



THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RICK HOLLIFIELD

)

) No. GIN003700

Plaintiff,

)

Vs.

)

RICHARD M.BRAUN, M.D, KAVASS

)

CONSTRUCTION CO, OLSEN STEEL,

)

INC, ARGONAUT INSURANCE CO,

)

)

Defendants.

)

)



Deposition of DEAN GOETZ,

at 603 North Highway 101, Suite H,

Solana Beach, California, Commencing at 12:30 P.M.

Friday, February 9, 2001

before Laura Ann Longarini, Certified Realtime Reporter

CSR No. 12384

Jan White & Associates
Certified Court Reporters

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2 FOR THE PLAINTIFF:

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9 FOR THE DEFENDANT:

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17
18 ALSO PRESENT:

19 RICK HOLLIFIELD

1
2 DEAN A. GOETZ,
3 having been first duly sworn, testified as follows:
4

5 EXAMINATION

6 BY MR. DEUPREY:

7 Q. State your name for the record, please.

8 A. My name is Dean Goetz, G-O-E-T-Z.

9 Q. You're an attorney; is that correct?

10 A. Yes.

11 Q. Would you state the nature of your practice,
12 generally speaking?

13 A. Civil litigation practice, do criminal work,
14 small amount of transactional things, primarily civil
15 litigation.

16 Q. And how long have you been in practice?

17 A. 1975.

18 Q. At one point you were one of the attorneys for
19 Mr. Hollifield, the plaintiff in this action?

20 A. Yes.

21 Q. And what documents, if any, have you reviewed in
22 preparing yourself for this deposition?

23 A. Almost nothing. I did look at some. I think I
24 looked at the file that says "notes and memos", something
25 like that. I looked in that file, looked through some,

1 whatever it was in there, and I think you've looked at
2 that file. It says, "memos," --

3 Q. What you provided to me yesterday and today to
4 review were three boxes labeled: Law-055,-056, and -057;
5 is that correct?

6 A. Yes.

7 Q. And so, as far as you know, does that constitute
8 your entire file?

9 A. Yes.

10 Q. Within those boxes there are a couple of manila
11 folders labeled: "Memos" et cetera; is that correct?

12 A. I don't know how many but I think there's one
13 for sure and I should, I guess, indicate that I have not
14 gone through those boxes carefully. It's like any other
15 office. Things can get misfiled, I suppose, or we close
16 files probably on a monthly basis. Anything's possible.
17 I found information misfiled in our files before, not very
18 often but it is it possible, yes.

19 Q. With the assistance of your staff, you caused to
20 be placed in those boxes what you believe to be your
21 entire file. It was your intent to have your entire file
22 in those boxes; is that correct?

23 A. I didn't actually do it, no. I told them to
24 prepare all the files from Rick Hollifield's case and get
25 them ready.

1 Q. And you're not aware of any other pieces of
2 paper pertaining to Hollifield's case which are at this
3 time outside of those three boxes?

4 A. I am not.

5 Q. And in reviewing those boxes yesterday and
6 today, it appeared that you substituted in as counsel in
7 09/77; is that in accord with your recollection?

8 A. I don't remember the date. I'd have to refresh
9 my memory. I don't know what the date was.

10 Q. Would it, generally speaking, be about a year
11 before the case was settled?

12 A. Again, I don't know. I'd have to check the
13 files and go through to find dates.

14 Q. We can do that later if it becomes necessary.
15 What I'd like to do is address the time frame of the
16 settlement. You were an attorney for Mr. Hollifield at
17 the time the case was settled?

18 A. Yes. Richard Sax and I were representing him.

19 Q. What was the relative division of labor between
20 you and Mr. Sax in representing Mr. Hollifield?

21 A. Well, I don't know exactly what you mean by
22 that. I'll try to answer it. If I recall, it's been a
23 few years. I handled all the pleadings and prepared the
24 mediation brief and handled the depositions. He may have
25 attended. I couldn't tell you for sure. I don't remember.

1 And I handled the negotiations up to the point of the
2 mediation, and of course we were both there and
3 participated fully in those discussions.

4 Q. There were two mediation meetings in the case
5 before retired Judge McCue?

6 A. I thought there was one, but might have been
7 two. Again, I'd have to look through the memos. It's
8 possible there were two. I have had occasions where I've
9 been before Judge McCue and come back. Maybe this is one
10 of them.

11 Q. Let me get the box with the note files in front
12 of you and ask you to take a few minutes to look through
13 your memos.

14 A. I'll get my glasses.

15 (Discussion off the Record.)

16 BY MR.DEUPEY:

17 Q. While we've been off of the record, we've gotten
18 box Law-057 up to the front and removed the "notes and
19 memos" file. Mr. Goetz, my question to you, as you go
20 through that memos file, is whether you can find any notes
21 in that file that refresh your recollection as to the
22 number of mediation meetings before Judge McCue?

23 A. No, I don't have anything in here that would do
24 that, at least that I'm finding.

25 Q. Did you take memos at the time of attending the

1 mediation?

2 A. Again, I don't remember, and if I did, they're
3 not in here. At least I don't see them.

4 Q. Would it have been your practice to take memos
5 at a mediation of this type?

6 A. Generally, yeah -- yes, I would take some memos.
7 They would be very minimum though.

8 Q. If you had taken any memos at the mediation
9 before Judge McCue, would they be located in any other
10 place than the note file that you're looking at, so far as
11 you know, based on your general practice?

12 A. Based on my general practice, they would be in
13 this file. They're not here. I didn't take any out or
14 throw them away.

15 Q. Now, when you handle any of these matters and
16 you speak to treating physicians, is it your
17 custom and practice to take memos of such conversations?

18 A. Yes, it would be.

19 Q. Do you have any recollection of having ever
20 spoken, either by telephone or face-to-face, with
21 Dr. Richmond and Dr. Braun at any time while you were
22 representing Mr. Hollifield, prior to the settlement?

23 A. I don't recall ever speaking to him
24 face-to-face. I may have spoken to him on the phone, and
25 I do not have an independent recollection of that

1 telephone conversation.

2 Q. Are there any memos in your memos files
3 reflecting any telephone conversations or any other
4 contacts with Dr. Braun?

5 A. I haven't gone through the whole file. Like I
6 said, the only folders I looked at were these.

7 (Indicating) I don't see any here though. I received
8 letters from him. I know that. And I'm sure that they
9 were in the medical files.

10 Q. Right. My question really goes to any notes
11 reflecting any telephone conversations or face-to-face
12 meetings.

13 A. I don't see any notes on any conversations or
14 meetings with Dr. Braun.

15 Q. Given your confidence that you did not speak
16 with him face-to-face and --

17 A. Not that I recall, no.

18 Q. If in fact you do not specifically recall any
19 telephone conversations with him

20 A. No. I couldn't tell you what was said.

21 Q. Do you have any recollection whatsoever of
22 having been on the phone with Dr. Braun regardless of what
23 you recall, if any?

24 A. I don't remember.

25 Q. And given the fact that there are no notes of

1 any telephone calls or meetings with Dr. Braun, what would
2 be the likelihood that you had no phone conversations and
3 had no face-to-face meetings with Dr. Braun while you were
4 representing Mr. Hollifield?

5 A. I haven't looked through these three boxes, only
6 two folders. I didn't find anything in here, which is
7 where they would normally be, but, you know, it's possible
8 that I wrote on his medical records or his report when I
9 was talking to him, made a copy of it and made notes on
10 it. I don't have any specific recollection of doing that.

11 If that happened there is a possibility that
12 that extra report, which would have been a copy that I
13 made so I could write on it without destroying his
14 original report -- would have been something that I would
15 have normally kept in the file.

16 But, it's not here, I don't know where it is,
17 and again, I don't know if I had that conversation with
18 him. But, I know that sometimes I do that; I make a copy
19 of the medical report and go over it with the doctor and
20 make notes.

21 Q. What happened, to the best of your recollection,
22 at the mediation meeting or meetings with Judge McCue?

23 MR. SAX: Objection. That's only -- obviously
24 broad. Can you confine that to a specific request?

25 ///

1 BY MR. DEUPREY:

2 Q. Basically who said what to whom in front of
3 Judge McCue when the first meeting was, if there was one?

4 A. I don't know. I would have to look at a
5 calendar. It was written in the calendar. There's
6 probably a brief around here someplace.

7 Q. There is, in those boxes, a mediation file. And
8 let me--

9 A. That probably has a date on it.

10 Q. Let's look at that. I found it. It's in box
11 number law-055, and I'll hand to you.

12 A. Looks like it was August 11, '98. That's what it
13 says on here.

14 Q. You're looking at a manila file which has
15 reports copies of -- I'm sorry -- mediation brief?

16 A. Brief, right.

17 Q. May we take one of those three copies and mark
18 it as an exhibit? Mark this as Exhibit Number 1. And the
19 first page of that has a date of Tuesday, August 11, 1998,
20 as the mediation date; is that correct?

21 (Defendant's Exhibit 1 was marked for identification and
22 is attached hereto.)

23 THE WITNESS: It is August 11th, '98, yes.

24 BY MR. DEUPREY:

25 Q. And did you prepare this mediation brief, mr.

1 Goetz?

2 A. Yes.

3 Q. "Mediation brief" appears to be dated. It is
4 dated August 17, 1998, according to Page 8, Line 14. Does
5 that suggest that the mediation date was continued from
6 August 11 to a date after August 17?

7 A. Yes, it might have been. If you want to take a
8 break, I can go look at my calendar.

9 Q. That would be fine. When you look at your
10 calendar, I'd appreciate it if you would also scan the
11 month of September to see if there was a second meditation
12 meeting. My information, just to save you time, is that
13 there was a second meeting on September, 29th, if you
14 wouldn't mind economizing.

15 {Recess.}

16 BY MR. DEUPREY:

17 Q. Thank you for getting your calendar during the
18 break, Mr. Goetz.

19 A. Yes. Here it is, August 11th. I had a note
20 that there was a mediation in this case, the Hollifield
21 case, at 1:00 p.m., but I have it crossed off, and I
22 believe that it means it was postponed for some reason.

23 On the 18th of August at 1:00 p.m, I have
24 another note indicating there was mediation at 1:00 p.m,
25 on the Hollifield case.

1 I suspect it probably went forward on this
2 date, which would indicate that this mediation brief was
3 signed on the 17th of August. It was probably completed
4 before. But not signed until then. It looks to me like
5 there was a CMC scheduled at 1:30 on --

6 MR. SAX: After August?

7 THE WITNESS: I don't know.

8 BY MR. DEUPREY:

9 Q. Would you check your calendar for September 29,
10 I have information there was a second.

11 A. Well, I show a note, Monday, September 28th,
12 settlement conference at 10:00 a.m.

13 Q. 09/28 at 10:00 a.m.?

14 A. I don't know where that was, if that was with
15 Judge McCue or a court schedule.

16 I also show on October 2nd that I had a meeting
17 with Dr. Braun at his office, and again, I don't know if
18 that occurred either. It's on my calendar. Maybe I did
19 see him in his office.

20 Q. I appreciate your pointing that out. Just to
21 clear the record here. Do you have any recollection
22 whatsoever of ever meeting Dr. Braun face-to-face either
23 on October 2 or any other date?

24 A. Well, I've met a lot of doctors, and I don't
25 remember if I've met him or not.

1 Q. That's all you can say?

2 A. I really don't--I do not have recollection of
3 meeting him. That doesn't mean that I didn't. I looked at
4 my calendar. I'd have to say I did. It's not crossed off
5 my calendar.

6 Q. You answered my next question; what was the time
7 on October 2nd that the appointment was?

8 A. 4:15. And I have his address and phone number
9 and all that.

10 Q. What's the address in which--

11 A. If I can read my writing, "04/15 Hollifield, Dr.
12 Braun, 770 Washington Street."

13 Q. Are you able to show me that particular page so
14 I can see what it looks like without violating any
15 confidences of any other clients?

16 (Indicating.)

17 A. If you can read my writing. Can you see it
18 there?

19 Q. I can. I see "04/15 Hollifield", then "Dr.
20 Braun, 770 Washington Street." Then there's "2995" -
21 something. I'm having a hard time reading. Is there any
22 way, from the facts, or by way of simply looking on your
23 calendar, to tell whether the meeting did occur or not?

24 A. I usually cross things off if they get
25 cancelled, but again, I do not remember specifically

1 meeting with him.

2 Q. Do you remember what the purpose of the
3 appointment was, given the fact you had one on October
4 2nd?

5 A. Well, I'm going to assume--

6 MR. SAX: No. I instruct you not to answer unless
7 you know.

8 THE WITNESS: I don't know. Other than he was
9 a treating physician, and I was interested in talking to
10 him about his opinion in this case.

11 MR. SAX: Please don't speculate, Mr. Goetz.

12 BY MR. DEUPREY:

13 Q. Would it be your custom and practice to try to
14 meet with a treating physician such as Mr. Hollifield?

15 A. Yes, at some point, yes.

16 Q. Why did you have that custom and practice? What
17 was of the purpose of meeting with a physician?

18 A. It would usually be trial prep.

19 Q. Now, if the meeting were set up solely for the
20 purposes of trial prep, and if it was at a period at or
21 about the time of the meeting that the case was probably
22 going to settle, what would have been your custom and
23 practice with regard to going forward with the meeting?

24 A. I would have had the meeting, unless the case
25 settled.

1 Q. Even though the meeting would cost your client
2 to meet with the doctor?

3 A. Until the case is settled, you have to plan to
4 go ahead.

5 Q. And when did this case settle? When was the
6 final decision made between you and Mr. Hollifield and Mr.
7 Sax to settle this case?

8 A. I don't know. And again, I would have to look
9 at the paperwork.

10 Q. All right. Let me direct your attention, then,
11 to a note which I found in reviewing the records yesterday
12 and today, which is contained in one of the "notes and
13 memos" files on the left side. I'll show you that
14 document now. This is a handwritten note on a stationery
15 "Summit Settlement Services, " a letter dated October 7,
16 '98. In the lower left-hand corner, there's writing which
17 appears to have some relationship to a discussion of
18 settlement; are those notes yours?

