why not?
14 A. MGA does not set pricing in any way,
15 shape or form.
16 Q. If you look at the second page of this
17 document, on the back, there's a bullet titled the
18 Windshield Bullies. What is your understanding of
19 what a windshield bully is?
20 A. A windshield bully would be someone
21 or -- that attempts to get a consumer to use a shop
22 other than the one they initially chose.
23 Q. Why do windshield bullies pose a
24 concern to the MGA?
25 A. Because they are steering business

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1 away from a shop that has been selected by a
2 consumer.
3 Q. Do you consider Safelite a windshield
4 bully?
5 A. Absolutely.
6 Q. So it's your view that Safelite poses
7 a threat to the members of the MGA?
8 A. Safelite Solutions does.
9 Q. You mentioned before that the MGA has
10 a lobbying budget. So would it be fair to say that
11 one of the MGA's purposes is to coordinate lobbying
12 on behalf of the interests of its members?
13 A. Yes.
14 Q. Would you say that lobbying is one of
15 the MGA's primary purposes?
16 A. No.
17 Q. Is it the biggest expense that the MGA
18 spends money on?
19 A. Last year, yes.
20 Q. Historically has that also been the
21 case?
22 A. No, I don't think so. I would say
23 probably not.
24 Q. What was special about last year?
25 A. Last year we saw a -- a task force

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1 established, a working force to look at the pra --
2 the arbitration practice in Minnesota, and that was
3 what spiked our interest in that, and we wanted to
4 track the legislation that was being considered on
5 that.
6 Q. Was the MGA involved in the initial
7 creation of the task force?
8 A. No.
9 Q. Did they persuade the legislature to
10 create the task force?
11 A. No.
12 Q. Was anyone from the MGA a member of
13 the task force?
14 A. We have -- we are represented by our
15 attorney, Chuck Lloyd, with -- at -- in the task
16 force.
17 Q. Does Chuck Lloyd work as a lobbyist
18 for the MGA?
19 A. No.
20 Q. When did you first meet Chuck Lloyd?
21 A. Twenty, twenty-five years ago.
22 Q. In what capacity?
23 A. Chuck was on the other side of an
24 issue, representing a company that -- that I --
25 that we had a -- we were on opposite sides of the

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1 table at that point in time.
2 Q. What was that issue about?
3 A. I believe that was about steering.
4 Q. And what side were you on?
5 A. I was working for Harmon Glass at the
6 time.
7 Q. Was Harmon being accused of steering?
8 A. Yes.
9 Q. What was your view of the allegations?
10 A. I -- at that point in time, I was very
11 much -- I disagreed with it.
12 Q. When did you work for Harmon Glass?
13 A. I worked for Harmon Glass from 1983 to
14 2004.
15 Q. What was your position at Harmon Glass?
16 A. Wide variety of positions.
17 Q. What was the most senior position that
18 you held at Harmon Glass?
19 A. National operations manager.
20 Q. And what were the accusations against
21 Harmon Glass? Can you elaborate, please, a little
22 bit on the steering accusation?
23 A. Ah, boy, it's -- you've got to
24 remember this is reaching back into the '90s or
25 the -- yeah, that would have been into the '90s.

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1 So Harmon Glass was running a third-party provider
2 network at the time, and we were accused by
3 independent glass shops of -- of steering work at
4 that point in time.
5 Q. What was the result of that dispute?
6 A. We -- there was a settlement on the --
7 on what we -- on the mat -- on the issue.
8 Q. Can you disclose any details about the
9 settlement?
10 A. They were confidential.
11 MS. SASSOON: Is that right?
12 MR. LLOYD: It was. And, quite
13 honestly, even if they weren't, I couldn't tell you
14 what the terms were, I've long since forgotten.
15 MS. SASSOON: Okay.
16 MR. LLOYD: But it was -- Harmon -- it
17 was -- it was a settlement that was reached, and it
18 was -- there was confidentiality provisions in it.
19 MS. SASSOON: Got it.
20 MR. LLOYD: So.
21 BY MS. SASSOON:
22 Q. At that point in time, did you hold
23 different views about the benefits of a third-party
24 provider network?
25 A. Yes.

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Q. What were those views?
A. Um, I thought that the -- that the -- because of the way the industry was evolving that the -- in other words, going from a large -- from a -- essentially where the entire country was made up of small independent shops, it was evolving into more of a national competitive market, that it was probably an answer to the way business could be done.
Q. What led you to abandon that viewpoint?
A. The fact -- one of the big factors was watching the evolution of the industry. It went from an industry where there were four -- as I -- as I recall, yeah, about four companies that owned both glass shops and third-party provider networks that were competing, to now it's less than -- virtually just one company that's almost got a monopoly on what's happening out there.
Q. So you thought Safelite became too dominant?
A. Yes.
Q. So you thought Safelite had too much competitive advantage?
A. Today, yes.
Q. But at one point in time you thought the model of claims administration that the

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industry was moving toward could be a good thing for Minnesota?
A. At that point in time, yes.
Q. Where were you -- where were you working when your viewpoint about this changed?
A. It -- I -- it -- it's hard to say. It was just a -- over a period of years, and it would probably have begun when I was still at Harmon to, you know, over the years as I've changed positions and -- and learned more and saw more about the way the industry was evolving.
Q. Did Safelite start to harm Harmon Glass's business?
A. I believe they did.
Q. So Safelite was outperforming Harmon Glass?
A. No. I would say that Safelite was doing a -- no, I don't think they were. I think they were -- they were better in -- from a technolog -- in the technological side of the business they were.
Q. Just so I understand it, Harmon Glass, where you were working, and Safelite were essentially pursuing the same business model?
A. Yes.

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Q. But Safelite ultimately got more business in the auto glass industry?
A. Yes.
Q. And that soured you on this business model?
A. Not just that they were getting more business.
Q. How many lobbyists does the MGA employ?
A. Right now, one.
Q. What is his name?
A. Joe Bagnoli.
Q. Do you know how much the MGA pays Joe?
A. It's $30,000 a year.
Q. That all goes to Joe?
A. Correct.
Q. Did the MGA's lobby activities include lobbying, say, legislature, legislators?
A. Yes.
Q. About what?
A. About -- right now it's about the -- not changing the no-fault law the way it's structured.
Q. What is the no-fault law?
A. Well, the -- the no-fault law allows glass shops to use mandatory arbitration in the

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settlement of auto glass pricing disputes.
Q. Do you know if any other state in the United States has a law similar to this one?
A. I don't believe they do. I don't know.
Q. As far as you know, does any other state have a law that allows glass shops to use mandatory arbitrations to settle auto glass pricing disputes?
A. I don't know for sure. I think that was the same question again.
Q. Do you know who Bob Dettmer is?
A. Yes. I believe I -- if it's the same person, I think I know who Bob is.
Q. Who do you think he is?
A. A state legislator.
Q. Do you know if the MGA has lobbied him for policies to protect independent glass shops?
A. Yes.
Q. Yes, it has?
A. Yes.
Q. Have you ever met with him?
A. Yes.
Q. Do you remember when?
A. No, not exactly.

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Q. Do you remember the substance of the meeting?
A. Yes. It was at the request of one of our members, and it was to review issues that the glass shop had with third-party claims administration in Minnesota.
Q. Do you remember which member?
A. It was -- I'm going to remember the name of his company eventually here. It was Jack Beckman, and I can't -- the name of his company is just simply eluding me right now.
Q. Forest Lake?
A. He is in Forest Lake. He lives in Forest Lake.
Q. Okay. So that's not his company.
Do you remember what the MGA advocated in this meeting with Bob Dettmer?
A. I -- we presented him with a -- some documents to illustrate our position, and, again, it was regarding third-party claims administration practices.
Q. Do you remember what your position was in greater detail?
A. I -- I probably could if I had to -- something in front of me.

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Q. Uh-huh.
A. I know that there's a -- that we did present written materials, but I'd rather not guess at it. I could --
Q. That's fine.
A. No.
Q. Would you say that members of the legislature are responsive to the issues that you advocate for with your lobbyist?
A. Very much so.
Q. And how do you know that or why do you think that?
A. Every time I visited with a legislator, when we can make our case and show them examples of what has happened, we get a sympathetic ear.
Q. So would you see that translated into action when you'd advocate something with the legislature, would you then see that come to life in legal policies?
A. To the extent that legislators would bring it to the attention of the Department of Commerce, yes.
Q. So you believe the legislatures and the Department of Commerce were responsive to your

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concerns about Safelite?
A. Yes.
Q. And so do you think the MGA's lobbying activities had concrete results with the legislature and the Department of Commerce?
A. Over the years, yes.
Q. What about recently, in the past couple years, do you think the MGA's lobby activities regarding Safelite generated results with the legislature and the Department of Commerce?
A. No.
Q. Why not?
A. I -- I don't believe the lobbying activities as conducted by the lobbyist was the -- was what generated action. I think it was more a result of consistent information provided through other sources, by members in contact with the Department of Commerce.
Q. You're saying materials provided by members of the MGA to the Department of Commerce generated results --
A. Yes.
Q. -- against Safelite?
A. Yes.
Q. But you don't consider that lobbying?

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A. Okay. When you start talking about lobbying, there's some pretty fine legal definitions that get involved.
Q. Fair. I just want to make sure I understand.
A. Yes. What a lobbyist does, yes, you can describe what they did as lobbying, but they did not -- they would -- they would not meet the definition of what a lobbyist is according to what I -- what I understand Minnesota law to say.
Q. When you say you could describe what they did as lobbying, who are you referring -- who is the "they"?
A. Members of the Glass Association and their representatives. I would -- I've talked to the Department of Commerce and other members have talked to the Department of Commerce.
Q. So to put it in less technical terms, is it your view that advocacy by members of the MGA to the Department of Commerce generated results against Safelite?
A. Yes.
Q. Going back to the legislature, do you agree that Minnesota has laws better than most states with respect to protecting independent glass

1 shops?
2 A. I don't know that.
3 Q. You don't have --
4 A. I'm not --
5 Q. -- a view about that?
6 A. A view, do I have a view about that?
7 I don't know what laws in other -- I'm not well
8 versed in what laws in other states say.
9 Q. Do you know whether Minnesota law
10 requires insurers to reimburse for the entire cost
11 of auto glass repair or replacement?
12 A. Say -- I'm sorry, please say that once
13 more.
14 Q. Do you know whether Minnesota law
15 requires insurers to reimburse the entire cost of
16 auto glass repair or replacement?
17 A. I -- yes, the way I view the law, I
18 believe the -- the law does require that.
19 Q. Do you know if that's true in other
20 states?
21 A. I -- I know a little bit about what
22 laws say in other states, but I am not well versed
23 in that area.
24 Q. Do you think it's important for the
25 MGA to cultivate a good relationship with the

1 Department of Commerce?
2 A. Absolutely, yes.
3 Q. Why is it important for MGA to
4 cultivate a good relationship with the Department
5 of Commerce?
6 A. Because they are tasked with enforcing
7 the claims practices laws in Minnesota.
8 Q. Do you think the MGA has the ear of
9 the Department of Commerce on issues related to
10 Safelite?
11 A. Yes.
12 Q. And is it your view that the
13 Department of Commerce has the power to pursue
14 policies that are in the MGA's interests?
15 A. I think you're putting words into my
16 mouth a little bit with that.
17 Q. So if you don't agree, tell me why you
18 don't agree?
19 A. I don't think it's the depart -- I
20 don't believe the department in any way, shape or
21 form is the Department of Commerce -- I don't think
22 they have any kind of responsibility in terms of
23 enforcing MGA policies. If the policy -- if -- if
24 the Department of Commerce is doing something that
25 is enforcing Minnesota law that happens to benefit

1 the MGA, fine, but it's not the job of the
2 Department of Commerce to enforce MGA policy.
3 Q. But is it a goal of the MGA to
4 persuade the Department of Commerce to pursue
5 certain cases or policies?
6 A. No.
7 Q. So the MGA is not interested in urging
8 the Department of Commerce to prioritize certain
9 issues that it believes to be important?
10 A. Yes.
11 Q. So the MGA does try to convince the
12 Department of Commerce to pursue certain instances
13 of what it believes to be legal violations?
14 A. Yes.
15 Q. Who is Glenn Wilson, do you know?
16 A. Glenn Wilson is a former commerce
17 commissioner.
18 Q. In your view, did he do a good job as
19 a former commerce commissioner?
20 A. No.
21 Q. Why not?
22 A. I don't think he understood the issues.
23 Q. What did he not understand, in your
24 view?
25 A. Glenn Wilson was -- as the commerce

1 commissioner had a enforcement official who -- who
2 actually was in charge of making enforcement
3 decisions, and when we presented him with detailed
4 information regarding problems that were going on
5 and we -- there was essentially no action. They --
6 when we would go back and visit with them, there
7 was -- they took forever, they would -- and would
8 give us no decision one way or the other on how
9 they were going to act on our complaints, and in a
10 conversation with the enforcement person, his name
11 escapes me right now, I -- yeah, I can recall years
12 ago having a conversation with him where I walked
13 through what the -- what had occurred, which was to
14 me a blatant violation of what the law said, and he
15 just said I -- he did not see a violation. So I
16 didn't feel they understood the issue, and I think
17 they had a narrow view of what was going on.
18 Q. So was it your hope to prevent --
19 sorry. Was it your hope to present evidence
20 against Safelite to the Department of Commerce so
21 that they would take enforcement action against
22 Safelite?
23 A. And other third-party administrators.
24 Q. So I just want to understand --
25 A. Yes.

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Q. -- if that was a yes. So just --
A. Yes.
Q. -- for the record --
A. Yes.
Q. Let me just reask it so we have it on the record.
A. I'm sorry.
Q. Was it your hope to present evidence against Safelite to the Department of Commerce so that they would take enforcement action against Safelite, yes or no?
A. No.
Q. You just changed your answer.
A. You -- you -- I saw it ans -- asked in a different way.
Q. I just read it exactly as it was there.
A. It wasn't our hope, it was what we did. In other words, was it our hope to present.
Q. Okay, I understand.
A. We did present.
Q. So you presented evidence against Safelite to the Department of Commerce --
A. Correct.
Q. -- and hoped --

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A. I'm sorry.
Q. -- that they would take enforcement action against Safelite?
A. Yes.
Q. Thank you. You're right, I was not clear. Okay.
Do you think Glenn Wilson when he was commissioner of the Department of Commerce acted in the best interest of consumers, in your view?
A. No.
Q. Why not?
A. Took a very narrow view of -- of the situation.
Q. What about Commissioner Rothman, do you know who that is?
A. Yes.
Q. Who is that?
A. Commerce commissioner.
Q. Did you present evidence to him about Safelite in the hope that he would pursue enforcement action against them?
A. Yes.
Q. And, in your view, was he more receptive to your evidence?
A. Yes.

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Q. Is the MGA concerned about the cost of glass repair dropping too low in Minnesota?
A. We've not taken a position on that.
Q. Do you have a concern about the cost of glass repair in Minnesota from dropping too low?
A. Personally?
Q. When you were acting as executive director of the MGA?
A. Yes.
Q. Do you think the cost of auto glass repair in Minnesota is accurately priced?
A. That's -- the -- I -- there's no way I can answer that. The pricing of glass in Minnesota is all over the place. To say it's accurate, I -- that's -- that's almost impossible to answer.
(Whereupon, Deposition Exhibit No. 2 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MS. SASSOON:
Q. The court reporter is going to hand you what has been marked as Exhibit 2. Do you recognize this document?
A. Yes.
Q. What is it?
A. It is a summary of pricing in the

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glass industry.
Q. Did you write this document?
A. I be -- yes.
Q. Do you remember when?
A. No.
Q. Did you distribute this document to anyone?
A. This document was written in preparation for -- or as part of submission to arbitrators to give a description of the pricing in the auto glass industry.
Q. What did you rely on to draft this document?
A. An accumulation of experience and conversations with glass shops over a number of years.
MR. LLOYD: Make sure your voice stays up, Mike, so that they can get it on the microphone.
BY MS. SASSOON:
Q. In the fourth paragraph, third sentence, it says, "In exchange for huge business volume the TPAs guarantee low prices to the insurers." In your view, is that true of Safelite, do you believe that in exchange for huge business volume it guaranteed low prices to the insurers?

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A. That's -- yes.
Q. Did you think that that was a bad thing?
A. Yes, to the extent that it didn't reflect local market considerations.
Q. Was it your view that the lower prices did not reflect local market considerations?
A. Yes.
Q. How did you know that?
A. Um, a -- one of -- it's -- first of all, my understanding is that the price was set nationally and -- prices tend to be set nationally and would not reflect the issues that we -- that -- for an example, that might come up in Minnesota where you have cold weather installation issues.
Q. What do you mean by cold weather installation issues?
A. You have to use different adhesives, you're going to have to -- it's going to take longer to do the work, there just -- it gets more complicated than -- in replacing glass on mould basis, for instance, than it would in a -- in Texas or Florida, for example.
Q. And how do you know that?
A. Common sense.

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Q. So you know the cost of glass repair in Texas and Florida?
A. I do not know it for sure, but my understanding is that the prices that Safelite sets for -- and other glass third-party administrators tend to be nat -- set on a national basis.
Q. How do you know that they set prices on a national basis?
A. Just hearsay and what I've listened -- heard in talking to glass dealers.
Q. Do you know the cost of labor in Texas or Florida?
A. It's -- having run glass shops in other parts of the country, yes, this is quite old, but historically when I ran shops in Texas, Arizona as compared to Minnesota, particularly in the metro area, the glass -- the labor prices were lower.
Q. Do you think at the time you wrote this, do you remember whether you had a view about whether the cost of auto glass repair in Minnesota had gotten too low?
A. No, I didn't -- I don't recall that.
Q. Do you have a view about how the fair and reasonable price for auto glass replacement in Minnesota should be calculated?

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A. Yes.
Q. Can you elaborate?
A. I think that the price in Minnesota should be calculated taking into account the volume of business that the given shop is doing with the -- with that particular agent, the relationship between the glass shop and the car owner, the complexity of the job, weather conditions, there are a number of factors that come into -- to play when calculating a price of the way -- the business model that the glass shop uses, the cost of acquiring the business, a wide number of things that could come into play in terms of calculating a fair and reasonable price.
Q. So you have concerns about the price of auto glass repair being calculated on a national basis; is that fair?
A. Yes.
Q. And are you aware that Safelite is a national business?
A. Yes.
Q. So do you have concerns about Safelite's national business model?
A. Yes.
Q. You think it would be better for

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independent glass shops if prices were calculated on a more local metric rather than by a national company?
A. Yes.
Q. Do you think Safelite is a threat to local business?
A. When you say Safelite, you mentioned Safelite as a -- an entity, and, again, you have Safelite Solutions and Safelite shops.
Q. Isn't it true that Safelite AutoGlass shops charge the prices that Safelite's insurance companies have calculated?
A. I don't know, I don't know anything about what Safelite shops charge.
Q. Do you know anything about the prices Safelite Solutions quotes to customers on behalf of their insurance companies?
A. I don't believe that Safelite quotes prices to insure -- I'll ask you to re -- say that again.
Q. Do you know anything about the prices Safelite Solutions quotes to customers on behalf of those customers' insurance companies?
A. To -- no, I really don't. I don't know what they're saying in terms of prices in

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1 phone calls, for instance, third-party calls,
2 whether they're quoting any kind of price, I don't
3 recall anything coming up in that regard where
4 they -- where they've quoted an actual number.
5 Q. So how do you know that the prices
6 Safelite quotes on behalf of the insurance
7 companies are too low?
8 A. What I know is that they are -- they
9 imply or that they say that the shop -- that the
10 price that the shop will charge will not be -- or
11 that the shop will not meet -- accept, the shop
12 will not accept the price that they are offering.
13 Q. So you don't know anything about the
14 actual prices Safelite quotes to consumers on
15 behalf of their insurance companies about the fair
16 and reasonable cost of auto glass repair?
17 A. Only by what's implied generally and
18 what -- and the discount structure that we hear
19 about periodically.
20 (Whereupon, Deposition Exhibit No. 3
21 was marked for identification, and a copy is
22 attached and hereby made a part of this deposition.)
23 BY MS. SASSOON:
24 Q. Handing you what has been marked as
25 Exhibit 3, which is an e-mail with two attachments,

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1 do you recognize this e-mail?
2 A. I can see that it has my name on it
3 and it was sent out here in early December, and I'm
4 looking at the first page.
5 Q. And this was sent to Brad at Only 1
6 Auto Glass?
7 A. Yes.
8 Q. And you mentioned earlier, is this the
9 Brad who was on the board of the MGA?
10 A. Yes.
11 Q. What's Brad's last name?
12 A. Hapka.
13 MR. LLOYD: H-A-P-K-A.
14 (Reporter's Note: Mr. Reigstad leaves
15 the room.)
16 BY MS. SASSOON:
17 Q. Do you remember sending him this
18 e-mail and the attached documents?
19 A. I believe so.
20 Q. Do you remember why you sent him this
21 e-mail?
22 A. Just in -- in -- in relationship to
23 the general discussions on -- on the -- the status
24 of the market and what was going on in the Safelite
25 case, if I remember right.

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1 Q. So was this related to any advocacy
2 that MGA was doing against Safelite?
3 A. I don't recall. It may be, I don't
4 recall.
5 Q. Turning to the first document
6 attachment, this is the letter to Senator Tomassoni
7 and Representative Rukavina, do you recognize this?
8 A. Yes.
9 Q. Do you remember sending this to Brad?
10 A. I'm sure I did if it was part of
11 this -- if it was an attachment to that e-mail.
12 Q. And this is a letter written by Glenn
13 Wilson, the former DOC --
14 A. Correct.
15 Q. -- commissioner?
16 THE VIDEOGRAPHER: Approximately two
17 minutes left on this disc.
18 BY MS. SASSOON:
19 Q. Do you remember writing an electronic
20 Post-it® note on this letter before sending it to
21 Brad?
22 A. I don't remember it, but I can see
23 that I did.
24 (Reporter's Note: Mr. Reigstad enters
25 the room.)

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1 BY MS. SASSOON:
2 Q. Did you write that sticky note that
3 says "Minnesota is the only state where installers
4 are fairly compensated for work on one of the most
5 important safety features" on "a car"?
6 A. I'm -- I can see that that's what I
7 said.
8 Q. Do you agree with that statement?
9 A. Ah, yes.
10 Q. So is it your view that in every other
11 state of the United States auto glass installers
12 are not fairly compensated for the work they do on
13 auto glass repair?
14 A. It's my understanding.
15 Q. What is the basis for that
16 understanding?
17 A. Conversations that I've had with
18 people over the years that are involved beyond
19 Minnesota.
20 Q. So is it, in fact, your view that
21 prices are lower in other states because auto glass
22 repair is not fairly compensated?
23 A. Yes.
24 Q. So it's not only because it's your
25 view that labor might be cheaper in those other

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1 states?
2 A. That may be one of the reasons.
3 Q. But another reason is that you don't
4 think the price of auto glass repair in those other
5 states is where it should be?
6 A. Yes.
7 Q. If you look at the first page of the
8 letter, the last paragraph, Glenn Wilson writes
9 that in the districts of these two legislators the
10 data confirms, quote, that local shops are doing
11 the majority of the work, close quote.
12 A. Uh-huh.
13 Q. Do you have any understanding of
14 whether local shops do most of the glass repair
15 work in Minnesota?
16 A. I don't know that.
17 Q. Turning to the other document that you
18 attached to your e-mail --
19 A. Here (indicating)?
20 Q. No.
21 MR. LARSON: I think we're about to
22 run out of tape here.
23 MS. SASSOON: Okay.
24 THE VIDEOGRAPHER: Going off the video
25 record. The time is now approximately 11:16 a.m.

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1 This is the end of disc number 1.
2 (Break from 11:16 to 11:26.)
3 THE VIDEOGRAPHER: We're back on the
4 video record. The time is now approximately 11:26
5 a.m. This is the beginning of disc number 2.
6 BY MS. SASSOON:
7 Q. Turning back to what's been marked as
8 Exhibit 3, we had just started to look at the
9 second attachment, so nothing part of the stapled
10 document, the next one behind it, just the one-pager.
11 A. Oh, going back to which --
12 Q. I think -- right there, this
13 (indicating).
14 A. Oh.
15 Q. This is a document on the top it says
16 "Think about the accomplishments and ongoing
17 efforts of the MGA." Do you recognize this document?
18 A. It's been a while since I've looked at
19 it. Okay, yes.
20 Q. Did -- did you draft this document?
21 A. More than likely I'm sure I did.
22 Q. And you write here, "I have heard --"
23 sorry, quote, I have heard from a good national
24 source that average glass invoices in Minnesota are
25 about $35 higher than the national average. Do you

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1 remember learning that?
2 A. I -- yes, I can remember -- remember
3 that, yep.
4 Q. Turning to the second page, the back
5 of the document, after the numbers it says, quote,
6 We continue to work with the Commerce Department,
7 and after eight years of being ignored we feel we
8 may be reaching them with a new administration in
9 place. Is this what you were referring to earlier
10 about your meetings with Glenn Wilson and then with
11 Commissioner Rothman?
12 A. Well, with Commissioner Wilson in
13 particular.
14 Q. When you say "we feel we may be
15 reaching them with a new administration in place,"
16 is that referring to Commissioner Rothman?
17 A. Yes.
18 Q. And in presenting your evidence about
19 Safelite to Commissioner Rothman, was that the same
20 presentation you had made to Commissioner Wilson?
21 A. To the best of my recollection, by and
22 large, it was, with some updating.
23 Q. So, by and large, the evidence against
24 Safelite that you presented to Commissioner Rothman
25 was the same as the evidence against them that you

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1 had presented to Commissioner Wilson?
2 A. It -- it had probably grown, it had
3 probably increased.
4 Q. In substance, were the allegations
5 basically the same against Safelite that you
6 presented to Commissioner Rothman after presenting
7 them to Wilson?
8 A. To the best of my recollection, yes.
9 Q. Based on your knowledge, do you know
10 whether non-network-affiliated shops in Minnesota
11 have a higher average cost per repair of auto glass
12 compared with network-affiliated shops?
13 A. Yes.
14 Q. So they charge more for auto glass
15 repair than other shops?
16 A. Clarify that, please.
17 Q. Do you know if non-network-affiliated
18 shops in Minnesota charge more for auto glass
19 repair than network-affiliated shops?
20 A. I believe so, yes.
21 Q. Do you know whether it is more
22 expensive for those non-network shops to perform
23 auto glass repair?
24 A. Yes.
25 Q. What is the basis for that answer?

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A. One would be acquisition, cost of acquisition of business, in other words, their sales cost.
Q. So it's more expensive for non-network shops to attract customers in Minnesota than for network-affiliated shops to do so?
A. They have a greater cost, yes.
Q. Going back to the e-mail that's at the front of Exhibit 3, you say, "Brad --"
A. Are you talking about this page (indicating)?
Q. Yes.
A. Okay.
Q. On September 2nd, 2014, you wrote to Brad, "I've attached the materials we discussed." And, then, later in your e-mail you say, quote, I have always been reluctant to leave these behind with others, they could be used against AG shops by insurers. You could show them to shops but don't leave copies behind, end quote. Does AG stand for auto glass?
A. Yes.
Q. Do you remember why you've always been reluctant to leave these documents behind?
A. I felt that -- now, by these

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documents, I -- it's basically a strategy outlaw -- or not a strategy. It -- it lays out our thought process in a way that I'd rather not have the people who are the people on the other side of the issue see.
Q. Why did you think these materials could be used against auto glass shops by insurers? Could it be --
A. This --
Q. I'm sorry.
A. Go ahead.
Q. I was going to say, could it be because Glenn Wilson writes in his letter that Minnesotans are paying much more for auto glass repair than other consumers?
A. No.
Q. Could it be --
A. It is -- go ahead.
Q. Could it be because he says the customers are not complaining about the repairs that they're receiving from auto glass shops --
A. No.
Q. -- in Minnesota?
A. No.
Q. So what is -- what is the reason, as

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far as you can recollect?
A. Um, give me -- I just want to phrase this accurately, just let me think about this for a minute.
Q. Uh-huh.
A. There are certain things -- no, let -- I'm sorry, I'm just going to take a second to think this through so I answer it accurately.
In aggregate, I feel we've accomplished a number of things that other states have not been able to accomplish, and I've watched insurers try different things over the years that would have a negative impact say on safety, and there are other things that they have done that -- or that they have tried to do as we've worked through the legislative process that would have a negative effect on choice, safety in Minnesota.
Q. Were you worried that if insurers saw these documents they could use against you the fact that you are discussing the favorable laws in Minnesota for auto glass shops?
A. It -- no. It's -- yes. It's -- they are -- in aggregate, yes.
Q. So, yes, you were worried that they would use against you your discussion of the

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favorable laws in Minnesota for auto glass shops?
A. Yes.
Q. Why, why did you think that?
A. For instance, one of the issues is that Minnesota is one of a few states, and I think it's outlined in here, that -- where complete coverage for auto glass repair is covered, and that has never been brought up in -- as we've approached the legislature, and I'd rather it not come up. That would be an example of that.
So complete coverage for auto glass replacement is a thing that where -- that exists in Minnesota as one of seven states where that's the case. It's never been an issue. I don't want it to become an issue. So that's an example.
Q. So you want to protect these laws that are favorable to the independent glass shops?
A. And favorable to the consumer.
Q. So that's a yes?
A. Yes.
Q. What is your current occupation?
A. I work for my own company, called Business Advocates.
Q. Does that have anything to do with auto glass repair?

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A. Only to the extent that I continue to do some volunteer work with the Glass Association and that I still represent a couple of companies in auto glass arbitration.
Q. What does Business Advocates do?
A. Primarily trade association management.
Q. How long have you held this position?
A. 2007, 2008.
Q. And before that, what were you doing professionally?
A. I was running the Glass Network for four years.
Q. And is that different from Harmon Glass?
A. Yes.
Q. Let's actually go back in time. Can you give me your work history starting after your education?
A. After I graduated from college, I went into the Navy for four years. After that, I worked for a company called North Star Glass for about nine years; I worked for Harmon Glass for about twenty, twenty-one years; four years with the Glass Network; and since then I've been with my company, Business Advocates.

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Q. Why did you leave Harmon Glass?
A. Harmon Glass was sold to the Glass Doctor, and they completely changed the structure of the company, and my position was eliminated.
Q. And was the Glass Network a similar business to Harmon Glass?
A. Ah, no, not really.
Q. And was the structure at Harmon Glass -- sorry. At the Glass Network, you said you operated a claims administrator; is that right?
A. Correct.
Q. Was that --
A. Yes.
Q. -- a competition with Safelite?
A. Yes.
Q. What is your understanding what it means to adjust a claim?
A. To me, to adjust a claim would be to -- again, I don't have experience in this, but it would be determining who performs the work, the extent of the work that might be done, what may or may not be covered by an insurance policy, and pricing.
Q. Did you make those determinations -- or did the Glass Network make those type of

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determinations for customers?
A. No, not really. I -- it's -- it's been a while, but, no.
Q. Did they refer customers to a shop to perform the work on their car?
A. Only if the customer had no choice.
Q. So in some circumstances they did make referrals to auto glass shops?
A. Yes.
Q. And did they help the customer determine what kind of work needed to be performed on the car?
A. No.
Q. And did they inform customers about their insurance coverage?
A. No.
Q. Did the Glass Network have a license to adjust claims?
A. No.
Q. In your view, was the Glass Network adjusting claims?
A. No.
Q. Why not?
A. We -- we were simply taking the call and processing the invoicing for that location --

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for that, the shop that referred -- that called the work in.
Q. And in your view how, if at all, is that different from what Safelite Solutions does?
A. It's been a while since they -- the Glass Network closed. It was like in 2007. Yes, I do believe it was different.
Q. What was -- what's the basis for your view that it was different?
A. The -- basically, the shop handled the relationship -- handled the verification of the claim and -- the claim and that kind of work with the policyholder and the insurance company and we did not get involved in that. We were primarily involved in handling the -- the billing aspect of it.
Q. Turning to Harmon Glass?
A. Yes.
Q. Do you remember if Harmon Glass determined who would perform the work for the customer?
A. My involvement with the third-party claims process at Harmon was pretty limited. I had other kinds of responsibilities. So I really am not in a good position to answer that question.

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1 Q. So you're not sure if Harmon Glass
2 would determine who performed the work?
3 A. No, I'm not sure.
4 Q. And you're not sure if Harmon Glass
5 determined the extent of the work that needed to be
6 performed?
7 A. I -- I -- no, I'm not. I could give
8 you a guess, but it's -- I don't want to guess.
9 Q. And are you in a position to tell me
10 whether Harmon Glass determined what the insurance
11 coverage would be?
12 A. My recollection is that the -- they
13 worked on getting that capability in cooperation
14 with the insurance company. I don't -- I don't
15 know how far they were able to take it.
16 Q. So what was your area within Harmon?
17 A. Pretty wide. I -- I did quite a
18 number of things over the years. Do you want a
19 summary?
20 Q. Sure, a brief summary?
21 A. All right. I started off doing
22 contract sales, meaning construction, contract
23 glazing, flat glass. I managed a couple of
24 locations in the Twin Cities. I went on to become
25 an operations manager for a number of auto glass

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1 shops in various segments across the country. As
2 we restructured, I went into operations management
3 and I con -- I ran -- I did customer ser -- I ran
4 the customer service training, ran all the real
5 estate operations, I handled coordination with
6 other networks at that time in terms of some of our
7 lobbying and legal activity, and I represented
8 management in a -- on a couple of suits that I
9 mentioned before.
10 Q. What was your role at North Star
11 Glass?
12 A. When I started in sales, I did some
13 glass installation work, very little but I did do
14 that, construction sales -- or sales of auto glass,
15 sales of flat glass products, to managing, hiring,
16 firing, cleaning the toilet, accounting, you name
17 it. I was -- it was a small company.
18 Q. Were you involved in setting prices of
19 auto glass repair when you were at North Star?
20 A. Ah, not setting it. It was a
21 different world then. We're talking 30 years ago,
22 and the pricing for auto glass at that point in
23 time was done -- it was totally different than what
24 we're seeing today, and you -- so.
25 Q. Was it done --

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1 A. Not really, no.
2 Q. Was it done on a customer-by-customer
3 basis?
4 A. I think it was done -- no.
5 Q. What was the general method of --
6 A. As I recall, we're talking 30 years
7 ago, it was pretty well one set price that was
8 acknowledged by everybody, with very little --
9 yeah. So that was what I remember.
10 Q. When you say about 30 years ago there
11 was one set price that was acknowledged by
12 everybody, do you mean all auto glass shops charged
13 the same price for auto glass repair?
14 A. Pretty much that was the case.
15 Q. And now do you have a view about
16 whether it's more or less profitable to be an
17 out-of-network provider as opposed to an in-network
18 shop?
19 A. It's more or less profitable to be an
20 out-of-network than -- I don't know -- I don't see
21 the financials for either one, so I really can't
22 answer that.
23 Q. Do you have an understanding of the
24 phrase balance bill?
25 A. As -- in my understanding is that --

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1 of that term is where -- is that it is when a glass
2 shop would go after -- go to a consumer for any
3 difference between what they receive from -- any
4 difference between what they charged and what they
5 received from the insurance company.
6 Q. Do you remember if North Star ever
7 balance billed its customers?
8 A. Never did, to the best of my
9 knowledge, never did.
10 Q. Do you know of any glass shops in
11 Minnesota that balance bill their customers?
12 A. No.
13 Q. Do you know the balance billing
14 policies of every member of the MGA?
15 A. No.
16 Q. Do you know the balance billing
17 policies of every out-of-network glass shop in
18 Minnesota?
19 A. No.
20 Q. So would you agree that it's at least
21 possible that there's some glass shops in Minnesota
22 that balance bill their customers?
23 A. Possible, yes.
24 Q. As far as you know, it's not against
25 the law in Minnesota to balance bill; is that right?

A. As far as I know, yes.
Q. I think I have just said a double negative. So, as far as you know, it is not against the law in Minnesota to balance bill; is that correct?
A. It is not against -- can I answer this in a way that --
Q. In a sentence.
A. It is not against the law to balance bill in Minnesota.
Q. So out-of-network shops at least have the right to seek payment not reimbursed by the insurer from the customer, don't they?
A. Yes.
Q. Would it be possible to give me a rough estimate of how many shops whose balance billing policies you actually are aware of?
A. No. Yeah, I would --
Q. Do you remember submitting an affidavit in this case?
A. Yes.
Q. Did someone approach you to submit an affidavit?
A. Yes.
Q. Who approached you?

A. Chuck Lloyd approached me on it.
Q. Did you draft your affidavit?
A. I drafted part of it. I did not draft it from scratch.
Q. Do you remember who drafted the rest of it?
A. I believe Chuck did.
Q. And do you remember that that was submitted under penalty of perjury?
A. Yes.
Q. And do you remember whether everything you included in there was truthful, to the best of your knowledge?
A. Yes.
(Whereupon, Deposition Exhibit No. 4 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MS. SASSOON:
Q. You've been handed what's been marked as Exhibit 4.
A. Yes.
Q. Do you recognize this --
A. Yes.
Q. -- document?
Is this your affidavit, the

preliminary injunction hearing in this case?
A. Yes.
Q. I'll give you a minute to look it over. Turning to paragraph five, you wrote and I quote, or you stated, quote, Notwithstanding that fact, Minnesota consumers are regularly told by third-party adjusters, like Safelite Solutions, that if a glass shop is chosen that does not subscribe to the insurance company's set pricing, the customer may be responsible for the difference between what is billed and what is paid by the insurer. That statement, in Minnesota, is simply not true, end quote.
Isn't it the case, though, that you don't actually know whether there are shops in Minnesota that do balance bill their customers?
A. I've been in the glass industry for 40 years. I've never heard of a glass shop doing that ever.
Q. But you don't know the balance billing policies of all glass shops currently operating in Minnesota, do you?
A. No.
Q. And you don't know the billing practices even of all the members of the MGA, do

you?
A. Not day to day, no.
Q. So you don't have the knowledge of the whole industry and practice today to know with certainty whether this statement in paragraph 5 in Minnesota is simply not true?
A. With absolute certainty? No.
Q. And in your capacity as executive director of the MGA, it was not your role, was it, to keep track of whether there were any glass companies in Minnesota seeking to collect payments directly from the customer that were not paid by the insurer, was it?
A. It was not my responsibility, no.
Q. So was the entire basis of your statement in paragraph 5 of your affidavit based on your anecdotal experience in the auto glass industry?
A. No.
Q. What else was the basis for that statement?
A. What I've heard a number of shops testify to in arbitration hearings.
Q. So that's individual shops testifying about their billing practices?
A. Correct.

Q. Were those shops testifying about the billing practices of every shop --
A. No.
Q. -- in Minnesota?
Is there any other basis for your statement in paragraph 5?
A. Yes.
Q. What would that be?
A. I've been in the industry for 40 years, I know many people in the industry. As this comes up in random conversations, there's never ever been an instance of hearing anybody refer to -- or talk about knowing that that has occurred. Having been in the industry for over 40 years with the number of people that I know, I think it is a reasonable thing to say.
Q. You think it's reasonable to represent that what Safelite is telling its consumers is false when you don't know for an absolute fact that it is false?
A. We can't -- yes, I do.
Q. When shops do not pursue customers for the cost of auto glass repair that's not covered by an insurer, how do they seek to recover the difference?

A. Either through arbitration or they eat it.
Q. And how often in your experience do they eat it?
A. I can't quantify that.
Q. You said you've been involved in some arbitrations. Have they been on this particular issue?
A. Ah, clarify that, please.
Q. Have those arbitrations involved seeking greater reimbursement from insurance companies?
A. Yes.
Q. And, in your experience, how often have those arbitrations been successful?
A. A very high percentage, 95 percent.
Q. Do you recall ever working with Jack Beckman on any lobbying or advocacy activity for the MGA?
A. Yes.
Q. And what do you recall?
A. The situation that you described earlier with Representative Dettmer.
Q. And do you recall if Jack Beckman was involved specifically in discussing the antifraud

bill?
A. No.
Q. So you don't recall collaborating with him about strategy for lobbying about the antifraud bill?
A. Not that bill.
Q. What project in particular, then, do you remember collaborating with him about?
A. Steering.
Q. Do you have respect for his analysis and opinions?
A. Yes.
Q. And did you often see eye to eye on the issues?
A. Yes.
MR. LLOYD: Just so things are clear, are we talking about seeing eye to eye with Mr. Beckman or with Senator Dettmer?
MS. SASSOON: I was talking about Beckman.
MR. LLOYD: Okay. I lost track with the pronouns.
MS. SASSOON: Are we up to 5?
THE COURT REPORTER: Yes.
(Whereupon, Deposition Exhibit No. 5

was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MS. SASSOON:
Q. I've handed you what's been marked as Exhibit 5. Do you remember this e-mail exchange between you and Jack Beckman in 2014?
A. I see that I'm involved in it, and it's -- some of it's -- wait, we have some more on the back here. Okay. I -- go ahead. What was your question?
Q. So do you agree it appears you and Jack Beckman are talking about strategy related to the antifraud bill?
A. It appears that that is correct now that I see this, yes.
Q. And it appears that Jack Beckman sent you some possible talking points for legislatures about the bill?
A. Yes.
Q. And you wrote on March 28th, 2014, "Jack, I wish you could be there for the discussions." Do you remember what discussions you're referring to?
A. No, I don't.
Q. Was it discussions with the

1 legislators about the bill?
2 A. It could have been discussions with
3 others -- with people, other glass dealers, it
4 could be discussions with legislature. Probably
5 among other glass dealers, I just don't remember.
6 Q. You --
7 A. Hold on here, let me look at this.
8 Q. Sure.
9 A. Yeah, with the timing. Okay. I -- I
10 believe this was probably related to the initial
11 meetings that we had when we learned that the bill
12 was going to come out, the reform to the no-fault
13 act. So, I guess, you know, going back to my
14 earlier answer, now seeing this, I recall that.
15 Q. And you wrote to Jack, quote, We are,
16 and, then, the work expecting is crossed out, and
17 it says hoping to see more from the Department of
18 Commerce. Do you remember why you struck through --
19 A. No.
20 Q. -- the word expecting?
21 A. No.
22 Q. Do you remember why you were hoping at
23 that point to see more from the Department of
24 Commerce?
25 A. No. I think -- again, it's a timing

1 issue. It may have been when we started to hear
2 that commerce was starting to dig into issues with
3 Triple A, we were starting to hear about some of
4 that.
5 Q. And, again, Safelite; is that accurate?
6 A. I -- yes, I believe so.
7 Q. You said, "I think it is very
8 important for the glass industry to stick together."
9 A. Yes.
10 Q. Do you remember why you thought that
11 was important?
12 A. To preserve the -- the environment,
13 the legal environment in which they work.
14 Q. The legal environment that we
15 discussed earlier that helped protect independent
16 glass shops?
17 A. It helps to keep a level playing field
18 in the glass industry.
19 Q. Turning to Jack Beckman sound bites,
20 were you in general agreement with the points that
21 he expressed here?
22 A. I'm reading through them here.
23 Q. Sure.
24 MR. LLOYD: While he's looking at
25 this, we should maybe have a discussion off the

1 record.
2 THE VIDEOGRAPHER: Do you want to go
3 off the record?
4 MR. LLOYD: Yeah.
5 MS. SASSOON: Let's let him answer.
6 There's a pending question.
7 MR. LLOYD: Oh, okay, yes.
8 THE WITNESS: Yes, from what I'm
9 seeing here, yes, I do agree.
10 BY MS. SASSOON:
11 Q. Sorry. There was some interruption
12 between the question and answer, so I'm just going
13 to ask again.
14 Turning to Jack Beckman sound bites,
15 were you in general agreement with the points --
16 A. In general --
17 Q. -- he expressed here?
18 A. -- agreement, yes.
19 MR. LLOYD: Okay.
20 MR. REIGSTAD: Off the record.
21 MR. LLOYD: Off the record for a
22 second.
23 THE VIDEOGRAPHER: Going off the video
24 record. The time is now approximately 12:05 p.m.
25 (Break from 12:05 to 12:08.)

1 THE VIDEOGRAPHER: We're back on the
2 video record. The time is now approximately
3 12:08 p.m.
4 BY MS. SASSOON:
5 Q. Turning to the second page of
6 Exhibit 5, where it says "Sound bites for
7 legislators," do you remember -- what's your best
8 recollection of who drafted these sound bites?
9 A. My best recollection is that I drafted
10 it.
11 Q. And looking at it today, do you agree
12 with what you put in here for the sound bites for
13 legislators? And I can get more specific. Do you
14 agree --
15 A. I'm just -- just kind of verifying
16 this. I want to -- yes, I -- by and large, yes.
17 Q. So were you concerned that if the
18 antifraud bill was amended that small independent
19 glass shops would have fewer remedies to be
20 reimbursed?
21 A. Yes.
22 Q. And were you concerned about a level
23 playing field between the big guys, on the one hand,
24 and the little guys on the other?
25 A. More because of third-party

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1 administration involvement in the process.
2 Q. Did you consider Safelite Solutions to
3 be a big guy that was endangering --
4 A. Yes.
5 Q. -- small independent glass shops?
6 A. Yes.
7 Q. And were you concerned, in part,
8 because Safelite was a big out-of-state company
9 involved in Minnesota industry?
10 A. In part, yes.
11 Q. And part of that concern was that,
12 quote, Safelite is a foreign-owned, multinational
13 entity that is the largest glass replacement
14 company in the United States; is that right?
15 A. Yes.
16 MS. SASSOON: So go off the record for
17 a second.
18 THE VIDEOGRAPHER: Going off the video
19 record. The time is now approximately 12:10 p.m.
20 (Break from 12:10 to 1:06.)
21 THE VIDEOGRAPHER: We're back on the
22 video record. The time is now approximately
23 1:06 p.m.
24 Do you understand you're still under
25 oath?

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1 THE WITNESS: Yes.
2 THE VIDEOGRAPHER: You may begin.
3 BY MS. SASSOON:
4 Q. You mentioned Safelite a few times.
5 When did you first become familiar with Safelite
6 business?
7 A. Probably when I was with Harmon, and I
8 want to say in the early '80s, late '70s, I'm not
9 sure. No. Actually, it would have been before
10 that, because they were involved in the industry,
11 and they might have attended some M -- National
12 Glass Association meetings. So I might have heard
13 their name back then.
14 Q. Have you ever interacted directly with
15 Safelite --
16 A. Yes.
17 Q. -- yourself?
18 A. Yes.
19 Q. In what capacity?
20 A. Ah, when I was with Harmon, I was
21 coordinating a joint legislative lobbying effort.
22 Q. So you were coordinating with Safelite
23 on certain lobbying activities?
24 A. Safelite, Windshields America, Globe,
25 and Harmon.

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1 Q. And what was the coordinated lobbying
2 about?
3 A. It was in -- we were dealing with
4 legislation that they were trying to enact around
5 the country.
6 Q. Do you remember what that legislation
7 was?
8 A. It was -- it was legislation that was
9 geared -- where they were trying to introduce
10 language, and I think the specific language we were
11 trying to prevent them from getting in was
12 incentive and inducement as they spoke around --
13 about steering efforts, and we were trying to
14 leave -- if you look at the Minnesota language, it
15 prohibits coercion, intimidation and something else,
16 and incentive and inducement, and because of that,
17 as a group, we felt that was too broad.
18 Q. That what was too broad, prohibiting
19 incentive --
20 A. Incentive --
21 Q. -- and inducement?
22 A. -- and inducement.
23 Q. Since that time you've taken the
24 opposite position on that issue; is that right?
25 A. Yes.

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1 Q. And you said you were working with
2 Safelite to prevent them from passing this
3 legislation. Who was the them?
4 A. The various parties in different
5 states.
6 Q. Did that include independent glass
7 shops?
8 A. It would have.
9 Q. So you were opposed to the position of
10 the independent glass shops on that issue?
11 A. Yes.
12 Q. Was there any other lobbying that you
13 coordinated with Safelite?
14 A. No, not that I can recall.
15 Q. Since that time, have you had other
16 interactions directly with Safelite?
17 A. I've talked to a couple of people at
18 Safelite to -- when I was working with the Glass
19 Network. I met with Tom Reid, one other fellow,
20 Andy Kipker. It's been a number of years ago.
21 Q. Do you remember what that was about?
22 A. It -- it was to do with the Glass
23 Network and how we were working with Safelite, but
24 I -- beyond that, I don't recall specifics.
25 Q. Do you remember in what way the Glass

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1 Network worked with Safelite?
2 A. Ah, not really. I -- I think that at
3 that point in time, you know, we were trying to
4 preserve -- trying to enable shops to hold on to
5 business that they had already attained, and so --
6 but the specifics of it, I don't recall.
7 Q. And did you say that the Glass Network
8 closed?
9 A. Yes.
10 Q. Why did it close?
11 A. It just went through -- it -- it was
12 not working, and we could see that it was going
13 downhill, so -- and financially it was not going to
14 be sustainable.
15 Q. Do you remember why it wasn't working?
16 A. Ah, basically, it was -- you know,
17 the -- it was at -- yes, I can -- I think I can. I
18 think it was because the cost of -- of trying to do
19 what we were doing in that way was too great for
20 the glass companies to carry in addition to the
21 other costs of doing business.
22 Q. Can you be more specific about what
23 you mean when you say "trying to do what we were
24 doing in that way"?
25 A. Trying to -- by trying to do what we

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1 were doing was trying to enable the glass shop --
2 the shops to retain the business they'd already
3 won.
4 Q. So when you were working with the
5 Glass Network, who were the members of the Glass
6 Network?
7 A. They were members of the Minnesota
8 Glass Association at that time, who were part of --
9 who chose to participate in the network. There
10 were -- I can -- Do you want me to name those --
11 Q. That's okay.
12 A. -- that I can recall?
13 Q. So the members were exclusively shops
14 that were also in the MGA?
15 A. If I remember correctly, you had to be
16 a member of the MGA. That was -- I think -- I'm
17 almost positive that was a requirement.
18 Q. And did the Glass Network -- sorry.
19 Did the Glass Network have contracts with insurance
20 companies?
21 A. We had one that I can recall.
22 Q. With which insurance company?
23 A. Grinnell.
24 Q. And did the insurance company set the
25 pricing or you negotiated that with the insurance

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1 company?
2 A. The insurance company set the pricing.
3 Q. Do you remember why you had to be a
4 member of the MGA to be in the Glass Network?
5 A. No, I don't remember for sure, I
6 think.
7 Q. Any other direct interactions was
8 Safelite that you've had?
9 A. I cannot recall any at this time.
10 Q. Have you ever had any consumers
11 complain directly to you about Safelite?
12 A. No.
13 Q. Have you ever directed any consumers
14 to file a complaint about Safelite with the
15 Department of Commerce?
16 A. I may have if -- you know, you think
17 of all the phone conversations you've had, I've
18 gotten a few calls from consumers. If the call
19 would have been -- I -- if the call would have been
20 about something like that, I -- I can see where I
21 would have, but I cannot recall any.
22 Q. Do you know of any customers that have
23 filed complaints about Safelite with the Department
24 of Commerce?
25 A. Ah, insurance agents, yes, I can think

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1 of one insurance agent in particular.
2 Q. Any auto glass consumers other than
3 insurance agents that you can think of that have
4 filed complaints --
5 A. No.
6 Q. -- about Safelite with the Department
7 of Commerce?
8 A. No.
9 Q. I think you've said that you have had
10 glass shops complain to you about Safelite?
11 A. Yes.
12 Q. Is that right?
13 Roughly, can you tell me how many
14 different glass shops have complained about Safelite?
15 A. If we talked about Safelite, it would
16 have been in the form of a complaint.
17 Q. And how many different shops?
18 A. All of them, any -- anybody. If -- if
19 I can name a shop that does auto glass that did
20 business with Safelite, they would have complained.
21 Q. What was the nature of the complaint?
22 A. Steering, price setting, the
23 involvement standing between them and their customer.
24 Q. And did you understand these shops to
25 be in competition with Safelite?

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A. No. You're disting -- you're speaking of Safelite again as one organization; and when you are talking about Safelite, the complaints have always been about Safelite as a third-party administrator. In terms of the shops, the Safelite shops, no, it's never been a big -- I -- I don't recall complaints about the shops.
Q. Did any shops complain about Safelite Solutions referring customers to Safelite AutoGlass shops?
A. Yes.
Q. So did any glass shops complain about Safelite AutoGlass getting a lot of the auto glass repair business in Minnesota?
A. Not in those -- no, not in those terms.
Q. In words or substance, did these auto glass shops you talked to complain that Safelite AutoGlass was getting too big a share of auto glass repair business in Minnesota?
A. No, never too big a share. It was always in terms of work that would have been -- redirected to them from a shop, not -- not too much.
Q. So there were auto glass shops that complained about Safelite AutoGlass getting auto

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glass repair business in Minnesota that they thought should have come to their shops?
A. Yes.
Q. Do you remember at what point in time you began communicating with the Department of Commerce about investigating Safelite's business practices?
A. The first time that -- about Safelite's business practices? The first one I recall would have been a visit with Commissioner Wilson, and about what time, more than likely it was early on in his administration. I can't put a specific date to that.
Q. I'm not familiar with when his administration started. So can you put a rough date on that?
A. No. I'd have to back into it. Let's see, it was with Jim -- when -- when Pawlenty was elected. So it would have been sometime after that, and two -- roughly 2002.
Q. Were you communicating directly with Commissioner Wilson about Safelite?
A. Yes, I did communicate directly with him at least on one occasion.
Q. Was that in-person?

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A. I was there, yes.
Q. Who else was there?
A. Let's see, at that -- I can remember at that meeting Anderson, he was -- he is out of the business now, was there, I believe Gary Jacobson was there.
Q. These are other members of --
A. These are --
Q. -- the MGA?
A. They were -- no, they weren't all members of the MGA. Oh, what's Anderson's first name? Can I --
Q. Are they auto glass owners?
A. Yeah.
Q. What about who was there from the DOC?
A. As I recall -- well, definitely Wilson was there, and I can't remember the name of his enforcement guy, I believe he was there, big heavyset guy, and his name escapes me right now.
Q. Did he make a presentation or what was the nature of the meeting?
A. I think at that point in time there -- as nearly as I can recall, I don't think we had any written materials that we gave to him, but it was just the individual glass shops that were there

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were describing what had occurred and what -- the experiences they'd had.
Q. And how was that received by Wilson?
A. Wilson's perspective on that went back to his personal experience, and that was that he had some glass replaced individually, I believe it was on a cash basis, and his -- part of his reaction was that he didn't feel there should be any difference between that kind of a transaction and the insurance transactions, and that was his -- you know, his reaction to it, that it was -- the lowest price should get the job regardless.
Q. Was he charged more on a cash basis than an insurance customer would have been charged?
A. I don't -- I -- I assume that he was charged about the same. I don't know for sure, but he used that as his reference point.
Q. Did you agree with what you described as his feeling that there shouldn't be any difference between cash transactions and insurance transactions --
A. No.
Q. -- in terms of price?
A. No, I don't.
Q. Why not?

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A. It's more expensive to do a -- an insurance transaction. You have the cost of acquiring the -- the business is different, you have to establish relationship with either the agent or the insurance company, you have to go through the entire approval process, getting the approval for the claim, perhaps working with a third-party administrator, you have to take the risk of a lower cost, you -- your warranty demands and so forth are -- are going to be a little bit different, and you have to wait for the money, whereas in a cash transaction you're going to get paid immediately.
Q. So in your experience, do independent glass shops charge more in a cash transaction or an insurance transaction?
A. It's all over the place. I don't -- I -- I don't track that, and I try not to get too involved with that, and especially with cash pricing, I have very little reason to track that.
Q. But in your view, it makes sense to charge more to the insurance company than in a cash transaction?
A. Yes. The costs are greater.
Q. After this initial meeting with

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Commissioner Wilson, what was the next step with the Department of Commerce?
A. As I recall, we provided documentation of some of the issues that we saw come forth. We drew them out and documented them in some way, and I -- we would have presented that to him and his staff.
Q. So you did another presentation to Commissioner Wilson and his staff?
A. I don't -- I don't recall exactly how that went. I do recall a meeting with his enforcement person and his legislative person and an individual by the name of Commodore with the Commerce Department. I believe those three people were present, but I can't remember the other names.
Q. And how did you go about collecting the documentation about Safelite that you referred to?
A. We're reaching back a little ways. I don't remember exactly, but the materials that the glass shops produced, and I'm sorry, I don't remember exactly how that --
Q. Is it fair to say that you felt you were not getting traction with the Department of Commerce under --

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A. Yes.
Q. -- Wilson about Safelite?
A. Yes.
Q. When did that start to change?
A. When Commissioner Rothman came in and -- yes, when Commissioner Rothman came in, and there was some direct -- no, that wasn't really a Safelite issue, but that's really when we saw change start to occur.
Q. Why do you think Commissioner Rothman was more receptive to your complaints about Safelite than Wilson was?
A. Just the weight of the -- I think the simplest way to put it, the weight of the evidence was -- was growing, and we became better at presenting it.
Q. Can you identify any particular new evidence that you put forward to Commissioner Rothman that you think tipped the balance?
A. No, I can't think of anything specifically, but, you know, as your time goes on you just get a little better at articulating what your -- your feelings are.
Q. Can you be any more specific about what you think you were able to better articulate?

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A. We had -- there's one exhibit that I believe that we produced that demonstrated how they were using information to have a negative effect on pricing. There were letters documenting the job theft that I've talked about in the past that were -- that were probably included that may not have been included earlier.
Q. Do you think the Department of Commerce's new receptiveness to your arguments had anything to do with the change from Wilson to Rothman?
A. Possibly. I -- I would assume it may -- it would have. I don't know that for sure.
Q. Do you think -- do you have any reason to believe that Rothman had different policy sympathies from Commissioner Wilson?
A. No. I think their basic objectives would probably be the same.
Q. So you think it came down to some additional letters that you showed to Commissioner Rothman?
A. Yes.
Q. How many times do you remember meeting with Commissioner Rothman's administration?
A. I remember two meetings that I was

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1 involved with myself.
2 Q. Can you tell me about those two
3 meetings?
4 A. The first meeting would have been
5 essentially, as I recall, it was attended by Mike
6 Schenian, Guy Selinski possibly, Reed Vanderzee,
7 and from -- there were about four people from the
8 Department of Commerce, the Commissioner, oh, Pam
9 something or another and --
10 Q. Pam Gergen?
11 A. That sounds right, and the -- Marty
12 Fleischhacker, and there was some other -- there
13 was another individual, and I can't remember his
14 name.
15 Q. Was TJ Patton there?
16 A. I don't remember him being in that
17 meeting. He could have been.
18 Q. So this is the first meeting and do
19 you -- with Commissioner Rothman's administration.
20 Do you remember around what date that took place?
21 A. Boy, specifically, you know, I'm
22 just -- I don't know, 2010. I -- I do not remember
23 the exact date, 2009, you know.
24 Q. Do you remember what happened at that
25 meeting?

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1 A. We laid the materials out, we -- we
2 presented that to them. I think, as I recall, they
3 said something about I think Pam was going to be
4 the point person on it and that we would continue
5 to talk with -- you know, that we should continue
6 to talk with her.
7 Q. Did they tell you that Pam would be
8 the point person to investigate Safelite?
9 A. I don't remember. They -- in terms of
10 relaying information back and forth, but as far as
11 investigating, no, I don't remember that.
12 Q. At that point do you remember if the
13 Department of Commerce had an active investigation
14 of Safelite underway?
15 A. I don't know.
16 Q. What do you remember about the second
17 meeting?
18 A. Ah, not -- it's -- I think the -- some
19 of the people attending may have been a little
20 different. I don't think that Guy Selinski was
21 there. I think the other members of the glass
22 industry were there, and I'm not trying to name
23 every one of them but those that I can remember.
24 TJ Patton may have been there at that meeting.
25 Q. Do you remember when it was?

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1 A. No. Well, it would have followed the
2 first one, and I want to say that might have been
3 2010 or '11.
4 Q. Do you remember in what way, if any,
5 the substance of that meeting differed from the
6 first meeting?
7 A. No.
8 Q. In these meetings, in words or
9 substance, did you tell the Department of Commerce
10 that Safelite was harming the business of independent
11 glass shops?
12 A. No. I would not have used those words.
13 Q. That's what I'm asking, in words or
14 substance?
15 A. In words or substance, we -- you
16 continue to use Safelite -- you use the term
17 Safelite as a third-party administrator, they would
18 have been hurting independent glass shops, yes.
19 Q. Did you tell the Department of
20 Commerce that?
21 A. Yes.
22 Q. And in words or substance, did you
23 tell the department or commerce -- sorry.
24 In words or substance, did you tell
25 the Department of Commerce that Safelite Solutions

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1 was driving down the price of auto glass repair?
2 A. We would have -- yes, because we -- I
3 recall one of the examples -- one of the exhibits
4 that I mentioned demonstrated how they were using
5 phantom locations to support their pricing
6 rationale, and that would have been affidavits that
7 we would have gotten that had -- as I recall, they
8 had Safelite on the bottom of the fax notes, so,
9 yeah.
10 Q. In words or substance, did you urge
11 the Department of Commerce to open an investigation
12 of Safelite?
13 A. We asked them to look into the matter
14 to -- if you want to call that opening an
15 investigation, yes.
16 Q. In words or substance, did you tell
17 the Department of Commerce that you had evidence
18 Safelite was violating Minnesota law?
19 A. Um, yes.
20 Q. In words or substance, did you urge
21 the Department of Commerce to enforce Minnesota law
22 against Safelite?
23 A. Yes.
24 Q. In words or substance, did you ask the
25 Department of Commerce to charge Safelite with

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1 legal violations?
2 A. Ah, we left that to the discretion of
3 the department.
4 Q. In words or substance, did you make
5 known to the Department of Commerce your view that
6 Safelite should be charged with legal violations?
7 A. We left that to the discretion of the
8 department, how they pursue that.
9 Q. What do you remember about your direct
10 communications with the Department of Commerce
11 between and after these meetings?
12 A. We would continue to follow up to find
13 out what was -- what was happening, what they were
14 doing.
15 Q. Who was your point of contact?
16 A. Oh, initially it was Pam, and I may
17 have had some conversations with Marty, and I
18 probably -- I might have talked to TJ once or twice
19 on that.
20 Q. Was there ever a point where you were
21 frustrated with the pace of the Department of
22 Commerce's investigation?
23 A. Always.
24 Q. You wanted them to take action against
25 Safelite more quickly?

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1 A. Ah, yes.
2 Q. Did you ever communicate that to the
3 Department of Commerce?
4 A. Ah, yes, you know.
5 Q. You communicated that you were
6 frustrated that their --
7 A. It's --
8 Q. -- investigation wasn't moving more
9 quickly?
10 A. Yes.
11 Q. And what was the response?
12 A. That they were working on --
13 essentially, it depended on when -- during -- when
14 Wilson was in place, they would just say they
15 wouldn't comment on an ongoing investigation, and
16 with the -- as it -- as time went on with the
17 Rothman administration, I simply got the feeling
18 that it was something that was in process and that,
19 you know, they were reviewing the materials, so it
20 was -- you know.
21 Q. So would it be fair to say that the
22 Rothman administration did sometimes comment to you
23 on the ongoing investigation of Safelite?
24 A. Only to the extent that it was ongoing.
25 Q. Did the Department of Commerce under

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1 Commissioner Rothman share any other information
2 with you about the ongoing investigation of Safelite?
3 A. No. I did not have a lot of
4 communication with him about what they were doing.
5 Q. Did they ever share any evidence
6 against Safelite with you?
7 A. I never saw any.
8 Q. Did they provide status updates about
9 the investigation?
10 A. Not with me.
11 Q. What was Chuck Lloyd's involvement in
12 the investigation of Safelite?
13 A. Ah, you'd need to ask Chuck that
14 question.
15 Q. Do you have any familiarity with Chuck
16 Lloyd's role in --
17 A. I know --
18 Q. -- the investigation?
19 A. -- that he was involved.
20 Q. What do you know about his involvement?
21 A. That he was -- that he was working
22 with the department to make sure they had relative
23 information.
24 Q. Would it be fair to say that sometimes
25 he acted as the conduit of information to the

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1 Department of Commerce about Safelite?
2 A. I don't know. I -- I would only be
3 able to make an assumption on that because I never
4 asked him what he was doing or -- or specifically.
5 Q. Did the MGA form a committee
6 specifically devoted to issues pertaining to the
7 Safelite investigation?
8 A. No.
9 Q. Was there a committee that among its
10 objectives was focused on the Safelite investigation?
11 A. No.
12 Q. Was there a subcommittee of MGA
13 members that worked with Chuck Lloyd to discuss
14 objectives related to the investigation?
15 A. No.
16 MS. SASSOON: Oh, the documents. Can
17 we go off the record for one second?
18 THE VIDEOGRAPHER: Going off the video
19 record. The time is now approximately 1:34 p.m.
20 (Break from 1:34 to 1:39.)
21 THE VIDEOGRAPHER: We're back on the
22 video record. The time is now approximately 1:39.
23 BY MS. SASSOON:
24 Q. Going back to the two meetings you
25 mentioned having with Commissioner Rothman's

1 administration, do you remember if Chuck Lloyd was
2 at either of those meetings?
3 A. No.
4 Q. He --
5 A. He was not.
6 (Whereupon, Deposition Exhibit No. 6
7 was marked for identification, and a copy is
8 attached and hereby made a part of this deposition.)
9 BY MS. SASSOON:
10 Q. You've been handed Exhibit 6.
11 A. Uh-huh.
12 Q. Do you recognize this document?
13 A. Uh-huh.
14 MR. LLOYD: Is that yes?
15 THE WITNESS: Yeah. I'm sorry. Yes.
16 MR. LLOYD: Okay.
17 BY MS. SASSOON:
18 Q. Are these meeting minutes from a board
19 meeting of the MGA?
20 A. Yes.
21 Q. On February 6, 2013?
22 A. Yes.
23 Q. Would you have been in attendance at
24 this meeting?
25 A. Yes.

1 Q. Going to the middle of the page,
2 there's a bullet that begins, "In January, auto
3 glass members attended meetings regarding the
4 problems with third party administrators
5 specifically steering and job theft. A committee
6 of members represented the MGA in subsequent
7 meetings with other independent auto glass dealers
8 and attorney Chuck Lloyd."
9 Do you remember this, and were you on
10 the committee of members that's referred to here?
11 A. Yeah, I'm looking at it, and I'm just
12 trying to -- yes, I do recall that -- I'm pretty
13 sure that I'm thinking of the -- yeah, I got this
14 one -- just a second, let me read the rest of this.
15 Okay, go ahead. Sorry, your question
16 again?
17 Q. Do you remember being involved in the
18 committee of members that engaged in meetings about
19 what you referred to as steering and job theft
20 issues?
21 A. Yes, I do.
22 Q. Do you remember what Chuck Lloyd's
23 role was in those meetings?
24 A. There was -- as I recall, first of
25 all, the word committee is probably used loosely,

1 and we had an auto glass committee, and so,
2 generally speaking, that's what that's probably
3 referring to; and the meeting that we're -- that
4 I'm talking about here was a -- if I'm thinking of
5 the same one, would have been as we learned about
6 the proposed reform to the no-fault law that would
7 have eliminated arbitration.
8 Q. It says here, "That group has
9 discussed future action which currently includes:
10 Approaching the Dept. of Commerce again for
11 enforcement of existing law."
12 A. Yep.
13 Q. Do you know if Chuck Lloyd ever
14 approached the Department of Commerce directly
15 about enforcing existing law against Safelite?
16 A. I'd be assuming that he did, but
17 that's all it would be.
18 Q. Do you remember if this group of
19 members formulated any sort of legislative strategy
20 about what it considered steering and job theft?
21 A. I don't believe that we articulated --
22 we may have -- there may have been notes or
23 information that was passed around to people, but I
24 don't remember anything specifically. The problem
25 was so well-known, and it was evolving pretty

1 quickly. So since it was so well-known, a lot of
2 times we could talk about those things without
3 really having to articulate them, have a formal
4 policy, if you will.
5 Q. How often was the Department of
6 Commerce's enforcement of existing law against
7 Safelite discussed at MGA board meetings?
8 A. Not always. It would have -- it was
9 an ongoing issue. So it would not have been
10 uncommon for it to come up, but it was -- it --
11 kind of -- as I say, it was just -- it's kind of
12 like the air, it's always there.
13 Q. At some point in time, did you start
14 coordinating with Rick Rosar and Mike Reid about
15 gathering evidence against Safelite for the
16 Department of Commerce?
17 A. At some point in time, we -- I did
18 talk to them, correct.
19 Q. Do you remember when that was?
20 A. It would have been probably sometime
21 following this. I don't remember exactly when.
22 Q. So sometime between 2013, 2014 --
23 A. Something --
24 Q. -- time range?
25 A. -- in that vicinity.

Q. Do you remember how that originated?
A. No, I don't specifically remember how it originated. I mean, I've known Rick Rosar for many years, and we'd have conversations on and off. To say exactly or even approximately when it started would be a guess.
Q. Do you remember who initiated this collaboration about the Safelite investigation?
A. Say -- who, what was that, who initiated it? I -- no. I think it might have been Mike Reid, but I -- you know, that's --
Q. Do you remember how often you would discuss the investigation of Safelite with Rick Rosar and Mike Reid?
A. Probably once every month or every two months.
Q. And in what form would you communicate, by e-mail, phone, in person?
A. Usually generally by phone.
Q. Also by e-mail?
A. There may have -- there probably was a little e-mail that went back and forth.
Q. Was it ever in person?
A. Yes. It would have been in person on a couple of occasions.

Q. Do you remember what those occasions were?
A. Mike Reid came to town at one point a couple of years ago, a couple, three years ago. He, Rick and I had dinner, talked about the issues; and Rick and I might have met once or twice outside of board meetings.
Q. When you say "talked about the issues," do you remember what you talked about at that dinner regarding Safelite?
A. No. It would have been -- it was essentially everything that we've been discussing here, but, no, specifically, I -- you know.
Q. Would that include how to convince the Department of Commerce to take enforcement action against Safelite?
A. I would phrase it differently.
Q. How would you phrase it?
A. About the kind of information to provide to them, what was needed to make the point.
Q. So would it be fair to say that you, Mike Reid and Rick Rosar were communicating in order to figure out what information you could provide to the Department of Commerce to make the point that they should investigate or take

enforcement action against Safelite?
A. Yes.
Q. Would you say that in this group of you, Mike Reid and Rick Rosar there was a team leader?
A. No.
Q. Did you ever have disagreements about the proper approach with the Department of Commerce?
A. Not really.
Q. Did you ever feel like they were leaving you out of the strategy?
A. Ah, no. There were times when I wondered about things, but I never felt that -- you know, I didn't keep up with everything that they were doing, but I had a good enough general sense of where things were going.
Q. You said sometimes you would wonder about things. What do you mean by that?
A. Just what's the -- what is the status today? Frankly, I keep pretty busy. I mean, I work eight, ten, twelve hours a day, and this is one of a lot of things that I am working on. So it would be -- there are many things that go undone.
Q. Did you feel like they were ever keeping you out of the loop on the status?

A. No. I never felt that I was truly in the dark. It just --
(Whereupon, Deposition Exhibit No. 7 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MS. SASSOON:
Q. You've been handed what's been marked as Exhibit 6, I'll ask you to just --
THE COURT REPORTER: Seven.
BY MS. SASSOON:
Q. Sorry, 7, you've been handed Exhibit 7. You may not have seen this document before, so take a second to look it over.
A. Okay.
Q. Have you seen this chain of e-mails before between Mike Reid, and Martin Fleischhacker?
A. No, don't recall seeing this at all before.
Q. Mike Reid writes to Marty Fleischhacker on April 15, 2014, "I can't control everyone and I recently found out that Mike Schmaltz filed a complaint against American Family and was told today that you guys are implementing a fine." Do you remember this complaint against American Family?

A. I believe I do.
Q. What is he referring to?
A. It is hereby American Family to pay -- make timely payment on an insurance -- I believe -- I think it was -- it's almost got to be a complaint about their failure to pay an arbitration claim in a timely manner.
Q. Do you remember if at the time you thought that Mike Reid was trying to control your involvement in the Department of Commerce's investigation against Safelite?
A. My feeling was that he had it in -- it was in good hands and that things were moving forward. So in terms of him trying to control it, I knew -- not to -- let me just think, I want to phrase this correctly.
When you say in control, there's an implication there that trying to avoid me, and to my way of thinking about it, it was in good hands, so I wasn't concerned with it.
(Reporter's Note: Mr. Snyder leaves the room.)
BY MS. SASSOON:
Q. Did you ever get the sense that he thought you were inappropriately bypassing him to

communicate with the Department of Commerce?
A. No, no, I didn't think so.
Q. Do you recollect any friction between the two of you about how to handle the investigation?
A. No.
Q. Do you have any understanding of why he would want to be the only person communicating directly with the Department of Commerce?
A. I think it was because they're -- you know, I'm -- you're asking me to speculate on this, and I think that it -- it was moving forward, and -- and that other involvement could be a distraction.
Q. Do you think your involvement was a distraction?
A. No.
Q. Do you remember the method by which you assembled evidence against Safelite to provide to the Department of Commerce?
A. Simply by request to glass shops.
Q. And did they provide that to you?
A. Yes.
THE COURT REPORTER: Number 8.
(Whereupon, Deposition Exhibit No. 8 was marked for identification, and a copy is attached and hereby made a part of this deposition.)

BY MS. SASSOON:
Q. You're being handed what's been marked as Exhibit 8. Do you recognize this document?
A. Ah, yes. I think I've -- I -- yes, it's been a while, it's a couple years old. So, yeah, it looks familiar.
Q. Are these minutes from an MGA meeting or a different group?
A. Ah, this would -- no, this would not be -- just a minute, let me look at the names here. They would have been members of the MGA, yes.
Q. Was this a subgroup of members of the MGA?
A. Yes.
Q. Do you remember how it was formed?
A. Informal, could have ad hoc.
Q. And did this specific group of people meet on a consistent basis?
A. No. We -- let me -- just to be clear, they would have been the same people that would have been likely to have attended any kind of meeting that related to auto glass.
Q. And this document on November 13th, 2013, discusses collecting evidence to share with the Department of Commerce about third-party

administrators, including Safelite; is that accurate?
A. Yes, I believe so.
Q. Do you recall if the Department of Commerce asked you to assemble this type of material to share with them?
A. No.
Q. You don't recall or they didn't ask you?
A. No, I don't recall that they -- it would be consistent with the kind of information that we had provided with them, but I don't recall them asking for this specifically.
Q. Do you remember if the Department of Commerce ever asked you for any type of evidence or information to provide to them about Safelite?
A. As a follow-up to the meetings we discussed before, they would have, yeah, provide us -- they would have -- I don't recall it specifically, but I would, you know, assume from that that that's what they would have asked for.
Q. You would assume that they would have asked you to provide more evidence against Safelite?
A. To continue to provide them with information consistent with what we'd given them

1 before.
2 Q. Do you remember if those in attendance
3 at this meeting ever did directly provide you
4 materials? And I ask that because at the bottom it
5 says, "We request that you direct materials either
6 to Mike Schmaltz or Chuck Lloyd."
7 A. I don't recall, there may have been,
8 but I don't recall.
9 Q. And do you recall any method for
10 filtering information that you collected before
11 providing it to the Department of Commerce?
12 A. No.
13 Q. What was the method of deciding which
14 pieces of information to share with the Department
15 of Commerce?
16 A. There wasn't a lot that we had to go
17 through, so I don't -- we would accept what the
18 glass shops had provided, by and large, without
19 editing it.
20 Q. So you did not gather a lot of
21 material to present to the Department of Commerce
22 about Safelite?
23 A. Over the years because of the -- the
24 difficulty we had getting the Department of
25 Commerce to act, it got progressively more

1 difficult to get information because people felt
2 that it wasn't getting action.
3 Q. So you did find that it was hard to
4 get the information that you wanted against
5 Safelite?
6 A. Because there was little action that
7 followed from it for a long time.
8 Q. So you found that other glass shops
9 were reluctant to provide information that might be
10 useful against Safelite?
11 A. When you -- a -- you --
12 Q. I can rephrase.
13 A. It's -- there was --
14 Q. Do you find --
15 A. The -- the -- the anger was there.
16 The fruitless, the -- the anticipated action
17 following up on any efforts was in question.
18 Q. But you did find as a result that
19 glass shops were reluctant to provide information
20 about Safelite that could be useful for the
21 investigation against Safelite?
22 A. A yes or no answer to that is, to me,
23 bothersome because it creates the impression that
24 there was a reluctance to provide information about
25 Safelite. There was -- there was -- again, there

1 was a -- and there was no -- as if people didn't
2 care. People did care, they were very bothered by
3 it; and so the reluctance that -- that was there
4 was due to the fact that materials had been
5 produced in the past without any kind of result.
6 Q. Do you remember if any of the calls
7 you had with Rick Rosar and Mike Reid were recorded
8 by any of you?
9 A. No. I -- if -- it was done without my
10 knowledge if it was done.
11 THE COURT REPORTER: Number 9.
12 (Whereupon, Deposition Exhibit No. 9
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 BY MS. SASSOON:
16 Q. You've been handed what's been marked
17 as Exhibit 9. And does it seem to you that this is
18 an e-mail from November 2013 trying to schedule a
19 conference call with Rick Rosar and Michael Reid?
20 A. Ah, yeah.
21 Q. Do you remember if that call took
22 place?
23 A. No, I don't remember. I -- 2013, I
24 definitely don't remember.
25 MS. SASSOON: Are there two copies

1 there?
2 THE COURT REPORTER: Yes.
3 (Whereupon, Deposition Exhibit No. 10
4 was marked for identification, and a copy is
5 attached and hereby made a part of this deposition.)
6 BY MS. SASSOON:
7 Q. Handing you what's been marked as
8 Exhibit 10, and this is an e-mail from Rick Rosar,
9 and I'll represent to you that it has an audio
10 attachment and that the document behind it is a
11 transcription of that audio.
12 A. Okay.
13 Q. Which was a call between you, Rick
14 Rosar, and Mike Reid. Do you remember Rick Rosar
15 sending you an audio file of a phone call meeting
16 on November 7th, 2013?
17 A. No, I don't believe -- no, I don't
18 remember getting a -- in other words, the recording
19 of this that I'm looking at a transcript, no, I
20 don't.
21 Q. I'll give you a minute to skim through
22 this and just see if you recognize the conversation
23 at all, particularly your comments on the phone call?
24 A. You want me to read this whole thing
25 from beginning --

Q. No.
A. -- to end?
Q. I just want -- I just want you to familiarize yourself with it.
A. Okay. I --
Q. And if I ask you a question that you don't feel equipped to answer, then you can always refer back.
A. All right.
Q. Do you have a sense in refreshing your recollection what the purpose of this phone call was?
A. Generally just to update one another on what was going on and where we might proceed from there.
Q. So in terms of where you might proceed from there, it's fair to say this was a strategy call about Safelite investigation?
A. No, I wouldn't call it a strategy call, just an exchange of information. There may have been some general direction.
Q. Was there some discussion about next steps in terms of moving the ball forward against Safelite?
A. I'm seeing a little bit of that in

here.
Q. You say on page 3, in the discussion about the Department of Commerce, "Well, great...I'm fine so I just need to know what it is they need, that we need to put in front of them." Is the "they" and the "them" the Department of Commerce?
A. Yes.
Q. And what is it that you're communicating there?
A. Go back. Is the kind of information that we would need to provide to the Commerce Department related to problems with third-party administrators.
Q. So you wanted to figure out what information you could gather that could effectively catch the interest of the Department of Commerce?
A. I believe that's what we're talking about, yes.
Q. With respect to third-party administrators, including Safelite?
A. I believe so, yes.
Q. And this is part of the general project or goal to convince the Department of Commerce that Safelite was violating Minnesota law?
A. Yes.

Q. You say later on page 4, this is the third paragraph, "Yeah, ok. Well, I think Marty is somebody who is, you know, based on history more likely to do something than others are and when he got that fine against Progressive it was when Glen Wilson was still the Commissioner and Wilson wasn't about to help us." Is Marty Marty Fleischhacker at the Department of Commerce?
A. Ah, yes.
Q. And when you said Glenn Wilson wasn't about to help us, you mean get involved in investigating third-party administrators?
A. Yes.
Q. And did you believe he wasn't about to help you because your evidence had not been strong enough?
A. No.
Q. Then why, in your view, was Wilson not about to help you?
A. I think he was biased against us. I think he knew it was -- he had a frame of reference that wasn't going to let him dig into things or consider what we were saying. He -- that was my -- and his staff reflected that position.
Q. Did you think Commissioner Rothman was

biased against you?
A. No. I --
Q. So when there was a change of administration, you had a new opportunity to present your evidence --
A. Yes.
Q. -- to what you consider --
A. I'm sorry.
Q. -- a mutual party?
A. I cut you off. Yes.
Q. And you thought Marty Fleischhacker was more receptive to your evidence than Glenn Wilson had been; is that fair?
A. That's right.
Q. I'd like to go back for a minute to Exhibit 8. This is the -- these are the notes from the November 13th, 2013, meeting.
A. Uh-huh.
Q. At the bottom of those notes it says, "We are not seeking to expand" this "group at this time. This approach appears to hold some promise so we are asking all to avoid direct contact with the Department of Commerce office as we pursue this remedy." Do you remember why you wanted everyone else to avoid direct communication with the

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1 Department of Commerce?
2 A. Yes.
3 Q. Why?
4 A. My -- this is -- I'm -- I'm kind of
5 guessing at the reason, and that is that my feeling
6 is the Department -- part of the reason the
7 Department of Commerce never went into everything
8 that we had was because they are overwhelmed with
9 the amount of work that they have to do and the
10 issues that they have to deal with, and that in the
11 unfortunate real -- in real life people have to
12 make decisions, and one of the things that comes up
13 is that where does this fit in the importance of
14 things; and I remember a conversation with an
15 individual where they were saying that we have to
16 worry about -- and I can't remember the exact -- it
17 might have been some -- it might have been one of
18 Glenn Wilson's people saying people that are losing
19 their homes and people that have issues that were
20 much more significant than this; and so I think
21 that we -- in terms of why, it was because we found
22 the right way to present the evidence, and we
23 didn't want to overwhelm them with a lot of detail
24 that would be distracting.
25 Q. So you thought the best way to

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1 persuade the Department of Commerce to take an
2 interest in the Safelite investigation was to more
3 carefully control the flow of information about
4 Safelite that went to the Department of Commerce?
5 A. So the quality information was getting
6 through and not to overwhelm them with and overly
7 burden them with other stuff, yes.
8 THE COURT REPORTER: Number 11.
9 (Whereupon, Deposition Exhibit No. 11
10 was marked for identification, and a copy is
11 attached and hereby made a part of this deposition.)
12 BY MS. SASSOON:
13 Q. Do you recognize this document, and is
14 that your handwriting?
15 A. Um, yes, it is my handwriting.
16 (Reporter's Note: Mr. Reigstad leaves
17 the room.)
18 THE WITNESS: I want to read it
19 through.
20 BY MS. SASSOON:
21 Q. Sure.
22 A. Okay, yes.
23 Q. So --
24 A. What's --
25 Q. -- is this --

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1 A. -- your question?
2 Q. Does this e-mail have to do with a
3 recording of a customer call that Mike Reid sent to
4 you?
5 A. It appears that it does.
6 Q. And do you remember why he would be
7 sending you a cust -- a recording of a customer
8 call?
9 A. It would be to illustrate the points
10 that he's making about the unhappiness with this --
11 with this particular situation.
12 Q. Was he --
13 A. With American -- with the poli -- the
14 policy holder's perception of what was happening
15 and their reaction to it.
16 (Reporter's Note: Mr. Reigstad enters
17 the room.)
18 BY MS. SASSOON:
19 Q. Was he sharing it with you in order to
20 potentially share it with the Department of Commerce?
21 A. I don't recall. I think it was part
22 of the general conversation that was going on at
23 that time, but I don't -- I -- it -- whether or not
24 he -- I don't recall whether or not he was going to
25 do this, share it with the Department of Commerce.

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1 I would hope that he did.
2 Q. Is that generally why you would
3 exchange information, in order to collect evidence
4 to share with the Department of Commerce?
5 A. No. I think it was more in the nature
6 of, hey, this is going on, this is outrageous, here's
7 something, you know, that you might be interested in.
8 Q. Do you remember if you considered this
9 outrageous?
10 A. The behavior of the representative
11 that was -- of the Safelite representative that was
12 on this call, yes.
13 Q. Going to the bottom of the page, in
14 your handwritten notes, am I reading this
15 accurately, that it says, "not sure that there was
16 a violation, except for failure to read the
17 advisory"?
18 A. Okay.
19 Q. So is it accurate that you listened to
20 this recording, and you thought it was outrageous,
21 but you were not sure that there was a violation of
22 Minnesota law other than possibly the requirement
23 to read an advisory?
24 A. That was my opinion at that point in
25 time, and this would have been just for my own --

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the notes on this would have been for my reference, it would not be -- just my thoughts so if I looked at it again I'd have a point of reference.
Q. So is it true that some calls -- or is it your understanding that some of this information that you and Mike Reid exchanged about Safelite was not ultimately passed on to the Department of Commerce?
A. Very possible.
Q. Why would that have been the case?
A. I -- I don't know. I'm not -- you know, you'd need to ask Mike that question.
Q. Did the Department of Commerce ever give you feedback on the materials that you were sharing with them?
A. Yes. That's -- you know, we're reaching over a broad spectrum of time.
Q. Uh-huh.
A. And now that I recall one -- there were a number of instances where Mike Schenian -- in one of the meetings Mike Schenian from City Auto Glass presented some bills that had remained unpaid for quite a period of time, and they indicated they were going to act on that; and I remember calling back and being told that they were going to

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continue to do that, but ultimately I don't believe any action was taken on it, so --
Q. Do you remember why you concluded after listening to this recording mentioned in Exhibit 11 that you concluded that you weren't sure there was a violation except as related to the advisory?
A. It would have been my -- my impression of what occurred, what I -- occurred in that conversation at that time.
(Reporter's Note: Mr. Snyder enters the room.)
MS. SASSOON: Should we take a short break?
MR. LLOYD: If that works for you.
MS. SASSOON: Yeah.
MR. LLOYD: Yeah.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 2:20 p.m.
(Break from 2:20 to 2:33.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 2:33 p.m. This is the beginning of disc number 3.
(Whereupon, Deposition Exhibit No. 12 was marked for identification, and a copy is

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attached and hereby made a part of this deposition.)
THE COURT REPORTER: Number 12.
BY MS. SASSOON:
Q. You've been handed what has been marked as Exhibit 12. Is this another e-mail about a customer recording involving Safelite that Mike Reid forwarded to you in 2013?
A. It appears to be, yes.
Q. Are those your notes on the side?
A. Yes. That's my writing.
Q. Does it appear that you concluded about this recording that it may have been misleading, but you did not think there was a violation of law?
A. Yes.
Q. Are you aware of the Consent Order entered -- are you aware of the Consent Order entered into between Auto Club Group and the Department of Commerce?
A. Ah, yes, I think I know what you're talking about.
Q. And if I refer to that as a Consent Order, you'll understand that's what I'm referring to?
A. That -- okay, yes.

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Q. Do you remember when you became aware of it?
A. Not exactly. There probably was some communication between -- or some phone call or something like that between Rick Rosar and myself, would be the most likely.
Q. Did you discuss the Consent Order with anyone at the Department of Commerce before it was finalized?
A. No.
Q. Did you know about it before it was finalized?
A. No.
Q. Do you think MGA's assistance to the Department of Commerce contributed to the outcome of that Consent Order?
A. That would be -- I -- I can only speculate on that. I have -- I can't answer that yes or no.
Q. Do you have a view whether the documents provided by the MGA helped DOC reach the result that it did?
A. I do not know.
Q. What role, if any, do you believe the MGA played in reaching the result of the Consent

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1 Order?
2 A. No, none.
3 Q. None?
4 A. I don't believe -- well, okay. It --
5 as -- it contributed to the weight of the evidence
6 that had been pro -- produced -- produced over the
7 years. So to that extent, yes.
8 Q. Don't you think the MGA played a role
9 in sparking the Department of Commerce's interest
10 in the issue in the first place?
11 A. In the -- yes.
12 Q. So is it fair to say that but for the
13 MGA drawing attention to the issue it might never
14 have been pursued?
15 MR. LLOYD: Well, I'll object to that
16 on the grounds of no foundation. You can go ahead
17 and answer if you know.
18 THE WITNESS: Ask the question again,
19 please?
20 BY MS. SASSOON:
21 Q. In your view, would it be fair to say
22 that but for the MGA drawing attention to the issue
23 it might never have been pursued?
24 A. No.
25 Q. Why not?

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1 A. I'm assuming the informa -- the --
2 the -- the evidence presented to the depart -- I'm
3 assuming the evidence presented to the Department
4 of Commerce was adequate for it to reach the
5 conclusion and take the action that it did. I
6 don't know what that information or evidence was.
7 Q. Are you aware whether some of that
8 evidence came from the MGA?
9 A. No.
10 Q. So you don't know whether any of the
11 evidence relied on by the Department of Commerce
12 underlying this Consent Order came from the MGA?
13 A. No, I do not know that.
14 (Whereupon, Deposition Exhibit No. 13
15 was marked for identification, and a copy is
16 attached and hereby made a part of this deposition.)
17 THE COURT REPORTER: Number 13.
18 BY MS. SASSOON:
19 Q. You've been handed what has been
20 marked as Exhibit 13.
21 A. Okay.
22 Q. Were you pleased with the outcome of
23 the Consent Order?
24 A. Yes.
25 Q. How come?

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1 A. I felt that it recognized problems
2 that had been going on for a long time.
3 Q. Problems related to Safelite's
4 business practices in Minnesota?
5 A. Safelite Solutions' practices across
6 the country.
7 Q. This e-mail from Rick Rosar dated
8 January 26, 2015, in Exhibit 13, is that a draft
9 press release about the Consent Order that he sent
10 to you?
11 A. Yes.
12 Q. And in that e-mail he wrote, "The
13 MGA...and its members played a major role in
14 providing the requested materials such as telephone
15 recordings, statements, etc.", end quote. And
16 that's a quote from Gary Hart at the IGA.
17 A. Yes, it is.
18 Q. Do you agree with that statement?
19 A. No.
20 Q. Why not?
21 A. I didn't feel we played a major role.
22 Q. Why not?
23 A. Because we weren't an active
24 participant in driving for this particular action.
25 Q. How do you define active participant?

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1 A. We didn't know the investigation --
2 I'm not sure we knew the investigation was going
3 on, I can't recall -- maybe that I'd heard some
4 rumblings about it, but I'm not recalling anything
5 along that line.
6 Q. You mean an investigation of the Auto
7 Club Group?
8 A. Correct.
9 Q. As opposed to the investigation of
10 Safelite?
11 A. Correct, the general investigation,
12 correct.
13 Q. Do you consider the MGA an active
14 participant in the investigation of Safelite?
15 THE VIDEOGRAPHER: You're --
16 MR. LARSON: Danielle, you're covering
17 your mic.
18 MS. SASSOON: Sorry.
19 BY MS. SASSOON:
20 Q. Do you consider the MGA an active
21 participant in the investigation of Safelite?
22 A. Currently we would support that, but
23 to say we're active, no. It's a small organization,
24 and we have not been particularly active in that
25 regard lately, over the years, to the degree that

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we've discussed so far, yes.
Q. So in the past few years, would it be fair to say that the MGA did play an active role in the Department of Commerce's investigation of Safelite?
A. That is a broad term, and we have played a role. Active, to me, implies more than I think -- a greater amount of activity than actually occurred. You saw what occurred in 2013, you produced that. Yes, we did do that. If you wanted to use that to describe -- to say that's active, then, it was. To me, it -- active would mean much more than that.
Q. You wrote back to Rick Rosar in this exhibit on January 27th, 2015, "Rick, MGA involvement in the process that led to the Consent Decree is hugely overstated in this release," and then later you continue, quote, Essentially we knew something was going on but did not participate in the process, end quote.
A. Yes.
Q. Why didn't you want MGA to get too much credit for the outcome of the consent decree?
A. I didn't feel it was accurate.
Q. You revised the press release and in

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your revision of Gary Hart's statement it says, quote, The Minnesota Glass Association...and its members played a role in providing the materials such as telephone recordings, statements, etc., end quote.
A. Uh-huh.
Q. So did you feel that statement was accurate?
A. Yes, over the years, yes.
Q. And did you agree that, quote, the consent order is the culmination of the hard work and dedication from Minnesota glass shops in providing direct evidence to the State in order for action to be taken?
A. Ah, over the years, yes.
Q. Are there other investigations of the Department of Commerce that you've been involved in over the years?
A. I think we've covered -- nothing that we haven't discussed here. I -- I understand another consent order has been issued for another insurance company, but, no.
Q. Do you think that the consent decree was a consequence of the original investigation opened about Safelite?

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A. It -- to the extent that it established that there was a problem that had been going on for some time and -- yes, I think that it did.
Q. Did you see the two issues, the Safelite investigation and the consent decree, as connected?
A. Say that again? Did I -- okay.
Q. Did you consider the Safelite investigation and this consent decree to be connected?
A. Yes.
Q. And are you aware whether the consent decree made any conclusions about Safelite Solutions' business practices?
A. I'd have to reread the consent decree before I -- you know, but my understanding is that it did.
Q. And are you aware whether the consent decree affected the business practices of Safelite Solutions in Minnesota in any way?
A. No.
Q. The original consent decree when it was issued, do you know whether it affected Safelite Solutions' ability to do business in Minnesota?

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A. I would guess that it -- I really don't know, but I would guess that it would.
Q. So would it be fair to say that the consent decree resulted in some action against Safelite that you had been advocating for?
A. Yes.
Q. Put another way -- I'll withdraw the question.
Do you remember if the MGA board discussed the consent decree after it was issued?
A. I'm sure we probably did. I don't remember it specifically.
Q. Did you become aware that Safelite brought a lawsuit against the state of Minnesota in 2015?
A. I -- yes, I have heard that.
Q. What was your opinion of that lawsuit?
A. I -- as I -- I -- my feeling is that they should not prevail.
Q. Are you aware that the Department of Commerce brought an administrative action against Safelite in 2015?
A. I believe I've have -- I believe I have heard about that. It's been a while since I've read that.

Q. What was your view about that?
A. I'd need to look at it again before I'd comment on it.
(Whereupon, Deposition Exhibit No. 14 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Exhibit 14.
BY MS. SASSOON:
Q. You've been handed what's been marked as Exhibit 14. Is this an e-mail that you sent in May of 2015 to Mike Reid and Rick Rosar with the notice of Minnesota's admin action against Safelite attached?
A. Okay.
Q. Do you remember sending this to Mike and Rick?
A. I don't remember it, but I don't contest it.
Q. You wrote, quote, Good to see that the Dept of Commerce is going directly after Safelite on this, end quote.
A. Yes.
Q. Do you remember why you thought it was good to see that?
A. Because Safelite has been engaged in

illegal activity.
Q. When you say that the Department of Commerce is going directly after Safelite, did you consider the Consent Order an indirect way of going after Safelite?
A. It makes -- that makes no sense to me, direct or indirect. I -- I think you're -- the -- you're reading more into the words directly, yeah, too much into that.
Q. Why --
A. You could take that out of the sentence and to me it would mean the same thing.
Q. When you saw that the Department of Commerce was going directly after Safelite on this, did you consider that a culmination of the advocacy you had been engaged in with the Department of Commerce?
A. Yes.
Q. When you said "I assume we will want to keep this quiet," why did you --
A. I --
Q. What did you want to keep quiet?
A. I think that we were still concerned about the flow of information to the Commerce Department to make sure that it would not all of a

sudden become distracting. To that -- to that point -- well, that's -- yeah, it would become distracting.
Q. Did you think that this was a good development for independent glass shops in Minnesota?
A. Yes.
Q. Did you think that because this would potentially limit Safelite's ability to do business in Minnesota?
A. Safelite Solutions group, yeah, it would affect their approach in the likelihood that insurance companies would be able to rely on them to manage claims.
Q. So you were in favor of decreasing the likelihood that insurance companies would do business with Safelite Solutions?
A. I think that's a good outcome.
Q. How would you describe the role that the MGA played in this outcome of the notice of an administrative action by the Department of Commerce?
MR. LLOYD: Object --
BY MS. SASSOON:
Q. Or, sorry, by the State of Minnesota

against Safelite?
MR. LLOYD: Objection, no foundation. You can answer if you know.
THE WITNESS: It would -- there really was not any more or less than the -- regarding the -- let's see, this was Safelite Solution.
State the question again? I just want to consider it.
BY MS. SASSOON:
Q. How would you describe the role that the MGA played in this outcome of the notice of administrative action?
A. Minimal.
Q. Even though you brought the issue to the attention of the Department of Commerce?
A. Minimal in terms of years -- over the years there was quite a bit, over the last year or so it is -- that has decreased. That's what I mean by minimal. So related to this specific action, minimal.
Q. But wouldn't you describe this action as the culmination of the years of work and investigation?
A. It's a step in the process.
Q. So how would you describe the MGA's

1 role in the overall process?
2 A. Of having called attention to the
3 activities, the illegal activities that we've
4 observe -- observed over the years.
5 Q. Do you have any knowledge whether the
6 Department of Commerce has investigated any other
7 insurers or claims administrators for activities
8 similar to those in which Safelite is accused of
9 having participated in?
10 A. No.
11 Q. What did you do to prepare for your
12 deposition today?
13 A. I initially talked to Chuck Lloyd, I
14 looked --
15 Q. Is that in person?
16 A. Correct, yes; and I looked through the
17 materials that we had submitted. I looked at the
18 deposition that -- that I prepared, and gave some
19 thought to things that were -- that had occurred
20 over the years.
21 Q. What do you mean the deposition that
22 you had prepared?
23 A. The deposition that you --
24 Q. Do you mean the affidavit?
25 MR. LARSON: The affidavit.

1 THE WITNESS: The affidavit, I'm
2 sorry, yeah, I'm sorry.
3 BY MS. SASSOON:
4 Q. How long did you meet with Chuck
5 Lloyd?
6 A. An hour, an hour and a half.
7 Q. Was Oliver Larson there?
8 A. No.
9 Q. Was anyone else there?
10 A. No.
11 Q. Are you aware that the Minnesota Glass
12 Association was served with a notice of document
13 subpoena in this action?
14 A. Yes.
15 Q. What did you do to collect documents
16 responsive to the subpoena?
17 A. I went through the documents that we
18 had on file, and having looked over the subpoena
19 for documents, I collected everything that I
20 thought was responsive and went through a number of
21 e-mails and did the same thing.
22 Q. Do you have a hard copy or any
23 documents that contain the MGA bylaws?
24 A. Ah, not -- not at this time. I've
25 turned them over to the administrative person who

1 is handling -- who will be handling things going
2 forward. I think I still have an electronic
3 version of it.
4 Q. And what about a list of the members
5 of the MGA?
6 A. I could access that, but I -- I don't
7 have one that I've -- not a hard copy. I could get
8 an electronic copy.
9 MS. SASSOON: Okay. Let's take a
10 short break and just make sure there's nothing else
11 I have to ask, but should be, basically, done.
12 THE VIDEOGRAPHER: Going -- going off
13 the video record. The time is now approximately
14 2:56 p.m.
15 (Break from 2:56 to 2:59.)
16 THE VIDEOGRAPHER: We're back on the
17 video record. The time is now approximately
18 2:59 p.m.
19 BY MS. SASSOON:
20 Q. Going back to your document
21 collection, I just want to make sure I understand.
22 Did anyone help you collect the documents?
23 A. No.
24 Q. Did you run search terms in your
25 e-mail?

1 A. Yes.
2 Q. Are there documents that you gave to
3 the Department of Commerce in those two meetings
4 you discussed that have not been produced?
5 A. Ah, yes, that would have predated the
6 time period that was affected by this. So the
7 document -- the Department of Commerce would have
8 had materials from previous years that would not
9 have been included in the documents that were
10 produced, but they tended to be -- you know, some
11 of the points and -- and materials were largely the
12 same, other than new materials that might have come
13 in.
14 Q. Do you remember what search terms you
15 ran in your e-mail?
16 A. No, I don't remember all of them. I
17 went through it probably 15 or 20 different ways,
18 plus, I use a single e-mail address now for the
19 last -- that I've used for the last couple of
20 years. So I wound up spending two days manually
21 going through e-mails to make sure that anything
22 that was not covered by a search term was ferreted
23 out.
24 Q. Thanks for doing that.
25 A. Don't do it anymore, please.

Q. And you went through your handwritten materials, it seems, as well?
A. Ah, yeah, because of the organization, yes, I would have gone through everything that -- all the MGA materials, right.
Q. I just had a few questions about the MGA membership.
A. Yes.
Q. I believe you said now the membership is about 35 shops?
A. Roughly, yes.
Q. Has that fluctuated a lot over the past decade or so?
A. Um, over the past decade it's prob -- it may have been up to 50 or 60, but it's -- you know, it's going -- it has fluctuated some, but it's been -- it's slide -- it's slid a lot over the years.
Q. Do you know why it has slid a lot over the years?
A. Yes.
Q. Why?
A. It's a strange industry. Things have changed so much in this industry over the years, it has been severely impacted by computerization and

telecommunications. It's enabled things to happen that never happened in the past. Because companies once went to market in an almost identical fashion, now there are many ways of going to market, some people work directly just as network members and rely on business for that, others market to insurance agents, and others will mark -- do direct market to go consumers, some use telemarketing. So that's different across the board with all of the these companies.

The distribution methods have changed over the years, and when I first got into the industry, the same companies made glass that was supplied to both flat glass and auto glass dealers. That's why you see both sides doing -- you know, to this day doing that kind of -- both kinds of work, that's part of that reason.

The manufacturers have changed. I could not -- I can't even keep track of all the company ownerships, mergers that have occurred over the years.

It tends also to be a pretty unsophisticated industry by and large. There's few barriers to entry to people getting into the auto glass market. So, essentially, anybody who chooses

to become an auto glass dealer can go in and start installing auto glass. You could fire a techni -- a reputable dealer could fire a technician for poor performance today, tomorrow he would go out and hang a shingle on his garage and contact a network or two or three and say I'm in the glass business today and start installing glass. It's not just Safelite that doesn't inspect network providers, all of them are bad that way. They'll take anybody who will meet their price and sign up as and accept them as dealer.

So, why has the -- why has it changed? It's changed for a wide number of reasons that -- you know, and getting unsophisticated dealers to -- somebody that essentially is a mechanic that's making a living from day to day off of doing a couple of windshields is not going to see the value of participating in an organization like that and won't understand the reasons why they should be AGRSS registered and certified.

Have I gone on long enough?

Q. So what are you -- you know, succinctly, what do you see as the benefits of being a member of the MGA?
A. Understanding what's going on in the

industry, training, sticking together, because as, you know, small independent businesses, they are dealing with big distributors, big insurance companies, big third-party administrators. The information that they can share I think is -- is, you know -- plus, just knowing how to do jobs correctly and install them safely are all advantages to be participating in an organization like this.
Q. Are you finding that fewer glass shops value those things?
A. Ah, yes.
MS. SASSOON: That's it.
MR. LARSON: I have no questions.
THE WITNESS: Oh, I was just getting -- oh, I'm sorry, go ahead.
MR. LARSON: I have no questions for you.
THE WITNESS: No questions?
MR. LARSON: No.
THE WITNESS: Okay, great.
MS. SASSOON: Anything from you, Chuck?

EXAMINATION

BY MR. LLOYD:
Q. I want to -- well, you gave an answer,

and I might as well follow up on it because I'm not sure you thought about it. You were asked about other Department of Commerce investigations, and you said you pretty much talked about them.

At one point, did you make a complaint about Progressive Insurance to Commerce when Glenn Wilson was commissioner?

A. Um, we complained to -- as I recall it, we complained to -- first of all, to -- oh, his name is escaping me, a -- one of the legislators; and Progressive always figured prominently in any of the complaints that we made to the Department of Commerce because of the amount of work that they did and how aggressive they were in dealing with independent glass shops.

Q. Okay. And this specific complaint, did you make a complaint about how slow Progressive was in paying arbitration awards?

A. Oh, yeah, absolutely; and we did -- there were -- there have been two decisions, judgments, what -- what have you, against Progressive fining them for those slow payments, correct, and I think the first one --

Q. Okay. All I wanted to do was to get that correction out there.

A. Yeah.

Q. Because you had been asked whether you were involved in any others and you had said no. That was one that I was aware of. So I wanted to make sure --

A. Yes.

Q. -- that that was out.

But that had -- just so the record is clear, that had nothing to do with Safelite or TPAs or anything, that specific complaint?

A. Yes.

Q. Correct?

A. Correct.

MR. LLOYD: That's all.

THE WITNESS: Correct.

THE VIDEOGRAPHER: Are we done? Read and sign?

MR. LARSON: I have no further questions.

THE VIDEOGRAPHER: Read and sign?

MR. LLOYD: That's not up to me, that's up to these guys. Everybody thinks it's up to the witness. It's really not, it's up to the parties whether you want us to read and sign.

MR. LARSON: I don't have a preference

on it.

MR. SNYDER: No, we have no preference, either.

MR. LLOYD: Court reporters do a great job. So I don't see there's any reason for us to read and sign the transcripts.

THE VIDEOGRAPHER: This concludes the video deposition. The time is now approximately 3:07 p.m. Thank you.

(Whereupon, the deposition of MICHAEL SCHMALTZ was concluded at 3:07 p.m.)

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN that I, Jean F. Soule, Registered Professional Reporter, took the foregoing deposition of MICHAEL SCHMALTZ;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were expressly waived by the witness and respective counsel;

That I am not related to any of the parties hereto, nor an employee of them, nor interested in the outcome of the action;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 16th day of January, 2016.

JEAN F. SOULE, Notary Public, RPR

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Larson Ex. 6

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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Michael Reid

January 28, 2016

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Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of MICHAEL REID, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Rainy Conference Room, Minneapolis, Minnesota, commencing at 8:06 a.m., Thursday, January 28, 2016.

* * *

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P R O C E E D I N G S

Whereupon, the video deposition of MICHAEL REID was commenced at 8:06 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International, Incorporated. Today's date is Thursday, January 28th in the year 2016. The time is now approximately 8:06 a.m. We are at 200 South Sixth Street, Minneapolis, Minnesota, to take the video deposition of Mr. Mike Reid in the matter of Safelite Group, Incorporated and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MR. LEFKOWITZ: Jay Lefkowitz for the Safelite defendants.

MR. LLOYD: Chuck Lloyd for Michael Reid.

MR. LARSON: Oliver Larson on behalf of the Commissioner.

MR. REIGSTAD: Christian Reigstad for the plaintiffs.

MR. SNYDER: And Richard Snyder.

THE VIDEOGRAPHER: Would the court

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reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. REID: Yes.

* * *

MICHAEL REID,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MR. LEFKOWITZ:

Q. Good morning.
A. Good morning.
Q. Can I ask you to state your name for the record, please?
A. Yeah, Michael Reid.
Q. And are you aware that we're here in connection with a case that's captioned Safelite Group, Inc. and Safelite Solutions, LLC versus Lori Swanson and Michael Rothman and that it's pending in the Federal Court here in Minnesota?
A. Yes.
Q. I'm going to refer to Safelite throughout the day, and if I just refer to

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1 Safelite, will you understand that I'm referring to
2 the plaintiffs in this case, Safelite Group and
3 Safelite Solutions, LLC?
4 A. No.
5 Q. Okay. I'm going to tell you, then,
6 that is how I'm going to refer to them. If I refer
7 to Safelite Solutions, then, I'll be referring to
8 the claims management business. Are you familiar
9 with -- that Safelite has a claims management
10 business?
11 A. Yes.
12 Q. So I want you to understand that if I
13 refer to Safelite Solutions, that's the claims
14 management business. All right?
15 A. Okay.
16 Q. And if I refer to Safelite AutoGlass,
17 I want you to understand that I'm referring to the
18 glass repair and replacement business. Okay?
19 A. Yes.
20 Q. If I refer to Safelite generally, I'm
21 just referring to the plaintiffs in this case; and
22 if you have any question and you want clarification,
23 just ask it.
24 A. Okay.
25 Q. Have you ever been deposed before?

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1 A. Yes.
2 Q. How many times?
3 A. Once.
4 Q. In what case was it?
5 A. Alpine Glass versus Farmers Insurance.
6 Q. What kind of a case was that?
7 A. That was short pay for auto glass
8 invoices.
9 Q. And it was a lawsuit or was it an
10 arbitration?
11 A. It was an arbitration.
12 Q. Okay. And you testified in a
13 deposition in that situation?
14 A. Yes, I had a deposition.
15 Q. Did you testify a second time in that
16 case?
17 A. I don't recall.
18 Q. Have you ever testified at a trial or
19 at a court hearing?
20 A. Ah, no.
21 Q. I just want to go over some ground
22 rules here so that the record will be -- will be
23 clean.
24 A. Okay.
25 Q. You've just taken an oath that

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1 requires you to tell the truth as if you were
2 testifying in court. Do you understand that?
3 A. Yes.
4 Q. And you have to give verbal answers as
5 opposed to just nodding your head so the court
6 reporter can take down your responses.
7 A. Yes.
8 Q. Do you understand that?
9 A. Yes.
10 MR. LLOYD: You also have to keep your
11 voice up so we can all hear you.
12 BY MR. LEFKOWITZ:
13 Q. Right. The court reporter will let
14 you know and the videographer will let you know if
15 your voice isn't loud enough. I can hear you, but
16 if they tell you you need to speak louder, then,
17 please speak louder.
18 A. Okay.
19 Q. And I think as a general rule it would
20 be great if you could let me finish my question
21 before you answer, I'll try to let you finish your
22 answers before I ask a follow-up question. All
23 right?
24 A. Okay.
25 Q. If you don't understand the question,

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1 just let me know and I'll try to rephrase the
2 question. All right?
3 A. All right.
4 Q. If at any point you realize that an
5 answer that you've given is incorrect or incomplete,
6 for example, I think I introduced myself and I said
7 I represent the defendants, I actually represent
8 the plaintiffs, I'm just used to representing
9 defendants, but -- so I'm correcting that. You
10 should do the same. All right?
11 A. Okay.
12 Q. And if at any point during the day you
13 want to take a break, get a drink, you want to go
14 to the bathroom, just let me know and we'll come to
15 a break as quickly as possible and we'll take a
16 break. All right?
17 A. Okay.
18 Q. Is there any reason as you sit here
19 today why you have a question about whether you can
20 give truthful and honest and accurate answers?
21 A. No.
22 Q. Okay. What is your professional
23 position today?
24 A. I'm the president of Alpine Glass.
25 Q. And what is Alpine Glass?

A. Alpine Glass, we are a retailer of auto glass in the -- throughout Minnesota.
Q. How long have you had that position?
A. Over 20 years or so.
Q. Did you found the company?
A. Yes.
Q. Do you have any other businesses or is this your full-time occupation?
A. It's my full-time occupation.
Q. And what are your responsibilities?
A. Just to oversee the business and the management crew that I have.
Q. What does Alpine Glass do, what are the functions of the business?
A. We replace windshields.
Q. Do you operate throughout the state of Minnesota?
A. Yes.
Q. Do you operate anywhere else other than Minnesota?
A. A little bit into Wisconsin.
Q. What percentage of your business is in the state of Wisconsin?
A. A large part of it.
Q. A majority?

A. Majority, yes.
Q. The most --
MR. LLOYD: I think you misunderstood what he asked. He asked about Wisconsin, not Minnesota.
THE WITNESS: Oh, I'm sorry.
MR. LEFKOWITZ: I'll get --
THE WITNESS: I'm sorry.
MR. LEFKOWITZ: -- to that. I'll -- so let's correct the record.
BY MR. LEFKOWITZ:
Q. Where is the majority of your business located?
A. Minnesota.
Q. And that would be by revenue; is that correct?
A. Yes.
Q. And would you say it's -- well, give me a percentage, just rough percentage of the business that Alpine Glass has in Minnesota as compared to outside the state?
A. Ninety-five percent or higher.
Q. Okay. And are you responsible for setting the prices of windshield replacement repairs for Alpine?

A. Yes.
Q. Are you responsible for Alpine Glass's billing and collection practices?
A. Yes.
Q. Does Alpine Glass engage in any lobbying activities?
A. Yes.
Q. And are you responsible for coordinating lobbying on behalf of Alpine Glass?
A. No. Oh, for Alpine Glass, yes.
Q. Correct.
A. Yes.
Q. Are you familiar with the Auto Glass Replacement Safety Standard or the AGRSS?
A. Yes.
Q. Can you tell me what that is?
A. It's just a safety standard that's put out for the safe install of -- of auto glass that we follow.
Q. And is Alpine Glass AGRSS registered?
A. No.
Q. And why is that?
A. We follow the standards, we're not registered.
Q. How many locations does Alpine Glass

have?
A. As far as install locations --
Q. Yes.
A. -- or offices?
Q. Well, let's start with the install. How many actual install locations does Alpine have?
A. None.
Q. Where do you do your installations?
A. It's all mobile.
Q. And how many offices do you have?
A. We have -- we have two offices.
Q. And where are they located?
A. Or three offices, I'm sorry.
Q. Where are they located?
A. Kirkland, Washington; Tukwila, Washington; and Des Moines, Iowa.
Q. But you don't repair glass in those states; is that correct?
A. No.
Q. Are you familiar with an organization called the Minnesota Glass Association?
A. Yes.
Q. Are they also known as the MGA?
A. Yes.
Q. Is Alpine Glass a member of the MGA?

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A. Yes.
Q. Have you ever served on the board of the MGA?
A. No.
Q. Have you ever served in any capacity in the leadership of the MGA?
A. No.
Q. Has Alpine Glass ever contributed money to the MGA?
A. Yes.
Q. Approximately how much money has Alpine contributed to the MGA?
A. I don't know offhand.
Q. Can you give me an estimate?
A. Um, I'm not going to guess, no. I don't know exactly how much we've donated.
Q. Okay. I'd like to make a note here that's something we'd like to ask you to follow up with and supplement. I assume that's something you do have records of contributions that the company has made to a lobbying organization?
A. Well, not a lobby. What do you mean a lobbying organization?
Q. A -- a industry association, would you have records --

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A. Yes.
Q. -- of contributions?
A. Yes.
Q. Okay. We'll request that you provide the information.
What's the Independent Glass Association?
A. Just -- just like you say, it's the Independent Glass Association.
Q. Is it the same as the MGA?
A. No.
Q. How are they different?
A. They're different, Minnesota is Minnesota, the independent is throughout the country.
Q. Is Alpine Glass a member of the IGA?
A. No.
Q. Has Alpine Glass contributed money to the IGA?
A. Not that I recall.
Q. Have you contributed money to the IGA personally?
A. No.
Q. Have you ever served on the board of the IGA?

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A. No.
Q. Okay. Are you familiar with a company called Safelite?
A. Yes.
Q. And how are you familiar with them?
A. Just the course of the business I know about them.
Q. Do you view Safelite as a competitor to Alpine Glass?
A. No.
Q. What is your understanding of Safelite's business?
A. My understanding of Safelite is that it has multiple arms of the business, from wholesale, retail, and manufacturing.
Q. Do you know if Safelite repairs glass, automobile glass?
A. Yes.
Q. And is that the same business that Alpine is in?
A. Yes.
Q. But you don't view them as a competitor?
A. Not really.
Q. And why is that?

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A. We just -- we don't run into -- we don't run into them that often, as far as -- as far as our business model.
Q. Do you have a view as to whether or not Safelite's prices for repairing glass are lower than Alpine's?
A. I don't know about Safelite's pricing.
Q. You don't know anything about Safelite's pricing?
A. I -- I don't, no, no, I don't know.
Q. What's your impression of Safelite, do you have a favorable impression of Safelite?
A. I really don't have a comment with Safelite. Like I say, they're -- they're not a competitor of ours.
Q. Do you know what Safelite Solutions is?
A. Yes.
Q. Can you describe what Safelite Solutions is?
A. My understanding of Safelite Solutions is they're the -- they process our invoices and make payments to us.
Q. Do you have a favorable impression of Safelite Solutions?

A. Ah, no.
Q. And why is that?
A. Just the problems that I've had with -- with Safelite Solutions.
Q. What kind of problems have you had with them?
A. Steering, late -- late payments.
Q. Have you ever had any problems with work that's been performed by Safelite shops or shops recommended by Safelite?
A. Can you -- can you repeat the question?
Q. Have you had any -- have you ever had any concerns about work that's been performed by Safelite shops or shops recommended by Safelite?
A. Yes.
Q. Can you tell me about those situations?
A. I've heard it from my installers of the -- the windshields that we've done that Safelite has previously replaced.
Q. Do you have any concrete examples that you can refer to now?
A. No.
Q. You're not aware of any particular examples?
A. No.

Q. Are you aware that Safelite also owns glass shops in Minnesota?
A. Yes.
Q. And that those glass shops perform the same function that your glass shops perform?
A. Yes.
Q. But you maintain that Safelite is not a competitor --
A. In my --
Q. -- to Alpine?
A. In my eyes, no.
Q. You're in the customer service business; is that right?
A. No.
Q. You're not?
A. No.
Q. You don't try to provide customers with good service?
A. Yes.
Q. But you don't consider that customer service?
A. I do consider that customer service. So, yeah, I guess it's a part of my business. I consider it auto glass, I'm in the auto glass business, but, yeah.

Q. Do you think lower prices are a good thing for consumers?
A. I think fair prices are a good thing for consumers.
Q. Do you think consumers prefer lower prices?
A. Define consumers.
Q. Consumers who have a need for auto glass repair?
A. Our -- our consumers, our customers, the majority of them have insurance. So their -- their payment to us is the assignment of proceeds.
Q. So you don't think they have a concern one way or the other about the price?
A. No.
Q. Who would be concerned about the price in that situation?
A. I would think the insurance company.
Q. You said you had some concerns with Safelite Solutions' business practices before; is that correct?
A. Yes.
Q. And which business practices in particular?
A. Steering and late payments.

Q. Are you aware of any situations where Safelite Solutions recommended a shop that did not follow adequate safety standards?
A. No.
Q. Are you aware of any instances where Safelite Solutions recommended a shop that did not perform quality work?
A. No.
Q. Do you have any reason to question Safelite AutoGlass's qualification to perform auto glass repair?
A. I just know what my installers have told me.
Q. But you --
A. About the quality of work.
Q. But you have no firsthand knowledge of that; is that correct?
A. Correct.
Q. Are you aware of any instances where Safelite AutoGlass did not follow adequate safety standards?
A. No.
Q. Are you aware of any instances where Safelite Solutions didn't perform quality work?
A. Safelite AutoGlass?

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Q. Safelite AutoGlass? I'm sorry.
A. No.
Q. Are you aware that Safelite's headquarters is outside of the state of Minnesota?
A. Yes.
Q. Are you aware that Safelite is the largest provider of vehicle glass repair services in Minnesota with its headquarters out of state?
A. Yes.
Q. Do you know that Safelite operates nationwide?
A. Yes.
Q. Are you aware that Safelite is, in fact, the country's largest nationwide auto glass repair business?
A. Yes.
Q. Do you think Safelite is taking business from Alpine Glass?
A. Yes.
Q. Why do you think Safelite is able to take business from Alpine Glass?
A. When the insured calls in the claim, Safelite Solutions makes statements about our company, and ultimately insureds have gone to -- to another shop versus Alpine.

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Q. What kind of statements are you aware of from firsthand knowledge that Safelite has made about your company?
A. That our price is higher than the competitive market; and the insured will be responsible, sometimes they say may be responsible, for the difference; and that Al -- they cannot guarantee Alpine Glass's warranty; that Alpine Glass has a history of charging more than the competitive market.
Q. Didn't you say that consumers don't care about the price that they're charged because they don't pay the price?
A. Correct.
Q. So why would it matter if someone said that the price that you charge was more?
MR. LLOYD: Objection, no foundation. You can answer if you know.
THE WITNESS: Because they're told they are going to be responsible for any difference in price.
BY MR. LEFKOWITZ:
Q. And you've heard Safelite say this personally?
A. Yes.

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Q. On how many instances?
A. I can't say how many instances.
Q. Do you know if, in fact, Safelite AutoGlass generally charges lower prices for its services than Alpine Glass?
MR. LLOYD: Objection, asked and answered. You can answer it again.
THE WITNESS: I don't -- I don't know what Safelite -- Safelite charges offhand.
BY MR. LEFKOWITZ:
Q. Now, you said that Safelite takes business away from Alpine Glass; is that correct?
A. Safelite Solutions.
Q. Safelite Solutions takes business away from Alpine Glass?
A. Yes.
Q. If Safelite Solutions didn't do business anymore in Minnesota, do you think that that would be good for Minnesota consumers?
A. If Safelite Solutions?
Q. Solutions didn't do business in Minnesota?
A. I don't know how it would affect consumers in Minnesota.
Q. But it would be better for Alpine

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Glass; is that correct?
A. We wouldn't lose business, yes.
Q. Yes, it would be better for Alpine Glass, is that your answer?
A. Yes.
Q. Have you ever had direct interaction with any Safelite representatives?
A. Yes.
Q. Can you tell me about those interactions?
A. Well, they were -- they were over the phone, so I've -- I've talked to many representatives of Safelite.
Q. And in what capacity have you had these conversations?
A. I've talked about late payments, I've inquired about rejected invoices, I've talked about steering, and, yeah, there's constant interaction with Safelite representatives.
Q. When you say "there's constant," are you referring to your personal engagement with Safelite representatives or people who work for you?
A. Both.
Q. How many times a week would you say you personally talk to representatives of Safelite?

A. I would say not every -- not every week. It depends on the situation.
Q. Do you know the names of any of the Safelite representatives you've spoken to?
A. Yes.
Q. Can you tell us their names?
A. I've talked to Andy Kipker, I've talked to JT Tumblin, I've talked to Tom Reid, I've talked to -- and there's a couple other people that I've talked to, I don't recall their names offhand.
Q. Okay. Let's start with Mr. Kipker. When did you speak with Mr. Kipker?
A. I've spoken to Mr. Kipker many times.
Q. When was the most recent time you've spoken to him?
A. Over a year ago.
Q. And what was the subject of the conversation?
A. Past due invoices, steering.
Q. And what did you say to him in that conversation?
A. Um, I don't recall the exact -- exactly what I said. It was those topics, though.
Q. What about Mr. JT -- what was his last name?

A. Tumblin.
Q. Tumblin, when was the last time you spoke to him?
A. Oh, that was at least two years ago or more. He's no longer with the company from what I found out.
Q. What about Tom Reid, when was the last time you spoke with him?
A. I don't recall. It was -- it was the last arbitration that we were -- he was at.
Q. So the last time you spoke to Mr. Reid was at an arbitration?
A. No. It was just after the arbitration.
Q. Just after the arbitration?
A. Yes, over the phone.
Q. Are we talking about in the last several weeks?
A. No, a year maybe.
Q. A year?
A. A year, two years.
Q. Can you remember a conversation you've had within the last year with a Safelite representative?
A. No, I don't -- I have had conversations, but not with those people.

Q. Who is responsible for handling calls with potential customers and third-party administrators at Alpine Glass?
A. I have a couple different people. So Mike Pruter is one, Laurie Britt.
Q. Does Alpine Glass have a sales manager, a CSR or sales manager who handles these calls?
A. Those two people that I mentioned.
Q. Roughly how many calls does Alpine Glass have each week with potential customers and third-party administrators on the phone?
A. I have no idea.
Q. How often are you on those phone calls as well?
A. Not often.
Q. Does Alpine Glass record those telephone calls?
A. Yes. I should say not all of them, but, yes.
Q. Have you ever personally participated in a call between yourself, a Safelite employee, and a potential customer?
A. Can you repeat that again?
Q. Have you personally participated in a

call with a Safelite employee and a potential customer?
A. Yes.
Q. How many such calls do you think you've had that fit into that category?
A. Um, I don't know.
Q. Are we talking about a handful or are we talking about --
A. Yeah, a handful.
Q. Have you listened to recordings of these telephone calls?
A. Yes.
Q. How many?
A. Um, I can't say how many.
Q. Who has selected the recordings that you've listened to?
A. Myself, Mike Pruter, Laurie Britt.
Q. When you've been involved in selecting them, how have you selected them?
A. I've selected them when I see a customer has canceled with our customer -- or our company.
Q. Have any customers complained to you personally about Safelite's business practices?
A. Yes.

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Q. Which customers?
A. I don't know, I don't know offhand.
Q. When was the most recent such occasion?
A. Um, I don't recall, I don't recall the -- the most recent.
Q. Can't remember the name of the customer or the date of when the customer made this complaint?
A. No.
Q. Did you ever direct a customer to file a complaint with the Department of Commerce?
A. No.
Q. Have any glass shops ever complained to you about Safelite's business practices?
A. Yes.
Q. Which glass shops?
A. I can't think of all the names, but -- but some of them have, so --
Q. Can you think of any of the names of the companies that have complained to you personally about Safelite?
A. Yes.
Q. Which ones?
A. Rapid Glass, Star Windshield.
Q. Do you remember when those complaints

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were made to you?
A. No, just throughout time.
Q. What was the nature of those complaints?
A. Same as my -- my experiences, steering, late payments.
Q. Did you ever direct another glass shop to file a complaint with the Department of Commerce?
A. No.
Q. Have you ever interacted with anyone at the Minnesota Department of Commerce?
A. Yes.
Q. If I refer to the DOC, will you understand that I'm referring to the Department of Commerce?
A. Yes.
Q. When did you first come into contact with the -- the DOC?
A. Um, I've filed complaints for quite -- quite a long time, so through -- throughout our years doing business here in Minnesota.
Q. Do you remember when you filed the first complaint?
A. No.
Q. Are we talking many years ago?

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A. Yes.
Q. And what was the nature of the complaint?
A. Steer -- steering and -- I don't know -- I don't know exactly what it was. I'm not going to guess.
Q. Do you know how many times that you've interacted with someone at the Department of Commerce?
A. No.
Q. Do you have a point of contact at the DOC?
A. I have a couple -- a couple people I've been in contact with.
Q. What are their names?
A. Marty Fleischhacker, TJ Patton, that's it.
Q. Anyone else?
A. No.
Q. When did you first meet TJ Patton?
A. It was at an arbitration. I don't know when -- when that was.
Q. Was he a customer at an arbitration?
A. No.
Q. What was his role at the arbitration?

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A. He was just watching the arbitration.
Q. Were these arbitrations public?
A. I have no idea. I don't know the rules of arbitration.
Q. Have you ever been involved in an arbitration?
A. Yes.
Q. But you haven't familiarized yourself with the rules?
A. I don't know the -- the exact rules of it, no.
Q. How often would you say you've spoken to Mr. Patton?
A. I can't guess as to a number.
Q. When have you spoken to him most recently?
A. Within the last year.
Q. What did you speak about when you spoke to him most recently?
A. One of the ongoing cases.
Q. Meaning an arbitration?
A. No, a complaint.
Q. A complaint that Alpine filed?
A. Yes.
Q. Do you remember what the complaint was

about?
A. It was steering and past due invoices.
Q. Do you have more particulars, do you remember who it involved, what -- what glass shop, what customer, do you have any details about that interaction with Mr. Patton?
A. The last interaction was in regards to USAA insurance.
Q. And did it involve a particular customer?
A. Um, I don't recall the -- the specifics of the conversation.
Q. You mentioned a Mr. Fleischhacker?
A. Yes.
Q. How did you first meet him?
A. Meet him personally or over -- over the phone or how?
Q. Let's start with over the phone. Did you first meet him by phone or --
A. Yes.
Q. -- in person?
A. Yes, over the phone.
Q. And how did that come about?
A. It came about the -- me filing a complaint with the Department of Commerce.

Q. And then he called you or you called him?
A. I called him.
Q. And how come you chose him to call?
A. Because I found out through the -- the people that answer the phone that he was in charge of enforcement for insurance matters.
Q. So the people at the Department of Commerce suggested that you speak with Mr. Fleischhacker?
A. Yes.
Q. And when was this?
A. I don't know the exact date.
Q. Do you know what year it was?
A. No.
Q. Do you know if it was within the last two years?
A. It was -- it was two, three years ago. I can't -- I can't say if it was two years or three years.
Q. Did you speak with him at that time about Safelite?
A. Yes.
Q. And what did you tell him on that first phone call about Safelite?

A. Well, we had filed a complaint against the insurance company, and Safelite Solutions was the TPA and -- with regard to our complaint of steering and past due invoices.
Q. And why did you want to alert Mr. Fleischhacker about this?
A. Because I felt it was -- it was hurting our business, and it was not right what Safelite Solutions was -- was doing.
Q. What did you want Mr. Fleischhacker to do?
A. I wanted him to investigate the -- the complaint with the insurance company and my allegations.
Q. And if he were to find your allegations credible, what did you want him to do about it?
A. I wanted him to enforce what the -- what the law states on the Unfair Claims Practice Act.
Q. What is your understanding of what the law requires?
A. My understanding is that the insured has the right to use whoever they want as their chosen vendor and that the insurance company cannot

dissuade them in any way of -- of using the -- their shop of choice.
Q. How many times would you say you were in contact with the Department of Commerce after that initial call with Mr. Fleischhacker?
A. I don't know how many times.
Q. More than a dozen, do you think?
A. Yes.
Q. Did Mr. Fleischhacker ever contact you or did you always initiate contact with him?
A. No. They've -- they've contacted me as well.
Q. Did you ever meet with anyone at the Department of Commerce in person?
A. Yes.
Q. How many times?
A. Um, just once at the -- at the Department of Commerce and, then, at the arbitration as well.
Q. So was that twice or is that once?
A. Um, maybe three times.
Q. So you met with people at the Department of Commerce three different occasions?
A. Yes.
Q. And once you said was at an

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1 arbitration, and once was in a meeting in their
2 office?
3 A. Yes.
4 Q. And when would the third be?
5 A. Another arbitration.
6 Q. Two arbitrations?
7 A. Yes.
8 Q. And in the meeting in their office,
9 when do you think that took place?
10 A. I don't know exactly when it was.
11 Q. Are we in that two-year time frame,
12 you think?
13 A. Two-, three-year time frame, yes.
14 Q. Two, three years ago?
15 A. Yes.
16 Q. And who was at that meeting?
17 A. Myself, my attorney, and Marty
18 Fleischhacker.
19 Q. And by your attorney, do you mean
20 Mister --
21 A. Mr. Lloyd.
22 Q. Lloyd?
23 A. Yes.
24 Q. Are you aware that in 2014 and 2015
25 the DOC opened investigations into Safelite

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1 Solutions and some insurance companies?
2 A. Yes.
3 Q. Do you know which insurance companies?
4 A. I just know the ones that they
5 contacted me about, Triple A insurance, USAA.
6 Q. What about American Family?
7 A. Oh, and American Family, yes.
8 Q. And the insurance companies that the
9 DOC was investigating used Safelite Solutions as
10 their claims administrator; is that right?
11 A. Yes.
12 Q. Were you involved in the DOC's
13 investigation of Safelite?
14 A. Ah, no, I don't -- I don't believe so.
15 I've provided information. I don't know if it, you
16 know, was for the insurance -- the insurance
17 complaints or -- or what it was.
18 Q. Did you correspond regularly with the
19 DOC concerning its investigations?
20 A. Yes.
21 Q. Did you correspond with anyone else
22 regarding the DOC's investigations?
23 A. Yes.
24 Q. With whom?
25 A. Just members of the MGA, Minnesota

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1 Glass Association.
2 Q. In other words, other glass shops?
3 A. Yes.
4 Q. Which ones?
5 A. Rapid Glass, in particular, and -- and
6 I don't -- I don't know what other shops, but Mike
7 Schmaltz, who is not affiliated with a shop, he was
8 the president of the MGA.
9 Q. Did you provide evidence to the DOC
10 for its investigations?
11 A. Yes.
12 Q. What was the evidence that you
13 provided?
14 A. Call recordings of steering
15 allegations.
16 Q. Call recordings just of Alpine Glass
17 calls?
18 A. Yes.
19 Q. How many such recordings?
20 A. I have no idea.
21 Q. Do you have a record anywhere of what
22 you provided to the government in connection with
23 this investigation?
24 A. I believe -- yeah, I believe we
25 provided it in -- with -- with this deposition,

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1 so --
2 Q. But you don't have any recollection of
3 how many --
4 A. I don't --
5 Q. -- such calls?
6 A. I have no idea.
7 Q. Other than recordings, did you provide
8 any other materials to the DOC for its investigation?
9 A. Um, there might have been other
10 materials, yes.
11 Q. What other kinds of materials?
12 A. I don't recall exactly what they were.
13 I would imagine there's past due invoices that were
14 in there, examples of those.
15 Q. Did you ever ask a DOC employee to
16 attend an arbitration?
17 A. Yes.
18 Q. Who was that?
19 A. It was either Marty Fleischhacker or
20 TJ, I can't remember.
21 Q. And do you know if they did --
22 A. Ah.
23 Q. -- attend?
24 A. I believe they did, yeah.
25 Q. Did the Department of Commerce ever

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1 provide you with information concerning the status
2 of its investigations?
3 A. Yes.
4 Q. Did they ever provide you with any
5 nonpublic information?
6 MR. LLOYD: I'm going to object to
7 foundation. You can answer if you know.
8 THE WITNESS: I -- I -- I don't -- I
9 have no idea what is -- what -- Can you repeat the
10 question?
11 BY MR. LEFKOWITZ:
12 Q. Yeah. You said that they provided you
13 with information about the status of the
14 investigation --
15 A. Oh, public information.
16 Q. -- and I wanted to know if any of that
17 was nonpublic information?
18 A. I have no idea what's nonpublic and
19 public with regard to that.
20 Q. Did you play a major role in the DOC's
21 investigation, in your view?
22 A. I don't know if I played a major role,
23 there were other people involved as well.
24 Q. Do you know whether the DOC relied on
25 any of the information that you provided?

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1 A. They asked for information, we
2 provided it.
3 Q. As you sit here today, do you believe
4 that you were a driving force in the DOC's
5 investigation?
6 A. I believe they followed up on my -- on
7 my complaints. I don't know if I'm a driving force.
8 Q. Do you think the DOC would have taken
9 the action that it did without your help?
10 A. Possibly.
11 Q. Had they taken such action in all the
12 years that you were writing complaints prior to
13 your direct engagement with them?
14 A. No.
15 MR. LEFKOWITZ: Excuse me. I'm going
16 to take a short bathroom break. We can go off the
17 record.
18 THE VIDEOGRAPHER: Going off the video
19 record. The time is now approximately 8:51 a.m.
20 (Break 8:51 to 9:01.)
21 THE VIDEOGRAPHER: We're back on video
22 record. The time is now approximately 9:01 a.m.
23 BY MR. LEFKOWITZ:
24 Q. Mr. Reid, you had said a few minutes
25 ago that you'd been sending complaints for many

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1 years to the Department of Commerce prior to your
2 engaging directly with them through Mr. Fleischhacker
3 approximately two, two plus years ago; is that right?
4 A. Yes.
5 Q. What was the nature of the complaints
6 that you had been sending over the years?
7 A. The same -- same things, steering and
8 payments.
9 Q. So the same issues that you engaged
10 with them on more recently?
11 A. Yes.
12 Q. Okay. Did you ever tell the DOC that
13 Safelite was harming the businesses of Minnesota
14 glass shops?
15 A. I don't recall me saying something
16 that -- saying that.
17 Q. Did you ever tell the DOC that
18 Safelite was driving down the price of auto glass
19 repair?
20 A. No. I don't recall saying that.
21 Q. Did you ever tell them that you had
22 evidence that Safelite was violating Minnesota law?
23 A. I don't recall saying that.
24 MR. LEFKOWITZ: All right. What
25 exhibit is this?

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1 MR. REIGSTAD: It's 44.
2 BY MR. LEFKOWITZ:
3 Q. All right. I'm going to show you a
4 document, it's a couple of e-mails, and take your
5 time to --
6 MR. LLOYD: Can you hand it to her
7 first so she can get a sticker on it?
8 (Whereupon, Deposition Exhibit No. 44
9 was marked for identification, and a copy is
10 attached and hereby made a part of this deposition.)
11 BY MR. LEFKOWITZ:
12 Q. Let me know when you've had a chance
13 to read it?
14 A. Do you want me to read the whole
15 thing?
16 Q. No, yeah -- well, I'd like to call
17 your attention to the bottom of the first page, the
18 one that ends with 187 at the bottom on the -- the
19 Bates number. When I refer to a Bates number, you
20 see --
21 MR. LARSON: I don't think we've
22 got --
23 THE WITNESS: I don't have --
24 MR. LLOYD: We don't have any Bates
25 numbers.

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1 THE WITNESS: -- any Bates numbers.
2 MR. LEFKOWITZ: Oh, you don't have a
3 Bates number here.
4 MR. REIGSTAD: These aren't Bates
5 numbered. That's for internal reference.
6 MR. LEFKOWITZ: Oh, okay.
7 BY MR. LEFKOWITZ:
8 Q. So if you just look at the page here,
9 and I'll refer to the top of the page has a sent
10 date of October 22 at 7:28:08 p.m.?
11 A. Yes.
12 Q. So if you look at the e-mail at the
13 bottom, it's an e-mail from Michael Reid to Martin
14 Fleischhacker on October 3rd. Do you see that?
15 A. Yes.
16 Q. And if you read that e-mail that you
17 sent, does this refresh your recollection --
18 A. I'm just -- I'm just reading it now.
19 Q. Okay.
20 A. I was looking at the previous e-mail
21 for context. Okay.
22 Q. Does this refresh your recollection
23 that you told Mr. Fleischhacker that Safelite was
24 harming the businesses of Minnesota glass shops?
25 A. Well, I don't think it says that it's

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1 harming the Minnesota glass shops.
2 Q. It doesn't harm the Minnesota glass
3 shops when, in your view, Safelite attempts to
4 steer every job they can regardless of the insurer,
5 that's what you said?
6 A. Yes.
7 Q. And you don't think that if that
8 allegation is true that that harms Minnesota glass
9 shops?
10 A. It does harm Minnesota glass shops,
11 yes.
12 Q. Okay, thank you. All right. I want
13 to move to another document.
14 MR. LLOYD: We've had witnesses walk
15 off with them. So I want you to put them over on
16 this side so that doesn't happen this time.
17 THE COURT REPORTER: In their pockets.
18 Forty-five.
19 (Whereupon, Deposition Exhibit No. 45
20 was marked for identification, and a copy is
21 attached and hereby made a part of this deposition.)
22 BY MR. LEFKOWITZ:
23 Q. Why don't you take a look at both
24 sides of that document, because I want to ask you a
25 question about that?

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1 A. Okay.
2 Q. Does this reflect your -- or refresh
3 your recollection that you told Mr. Fleischhacker
4 that you had evidence that Safelite was violating
5 Minnesota law?
6 A. Yes.
7 Q. So you agree that you did tell him
8 that?
9 A. Yes.
10 Q. How would you describe your
11 relationship with the Department of Commerce
12 after -- over the last couple years, once you began
13 to talk to them and meet with them in person?
14 A. Um, what do you mean re -- how would I
15 describe my relationship with them?
16 Q. Well, were they responsive to your
17 concerns?
18 A. They -- they asked questions, and I
19 feel, yeah, they were responsive for my -- my
20 concerns, yes.
21 Q. And were you satisfied with their
22 actions?
23 A. I don't know if I'm satisfied with the
24 actions. It's -- you know, it's -- they made a
25 decision, and I focus on my business, so --

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1 Q. Well --
2 A. So I think -- I think it was a good
3 thing, yes.
4 Q. And as compared to the frustration you
5 felt during the many years that you were writing --
6 A. Right.
7 Q. -- letters and being ignored; is that
8 right?
9 A. Right, right. So, yes, it was -- it
10 was good.
11 Q. Did you want the Department of
12 Commerce's investigation into Safelite to proceed
13 even faster than it did over the last couple years?
14 A. My -- my complaints were against the
15 insurance companies, not against Safelite. So
16 Safelite happens to be the TPA for the insurance
17 companies that I'm having trouble with.
18 Q. So you didn't have any beef with
19 Safelite Solutions?
20 A. I had a beef with Safelite Solutions,
21 but my complaints were with the insurance company
22 who hired Safelite Solutions.
23 Q. You know, I -- I'm thinking a little
24 bit about the whole Safelite Solutions issue, and
25 you and I talked earlier this morning about prices,

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1 and I asked you whether or not you thought
2 consumers preferred lower prices. Am I correct
3 that you said you didn't think consumers cared?
4 A. Well, I think we have a difference of
5 opinion on who the consumer is.
6 Q. Can you elaborate, please?
7 A. When I -- when we replace a
8 windshield, we send a bill to the insurance
9 company, not the customer who owns the vehicle.
10 Q. So, in other words, you think --
11 A. And I think you're --
12 Q. Go ahead.
13 A. Oh.
14 Q. I don't want to interrupt.
15 A. Well, I'm not -- go ahead.
16 Q. Let me ask -- let me clarify, then.
17 So, in your view, the consumers for whom price
18 would be a factor are the insurance companies, not
19 the actual owners of the automobiles?
20 A. Correct.
21 Q. Do you know if the owners of the
22 automobiles have to pay proceeds or pay premiums to
23 the insurance companies?
24 A. Well, all -- all insureds have to pay
25 premiums, yes.

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1 Q. And is it your view that the premiums
2 are the same irrespective of what the insurance
3 company has to pay out on policies?
4 A. The payout on glass or payout on an --
5 Q. On anything?
6 A. I know for -- I know what I've heard
7 for glass.
8 Q. And what have you heard for glass?
9 A. I've heard for glass that it has no --
10 no effect on premiums.
11 Q. And have you been told that by
12 insurance companies?
13 A. I've been told that during an
14 arbitration proceeding.
15 Q. By whom?
16 A. By an actuary for an insurance
17 company.
18 Q. By whom?
19 A. I don't know the specifics.
20 Q. Do you know which insurance company?
21 A. No.
22 Q. Do you remember the date of this
23 conversation?
24 A. No.
25 Q. Are you familiar with what it means to

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1 be a glass shop in a preferred network of shops?
2 A. Do I know specifically? No.
3 Q. Do you have an understanding, have you
4 ever heard -- let me just ask this. Have you ever
5 heard the term network of -- network of shops?
6 A. Yes.
7 Q. And what does that term mean to you?
8 A. That term, to me, means a -- a network
9 of shops that accept the insurance company's pricing.
10 Q. So, in other words, to be a member of
11 a preferred network a company or auto repair shop
12 has to accept the pricing of the insurance company?
13 A. Yes.
14 Q. Is Alpine Glass a member of a
15 preferred network?
16 A. Ah, no.
17 Q. And why is that?
18 A. Because I haven't sought out to become
19 a member of a network, and I don't agree with the
20 pricing that has been proposed to me.
21 Q. When you say you don't agree with the
22 pricing, is that because the pricing is not high
23 enough to your liking?
24 A. It's not fair and competitive.
25 Q. When you say "fair and competitive,"

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1 can you describe what you mean by that?
2 A. Fair and competitive in -- in my eyes
3 as a business owner in the marketplace.
4 Q. So, in other words, the prices are not
5 high enough for you to consider them competitive?
6 A. Correct.
7 Q. So, in your view, it's more profitable
8 for Alpine Glass to be a non-network shop because
9 you're not limited by these prices established by
10 the network?
11 A. I don't know if it's prof -- more
12 profitable. It's -- I don't feel it's fair and
13 competitive.
14 Q. Well, if you thought it were more
15 profitable to be in the network, wouldn't you
16 choose to be in the network?
17 A. No, not necessarily.
18 Q. You're not trying to maximize profits
19 for your business?
20 A. I'm trying -- I'm trying to charge a
21 fair and reasonable price, so --
22 Q. When you say you want to charge a fair
23 and reasonable price, do you think a lower price
24 would be more fair and reasonable for the consumers?
25 A. For the insurance company?

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1 Q. For the -- for the insurance company,
2 yes.
3 A. I have no idea.
4 Q. And what about for the owners of the
5 vehicles that you repair?
6 A. The owners of the vehicle do not pay
7 us -- they pay us in the form of an assignment of
8 proceeds.
9 Q. Do you know how a glass shop joins a
10 network?
11 A. No.
12 Q. Have you ever tried to become a member
13 of a network?
14 A. Ah, no. I take that back. We have --
15 we have the Harmon network. They -- we made an
16 agreement with them. So we were -- we were -- I
17 guess had a pricing arrangement with Harmon
18 Solutions, which is a network.
19 Q. And --
20 A. I don't -- necessarily we weren't a
21 member of their network.
22 Q. Who is Harmon?
23 A. Harmon Solutions is another TPA.
24 Q. And did they have contracts with
25 insurance companies?

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1 A. Yes.
2 Q. Insurance companies other than the
3 ones that Safelite Solutions has contracts with?
4 A. Yes.
5 Q. And are you still in the Harmon
6 network?
7 A. Like I say, we're not in a network, we
8 have a pricing arrangement.
9 Q. And how does that pricing arrangement
10 work?
11 A. We have an agreed-upon price between
12 the both of us. We bill out what we -- what we
13 agreed for on the price, and that's what we get
14 paid.
15 Q. Are there any differences, in your
16 view, between non-network glass shops and network
17 glass shops?
18 A. In which way?
19 Q. In any way, other than -- I guess
20 other than the fact that the network shops have
21 pricing agreements with insurance companies, in
22 your view, and the non-network shops don't?
23 A. Yeah. I don't know any other
24 differences.
25 Q. You said you have an agreement with

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1 Harmon to provide services to their insureds at a
2 agreed-upon price; is that correct?
3 A. That's correct.
4 Q. Do you charge higher prices anywhere
5 in the state to non-Harmon clients?
6 MR. LLOYD: I'm going to object. We
7 have an objection standing with respect to pricing,
8 and it's the subject of a protective order motion
9 in the administrative proceeding, and it's
10 completely irrelevant in the federal proceeding.
11 So I'm going to instruct you not to answer that
12 question.
13 BY MR. LEFKOWITZ:
14 Q. Are you going to follow your
15 attorney's instruction?
16 A. Yes.
17 MR. LEFKOWITZ: Okay. We'll reserve
18 the right to reopen the deposition if the Court
19 denies the motion to quash.
20 BY MR. LEFKOWITZ:
21 Q. Do you know if there are any
22 differences in the liability insurance maintained
23 by glass shops that are in networks and those that
24 are not in networks?
25 A. I have no idea what the liability

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1 insurance of other shops are.
2 Q. Does Alpine contractually agree with
3 any insurance companies that it will maintain
4 adequate liability insurance?
5 A. Not to my knowledge, I don't know.
6 Q. Not with Harmon?
7 A. I don't know. I don't know the
8 contract offhand.
9 Q. But you're responsible for that
10 contract --
11 A. Correct.
12 Q. -- is that correct?
13 Do you know if there are any
14 differences in whether insurance companies provide
15 a guaranty of the work performed by network shops
16 and non-network shops?
17 A. Can you repeat the question again,
18 please?
19 Q. Yes. Do you know if there are any
20 differences in network shops and non-network shops
21 with respect to the guarantees that they provide
22 for the work they perform?
23 A. I don't know.
24 Q. In your personal view as the owner of
25 Alpine Glass, what are the benefits to remaining

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1 outside of networks other than the Harmon network?
2 A. I -- I don't know of any benefits.
3 Q. If you were in a broader network, do
4 you think you would have access to a greater volume
5 of customers?
6 A. I have no idea.
7 Q. Other than with your contract with
8 Harmon where you've agreed to a set price, you have
9 no other limitations on the price that you can set;
10 is that correct?
11 A. I wouldn't -- I wouldn't say that. I
12 have to charge a fair and reasonable rate in order
13 to be paid a fair and reasonable rate.
14 Q. Can you explain that to me? You're --
15 you're -- because my understanding is that other
16 than with Harmon, where you have agreed
17 contractually to charge Harmon clients a set price,
18 you have no other price limitations; isn't that
19 correct?
20 A. Well, I have other pricing agreements,
21 yes.
22 Q. With whom do you have pricing
23 agreements?
24 A. Insurance companies.
25 Q. Other than Harmon?

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1 A. Yes.
2 Q. I'm not going to ask in light of the
3 objection about the pricing, but I'd like to ask,
4 which other insurance companies do you have pricing
5 agreements with?
6 A. I'm not -- I can't provide you with a
7 list of that.
8 Q. Because you don't know?
9 A. I don't know off the top of my head.
10 I'd have to look at who we have agreements with.
11 Q. Do you have agreements with every
12 insurance company?
13 A. No.
14 Q. With respect to the companies, the
15 insurance companies that you don't have pricing
16 agreements, are there any other limiting factors on
17 what you can charge?
18 A. No.
19 Q. Have you ever heard the term balance
20 bill?
21 A. Yes.
22 Q. What is your understanding of the
23 meaning of balance bill?
24 A. My understanding is that it is the
25 difference of what the insurance company pays to

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1 what we -- to what we bill, and if there -- if it
2 is -- the difference is shorted, the balance bill
3 is put onto the owner of the vehicle, the
4 policyholder.
5 Q. And I understand that as a matter of
6 practice you've maintained that Alpine does not do
7 that; is that correct?
8 A. Correct.
9 Q. Does Minnesota law prevent companies
10 from doing that?
11 MR. LLOYD: Objection, no foundation.
12 You can answer if you know.
13 THE WITNESS: I don't know.
14 BY MR. LEFKOWITZ:
15 Q. Are you aware of any prohibition on
16 balance billing?
17 A. I -- I don't -- I'm not aware of any,
18 no.
19 Q. Do you have any reason to believe that
20 it's unlawful for a company to balance bill?
21 A. No.
22 Q. Are you aware that some glass repair
23 shops reserve the right contractually to balance
24 bill?
25 A. I'm not aware of that.

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1 Q. If an insurance company doesn't pay
2 Alpine Glass in full for a job, could you seek the
3 balance from the customer if you chose to?
4 A. I've never thought of it.
5 Q. I'm asking you now to think about it.
6 Is there anything that you're aware of that would
7 prohibit you from doing that?
8 A. Well, we have an assignment. So
9 it's -- it's the insurance company's obligation,
10 not the policyholder.
11 Q. What if someone didn't have insurance?
12 A. What -- what do you mean if someone --
13 Q. If a customer didn't have insurance
14 and asked you to repair his window?
15 A. What are you asking?
16 Q. Could you send the bill to that person?
17 A. Sure.
18 Q. You could. What if the person didn't
19 have sufficient insurance, could you balance bill
20 if you wanted to?
21 A. I'm -- I don't -- I don't understand.
22 What do you mean, if they didn't --
23 Q. If they had --
24 A. If they didn't have insur --
25 Q. If someone didn't have sufficient

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1 insurance and the insurance company didn't pay you
2 the cost of the repair, could you if you wanted to
3 seek to get payment from the customer?
4 MR. LLOYD: I'm going to object. That
5 calls for a legal conclusion. You can go ahead and
6 answer to the best of your understanding.
7 THE WITNESS: Yeah. I don't know, I
8 don't know.
9 BY MR. LEFKOWITZ:
10 Q. You don't know whether you could if
11 you wanted to?
12 A. No, I don't know. We never have.
13 Q. Do you know how many -- approximately
14 how many glass shops there are in the state of
15 Minnesota?
16 A. No.
17 Q. Are you familiar with the billing
18 practices of all of the non-Alpine shops in the
19 state of Minnesota?
20 A. No.
21 Q. In what context is it your
22 understanding that Safelite Solutions talks to
23 customers about balance billing?
24 A. I've heard them -- I've heard them on
25 the calls.

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1 Q. Calls that you've been -- you've
2 participated on?
3 A. Calls that I've participated on and
4 calls that I've listened to.
5 Q. And on such calls, there's a member of
6 the Alpine company that's also participating in the
7 call?
8 A. Yes.
9 Q. And does the Alpine representative
10 have the ability on that call to tell customers
11 about Alpine's balance billing policy?
12 A. Yes.
13 Q. I want to hand you an affidavit that
14 you submitted in this case and ask you to take a
15 look at it?
16 (Whereupon, Deposition Exhibit No. 46
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Forty-six.
20 THE WITNESS: You wanted me to read
21 this now or --
22 BY MR. LEFKOWITZ:
23 Q. Yes. Have you read it?
24 A. No. Well, I've --
25 Q. Because I want --

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1 A. I've read --
2 Q. -- to ask you --
3 A. I've read it, yes.
4 Q. You have?
5 A. I didn't read it right this second.
6 Q. That's all right.
7 Is this a declaration that you
8 submitted in connection with this litigation?
9 A. Yes.
10 Q. Did you volunteer to submit this
11 declaration?
12 A. Ah, yes.
13 Q. Did anyone ask you to submit it?
14 A. Yes, my attorney.
15 Q. Did you draft the declaration
16 yourself?
17 A. No.
18 Q. Your attorney drafted it?
19 A. Yes.
20 Q. Did you verify every sentence in the
21 declaration to make sure it was true before you
22 signed it?
23 A. Yes.
24 Q. And you submitted it under penalty of
25 perjury; is that correct?

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1 A. Yes.
2 Q. Take a look at paragraph 4, please,
3 and beginning at the third sentence you say,
4 "Because we do not accept the rates, Safelite
5 routinely tells our customers that the customers
6 will be responsible for the difference between what
7 we bill and what we are reimbursed"; is that correct?
8 A. Yes.
9 Q. So you're saying here that Safelite
10 routinely tells your customers they will be balance
11 billed?
12 A. Yes.
13 Q. And you heard Safelite say that
14 personally on the phone?
15 A. Yes.
16 Q. Did you hear the secondhand, also,
17 from your CSRs?
18 A. Did I hear -- hear this secondhand?
19 Q. Yes.
20 A. Yes.
21 Q. Did you ever hear Safelite say the
22 customers may be held responsible for the
23 difference as opposed to will?
24 A. Yes.
25 Q. Do you know how many times you heard

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1 them say may?
2 A. No.
3 Q. Do you know how many times you heard
4 them say, in your view, will?
5 A. No.
6 Q. And do you know as you sit here today
7 how many conversations you personally listened to?
8 A. No.
9 Q. Take a look at also in paragraph 4,
10 beginning with the next sentence and on to the end
11 of the paragraph where it begins "Often when this
12 occurs," if you could just read that? You say,
13 "Often when this occurs," and I guess my question
14 is --
15 A. Hold on a second.
16 Q. Okay.
17 A. I'm not done reading it. Okay.
18 Q. You say, "Often when this occurs, an
19 Alpine representative" tells the customer that you
20 don't collect any money other than the deductible,
21 which is what you told me earlier. Do you know if
22 an Alpine representative does that most of the time?
23 A. Yes.
24 Q. Are there instructions for the Alpine
25 representative to do that all of the time?

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1 A. There's no written instructions, no.
2 Q. Why do you believe that an Alpine
3 representative does that most of the time?
4 A. Because the calls I've listened to,
5 that's what's -- that's what's occurred.
6 Q. And an Alpine representative
7 specifically arranges to be on the call with
8 Safelite; is that correct?
9 A. That's correct.
10 Q. If you turn to paragraph 5, tell me
11 when you've reread the first sentence?
12 A. Okay.
13 Q. You say that customers call to cancel
14 jobs several times a year. How many times is
15 several?
16 A. I don't know how many is several, but
17 it happens, you know.
18 Q. It's your affidavit. So what was in
19 your mind when you wrote several?
20 A. Several, more than one, more than
21 five. I mean, it happens quite often.
22 Q. Less than ten?
23 A. I don't know the exact number.
24 Q. So you just wrote several because you
25 actually don't know the -- know a number?

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1 A. I don't know the number, no.
2 Q. How do you know that the customer is
3 cancelling the job because of Safelite?
4 A. Because they call and cancel the job
5 and say that they were told that they're going to
6 be balance billed and they don't want to have an
7 out-of-pocket expense and they want to go with a --
8 the provider their insurance company recommends.
9 Q. And they say that to you on a
10 telephone call?
11 A. Yes.
12 Q. Are those phone calls recorded?
13 A. Sometimes, yes, not all.
14 Q. Now, you said that Alpine
15 representatives are on the phone in order to
16 reassure the customer that such statements are not
17 true and that, in your view, they're able to save
18 the job; is that right?
19 A. Yes.
20 Q. So out of those several times a year
21 that a customer calls to cancel a job, in most
22 instances does your sales manager save the job?
23 A. Most of them, yes.
24 Q. So how many jobs do you believe you
25 lose per year because of statements made by

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1 Safelite?
2 A. I don't have a number offhand.
3 Q. Do you have an estimate?
4 A. No.
5 Q. None whatsoever?
6 A. No. I can't -- I'm not going to guess.
7 Q. How many times have you told Safelite
8 executives that Alpine does not balance bill?
9 A. I don't know the exact number.
10 Q. Do you recall what Safelite
11 representatives said to you in response?
12 A. Um, no.
13 Q. Do you always trust the statements
14 that are made by Safelite to you?
15 A. Do I always trust them?
16 Q. Yes.
17 A. No, I don't always trust them.
18 Q. Do you think Safelite is required to
19 trust the statements that you make to them?
20 A. No.
21 Q. You say in paragraph 8 that "I am not
22 aware of any company going after a customer for a
23 short pay balance...We certainly do not." Do you
24 see that sentence?
25 A. Yes.

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Q. And you're familiar with your company's policies because you're the president of Alpine Glass; is that correct?
A. That's correct.
Q. But you also say in that statement that you're not aware of any glass shop that has balance billed a customer, correct?
A. That's correct.
Q. But as you said a few minutes ago, you don't even know how many glass shops there are in Minnesota, correct?
A. That's correct.
Q. And you don't know any of their billing policies?
A. No.
Q. Take a look, please, at the last sentence in paragraph 7 of your affidavit, the one beginning "When that issue has arisen"?
A. Okay.
Q. Are we talking here about testimony by insurance company representatives at arbitrations?
A. Yes.
Q. And that testimony is in response to a question by an Alpine attorney?
A. Yes.