19 A. Yes.

20 Q. Can you read that notation into the record,
21 please?

22 A. "I discussed with Rick 3:45 p.m., on -- looks
23 like -- 10/07/98, doesn't want structure, he wants to
24 settle." And that could have meant that he didn't want
25 structure settlement? He would have wanted all the money

1 instead of waiting for it, which is what that is about?

2 Q. Do you recall any reasons Mr. Hollifield gave
3 you for wanting the money in a lump sum other than
4 structure?

5 A. No.

6 Q. Does that note refresh your recollection when
7 the final decision to settle was made?

8 A. No.

9 Q. I'd Like to make that document as Exhibit 2, and
10 for purposes of orderliness for the court reporter, we are
11 removing the document from the file and putting a sticker
12 with a number 2 on it.

13 Would you take a few minutes to look through the
14 file and determine, as best you can, the date or
15 approximate date when the final decision of settlement was
16 made?

17 (Defendant's Exhibit 2 was marked for identification and
18 is attached hereto.)

19 THE WITNESS: Well, there's a letter dated
20 October 20, from Kawabata, Attorney for Olsen Steel.

21 BY MR. DEUPREY:

22 Q. May I ask you what letter are you referring to?

23 A. Yes, it's--

24 Q. And what's contained in that letter that
25 indicates to you that a settlement decision had been made?

1 And not to paraphrase--

2 A. What he says in here, this will confirm that
3 we've settled in the amount of \$200,000, talking about the
4 preparation of the settlement draft, so, it had to have
5 happened sometime before October 20.

6 This -- I couldn't tell you right now when that
7 occurred, though, although, there is a letter dated
8 October 9th from Mr. Kawabata to indicate that he's going
9 to be appearing on October 13th and asking for a short
10 continuance of the trial. So, it had to settle sometime
11 between the 9th and 20th, October 1998.

12 Q. Is there anything in the file which helps you
13 narrow the gap to better determine when the settlement
14 agreement was reached between October 9th and October
15 20th?

16 A. It would take me hours to find it.

17 Q. Understood. I don't want you to take the time
18 to do that now. I noticed in the file a jury fee payment
19 form by Ken Kawabata's firm paying jury fees on October
20 16, 1998?

21 A. Case wasn't settled then either.

22 Q. That would be the logical conclusion.

23 A. I would say so. There is a disbursement letter
24 here which was dated and signed November 3rd. You know,
25 but--

1 Q. November 3rd of '98?

2 A. But I would suspect that the settlement-- you
3 said, "When did we agree to settle?" That probably
4 happened sometime around October 20th, I'll guess, maybe a
5 day or two at the most before that.

6 Q. Relying on the payment of jury fees of October
7 16, '98, and in consideration of Mr. Kawabata's letters to
8 you confirming the settlement of October 20, then, we can
9 at least narrow down the range of time when the final
10 settlement agreement was reached as sometime between
11 October 16 and October 20 1998; is that correct?

12 MR. SAX: I'll object to that. It misstates his
13 testimony he's given you that the disbursement was at
14 11/3/98, which may be a more accurate date for the finally
15 settlement.

16 BY MR. DEUPREY:

17 Q. Whatever it is. I just want the collective
18 wisdom to tell it to us for the record when the most
19 likely time was for the final decision to settle. I'm not
20 talking about when the documents were signed. When the
21 phone call was made and counsel on each side said, "Yes,
22 we have an agreement."

23 A. I'm going to state that it was around October
24 20th, but I don't know precisely.

25 Q. Okay. Now, do you have any recollection of the

1 phone conversation you probably had with Dr. Kawabata when
2 you reached a settlement agreement?

3 A. No.

4 Q. Do you have any recollection of your last
5 discussion with Mr. Hollifield, whether the case should be
6 settled prior to your reaching a settlement agreement for
7 the amount of \$200,000?

8 A. I don't.

9 Q. Do you have any recollection of your last
10 conversation with Mr. Sax on that subject just prior to
11 advising Mr. Kawabata that there would be a settlement?

12 A. Not without looking at notes and things. I
13 don't remember what was specifically said by oral
14 discussion. I would -- generally speaking, I know the
15 issues in the case; I know what we probably talked about
16 in these "notes and memos." That we tossed about numbers.
17 So, we probably talked about those things.

18 Q. Would it be your custom and practice when you're
19 having a phone conversation with a lawyer on the other
20 side, such as Mr. Kawabata, to make any notes of such
21 conversation?

22 A. I usually don't unless I have a reason to.

23 Q. You basically customarily rely upon a letter to
24 come from the other side or you send one; is that correct?

25 A. Yes, if it's necessary.

1 Q. When you have co-counsel such as you did here
2 with Mr. Sax, however, it would be your custom to discuss
3 any final problems with him as well as Mr. Hollifield in
4 reaching a final decision?

5 A. Yes.

6 Q. But you have no recollection, without looking at
7 notes, of any such discussion?

8 A. I'm sure everybody was in agreement.

9 Q. Would you look through your notes to see if
10 there are any notes of any such discussions with Mr. Sax
11 or Mr. Hollifield for conveying the decision to settle?

12 A. Not any specific notes indicating the time or
13 date of the meeting or specifically what was discussed.
14 But I know that these documents are typed up. I think
15 they're all typed up. ~~They talk about loss of mechanic~~
16 ~~liability apportionment.~~ J

17 They're documents I prepare to try to evaluate
18 the case, you know, and then I use these to explain what
19 the possible results would be with Mr. Hollifield and Mr.
20 Sax, and the three of us talked about it.

21 Q. Would you gather those documents so we can mark
22 them as exhibit-- please let the record reflect--

23 A. It looks like some of them are duplicated.

24 Q. Even if they are duplicates--

25 A. They might be the--

1 Q. I'll mark them, even if they appear to be the
2 same. Anything from your notes file that will fall in the
3 same category? We'll mark that packet as Exhibit 3 --
4 marking that as packet Exhibit 3, which consists of one,
5 two, three, four, five, six, seven, seven pages. The top
6 page is entitled "likely result," and then the third page
7 has captions or sections entitled "best possible result,"
8 and "worst possible result," then the 4th page again has
9 "likely result," an the 6th page has "best possible
10 result," "worst possible result," and then the final page
11 has "likely results," again.

12 (Defendant's Exhibit 3 was marked for identification and is
13 attached hereto.)

14 MR SAX: Let me see that.

15 MR. DEUPREY: I'll provide those to you, Mr.

16 Sax.

17 BY MR. DEUPREY:

18 Q. Are there any other notes in your note file
19 which would pertain to discussions leading up to the final
20 decision to settle?

21 A. Not that I see in this folder.

22 Q. I'd like to review Exhibit 3 in more detail, and
23 I hate to have you do this, but it's only one page. Would
24 you please read the notes in handwriting on the back of
25 those pages?

1 A. "Mr. Hollifield fell because the slack in the
2 cable, caused a rapid drop of the channel."

3 And then the next part is the 'ladder use',
4 "defendants contend that Mr. Hollifield's placement of the
5 ladder was negligent," "we contend that" -- hard to read
6 my own writhing sometimes. "We contend that given the --
7 something -- Mr. Hollifield had the ladder in a safe place
8 or placed the ladder in a safe manner." This is just
9 shorthand notes. Some of this probably is not
10 grammatically correct.

11 Q. Understood. Do the best you can.

12 A. "He would not have fallen if defendants had not
13 caused the -- I don't know -- the slack in the cable.
14 Then the major issue in this case is liability. Mr.
15 Hollifield has suffered permanent disability. Defendants
16 will contend that plaintiff's negligence in ladder
17 placement caused him to fall." "Plaintiffs contend that
18 the negligence of the third party caused Mr. Hollifield to
19 fall."

20 I can't read the lower part of that and there's
21 a portion over here on the right says, "the meds have been
22 paid by Argonaut." "The meds and TD", which would be
23 temporary disability.

24 Oh, the bottom part says, "additional" -- I'm
25 not sure -- may be "complaint" or "problem" that Argonaut

1 is the workers' comp carrier for Kawabata and also for, I
2 think it says, "Olsen steel".

3 That was one of the problems they had, the same
4 carrier for workers' comp and the general liability
5 policy.

6 Q. In those handwritten notes, you concluded a
7 statement to the effect that, quote, "The major issue was
8 liability," end quote. What do you mean by that?

9 A. By that I meant that everyone knew that he had
10 incurred a serious injury. That was not something you
11 *d* could ~~not~~ dispute. He did. He got hurt, hurt bad. So,
12 if liability was there, the case obviously would be worth
13 some money. And liability was an issue.

14 In some cases liability isn't an issue. You
15 have a car accident, a rear-end collision, but it's not
16 really a serious issue. But, in this case,
17 liability--they wanted to attack. That was a place they
18 could attack whereas his injury, you know, he had a bad
19 injury. A matter of degree was something you could argue.

20 They weren't about to argue that he wasn't
21 injured or it wasn't serious or to downplay it; that
22 wasn't where they were going to go. They were going to
23 *d* have to ~~go over~~ ^{argue} the issue of liability.

24 Q. So, in terms of the liability issue, you had to
25 consider the risk that Mr. Hollifield would be

1 comparatively negligent if the case went to trial?

2 A. Yes -- well, yes that was one of the potential
3 risks, yes.

4 Q. And from these notes, Exhibit 3, looking through
5 these seven pages, are you able to tell me when any of
6 these notes were prepared?

7 A. Not exactly, but they would have been ^{prepared} at or
8 about the time of the mediations. They would have been ^{prepared}
9 before the mediations, but sometime around that.

10 Q. Because we've now established there were two
11 mediation dates, based on your calendar?

12 A. I don't know that we've established that.

13 Q. Let's go back to that question. Look at your
14 calendar again for 09/28.

15 A. I have a note "Hollifield settlement
16 conference," but I don't know if that was in court or with
17 Judge McCue, I couldn't tell you.

18 Q. Okay. If we assumed that Judge Mc Ue handled
19 the August 18 mediation, would it be likely that he would
20 handle any follow-up?

21 A. Yes, it is likely.

22 Q. But regardless whether it was McCue in both
23 meetings or not, my question goes to whether, given the
24 apparent fact that there were two mediation meetings --
25 whether you can most likely determine when the notes in

1 Exhibit 3 were made? Were some made prior to the first
2 and some prior to the second?

3 A. I don't know. They're not dated.

4 Q. I notice that most of them are in typewritten
5 form with bold font --

6 A. Uh-huh.

7 Q. -- in some places with headings. Does the
8 format of these tell you who actually typed them up,
9 yourself or the secretary?

10 A. I did it.

11 Q. Okay. It is your custom and practice to do
12 these kinds of notes on your own at your computer at your
13 desk?

14 A. Yes.

15 Q. So, looking at Page 3, under the category "worst
16 possible result --

17 A. Yes.

18 Q. -- would you walk us through your thinking in
19 preparing that particular section of those notes?

20 MR. SAX: If you recall your thinking.

21 THE WITNESS: Well, looking at this, there were
22 a lot of different possibilities. Hollifield could have
23 been found responsible, comparatively negligent in a
24 certain percent, anywhere from 0 to 8 percent. What I try
25 to do is lay out several different scenarios, and by doing

1 that, coming up with what he would end up with. And his
2 employer was Kavass, and he cannot sue Kavass.

3 BY MR. DEUPREY:

4 Q. For the correction of the record, the actual
5 spelling of Kavass, which varies from the exhibits.
6 K-A-V-A-S-S.

7 A. That's correct. I spelled it wrong in this
8 document. It's right in the pleadings anyway. This
9 "worst possible result," what I have, is Hollifield 70%
10 comparatively. It's called "liability apportionment."
11 "Olsen 0% recovery." Zero from Olsen Steel and the WCAB
12 payout at that time was apparently \$160,000 or
13 thereabouts.

14 He already received those benefits, in one form
15 or another, that would have been medical bills paid,
16 temporary disability paid. He may have received some, I
17 don't know. I don't remember.

18 He may have received--there may have been other
19 benefits other than TD and medical benefits.

20 "Rehab. \$20,000" looked like, and of course if
21 that had occurred, his only recovery would have been
22 through workers' comp, and I have that the headline of
23 that worst possible result. In other words, the worst
24 possible result ^{is} that you lose. *J*

25 Q. What was your thinking on the basis of, "30%

1 possible negligence on the part of Kavass"?

2 A. I don't remember specifically, but these are
3 numbers I'm pulling out as a guesstimate as to the worst
4 possible thing that could happen.

5 I didn't think that Rick Hollifield would, even
6 worst possible result, be a hundred percent comparatively
7 negligent. I didn't think that would happen.

8 Kavass, their negligence could have been not
9 providing enough workers: Somebody to hold a ladder, a
10 different ladder, a better ladder, there could be a lot of
11 things that one could argue. If you look at the others, I
12 don't have Kavass as being more than, I guess, 30 percent
13 on any of these.

14 Q. Okay. On the same page where you put, "the
15 worst possible result" with Hollifield at 70%, you have a
16 "best possible result" above that with Hollifield at 30%;
17 is that correct?

18 A. Yes, that's what it says. And these are
19 different. Obviously I prepared these at different times
20 after going through these. I also have "likely result" on
21 the first page and Hollifield 10%.

22 I think my thinking must have been that it was
23 likely between 10 and 30 percent. Hollifield and Kavass
24 were joined in terms of any negligence attributable to
25 them, which was bad for us, either one. You can't sue

1 Kavass anyway.

2 Q. Because the negligence of Mr. Hollifield,
3 combined with that, Kavass would have been deducted from a
4 hundred percent, thus reducing Olsen Steel, correct?

5 A. Hollifield couldn't sue. His remedy there was
6 workers' comp. Any negligence attributed to Kavass or
7 Hollifield was bad for us, and it didn't matter who it was
8 assigned to--Either one was bad. This particular first
9 page "likely result" is 10% Hollifield, 40% Kavass. The
10 other page is "best possible result" is 30%, 10% Kavass.