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Q. So what you're saying here is that when asked by your attorney the insurance company witness could not recall an example where a customer was balance billed off the top of their head; is that right?
A. Yes.
Q. How many times have you personally seen this exchange actually happen in an arbitration proceeding?
A. I don't know.
Q. No -- no -- no number at all, can't even --
A. No number at all, no. I'm not going to guess.
Q. Can you recall the names of the insurance companies involved?
A. One of them was American Family.
Q. But you don't remember when that arbitration took place?
A. We've had three arbitrations against them, so I don't know which one it was.
Q. Do you remember who else was present at that arbitration?
A. No.
Q. Any of the people present to that

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arbitration?
A. Any of who?
Q. Do you know anyone who was present other than yourself?
A. Oh, my -- my attorney.
Q. Your attorney Mr. Lloyd?
A. Mr. Lloyd, yeah.
Q. You said you were not aware of whether any Minnesota glass shops reserved the right to balance bill the customer if the insurance company doesn't make payment in full; is that correct?
A. Correct.
Q. Have you ever seen language in a Minnesota glass shop invoice that reserves the right to balance bill?
A. No.
Q. I'm going to hand you a invoice from a company called Lake Side Glass. Have you ever seen this document before, Mr. Reid?
A. Hold on a second.
Q. Okay.
(Whereupon, Deposition Exhibit No. 47 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Excuse me,

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forty-seven.
THE WITNESS: Okay.
BY MR. LEFKOWITZ:
Q. Have you ever seen this document before?
A. No.
Q. Never?
A. No.
Q. Okay. If you could take a look at it and tell me if this looks like an invoice from Lake Side Glass?
A. I don't know even know who Lake Side Glass is, so I don't know if this is an invoice from them.
Q. Never heard of Lake Side Glass?
A. No.
Q. Do the descrip -- the items, the description, do these mean anything to you as an owner of a glass shop?
A. In what way?
Q. Do you under -- I'm -- I'm not familiar with cars or glass or anything, so I didn't even understand what acoustic interlayer green tint/blue shade refers to. Does that mean anything to you, do you understand those terms?

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A. Yeah.
Q. What are -- what are those?
A. Well, the green tint/blue shade is the color of the glass. The acoustic interlay is just an option on the glass.
Q. And what is 2.0 adhesive, urethane, dam, primer?
A. Well, I don't know how they format their invoice. In my opinion, that is the urethane used to put the windshield in.
Q. Got it. And this refers to a Ford Focus. Is that -- that's a type of vehicle; is that correct?
A. That is a type of vehicle, yes.
Q. That's the vehicle referred to here?
A. Okay, yep, yeah, it says Ford Focus on the sheet here.
Q. Correct. And it says here the total is $845.75 with a deductible of $100, correct?
A. Correct.
Q. And can I ask you to read the small print at the bottom of the page below the customer's signature?
A. "I hereby authorize the above named Insurance Company to pay this Invoice in full

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settlement satisfaction and discharge of all loss under the above policy. In the event that the above named Insurance Company does not make timely and/or full payment of this Invoice according to its terms, I here by accept responsibility for such payment and agree to pay all charges reflected on this invoice to Lake Side Glass."
Q. Thank you, Mr. Reid.
Do you have any reason to think that that language is not common in the industry?
A. I -- I don't -- I don't know what other invoices say on their -- on their language. So I don't know if it's common or not.
Q. Okay. Let's take a look at the invoices that Alpine Glass uses. I'm going to hand you a document that should be more recognizable to you now, although it's harder to read because the copy we received from your lawyer I guess is --
A. Which side --
Q. Is quite incredible --
A. -- are you going to use?
Q. I'm going to ask you about both of them, so I'd like to ask you to take a look at both parts of that document?
(Whereupon, Deposition Exhibit No. 48

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was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Forty-eight.
MR. LLOYD: Well, I'm going to comment since there was a little colloquy about where you got this document. This is not one that we produced to you in discovery as I can tell. This is something that was filed with the Federal Court in April of 2015, which was long before our production of documents.
MR. LEFKOWITZ: Got it, all right.
BY MR. LEFKOWITZ:
Q. So I'll ask Mr. Reid, then, to look at this and tell me if this -- if you recognize this document?
A. Yes.
Q. And can you describe what this document is?
A. Well, this is the -- one side is the invoice to the insurance company, and the other side is the work order that the customer signs.
Q. Got it. So the -- which copy is the invoice to the insurance, is it the copy that has the smaller amount of writing and the numbers, with 893.96 at the bottom?

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A. Yeah, 893.96.
Q. Right. So that -- so comparing this to the Lake Side invoice that we looked at before where the invoice had a total price of 845 and change, this one is 893 and change; is that correct?
A. Correct.
Q. And this is, also, for some windshield repair, and it even uses some of the similar language in terms of the urethane and the like; is that correct?
A. Correct.
Q. And the total cost for this glass repair on the invoice that we're looking at from Alpine is how much money?
A. Eight ninety-three ninety-six.
Q. Now, the back side of this, can you tell me what the back side of this document refers to?
A. That's the work order that the installer takes out onto the job site.
Q. All right. Now, there is a line here -- there are a couple places here where there are signatures for the customer to sign on the back; is that correct?
A. Correct.

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1 Q. It looks like there's one that says
2 insurance and then there is some language and then
3 payment authorization; is that correct?
4 A. Well, there's payment authorization,
5 and then there's warranty information.
6 Q. Correct. And for the payment
7 authorization, there's a signature line for the
8 customer to sign; is that correct?
9 A. Correct.
10 Q. And above that there is some language;
11 is that correct?
12 A. Yes.
13 Q. Now, I'm going to ask you if you can
14 read, I can read it, if you can't, because I've
15 studied it, but you may be able to read it
16 because --
17 A. I can't read it.
18 Q. Because you're familiar with it?
19 A. Well, I'm familiar with it but --
20 Q. Do you know -- do you know what that
21 last sentence says?
22 A. No. I can't even make it out. It
23 looks like it's -- there's writing of some sort in
24 the middle of it.
25 Q. So let me -- let me try to read this

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1 very slowly and tell me if you think I'm reading
2 this accurately. We can, obviously, try to get
3 another cleaner copy from --
4 A. Okay.
5 Q. -- your office, because, obviously,
6 your office must have records of all of these. But
7 in the interest of time, tell me, as I read slowly,
8 whether you think I'm reading accurately.
9 The last sentence, beginning four,
10 five words from the left-hand side says, I
11 understand that if I have no insurance coverage for
12 this work, comma, I am responsible to pay for the
13 work upon notification by Alpine?
14 A. Okay.
15 Q. Does that seem accurate to you?
16 A. Yes.
17 Q. Do you know if this is standard
18 language in the Alpine invoices?
19 A. Yes.
20 Q. And the customer is required to sign
21 that language, correct?
22 A. Correct.
23 Q. I want to turn back briefly to your
24 declaration for a moment.
25 MR. LEFKOWITZ: If you could hand the

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1 declaration back, Madam Reporter?
2 THE WITNESS: Is it okay if I grab it?
3 MR. LLOYD: Exhibit 46.
4 MR. LEFKOWITZ: It's Exhibit 46.
5 (Reporter's Note: The court reporter
6 hands Exhibit 46 to the witness.)
7 BY MR. LEFKOWITZ:
8 Q. If you could turn to the last
9 paragraph of your affidavit, where you say, "I am
10 not aware of any company going after a customer for
11 a short" payment "-- for short pay balance after
12 the insurance company has issued" a "payment on a
13 claim. We certainly do not. We inform customers
14 verbally and, if asked, will put that fact in
15 writing for our customers." Do you see that?
16 A. Yes.
17 Q. So is it your testimony that
18 notwithstanding the invoice that the customers are
19 required to sign that you assure customers in
20 writing that Alpine does not balance bill?
21 A. Correct.
22 Q. Do you assure all customers of that in
23 writing or only customers who ask?
24 A. Only customers who ask.
25 Q. And you say, actually, that you inform

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1 them first verbally and then, if asked, you'll put
2 it in writing?
3 A. Correct.
4 Q. Let's turn to a copy of such a letter.
5 MR. LEFKOWITZ: Chris, if you can pull
6 the next document for me?
7 BY MR. LEFKOWITZ:
8 Q. I'm handing you a document which is on
9 Alpine Glass letterhead which begins Dear Thomas?
10 MR. LLOYD: Can you hand it to the
11 reporter --
12 THE WITNESS: Oh, yeah.
13 MR. LLOYD: -- so we can get an
14 exhibit number on it?
15 THE WITNESS: Sorry.
16 (Whereupon, Deposition Exhibit No. 49
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Forty-nine.
20 BY MR. LEFKOWITZ:
21 Q. Do you recognize this document?
22 A. Yes.
23 Q. This is a letter from Alpine to a
24 customer promising not to balance bill that
25 customer; is that correct?

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A. Well, I'm -- I'm still reading it.
Q. Okay, take your time, it's still early morning.
A. Yeah. Okay.
Q. So is this an example of the letter you referred to in paragraph 8 of your declaration?
A. Yes.
Q. You don't send this to every single customer; is that right?
A. That's correct.
Q. And the reason customers ask you for this is that they're concerned about the possibility of getting balance billed; is that correct?
A. Yes.
MR. LLOYD: Objection, no foundation. You can answer if you know.
THE WITNESS: Sorry. Yes.
BY MR. LEFKOWITZ:
Q. Well, just to clear up your lawyer's question, what is it that gives rise to your sending such a letter?
A. When they have a concern that they're going to be balance billed after they've made the appointment.

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Q. Thank you.
Can you name any other Minnesota glass shops that send letters like this to customers assuring them that they will not be balance billed?
A. No.
Q. I think you mentioned earlier that you had communicated with a couple of other glass shops around the time that you were communicating with the Department of Commerce in connection with Safelite; is that correct?
A. That's correct.
Q. One was Rapid Glass; is that right?
A. Yes.
Q. Was Rick Rosar the individual from Rapid Glass you were communicating with?
A. Yes.
Q. And was Mike Schmaltz the individual from MGA that you were communicating with?
A. Yes.
Q. Did you and these individuals ever formulate a plan of action against Safelite?
A. No.
Q. Did you coordinate your actions with respect to the Department of Commerce's investigation of Safelite?

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A. Did I what?
Q. Coordinate your actions together?
A. No.
Q. You didn't?
A. No, I don't think we coordinated together.
Q. Who is the primary contact with the Department of Commerce on behalf of the glass industry regarding the Safelite investigation?
A. I would assume me. I don't -- I don't know, but I would assume me.
Q. Do you know -- Other than you, do you know who else had contact with the DOC in connection with the Safelite investigation?
A. Rick Rosar.
Q. How about Chuck Lloyd?
A. And Chuck Lloyd, yes.
Q. All right, I think it's time. Let's turn -- I want to turn to a document. Why don't you hand it to me. I'm not ready yet --
I'd like to hand you a document, it's an e-mail chain between you and Mike Schmaltz and Rick Rosar, if you could take a look at it?
MR. LLOYD: This is -- for the record, it's been previously marked as Exhibit 9.

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MR. LEFKOWITZ: Thank you.
THE WITNESS: Do you need to -- oh, all right.
BY MR. LEFKOWITZ:
Q. And the top e-mail, if you would look at this, is dated November 7th; is that right?
A. Yes.
Q. And is this an e-mail chain involving you, Rick Rosar, and Mike Schmaltz?
A. Yes.
Q. And do you see in paragraph one it says, "Hey Mike, I just spoke" with "Rick. How about sometime between 1:00 and 2:00 MN time today?"
A. Yes.
Q. Do you recall having a call with Mr. Schmaltz and Mr. Rosar that day?
A. No.
Q. You have no recollection of that call?
A. No.
Q. Do you know if this e-mail chain was in connection with trying to instigate a Department of Commerce investigation of Safelite?
A. No.
Q. Do you know if you discussed assembling evidence for the Department of Commerce

against Safelite?
MR. LLOYD: I'm confused. Are you talking about in the phone call or in the e-mails?
BY MR. LEFKOWITZ:
Q. Well, in the phone call or the e-mails?
A. No.
Q. No, you don't? So let me call your attention to the -- let me call your attention to the last e-mail on the bottom of the flip side of the page?
A. Okay.
Q. This is an e-mail from Rick Rosar to you and to Mike Schmaltz?
A. Okay.
Q. And does this refresh your recollection of what this e-mail chain is about?
A. No.
Q. Does it say here, "here is something else that is black and white in the UCPA that they never read, and should also be a violation. Hopefully after commerce hears our recordings, and looks at the statute he will feel they are violating all of it. Regards, Rick Rosar." Do you see that?
A. Yes.
Q. Are you testifying today that you have

no knowledge about what he's referring to there?
A. I don't know what he's referring to in that -- in that e-mail.
Q. Do you see in the e-mail right above, which you sent later that day, you said, "Hey Rick and Mike, I will start putting some stuff together next week and maybe we can arrange a conference call." Do you see that?
A. Yes.
Q. And it's your testimony that your response has nothing to do with the e-mail that you were responding to?
A. Well, I would assume it -- it's for what -- no, I have no idea the topic of the -- of the e-mail. It could be anything.
MR. LEFKOWITZ: All right. We've gone another hour. Let's take a brief break, come back in about five to eight minutes.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 9:56 a.m.
(Break from 9:56 to 10:08.)
(Whereupon, Deposition Exhibit No. 50 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE VIDEOGRAPHER: We're back on the

video record. The time is now approximately 10:08 a.m.
BY MR. LEFKOWITZ:
Q. So, Mr. Reid, this is a document that your counsel produced. It's a recording of a call that took place among you, Mr. Schmaltz, and -- oh, no, we -- you didn't produce it, it was produced by Mr. Rosar.
MR. LLOYD: Right, and the recording was produced by Mr. Rosar. My understanding is that your office had it transcribed.
MR. LEFKOWITZ: Got it, okay.
BY MR. LEFKOWITZ:
Q. So this is a transcription of a telephone call based on a recording that was produced to us. It involves you, Mr. Rosar, and Mr. Schmaltz. Have you ever seen this document before?
A. No.
Q. So I'm going to ask you some questions about it, and so, if you'd like, I'm happy to just take five minutes and let you read the whole document, if you'd like to do that, otherwise --
A. Yeah, I haven't -- I haven't looked at it or --

Q. Well, okay. We can just start, and if at any point you want to just stop and just read the whole thing, just say so, because I want to give you the opportunity, obviously.
A. So this is a recorded conversation?
Q. Yes, that took place on November 7th, 2013.
A. Corresponding to the last --
Q. Corresponding, correct.
A. Okay, okay.
Q. And I know you hadn't recalled what happened in that e-mail.
A. Right, right.
Q. But perhaps by reading the transcript it may refresh your recollection, and the very beginning of this transcript, it begins with Mr. Rosar saying -- well, you can read it yourself. "He is, and he came about because I had sent him many complaints on steering and they said there's no basis for them to take any action and I got pissed off so I kept on calling him and finally he said, alright, if this is what you are saying let's assume my windshield and I'll call in a claim and he was shocked with what he heard." Do you -- do you read -- do you see that?

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A. I see that.
Q. Now, do you recall making that statement?
A. No, I don't recall. But, I mean, did I make -- according to this transcript it says Rick Rosar.
MR. LEFKOWITZ: Do you want to help out here or --
MR. LLOYD: Yeah, and we can do --
MR. LEFKOWITZ: -- I'm happy to refresh --
MR. LLOYD: And we can do this on the record or off, it doesn't matter.
MR. LEFKOWITZ: Might as well do it on the record.
MR. LLOYD: Okay. I think because they transcribed it, I'm not sure that they recognized whose voice was who.
THE WITNESS: Oh.
MR. LLOYD: And it's my belief -- it was my belief at an earlier deposition that that's really your statement based on facts as I understand them.
THE WITNESS: Right, right, right. So this is -- this is not -- this transcript was not

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e-mailed to me like it indicates on --
MR. LLOYD: No. The recording --
MR. REIGSTAD: The recording.
MR. LLOYD: -- was e-mailed to you at some point according to that, but the transcript was one that Kirkland & Ellis --
THE WITNESS: Right, okay, okay. Now I understand.
BY MR. LEFKOWITZ:
Q. The recording --
A. That's why I've never seen this document.
Q. The recording is probably on your e-mail system somewhere, and you're obviously welcome to listen to it.
A. Okay.
Q. We did a transcription. It's possible that we couldn't tell all the voices; and in an earlier deposition, when we talked about this document, your lawyer said, actually, I believe that this is Mr. Reid's statement, not Mr. Rosar's, and I think that's probably consistent with the substance of later --
A. Yes.
Q. -- in this document?

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A. Yes, I would agree.
MR. LLOYD: And, you know.
MR. LEFKOWITZ: Right.
MR. LLOYD: Having been in this same position, trying to get the names --
MR. LEFKOWITZ: Yeah.
MR. LLOYD: -- on -- on a reporting unlike what we have --
MR. LEFKOWITZ: Yeah.
MR. LLOYD: -- with a court reporter can be a challenge at best. But, I mean, if -- if my understanding of it was wrong --
MR. LEFKOWITZ: Right.
MR. LLOYD: -- you should fix it. But that was my understanding --
MR. LEFKOWITZ: Right.
THE WITNESS: Okay.
MR. LLOYD: -- as stated in an earlier --
THE WITNESS: Okay.
MR. LLOYD: -- deposition.
BY MR. LEFKOWITZ:
Q. Do you think Mr. Lloyd's understanding is correct in light of the context of the -- and the substance of this statement?

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A. Yes.
Q. Okay. Now, in this statement that you are making here, and it tracks, I believe, your earlier testimony today, you talk about "I had sent him many complaints," I assume you were referring to the Department of Commerce and the "him" is actually Mr. Fleischhacker; is that correct?
A. No, it's not necessarily Mr. Fleischhacker, just the department.
Q. Got it. But when you get to the point in this transcript where you say, "...so I kept on calling him and finally he said, alright," is that Mr. Fleischhacker you're referring to?
A. Yes.
Q. And then you go on to say, he says, "...alright, if this is what you are saying," and I assume that refers to the complaints you're making about Safelite, he then says, according to you, "...let's assume my windshield and I'll call in a claim." Can you explain what you meant by that?
A. Well, at the time when I talked to Mr. Fleischhacker, he -- he told me -- I was upset because the -- the Department of Commerce had not taken action, and so I contacted him and got him on the phone, and I was upset because they hadn't done

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1 anything, they hadn't responded, and he said, all
2 right, I have a crack in my windshield, let's have
3 Alpine Glass do the windshield and I'll call in the
4 claim.
5 Q. Do you know who Mr. Fleischhacker's
6 insurance company was at the time?
7 A. Triple A.
8 Q. And so this conversation that you had
9 with him took place after those many years when you
10 had been sending in claims -- sending in complaints,
11 and when you say in this transcript that you,
12 quote, got pissed off, it's at the lack of action
13 by the DOC up till this point?
14 A. Correct.
15 Q. Okay. And you say here, "...and he
16 was shocked with what he heard." The "he," I
17 assume, is Mr. Fleischhacker, correct?
18 A. Yes.
19 Q. And he told you he was shocked with
20 what he heard?
21 A. Um, I don't recall him saying he was
22 shocked.
23 Q. Okay. Now let's go a little bit
24 forward, to page 5 of this transcript, and in the
25 middle of the page there is a statement, "So, I

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1 kind of started this crusade on my own and I told
2 Chuck I want to keep it small," and then it goes
3 on. Can you read that, please?
4 A. Okay.
5 Q. Is there any reason to doubt that you
6 made this statement?
7 A. No.
8 Q. What did you mean by "I kind of
9 started this crusade on my own"?
10 A. I started making complaints to
11 Commerce on my own.
12 Q. And what was the crusade you were
13 referring to?
14 A. The ongoing steering and late payments
15 by insurance companies.
16 Q. And when you say you started this
17 crusade against Safelite on your own, what do you
18 mean by on your own?
19 A. Oh, I never said I started this
20 crusade against Stafe -- Safelite.
21 Q. Oh, it wasn't against Safelite?
22 A. No.
23 Q. It was against whom?
24 A. Insurance companies.
25 Q. So you started a crusade against

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1 insurance companies. What do you -- What do you
2 mean by on your own?
3 A. With no -- on my own, Alpine Glass.
4 Q. And when you said "I told Chuck I want
5 to keep it small," was that Mr. Lloyd here?
6 A. Yes.
7 Q. And you wanted to limit the number of
8 people participating in the Department of
9 Commerce's investigation?
10 A. Yes.
11 Q. And why was that?
12 A. Because Marty had told me he didn't
13 want to have -- he was getting bombarded with
14 complaints, and he was overwhelmed by them and
15 wanted to focus on what we have brought to him.
16 Q. When did he tell you that?
17 A. I don't know when he told us that.
18 Q. How many times did you speak with
19 Marty?
20 A. I don't -- I don't know how many times
21 I've spoken to Marty.
22 Q. More than two or three?
23 A. Yes.
24 Q. Can you read the latter part of that
25 paragraph?

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1 A. Okay.
2 Q. What kind of deal did you make with
3 Marty Fleischhacker?
4 A. That -- that we wouldn't -- that we
5 would limit what we have being filed down there,
6 that we would just focus on what the complaints
7 that I -- that I brought forward.
8 Q. And then it says, and then Chuck got
9 involved in it. Why did Chuck get involved in it?
10 A. I don't recall why Chuck got involved
11 in it.
12 Q. Maybe we'll have a chance to ask Chuck
13 that at his deposition, but we'll --
14 MR. LLOYD: Oh, I look forward to that.
15 MR. LEFKOWITZ: I'm sure you do.
16 BY MR. LEFKOWITZ:
17 Q. It says at the bottom of the page,
18 about four, five, six lines from the bottom of that
19 page, right where your finger is now, it says --
20 and this looks like it's Mr. Rosar speaking,
21 "They've even had meeting as early as this year
22 with commerce so they've kind of been working on it
23 but now all of a sudden you know with your
24 situation putting in Marty's glass, you know,
25 you've got a fresh ear there."

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What is the "situation putting in Marty's glass" that Mr. Rosar is referring to?
A. Well, I don't -- you know, I'm just -- I don't know what Rick is -- is -- what he's thinking. But putting in Marty's glass is we did the windshield replacement for Marty. He had a cracked windshield and -- and he chose Alpine Glass to do it and call in the claim.
Q. And he came to become your customer as a result of a call that you had made to him in which you were complaining about Safelite and the insurance companies and the steering and the lack of progress and --
A. Yeah, my --
Q. -- you generally said --
A. My previous complaints.
Q. Yes. When did you perform the glass repair for Mr. Fleischhacker?
A. I don't recall.
Q. When you performed the work for Mr. Fleischhacker, you complained to him about Safelite's practices; is that right?
A. Yes.
Q. And what did you say in particular?
A. Whatever we've had in the -- in the

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previous complaints, steering, late payments, arbitrations, short payments.
Q. In the same degree of generality that you've described to me, you didn't give him specific dates or times or places --
A. I don't --
Q. -- or people?
A. Yeah. I don't recall the conversation.
Q. Do you recall what he said to you?
A. No.
Q. Do you agree with Mr. Rosar's comment that Mr. Fleischhacker gave you a, quote, fresh ear, close quote, with the Department of Commerce?
A. I think he -- I don't know what he means by fresh ear. He -- Marty did listen to us after that.
Q. And performing glass repair for Mr. Fleischhacker gave you another chance to make the steering complaints that you had been making for years; is that right?
A. It gave an opportunity for him to hear it firsthand.
Q. On page 6, in the middle of the page there is a line that begins after Mike, M. Reid, "like Marty sends an email," and I think it's a

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continuation because of the interruption. It says, "And, I want Chuck to review it because like Marty sends an email, Chuck" wants to know "-- Chuck knows what we want. He wants stuff to go through Chuck." Who is the "he" who wants stuff to go through Chuck?
A. I don't know what I was referring to as he. I would assume it's Marty.
Q. On page 7, the first big entry with your name next to it that begins "Exactly," can you explain what you mean here when you said, "...he did make the point saying majority of the complaints he receives from glass companies don't go so far to where there is a cut and dry violation."
A. What -- what's the question for me?
Q. What -- I don't understand what that means, what you mean here when you say the majority of the complaints don't go so far as to where there's a cut and dry --
A. Where he --
Q. -- violation?
A. Where he doesn't have -- he doesn't have the call recordings.
Q. So he's getting complaints, but -- but there isn't sufficient evidence in the complaints?

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A. Correct.
Q. And is that why you and Rick Rosar agreed that the other glass shops should only send over the, quote, really, really good stuff, close quote?
A. Where's --
Q. And I'm referring to the --
A. Where are you looking at that?
Q. Just above, about three, four lines above in the paragraph right above that. You can take a look at that, but it's the last two sentences of that.
A. Yeah. I don't know what Rick is -- that's Rick talking. I don't know what he was -- what he's talking about there.
Q. Then what do you mean just below that where you say, "You know from the fact...even I'm guilty of it too," what are you referring to there?
A. I have no idea.
Q. But Mr. Fleischhacker made the point of telling you that a majority of the complaints he receives from the glass companies just don't go far enough to find a -- a violation; is that right?
A. Yes. That was an -- let me rephrase that. That wasn't Marty that said that, that's the

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1 Commerce Department in general responding to the
2 complaints.
3 Q. So when you say "he did make the
4 point," you're actually not referring to an
5 individual?
6 A. Where are you? I'm getting confused.
7 Q. "Exactly, because he did make the
8 point saying the majority of the complaints"
9 (indicating). I can show you if you --
10 A. No, I see it now.
11 Q. Yeah.
12 A. I don't know what I'm saying about he,
13 he did make the point. Like I say, I don't recall
14 the conversation. I'm reading this for the first
15 time, so I don't know.
16 Q. Do you know what the difference in
17 your view would be between illegal or unethical
18 conduct in connection with your complaints?
19 A. Well, I think my complaints showed
20 illegal conduct.
21 THE VIDEOGRAPHER: Approximately two
22 minutes left on this disc.
23 MR. LEFKOWITZ: Thanks.
24 BY MR. LEFKOWITZ:
25 Q. You have a statement in the middle of

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1 this page where it says -- well, why don't you read
2 what Mr. Schmaltz says and then what you say in the
3 middle of the page so you have the context for
4 this?
5 MR. LLOYD: Can you tell me which
6 paragraph?
7 MR. LEFKOWITZ: Yes. It's
8 Mr. Schmaltz, "Yeah, believe me we --"
9 MR. LLOYD: Okay, I got it.
10 MR. LEFKOWITZ: And, then, the next
11 response by --
12 MR. LLOYD: Okay, I got it, thank you.
13 BY MR. LEFKOWITZ:
14 Q. If I can ask you, what do you
15 understand to be unethical conduct that may not
16 have been illegal?
17 A. I have no idea.
18 Q. You say here, "He knows the whole
19 thing, how unethical Safelite is and he's had
20 enough of it and he wants to go after a couple" of
21 "insurance companies which I think are Farmers and
22 Progressive and then he wants to get Safelite out
23 of Minnesota." Did you read that?
24 A. Hold on, let me read it. Yep.
25 Q. And, then, the next thing you say is,

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1 yeah, "he said if I slap them with a cease and
2 desist order, it's going to cause massive chaos and
3 he goes I don't care." Do you see that?
4 A. Yep.
5 Q. And the "he" refers to
6 Mr. Fleischhacker, correct?
7 A. Yes.
8 Q. And then you say, "So, this is about
9 the best shot we've got right now and if we can
10 just get some really good recordings so maybe the
11 three of us can kind of decide what would be the
12 best recordings. I've forwarded you...a couple
13 and you guys forwarded me a couple, maybe we
14 should" just "revisit those and put together ah you
15 know" maybe top five. Do you see that?
16 A. Yes.
17 Q. And you're having this conversation
18 with whom?
19 A. Rick and Mike Schmaltz, it looks like.
20 Q. And you're talking about how to help
21 the Department of Commerce's investigation, correct?
22 A. Correct.
23 Q. And Mr. Fleischhacker told you he'd
24 had enough of that, the conduct, right?
25 A. Yes.

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1 Q. And he told you he wants to go after a
2 couple of insurance companies?
3 A. I don't know if he said he was -- he
4 wanted to go after a couple insurance companies. I
5 don't -- I don't recall that conversation.
6 Q. Do you recall him telling you that he
7 wanted to get Safelite out of Minnesota?
8 A. I don't recall that conversation.
9 Q. But you did say that, is that correct?
10 A. Right, yeah, in a conversation two
11 years ago. I don't re -- like I say, I don't
12 recall the conversation.
13 Q. When you were having conversations
14 with your friends about promoting and helping this
15 investigation, did you make it a habit to try to be
16 accurate and honest in your statements to them?
17 A. I have no idea. I don't recall this
18 conversation. I know it happened. I don't -- I
19 don't recall.
20 Q. Do you generally speak honestly?
21 A. Do I generally speak honestly? Yes.
22 Q. Yes. But sometimes you kind of
23 overstate things for emphasis?
24 A. I have no idea.
25 Q. Do you know why Mr. Fleisch --

THE VIDEOGRAPHER: We need to change the --
MR. LEFKOWITZ: Do you need to change?
THE VIDEOGRAPHER: Yes.
MR. LEFKOWITZ: All right. Let's take a two-minute break and change the disc.
THE VIDEOGRAPHER: Going off the video record. The time is approximately 10:30 a.m. This is the end of disc No. 1.
(Break from 10:30 to 10:40.)
THE VIDEOGRAPHER: We're back --
THE WITNESS: I want --
THE VIDEOGRAPHER: -- on the video record. The time is now approximately 10:40 a.m. This is the beginning of disc number 2.
THE WITNESS: I want to -- before you get started, I wanted to back up, I was thinking about the other questions and I just want to clarify if I misspoke. What was the question you asked about something about my statements being honest, what was my answer on that?
BY MR. LEFKOWITZ:
Q. Yeah, I think that --
A. Do you generally speak --
Q. I -- yeah, because I think I had asked

you about a statement that you made here, and I'm trying to recall, let me just have a second.
A. Or if the court reporter can go back on it.
Q. Let me just take a look and see if I can recall. I might be able to make it shorter.
MR. LEFKOWITZ: Let's go -- can we go back up so I can --
MR. REIGSTAD: Yeah.
(Reporter's Note: Mr. Lefkowitz is looking at the real-time transcript on an iPad.)
MR. LEFKOWITZ: Let me see if I can just -- yeah, yeah.
BY MR. LEFKOWITZ:
Q. Yeah. I asked you when you were having conversation with your friends about promoting and helping this investigation and you were reporting on things, at least according to the transcript, according to the tape recording that Mr. Fleischhacker had told you, I asked you if you were accurately conveying what he told you, and I believe you said you weren't sure, and so I said, well, I'm just reading your words back to you, do you make a habit of trying to be honest when you are talking to your friends or do you have a habit

of kind of inflating things?
A. Oh, okay.
Q. And so --
A. And my answer was I don't know or --
Q. Your answer was, "I have no idea."
A. Okay. So I was confused. Yes, I generally speak honestly.
Q. Okay. So to the best of your knowledge, when you were -- when you referenced in real-time back on this date, November 7th, or whatever the date was, a statement that you recalled Mr. Fleischhacker making, you were trying to be as accurate as possible?
A. Yes.
Q. Okay, very good. Thanks for clarifying --
A. Yes.
Q. -- that, Mr. Reid.
A. Okay.
Q. Better than I don't know.
Now, you report on this call that Mr. Fleischhacker told you that he didn't care if it caused massive chaos if he slapped a cease and desist order on Safelite, and my question is, do you have an understanding of how serving Safelite

with a cease and desist order would cause massive chaos?
A. No. I'm just -- it was my assumption at the time.
Q. And when did Mr. Fleischhacker tell you these things?
A. He told me in our -- in a meeting that we had with him, or a phone call, I don't recall when.
Q. So it could have been a meeting or it could have been a phone call?
A. Yes.
Q. So at the bottom of page 7 here you have a statement that says, "the best shot we've got right now," and then you go on to talk about these recordings. The best shot you had at what, what was the objective that you were, quote, shooting for?
A. For them to take action against the insurance company, Department of Commerce.
Q. And is your testimony that all you cared about was their taking action against the insurance company and not at all about Safelite?
A. Correct.
Q. So you had no interest in the state of

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1 Minnesota taking any action against Safelite?
2 A. Well, Safelite is the TPA for the
3 insurance company.
4 Q. Correct.
5 A. So -- so whether they are part of the
6 insurance company as a TPA or the insurance
7 company, I view them as one in the same.
8 Q. So, to clarify, then, you did want
9 them to take action against Safelite as a TPA?
10 A. As a TPA, yes.
11 Q. And you wanted to work with
12 Mr. Schmaltz and Mr. Rosar to decide what would be
13 the, quote, best recordings; is that right?
14 A. Yes.
15 Q. And specifically you wanted to work
16 with Mr. Schmaltz and Mr. Rosar to put together a
17 top five recordings to send to Mr. Fleischhacker,
18 right?
19 A. Yes.
20 Q. And did you do that?
21 A. I believe so.
22 Q. All right. Let's turn now to page 11
23 and towards the bottom of the page, the third kind
24 of paragraph from the bottom, it begins, "Well, see
25 Marty was with AAA," do you see that --

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1 A. Yes.
2 Q. -- paragraph?
3 A. Yeah.
4 Q. What do you mean when you said, "I
5 tried to find some AAA insurance stuff"?
6 A. I don't know what -- what I was
7 referring to.
8 Q. But you knew that Mr. Fleischhacker's
9 insurance company was Triple A when you performed
10 the repair work on his window; is that correct?
11 A. Correct.
12 Q. And because you knew that you tried to
13 send him some evidence concerning AAA?
14 A. Correct.
15 Q. Do you think that performing the
16 repair work on Mr. Fleischhacker's vehicle gave you
17 an advantage in pursuing your crusade?
18 A. I think it shed light on what was
19 happening, and Marty got to hear it firsthand.
20 Q. And did you also perform repair work
21 on his girlfriend's vehicle?
22 A. Yes.
23 Q. How did that come about?
24 A. Marty contacted me regarding a crack
25 in his girlfriend's windshield.

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1 Q. And --
2 A. I -- I -- I don't know if it was his
3 girlfriend or friend or whoever it was.
4 Q. But he reached out to you?
5 A. Yes.
6 Q. And asked you to do that repair as
7 well?
8 A. Yes.
9 Q. And you did it?
10 A. Yes.
11 Q. At one point you -- you say you don't
12 want to do anything about Lynx; is that correct?
13 A. Correct.
14 Q. Why not?
15 A. Because the focus was on the few
16 insurance companies that we had already filed with
17 Marty, and we didn't want to overwhelm him with
18 other insurance companies.
19 Q. Isn't it actually correct that you
20 didn't want to do anything with Lynx because you
21 only wanted to do things with Safelite?
22 A. No.
23 Q. Can you read for me the exchange
24 beginning with Mr. Rosar, where he says "Great,
25 well," just read the next four lines on page 12?

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1 A. Okay.
2 Q. Now, isn't it clear from this that you
3 didn't want to do anything with Lynx because you
4 only wanted to focus the investigation on Safelite?
5 A. On the insurers that we filed with --
6 with Safe -- that Safelite was the TPA, yes.
7 Q. Right. And not the insurers that were
8 doing business through a different TPA, only the
9 ones with Safelite, correct?
10 A. Correct, yes.
11 Q. Why did you want Marty to show up at
12 an arbitration?
13 A. Because he was trying to find out more
14 about the industry, and the arbitrations go into
15 great detail about the industry and work --
16 workmanship, and so it was a good understanding for
17 him to -- to hear.
18 Q. So you wanted him to come to the
19 arbitration to educate himself?
20 A. Yes.
21 Q. Were there any other reason why you
22 wanted him to come to the arbitration?
23 A. No.
24 Q. Something just occurred to me and --
25 where is that -- excuse me one sec, and I'd like to

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1 hand you a document in the interim.
2 MR. LEFKOWITZ: This is tab 7, you can
3 look for that while I'm doing this.
4 MR. LLOYD: Were you done with
5 Exhibit 50 for now?
6 MR. LEFKOWITZ: I am, and I'm going to
7 hand you -- What exhibit is this?
8 THE COURT REPORTER: Fifty-one.
9 (Whereupon, Deposition Exhibit No. 51
10 was marked for identification, and a copy is
11 attached and hereby made a part of this deposition.)
12 BY MR. LEFKOWITZ:
13 Q. This is a e-mail chain from
14 February 14th, it involves, again, you, Mr. Reid,
15 as well as Mr. Rosar and Mr. Schmaltz. Do you see
16 this e-mail?
17 A. Yes.
18 Q. And it says at the bottom, and this is
19 your e-mail, please try to keep all this fairly
20 quiet. Why did you want to keep this quiet?
21 A. Um, I wanted to keep it quiet for a
22 couple reasons. First was that I didn't want other
23 shops to know that Commerce was doing these
24 investigations and file a bunch of complaints and
25 upset Commerce after they've asked not to be

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1 overwhelmed with complaints; and, secondly, I didn't
2 want to have the insurance companies be prepared to
3 have some type of rebuttal. In my eyes, that's
4 what I thought would happen.
5 Q. So, to your knowledge, the
6 investigation at this point was not public
7 knowledge?
8 A. No.
9 Q. And you didn't even want all the other
10 shops to know about it?
11 A. I didn't want the other shops to know
12 because I thought it would fuel them to file more
13 complaints and ruin kind of what we've -- what we
14 had accomplished.
15 Q. You say, "This is why we are filing
16 complaints and we are farther than we have been in
17 a long time." This refers to, again, your long-time
18 frustration of not having real reaction from the
19 DOC and then, finally, after you started engaging
20 with Mr. Fleischhacker to have him actively
21 involved; is that right?
22 A. Yes.
23 Q. And you say in the next line, "I think
24 his subpoena on AAA got everyone's attention but
25 him showing up at the arbitration...has probably

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1 caused panic everywhere"; is that right?
2 A. Yes.
3 Q. And what do you mean by panic?
4 A. I don't know if panic -- just that it
5 was -- it's causing surprise in the insurance -- in
6 the insurance industry.
7 Q. And you were pleased about that; is
8 that right?
9 A. I think it -- yes.
10 Q. So one of the ways in which Marty was,
11 quote, stepping up was his showing up at this
12 arbitration?
13 A. Yes.
14 Q. Is that right?
15 And you thought that it showed that he
16 was responsive to your concerns?
17 A. Yes.
18 Q. And it certainly sent a message to the
19 insurers that the DOC was taking a serious interest
20 in this; is that right?
21 A. Yes.
22 Q. So isn't it fair to say that
23 Mr. Fleischhacker showing up at the arbitration
24 wasn't just to educate himself?
25 A. It was to educate himself.

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1 Q. That was your only objective?
2 A. Yes.
3 Q. When you say the subpoena got
4 everyone's attention, who is everyone in your view?
5 A. Everyone, in my view, was the -- was
6 the insurance companies.
7 Q. Did you care if Safelite knew about
8 this investigation?
9 A. No.
10 Q. Even though Safelite Solutions was one
11 of the targets of your investigation?
12 A. Right.
13 Q. You didn't care if they knew about it?
14 A. I -- I really didn't care if -- no, I
15 didn't care if they knew about it.
16 Q. But I thought you wanted to keep the
17 investigation quiet, in part, so that the insurance
18 companies wouldn't be able to coordinate and put
19 together a defense?
20 A. Yes. But they ultimately found out
21 about it when the subpoenas and Marty Fleischhacker
22 showed up at one of the arbitrations.
23 Q. All right. I'm going to hand you
24 another document.
25 (Whereupon, Deposition Exhibit No. 52

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was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. LEFKOWITZ:
Q. Do you see this e-mail, sir?
A. Yes.
Q. And when you're writing to Rick and you say, "I would like to file against USAA next week," are you talking about filing a complaint?
A. Yes.
Q. And you say, "Please send me the usual," what are you referring to there?
A. Steering recordings.
Q. And you meant the three to four worst steering calls he could find?
A. I just -- three to four examples.
Q. Well, I assume you were looking for the worst examples, right?
A. I -- I wouldn't say that.
Q. Well, were you looking just for random recordings?
A. With USAA, they're all pretty -- pretty similar recordings.
Q. And how do you know that?
A. Because I've listened to them.
Q. How many U.S.A. recordings have you

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listened to?
A. I don't know.
Q. More than 100?
A. No.
Q. Do you have any idea of the volume of USAA's business in Minnesota?
A. No.
Q. So you don't know whether you've listened to a majority of all the calls that USAA has been on?
A. No.
Q. When you were sending evidence that you were pulling together to the Department of Commerce, did you ever send them just, you know, a group of 100 random recordings or were the recordings that you sent them selected based on the content?
A. They were selected, but USAA was pretty -- pretty standard.
Q. Although as you've said, you haven't listened to a majority of the recordings, you don't even know if you've listened to a significant percentage of their recordings, correct?
A. Correct.
Q. You don't even know how many

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recordings there are of USAA talking to customers in Minnesota, correct?
A. Correct.
Q. And you've listened to fewer than 100?
A. Yeah, fewer than 100.
Q. Did you have an understanding when you were working on this investigation with Mr. Rosar and Mr. Schmaltz and Mr. Fleischhacker whether you were privy to nonpublic information?
A. No.
Q. Do you have any understanding of whether or not the Department of Commerce treats its investigations as private or public?
A. I don't know how -- how they do it.
Q. So you have no idea whatsoever?
A. No.
Q. Do you know whether or not the Department of Commerce ever provided you with information that they shouldn't have provided you with?
A. No.
Q. I'm going to hand you a e-mail that you wrote to Mike Schmaltz and Rick Rosar and a gentleman named Brad at Auto -- Only 1 Auto Glass. Who is Brad?

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A. Brad Hapka.
Q. And who is he?
A. He's the owner of Only 1 Auto Glass.
Q. Are they another auto glass repair company?
A. Yes.
Q. Are they a competitor of yours?
A. Um, I don't -- I don't consider a lot of these guys competitors now.
MR. LLOYD: Do you have -- hold on a second. We've got to get that document marked.
MR. LEFKOWITZ: Oh, I'm sorry.
THE WITNESS: Sorry.
THE COURT REPORTER: Fifty-three.
(Whereupon, Deposition Exhibit No. 53 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. LEFKOWITZ:
Q. Do you consider any -- that you have any competitors?
A. Yes.
Q. Who are you competitors?
A. I consider my competitors ones that market similarly to -- to our company, which is telemarketing.

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1 Q. And who are the companies that --
2 A. I don't -- There's been a few that
3 have come and gone, and I don't know of any right
4 now.
5 Q. So you're not aware of a single
6 competitor?
7 A. No.
8 Q. It's an enviable position to be in.
9 And why don't you consider glass shops
10 that repair glass and charge prices and get
11 reimbursed largely through insurance company
12 proceeds, why don't you consider them to be
13 competitors?
14 A. Um, I don't -- because of the way they
15 get their business.
16 Q. You get all of your business from
17 telemarketing?
18 A. Primarily that and referrals.
19 Q. What about your contract with that
20 insurance company Harmon?
21 A. Harmon?
22 Q. Yes.
23 A. No referrals.
24 Q. So how do the Harmon customs come to
25 you?

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1 A. They don't come to us, we telemarket.
2 Q. And they're not required to come to
3 you, obviously, right?
4 A. No.
5 Q. So your only competitors are some
6 companies that you don't even know about right now?
7 A. Correct.
8 Q. So let's take a look at this e-mail
9 from you. You're referring to a "C&D from Commerce."
10 What is a C&D?
11 A. The cease and desist order.
12 Q. What do you mean when you say, "It's
13 very important that we continue to keep this"
14 information "between us"?
15 A. For what I said in the past, that we
16 didn't want other shops to get excited and file
17 complaints and -- and upset Commerce of what they
18 were doing with the investigations.
19 Q. And that's the only reason why you
20 wanted to keep it between us?
21 A. Yes.
22 Q. You're sure it wasn't because you were
23 aware that you had information that you shouldn't
24 have had?
25 A. No.

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1 Q. What did you mean when you continued
2 in that sentence and you say, "It's very important
3 that we continue to keep this information between
4 us as technically we are not supposed to know about
5 the C&D"?
6 A. That was just my own -- my own
7 thinking on that. I didn't know from a legal
8 standpoint if we were or not.
9 Q. But your thinking was that you weren't
10 supposed to know --
11 A. Maybe I --
12 Q. -- about that information, right?
13 A. I was thinking maybe -- maybe we
14 shouldn't have -- yeah, maybe we shouldn't have
15 known that.
16 Q. And so actually one of the reasons why
17 you thought and told your friends that you should
18 keep the info between or among yourselves was
19 because at least you thought, without necessarily
20 having a legal conclusion, that you actually
21 weren't even supposed to know about the C&D?
22 A. The main reason was is I didn't want
23 people to file more complaints.
24 Q. But in this sentence, that's -- you
25 don't -- you don't refer --

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1 A. Right.
2 Q. -- to the main reason, you refer to
3 this other reason that maybe you shouldn't have
4 known about this?
5 A. Exactly.
6 Q. And, obviously, you guys wanted to
7 benefit from this Commerce action?
8 A. We wanted the illegal activity to
9 stop.
10 Q. And how would you have benefited from
11 that?
12 A. Our customers wouldn't have been
13 steered, our payments would have arrived on time.
14 Q. Right. So the benefit would have been
15 to you, not to the customers?
16 A. Benefits would have been to -- what do
17 you mean the customers?
18 Q. Well, you said you wanted to benefit.
19 You said, "...we will benefit somehow." "I...hope
20 with all the evidence we gave them," meaning we
21 gave Commerce, right?
22 A. Yes.
23 Q. "...we will benefit somehow." You're
24 looking for you, meaning you, your glass shop and
25 these other glass shops to benefit?

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A. Not me, my glass company.
Q. Your glass company, not -- well.
A. Correct, that everybody will be on a level playing field.
Q. Right.
A. And that the laws will apply --
Q. Right.
A. -- to all the gas companies.
Q. Right. And that would benefit the glass companies?
A. Correct.
Q. And you've previously said that in terms of getting lower prices that actually wouldn't benefit the consumers or higher prices wouldn't affect the consumers because, in your view, they're not involved in paying the cost here, correct?
A. Yes.
Q. In this e-mail you're giving your friends a status update on this cease and desist order from DOC, right?
A. Yes.
Q. And this is a DOC that the -- this is a cease and desist order that the DOC wanted to send to Safelite?

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A. Yes.
Q. And the DOC wanted the Minnesota Attorney General to sign off on that cease and desist, correct?
A. That was my understanding.
Q. And that cease and desist would have ordered Safelite to stop doing business in Minnesota, correct?
A. I don't know exactly what it entailed legally, but that was my understanding, and it -- it was my understanding it was -- I should step back.
Q. Please.
A. That was Safelite Solutions.
Q. Correct, Safelite Solu --
A. Not -- not Safelite.
Q. Safelite Solutions, correct.
A. Correct.
Q. And someone from the DOC, obviously, told you about this C&D, correct?
A. Yes.
Q. And do you know who that was?
A. I believe it was Marty Fleischhacker.
Q. Do you recall when the first time that some -- that Mr. Fleischhacker mentioned a C&D to

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you?
A. No.
Q. Do you know what happened with that C&D?
A. No.
Q. Was it ever sent to Safelite?
A. I don't know what happened with it.
Q. If there had been a settlement between DOC and Triple A, which is what you're referring to in the second paragraph there, how, in your view, would the glass industry have benefited from such a settlement?
A. As a -- as a level playing field and that the illegal activity would stop on behalf of the -- the TPA.
Q. Didn't you hope that the DOC would force Triple A to pay your prices?
A. No.
Q. You didn't?
A. No.
Q. Did you hope that the DOC would order Triple A to stop doing business with Safelite Solutions?
A. No.
Q. So you didn't care whether or not

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Triple A paid your prices or not?
A. They -- they don't pay my prices.
Q. But didn't you want them to?
A. My understanding is that the Department of Commerce cannot enforce an insurance company to pay an invoice, that it has to go through arbitration.
Q. So what did you want the Department of Commerce to do in the settlement with Triple A?
A. To make them abide by the law -- by the Unfair Claims Practice Act and pay our invoices on time and stop the steering.
Q. When you say pay your invoices on time, you mean pay the price that's you're charging?
A. No. Pay our invoices within 30 business days, just make a payment.
Q. Any payment?
A. Yes.
Q. So if they didn't pay the amount that you are charging because they thought that was higher than they were comfortable paying, you'd be okay with that?
A. Well, we'd go to arbitration with it. That's the proper way.
Q. Isn't it true that you wanted the

1 Department of Commerce to go after these insurers
2 and Safelite so that you could benefit economically?
3 A. No.
4 Q. It's not true?
5 A. No.
6 Q. You didn't think that going after
7 Safelite and going after the insurers would put
8 money in your pockets?
9 A. No.
10 Q. Isn't it true that you wanted to,
11 basically, use or leverage this whole Department of
12 Commerce investigation to benefit your glass shop
13 and the other independent glass shops?
14 A. I don't necessarily -- in my eyes,
15 benefiting -- it's really not a benefit when -- if
16 the enforcement is to make an insurance company
17 abide by the laws that are set, that's really not a
18 benefit to me, it's just enforcing the rules; and
19 that's what I wanted -- that's what I wanted them
20 to do.
21 Q. But it would be a benefit if it put
22 money in their pockets?
23 A. I don't know how it would put money in
24 my pockets, I don't know why --
25 Q. You don't -- you don't think --

1 A. I don't know why you're saying --
2 Q. You don't think the glass shops would
3 get more money?
4 A. How? I don't know.
5 Q. Well, okay, you don't. I'd like to
6 show you an e-mail that you, again, were involved
7 in with Brad and Rick Rosar and Mike Schmaltz.
8 (Whereupon, Deposition Exhibit No. 54
9 was marked for identification, and a copy is
10 attached and hereby made a part of this deposition.)
11 THE COURT REPORTER: Fifty-four.
12 BY MR. LEFKOWITZ:
13 Q. In this e-mail -- I'll wait until
14 you've read it.
15 A. Okay.
16 Q. Okay. So what are you trying to get
17 shops to contribute to here?
18 A. I'm trying to get shops to contribute
19 to the -- to pay for our lobbyist that the MGA has
20 hired.
21 Q. And don't you say here that "This
22 might be a good angle to get shops to contribute as
23 it shows Commerce is coming down on insurers and
24 Safelite which will ultimately put money in their
25 pockets"?

1 A. Yes.
2 Q. So let's just break this down because
3 I want to understand what you wrote here. Whose
4 pockets are you referring to?
5 A. The glass companies.
6 Q. Okay. And what's going to put money
7 in their pockets -- sorry.
8 A. Sorry.
9 Q. -- is Commerce coming down on the
10 insurers and Safelite?
11 A. Yes.
12 Q. Okay. That's -- that's what I
13 thought. And in this e-mail exchange, are you
14 forwarding to your friends an e-mail exchange that
15 you had with TJ Patton?
16 A. I don't think so.
17 Q. Well, let's take a look. You -- it
18 looks here that -- if you go to the back of the
19 page, it looks like the first e-mail is an e-mail
20 from you to TJ Patton and Marty Fleischhacker in
21 which you're forwarding them a arbitration award?
22 A. Yes.
23 Q. And, then, Mr. Patton from the
24 Department of Commerce writes back to you and says,
25 "Happy New Year," thanks for sending this to me,

1 and then he's giving you a report on his ongoing
2 investigation, right?
3 A. Yes.
4 Q. And, then, it looks like you're
5 forwarding that whole communication to your friends
6 in the glass shops?
7 A. Where -- where are you seeing -- where
8 do you see that? Am I --
9 Q. Well --
10 A. I'm looking at the right thing?
11 Q. Well, it's a forward -- it says here
12 this is a forwarded message, and I think the way --
13 and we could ask a computer expert to --
14 A. Yeah. I --
15 Q. -- explain it, but the way this -- the
16 way this e-mail chain works is Mike Reid from
17 Alpine Glass is now sending an e-mail to Brad, Rick
18 Rosar and Mike Schmaltz, and it says, "I forwarded
19 our recent American Family award to Commerce."
20 You're describing what you did below --
21 A. Yeah.
22 Q. -- and you're actually sending them
23 that communication that you had.
24 A. Okay. I don't know if I'm sending
25 that or if I'm sending the American Family award, I

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1 have no idea. I might have, I might have, I don't
2 know.
3 Q. Okay. Is it fair to say that
4 Mr. Patton regularly updated you on the status of
5 the DOC's investigations?
6 A. Yeah. I inquired at times.
7 Q. And the status updates that he
8 provided you were not public, correct?
9 A. I don't think so.
10 Q. That's why you had to ask him?
11 A. Right.
12 Q. You thought that telling the shops,
13 the independent shops that the DOC investigation
14 would put money in their pockets was a good angle
15 to get the independent shops to give money to the
16 Minnesota Glass Association, right?
17 A. Yes.
18 Q. Did you ever tell any independent
19 glass shops to contribute money to the MGA?
20 A. Yes.
21 Q. Which shops?
22 A. I -- I don't know.
23 Q. Do you remember what you told them?
24 A. I just asked them if they would -- if
25 they would contribute to it.

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1 Q. But you don't remember which ones you
2 asked?
3 A. No.
4 Q. So even though you didn't want them to
5 know about the investigation when you were kind of
6 coming up with the deal with Mr. Fleischhacker and
7 everything, you had no problem asking them to
8 contribute money to support the investigation, right?
9 A. Well, it wasn't money to support the
10 investigation, it was to support the lobbying
11 efforts.
12 Q. And what were the lobbying efforts?
13 A. Regarding arbitrations.
14 Q. So the lobbying was pretty much about
15 the arbitration?
16 A. Yeah.
17 Q. And what about the arbitration?
18 A. There's been some -- there's been some
19 talk about -- about getting rid of the arbitrations
20 or limiting the arbitrations.
21 Q. It says here on page 1 of this e-mail
22 that "Insurers don't like the complaints and
23 scrutiny by Commerce and are going to try to strip
24 away anything positive through legislation, which
25 is why we need funding for Joe and Chuck." And I

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1 assume Chuck here is the gentleman who is going to
2 be funded with this, correct?
3 A. Ah, Chuck --
4 Q. Is Chuck the same Chuck we're talking
5 about here?
6 A. Yeah, Joe and Chuck work -- working
7 together on the -- the legislation issues.
8 Q. Who is Joe?
9 A. Joe Bagnoli, he's a lobbyist.
10 Q. And he works with Chuck?
11 A. No. He has a different law firm.
12 Q. Got it. What -- what kind of
13 legislation did you think that the insurers were
14 going to try to achieve here?
15 A. To eliminate arbitrations.
16 Q. All right. Why don't you take a look
17 at this.
18 (Whereupon, Deposition Exhibit No. 55
19 was marked for identification, and a copy is
20 attached and hereby made a part of this deposition.)
21 THE COURT REPORTER: Fifty-five.
22 BY MR. LEFKOWITZ:
23 Q. I'd like you to read this document in
24 full before I ask you about it. Are you ready?
25 A. Yeah.

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1 Q. Okay. This is an e-mail from you to
2 Mr. Rosar, Mr. Schmaltz, dated May 4th of 2015,
3 correct?
4 A. Yes.
5 Q. And you've excerpted a post from
6 Glass -- GlassBuzz, I believe, or glassBYTEs, I'm
7 not -- I'm not quite sure.
8 A. GlassBYTEs.
9 Q. GlassBYTEs. What is this post, what
10 is glassBYTEs?
11 A. GlassBYTEs is a -- is a forum for auto
12 glass on the Internet.
13 Q. And this post is urging Minnesota
14 glass shops to start filing complaints with the
15 Department of Commerce regarding Safelite, correct?
16 A. It reads that, yes, start filing a few
17 complaints.
18 Q. Yeah. And it says here, you say here,
19 I hope that -- "I hope all the MGA shops know that
20 now is not the time to randomly file complaints
21 like the poster is encouraging," correct?
22 A. Correct.
23 Q. And you didn't want the MGA glass
24 shops to randomly file complaints with the DOC,
25 right?

A. Yes.
Q. That's because you wanted the glass shops to go through you or Mike Schmaltz or Chuck Lloyd, right?
A. Yes.
Q. Because you wanted to control the flow of information provided to the DOC?
A. Yes.
MR. LEFKOWITZ: You know what, I'm going to go off the record. Let's take a ten-minute break. I want to take a look at where I want to go with this.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 11:25 a.m.
(Break from 11:25 to 11:38.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 11:38 a.m.
MR. LEFKOWITZ: Thank you, Mr. Reid.
BY MR. LEFKOWITZ:
Q. By middle of 2014, is it true that you thought that the Department of Commerce sympathized with and was somewhat responsive to your concerns?
A. I don't know the timeline, but I know at some point they were, they took my -- my

complaints seriously.
Q. And you wanted the DOC to force the insurers to pay Alpine Glass's prices, correct?
A. No.
Q. Let me show you an e-mail chain. It's a July 14th e-mail between you and Mr. Patton.
MR. LLOYD: Thank you.
BY MR. LEFKOWITZ:
Q. It's actually a few -- a few pages.
(Whereupon, Deposition Exhibit No. 56 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Fifty-six.
BY MR. LEFKOWITZ:
Q. Let me ask you a question, just about what I just said. You said you weren't interested in forcing them to pay your glass prices, right?
A. I was -- there were -- there were multiple things of what I was interested in them doing.
Q. Was that one of them?
A. I wanted them to -- I wanted them to take some type of action so we didn't have to serial arbitrate and -- for our short pays and incur legal bills on every arbitration. So if you

consider that forcing payment of our invoices, then, yes.
Q. Well, I'm a little confused because about 10 or 15 minutes ago -- we can look at the transcript if my recollection doesn't track yours -- I thought you said all we wanted was them to pay promptly, and even if they didn't pay the amount that we wanted, we would just go and arbitrate?
A. Correct.
Q. But all we wanted was them to pay promptly, when I was actually asking you didn't you want them to be forced to pay your prices and you were -- you were rejecting that, and you said, no, no, I just want them to pay promptly, and if they don't pay enough, we'll arbitrate.
A. Well, ini --
Q. So now you're telling me something a little different.
A. Well, initially I wanted them to pay promptly and to take control of the steering. As things went on, we had arbitrations that were against insurance companies that we had previously beat on multiple occasions, and I wanted them to take action for enforcing the -- enforcing their

insurance policy for fair payments and -- and not have us go through the arbitration process over and over and over again.
Q. The only way to avoid having to go through the arbitration process is if the Department of Commerce forced the insurers to pay your prices, correct?
A. Not necessarily to force it, to -- to make an agreement.
Q. What does that mean to you, to make an agreement?
A. To make -- to have the insurance companies make an agreement with my company as far as pricing, not necessarily forcing them to pay my price but to come to a resolution that works for me and the insurance companies.
Q. Well, you have prices that you want to get paid that you think are fair and reasonable, right?
A. Correct.
Q. And those are the prices that you wanted the insurers to have to pay, correct?
A. Correct.
Q. Okay. So it is true that you were trying to use this DOC process to, basically, be

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1 able to get out of having to serially arbitrate
2 against the insurance companies?
3 A. It was one of -- it was one of the
4 items of the complaints.
5 Q. And you were frustrated that Triple A
6 wasn't willing to enter into an agreement with you
7 regarding pricing?
8 A. Oh, yes.
9 Q. Right?
10 Do you think it's illegal as you
11 understand things, and I'm not asking you for a
12 legal conclusion, but do you think it's illegal for
13 a company not to enter into a pricing agreement
14 with you?
15 A. No.
16 Q. And you wanted Mr. Patton to use
17 Triple A as an example to other insurers who use
18 Safelite as their claims administrator, right?
19 A. It was the first -- it was the first
20 complaint, yes.
21 Q. And one of the things you hoped was
22 that if they made Triple A an example that other
23 insurers would begin to agree to your pricing,
24 right?
25 A. Not -- are you -- are you reading that

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1 somewhere or --
2 Q. No.
3 A. Oh.
4 Q. I'm just asking you.
5 A. No. It's -- it -- not -- not at all,
6 that they would -- they would start abiding by the
7 rules and laws, which some insurance companies did
8 after this.
9 Q. But you also wanted them to agree to
10 pay your prices so you wouldn't have to keep
11 arbitrating?
12 A. I wanted them to force -- have the
13 insurance companies meet with us to come up with an
14 agreement, yes. So, in a way, it would be the --
15 paying our invoices if we made an agreement on
16 pricing.
17 Q. But you weren't going to be satisfied
18 if all they came to the table was we'll pay you the
19 same we pay the Safelite network shops?
20 A. No, I wouldn't be satisfied with that
21 at all.
22 Q. You say on page 2 of this e-mail that
23 "We have another batch of short pays," and then you
24 say, "Even though we win legal fees and time value
25 of money seriously erodes my fair reimbursements,"

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1 then you say, "Please let me know what I can do to
2 help these serial arbitrations stop."
3 So that was clearly one of your key
4 objectives, to try to get the DOC to stop making
5 you go to arbitration?
6 A. Correct.
7 Q. And, then, Mr. Patton responds to you,
8 and he says at the top, "I can't imagine how
9 frustrating AAA's conduct must be for you"; is that
10 right?
11 A. Where -- which page are you on?
12 Q. The first page, cover page of that
13 e-mail, midway --
14 A. Oh, okay.
15 Q. -- down the page. Do you see that?
16 A. I -- yep.
17 Q. And you thought Mr. Patton sympathized
18 with your complaints?
19 A. I don't know if he -- I don't know
20 what he -- if he sympathized or not. He said it
21 was -- he can't imagine how frustrating it is. I
22 didn't know what to take, the meaning of that.
23 Q. Weren't you grateful when -- when you
24 read that?
25 A. Not really.

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1 Q. You didn't think he was on your side?
2 A. I didn't know what he was going to do.
3 He just said, "I can't imagine how frustrating
4 AAA's conduct must be for you."
5 Q. When you responded to him, you say,
6 "Thanks TJ!," with a big exclamation point, right?
7 A. It's not a big exclamation point, it's
8 an exclamation point.
9 Q. Do you have a way of making a bigger --
10 (Reporter's Note: Laughter.)
11 BY MR. LEFKOWITZ:
12 Q. Do you have a way of making a bigger
13 exclamation point sometimes?
14 A. I guess I could change the font, yes.
15 Q. Do you do that -- do you do that often?
16 A. No, I don't.
17 Q. So this is your exclamation point?
18 A. This is my exclamation point.
19 Q. And you're, presumably, thanking him,
20 I would guess --
21 A. I --
22 Q. -- for what he says to you, right?
23 A. I -- I use -- I use the exclamation
24 point a lot.
25 Q. You do?

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A. Yeah, in an e-mail, hello, you know, exclamation point, you know, good morning, exclamation point.
Q. So you're responding to an e-mail where he sympathizes with you, and you're telling him, "You clearly updated me last week on the progress with respect to Safelite, Amfam and AAA"; is that correct?
A. Yes.
Q. And, again, you're not aware, as you sit here today, whether or not it was lawful or unlawful for him to share the results of ongoing investigations with you?
A. No. I just -- I -- I assumed it's okay.
Q. And then you say, at the end of that first e-mail you say, I have some addition -- "I have some ideas regarding the claims process if a C&D is in fact issued. If you want to call me I can share with you...and "make it easy" on "the AG." Is that -- is that what -- what you're reading here?
A. Yes.
Q. What kind of ideas did you have regarding the claims process?
A. That other insurance companies handle

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their claims in-house with no problem with the volume in Minnesota.
Q. So you were suggesting or wanted to suggest that they -- insurance companies didn't even need to work with Safelite Solutions, correct?
A. They could -- they could handle them themselves, like other insurance companies do.
Q. Do you know if Mr. Patton took your advice?
A. Um, I think that was the last of the conversation with it. I don't -- I don't know. I -- I don't know if he took my advice at all. I don't even think I -- I don't even know if I even gave him my advice.
Q. Okay. Do you have a preference for performing replacements over repairs?
A. We do more replacements over repairs.
Q. And why is that?
A. Because the repairs are -- are quite costly, and they're -- we just -- we don't focus on those that much.
Q. Do you get more reimbursement from a repair or from a replacement as a general rule?
A. More from a replacement.
Q. How does Alpine determine whether a

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windshield should be repaired or replaced?
A. We talk to the insured.
Q. And who makes the final decision about whether it's a replacement or a repair?
A. However the custom -- the customer and the person talking to the customer, you know, as far as the damage.
Q. Do you have a kind of rule of thumb about what size damage should be replaced or repaired?
A. No.
Q. Do you ever use a dime or a dollar bill or anything as a proxy for figuring out --
A. Not --
Q. -- whether something should be repaired or replaced?
A. Not that I'm aware of.
Q. Is it your view that Safelite pays a commission to the CSR for steering a job?
A. It's my assumption.
Q. What's that assumption based on?
A. Um, I don't recall. It's a conversation I had with someone at Safelite a while ago, but I don't -- I don't recall the conversation or who it was with.

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Q. So you have no knowledge, as you sit here today, why you had that --
A. No.
Q. -- assumption?
A. No.
Q. Are you aware that Safelite CSRs are paid on an hourly rate?
A. I don't know how they're paid.
Q. You don't know?
So you just have kind of rank speculation about this, you have no facts to support your speculation?
A. No.
Q. Did you ever make a reference or a representation to Mr. Patton that Safelite pays commissions to CSRs?
A. I don't recall if I did or -- or didn't.
Q. But you wouldn't have a factual basis for making such a representation?
A. No.
Q. Let's take a look at a document. It's at tab 12 for me. I don't know what you have.
(Whereupon, Deposition Exhibit No. 57 was marked for identification, and a copy is

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1 attached and hereby made a part of this deposition.)
2 THE COURT REPORTER: Fifty-seven.
3 BY MR. LEFKOWITZ:
4 Q. And I just wanted to call your
5 attention to about the third line down here where
6 it says, "In my opinion nothing should be repaired
7 over the size of a dime."
8 A. Okay.
9 Q. Does that refresh your recollection
10 about whether you have a benchmark for how you make
11 an assessment?
12 A. We don't have a benchmark, this is
13 just my opinion.
14 Q. Do you see at the bottom where you're
15 telling Mr. Patton at the Department of Commerce
16 that Safelite pays a commission to the CSR that
17 steers a job?
18 A. What line is that?
19 Q. The very end, the last sentence.
20 A. Yeah. It's just my assumption.
21 Q. Okay. So there's no factual --
22 A. No, no factuals, no.
23 Q. Do you ever -- do you know if you ever
24 told Mr. Patton that you actually had no basis in
25 fact for that suggestion you made to him?

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1 A. No.
2 Q. Have you ever met a Safelite employee
3 named JT Tumblin?
4 A. I've talked to him on the phone.
5 Q. Who is he?
6 A. JT Tumblin handled our account with
7 Safelite, and he was our person to go to with any
8 problems.
9 Q. Do you know how you first came into
10 contact with him?
11 A. I think he came into contact with us
12 probably.
13 Q. Did you ever talk to him about the
14 investigation by the Department of Commerce?
15 A. I believe so. I never talk -- I don't
16 think I talked to him -- yeah. I don't know how I
17 communicated with him, but, yes, I did communicate
18 with him.
19 Q. Did you ever tell the Department of
20 Commerce about him?
21 A. Yes.
22 Q. In what capacity?
23 A. I just told them that he would be a
24 good person to talk to since he was familiar with a
25 lot of the -- the -- how our business works and

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1 some of my problems with -- with steering and late
2 payments and -- and such, so --
3 Q. Do you know if he's still employed by
4 Safelite?
5 A. I heard he wasn't.
6 Q. Do you know why he left?
7 A. No.
8 Q. Do you know whether in the course of
9 their investigation the Department relied on
10 Mr. Tumblin at all?
11 A. I gave them the information. I don't
12 know what came -- came about with it.
13 Q. You wouldn't have been happy if the
14 result of this whole investigation that you had put
15 so much effort in was just a fine to the insurance
16 companies of Safelite, right?
17 A. No.
18 Q. You wanted more than that?
19 A. Well, I wanted -- I wanted them to
20 enforce the law.
21 Q. Well, you wanted them to enforce the
22 law so that the glass shops would benefit?
23 A. That they would -- that they would not
24 lose -- that they would not lose customers and they
25 would get their payments. So, yes, that's a

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1 benefit.
2 Q. Got it, okay.
3 And, actually, one of the biggest
4 benefits would be to take action against insurers
5 that constantly are, in your view, forcing these
6 glass companies to have arbitrations?
7 A. Yeah. I don't know if -- I don't know
8 if a benefit is really a benefit you gain from
9 someone actually enforcing the law and having a
10 level playing field, but if that's what you're
11 saying a benefit is, then, that's what it is.
12 Q. So let's -- I think your -- let's take
13 a look at your e-mail, because I think it's actually
14 your words and I don't want to mischaracterize
15 them, you can read.
16 (Whereupon, Deposition Exhibit No. 58
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Fifty-eight.
20 MR. LLOYD: Take some time to read the
21 e-mail.
22 BY MR. LEFKOWITZ:
23 Q. Yeah, please, take as much time as you
24 want. Let me know when you've read it.
25 A. Do you want me to read all these

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1 e-mails?
2 Q. Yeah, read all of them, because I'm
3 going --
4 A. Okay.
5 Q. -- to ask you some --
6 A. All right.
7 Q. -- questions about the whole --
8 A. Give me just a minute, then.
9 Q. Sure, take -- take your time. Are you
10 ready?
11 A. Yes.
12 Q. So this is an e-mail chain which
13 begins with some e-mails between you and a Triple A
14 claims manager, right?
15 A. Yes.
16 Q. And you're trying to get the Triple A
17 claims manager to agree to your pricing, correct?
18 A. Well, to discuss a pricing, to discuss
19 a pricing arrangement.
20 Q. Because you wanted an agreement, right?
21 A. I want an agreement, yes.
22 Q. Correct, okay. And then you forwarded
23 the e-mail chain to Mr. Patton, right?
24 A. Yes.
25 Q. And you copied Mr. Fleischhacker and

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1 someone named Mr. Livgard?
2 A. No, that's Chuck at Livgard -- that's
3 his law firm, Livgard.
4 Q. Oh, oh, I'm sorry.
5 A. Chuck, my attorney.
6 Q. Chuck, okay. So you just sent it to
7 Mr. Fleischhacker, as well?
8 A. Yeah, Marty, TJ, and Chuck.
9 Q. Got it. Now, on the top e-mail you're
10 discussing a settlement probably from the Department
11 of Commerce to Triple A?
12 A. Yes.
13 Q. And you say, "I am hopeful that the
14 settlement proposal proposed to AAA has some
15 benefit to the glass industry as we have provided a
16 lot of information to help with the investigation";
17 is that right?
18 A. Yes.
19 Q. So you're suggesting that you want
20 some benefit for the industry after all the work
21 that you put into this investigation?
22 A. Yes.
23 Q. Okay. And, then, you repeat, in a
24 similar vein, at the very bottom of that e-mail you
25 say again, "I hope there is no benefit to the glass

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1 companies that will come out of the investigations."
2 So there's no question you're looking
3 for a benefit for your company and the other
4 companies as part of this investigation, right?
5 A. Yeah. I'm looking for them to enforce
6 the law versus just fining the insurance company.
7 Q. But enforcing the law isn't the only
8 benefit you're looking for?
9 A. Enforcing the policy, enforcing the
10 law, yes.
11 Q. Well, you're also looking for them to
12 take action against the insurers so that they won't
13 have to keep going through all these arbitrations,
14 right?
15 A. Right. That's what I mean by
16 enforcing the policy. We go through arbitration
17 because they're not fulfilling the policy language.
18 We win in arbitration, they make us go through
19 another arbitration.
20 Q. But that's not enforcing the law, is --
21 A. It's enforcing the law and the policy
22 language.
23 Q. What law, as you understand it since
24 it's your testimony, requires an insurance company
25 to pay the price that you establish?

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1 A. I --
2 MR. LLOYD: Well, objection, that
3 misstates his testimony.
4 MR. LEFKOWITZ: He can answer the
5 question, obviously, it's in English.
6 BY MR. LEFKOWITZ:
7 Q. Do you understand that there's any
8 requirement that an insurance company pay Alpine's
9 prices?
10 A. No.
11 Q. But you want them to pay your prices,
12 and if they don't, then you arbitrate, correct?
13 A. I want them to enforce the laws of
14 steering, enforce the laws of timely payments, and
15 I want to enforce -- them to enforce the insurance
16 policy as it relates to fair and reasonable
17 payment. Therefore, that coincides with the --
18 with the arbitrations, so --
19 Q. But you wanted them to be forced --
20 MR. LLOYD: Were you finished with
21 your answer?
22 THE WITNESS: No.
23 BY MR. LEFKOWITZ:
24 Q. Go ahead, please.
25 A. So -- so it is -- I want them to

1 enforce the law and the insurance policy. I'm not
2 saying that the insurance policy is part of the
3 law.
4 Q. Okay.
5 A. It's my understanding the Department
6 of Commerce enforces the Unfair Claims Practice Act
7 and they -- and they approve insurance policies.
8 Q. And is having an arbitration over a
9 dispute over pricing a proper procedure in your
10 view?
11 A. Is it --
12 Q. Is it a proper procedure, is it
13 against the law or against the policy for two
14 parties who are having a disagreement over pricing
15 to have an arbitration --
16 A. No.
17 Q. -- to decide who is right?
18 A. No. I think it is to have to do it
19 over and over throughout the course of business.
20 That's my opinion.
21 Q. Did there come a time where the
22 Department of Commerce barred Triple A from using
23 Safelite as its claims administrator?
24 A. Yes.
25 Q. And what did Triple A do after that?

1 A. They went to --
2 MR. LLOYD: Objection, no foundation.
3 BY MR. LEFKOWITZ:
4 Q. Do you know what Triple A did after
5 that?
6 A. They went to another TPA.
7 Q. Do you know who they went to?
8 A. Quest.
9 Q. And, in your view, did Quest steer
10 business away from you?
11 A. In my view, Quest -- Quest -- I
12 don't -- necessarily steered business away, but
13 they -- they did say that we weren't a preferred
14 provider.
15 Q. And was that a true statement?
16 A. We aren't -- it is a true statement.
17 Q. Okay. But you weren't happy about
18 Quest being the claims administrator, either?
19 A. I'm not happy about any third-party
20 administrator.
21 Q. Because you don't like losing business
22 to network shops, right?
23 A. I don't like -- I don't like -- I
24 don't like steering and I don't like my payments to
25 be delayed.

1 Q. But you just told me that Quest wasn't
2 steering, Quest was just telling people truthfully
3 that you're not a preferred provider, correct?
4 A. Correct.
5 Q. And you don't like losing business to
6 network shops, right?
7 A. I -- I don't like losing business to
8 network shops.
9 Q. Okay. Let's take a look at 25. I
10 don't have it in my binder for some reason. Here's
11 an e-mail exchange.
12 (Whereupon, Deposition Exhibit No. 59
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 MR. LEFKOWITZ: What exhibit is this?
16 THE COURT REPORTER: Fifty-nine.
17 BY MR. LEFKOWITZ:
18 Q. This is a rather lengthy e-mail from
19 you to Mr. Patton, actually a couple of e-mails
20 from you to Mr. Patton, and an e-mail from
21 Mr. Patton to you. I want to call your attention
22 to the very, very end of this e-mail exchange at
23 the bottom of -- at page 3, it's the very end,
24 where you say, "I am sure this somehow violates the
25 consent order they entered into," and you ask in

1 the prior sentence, "Is there anything that can be
2 done here?"
3 I'd like to know what are you asking,
4 what would you like Mr. Patton to do here for you?
5 A. I would like -- I was -- my intent of
6 this was to force Triple A to allow their
7 policyholders to contact their own insurance
8 company to report the claim, and Triple A was
9 not -- was not accepting these calls from their own
10 insureds, they were forcing the insured to use --
11 to go through a TPA.
12 Q. So even after the consent order was
13 entered, you were -- you were still unhappy?
14 A. Oh, yes.
15 Q. And you made a number of other
16 complaints about Triple A, correct?
17 A. Yes.
18 Q. So it sounds like one of your basic
19 concerns is you just don't want to have third-party
20 administrators involved in this process at all, you
21 don't think that's a good thing?
22 A. I think it -- it's -- it causes
23 confusion on the -- on our customers and it delays
24 payments.
25 Q. Do you have any evidence that

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1 customers have complained to you about this?
2 A. I've heard customers complain about
3 the process of using TPAs all the time.
4 Q. Can you give me some information about
5 those complaints you've received, when you've
6 received them, from whom you've received them?
7 A. No, I can't give you any specifics.
8 Q. It's just anecdotally you can tell me
9 that?
10 A. Yeah, I know, yeah.
11 Q. Doesn't Mr. Patton tell you that aside
12 from your steering allegations, which he doesn't
13 say whether they're accurate or not, he says none
14 of the acts you allege were prohibited by the
15 Consent Order?
16 A. Where are you -- where are you reading
17 that?
18 Q. Well, I'll let you read it. The
19 middle of page 2 here, it says, "Aside from the
20 steering allegation, I do not believe you are
21 alleging acts covered by the consent order's
22 prohibitions"?
23 A. Correct.
24 Q. So you were not happy to get this
25 e-mail?

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1 A. I don't know. I really don't even
2 recall getting it, so I don't know if I was happy
3 or not happy. I mean --
4 Q. So let's turn to the press release.
5 Do you remember a discussion with Rick
6 Rosar about a proposed press release?
7 A. Yes.
8 Q. What do you recall about it?
9 A. I just recall that we were going to
10 get something out as a press release.
11 Q. And who was going to issue the press
12 release?
13 A. I don't recall who was, Rick or Mike,
14 one of the two.
15 Q. It was going to be issued by your
16 company or by --
17 A. No. I don't know -- I don't -- I
18 don't recall.
19 Q. And what was the purpose of putting
20 out a press release?
21 A. To get the facts out that -- of
22 what -- what is -- what has happened versus another
23 outlet putting some -- something out that may not
24 be a hundred percent accurate.
25 Q. And you didn't want to give the other

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1 insurers a chance to prepare responses or anything,
2 right?
3 A. That wasn't my intent at all.
4 Q. It wasn't?
5 A. To -- to do what?
6 Q. To keep the insurers from being able
7 to respond?
8 A. Not at all.
9 Q. Or to prepare?
10 A. No.
11 Q. No? Let me show you an e-mail that
12 you wrote to Rick Rosar.
13 MR. LLOYD: I'm sorry, what number?
14 THE COURT REPORTER: Sixty.
15 (Whereupon, Deposition Exhibit No. 60
16 was marked for identification, and a copy is
17 attached and hereby made a part of this deposition.)
18 BY MR. LEFKOWITZ:
19 Q. And what you say here is, "If you want
20 to clean it up please do so but after talking to
21 Chuck we should get it out there but keep it short
22 and to the point, that way it doesn't give other
23 insurers a chance to prepare." What are you
24 referring --
25 A. Oh.

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1 Q. -- to there?
2 A. Okay. I was -- I -- I didn't
3 understand your previous question. Now that you
4 put that in there, I thought you were -- okay.
5 So it was just more of the insurance
6 companies being able to -- that we already had
7 investigations to -- or complaints against to kind
8 of skirt off the -- the issue and -- and look into
9 different things that we -- that we might be
10 including in the complaints. So that's all it was.
11 Q. And why did you think it was going to
12 be huge?
13 A. Because it was huge.
14 Q. What was huge about it?
15 A. Huge that the Commerce Department,
16 after many years of people filing complaints,
17 actually did something and took action against
18 illegal steering.
19 Q. Let's take a look at the final press
20 release that was actually --
21 (Whereupon, Deposition Exhibit No. 61
22 was marked for identification, and a copy is
23 attached and hereby made a part of this deposition.)
24 THE COURT REPORTER: Sixty-one.
25 BY MR. LEFKOWITZ:

Q. I'm going to ask you if you recognize this? Do you see this press release?
A. Yes.
Q. Did you have any role in editing it or reviewing it?
A. Ah, no, I don't think I did. I gave a quote, but I don't think I edited it.
Q. Did you review a draft of a press release before it was finalized?
A. I don't recall reviewing it. I might have, I might not have.
Q. You approved your quote, correct, when you say this is a big step forward?
A. Yes.
Q. Because you wanted to make sure you got some credit for the consent order?
A. Not really.
Q. But you threatened to file other complaints against other insurers if Safelite or any other TPA continues to utilize the tactics that you found objectionable, right?
A. Yes.
Q. And did you approve Rick Rosar's statement that the consent order is the culmination of hard work and dedication from Minnesota glass

shops?
A. Not that I recall.
Q. Do you agree with that statement?
A. Yes.
Q. Let's look at the draft. I'm going to show you a -- I'm going to show you another document. This is not a press release, but it refers to another public communication.
MR. LLOYD: For the record, this is previously marked as Exhibit 30.
BY MR. LEFKOWITZ:
Q. This is an e-mail chain between you, Rick Rosar, Gary Hart, and Mr. Lloyd; is that correct?
A. Yes.
Q. And this is about a proposed post on the -- on GlassBuzz, correct?
A. Yes.
Q. Is GlassBuzz the same thing as glassBYTEs?
A. No.
Q. What -- what are the two?
A. Two different forums, two different -- yeah.
Q. But they're both for the industry?

A. For auto glass, yeah.
Q. Got it. What are you referring to when you say, "I don't like the proposed press release gary proposes at all. Nothing in it is true and is only an attempt to get credit and promotions edirect." What are you referring to?
A. I thought it was more to try to get -- for Gary to take credit for the actions and the consent order to get more members for the IGA and his e -- and his edirect campaign that he was working on.
Q. And you worked hard on the issue and you wanted some credit, too, right?
A. Well, I just didn't -- no, it's not that I wanted credit. I wanted the facts to be right, to be correct.
Q. You didn't actually even want this to be made public because you were still working on other things with the Department of Commerce, right?
A. I don't know the timeline of this. This could have been when we were going to have a -- a press release put out.
Q. Take a look at the second page, it says here in the middle, "Gary do not put this press release out." Can you read the rest of that

to yourself?
A. Yes.
Q. So does this refresh your recollection?
A. Yes. This was before the other press release, yes.
Q. So you wanted this -- you didn't really want this out, in part, because you had other things in the works with the Department of Commerce, right?
A. Right, and I was -- I thought other glass companies were going to file more complaints.
Q. You said earlier today that you are in charge of setting prices for the Alpine shops; is that right?
A. Yes.
Q. And Alpine Glass, you said that's your only business?
A. That's my only business, yes.
Q. Do you charge insured customers differently than cash customers?
MR. LLOYD: I'm going to object and instruct you not to answer. That is covered by the motion to quash.
MR. LEFKOWITZ: Okay. We have a continuing disagreement. We'll just reserve that

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1 for when the deposition reopens, if it does.
2 BY MR. LEFKOWITZ:
3 Q. Let's -- How many different
4 arbitrations have you testified in?
5 A. I don't know the exact number, it's
6 11, 12, 13.
7 Q. All for other independent glass shops?
8 A. Oh, that I've testified in?
9 Q. Yes.
10 A. Just my own.
11 Q. Oh, just your own?
12 A. Yes. I mean, I've testified via
13 affidavit on other glass companies.
14 Q. You have --
15 A. Yes.
16 Q. -- for other glass companies?
17 A. Yes.
18 Q. And have you ever testified that the
19 prices charged by the other glass companies are not
20 fair and reasonable?
21 A. That -- that the prices charged by
22 other glass companies?
23 Q. Not -- correct, are not fair or
24 reasonable?
25 A. I -- what -- can you --

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1 Q. Well, when you've testified in an
2 arbitration --
3 A. Yes.
4 Q. -- what's been the subject of your
5 testimony?
6 A. That our price is fair and reasonable.
7 Q. Correct. Have you ever test -- been
8 asked to testify in some other shop's --
9 A. Yes.
10 Q. -- arbitration?
11 A. Yes.
12 Q. About what, what's the subject?
13 A. About the prices are fair and
14 reasonable.
15 Q. Correct. And have you ever given
16 testimony that the other shop's prices are not fair
17 and reasonable?
18 A. I don't recall, I don't recall my
19 testimony on affidavits.
20 Q. So you may have testified --
21 A. May have, may not have.
22 Q. -- that someone else's prices were not
23 fair or reasonable?
24 A. Yeah. I guess I'm not understanding
25 the question. So are you asking me --

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1 Q. What is the nature -- When you're
2 asked to give testimony in an arbitration, what's
3 the scope of what you're being asked to testify
4 about?
5 A. That the -- that the price is fair and
6 reasonable, that the -- the glass company that is
7 charging the insurance company is fair and
8 reasonable.
9 Q. Right. And my question is, have you
10 ever given testimony that says, no, I've looked at
11 these prices and I don't think they're fair --
12 A. Oh, okay.
13 Q. -- or reasonable?
14 A. No, no.
15 Q. You haven't?
16 A. No.
17 Q. Do you know if in any of the
18 arbitrations that Alpine has been involved in
19 people from other glass shops have given testimony?
20 A. Yes.
21 Q. Do you know if any of them have ever
22 given testimony that Alpine's prices are not fair
23 or reasonable?
24 A. Not that I recall.
25 Q. Do you recall participating in an

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1 arbitration about fair and reasonable prices where
2 your testimony was not credited in an arbitration
3 involving Rapid Glass?
4 A. No.
5 Q. This was previously marked as 32, and
6 I'll hand you a -- This document is dated
7 August 5th, 2010. Do you recall this arbitration?
8 A. No.
9 Q. Let me call your attention to pages 25
10 and 26. At the bottom of 25 there's a paragraph
11 that refers to your testimony. Do you see that you
12 gave testimony about fair and reasonable prices?
13 A. Yes.
14 Q. And that you said that the prices that
15 were charged were fair and reasonable?
16 A. Yes.
17 Q. Do you know, if you look a page
18 earlier it talks about Rick Rosar giving testimony
19 as well?
20 A. Okay.
21 Q. Do you know if Mr. Rosar ever
22 testified in support of Alpine in any arbitrations?
23 A. I believe he's submitted affidavits.
24 Q. Uh-huh. When you submit an affidavit,
25 that's a form of testimony.

A. Okay.
Q. It's under perj -- it's under penalty of perjury?
A. Yeah, okay. So, yes, yeah, he didn't -- yeah.
Q. Not in person?
A. Right.
Q. I understand, okay. Do you know the outcome of this arbitration that you testified in?
A. Not from six years ago, no.
Q. If you'll look at page 35, it gives the conclusion at the top. It says, "The arbitrator finds that Allied has paid to or on behalf of it's" [sic] "insureds a prevailing competitive rate," and other than with respect to one claimed called the Groettum claim, Rapid, for whom you were testifying, lost and the request for cost and disbursements is denied. Do you see that that's reflected --
A. Yes.
Q. -- in the document?
A. Yes.
Q. Let me show you another document as well. This is a document involving an arbitration that Alpine was involved in.

(Whereupon, Deposition Exhibit No. 62 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Sixty-two.
BY MR. LEFKOWITZ:
Q. If you turn to page 3, it says that this was held on February 12th, 2014; is that correct?
A. Yes.
Q. And Mr. Lloyd represented Alpine at this arbitration?
A. Yes.
Q. Do you recall this dispute?
A. Yes.
Q. This was over an American Family bill that you claim they should have paid in full?
A. Yes.
MR. LLOYD: Well, actually, it's over several American Family bills --
MR. LEFKOWITZ: Excuse me, Mister --
MR. LLOYD: -- not one.
MR. LEFKOWITZ: Mr. Lloyd, that's not an objection, and you're going to have your opportunity to testify in this case.
MR. LLOYD: Well, you can't

misrepresent what the document is about. That obligation is on you as the questioner.
MR. LEFKOWITZ: I'm not making any -- I'm asking him, as a question, and he gave an answer. If you want to object to the form of my question --
MR. LLOYD: I'm going to object to the form of the question --
MR. LEFKOWITZ: -- I'll restate the question.
MR. LLOYD: -- as misstating what the --
MR. LEFKOWITZ: I'll -- I'll --
MR. LLOYD: -- exhibit says.
MR. LEFKOWITZ: I'll restate the question, but you'll get your chance to testify, Mr. Lloyd.
BY MR. LEFKOWITZ:
Q. Do you recognize this document?
A. Yes. It's an arbitration award.
Q. And what was the arbitration about?
A. Short payments.
Q. By what company?
A. American Family.
Q. And did you testify in this

arbitration?
A. Yes.
Q. And do you recall that the arbitrator found that Alpine charges different rates to different insurance companies?
A. I don't know. I haven't looked through this -- this document.
Q. Why don't you look at page 17.
A. Okay.
Q. Do you see now that it's -- that the Arbitrator found that Alpine charges different rates to different insurance companies?
A. Yes.
Q. Is that true?
A. Yes.
Q. Do you also see where it says that you testified credibly that you routinely and frequently listen in on calls from prospective customers as they interact with Safelite Solutions and Alpine and that you allege that steering, in fact, does occur but that you offered no compelling evidence?
A. Yes.
Q. So the Arbitrator found that you offered no compelling evidence of steering; is that

correct?
A. That's what -- that's what it says right there.
Q. In your view, are the amounts that are offered for auto glass replacement by Safelite on behalf of insurance companies unreasonable and below market rates?
A. Can you restate or --
Q. Yes. Do you --
A. Can you repeat it?
Q. Do you believe in your judgment that the amounts that are offered for auto glass replacement by Safelite on behalf of insurance companies are below market and unreasonable?
A. Some are, some aren't.
Q. So you think some of Safelite's rates are reasonable and fair?
A. I -- I am -- I'm confused. Are you saying Safelite setting the rates? What do you mean --
Q. No.
A. What do you mean by Safelite rates?
Q. Safelite as a TPA, right?
A. Safelite Solutions is a TPA.
Q. On behalf of insurance companies

suggests pricing, and you reject that pricing because you consider it to be unreasonable and below market; is that right?
A. Who -- who is suggesting the pricing?
Q. The insurance companies.
A. Are suggesting pricing?
Q. Correct.
A. To -- to Alpine Glass?
Q. Correct. And you're rejecting them because you believe that they are unreasonable and below market?
A. Some.
Q. Which ones do you believe are reasonable?
A. We have agreements with some that Safelite is the administrator for.
Q. Which ones do you have agreements with that Safelite is the administrator for?
A. I don't have the list, but I -- I don't have the list in front of me.
Q. And the ones that you don't have agreements with you reject?
A. We don't reject, no, we don't -- What do you mean reject? How --
Q. If you can't answer the question, just

say --
A. I don't --
Q. -- you don't understand the question.
A. Yeah, yeah.
Q. Is it true that you rarely agree to the pricing that's offered to you by Safelite on behalf of insurance companies?
A. In which instance?
Q. In any instance, is that a true statement?
A. How are they offered?
Q. Let me go back to your --
MR. REIGSTAD: It's 46.
BY MR. LEFKOWITZ:
Q. Can we take 46 out? It's your affidavit, your declaration, and turn to paragraph 4, just read paragraph 4 beginning where it says "Alpine Glass."
A. Okay.
Q. So is it true that you rarely agree to the pricing that's offered by Safelite on behalf of insurance companies because you consider it to be unreasonable and below market rates?
A. When it's offered, yes, we -- we don't agree with it.

Q. Has Alpine Glass had shops or done repairs other than in Minnesota and western Wisconsin?
A. Yes.
Q. Where?
A. Florida, Arizona, Iowa, maybe some of the bordering states of those, Kentucky.
Q. When did you stop doing business in -- other than in Minnesota and Wisconsin?
A. I don't know the dates.
Q. Do you have a view as to whether or not the prices for glass repair work are higher in Minnesota than in other states that you've operated in?
A. That was a long time ago. I can't compare the two.
MR. LEFKOWITZ: All right, let's go off the record. I'm going to take five minutes, and then I'll let you know if I'm going to continue or if we should take -- or if we're done or if we're going to take a lunch break. All right? Give me five minutes.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 12:35 p.m.
(Break from 12:35 to 12:39.)

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1 THE VIDEOGRAPHER: We're back on the
2 video record. The time is now approximately
3 12:39 p.m.
4 BY MR. LEFKOWITZ:
5 Q. Mr. Reid, what did you do to prepare
6 for this deposition?
7 A. I met with Chuck yesterday and
8 reviewed my -- my declaration.
9 Q. You just met with him on one occasion
10 to prepare for the deposition?
11 A. Yes.
12 Q. And who was present for the meeting?
13 A. Just my -- Chuck and myself.
14 Q. Did you have any communications in
15 preparation for this deposition with Mr. Larson?
16 A. No.
17 Q. Did you ever meet Mr. Larson before
18 today?
19 A. Not until today.
20 Q. You mentioned earlier that you don't
21 record all of your phone calls, but you record many
22 of them; is that accurate?
23 A. Yes.
24 Q. How do you decide which phone calls to
25 record and which not to record?

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1 A. Um, I don't know how they do that.
2 That's at the -- the different -- it doesn't come
3 out of my office. It's the different -- different
4 offices.
5 Q. Do you know if there is a policy at
6 the company on recording of calls?
7 A. No.
8 Q. You know that there is no such policy?
9 A. There's no policy at all.
10 Q. Who is in charge of deciding which
11 calls should be recorded?
12 A. The sales manager who is doing the
13 call.
14 Q. So the sales manager can just decide
15 for each call to hit a record button or not?
16 A. Well, I think there's more to it.
17 They've complained that tech -- we don't have the
18 technology to record it. So if someone calls in,
19 that may not be recorded because they have to do --
20 do it on a different phone or computer, so --
21 Q. But if you guys are doing your
22 telemarketing calls, you --
23 A. Those aren't -- those aren't recorded,
24 no.
25 Q. Those are not recorded?

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1 A. No.
2 Q. Do you know what percentage of phone
3 calls that Alpine is involved in with consumers are
4 recorded?
5 A. Um, no, I don't know what percentage.
6 Our verifications are also recorded, I should say.
7 So I guess those -- the verifications are done at
8 my office, so those are recorded as well.
9 Q. Got it. Now, you -- you said you've
10 listened in on a variety of phone calls?
11 A. Yes.
12 Q. Have you ever heard a TPA negotiating
13 price with a consumer?
14 A. Not negotiating, no.
15 Q. Now, you do negotiate prices with
16 insurance companies, correct?
17 A. Yes.
18 Q. And do you do that personally?
19 A. Yes.
20 Q. And you've done that, as I understand,
21 obviously, with Harmon because you're part of
22 their -- well, you called it a network, but it's
23 not really a network, it's just an agreement?
24 A. I made an agreement with Harmon, yeah.
25 Q. And, then, you made an agreement with

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1 some other companies, insurance companies, whose
2 names you don't recall now, who use Safelite as
3 their third-party administrator?
4 A. Yes.
5 Q. And so when Safelite is the
6 third-party administrator for the insurance
7 companies that you have an agreement with, Safelite
8 is obligated to tell this -- the customer the price
9 that you've agreed with them?
10 A. I don't know if they -- they -- they
11 tell them that.
12 Q. You've never listened in on any calls
13 with --
14 A. I've listened in on calls, but I don't
15 recall if -- how -- the details of those calls.
16 Q. Have you ever negotiated a price with
17 a third-party administrator?
18 A. Well, we did with Harmon.
19 Q. Harmon is?
20 A. Harmon Solutions is a TPA.
21 Q. For how many different insurance
22 companies?
23 A. I don't know off the top of my head.
24 It's not as big as Safelite or Lynx.
25 Q. And Harmon is the only TPA that you've

negotiated directly with on price?
A. Yes.
MR. LEFKOWITZ: I'm finished. Do you have any questions?
MR. LLOYD: No.
MR. LARSON: I do, just a couple.
EXAMINATION
BY MR. LARSON:
Q. Mr. Reid, if you could pick up, what is this, Exhibit 48, this is the invoice that they showed you earlier from Alpine Glass?
MR. LLOYD: What's the -- what's the number?
MR. LARSON: Forty-eight.
THE WITNESS: Okay.
MR. LARSON: Let Chuck here get on board.
MR. LLOYD: Got it. It's all out of order, but I got it.
BY MR. LARSON:
Q. All right. So, Mr. Reid, you recall you were asked some questions about some language on this invoice, do you recall that?
A. Yes.
Q. And the language that appears on -- on

the second page here, the invoice says, I understand that if I have no insurance -- well, I'm having trouble reading, but basically what it says if -- if the person coming to get the work done does not have insurance, then they may be billed for the work by Alpine. Do you recall that?
A. Yes.
Q. In what situation would you bill somebody for work that you performed because they did not have insurance?
A. Someone that schedules the appointment that doesn't have insurance, a cash -- a cash job.
Q. Okay. So does this apply, then, to situations where somebody does have insurance and there's a short pay?
A. No.
MR. LARSON: Okay. That's all the questions I have.
MR. LLOYD: Nothing further.
MR. LEFKOWITZ: All right.
THE VIDEOGRAPHER: This concludes the video deposition. The time is now 12:45 p.m. Thank you.
(Whereupon, the deposition of MICHAEL REID was concluded at 12:45 p.m.)

I, MICHAEL REID, do hereby certify that I have read the foregoing deposition and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
____	____	_____
____	____	_____
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Date: MICHAEL REID

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN that I, Jean F. Soule, Registered Professional Reporter, took the foregoing deposition of MICHAEL REID;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction to the best of my ability;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were not waived by the witness and respective counsel;

That I am not related to any of the parties hereto, nor an employee of them, nor interested in the outcome of the action;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 3rd day of February, 2016.

JEAN F. SOULE, Notary Public, RPR

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Larosn Ex. 6

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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Michael Reid

January 28, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of MICHAEL REID, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Rainy Conference Room, Minneapolis, Minnesota, commencing at 8:06 a.m., Thursday, January 28, 2016.

* * *

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P R O C E E D I N G S

Whereupon, the video deposition of MICHAEL REID was commenced at 8:06 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International, Incorporated. Today's date is Thursday, January 28th in the year 2016. The time is now approximately 8:06 a.m. We are at 200 South Sixth Street, Minneapolis, Minnesota, to take the video deposition of Mr. Mike Reid in the matter of Safelite Group, Incorporated and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MR. LEFKOWITZ: Jay Lefkowitz for the Safelite defendants.

MR. LLOYD: Chuck Lloyd for Michael Reid.

MR. LARSON: Oliver Larson on behalf of the Commissioner.

MR. REIGSTAD: Christian Reigstad for the plaintiffs.

MR. SNYDER: And Richard Snyder.

THE VIDEOGRAPHER: Would the court

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reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. REID: Yes.

* * *

MICHAEL REID,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MR. LEFKOWITZ:

Q. Good morning.
A. Good morning.
Q. Can I ask you to state your name for the record, please?
A. Yeah, Michael Reid.
Q. And are you aware that we're here in connection with a case that's captioned Safelite Group, Inc. and Safelite Solutions, LLC versus Lori Swanson and Michael Rothman and that it's pending in the Federal Court here in Minnesota?
A. Yes.
Q. I'm going to refer to Safelite throughout the day, and if I just refer to

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1 Safelite, will you understand that I'm referring to
2 the plaintiffs in this case, Safelite Group and
3 Safelite Solutions, LLC?
4 A. No.
5 Q. Okay. I'm going to tell you, then,
6 that is how I'm going to refer to them. If I refer
7 to Safelite Solutions, then, I'll be referring to
8 the claims management business. Are you familiar
9 with -- that Safelite has a claims management
10 business?
11 A. Yes.
12 Q. So I want you to understand that if I
13 refer to Safelite Solutions, that's the claims
14 management business. All right?
15 A. Okay.
16 Q. And if I refer to Safelite AutoGlass,
17 I want you to understand that I'm referring to the
18 glass repair and replacement business. Okay?
19 A. Yes.
20 Q. If I refer to Safelite generally, I'm
21 just referring to the plaintiffs in this case; and
22 if you have any question and you want clarification,
23 just ask it.
24 A. Okay.
25 Q. Have you ever been deposed before?

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1 A. Yes.
2 Q. How many times?
3 A. Once.
4 Q. In what case was it?
5 A. Alpine Glass versus Farmers Insurance.
6 Q. What kind of a case was that?
7 A. That was short pay for auto glass
8 invoices.
9 Q. And it was a lawsuit or was it an
10 arbitration?
11 A. It was an arbitration.
12 Q. Okay. And you testified in a
13 deposition in that situation?
14 A. Yes, I had a deposition.
15 Q. Did you testify a second time in that
16 case?
17 A. I don't recall.
18 Q. Have you ever testified at a trial or
19 at a court hearing?
20 A. Ah, no.
21 Q. I just want to go over some ground
22 rules here so that the record will be -- will be
23 clean.
24 A. Okay.
25 Q. You've just taken an oath that

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1 requires you to tell the truth as if you were
2 testifying in court. Do you understand that?
3 A. Yes.
4 Q. And you have to give verbal answers as
5 opposed to just nodding your head so the court
6 reporter can take down your responses.
7 A. Yes.
8 Q. Do you understand that?
9 A. Yes.
10 MR. LLOYD: You also have to keep your
11 voice up so we can all hear you.
12 BY MR. LEFKOWITZ:
13 Q. Right. The court reporter will let
14 you know and the videographer will let you know if
15 your voice isn't loud enough. I can hear you, but
16 if they tell you you need to speak louder, then,
17 please speak louder.
18 A. Okay.
19 Q. And I think as a general rule it would
20 be great if you could let me finish my question
21 before you answer, I'll try to let you finish your
22 answers before I ask a follow-up question. All
23 right?
24 A. Okay.
25 Q. If you don't understand the question,

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1 just let me know and I'll try to rephrase the
2 question. All right?
3 A. All right.
4 Q. If at any point you realize that an
5 answer that you've given is incorrect or incomplete,
6 for example, I think I introduced myself and I said
7 I represent the defendants, I actually represent
8 the plaintiffs, I'm just used to representing
9 defendants, but -- so I'm correcting that. You
10 should do the same. All right?
11 A. Okay.
12 Q. And if at any point during the day you
13 want to take a break, get a drink, you want to go
14 to the bathroom, just let me know and we'll come to
15 a break as quickly as possible and we'll take a
16 break. All right?
17 A. Okay.
18 Q. Is there any reason as you sit here
19 today why you have a question about whether you can
20 give truthful and honest and accurate answers?
21 A. No.
22 Q. Okay. What is your professional
23 position today?
24 A. I'm the president of Alpine Glass.
25 Q. And what is Alpine Glass?

A. Alpine Glass, we are a retailer of auto glass in the -- throughout Minnesota.
Q. How long have you had that position?
A. Over 20 years or so.
Q. Did you found the company?
A. Yes.
Q. Do you have any other businesses or is this your full-time occupation?
A. It's my full-time occupation.
Q. And what are your responsibilities?
A. Just to oversee the business and the management crew that I have.
Q. What does Alpine Glass do, what are the functions of the business?
A. We replace windshields.
Q. Do you operate throughout the state of Minnesota?
A. Yes.
Q. Do you operate anywhere else other than Minnesota?
A. A little bit into Wisconsin.
Q. What percentage of your business is in the state of Wisconsin?
A. A large part of it.
Q. A majority?

A. Majority, yes.
Q. The most --
MR. LLOYD: I think you misunderstood what he asked. He asked about Wisconsin, not Minnesota.
THE WITNESS: Oh, I'm sorry.
MR. LEFKOWITZ: I'll get --
THE WITNESS: I'm sorry.
MR. LEFKOWITZ: -- to that. I'll -- so let's correct the record.
BY MR. LEFKOWITZ:
Q. Where is the majority of your business located?
A. Minnesota.
Q. And that would be by revenue; is that correct?
A. Yes.
Q. And would you say it's -- well, give me a percentage, just rough percentage of the business that Alpine Glass has in Minnesota as compared to outside the state?
A. Ninety-five percent or higher.
Q. Okay. And are you responsible for setting the prices of windshield replacement repairs for Alpine?

A. Yes.
Q. Are you responsible for Alpine Glass's billing and collection practices?
A. Yes.
Q. Does Alpine Glass engage in any lobbying activities?
A. Yes.
Q. And are you responsible for coordinating lobbying on behalf of Alpine Glass?
A. No. Oh, for Alpine Glass, yes.
Q. Correct.
A. Yes.
Q. Are you familiar with the Auto Glass Replacement Safety Standard or the AGRSS?
A. Yes.
Q. Can you tell me what that is?
A. It's just a safety standard that's put out for the safe install of -- of auto glass that we follow.
Q. And is Alpine Glass AGRSS registered?
A. No.
Q. And why is that?
A. We follow the standards, we're not registered.
Q. How many locations does Alpine Glass

have?
A. As far as install locations --
Q. Yes.
A. -- or offices?
Q. Well, let's start with the install. How many actual install locations does Alpine have?
A. None.
Q. Where do you do your installations?
A. It's all mobile.
Q. And how many offices do you have?
A. We have -- we have two offices.
Q. And where are they located?
A. Or three offices, I'm sorry.
Q. Where are they located?
A. Kirkland, Washington; Tukwila, Washington; and Des Moines, Iowa.
Q. But you don't repair glass in those states; is that correct?
A. No.
Q. Are you familiar with an organization called the Minnesota Glass Association?
A. Yes.
Q. Are they also known as the MGA?
A. Yes.
Q. Is Alpine Glass a member of the MGA?

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A. Yes.
Q. Have you ever served on the board of the MGA?
A. No.
Q. Have you ever served in any capacity in the leadership of the MGA?
A. No.
Q. Has Alpine Glass ever contributed money to the MGA?
A. Yes.
Q. Approximately how much money has Alpine contributed to the MGA?
A. I don't know offhand.
Q. Can you give me an estimate?
A. Um, I'm not going to guess, no. I don't know exactly how much we've donated.
Q. Okay. I'd like to make a note here that's something we'd like to ask you to follow up with and supplement. I assume that's something you do have records of contributions that the company has made to a lobbying organization?
A. Well, not a lobby. What do you mean a lobbying organization?
Q. A -- a industry association, would you have records --

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A. Yes.
Q. -- of contributions?
A. Yes.
Q. Okay. We'll request that you provide the information.
What's the Independent Glass Association?
A. Just -- just like you say, it's the Independent Glass Association.
Q. Is it the same as the MGA?
A. No.
Q. How are they different?
A. They're different, Minnesota is Minnesota, the independent is throughout the country.
Q. Is Alpine Glass a member of the IGA?
A. No.
Q. Has Alpine Glass contributed money to the IGA?
A. Not that I recall.
Q. Have you contributed money to the IGA personally?
A. No.
Q. Have you ever served on the board of the IGA?

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A. No.
Q. Okay. Are you familiar with a company called Safelite?
A. Yes.
Q. And how are you familiar with them?
A. Just the course of the business I know about them.
Q. Do you view Safelite as a competitor to Alpine Glass?
A. No.
Q. What is your understanding of Safelite's business?
A. My understanding of Safelite is that it has multiple arms of the business, from wholesale, retail, and manufacturing.
Q. Do you know if Safelite repairs glass, automobile glass?
A. Yes.
Q. And is that the same business that Alpine is in?
A. Yes.
Q. But you don't view them as a competitor?
A. Not really.
Q. And why is that?

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A. We just -- we don't run into -- we don't run into them that often, as far as -- as far as our business model.
Q. Do you have a view as to whether or not Safelite's prices for repairing glass are lower than Alpine's?
A. I don't know about Safelite's pricing.
Q. You don't know anything about Safelite's pricing?
A. I -- I don't, no, no, I don't know.
Q. What's your impression of Safelite, do you have a favorable impression of Safelite?
A. I really don't have a comment with Safelite. Like I say, they're -- they're not a competitor of ours.
Q. Do you know what Safelite Solutions is?
A. Yes.
Q. Can you describe what Safelite Solutions is?
A. My understanding of Safelite Solutions is they're the -- they process our invoices and make payments to us.
Q. Do you have a favorable impression of Safelite Solutions?

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A. Ah, no.
Q. And why is that?
A. Just the problems that I've had with -- with Safelite Solutions.
Q. What kind of problems have you had with them?
A. Steering, late -- late payments.
Q. Have you ever had any problems with work that's been performed by Safelite shops or shops recommended by Safelite?
A. Can you -- can you repeat the question?
Q. Have you had any -- have you ever had any concerns about work that's been performed by Safelite shops or shops recommended by Safelite?
A. Yes.
Q. Can you tell me about those situations?
A. I've heard it from my installers of the -- the windshields that we've done that Safelite has previously replaced.
Q. Do you have any concrete examples that you can refer to now?
A. No.
Q. You're not aware of any particular examples?
A. No.

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Q. Are you aware that Safelite also owns glass shops in Minnesota?
A. Yes.
Q. And that those glass shops perform the same function that your glass shops perform?
A. Yes.
Q. But you maintain that Safelite is not a competitor --
A. In my --
Q. -- to Alpine?
A. In my eyes, no.
Q. You're in the customer service business; is that right?
A. No.
Q. You're not?
A. No.
Q. You don't try to provide customers with good service?
A. Yes.
Q. But you don't consider that customer service?
A. I do consider that customer service. So, yeah, I guess it's a part of my business. I consider it auto glass, I'm in the auto glass business, but, yeah.

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Q. Do you think lower prices are a good thing for consumers?
A. I think fair prices are a good thing for consumers.
Q. Do you think consumers prefer lower prices?
A. Define consumers.
Q. Consumers who have a need for auto glass repair?
A. Our -- our consumers, our customers, the majority of them have insurance. So their -- their payment to us is the assignment of proceeds.
Q. So you don't think they have a concern one way or the other about the price?
A. No.
Q. Who would be concerned about the price in that situation?
A. I would think the insurance company.
Q. You said you had some concerns with Safelite Solutions' business practices before; is that correct?
A. Yes.
Q. And which business practices in particular?
A. Steering and late payments.

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Q. Are you aware of any situations where Safelite Solutions recommended a shop that did not follow adequate safety standards?
A. No.
Q. Are you aware of any instances where Safelite Solutions recommended a shop that did not perform quality work?
A. No.
Q. Do you have any reason to question Safelite AutoGlass's qualification to perform auto glass repair?
A. I just know what my installers have told me.
Q. But you --
A. About the quality of work.
Q. But you have no firsthand knowledge of that; is that correct?
A. Correct.
Q. Are you aware of any instances where Safelite AutoGlass did not follow adequate safety standards?
A. No.
Q. Are you aware of any instances where Safelite Solutions didn't perform quality work?
A. Safelite AutoGlass?

Q. Safelite AutoGlass? I'm sorry.
A. No.
Q. Are you aware that Safelite's headquarters is outside of the state of Minnesota?
A. Yes.
Q. Are you aware that Safelite is the largest provider of vehicle glass repair services in Minnesota with its headquarters out of state?
A. Yes.
Q. Do you know that Safelite operates nationwide?
A. Yes.
Q. Are you aware that Safelite is, in fact, the country's largest nationwide auto glass repair business?
A. Yes.
Q. Do you think Safelite is taking business from Alpine Glass?
A. Yes.
Q. Why do you think Safelite is able to take business from Alpine Glass?
A. When the insured calls in the claim, Safelite Solutions makes statements about our company, and ultimately insureds have gone to -- to another shop versus Alpine.

Q. What kind of statements are you aware of from firsthand knowledge that Safelite has made about your company?
A. That our price is higher than the competitive market; and the insured will be responsible, sometimes they say may be responsible, for the difference; and that Al -- they cannot guarantee Alpine Glass's warranty; that Alpine Glass has a history of charging more than the competitive market.
Q. Didn't you say that consumers don't care about the price that they're charged because they don't pay the price?
A. Correct.
Q. So why would it matter if someone said that the price that you charge was more?
MR. LLOYD: Objection, no foundation. You can answer if you know.
THE WITNESS: Because they're told they are going to be responsible for any difference in price.
BY MR. LEFKOWITZ:
Q. And you've heard Safelite say this personally?
A. Yes.

Q. On how many instances?
A. I can't say how many instances.
Q. Do you know if, in fact, Safelite AutoGlass generally charges lower prices for its services than Alpine Glass?
MR. LLOYD: Objection, asked and answered. You can answer it again.
THE WITNESS: I don't -- I don't know what Safelite -- Safelite charges offhand.
BY MR. LEFKOWITZ:
Q. Now, you said that Safelite takes business away from Alpine Glass; is that correct?
A. Safelite Solutions.
Q. Safelite Solutions takes business away from Alpine Glass?
A. Yes.
Q. If Safelite Solutions didn't do business anymore in Minnesota, do you think that that would be good for Minnesota consumers?
A. If Safelite Solutions?
Q. Solutions didn't do business in Minnesota?
A. I don't know how it would affect consumers in Minnesota.
Q. But it would be better for Alpine

Glass; is that correct?
A. We wouldn't lose business, yes.
Q. Yes, it would be better for Alpine Glass, is that your answer?
A. Yes.
Q. Have you ever had direct interaction with any Safelite representatives?
A. Yes.
Q. Can you tell me about those interactions?
A. Well, they were -- they were over the phone, so I've -- I've talked to many representatives of Safelite.
Q. And in what capacity have you had these conversations?
A. I've talked about late payments, I've inquired about rejected invoices, I've talked about steering, and, yeah, there's constant interaction with Safelite representatives.
Q. When you say "there's constant," are you referring to your personal engagement with Safelite representatives or people who work for you?
A. Both.
Q. How many times a week would you say you personally talk to representatives of Safelite?

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A. I would say not every -- not every week. It depends on the situation.
Q. Do you know the names of any of the Safelite representatives you've spoken to?
A. Yes.
Q. Can you tell us their names?
A. I've talked to Andy Kipker, I've talked to JT Tumblin, I've talked to Tom Reid, I've talked to -- and there's a couple other people that I've talked to, I don't recall their names offhand.
Q. Okay. Let's start with Mr. Kipker. When did you speak with Mr. Kipker?
A. I've spoken to Mr. Kipker many times.
Q. When was the most recent time you've spoken to him?
A. Over a year ago.
Q. And what was the subject of the conversation?
A. Past due invoices, steering.
Q. And what did you say to him in that conversation?
A. Um, I don't recall the exact -- exactly what I said. It was those topics, though.
Q. What about Mr. JT -- what was his last name?

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A. Tumblin.
Q. Tumblin, when was the last time you spoke to him?
A. Oh, that was at least two years ago or more. He's no longer with the company from what I found out.
Q. What about Tom Reid, when was the last time you spoke with him?
A. I don't recall. It was -- it was the last arbitration that we were -- he was at.
Q. So the last time you spoke to Mr. Reid was at an arbitration?
A. No. It was just after the arbitration.
Q. Just after the arbitration?
A. Yes, over the phone.
Q. Are we talking about in the last several weeks?
A. No, a year maybe.
Q. A year?
A. A year, two years.
Q. Can you remember a conversation you've had within the last year with a Safelite representative?
A. No, I don't -- I have had conversations, but not with those people.

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Q. Who is responsible for handling calls with potential customers and third-party administrators at Alpine Glass?
A. I have a couple different people. So Mike Pruter is one, Laurie Britt.
Q. Does Alpine Glass have a sales manager, a CSR or sales manager who handles these calls?
A. Those two people that I mentioned.
Q. Roughly how many calls does Alpine Glass have each week with potential customers and third-party administrators on the phone?
A. I have no idea.
Q. How often are you on those phone calls as well?
A. Not often.
Q. Does Alpine Glass record those telephone calls?
A. Yes. I should say not all of them, but, yes.
Q. Have you ever personally participated in a call between yourself, a Safelite employee, and a potential customer?
A. Can you repeat that again?
Q. Have you personally participated in a

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call with a Safelite employee and a potential customer?
A. Yes.
Q. How many such calls do you think you've had that fit into that category?
A. Um, I don't know.
Q. Are we talking about a handful or are we talking about --
A. Yeah, a handful.
Q. Have you listened to recordings of these telephone calls?
A. Yes.
Q. How many?
A. Um, I can't say how many.
Q. Who has selected the recordings that you've listened to?
A. Myself, Mike Pruter, Laurie Britt.
Q. When you've been involved in selecting them, how have you selected them?
A. I've selected them when I see a customer has canceled with our customer -- or our company.
Q. Have any customers complained to you personally about Safelite's business practices?
A. Yes.

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1 Q. Which customers?
2 A. I don't know, I don't know offhand.
3 Q. When was the most recent such occasion?
4 A. Um, I don't recall, I don't recall
5 the -- the most recent.
6 Q. Can't remember the name of the
7 customer or the date of when the customer made this
8 complaint?
9 A. No.
10 Q. Did you ever direct a customer to file
11 a complaint with the Department of Commerce?
12 A. No.
13 Q. Have any glass shops ever complained
14 to you about Safelite's business practices?
15 A. Yes.
16 Q. Which glass shops?
17 A. I can't think of all the names, but --
18 but some of them have, so --
19 Q. Can you think of any of the names of
20 the companies that have complained to you personally
21 about Safelite?
22 A. Yes.
23 Q. Which ones?
24 A. Rapid Glass, Star Windshield.
25 Q. Do you remember when those complaints

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1 were made to you?
2 A. No, just throughout time.
3 Q. What was the nature of those
4 complaints?
5 A. Same as my -- my experiences, steering,
6 late payments.
7 Q. Did you ever direct another glass shop
8 to file a complaint with the Department of Commerce?
9 A. No.
10 Q. Have you ever interacted with anyone
11 at the Minnesota Department of Commerce?
12 A. Yes.
13 Q. If I refer to the DOC, will you
14 understand that I'm referring to the Department of
15 Commerce?
16 A. Yes.
17 Q. When did you first come into contact
18 with the -- the DOC?
19 A. Um, I've filed complaints for quite --
20 quite a long time, so through -- throughout our
21 years doing business here in Minnesota.
22 Q. Do you remember when you filed the
23 first complaint?
24 A. No.
25 Q. Are we talking many years ago?

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1 A. Yes.
2 Q. And what was the nature of the
3 complaint?
4 A. Steer -- steering and -- I don't
5 know -- I don't know exactly what it was. I'm not
6 going to guess.
7 Q. Do you know how many times that you've
8 interacted with someone at the Department of
9 Commerce?
10 A. No.
11 Q. Do you have a point of contact at the
12 DOC?
13 A. I have a couple -- a couple people
14 I've been in contact with.
15 Q. What are their names?
16 A. Marty Fleischhacker, TJ Patton, that's
17 it.
18 Q. Anyone else?
19 A. No.
20 Q. When did you first meet TJ Patton?
21 A. It was at an arbitration. I don't
22 know when -- when that was.
23 Q. Was he a customer at an arbitration?
24 A. No.
25 Q. What was his role at the arbitration?

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1 A. He was just watching the arbitration.
2 Q. Were these arbitrations public?
3 A. I have no idea. I don't know the
4 rules of arbitration.
5 Q. Have you ever been involved in an
6 arbitration?
7 A. Yes.
8 Q. But you haven't familiarized yourself
9 with the rules?
10 A. I don't know the -- the exact rules of
11 it, no.
12 Q. How often would you say you've spoken
13 to Mr. Patton?
14 A. I can't guess as to a number.
15 Q. When have you spoken to him most
16 recently?
17 A. Within the last year.
18 Q. What did you speak about when you
19 spoke to him most recently?
20 A. One of the ongoing cases.
21 Q. Meaning an arbitration?
22 A. No, a complaint.
23 Q. A complaint that Alpine filed?
24 A. Yes.
25 Q. Do you remember what the complaint was

about?
A. It was steering and past due invoices.
Q. Do you have more particulars, do you remember who it involved, what -- what glass shop, what customer, do you have any details about that interaction with Mr. Patton?
A. The last interaction was in regards to USAA insurance.
Q. And did it involve a particular customer?
A. Um, I don't recall the -- the specifics of the conversation.
Q. You mentioned a Mr. Fleischhacker?
A. Yes.
Q. How did you first meet him?
A. Meet him personally or over -- over the phone or how?
Q. Let's start with over the phone. Did you first meet him by phone or --
A. Yes.
Q. -- in person?
A. Yes, over the phone.
Q. And how did that come about?
A. It came about the -- me filing a complaint with the Department of Commerce.

Q. And then he called you or you called him?
A. I called him.
Q. And how come you chose him to call?
A. Because I found out through the -- the people that answer the phone that he was in charge of enforcement for insurance matters.
Q. So the people at the Department of Commerce suggested that you speak with Mr. Fleischhacker?
A. Yes.
Q. And when was this?
A. I don't know the exact date.
Q. Do you know what year it was?
A. No.
Q. Do you know if it was within the last two years?
A. It was -- it was two, three years ago. I can't -- I can't say if it was two years or three years.
Q. Did you speak with him at that time about Safelite?
A. Yes.
Q. And what did you tell him on that first phone call about Safelite?

A. Well, we had filed a complaint against the insurance company, and Safelite Solutions was the TPA and -- with regard to our complaint of steering and past due invoices.
Q. And why did you want to alert Mr. Fleischhacker about this?
A. Because I felt it was -- it was hurting our business, and it was not right what Safelite Solutions was -- was doing.
Q. What did you want Mr. Fleischhacker to do?
A. I wanted him to investigate the -- the complaint with the insurance company and my allegations.
Q. And if he were to find your allegations credible, what did you want him to do about it?
A. I wanted him to enforce what the -- what the law states on the Unfair Claims Practice Act.
Q. What is your understanding of what the law requires?
A. My understanding is that the insured has the right to use whoever they want as their chosen vendor and that the insurance company cannot

dissuade them in any way of -- of using the -- their shop of choice.
Q. How many times would you say you were in contact with the Department of Commerce after that initial call with Mr. Fleischhacker?
A. I don't know how many times.
Q. More than a dozen, do you think?
A. Yes.
Q. Did Mr. Fleischhacker ever contact you or did you always initiate contact with him?
A. No. They've -- they've contacted me as well.
Q. Did you ever meet with anyone at the Department of Commerce in person?
A. Yes.
Q. How many times?
A. Um, just once at the -- at the Department of Commerce and, then, at the arbitration as well.
Q. So was that twice or is that once?
A. Um, maybe three times.
Q. So you met with people at the Department of Commerce three different occasions?
A. Yes.
Q. And once you said was at an

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1 arbitration, and once was in a meeting in their
2 office?
3 A. Yes.
4 Q. And when would the third be?
5 A. Another arbitration.
6 Q. Two arbitrations?
7 A. Yes.
8 Q. And in the meeting in their office,
9 when do you think that took place?
10 A. I don't know exactly when it was.
11 Q. Are we in that two-year time frame,
12 you think?
13 A. Two-, three-year time frame, yes.
14 Q. Two, three years ago?
15 A. Yes.
16 Q. And who was at that meeting?
17 A. Myself, my attorney, and Marty
18 Fleischhacker.
19 Q. And by your attorney, do you mean
20 Mister --
21 A. Mr. Lloyd.
22 Q. Lloyd?
23 A. Yes.
24 Q. Are you aware that in 2014 and 2015
25 the DOC opened investigations into Safelite

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1 Solutions and some insurance companies?
2 A. Yes.
3 Q. Do you know which insurance companies?
4 A. I just know the ones that they
5 contacted me about, Triple A insurance, USAA.
6 Q. What about American Family?
7 A. Oh, and American Family, yes.
8 Q. And the insurance companies that the
9 DOC was investigating used Safelite Solutions as
10 their claims administrator; is that right?
11 A. Yes.
12 Q. Were you involved in the DOC's
13 investigation of Safelite?
14 A. Ah, no, I don't -- I don't believe so.
15 I've provided information. I don't know if it, you
16 know, was for the insurance -- the insurance
17 complaints or -- or what it was.
18 Q. Did you correspond regularly with the
19 DOC concerning its investigations?
20 A. Yes.
21 Q. Did you correspond with anyone else
22 regarding the DOC's investigations?
23 A. Yes.
24 Q. With whom?
25 A. Just members of the MGA, Minnesota

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1 Glass Association.
2 Q. In other words, other glass shops?
3 A. Yes.
4 Q. Which ones?
5 A. Rapid Glass, in particular, and -- and
6 I don't -- I don't know what other shops, but Mike
7 Schmaltz, who is not affiliated with a shop, he was
8 the president of the MGA.
9 Q. Did you provide evidence to the DOC
10 for its investigations?
11 A. Yes.
12 Q. What was the evidence that you
13 provided?
14 A. Call recordings of steering
15 allegations.
16 Q. Call recordings just of Alpine Glass
17 calls?
18 A. Yes.
19 Q. How many such recordings?
20 A. I have no idea.
21 Q. Do you have a record anywhere of what
22 you provided to the government in connection with
23 this investigation?
24 A. I believe -- yeah, I believe we
25 provided it in -- with -- with this deposition,

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1 so --
2 Q. But you don't have any recollection of
3 how many --
4 A. I don't --
5 Q. -- such calls?
6 A. I have no idea.
7 Q. Other than recordings, did you provide
8 any other materials to the DOC for its investigation?
9 A. Um, there might have been other
10 materials, yes.
11 Q. What other kinds of materials?
12 A. I don't recall exactly what they were.
13 I would imagine there's past due invoices that were
14 in there, examples of those.
15 Q. Did you ever ask a DOC employee to
16 attend an arbitration?
17 A. Yes.
18 Q. Who was that?
19 A. It was either Marty Fleischhacker or
20 TJ, I can't remember.
21 Q. And do you know if they did --
22 A. Ah.
23 Q. -- attend?
24 A. I believe they did, yeah.
25 Q. Did the Department of Commerce ever

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1 provide you with information concerning the status
2 of its investigations?
3 A. Yes.
4 Q. Did they ever provide you with any
5 nonpublic information?
6 MR. LLOYD: I'm going to object to
7 foundation. You can answer if you know.
8 THE WITNESS: I -- I -- I don't -- I
9 have no idea what is -- what -- Can you repeat the
10 question?
11 BY MR. LEFKOWITZ:
12 Q. Yeah. You said that they provided you
13 with information about the status of the
14 investigation --
15 A. Oh, public information.
16 Q. -- and I wanted to know if any of that
17 was nonpublic information?
18 A. I have no idea what's nonpublic and
19 public with regard to that.
20 Q. Did you play a major role in the DOC's
21 investigation, in your view?
22 A. I don't know if I played a major role,
23 there were other people involved as well.
24 Q. Do you know whether the DOC relied on
25 any of the information that you provided?

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1 A. They asked for information, we
2 provided it.
3 Q. As you sit here today, do you believe
4 that you were a driving force in the DOC's
5 investigation?
6 A. I believe they followed up on my -- on
7 my complaints. I don't know if I'm a driving force.
8 Q. Do you think the DOC would have taken
9 the action that it did without your help?
10 A. Possibly.
11 Q. Had they taken such action in all the
12 years that you were writing complaints prior to
13 your direct engagement with them?
14 A. No.
15 MR. LEFKOWITZ: Excuse me. I'm going
16 to take a short bathroom break. We can go off the
17 record.
18 THE VIDEOGRAPHER: Going off the video
19 record. The time is now approximately 8:51 a.m.
20 (Break 8:51 to 9:01.)
21 THE VIDEOGRAPHER: We're back on video
22 record. The time is now approximately 9:01 a.m.
23 BY MR. LEFKOWITZ:
24 Q. Mr. Reid, you had said a few minutes
25 ago that you'd been sending complaints for many

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1 years to the Department of Commerce prior to your
2 engaging directly with them through Mr. Fleischhacker
3 approximately two, two plus years ago; is that right?
4 A. Yes.
5 Q. What was the nature of the complaints
6 that you had been sending over the years?
7 A. The same -- same things, steering and
8 payments.
9 Q. So the same issues that you engaged
10 with them on more recently?
11 A. Yes.
12 Q. Okay. Did you ever tell the DOC that
13 Safelite was harming the businesses of Minnesota
14 glass shops?
15 A. I don't recall me saying something
16 that -- saying that.
17 Q. Did you ever tell the DOC that
18 Safelite was driving down the price of auto glass
19 repair?
20 A. No. I don't recall saying that.
21 Q. Did you ever tell them that you had
22 evidence that Safelite was violating Minnesota law?
23 A. I don't recall saying that.
24 MR. LEFKOWITZ: All right. What
25 exhibit is this?

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1 MR. REIGSTAD: It's 44.
2 BY MR. LEFKOWITZ:
3 Q. All right. I'm going to show you a
4 document, it's a couple of e-mails, and take your
5 time to --
6 MR. LLOYD: Can you hand it to her
7 first so she can get a sticker on it?
8 (Whereupon, Deposition Exhibit No. 44
9 was marked for identification, and a copy is
10 attached and hereby made a part of this deposition.)
11 BY MR. LEFKOWITZ:
12 Q. Let me know when you've had a chance
13 to read it?
14 A. Do you want me to read the whole
15 thing?
16 Q. No, yeah -- well, I'd like to call
17 your attention to the bottom of the first page, the
18 one that ends with 187 at the bottom on the -- the
19 Bates number. When I refer to a Bates number, you
20 see --
21 MR. LARSON: I don't think we've
22 got --
23 THE WITNESS: I don't have --
24 MR. LLOYD: We don't have any Bates
25 numbers.

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1 THE WITNESS: -- any Bates numbers.
2 MR. LEFKOWITZ: Oh, you don't have a
3 Bates number here.
4 MR. REIGSTAD: These aren't Bates
5 numbered. That's for internal reference.
6 MR. LEFKOWITZ: Oh, okay.
7 BY MR. LEFKOWITZ:
8 Q. So if you just look at the page here,
9 and I'll refer to the top of the page has a sent
10 date of October 22 at 7:28:08 p.m.?
11 A. Yes.
12 Q. So if you look at the e-mail at the
13 bottom, it's an e-mail from Michael Reid to Martin
14 Fleischhacker on October 3rd. Do you see that?
15 A. Yes.
16 Q. And if you read that e-mail that you
17 sent, does this refresh your recollection --
18 A. I'm just -- I'm just reading it now.
19 Q. Okay.
20 A. I was looking at the previous e-mail
21 for context. Okay.
22 Q. Does this refresh your recollection
23 that you told Mr. Fleischhacker that Safelite was
24 harming the businesses of Minnesota glass shops?
25 A. Well, I don't think it says that it's

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1 harming the Minnesota glass shops.
2 Q. It doesn't harm the Minnesota glass
3 shops when, in your view, Safelite attempts to
4 steer every job they can regardless of the insurer,
5 that's what you said?
6 A. Yes.
7 Q. And you don't think that if that
8 allegation is true that that harms Minnesota glass
9 shops?
10 A. It does harm Minnesota glass shops,
11 yes.
12 Q. Okay, thank you. All right. I want
13 to move to another document.
14 MR. LLOYD: We've had witnesses walk
15 off with them. So I want you to put them over on
16 this side so that doesn't happen this time.
17 THE COURT REPORTER: In their pockets.
18 Forty-five.
19 (Whereupon, Deposition Exhibit No. 45
20 was marked for identification, and a copy is
21 attached and hereby made a part of this deposition.)
22 BY MR. LEFKOWITZ:
23 Q. Why don't you take a look at both
24 sides of that document, because I want to ask you a
25 question about that?

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1 A. Okay.
2 Q. Does this reflect your -- or refresh
3 your recollection that you told Mr. Fleischhacker
4 that you had evidence that Safelite was violating
5 Minnesota law?
6 A. Yes.
7 Q. So you agree that you did tell him
8 that?
9 A. Yes.
10 Q. How would you describe your
11 relationship with the Department of Commerce
12 after -- over the last couple years, once you began
13 to talk to them and meet with them in person?
14 A. Um, what do you mean re -- how would I
15 describe my relationship with them?
16 Q. Well, were they responsive to your
17 concerns?
18 A. They -- they asked questions, and I
19 feel, yeah, they were responsive for my -- my
20 concerns, yes.
21 Q. And were you satisfied with their
22 actions?
23 A. I don't know if I'm satisfied with the
24 actions. It's -- you know, it's -- they made a
25 decision, and I focus on my business, so --

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1 Q. Well --
2 A. So I think -- I think it was a good
3 thing, yes.
4 Q. And as compared to the frustration you
5 felt during the many years that you were writing --
6 A. Right.
7 Q. -- letters and being ignored; is that
8 right?
9 A. Right, right. So, yes, it was -- it
10 was good.
11 Q. Did you want the Department of
12 Commerce's investigation into Safelite to proceed
13 even faster than it did over the last couple years?
14 A. My -- my complaints were against the
15 insurance companies, not against Safelite. So
16 Safelite happens to be the TPA for the insurance
17 companies that I'm having trouble with.
18 Q. So you didn't have any beef with
19 Safelite Solutions?
20 A. I had a beef with Safelite Solutions,
21 but my complaints were with the insurance company
22 who hired Safelite Solutions.
23 Q. You know, I -- I'm thinking a little
24 bit about the whole Safelite Solutions issue, and
25 you and I talked earlier this morning about prices,

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1 and I asked you whether or not you thought
2 consumers preferred lower prices. Am I correct
3 that you said you didn't think consumers cared?
4 A. Well, I think we have a difference of
5 opinion on who the consumer is.
6 Q. Can you elaborate, please?
7 A. When I -- when we replace a
8 windshield, we send a bill to the insurance
9 company, not the customer who owns the vehicle.
10 Q. So, in other words, you think --
11 A. And I think you're --
12 Q. Go ahead.
13 A. Oh.
14 Q. I don't want to interrupt.
15 A. Well, I'm not -- go ahead.
16 Q. Let me ask -- let me clarify, then.
17 So, in your view, the consumers for whom price
18 would be a factor are the insurance companies, not
19 the actual owners of the automobiles?
20 A. Correct.
21 Q. Do you know if the owners of the
22 automobiles have to pay proceeds or pay premiums to
23 the insurance companies?
24 A. Well, all -- all insureds have to pay
25 premiums, yes.

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1 Q. And is it your view that the premiums
2 are the same irrespective of what the insurance
3 company has to pay out on policies?
4 A. The payout on glass or payout on an --
5 Q. On anything?
6 A. I know for -- I know what I've heard
7 for glass.
8 Q. And what have you heard for glass?
9 A. I've heard for glass that it has no --
10 no effect on premiums.
11 Q. And have you been told that by
12 insurance companies?
13 A. I've been told that during an
14 arbitration proceeding.
15 Q. By whom?
16 A. By an actuary for an insurance
17 company.
18 Q. By whom?
19 A. I don't know the specifics.
20 Q. Do you know which insurance company?
21 A. No.
22 Q. Do you remember the date of this
23 conversation?
24 A. No.
25 Q. Are you familiar with what it means to

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1 be a glass shop in a preferred network of shops?
2 A. Do I know specifically? No.
3 Q. Do you have an understanding, have you
4 ever heard -- let me just ask this. Have you ever
5 heard the term network of -- network of shops?
6 A. Yes.
7 Q. And what does that term mean to you?
8 A. That term, to me, means a -- a network
9 of shops that accept the insurance company's pricing.
10 Q. So, in other words, to be a member of
11 a preferred network a company or auto repair shop
12 has to accept the pricing of the insurance company?
13 A. Yes.
14 Q. Is Alpine Glass a member of a
15 preferred network?
16 A. Ah, no.
17 Q. And why is that?
18 A. Because I haven't sought out to become
19 a member of a network, and I don't agree with the
20 pricing that has been proposed to me.
21 Q. When you say you don't agree with the
22 pricing, is that because the pricing is not high
23 enough to your liking?
24 A. It's not fair and competitive.
25 Q. When you say "fair and competitive,"

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1 can you describe what you mean by that?
2 A. Fair and competitive in -- in my eyes
3 as a business owner in the marketplace.
4 Q. So, in other words, the prices are not
5 high enough for you to consider them competitive?
6 A. Correct.
7 Q. So, in your view, it's more profitable
8 for Alpine Glass to be a non-network shop because
9 you're not limited by these prices established by
10 the network?
11 A. I don't know if it's prof -- more
12 profitable. It's -- I don't feel it's fair and
13 competitive.
14 Q. Well, if you thought it were more
15 profitable to be in the network, wouldn't you
16 choose to be in the network?
17 A. No, not necessarily.
18 Q. You're not trying to maximize profits
19 for your business?
20 A. I'm trying -- I'm trying to charge a
21 fair and reasonable price, so --
22 Q. When you say you want to charge a fair
23 and reasonable price, do you think a lower price
24 would be more fair and reasonable for the consumers?
25 A. For the insurance company?

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1 Q. For the -- for the insurance company,
2 yes.
3 A. I have no idea.
4 Q. And what about for the owners of the
5 vehicles that you repair?
6 A. The owners of the vehicle do not pay
7 us -- they pay us in the form of an assignment of
8 proceeds.
9 Q. Do you know how a glass shop joins a
10 network?
11 A. No.
12 Q. Have you ever tried to become a member
13 of a network?
14 A. Ah, no. I take that back. We have --
15 we have the Harmon network. They -- we made an
16 agreement with them. So we were -- we were -- I
17 guess had a pricing arrangement with Harmon
18 Solutions, which is a network.
19 Q. And --
20 A. I don't -- necessarily we weren't a
21 member of their network.
22 Q. Who is Harmon?
23 A. Harmon Solutions is another TPA.
24 Q. And did they have contracts with
25 insurance companies?

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1 A. Yes.
2 Q. Insurance companies other than the
3 ones that Safelite Solutions has contracts with?
4 A. Yes.
5 Q. And are you still in the Harmon
6 network?
7 A. Like I say, we're not in a network, we
8 have a pricing arrangement.
9 Q. And how does that pricing arrangement
10 work?
11 A. We have an agreed-upon price between
12 the both of us. We bill out what we -- what we
13 agreed for on the price, and that's what we get
14 paid.
15 Q. Are there any differences, in your
16 view, between non-network glass shops and network
17 glass shops?
18 A. In which way?
19 Q. In any way, other than -- I guess
20 other than the fact that the network shops have
21 pricing agreements with insurance companies, in
22 your view, and the non-network shops don't?
23 A. Yeah. I don't know any other
24 differences.
25 Q. You said you have an agreement with

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1 Harmon to provide services to their insureds at a
2 agreed-upon price; is that correct?
3 A. That's correct.
4 Q. Do you charge higher prices anywhere
5 in the state to non-Harmon clients?
6 MR. LLOYD: I'm going to object. We
7 have an objection standing with respect to pricing,
8 and it's the subject of a protective order motion
9 in the administrative proceeding, and it's
10 completely irrelevant in the federal proceeding.
11 So I'm going to instruct you not to answer that
12 question.
13 BY MR. LEFKOWITZ:
14 Q. Are you going to follow your
15 attorney's instruction?
16 A. Yes.
17 MR. LEFKOWITZ: Okay. We'll reserve
18 the right to reopen the deposition if the Court
19 denies the motion to quash.
20 BY MR. LEFKOWITZ:
21 Q. Do you know if there are any
22 differences in the liability insurance maintained
23 by glass shops that are in networks and those that
24 are not in networks?
25 A. I have no idea what the liability

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1 insurance of other shops are.
2 Q. Does Alpine contractually agree with
3 any insurance companies that it will maintain
4 adequate liability insurance?
5 A. Not to my knowledge, I don't know.
6 Q. Not with Harmon?
7 A. I don't know. I don't know the
8 contract offhand.
9 Q. But you're responsible for that
10 contract --
11 A. Correct.
12 Q. -- is that correct?
13 Do you know if there are any
14 differences in whether insurance companies provide
15 a guaranty of the work performed by network shops
16 and non-network shops?
17 A. Can you repeat the question again,
18 please?
19 Q. Yes. Do you know if there are any
20 differences in network shops and non-network shops
21 with respect to the guarantees that they provide
22 for the work they perform?
23 A. I don't know.
24 Q. In your personal view as the owner of
25 Alpine Glass, what are the benefits to remaining

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1 outside of networks other than the Harmon network?
2 A. I -- I don't know of any benefits.
3 Q. If you were in a broader network, do
4 you think you would have access to a greater volume
5 of customers?
6 A. I have no idea.
7 Q. Other than with your contract with
8 Harmon where you've agreed to a set price, you have
9 no other limitations on the price that you can set;
10 is that correct?
11 A. I wouldn't -- I wouldn't say that. I
12 have to charge a fair and reasonable rate in order
13 to be paid a fair and reasonable rate.
14 Q. Can you explain that to me? You're --
15 you're -- because my understanding is that other
16 than with Harmon, where you have agreed
17 contractually to charge Harmon clients a set price,
18 you have no other price limitations; isn't that
19 correct?
20 A. Well, I have other pricing agreements,
21 yes.
22 Q. With whom do you have pricing
23 agreements?
24 A. Insurance companies.
25 Q. Other than Harmon?

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1 A. Yes.
2 Q. I'm not going to ask in light of the
3 objection about the pricing, but I'd like to ask,
4 which other insurance companies do you have pricing
5 agreements with?
6 A. I'm not -- I can't provide you with a
7 list of that.
8 Q. Because you don't know?
9 A. I don't know off the top of my head.
10 I'd have to look at who we have agreements with.
11 Q. Do you have agreements with every
12 insurance company?
13 A. No.
14 Q. With respect to the companies, the
15 insurance companies that you don't have pricing
16 agreements, are there any other limiting factors on
17 what you can charge?
18 A. No.
19 Q. Have you ever heard the term balance
20 bill?
21 A. Yes.
22 Q. What is your understanding of the
23 meaning of balance bill?
24 A. My understanding is that it is the
25 difference of what the insurance company pays to

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1 what we -- to what we bill, and if there -- if it
2 is -- the difference is shorted, the balance bill
3 is put onto the owner of the vehicle, the
4 policyholder.
5 Q. And I understand that as a matter of
6 practice you've maintained that Alpine does not do
7 that; is that correct?
8 A. Correct.
9 Q. Does Minnesota law prevent companies
10 from doing that?
11 MR. LLOYD: Objection, no foundation.
12 You can answer if you know.
13 THE WITNESS: I don't know.
14 BY MR. LEFKOWITZ:
15 Q. Are you aware of any prohibition on
16 balance billing?
17 A. I -- I don't -- I'm not aware of any,
18 no.
19 Q. Do you have any reason to believe that
20 it's unlawful for a company to balance bill?
21 A. No.
22 Q. Are you aware that some glass repair
23 shops reserve the right contractually to balance
24 bill?
25 A. I'm not aware of that.

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1 Q. If an insurance company doesn't pay
2 Alpine Glass in full for a job, could you seek the
3 balance from the customer if you chose to?
4 A. I've never thought of it.
5 Q. I'm asking you now to think about it.
6 Is there anything that you're aware of that would
7 prohibit you from doing that?
8 A. Well, we have an assignment. So
9 it's -- it's the insurance company's obligation,
10 not the policyholder.
11 Q. What if someone didn't have insurance?
12 A. What -- what do you mean if someone --
13 Q. If a customer didn't have insurance
14 and asked you to repair his window?
15 A. What are you asking?
16 Q. Could you send the bill to that person?
17 A. Sure.
18 Q. You could. What if the person didn't
19 have sufficient insurance, could you balance bill
20 if you wanted to?
21 A. I'm -- I don't -- I don't understand.
22 What do you mean, if they didn't --
23 Q. If they had --
24 A. If they didn't have insur --
25 Q. If someone didn't have sufficient

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1 insurance and the insurance company didn't pay you
2 the cost of the repair, could you if you wanted to
3 seek to get payment from the customer?
4 MR. LLOYD: I'm going to object. That
5 calls for a legal conclusion. You can go ahead and
6 answer to the best of your understanding.
7 THE WITNESS: Yeah. I don't know, I
8 don't know.
9 BY MR. LEFKOWITZ:
10 Q. You don't know whether you could if
11 you wanted to?
12 A. No, I don't know. We never have.
13 Q. Do you know how many -- approximately
14 how many glass shops there are in the state of
15 Minnesota?
16 A. No.
17 Q. Are you familiar with the billing
18 practices of all of the non-Alpine shops in the
19 state of Minnesota?
20 A. No.
21 Q. In what context is it your
22 understanding that Safelite Solutions talks to
23 customers about balance billing?
24 A. I've heard them -- I've heard them on
25 the calls.

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1 Q. Calls that you've been -- you've
2 participated on?
3 A. Calls that I've participated on and
4 calls that I've listened to.
5 Q. And on such calls, there's a member of
6 the Alpine company that's also participating in the
7 call?
8 A. Yes.
9 Q. And does the Alpine representative
10 have the ability on that call to tell customers
11 about Alpine's balance billing policy?
12 A. Yes.
13 Q. I want to hand you an affidavit that
14 you submitted in this case and ask you to take a
15 look at it?
16 (Whereupon, Deposition Exhibit No. 46
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Forty-six.
20 THE WITNESS: You wanted me to read
21 this now or --
22 BY MR. LEFKOWITZ:
23 Q. Yes. Have you read it?
24 A. No. Well, I've --
25 Q. Because I want --

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1 A. I've read --
2 Q. -- to ask you --
3 A. I've read it, yes.
4 Q. You have?
5 A. I didn't read it right this second.
6 Q. That's all right.
7 Is this a declaration that you
8 submitted in connection with this litigation?
9 A. Yes.
10 Q. Did you volunteer to submit this
11 declaration?
12 A. Ah, yes.
13 Q. Did anyone ask you to submit it?
14 A. Yes, my attorney.
15 Q. Did you draft the declaration
16 yourself?
17 A. No.
18 Q. Your attorney drafted it?
19 A. Yes.
20 Q. Did you verify every sentence in the
21 declaration to make sure it was true before you
22 signed it?
23 A. Yes.
24 Q. And you submitted it under penalty of
25 perjury; is that correct?

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1 A. Yes.
2 Q. Take a look at paragraph 4, please,
3 and beginning at the third sentence you say,
4 "Because we do not accept the rates, Safelite
5 routinely tells our customers that the customers
6 will be responsible for the difference between what
7 we bill and what we are reimbursed"; is that correct?
8 A. Yes.
9 Q. So you're saying here that Safelite
10 routinely tells your customers they will be balance
11 billed?
12 A. Yes.
13 Q. And you heard Safelite say that
14 personally on the phone?
15 A. Yes.
16 Q. Did you hear the secondhand, also,
17 from your CSRs?
18 A. Did I hear -- hear this secondhand?
19 Q. Yes.
20 A. Yes.
21 Q. Did you ever hear Safelite say the
22 customers may be held responsible for the
23 difference as opposed to will?
24 A. Yes.
25 Q. Do you know how many times you heard

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1 them say may?
2 A. No.
3 Q. Do you know how many times you heard
4 them say, in your view, will?
5 A. No.
6 Q. And do you know as you sit here today
7 how many conversations you personally listened to?
8 A. No.
9 Q. Take a look at also in paragraph 4,
10 beginning with the next sentence and on to the end
11 of the paragraph where it begins "Often when this
12 occurs," if you could just read that? You say,
13 "Often when this occurs," and I guess my question
14 is --
15 A. Hold on a second.
16 Q. Okay.
17 A. I'm not done reading it. Okay.
18 Q. You say, "Often when this occurs, an
19 Alpine representative" tells the customer that you
20 don't collect any money other than the deductible,
21 which is what you told me earlier. Do you know if
22 an Alpine representative does that most of the time?
23 A. Yes.
24 Q. Are there instructions for the Alpine
25 representative to do that all of the time?

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1 A. There's no written instructions, no.
2 Q. Why do you believe that an Alpine
3 representative does that most of the time?
4 A. Because the calls I've listened to,
5 that's what's -- that's what's occurred.
6 Q. And an Alpine representative
7 specifically arranges to be on the call with
8 Safelite; is that correct?
9 A. That's correct.
10 Q. If you turn to paragraph 5, tell me
11 when you've reread the first sentence?
12 A. Okay.
13 Q. You say that customers call to cancel
14 jobs several times a year. How many times is
15 several?
16 A. I don't know how many is several, but
17 it happens, you know.
18 Q. It's your affidavit. So what was in
19 your mind when you wrote several?
20 A. Several, more than one, more than
21 five. I mean, it happens quite often.
22 Q. Less than ten?
23 A. I don't know the exact number.
24 Q. So you just wrote several because you
25 actually don't know the -- know a number?

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1 A. I don't know the number, no.
2 Q. How do you know that the customer is
3 cancelling the job because of Safelite?
4 A. Because they call and cancel the job
5 and say that they were told that they're going to
6 be balance billed and they don't want to have an
7 out-of-pocket expense and they want to go with a --
8 the provider their insurance company recommends.
9 Q. And they say that to you on a
10 telephone call?
11 A. Yes.
12 Q. Are those phone calls recorded?
13 A. Sometimes, yes, not all.
14 Q. Now, you said that Alpine
15 representatives are on the phone in order to
16 reassure the customer that such statements are not
17 true and that, in your view, they're able to save
18 the job; is that right?
19 A. Yes.
20 Q. So out of those several times a year
21 that a customer calls to cancel a job, in most
22 instances does your sales manager save the job?
23 A. Most of them, yes.
24 Q. So how many jobs do you believe you
25 lose per year because of statements made by

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1 Safelite?
2 A. I don't have a number offhand.
3 Q. Do you have an estimate?
4 A. No.
5 Q. None whatsoever?
6 A. No. I can't -- I'm not going to guess.
7 Q. How many times have you told Safelite
8 executives that Alpine does not balance bill?
9 A. I don't know the exact number.
10 Q. Do you recall what Safelite
11 representatives said to you in response?
12 A. Um, no.
13 Q. Do you always trust the statements
14 that are made by Safelite to you?
15 A. Do I always trust them?
16 Q. Yes.
17 A. No, I don't always trust them.
18 Q. Do you think Safelite is required to
19 trust the statements that you make to them?
20 A. No.
21 Q. You say in paragraph 8 that "I am not
22 aware of any company going after a customer for a
23 short pay balance...We certainly do not." Do you
24 see that sentence?
25 A. Yes.

Q. And you're familiar with your company's policies because you're the president of Alpine Glass; is that correct?
A. That's correct.
Q. But you also say in that statement that you're not aware of any glass shop that has balance billed a customer, correct?
A. That's correct.
Q. But as you said a few minutes ago, you don't even know how many glass shops there are in Minnesota, correct?
A. That's correct.
Q. And you don't know any of their billing policies?
A. No.
Q. Take a look, please, at the last sentence in paragraph 7 of your affidavit, the one beginning "When that issue has arisen"?
A. Okay.
Q. Are we talking here about testimony by insurance company representatives at arbitrations?
A. Yes.
Q. And that testimony is in response to a question by an Alpine attorney?
A. Yes.

Q. So what you're saying here is that when asked by your attorney the insurance company witness could not recall an example where a customer was balance billed off the top of their head; is that right?
A. Yes.
Q. How many times have you personally seen this exchange actually happen in an arbitration proceeding?
A. I don't know.
Q. No -- no -- no number at all, can't even --
A. No number at all, no. I'm not going to guess.
Q. Can you recall the names of the insurance companies involved?
A. One of them was American Family.
Q. But you don't remember when that arbitration took place?
A. We've had three arbitrations against them, so I don't know which one it was.
Q. Do you remember who else was present at that arbitration?
A. No.
Q. Any of the people present to that

arbitration?
A. Any of who?
Q. Do you know anyone who was present other than yourself?
A. Oh, my -- my attorney.
Q. Your attorney Mr. Lloyd?
A. Mr. Lloyd, yeah.
Q. You said you were not aware of whether any Minnesota glass shops reserved the right to balance bill the customer if the insurance company doesn't make payment in full; is that correct?
A. Correct.
Q. Have you ever seen language in a Minnesota glass shop invoice that reserves the right to balance bill?
A. No.
Q. I'm going to hand you a invoice from a company called Lake Side Glass. Have you ever seen this document before, Mr. Reid?
A. Hold on a second.
Q. Okay.
(Whereupon, Deposition Exhibit No. 47 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Excuse me,

forty-seven.
THE WITNESS: Okay.
BY MR. LEFKOWITZ:
Q. Have you ever seen this document before?
A. No.
Q. Never?
A. No.
Q. Okay. If you could take a look at it and tell me if this looks like an invoice from Lake Side Glass?
A. I don't know even know who Lake Side Glass is, so I don't know if this is an invoice from them.
Q. Never heard of Lake Side Glass?
A. No.
Q. Do the descrip -- the items, the description, do these mean anything to you as an owner of a glass shop?
A. In what way?
Q. Do you under -- I'm -- I'm not familiar with cars or glass or anything, so I didn't even understand what acoustic interlayer green tint/blue shade refers to. Does that mean anything to you, do you understand those terms?

A. Yeah.
Q. What are -- what are those?
A. Well, the green tint/blue shade is the color of the glass. The acoustic interlay is just an option on the glass.
Q. And what is 2.0 adhesive, urethane, dam, primer?
A. Well, I don't know how they format their invoice. In my opinion, that is the urethane used to put the windshield in.
Q. Got it. And this refers to a Ford Focus. Is that -- that's a type of vehicle; is that correct?
A. That is a type of vehicle, yes.
Q. That's the vehicle referred to here?
A. Okay, yep, yeah, it says Ford Focus on the sheet here.
Q. Correct. And it says here the total is $845.75 with a deductible of $100, correct?
A. Correct.
Q. And can I ask you to read the small print at the bottom of the page below the customer's signature?
A. "I hereby authorize the above named Insurance Company to pay this Invoice in full

settlement satisfaction and discharge of all loss under the above policy. In the event that the above named Insurance Company does not make timely and/or full payment of this Invoice according to its terms, I here by accept responsibility for such payment and agree to pay all charges reflected on this invoice to Lake Side Glass."
Q. Thank you, Mr. Reid.
Do you have any reason to think that that language is not common in the industry?
A. I -- I don't -- I don't know what other invoices say on their -- on their language. So I don't know if it's common or not.
Q. Okay. Let's take a look at the invoices that Alpine Glass uses. I'm going to hand you a document that should be more recognizable to you now, although it's harder to read because the copy we received from your lawyer I guess is --
A. Which side --
Q. Is quite incredible --
A. -- are you going to use?
Q. I'm going to ask you about both of them, so I'd like to ask you to take a look at both parts of that document?
(Whereupon, Deposition Exhibit No. 48

was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Forty-eight.
MR. LLOYD: Well, I'm going to comment since there was a little colloquy about where you got this document. This is not one that we produced to you in discovery as I can tell. This is something that was filed with the Federal Court in April of 2015, which was long before our production of documents.
MR. LEFKOWITZ: Got it, all right.
BY MR. LEFKOWITZ:
Q. So I'll ask Mr. Reid, then, to look at this and tell me if this -- if you recognize this document?
A. Yes.
Q. And can you describe what this document is?
A. Well, this is the -- one side is the invoice to the insurance company, and the other side is the work order that the customer signs.
Q. Got it. So the -- which copy is the invoice to the insurance, is it the copy that has the smaller amount of writing and the numbers, with 893.96 at the bottom?

A. Yeah, 893.96.
Q. Right. So that -- so comparing this to the Lake Side invoice that we looked at before where the invoice had a total price of 845 and change, this one is 893 and change; is that correct?
A. Correct.
Q. And this is, also, for some windshield repair, and it even uses some of the similar language in terms of the urethane and the like; is that correct?
A. Correct.
Q. And the total cost for this glass repair on the invoice that we're looking at from Alpine is how much money?
A. Eight ninety-three ninety-six.
Q. Now, the back side of this, can you tell me what the back side of this document refers to?
A. That's the work order that the installer takes out onto the job site.
Q. All right. Now, there is a line here -- there are a couple places here where there are signatures for the customer to sign on the back; is that correct?
A. Correct.

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1 Q. It looks like there's one that says
2 insurance and then there is some language and then
3 payment authorization; is that correct?
4 A. Well, there's payment authorization,
5 and then there's warranty information.
6 Q. Correct. And for the payment
7 authorization, there's a signature line for the
8 customer to sign; is that correct?
9 A. Correct.
10 Q. And above that there is some language;
11 is that correct?
12 A. Yes.
13 Q. Now, I'm going to ask you if you can
14 read, I can read it, if you can't, because I've
15 studied it, but you may be able to read it
16 because --
17 A. I can't read it.
18 Q. Because you're familiar with it?
19 A. Well, I'm familiar with it but --
20 Q. Do you know -- do you know what that
21 last sentence says?
22 A. No. I can't even make it out. It
23 looks like it's -- there's writing of some sort in
24 the middle of it.
25 Q. So let me -- let me try to read this

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1 very slowly and tell me if you think I'm reading
2 this accurately. We can, obviously, try to get
3 another cleaner copy from --
4 A. Okay.
5 Q. -- your office, because, obviously,
6 your office must have records of all of these. But
7 in the interest of time, tell me, as I read slowly,
8 whether you think I'm reading accurately.
9 The last sentence, beginning four,
10 five words from the left-hand side says, I
11 understand that if I have no insurance coverage for
12 this work, comma, I am responsible to pay for the
13 work upon notification by Alpine?
14 A. Okay.
15 Q. Does that seem accurate to you?
16 A. Yes.
17 Q. Do you know if this is standard
18 language in the Alpine invoices?
19 A. Yes.
20 Q. And the customer is required to sign
21 that language, correct?
22 A. Correct.
23 Q. I want to turn back briefly to your
24 declaration for a moment.
25 MR. LEFKOWITZ: If you could hand the

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1 declaration back, Madam Reporter?
2 THE WITNESS: Is it okay if I grab it?
3 MR. LLOYD: Exhibit 46.
4 MR. LEFKOWITZ: It's Exhibit 46.
5 (Reporter's Note: The court reporter
6 hands Exhibit 46 to the witness.)
7 BY MR. LEFKOWITZ:
8 Q. If you could turn to the last
9 paragraph of your affidavit, where you say, "I am
10 not aware of any company going after a customer for
11 a short" payment "-- for short pay balance after
12 the insurance company has issued" a "payment on a
13 claim. We certainly do not. We inform customers
14 verbally and, if asked, will put that fact in
15 writing for our customers." Do you see that?
16 A. Yes.
17 Q. So is it your testimony that
18 notwithstanding the invoice that the customers are
19 required to sign that you assure customers in
20 writing that Alpine does not balance bill?
21 A. Correct.
22 Q. Do you assure all customers of that in
23 writing or only customers who ask?
24 A. Only customers who ask.
25 Q. And you say, actually, that you inform

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1 them first verbally and then, if asked, you'll put
2 it in writing?
3 A. Correct.
4 Q. Let's turn to a copy of such a letter.
5 MR. LEFKOWITZ: Chris, if you can pull
6 the next document for me?
7 BY MR. LEFKOWITZ:
8 Q. I'm handing you a document which is on
9 Alpine Glass letterhead which begins Dear Thomas?
10 MR. LLOYD: Can you hand it to the
11 reporter --
12 THE WITNESS: Oh, yeah.
13 MR. LLOYD: -- so we can get an
14 exhibit number on it?
15 THE WITNESS: Sorry.
16 (Whereupon, Deposition Exhibit No. 49
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Forty-nine.
20 BY MR. LEFKOWITZ:
21 Q. Do you recognize this document?
22 A. Yes.
23 Q. This is a letter from Alpine to a
24 customer promising not to balance bill that
25 customer; is that correct?

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A. Well, I'm -- I'm still reading it.
Q. Okay, take your time, it's still early morning.
A. Yeah. Okay.
Q. So is this an example of the letter you referred to in paragraph 8 of your declaration?
A. Yes.
Q. You don't send this to every single customer; is that right?
A. That's correct.
Q. And the reason customers ask you for this is that they're concerned about the possibility of getting balance billed; is that correct?
A. Yes.
MR. LLOYD: Objection, no foundation. You can answer if you know.
THE WITNESS: Sorry. Yes.
BY MR. LEFKOWITZ:
Q. Well, just to clear up your lawyer's question, what is it that gives rise to your sending such a letter?
A. When they have a concern that they're going to be balance billed after they've made the appointment.