11 Q. So you came up with a total of 40 to 50 percent
12 combined Hollifield and Kavass in those two analyses?

13 A. Yes, and again, that was an estimate of--a
14 guesstimate of what could occur if the case had gone to
15 trial.

16 Q. You have on the 4th page down in that packet
17 Exhibit 3, the "likely result" analysis where you came up
18 with a total to be paid by Olsen of \$200,000; do you see
19 that?

20 A. Yes. This may have been done after we got an
21 offer of two hundred just--

22 Q. So that would have--

23 A. I don't know that for sure, but it kind of,
24 since the numbers are right on as to what we got money
25 from Olsen, I'm thinking that I probably took the two

1 hundred and worked backwards indicating how that result
2 could occur.

3 Q. What's the significance of the title in that
4 analysis as, quote, "likely", end quote?

5 A. Probably that I didn't change the heading. I
6 already had prepared these. I went back and didn't change
7 the heading, just changed the numbers.

8 I notice another page here--too hard to read the
9 back. I don't know if these are copies. I'd have to
10 look. "Best possibility result," on one hand, I had
11 written on the side that "no fusion," and on the next
12 page, the last page of this, it says, "likely result with
13 fusion" these are numbers that I'd come up with based
14 on--in that case I must have been looking at whether he
15 had had a fusion or not. By "fusion." I mean whether the
16 bones had fused, whether there was healing, which of
17 course if he had fusion, it's a much better scenario than
18 if he didn't. It means he would have to have additional
19 surgery and lots of other problems.

20 Q. Can you give me a more specific time frame for
21 when the analyses were done, where you made a notation
22 where you said "fusion" and, quote, "no fusion," end
23 quote?

24 A. No. I don't remember whether these were done
25 exactly--they were sometime around that settlement

1 mediation period of time, before or after or between
2 somewhere in there. I know that. I do remember that.

3 I felt the case was worth more money, if in fact
4 he was going to need more surgery, if the bones did not
5 fuse, and of course Dr. Braun's letter indicates that
6 there was fusion of the bones, and that made it a
7 different case.

8 Q. So, those notes could have been made anytime up
9 to the last mediation meeting?

10 A. Yes, or it's possible they could have even been
11 done after. I know one of these was done sometime after
12 we got \$200,000. However, that was being considered
13 seriously. I'm certain I worked using the 200 as the
14 bottom line and seeing how would that play out is
15 something in the realm of what could happen if we went to
16 trial.

17 Q. So, probably would be helpful now if we could
18 figure out, when you got the \$200,000 offer, that probably
19 prompted that note in Exhibit 3. Are you able to inform
20 us of that by looking at your file or--

21 A. Not--not exactly. It would be around the time
22 of his letter, Ken Kawabata. The 20th of October, I
23 believe, right? Isn't that the date of his letter?

24 Q. That was the date of the settlement confirmation
25 letter?

1 A. Yes.

2 Q. So, in essence, any of those notes in Exhibit 3
3 may have been made anytime prior to October 20, 1998?

4 A. Yes. I believe they would have been. Yes. Once
5 it was settled, I wouldn't have been doing this.

6 Q. Looking at the "likely result with fusion,"
7 which is the last page of those notes, you have Hollifield
8 at 30 percent, Kavass at 30%, and Olsen at 40%; is that
9 correct?

10 A. Yes.

11 Q. When you made those notes, was your thinking
12 that those percentages of fault would most likely be
13 reached by a jury?

14 A. Not necessarily. It was again an estimate of a
15 possible result. And as you can see, I did several of
16 these.

17 The main purpose of doing this was to show I
18 thought it was complicated in terms of three parties, all
19 of which could have comparative negligence.

20 Workers' comp paid out 160, and then the
21 question was how does that equate to the bottom line?

22 And based on the rules that apply, you can see
23 in each case how much Olsen would pay in new money, and
24 they paid one percent of the non-economic damages and then
25 a different percent of the non-economic damages which is

1 all relatively complicated. You have to sit down with pen
2 and pencil to get to the bottom line. My main of purpose
3 was to paint several different scenarios not that any one
4 of them was accurate or my best guess or best estimate as
5 to what happened, what would happen, just to show how,
6 using the different percentages of fault and different
7 numbers in terms of beginning number -- how you would end
8 up, bottom line.

9 Q. I guess what I'm try--

10 A. I thought I had to do that. It was fairly
11 complicated, and the only way to really show anybody how
12 it worked was to put it down like this.

13 Q. What I'm trying to understand more clearly is
14 what you meant by the category "likely," quote, end quote
15 as opposed to the other categories "best" end quote and
16 "possibly," end quote. What did "likely," mean?

17 A. The headings didn't really mean much of anything
18 other than the one "worst result" is obviously zero. That
19 one didn't need much explanation.

20 The others I would try to do different
21 scenarios. The heading didn't mean much of anything, just
22 if the fault is thus and so, and the economic damages are
23 this number, and the non-economics are this number, here's
24 what you'd end up with.

25 Q. How important was it in making your decision to

1 settle to determine whether Mr. Hollifield had fusion or
2 did not have fusion?

3 A. Well, by fusion --

4 Q. What was referred to in Exhibit 3. One page
5 says "with fusion" and another page says "without fusion".

6 A. By "fusion," I meant that his bone had fused.
7 When I have "with fusion," that means the bones fused.
8 Based on the letter from Dr. Braun, he had fusion. Which
9 would be good, in terms of a better medical result. It
10 would mean that his case would be worth less.

11 And "no fusion" meant that the bones hadn't
12 fused in my mind.

13 Based on the medical report, that wasn't the
14 report that we got. The report that we got said he had
15 fusion of the bones, ~~and I thought the case was worth~~
16 ~~substantially more.~~ *f*

17 *f* If ~~I~~ ^{we} did not have fusion of the bones, healing,
18 in other words, ~~because~~ that would mean that he'd have to
19 have more surgery, more medical bills, more economic
20 damages, and he'd be off work longer, so, there would be
21 more -- additional economic damages in terms of loss of
22 income. So, ~~it's~~ ^{would} the potential was greater. *f*

23 Q. When you made the notes in Exhibit 3, at least
24 the last two pages, Page 6 stating "no fusion," and Page
25 seven stating "with fusion," did you at that time not know

1 whether there was a fusion?

2 A. I don't remember the date of Dr. Braun's letter.

3 Q. Well, aside from the date of the letter, which
4 may help or not help answer my question. I'm addressing
5 what your state of mind was when you wrote "with fusion"
6 and a scenario when you made notes. Did you at that time
7 know, one way or the other, whether there had been fusion?
8 And was that the reason why you did two different
9 scenarios, one with fusion and one without fusion?

10 A. Well, I didn't know whether there was a fusion
11 or fusing of the bones -- put it that way -- until I got
12 Dr. Braun's letter, which I think it was sometime in
13 August, maybe September -- I'm not sure -- of '98, so I
14 think I had his letter before I did these.

15 Q. So, if you had his letter before you did these
16 notes, you did one with no fusion and one with fusion. I
17 need a clear indication as to why you would do two
18 different scenario, one with and one without fusion, if
19 you had already received Dr. Braun's letter of August
20 18th?

21 A. I can't recall.

22 Q. Was there anything in the letter of August 18th
23 which left some question in your mind whether there was in
24 fact a fusion?

25 A. I don't remember.

1 MR. SAX: Excuse me Counsel. Have we established
2 a date on these notes?

3 THE WITNESS: I don't know ^{whether} ~~whether~~ I did them.
4 It was at or about the time of the settlement conferences
5 or mediations.

6 BY MR. DEUPREY:

7 Q. What I'd like to do is ask you, now that we've
8 had a chance to go through Exhibit 3 and we've talked
9 about the settlement consideration thus far in the
10 deposition, I'd ask you what demands were made on behalf
11 of Mr. Hollifield at the first mediation conference?

12 A Well, that probably would be in the mediation
13 brief. Let's look.

14 Q. Looking at Exhibit 3, there appears to be a
15 page, it's Page 3, it states "settle at \$300,000." Does
16 that refresh your recollection?

17 A. ~~Again, yes.~~ ^I No. It doesn't reflect my
18 recollection as to what the offers were at the mediation.
19 These are notes that I made to myself and I do them.

20 Frequently these may change. I don't know, ^{when} ~~when~~
21 I did this, ^A lot of the times I'll put a number down as
22 the case proceeds, ^I It may change. You have to remember
23 that any settlement offer that we made would have included
24 -- they would get a credit for whatever work comp money
25 that they had paid. they already paid \$160,000. So, if we

1 were talking about \$200,000 in new money, that was a
2 \$360,000 settlement.

3 Q. Do you recall what was offered, if anything, at
4 the first mediation?

5 A. I don't.

6 Q. Who attended the first mediation besides you and
7 Mr. Sax? For example, was Mr. Hollifield present.

8 A. I'm sure he was present at any mediation that we
9 had, but I don't even remember there being two. ~~So, I~~
10 ~~guess there were.~~ *f*

11 Q. Do you remember one?

12 A. I remember being at a mediation.

13 Q. That was in front of Judge McCue?

14 A. Yes.

15 Q. Do you remember who was there?

16 A. Ken Kawabata was there, and Richard Sax was
17 there, Rick Hollifield was there, Judge McCue was there, I
18 think he had his clerk there, his assistant, a lady, and
19 there was an insurance adjuster there at one of them
20 and--

21 MR. HOLLIFIELD: That was Jones.

22 BY MR. DEUPREY:

23 Q. And was anybody else there? Was there any
24 attorney other than yourself representing any party to the
25 workers' comp proceeding?

1 A. You know, I think there was a workers' comp
2 attorney for--or adjuster representing the insurance
3 company. I think they had two adjusters there. I could
4 be *wrong, if*

5 Q. Was Argonaut one for the workers' comp side and
6 one for the third-party side?

7 A. I could be wrong. That sounds familiar. I'm not
8 sure about that, no.

9 Q. But maybe they were comp attorneys for the
10 defense, maybe?

11 A. Seems like one was there, maybe. I don't know
12 who it was.

13 Q. Does Michael Jones ring a bell?

14 A. Yes, that name is familiar to me. It could have
15 been him.

16 Q. Anyone else who may have been there other than
17 those you have mentioned?

18 MR. SAX: Excuse me Counsel. In what capacity
19 did you indicate Michael Jones was there?

20 MR. DEUPREY: I thought he was one of the
21 attorneys involved in the workers' comp case. I can't
22 remember what side he was on. Just throwing out names if
23 that rings a bell.

24 MR. SAX: Thank you.

25 //

1 BY MR. DEUPREY:

2 Q. How long did the mediation last?

3 A. I don't know.

4 Q. Was it perhaps half day or full day, one hour?

5 A. I don't remember.

6 Q. Do you recall when you left the mediation,
7 there --

8 MR. SAX: Are we speaking of the first
9 mediation?

10 MR. DEUPREY: The one he can remember.

11 THE WITNESS: If I look at my notes--it started
12 at 1:00 o'clock, so, it couldn't be a full day.

13 BY MR. DEUPREY:

14 Q. 08/18 starting at 1:00 p.m. Okay, you don't
15 recall whether any progress was made or not?

16 A. No.

17 Q. You haven't been able to find any notes from the
18 mediation?

19 A. I haven't looked through all these boxes of -- I
20 just have this file.

21 Q Now, do you remember Dr. Braun's letter of
22 August 18 being brought up at the mediation?

23 A Yes.

24 Q. I guess what's confusing to me here is that the
25 date of the letter is August 18, can you clarify for me

1 how it is that you, -- on one hand, you remember Dr.
2 Braun's letter brought up at the mediation. But, on the
3 other hand, the only mediation you recall occurred on the
4 18th?

5 A. No. what I have said is that I don't remember
6 two mediations necessarily. I remember the mediations I
7 have a recollection of being at. Whatever
8 meditation--whether there was one or the other. I didn't
9 say that I only remember one of them. I remember being at
10 *the* ~~two~~ mediations. I don't have specific recollection as I
11 sit here today of them being two separate mediations, but
12 my calendar would indicate that's what happened.

13 Q. Based on your calendar, you believe there were
14 two mediations?

15 A. Sure looks like it.

16 Q. And you do have a recollection of Dr. Braun's
17 letter being mentioned at one of those mediations?

18 A. One or both. Again, I remember it being
19 discussed, yes. It was definitely a big point of
20 discussion among all the parties.

21 Q. All right. Did anyone produce a copy of this
22 letter?

23 A. Oh, yes. Everyone had copies of it.

24 Q. All right. And what was the substance of the
25 discussion back and forth among those present at the

1 mediation concerning Dr. Braun's letter?

2 A. What I remember generally -- and I haven't read
3 that letter in years -- what I remember generally the
4 conversation among all parties, you know. Sometimes we
5 were in the room with Magistrate McCue alone. Our side
6 was with him speaking, and then he would talk to the other
7 side. He would tell us what they said and, I'm sure, vice
8 versa.

9 And sometimes in the room--I do remember that
10 Justice Magistrate McCue felt that the letter was stating
11 we had a really good recovery, and that that was the
12 feeling of the other side, that he had made a really good
13 recovery from a really bad injury.

14 Q. And what was your response to that?

15 A. It was hard to argue with that when you read his
16 letter. I tried. I said "Well, what if he's wrong, what
17 if he's wrong?" and trying to get the price up, basically
18 the settlement up.

19 Q. And so basically the gist of it was the defense
20 and Judge McCue were urging Braun's letter as evidence of
21 a really good recovery, and your response to that was?
22 Was the question raised "What if Dr. Braun is wrong?"

23 A. Well, my response was, he's still got a really
24 bad injury, and he's entitled to money and there is a
25 possibility, you know, based on the letter, that doctor

1 seemed certain of his position. But medicine is medicine,
2 it's not an exact science I guess. But, you know, I was
3 trying to be an advocate for my client, trying to get him
4 more money. I'm stuck with this letter. There is not a
5 heck of a lot I can say.