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Q. Thank you.
Can you name any other Minnesota glass shops that send letters like this to customers assuring them that they will not be balance billed?
A. No.
Q. I think you mentioned earlier that you had communicated with a couple of other glass shops around the time that you were communicating with the Department of Commerce in connection with Safelite; is that correct?
A. That's correct.
Q. One was Rapid Glass; is that right?
A. Yes.
Q. Was Rick Rosar the individual from Rapid Glass you were communicating with?
A. Yes.
Q. And was Mike Schmaltz the individual from MGA that you were communicating with?
A. Yes.
Q. Did you and these individuals ever formulate a plan of action against Safelite?
A. No.
Q. Did you coordinate your actions with respect to the Department of Commerce's investigation of Safelite?

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A. Did I what?
Q. Coordinate your actions together?
A. No.
Q. You didn't?
A. No, I don't think we coordinated together.
Q. Who is the primary contact with the Department of Commerce on behalf of the glass industry regarding the Safelite investigation?
A. I would assume me. I don't -- I don't know, but I would assume me.
Q. Do you know -- Other than you, do you know who else had contact with the DOC in connection with the Safelite investigation?
A. Rick Rosar.
Q. How about Chuck Lloyd?
A. And Chuck Lloyd, yes.
Q. All right, I think it's time. Let's turn -- I want to turn to a document. Why don't you hand it to me. I'm not ready yet --
I'd like to hand you a document, it's an e-mail chain between you and Mike Schmaltz and Rick Rosar, if you could take a look at it?
MR. LLOYD: This is -- for the record, it's been previously marked as Exhibit 9.

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MR. LEFKOWITZ: Thank you.
THE WITNESS: Do you need to -- oh, all right.
BY MR. LEFKOWITZ:
Q. And the top e-mail, if you would look at this, is dated November 7th; is that right?
A. Yes.
Q. And is this an e-mail chain involving you, Rick Rosar, and Mike Schmaltz?
A. Yes.
Q. And do you see in paragraph one it says, "Hey Mike, I just spoke" with "Rick. How about sometime between 1:00 and 2:00 MN time today?"
A. Yes.
Q. Do you recall having a call with Mr. Schmaltz and Mr. Rosar that day?
A. No.
Q. You have no recollection of that call?
A. No.
Q. Do you know if this e-mail chain was in connection with trying to instigate a Department of Commerce investigation of Safelite?
A. No.
Q. Do you know if you discussed assembling evidence for the Department of Commerce

against Safelite?
MR. LLOYD: I'm confused. Are you talking about in the phone call or in the e-mails?
BY MR. LEFKOWITZ:
Q. Well, in the phone call or the e-mails?
A. No.
Q. No, you don't? So let me call your attention to the -- let me call your attention to the last e-mail on the bottom of the flip side of the page?
A. Okay.
Q. This is an e-mail from Rick Rosar to you and to Mike Schmaltz?
A. Okay.
Q. And does this refresh your recollection of what this e-mail chain is about?
A. No.
Q. Does it say here, "here is something else that is black and white in the UCPA that they never read, and should also be a violation. Hopefully after commerce hears our recordings, and looks at the statute he will feel they are violating all of it. Regards, Rick Rosar." Do you see that?
A. Yes.
Q. Are you testifying today that you have

no knowledge about what he's referring to there?
A. I don't know what he's referring to in that -- in that e-mail.
Q. Do you see in the e-mail right above, which you sent later that day, you said, "Hey Rick and Mike, I will start putting some stuff together next week and maybe we can arrange a conference call." Do you see that?
A. Yes.
Q. And it's your testimony that your response has nothing to do with the e-mail that you were responding to?
A. Well, I would assume it -- it's for what -- no, I have no idea the topic of the -- of the e-mail. It could be anything.
MR. LEFKOWITZ: All right. We've gone another hour. Let's take a brief break, come back in about five to eight minutes.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 9:56 a.m.
(Break from 9:56 to 10:08.)
(Whereupon, Deposition Exhibit No. 50 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE VIDEOGRAPHER: We're back on the

video record. The time is now approximately 10:08 a.m.
BY MR. LEFKOWITZ:
Q. So, Mr. Reid, this is a document that your counsel produced. It's a recording of a call that took place among you, Mr. Schmaltz, and -- oh, no, we -- you didn't produce it, it was produced by Mr. Rosar.
MR. LLOYD: Right, and the recording was produced by Mr. Rosar. My understanding is that your office had it transcribed.
MR. LEFKOWITZ: Got it, okay.
BY MR. LEFKOWITZ:
Q. So this is a transcription of a telephone call based on a recording that was produced to us. It involves you, Mr. Rosar, and Mr. Schmaltz. Have you ever seen this document before?
A. No.
Q. So I'm going to ask you some questions about it, and so, if you'd like, I'm happy to just take five minutes and let you read the whole document, if you'd like to do that, otherwise --
A. Yeah, I haven't -- I haven't looked at it or --

Q. Well, okay. We can just start, and if at any point you want to just stop and just read the whole thing, just say so, because I want to give you the opportunity, obviously.
A. So this is a recorded conversation?
Q. Yes, that took place on November 7th, 2013.
A. Corresponding to the last --
Q. Corresponding, correct.
A. Okay, okay.
Q. And I know you hadn't recalled what happened in that e-mail.
A. Right, right.
Q. But perhaps by reading the transcript it may refresh your recollection, and the very beginning of this transcript, it begins with Mr. Rosar saying -- well, you can read it yourself. "He is, and he came about because I had sent him many complaints on steering and they said there's no basis for them to take any action and I got pissed off so I kept on calling him and finally he said, alright, if this is what you are saying let's assume my windshield and I'll call in a claim and he was shocked with what he heard." Do you -- do you read -- do you see that?

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A. I see that.
Q. Now, do you recall making that statement?
A. No, I don't recall. But, I mean, did I make -- according to this transcript it says Rick Rosar.
MR. LEFKOWITZ: Do you want to help out here or --
MR. LLOYD: Yeah, and we can do --
MR. LEFKOWITZ: -- I'm happy to refresh --
MR. LLOYD: And we can do this on the record or off, it doesn't matter.
MR. LEFKOWITZ: Might as well do it on the record.
MR. LLOYD: Okay. I think because they transcribed it, I'm not sure that they recognized whose voice was who.
THE WITNESS: Oh.
MR. LLOYD: And it's my belief -- it was my belief at an earlier deposition that that's really your statement based on facts as I understand them.
THE WITNESS: Right, right, right. So this is -- this is not -- this transcript was not

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e-mailed to me like it indicates on --
MR. LLOYD: No. The recording --
MR. REIGSTAD: The recording.
MR. LLOYD: -- was e-mailed to you at some point according to that, but the transcript was one that Kirkland & Ellis --
THE WITNESS: Right, okay, okay. Now I understand.
BY MR. LEFKOWITZ:
Q. The recording --
A. That's why I've never seen this document.
Q. The recording is probably on your e-mail system somewhere, and you're obviously welcome to listen to it.
A. Okay.
Q. We did a transcription. It's possible that we couldn't tell all the voices; and in an earlier deposition, when we talked about this document, your lawyer said, actually, I believe that this is Mr. Reid's statement, not Mr. Rosar's, and I think that's probably consistent with the substance of later --
A. Yes.
Q. -- in this document?

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A. Yes, I would agree.
MR. LLOYD: And, you know.
MR. LEFKOWITZ: Right.
MR. LLOYD: Having been in this same position, trying to get the names --
MR. LEFKOWITZ: Yeah.
MR. LLOYD: -- on -- on a reporting unlike what we have --
MR. LEFKOWITZ: Yeah.
MR. LLOYD: -- with a court reporter can be a challenge at best. But, I mean, if -- if my understanding of it was wrong --
MR. LEFKOWITZ: Right.
MR. LLOYD: -- you should fix it. But that was my understanding --
MR. LEFKOWITZ: Right.
THE WITNESS: Okay.
MR. LLOYD: -- as stated in an earlier --
THE WITNESS: Okay.
MR. LLOYD: -- deposition.
BY MR. LEFKOWITZ:
Q. Do you think Mr. Lloyd's understanding is correct in light of the context of the -- and the substance of this statement?

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A. Yes.
Q. Okay. Now, in this statement that you are making here, and it tracks, I believe, your earlier testimony today, you talk about "I had sent him many complaints," I assume you were referring to the Department of Commerce and the "him" is actually Mr. Fleischhacker; is that correct?
A. No, it's not necessarily Mr. Fleischhacker, just the department.
Q. Got it. But when you get to the point in this transcript where you say, "...so I kept on calling him and finally he said, alright," is that Mr. Fleischhacker you're referring to?
A. Yes.
Q. And then you go on to say, he says, "...alright, if this is what you are saying," and I assume that refers to the complaints you're making about Safelite, he then says, according to you, "...let's assume my windshield and I'll call in a claim." Can you explain what you meant by that?
A. Well, at the time when I talked to Mr. Fleischhacker, he -- he told me -- I was upset because the -- the Department of Commerce had not taken action, and so I contacted him and got him on the phone, and I was upset because they hadn't done

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1 anything, they hadn't responded, and he said, all
2 right, I have a crack in my windshield, let's have
3 Alpine Glass do the windshield and I'll call in the
4 claim.
5 Q. Do you know who Mr. Fleischhacker's
6 insurance company was at the time?
7 A. Triple A.
8 Q. And so this conversation that you had
9 with him took place after those many years when you
10 had been sending in claims -- sending in complaints,
11 and when you say in this transcript that you,
12 quote, got pissed off, it's at the lack of action
13 by the DOC up till this point?
14 A. Correct.
15 Q. Okay. And you say here, "...and he
16 was shocked with what he heard." The "he," I
17 assume, is Mr. Fleischhacker, correct?
18 A. Yes.
19 Q. And he told you he was shocked with
20 what he heard?
21 A. Um, I don't recall him saying he was
22 shocked.
23 Q. Okay. Now let's go a little bit
24 forward, to page 5 of this transcript, and in the
25 middle of the page there is a statement, "So, I

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1 kind of started this crusade on my own and I told
2 Chuck I want to keep it small," and then it goes
3 on. Can you read that, please?
4 A. Okay.
5 Q. Is there any reason to doubt that you
6 made this statement?
7 A. No.
8 Q. What did you mean by "I kind of
9 started this crusade on my own"?
10 A. I started making complaints to
11 Commerce on my own.
12 Q. And what was the crusade you were
13 referring to?
14 A. The ongoing steering and late payments
15 by insurance companies.
16 Q. And when you say you started this
17 crusade against Safelite on your own, what do you
18 mean by on your own?
19 A. Oh, I never said I started this
20 crusade against Stafe -- Safelite.
21 Q. Oh, it wasn't against Safelite?
22 A. No.
23 Q. It was against whom?
24 A. Insurance companies.
25 Q. So you started a crusade against

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1 insurance companies. What do you -- What do you
2 mean by on your own?
3 A. With no -- on my own, Alpine Glass.
4 Q. And when you said "I told Chuck I want
5 to keep it small," was that Mr. Lloyd here?
6 A. Yes.
7 Q. And you wanted to limit the number of
8 people participating in the Department of
9 Commerce's investigation?
10 A. Yes.
11 Q. And why was that?
12 A. Because Marty had told me he didn't
13 want to have -- he was getting bombarded with
14 complaints, and he was overwhelmed by them and
15 wanted to focus on what we have brought to him.
16 Q. When did he tell you that?
17 A. I don't know when he told us that.
18 Q. How many times did you speak with
19 Marty?
20 A. I don't -- I don't know how many times
21 I've spoken to Marty.
22 Q. More than two or three?
23 A. Yes.
24 Q. Can you read the latter part of that
25 paragraph?

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1 A. Okay.
2 Q. What kind of deal did you make with
3 Marty Fleischhacker?
4 A. That -- that we wouldn't -- that we
5 would limit what we have being filed down there,
6 that we would just focus on what the complaints
7 that I -- that I brought forward.
8 Q. And then it says, and then Chuck got
9 involved in it. Why did Chuck get involved in it?
10 A. I don't recall why Chuck got involved
11 in it.
12 Q. Maybe we'll have a chance to ask Chuck
13 that at his deposition, but we'll --
14 MR. LLOYD: Oh, I look forward to that.
15 MR. LEFKOWITZ: I'm sure you do.
16 BY MR. LEFKOWITZ:
17 Q. It says at the bottom of the page,
18 about four, five, six lines from the bottom of that
19 page, right where your finger is now, it says --
20 and this looks like it's Mr. Rosar speaking,
21 "They've even had meeting as early as this year
22 with commerce so they've kind of been working on it
23 but now all of a sudden you know with your
24 situation putting in Marty's glass, you know,
25 you've got a fresh ear there."

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What is the "situation putting in Marty's glass" that Mr. Rosar is referring to?
A. Well, I don't -- you know, I'm just -- I don't know what Rick is -- is -- what he's thinking. But putting in Marty's glass is we did the windshield replacement for Marty. He had a cracked windshield and -- and he chose Alpine Glass to do it and call in the claim.
Q. And he came to become your customer as a result of a call that you had made to him in which you were complaining about Safelite and the insurance companies and the steering and the lack of progress and --
A. Yeah, my --
Q. -- you generally said --
A. My previous complaints.
Q. Yes. When did you perform the glass repair for Mr. Fleischhacker?
A. I don't recall.
Q. When you performed the work for Mr. Fleischhacker, you complained to him about Safelite's practices; is that right?
A. Yes.
Q. And what did you say in particular?
A. Whatever we've had in the -- in the

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previous complaints, steering, late payments, arbitrations, short payments.
Q. In the same degree of generality that you've described to me, you didn't give him specific dates or times or places --
A. I don't --
Q. -- or people?
A. Yeah. I don't recall the conversation.
Q. Do you recall what he said to you?
A. No.
Q. Do you agree with Mr. Rosar's comment that Mr. Fleischhacker gave you a, quote, fresh ear, close quote, with the Department of Commerce?
A. I think he -- I don't know what he means by fresh ear. He -- Marty did listen to us after that.
Q. And performing glass repair for Mr. Fleischhacker gave you another chance to make the steering complaints that you had been making for years; is that right?
A. It gave an opportunity for him to hear it firsthand.
Q. On page 6, in the middle of the page there is a line that begins after Mike, M. Reid, "like Marty sends an email," and I think it's a

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continuation because of the interruption. It says, "And, I want Chuck to review it because like Marty sends an email, Chuck" wants to know "-- Chuck knows what we want. He wants stuff to go through Chuck." Who is the "he" who wants stuff to go through Chuck?
A. I don't know what I was referring to as he. I would assume it's Marty.
Q. On page 7, the first big entry with your name next to it that begins "Exactly," can you explain what you mean here when you said, "...he did make the point saying majority of the complaints he receives from glass companies don't go so far to where there is a cut and dry violation."
A. What -- what's the question for me?
Q. What -- I don't understand what that means, what you mean here when you say the majority of the complaints don't go so far as to where there's a cut and dry --
A. Where he --
Q. -- violation?
A. Where he doesn't have -- he doesn't have the call recordings.
Q. So he's getting complaints, but -- but there isn't sufficient evidence in the complaints?

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A. Correct.
Q. And is that why you and Rick Rosar agreed that the other glass shops should only send over the, quote, really, really good stuff, close quote?
A. Where's --
Q. And I'm referring to the --
A. Where are you looking at that?
Q. Just above, about three, four lines above in the paragraph right above that. You can take a look at that, but it's the last two sentences of that.
A. Yeah. I don't know what Rick is -- that's Rick talking. I don't know what he was -- what he's talking about there.
Q. Then what do you mean just below that where you say, "You know from the fact...even I'm guilty of it too," what are you referring to there?
A. I have no idea.
Q. But Mr. Fleischhacker made the point of telling you that a majority of the complaints he receives from the glass companies just don't go far enough to find a -- a violation; is that right?
A. Yes. That was an -- let me rephrase that. That wasn't Marty that said that, that's the

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1 Commerce Department in general responding to the
2 complaints.
3 Q. So when you say "he did make the
4 point," you're actually not referring to an
5 individual?
6 A. Where are you? I'm getting confused.
7 Q. "Exactly, because he did make the
8 point saying the majority of the complaints"
9 (indicating). I can show you if you --
10 A. No, I see it now.
11 Q. Yeah.
12 A. I don't know what I'm saying about he,
13 he did make the point. Like I say, I don't recall
14 the conversation. I'm reading this for the first
15 time, so I don't know.
16 Q. Do you know what the difference in
17 your view would be between illegal or unethical
18 conduct in connection with your complaints?
19 A. Well, I think my complaints showed
20 illegal conduct.
21 THE VIDEOGRAPHER: Approximately two
22 minutes left on this disc.
23 MR. LEFKOWITZ: Thanks.
24 BY MR. LEFKOWITZ:
25 Q. You have a statement in the middle of

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1 this page where it says -- well, why don't you read
2 what Mr. Schmaltz says and then what you say in the
3 middle of the page so you have the context for
4 this?
5 MR. LLOYD: Can you tell me which
6 paragraph?
7 MR. LEFKOWITZ: Yes. It's
8 Mr. Schmaltz, "Yeah, believe me we --"
9 MR. LLOYD: Okay, I got it.
10 MR. LEFKOWITZ: And, then, the next
11 response by --
12 MR. LLOYD: Okay, I got it, thank you.
13 BY MR. LEFKOWITZ:
14 Q. If I can ask you, what do you
15 understand to be unethical conduct that may not
16 have been illegal?
17 A. I have no idea.
18 Q. You say here, "He knows the whole
19 thing, how unethical Safelite is and he's had
20 enough of it and he wants to go after a couple" of
21 "insurance companies which I think are Farmers and
22 Progressive and then he wants to get Safelite out
23 of Minnesota." Did you read that?
24 A. Hold on, let me read it. Yep.
25 Q. And, then, the next thing you say is,

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1 yeah, "he said if I slap them with a cease and
2 desist order, it's going to cause massive chaos and
3 he goes I don't care." Do you see that?
4 A. Yep.
5 Q. And the "he" refers to
6 Mr. Fleischhacker, correct?
7 A. Yes.
8 Q. And then you say, "So, this is about
9 the best shot we've got right now and if we can
10 just get some really good recordings so maybe the
11 three of us can kind of decide what would be the
12 best recordings. I've forwarded you...a couple
13 and you guys forwarded me a couple, maybe we
14 should" just "revisit those and put together ah you
15 know" maybe top five. Do you see that?
16 A. Yes.
17 Q. And you're having this conversation
18 with whom?
19 A. Rick and Mike Schmaltz, it looks like.
20 Q. And you're talking about how to help
21 the Department of Commerce's investigation, correct?
22 A. Correct.
23 Q. And Mr. Fleischhacker told you he'd
24 had enough of that, the conduct, right?
25 A. Yes.

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1 Q. And he told you he wants to go after a
2 couple of insurance companies?
3 A. I don't know if he said he was -- he
4 wanted to go after a couple insurance companies. I
5 don't -- I don't recall that conversation.
6 Q. Do you recall him telling you that he
7 wanted to get Safelite out of Minnesota?
8 A. I don't recall that conversation.
9 Q. But you did say that, is that correct?
10 A. Right, yeah, in a conversation two
11 years ago. I don't re -- like I say, I don't
12 recall the conversation.
13 Q. When you were having conversations
14 with your friends about promoting and helping this
15 investigation, did you make it a habit to try to be
16 accurate and honest in your statements to them?
17 A. I have no idea. I don't recall this
18 conversation. I know it happened. I don't -- I
19 don't recall.
20 Q. Do you generally speak honestly?
21 A. Do I generally speak honestly? Yes.
22 Q. Yes. But sometimes you kind of
23 overstate things for emphasis?
24 A. I have no idea.
25 Q. Do you know why Mr. Fleisch --

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1 THE VIDEOGRAPHER: We need to change
2 the --
3 MR. LEFKOWITZ: Do you need to change?
4 THE VIDEOGRAPHER: Yes.
5 MR. LEFKOWITZ: All right. Let's take
6 a two-minute break and change the disc.
7 THE VIDEOGRAPHER: Going off the video
8 record. The time is approximately 10:30 a.m. This
9 is the end of disc No. 1.
10 (Break from 10:30 to 10:40.)
11 THE VIDEOGRAPHER: We're back --
12 THE WITNESS: I want --
13 THE VIDEOGRAPHER: -- on the video
14 record. The time is now approximately 10:40 a.m.
15 This is the beginning of disc number 2.
16 THE WITNESS: I want to -- before you
17 get started, I wanted to back up, I was thinking
18 about the other questions and I just want to
19 clarify if I misspoke. What was the question you
20 asked about something about my statements being
21 honest, what was my answer on that?
22 BY MR. LEFKOWITZ:
23 Q. Yeah, I think that --
24 A. Do you generally speak --
25 Q. I -- yeah, because I think I had asked

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1 you about a statement that you made here, and I'm
2 trying to recall, let me just have a second.
3 A. Or if the court reporter can go back
4 on it.
5 Q. Let me just take a look and see if I
6 can recall. I might be able to make it shorter.
7 MR. LEFKOWITZ: Let's go -- can we go
8 back up so I can --
9 MR. REIGSTAD: Yeah.
10 (Reporter's Note: Mr. Lefkowitz is
11 looking at the real-time transcript on an iPad.)
12 MR. LEFKOWITZ: Let me see if I can
13 just -- yeah, yeah.
14 BY MR. LEFKOWITZ:
15 Q. Yeah. I asked you when you were
16 having conversation with your friends about
17 promoting and helping this investigation and you
18 were reporting on things, at least according to the
19 transcript, according to the tape recording that
20 Mr. Fleischhacker had told you, I asked you if you
21 were accurately conveying what he told you, and I
22 believe you said you weren't sure, and so I said,
23 well, I'm just reading your words back to you, do
24 you make a habit of trying to be honest when you
25 are talking to your friends or do you have a habit

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1 of kind of inflating things?
2 A. Oh, okay.
3 Q. And so --
4 A. And my answer was I don't know or --
5 Q. Your answer was, "I have no idea."
6 A. Okay. So I was confused. Yes, I
7 generally speak honestly.
8 Q. Okay. So to the best of your
9 knowledge, when you were -- when you referenced in
10 real-time back on this date, November 7th, or
11 whatever the date was, a statement that you
12 recalled Mr. Fleischhacker making, you were trying
13 to be as accurate as possible?
14 A. Yes.
15 Q. Okay, very good. Thanks for
16 clarifying --
17 A. Yes.
18 Q. -- that, Mr. Reid.
19 A. Okay.
20 Q. Better than I don't know.
21 Now, you report on this call that
22 Mr. Fleischhacker told you that he didn't care if
23 it caused massive chaos if he slapped a cease and
24 desist order on Safelite, and my question is, do
25 you have an understanding of how serving Safelite

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1 with a cease and desist order would cause massive
2 chaos?
3 A. No. I'm just -- it was my assumption
4 at the time.
5 Q. And when did Mr. Fleischhacker tell
6 you these things?
7 A. He told me in our -- in a meeting that
8 we had with him, or a phone call, I don't recall
9 when.
10 Q. So it could have been a meeting or it
11 could have been a phone call?
12 A. Yes.
13 Q. So at the bottom of page 7 here you
14 have a statement that says, "the best shot we've
15 got right now," and then you go on to talk about
16 these recordings. The best shot you had at what,
17 what was the objective that you were, quote,
18 shooting for?
19 A. For them to take action against the
20 insurance company, Department of Commerce.
21 Q. And is your testimony that all you
22 cared about was their taking action against the
23 insurance company and not at all about Safelite?
24 A. Correct.
25 Q. So you had no interest in the state of

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1 Minnesota taking any action against Safelite?
2 A. Well, Safelite is the TPA for the
3 insurance company.
4 Q. Correct.
5 A. So -- so whether they are part of the
6 insurance company as a TPA or the insurance
7 company, I view them as one in the same.
8 Q. So, to clarify, then, you did want
9 them to take action against Safelite as a TPA?
10 A. As a TPA, yes.
11 Q. And you wanted to work with
12 Mr. Schmaltz and Mr. Rosar to decide what would be
13 the, quote, best recordings; is that right?
14 A. Yes.
15 Q. And specifically you wanted to work
16 with Mr. Schmaltz and Mr. Rosar to put together a
17 top five recordings to send to Mr. Fleischhacker,
18 right?
19 A. Yes.
20 Q. And did you do that?
21 A. I believe so.
22 Q. All right. Let's turn now to page 11
23 and towards the bottom of the page, the third kind
24 of paragraph from the bottom, it begins, "Well, see
25 Marty was with AAA," do you see that --

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1 A. Yes.
2 Q. -- paragraph?
3 A. Yeah.
4 Q. What do you mean when you said, "I
5 tried to find some AAA insurance stuff"?
6 A. I don't know what -- what I was
7 referring to.
8 Q. But you knew that Mr. Fleischhacker's
9 insurance company was Triple A when you performed
10 the repair work on his window; is that correct?
11 A. Correct.
12 Q. And because you knew that you tried to
13 send him some evidence concerning AAA?
14 A. Correct.
15 Q. Do you think that performing the
16 repair work on Mr. Fleischhacker's vehicle gave you
17 an advantage in pursuing your crusade?
18 A. I think it shed light on what was
19 happening, and Marty got to hear it firsthand.
20 Q. And did you also perform repair work
21 on his girlfriend's vehicle?
22 A. Yes.
23 Q. How did that come about?
24 A. Marty contacted me regarding a crack
25 in his girlfriend's windshield.

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1 Q. And --
2 A. I -- I -- I don't know if it was his
3 girlfriend or friend or whoever it was.
4 Q. But he reached out to you?
5 A. Yes.
6 Q. And asked you to do that repair as
7 well?
8 A. Yes.
9 Q. And you did it?
10 A. Yes.
11 Q. At one point you -- you say you don't
12 want to do anything about Lynx; is that correct?
13 A. Correct.
14 Q. Why not?
15 A. Because the focus was on the few
16 insurance companies that we had already filed with
17 Marty, and we didn't want to overwhelm him with
18 other insurance companies.
19 Q. Isn't it actually correct that you
20 didn't want to do anything with Lynx because you
21 only wanted to do things with Safelite?
22 A. No.
23 Q. Can you read for me the exchange
24 beginning with Mr. Rosar, where he says "Great,
25 well," just read the next four lines on page 12?

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1 A. Okay.
2 Q. Now, isn't it clear from this that you
3 didn't want to do anything with Lynx because you
4 only wanted to focus the investigation on Safelite?
5 A. On the insurers that we filed with --
6 with Safe -- that Safelite was the TPA, yes.
7 Q. Right. And not the insurers that were
8 doing business through a different TPA, only the
9 ones with Safelite, correct?
10 A. Correct, yes.
11 Q. Why did you want Marty to show up at
12 an arbitration?
13 A. Because he was trying to find out more
14 about the industry, and the arbitrations go into
15 great detail about the industry and work --
16 workmanship, and so it was a good understanding for
17 him to -- to hear.
18 Q. So you wanted him to come to the
19 arbitration to educate himself?
20 A. Yes.
21 Q. Were there any other reason why you
22 wanted him to come to the arbitration?
23 A. No.
24 Q. Something just occurred to me and --
25 where is that -- excuse me one sec, and I'd like to

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1 hand you a document in the interim.
2 MR. LEFKOWITZ: This is tab 7, you can
3 look for that while I'm doing this.
4 MR. LLOYD: Were you done with
5 Exhibit 50 for now?
6 MR. LEFKOWITZ: I am, and I'm going to
7 hand you -- What exhibit is this?
8 THE COURT REPORTER: Fifty-one.
9 (Whereupon, Deposition Exhibit No. 51
10 was marked for identification, and a copy is
11 attached and hereby made a part of this deposition.)
12 BY MR. LEFKOWITZ:
13 Q. This is a e-mail chain from
14 February 14th, it involves, again, you, Mr. Reid,
15 as well as Mr. Rosar and Mr. Schmaltz. Do you see
16 this e-mail?
17 A. Yes.
18 Q. And it says at the bottom, and this is
19 your e-mail, please try to keep all this fairly
20 quiet. Why did you want to keep this quiet?
21 A. Um, I wanted to keep it quiet for a
22 couple reasons. First was that I didn't want other
23 shops to know that Commerce was doing these
24 investigations and file a bunch of complaints and
25 upset Commerce after they've asked not to be

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1 overwhelmed with complaints; and, secondly, I didn't
2 want to have the insurance companies be prepared to
3 have some type of rebuttal. In my eyes, that's
4 what I thought would happen.
5 Q. So, to your knowledge, the
6 investigation at this point was not public
7 knowledge?
8 A. No.
9 Q. And you didn't even want all the other
10 shops to know about it?
11 A. I didn't want the other shops to know
12 because I thought it would fuel them to file more
13 complaints and ruin kind of what we've -- what we
14 had accomplished.
15 Q. You say, "This is why we are filing
16 complaints and we are farther than we have been in
17 a long time." This refers to, again, your long-time
18 frustration of not having real reaction from the
19 DOC and then, finally, after you started engaging
20 with Mr. Fleischhacker to have him actively
21 involved; is that right?
22 A. Yes.
23 Q. And you say in the next line, "I think
24 his subpoena on AAA got everyone's attention but
25 him showing up at the arbitration...has probably

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1 caused panic everywhere"; is that right?
2 A. Yes.
3 Q. And what do you mean by panic?
4 A. I don't know if panic -- just that it
5 was -- it's causing surprise in the insurance -- in
6 the insurance industry.
7 Q. And you were pleased about that; is
8 that right?
9 A. I think it -- yes.
10 Q. So one of the ways in which Marty was,
11 quote, stepping up was his showing up at this
12 arbitration?
13 A. Yes.
14 Q. Is that right?
15 And you thought that it showed that he
16 was responsive to your concerns?
17 A. Yes.
18 Q. And it certainly sent a message to the
19 insurers that the DOC was taking a serious interest
20 in this; is that right?
21 A. Yes.
22 Q. So isn't it fair to say that
23 Mr. Fleischhacker showing up at the arbitration
24 wasn't just to educate himself?
25 A. It was to educate himself.

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1 Q. That was your only objective?
2 A. Yes.
3 Q. When you say the subpoena got
4 everyone's attention, who is everyone in your view?
5 A. Everyone, in my view, was the -- was
6 the insurance companies.
7 Q. Did you care if Safelite knew about
8 this investigation?
9 A. No.
10 Q. Even though Safelite Solutions was one
11 of the targets of your investigation?
12 A. Right.
13 Q. You didn't care if they knew about it?
14 A. I -- I really didn't care if -- no, I
15 didn't care if they knew about it.
16 Q. But I thought you wanted to keep the
17 investigation quiet, in part, so that the insurance
18 companies wouldn't be able to coordinate and put
19 together a defense?
20 A. Yes. But they ultimately found out
21 about it when the subpoenas and Marty Fleischhacker
22 showed up at one of the arbitrations.
23 Q. All right. I'm going to hand you
24 another document.
25 (Whereupon, Deposition Exhibit No. 52

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was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. LEFKOWITZ:
Q. Do you see this e-mail, sir?
A. Yes.
Q. And when you're writing to Rick and you say, "I would like to file against USAA next week," are you talking about filing a complaint?
A. Yes.
Q. And you say, "Please send me the usual," what are you referring to there?
A. Steering recordings.
Q. And you meant the three to four worst steering calls he could find?
A. I just -- three to four examples.
Q. Well, I assume you were looking for the worst examples, right?
A. I -- I wouldn't say that.
Q. Well, were you looking just for random recordings?
A. With USAA, they're all pretty -- pretty similar recordings.
Q. And how do you know that?
A. Because I've listened to them.
Q. How many U.S.A. recordings have you

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listened to?
A. I don't know.
Q. More than 100?
A. No.
Q. Do you have any idea of the volume of USAA's business in Minnesota?
A. No.
Q. So you don't know whether you've listened to a majority of all the calls that USAA has been on?
A. No.
Q. When you were sending evidence that you were pulling together to the Department of Commerce, did you ever send them just, you know, a group of 100 random recordings or were the recordings that you sent them selected based on the content?
A. They were selected, but USAA was pretty -- pretty standard.
Q. Although as you've said, you haven't listened to a majority of the recordings, you don't even know if you've listened to a significant percentage of their recordings, correct?
A. Correct.
Q. You don't even know how many

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recordings there are of USAA talking to customers in Minnesota, correct?
A. Correct.
Q. And you've listened to fewer than 100?
A. Yeah, fewer than 100.
Q. Did you have an understanding when you were working on this investigation with Mr. Rosar and Mr. Schmaltz and Mr. Fleischhacker whether you were privy to nonpublic information?
A. No.
Q. Do you have any understanding of whether or not the Department of Commerce treats its investigations as private or public?
A. I don't know how -- how they do it.
Q. So you have no idea whatsoever?
A. No.
Q. Do you know whether or not the Department of Commerce ever provided you with information that they shouldn't have provided you with?
A. No.
Q. I'm going to hand you a e-mail that you wrote to Mike Schmaltz and Rick Rosar and a gentleman named Brad at Auto -- Only 1 Auto Glass. Who is Brad?

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A. Brad Hapka.
Q. And who is he?
A. He's the owner of Only 1 Auto Glass.
Q. Are they another auto glass repair company?
A. Yes.
Q. Are they a competitor of yours?
A. Um, I don't -- I don't consider a lot of these guys competitors now.
MR. LLOYD: Do you have -- hold on a second. We've got to get that document marked.
MR. LEFKOWITZ: Oh, I'm sorry.
THE WITNESS: Sorry.
THE COURT REPORTER: Fifty-three.
(Whereupon, Deposition Exhibit No. 53 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. LEFKOWITZ:
Q. Do you consider any -- that you have any competitors?
A. Yes.
Q. Who are you competitors?
A. I consider my competitors ones that market similarly to -- to our company, which is telemarketing.

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Q. And who are the companies that --
A. I don't -- There's been a few that have come and gone, and I don't know of any right now.
Q. So you're not aware of a single competitor?
A. No.
Q. It's an enviable position to be in.
And why don't you consider glass shops that repair glass and charge prices and get reimbursed largely through insurance company proceeds, why don't you consider them to be competitors?
A. Um, I don't -- because of the way they get their business.
Q. You get all of your business from telemarketing?
A. Primarily that and referrals.
Q. What about your contract with that insurance company Harmon?
A. Harmon?
Q. Yes.
A. No referrals.
Q. So how do the Harmon customs come to you?

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A. They don't come to us, we telemarket.
Q. And they're not required to come to you, obviously, right?
A. No.
Q. So your only competitors are some companies that you don't even know about right now?
A. Correct.
Q. So let's take a look at this e-mail from you. You're referring to a "C&D from Commerce." What is a C&D?
A. The cease and desist order.
Q. What do you mean when you say, "It's very important that we continue to keep this" information "between us"?
A. For what I said in the past, that we didn't want other shops to get excited and file complaints and -- and upset Commerce of what they were doing with the investigations.
Q. And that's the only reason why you wanted to keep it between us?
A. Yes.
Q. You're sure it wasn't because you were aware that you had information that you shouldn't have had?
A. No.

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Q. What did you mean when you continued in that sentence and you say, "It's very important that we continue to keep this information between us as technically we are not supposed to know about the C&D"?
A. That was just my own -- my own thinking on that. I didn't know from a legal standpoint if we were or not.
Q. But your thinking was that you weren't supposed to know --
A. Maybe I --
Q. -- about that information, right?
A. I was thinking maybe -- maybe we shouldn't have -- yeah, maybe we shouldn't have known that.
Q. And so actually one of the reasons why you thought and told your friends that you should keep the info between or among yourselves was because at least you thought, without necessarily having a legal conclusion, that you actually weren't even supposed to know about the C&D?
A. The main reason was is I didn't want people to file more complaints.
Q. But in this sentence, that's -- you don't -- you don't refer --

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A. Right.
Q. -- to the main reason, you refer to this other reason that maybe you shouldn't have known about this?
A. Exactly.
Q. And, obviously, you guys wanted to benefit from this Commerce action?
A. We wanted the illegal activity to stop.
Q. And how would you have benefited from that?
A. Our customers wouldn't have been steered, our payments would have arrived on time.
Q. Right. So the benefit would have been to you, not to the customers?
A. Benefits would have been to -- what do you mean the customers?
Q. Well, you said you wanted to benefit. You said, "...we will benefit somehow." "I...hope with all the evidence we gave them," meaning we gave Commerce, right?
A. Yes.
Q. "...we will benefit somehow." You're looking for you, meaning you, your glass shop and these other glass shops to benefit?

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A. Not me, my glass company.
Q. Your glass company, not -- well.
A. Correct, that everybody will be on a level playing field.
Q. Right.
A. And that the laws will apply --
Q. Right.
A. -- to all the gas companies.
Q. Right. And that would benefit the glass companies?
A. Correct.
Q. And you've previously said that in terms of getting lower prices that actually wouldn't benefit the consumers or higher prices wouldn't affect the consumers because, in your view, they're not involved in paying the cost here, correct?
A. Yes.
Q. In this e-mail you're giving your friends a status update on this cease and desist order from DOC, right?
A. Yes.
Q. And this is a DOC that the -- this is a cease and desist order that the DOC wanted to send to Safelite?

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A. Yes.
Q. And the DOC wanted the Minnesota Attorney General to sign off on that cease and desist, correct?
A. That was my understanding.
Q. And that cease and desist would have ordered Safelite to stop doing business in Minnesota, correct?
A. I don't know exactly what it entailed legally, but that was my understanding, and it -- it was my understanding it was -- I should step back.
Q. Please.
A. That was Safelite Solutions.
Q. Correct, Safelite Solu --
A. Not -- not Safelite.
Q. Safelite Solutions, correct.
A. Correct.
Q. And someone from the DOC, obviously, told you about this C&D, correct?
A. Yes.
Q. And do you know who that was?
A. I believe it was Marty Fleischhacker.
Q. Do you recall when the first time that some -- that Mr. Fleischhacker mentioned a C&D to

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you?
A. No.
Q. Do you know what happened with that C&D?
A. No.
Q. Was it ever sent to Safelite?
A. I don't know what happened with it.
Q. If there had been a settlement between DOC and Triple A, which is what you're referring to in the second paragraph there, how, in your view, would the glass industry have benefited from such a settlement?
A. As a -- as a level playing field and that the illegal activity would stop on behalf of the -- the TPA.
Q. Didn't you hope that the DOC would force Triple A to pay your prices?
A. No.
Q. You didn't?
A. No.
Q. Did you hope that the DOC would order Triple A to stop doing business with Safelite Solutions?
A. No.
Q. So you didn't care whether or not

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Triple A paid your prices or not?
A. They -- they don't pay my prices.
Q. But didn't you want them to?
A. My understanding is that the Department of Commerce cannot enforce an insurance company to pay an invoice, that it has to go through arbitration.
Q. So what did you want the Department of Commerce to do in the settlement with Triple A?
A. To make them abide by the law -- by the Unfair Claims Practice Act and pay our invoices on time and stop the steering.
Q. When you say pay your invoices on time, you mean pay the price that's you're charging?
A. No. Pay our invoices within 30 business days, just make a payment.
Q. Any payment?
A. Yes.
Q. So if they didn't pay the amount that you are charging because they thought that was higher than they were comfortable paying, you'd be okay with that?
A. Well, we'd go to arbitration with it. That's the proper way.
Q. Isn't it true that you wanted the

1 Department of Commerce to go after these insurers
2 and Safelite so that you could benefit economically?
3 A. No.
4 Q. It's not true?
5 A. No.
6 Q. You didn't think that going after
7 Safelite and going after the insurers would put
8 money in your pockets?
9 A. No.
10 Q. Isn't it true that you wanted to,
11 basically, use or leverage this whole Department of
12 Commerce investigation to benefit your glass shop
13 and the other independent glass shops?
14 A. I don't necessarily -- in my eyes,
15 benefiting -- it's really not a benefit when -- if
16 the enforcement is to make an insurance company
17 abide by the laws that are set, that's really not a
18 benefit to me, it's just enforcing the rules; and
19 that's what I wanted -- that's what I wanted them
20 to do.
21 Q. But it would be a benefit if it put
22 money in their pockets?
23 A. I don't know how it would put money in
24 my pockets, I don't know why --
25 Q. You don't -- you don't think --

1 A. I don't know why you're saying --
2 Q. You don't think the glass shops would
3 get more money?
4 A. How? I don't know.
5 Q. Well, okay, you don't. I'd like to
6 show you an e-mail that you, again, were involved
7 in with Brad and Rick Rosar and Mike Schmaltz.
8 (Whereupon, Deposition Exhibit No. 54
9 was marked for identification, and a copy is
10 attached and hereby made a part of this deposition.)
11 THE COURT REPORTER: Fifty-four.
12 BY MR. LEFKOWITZ:
13 Q. In this e-mail -- I'll wait until
14 you've read it.
15 A. Okay.
16 Q. Okay. So what are you trying to get
17 shops to contribute to here?
18 A. I'm trying to get shops to contribute
19 to the -- to pay for our lobbyist that the MGA has
20 hired.
21 Q. And don't you say here that "This
22 might be a good angle to get shops to contribute as
23 it shows Commerce is coming down on insurers and
24 Safelite which will ultimately put money in their
25 pockets"?

1 A. Yes.
2 Q. So let's just break this down because
3 I want to understand what you wrote here. Whose
4 pockets are you referring to?
5 A. The glass companies.
6 Q. Okay. And what's going to put money
7 in their pockets -- sorry.
8 A. Sorry.
9 Q. -- is Commerce coming down on the
10 insurers and Safelite?
11 A. Yes.
12 Q. Okay. That's -- that's what I
13 thought. And in this e-mail exchange, are you
14 forwarding to your friends an e-mail exchange that
15 you had with TJ Patton?
16 A. I don't think so.
17 Q. Well, let's take a look. You -- it
18 looks here that -- if you go to the back of the
19 page, it looks like the first e-mail is an e-mail
20 from you to TJ Patton and Marty Fleischhacker in
21 which you're forwarding them a arbitration award?
22 A. Yes.
23 Q. And, then, Mr. Patton from the
24 Department of Commerce writes back to you and says,
25 "Happy New Year," thanks for sending this to me,

1 and then he's giving you a report on his ongoing
2 investigation, right?
3 A. Yes.
4 Q. And, then, it looks like you're
5 forwarding that whole communication to your friends
6 in the glass shops?
7 A. Where -- where are you seeing -- where
8 do you see that? Am I --
9 Q. Well --
10 A. I'm looking at the right thing?
11 Q. Well, it's a forward -- it says here
12 this is a forwarded message, and I think the way --
13 and we could ask a computer expert to --
14 A. Yeah. I --
15 Q. -- explain it, but the way this -- the
16 way this e-mail chain works is Mike Reid from
17 Alpine Glass is now sending an e-mail to Brad, Rick
18 Rosar and Mike Schmaltz, and it says, "I forwarded
19 our recent American Family award to Commerce."
20 You're describing what you did below --
21 A. Yeah.
22 Q. -- and you're actually sending them
23 that communication that you had.
24 A. Okay. I don't know if I'm sending
25 that or if I'm sending the American Family award, I

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1 have no idea. I might have, I might have, I don't
2 know.
3 Q. Okay. Is it fair to say that
4 Mr. Patton regularly updated you on the status of
5 the DOC's investigations?
6 A. Yeah. I inquired at times.
7 Q. And the status updates that he
8 provided you were not public, correct?
9 A. I don't think so.
10 Q. That's why you had to ask him?
11 A. Right.
12 Q. You thought that telling the shops,
13 the independent shops that the DOC investigation
14 would put money in their pockets was a good angle
15 to get the independent shops to give money to the
16 Minnesota Glass Association, right?
17 A. Yes.
18 Q. Did you ever tell any independent
19 glass shops to contribute money to the MGA?
20 A. Yes.
21 Q. Which shops?
22 A. I -- I don't know.
23 Q. Do you remember what you told them?
24 A. I just asked them if they would -- if
25 they would contribute to it.

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1 Q. But you don't remember which ones you
2 asked?
3 A. No.
4 Q. So even though you didn't want them to
5 know about the investigation when you were kind of
6 coming up with the deal with Mr. Fleischhacker and
7 everything, you had no problem asking them to
8 contribute money to support the investigation, right?
9 A. Well, it wasn't money to support the
10 investigation, it was to support the lobbying
11 efforts.
12 Q. And what were the lobbying efforts?
13 A. Regarding arbitrations.
14 Q. So the lobbying was pretty much about
15 the arbitration?
16 A. Yeah.
17 Q. And what about the arbitration?
18 A. There's been some -- there's been some
19 talk about -- about getting rid of the arbitrations
20 or limiting the arbitrations.
21 Q. It says here on page 1 of this e-mail
22 that "Insurers don't like the complaints and
23 scrutiny by Commerce and are going to try to strip
24 away anything positive through legislation, which
25 is why we need funding for Joe and Chuck." And I

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1 assume Chuck here is the gentleman who is going to
2 be funded with this, correct?
3 A. Ah, Chuck --
4 Q. Is Chuck the same Chuck we're talking
5 about here?
6 A. Yeah, Joe and Chuck work -- working
7 together on the -- the legislation issues.
8 Q. Who is Joe?
9 A. Joe Bagnoli, he's a lobbyist.
10 Q. And he works with Chuck?
11 A. No. He has a different law firm.
12 Q. Got it. What -- what kind of
13 legislation did you think that the insurers were
14 going to try to achieve here?
15 A. To eliminate arbitrations.
16 Q. All right. Why don't you take a look
17 at this.
18 (Whereupon, Deposition Exhibit No. 55
19 was marked for identification, and a copy is
20 attached and hereby made a part of this deposition.)
21 THE COURT REPORTER: Fifty-five.
22 BY MR. LEFKOWITZ:
23 Q. I'd like you to read this document in
24 full before I ask you about it. Are you ready?
25 A. Yeah.

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1 Q. Okay. This is an e-mail from you to
2 Mr. Rosar, Mr. Schmaltz, dated May 4th of 2015,
3 correct?
4 A. Yes.
5 Q. And you've excerpted a post from
6 Glass -- GlassBuzz, I believe, or glassBYTEs, I'm
7 not -- I'm not quite sure.
8 A. GlassBYTEs.
9 Q. GlassBYTEs. What is this post, what
10 is glassBYTEs?
11 A. GlassBYTEs is a -- is a forum for auto
12 glass on the Internet.
13 Q. And this post is urging Minnesota
14 glass shops to start filing complaints with the
15 Department of Commerce regarding Safelite, correct?
16 A. It reads that, yes, start filing a few
17 complaints.
18 Q. Yeah. And it says here, you say here,
19 I hope that -- "I hope all the MGA shops know that
20 now is not the time to randomly file complaints
21 like the poster is encouraging," correct?
22 A. Correct.
23 Q. And you didn't want the MGA glass
24 shops to randomly file complaints with the DOC,
25 right?

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A. Yes.
Q. That's because you wanted the glass shops to go through you or Mike Schmaltz or Chuck Lloyd, right?
A. Yes.
Q. Because you wanted to control the flow of information provided to the DOC?
A. Yes.
MR. LEFKOWITZ: You know what, I'm going to go off the record. Let's take a ten-minute break. I want to take a look at where I want to go with this.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 11:25 a.m.
(Break from 11:25 to 11:38.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 11:38 a.m.
MR. LEFKOWITZ: Thank you, Mr. Reid.
BY MR. LEFKOWITZ:
Q. By middle of 2014, is it true that you thought that the Department of Commerce sympathized with and was somewhat responsive to your concerns?
A. I don't know the timeline, but I know at some point they were, they took my -- my

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complaints seriously.
Q. And you wanted the DOC to force the insurers to pay Alpine Glass's prices, correct?
A. No.
Q. Let me show you an e-mail chain. It's a July 14th e-mail between you and Mr. Patton.
MR. LLOYD: Thank you.
BY MR. LEFKOWITZ:
Q. It's actually a few -- a few pages.
(Whereupon, Deposition Exhibit No. 56 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Fifty-six.
BY MR. LEFKOWITZ:
Q. Let me ask you a question, just about what I just said. You said you weren't interested in forcing them to pay your glass prices, right?
A. I was -- there were -- there were multiple things of what I was interested in them doing.
Q. Was that one of them?
A. I wanted them to -- I wanted them to take some type of action so we didn't have to serial arbitrate and -- for our short pays and incur legal bills on every arbitration. So if you

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consider that forcing payment of our invoices, then, yes.
Q. Well, I'm a little confused because about 10 or 15 minutes ago -- we can look at the transcript if my recollection doesn't track yours -- I thought you said all we wanted was them to pay promptly, and even if they didn't pay the amount that we wanted, we would just go and arbitrate?
A. Correct.
Q. But all we wanted was them to pay promptly, when I was actually asking you didn't you want them to be forced to pay your prices and you were -- you were rejecting that, and you said, no, no, I just want them to pay promptly, and if they don't pay enough, we'll arbitrate.
A. Well, ini --
Q. So now you're telling me something a little different.
A. Well, initially I wanted them to pay promptly and to take control of the steering. As things went on, we had arbitrations that were against insurance companies that we had previously beat on multiple occasions, and I wanted them to take action for enforcing the -- enforcing their

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insurance policy for fair payments and -- and not have us go through the arbitration process over and over and over again.
Q. The only way to avoid having to go through the arbitration process is if the Department of Commerce forced the insurers to pay your prices, correct?
A. Not necessarily to force it, to -- to make an agreement.
Q. What does that mean to you, to make an agreement?
A. To make -- to have the insurance companies make an agreement with my company as far as pricing, not necessarily forcing them to pay my price but to come to a resolution that works for me and the insurance companies.
Q. Well, you have prices that you want to get paid that you think are fair and reasonable, right?
A. Correct.
Q. And those are the prices that you wanted the insurers to have to pay, correct?
A. Correct.
Q. Okay. So it is true that you were trying to use this DOC process to, basically, be

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1 able to get out of having to serially arbitrate
2 against the insurance companies?
3 A. It was one of -- it was one of the
4 items of the complaints.
5 Q. And you were frustrated that Triple A
6 wasn't willing to enter into an agreement with you
7 regarding pricing?
8 A. Oh, yes.
9 Q. Right?
10 Do you think it's illegal as you
11 understand things, and I'm not asking you for a
12 legal conclusion, but do you think it's illegal for
13 a company not to enter into a pricing agreement
14 with you?
15 A. No.
16 Q. And you wanted Mr. Patton to use
17 Triple A as an example to other insurers who use
18 Safelite as their claims administrator, right?
19 A. It was the first -- it was the first
20 complaint, yes.
21 Q. And one of the things you hoped was
22 that if they made Triple A an example that other
23 insurers would begin to agree to your pricing,
24 right?
25 A. Not -- are you -- are you reading that

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1 somewhere or --
2 Q. No.
3 A. Oh.
4 Q. I'm just asking you.
5 A. No. It's -- it -- not -- not at all,
6 that they would -- they would start abiding by the
7 rules and laws, which some insurance companies did
8 after this.
9 Q. But you also wanted them to agree to
10 pay your prices so you wouldn't have to keep
11 arbitrating?
12 A. I wanted them to force -- have the
13 insurance companies meet with us to come up with an
14 agreement, yes. So, in a way, it would be the --
15 paying our invoices if we made an agreement on
16 pricing.
17 Q. But you weren't going to be satisfied
18 if all they came to the table was we'll pay you the
19 same we pay the Safelite network shops?
20 A. No, I wouldn't be satisfied with that
21 at all.
22 Q. You say on page 2 of this e-mail that
23 "We have another batch of short pays," and then you
24 say, "Even though we win legal fees and time value
25 of money seriously erodes my fair reimbursements,"

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1 then you say, "Please let me know what I can do to
2 help these serial arbitrations stop."
3 So that was clearly one of your key
4 objectives, to try to get the DOC to stop making
5 you go to arbitration?
6 A. Correct.
7 Q. And, then, Mr. Patton responds to you,
8 and he says at the top, "I can't imagine how
9 frustrating AAA's conduct must be for you"; is that
10 right?
11 A. Where -- which page are you on?
12 Q. The first page, cover page of that
13 e-mail, midway --
14 A. Oh, okay.
15 Q. -- down the page. Do you see that?
16 A. I -- yep.
17 Q. And you thought Mr. Patton sympathized
18 with your complaints?
19 A. I don't know if he -- I don't know
20 what he -- if he sympathized or not. He said it
21 was -- he can't imagine how frustrating it is. I
22 didn't know what to take, the meaning of that.
23 Q. Weren't you grateful when -- when you
24 read that?
25 A. Not really.

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1 Q. You didn't think he was on your side?
2 A. I didn't know what he was going to do.
3 He just said, "I can't imagine how frustrating
4 AAA's conduct must be for you."
5 Q. When you responded to him, you say,
6 "Thanks TJ!," with a big exclamation point, right?
7 A. It's not a big exclamation point, it's
8 an exclamation point.
9 Q. Do you have a way of making a bigger --
10 (Reporter's Note: Laughter.)
11 BY MR. LEFKOWITZ:
12 Q. Do you have a way of making a bigger
13 exclamation point sometimes?
14 A. I guess I could change the font, yes.
15 Q. Do you do that -- do you do that often?
16 A. No, I don't.
17 Q. So this is your exclamation point?
18 A. This is my exclamation point.
19 Q. And you're, presumably, thanking him,
20 I would guess --
21 A. I --
22 Q. -- for what he says to you, right?
23 A. I -- I use -- I use the exclamation
24 point a lot.
25 Q. You do?

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1 A. Yeah, in an e-mail, hello, you know,
2 exclamation point, you know, good morning,
3 exclamation point.
4 Q. So you're responding to an e-mail
5 where he sympathizes with you, and you're telling
6 him, "You clearly updated me last week on the
7 progress with respect to Safelite, Amfam and AAA";
8 is that correct?
9 A. Yes.
10 Q. And, again, you're not aware, as you
11 sit here today, whether or not it was lawful or
12 unlawful for him to share the results of ongoing
13 investigations with you?
14 A. No. I just -- I -- I assumed it's
15 okay.
16 Q. And then you say, at the end of that
17 first e-mail you say, I have some addition -- "I
18 have some ideas regarding the claims process if a
19 C&D is in fact issued. If you want to call me I
20 can share with you...and "make it easy" on "the AG."
21 Is that -- is that what -- what you're reading here?
22 A. Yes.
23 Q. What kind of ideas did you have
24 regarding the claims process?
25 A. That other insurance companies handle

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1 their claims in-house with no problem with the
2 volume in Minnesota.
3 Q. So you were suggesting or wanted to
4 suggest that they -- insurance companies didn't
5 even need to work with Safelite Solutions, correct?
6 A. They could -- they could handle them
7 themselves, like other insurance companies do.
8 Q. Do you know if Mr. Patton took your
9 advice?
10 A. Um, I think that was the last of the
11 conversation with it. I don't -- I don't know.
12 I -- I don't know if he took my advice at all. I
13 don't even think I -- I don't even know if I even
14 gave him my advice.
15 Q. Okay. Do you have a preference for
16 performing replacements over repairs?
17 A. We do more replacements over repairs.
18 Q. And why is that?
19 A. Because the repairs are -- are quite
20 costly, and they're -- we just -- we don't focus on
21 those that much.
22 Q. Do you get more reimbursement from a
23 repair or from a replacement as a general rule?
24 A. More from a replacement.
25 Q. How does Alpine determine whether a

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1 windshield should be repaired or replaced?
2 A. We talk to the insured.
3 Q. And who makes the final decision about
4 whether it's a replacement or a repair?
5 A. However the custom -- the customer and
6 the person talking to the customer, you know, as
7 far as the damage.
8 Q. Do you have a kind of rule of thumb
9 about what size damage should be replaced or
10 repaired?
11 A. No.
12 Q. Do you ever use a dime or a dollar
13 bill or anything as a proxy for figuring out --
14 A. Not --
15 Q. -- whether something should be
16 repaired or replaced?
17 A. Not that I'm aware of.
18 Q. Is it your view that Safelite pays a
19 commission to the CSR for steering a job?
20 A. It's my assumption.
21 Q. What's that assumption based on?
22 A. Um, I don't recall. It's a
23 conversation I had with someone at Safelite a while
24 ago, but I don't -- I don't recall the conversation
25 or who it was with.

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1 Q. So you have no knowledge, as you sit
2 here today, why you had that --
3 A. No.
4 Q. -- assumption?
5 A. No.
6 Q. Are you aware that Safelite CSRs are
7 paid on an hourly rate?
8 A. I don't know how they're paid.
9 Q. You don't know?
10 So you just have kind of rank
11 speculation about this, you have no facts to
12 support your speculation?
13 A. No.
14 Q. Did you ever make a reference or a
15 representation to Mr. Patton that Safelite pays
16 commissions to CSRs?
17 A. I don't recall if I did or -- or
18 didn't.
19 Q. But you wouldn't have a factual basis
20 for making such a representation?
21 A. No.
22 Q. Let's take a look at a document. It's
23 at tab 12 for me. I don't know what you have.
24 (Whereupon, Deposition Exhibit No. 57
25 was marked for identification, and a copy is

1 attached and hereby made a part of this deposition.)
2 THE COURT REPORTER: Fifty-seven.
3 BY MR. LEFKOWITZ:
4 Q. And I just wanted to call your
5 attention to about the third line down here where
6 it says, "In my opinion nothing should be repaired
7 over the size of a dime."
8 A. Okay.
9 Q. Does that refresh your recollection
10 about whether you have a benchmark for how you make
11 an assessment?
12 A. We don't have a benchmark, this is
13 just my opinion.
14 Q. Do you see at the bottom where you're
15 telling Mr. Patton at the Department of Commerce
16 that Safelite pays a commission to the CSR that
17 steers a job?
18 A. What line is that?
19 Q. The very end, the last sentence.
20 A. Yeah. It's just my assumption.
21 Q. Okay. So there's no factual --
22 A. No, no factuals, no.
23 Q. Do you ever -- do you know if you ever
24 told Mr. Patton that you actually had no basis in
25 fact for that suggestion you made to him?

1 A. No.
2 Q. Have you ever met a Safelite employee
3 named JT Tumblin?
4 A. I've talked to him on the phone.
5 Q. Who is he?
6 A. JT Tumblin handled our account with
7 Safelite, and he was our person to go to with any
8 problems.
9 Q. Do you know how you first came into
10 contact with him?
11 A. I think he came into contact with us
12 probably.
13 Q. Did you ever talk to him about the
14 investigation by the Department of Commerce?
15 A. I believe so. I never talk -- I don't
16 think I talked to him -- yeah. I don't know how I
17 communicated with him, but, yes, I did communicate
18 with him.
19 Q. Did you ever tell the Department of
20 Commerce about him?
21 A. Yes.
22 Q. In what capacity?
23 A. I just told them that he would be a
24 good person to talk to since he was familiar with a
25 lot of the -- the -- how our business works and

1 some of my problems with -- with steering and late
2 payments and -- and such, so --
3 Q. Do you know if he's still employed by
4 Safelite?
5 A. I heard he wasn't.
6 Q. Do you know why he left?
7 A. No.
8 Q. Do you know whether in the course of
9 their investigation the Department relied on
10 Mr. Tumblin at all?
11 A. I gave them the information. I don't
12 know what came -- came about with it.
13 Q. You wouldn't have been happy if the
14 result of this whole investigation that you had put
15 so much effort in was just a fine to the insurance
16 companies of Safelite, right?
17 A. No.
18 Q. You wanted more than that?
19 A. Well, I wanted -- I wanted them to
20 enforce the law.
21 Q. Well, you wanted them to enforce the
22 law so that the glass shops would benefit?
23 A. That they would -- that they would not
24 lose -- that they would not lose customers and they
25 would get their payments. So, yes, that's a

1 benefit.
2 Q. Got it, okay.
3 And, actually, one of the biggest
4 benefits would be to take action against insurers
5 that constantly are, in your view, forcing these
6 glass companies to have arbitrations?
7 A. Yeah. I don't know if -- I don't know
8 if a benefit is really a benefit you gain from
9 someone actually enforcing the law and having a
10 level playing field, but if that's what you're
11 saying a benefit is, then, that's what it is.
12 Q. So let's -- I think your -- let's take
13 a look at your e-mail, because I think it's actually
14 your words and I don't want to mischaracterize
15 them, you can read.
16 (Whereupon, Deposition Exhibit No. 58
17 was marked for identification, and a copy is
18 attached and hereby made a part of this deposition.)
19 THE COURT REPORTER: Fifty-eight.
20 MR. LLOYD: Take some time to read the
21 e-mail.
22 BY MR. LEFKOWITZ:
23 Q. Yeah, please, take as much time as you
24 want. Let me know when you've read it.
25 A. Do you want me to read all these

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1 e-mails?
2 Q. Yeah, read all of them, because I'm
3 going --
4 A. Okay.
5 Q. -- to ask you some --
6 A. All right.
7 Q. -- questions about the whole --
8 A. Give me just a minute, then.
9 Q. Sure, take -- take your time. Are you
10 ready?
11 A. Yes.
12 Q. So this is an e-mail chain which
13 begins with some e-mails between you and a Triple A
14 claims manager, right?
15 A. Yes.
16 Q. And you're trying to get the Triple A
17 claims manager to agree to your pricing, correct?
18 A. Well, to discuss a pricing, to discuss
19 a pricing arrangement.
20 Q. Because you wanted an agreement, right?
21 A. I want an agreement, yes.
22 Q. Correct, okay. And then you forwarded
23 the e-mail chain to Mr. Patton, right?
24 A. Yes.
25 Q. And you copied Mr. Fleischhacker and

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1 someone named Mr. Livgard?
2 A. No, that's Chuck at Livgard -- that's
3 his law firm, Livgard.
4 Q. Oh, oh, I'm sorry.
5 A. Chuck, my attorney.
6 Q. Chuck, okay. So you just sent it to
7 Mr. Fleischhacker, as well?
8 A. Yeah, Marty, TJ, and Chuck.
9 Q. Got it. Now, on the top e-mail you're
10 discussing a settlement probably from the Department
11 of Commerce to Triple A?
12 A. Yes.
13 Q. And you say, "I am hopeful that the
14 settlement proposal proposed to AAA has some
15 benefit to the glass industry as we have provided a
16 lot of information to help with the investigation";
17 is that right?
18 A. Yes.
19 Q. So you're suggesting that you want
20 some benefit for the industry after all the work
21 that you put into this investigation?
22 A. Yes.
23 Q. Okay. And, then, you repeat, in a
24 similar vein, at the very bottom of that e-mail you
25 say again, "I hope there is no benefit to the glass

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1 companies that will come out of the investigations."
2 So there's no question you're looking
3 for a benefit for your company and the other
4 companies as part of this investigation, right?
5 A. Yeah. I'm looking for them to enforce
6 the law versus just fining the insurance company.
7 Q. But enforcing the law isn't the only
8 benefit you're looking for?
9 A. Enforcing the policy, enforcing the
10 law, yes.
11 Q. Well, you're also looking for them to
12 take action against the insurers so that they won't
13 have to keep going through all these arbitrations,
14 right?
15 A. Right. That's what I mean by
16 enforcing the policy. We go through arbitration
17 because they're not fulfilling the policy language.
18 We win in arbitration, they make us go through
19 another arbitration.
20 Q. But that's not enforcing the law, is --
21 A. It's enforcing the law and the policy
22 language.
23 Q. What law, as you understand it since
24 it's your testimony, requires an insurance company
25 to pay the price that you establish?

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1 A. I --
2 MR. LLOYD: Well, objection, that
3 misstates his testimony.
4 MR. LEFKOWITZ: He can answer the
5 question, obviously, it's in English.
6 BY MR. LEFKOWITZ:
7 Q. Do you understand that there's any
8 requirement that an insurance company pay Alpine's
9 prices?
10 A. No.
11 Q. But you want them to pay your prices,
12 and if they don't, then you arbitrate, correct?
13 A. I want them to enforce the laws of
14 steering, enforce the laws of timely payments, and
15 I want to enforce -- them to enforce the insurance
16 policy as it relates to fair and reasonable
17 payment. Therefore, that coincides with the --
18 with the arbitrations, so --
19 Q. But you wanted them to be forced --
20 MR. LLOYD: Were you finished with
21 your answer?
22 THE WITNESS: No.
23 BY MR. LEFKOWITZ:
24 Q. Go ahead, please.
25 A. So -- so it is -- I want them to

1 enforce the law and the insurance policy. I'm not
2 saying that the insurance policy is part of the
3 law.
4 Q. Okay.
5 A. It's my understanding the Department
6 of Commerce enforces the Unfair Claims Practice Act
7 and they -- and they approve insurance policies.
8 Q. And is having an arbitration over a
9 dispute over pricing a proper procedure in your
10 view?
11 A. Is it --
12 Q. Is it a proper procedure, is it
13 against the law or against the policy for two
14 parties who are having a disagreement over pricing
15 to have an arbitration --
16 A. No.
17 Q. -- to decide who is right?
18 A. No. I think it is to have to do it
19 over and over throughout the course of business.
20 That's my opinion.
21 Q. Did there come a time where the
22 Department of Commerce barred Triple A from using
23 Safelite as its claims administrator?
24 A. Yes.
25 Q. And what did Triple A do after that?

1 A. They went to --
2 MR. LLOYD: Objection, no foundation.
3 BY MR. LEFKOWITZ:
4 Q. Do you know what Triple A did after
5 that?
6 A. They went to another TPA.
7 Q. Do you know who they went to?
8 A. Quest.
9 Q. And, in your view, did Quest steer
10 business away from you?
11 A. In my view, Quest -- Quest -- I
12 don't -- necessarily steered business away, but
13 they -- they did say that we weren't a preferred
14 provider.
15 Q. And was that a true statement?
16 A. We aren't -- it is a true statement.
17 Q. Okay. But you weren't happy about
18 Quest being the claims administrator, either?
19 A. I'm not happy about any third-party
20 administrator.
21 Q. Because you don't like losing business
22 to network shops, right?
23 A. I don't like -- I don't like -- I
24 don't like steering and I don't like my payments to
25 be delayed.

1 Q. But you just told me that Quest wasn't
2 steering, Quest was just telling people truthfully
3 that you're not a preferred provider, correct?
4 A. Correct.
5 Q. And you don't like losing business to
6 network shops, right?
7 A. I -- I don't like losing business to
8 network shops.
9 Q. Okay. Let's take a look at 25. I
10 don't have it in my binder for some reason. Here's
11 an e-mail exchange.
12 (Whereupon, Deposition Exhibit No. 59
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 MR. LEFKOWITZ: What exhibit is this?
16 THE COURT REPORTER: Fifty-nine.
17 BY MR. LEFKOWITZ:
18 Q. This is a rather lengthy e-mail from
19 you to Mr. Patton, actually a couple of e-mails
20 from you to Mr. Patton, and an e-mail from
21 Mr. Patton to you. I want to call your attention
22 to the very, very end of this e-mail exchange at
23 the bottom of -- at page 3, it's the very end,
24 where you say, "I am sure this somehow violates the
25 consent order they entered into," and you ask in

1 the prior sentence, "Is there anything that can be
2 done here?"
3 I'd like to know what are you asking,
4 what would you like Mr. Patton to do here for you?
5 A. I would like -- I was -- my intent of
6 this was to force Triple A to allow their
7 policyholders to contact their own insurance
8 company to report the claim, and Triple A was
9 not -- was not accepting these calls from their own
10 insureds, they were forcing the insured to use --
11 to go through a TPA.
12 Q. So even after the consent order was
13 entered, you were -- you were still unhappy?
14 A. Oh, yes.
15 Q. And you made a number of other
16 complaints about Triple A, correct?
17 A. Yes.
18 Q. So it sounds like one of your basic
19 concerns is you just don't want to have third-party
20 administrators involved in this process at all, you
21 don't think that's a good thing?
22 A. I think it -- it's -- it causes
23 confusion on the -- on our customers and it delays
24 payments.
25 Q. Do you have any evidence that

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1 customers have complained to you about this?
2 A. I've heard customers complain about
3 the process of using TPAs all the time.
4 Q. Can you give me some information about
5 those complaints you've received, when you've
6 received them, from whom you've received them?
7 A. No, I can't give you any specifics.
8 Q. It's just anecdotally you can tell me
9 that?
10 A. Yeah, I know, yeah.
11 Q. Doesn't Mr. Patton tell you that aside
12 from your steering allegations, which he doesn't
13 say whether they're accurate or not, he says none
14 of the acts you allege were prohibited by the
15 Consent Order?
16 A. Where are you -- where are you reading
17 that?
18 Q. Well, I'll let you read it. The
19 middle of page 2 here, it says, "Aside from the
20 steering allegation, I do not believe you are
21 alleging acts covered by the consent order's
22 prohibitions"?
23 A. Correct.
24 Q. So you were not happy to get this
25 e-mail?

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1 A. I don't know. I really don't even
2 recall getting it, so I don't know if I was happy
3 or not happy. I mean --
4 Q. So let's turn to the press release.
5 Do you remember a discussion with Rick
6 Rosar about a proposed press release?
7 A. Yes.
8 Q. What do you recall about it?
9 A. I just recall that we were going to
10 get something out as a press release.
11 Q. And who was going to issue the press
12 release?
13 A. I don't recall who was, Rick or Mike,
14 one of the two.
15 Q. It was going to be issued by your
16 company or by --
17 A. No. I don't know -- I don't -- I
18 don't recall.
19 Q. And what was the purpose of putting
20 out a press release?
21 A. To get the facts out that -- of
22 what -- what is -- what has happened versus another
23 outlet putting some -- something out that may not
24 be a hundred percent accurate.
25 Q. And you didn't want to give the other

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1 insurers a chance to prepare responses or anything,
2 right?
3 A. That wasn't my intent at all.
4 Q. It wasn't?
5 A. To -- to do what?
6 Q. To keep the insurers from being able
7 to respond?
8 A. Not at all.
9 Q. Or to prepare?
10 A. No.
11 Q. No? Let me show you an e-mail that
12 you wrote to Rick Rosar.
13 MR. LLOYD: I'm sorry, what number?
14 THE COURT REPORTER: Sixty.
15 (Whereupon, Deposition Exhibit No. 60
16 was marked for identification, and a copy is
17 attached and hereby made a part of this deposition.)
18 BY MR. LEFKOWITZ:
19 Q. And what you say here is, "If you want
20 to clean it up please do so but after talking to
21 Chuck we should get it out there but keep it short
22 and to the point, that way it doesn't give other
23 insurers a chance to prepare." What are you
24 referring --
25 A. Oh.

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1 Q. -- to there?
2 A. Okay. I was -- I -- I didn't
3 understand your previous question. Now that you
4 put that in there, I thought you were -- okay.
5 So it was just more of the insurance
6 companies being able to -- that we already had
7 investigations to -- or complaints against to kind
8 of skirt off the -- the issue and -- and look into
9 different things that we -- that we might be
10 including in the complaints. So that's all it was.
11 Q. And why did you think it was going to
12 be huge?
13 A. Because it was huge.
14 Q. What was huge about it?
15 A. Huge that the Commerce Department,
16 after many years of people filing complaints,
17 actually did something and took action against
18 illegal steering.
19 Q. Let's take a look at the final press
20 release that was actually --
21 (Whereupon, Deposition Exhibit No. 61
22 was marked for identification, and a copy is
23 attached and hereby made a part of this deposition.)
24 THE COURT REPORTER: Sixty-one.
25 BY MR. LEFKOWITZ:

Q. I'm going to ask you if you recognize this? Do you see this press release?
A. Yes.
Q. Did you have any role in editing it or reviewing it?
A. Ah, no, I don't think I did. I gave a quote, but I don't think I edited it.
Q. Did you review a draft of a press release before it was finalized?
A. I don't recall reviewing it. I might have, I might not have.
Q. You approved your quote, correct, when you say this is a big step forward?
A. Yes.
Q. Because you wanted to make sure you got some credit for the consent order?
A. Not really.
Q. But you threatened to file other complaints against other insurers if Safelite or any other TPA continues to utilize the tactics that you found objectionable, right?
A. Yes.
Q. And did you approve Rick Rosar's statement that the consent order is the culmination of hard work and dedication from Minnesota glass

shops?
A. Not that I recall.
Q. Do you agree with that statement?
A. Yes.
Q. Let's look at the draft. I'm going to show you a -- I'm going to show you another document. This is not a press release, but it refers to another public communication.
MR. LLOYD: For the record, this is previously marked as Exhibit 30.
BY MR. LEFKOWITZ:
Q. This is an e-mail chain between you, Rick Rosar, Gary Hart, and Mr. Lloyd; is that correct?
A. Yes.
Q. And this is about a proposed post on the -- on GlassBuzz, correct?
A. Yes.
Q. Is GlassBuzz the same thing as glassBYTEs?
A. No.
Q. What -- what are the two?
A. Two different forums, two different -- yeah.
Q. But they're both for the industry?

A. For auto glass, yeah.
Q. Got it. What are you referring to when you say, "I don't like the proposed press release gary proposes at all. Nothing in it is true and is only an attempt to get credit and promotions edirect." What are you referring to?
A. I thought it was more to try to get -- for Gary to take credit for the actions and the consent order to get more members for the IGA and his e -- and his edirect campaign that he was working on.
Q. And you worked hard on the issue and you wanted some credit, too, right?
A. Well, I just didn't -- no, it's not that I wanted credit. I wanted the facts to be right, to be correct.
Q. You didn't actually even want this to be made public because you were still working on other things with the Department of Commerce, right?
A. I don't know the timeline of this. This could have been when we were going to have a -- a press release put out.
Q. Take a look at the second page, it says here in the middle, "Gary do not put this press release out." Can you read the rest of that

to yourself?
A. Yes.
Q. So does this refresh your recollection?
A. Yes. This was before the other press release, yes.
Q. So you wanted this -- you didn't really want this out, in part, because you had other things in the works with the Department of Commerce, right?
A. Right, and I was -- I thought other glass companies were going to file more complaints.
Q. You said earlier today that you are in charge of setting prices for the Alpine shops; is that right?
A. Yes.
Q. And Alpine Glass, you said that's your only business?
A. That's my only business, yes.
Q. Do you charge insured customers differently than cash customers?
MR. LLOYD: I'm going to object and instruct you not to answer. That is covered by the motion to quash.
MR. LEFKOWITZ: Okay. We have a continuing disagreement. We'll just reserve that

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1 for when the deposition reopens, if it does.
2 BY MR. LEFKOWITZ:
3 Q. Let's -- How many different
4 arbitrations have you testified in?
5 A. I don't know the exact number, it's
6 11, 12, 13.
7 Q. All for other independent glass shops?
8 A. Oh, that I've testified in?
9 Q. Yes.
10 A. Just my own.
11 Q. Oh, just your own?
12 A. Yes. I mean, I've testified via
13 affidavit on other glass companies.
14 Q. You have --
15 A. Yes.
16 Q. -- for other glass companies?
17 A. Yes.
18 Q. And have you ever testified that the
19 prices charged by the other glass companies are not
20 fair and reasonable?
21 A. That -- that the prices charged by
22 other glass companies?
23 Q. Not -- correct, are not fair or
24 reasonable?
25 A. I -- what -- can you --

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1 Q. Well, when you've testified in an
2 arbitration --
3 A. Yes.
4 Q. -- what's been the subject of your
5 testimony?
6 A. That our price is fair and reasonable.
7 Q. Correct. Have you ever test -- been
8 asked to testify in some other shop's --
9 A. Yes.
10 Q. -- arbitration?
11 A. Yes.
12 Q. About what, what's the subject?
13 A. About the prices are fair and
14 reasonable.
15 Q. Correct. And have you ever given
16 testimony that the other shop's prices are not fair
17 and reasonable?
18 A. I don't recall, I don't recall my
19 testimony on affidavits.
20 Q. So you may have testified --
21 A. May have, may not have.
22 Q. -- that someone else's prices were not
23 fair or reasonable?
24 A. Yeah. I guess I'm not understanding
25 the question. So are you asking me --

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1 Q. What is the nature -- When you're
2 asked to give testimony in an arbitration, what's
3 the scope of what you're being asked to testify
4 about?
5 A. That the -- that the price is fair and
6 reasonable, that the -- the glass company that is
7 charging the insurance company is fair and
8 reasonable.
9 Q. Right. And my question is, have you
10 ever given testimony that says, no, I've looked at
11 these prices and I don't think they're fair --
12 A. Oh, okay.
13 Q. -- or reasonable?
14 A. No, no.
15 Q. You haven't?
16 A. No.
17 Q. Do you know if in any of the
18 arbitrations that Alpine has been involved in
19 people from other glass shops have given testimony?
20 A. Yes.
21 Q. Do you know if any of them have ever
22 given testimony that Alpine's prices are not fair
23 or reasonable?
24 A. Not that I recall.
25 Q. Do you recall participating in an

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1 arbitration about fair and reasonable prices where
2 your testimony was not credited in an arbitration
3 involving Rapid Glass?
4 A. No.
5 Q. This was previously marked as 32, and
6 I'll hand you a -- This document is dated
7 August 5th, 2010. Do you recall this arbitration?
8 A. No.
9 Q. Let me call your attention to pages 25
10 and 26. At the bottom of 25 there's a paragraph
11 that refers to your testimony. Do you see that you
12 gave testimony about fair and reasonable prices?
13 A. Yes.
14 Q. And that you said that the prices that
15 were charged were fair and reasonable?
16 A. Yes.
17 Q. Do you know, if you look a page
18 earlier it talks about Rick Rosar giving testimony
19 as well?
20 A. Okay.
21 Q. Do you know if Mr. Rosar ever
22 testified in support of Alpine in any arbitrations?
23 A. I believe he's submitted affidavits.
24 Q. Uh-huh. When you submit an affidavit,
25 that's a form of testimony.

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A. Okay.
Q. It's under perj -- it's under penalty of perjury?
A. Yeah, okay. So, yes, yeah, he didn't -- yeah.
Q. Not in person?
A. Right.
Q. I understand, okay. Do you know the outcome of this arbitration that you testified in?
A. Not from six years ago, no.
Q. If you'll look at page 35, it gives the conclusion at the top. It says, "The arbitrator finds that Allied has paid to or on behalf of it's" [sic] "insureds a prevailing competitive rate," and other than with respect to one claimed called the Groettum claim, Rapid, for whom you were testifying, lost and the request for cost and disbursements is denied. Do you see that that's reflected --
A. Yes.
Q. -- in the document?
A. Yes.
Q. Let me show you another document as well. This is a document involving an arbitration that Alpine was involved in.