6 Q. Was Mr. Hollifield wearing his splint at the
7 time he attended the mediation?

8 A. I don't know.

9 Q. Were you generally aware that he was still
10 wearing his splint at or about the time of the mediation?

11 A. I don't remember specifically.

12 Q. Was Mr. Hollifield still in possession of his
13 bone stimulator, to the best of your knowledge?

14 A. I don't know.

15 Q. Do you recall whether or not -- I guess you
16 answered this one. Let me speak totally clear.

17 Do you recall whether or not Mr. Hollifield
18 advised you that he was still using his bone stimulator at
19 the time of the mediation?

20 A. I don't remember.

21 Q. Do you recall that Mr. Hollifield at the time of
22 the mediation was still in treatment with Dr. Braun?

23 A. I don't remember that either, independent of
24 looking at the medical report of Dr. Braun.

25 Q. Do you remember that, at some point in the

1 history of treatment of Mr. Hollifield, he had begun to
2 use a bone stimulator at some point earlier?

3 A. Do I specifically remember that now? No. Did I
4 know it then? I'm sure I did. I'm sure we talked about
5 it, I don't remember now.

6 Q. You're generally aware that a bone stimulator is
7 to promote fusion of this type of treatment?

8 A. I think that's one of the possible treatments,
9 yes. That I've heard of, yes. It may be used for other
10 things too. I don't know.

11 Q. Can you remember anything else discussed at the
12 mediation other than Dr. Braun's letter?

13 A. Liability was discussed, how it happened, that
14 was the -- I think the first thing that was discussed,
15 actually, and there was some time spent on that,
16 certainly.

17 Q. Before we go to those others subjects, do you
18 remember anything else said, any other comments made about
19 Dr. Braun's letter at either one or both of the mediations
20 other than what you've already stated for the record?

21 A. Just generally the discussions revolved around
22 the fact -- and again we were talking to Magistrate McCue,
23 primarily on several occasions. "We're stuck with this
24 letter, there is not much you can do about it," and he
25 felt that it changed the complexion of the case in terms

1 of the value.

2 Q. By "He," do you mean Judge, Magistrate
3 McCue?

4 A. Yes.

5 Q. And what was his more specific opinion as to how
6 the letter affected your negotiating position?

7 A. His injury wasn't--I mean like I said before, if
8 in fact he needed more surgery because there was no fusing
9 of the bones, there's more medicals, there's more loss of
10 income; the end result is really in doubt.

11 Then probably they would fuse his wrist and he
12 would have no movement in it. That's a different picture
13 than one where the bones are mending quite nicely. Fusion
14 is looking pretty good. That's two completely different
15 pictures.

16 Anybody would have to say, "gosh there's ~~A~~, a *J*
17 different value under Scenario A as opposed to Scenario B.

18 *settles* ² He was encouraging us. His job was to try to
19 ~~sell~~ cases.

20 Q. I'm sure that if there was something in the
21 letter that favored your side, he'd tell the other people
22 to pay attention to that and pay more money. That's what
23 mediators do. That's their job.

24 But I'm wondering if you recall there being any
25 suggestions or discussions, any point made by McCue or

1 anybody else that there ought to be follow-up with Dr.
2 Braun to see just how clear the prognosis was?

3 A. Not that I recall. It was a pretty clear
4 letter. Everyone seemed to think that--he was the
5 treating doctor from day one. He wasn't a hired doctor.
6 A doctor hired just to look at him for some reason. He
7 was his treating doctor. He knew him from Day 1.

8 Q. Was Dr. Braun ever deposed?

9 A. I don't think so.

10 Q. One of the reasons I'm curious as to whether
11 there was any suggestions as to follow up is that you
12 established from your calendar that the second mediation
13 probably occurred on September 28, correct?

14 A. Yes, I think that is--was the date.

15 Q. And if you will get that in front of you --

16 A. Yes.

17 Q. -- what day of the week was that?

18 A. Monday.

19 Q. And then the same week on a Friday, October 2nd;
20 is that correct? You had a appointment with Dr. Braun;
21 correct?

22 A. Yes.

23 Q. Do you recall whether the appointment with Dr.
24 Braun was made before or after the mediation date of
25 September 28th?

1 A. I don't know for a certainty. Knowing doctors, I
2 doubt it -- if it was made after that.

3 Q. Do you know whether the appointment with Dr.
4 Braun was made before or after the meditation of August
5 18?

6 A. I don't know.

7 Q. Do you have any recollection now at this point
8 in the deposition whether the appointment on October 2nd
9 to meet Dr. Braun was related in any way to the discussion
10 of Dr. Braun's letter, which occurred possibly on
11 September 28th?

12 A. I don't. I don't have any independent
13 recollection of that.

14 Q. Certainly, however, if you're in mediation on
15 September 28th, and Dr. Braun's letter is being discussed
16 in detail on that occasion, meeting the same week with Dr.
17 Braun on a Friday, October 2nd, would have given you a
18 opportunity to discuss with Dr. Braun the contents of his
19 August 18 letter, correct?

20 A. Could have -- could I have talked to him about
21 it if I had an appointment with him? I presume.

22 Q. Did you at any time after the mediation session
23 and his letter was discussed, as you've indicated, and
24 Judge McCue is arguing to you that it showed a good
25 recovery, did you follow up after that to try to contact

1 Dr. Braun to discuss the contents of his August 18th
2 letter?

3 A. I don't remember. I had an indication of a
4 meeting with him, but I don't remember.

5 Q. The "indication" referring to that appointment
6 on October 2nd?

7 A. Yes.

8 Q. That's the "indication" you're talking about?

9 A. Right.

10 Q. But you had no recollection specifically of ever
11 having discussed the August 18th letter with Dr. Braun; is
12 that correct?

13 A. I don't.

14 Q. Is that correct, that you had no specific
15 recollection?

16 A. No specific recollection.

17 Q. Let's get that August 18th letter out just for a
18 few minutes to take a look at it. Mr. Sax has given you a
19 copy of it. Take a few minutes to read that letter and
20 I'll ask you a few questions about it.

21 A. Okay. I've looked at it.

22 Q. All right. What is your understanding of the
23 areas of the anatomy where the question of fusion had been
24 an issue?

25 A. Well, he injured his wrist, his left wrist, and

1 left forearm.

2 Q. Could you be more specific as to what parts of
3 his forearm and wrist were at issue in terms of whether a
4 fusion would occur as of the time that letter was written
5 August 18, 1998.

6 A. In this letter he's using the word "fusion" it
7 refers to a procedure, a medical procedure, let me find it
8 here.

9 He indicates, "Mr. Hollifield has never required
10 a total wrist fusion." That's in the second paragraph on
11 Page 1. He's referring to a medical procedure whereby
12 they fuse the wrist by making it stiff so that it wouldn't
13 move. But he's indicated here he'll never require--and he
14 goes on to state, "a total wrist fusion would carry extra
15 morbidity and increased disability for Mr. Hollifield.
16 For this reason, I have worked diligently toward avoiding
17 this procedure and have fused the proximal carpal row to
18 the distal radius with difficulty."

19 He indicates, "This will allow Mr. Hollifield
20 30% range of motion in his wrist which will be helpful to
21 him in grasping and holding objects. And then he goes on.
22 This is the important part. "Prognosis, or the success of
23 this plan is good at this time because of the recent
24 radiographs which show healing in both of these areas."

25 And that's what I was referring to when I talked

1 about "bone fusion," when he refers to "healing," talking
2 about the bones healing together.

3 Q. Which bones though, to your understanding?

4 A. Well, what he's talking about, he's talking.
5 Here he said. He's worked diligently to avoid a wrist
6 fusion and that he has fused the proximal carpal row to
7 the distal radius. And I think he's referring to that in
8 that particular paragraph.

9 Q. In any event, drawing your attention to the
10 language in the letter, on Page 3 --

11 A. Well, there's also on Page 2 he also goes on to
12 talk about how he had "difficulty in healing the distal
13 radial fracture" which he talked about before, because of
14 misalignment problems and the difficulty in securing a
15 bone graft.

16 He had further difficulty in incorporating bone
17 graft into the fusion of the distal radius proximal carpal
18 row which he talked about in the other paragraph.

19 "All of these problems appear to be behind Mr.
20 Hollifield at this time. He has healed his fracture of
21 the distal radius. He has healed the radius to the
22 proximal carpal row fusion. His wrist is straight and
23 well aligned. His fingers move. His sensation and median
24 nerve function is normal.

25 Q. What did you interpret the language to mean

1 quote, "all of these problems appear to be behind Mr.
2 Hollifield at this time", end quote?

3 A. Well, I would assume he meant the things he
4 finished discussing in that paragraph and the one before
5 it. If you read it, that's the way it reads.

6 Q. Well, when we look at the language "appear to be
7 behind," what does the word "appear" imply to you in
8 reading that?

9 A. He earlier discussed his reviewing x-rays and
10 examination saying, by that I thought Mr. Hollifield was
11 doing great and that, "his problems were behind him", he
12 was healing well, and he had good things to look forward
13 to with respect to his fractures.

14 Q. In your practice as a lawyer, you use the word
15 "appear" in various contexts; is that correct?

16 A. I suppose. I don't use the word "appear" very
17 often.

18 Q. But, in the context of this letter, did you take
19 it in reading, "all of these problems appear to be behind
20 Mr. Hollifield at this time" end quote, to imply some sort
21 of the certainty or guarantee? In other words, does
22 "appear" mean "certainty" in that context to you?

23 A. Do I know what he meant. Would it be appropriate
24 to speculate what he meant?

25 All I can go by is what I read, and if you look

1 at the word in this context, to me that meant that it was
2 his opinion that Mr. Hollifield's problems were behind
3 him.

4 Q. With what degree of certainty, given the fact he
5 used the word "appear"?

6 A. Well, you know, I don't know what his use of
7 language is like. I think it means Mr. Hollifield's
8 problems are behind him, based on the evidence that he has
9 in front of him, X-rays, examination, et cetera.

10 Q. So you took the use of the word "appear" in this
11 context as an indication of certainty that the problems
12 were behind Mr. Hollifield?

13 A. Again, medicine is not an exact science. I
14 think we all know that. But, I took it to mean that based
15 on the doctor's evaluation of the information that he had
16 in front of him, including X-rays, that Mr. Hollifield's
17 problems were behind him. That was his medical opinion.

18 Q. Well, what I'm trying to understand -- maybe you
19 have told me all you can tell me -- is to what degree of
20 certainty did you read that to be the case based upon the
21 language of Dr. Braun's letter? I'm asking about your
22 interpretations?

23 A. I thought he was certain of his opinion.

24 Q. Even though he used the word "appear"?

25 MR. SAX: Asked and answered. Asked and

1 answered. Don't answer further. You've given your best
2 answer.

3 THE WITNESS: I thought it--I'm going to answer
4 anyway. I thought that -- in the meantime that he had
5 reviewed the X-rays, he had reviewed the information, and
6 based on those things, it was obvious to him that his
7 problems were behind him. Which is all he can base it on I
8 suppose. The x-rays, his examination, and the fact that
9 he treated him since.

10 BY MR. DEUPREY:

11 Q. Directing your attention to the language on page
12 three at the end the second paragraph which states quote,
13 "his eventual disability".

14 A. Where are we?

15 Q. I'm on Page 3, end of the second paragraph.

16 A. Okay. I'm with you.

17 Q. As follows: Quote "His eventual disability will
18 obviously be presented in the permanent and stationary
19 report and should not be prematurely evaluated at this
20 time." Period, end quote.

21 Now, asking you about your thoughts, how did you
22 interpret the language when you read that letter?

23 A. That meant to me he wasn't ready to rate him as
24 permanent and stationary. He needed additional--he talked
25 about a pin that had to be taken out and how much that was

1 going to cost and continuing physical therapy to build up
2 strength. He couldn't do a permanent and stationary
3 report yet because he wasn't permanent and stationary yet.

4 Q. Did that line I quoted to you raise any question
5 in your mind as to whether or not there could be any
6 certainty as to the extent of the healing with regard to
7 the fusion?

8 A. No, I don't think that's why that sentence is in
9 there. I think that sentence is there only to indicate
10 that he can't do a permanent and stationary report yet
11 because his patient has not reached that point due to
12 additional procedures being required and additional
13 procedure and therapy after that, so he can't -- he can't
14 prepare a permanent and stationary report.

15 Q. The language on Page 2, strike that. Strike
16 that. I'm sorry, with Page 1, first sentence, second
17 paragraph says, quote, "the patient's prognosis has
18 improved with surgical treatment." Period. "On his last
19 visit, Mr. Hollifield appeared to have healed the distal
20 radius fracture which has given us great difficulty in
21 management during the last year." Period. "The appropriate
22 bone plating and grafting appears to solved the problem of
23 bone union in this area." Period. End quote.

24 When you read that language, what degree of
25 certainty did you attach to the use of his language where

1 he states, quotes, "appeared to have healed," end quote?

2 A. I took it in context with the entire letter
3 which includes indication that he has reviewed the
4 radiographs, the x-rays, and that he was basing those
5 statements on evidence that he was reviewing and giving
6 his expert medical opinion on.

7 Q. Now, when this letter was raised at the
8 mediation by Judge McCue and the others, Hollifield was
9 present? He was there at the mediation?

10 A. He was there at the mediation, yes.

11 Q. In your private sessions with Mr. Hollifield,
12 was Mr. Sax there also?

13 A. Yes.

14 Q. Did you talk to Mr. Hollifield and Mr. Sax about
15 this letter?

16 A. Yes, yes.

17 Q. What did Mr. Hollifield tell you was the state
18 of his care and treatment, assuming that you reviewed it
19 with him at that time?

20 A. Oh, I'm sure we talked about it, but I don't
21 remember specifics. I couldn't tell you, as we sit here
22 today, what he told me.

23 Q. Now, at this point in the deposition, do you
24 remember whether Mr. Hollifield was wearing his splint?

25 A. I don't -- I'm sure we knew at the time, but I

1 don't know now.

2 Q. Or whether he was still using a bone stimulator?

3 A. I don't remember

4 Q. Now, just -- strike that, it is more likely that
5 this letter of August 18, was the subject of the comment
6 at the second mediation, or according to your calendar,
7 was August?

8 A. It's possible that I got this the morning of.

9 Q. Morning of August 18?

10 A. Right. And the mediation was in the afternoon.

11 Q. All right, in any--

12 A. I'm not saying that's the way it happened, but
13 it very well could have been the case.

14 Q. Given the state of your recollection as you sit
15 here now?

16 A. Given the dates, I mean, it's interesting that
17 it's the same date as the mediation. That may mean that we
18 called and said, "Give it to us soon." If it's the
19 morning of, that could have happened.

20 Q. Take a moment to look at Page 3 of your copy.
21 Does it have a dated signature from Dr. Braun?

22 A. It does. It says the 27th.

23 Q. His signature is 08/27?

24 A. Correct. Maybe we didn't have it on that first
25 meeting, then.

1 Q. Can you now recall, without going back and
2 reviewing the records, whether your client Mr. Hollifield
3 saw Dr. Braun sometime between August 18, 1990 and strike
4 that. Strike that. I don't want to assume too much.

5 I'm not implying this that your client actually
6 had a visit with him on August 18.

7 Going back and starting -- can you now remember
8 whether your client saw Dr. Braun sometime after August 18
9 and prior to the time the case was settled?

10 A. No. I'm sure there were medical records that
11 would tell us.

12 Q. We'll go to your file to refresh your
13 recollection with the file on the "CorVel case management
14 report" and I'll bring your attention to the report which
15 is dated 09/10/98, I'll ask you to take a look at that.
16 Do you have that in front of you?

17 A. Well, it looked like--yes, I see it. It says
18 here that by Doris Harrah, that she was confirming Mr.
19 Hollifield, April 27, '98 appointment. Which is the same
20 date he signed the letter.

21 Q. I notice in the file that you're looking at that
22 there are--can you, starting at the top of the file and
23 going down, can you locate the envelope from which the
24 report of September 10, '98 by Harrah was sent?

25 A. I don't know if this is it or not. But, one in

1 front of it saying October 20, I'm not sure what it says.

2 Q. Which report was that attached to? Wrong
3 one. Pull out the report number 34, mark that as an
4 exhibit anyway. Does that have an envelope stapled
5 to it?

6 A. Yes, September 25th.

7 Q. That's the postmark date?

8 A. Yes, it appears to be.

9 Q. Is there any other indication of when you have
10 received that report other than the postmark date of the
11 September 25th?

12 A. On the back. Received September 28th.

13 Q. Received September 28th?

14 A. Yes. I don't know. But, that's on the back of
15 the second page.

16 Q. I'd like to have this complete with both sides
17 of the second page so we have the receive stamp and the
18 envelope marked as Exhibit 4 and I would ask that you take
19 a few minutes to read that before I ask you questions
20 about it.

21 (Defendant's Exhibit 4 was marked for identification and
22 is attached hereto.)

23 (Discussion off the record.)

24 MR. DEUPREY: I'm going to modify my exhibit
25 number here, thanks to comment from the reporter, we

1 should mark a copy of the August 18 letter you're
2 referring to as Exhibit 4. All of these will be copied
3 for you before the court reporter leaves and at any given
4 time we'll get to these to a copier person. At this time
5 we'll mark as Exhibit 5, the CorVel report by Doris
6 Harrah, H-A-R-R-A-H.

7 (Defendant's Exhibit 5 was marked for identification and
8 is attached hereto.)

9 BY MR. DEUPREY:

10 Q. Okay now, I'd like to ask you a few questions
11 About Exhibit 5. First of all do you remember one way or
12 the other if you reviewed that Exhibit 5 when it was
13 received by your office on September 28th?

14 A. I'm sure that I did.

15 Q. And would it have been your custom and practice
16 to review something like that -- given the circumstances
17 of the settlement discussions in this case?

18 A. Yes.

19 Q. And do you remember one way or the other if you
20 reviewed that document before or after the mediation
21 session, which your calendar reflects occurred on
22 September 28th?

23 A. Well, I think I had this before that or at or
24 about that time.

25 Q. And, looking at this, and with the understanding

1 that you had it, do you remember you're bringing it up or
2 Mr. Sax bringing it up with Judge McCue? When he was
3 talking about Dr. Braun's letter of August 18?

4 A. No. I don't specifically recall. But, this
5 certainly would be consistent with the letter and I don't
6 know. I don't know that I'd been wanting to necessarily
7 show this to the other side.

8 Q. Let me draw a couple of things to your attention
9 and ask you what your interpretation was, if I may. We'll
10 have to pass this back and forth. You see this last
11 paragraph? If I can read it for the record just briefly
12 stating the last paragraph on Page 1. Above
13 recommendations, it states, quote, "On 9/3/98 received and
14 reviewed a copy of Dr. Braun's 8/27/98 letter to the
15 claims examiner," end quote. And then in that same
16 paragraph it states, quote, "Doctor went on to say that
17 Mr. Hollifield is using his bone stimulator doing a home
18 strengthening program." end quote. Do you recall making
19 note of that particular part of the report?

20 A. Not as I sit here today.

21 Q. In your opinion at that time, would the fact
22 that Mr. Hollifield was still using a bone stimulator as
23 of August 27, 1998 have some relationship to the question
24 of whether or not the fusion was in fact complete,
25 completely healed?

1 MR. SAX: I'm going to object to that. It
2 calls for a medical conclusion.

3 MR. DEUPREY: Well, I certainly respect your
4 objection, Richard, but subject to the objection and just
5 knowing Mr. Goetz is not a doctor but a lawyer, I'm asking
6 for his interpretations at that time.

7 MR. SAX: I'm not instructing him not to answer
8 the question.

9 BY MR. DEUPREY:

10 Q. Subject to all of that, what was your
11 interpretation of what was the significance that Mr.
12 Hollifield was using a bone stimulator at the time he saw
13 Dr. Braun on October?

14 MR. SAX: If you know. Please don't speculate.

15 THE WITNESS: Well, I think I focused more on
16 the fact that in the third paragraph the doctor indicated
17 the fused area is healed, and just prior to that the bone
18 is healing. So, the bone stimulator may be an abundance of
19 ~~causing~~ ^{caution} one continues to use it to try to get even a
20 better result maybe than what he indicated he already had
21 here, which was a fused area healed.

22 BY MR. DEUPREY:

23 Q. In the third paragraph that you pointed to,
24 which is obviously something that Doris Harrah overheard,
25 not to the doctor directly?

1 A. Yes, but consistent with his letter to me.

2 Q. Well, in this third paragraph offered by Harrah
3 she states, quote "Doctor mentioned that the bone is
4 healing and that the fused area is healed." End quote.

5 When you read this could you determine whether
6 she was referring to the fused area of the carpal bones or
7 to some other area?

8 A. Well, again, this is a nurse writing notes as
9 she's sitting there listening to -- I guess the doctor and
10 the patient discuss it.

11 I took the doctor's letter as, what was it --
12 August 18th, as being something that he was actually
13 stating himself. That was more important than interpreting
14 what he said.

15 So, that was what I thought was more important
16 than this, these notes.

17 Although I look at these notes, to me they seem
18 consistent with what he said in his letter of August 18th.
19 Furthermore, they were based on an examination of August
20 27th and additional X-rays, which apparently didn't change
21 his opinion.

22 Q. Had you received and reviewed Dr. Braun's report
23 of August 27th prior to completing the mediation process?

24 A. His letter of what.

25 Q. Dr. Braun's report of August 27th?

1 A. It was the 18th.

2 MR. SAX: I think we are confusing a letter dated
3 the 18th and the signature date of the 27th; is that
4 correct Counselor?

5 MR. DEUPREY: The exhibit reflects a handwritten
6 date of August 27th as a signature date on the letter of
7 August 18, '98. I was asking Mr. Goetz whether he had
8 reviewed Dr. Braun's August 27 medical records reflecting
9 what happened on the 27th, when the patient saw him on the
10 27th, prior to the time that the mediation process has
11 been completed?

12 THE WITNESS: I don't remember. I'd have to look
13 at the records. I thought you were talking about the
14 August 18 letter?

15 BY MR. DEUPREY:

16 Q. When you saw the report number 34, which is
17 Exhibit 5, you were aware that your patient, or your
18 client, had seen Dr. Braun?

19 A. You're talking about CorVel's management report.
20 But that's not doctor--these are not Dr. Braun's medical
21 records.

22 Q. I'm not implying that they are.

23 A. He said that it was.

24 Q. I apologize if I misstated myself. My question
25 on the table at the moment is whether, when you read

1 Exhibit 5, whereby reading Exhibit 5, were you aware that
2 your client, Mr. Hollifield, had seen Dr. Braun on August
3 27th?

4 A. It says that he did. Yes.

5 Q. And?

6 A. But that's not Dr. Braun's records. You refer
7 to as his records. You referred to it as his letter.

8 Q. I apologize. If I had. Now my next question is
9 having seen your client saw Dr. Braun on August 27th and
10 evaluated him on that date, did you to the best of your
11 recollection see Dr. Braun's medical records prepared on
12 August 27?

13 A. I don't remember. I don't remember as I sit
14 here. It's been several years I don't remember.

15 Q. Would it be your custom and practice having
16 gotten Exhibit 5 through the mail and reviewed it to have
17 caused someone to get a copy of Dr. Braun's medical
18 records reflecting his office visit with your client on
19 August 27th would that have been the next step in other
20 words?

21 A. Well, maybe not. He wrote this and signed on
22 August 27th and he dated it August--what's the date of his
23 letter? The 11th. And so I presume that if he signed
24 that on the 27th, that letter may very well have been
25 based on that visit of the 27th, and probably was.

1 Q. Even though it was dated on August 18? It was
2 signed on the 27th if you review the letter it's
3 consistent with what this lady, Doris Harrah says in her
4 notes of what she heard on August 27th being at that
5 meeting between the doctor and Mr. Hollifield.

6 However, I am interested and concerned, and
7 let's focus for a moment on the narrow question of;
8 whether you would have asked someone in your office, one
9 of your staff, to go about trying to get the actual
10 medical records for the visit of August 27th once you got
11 the information that your client had seen Dr. Braun on
12 that date?

13 A. I don't remember if I did or not.

14 Q. I understand that. But, would that have been
15 your custom and practice?

16 A. It depends on whether or not I felt I had the
17 information I needed.

18 Q. Do you remember what--

19 A. ~~or not?~~ *J*

20 Q. Do you remember whether or not you drew any such
21 conclusion.

22 Q. I'll stop now because my questions have been
23 interrupted by someone putting a paper in front of you.

24 A. As I look at s.

25 Q. What is it that he showed you?

1 A. What looks like a -- what is it a letter from
2 Dr. Braun that he wrote to Dianna Cumpian of Argonaut and
3 he cc'd to me. He may have very well been sending me
4 copies of his records or letters, he was doing that on an
5 on-going basis without my asking for.

6 Q. What Mr. Sax has shown you is a letter on Dr.
7 Braun's stationery dated July 27th; is that correct?

8 A. Yes.

9 Q. And it shows a "cc" to you on the bottom of that
10 page?

11 A. Yes, and to Doris Harrah.

12 Q. So, from that, it's apparent that Dr. Braun was
13 copying you with his reports to Cumpian?

14 A. I don't remember. You've looked at them if you
15 look again you could find his records if they're in there.
16 If they're in there I asked for them, he ^{sent} ~~stent~~ them. To
17 sit here two years later--I don't remember.

18 Q. I don't know, but a moment ago, just to complete
19 this line of questioning, you said why you would--what
20 would cause someone to go to try to get a copy "would
21 depend". I want to know what that would depend upon?

22 A. This is here. If I had copies--^{+ here} ~~it~~ was no point.
23 If I felt I had what I needed, ^{sent} ~~it~~ would no point.

24 MR. SAX: Counsel, is there a report dated August
25 27th that you wish to ask us about.

1 MR. DUPREY: Now it came up in the deposition.
2 We'll get to that. I'm trying to find out what the
3 procedure--what he would do to get to the copies of those
4 reports then we'll get to the report in a few minutes.
5 BY MR. DEUPREY:
6 Q. Getting back to Exhibit 5, before we get to Dr.
7 Braun's report of the 27th. In this language in Paragraph
8 3 as you pointed out states "Doctor mentioned that the bone
9 is healing and that the fused area is healed" end quote.
10 When you read that did you distinguish--strike that.
11 Strike that. When you read that line that I just quoted,
12 did you interpret that language as drawing a distinction
13 between the word "healing" end quote and the word "healed"
14 end quote?
15 A. I don't understand your question.
16 Q. All right. First of all just to go back a
17 little bit, at that time, what was your understanding as
18 to what anatomical area Dr. Braun was referring to when
19 the nurse reported that he stated quote "the fused area is
20 healed" end quote?
21 A. Well, well, he was talking--again if you look at
22 his letter I believe what he's talking about is the same
23 area he is talking about in his August 18th letter.
24 Q. And what area is that?
25 A. I'll find it here--what he's talking about, well

1 he says, "in healed -- the fracture of the distal radius,
2 he has healed the radius, to the carpal row fusion his
3 wrist is straight and well aligned." He's talking about, I
4 thought, the same areas, and this is more specific.

5 Q. Is there one area or two areas of fusion
6 referred to in Dr. Braun's letter of August 18, to the
7 best of your interpretation?

8 A. ~~Were there two areas.~~ *f*

9 Q. Was there one area or two areas referred to as
10 "fusion areas" in his letter of August 18, to the best of
11 your interpretation?

12 A. Well, I think he is talking about two areas,
13 one, the fracture of the distal radius and the other
14 radius proximal carpal row. And I think that he's stating
15 that the fracture of the distal radius is healed and that
16 he also says he's healed the radius to the proximal carpal
17 row, and I think that it's set out in his letter.

18 Q. Now going to Exhibit 5, if you'd look at Doris
19 Harrah's report on the 3rd Paragraph, where she says that
20 he said quote, "The fused area is healed" end quote. What
21 area did you interpret that to be referring to?

22 A. I just told you. These areas he just talked
23 about.

24 Q. Both areas?

25 A. Yes. I think he's talking about both of them, I

1 think one of these fields is already healed and the other
2 one is healing.