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(Whereupon, Deposition Exhibit No. 62 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Sixty-two.
BY MR. LEFKOWITZ:
Q. If you turn to page 3, it says that this was held on February 12th, 2014; is that correct?
A. Yes.
Q. And Mr. Lloyd represented Alpine at this arbitration?
A. Yes.
Q. Do you recall this dispute?
A. Yes.
Q. This was over an American Family bill that you claim they should have paid in full?
A. Yes.
MR. LLOYD: Well, actually, it's over several American Family bills --
MR. LEFKOWITZ: Excuse me, Mister --
MR. LLOYD: -- not one.
MR. LEFKOWITZ: Mr. Lloyd, that's not an objection, and you're going to have your opportunity to testify in this case.
MR. LLOYD: Well, you can't

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misrepresent what the document is about. That obligation is on you as the questioner.
MR. LEFKOWITZ: I'm not making any -- I'm asking him, as a question, and he gave an answer. If you want to object to the form of my question --
MR. LLOYD: I'm going to object to the form of the question --
MR. LEFKOWITZ: -- I'll restate the question.
MR. LLOYD: -- as misstating what the --
MR. LEFKOWITZ: I'll -- I'll --
MR. LLOYD: -- exhibit says.
MR. LEFKOWITZ: I'll restate the question, but you'll get your chance to testify, Mr. Lloyd.
BY MR. LEFKOWITZ:
Q. Do you recognize this document?
A. Yes. It's an arbitration award.
Q. And what was the arbitration about?
A. Short payments.
Q. By what company?
A. American Family.
Q. And did you testify in this

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arbitration?
A. Yes.
Q. And do you recall that the arbitrator found that Alpine charges different rates to different insurance companies?
A. I don't know. I haven't looked through this -- this document.
Q. Why don't you look at page 17.
A. Okay.
Q. Do you see now that it's -- that the Arbitrator found that Alpine charges different rates to different insurance companies?
A. Yes.
Q. Is that true?
A. Yes.
Q. Do you also see where it says that you testified credibly that you routinely and frequently listen in on calls from prospective customers as they interact with Safelite Solutions and Alpine and that you allege that steering, in fact, does occur but that you offered no compelling evidence?
A. Yes.
Q. So the Arbitrator found that you offered no compelling evidence of steering; is that

1 correct?
2 A. That's what -- that's what it says
3 right there.
4 Q. In your view, are the amounts that are
5 offered for auto glass replacement by Safelite on
6 behalf of insurance companies unreasonable and
7 below market rates?
8 A. Can you restate or --
9 Q. Yes. Do you --
10 A. Can you repeat it?
11 Q. Do you believe in your judgment that
12 the amounts that are offered for auto glass
13 replacement by Safelite on behalf of insurance
14 companies are below market and unreasonable?
15 A. Some are, some aren't.
16 Q. So you think some of Safelite's rates
17 are reasonable and fair?
18 A. I -- I am -- I'm confused. Are you
19 saying Safelite setting the rates? What do you
20 mean --
21 Q. No.
22 A. What do you mean by Safelite rates?
23 Q. Safelite as a TPA, right?
24 A. Safelite Solutions is a TPA.
25 Q. On behalf of insurance companies

1 suggests pricing, and you reject that pricing
2 because you consider it to be unreasonable and
3 below market; is that right?
4 A. Who -- who is suggesting the pricing?
5 Q. The insurance companies.
6 A. Are suggesting pricing?
7 Q. Correct.
8 A. To -- to Alpine Glass?
9 Q. Correct. And you're rejecting them
10 because you believe that they are unreasonable and
11 below market?
12 A. Some.
13 Q. Which ones do you believe are
14 reasonable?
15 A. We have agreements with some that
16 Safelite is the administrator for.
17 Q. Which ones do you have agreements with
18 that Safelite is the administrator for?
19 A. I don't have the list, but I -- I
20 don't have the list in front of me.
21 Q. And the ones that you don't have
22 agreements with you reject?
23 A. We don't reject, no, we don't -- What
24 do you mean reject? How --
25 Q. If you can't answer the question, just

1 say --
2 A. I don't --
3 Q. -- you don't understand the question.
4 A. Yeah, yeah.
5 Q. Is it true that you rarely agree to
6 the pricing that's offered to you by Safelite on
7 behalf of insurance companies?
8 A. In which instance?
9 Q. In any instance, is that a true
10 statement?
11 A. How are they offered?
12 Q. Let me go back to your --
13 MR. REIGSTAD: It's 46.
14 BY MR. LEFKOWITZ:
15 Q. Can we take 46 out? It's your
16 affidavit, your declaration, and turn to paragraph
17 4, just read paragraph 4 beginning where it says
18 "Alpine Glass."
19 A. Okay.
20 Q. So is it true that you rarely agree to
21 the pricing that's offered by Safelite on behalf of
22 insurance companies because you consider it to be
23 unreasonable and below market rates?
24 A. When it's offered, yes, we -- we don't
25 agree with it.

1 Q. Has Alpine Glass had shops or done
2 repairs other than in Minnesota and western
3 Wisconsin?
4 A. Yes.
5 Q. Where?
6 A. Florida, Arizona, Iowa, maybe some of
7 the bordering states of those, Kentucky.
8 Q. When did you stop doing business in --
9 other than in Minnesota and Wisconsin?
10 A. I don't know the dates.
11 Q. Do you have a view as to whether or
12 not the prices for glass repair work are higher in
13 Minnesota than in other states that you've operated
14 in?
15 A. That was a long time ago. I can't
16 compare the two.
17 MR. LEFKOWITZ: All right, let's go
18 off the record. I'm going to take five minutes,
19 and then I'll let you know if I'm going to continue
20 or if we should take -- or if we're done or if
21 we're going to take a lunch break. All right?
22 Give me five minutes.
23 THE VIDEOGRAPHER: Going off the video
24 record. The time is now approximately 12:35 p.m.
25 (Break from 12:35 to 12:39.)

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1 THE VIDEOGRAPHER: We're back on the
2 video record. The time is now approximately
3 12:39 p.m.
4 BY MR. LEFKOWITZ:
5 Q. Mr. Reid, what did you do to prepare
6 for this deposition?
7 A. I met with Chuck yesterday and
8 reviewed my -- my declaration.
9 Q. You just met with him on one occasion
10 to prepare for the deposition?
11 A. Yes.
12 Q. And who was present for the meeting?
13 A. Just my -- Chuck and myself.
14 Q. Did you have any communications in
15 preparation for this deposition with Mr. Larson?
16 A. No.
17 Q. Did you ever meet Mr. Larson before
18 today?
19 A. Not until today.
20 Q. You mentioned earlier that you don't
21 record all of your phone calls, but you record many
22 of them; is that accurate?
23 A. Yes.
24 Q. How do you decide which phone calls to
25 record and which not to record?

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1 A. Um, I don't know how they do that.
2 That's at the -- the different -- it doesn't come
3 out of my office. It's the different -- different
4 offices.
5 Q. Do you know if there is a policy at
6 the company on recording of calls?
7 A. No.
8 Q. You know that there is no such policy?
9 A. There's no policy at all.
10 Q. Who is in charge of deciding which
11 calls should be recorded?
12 A. The sales manager who is doing the
13 call.
14 Q. So the sales manager can just decide
15 for each call to hit a record button or not?
16 A. Well, I think there's more to it.
17 They've complained that tech -- we don't have the
18 technology to record it. So if someone calls in,
19 that may not be recorded because they have to do --
20 do it on a different phone or computer, so --
21 Q. But if you guys are doing your
22 telemarketing calls, you --
23 A. Those aren't -- those aren't recorded,
24 no.
25 Q. Those are not recorded?

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1 A. No.
2 Q. Do you know what percentage of phone
3 calls that Alpine is involved in with consumers are
4 recorded?
5 A. Um, no, I don't know what percentage.
6 Our verifications are also recorded, I should say.
7 So I guess those -- the verifications are done at
8 my office, so those are recorded as well.
9 Q. Got it. Now, you -- you said you've
10 listened in on a variety of phone calls?
11 A. Yes.
12 Q. Have you ever heard a TPA negotiating
13 price with a consumer?
14 A. Not negotiating, no.
15 Q. Now, you do negotiate prices with
16 insurance companies, correct?
17 A. Yes.
18 Q. And do you do that personally?
19 A. Yes.
20 Q. And you've done that, as I understand,
21 obviously, with Harmon because you're part of
22 their -- well, you called it a network, but it's
23 not really a network, it's just an agreement?
24 A. I made an agreement with Harmon, yeah.
25 Q. And, then, you made an agreement with

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1 some other companies, insurance companies, whose
2 names you don't recall now, who use Safelite as
3 their third-party administrator?
4 A. Yes.
5 Q. And so when Safelite is the
6 third-party administrator for the insurance
7 companies that you have an agreement with, Safelite
8 is obligated to tell this -- the customer the price
9 that you've agreed with them?
10 A. I don't know if they -- they -- they
11 tell them that.
12 Q. You've never listened in on any calls
13 with --
14 A. I've listened in on calls, but I don't
15 recall if -- how -- the details of those calls.
16 Q. Have you ever negotiated a price with
17 a third-party administrator?
18 A. Well, we did with Harmon.
19 Q. Harmon is?
20 A. Harmon Solutions is a TPA.
21 Q. For how many different insurance
22 companies?
23 A. I don't know off the top of my head.
24 It's not as big as Safelite or Lynx.
25 Q. And Harmon is the only TPA that you've

negotiated directly with on price?
A. Yes.
MR. LEFKOWITZ: I'm finished. Do you have any questions?
MR. LLOYD: No.
MR. LARSON: I do, just a couple.
EXAMINATION
BY MR. LARSON:
Q. Mr. Reid, if you could pick up, what is this, Exhibit 48, this is the invoice that they showed you earlier from Alpine Glass?
MR. LLOYD: What's the -- what's the number?
MR. LARSON: Forty-eight.
THE WITNESS: Okay.
MR. LARSON: Let Chuck here get on board.
MR. LLOYD: Got it. It's all out of order, but I got it.
BY MR. LARSON:
Q. All right. So, Mr. Reid, you recall you were asked some questions about some language on this invoice, do you recall that?
A. Yes.
Q. And the language that appears on -- on

the second page here, the invoice says, I understand that if I have no insurance -- well, I'm having trouble reading, but basically what it says if -- if the person coming to get the work done does not have insurance, then they may be billed for the work by Alpine. Do you recall that?
A. Yes.
Q. In what situation would you bill somebody for work that you performed because they did not have insurance?
A. Someone that schedules the appointment that doesn't have insurance, a cash -- a cash job.
Q. Okay. So does this apply, then, to situations where somebody does have insurance and there's a short pay?
A. No.
MR. LARSON: Okay. That's all the questions I have.
MR. LLOYD: Nothing further.
MR. LEFKOWITZ: All right.
THE VIDEOGRAPHER: This concludes the video deposition. The time is now 12:45 p.m. Thank you.
(Whereupon, the deposition of MICHAEL REID was concluded at 12:45 p.m.)

I, MICHAEL REID, do hereby certify that I have read the foregoing deposition and found the same to be true and correct except as follows, (noting the page and line number of the change or addition as desired and the reason why):

Page	Line	Correction
____	____	_____
____	____	_____
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Date: MICHAEL REID

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN that I, Jean F. Soule, Registered Professional Reporter, took the foregoing deposition of MICHAEL REID;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction to the best of my ability;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were not waived by the witness and respective counsel;

That I am not related to any of the parties hereto, nor an employee of them, nor interested in the outcome of the action;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 3rd day of February, 2016.

JEAN F. SOULE, Notary Public, RPR

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Larson Ex. 7

In The Matter Of:

Safelite Group, Inc. and Safelite Solutions, LLC vs. Michael Rothman

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Richard Rosar

January 12, 2016

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Min-U-Script® with Word Index

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

- -

Safelite Group, Inc., and
Safelite Solutions, LLC,

Plaintiffs,

vs. Case No.: 15-cv-1878
(SRN/SER)

Michael Rothman, in his official
capacity as Commissioner of the
Minnesota Department of Commerce,

Defendant.

- -

VIDEO DEPOSITION

The following is the video deposition of RICHARD ROSAR, taken before Jean F. Soule, Notary Public, Registered Professional Reporter, pursuant to Notice of Taking Deposition, at the law offices of Fredrikson & Byron, P.A., 200 South Sixth Street, Minneapolis, Minnesota, commencing at 8:45 a.m., Tuesday, January 12, 2016.

* * *

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P R O C E E D I N G S

Whereupon, the video deposition of RICHARD ROSAR was commenced at 8:45 a.m. as follows:

* * *

THE VIDEOGRAPHER: This is the video operator speaking, Don Carl with Depo International, Incorporated. Today's date is Tuesday, January 12th, in the year 2016. The time is now approximately 8:45 a.m. We are at 4000 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, Minnesota, to take the video deposition of Mr. Rick Rosar in the matter of Safelite Group, Incorporated and Safelite Solutions, LLC versus Michael Rothman.

Will counsel please voice identify themselves for the video record?

MR. REIGSTAD: Christian Reigstad from Kirkland & Ellis for the Plaintiffs, and with me is my colleague Danielle Sassoon, and Rick Snyder.

MR. LLOYD: Chuck Lloyd appearing on behalf of Rick Rosar.

MR. LARSON: And Oliver Larson, Attorney General's Office, appearing on behalf of the Commissioner.

THE VIDEOGRAPHER: Would the court reporter please administer the oath?

* * *

(Reporter's Note: The oath was administered by the court reporter.)

MR. ROSAR: I do.

THE VIDEOGRAPHER: You may begin.

* * *

RICHARD ROSAR,
after having been first duly sworn,
deposes and says under oath as follows:

***

EXAMINATION

BY MR. REIGSTAD:

Q. Good morning, Mr. Rosar.
A. Good morning.
Q. Can you please state your name for the record?
A. Richard Kenneth Rosar.
Q. And you are aware that you are here in connection with the case captioned Safelite Group, Inc. and Safelite Solutions, LLC versus Lori Swanson and Michael Rothman in the United States District Court for the District of Minnesota, correct?
A. Yes.
Q. And going forward if I refer to

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1 Safelite, will you understand I'm referring to the
2 plaintiffs in this case?
3 A. I'd prefer if you separated it, I
4 guess, between TPA and AutoGlass.
5 Q. Sure. So how about if I refer to
6 Safelite Solutions and, then, Safelite AutoGlass?
7 A. Sure.
8 Q. And, then, sometimes I might refer to
9 them together, and if that's confusing for you,
10 please let me know. Okay?
11 A. Okay.
12 Q. Have you ever been deposed before,
13 Mr. Rosar?
14 A. Um, yes.
15 Q. How many times?
16 A. I believe just once.
17 Q. How long ago was that?
18 A. Um, several years ago.
19 Q. Was that over five years ago?
20 A. I believe it was.
21 Q. And what was that case about?
22 A. Um, I believe it was in connection
23 with a short pay case.
24 Q. And was this in an arbitration
25 proceeding?

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1 A. Um, either court or arbitration, we've
2 done both.
3 Q. Okay. And setting aside that
4 deposition, have you ever testified at a hearing?
5 A. Um, a hearing in regards to what type
6 of hearing?
7 Q. Any -- any kind of hearing, so
8 testified in a trial or an arbitration hearing or
9 anything like that?
10 A. Yes.
11 Q. And how many times?
12 A. Um, several times, I don't know the
13 exact number, but it's been more than three.
14 Q. And are these mostly arbitrations?
15 A. Mostly, yes.
16 Q. And are these arbitrations between
17 insurance companies and glass repair shops?
18 A. Um, yes.
19 Q. So it sounds like you have a little
20 bit of experience, but we start I just want to go
21 over some rules of the road.
22 Now, during this deposition, I'll ask
23 you questions, you'll give your truthful answers,
24 and the court reporter is going to write down
25 everything you say. Do you understand?

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1 A. Yes.
2 Q. And you've just taken an oath that
3 requires you to tell the truth just as if you were
4 testifying in court. Do you understand that?
5 A. Yes.
6 Q. And the court reporter is not going to
7 pick up like nodding or uh-huhs. So I'd just ask
8 that you give verbal answers so she can write down
9 everything you say. Do you understand?
10 A. I understand. I'll try my best.
11 Q. Excuse me. The court reporter might
12 also have trouble if we talk over each other. So
13 will you let me finish my question before you
14 answer?
15 A. Certainly.
16 Q. And if you don't understand a
17 question, please let me know and I'll rephrase the
18 question in a way so that you can understand it.
19 Does that sound fair?
20 A. Yes, it does.
21 Q. And if at any point in the deposition
22 you realize something you said was incorrect or
23 incomplete, even if it's much later on, please let
24 me know and you can revise or supplement your
25 answer. Do you understand?

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1 A. Yes. I'll try to remember that.
2 Q. If you'd like to take a break at any
3 point, just let me know. I know a lot of witnesses
4 like to take a break every hour or so just to
5 stretch the legs and keep fresh. The one request
6 I'd make is that if I have a question pending, you
7 need to answer the question before we take the
8 break. Do you understand?
9 A. Yes.
10 Q. And is there any reason at all why you
11 cannot give complete and truthful testimony today?
12 A. No reason.
13 Q. Mr. Rosar, can you please explain any
14 professional positions you held before your current
15 job?
16 A. Um, professional? I mean, I was in
17 the computer business before I was in glass.
18 Q. And when did you start in the computer
19 business?
20 A. Um, shortly after high school and
21 postsecondary training.
22 Q. And how long did you work in the
23 computer business?
24 A. Ah, I believe it was around ten years.
25 Q. And what did you do next after you

stopped working in the computer business?
A. Ah, then I moved into the glass business.
Q. And where did you first work in the glass business?
A. Fast Glass.
Q. When did you start working at Fast Glass?
A. I don't know the exact date, but I believe it was in the -- the early 1990s.
Q. And when did you stop working for Fast Glass?
A. Ah, around 1997, I believe.
Q. Can you describe the business of Fast Glass for the Court?
A. Um, yeah. They were primarily auto glass, they also did home glass, and they also did vehicle accessories, such as sunroofs and running boards and stuff.
Q. And what was your position at Fast Glass?
A. Um, I was kind of in management that oversaw a lot of the accessory stuff, and I also managed the IT portion of it, the computers and telecommunications.

Q. Did you have -- excuse me. Did you have a formal title?
A. Um, I don't recall what it was. I was, like I say, primarily a manager.
Q. And did your position change at all from when you started at Rapid Glass -- excuse me, when you started at Fast Glass to when you left Fast Glass?
A. Um, not really. It was a family business, so, you know, I kind of did whatever was required of me.
Q. So who ran the business?
A. My parents owned the company.
Q. And what did you do next after you left Fast Glass?
A. Um, I started up the -- the current company, Buy-Rite Auto Glass, d/b/a Rapid Glass.
Q. And if I refer to Rapid Glass, will you understand that I'm referring to Buy-Rite Auto Glass?
A. Yes.
Q. And how long have you held your current position at Rapid Glass?
A. Ah, since the -- the purchase of the company in -- in the late 1990s, like I say, I

believe around 1997.
Q. And I should ask, what is your current position at Rapid Glass?
A. Um, CEO, manager, installer when needed.
Q. Do you own Rapid Glass?
A. Yes.
Q. Are you a co-owner or do you fully own it?
A. I fully own it.
Q. Can you describe the business of Rapid Glass?
A. Um, yeah. We do auto glass and home and business glass.
Q. And -- excuse me. Where does Rapid Glass do business?
A. In the Twin Cities, Minnesota only. Well, actually, we've done some stuff in Wisconsin, too, but primarily the metropolitan area, the Twin Cities.
Q. If you could estimate what percentage of your business is in Minnesota versus in Wisconsin?
A. Oh, over 90 percent.
Q. Over 90 percent is in Minnesota?

A. Yeah, yeah.
Q. How many locations does Rapid Glass have?
A. Ah, just one.
Q. And where is that?
A. Ah, Coon Rapids, Minnesota.
Q. Could you describe your job responsibilities at Rapid Glass?
A. Um, handle the marketing, manage the employees, um, basic daily operations.
Q. Are you responsible for setting pricing of windshield replacements and repairs at Rapid Glass?
A. Um, yes.
Q. Are you responsible for Rapid Glass's billing practices?
A. Um, I'm responsible for setting the practices primarily, yes, with input from our receivables department, payable receivables. But, yes, it primarily comes down to me.
Q. So you're familiar with the billing --
A. Making the decisions of the practices.
Q. So you're familiar with the billing practices at Rapid Glass?
A. Yes.

Q. Are you responsible for Rapid Glass's collection practices?
A. Yes.
Q. Excuse me. Does Rapid Glass engage in any lobbying activities?
A. Um, not on its own, no.
Q. Does Rapid Glass indirectly engage in any lobbying activities?
A. Yes.
Q. Can you explain that?
A. Um, just we're active at the legislature. Whenever issues come up or monitoring issues of the legislature, we've always been a -- a active company in contacting legislature, legislators and stuff like that.
Q. And at Rapid Glass, are you the primary person who is responsible for coordinating the lobbying activities?
A. Yes.
Q. Are you familiar with an organization called the Minnesota Glass Association?
A. Yes.
Q. If I refer to that as the MGA, will you understand what I mean?
A. Yes.

Q. Is Rapid Glass a member of the MGA?
A. Yes.
Q. How long has Rapid Glass been a member of the MGA?
A. Um, we were members years ago, and then we got out, and now I believe we've been members for around two years.
Q. When did you get out of the MGA?
A. I don't recall the exact date.
Q. Can you give me a time range?
A. Um, gosh, we were out of it in the early 2000s, I know we were not in it.
Q. Why did you -- excuse me. Why did you get out of the MGA?
A. There was another glass association that started up, and I ended up joining that one instead.
Q. And was there a reason you preferred that glass organization over the MGA?
A. Um, yeah. They just seemed like their ideals were more aligned with what I agreed with, I guess.
Q. So what was it about the MGA's ideals that you felt were not aligned with yours?
A. Ah, the MGA? It was primarily made up

of glass shops that marketed to insurance agents and insurance companies, and we were a consumer-based marketer.
Q. And what was the other glass shop that you switched over to?
A. I was --
Q. Excuse me, strike that.
What was the other association that you switched over to?
A. Yeah. The Minnesota Independent Glass Association.
Q. Is that the IGA, known as the IGA, or is that different?
A. Um, it's different. Um, many of the members from MIAGA, when it disbanded, became IGA members, but it's a different organization.
Q. Okay. So --
A. Different association.
Q. So the Minnesota Independent Glass Association is separate from the Independent Glass Association?
A. Correct.
Q. And when did the Minnesota Independent Glass Association start, as best you can recall?
A. I -- I don't remember. I wasn't

involved in the inception of it. But, again, I believe it was in the neighborhood of the early 2000s.
Q. And what was the purpose of the Minnesota Independent Glass Association, if you know?
A. Um, I don't recall what the exact purpose of it was. It was just a -- you know, similar to the MGA and the IGA, just, you know, networking, getting information, you know, learning about installation techniques, you know, just staying connected in the industry.
Q. So is it fair to say that the Minnesota Independent Glass Association was catering more to non-network shops than the Minnesota Glass Association?
A. Um, no. I would say it was probably more to people that marketed to the consumer than marketed to agents. I don't know, as far as network and non-network, I think there was non-network and network shops in both organizations.
Q. Can you explain what you mean -- excuse me -- when you say marketed to the consumer versus marketed to the insurance agents?
A. Um, primarily, you know, when I bought

1 the company, Buy-Rite Auto Glass marketed mostly to
2 consumers via the -- the Yellow Pages and other
3 mailings and type of marketing like that. The
4 company prior to that, Fast Glass, they were more
5 an agent marketing type of company.
6 Q. So you'd, basically, get your
7 customers directly from an insurance agent rather
8 than directly marketing to consumers?
9 A. Correct.
10 Q. Okay. And how have the ideals of the
11 MGA changed in recent years?
12 A. Um, I think that they've opened up a
13 little bit more, like you say, where, you know,
14 most of the org -- glass shops that were involved
15 with them marketed to the agents and they had a
16 little different mindset on how marketing occurred,
17 you know, agent marketing versus consumer marketing,
18 and I think they've since come to realize that, you
19 know, we all -- actually, our interests are all
20 more similar than they are opposing in the industry.
21 Q. And when you say we -- "we all," who
22 are you referring to?
23 A. Um, all the glass shops in Minnesota,
24 I guess.
25 Q. So when did MGA become a member --

1 excuse me, strike that.
2 When did Rapid Glass become a member
3 of the MGA again?
4 A. I believe about two years ago.
5 Q. So 2013?
6 A. Yes.
7 Q. And why did Rapid Glass become a
8 member of the MGA again?
9 A. Um, like I say, I felt that over time
10 it had -- the Association had actually become more
11 open to acknowledging, you know, all types of glass
12 shops, and it made me more comfortable joining with
13 them.
14 Q. Can you be a little bit more specific
15 about what you mean when you say "all types of
16 glass shops"?
17 A. Whether you're marketing to the agent
18 or marketing to the consumer or marketing to car
19 dealerships or, you know, just all different
20 business models.
21 Q. Has Rapid Glass -- strike that.
22 Have you been on the board of the MGA
23 at any time?
24 A. Yes.
25 Q. At what times?

1 A. Um, about a year ago I joined the
2 board or was voted on the board.
3 Q. Are you still on the board?
4 A. Yes.
5 Q. How many board members are there for
6 MGA?
7 A. I don't know the exact number.
8 Q. And why did you choose to become on
9 the board of the MGA?
10 A. Ah, they just asked me to. Um, the
11 MGA is made up of auto glass and flat glass
12 companies, and I think they wanted a little more
13 auto glass presence, I guess, on the board.
14 Q. And I think we've already mentioned
15 this, but do you know what the Independent Glass
16 Association is?
17 A. Yes.
18 Q. And if I refer to the IGA, will you
19 understand I'm referring to the Independent Glass
20 Association?
21 A. Yes.
22 Q. Is Rapid Glass a member of the IGA?
23 A. Yes.
24 Q. And how long has Rapid Glass been a
25 member of the IGA?

1 A. Um, many years, more than five, maybe
2 close to ten.
3 Q. Has Rapid Glass contributed money to
4 the IGA?
5 A. Um, I don't recall contributing money.
6 I mean, we paid dues, we -- you know, I donate my
7 time.
8 Q. Are there annual dues for the IGA?
9 A. Yes.
10 Q. And how much is it per year?
11 A. I don't know exactly. If I had to
12 guess, I'd say in the range of four to $500.
13 Q. And how --
14 A. Three to five hundred maybe.
15 Q. And how about for the MGA, has Rapid
16 Glass ever contributed money to the MGA?
17 A. Um, again, you know, dues and time
18 type of thing.
19 Q. And do you know how much dues are for
20 the MGA?
21 A. I believe they're roughly the same,
22 three to five hundred.
23 Q. And other than contributing dues to
24 the MGA and the IGA, has Rapid Glass ever
25 contributed any other money to the MGA or the IGA?

A. Um, I believe some, like, lobbying effort funding.
Q. And can you tell me about that?
A. Um, I believe it was -- actually went through the IGA, where we contributed, I think, five hundred to a thousand dollars to go towards lobbying efforts.
Q. And when was that?
A. Two to three years ago, is my best guess.
Q. And why did Rapid Glass give that money to the IGA?
A. Um, to contribute for lobbying efforts.
Q. Was there a specific lobbying effort that you wanted to see furthered by the IGA?
A. You know, I don't -- at the time I don't recall the exact one. I know a few years ago there was some stuff going through the legislature. I don't remember the exact nature of it. Like I say, I've been involved in lobbying, you know, pretty much the whole time. So I don't remember exactly what the nature of that issue was.
Q. So as far as you know, it was you were contributing money to assist the IGA in lobbying

for the passage of a law; is that right?
A. Well, it's not always the passage of the law, sometimes it's monitoring, you know, and -- to see if something comes up in the legislature type of thing.
Q. Okay. I guess what I'm trying to understand is, when you contributed that money, was it to lobby the legislature or was it to lobby like a government agency like the Department of Commerce or something like that?
A. Oh, the legislature for sure, yes.
Q. Okay. And it was, you know, basically to lobby for legislative activity that was going on at that time?
A. Correct.
Q. And, again, you think this was a couple years ago, so maybe 2013?
A. Yes.
Q. So other than that $500 to $1,000, can you recall giving any other money to the MGA or the IGA?
A. I do not recall at this time, no.
Q. Excuse me.
MR. REIGSTAD: I'm going to just continue with marking from yesterday, so I think

this is 13.
THE COURT REPORTER: Exhibit 15.
MR. LARSON: We're at 15.
MR. REIGSTAD: Are we?
THE COURT REPORTER: Yes.
MR. REIGSTAD: Okay.
MR. LLOYD: Did you leave early yesterday?
MR. REIGSTAD: I guess I missed some of the good stuff.
(Whereupon, Deposition Exhibit No. 15 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. REIGSTAD:
Q. The court reporter is handing you what's been marked as Exhibit 15.
A. Can I get my reading glasses out of my jacket?
Q. Sure.
MR. LLOYD: Just make sure you take the microphone off.
THE WITNESS: Oh.
MR. REIGSTAD: Let's go off the record for just a minute maybe.
THE VIDEOGRAPHER: Going off the video

record. The time is now approximately 9:05.)
(Break from 9:05 to 9:06.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 9:06 a.m.
BY MR. REIGSTAD:
Q. Now, Mr. Rosar, do you recognize this document?
A. It appears to be a LinkedIn printout.
Q. And is this a copy of your LinkedIn profile?
A. It appears so, yes.
Q. I just have a couple questions on this.
A. Sure.
Q. If you could turn to the third page of the profile, and there's a section that says honors and awards, do you see that?
A. Yes.
Q. Right below that heading it says Industry Certificate of Recognition, IGA-Independent glass association, October 2014. Do you see that?
A. Yes.
Q. Can you explain what that award is?

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A. Um, it was given to me by the IGA at the conference that year just for advancing the ideals of the auto glass association, just for being an active glass shop, for all my contributions of time.
Q. And do you know if it was in return for any specific contributions or actions?
A. I don't know that. I don't believe so.
Q. Do you think you received this award -- do you think receiving this award had any connection to your activities with respect to Safelite?
A. I don't believe so.
Q. And, then, right below that there's a President's Award from the IGA-Independent Glass Association 2006. Do you see that?
A. Yes, I do.
Q. And did you receive that award?
A. Yes.
Q. And do you recall why you received that award?
A. Um, to the best of my knowledge, again, just for being active in the industry and donating time.

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Q. And to the best of your knowledge, did you receiving that award have anything to do with your actions with respect to Safelite?
A. I don't believe it was. Nobody ever mentioned that to me at all ever.
Q. And, then, below that do you see there's an award for Outstanding Dedication from the Minnesota Glass Association, dated 2003, do you see that?
A. Yes.
Q. And that's the MIGA that you referred to earlier?
A. That's correct.
Q. And did you receive that award?
A. Yes.
Q. Do you recall why you received that award?
A. Um, similar to the other two, just for dedicating my time and energy to the advancement of the auto glass industry.
Q. And as best you know, did receiving that award have anything to do with your actions with respect to Safelite?
A. To the best of my knowledge, no.
Q. You mentioned you received these

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awards for being active in the industry. Can you describe what you mean by active in the industry?
A. Um, just being involved in the associations, doing seminars when asked to, taking phone calls from people, answering questions, you know, if need be, just making myself available to people in the industry.
Q. Do you think receiving these awards had anything to do with your efforts coordinating lobbying activities on behalf of Rapid Glass?
A. I don't think these awards had anything specifically to do with lobbying, no.
Q. Did anyone tell you they did?
A. Nobody told me they did.
Q. Okay. You can put that away.
A. Okay.
Q. Now, Mr. Rosar, are you familiar with what it means to be a glass shop in a preferred network of shops?
A. Yes.
Q. So are you familiar that there are some glass shops that are in a preferred network and there are some that are not?
A. Yes.
Q. Is there a term that makes sense for

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you for me to use when I'm referring to preferred glass shops versus non-preferred glass shops? I just want to use your words.
A. Um, that works fine.
Q. Preferred versus non-preferred?
A. Sure.
Q. As best you know, what does it mean to be in a preferred network of shops?
A. Um, you basically sign an agreement with Safelite or Lynx or one of the other networks, possibly, to do work at a certain price, is the main reason, I guess.
Q. And when you say Safelite, do you mean Safelite Solutions?
A. I do mean Safelite Solutions.
Q. And can you describe for the Court what Lynx is?
A. Lynx is another third-party administrator.
Q. So, to you, being in a preferred network means signing an agreement with a third-party administrator to be -- to participate in their network of glass shops?
A. Correct.
Q. And the agreement that you sign, is

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that sometimes referred to as network participation agreement?
A. Um, I would agree with that.
Q. Is Rapid Glass a member of any preferred network of shops?
A. Um, we have not signed any -- currently we are not a network agreement shop with Lynx or Safelite.
Q. Are you a preferred shop with any other third-party administrator?
A. No.
Q. Okay. So Rapid Glass is a -- is not in any preferred network of shops; is that right?
A. That's correct.
Q. Have you ever tried to be a member of a preferred network of shops?
A. Yes.
Q. And when was that?
A. Very early on, when third-party administrators were formed, we actually signed up for quite a few of them. Exact date, again, I'm guessing, but it was in the 1990s.
Q. So was this Rapid Glass or was this Fast Glass?
A. Rapid Glass, shortly after the

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purchase in, like I say, I believe that '97 area.
Q. Did you ever sign a network participation agreement with Safelite Solutions?
A. Ah, I don't recall at that time. I know I did attempt to sign up with them one other time, and I don't recall if we actually went all the way through with it or not. I know we were exchanging information back and forth, but I don't recall if we actually fully went forward with it.
Q. All right. Let me just break this down a little bit. So in the 1990s --
A. Uh-huh.
Q. -- Rapid Glass signed up to be in some preferred network of shops; is that right?
A. Correct.
Q. And it sounds like you eventually left those networks; is that right?
A. Yes.
Q. And when was that?
A. Ah, I don't recall the exact date. I mean, it was little by little, I believe. I don't think it was like cold turkey, you know.
Q. Sure.
A. We just gradually weaned ourselves off of them.

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Q. And can you provide, as best you recall, an estimate of when Rapid Glass had completely weaned itself off of these -- these networks?
A. I would say the early 2000s.
Q. So is it fair to say by, say, 2005 Rapid Glass was not in any preferred network of -- networks of shops?
A. To the best of my knowledge, yes.
Q. And that's continued to be true through today?
A. Yes.
Q. And I know you mentioned at one point you were in discussions with Safelite Solutions about joining their preferred networks of shops; is that right?
A. Yes.
Q. And do you recall when that was?
A. I do not exactly, I don't.
Q. Was it before 2005?
A. I think it was in that neighborhood of the mid-2000s.
Q. And I know that was a long time ago, but can you provide your best recollection of those discussions and what happened?

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A. Um, my best recollection, like I say, and I don't think we actually went through with it, but I think we were going back and forth and signing some documents and getting them the information that they needed, and my best recollection of it is after I saw what, you know, some of the pricing was to be on the network, I decided not to enter the agreement. But I'm not a hundred percent certain of that, but I don't think we ever did fully go into that agreement.
Q. So as best you recall, you've never been a member of Safelite Solutions' preferred network of shops; is that right?
A. The best I recall at this time, yes.
Q. And the reason for that is you thought that the pricing for Safelite Solutions was too low, as best you can remember?
A. Yes.
Q. But to be clear, if you had agreed to that pricing, as best you know, Safelite Solutions would have allowed you into their network, right?
A. Um, they do have the right to deny, so I can't say what they would do with me. I don't know.
Q. Sure, okay. But did they ever

1 indicate, you know, that they weren't going to let
2 you into their shops even if you agreed to their
3 pricing?
4 MR. LLOYD: And by shops, I think you
5 mean network, correct?
6 MR. REIGSTAD: Their preferred network
7 of shops. Thanks, Chuck.
8 THE WITNESS: Oh, um, rephrase -- say
9 that again?
10 MR. REIGSTAD: Sure.
11 BY MR. REIGSTAD:
12 Q. So what I'm getting at is, if you had
13 agreed to their pricing, as best you know, they
14 would have let you into their preferred network of
15 shops; is that right?
16 A. No, I can't say that for certain.
17 Q. So you just don't know one way or the
18 other?
19 A. I don't know.
20 Q. Okay. Now, are you aware of any
21 differences between preferred glass shops, on the
22 one hand, and non-preferred glass shops on the
23 other hand?
24 A. Any differences between a preferred
25 and not preferred?

1 Q. Uh-huh.
2 A. One signs the agreement, one does not.
3 Q. And by "the agreement," you mean a
4 network participation agreement?
5 A. Correct.
6 Q. And I just want to go back a little
7 bit. I know you mentioned, you know, the reason
8 you think you didn't go through with the network
9 participation agreement with Safelite Solutions was
10 the pricing was too low. And to be clear, you mean
11 the contracted pricing rate that the insurers were
12 asking for; is that right?
13 A. The contracted pricing rate that was
14 included in the network agreement by insurance
15 companies.
16 Q. Right.
17 A. Yes.
18 Q. I just wanted to make sure the record
19 was clear, thanks.
20 A. I just -- I don't know if it was the
21 pricing that the insurance companies were asking
22 for or Safelite. I know there was a network
23 agreement pricing by insurance company, I don't
24 know where that was derived from.
25 Q. Sure. And that would have been the

1 price that you would --
2 A. Agreed to. Oh, sorry.
3 Q. That would have been the price that
4 you would have agreed to charge insurance companies,
5 right?
6 A. That's correct.
7 Q. Now, you mentioned that one difference
8 between preferred shops and non-preferred shops is
9 that the preferred shops sign a network
10 participation agreement. Can you think of any
11 other differences?
12 A. Um, not particularly. I mean, there's
13 hundreds of shops out there, they all have
14 different business models. Some choose to go on
15 the network agreement, some do not.
16 Q. Okay. So other than signing the
17 network participation agreement, you can't recall
18 any other differences between preferred shops and
19 non-preferred shops?
20 A. Um, nothing -- I mean, that's the main
21 gist of it. You have to follow that agreement,
22 otherwise, you know, you can -- you don't follow
23 the agreement, I guess.
24 Q. Okay. And are you familiar with --
25 you know, with what the network participation

1 agreement says generally?
2 A. I've seen some in the past. I know
3 some summary information about it.
4 Q. Sure, and I understand they may differ
5 from, you know, administrator to administrator.
6 But, generally speaking, would you agree that --
7 that preferred shops agree to pay lower prices than
8 non-preferred shops?
9 A. Um, I believe that's probably an
10 accurate statement in general. The network
11 agreements are generally on the lower side of
12 pricing.
13 Q. And are you aware of whether the
14 network partition -- network participation
15 agreement requires preferred shops to provide
16 adequate liability insurance?
17 A. I don't know all the details of that,
18 no.
19 Q. So you don't know one way or the other?
20 A. Um, I've heard that there was some
21 provisions like that in there, but I don't know the
22 specifics or if they're in there today. I haven't
23 seen a signed one in years.
24 Q. Okay. So you've heard that some
25 network participation agreements require glass

1 shops to maintain adequate liability insurance?
2 A. Yes.
3 Q. Are you aware that some network
4 participation agreements, in some network
5 participation agreements the insurance company
6 provides a guarantee of the work performed by the
7 preferred network shop?
8 A. I don't think that's an -- it doesn't
9 seem to me like that's an accurate statement,
10 because the -- the warranty is always supplied by
11 the glass shop, not the insurance company.
12 Q. So -- so even if the -- the glass shop
13 supplies a guarantee, are you aware that some
14 network participation agreements provide that the
15 insurance company provides a guarantee on top of
16 that?
17 A. I do not, I'm not aware of that.
18 Q. So you don't know one way or the
19 other?
20 A. I do not know.
21 Q. Now, you mentioned that Rapid Glass
22 weaned itself off of some preferred networks of
23 shops around 2005. Do you recall that?
24 A. Say that again?
25 Q. You mentioned that Rapid Glass had

1 completely weaned itself off of networks of shops
2 around 2005. Do you recall that?
3 A. Yes.
4 Q. Why, why did Rapid Glass do that?
5 A. Um, because the -- the pricing,
6 primarily the reason was the pricing was going
7 lower and lower and lower on the network agreements.
8 Q. Is it more profitable for Rapid Glass
9 to be outside of a preferred network of shops?
10 A. Um, yes.
11 Q. And that's because you can charge
12 higher prices?
13 A. We can charge the price that we feel
14 is fair and reasonable, not necessarily higher
15 because I don't know what all of them are, but
16 because we can charge the price that we feel is
17 appropriate.
18 Q. Sure, and I -- I appreciate that. I'm
19 just saying, generally speaking, you know, if
20 you're outside the preferred network of shops,
21 you're going to be able to charge a higher price
22 than if you were inside; is that right?
23 A. We can bill the insurers, yeah, what
24 price we feel is fair and reasonable.
25 Q. Which is higher than in a preferred

1 network?
2 A. Sometimes it is. I don't know if it's
3 all the time, but, yes.
4 Q. Aside from the pricing considerations
5 you just mentioned, can you think of any other
6 benefits for Rapid Glass of being outside of a
7 preferred network of shops?
8 A. Um, it just seems like it's more of a
9 free market way of doing business, I guess. We
10 can, you know, carry the insurance we want to, we
11 bill the price we feel is fair and reasonable. It
12 just feels right for our business model, I guess,
13 and, you know, particularly marketing consumers, it
14 just feels like it's a natural fit for us.
15 Q. Can you think of any other reasons?
16 A. No, not at this time, anyways. There
17 may be, but I can't think of any.
18 Q. And on the other hand, can you think
19 of any benefits for Rapid Glass of being inside a
20 preferred network of shops?
21 A. Um, no, not really. Um, I mean, they
22 say that sometimes you may get referrals, but we
23 haven't seen that, I guess, in our experiences in
24 the industry a whole lot.
25 Q. So when you originally joined some

1 preferred networks of shops back in the late '90s,
2 why did you do so?
3 A. Um, because we were new to the
4 industry and we were just trying out everything we
5 could try.
6 Q. Did you hope to get more volume of
7 customers?
8 A. Um, I think it was just we -- it was
9 an unknown for us. So it was just something we
10 wanted to try. It was -- you know, third-party
11 administrators were relatively new, nobody knew a
12 whole lot about them. So it was something we just
13 wanted to try and see how it worked out.
14 Q. And I think this came through in your
15 prior testimony, but I just want to make sure it's
16 clear for the record. So if you're in a preferred
17 network of shops, you agree to pay a certain price,
18 is that right, or a certain rate?
19 A. Generally, that's what I understand it
20 to be.
21 Q. And so if you're outside it, if you're
22 outside a preferred network of shops, like Rapid
23 Glass --
24 A. Yes.
25 Q. -- then you have discretion to set

1 whatever price you think is fair; is that right?
2 A. Correct.
3 Q. I'm going to move on to a new topic.
4 A. Okay.
5 Q. If you want to take a break, you're
6 welcome to do so or we can keep moving.
7 A. We can keep going.
8 Q. Okay. Mr. Rosar, have you heard the
9 term balance bill?
10 A. Yes.
11 Q. What is your understanding of the
12 phrase balance bill in the context of your industry?
13 A. Really, balance bill wasn't in the
14 context of the industry. I guess I didn't hear
15 that a whole lot until this case came up. But what
16 I understand it's synonymous to is billing the
17 customer the difference of what we bill the
18 insurance company and from what the TPA pays us.
19 Q. Okay. Now, generally speaking, isn't
20 it true that non-network shops have the right to
21 seek payment not reimbursed -- not reimbursed by
22 the insurer from the customer if they so chose?
23 MR. LLOYD: Well, I'm going to object
24 to that, that calls for a legal conclusion. You
25 can go ahead and answer, but that's -- that calls

1 for a legal conclusion. Go ahead and answer.
2 BY MR. REIGSTAD:
3 Q. You can go ahead and answer.
4 A. Say that again?
5 Q. Sure. So you testified earlier that
6 you're familiar with -- with Rapid Glass's billing
7 and collections policies; is that right?
8 A. Yes.
9 Q. And so is it fair to say you know what
10 Rapid Glass can do in connection with billing and
11 collections?
12 A. Right.
13 Q. And that's your job, right?
14 A. Yes.
15 Q. And so as far as you know, do
16 non-network shops have the right to go after the
17 customer for the difference between what the --
18 what the insurance company pays and what Rapid
19 Glass charged?
20 MR. LLOYD: Same objection.
21 THE WITNESS: I'm not aware of that
22 ever occurring, but I would suspect they may have
23 that right.
24 BY MR. REIGSTAD:
25 Q. I'm not asking you whether it's ever

1 happened, all I'm asking is if a non-network shop
2 wanted to do that, could they, as far --
3 MR. LLOYD: Same objection.
4 BY MR. REIGSTAD:
5 Q. As far as you know?
6 MR. LLOYD: Same objection.
7 THE WITNESS: Yeah. Again, I know
8 that we don't. I can't say what others do. We
9 have language that specifically says we don't do
10 that.
11 BY MR. REIGSTAD:
12 Q. Sure, but I'm just asking you, all I'm
13 asking is, if you wanted to, do you think you have
14 the right to do so? Could you -- could you go
15 after the customer for that difference between what
16 the insurance company paid and what you charged?
17 MR. LLOYD: Same objection.
18 THE WITNESS: Um, again, I don't know
19 the legalities of it. I would suspect maybe you
20 could.
21 BY MR. REIGSTAD:
22 Q. And as far as you know, is balance
23 billing legal in Minnesota?
24 MR. LLOYD: Same objection.
25 THE WITNESS: Again, I am not sure of

1 the exact letter of the law regarding that. So I
2 guess I can't quote on -- comment on a legal issue
3 like that.
4 BY MR. REIGSTAD:
5 Q. Do you have any reason to believe that
6 balance billing is illegal in Minnesota?
7 A. Um, the same thing, I guess I haven't
8 looked into that in the law. It's never been done,
9 but I don't know the exact legalities of it, where
10 it comes with billing the customer and the insured.
11 I know what we do, but --
12 Q. Sure. And all I'm asking you is
13 whether you, Rick Rosar, have any reason to believe
14 that balance billing is illegal?
15 A. I guess I don't have any reason to
16 believe that it's illegal.
17 Q. I'm going to grab an exhibit.
18 (Whereupon, Deposition Exhibit No. 16
19 was marked for identification, and a copy is
20 attached and hereby made a part of this deposition.)
21 MR. REIGSTAD: This is 16, pass that
22 over.
23 THE WITNESS: Thank you.
24 BY MR. REIGSTAD:
25 Q. Do you want to take a minute to read

it over?
A. Ah, no. I'm -- you can ask the question.
Q. Sure.
A. I can probably --
Q. Do you recognize this document?
A. Yes, I do.
Q. What is it?
A. It's a -- I believe they call it a deposition -- or affidavit or legal document that -- what are they calling it here? Um, that I supplied to the Attorney General for the -- this case, I believe, that we're discussing now.
Q. And this is an affidavit you submitted --
A. Affidavit.
Q. -- in connection with -- This is an affidavit you submitted in connection with the case; is that right?
A. Yes.
Q. Did you volunteer to submit this affidavit or did someone ask you in the first instance?
A. Um, I remember talking to my attorney about it. I believe it -- the request came from

the Attorney General's Office, but I'm not a hundred percent certain of that.
Q. And your attorney is who?
A. Chuck Lloyd.
Q. And did he reach out to you and ask you to submit this or did you reach out to him?
A. Um, I did not reach out. I don't remember reaching out, anyways. It was discussed.
Q. Okay. And so as best you recall, Chuck Lloyd reached out to you and asked you to submit this affidavit; is that right?
A. I -- to the best of my knowledge, it was a -- possibly a request for -- I believe it was a request from the attorney general to present something to them. I don't remember the exact specifics, but, you know, Chuck is my attorney, so I always discuss these issues with him.
Q. Did you draft this yourself or did someone else draft it?
A. Um, I helped with it. We worked on it together, which I had Chuck help me with it.
Q. Did someone do a first draft?
A. Let me look it over here. Yes, yes. I believe I got this from Chuck initially, but a lot of this stuff looks like it was taken from some

of my other arbitration stuff.
Q. And if you turn to the last page of the affidavit, it says you submitted this affidavit under penalty of perjury. Do you see that?
A. Yes.
Q. And so everything in here is truthful; is that right?
A. Yes, to the best of my knowledge, yes, it is.
Q. Okay. I just want to ask you about a few specific statements in the affidavit.
A. Sure.
Q. If you look at paragraph 4, the first sentence says, "I am not aware of any glass shops in Minnesota billing customers for amounts not paid by insurance companies other than the customers' deductibles." Do you see that?
A. Yes.
Q. Now, do you know how many non-network glass shops there are in Minnesota?
A. No, I do not.
Q. Do you have any idea?
A. No, I really don't.
Q. And so you don't have personal knowledge about the balance billing policies of

every non-network glass shop in Minnesota; is that right?
A. Um, I don't have the billing policies of every non-network shop, but in my duties in the national organization and both Minnesota glass organizations is where I gathered that information from over years of time, I guess.
Q. Sure. So you have knowledge about the balance billing policies of Rapid Glass, right?
A. Correct.
Q. Because you're the CEO?
A. Yes.
Q. Do you have personal knowledge about the balance billing policies of any shops other than Rapid Glass?
A. Um, I've had conversations with other shops. They don't really come to mind, but I know I've had several discussions with other shops that said they do not balance bill.
Q. Okay. Can you name those shops?
A. Um, Foley Glass most recently.
Q. Okay.
A. Alpine Glass, um, Boulay Auto Glass.
Q. Could you spell that one, please?
A. B-O-U-L-A-Y.

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1 Q. Okay.
2 A. There are others, but that's the one
3 that come to mind, I guess, right now.
4 Q. So, as best you can recall right now,
5 you know about the balance billing policies of
6 Rapid Glass, Foley Glass, Alpine Glass, and Boulay
7 Auto Glass; is that right?
8 A. Um, no. I would say there's probably
9 dozens that I've talked to over the years, but all
10 the individual glass company names I don't recall,
11 but there's been many, many people I've -- in all
12 my years in the glass industry everybody I've
13 talked to I've never run across one person and
14 we've had conversations with that. So that's just
15 the ones that come to the top of my mind that were
16 involved in some of the associations that I'm most
17 familiar with, but there's --
18 Q. Sure, I understand. I'm just trying
19 to get at the ones you recall right now.
20 A. Yeah.
21 Q. So other than those four -- excuse me,
22 five, Rapid Glass, Foley Glass, Alpine Glass, and
23 Boulay Auto Glass, can you recall any other
24 non-network glass shops whose balance billing
25 policies you are familiar with?

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1 A. Um, none that I guess I'm as familiar
2 with as these ones, you know, just because they're
3 in Minnesota and I've known them for years.
4 Q. So is that a no?
5 A. What's the question, again?
6 Q. Other than those five --
7 A. Uh-huh.
8 Q. -- glass repair shops, can you recall
9 any other glass shops with whose balance billing
10 policies you are personally familiar?
11 A. Ah, no, not specifically by name at
12 this time.
13 Q. Okay.
14 A. I believe there are others, though.
15 Q. And so you mentioned you don't know
16 how many non-network glass shops there are in
17 Minnesota; is that right?
18 A. Correct.
19 Q. And so is it fair to say you don't
20 know if every single glass shop in Minnesota has a
21 policy whereby they never balance bill customers?
22 A. I do not know that every single one
23 has that policy.
24 Q. So it's possible, isn't it, that there
25 is at least one glass shop in Minnesota that

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1 balance bills customers?
2 A. It would be outside of my fathom of
3 reasoning, but it is possible.
4 Q. I want to go on to the next sentence,
5 and this is in paragraph 4.
6 A. Oh, sure.
7 Q. "My company, Rapid Glass, never bills
8 customers when an insurer short pays our invoices."
9 So are you representing that Rapid Glass has never
10 balance billed a customer since it was started in
11 1997?
12 A. To the best of my knowledge, yes.
13 Q. Do you have a sense of how many
14 customers Rapid Glass serves a year?
15 A. It's changed over the years, you know,
16 thousands, you know. I don't know the exact number.
17 Q. Thousands a year?
18 A. Yeah.
19 Q. And are you familiar with the -- you
20 know, how every single one of those thousands is
21 billed?
22 A. I don't touch each piece of paperwork,
23 but I set the policies of the company.
24 Q. Okay. And so you're not familiar with
25 how each customer is billed; is that right?

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1 A. Say that again.
2 Q. Sure?
3 A. Or rephrase it?
4 Q. So you said Rapid Glass has thousands
5 of customers a year, right?
6 A. Yes.
7 Q. And you're the CEO?
8 A. Yes.
9 Q. Are you, like, personally involved
10 with the billing of every single customer?
11 A. Not on a day-to-day basis, no.
12 Q. So you're not familiar with how every
13 single customer is billed; is that right?
14 A. The question seems a little odd to me.
15 Um, I set the policies, so I set the standards on
16 how they're billed. I instruct my staff, you know,
17 not to balance bill customers, but I do not touch
18 every piece of paperwork.
19 Q. Okay. And moving on to the next
20 sentence, and this is still in paragraph 4.
21 A. Sure.
22 Q. It says, "We tell customers on the
23 phone that we do not collect any money from them
24 other than their deductible and we have stated in
25 writing, repeatedly, that we do not bill customers

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for any amounts other than their deductibles." I just want to focus on the first half of that sentence for now about the phone.
A. Sure.
Q. It says, "We tell customers on the phone," but it doesn't say how often. Do you have a sense of how often Rapid Glass tells customers on the phone that they won't be balance billed?
A. Um, I believe it's every auto glass customer that we deal with.
Q. And what's the basis for that belief?
A. Because that's the policies that I've set in place for the company, as far as the scripting that we read when we do the three-way calling.
Q. And what does that scripting say, as best you can recall?
A. Um, basically, that there will be no out-of-pocket expense to the customer, unless they have a deductible.
Q. Do you personally handle any calls with customers?
A. I do, very rarely, but occasionally.
Q. Like roughly how many a year, if you can guess? Strike that, don't guess. Roughly how

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many a year if you can recall?
A. Um, I mean, I -- I talk to a lot of customers, and I schedule a lot of jobs, but I don't do the verification process. Maybe two, three dozen a year.
Q. Yeah. What I'm getting at is just --
A. For the verification.
Q. -- how often would you read the script that you're talking about?
A. Um, again, pretty much every auto glass customer that I would talk to.
Q. Right. And that would be two, three dozen a year, you think?
A. Well, as far as the verifications. I schedule more jobs than that; and, typically, when we schedule a job, we also reiterate that.
Q. All right, yeah. So maybe let me --
A. Because we -- we -- we take the job, we schedule it, and we typically inform them that there will be no out-of-pocket expense, and, then, on the call, when we verify it, we also reiterate that again.
Q. Okay.
A. And I do a lot of the -- the invoicing where I'll take the job, but I don't do a lot of

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the verifications.
Q. Okay.
A. Just to clarify.
Q. So -- so the script you were talking about, when is that script read, is it -- is it read in both of those instances or just one?
A. Ah, most certainly during the three-way verification call.
Q. Okay.
A. But it's also supposed to be done on the initial call, as well.
Q. And the two, three dozen times you mentioned where you'd converse with customers, is that in the initial call or the three-way verification call?
A. The two or three dozen times is in the -- the verification portion of it. I -- I do hundreds of, you know, initial invoicing calls a year.
Q. Okay. I want to move to the last sentence in this paragraph. It says, "We also signed a pledge that was created by the Independent Glass Association in 2005 indicating that we do not bill customers for short" payments. Do you see that?

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A. Yes.
Q. So you mentioned earlier that you hadn't really heard the term balance billing before this litigation; is that right?
A. Correct.
Q. But this pledge is talking about the practice which is balance billing, right?
A. Well, the -- the actual term balance billing --
Q. Got it.
A. -- we didn't really use before. It was referred to like the short payment, is the terminology that we used.
Q. So the terminology of billing a customer --
A. A customer.
Q. -- for the difference?
A. Right.
Q. What would you call that?
A. Um, billing the customer for the difference.
Q. Okay. So billing the customer for the difference, to be clear, you were familiar with that before this litigation, right?
A. Yes.

Q. And, in fact, as far as back as 2005?
A. Yes.
Q. And can you -- if you recall, can you tell me what this pledge said?
A. Um, I don't remember the exact language, but in gist, it was going back to -- similar to what we're discussing today, where the pledge said glass shops did not bill the difference, so Safelite Solutions shouldn't have the right to say that they may or will be billed the difference.
Q. So -- so this pledge was drafted, basically, to use against Safelite Solutions; is that right?
A. Um, the pledge was designed to notify Safelite Solutions that these glass shops did not bill the difference.
Q. So it was a list of glass shops, and it said these glass shops don't balance bill, basically?
A. Correct.
Q. And who was this pledge shared with?
A. Um, I'm not sure I understand.
Q. Sure. So who did you give the pledge to, did you give it to Safelite, did you give it to customers?

A. Um, to the best of my knowledge, I think it went to Safelite. Again, you know, from what I recall, it did not go to the customers, it was sent to Safelite, from what I understand.
Q. Do you know how many Minnesota glass shops signed the pledge?
A. I do not.
Q. Can you name each that you remember?
A. Um, no, no, I can't.
Q. So you can't recall any other than Rapid Glass?
A. Um, not with certainty, no.
Q. Do you know of any Minnesota glass shop that did not sign the pledge?
A. No. I mean, not -- again, I don't know who did, I don't know who didn't, I guess.
Q. And just turning to the last paragraph of the affidavit?
A. Sure.
Q. It says, "Even though we have made it clear that we do not hold customers responsible for insurer short payments, Safelite still tells virtually every one of our customers that the customer will be responsible if we bill more than the insurer's pre-determined price. Such

statements are absolutely false and misleading." Did I read that right?
A. Yes.
Q. What's -- what's the basis for this statement, what's the -- what are the facts that you know that you believe make this statement true?
A. Um, well, when we do the -- the three-way call between the customer and Safelite Solutions, how I mentioned our scripting before, what we say, their scripting says basically what this paragraph is referring to, that the customer will be responsible for the difference.
Q. Does the Safelite representative ever say that the customer may be held responsible, not will be?
A. I believe I've heard it both ways.
Q. Okay. And you say that that's false, right?
A. That's correct.
Q. And so why do you think it's false?
A. Because we -- we don't bill the customer the difference, we never have, and we tell them that we don't.
Q. So that's why you think it's false as to Rapid Glass, right?

A. Correct.
Q. Do you think that Safelite's statement is also false as to other shops?
A. It depends on their specific billing practices.
Q. Right. And so you don't know if Safelite's statement is false as to other shops, right?
A. Um, again, like we discussed before, I'm not aware of any shops that did, but without certainty, I'm not sure.
Q. Now, are you aware of any Minnesota glass shops that reserve the right to charge customers for the difference, to use your terminology?
A. Um, are you saying am I aware of any glass shops that have charged the customer the difference?
Q. No. I can be more specific.
Are you aware of any Minnesota glass shops that on their invoice they have language where they reserve the right to charge the customer the difference?
A. Um, I'm not familiar with any specific invoice language of customers -- or, I mean, of

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other glass shops. I've seen other languages over the years but not specifically per glass shop.
Q. Okay. Have you -- can you recall ever seeing language like that on any -- on any invoice for a Minnesota glass shop?
A. Um, that language was -- I would say, first of all, the answer to your question is more than likely there is language like that on other Minnesota glass shops, because that language was boilerplate language that came from a time when there weren't third-party networks and there weren't short pays, when we called the insurance agent, got a verification, they paid what we billed. So that language came from a much different time and just stuck on the people's invoices.
Q. And this much different time, how long ago was this much different time?
A. Um, you know, over 15 years ago, I'd say.
Q. And so this reserving the right to charge customers the difference language is still on some invoices, even though this much different time was 15 years ago?
A. I believe it is, yeah.

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Q. Do you have a sense of how many invoices in Minnesota have that language?
A. No, no. But, like I say, it was boilerplate language that, I guess, nobody really knows where it came from. It was on the bottom of, like, the point-of-sale people's, and you'd order invoices from the paper supply company or whatever, and that was the language that was on there from, again, you know, a much different time.
Q. So you mentioned it's boilerplate. Does that mean it's very common language in Minnesota?
A. Um, I'm not sure. I know there is standard language that says that, that's been around for years, but I don't know how common it is.
Q. Okay. I'm going to get another exhibit, we're done with that one?
A. Okay.
Q. So you can put it aside.
(Whereupon, Deposition Exhibit No. 17 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Seventeen.
THE WITNESS: Thank you.

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BY MR. REIGSTAD:
Q. Do you recognize this document?
A. Yeah. In general, it's one of our invoices, and I believe one that we supplied in the subpoena.
Q. So this is an invoice -- strike that.
Is this the form of invoice that Rapid Glass uses in the ordinary course of business?
A. Yes.
Q. Now, if you look at the language in the small type at the bottom?
A. Sure.
Q. And I think you'll probably need your reading glasses for that.
A. Yeah.
Q. But the very last sentence, it says, "If I do not have insurance coverage, I agree to pay for the work myself."
A. Correct.
Q. Did I read that right?
A. Yes.
Q. And that language appears on every one of Rapid Glass's invoices, right?
A. Yeah, for the most part it does. The assignment of proceeds may be changed once or twice

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over the years, but, yeah, that's our standard invoice language.
Q. And the customer has to sign below that language; is that right?
A. That's correct.
Q. You can put that away. And I apologize, I actually want to turn back to your affidavit.
A. Okay. And what this is for is if they do not have coverage, just so we're clear on that, and if we get a short pay, obviously, they had coverage.
MR. REIGSTAD: Oops, sorry.
MR. LLOYD: I hope the camera caught that.
MR. REIGSTAD: Can we go off the record for a second?
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 9:48 a.m.
(Break from 9:48 to 9:49.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 9:49 a.m.
BY MR. REIGSTAD:
Q. If you could turn back to page 2 of

your affidavit?
MR. LLOYD: It's Exhibit 16.
BY MR. REIGSTAD:
Q. Exhibit 16.
A. Gotcha.
Q. There's some language that says, "The letter noting that we do not hold the customer responsible is sent every time an invoice is short paid." Do you see that?
A. Is it in --
MR. LLOYD: What page are you on?
THE WITNESS: -- paragraph 4?
MR. REIGSTAD: Just hold on one second.
MR. LLOYD: Oh, it's -- yeah, it's paragraph 4. It's about halfway down, is the sentence --
MR. REIGSTAD: Yeah.
MR. LLOYD: -- that he's talking about.
THE WITNESS: Oh, I see it, yes.
BY MR. REIGSTAD:
Q. I'm going to hand you another exhibit, which I think is that letter.
A. Sure.
(Whereupon, Deposition Exhibit No. 18

was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Number 18.
BY MR. REIGSTAD:
Q. Do you recognize this document?
A. Yes.
Q. Is this the letter that you referred to in your affidavit?
A. Um, I don't believe it is.
Q. So what is this?
A. Um, this is a letter, to the best of my knowledge, that when Safelite Solutions tells the customer that they have to pay the difference and we're on a three-way phone call with them and we get into a little bit discussion and the customer is having a little bit of cold feet about the situation, thinking that maybe they do have to pay the difference, we tell the customer that -- to assure them, we'll put it in writing, that we guarantee they do not have to pay the difference.
Q. Okay, all right. So if we could turn back to Exhibit 16, your affidavit?
A. Okay.
Q. And on the last page there's a letter; is that right? It should be --

A. Okay, yeah. It's the same as that one.
Q. Do you see that?
A. Yes.
Q. And is this the letter that you're referring to in your affidavit?
A. Yes, I believe that's correct.
Q. And this letter at the end of your affidavit, this is sent to Safelite Solutions or the claims administrator?
A. To the best of my knowledge, the accounts receivable, they may send this, like, to the insurance company, too, I'm not certain of that, they would have a better feel for that. But my understanding is this is sent to Safelite Solutions and maybe the insurance company, but I'm not a hundred percent on that.
Q. This doesn't go to the customer, right?
A. That's correct.
Q. And so the other letter which we were just looking at, Exhibit 18, that goes to the customer?
A. That's correct.
Q. Okay. So let's turn back to

Exhibit 18, then.
A. Okay.
Q. Okay. I think you touched on this a little bit, but could you please explain when Exhibit 18 is provided to customers?
A. Um, we basically give it to the customers for those customers that were scared by the notion that they may have to pay the difference by the TPA, the Safelite solutions.
Q. And so just in terms of timing, is this -- is this sent after Rapid Glass has performed their work or -- I'm just trying to figure out when in the chronology this is sent?
A. Um, in different times. It's almost always sent after the three-way call. Some customers we may fax or e-mail it, some we may mail it, some we have the technician bring it out at the time we do the install.
Q. And so does every customer receive this letter or just some?
A. Just some.
Q. And which ones receive this -- this letter?
A. The ones that felt like they were being intimidated or coerced into thinking that

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1 they had to pay the difference.
2 Q. So the customers that are concerned
3 about possible balance billing receive this letter?
4 A. That's correct.
5 Q. And do they tell you why they're
6 concerned about possible balance billing?
7 A. Um, I mean, in general, they just -- I
8 think as in one of the other examples that we
9 produced they're like, oh, I pay my insurance
10 premiums all these years, why do I have to go
11 through this, you know, I have full glass coverage,
12 that type of concern.
13 Q. Right. So customers don't want to pay
14 out of their own pockets if they have insurance,
15 right?
16 A. Correct.
17 Q. Do you have a sense of how many
18 customers express concern and then receive this
19 letter?
20 A. Um, it -- this letter, like I say, is
21 in, you know, more extreme situations, you know.
22 So it's -- you know, less customers receive this
23 than do receive it, not as many receive this
24 letter, more don't receive the letter -- I don't
25 know how to say it. It's more of a -- a occasional

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1 situation that receive this letter.
2 Q. Okay. Can you quantify it in any way,
3 like maybe 10 a year, 20 a year?
4 A. No, I don't know that, um, I don't
5 know that.
6 Q. What about in terms of percentages,
7 maybe 10 percent of customers?
8 A. I -- I can't say that for certain.
9 Q. But certainly less than half?
10 A. I would say that, yeah, for sure.
11 Q. How long has Rapid Glass sent out this
12 letter, when did you start doing it?
13 A. I don't recall that date.
14 Q. More than five years?
15 A. I -- I would say so. I'm not a
16 hundred percent certain of that, but I would
17 believe it's probably more than five years.
18 Q. More than ten years?
19 A. I can't say for certain.
20 Q. So you think somewhere between five
21 and ten years?
22 A. Five to ten years at least, yeah.
23 Q. And why did Rapid Glass start sending
24 out this letter?
25 A. Um, just to alleviate those customers

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1 concerned that they, you know, might have to pay
2 the difference.
3 Q. Because --
4 A. Some people, you know, you can tell a
5 person something, but if it's in writing it has a
6 stronger, you know, emphasis. So for those people
7 that were a little more scared of what they heard,
8 we would send this.
9 Q. Because the potential of balance
10 billing is something that customers care about; is
11 that right?
12 A. I would say so.
13 Q. When they receive this letter, do
14 customers ever ask you any questions or have any
15 concerns about it?
16 A. I'm not aware of any after receiving
17 the letter customers coming back. I haven't heard
18 personally. But, again, some of the day-to-day
19 operations I don't hear everything, but I'm not
20 aware of.
21 Q. So if they did have concerns, it looks
22 like they would call the customer service number
23 listed on this letter, is that right,
24 1-877-880-0700?
25 A. Yes.

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1 Q. And who would answer the phone if that
2 happened?
3 A. Um, it could be any number of people
4 that would answer the phone, a CSR, myself, a
5 payables, receivables person.
6 Q. CSR is a customer service
7 representative?
8 A. That's correct.
9 Q. How many CSRs does Rapid Glass employ?
10 A. Currently, right now, we have one
11 full-time dedicated CSR.
12 Q. And what is his or her name?
13 A. Jennifer.
14 Q. What's her last name?
15 A. Klue -- Kluge.
16 Q. Can you spell that?
17 A. K-L-U-G-E.
18 Q. And so would Jennifer answer the phone
19 in most instances if a customer called about this
20 letter?
21 A. Um, no. It could be I'm in the office
22 the majority of the time, accounts payable is.
23 We -- you know, whoever is available will grab the
24 phone.
25 Q. So this is a general number and just

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1 anyone can pick up; is that correct?
2 A. Correct.
3 Q. Do you know of any Minnesota glass
4 shops other than Rapid Glass that send letters like
5 this?
6 A. Um, I'm not aware of any. I -- there
7 could be, I don't know.
8 Q. And I just have one question about the
9 language at the end.
10 A. Sure.
11 Q. It says, "Safelite is not your
12 insurance company, they are our competitor and the
13 3rd party administrator for your insurance company."
14 Did I read that right?
15 A. Yes.
16 Q. Do you know why it says that?
17 A. Um, because a lot of customers think
18 that they're -- when they call the 800 number, like
19 on their card, they're calling their insurance
20 company. They don't know that it's a third-party
21 administrator.
22 Q. And so when you say Safelite, are you
23 referring to Safelite Solutions?
24 A. Um, yes. I mean, we don't have time
25 to educate the customers on the whole hierarchy of

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1 the Safelite empire, so --
2 Q. Sure. And so do you consider Safelite
3 Solutions a competitor of Rapid Auto Glass?
4 A. No, no, to me, no, they're not. We
5 don't operate a TPA. Safelite AutoGlass would be a
6 competitor of mine, but not Safelite Solutions.
7 Q. So why does it say Safelite is a
8 competitor?
9 A. Well, primarily because they refer
10 work to themselves in that situation. But, again,
11 we can't -- these phone calls take long enough the
12 way it is with a customer. We can't explain the
13 whole hierarchy like we're all familiar with here,
14 you know.
15 Q. So I understand that -- that Rapid
16 Glass isn't a claims administrator.
17 A. Correct.
18 Q. But is it fair to say that Safelite
19 Solutions competes with Rapid Glass insofar as it
20 refers business to repair glass shops that compete
21 with Rapid Glass?
22 A. That sounds like a compound question,
23 I know. Can you try that one more time?
24 Q. Sure. So I understand that Rapid
25 Glass is not a claims administrator, right?

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1 A. Yeah.
2 Q. And Safelite Solutions is?
3 A. Yes.
4 Q. So you two don't directly compete
5 because you're not a claims administrator, right?
6 A. That's correct.
7 Q. But Safelite Solutions does refer work
8 to glass repair shops, right?
9 A. Yes.
10 Q. And some of those glass repair shops
11 do compete with you, right?
12 A. Yes.
13 MR. REIGSTAD: So I'm again going to
14 move on to another topic. So if you want to take a
15 break, I think now would be a good time because
16 it's going to be pretty different.
17 MS. SASSOON: I think we should take a
18 short break.
19 MR. REIGSTAD: Yeah, it's been about
20 an hour and a half.
21 THE VIDEOGRAPHER: Going off the video
22 record. The time is now approximately 10:00 a.m.
23 (Break from 10:00 to 10:14.)
24 THE VIDEOGRAPHER: We're back on the
25 video record. The time is now approximately 10:14

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1 a.m.
2 BY MR. REIGSTAD:
3 Q. Mr. Rosar, before today, had you ever
4 met Oliver Larson?
5 A. No.
6 Q. Are you familiar with someone named
7 Lisa Rosar?
8 A. Yes.
9 Q. Who is Lisa Rosar?
10 A. Ah, my wife.
11 Q. Do you work with Lisa?
12 A. Yes.
13 Q. Can you tell me about that?
14 A. Um, Lisa is -- primarily does the
15 accounts receivables, payables, like I said before,
16 she answers the phone. I mean, we're a small
17 company. You know, currently we have three people
18 in the office, so --
19 Q. Does she have a formal title at Rapid
20 Glass?
21 A. Um, accounts payable, accounts
22 receivables, primarily, sometimes we call her
23 offers manager. It's a family business, so we -- a
24 little loose in regard to the titles.
25 Q. And, then, you mentioned she answers

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1 the phones. What kind of phone calls does she --
2 does she handle?
3 A. Um, the majority of the phone calls,
4 you know, scheduling customer jobs, writing invoices.
5 She does most of the third-party verifications.
6 Q. So is she on the three-way calls with
7 the claims administrator --
8 A. Yes.
9 Q. -- like you mentioned earlier?
10 Is she the primary person at Rapid
11 Glass who handles that?
12 A. Yes.
13 Q. So, Mr. Rosar, I know we've mentioned
14 Safelite a few times today, but I just want to take
15 a step back and ask you how you first became
16 familiar with Safelite?
17 A. Um.
18 MR. LLOYD: And just for
19 clarification, are you talking about Safelite
20 generally or are you talking about some specific
21 aspect of Safelite?
22 BY MR. REIGSTAD:
23 Q. I'm asking generally?
24 A. You know, I don't really remember, I
25 mean, just heard of them through the auto glass

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1 industry, I guess.
2 Q. What's your impression of Safelite
3 generally?
4 A. Solutions or AutoGlass?
5 Q. Let's take them one at a time. How
6 about AutoGlass?
7 A. Um, they're just another auto glass
8 company out there, competitor, I guess, um, large
9 competitor.
10 Q. Do you have a sense of whether
11 Safelite AutoGlass charges higher or lower prices
12 than Rapid Glass?
13 A. Um, on replacements, I think in
14 general probably charge lower.
15 Q. And what about repairs?
16 A. Repairs, I've heard where they've
17 charged higher for some repairs.
18 Q. So notwithstanding that they've
19 charged higher for some repairs, do they usually
20 charge higher or lower for repairs, if you can
21 answer?
22 A. I don't know that.
23 Q. Do you have -- What is your impression
24 of Safelite Solutions?
25 A. Um, I guess a little more negative

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1 than Safelite AutoGlass. I mean, AutoGlass is --
2 like I say, there's -- we have a lot of competitors
3 out there in the auto glass industry. But Safelite
4 Solutions, you know, are -- I think it's an unfair
5 advantage to be able to refer work to their, you
6 know, other arm, I guess. You know, we don't like
7 the -- the nature of the three-way calls.
8 Like I say, back in the day it was
9 we'd call the agent, do they have coverage? Yes.
10 We'd go out and do the job. It was a less than
11 five-minute call. Now we have calls that are 15,
12 20, 30, 45 minutes, you know.
13 Q. I just want to back up. You just
14 mentioned that Safelite AutoGlass is just another
15 competitor. Do you take issue with any of Safelite
16 AutoGlass's business practices?
17 A. Um, there's been, you know, reports
18 where Safelite trucks will show up on a job site
19 that was scheduled with another company, but they
20 could only be made aware of that through Safelite
21 Solutions.
22 Q. Okay. So -- so is that --
23 A. So I would take issue on that, you
24 know.
25 Q. So sitting aside that, do you have any

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1 other reason to take issue with Safelite
2 AutoGlass's business practices?
3 A. The -- the auto glass arm themselves,
4 none that come to mind at this time. There may be,
5 but, like I say, they're another competitor.
6 Q. Do you have any reason to take issue
7 with the work that Safe AutoGlass performs?
8 MR. LLOYD: And by Safe AutoGlass, I
9 assume you mean Safelite?
10 MR. REIGSTAD: I do, thank you.
11 MR. LLOYD: Because there are
12 companies that are actually named that, so --
13 BY MR. REIGSTAD:
14 Q. And by -- Do you have any reason to
15 take issue with the work that Safelite AutoGlass
16 performs?
17 A. I don't have any issue with the work
18 they perform. I mean, it's not my vehicle.
19 Q. Do you have any reason to question the
20 quality of the work performed by Safelite AutoGlass?
21 A. The quality of the work? Like I say,
22 I don't know their exact practices, but I can only
23 speak to what I believe we do, you know, primarily,
24 and I -- not just with Safelite, I feel our work is
25 superior to a lot of companies, you know.

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Q. Sure. But I guess compared to all your other competitors, so sitting aside Rapid Glass, compared to all your other competitors, do you have any reason to take issue with the quality of the work at Safelite AutoGlass?
A. Nothing particularly that comes to mind, I guess.
Q. So you mentioned you have a more negative impression of Safelite Solutions, and you mentioned, I think, two things, you think it's an unfair advantage to refer work to Safelite AutoGlass and you don't like the nature of the three-way calls?
A. Right.
Q. Can you think of any other reasons why you have a negative impression of Safelite Solutions?
A. Um, no. I mean, it all revolves around the claims verification process, the negative aspects of that, with what they say to our customers that, you know, is inaccurate and, you know, we believe trying to, you know, steal our jobs.
Q. So you think that Safelite Solutions is trying to steal Rapid Glass's business; is that right?
A. Yes, or steer it to themselves or

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somebody else.
Q. Do you think Safelite Solutions is responsible for driving down the price of auto glass repair or replacement in Minnesota?
A. Um, I would say yes.
Q. Are you aware that Safelite Solutions' headquarters is outside Minnesota?
A. I -- I understand that to be correct, yes.
Q. Are you aware that Safelite is actually the largest -- I should be clear. Are you aware that Safelite AutoGlass is actually the largest provider of vehicle glass repair services in Minnesota with a headquarters out of state?
A. I would believe that to be correct.
Q. Are you aware that Safelite Solutions and Safelite AutoGlass operate nationwide?
A. Yes, from what I understand.
Q. Are you aware that Safelite is actually the country's largest nationwide auto glass repair business?
A. I would believe that to be correct.
Q. Now, do you consider -- strike that.
Does Safelite Solutions threaten Rapid Glass's business in any way?

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A. Safelite Solutions?
Q. Uh-huh.
A. Yeah, I would say they do.
Q. How so?
A. Um, by intimidating and coercing our customers during the three-way call process.
Q. Any other ways?
A. Um, as far as -- what was that again, reducing our business or what was the question?
Q. Threaten your business in any way?
A. Threaten your business? Um, I guess they're, you know, connected with some of the insurance companies, and actually the -- the 800 number on the Web site and insurance cards goes directly to Safelite Solutions.
Q. And how does that threaten your business?
A. Well, again, I mean, I -- I think it's somewhat of an unfair advantage, particularly when the customer doesn't know they're, you know, talking to Safelite Solutions. In many cases they're thinking the 800 number goes to their insurance company. So I don't think that's fair.
Q. Can you think of any other ways that Safelite is a threat to the business of Rapid

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Glass?
A. Um, there may be, but those are the main ones that come to mind at this time.
Q. Do you think that Safelite is a threat to small businesses in Minnesota?
A. Safelite Solutions is a threat to small businesses in Minnesota?
Q. Yes.
A. Auto glass shops, you mean?
Q. Let's start with Safelite Solutions. Do you think Safelite Solutions is a threat to small businesses in Minnesota?
A. You know, I don't know if threat is the right word. I know small businesses are concerned about the practices that -- you know, the similar things happen to them that happen to Rapid Glass.
Q. Sure, so let me try a different word.
Do you think that Safelite is hurting small businesses in Minnesota?
A. Um, I would say that Safelite Solutions probably does hurt some of the small auto glass shops.
Q. In Minnesota?
A. Yes.

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1 Q. Now, you mention that you think that
2 Safelite Solutions is driving down the price of
3 auto glass repair in Minnesota. Why do you think
4 that is?
5 A. Um, just over my years of being in
6 business, we've heard things from people and seen
7 exhibits produced in arbitrations where, you know,
8 Safelite goes to the insurance company and shows
9 them pricing that they could get for them and what
10 other insurers are paying and that they shouldn't
11 have to pay that high of a -- a reimbursement if
12 they worked with Safelite Solutions.
13 Q. Now, do you want to stop Safelite from
14 doing business in Minnesota?
15 A. Safelite Solutions or Safelite
16 AutoGlass?
17 Q. Let's start with Safelite Solutions?
18 A. Safelite Solutions, I mean, if they --
19 you know, if I felt they played by the letter of
20 the law, it would be fine, but I believe that
21 they're, you know, breaking the law. So if that's
22 the way they're going to act, then, you know, I
23 don't think they should be allowed to do business.
24 If they want to work within the guidelines of the
25 law, fine.

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1 Q. Let's assume that Safelite Solutions
2 continues its current business practices. Okay?
3 A. Uh-huh.
4 Q. If that's true --
5 A. Uh-huh.
6 Q. -- do you want to stop Safelite from
7 doing business in Minnesota?
8 A. If they're -- like I say, if they're
9 breaking the law, then, yes. If they're within the
10 law, then, I guess I'll have to deal with it.
11 Q. But what I'm asking you is if they
12 continue their current business practices. Okay?
13 And you think those current business practices are
14 breaking the law; is that right?
15 A. Correct.
16 Q. And so if Safelite continues its
17 current business practices, do you want to stop
18 Safelite from doing business in Minnesota?
19 A. Um, I don't know if I -- that's
20 really -- you know, if I want to stop them. I
21 mean, I wish they wouldn't do it. I mean, I'm just
22 a small glass shop, they're a big glass shop, you
23 know.
24 Q. I understand.
25 A. So I wish they wouldn't do it. As far

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1 as stop them from doing it, there's nothing I can
2 do about it, I guess, you know.
3 Q. But if you could, I'm not asking if
4 you can do something about it, what I'm asking you
5 is --
6 A. If I could wave a magic wand and have
7 them quit doing what they're doing, yes, I would
8 like it to stop.
9 Q. If you could wave a magic wand and
10 have Safelite stop doing business in Minnesota,
11 would you?
12 A. Um, with their current business
13 practices, yeah, it's not very comfortable.
14 Q. So that's a yes?
15 A. Yes.
16 MR. REIGSTAD: What number are we on?
17 THE COURT REPORTER: Nineteen.
18 (Whereupon, Deposition Exhibit No. 19
19 was marked for identification, and a copy is
20 attached and hereby made a part of this deposition.)
21 THE WITNESS: Thank you.
22 BY MR. REIGSTAD:
23 Q. Why don't you just take a minute to
24 skim this, there are a few pages, and I'm going to
25 tell you, what I'm going to direct your attention

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1 to is the article that starts on -- if you use the
2 page numbers in the upper left-hand corner, page
3 26, and it says Leveling the glass playing field.
4 A. Okay.
5 Q. I'm going to ask you about that, if
6 you could maybe just skim it for a moment?
7 A. Sure.
8 MR. LLOYD: Chris, did mine just get
9 stapled in the wrong place, is this the first page
10 (indicating)?
11 MR. REIGSTAD: Yes.
12 MR. LLOYD: And, then, that's page 2
13 (indicating)?
14 MR. REIGSTAD: Right.
15 MR. LLOYD: Okay.
16 MR. REIGSTAD: I'll try to say the
17 page numbers in the record that are in the upper
18 right -- in the upper left-hand corner.
19 MR. LLOYD: Yeah. And where it got
20 stapled like -- I can't say where the page, that's
21 why I was having a hard time.
22 THE WITNESS: Okay, I scanned it
23 briefly.
24 BY MR. REIGSTAD:
25 Q. Mr. Rosar, do you recognize this

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document?
A. Um.
MR. LLOYD: I think the question is have you ever seen it before?
THE WITNESS: Yeah. I -- I mean, I don't recall seeing it in this format before. I don't know if this was excerpted from another -- yeah.
BY MR. REIGSTAD:
Q. Let me ask you --
A. Document or not.
Q. Do you recall being interviewed for an article called Leveling the glass playing field?
A. I -- I've done many interviews. I guess I don't recall this specific one, but I'm not doubting those are my words, I guess.
Q. So you have no reason to doubt that you were interviewed for this article?
A. Correct.
Q. I'm going to draw your attention to it's going to be the last page of the exhibit, with the ABRN at the very top?
A. Sure.
Q. And if you look at the paragraph starting with independent glass repairs, do you see

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that? It's right here (indicating).
A. Okay.
Q. And I'm going to ask you about the second sentence in that paragraph. It says, quote, Led by the trade groups such as the Independent Glass Association (IGA), a Harmont, Ill.,-based organization with over 1,600 member shops, independents have produced a litany of unfair trade practice accusations at repairer/claims administrator Belron US Inc. (which recently merged with Safelite).
Now, are you aware that Belron is a company which later merged with Safelite?
A. Yes.
Q. And according to what it says here at least, the IGA was producing a litany of unfair trade practice accusations against Safelite; is that right?
A. Um, I can't really comment on that. I -- that's not my statement there.
Q. Are you aware of whether back in 2007 the IGA was producing a litany of evidence and accusing Safelite of unfair trade practices?
A. I'm not aware of any specifics on that, I'm really not.

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Q. Okay. Let me ask you about some specifics. If you turn to -- it's the previous page, it says 26 in the upper left-hand corner?
A. Okay.
Q. And there's four columns of text. In the second column of text --
A. Uh-huh.
Q. -- the last paragraph, it starts with Rosar says.
A. Okay.
Q. Do you see it?
A. Okay.
Q. And it says, "Rosar says the market access given to Belron due to its administration services makes it far cheaper for them to conduct business." Quote, "They don't have to advertise like we do. Their cost for acquiring customers is far lower than ours," end quote, "he says." Do you see that?
A. Yes.
Q. Do you have any reason to doubt that you said that?
A. No.
Q. So you believe that -- that the market access given to Safelite by Safelite Solutions by

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its administration services makes it cheaper for them to conduct business?
A. Um, yeah, exactly how I said it there.
Q. And --
A. Safelite AutoGlass is getting work from Safelite Solutions.
Q. Uh-huh. Do you think that Safelite AutoGlass -- strike that.
Do you think it's cheaper for Safelite AutoGlass to conduct business than Rapid Glass?
A. I don't know that.
Q. And you mention here that one reason it's cheaper for Safelite to conduct business is, quote, they don't have to advertise like we do, their cost of acquiring customers is far lower than ours. Do you see that?
A. Yes.
Q. And do you agree with that?
A. Yes, and that was because the referrals from Safelite Solutions to Safelite AutoGlass.
Q. And so just so I understand, when you're talking about cheaper to conduct business, are you talking about it's cheaper for Safelite AutoGlass to conduct business, Safelite Solutions

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1 to conduct business, or both?
2 A. Well, I would say as far as auto glass
3 installations are concerned, it would be cheaper
4 for them, because the referrals they get from
5 Safelite Solutions.
6 Q. So it's cheaper for Safelite AutoGlass
7 to conduct business than Rapid Glass because of
8 these referrals?
9 A. I would say so.
10 Q. Can you think of any other reasons
11 aside from these referrals for why it might be
12 cheaper for Safelite AutoGlass to conduct business
13 than Rapid Glass?
14 A. There may be, I don't know, economy of
15 sale. You know, I don't know specifically what
16 their finances are, but it's -- I'll just stand by
17 what I said, I guess, the first time and in 2007.
18 Q. It's a really big company, right?
19 A. Right.
20 Q. Safelite AutoGlass? And so because of
21 that, like you said, they have economies of scale;
22 is that right?
23 A. Sure.
24 Q. And they're a nationwide business,
25 right?

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1 A. Yes.
2 Q. And so do you think that's one reason
3 they can charge lower prices?
4 A. It could be. I don't know for
5 certain, but it could be.
6 Q. So you mentioned they have lower
7 advertising costs, right, and then also --
8 A. Well, they can, sure.
9 Q. Sure. And, then, also the economies
10 of scale. So their costs are lower than Rapid
11 Glass, is that right, at least with respect to
12 these things?
13 A. I don't know for certain what their
14 costs are. I mean, my comment was regarding that I
15 have to advertise to get customers to come in my
16 door. Safelite Solutions refers customers to them,
17 some customers which are Rapid Glass that's scared
18 from their scripting. That's what this is in
19 reference to.
20 Q. So Safelite AutoGlass's cost of
21 acquiring customers is lower, right, according to
22 what you said here?
23 A. Due to the administration services,
24 that's what I believe.
25 Q. Yeah. And one consequence of that is

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1 that Safelite AutoGlass can charge lower prices
2 than Rapid Glass and still make the same profits;
3 isn't that right?
4 A. Ah, I don't know.
5 Q. You're the CEO of Rapid Glass; is that
6 right?
7 A. Yes.
8 Q. And do you understand how to read an
9 income statement?
10 A. Yeah, not my favorite thing to do,
11 but, yeah.
12 Q. And so you understand that if all else
13 equal, if your costs are lower, your profits with
14 are going to be higher, right?
15 A. Sure.
16 Q. And so do you agree with me that if
17 Safelite AutoGlass's costs are lower, if everything
18 else is equal, their profits are going to be higher
19 than Rapid AutoGlass?
20 A. Right. But, I mean, there's so many
21 other factors that go into that. We're -- I'm
22 talking about --
23 Q. And I understand that.
24 A. -- one factor here --
25 Q. I'm saying --

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1 A. -- you know.
2 Q. I understand that. I'm saying keeping
3 everything else equal, would you agree with that?
4 A. I -- I don't -- I don't think you can
5 compare Rapid Glass and our cost to what Safelite
6 has to do. I don't know everything they have to
7 do. But in this aspect of it I can comment on, but
8 I can't say, you know, in general or everything.
9 Q. I'm not asking you to testify as to in
10 general and everything. What I'm asking is, with
11 respect to the cost of acquiring customers --
12 A. Uh-huh.
13 Q. -- right, you agree that Safelite
14 AutoGlass's costs are lower than Rapid Glass's,
15 right?
16 A. In regards to my advertising versus
17 their administrative services.
18 Q. Right. And if you assume all your
19 other costs are equal, what that means is that
20 Safelite Solutions will make more profits than
21 Rapid Glass; is that right?
22 MR. LARSON: I'm going to object to
23 the question as being argumentative.
24 BY MR. REIGSTAD:
25 Q. You can answer.

A. Safelite Solutions now you're saying or --
Q. Strike that.
And if you assume all your other costs are equal, what that means is that Safelite AutoGlass will make more profits than Rapid Glass; is that right?
A. Um, if everything else is equal, I guess if you're saying in a vacuum everything else is equal, and I have to advertise and they can get work from the administrative services, I guess that premise could be correct.
Q. It could be or it is correct?
A. I can't say with certainty. I don't -- well, I guess if you're -- you know, I mean, you're talking about a theoretical thing. If your theoretical thing, everything was equal and I got to pay for advertising and they can get jobs from the administrative services, then, I guess your premise is correct.
Q. You guess it's correct or it is correct?
A. I -- I can't say with certainty.
MR. LLOYD: I think it's time to move on. You've gotten the answer you're going to get.

BY MR. REIGSTAD:
Q. You guess it's correct or it is correct?
MR. LLOYD: It's argumentative, it's been asked and answered.
BY MR. REIGSTAD:
Q. You can answer.
A. I -- I -- I don't think you can say a blanket statement like that. You know, what I was referring to in this document was they have some lower costs because they get referrals from the administrative arm of it.
Q. Does the fact that Safelite AutoGlass has lower costs of acquiring customers give it a competitive advantage over Rapid Glass?
A. Safelite AutoGlass?
Q. Uh-huh.
A. Um, their costs of acquiring customers has a competitive advantage over Rapid Glass? I'd say it probably does.
Q. Can you turn to the previous page? It's labeled 28 in the upper left-hand corner.
A. Sure.
Q. And if you look at the -- there is, I guess, four columns of text. In the third column

of text there's a paragraph towards the end that starts with "Even with this progress." Do you see that?
MR. LLOYD: It's about four up from the bottom.
THE WITNESS: Okay, yep, I see it.
BY MR. REIGSTAD:
Q. And that says, "Even with this progress, some independents see themselves in a race against time to save their businesses." Quote, "We're losing a lot of shops," end quote, "says Rosar." Quote, "I spend a lot of time on the phone trying to add members, and I hear quite often shop owners say, 'We'd like to help, but we don't expect to make it through the winter,'" end quote.
A. Yes.
Q. Do you see that?
A. Yes.
Q. Do you have any reason to doubt you said that?
A. No.
Q. And so, you know, at least at this time, was Safelite running smaller Minnesota shops out of business?
A. Um, I believe since the -- you know,

this was back in 2007, and we did have a lot of, you know, consolidation and stuff with the shops and shops going out of business, like I mentioned. And so -- again, what was the question?
Q. Sure.
A. I lost it there.
Q. And so at least at this time, was Safelite running smaller Minnesota shops out of business?
A. Um, I think the -- the growth and the additional work that Safelite AutoGlass was to receive, you know, because of Safelite Solutions, it did hurt a lot of independent auto glass shops and did -- possibly one of the reasons why it caused them to go out of business.
Q. It ran some of them out of business; isn't that right?
A. Um, yeah. I mean, the economy at this time wasn't -- was starting to go downhill, as well, but it was one of the reasons, yes.
Q. So Safelite was one of the reasons that these shops were getting run out of business; isn't that right?
A. I think it contributed to some of the jobs drying up, yes.

1 Q. Now, you mentioned I think a couple
2 times that you participate in calls like these
3 three-way calls. I just want to understand, have
4 you ever interacted with Safelite employees
5 yourself in any capacity?
6 A. Um, very infrequently.
7 Q. Can you tell me about each time you
8 can remember?
9 A. I -- I can't remember any spefic --
10 specific times. Are you talking strictly on, like,
11 phone calls that --
12 Q. Any time that you've interacted with
13 someone from Safelite?
14 A. Yeah. I mean, there's been many --
15 through phone calls, through arbitrations, through
16 trade shows.
17 Q. Can you explain what you mean by trade
18 shows?
19 A. Oh, just some of the industry trade
20 shows that they have. I mean, I run into Safelite
21 employees occasionally and talk to them or say hi
22 to them or something.
23 Q. And, then, you also mentioned
24 arbitrations. Can you tell me about that?
25 A. At the trade shows it's primarily

1 Safelite Solutions employees that I'm running into,
2 and actually on the phone, too. But what was the
3 question again?
4 Q. Sure. You mentioned arbitrations --
5 A. Yes.
6 Q. -- you interacted with Safelite --
7 A. Yes.
8 Q. -- people at arbitrations. Can you
9 tell me about that?
10 A. Just Safelite -- and I believe it's
11 Safelite Solutions, comes to the arbitrations often
12 on behalf of the insurance company to testify.
13 Q. And so you see them at this
14 arbitration?
15 A. Yes.
16 Q. Do you talk to them?
17 A. Yes.
18 Q. What do you talk about?
19 A. Just small talk.
20 Q. Anything else?
21 A. Um, no, nothing really in great detail
22 that I recall.
23 Q. And, then, you also mentioned
24 sometimes on calls. Can you tell me about that?
25 A. Um, three-way verification calls. I

1 mean, that would be, you know, more like their
2 customer service representative. I mean, I have
3 called or e-mailed, you know, some of their people.
4 I guess another communication would be, you know,
5 to, you know, bring complaints to them about certain
6 things that might happen or payments we received or
7 didn't receive.
8 Q. How often are you on these three-way
9 verification calls?
10 A. Myself, not very often.
11 Q. And how often have you brought
12 complaints to Safelite?
13 A. Um, I don't know, occasionally. It's
14 usually in, you know, more extreme situations. I
15 mean, we have daily occurrences that are unpleasant,
16 but it's sometimes in the more extreme situations.
17 Q. Sitting here today, can you remember
18 any of the specific complaints you made to Safelite?
19 A. I don't, no.
20 Q. You can't remember one?
21 A. Not with specifics. I know, you know,
22 some of the people that we probably complain to
23 over there, but I -- the specific -- you know,
24 usually if it's something with billing or
25 something, it was -- you know, it would be like a

1 JT Tumblin. I don't think he's there no more. If
2 it was something to do with the CSRs, you know,
3 maybe Tom Reid or I don't know if it's -- McFarland
4 is over there or if he's for the other network.
5 But, you know, some of the -- the network people
6 that would deal with the shops, you know, that's
7 kind of their job duty.
8 Q. So you mentioned billing complaints
9 and the complaints about customer service
10 representatives. Can you think of any other
11 categories of complaints you've made to Safelite?
12 A. Um, well, like I say, the -- you know,
13 if it was, you know, billing kind of -- you know,
14 like the steering issues that we're talking about,
15 I guess are the primary ones that we would, you
16 know, call them about. There may be others, but
17 those are probably the primary ones.
18 Q. Can you think of any others right now?
19 A. Um, no, not at this time. There may
20 be, but it's primarily, like I say, if there's a
21 billing issue or, you know, complaint with a
22 customer service call or something along those lines.
23 Q. And what kind of billing issues have
24 you complained about?
25 A. Um, that's not really my department.

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1 I mean, I'm very close by, I'm just sitting in the
2 next room, but maybe if they had -- and, you know,
3 usually I refer this to our accountant, which is
4 Lisa, but occasionally we'll have the conversation
5 about it, and I'll tell her, well, just, you know,
6 send JT an e-mail or send somebody over there an
7 e-mail, they must have made a mistake or this isn't
8 right or whatever.
9 Q. Okay. So is that Lisa's department,
10 the billing complaints?
11 A. Yes.
12 Q. And, then, what about the complaints
13 about customer service representatives, what kind
14 of complaints do you make with respect to them?
15 A. Um, just if, you know, we get one
16 that's really nasty or, you know, won't let us talk
17 in general or just something that seems really even
18 out of the ordinary for Safelite Solutions, you
19 know, that's maybe a little bit over the top, we
20 might contact someone there.
21 Q. And how often would you say you do
22 that?
23 A. Oh, pretty seldomly, I mean, a handful
24 of times a year, I suppose, as far as going higher
25 up, you know. I mean, occasionally -- I know I've

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1 heard Lisa, if she's talking to a CSR, will ask to
2 speak with like their supervisor, you know, type of
3 thing sometimes. But going beyond that is, you
4 know, infrequent.
5 Q. And can you remember any specific
6 complaints about the customer service representative,
7 sitting here today?
8 A. Ah, no, no, not really, I mean, not
9 any that were made.
10 Q. And how about the billing complaints,
11 can you remember any specific billing complaints
12 you made to Safelite sitting here today?
13 A. No, not specific by name or issue, you
14 know, with any specificity.
15 Q. Can you -- can you quantify in any way
16 how many calls, how many of those verification
17 calls you've been on with Safelite employees, is it
18 more than a hundred, more than --
19 A. Myself?
20 Q. Uh-huh, yourself, you, Rick Rosar?
21 A. Um, well, like I say, you know, by
22 the -- by the year, like I mentioned earlier, you
23 know, might be two to three dozen that I do the
24 verification. Lisa does the vast majority of them.
25 Q. Do you record those calls?

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1 A. Most of them we do, almost always we
2 try to, but sometimes we forget or something
3 happens with the recording or whatnot, but --
4 Q. And of the calls you record, how many
5 do you listen to afterwards?
6 A. Oh, it's -- usually if Lisa hears one
7 that's a little more egregious than another she'll
8 send it to me, you know, by e-mail, and then I'll
9 listen to and, you know, take it from there.
10 Q. And how often does Lisa send you these
11 recordings?
12 A. Oh, weekly for sure. I can't say
13 daily, but I think, you know, with confidence I can
14 say pretty much every week, you know, I get at
15 least one call, if not several.
16 Q. And what do you do -- and what do you
17 next when Lisa sends you these calls, recordings?
18 A. It depends on the nature of it. You
19 know, if, you know, we need to call an agent we may
20 call an agent and discuss it with them. You know,
21 if we got to call the customer back, we may have to
22 do that to clarify something. Like I say, if it's
23 something else, we may have to refer it to a
24 supervisor or JT Tumblin or one of the other people
25 in that department. You know, occasionally we'll,

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1 you know, send a complaint to Commerce or -- you
2 know, a customer's name over there.
3 Q. Okay. So I just asked you about your
4 personal interactions with Safelite. Next I just
5 want to understand your interactions with customers
6 about Safelite.
7 A. Sure.
8 Q. And I mean Rapid Glass customers.
9 A. Sure.
10 Q. Have any of your customers complained
11 to you about Safelite's business practices?
12 A. Yes.
13 Q. How many?
14 A. Um, I -- I don't have any number. I
15 know, you know, there's many customers that -- like
16 I mentioned earlier, that complain about, hey, I
17 got coverage, why are we going through this, you
18 know, that type of thing. It's more the complaint
19 on the -- how the three-way call goes, you know, is
20 most of the customers that get upset.
21 Q. So you mentioned, you know, I guess
22 complaints about the amount the insurance company
23 pays, right, that's one category?
24 A. Um.
25 Q. The short pay, I guess you might call

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it?
A. The customer? Well, it's more about them thinking that they have to pay out of pocket, not the amount.
Q. Okay.
A. Typically.
Q. And, then, the other category you said was interactions during these calls; is that right?
A. Yes, yes.
Q. Can you think of any other categories of complaints that customers have made to you about Safelite?
A. Um, no. It's more in -- in general. I mean, there's various tentacles within those, but -- and all those are primarily what we hear.
Q. Yeah. And can you remember any specific examples of those complaints sitting here today?
A. Um, I mean, just one comes to mind because it was one we produced in the subpoena, and I was just kind of perusing over the documents to refresh my memory with it, you know, and it was just as I described earlier, the customer is, like, you know, I don't get what the problem is here, I pay my policy all the time, you know, how come

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you're just not, you know, taking care of this. You know, they ask, you know, well, even if the insurance company is going to pay this much, do you still want to go Rapid Glass? She's, like, well, yeah, that's who I called, you know. So as far as, you know, fresh ones, that's just one that I happened to hear recently.
Q. So sitting aside that one that you just mentioned, can you think of any other specific examples of customer complaints sitting here today?
A. Um, well, like I say, I mean, I get them every week, you know. So as far as names, you know, no.
Q. I understand that. I'm just asking for your best recollection sitting here today, can you remember any specific examples of customer complaints other than the one that you just mentioned?
A. Well, there's been lots of them that are very similar to that. You know, the exact wording that they used I can't say specifically.
Q. So is the answer, no, you can't remember any other specific examples sitting here today?
A. I remember a lot of examples of

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customer complaints, the exact wording of those complaints I cannot remember.
Q. Can you name some more examples?
A. Examples?
Q. Of specific customer complaints?
A. Um, no. I mean, usually when Lisa sends them to me, she sends me a -- a file with the last name on it, you know. So I would have to refer to that.
Q. Okay. So setting aside the one that you mentioned that was produced in this litigation, sitting here today, you can't remember any other specific customer complaints made to you about Safelite; is that right?
A. Um, not specifically the name related to the date remembered -- related to the words they said, if you're looking for specifics.
Q. That's what I'm asking for, specifics?
A. Yeah. There's -- there's -- like I say, every week I get complaints sent to me. Specifically do I remember the words and the name of the person and what the exact complaint is? No.
Q. Okay. So moving from customers to glass shops.
A. Sure.

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Q. Have any glass shops complained to you about Safelite?
A. Oh, sure. You know, I've heard over the years glass shops, you know, venting regarding it.
Q. How many?
A. Um, dozens, if not hundreds, over the years.
(Reporter's Note: Ms. Sassoon leaves the room.)
BY MR. REIGSTAD:
Q. If not hundreds?
A. And are we talking just Minnesota or are we talking --
Q. Let's start with anywhere, yeah, how about anywhere?
A. Okay. Yeah, anywhere, I'd have to say hundreds for sure, you know.
Q. Okay. And, then, how about just Minnesota?
A. Yeah. I mean, dozens, many dozens, you know. I can't say hundreds because I don't know how many glass shops are in Minnesota, but --
Q. And what is the time period over which you've received these complaints from glass shops?

A. Since -- well, I don't know the -- probably more prevalent in the -- the 2000 era, I guess, you know.
Q. Why do you think that was?
A. Um, because Safelite's practices seem to get more egregious over the years as far as their scripting, and, also, the pricing dropped moreover the years. So I think it was kind of a -- you know, a scale that's been ramping up since the early 2000s.
Q. So as Safelite prices have dropped, independent glass shops have complained about Safelite more?
A. Um, again, as -- you know, probably more than a two-tier, but the scripting has gotten more aggressive and the prices have gone lower.
Q. I understand, but my question was a little different. My question was just, so as Safelite's prices have dropped, independent glass shops have complained about Safelite more; is that right?
A. One of the factors, yes.
Q. Can you describe -- and maybe it's easiest to do it in categories like we've been doing. But can you describe me the categories of

complaints you received from independent glass shops about Safelite?
A. Sure. I mean, you know, primarily it's the -- you know, I mean, in general we call it steering, which is kind of an industry term, you know, and that can include, you know, many things from, you know, telling the customer they have to pay the difference, um, saying disparaging things about the warranty, um. Oh, most recently there was some inspections that came up recently, calling the customer back, you know, and talking to the customer outside of our three-way call.
Q. Steering is, basically, trying to take customers; is that right?
A. Correct.
(Reporter's Note: Ms. Sassoon enters the room.)
BY MR. REIGSTAD:
Q. Are there any other categories of complaints you've heard about Safelite from --
A. Safelite Solutions?
Q. Why don't we just -- why don't we just say Safelite AutoGlass and Solutions.
So aside from steering, are there any other complaints you've heard from glass shops

about Safelite?
A. Um, again, the steering and the pricing erosion are the two main ones that come to mind.
Q. Can you tell me what --
THE VIDEOGRAPHER: Sorry, approximately two minutes left on this disc.
MR. REIGSTAD: I'll just ask a couple more questions and we'll take a break, he has to switch the tape.
THE WITNESS: Sure.
BY MR. REIGSTAD:
Q. Can you tell me what you've heard from glass shops about pricing erosion?
A. Um, just that, you know, they're reimbursed less that -- less and less over the years.
Q. By Safelite?
A. Correct.
Q. And aside from steering and pricing erosion, can you think of any other categories of complaints you've heard from glass shops about Safelite?
A. Those are the primary two. There could be more, but those are the ones that I hear about the most, I guess.

Q. Can you think of any others right now?
A. No. Like I say, the steering kind of encompasses a lot of different tactics. I mean, another one is sometimes our phone rings and nobody is on it. Some glass shops think that Safelite calls them and then they tell the customer, oh, we can't get ahold of the glass shop, but they only let it ring once and hang up. They play the hard-of-hearing game, we think, sometimes where it's like they're trying to get the customer on the line themselves by saying, oh, you know, I can't hear you, type of thing.
Q. Right.
A. So, I mean, there's --
Q. But I guess you could probably put that under the steering umbrella?
A. Correct.
Q. Right?
A. Yes.
Q. So aside from the steering and the pricing erosion, can you think of any other categories of complaints?
A. Those are the primary two that we deal with on a day-to-day basis, I guess.
MR. REIGSTAD: Okay. Let's -- let's

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1 take a break, then, switch the tape.
2 THE VIDEOGRAPHER: Going -- going off
3 the video record. The time is now 11:00 a.m. This
4 is the end of disc number 1.
5 (Break from 11:00 to 11:12.)
6 THE VIDEOGRAPHER: We're back on the
7 video record. The time is now approximately
8 11:12 a.m. This is the beginning of disc number 2.
9 BY MR. REIGSTAD:
10 Q. Mr. Rosar, you mentioned that Lisa
11 sometimes sends you -- Lisa Rosar sometimes sends
12 you recordings of calls from Safelite; is that right?
13 A. Yes.
14 Q. Does she do that by e-mail?
15 A. Sometimes she does, yes.
16 Q. And about how often does she do that
17 by e-mail, would you say?
18 A. Well, you know, weekly, you know,
19 probably.
20 Q. Okay. Switching topics, have you ever
21 interacted with someone at the Minnesota Department
22 of Commerce?
23 A. Yes.
24 Q. Who have you interacted with at the
25 Minnesota Department of Commerce?

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1 A. Um, TJ.
2 Q. Is that TJ Patton?
3 A. Yes.
4 Q. Anyone else?
5 A. Ah, I don't -- I mean, over the years
6 there's been many people, but more recently TJ.
7 Q. So how about in the last three years,
8 other than TJ Patton, have you interacted with
9 anyone else at the Department of Commerce?
10 A. I'm not certain. I mean, we've called
11 up and sent in complaints or mailed in complaints,
12 but -- and I've known other people over the years
13 over there, but TJ is the only name that comes to
14 mind because it's recent, I guess.
15 Q. And, Mr. Rosar, when I ask you these
16 questions, all I'm asking for is your best
17 recollection. I understand that you might not be
18 able to remember something that happened in the past.
19 A. Sure.
20 Q. So all I'm asking is, in the last
21 three years, can you remember talking to anybody
22 else in the Department of Commerce other than
23 TJ Patton?
24 A. I don't believe so.
25 Q. And, then, can you recall any other

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1 names you've spoken with at the Department of
2 Commerce going back before three years? Excuse me,
3 strike that.
4 Aside from TJ Patton, can you remember
5 anyone else who you've spoken with at the Department
6 of Commerce ever?
7 A. Um, Jim Bernstein.
8 Q. Do you know what his job was?
9 A. Ah, Commerce Commissioner.
10 Q. And do you recall when you -- what
11 time period you spoke with him?
12 A. It was over three years ago.
13 Q. Anything more specific than that?
14 A. No. I mean, there was other officers
15 of his over there over the years, but none of the
16 names are coming to me right now.
17 Q. Other than TJ Patton and Jim
18 Bernstein, can you remember anyone else at the
19 Department of Commerce that you've spoken with?
20 A. No.
21 Q. So let's start with Jim Bernstein.
22 When did you begin speaking with Jim Bernstein from
23 the Department of Commerce?
24 A. Um, typically, it was when we were
25 down there, you know, for other lobbying activities,

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1 we might stop in or run into him. I've met up with
2 him at arbitrations before he's -- but was brought
3 into arbitrations to testify, and I was brought
4 into arbitrations.
5 Q. And what did you speak about?
6 A. Um, to the best of my knowledge, just
7 small talk, for the most part. The last
8 arbitration I saw him at I -- he was out of Commerce
9 already, I believe, and just talked about what he
10 was doing in general, you know. I think he was
11 already out of the Commerce Department at that
12 point.
13 Q. So when Jim Bernstein was -- strike
14 that. Is it okay if I refer to the Department of
15 Commerce as the DOC?
16 A. Sure.
17 Q. When Jim Bernstein was at the DOC, do
18 you recall talking to him about anything other than
19 small talk?
20 A. Um, no.
21 Q. I'd like to move on to TJ Patton, then?
22 A. Sure.
23 Q. When did you first interact with TJ
24 Patton in any way?
25 A. I don't know, within the last few

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1 years. Um, he responded -- I mean, like I say, I
2 mean, we occasionally send in complaints into
3 Commerce, and then at some point he reached out to
4 me, and has a couple of times since, looking for
5 information and documentation.
6 Q. So Mr. Patton reached out to you first?
7 A. Well, like I say, we've sent complaints
8 in, but at some point, you know, there was no
9 specific thing that happened on my part why he
10 called me back all of a sudden, I guess. You know,
11 eventually he contacted me and said, "Could you
12 send me some information?"
13 Q. So when did you first send a complaint
14 to the Department of Commerce, as best you can
15 recall?
16 A. I mean, we've been sending complaints
17 since the early 2000s.
18 Q. When did you first -- Have you ever
19 sent a complaint about Safelite to the Department
20 of Commerce?
21 A. Um, I don't recall specifically. It's
22 usually the complaints we send in are more about
23 the insurance companies.
24 Q. Do you recall you ever sending a
25 complaint about Safelite to the Department of

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1 Commerce?
2 A. I don't recall anything specifically.
3 Like I say, usually we send a complaint that said,
4 you know, this occurred or that occurred, you know,
5 on the phone call. But I don't recall any specific
6 complaint about Safelite, I guess.
7 Q. And when I say Safelite --
8 A. Solutions.
9 Q. -- I mean Safelite Solutions and
10 AutoGlass. Does that change your answer?
11 A. No, no, I don't think I've ever sent
12 complaints on Safelite AutoGlass that I can recall.
13 Q. Or Safelite Solutions?
14 A. I -- I don't recall. Like I say, I
15 can't recall the exact nature of them. I mean, it
16 was probably -- you know, like I say, usually we
17 send it on, you know, behalf of the insurance
18 company, but the complaint could have said is what
19 occurred on the call, you know, with Safelite
20 Solutions.
21 Q. Yeah. So I would -- I would include
22 that, you know, within the scope of the question.
23 So have you ever complained to the
24 Department of Commerce about Safelite, and that
25 would include its conduct on calls with insurance

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1 companies?
2 A. Um, you know, I don't have any
3 specific examples, but I'd say more than likely it
4 was included in the correspondence or complaint,
5 you know, because they were the ones that we
6 interacted with via the insurance company.
7 Q. And when you sent complaints like this
8 to DOC, who did you send it to?
9 A. Sometimes we just send it to a general
10 e-mail or leave a voice mail over the years, that
11 we didn't really target anyone specifically. I
12 didn't have --
13 Q. Did you use --
14 A. -- relationships with anybody down
15 there.
16 Q. Did you use like the DOC Web site to
17 submit complaints or did you e-mail it to someone
18 at the DOC?
19 A. I don't remember specifically. Like I
20 say, I mean, we've used all sources. You know,
21 there's been times when I -- I know I've called
22 down there, too, and just -- I think there's a
23 general number. We had complaints that -- forms
24 that we used to fill out, too. I believe the IGA
25 had a program at one time where we would fill out

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1 complaint forms and they would actually send them
2 in as well.
3 Q. When do you fall -- when do you recall
4 first complaining to the DOC about Safelite? And,
5 again, that would include Safelite's conduct on
6 these calls.
7 A. Yeah. Again, I can't say specifically,
8 because usually it was referred in the context of
9 the insurance company. But, like I say, I mean,
10 we've been sending in complaints, you know, going
11 back to the, you know, early 2000s, you know, maybe
12 before that.
13 Q. And, then, you said at one point --
14 you know, you were sending these complaints, and
15 then at one point you got an e-mail back from TJ
16 Patton, right?
17 A. Uh-huh.
18 Q. And that was the first time that you
19 had received any follow-up on your complaints about
20 Safelite?
21 A. Ah, no. Well, and I -- again, you
22 keep saying Safelite, Safelite, Safelite, you know,
23 it's more the insurance company type of thing, but
24 usually -- there's been times when we've sent in
25 complaints about a particular insurance company

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1 and, I mean, we've gotten letters back that says,
2 hey, we investigated this and we found, you know,
3 that it wasn't viable or we did find that it was
4 viable and we've spoken with them and they're going
5 to do this for you, you know, the insurance company.
6 I mean, we've been paid by insurance
7 companies for jobs that have been steered by
8 Safelite CSRs before, where they listen to the
9 regarding, said, yeah, that's a violation, that's
10 not supposed to happen, they paid it to us. But,
11 then, we have received letters back, you know, many
12 times that says we looked into it and, you know, we
13 don't think there's any basis for this, and we're
14 closing the case or we contacted them, they sent us
15 a letter back, and, you know, we're closing the
16 case type of thing.
17 Q. And these complaints that you've made
18 to the Department of Commerce --
19 A. Uh-huh.
20 Q. And I'm going to say about Safelite,
21 but, just for the record, when I say that I mean,
22 you know, including calls where Safelite was the
23 claims administrator.
24 A. Sure.
25 Q. And I'm going to do that going

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1 forward.
2 (Reporter's Note: Mr. Snyder leaves
3 the room.)
4 BY MR. REIGSTAD:
5 Q. Was it -- was it about steering, the
6 kind of steering practices you've been discussing?
7 A. Ah, yeah, some of them is.
8 Q. Can you recall any --
9 A. Are.
10 Q. Can you recall any other categories of
11 complaints you made to the DOC other than steering?
12 A. Um, yeah, delayed payments, which
13 actually after our -- just before we broke was
14 another thing I thought of that didn't come to
15 mind, was the delayed payments sometimes where we
16 don't get paid, you know, for a long time, months,
17 sometimes could be over a year. So the delayed
18 payments, you know, might be an issue as well.
19 (Reporter's Note: Mr. Snyder enters
20 the room.)
21 BY MR. REIGSTAD:
22 Q. And when you mentioned that's something
23 you've thought of, do you mean it's something
24 you've thought of as a complaint that glass shops
25 had made to you about Safelite?

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1 A. Yes, yes, after our -- or just before
2 our break, as soon as I stood up.
3 Q. So just --
4 A. It popped into my head, too.
5 Q. So I appreciate you -- you clarifying
6 the record on that.
7 So just to be clear, the three
8 categories of complaints you can recall glass shops
9 making to you about Safelite were the steering, the
10 pricing erosion, and the delayed payments?
11 A. Yep.
12 Q. And you --
13 A. And, I mean, there -- there's another
14 one that, I guess, that comes to mind --
15 Q. Sure.
16 A. -- if we're going back there. I'm not
17 saying this is all of them, but another one is
18 sometimes when we get the faxes from them they
19 have, like, the incorrect part number on there. So
20 I don't know if that's a different category, if
21 that's included in billing or not, but --
22 Q. Okay. So --
23 A. And the -- also, like, when we send in
24 our EDIs they'll say we don't have a signature, and
25 we send them a signature, they say the VIN is bad,

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1 we send it back again. So I don't know what
2 process you'd consider that, billing process or
3 what, but it's kind of along those lines, I guess.
4 Q. So let's call that billing process.
5 So aside from steering, delayed
6 payments, pricing erosion, incorrect faxes, and the
7 billing process, can you think of any other
8 categories of complaints that glass shops have made
9 to you about Safelite?
10 A. No. Those are the four that come to
11 mind at this time. There could be more, but those
12 other two just kind of popped in my head --
13 Q. Okay. And I --
14 A. -- when we --
15 Q. -- appreciate you --
16 A. -- broke last time.
17 Q. -- following up on that.
18 A. Sorry about that.
19 Q. So moving back to the communications --
20 A. Yeah.
21 Q. -- with the DOC. So we were talking
22 about the categories of complaints --
23 A. Yeah.
24 Q. -- you've made to the DOC, and you
25 mentioned steering, and you also mentioned delayed

payments?
A. Yes.
Q. Can you recall any other categories of complaints you made to the DOC?
A. Um, I mean, the -- the categories that we would complain about were the -- the four that we finally discussed with you, with the exception of probably the wrong part on the fax issue.
Q. So it would be steering, delayed payments, pricing erosion?
A. Yeah.
Q. And --
A. Well, not really pricing erosion, but either not getting paid or not getting paid fairly.
(Reporter's Note: Mr. Snyder leaves the room.)
BY MR. REIGSTAD:
Q. Can you explain what you mean by not being paid fairly?
A. Um, well, I mean, they -- and I don't know if it's the insurance companies or what, I would assume it's the insurance companies, but we've arbitrated, you know, many times, and, you know, sometimes we'll arbitrate with an insurance company and we'll win the arbitration, and then

it's like the very next day it goes back to short paying us again type of thing.
Q. So one of the categories of complaints you made was that Safelite and insurance companies aren't paying Rapid Glass enough?
A. Um, I would say, you know, the -- the repetitive arbitration, make us going back for these arbitrations type of thing, we already won, you know.
Q. I understand that's the reason, but I'm just trying to get at the complaint, which is that you were getting short paid, in your view, right?
A. Yeah, and, I mean, we have sent complaints to Commerce over the years about, you know, short payments certainly. Back many years ago there was complaints that -- about -- with State Farm in regards to State Farm, and then we ended up getting supplemental payments from State Farm based on Commerce's actions or their negotiations with State Farm.
(Reporter's Note: Mr. Snyder enters the room.)
BY MR. REIGSTAD:
Q. So in the past sometimes the DOC's

actions resulted in you getting paid more?
A. Yeah.
Q. And was that your goal in first reaching out to the DOC about State Farm, was to get paid more?
A. No. It's more about the -- you know, the issues with the phone calls and stuff. The -- the paid more thing is probably a lower tier on the complaints, I guess. We deal with those in arbitration, typically, ourselves.
MR. LLOYD: I want to make sure the record was clear with respect to that, because you said State Farm, and I don't know if your answer was about State Farm or back to Safelite.
THE WITNESS: Oh, what was it?
MR. REIGSTAD: State Farm, was the question. I can -- Can you read back the question?
(Whereupon, the court reporter read back the following question: "And was that your goal in first reaching out to the DOC about State Farm, was to get paid more?")
THE WITNESS: Boy, um, you know, I -- I don't recall. I wasn't one of the ones that was really actively involved back then. I know that was the result of what occurred.

BY MR. REIGSTAD:
Q. Okay. And just so I understand all the categories of complaints that you made to the DOC, I have steering, delayed payments, short payments, and billing process?
A. Yeah.
Q. Can you think of any other categories of complaints? And, again, this is just sitting here today.
A. Yeah, like I say, there's many tentacles within those, but those are the primary ones that come to mind at this time.
Q. Can you think of any others right now?
A. No, but it doesn't mean I get up and think of something else, but --
Q. That's always true, so I understand.
A. Sorry.
Q. In words or some -- in words or substance, did you ever tell the DOC that Safelite was harming the business of Minnesota glass shops?
A. No. That's not really the way the conversation goes or not really our -- the way our complaint goes, it's more what happened, you know.
Q. And I'm not asking you for specific wording.

A. Yeah.
Q. I'm asking you words or substance, did you ever tell the DOC that Safelite was harming the business of Minnesota glass shops?
A. No. I -- I more send in the complaints for Rapid Glass.
Q. Did you ever tell the DOC in words or substance that Safelite was harming the business of Rapid Glass?
A. No. I never used those words.
Q. That's why I said words or substance. Did you ever tell --
A. Oh.
Q. Did you ever tell the DOC in words or substance that Safelite was harming the business of Rapid Glass?
A. I know it's difficult for me to answer that. I mean, I complained about situations that occurred, I guess, that were harming our operational substance.
Q. Yeah. I'm looking --
A. So --
Q. I'm just looking for -- I'm just looking for a yes or no answer. Okay?
Did you ever tell the DOC in words or

substance that Safelite was harming the business of Rapid Glass?
A. I'd say in so many words, sure, in substance.
Q. In words or substance, did you ever tell the DOC that Safelite was driving down the price of auto glass repair?
A. No, I don't think I ever utilized that, no.
Q. What do you mean, "utilized that"?
A. I don't think I ever used that as a reasoning or complaint.
Q. In words or substance, did you ever tell the DOC to open an investigation of Safelite?
A. Um, I guess whenever we turned in an insurance company complaint we'd always hoped that they would.
Q. So is that a yes?
A. Yes.
Q. In words or substance, did you ever communicate to the DOC that you had evidence that Safelite was violating Minnesota law?
A. Yes.
Q. And in words or substance, did you ever tell the DOC or ask the DOC to enforce

Minnesota law against Safelite?
A. Um, again, I don't control what the Department of Commerce does, but I'd asked them to look into it and see if they were violating the law and, if so, enforce it, but --
Q. So in words or substance, did you tell -- did you -- strike that, let me rephrase that.
In words or substance, did you ever ask the DOC to enforce Minnesota law against Safelite?
A. No, I don't think it was worded that way. It was worded in the way that, you know, I thought that they were violating the law, you know, and I'd like them to look into it. Again, I don't control them or tell them what to do, alls I can do is bring them the evidence or send in the complaint and they make the decision based on it.
Q. And when you sent them this evidence, was it your hope that they would ultimately charge Safelite with legal violations?
A. I had no expectations of what they may or may not do. I hoped that they would maybe stop them from breaking the law if they found that they were.

Q. Yeah, and that's just my question. When you gave them this evidence, you wanted them to charge Safelite with legal violations, right?
A. Um, no, I wouldn't say that was the intent of charging Safelite with legal violations. I wanted the practices to stop.
Q. So you thought Safelite was violating the law, right?
A. Yes.
Q. And you gave the DOC what you thought was evidence of that?
A. Yes.
Q. And what did you hope to happen next?
A. Um, that Safelite would, you know, cease from what I thought was violating the law.
Q. And that --
A. That they --
Q. I'm sorry.
A. Yeah. That they would cease from doing what I thought they were violating the law for.
Q. And you would hope that the DOC would get Safelite to cease violating the law, right?
A. Yes.
Q. Because you can't do that, right?

A. Correct.
Q. How would you describe your relationship with TJ Patton?
A. Professional.
Q. Do you think he's been responsive to your concerns?
A. Um, yeah, I guess so.
Q. Were you ever frustrated with the pace of the DOC's investigation?
A. Yes.
Q. Can you tell me about that?
A. When, what time period?
Q. So let me ask it differently. Were you often frustrated with the pace of the DOC's investigation?
A. Yes.
Q. Were you always frustrated with the pace of the DOC's investigation?
A. Most oftenly over the years, yes.
Q. And why is that?
A. Um, just because we would -- a lot of times we would send in complaints and they'd take no action on it. Actually when, you know, Glenn Wilson was on board, he was kind of looked at being favorable to the insurers, and he actually

responded us more than Rothman did. We were actually quite upset that, you know, Rothman wasn't responding to us, and then, you know, eventually he did. But throughout the years, typically, we were never happy with how slowly they responded to us.
Q. And it sounds like over the years you've been sending in the same types of complaints about steering and short payment; is that right?
A. Yes.
Q. And you weren't getting the results that you wanted?
A. Um, that's correct. We had very -- very little results typically.
Q. And you mentioned Commissioner Wilson. That's former Department of Commerce Commissioner Wilson?
A. Correct.
Q. Have you ever met him?
A. You know, I -- in passing I've seen him, but I can't say that I've met him or had a long conversation with him that's memorable at all.
Q. Have you ever spoken with something about -- spoken with Commissioner Wilson about something of substance?
A. No.

Q. And you mentioned that he was looked at as being favorable to insurers?
A. Yeah.
Q. Is that your view?
A. Yeah, just an opinion.
Q. And what's that view based on?
A. Um, I -- if I recall, I think he kind of came from the insurance industry, and he was appointed by Pawlenty, and typically Republicans are more favorable to big business in the insurance industry than the Democrats are.
Q. Can you tell the Court who Pawlenty is?
A. Ah, past governor of Minnesota.
Q. Do you know if anyone else shared your view about Mr. Wilson being favorable towards insurers?
A. I think it was a general consensus that that was the case. I don't know any specific names but, you know.
Q. Was it the general consensus among glass shops?
A. Yeah, because that's primarily who I talked to because that's the industry I'm in.
Q. Was Commissioner Rothman viewed as

less favorable towards insurers compared to Commissioner Wilson?
A. Um, no. In my opinion, it was just because he was appointed by a democratic governor, you know, we thought he would maybe listen a little more intently to our concerns, but for a long time that didn't occur.
Q. But it ultimately did occur, right?
A. Yes.
Q. I have one more question about Commissioner Wilson.
A. Uh-huh.
Q. You mentioned earlier that sometimes you would send complaints and you would receive letters back saying that they looked into it --
A. Right.
Q. -- and there was no violation?
A. Right.
Q. Did that ever -- did you ever receive a letter like that from Commissioner Wilson or his staff?
A. Um, I don't remember which commissioner it is. I -- I would -- I would only be guessing.
Q. Okay. I don't want you to do that.
A. No.

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1 Q. Can you recall what time period it was
2 that you received letters like this?
3 A. Um, I think it was after Jim
4 Bernstein, I could safely say.
5 Q. And do you remember the substance of
6 the letter that you received, what did it say?
7 A. Um, typically, the general substance
8 of it was either, you know, we contacted them, they
9 sent us a response, and we found that, you know,
10 basically, something to the effect that there was,
11 you know, either no violation or we didn't find
12 that there was a violation or, you know, something
13 to that, you know.
14 Q. And the complaints that precipitated
15 these letters, were they the steering complaints
16 and the short payments complaints that you were
17 talking about earlier or were they different?
18 A. I think it was more along those lines.
19 But, I mean, to my recollection, you know, it
20 wasn't like they sent complaints to Safelite, you
21 know, or -- you know, when -- whenever they did
22 open and investigate it, it was my understanding
23 that they sent something to the insurance company
24 and then the insurance company responded, and then
25 they either, you know, dealt with it or didn't.

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1 Q. Yeah. What I'm asking is, so you
2 received these letters back sometimes that the DOC
3 was taking no action?
4 A. Yeah.
5 Q. What were the complaints that those
6 letters were referring to, were they like steering
7 and short payments and that kind of thing?
8 A. Yeah, yeah, and violations, maybe, you
9 know, the coercing and intimidation, you know,
10 parts of the law, you know, stuff like that. It
11 was, you know, typically related to the parts of
12 the law that the Unfair Claims Practices Act covered,
13 you know.
14 Q. And, then, eventually after -- after
15 Commissioner Rothman was appointed, you began to
16 have some success with your complaints; is that
17 right?
18 A. Yeah, yeah.
19 Q. I'd like to take a look at some
20 documents.
21 A. Sure.
22 MR. REIGSTAD: What number are we on?
23 THE COURT REPORTER: Number 20.
24 (Whereupon, Deposition Exhibit No. 20
25 was marked for identification, and a copy is

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1 attached and hereby made a part of this deposition.)
2 THE WITNESS: Thank you.
3 BY MR. REIGSTAD:
4 Q. The court reporter is handing you
5 what's been marked as Exhibit 20, and this is a
6 e-mail chain between it looks like you and TJ Patton,
7 but let me just ask you, do you see it says
8 Rick@RapidGlass.com in several of these e-mails?
9 A. Yes.
10 Q. Is that your e-mail address?
11 A. Yes.
12 Q. Do you have any doubt that you sent
13 this e-mail?
14 A. No.
15 MR. LLOYD: And when you say -- just
16 to be clear -- that you sent this e-mail, you're
17 talking about the ones where the from line is from
18 that e-mail address, correct?
19 MR. REIGSTAD: Yeah.
20 BY MR. REIGSTAD:
21 Q. Let me -- let me ask again. Do you
22 have any doubt that you sent and received the
23 e-mails that are reflected in this chain?
24 A. No. I --
25 Q. Did you communicate with Mr. Patton

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1 regularly about -- about Safelite?
2 A. No.
3 Q. Did you ever talk to him on the phone
4 about Safelite?
5 A. Um, I believe I may have spoken with
6 him on the phone once, but it's not typically, you
7 know, about Safelite. It was, I believe, regarding
8 one of the insurers.
9 Q. Let me take a step back because I
10 think we might be talking past each other a little
11 bit.
12 A. Sure.
13 Q. When I ask about Safelite, I'm also
14 referring to, you know, these calls where Safelite
15 is the claims administrator --
16 A. Okay.
17 Q. -- and you're discussing the steering
18 practices that you allege occurred on these calls.
19 Do you understand that?
20 A. Okay.
21 Q. So if I do say about Safelite, will
22 you -- will you assume that I'm including that type
23 of information? I just want to make sure we're on
24 the page.
25 A. Including that the -- the insurers?

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Q. The insurers and calls where Safelite is acting as a claims administrator.
A. Okay. Because, I mean, there's times, you know, that TJ and -- I mean, I see in here the word Safelite is -- is mentioned.
Q. Uh-huh.
A. But there's times when TJ will contact me and he'll say, could you send me an invoice for USAA or could you send me this document for Triple A or something, you know.
Q. Sure. So -- so I --
A. That's usually along the lines of the communication.
Q. So I would separate that. When I'm -- when I'm asking about Safelite --
A. Uh-huh.
Q. -- I'm just including either Safelite directly or when you're talking about calls where Safelite was acting as a claims administrator --
A. Okay.
Q. -- and you're discussing the steering, alleged steering practices --
A. Okay.
Q. -- in that calls. Do you understand that?

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A. Sure.
Q. And will you -- will you use that assumption in your answer so we're on the same page?
A. Yeah, yeah, I'll try. I think I getcha.
Q. Okay, I appreciate that.
Now, let me just take a step back. Do you recall the first time you communicated with Mr. Patton about Safelite?
A. I do not.
Q. Was it within the last five years?
A. I would say yes.
Q. The last three years?
A. More than likely, yes.
Q. So probably --
A. Three to five years.
Q. -- 2013 to now, sometime in that time period?
A. I'd say that's a fair assessment, yes, could have been 2012, but in that time frame.
Q. Have you ever met with him in person?
A. I don't recall. I don't believe so.
Q. So your communications were either via e-mail?
A. Yeah.

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Q. Is that right? Were they ever on the phone?
A. I -- I think there was one conversation on the phone that I recall, but it was typically e-mail.
Q. And what was that conversation on the phone about?
A. I do not recall. It was -- exactly.
Q. Do you recall when that was?
A. I seem to recall that there was a -- one phone call.
Q. Do you remember when that was?
A. Within that time frame we talked about, you know.
Q. And do you remember the substance of the discussion?
A. Um, no, I do not.
Q. So I want to go down to the -- I guess the bottom of this e-mail chain, so page 2 of the document?
A. On the back side, okay.
Q. And this is the e-mail that you sent to Mr. Patton on July 17th, 2014, at 4:48 p.m. Do you see that?
A. Uh-huh.

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Q. And the e-mail begins, "TJ, I believe these are the two jobs you requested." And, then, moving on to the next paragraph you say, "I have attached the work order, Invoice, Safelites fax, the check and the letter we sent them letting them know it is short paid, that we do not bill the customer the difference and to call us to negotiate."
Were you providing this information in response to a request from Mr. Patton?
A. Yes.
Q. Do you recall what he asked you for?
A. Um, I mean, just reading through this, it looks like he was looking for information on -- on two invoices. These numbers that he gave, I think those were Safelite numbers, and we really don't use those in our tracking. So I think it was the information related to a couple of jobs that we did.
Q. Do you know why he asked you for this information?
A. No.
Q. I'm not sure I covered this, but you mentioned at one point, you know, you had an e-mail exchange with TJ Patton and that was the first time that, I guess, he had followed up with you about

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1 the DOC's investigations. Do you remember when
2 that was?
3 A. No, no. Like I say, everything where
4 TJ was concerned has been within the last few years.
5 Q. And do you know how he got in touch
6 with you? Did someone else give you your e-mail
7 address -- give him your e-mail address or did you
8 give it to him or how did that happen?
9 A. I -- I don't know for certainty, I
10 really don't.
11 Q. So you just received an e-mail out of
12 the blue from Mr. Patton?
13 A. I -- I believe so, unless I got his
14 e-mail. I -- I don't know.
15 Q. You just don't recall one way or the
16 other?
17 A. I -- I don't recall one way or the
18 other.
19 Q. What did you expect Mr. Patton to do
20 with the information you're providing him in this
21 e-mail?
22 A. Um, what is this about? Oh, this was
23 Triple A. Um, I -- I have no idea what he wanted
24 these for.
25 Q. Do you know what he did with them?

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1 A. I do not.
2 Q. Can you turn back to the first page of
3 the document, and I'm going to ask you about the
4 next e-mail you sent, at 12:52 p.m. on July 18,
5 2014?
6 A. Sure.
7 Q. Do you see that?
8 A. Yeah.
9 Q. If you go down, I guess it's the
10 second sentence in the e-mail, it says, "Rapid
11 Glass nor any glass shop that I am aware of has
12 ever charged or billed the customer the difference.
13 Perhaps there could be a couple extremely rare
14 instances where other damage may be present, but I
15 don't see this ever happing."
16 A. Uh-huh.
17 Q. I think you probably meant happening;
18 is that right?
19 A. Uh-huh.
20 Q. You're talking about --
21 MR. LLOYD: That's a yes?
22 THE WITNESS: Yes, oh, yeah. I was
23 doing good.
24 BY MR. REIGSTAD:
25 Q. And here you're talking about the

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1 practice that today we've referred to as balance
2 billing; is that right?
3 A. Yes.
4 Q. And you mention that there, quote,
5 could be a couple extremely rare instances,
6 unquote, where it could occur?
7 A. Yeah. I don't know my exact contents
8 of this. But, I mean, it says where damage may be
9 present. So I'm assuming that has something to do
10 with damage on the vehicle possibly.
11 Q. That's what I'm asking. Could you
12 explain what you were referring to there if you
13 recall?
14 A. Perhaps there could be where damage
15 may be present, but I don't see this happening.
16 Yeah, I -- I don't recall. I -- the only thing I
17 can say is, you know, sometimes where there -- when
18 there's other damage on the vehicle, then, a
19 deductible kicks in. That's typically where that
20 situation comes to mind, but I'm not certain. But
21 damage seems to be damage on the vehicle, because
22 if there is, you know, full glass coverage and
23 we're just replacing the windshield we replace the
24 windshield, sometimes if there's damage maybe a
25 deductible would kick in or something.

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1 Q. Are you guessing when you say that?
2 A. Yeah. I mean, you -- you asked me
3 what I thought damage was, and I think that's what
4 it was, but --
5 Q. Can you recall one way or the other
6 what you were referring to here?
7 A. Not with a hundred percent certainty.
8 Q. But you did recognize that balance
9 billing could occur in extremely rare instances;
10 isn't that right?
11 A. Um, where other damage may be present,
12 but I don't see this ever happening. Um, so, I
13 guess, you know, at that time.
14 Q. And I'm just --
15 A. I mean it says in extreme rare
16 instances, but then I say I don't see that ever
17 happening. So I don't know what you want me to say.
18 Q. I'm just asking you, when you wrote
19 this e-mail, isn't it true that you recognized that
20 balance billing could occur in extremely rare
21 instances? And I'm just looking for a yes or no
22 answer.
23 MR. LLOYD: Well, I think that is
24 misstating what the e-mail states. So I'm going to
25 object both to the question and the limitation with

respect to a yes or no answer. The document speaks for itself.
BY MR. REIGSTAD:
Q. You can answer.
MR. REIGSTAD: Can you read back the question, please?
(Whereupon, the court reporter read back the following question: "I'm just asking you, when you wrote this e-mail, isn't it true that you recognized that balance billing could occur in extremely rare instances? And I'm just looking for a yes or no answer.")
THE WITNESS: Again, the only time I could see it if there is, you know, like damage to a vehicle or where a deductible occurs.
BY MR. REIGSTAD:
Q. So is that a yes?
A. In the context that you're using for balance billing, I would say no, I don't see this ever happening.
Q. So you disagree with what you wrote in that e-mail?
A. No.
MR. LARSON: I object as being argumentative.

MR. LLOYD: I join that objection.
BY MR. REIGSTAD:
Q. You can answer.
A. No, I don't disagree. I mean, I got two thought processes going on here, and at the end I say but I don't see this ever happening.
Q. So do you deny what you wrote in this e-mail?
A. No.
MR. LARSON: I'm going to object as being argumentative.
BY MR. REIGSTAD:
Q. Do you think anything --
MR. LLOYD: Same objection.
BY MR. REIGSTAD:
Q. Do you think anything you wrote in this letter is inaccurate?
MR. LARSON: Wait a minute. Are you going to let him answer the question or are you going to move on and strike your question?
MR. REIGSTAD: You can strike the last question.
BY MR. REIGSTAD:
Q. Do you think anything in this e-mail is inaccurate?

A. No. I think there could be where damage may be present. Like I say, if you're asking me my best recollection of this, it would appear to be in a deductible situation.
Q. But you don't know one way or the other; isn't that right?
A. Not with a hundred percent certainty.
Q. But sitting here today, do you see anything in this e-mail that you think is inaccurate?
MR. LLOYD: Objection, it's been asked and answered about four times now.
BY MR. REIGSTAD:
Q. You can answer.
A. Um, no, I can't say that there's anything inaccurate here.
Q. I want to move on to the last sentence in this same e-mail.
A. Sure.
Q. In says, quote, The only reason for their features and benefits scripts is to steal the job....plain and simple. Do you see that?
A. Yes.
Q. And here you're talking about Safelite's features and benefits scripts; isn't that right?

A. Um, well, the features and benefits scripts that are read by Safelite.
Q. Yeah, okay.
A. I mean, I don't know if they drafted them or the insurance company drafted them.
Q. So here you're talking about the scripts that Safelite reads on calls; is that right?
A. Correct.
Q. And you think that those scripts were -- were designed to steal jobs from Rapid Glass; is that right?
A. I do.
Q. And so you think Safelite was trying to steal business from Rapid Glass; is that right?
A. Yes.
Q. And is that why you were complaining to TJ Patton about Safelite?
A. Well, is this the -- I got to see the e-mail times for July 17th, July 18th. Well, again, he reached out to me looking for some information, and I just added this other stuff, you know, in our e-mail exchange --
Q. Sure.
A. -- going back to him.
Q. But wouldn't you agree with me that in

this e-mail you are complaining to TJ Patton about Safelite, right?
A. Yes.
Q. And one of the reasons you're complaining to TJ Patton is because they're stealing Rapid Glass's business, in your view; isn't that right?
A. Yes.
Q. If Safelite hadn't been stealing any of Rapid Glass's business, would you have ever complained to the DOC about Safelite?
A. Well, again, I complained because I felt they were breaking the law, and because of that they were stealing business. So I'm not quite sure how to answer that.
Q. I'll move on. You can put that away.
A. All right, thank you.
(Whereupon, Deposition Exhibit No. 21 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Twenty-one.
MR. LLOYD: Thank you.
THE WITNESS: Thank you.
BY MR. REIGSTAD:
Q. Mr. Rosar, the court reporter has

handed you what's been marked as Exhibit 21, and this is an e-mail exchange between yourself and TJ Patton dated August 11th, 2014. Do you see that?
A. Yes.
Q. Do you have any reason to doubt that you sent or received the e-mails in this e-mail chain?
A. Ah, no.
Q. I wanted to look at your e-mail to Mr. Patton on August 11, 2014, and it says, quote, I was wondering if anything has been resolved with Triple A yet? Cash flow is really difficult with all of these short pays from the various insurers. Triple A alone owes me over $80,000 (based on the spreadsheet I sent you) and I need to decide how I am going collect. Do you see that?
A. Yes.
Q. And does Triple A mean The Auto Club Group?
A. Yes.
Q. If I refer to Triple A going forward, will you understand I'm referring to The Auto Club Group?
A. Certainly.
Q. Are you -- are you aware whether

Safelite was a claims administrator for Triple A?
A. Yes.
Q. And when were they -- was Safelite a claims administrator for Triple A?
A. When were they?
Q. Were they a claims administrator for Triple A?
A. Um, yes, I believe they were.
Q. And was Safelite a claims administrator for Triple A during this time period?
A. Um, I believe they were.
Q. And you're asking Mr. Patton regarding the status of the DOC's investigation of Triple A; is that right?
A. Yes.
Q. Do you know if the DOC's investigation of Triple A was public at this time?
A. Um, I do not know.
Q. You don't know one way or the other?
A. I don't know one way or the other.
Q. And one of the reasons you asked Mr. Patton for the status of the DOC's investigation is because cash flow is really difficult; is that right?
A. Um, yeah.

Q. And your -- you want to decide how you're going to collect from various insurers?
A. Correct.
Q. Did you think that the DOC's investigation might help Rapid Glass's cash flow?
A. Um, I was just trying to make a decision on, you know, how to collect for them. Sometimes, you know, I wait for certain times to strategically negotiate with them. So if, you know, maybe they spanked Triple A maybe it was a good time for me to go to Triple A and try to negotiate with them or whether I should arbitrate. I was just trying to figure out where I should go to collect my money, you know.
Q. So if the DOC had -- to use your words -- spanked Triple A, do you think that would have been a good time to go collect?
A. It could give me some negotiating power.
Q. And if you look up in the next e-mail on the chain, Mr. Patton provides you with an update on the status of the investigation; isn't that right?
A. Yes.
Q. And he said his findings have been

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1 submitted?
2 A. Uh-huh.
3 Q. And, "Another investigator is
4 finishing files involving other AAA conduct"?
5 A. Yes.
6 Q. Did Mr. Patton, to the best of your
7 recollection, provide you with regular updates on
8 the status of the Triple A investigation?
9 A. No.
10 Q. No, he didn't provide you with
11 updates?
12 A. Didn't provide regular updates.
13 Q. How often would you say he provided
14 updates on the Triple A investigation?
15 A. Um, he didn't. I mean, I believe I
16 reached out to him to ask, you know, if anything --
17 Q. Sure.
18 A. -- has been going on.
19 Q. And I would include -- you know, I
20 would include in providing updates updates he gives
21 after you ask him for -- for one.
22 So, including that, would you say that
23 Mr. Patton regularly provided you with updates on
24 the Triple A investigation?
25 A. No, I would not say he regularly

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1 provided me updates.
2 Q. How often do you think he provided you
3 with updates after you asked for them?
4 A. Um, I don't recall any type of regular
5 updates, you know, that he would send me.
6 Typically, like I say, if he wanted information, he
7 would e-mail me; and as in this one, I was
8 questioning him for any updates. So, you know, we
9 didn't have that type of relationship, I guess,
10 where --
11 Q. But you did have a relationship where
12 if you asked him for an update on the Triple A
13 investigation he would provide it, right?
14 A. Um, in this situation, yes, might not
15 always, you know.
16 Q. Well, in fact, he -- he writes at the
17 end of this e-mail, "Please keep checking in,"
18 right?
19 A. Sure.
20 Q. And did you?
21 A. I really don't know. I'd, you know,
22 have to scan my e-mails to see.
23 Q. And just to circle back to something
24 we were talking about earlier, you mentioned that
25 you would make your collection decision based on

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1 the status of the Triple A investigation; isn't
2 that right?
3 A. In this particular situation, because
4 I know there was an investigation underway.
5 Q. And so is it fair to say that the
6 information -- you asked for TJ Patton -- you
7 ask -- strike that.
8 Is it fair to say that you asked TJ
9 Patton for information in order to help your
10 collection strategy?
11 A. Um, I've been negotiating with
12 Triple A, I think, for probably a couple years
13 before this, and it was going quite slowly, which
14 is, yes, why I was asking him if anything has been
15 resolved yet because, then, that might give me, you
16 know, something to go back to them, Triple A with
17 if they -- something did occur from this
18 investigation.
19 Q. So you were asking Mr. Patton for
20 information in order to help you determine when to
21 collect; is that right?
22 A. Cor -- or how, you know, I should
23 proceed.
24 Q. Is that a yes?
25 A. Say that again?

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1 Q. Sure.
2 MR. REIGSTAD: Could you read the
3 question back?
4 (Whereupon, the court reporter read
5 back the following question: "So you were asking
6 Mr. Patton for information in order to help you
7 determine" whether "to collect; is that right?")
8 THE WITNESS: Sure.
9 BY MR. REIGSTAD:
10 Q. Now you can put that away, I'm going
11 to move on to a different document.
12 (Whereupon, Deposition Exhibit No. 22
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 THE COURT REPORTER: It's 22.
16 THE WITNESS: Thanks.
17 BY MR. REIGSTAD:
18 Q. Mr. Rosar, the court reporter has
19 handed you what's been marked as Exhibit 22, and
20 this is an e-mail chain, another e-mail chain
21 between you and Mr. Patton, dated August 21st, 2014.
22 Do you see that?
23 A. Yes.
24 Q. And do you have any doubt that you
25 sent and received the e-mails reflected in this

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1 chain?
2 A. No.
3 Q. I want to ask you about the first
4 e-mail in the chain, which is the bottom of this
5 page.
6 A. Sure.
7 Q. And it begins, "TJ, I know you have
8 finished your portion of the investigation, but I
9 thought I would share this excerpt from their
10 policy." Do you see that?
11 A. Yes.
12 Q. And if you look, this is sent the same
13 day as the previous exhibit, right, August 21st,
14 2014?
15 A. I thought it was shortly after that,
16 but August 11th. I must have --
17 Q. Okay. So it's --
18 A. Shortly after.
19 Q. My mistake. So this was sent shortly
20 after the previous e-mail; is that right?
21 A. Yes.
22 Q. And in the previous e-mail Mr. Patton
23 had told you that his findings had been submitted
24 for the Triple A investigation; isn't that right?
25 A. Correct.

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1 Q. And so here you're saying, I know you
2 finished your portion of that investigation, but
3 you're providing him with additional information;
4 is that right?
5 A. Yes.
6 Q. If you look at the paragraph in the
7 bottom of this e-mail it says, "Before Safelite
8 took over from Triple A our invoices were paid in
9 full and they would ask glass shops for a," quote,
10 "bottom line bid and then they would always accept
11 it. Now Safelite is not doing any of that which is
12 required by the policy." Do you see that?
13 A. Yes.
14 Q. So this is another instance where
15 you're complaining to Mr. Patton about Safelite,
16 correct?
17 A. About Triple A, but since Safelite
18 took over Triple A as third-party administrator.
19 Q. So is that a -- is that a no?
20 A. Um, rephrase the question?
21 MR. REIGSTAD: Can you -- can you
22 restate the question, please?
23 (Whereupon, the court reporter read
24 back the following question: "So this is another
25 instance where you're complaining to Mr. Patton

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1 about Safelite, correct?")
2 THE WITNESS: I think I'm complaining
3 about Triple A.
4 BY MR. REIGSTAD:
5 Q. Is it fair to say you're also
6 complaining about Safelite?
7 A. Yes.
8 Q. And if you look up to the next e-mail
9 in the chain Mr. Patton asks you, "Have you filed
10 an arbitration against AAA for the short pays Rapid
11 has received?" Do you see that?
12 A. Yes.
13 Q. And, then, if you look up at the top
14 of the chains it says, quote, "No, I was waiting to
15 see if once you completed your" investigation,
16 "that it may bring them to the table and negotiate
17 with me or if there was anything your department
18 might do that would make them pay." Do you see
19 that?
20 A. Yes.
21 Q. So you hadn't filed an arbitration yet
22 against Triple A for short pays, correct?
23 A. Correct.
24 Q. And that's because you thought that
25 the DOC's investigation would improve your

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1 negotiating position with Triple A; is that right?
2 A. No.
3 (Reporter's Note: Mr. Snyder leaves
4 the room.)
5 BY MR. REIGSTAD:
6 Q. So why is it, then?
7 A. I had been in process with negotiating
8 with Triple A for some time, over a year, and it
9 was getting to the point where the negotiations
10 weren't going very well, and so at that point I was
11 starting to look at the possibility of whether I
12 should arbitrate or if anything happened with their
13 investigation that might help.
14 (Reporter's Note: Mr. Snyder enters
15 the room.)
16 BY MR. REIGSTAD:
17 Q. Did you think that the DOC's
18 investigation might bring Triple A to the table in
19 your negotiations more?
20 A. Yes.
21 Q. And just to be clear, what exactly
22 were you negotiating with Triple A about?
23 A. Short payments.
24 Q. Did you think that the DOC's
25 investigation would help you get Triple A to pay

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1 Rapid Glass higher prices?
2 A. Um, no, not higher prices. I just
3 hoped that maybe, like I say before, if they did --
4 if something came of the investigation, maybe
5 Triple A would loosen up on their negotiating with
6 me. I wasn't -- yeah. That's basically about it.
7 Q. So you thought the DOC investigation
8 might cause Triple A to soften their negotiating
9 position with you; is that right?
10 A. Yes.
11 Q. Okay. You can put that away.
12 (Whereupon, Deposition Exhibit No. 23
13 was marked for identification, and a copy is
14 attached and hereby made a part of this deposition.)
15 THE COURT REPORTER: Number 23.
16 BY MR. REIGSTAD:
17 Q. So this is Exhibit No. 23. This is an
18 e-mail exchange, another e-mail exchange between
19 you and Mr. Patton, dated August 21st, August 21st,
20 2014; is that right?
21 A. Yes.
22 Q. And that's the same day as the
23 previous exhibit?
24 A. Yes, the same or next day, yes.
25 Q. And do you have any doubt that you

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1 sent this e-mail?
2 A. No.
3 Q. I just have a couple questions about
4 some things you said.
5 A. Sure.
6 Q. It looks like you attached a Consent
7 Order from State Farm; is that right?
8 A. It appears to be. I see at the top
9 there's a file that's called State Farm Consent
10 Order, and I mention it in the body here.
11 Q. Is that the Consent Ord -- the State
12 Farm consent order that you referred to early in
13 this -- earlier in this deposition?
14 A. Let me see, what's the time frame?
15 Um, 2001 Consent Order. I'm not sure if there was
16 two separate consent orders or if there was one
17 consent order on State Farm. What I was referring
18 to is I know there was a consent order that the
19 Department of Commerce and State Farm agreed upon
20 that said State Farm would pay all short paid
21 invoices up to a certain percentage, and, then, I
22 do know there was a consent order about doing this
23 survey, but what I'm not certain of if it was two
24 separate ones or if it was one.
25 Q. Okay. In the next sentence you say,

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1 "There were things in" the "2001 consent order that
2 were not the best, especially about doing a survey
3 and paying the lesser amount, I think that was just
4 a typo, yet we had to stick with it."
5 A. Right.
6 Q. Can you explain what you're referring
7 to here with respect to the survey and the paying
8 the lesser amount?
9 A. Yeah. Part of the concept -- one of
10 consent orders was -- and I believe this was done
11 as Bernstein was leaving the office, he said that
12 State Farm could do a survey by contacting three
13 shops and pay the lesser amount of the survey. It
14 was part of the Consent Order.
15 Q. And why did you think that was not the
16 best?
17 A. Um, because it says they had to pay
18 the lesser amount, I just thought, you know, was
19 unfair, you know.
20 Q. And, then, in the next sentence you
21 say, "One thing that was good is that it forced
22 State Farm to pay a fair and reasonable rate." Do
23 you see that?
24 A. Yes.
25 Q. How did the consent order force State

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1 Farm to do that?
2 A. Well, and I -- the word force probably
3 isn't the best use of words because I think it was
4 an agreement between Commerce and State Farm. But
5 as part of that agreement, State Farm agreed to pay
6 glass shops that were charging over their preferred
7 rate a rate up to a certain percentage as part of
8 the agreement between Commerce and State Farm.
9 Q. And you thought that was a good thing
10 in the consent order?
11 A. Oh, yeah.
12 Q. And why is that?
13 A. Um, because on some shops that were
14 short paid, and not just my shop but other shops in
15 Minnesota that were short paid, if they sent those
16 invoices to State Farm, they would take a look at
17 them and reimburse them an additional amount, and
18 it may not be everything that they billed for, but
19 it was an additional amount.
20 MR. REIGSTAD: I think we can take a
21 break now. Go off the record.
22 THE WITNESS: Sure.
23 THE VIDEOGRAPHER: Going off the video
24 record. The time is 12:08 p.m.
25 (Break from 12:08 to 12:50.)

(Whereupon, Deposition Exhibit No. 24 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 12:50 p.m.
You understand you're still under oath?
THE WITNESS: Yes.
THE VIDEOGRAPHER: You may begin.
BY MR. REIGSTAD:
Q. Mr. Rosar, the court reporter just handed you another exhibit, and if you take a look, this is an e-mail chain between -- well, there are a few names on it, it looks like TJ Patton, yourself, and, then, further up the chain Mike -- Michael Reid is on the chain. Do you see that?
A. Yes.
Q. Do you have any doubt that you sent and received the e-mails on this chain?
A. No.
Q. I'm just going to ask some general questions about the e-mail chain, so maybe just take 30 seconds to read through it.
A. Okay. Okay.
(Reporter's Note: Witness coughs.)

THE WITNESS: Excuse me.
BY MR. REIGSTAD:
Q. So you'll see the subject line is USAA, do you see that?
A. Uh-huh, yes.
Q. And do you have an understanding of what USAA is?
A. Yes.
Q. What is USAA?
A. Ah, an insurance company.
Q. And if you look at the bottom of the chain, you provided responses to some questions from Mr. Patton regarding USAA; is that right?
A. Yes. Are you talking about the back of page 2?
Q. Yes, that's right.
A. Okay. Yeah, the back of page 2 is from TJ, and, then, above that it looks like is my response to that perhaps.
Q. But if you -- if you look at the bottom of your response it says, "See additional comments below." Do you see that?
A. Oh, okay.
Q. And it looks like you wrote in responses to Mr. Patton's question, is --

A. Oh, okay, sure, sure.
Q. Is that right?
A. Yes.
Q. And, then, further up the chain, so this is at the top of page 2?
A. Uh-huh.
Q. Continuing on to the bottom of page 1?
A. Uh-huh, yes.
Q. You tell Mr. Patton a number of complaints that you have about USAA and Safelite; is that right?
A. Yes.
Q. And you tell Mr. Patton that he can hear those things if he listens to call recordings; is that right?
A. Yes.
Q. And did you provide Mr. Patton with call recordings?
A. Um, I believe so, if I remembered to attached them. It looks like I indicated I did.
Q. So just for the record, do you believe that you provided Mr. Patton with call recordings?
A. Yes.
Q. And if you look up towards the top of the chain, you forward the e-mail to Mike Reid; is

that right? And this was sent on March 5th, 2015 --
A. Yeah.
Q. -- at 8:00 a.m.
A. I was just following the dates, at 8:00 a.m. Yeah, it was to Mike Reid.
Q. Now, it looks like you forwarded the e-mail chain with Mr. Patton to Mike Reid; is that right?
A. I'm not certain. It looks -- it appears that way, but I'm not a hundred percent sure because how this lays out, but I -- I think that's the way it's laid out.
Q. And you tell Mr. Reid, "I just sent" you "some additional info to TJ on his request." Do you see that?
A. Yes.
Q. So my first question is, who is Mike Reid?
A. The owner of Alpine Glass.
Q. And how do you know him?
A. Um, just through the glass industry.
Q. And is Alpine -- Alpine Glass is a -- is a glass shop?
A. Yes.
Q. And do you know him through the MGA or

1 the IGA or can you tell me how -- how you know
2 Mr. Reid?
3 A. Um, not necessarily through the MGA or
4 IGA, just through the -- the industry, being a
5 shop, you know, that operates in Minnesota.
6 Q. How long have you known Mr. Reid?
7 A. Oh, um, oh, probably over five years
8 for sure, maybe approaching ten.
9 Q. Do you consider him a friend?
10 A. Sure.
11 Q. And, then, you'll see he responds to
12 your March 5th e-mail to him by saying, "We also
13 sent him info for June 2014. He sent me the" exact
14 same "e-mail. Looks like they are really digging
15 into it." Do you see that?
16 A. Yes.
17 Q. Did you -- Did you and Mr. Reid keep
18 each other in the loop regarding communications
19 with the DOC?
20 A. Sometimes we did, yes.
21 Q. You can put that away.
22 A. There was some e-mails I know that TJ
23 sent where they had both of our e-mail addresses on
24 there. So I knew he was somewhat involved as well.
25 Q. And, then, sometimes would you discuss

1 the investigation separately with Mr. Reid, either
2 via e-mail or on the phone?
3 A. I -- I believe so.
4 Q. So let me take a step back. Did you
5 coordinate with other -- with other glass shops
6 either before or after you communicated with the DOC?
7 A. Um, I have in the past.
8 Q. Did you ever communicate -- strike that.
9 We saw you just communicated with
10 Mr. Reid --
11 A. Uh-huh.
12 Q. -- before communicating with the DOC;
13 is that right?
14 A. Yes.
15 Q. Did you ever communicate with Mike
16 Schmaltz before communicating with the DOC?
17 A. Yeah. I've had many communications
18 with Mike.
19 Q. About the investigation of Safelite
20 and other insurers?
21 A. Just many communications over the
22 years, but some involving Safelite and other
23 insureds.
24 Q. And same question for Gary Hart, did
25 you ever communicate with Gary Hart about the DOC's

1 investigation of Safelite and other insurers?
2 A. I believe so.
3 Q. Anyone else you can think of that
4 worked at a glass shop?
5 A. Well, my communications with Gary Hart
6 was one of them. He's not a glass shop, of course.
7 Yeah, I'm sure I've talked to other glass shops
8 about it. Yeah, yeah, I have talked to other glass
9 shops about it.
10 Q. Can you think of any other names of
11 people who worked at glass shops that you
12 communicated with about the DOC's investigation of
13 Safelite and other insurers?
14 A. Sure. I know Jerry Mattison from Star
15 Windshields.
16 Q. Okay.
17 A. Yeah. There -- there maybe have been
18 some others, but I can't remember specific names, I
19 guess.
20 Q. Who did you communicate with most
21 about the DOC's investigations out of the folks you
22 just named?
23 A. Probably Mike Reid.
24 Q. And, then, was there a second most
25 after Mike Reid?

1 A. No.
2 Q. Did you and Mike Reid formulate a plan
3 of action or strategy against Safelite?
4 A. No.
5 Q. Was there a primary contact person
6 with the DOC on behalf of the glass industry
7 regarding its -- regarding the DOC's investigation
8 into Safelite?
9 A. The contact that I had was TJ. Um,
10 yeah, I don't --
11 Q. I apologize.
12 A. I'm sorry.
13 Q. Bad question.
14 Was there -- was there a primary
15 contact on behalf of the glass industry with the
16 DOC? So who was the primary person that spoke to
17 the DOC on behalf of the glass industry about its
18 investigation of Safelite?
19 A. The -- there really was none.
20 Q. Was there someone who communicated
21 with the DOC the most out of other folks in the
22 glass industry?
23 A. In the glass industry? Not in
24 particular. I mean, Mike Schmaltz, being the
25 director for the MGA, I know he had some

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1 communications with them as well.
2 Q. What was your role in these -- in the
3 State's investigation of Safelite?
4 A. Um, as far as I know, from my point of
5 view, was providing information to the DOC.
6 Q. Did you ever provide information to
7 someone else who then provided it to the DOC?
8 A. Um, yes.
9 Q. And who was that person?
10 A. Um, I have to Chuck, and I think
11 pretty much everything went through Chuck. I know
12 Chuck was for sure one that I provided information
13 that it went through. I'm not certain if I provided
14 stuff to Mike Reid or not.
15 Q. So from the e-mails we were just
16 looking at, it looks like sometimes you provided --
17 you provided information directly to the DOC; is
18 that right?
19 A. Yes.
20 Q. And, then, sometimes you provided
21 information through Chuck Lloyd to the DOC?
22 A. Yes.
23 (Whereupon, Deposition Exhibit No. 25
24 was marked for identification, and a copy is
25 attached and hereby made a part of this deposition.)