3 Q. Which area did you interpret Dr. Braun thought
4 was, quote, "healing," end quote as opposed to "healed,"
5 end quote?

6 A. Well, just go by what he says. He says, "healed
7 his fracture of the distal radius" those are his words.

8 Q. You're referring to the August 18th letter?

9 A. Yes. He says, "Hollifield healed the radius to
10 the proximal carpal row fusion.

11 Q. Now, when you read Exhibit 5, and Nurse Harrah
12 referred to the, quote "fused areas" as "healed" end
13 quote, which area did you understand she was referring to;
14 one or both?

15 A. I would say both.

16 Q. All right and when she referred in the same
17 sentence to quote "bone is healing" end quote. What bone
18 did you assume she was referring to.

19 Q. Well, I don't know if she was right. I guess I
20 was more focused on his letter than her third-party-report
21 of what she heard.

22 Q. Well, when you read this third-party-report and
23 you saw the phrase, "the bone healing" end quote. Did
24 that raise any question in your mind as to whether or not
25 there was healing that was not yet completed?

1 A. Well, I think he was still healing. He wasn't
2 ready to go back to work. He wasn't permanent and
3 stationary.

4 Based on the doctor's letter, I knew that, of
5 course, he was still healing. He even needed another
6 procedure to take these pins out. He wasn't hundred
7 percent healed.

8 But I think the word "healed" meant that you had
9 mending of the bones or fusion of the bones, which is a
10 good sign. The doctor gave him a really good prognosis.

11 Q. More specifically, though, I'm wondering if you
12 interpreted the phrase, "the bone is healing" end quote,
13 with respect to any particular area of his anatomy?

14 A. No, just the injured area that I've -- I think
15 of that as one specific bone. No. I would -- this was a
16 third-party letter or report. I was more interested in
17 what the doctor had to say directly.

18 Q. You think it would be more helpful to see the
19 doctor's records than reply on Harrah's report?

20 A. I think it is more important ^{to see} His letter, -- 
21 ~~He~~'s trying to tell me as best he can what the prognosis
22 is for his patient, my client.

23 His records are important but it is not as
24 important as a letter that he's going to write that he
25 knows is going to be used more for medical/legal purposes.

1 Q. Go ahead. I don't want to interrupt your answer
2 but you're beyond my question. My question simply was;
3 did you at that time feel that the most reliable source of
4 the doctors opinion would be the doctor's own records as
5 opposed to the reports of Doris Harrah?

6 MR. SAX: Counsel, I don't believe that was the
7 call of your question that he just answered. Is this a
8 new question.

9 MR. DEUPREY: I don't care whether you call it
10 "new" or what. That is my question. I'm trying to move
11 things along.

12 THE WITNESS: My answer would be that I would be
13 interested in what the doctor wrote in a letter to me.
14 That he knows is a medical/legal letter to be used for
15 that purpose. Than his notes, or some nurse telling me
16 about what happened at a meeting.

17 Most times you can't even read their notes and
18 if not typed, shorthand -- I cannot say what that
19 information may mean, little or nothing. But, when they
20 finally sit down and write you a letter, now you're
21 talking about something that everyone can understand.

22 BY MR. DEUPREY:

23 Q. Looking at the last paragraph of the medical
24 summary in Exhibit 5 it states, quote, "on 9/3/98, I
25 received and reviewed a copy of Dr. Braun's 8/27/98 letter

1 to the claims examiner," end quote. When you read that,
2 did you have in mind that it would be helpful to get Dr.
3 Braun's 08/27th letter?

4 A. ~~I never had it.~~ I don't recall. J

5 Q. Let's take a look at your files in that regard
6 and in particular to a file, which is labeled "Additional
7 records", this is a file labeled quote "Rick Hollifield's
8 additional medical records" dash "Dr. Braun" end quote?
9 Would you take a few moments to review that, and I'll ask
10 you a few questions about it.

11 A. You want me to review this entire file

12 Q. No, you don't have to look at it all if you'd
13 like to scan through it see what it contains, I'll ask you
14 questions. If you find a copy of Dr. Braun's 08/27th'98
15 letter, I'd like to ask you a few questions about that?

16 A. There appears to be a letter dated August 27,
17 1998 from Dr. Braun to Diana Cumpian, unsigned.

18 Q. The second page of that letter references copies
19 being--isn't it both to Doris Harrah and to you?

20 A. Yes.

21 Q. And, do you have in that file any indications
22 either on the back of the page 41 of the page when your
23 office received a copy of that?

24 A. No.

25 Q. Do you have any independent recollection of it?

1 A. No.

2 Q. Given the fact that Exhibit 5 indicates that
3 Doris Harrah received a that copy of the that letter on
4 September 3rd '98, my question is whether or not you have
5 any recollection contrary to your receiving the copy of
6 the letter at or about the same time?

7 A. Counsel, I don't have.

8 Q. Do you recall, now that you've read both Braun's
9 letter of August 27, 1998, and Diana Cumpian's letter of
10 August 27th. Whether you reviewed that letter when you
11 received it?

12 A. I would presume that I did.

13 Q. And can we assume that if you received it, this
14 is an -- it's a hypothetical -- if you received it on or
15 about September 3rd, '98, that you would have reviewed it
16 shortly after receiving it at that time?

17 A. I would have reviewed it shortly after receiving
18 it, yes.

19 Q. In looking at that letter, does it appear that
20 in the second paragraph Dr. Braun states, quote "Purposely
21 asked the patient to avoid strong gripping because of the
22 osteotomy site, which is he is at risk" end quote. Do you
23 see that?

24 A. Yes.

25 Q. And at that time, what would have been the

1 significance of reading that language in the context of
2 trying to evaluate whether Mr. Hollifield received a
3 complete fusion?

4 A. I'm not sure what he meant by that. Other than
5 he didn't want Hollifield to, I guess, overexert his
6 gripping. Although apparently he had him grip 12 pounds.

7 Q. He further goes on to state "radiographs of
8 this area appear to show slow healing as would be
9 expected. The patient continues to use a bone stimulator
10 as we have advised." End quote. What would have been
11 your thinking in reviewing that at the time, in the
12 context of trying to determine if Mr. Hollifield had
13 received a complete fusion?

14 A. Well, he's indicating that the X-rays show that
15 it was healed, which would mean to me there was bone
16 fusion going on.

17 Q. However, at that time, would it have been your
18 interpretation that the bone fusion had not been completed
19 based upon such language?

20 A. Not necessarily, no, I think that the bones--I
21 think continue to fuse maybe as they ^{heal} heal, sometimes they
22 don't fuse at all. That's my understanding. ^{IF} There's no
23 fusion, you ^{have} ~~are~~ a big problem, ^{IF} you have fusion, it's good,
24 it's a continuing process. That's my understanding.

25 Q. And when you read Dr. Braun's letter of August

1 18, which is Exhibit 4, is that your understanding and
2 interpretation of what he meant by "a state of fusion" in
3 those areas we talked about?

4 A. Is there what? What he meant.

5 Q. What you just described your understanding would
6 be that "it's a continuing process"?

7 A. Well, in his letter, all I can do is quote what
8 he says. Let me find it again. His last page of this
9 letter he indicates that--something similar I suppose, he
10 says that, "the prognosis for the success of his plan is
11 good at this time because the recent radiographs which
12 show healing in both of these areas.

13 Q. In terms of, quote, "healing," end quote, was it
14 your interpretation that he was referring to an on-going
15 process other than a completed and finished process?

16 A. I think that he wasn't completely healed. He
17 says he needs the pins removed and so on. The first
18 paragraph on Page 2 is the paragraph in which the doctor
19 is making his--or setting forth his opinion as to, "All of
20 these problems appear to be behind Mr. Hollifield. He has
21 healed his fracture of the distal radius. He has healed
22 the radius to proximal carpal row fusion."

23 ~~Maybe his letters are inconsistent? I don't~~
24 ~~know.~~ I took it, this paragraph on Page 2, to be his
25 opinion that he was doing very well and maybe the healing

1 process hadn't been completed. But, it was so far along
2 on a good path that he was convinced that his worst days
3 were behind him; his problems are behind him.

4 Q. At the time that you reviewed the subsequent
5 report of August 27, 1998, did you see any degree at all
6 of inconsistency between the language of Dr. Braun's
7 letter dated August 11 and the language from the second
8 paragraph of the letter of August 27th in which Dr. Braun
9 stated that the osteotomy site was at risk?

10 A. No, not really, because what he was saying was
11 if he were to, you know, overuse or exert the wrist by
12 gripping something really heavy, using it too much, that
13 he could hurt himself; he could somehow damage the healing
14 process that was going on.

15 That's what I thought he was saying. But that
16 he was okay. It was a matter of, "don't do anything
17 stupid, don't overexert by overgripping."

18 Q. So, you did--strike that. Strike that. So,
19 when you got the August 18 letter which is dated August 27
20 at the signature line, and when you got the doctor's
21 report dated August 27, you saw no inconsistency between
22 the two documents; is that correct?

23 A. Which documents are we talking about?

24 Q. Talking about Exhibit 4 as compared with--

25 A. Exhibit 4 being his letter?

1 Q. Yes. Dated August 18. Compared with what we'll
2 mark as Exhibit 6, which looks like the report of the
3 August 27th from your file.

4 (Defendant's Exhibit 6 was marked for identification and
5 is attached hereto.)

6 THE WITNESS: No. I didn't think they were
7 inconsistent.

8 BY MR. DEUPREY:

9 Q. So, when you arrived at a final settlement
10 decision in this case, in the mid to latter part of
11 October, you had in mind the information provided by Dr.
12 Braun's letter dated August 27th '98, Exhibit 6?

13 A. I don't know when I got this, I would presume I
14 got it sometime around August 27th, but I don't know that
15 for sure, there's no mark on when it came in, I don't know
16 if I had it or not.

17 Q. If you had received it at or about the time of
18 Miss Harrah's report on September 3rd can we then presume
19 that you had the information contained in it at the time
20 you arrived at a final settlement at this time in this
21 case?

22 A. If I did, did I look at it? Yes, if I had it
23 before the settlement discussions, then I would have
24 looked at it and would have taken it into consideration,
25 yes.

1 Q. And, at the time you have the final decision to
2 settle, it was your understanding that the fusion was not
3 totally complete, totally finished healing; is that
4 correct?

5 A. Well, I don't know. As I sit here today, I
6 don't know if I can answer that.

7 What I do know. I relied on the doctor's letter
8 of August 18 particularly Page 2 that first paragraph, in
9 which he clearly states that "Mr. Hollifield's problems
10 appear to be behind him" and he talks about how he healed
11 the radius of the carpal row fusion, that was what
12 everyone was focusing on.

13 Q. And you saw no inconsistency between that and
14 the letter of August 27, 1998, correct?

15 A. I saw a report that I had from Dr. Braun written
16 to me, a medical/legal report, in which he gave Mr.
17 Hollifield or indicated that Mr. Hollifield made a very
18 good recovery and his problems were behind him. That's
19 what I was focused on.

20 I wasn't trying to ~~any~~  nitpick some little
21 inconsistency between a couple of notes he may have made.
22 What I felt was the most important document was his
23 medical/legal report to me which was gathered for the
24 specific purpose of showing it to the other side and
25 evaluating this case in terms of settlement.

1 Q. Well, is it fair to assume, though, that because
2 Mr. Hollifield is continuing to see Dr. Braun, that you
3 would also be willing to consider and did consider any
4 follow-up reports that you received prior to your
5 settlement?

6 A. Yes, I would, but I think that this report was
7 the key report for the reasons I've already stated.

8 Q. Well, what I do need to know is whether you saw
9 any inconsistency at all between the language on the
10 report of the August 18, Page 2. It references the
11 problems being behind Mr. Hollifield on one hand, and on
12 the other hand, the language contained in Dr. Braun's
13 subsequent report dated August 27th 1998--

14 A. I didn't see any major inconsistency that
15 couldn't be revealed in reading his letter.

16 Q. Did you see any minor inconsistencies?

17 A. No. I thought that they were consistent. I
18 thought that he ^{may have said if} ~~had~~ it in a different way but the way I
19 understand it is Mr. Hollifield's doing very well, his
20 bones had healed and his fractures were healed. He ~~s~~
21 ~~stated or, and very close to finally I suppose and but you~~ ^g
22 ~~know--yes~~ he has some things that had to be done but he
23 was getting close.

24 Q. So that when you saw that language in the August
25 27th letter stating that the osteotomy site would be at

1 risk or was at risk so your client had to avoid strong
2 gripping, that was consistent with how you interpreted the
3 August 18 letter?

4 A. Well, I didn't consider when I read the letter
5 anything about the fact that he should avoid gripping. I
6 thought that the letter from the Dr. Braun was a
7 indication that he wanted to make sure that Mr. Hollifield
8 didn't reinjure himself by overexerting.

9 Q. To be very, very specific here, focusing on the
10 language quote "the osteotomy site which is at risk" end
11 quote. Is it correct that your interpretation of the
12 language of the 08/18 letter was consistent with the
13 concept that the osteotomy site was at risk?

14 A. Did I consider it at the time as being
15 inconsistent with that? I don't remember if I did or not.

16 I think that the key here is that the doctor
17 wrote this letter, and the people at the mediation, and
18 the ones that are looking at the case, also focused on the
19 report. And, you know, even though there might have been
20 -- if that's inconsistent I don't think it's inconsistent
21 if somebody wants to look at it that way, that's not a
22 very good argument on our side to try to get more money,
23 to say look here, he's not supposed to hurt himself by
24 gripping strong. So, that's the way I would have looked
25 at it, I think, at the time.

1 Q. Do you have any information indicating that a
2 person or persons advised Dr. Braun of the fact that
3 mediation sessions were going on?

4 A. Well, I'm certain that they wrote him a letter
5 because he's responding to my request for a medical/legal
6 report.

7 Q. Which --

8 (Discussion off the record.)