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1 THE COURT REPORTER: Twenty-five.
2 THE WITNESS: Thank you.
3 BY MR. REIGSTAD:
4 Q. So, Mr. Rosar, the court reporter has
5 just handed you what's been marked as Exhibit 25,
6 and this is an e-mail chain between yourself,
7 Michael Reid and Mike Schmaltz, and it looks like
8 it spans the time period from November 1st through
9 November 11 -- or, excuse me, through November 7,
10 2013. Do you see that?
11 A. Yes.
12 Q. And am I correct that it looks like
13 you three were trying to set up a call?
14 A. Yes.
15 Q. And if you look at the top of the
16 chain, Mr. Reid suggests a time between 1:00 and
17 2:00 p.m. on November 7, 2013.
18 A. Yes.
19 Q. Do you see that?
20 A. Yes.
21 Q. Do you recall having a call with
22 Mr. Schmaltz and Mr. Reid at that time?
23 A. I do.
24 Q. What was the purpose of the call?
25 A. Um, I don't recall the specifics. I

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1 see on here the Unfair Claims Practices Act.
2 Q. Okay. Does that refresh your
3 recollection as to what the call was about?
4 A. Um, a little bit it does.
5 Q. Can you tell me what your recollection
6 is of the purpose of the call?
7 A. Um, I thought it had something to do
8 about lobbying, but now that I see this, that
9 doesn't appear to be the case. So, um, yeah, I'm
10 not certain. This was 2013, yeah.
11 Q. Do you recall discussing pressuring
12 the DOC to investigate Safelite on this call?
13 A. Um, I don't -- I guess I don't recall
14 press -- those exact statements, I don't.
15 Q. Do you recall discussing Safelite in
16 any way on this call?
17 A. Um, I don't recall that specific. I
18 don't doubt it, but I don't recall the specifics of
19 that.
20 Q. Do you remember discussing assembling
21 evidence against Safelite on this call?
22 A. Um, not -- not specifically, no.
23 Q. Can you just tell me everything you
24 can remember about this call sitting here today?
25 A. Um, I mean, based on the -- that it

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1 was Unfair Claims Practice Act, I mean, it's
2 reasonable to think that it, obviously, had to do
3 with involving commerce in some way, shape or form.
4 Q. Can you remember anything else?
5 A. Um, no, not with -- not with specifics.
6 Q. Okay. You can put that away.
7 MR. REIGSTAD: So this has previously
8 been marked as Exhibit 10.
9 MR. LLOYD: Do you have yesterday's
10 exhibits?
11 THE COURT REPORTER: He just wants me
12 to re-mark it.
13 MR. REIGSTAD: You can -- you can use
14 the same version for the witness --
15 MS. SASSOON: It can be a new copy.
16 MR. REIGSTAD: -- if you want, yeah.
17 So this is just a --
18 MR. LLOYD: Yeah, I've got it.
19 MR. REIGSTAD: Okay.
20 THE WITNESS: Is that the same one?
21 MR. REIGSTAD: Yeah. I'm missing the
22 cover page.
23 THE WITNESS: Oh, okay.
24 MR. REIGSTAD: But this is the
25 document.

1 BY MR. REIGSTAD:
2 Q. You'll see that's an e-mail from you,
3 right?
4 A. Okay. Is this the e-mail you were
5 referring to here or --
6 Q. This is a new e-mail?
7 A. Okay.
8 Q. And it -- I'll represent to you that
9 your e-mail is attaching a recording --
10 A. Uh-huh.
11 Q. -- of the call on November 7, 2013,
12 that your counsel produced to us.
13 A. Yes.
14 Q. And if you turn the page, there's a
15 transcript of that call.
16 A. Okay, good.
17 Q. So I'm just going to ask you some
18 questions about some of the statements you made on
19 the call.
20 A. Certainly.
21 Q. The first question I have is, if
22 you'll look, it looks like the transcript begins
23 "Option how they basically control independence."
24 And my question is just, do you remember if you
25 started the recording -- well, let me -- let me

1 back up. Do you remember recording this call?
2 A. I do recall recording a call between
3 us, yes.
4 Q. Do you remember whether you started
5 partway into the call, whether you started
6 recording partway into the call?
7 A. I don't recall. It doesn't look like
8 it was the beginning, though, but I don't recall.
9 Q. Do you remember how long you had been
10 talking before you began recording?
11 A. I -- I don't, I'm sorry.
12 Q. So moving on, this is still on the
13 first page, and, let's see, my question is about
14 the second sort of paragraph where you're talking
15 that begins with "He is." Do you see that?
16 A. Yes.
17 Q. And it says, "He is, and" it "came
18 about because I had sent him many complaints on
19 steering and they said there's no basis for them to
20 take any action and I got pissed off so I kept
21 calling him and finally he said, alright, if this
22 is what you are saying let's assume my windshield
23 and I'll call in a claim and he was shocked with
24 what he heard."
25 A. Okay.

1 Q. Do you see that?
2 A. I -- I wasn't in the same spot as you.
3 Q. Oh, I'm sorry.
4 A. I was following something else.
5 Q. So it's right on the first page, or
6 the first page of the transcript.
7 A. Here? Okay.
8 Q. And it's the -- the second time you're
9 shown -- shown on the page that begins with he is.
10 A. Okay, okay, gotcha.
11 MR. LLOYD: And -- and just to clarify
12 for the record, this is a transcript that your
13 office prepared, correct, this is not a transcript
14 that Mr. Rosar prepared, what was attached to the
15 e-mail was the actual call recorded?
16 MR. REIGSTAD: Yes, that's correct.
17 MR. LLOYD: Okay.
18 MR. REIGSTAD: We took the call
19 recording that was attached to the e-mail and
20 transcribed it at Kirkland.
21 BY MR. REIGSTAD:
22 Q. Can you take a moment to -- to read
23 that paragraph there and then I'll ask you a couple
24 questions about it?
25 A. Sure, sure. Okay.

1 Q. So my first question is, who is "he"
2 that you're referring to in this paragraph, is it
3 someone from the DOC?
4 MR. LLOYD: Well, I'm going to object
5 to the question because -- for foundation, because
6 it assumes that the transcript is correct in terms
7 of who the speakers are, and that's never been
8 established at this point.
9 MR. REIGSTAD: Okay. If you -- if you
10 have issues with it, I believe you're in possession
11 of the recording and we're happy to follow up with
12 you after the deposition.
13 MR. LLOYD: Okay. Well, I have an
14 issue with that one because I don't believe that
15 that speaker is Rick Rosar.
16 MR. REIGSTAD: And what's the basis
17 for your belief?
18 MR. LLOYD: What is said in the --
19 what is said there. I believe the speaker there is
20 Mike Reid, not Rick Rosar, based on what is being
21 said.
22 MR. REIGSTAD: Okay.
23 BY MR. REIGSTAD:
24 Q. Let me ask you, do you recall saying
25 something like this?

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A. No, I can't specifically recall that I said that. I mean, I -- the general, you know, language in here I'm familiar with, but not that particular sentence.
Q. How are you familiar with the general language?
A. Um, like I say, the call recording, the e-mail I sent, you know, just brings back some recollection of the call that occurred.
Q. So do you have an understanding of who "he" is in this paragraph?
A. Ah, not with certainty.
Q. Do you think it's TJ Patton?
A. Um, I wouldn't go that far. I would say that it's probably a Commerce Department investigator.
Q. But you're not sure which one?
A. No.
Q. And my next question, do you have an understanding of who "they" is in this paragraph?
A. Um, it appears to be in the context that it's the insured.
Q. And so let me just ask you, I mean, do you think you said this?
A. I really don't recall.

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Q. You don't recall one way or the other?
A. No. If I listened to the recording, I'm sure I could tell, but --
Q. Do you have any recollection of sending the glass -- of sending the DOC many complaints on steering, like it says here?
A. Is that in the larger paragraph --
Q. Yep.
A. -- just below that?
Q. Oh, no. It starts in the -- the paragraph we were looking at, starting with "He is."
A. Oh. Um, yeah. No, I don't recall that, saying that at all.
Q. Do you recall being pissed off that the DOC was not taking any action?
A. Um, I mean, over the years, like we previously discussed, yeah. But in this context, yeah, I don't -- I don't think that's -- I don't recall that, saying that.
Q. Okay. So over the years you were pissed off that the State wasn't taking any action against Safelite?
A. Yes.
Q. Let's move on to a different page. Can you turn to page 5 of the transcript?

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A. Certainly.
Q. It should be numbered at the bottom.
A. Yeah.
Q. What I'm going to ask you about is the paragraph with your name next to it at the very bottom that starts with "I'll summarize." Do you see that?
A. Sure.
Q. And it says, "I'll summarize Mike, yeah, Mike Schmaltz is just saying that first of all the guys that know about this, they were in the meeting with Chuck. That's when Chuck asked you if it was okay to tell a few people. These are the core guys, this is not the entire glass industry. This isn't even the entire Minnesota Glass Association. This is more like a smaller committee of glass shops that have been working on this for you know at least since the beginning of the year. You know we've had some meetings with Chuck to discuss what to do with Commerce and what to do with legislation. So it is kind of a core group of guys that were involved in this and Mike was going down to commerce previously." Do you see that?
A. Yes.
Q. Do you have any understanding of who

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this core group of guys is?
A. Um, yeah, me, you know, the three people on this sheet for sure.
Q. So yourself, Mr. Reid, and Mike Schmaltz?
A. Yes.
Q. Anyone else?
A. I got to read the paragraph before that to --
Q. Sure.
A. -- see what context I said it in.
(Reporter's Note: Mr. Snyder leaves the room.)
THE WITNESS: Yeah, I see that. Um, specific names, other than who is on the call, um, again, without certainty, I can't name any specific names, I guess.
BY MR. REIGSTAD:
Q. Okay.
A. I know I've -- obviously, I said I discussed it with a core group of guys, but -- yeah, I -- I don't know the specific names, I guess, at this time.
(Reporter's Note: Mr. Snyder enters the room.)

BY MR. REIGSTAD:
Q. So in the core group of guys you'd include yourself, Mr. Reid, and Mr. Schmaltz, right?
A. Yes.
Q. And would you include Chuck Lloyd?
A. Um, I mean, obviously, we were discussing with Chuck, but I think in this context I was probably more referring to, you know, the auto glass industry, it appears.
Q. And you mentioned that this core group of guys had meetings to discuss what to do with commerce and legislation; is that right? If you look at the second to last sentence.
A. Yeah, yeah.
Q. And was -- it says that Chuck was present at those meetings; is that right?
A. Well, I'm not so sure I can say that the core group of guys had a meeting with Chuck. I can't go that far. It says "we've had some meetings with Chuck." That could be meaning, you know, Rapid Glass.
Q. Okay. Did you have meetings with Chuck to discuss what to do with commerce and what to do with legislation?
A. Yes.

Q. And was Safelite mentioned at those meetings?
A. Um, I don't know.
MR. LLOYD: That's a yes or no answer, by the way.
THE WITNESS: Oh, okay.
Meetings with Chuck, what to do with commerce and what to do with legislation. Um, if it's a yes or no, I'd have to say, yes, more than likely it was.
BY MR. REIGSTAD:
Q. Did you have meetings with Mr. Reid and Mr. Schmaltz to discuss what to do with commerce and what to do with legislation?
A. Yes.
Q. And was Safelite mentioned at those meetings?
A. I believe they probably were.
Q. And did you formulate a strategy for dealing with Safelite at those meetings?
A. Um -- oops. Again, usually with Commerce it was, you know, the insurance company. But, obviously, Safelite was a close component to that.
Q. Sure.

A. So it was probably in the discussions.
Q. And my question was just did you formulate a strategy for dealing with Commerce with respect to the Safelite and the insurance company?
A. Yes.
Q. And what was that strategy?
A. Um, to my recollection, it was where I think Mike Schmaltz wanted -- the discussion was whether to have glass shops send in a bunch of complaints or to not inundate them with complaints, and I believe the basic strategy was not to inundate them with complaints at this time.
Q. And why did you decide on that strategy?
A. Um, just so we could keep it more focused, you know, on the issues instead of having a bunch of people willy-nilly send stuff in. I mean, there's been times over the years where we've, you know, asked glass shops to send in complaints and, you know, there's been times when we've asked them to hold off, such as this situation.
Q. So you wanted to focus the information that was provided to Commerce?
A. Correct.
Q. Can you recall any other strategies

that you discussed with Mr. Schmaltz and Mr. Reid at these meetings?
A. I see here there's some mention of broadcasting the information to the industry as far as press releases or whatnot and --
Q. And let me just clarify. I'm just asking based on your own recollection, not what's on the page right now. So sitting here today, can you --
A. Um, well, I -- I know even without looking at this.
Q. Okay.
A. We've had discussions on, you know, whether to put out press release or not.
Q. And what was the --
A. Or whether to notify the industry in some way.
Q. Notify them about what?
A. Um, typically things that, you know, go on in the industry with -- let's see, what is the date -- oh, this was 2013, right? Yeah, yeah, just, you know, sometimes when things happen in the industry, whether it's an arbitration award or something else in the industry, you know, we may want to put out a press release or notify it and

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1 sometimes we may not want to.
2 Q. Okay, let's see. So my next question
3 is about -- it's the same page, same paragraph.
4 A. Uh-huh.
5 Q. And it continues on, let's see, after
6 previously it says, "They've had two or three
7 meetings. They've even had meeting as early as
8 this year with commerce so they've kind of been
9 working on it but now all of" a "sudden you know
10 with your situation putting in Marty's glass, you
11 know, you've got a fresh ear there." Do you see
12 that?
13 A. Yes.
14 Q. Do you have an understanding of -- of
15 what you're referring to there with respect to
16 "putting in Marty's glass"?
17 A. Yes.
18 Q. Can you explain that, please?
19 A. Um, yes. I believe Mike Reid's
20 company put a windshield in for Marty.
21 Q. And you think that gave Mike Reid the
22 fresh ear with Commerce?
23 A. Yes.
24 Q. And specifically it gave Mike Reid a
25 fresh ear with Commerce with respect to its

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1 investigations of Safelite and insurers?
2 A. Yes.
3 Q. And do you remember when that was,
4 that -- that Mr. Reid putting glass for Marty?
5 A. No, I don't specifically.
6 Q. Was it sometime in 2013, do you think?
7 A. I mean, based on the date on this, I
8 would say, yes, more likely it was 2013.
9 Q. And just for the record, is Marty
10 Marty Fleischhacker at Commerce?
11 A. Yes.
12 Q. I'd like to ask you about part of the
13 transcript that starts at the bottom of page 6.
14 A. Okay.
15 Q. Continues on to page 7.
16 A. Yes.
17 Q. And it reads, "Mike Reid, what Mike
18 Schmaltz was saying is you know in the meeting that
19 they had on the 13th, the core guy and I think we
20 should do this anyways because you know I've been
21 sending stuff to commerce as well and Chuck told
22 me (well I asked him), I said you want me to hold
23 off from sending him stuff and Chuck said
24 absolutely--don't send him anything else anymore.
25 So, Mike can tell the group, you know, just in

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1 general terms, you know, we are working on
2 something with Commerce. Don't inundate Commerce
3 with anything. If you have anything good send it
4 to Mike Schmaltz and we are not going to ask them
5 to dig in and come up with anything. Mike can just
6 say if you do come up with anything that's really,
7 really, really good send it to Mike Schmaltz, don't
8 send it to Commerce. You know, we don't want to
9 bother them."
10 A. Yes.
11 Q. Do you see that?
12 A. Yes.
13 Q. And, again, Chuck in that paragraph,
14 is that Chuck Lloyd?
15 A. Yes.
16 Q. And he told you to hold off on sending
17 documents to the DOC?
18 A. Yes.
19 Q. And did you do so?
20 A. Um, that was primarily in regards to
21 we didn't want -- and I think Mike Schmaltz kind of
22 wanted to start sending stuff in, and we had
23 decided after a meeting that that probably wasn't
24 the best tactic because we didn't want to send him
25 a bunch of stuff, to -- to hold off.

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1 Q. And that's what you were referring to
2 earlier, that you wanted to focus the information
3 sent to the DOC; is that right?
4 A. Correct.
5 Q. And you only wanted to send them the
6 really, really, really good stuff, right?
7 A. Sure.
8 Q. And on page 8 I have a question. This
9 is a paragraph starting with, "So, I mean." Do you
10 see that?
11 A. Yes.
12 Q. And it says, "So, I mean, I've already
13 sent you a few things and I will continue to look
14 or as things come up, as I say I am not going to
15 inundate you with stuff but what happens is my
16 CSR's gives me stuff that they think is bad and I,
17 you know, about half or less of that stuff they
18 send. They don't send me every call but you know
19 the ones they think are really bad they send to me
20 and then I listen to them and some of them like
21 Mike Schmaltz says, I just say, well yeah, that's
22 unethical but it's not illegal so I filter those
23 too and then the couple remaining ones that I think
24 are extra special for this, I will send to you,
25 Mike Reid." Do you see that?

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A. Yep.
Q. And here you're talking about the information that you will send to Mike Reid about Safelite insurers; is that right?
A. Um, yes. I don't know if it was -- but information to Commerce.
Q. Sure, and that's right. And this is information from Mike Reid to give to Commerce; is that right?
A. Ah, yes.
Q. And I just want to make sure I understand the process that you use for filtering this information.
A. Uh-huh.
Q. So first you mention your CSRs, and those are your customer service representatives; is that right?
A. Yes.
Q. And so they would send you recordings of the calls that they think are bad, right?
A. Yes.
Q. And I think it says that was less than half of the calls they had, right?
A. Um, apparently, from what I wrote here, yes. There's some they send me that I don't

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think are that bad.
Q. Sure, so we'll get to that.
A. Sure.
Q. So you get this set of calls from your CSRs, right?
A. Yeah.
Q. And you listen to those?
A. Uh-huh.
Q. And, then, of those calls that your CSRs send you, you filter it down to a couple, right?
A. Sure.
Q. And you think those are extra special?
A. Yes.
Q. And those extra special calls, those are the ones that you think are illegal, right?
A. Yes.
Q. And those are the ones that you send to Mike Reid?
A. Um, in the context of this meeting, since Mike had his windshield replaced, it appears after reading this that, yeah, there were some that I sent to Mike initially.
Q. And, then, those are the -- and, then, those are the e-mails that Mike Reid sends to -- to

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Commerce, to the best of your knowledge?
A. Right, right.
Q. Not the other calls?
A. Um, not what other calls?
Q. Not all the other calls except for the couple?
A. Right, right, right.
Q. Okay. And I just want to ask you about a few statements at the very end of this call, so you can turn to page 12.
A. And I'm not certain, too, if Mike didn't send these to Chuck or if he sent them right to Commerce. But, obviously, I did send a couple to Mike.
Q. I appreciate that.
A. Yep. What page are we on?
Q. Sure. So this is the very last page, page 12.
A. Okay.
Q. If you could just read -- I think it's pretty short. If you could just read this page and let me know when you're done?
A. Sure.
Q. I'm going to ask you a couple of general questions.

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A. Sure.
Q. You can either read a little bit beforehand, that's fine, too.
A. Yeah, that's what I was trying to do. Okay.
Q. So if you look in the middle of page 12, it says, "Great, well if you find out something different but apparently it will be insurers that are working with Safelight" [sic] "and not Lynx." Do you see that?
A. Yes.
Q. And Lynx is the other claims administrator that we talked about earlier in the day, right?
A. Yes.
Q. And so is it accurate that you wanted to focus the material you presented to the DOC on Safelite and not Lynx?
A. During this specific period of time, that's correct.
Q. And it also says that you want to throw as bad as light on Safelite, correct?
A. Yeah. It looks like that's broken off. I was -- when I was pursuing this, I'm not sure of the context of that.

1 Q. But did you want to throw as bad a
2 light on Safelite as possible when you were
3 presenting your evidence to the DOC?
4 A. Sure.
5 Q. And I just have one more general
6 question circling back.
7 A. Yeah.
8 Q. We talked about earlier about the
9 process you used to filter the calls that were
10 provided to the DOC?
11 A. Uh-huh.
12 Q. Why did you filter the calls?
13 A. Um, filter the calls from?
14 Q. Why did you filter the recordings that
15 you provided to the DOC?
16 A. From my CSR staff or --
17 Q. Uh-huh.
18 A. Um, like I say, they -- my staff sends
19 me, you know, a lot of calls, and I listen to them,
20 and sometimes at the time they take the call
21 they're all excited and upset and, "You got to
22 listen to this one, it's real bad," and I'll listen
23 to it and it's like, well, that's kind of a
24 standard call, you know, so --
25 Q. And how often did that happen that you

1 listened and you thought it was kind of a standard
2 call?
3 A. Like I say, maybe half the time. I
4 mean, it wasn't like every single call they sent me
5 I thought was, you know --
6 Q. And that was --
7 A. -- illegal.
8 Q. Sure. And that was half of the calls
9 that the CS -- that the CSR sent to you, right,
10 just your understanding?
11 A. In general, approximately, I'd say,
12 you know, I mean, yeah. It wasn't all of them.
13 Q. Did you ever consider sending more
14 calls to the DOC other than, you know, the couple
15 that you filtered down?
16 A. I'm not sure I understand the question.
17 Q. Sure. So you picked out, you know, a
18 certain subset of calls to send to the DOC, right?
19 A. Um, oh, I mean, typically they would
20 send me the calls, and sometimes I would maybe send
21 them right on, but sometimes I would just save the
22 file or the recording for use at a later date. So
23 it wasn't like I just -- every one.
24 Q. Sure, sure. I guess what I'm getting
25 at is, did you ever consider sending more calls to

1 the DOC so that they had more evidence to consider?
2 A. Um, no, not really, I guess.
3 Q. And why not?
4 A. Um, I don't know. It's just busy
5 running day-to-day businesses. Sometimes we go
6 through periods where we'll send in a bunch of
7 complaints and, then, months might go by and we
8 just don't do anything because we got other things
9 on our mind, and, then, another period of time
10 might come up when we get excited and send in a
11 bunch more type of thing, so --
12 Q. Okay. Switching topics, are you aware
13 of the consent order entered into between Triple A
14 and the Department of Commerce?
15 A. Yes, the recent --
16 Q. Yeah, in or about January 2014?
17 A. Yes.
18 Q. I believe.
19 (Whereupon, Deposition Exhibit No. 26
20 was marked for identification, and a copy is
21 attached and hereby made a part of this deposition.)
22 THE COURT REPORTER: Twenty-six.
23 THE WITNESS: Thank you.
24 BY MR. REIGSTAD:
25 Q. Do you recognize this document,

1 Mr. Rosar?
2 A. Yes.
3 Q. Is this the Consent Order between
4 Triple A and the Department of Commerce that you
5 just referred to?
6 A. Yes, it is.
7 Q. And if you turn to page 6 of the
8 document, you'll see that it looks like the
9 Commissioner signed this on January 8th, 2015. Do
10 you see that?
11 A. On the last page?
12 Q. The sixth page (indicating).
13 A. Oh, when -- when he -- oh, Marty
14 Fleischhacker, yeah, January 8th, 2015, yes.
15 Q. And is that consistent with your
16 recollection of -- of when the consent order was
17 signed?
18 A. Sure.
19 Q. If I refer to the consent order, will
20 you understand I'm referring to this document
21 (indicating)?
22 A. Yes.
23 Q. How did you first become aware of the
24 consent order?
25 A. Gosh, you know, I'm not -- not a

hundred percent certain how I got that.
Q. Do you have an understanding of when the consent order first became public?
A. Um, I do not. I know I've looked it up on the Commerce Enforcement Actions Web site, but I don't know the exact date it became public.
Q. Do you know whether you knew about the consent order before it became public?
A. I believe I did, I'm not certain of that, but I believe I had heard about it.
Q. And you heard about it directly from the DOC?
A. I -- I don't remember if it was from the DOC or Mike or Chuck, someone involved, but I don't recall.
Q. What role, if any, do you believe Rapid Glass played in obtaining the consent order against Triple A?
A. Just supplying information that was, you know -- to Commerce.
Q. Do you think that the DOC could have reached the consent order without the documents provided by Rapid Glass?
MR. LLOYD: Objection, no foundation.
THE WITNESS: I don't know.

BY MR. REIGSTAD:
Q. You can put that away.
A. Sure.
(Whereupon, Deposition Exhibit No. 27 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE COURT REPORTER: Twenty-seven.
THE WITNESS: Thanks.
MR. REIGSTAD: Can we go off the record for one moment?
THE VIDEOGRAPHER: Going -- going off the video record. The time is now approximately 1:34 p.m.
(Break from 1:34 to 1:35.)
MR. REIGSTAD: The last exhibit was marked in error. So we're going to -- we're going to take that off and we're re-marking the new Exhibit 27, which is a document, an e-mail from Mr. Reid to Brad at Only Auto Glass 1 dot.com and Mike Schmaltz.
(Whereupon, Deposition Exhibit No. 27 was re-marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. REIGSTAD:
Q. Do you recognize this document,

Mr. Rosar?
MR. LLOYD: And just so the record is clear, you had said this was an e-mail from Mike Reid. I think you meant to say it's an e-mail from Rick Rosar.
MR. REIGSTAD: I apologize. This is an e-mail from Mr. Rosar to brad@only1autoglass.com and Michael Schmaltz, dated January 9th, 2015.
THE WITNESS: Yeah, because I -- I didn't re -- recognize the Gmail context, but, okay. What's the question?
BY MR. REIGSTAD:
Q. Do you recognize this document?
A. Um, yes. I -- I mean, I -- I see what it is. I don't remember it, but, yes, I recognize it.
Q. Do you have any doubt that you sent this e-mail to -- to Brad and Michael Schmaltz?
A. No.
Q. And can I ask you, who is brad@only1autoglass.com?
A. Ah, Brad Hapka.
Q. And where does he work?
A. Only 1 Auto Glass.
Q. And if you look in the --

A. He would probably be another one of those small core group guys, too.
Q. So you would add Brad Hapka to the small group of guys that you --
A. Sure.
Q. -- mentioned earlier?
A. Now this kind of -- yes.
Q. And did you discuss the DOC's investigation of Safelite and insurers with him, as well?
A. Um, I believe we did.
Q. Okay. If you look at the body of this e-mail it says, "Fyi Keep on the down low until we get an opinion from Chuck on releasing the info," and, then, if you look -- it looks like you attached a copy of the Consent Order. Do you see that?
A. Yes.
Q. And this is dated one day after the Consent Order; is that right?
A. Um, it appears so, yes.
Q. And so you had a copy of the Consent Order by the next day; is that right?
A. Yes.
Q. Why did you want to keep the Consent

1 Order on the down low?
2 A. Um, just -- again, I think it goes
3 back to the decision on whether we want to release
4 it or not, and I wanted to have discussions with
5 Chuck on his opinion on whether we should release --
6 Q. And I don't want --
7 A. -- the information.
8 Q. I don't want you to get into that.
9 A. Okay.
10 MR. LLOYD: Yeah, my spidey-sense was
11 tingling.
12 BY MR. REIGSTAD:
13 Q. I don't want you to get into the
14 substance of the discussions between you and Chuck.
15 A. Okay.
16 Q. All I'm asking is why did you
17 personally at this time want to keep this on the
18 down low? And I think you answered the question.
19 If there's nothing further other than --
20 A. Nothing further.
21 Q. -- discussing it with Chuck, that's
22 fine.
23 Is it fair to say at this time you
24 understood that the Consent Order was not public,
25 right?

1 A. Um, no, I -- I can't say that. I
2 didn't know that it was not public at this point.
3 Q. So why would you want to keep it on
4 the down low if you thought it might be public?
5 A. Well, because even if something is
6 public information it doesn't mean all the public
7 knows about it.
8 Q. And so the reason you wanted to keep
9 this on the down low is because you thought the
10 Consent Order could be used strategically by you
11 and other glass shops; is that right?
12 A. Um, probably the opposite. I guess I
13 didn't know how it could be used, which is why I
14 didn't want it getting out to the public. I'm not
15 saying it could be used strategically for or if it
16 was released possibly against.
17 Q. So you --
18 A. I didn't want it released to the
19 public at this time until further discussion.
20 Q. So you didn't want the Consent Order
21 released to the public until further discussion at
22 this time; is that right?
23 A. Correct.
24 Q. And you wanted to get a handle on the
25 import of the Consent Order before it was released,

1 right?
2 A. Get a handle on the what?
3 Q. You wanted to get a handle on the
4 consequences of the Consent Order before it was
5 released, right?
6 A. Um, more of if it was released, would
7 there be any benefit to the industry or negative
8 context to the industry.
9 Q. Can you think of any negative effects
10 on the industry from the release of the Consent
11 Order?
12 A. Um, yeah. Um, I mean, one could be if
13 it got out there, people are -- news media or
14 whatever calling Commerce, asking them for opinions,
15 what's going on; and we just wanted to, you know,
16 keep it on the down low until we knew if that's
17 what we wanted or not. I mean, that would be one
18 reason possibly not to inundate them with industry
19 calls from the media or whatever, you know,
20 regarding it.
21 Q. And the reason you didn't want them
22 inundated with industry calls is because they were
23 continuing to pursue investigations at that time
24 against other insurers and Safelite, right?
25 A. I wouldn't go that far. It's just I

1 didn't know at this point, you know.
2 Q. So you didn't want this released
3 because you didn't want the press to distract the
4 Commerce from its actions at that time, is that one
5 reason?
6 A. Um, that would be probably -- not
7 distra -- yeah, I guess that would be one reason.
8 Q. And can you think of any other
9 negative effects that might happen on the glass
10 industry from the release of the Consent Order?
11 A. Um, yeah, probably, you know, didn't
12 want a bunch of glass shops, you know, piling on
13 and contacting them, didn't want the media
14 contacting them; and, like I say, at this point
15 that hadn't really been decided yet, it was just a
16 couple of the things -- there may be more, but a
17 couple of the things that were running through my
18 mind.
19 Q. So this is another example of you
20 trying to focus the information that's provided to
21 the DOC; is that right?
22 A. This wouldn't be focusing information,
23 this would be more minimizing distractions, I guess.
24 Q. By limiting the information that's
25 provided to the DOC?

A. No, limiting information to the public.
Q. But the reason you didn't want the public to find out about the Consent Order is because you thought they might flood the DOC with information; isn't that right?
A. One of the reasons, yes, information, questions.
Q. Can you think of any other negative effects on the glass industry from the release of the Consent Order?
A. Um, no, not at this time.
Q. And how about benefits to the glass industry from the release of the Consent Order, can you think of any of those?
A. Um, yeah. One of the benefits could be, you know, just -- well, first of all, just getting the information out there because it's newsworthy, is one thing. You know, maybe letting other glass shops know that, you know, things can be done, you know, if they send in the right complaints or, you know, just keep beating the drum, you know.
Q. So you thought this would -- would encourage the rest of the glass industry to

continue, you know, pursuing insurance companies and Safelite for some of the practices you've been complaining about today?
A. Yeah. But also, just to make clear, we're not talking just about Minnesota, you know, we're talking about the whole United States, is when I look at that.
Q. And aside from the reason you just mentioned, encouraging glass shops, can you think of any other benefits from releasing the consent order?
A. Um, sure. I suppose if other insurance companies, you know, saw that, you know, this was occurring, that maybe they would look at their practices a little bit closer as well.
Q. And a lot of those other insurance companies also did business with Safelite; isn't that right?
A. Some did Safelite, some with Lynx, you know, I mean.
Q. And Triple A, as you mentioned earlier, used Safelite as a claims administrator, right?
A. Correct.
Q. And the Consent Order actually restricted Triple A's ability to do business with

Safelite, right?
A. There was some features of that in the Consent Order, yes.
Q. And so do you think if this Consent Order got out it might discourage other insurers from doing business with Safelite?
MR. LLOYD: Objection, calls for speculation. There's no foundation.
THE WITNESS: Yeah. I mean, again, I don't know what they would think, but it would more, like I said before, get people to -- or get the TPAs and insurance companies to just follow the rules within the statute, I guess.
BY MR. REIGSTAD:
Q. You can put that away.
A. Sure.
MR. REIGSTAD: This is 28.
THE COURT REPORTER: Yes.
(Whereupon, Deposition Exhibit No. 28 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE WITNESS: Thank you.
BY MR. REIGSTAD:
Q. So this is an e-mail between -- an e-mail chain between yourself and Gary Hart of the

IGA, dated January 12, 2015. Do you see that?
A. Yes.
Q. And do you have any doubt that you sent and received the e-mails on this chain?
A. No.
Q. I'm going to ask you a few questions about, basically, every part of this e-mail chain.
A. Okay.
Q. So if you could take a moment just to read it through --
A. Sure.
Q. -- and let me know when you're finished?
MR. REIGSTAD: And, Rick, let me ask you, now might be a good time for a break, if you want, and you can maybe just take a chance to read it on the break and then we can come back, because it's been a little over an hour.
THE WITNESS: Okay, I'm fine, but whatever.
THE VIDEOGRAPHER: Going --
MR. REIGSTAD: We don't have to if you don't want to.
THE WITNESS: All right.
MR. REIGSTAD: It's up to you.

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1 THE WITNESS: No, let's keep going.
2 MR. REIGSTAD: Okay.
3 THE VIDEOGRAPHER: We've got about
4 four minutes left on this.
5 MR. LARSON: We're going to need to
6 change the tape, anyway, so --
7 MR. LLOYD: Yeah, why don't we just
8 take a break.
9 MR. REIGSTAD: Let's take a break,
10 yeah. We've got to change the tape.
11 THE VIDEOGRAPHER: Going off the video
12 record. The time is now approximately 1:46 p.m.
13 This is the end of disc number 2.
14 (Break from 1:46 to 1:55.)
15 THE VIDEOGRAPHER: We're back on the
16 video record. The time is now approximately
17 1:55 p.m. This is the beginning of disk number 3.
18 BY MR. REIGSTAD:
19 Q. Mr. Rosar, have you had a chance to
20 review Exhibit 28?
21 A. Yes.
22 Q. And this is an e-mail chain between
23 you and Gary Hart from IGA; is that right?
24 A. Yes.
25 Q. And it's dated January 12, 2015?

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1 A. Yes.
2 Q. So that's four days after the Consent
3 Order is signed, right?
4 A. Yes.
5 Q. Now, at the very top of the e-mail you
6 sent at 12:11 p.m., do you see that?
7 A. Yes.
8 Q. It says, "Gary, I didn't copy the rest
9 of the board at this time."
10 A. Yes.
11 Q. The rest of what board?
12 A. IGA board.
13 Q. Is there a reason you didn't copy the
14 rest of the board at that time?
15 A. Um, just because I wanted to keep it
16 quiet for now.
17 Q. And you wanted to keep it quiet for
18 the same reasons you were testifying about earlier?
19 A. I believe so.
20 Q. Now, if you look at the next sentence
21 it says, "The biggest positive news in the auto
22 glass industry in the last 15 years. (I may be
23 over exaggerating a bit)." Do you believe that the
24 Consent Order was the biggest positive news in the
25 auto glass industry in the last 15 years?

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1 A. I may be overexaggerating a bit, but
2 it was positive news I felt, yes.
3 Q. And why was it positive news?
4 A. Um, just because it went to, you know,
5 the core of some of the issues we were having with
6 some of the insurance companies utilizing the
7 third-party claims process.
8 Q. Did you think that the Consent Order
9 would be helpful to Rapid Glass and shops like it?
10 A. Um, yes.
11 Q. And why, how would it be helpful to
12 Rapid Glass?
13 A. Um, can I look at the Consent Order a
14 little bit --
15 Q. Certainly.
16 A. -- to refresh my memory? The positive
17 aspects, were we talking about?
18 Q. Yeah. The question was, how do you
19 think the Consent Order would be helpful to Rapid
20 Glass and shops like it?
21 A. Um, yeah, just because the -- the
22 basis of the Consent Order dealt with some of the
23 things that we were having problems with about, you
24 know, the warranty, the balance billing, those type
25 of issues.

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1 Q. If you look a little bit further down,
2 I guess it's actually the next sentence, it says,
3 "I am letting you know" that "this info in case it
4 may be an opportunity for our new program partners
5 to pick up AAA nationwide, or at least in MN," do
6 you see that?
7 A. Yes.
8 Q. Who were your new program partners?
9 A. The IGA was working on a -- some type
10 of program to allow glass shops to -- I don't know
11 if it was to call in claims or do it over the
12 computer or what, but a different type of first
13 notice of loss process.
14 Q. Okay. And how -- and how would the
15 Consent Order provide an opportunity for new
16 program partners to pick up Triple A?
17 A. Well, based on the consent decree
18 that -- from what I understand Safelite not being
19 allowed to administer Triple A, possibly the IGA
20 could, you know, get a partnership with Triple A or
21 their program partner to do first notice of losses.
22 (Reporter's Note: Ms. Sassoon enters
23 the room.)
24 BY MR. REIGSTAD:
25 Q. So this provided a business

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1 opportunity for the IGA?
2 A. Um, it was for their -- their -- one
3 of their program partners, and I don't think it
4 ever came to fruition. I'm not aware of that it
5 even got off the ground, but --
6 Q. Sure.
7 A. -- after seeing the Consent Decree it
8 was a thought.
9 Q. So at this time you thought there was
10 that possibility that the Consent Order could
11 provide an opportunity for one of the IGA's program
12 partners?
13 A. Yes.
14 Q. And if you read a little bit further
15 down, let's see, the -- I guess the third to last
16 sentence on the page, it says, "We can also use
17 this if we put" to "-- if we put something together
18 with the MGA as a way of gaining membership and
19 fundraising." Do you see that?
20 A. Yes.
21 Q. So you thought that the MGA and the
22 IGA could use the Consent Order to gain membership
23 and fund-raising?
24 A. Yes.
25 Q. If you look at the sentence above

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1 that, it says, "We have active investigations
2 currently going on with two other insurers (USAA
3 and Am-Fam)." Do you see that?
4 A. Yes.
5 Q. Can you tell the Court who AmFam is?
6 A. American Family Insurance.
7 Q. And that's an insurance company that
8 operates in Minnesota?
9 A. Yes.
10 Q. And do you know whether AmFam uses
11 Safelite as a claims administrator?
12 A. Yes, yes, I believe they do.
13 Q. When you say "We have active
14 investigations," do you mean you and Commerce?
15 A. Um, I can't say the exact context.
16 When I first read it, I just thought the State of
17 Minnesota in general.
18 Q. So you meant that -- that the State of
19 Minnesota had active investigations currently going
20 on with two other insurers, right?
21 A. Yeah, yeah; and the auto glass
22 industry, of course, in particular.
23 Q. The auto glass industry in particular
24 had investigators --
25 A. As being a we, just not every person

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1 in the State of Minnesota.
2 Q. I'm sorry. So the "we" refers to the
3 auto glass industry and the Department of Commerce?
4 A. Um, I can't say that, no. I can't say
5 that the we includes the Department of Commerce.
6 We have -- let me just read it here.
7 Q. Sure.
8 A. Um, I think it's referred to in the
9 context of auto glass shops in the State of
10 Minnesota.
11 Q. So auto glass shops in the State of
12 Minnesota --
13 A. But, obviously, it is in regards to
14 Commerce, because these are two other insurers that
15 were being investigated. So I guess there is a
16 Commerce component in there as well.
17 Q. Okay. So the "we" refers to the auto
18 glass industry's investigation into these insurers
19 and, then, also Commerce investigation?
20 A. Yeah.
21 Q. Is that right?
22 A. Yes.
23 Q. And if you look at the paragraph right
24 above it, it says, "Please do not share this
25 consent decree or any information contained here

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1 with anyone at this time," and in the next sentence
2 you explain why; is that right?
3 A. Yes.
4 Q. And one of the reasons you didn't want
5 to share the consent decree is because of the
6 ongoing investigations of USAA and AmFam; isn't
7 that right?
8 A. Um, I can't say that for certainty,
9 no.
10 Q. Were you worried that if the Consent
11 Order got out it could affect the ongoing
12 investigations of USAA and AmFam?
13 A. No, I can't say that for certainty.
14 Q. So why do you think you wrote that we
15 have active investigations currently going on with
16 two other insurers?
17 A. Because it was my understanding that
18 we did.
19 Q. So is it your testimony that that
20 sentence is not at all related to the previous two
21 sentences?
22 A. Well, the previous sentence says a
23 bunch of insurers. So I think we're referring to
24 the insurance industry. The second sentence is we
25 have investigations going on with these two.

Q. So you didn't want USAA and AmFam to start leaning on the Commerce Department; is that right?
A. No. I think you're reading too much into that. What I say in the first sentence is we don't want a bunch of insurers to start leaning on the Commerce Department. To my knowledge, that means a bunch of insurers, you know, all the insurers, not USAA and American Family specifically.
Q. Okay. If you look at the second to -- I guess the third to the last sentence it says, "This was a direct result of Mike Reid from Alpine and myself working with commerce and sending them documents and recordings from eDG." Do you see that?
A. Yes.
Q. Do you agree with that sentence?
A. Yes.
Q. So you believe that the Consent Order was a direct result of your and Mike Reid's efforts?
A. We were a big part of it because we were two of the glass shops that the Commerce Department was requesting information from. I mean, many other glass shops sent in complaints, as

did the MGA. But as the investigation started going on, it appeared that the Commerce Department was focusing on us or asking us for information on their case or on their investigations.
Q. So you noticed that Commerce was focusing on yourself and Mike Reid in its investigation in terms of providing it with information?
A. Yeah. They were asking us for information to provide for their investigations.
Q. What is eDG?
A. eDirectGlass. That's our invoicing system. It's just, basically, a way that we save recordings.
Q. Can you explain it in a little bit more detail?
A. Yeah. When we do a three-way call, we have a recording device hooked up to the phone, and it dumps it into the computer and we can attach it to the invoice.
Q. So is eDG a computer program?
A. Yes.
Q. And that computer program, basically, takes the recording and associates it with an invoice; is that correct?

A. Correct.
Q. And, then, the next sentence says, "We may be able to exploit this at a later time to gain eDG users, but we need to be silent for now." Why did you think you could use the Consent Order to gain eDG users?
A. I wasn't referring on the -- the Consent Order so much to get eDG users, it was the recording process within eDG that I wanted to exploit to gain users.
Q. And do you have a financial interest in eDG?
A. Um, no, no.
Q. So why did you want to gain eDG users?
A. For the better of the industry; and, actually, I guess I do own a very small share of stock in eDG, but this was more for the -- the industry related.
Q. If you go to the -- Gary Hart's e-mail response to you, he says, "H O L Y S H I T!" Do you see that?
A. Yes.
Q. And, then, if you go to your response you say, "Yeah, I don't have to tell you I can be a pain in" my "ass when I set my mind to it and

Safelite is on my mind A LOT."
A. Uh-huh, yes, I see that.
Q. So why was Safelite on your mind a lot?
A. Just because of the issues that we talked about previously in the three-way calls.
Q. Because Safelite was hurting your business, right?
A. Interfering with it, yes.
Q. And how were you a pain in the ass with respect to Safelite?
A. Um, I think I was referring to that I'm just a pain in the ass in general.
Q. Well, so you mention you're a pain in the ass when you set your mind to and that Safelite was on your mind a lot?
A. Correct.
Q. So Safelite was on your mind a lot, and as a result --
A. Yeah.
Q. -- you were a pain in the ass, right?
A. Yes.
Q. And who were you a pain in the ass to?
A. Well, like I say, I think in this context I'm saying that -- I'm admitting that I'm a

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1 pain in the ass in general with my dealings with
2 Gary Hart and that, you know, Safelite was on my
3 mind a lot. So, I guess, essentially, I would be a
4 pain in the ass to Safelite as well.
5 Q. And the reason you're talking about
6 Safelite is because the Consent Order restricts
7 Safelite's business in Minnesota; is that right?
8 A. Yes.
9 Q. The next sentence says, "We already
10 ran into the Safelite lobbyist at the capitol last
11 week," and it continues, "He asked our lobbyist if
12 we are pushing for a law change OR if we are just
13 going to keep kicking the shit out of Safelite at
14 the commerce department. We told him, maybe
15 both....," parenthetical, "(Actually we are not
16 pushing for a law change, purely a defensive
17 session to keep what we have)," close parenthetical.
18 Did I read that right?
19 A. Yes.
20 Q. Did you tell a Safelite lobbyist what
21 it says in this e-mail?
22 A. I did not. It was my understanding
23 that one of the lobbyists working for the glass
24 industry, working for the MGA, ran into a Safelite
25 lobbyist, and the Safelite lobbyist approached him

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1 with this statement.
2 Q. Okay. So this is a conversation
3 between a glass industry lobbyist and a Safelite
4 lobbyist?
5 A. Correct.
6 Q. That was relayed to you?
7 A. Correct.
8 Q. Who relayed it to you, if you recall?
9 A. Um, I don't. I think it could have
10 been the lobbyist directly, it could have been
11 someone from the MGA. I don't recall. It was
12 relayed to me.
13 Q. And who was the glass industry
14 lobbyist that you're referring to here?
15 A. Um, Joel -- Joe Bagnoli.
16 Q. Okay. And who does he work for
17 directly?
18 A. The MGA.
19 Q. Anyone else?
20 A. That's -- in our context, that's who
21 he works for. I'm sure he's probably got other
22 people, but --
23 Q. Do you think that the glass industry
24 was kicking the shit out of Safelite at the
25 Commerce Department?

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1 A. Um, I mean that came from the Safelite
2 lobby I felt. I --
3 Q. Do you --
4 A. I don't know.
5 Q. Do you agree with that sentence?
6 A. Um, sure.
7 Q. And you mentioned earlier that you
8 were being a pain in the ass to Safelite. What
9 conduct made you a pain in the ass, was it sending
10 information to the DOC?
11 A. Yes.
12 Q. And so you were being a pain in the
13 ass in that you were being very persistent with the
14 DOC?
15 A. Yes.
16 Q. Then at the end of this e-mail it
17 says, "I believe there will be other big news to
18 come this year." Do you see that? It's at the top
19 of the page.
20 A. Oh, okay. Yes.
21 Q. Are you referring to the investigations
22 of USAA and AmFam?
23 A. I can't say for certain, but I believe
24 in the context of this that's what I probably meant.
25 Q. Okay. You can put that away.

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1 (Whereupon, Deposition Exhibit No. 29
2 was marked for identification, and a copy is
3 attached and hereby made a part of this deposition.)
4 MR. REIGSTAD: Is this 29?
5 THE COURT REPORTER: Yes.
6 BY MR. REIGSTAD:
7 Q. So the court reporter just handed you
8 what's been marked as Exhibit 29, and this is an
9 e-mail, you're at the top and you e-mail I believe
10 it's Mike Schmaltz and Brad Hapka, and below that
11 is an e-mail exchange between Rapid Glass
12 Administrator and Sid Lounds, and the date of the
13 e-mail is January 20th, 2015. Do you see that?
14 A. Yes.
15 Q. Do you have any doubt that you sent
16 and received the e-mails on this chain?
17 A. No.
18 Q. Feel free to take a moment to review
19 if it's helpful, but it looks like the e-mail at
20 the bottom of the chain is from Quest Software; is
21 that right?
22 A. Yes.
23 Q. And are they a claims administrator?
24 A. Yes.
25 Q. And they have a network of shops,

1 right, or they're trying to set up a network of
2 shops, right?
3 A. Yes.
4 Q. And they're reaching out to you about
5 potentially joining their network?
6 A. Yes.
7 Q. And they mention that Triple A is one
8 of their clients, right? If you look at the --
9 A. Yes.
10 Q. And they also send a pricing
11 agreement, which is for Quest Net -- Glass Network
12 in-network pricing, 38 percent off NAGS; is that
13 right? This is on the second page of the document,
14 about the middle -- I guess sort of top of the
15 page, the first full paragraph.
16 A. Okay, yes, uh-huh.
17 Q. Can you tell the Court what NAGS is?
18 A. National Auto Glass Standards -- or
19 Specifications.
20 Q. And is that a pricing standard used in
21 the auto glass industry?
22 A. Yes. It's a benchmark pricing
23 catalog -- well, and now electronic.
24 Q. And one of the e-mails says 38 percent
25 off NAGS. Did you understand that to mean below

1 NAGS or above?
2 A. Below the NAGS benchmark.
3 Q. And, then, at the top of the chain you
4 e-mail Mike Schmaltz and Brad Hapka; is that right?
5 A. Yes.
6 Q. And it says, "It looks like AAA is
7 testing Quest for their provider as a result of the
8 consent decree. They are asking for 38% off, but
9 will accept a customized offer, possibly above NAGS
10 list." Do you see that?
11 A. Yes.
12 Q. So you thought that Triple A had to
13 switch claims administrators because of the consent
14 decree; is that right?
15 A. Yes.
16 Q. And did you think that you could get a
17 higher price from Quest than you could have gotten
18 from Safelite?
19 A. Um, no. I mean, that was nowhere in
20 my intention or throughout the whole process or
21 anything. I mean, I had no idea Commerce was going
22 to enter into the consent decree with Safelite so
23 they couldn't do it in Minnesota, and I had no idea
24 they were going to pick up Quest. So that was --
25 Q. I'm not asking about prior to this

1 e-mail.
2 A. Okay.
3 Q. What I'm asking is, when you sent this
4 e-mail, did you think you could get a better price
5 from Quest than you could from Safelite?
6 A. Um, I -- I really don't know. I -- I
7 don't know off the top of my head what Safelite's
8 pricing was. They contact -- Quest contacted me
9 about this. They sent it out to most of the glass
10 shops in Minnesota, from what I understand.
11 Q. Did you accept an offer to enter into
12 Quest's network after this e-mail?
13 A. No.
14 Q. Do you know of any other glass shops
15 that did?
16 A. I don't know.
17 Q. Why did you think that you could
18 possibly obtain a price from Quest above the NAGS
19 list?
20 A. Um, it was just a -- a passing
21 thought. I mean, before Triple A used Safelite as
22 a claims administrator, they were paying above NAGS
23 list, and when Safelite took over as their claims
24 administrator, the pricing went to like NAGS list
25 and then continued to go below that. So it was

1 just a possibility that maybe they'd swing back the
2 other way.
3 Q. So now that Safelite was gone, you
4 thought maybe -- maybe Triple A might allow higher
5 prices?
6 A. Yes.
7 Q. Okay. You can put that away.
8 MR. REIGSTAD: This is 30.
9 (Whereupon, Deposition Exhibit No. 30
10 was marked for identification, and a copy is
11 attached and hereby made a part of this deposition.)
12 THE WITNESS: Thank you.
13 BY MR. REIGSTAD:
14 Q. So the court reporter just handed you
15 what's been marked Exhibit 30.
16 A. Yes.
17 Q. And this is a e-mail exchange between
18 yourself, Mike Reid, Chuck Lloyd, and it looks like
19 Gary Hart from IGA is also involved. Do you see
20 that?
21 A. Yes.
22 Q. Do you have any doubt that you sent
23 and received the e-mails on this chain?
24 A. No.
25 Q. And if you take a look, this e-mail

chain is about a proposed post on GlassBuzz about the Consent Order; is that right?
A. Ah, let me peruse it here briefly.
Q. Sure.
A. Proposed post on GlassBuzz, yes.
Q. And can you tell the Court what GlassBuzz is?
A. GlassBuzz is just an industry forum, online forum.
Q. And if you take a look down the chain, at the bottom it looks like Mr. Hart sent you a draft post on GlassBuzz; is that right?
A. Oh, I believe he did. I'm just looking to see where -- from Gary Hart. Yes, it looks like Gary sent me a proposed post.
Q. And then you replied to him on January 26th at 1:56 p.m., and you say, "I still prefer this not get out." Do you see that, at the bottom of the second page of the document?
A. Yes, yes, I see that.
Q. And so at this time at least you did not want the Triple A Consent Order to become public; is that right?
A. Correct.
Q. And why was that?

A. Um, I believe we were still in the process of deciding, you know, if we wanted it out or not and how it should be worded. I remember there was a lot of discussion on the wording of this.
Q. And if you look down, you provide some editing on Gary Hart's draft post, do you see that?
A. Yes.
Q. And then later it looks like the draft post is forwarded to Mike Reid, do you see that? He replies on January 26th, 2015, at 8:03 p.m.
A. Yes. I see his reply there.
Q. And do you see he offers some objections to the draft post?
A. Yes.
Q. And you respond to him at the top of the e-mail chain, and it looks like you provide written responses to each of his objections below. Do you see that?
A. Yes.
Q. And one of the concerns that Mr. Reid raised was the language that says "This consent order is the culmination of the hard work and dedication from Minnesota glass shops in providing direct evidence to the State in order for action to be taken," and, then, it looks like you inserted a

response that says, "This is true. Between us, we provided a majority of the information." Do you see that?
A. Yes.
Q. And is that true, do you believe that you and Mike Reid provided a majority of the information to the State that resulted in the Consent Order?
A. Yes.
Q. And is it true that the Consent Order is the culmination of your and Mike Reid's hard work and dedication?
A. Well, again, it's from, you know, all glass shops, because I know the MGA filed a complaint and other glass shops did. So the statement the culmination and hard work, both of those statements are correct.
Q. And, then, just at the very top of the document, the second sentence, it says, "You mentioned you wanted to get out in front of it but perhaps it is a bit too strong." Do you see that?
A. Yes.
Q. Why did you think the proposed post was perhaps a bit too strong?
A. I didn't, it appears Mike did.

Q. But you did not think it was too strong?
A. I would have to read through the whole thing here again. It -- I was trying to alleviate his concerns on it and settle him down a little bit.
MR. REIGSTAD: Can we go off the record for a second?
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 2:22 p.m.
(Break from 2:22 to 2:23.)
(Whereupon, Deposition Exhibit No. 31 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 4:23 p.m.
MR. LARSON: 4:23?
THE VIDEOGRAPHER: No, I'm sorry, 2:23.
MS. SASSOON: Only one of us is --
MR. LLOYD: On to Dominican Republic time.
THE WITNESS: Let's go.
BY MR. REIGSTAD:
Q. The court reporter just handed you what's been marked as Exhibit 31. Do you recognize

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that document, Mr. Rosar?
A. Yes.
Q. And what is it?
A. Ah, it looks like it's either a forum post or a press release. It's some type of release regarding the fines against Auto Club Group.
Q. And it looks like it's dated February 19th, 2015; is that right?
A. Yes.
Q. And is that consistent with your recollection of when the press release was issued?
A. Ah, yeah, that makes sense that it was.
Q. And if you look on the press release, about four-fifths of the way down there's a paragraph that starts with "This consent order." Do you see that?
A. The second to the last paragraph?
Q. Yep.
A. Yes.
Q. It says, "'This consent order is the culmination of the hard work and dedication from Minnesota glass shops that provided direct evidence to the State in order for action to be taken.' Explains Rick Rosar with Rapid Glass." Do you see

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that?
A. Yes.
Q. And that's the same language we saw in the draft glass pus -- GlassBuzz post in the previous exhibit?
A. Yes.
Q. And do you agree with that statement?
A. Yes.
Q. You can put that away.
MR. REIGSTAD: It's 32.
(Whereupon, Deposition Exhibit No. 32 was marked for identification, and a copy is attached and hereby made a part of this deposition.)
BY MR. REIGSTAD:
Q. I know this is a longer document, so if you want to take a moment to skim it, feel free.
A. I'll just try to go through it as you ask, I think.
Q. Sure. So I'll represent to you this is a -- an arbitration decision that was produced to us by your counsel, and from the beginning it looks like it's an arbitration between Rapid Glass and Allied Insurance Company. Do you see that?
A. Yes.
Q. Do you recall that arbitration?

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A. Yes.
Q. Do you remember testifying at that arbitration?
A. What year was this? This is Allied --
Q. So if you turn --
A. -- Nationwide.
Q. If you turn to page 36 of the opinion, it's dated August 5th, 2010.
A. Yeah, yeah, I just want to refresh my memory on this, Allied, Nationwide. Yeah, I mean, I remember testifying in this.
Q. If you turn to the second page of the opinion, it has a list of witnesses for Rapid. Do you see that?
A. Yes.
Q. And one of those witnesses is Mike Reid. Do you see that?
A. Yes.
Q. And if you turn to page 25 of the decision, I believe it has a short summary of his testimony.
A. Yes.
Q. And it says that Mr. Reid is testifying as to what a fair and reasonable rate is in Minnesota. Do you see that?

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A. Yes.
Q. Do you recall if Mr. Reid has testified in support of Rapid at any other arbitrations?
A. Um, I -- yes. I believe he's probably provided -- you know, and I don't know if this was in -- in-person testimony. I -- I think it was an affidavit or something, but I'm not certain.
Q. Sure. So it says in the first sentence he testified by means of a declaration. So it looks like he submitted something --
A. Yes.
Q. Something written. Is that consistent with your recollection?
A. Yes, yes.
Q. And did he submit a declaration in any of your other arbitrations?
A. Um, I'm not a hundred percent certain. He may have very well. You know, I don't doubt it, but I don't recall specifically.
Q. Did you ever testify on behalf of Mr. Reid's shop, Alpine Glass --
A. Yes.
Q. -- at an arbitration?
A. I believe I provided documentation for him in the past.

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1 Q. Do you recall how many -- how many
2 arbitrations you did that for?
3 A. I do not.
4 Q. Was it more than five?
5 A. I don't think so.
6 Q. And when you provided the
7 documentation, was it -- did you provide evidence
8 on what a fair and reasonable price is?
9 A. Yes.
10 Q. And Mike Reid did the same for you in
11 this arbitration; isn't that right?
12 A. Yes.
13 Q. Turn to page 21 of the opinion,
14 please? So page -- strike that. Paragraph 51 here
15 reads --
16 A. Twenty-one?
17 Q. Fifty-one.
18 A. Oh, paragraph 51.
19 Q. Sorry, paragraph 51 reads, "Rapid's
20 hourly rate between April 14, 2005 and August 29,
21 2009 as to Allied was $85.00 per hour and as to
22 Nationwide was $115.00 per hour. Rapid charged
23 NAGS list price plus 79% to Allied and NAGS list
24 price plus 180% to Nationwide for the glass.
25 Allied and Nationwide are related companies, yet

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1 Nationwide was being charged far more than was
2 Allied for the same identical glass and service.
3 Mr. Rosar was asked the reason that the two...related
4 companies were being charged different prices to
5 which is responded as follows: 'Nationwide was
6 reimbursing better at that time," and it continues.
7 Did I read that portion of the
8 Arbitrator's opinion correctly?
9 A. Yes.
10 Q. And any reason to dispute that was the
11 arbitration -- that was the Arbitrator's finding
12 here?
13 A. Um, no. It appears that's what the
14 Arbitrator's finding was.
15 Q. And on the same page, at the bottom of
16 the page --
17 A. I want to go back and see if that's
18 what this is. Is that what this is, is the
19 Arbitrator's finding?
20 Q. Sure.
21 A. I just want to make sure of that.
22 Q. So it probably might be easiest just
23 to look at the first page, or I guess --
24 A. Okay. I guess this whole thing is,
25 basically, his findings, right?

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1 Q. Yes, that's right.
2 A. Okay.
3 Q. So just to -- for a clean record, is
4 there any reason to dispute that there -- that was
5 the Arbitrator's finding here?
6 A. No.
7 Q. And if you go a little bit further
8 down the same paragraph, at the bottom of the page
9 it says, "Rosar admits that in some cases he will
10 charge as much as he possibly can on a particular
11 glass job if he can get away with it." Do you see
12 that?
13 A. Yes.
14 Q. Do you have any reason to dispute that
15 that is what the Arbitrator found in this case?
16 A. Well, that's his wording of it. I
17 don't know specifically what he was thinking, but
18 apparently he wrote it.
19 Q. And so that was the Arbitrator's
20 finding, correct?
21 A. Yes.
22 Q. If you can turn to page 29, please,
23 and I'm going to ask you about paragraph sixty --
24 A. Oh, 29.
25 Q. I'm going to ask you about paragraph

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1 67.
2 A. Okay.
3 Q. And it reads, "Cash pricing is
4 different from invoice pricing which is submitted
5 to insurance companies (Allied included).
6 Mr. Rosar testified as follows when asked if he had
7 a cash rate." Quote, "We have a rate if we get
8 paid, you know, the same day we do the job. I
9 guess I wouldn't call it a cash rate, but if we get
10 paid the same day we do the job and don't have to
11 deal with the TPA's and the whole billing process
12 and spend the extra time and worry about the job
13 getting taken away from us, yeah, we have a cheaper
14 price." Did I read that correctly?
15 A. Yes.
16 Q. Do you have any reason to doubt that
17 you testified in the way that is reflected here?
18 A. No. But to expand on this, we also,
19 if we, you know, got paid from the insurance company
20 or something the same day, you know, we'd give them
21 a discounted price as well.
22 Q. And, then, it goes on, "Mr. Rosar
23 testified as follows when asked if it was a fixed
24 price or one that fluctuates." Quote, "It
25 fluctuates. I mean some days if we're super

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1 swamped we might not give any break in price. I
2 could change it, you know, a hundred dollars from
3 the morning to the afternoon if we get busy. So
4 it's totally a fluid fixed or fluid price, not a
5 fixed price." Do you see that?
6 A. Yeah. And what page are you on?
7 Q. Page 29, paragraph 67.
8 A. Oh, okay.
9 Q. So it's the -- Do you want to read it
10 again?
11 A. Um, no, just point out which
12 paragraph -- oh, it fluc -- starting with it
13 fluctuates?
14 Q. Yeah, starting with it fluctuates and
15 ending with not a fixed price. Do you see that?
16 A. Yes, that's true, and -- and we do do
17 that. I mean, if we're busy, we might charge more
18 for --
19 MR. LLOYD: There's no question
20 pending.
21 THE WITNESS: Oh, I'm sorry.
22 MR. LLOYD: So answer the question.
23 THE WITNESS: Yes.
24 BY MR. REIGSTAD:
25 Q. And the first paragraph, beginning

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1 with we have a rate until cheaper price, do you see
2 that?
3 A. Which one?
4 Q. The first paragraph block quoted here
5 the begins with we have a rate and ending with --
6 A. Yes.
7 Q. Is that true as well?
8 MR. LLOYD: Well, I'm going to object
9 to that because now we're getting into pricing. If
10 you want to ask him if it is true in 2007 to 2009,
11 that's fine, but we're not going to talk about
12 pricing as it exists today. That's a fairly
13 clearly stated position that we've taken.
14 MR. REIGSTAD: Sure, and just so we're
15 clear for the record, you'll instruct the witness
16 not to answer any questions that get into Rapid
17 Glass's method of determining prices; is that
18 right?
19 MR. LLOYD: Correct.
20 MR. REIGSTAD: Okay. And just so it's
21 clear for the record, our understanding is -- or
22 our position is that should you lose your pending
23 motion to quash the administrat -- the administrative
24 action, we'll bring in Mr. Rosar to answer questions
25 about pricing.

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1 MR. LLOYD: Understood.
2 MR. REIGSTAD: And for that reason
3 we're going to leave the deposition open today
4 pending -- pending resolution of that motion.
5 BY MR. REIGSTAD:
6 Q. Could you turn to page 22 of the
7 opinion, please? And I'll ask you about the
8 sentence that begins about a third of the way down
9 the page, it starts with "On occasion," do you see
10 that?
11 MS. SASSOON: Was your last question
12 answered?
13 MR. LLOYD: I'm instructing him not to
14 answer, because my understanding of it was it was
15 asking about --
16 MS. SASSOON: If you want to --
17 MR. LLOYD: -- current price.
18 MS. SASSOON: -- ask the question
19 referring to that time period?
20 MR. REIGSTAD: Sure.
21 BY MR. REIGSTAD:
22 Q. Can we go back to, I guess, page 29,
23 and in the middle of the page it starts with, "We
24 have a rate," do you see that?
25 A. Yes.

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1 Q. Is that -- is the language beginning
2 with we have a rate and ending with cheaper price,
3 is that true for the time period from 2007 through
4 2009 for Rapid Glass?
5 A. Yes.
6 Q. Okay. Turn back to page 22, and,
7 again, asking you about the sentence that starts
8 about a third of the way down. "On occasion Rapid
9 has charged Allied for a windshield molding which
10 came with the windshield and cost Rapid nothing.
11 Rosar testified that," quote, "Like I say, just
12 because I get a molding for free doesn't mean I'm
13 going to give it away for free." Do you see that?
14 A. Okay. Yes, I see it. And where did
15 you start, again?
16 Q. On occasion.
17 MR. LLOYD: On is the very last word --
18 THE WITNESS: Okay.
19 MR. LLOYD: -- about three --
20 THE WITNESS: I gotcha.
21 MR. LLOYD: -- lines above it.
22 THE WITNESS: Yep.
23 BY MR. REIGSTAD:
24 Q. And do you see the language I just
25 read?

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A. Yes, yes, yes. I'm reading it for the second time.
Q. And do you have any reason to doubt that you testified that way?
A. Ah, no reason to doubt that. And I'll just add being that --
MR. LLOYD: There is no question pending, Mr. Rosar.
THE WITNESS: Okay.
MS. SASSOON: That's not an objection.
MR. LLOYD: I'm instructing my client to answer questions.
THE WITNESS: Okay.
BY MR. REIGSTAD:
Q. If you feel you need to supplement a question to make it complete, you're always free to do so.
A. Okay.
Q. If you look at the -- let's see, the sentence that begins at the very, very bottom of page 21 and continues through page 22, it reads, "Rosar testified that after Allied and Nationwide merged that Rapid started billing everything at NAGS --"
A. Starts on -- excuse me a second.

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Q. Sure.
A. It starts on what page?
Q. The very bottom of 21, starting with "Rosar testified that."
A. "Rosar admits"?
MR. LLOYD: The very last line. No, the last line.
THE WITNESS: Oh, "Rosar testified," okay, gotcha.
BY MR. REIGSTAD:
Q. Sure. It says, "Rosar testified that," and it continues to the next page, "after Allied and Nationwide merged that Rapid started billing everything at NAGS plus 79%. Mr. Rosar stated that rapid no longer billed Allied or Nationwide NAGS plus 180%. Mr. Rosar's statement regarding billing Nationwide at NAGS plus 79% is not true." Do you see that?
A. Yes.
Q. And do you have any reason to doubt that that is the Arbitrator's finding?
A. Ah, no reason to doubt that that's his finding.
Q. And the Arbitrator found that some of your testimony was false; isn't that right?

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A. Ah, I don't think he understood the entire glass industry and what we were talking about here.
Q. So you disagreed with the Arbitrator's finding?
A. Let me finish reading the rest of the paragraph.
Q. Sure.
A. I guess I can't disagree with it without seeing other documents. I'll just take it for what it's worth.
Q. My question was just that the Arbitrator found that some of your testimony was false; isn't that right?
A. It appears that regarding the billing there was some errors in what he found to be true.
Q. There -- I'm sorry, I don't understand the answer. There were some errors in what the Arbitrator found to be true or some errors in your testimony?
A. Um, it -- why don't you ask a question?
Q. Sure. I think I just did, but --
A. Okay.
Q. -- I'll ask again.
A. Sure.

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Q. My question was just that isn't it true that the Arbitrator found that some of your testimony in this arbitration was false?
A. He did.
Q. I have one more question about the testimony, and if you turn to page -- let's see, page 29. Apologies, page 21, I'm sorry.
A. Uh-huh.
Q. Page 21, and I'm going to ask you about paragraph 51. And in this paragraph the Arbitrator found that you were charging Allied and Nationwide two different prices for the same services; is that right?
A. Yes.
Q. And, in fact, Nationwide was being charged more than Allied for the same services; isn't that right?
A. Yes.
Q. And the reason you gave for that is that Nationwide was reimbursing better at the time; isn't that right?
A. Yes.
Q. And just to be clear, Allied didn't know that it was getting a better price than Nationwide for the same services, right?

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A. I don't know that.
Q. And as far as you know, at least Nationwide didn't know that it was paying more for the same services as Allied; is that right?
A. I have no knowledge of that.
Q. Well, do you remember telling either of them about this pricing arrangement?
A. No, I do not remember telling them about the pricing arrangement.
Q. So as far as you know, you didn't tell Nationwide, hey, I'm charging you more than Allied for the same services because you're reimbursing better, right?
A. That's correct.
Q. Do you think that's fair?
A. Um, the -- in the -- the -- I don't know how far we can go into this with the -- the pricing issue, but a lot --
MR. LLOYD: Well, hold on a second. I want to get a time frame. Does he think it's fair in 2007 to 2009?
BY MR. REIGSTAD:
Q. So when this arbitration decision was issued, they're talking about a specific pricing practice, right, between Allied and Nationwide?

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A. Uh-huh.
Q. That must have been before 2010, because that's when this was issued, correct?
A. Uh-huh.
Q. And so I'm asking about that time period. And in time period, when this pricing practice was happening, did you think it was fair?
A. Yes.
MS. SASSOON: He can respond, he can ask if it's fair. He's not disclosing any confidential information to give his opinion today on whether a pricing practice is fair. I don't think that falls under the scope of your objection.
MR. LLOYD: Well, number one, there's only one lawyer at a time --
MR. LARSON: Yeah, exactly right.
MR. LLOYD: -- going to handle this. If you want to do the deposition, then you do it, otherwise he talks.
Number two, 2007 to 2009 is what he's being asked about. What the relevance of it is is completely beyond me. But if you want to ask -- answer why it's fair, that's fine. It has nothing to do with either the charges that were made by the Commissioner against the -- against Safelite in the

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administrative proceeding nor does it have anything to do with the federal lawsuit. It's absolutely way beyond the scope of both cases, and that's why I'm making the objection. But if you want to talk about and continue to waste everyone's time with discussion about 2007 to 2009, your deposition. So go ahead and answer the question.
BY MR. REIGSTAD:
Q. So I'll withdraw my question, and I'm going to ask it again, but I'm asking you as you sit here today, do you think that pricing practice of charging Nationwide more than Allied for the same services is fair?
A. Yes.
Q. Why?
A. Because a lot of times with the pricing is the insurers back at that time would send us fax sheets that said the pricing that they were willing to pay, and it was easier to accept their pricing at that time than for us to have a different pricing structure. See, because they weren't one company at one time, all the insurance companies had different reimbursement rates, and so they were all, you know, different. It was easier to deal with them based on their own pricing at

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that time. So it just so happened that these two companies came together and the two had different reimbursement rates.
Q. Okay. I have one more question about the testimony. Turn to page 22.
A. Sure.
Q. And you already went over this language, but it's about a third of the way down the page, it says, "On occasion Rapid has charged Allied for a windshield molding which came with the windshield and cost Rapid nothing. Rosar testified that, "Like I say, just because I get a molding for free doesn't mean I'm going to give it away for free.'" And my question is, do you think it's fair to charge a customer for something that you got for free?
A. You have to understand that there's different vendors and suppliers of glass. Sometimes the molding comes on the windshield, sometimes it's separate. Any time we charge for a molding, the molding was needed on the job. So whether I work out a deal with my suppliers where I get the molding for free, yes, it doesn't mean I'm going to give it away for free, I am still allowed to charge for that.

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1 Q. And do you recall the outcome of this
2 arbitration?
3 A. Um, yeah. In general, we received
4 some amount of money.
5 Q. Can you turn to page 35, please? And
6 if you look at the paragraph 4 at the top of the
7 page, it says, "The arbitrator finds that Allied
8 has paid to or on behalf of it's" [sic] "insureds a
9 prevailing competitive price as defined in Allied's
10 policy of insurance on those payments which Allied
11 has made. Excluded from this paragraph is the
12 Groettum claim set forth in paragraph 2 above." Do
13 you see that?
14 A. Yes.
15 Q. And if you look in paragraph 2 above,
16 it's referring to a $704.94 claim. Do you see
17 that?
18 A. On what page?
19 Q. It's the previous page, page 34, the
20 paragraph 2.
21 A. Yes.
22 Q. And so other than that 74 -- $704
23 claim, the Arbitrator found against Rapid Glass;
24 isn't that right?
25 A. I would have to read this further.

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1 I -- I thought that there was some compensation,
2 but I would have to read it a little bit further
3 here.
4 Q. Okay. The Arbitrator's decision
5 begins at paragraph 1, so -- it's not very long, so
6 feel free to read it --
7 A. Where does it begin at?
8 Q. -- if you think it will be helpful.
9 A. Page?
10 Q. It begins the previous page, page 34,
11 at paragraph 1.
12 A. Oh, okay. Okay. Yeah, from what I'm
13 reading here, it appears that there was. I thought
14 there was some monies. But, obviously, from what
15 I'm seeing here, it doesn't appear to be so.
16 Q. And if you look at paragraph 5 it
17 says, "Rapids request for costs and disbursements
18 is denied in its entirety." Do you see that?
19 A. Yes.
20 Q. You can put that away.
21 A. Okay.
22 Q. Did you -- did you prepare for this
23 deposition at all today?
24 A. Um, sure.
25 Q. Can you tell me how you prepared?

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1 A. Um, just discussions with the attorney
2 and just kind of browsed through the subpoena
3 documents that were produced.
4 Q. Is the attorney Chuck Lloyd?
5 A. Yes.
6 Q. Did you meet with him in person?
7 A. Yes.
8 Q. For how long?
9 A. Um, maybe an hour.
10 Q. And when was that?
11 A. Um, Friday, I believe.
12 Q. This past Friday?
13 A. Yeah.
14 Q. Was anyone else present aside from you
15 and Mr. Lloyd?
16 A. Yes, Lisa.
17 Q. Anyone else aside from you, Lisa, and
18 Mr. Lloyd?
19 A. No.
20 Q. Did you review any documents at the --
21 at the meeting with Mr. Lloyd?
22 A. No.
23 Q. And you've mentioned you reviewed the
24 documents produced in connection with the subpoena.
25 Were those the documents produced by Rapid Glass?

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1 A. Yes.
2 Q. And did you review all of them?
3 A. No.
4 Q. How many did you review?
5 A. I just cursory browsed through some of
6 them, I think I listened to one recording.
7 Q. So aside from meeting with Mr. Lloyd
8 and -- and reviewing the subpoena documents, did
9 you do anything else to prepare for the deposition?
10 A. No.
11 MR. REIGSTAD: Is this 32?
12 THE COURT REPORTER: Thirty-three.
13 (Whereupon, Deposition Exhibit No. 33
14 was marked for identification, and a copy is
15 attached and hereby made a part of this deposition.)
16 BY MR. REIGSTAD:
17 Q. The court reporter just handed you
18 what's been marked as Exhibit 33. Do you recognize
19 this document?
20 A. I believe so.
21 (Reporter's Note: Ms. Sassoon leaves
22 the room.)
23 THE WITNESS: What's the date on this?
24 Yes.
25 BY MR. REIGSTAD:

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Q. Is this the document subpoena that was served on Rapid Glass in connection with this case?
A. Yes.
Q. And are you aware that as a part of that subpoena Rapid Glass was required to produce certain documents related to certain topics in this case?
A. Yes.
Q. Do you believe that Rapid Glass produced all documents in its possession that are responsive to the subpoena subject to any objections from counsel?
A. Yes.
(Reporter's Note: Ms. Sassoon enters the room.)
BY MR. REIGSTAD:
Q. Can you please describe the steps you took to produce documents in response to the subpoena?
A. I did an exhaustive search through e-mails and files on my computer, um, asked for if there was any other documents that were needed, asked Lisa, you know, to provide any additional documents that I didn't have, asked her to go through her e-mails on her computer and files,

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reviewed -- gosh, most of the stuff I keep is electronically now. So just, basically, did an exhaustive search of e-mails, documents, electronic documents, recordings.
Q. What e-mail address do you use for business?
A. Rick@rapidglass.com.
Q. And is that the e-mail account that you searched?
A. Yes.
Q. Do you use any other e-mail accounts for business?
A. No.
Q. Did you use search terms to search your e-mails?
A. Yes, yes, punched in keywords.
Q. Can you recall which search terms you used?
A. Um, yeah. I mean, Safelite, Commerce, Alpine, MGA, um; and, I mean, as I was pulling up these search terms, other key terms popped into my head. So then I would punch those in as well and search that string of documents, so --
Q. Do you recall roughly how long you spent searching your e-mails?

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A. Um, I'd say probably days, not hours.
Q. Was it more than --
A. Sixteen hours, I'd say.
Q. Sixteen hours total? And to be clear --
A. More than 16 hours.
Q. More than 16 hours?
A. Yeah.
Q. Do you think more than 20 hours?
A. I don't know. It was a couple of days going through them.
Q. And to be clear, you performed this search yourself, right?
A. Yes.
Q. And did anybody else help you?
A. No.
Q. Did anybody else provide you with any direction?
A. Um, no, other than, you know, my attorney telling me to --
MR. LLOYD: Don't --
BY MR. REIGSTAD:
Q. I don't --
MR. LLOYD: -- tell him --
BY MR. REIGSTAD:

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Q. I don't want to get into that.
MR. LLOYD: Don't tell him what I told you.
BY MR. REIGSTAD:
Q. And so aside from your e-mail and you mentioned you also searched hard copy files in your possession; is that right?
A. Yes.
Q. You mentioned you also asked Lisa to search her e-mail?
A. Yes.
Q. Okay, and I think we can ask her about that later. Did she do it herself or did you help her with that?
A. Um, she deletes everything, she doesn't hardly have anything. I keep e-mails, she deletes everything almost like the day it comes. So she -- I don't think she had a whole lot.
Q. All I'm asking is when she was searching her e-mails, did you help her or did she do it herself?
A. Um, I don't recall helping her with it.
MR. REIGSTAD: Okay. I think we can just go off the record for a minute. I'm going to check my notes, but I think we're about done.

THE WITNESS: Sure.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 2:53 p.m.
(Break from 2:53 to 2:57.)
THE VIDEOGRAPHER: We're back on the video record. The time is now approximately 2:57 p.m.
MR. REIGSTAD: Mr. Rosar, thank you so much for your time today. I am finished, although we will leave the deposition open pending the resolution of your Counsel's motion to quash pricing related questions. But, with that, I'm finished for today.
THE WITNESS: Okay, thank you.
MR. LARSON: I have no questions for the witness.
MR. LLOYD: And since the deposition is left open, I suppose we don't have any reading and signing issues to make at this point.
THE VIDEOGRAPHER: Going off the video record. The time is now approximately 2:58 p.m. Thank you.
(Whereupon, the deposition of RICHARD ROSAR was adjourned at 2:58 p.m.)

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN that I, Jean F. Soule, Registered Professional Reporter, took the foregoing deposition of RICHARD ROSAR;

That the witness, before testifying, was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in shorthand by me and was reduced to typewriting under my direction;

That the foregoing deposition is a true record of the testimony given by said witness;

That the reading and signing of the foregoing deposition by the said witness were expressly waived by the witness and respective counsel;

That I am not related to any of the parties hereto, nor an employee of them, nor interested in the outcome of the action;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 17th day of January, 2016.

JEAN F. SOULE, Notary Public, RPR

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