9 BY MR. DEUPREY:

10 Q. Back on the record. Have you found the letter
11 you're referring to just before the break?

12 A. There was a letter from Dr. Braun asking him to
13 provide a medical/legal letter.

14 Q. Does that letter make any reference to any
15 mediation or a settlement conference?

16 A. No.

17 Q. Does it make any reference to negotiations?

18 A. No.

19 Q. Are you aware of any person, contacting Dr.
20 Braun's office to advise him of the fact of the mediations
21 which took place in this case?

22 A. Am I aware of -- say that again, please?

23 Q. Are you aware of any person or persons who
24 contacted Dr. Braun's office to let him know that
25 mediations were scheduled in this case?

1 A. As I sit here today I cannot recall that. But,
2 I have this recollection of either myself or somebody from
3 my office calling Dr. Braun's office and indicating to
4 that we needed this report ASAP, because we were trying to
5 mediate, trying to settle a case, and we needed his letter
6 before we could do it.

7 Q. Now, someone is showing you something. That --
8 does that refresh your recollection?

9 A. Yeah. In the third page.

10 Q. Third page of what? So we're clear?

11 A. Exhibit 4. It says in the second paragraph,
12 second sentence, "I understand that all parties in this
13 case have become somewhat anxious to see this matter
14 brought to a permanent and stationary status and I can
15 assure you that I feel the same way.

16 Q. For clarification, you're talking about the
17 August 18th letter?

18 A. Yes, Exhibit 4.

19 Q. And what is your interpretation of that?

20 A. I'm just having this recollection that we
21 contacted him. Either I did or somebody from my office
22 did it may not have been him ^{but could have been} ~~or~~ a secretary or the nurse. 
23 We indicated that we needed this report from him because
24 we were trying to settle a case, that we had a mediation
25 arbitration conference, which it became necessary to get

1 this document, and it may well be that at this meeting
2 that we had with Judge McCue, we did not have this
3 document, and that may have been one of the reasons it got
4 continued again, to give us a chance to get Dr. Braun's
5 report.

6 Q. Do you have any specific recollection of that?

7 A. Vaguely recall. There had to be a reason we
8 continued this.

9 Q. Do you recall specifically that any such reason
10 was the fact that a report was noted from Braun?

11 A. I don't have any notes to that effect that I see
12 there. So, say that I'm relying on notes--but I do have a
13 recollection of having someone or doing it myself, calling
14 his office saying "we need a report" saying "we're having
15 a mediation", something to that effect and "we need your
16 report.

17 Q. All right. Now I'm going to take this one step
18 at a time. As you sit here now, do you specifically
19 recall being the one to make a telephone call to Dr.
20 Braun?

21 A. I don't.

22 Q. Who in your office would be the most likely to
23 make that call that occurred?

24 A. It would have been my secretary. I don't know
25 who my secretary was then.

1 Q. If you look at the initials on August 3rd, would
2 that help you identify your secretary?

3 A. Probably. Says "P.C." I don't remember who
4 "P.C." was.

5 Q. Do you have a different secretary now than you
6 had in the time frame of August and September 1998?

7 A. Yes.

8 Q. And do you -- putting aside the initials P.C. do
9 you remember who your secretary was in the time frame of
10 August--September '98?

11 A. No. I'd have to look at employment records.

12 Q. Okay. I would appreciate getting that
13 information along with any last address and phone number
14 and also any information that you might have as to who,
15 quote, "P.C." end quote is. Can we have the reporter
16 leave space in the transcript at this point to have that
17 filled in when you have a chance?

18 A. Sure.

19 Q. Thank you very much.

20 (Information requested: _____
21 _____.)

22 Q. Other than your testimony a few moments ago that
23 you believe someone called Dr. Braun's office and spoke to
24 him or his secretary about needing a report because a
25 mediation was set up, other than that state of your

1 recollection, do you have other information concerning the
2 question whether Dr. Braun's office or Dr. Braun was ever
3 notified of the existence of a mediation meeting?

4 A. No.

5 Q. Not that I'm aware of. But again I haven't
6 looked through every one of these boxes.

7 Q. Do you remember Judge McCue or anyone else, be
8 it Mr. Sax, or anyone within your earshot, during the
9 course of the mediation session you can remember raising a
10 question whether Dr. Braun should be personally contacted
11 concerning the status was of Mr. Hollifield's condition?

12 A. No.

13 Q. Was Hollifield ever given what is called we all
14 refer to as an independent medical examination anytime
15 prior to settlement?

16 A. No, not that I'm aware of. Again, I'd have to
17 look at medical files to be sure of that.

18 Q. I noticed in the files that I reviewed yesterday
19 and this morning, there was a designation by the defense
20 Mr. Kawabata's office I believe William Davidson, an
21 orthopedic expert, my question is does this refresh your
22 recollection that Dr. Davidson ever did an IME?

23 A. No.

24 Q. Do you recall ever personally speaking with
25 Doris Harrah prior to reaching a final decision about the

1 settlement of Mr. Hollifield's case?

2 A. I recall that I did speak to her. I don't know
3 how many times or when.

4 Q. What's your best recollection in terms of when
5 you last spoke with her previously to the settlement
6 decision in terms of days, weeks, months?

7 A. I don't remember.

8 Q. What's your best recollection as to whether you
9 ever had a face-to-face conference with her?

10 A. I don't think so.

11 Q. Do you have a specific recollection of the
12 substance of any conversation or conversations that you
13 had with Doris Harrah?

14 A. No. Other than we talked about Rick and his
15 medical condition. Specifics? I have no idea.

16 Q. Do you remember ever speaking to Doris Harrah
17 about the contents of the August 18 report of Dr. Braun?

18 A. Not specifically. I may very well have, but I
19 don't remember

20 Q. I'd like to sort of gather up the exhibits and
21 mark a couple more here at this point. We're trying to
22 keep them all in one pile.

23 Drawing your attention back again to the file
24 which is entitled "Additional medical records-Dr. Braun,"
25 and have you look at that for a moment, did you determine

1 whether there are additional medical records from Dr.
2 Braun dated after -- I'm going through the file marked
3 "Additional medical records-Dr. Braun" does there appear
4 to be an original copy of the August 18th letter in that
5 file?

6 A. Looks like it, yes.

7 Q. And --

8 A. Yes. Looks like a gray stationery.

9 Q. And it looks like it is an original signature?

10 A. Looks like it.

11 Q. Is there a received stamping anywhere on the
12 back of any of those pages, or on the front of those
13 pages?

14 A. On the back it says September 28--3.

15 Q. Pardon?

16 A. 23.

17 Q. 23? I ask you to examine that very carefully in
18 view of the fact that the original signature is August
19 27th.

20 A. Yeah, it says September 23. I don't know if
21 that's accurate or not. That's what it says.

22 Q. It does look like the 23rd to me.

23 A. But I did not stamp these. And I don't know if
24 its an accurate stamp or not. That's what it says.

25 It could be that the original came in and I took

1 it to a mediation and never got it back to get it stamped
2 until later.

3 Or, it could have been that's a good chance too
4 ~~that~~⁺ we may have gotten a copy of it faxed, and when the
5 original came in, I may not have gotten it back to the
6 secretary to even have a chance to mark it until later.

7 Q. But, the stamp appears to be a stamped placed by
8 your office?

9 A. Yes, yeah, it does. But, if I get the mail,
10 sometimes I'll--for some reason, I hang on to something.
11 She may have not gotten it back to put a stamp on it until
12 later. That's not necessarily an accurate indication of
13 when we got it.

14 Q. The document next above that in the file
15 "Receivable" would be the next document received
16 chronologically?

17 A. Again, these files may have been re-worked,
18 things may have been put in them and taken out and put
19 back in a different order. It doesn't mean that they're
20 in chronological order. I wouldn't say that that's true.
21 It might be or it might not be.

22 Q. Okay. The next is August 27th. If you'll look at
23 that August 27th letter, does that appear to be just
24 another copy?

25 A. The one you've already mark.

1 Q. Which is Exhibit 6?

2 A. Right.

3 Q. Exhibit 6 has no signature?

4 A. Right.

5 Q. And the copy that you're looking at in your

6 file, it does have a signature; is that correct?

7 A. Right.

8 Q. Do you have any idea why you have two copies of

9 that report?

10 A. No. No, I don't.

11 Q. I see on the upper part of Exhibit 6 there's a

12 fax legend which states, quote, "9-23-1998, 11:30 a.m.,

13 from Dr. Braun's cage mack, 619 297-9076," end quote. Does

14 that refresh your recollection whether someone had another

15 copy of August 27th letter faxed over to you?

16 A. Could be.

17 Q. For example, if it were, it and you wanted

18 another copy, it might have been printed out and faxed to

19 you?

20 A. Could be.

21 Q. And the second copy you have in of your file,

22 does that have a fax legend on the top?

23 A. Same one you just read.

24 Q. One has a different date however. Look at the

25 date of the fax. The second copy, the one with the

1 signature.

2 (Discussion off the record.)

3 THE WITNESS: One of the copies of Exhibit 6 has
4 a typed notation at the top. I don't know if it means it
5 was faxed or not. It says 9/23/98 11:30 a.m. And the
6 other one says--I can't really read that, I think it's
7 possibly 9/02 maybe 22, I can't read that, I can't read
8 it.

9 MR. DEUPREY: We'll mark that as Exhibit 7 may
10 the record speak for itself. So, for the record, Exhibit 7
11 will be the copy which has a copy of Dr. Braun's
12 signature. And we'll go to the next question which is
13 next to this exhibit we just marked Exhibit 7. In your
14 file, do you have document dated August 28th from Dr.
15 Braun?

16 (Defendant's Exhibit 7 was marked for identification and
17 is attached hereto.)

18 THE WITNESS: Yes.

19 BY MR. DEUPREY:

20 Q. And may I see what you're a looking at? Okay,
21 that is a document we'll mark as Exhibit 8. Will you take
22 it out of the file? Thank you. Which has, at the top, a
23 typed date right at the very edge of the top, it may or
24 may not be a fax legend, 8/28/98; is that correct?

25 ///

1 (Defendant's Exhibit 8 was marked for identification and
2 is attached hereto.)

3 THE WITNESS: I didn't see --

4 BY MR. DEUPREY:

5 Q. And the handwritten date is 8/27/98; is that
6 correct?

7 A. Yes.

8 Q. Now, can we assume that that's also a document
9 that you would have reviewed had you received it on or
10 about 8/28/98.

11 A. Yes. If I had it I would have looked at it,
12 sure.

13 Q. And you see that language written, in which it
14 states under Item 2 "Symptoms and physical finding" end
15 quote. "Reasonable progress and healing of osteotomy
16 site," end quote?

17 A. Yes.

18 Q. Was that, when you read it, consistent with your
19 interpretation of the August 18th report?

20 A. Yes.

21 Q. Was there any inconsistency, in your mind, whEn
22 you read it?

23 A. No.

24 Q. When--strike that. Also in the same manila file
25 titled "additional medical records-Dr. Braun", you have a

1 document with a handwritten note. It says "10/3" could
2 you read that note into the record?

3 A. I didn't write it.

4 Q. Can you read it? Are you able to make it out?

5 A. It says, "10/03" or something--looks like
6 "Hollifield," but I don't know what it says before then.

7 Q. Can you make out any of the handwriting?

8 A. Again I didn't write it so, I'm reading
9 somebody's handwritten note. But, I think it says "please
10 show--something," his "X-ray on 10/05 then I'll be able to
11 decide on PNS status." It might be signed by Dr. Braun.

12 (Defendant's Exhibit 9 was marked for identification and is
13 attached hereto.)

14 BY MR. DEUPREY:

15 Q. Mark that document Exhibit 9. That document is
16 attached to another sheet which has handwriting on it.
17 It's also stapled to a sheet called a "communication
18 sheet" dated 10/05; is that correct?

19 A. It appears to be stapled to a communication
20 sheet with Dr. Braun's name on it.

21 Q. Okay, we'll just collectively mark all three
22 stamped sheets as Exhibit 9. Do you believe that you
23 would have reviewed that document when you received it?

24 A. Yes.

25 Q. Do you have any specific recollection of having

1 reviewed that document prior to deciding upon settlement?

2 A. Not any specific recollection, no

3 Q. Now, I'm through with that document. Thank you.

4 I'm trying to go through my notes so I can get to the
5 meat of what I want to ask him. Pardon me if I'm hunting.
6 I'm not going to ask you about all this stuff.

7 Were there any other mediation briefs that you
8 filed other than the one?

9 A. What was in these boxes?

10 Q. I didn't find another one.

11 A. ~~well --~~ 

12 Q. Do you offhand remember doing a second one?

13 A. I'd have to look at the files. I don't know.

14 Q. Okay. All right. There is a letter in your
15 file for Mr. Kawabata rejecting a \$10,000 demand, it's
16 dated 10/02/98, this is in the "correspondence file" or
17 file 3274.

18 A. What's the date?

19 Q. Its 10/02/98 from Ken Kawabata, appears to
20 reject your demand?

21 A. It looks to me like somebody else put these
22 files back together.

23 Q. I'll represent to you that I made no changes
24 myself.

25 A. Well they're arranged funny. What's the date

1 again? 10/02/98?

2 Q. Do you have it in front of you?

3 A. Yes.

4 Q. I'll ask you to tell me whether or not that
5 refreshes your recollection as to a demand was made upon
6 Mr. Hollifield at the mediation?

7 A. What was your question.

8 Q. Does that refresh your recollection as to the
9 demand you made?

10 A. Yes, we must have made a demand for 310 --

11 Q. At the mediation with McCue or--

12 A. I don't know. Probably at the mediation, I
13 would presume. When was the mediation?

14 Q. September 29th, 28th.

15 A. So a few days later.

16 Q. So you think the demand on the table was
17 \$310,000 as of 10/02?

18 A. Right.

19 Q. What response was there in follow-up after you
20 received that letter? Did you call Mr. Kawabata? Was
21 there something that went on after that you can now
22 remember?

23 A. No, I don't remember.

24 Q. Okay. This proposal in that letter is a total of
25 \$200,000. Is that the proposal which you and Mr. Sax and

1 Mr. Hollifield agreed to accept?

2 A. Well, we agreed to accept \$200,000, I don't know
3 if it's done in this fashion. 50 on workers' comp, 50--I
4 don't think we settled his workers' comp case. You'd have
5 to look at the paperwork on it. I believe they received a
6 credit for a certain amount that they had paid on his
7 workers' comp case.

8 Q. I think your file reflects documents indicating
9 that on January 28, '99 there was an order of credit for
10 120 and 35 allowed to Argonaut against the employers'
11 compensation liability; does that happen to sound right?

12 A. That sounds right.

13 Q. And there's also an order of December 10, '98
14 pending action, pending filing of a permanent and
15 stationary report; does that sound familiar?

16 A. I remember, yes.

17 Q. And you substituted out of the workers' comp
18 case by a substitution signed on December 20th of the year
19 2000, substituting Mr. Hollifield in pro per; does that
20 sound accurate?

21 A. Yes.

22 Q. But going back to Mr. Kawabata's letter of
23 October 2, 1998, I just want the record clarified. Do you
24 now remember any follow up discussions or bargaining or
25 further conversation with Mr. Kawabata -- about the case

1 of that letter -- prior to accepting the total figures of
2 200,000?

3 A. I'm sure I talked to him. I don't remember the
4 specifics.

5 Q. It looks as if there was an ex parte hearing by
6 Kawabata scheduled for October 13, 1998 to continue the
7 trial to December do you remember attending such an ex
8 parte hearing where the trial was continued?

9 A. I don't.

10 Q. I am now looking at my notes, and in going
11 through your pile from --for October 28th I don't have
12 notes here with whom or what doctor was sent that whether
13 an IME was ever set?

14 A. Where do you see that.

15 Q. From reviewing your file this morning and
16 yesterday, it was something in the correspondence file.

17 A. There's no way I'd remember a date and a time
18 that an Ime was taking place.

19 Q. We won't take the time to go through it now. In
20 your correspondence file there is lose, and I think you'll
21 be able to find it quickly, a fax sheet with a bright pink
22 card on the front of the it and what was the purpose of
23 that fax?

24 A. Looks like we faxed things to Rick.

25 Q. And what was faxed?

1 A. Well, what's attached is a letter dated August
2 3rd that I sent to Dr. Braun that you've already talked
3 about marked as an exhibit and a letter dated August 18th,
4 1998 that appears to be it.

5 Q. We'll mark those documents as Exhibit 10.

6 (Defendant's Exhibit 10 was marked for identification and
7 is attached hereto.)

8 BY MR. DEUPREY:

9 Q. And do you remember why it was that those
10 materials were faxed to Mr. Hollifield?

11 A. Because he asked for them.

12 Q. What was the conversation between you and Mr.
13 Hollifield as to why he wanted those documents in or about
14 November 16, 2000?

15 A. I don't have any independent recollection. I
16 don't know why he wanted them. I could guess.

17 MR. SAX: I don't want you to guess or
18 speculate if you had a specific recollection of the
19 conversation. We won't have you speculate.

20 BY MR. DEUPREY:

21 Q. In your correspondence file, there is a
22 memorandum dated January 10, 1998, a telephone
23 conversation with Mr. Hollifield, would you see if you can
24 locate that?

25 A. What date?

1 Q. January 10, 1998.

2 A. It's in the correspondence file.

3 Q. Let me see if I could find it.

4 A. January 10th.

5 Q. There's one dated oh, you mean a telephone
6 message?

7 Q. Oh, it may be a memorandum of a telephone call.
8 Let me see if I could find the document here. It is
9 January 10, I apologize it's December 10 1998. We'll mark
10 that as an exhibit.

11 (Defendant's Exhibit 11 was marked for identification and
12 is attached hereto.)

13 BY MR. DEUPREY:

14 Q. This reflects, on it's face as I read it, that
15 Mr. Hollifield called and asked that you call him
16 immediately, and there's a lot of information; did you
17 return the call, to the best of your knowledge?

18 A I'm sure I did.

19 Q. Do you remember the conversation you had with
20 Mr. Hollifield at or about that time?

21 A. Not really other than it was consistent probably
22 with this note. I remember after reading this, that we
23 discussed the things that were in here.

24 Q. Do you remember Mr. Hollifield expressing any
25 unhappiness with Dr. Braun's care at that time?

1 A. Well, if he says he needs additional surgery,
2 that the bone plates broken and I know he was upset, I
3 don't know specifically Dr. Braun's care or the opinions
4 he gave in the letter that he sent to me on--it was dated
5 August 18th, August 18th, '9.

6 Q. From the total circumstances, is it likely that
7 in your conversation with Mr. Hollifield he expressed some
8 upset over his perception of Dr. Braun's opinions in his
9 report of the August 18th, given the fact that now the
10 plate has broken and it needs further surgery?

11 A. I don't have any recollection of that; I don't
12 remember. I just know that he was upset about the
13 additional surgery, and he was hurting and feeling bad.

14 Q. To your knowledge, did Mr. Hollifield ever
15 return to Dr. Braun after the December 10 date --

16 A. I don't know.

17 Q. -- 1998?

18 A. I don't know.

19 Q. Did you make any suggestions to him about seeing
20 any other doctors for an evaluation?

21 A. I don't remember, I may have, but I don't
22 remember. He may have told me he was going to see another
23 doctor on that occasion.

24 Q. This memo states, quote, "Rick needs to know
25 ASAP if the surgery and subsequent care will still be

1 covered under his workers' comp," end quote. Do you
2 remember in your follow-up conversation with Mr.
3 Hollifield if that question was addressed?

4 A. Specifically? No. But he probably did ask me
5 that.

6 Q. The last paragraph of the memo in Exhibit 11
7 states, quote "there was a workers' comp hearing on the
8 lien matter on 12/08/98 before Keith Dietterle. "Rick
9 wanted to know why you were not at that hearing" period.
10 "he said your his attorney in this matter," period, end
11 quote.

12 Does that refresh your recollection as to what
13 you discussed with Mr. Hollifield.

14 MR. SAX: I'll object to this line for two
15 reasons. First of all, this is not about the settlement
16 and was not anything that we agreed to waive
17 attorney-client privilege pertaining to the discussions to
18 the attorneys and the client as to why they will settle
19 and what Dr. Braun's--entirely beyond the scope.

20 Second of all, this is encroaching on an area of
21 attorney-client privilege regarding another matter which
22 is not the subject of this lawsuit.

23 MR. DEUPREY: Well, you've asserted the
24 attorney-client privilege. I'm not going to battle you on
25 it here. We'll just reserve our rights to question the

1 witness on that subject should a judge find that the
2 privilege does not apply.

3 BY MR. DEUPREY:

4 Q. I just need to know Mr. Goetz, whether you're
5 going to respect that and not answer based upon that
6 assertion, or if we can just proceed having made a record
7 to bring a motion.

8 MR. SAX: Clarification. Are you not in fact
9 asking for attorney-client information post-date of the
10 settlement? We've had confusion as to the dates of
11 mediation hearings but, we've had no confusion 11/03/98
12 this was settled.

13 So anything that transpired between attorneys
14 and client post-settlement is not germane to the scope.
15 You've made your record, Dan. I will instruct him not to
16 answer this question.

17 MR. DEUPREY: It clearly goes to a time frame
18 after the settlement was included. That speaks for
19 itself, but I just want to reserve my right to pursue this
20 line of questioning after bringing a motion, should I
21 choose to.

22 MR. SAX: So noted.

23 BY MR. DEUPREY:

24 Q. Are you going to follow that instruction, Mr.
25 Goetz?

1 A. Yes, I will not violate my attorney-client
2 privilege and I think that unfortunately this document
3 should have been taken out of the file. There is
4 information in here that has nothing to do with this case.

5 Q. Let me ask you, did you have anything to do with
6 getting Mr. Hollifield in to see Reid Abrams at any time?

7 A. No.

8 Q. And my next question does not ask for any
9 confidential communication between you and Mr. Hollifield
10 I don't think.

11 Did you have anything to do with getting Mr.
12 Hollifield in to see any other doctors? After the date of
13 Exhibit 11?

14 MR. SAX: After December 10/98? I think it would
15 be beyond the scope of this case. Anyway, he's only
16 authorized to talk to you about what is germane to this
17 case. I don't think it's germane.

18 BY MR. DEUPREY:

19 Q. Well, I take that as a refusal to answer?

20 A. I think I have to refuse to answer.

21 MR. SAX: Can we have the same stipulation both
22 ways Counsel.

23 MR. DEUPREY: Thank you very much.

24 BY MR. DEUPREY:

25 Q. If you want, Mr. Goetz, you've just indicated

1 that perhaps you object to the Exhibit 11 being made an
2 exhibit to the deposition. I'm willing to have a judge
3 rule on the issues. To have you hold that document in
4 your file. It does not need to be made an exhibit. But,
5 I will leave 11 open, and the next exhibit will be 12.

6 MR. SAX: Most gracious of you. We are filing
7 an objection.

8 MR. DEUPREY: All right,
9 BY MR. DEUPREY:

10 Q. Can you articulate for me -- strike that.
11 Strike that.

12 So that I walk away today with a clear record,
13 can you remember any reasons articulated to you by Mr.
14 Hollifield as to why he agreed to a settlement of
15 \$200,000? In other words, I assume that you had
16 discussions with him on that subject before you came to
17 your--

18 A. In answer to your question, I don't recommend,
19 generally speaking, settlements to my clients.

20 What I do is I give them all of the facts
21 and try to give them an analysis what the bottom line is
22 going to be, which are the exhibits that you've got, is an
23 example of that. And there may have been others.

24 I may have written other scenarios other than
25 those, and I'm sure we discussed the medical report of Dr.

1 Braun, we discussed the possible liability issues, we
2 discussed future meds, that workers' comp case, all of
3 these came in to play along with the numbers and what he
4 would end up with. Their lien, Kavass' possible
5 negligence, all of these things. It was a complicated
6 case.

7 And, after doing that I told him he had to make
8 the decision because it wasn't my case, it was his case
9 and ^{it} was his decision to make, not mine. *J*

10 Q. Did you recommend against settlement of
11 \$200,000?

12 A. I didn't recommend either way.

13 Q. Did Mr. Hollifield ask you for a recommendation?

14 A. I don't think he did.

15 Q. Did Mr. Sax, in your conversation, make a
16 recommendation as to whether the \$200,000 should be
17 accepted?

18 MR. SAX: Recommend to whom? To Mr. Goetz or to
19 Mr. Hollifield.

20 BY MR. DEUPREY:

21 Q. To either Mr. Goetz or Mr. Hollifield or both.
22 If it happened to be a joint conference?

23 A. Not that I remember no.

24 Q. Do you remember any conversation or
25 conversations, with Mr. Hollifield present -- either

1 present or on the telephone, where these complex issues
2 were laid out for him to decide? Do you remember any such
3 conversations specifically?

4 A. With Hollifield? Sure.

5 Q. How many such conversations relating to a
6 settlement of \$200,000--let me clarify. And maybe my last
7 question wasn't clear.

8 I'm assuming that you're at a point, after Mr.
9 Kawabata's letter of October 2nd, where a figure of
10 \$200,000 is on the table from the defense. And you're at
11 a point where you're considering it; and my question is in
12 the time frame, when the \$200,000 was on the table, do you
13 remember having a specific conversation with Mr.
14 Hollifield where you laid out these checks that he would
15 have to consider in deciding what to do about the offer?

16 A. Yes. I did that. I don't remember exactly
17 when.

18 Q. Regardless of the specific date, do you have in
19 mind, in your recollection, a picture of talking to Mr.
20 Hollifield either in person or by phone about these
21 conversations?

22 A. I remember having that discussion with him, yes.

23 Q. Was it a face-to-face or a telephone?

24 A. It was face-to-face. We may have had telephone
25 follow-ups. Probably did, actually.

1 Q. Was Mr. Sax present?

2 A. I believe. *he was present. J*

3 Q. Was it in this office here in Solana Beach?

4 A. I think we talked about it at the settlement
5 conference. We may have talked about it here too, but we
6 certainly talked. I recall talking about it at the
7 settlement conference. We may not have had a specific
8 number then but we certainly discussed the case, the pros
9 and the con, the numbers.

10 Q. Do you actually remember the conversation when
11 you heard the words from Mr. Hollifield either over the
12 phone or in person telling you that he had decided to take
13 the \$200,000?

14 A. Do I remember those words?

15 Q. Not verbatim, but in substance. His telling you
16 will let's take the two hundred?

17 A. I remember him agreeing to it. He signed a
18 release and probably a check at some point.

19 Q. Was that conversation when he told you that he
20 wanted you to go ahead and accept the two hundred, on the
21 telephone, or in person?

22 A. I think it was in person.

23 Q. And was Mr. Sax there?

24 A. I think so.

25 Q. And during that conversation, did Mr. Hollifield

1 express any particular reasons why he wanted to accept the
2 \$200,000?

3 A. I remember -- if I'm not mistaken, I remember
4 that he had financial pressures. They were cutting him
5 off the workers' comp. They said he was permanent and
6 stationary based on Dr. Braun's report that he didn't need
7 any more treatment.

8 And I'm sure he thought about it. I think he
9 had sufficient time to think about it. He indicated that
10 he did.

11 But, there were a lot of factors, the factors we
12 discussed and his personal situation, needing funds, had
13 something to do with it too. That's true of anybody when
14 they settle a case.

15 Q. Did he express any other reasons, that you can
16 recall, other than his financial difficulties?

17 A. Well, definitely. Dr. Braun's report came up,
18 and the reaction of the other side to that and Judge
19 McCue. And then the follow-up, where he says that he's
20 permanent and stationary; they're cutting him off at TD.

21 Q. When was he cut off of TD?

22 A. I think it was around October six.

23 Q. Mr. Sax just put a document in front of you.
24 Would you take a look at that and see if that refreshes
25 your recollection?

1 A. This is a notice regarding--from Argonaut saying
2 that, "Your payments are ending because you are permanent
3 and stationary.

4 Q. What's the date of that?

5 A. Looks to me like.

6 Q. And did Mr. Hollifield bring that notice to your
7 attention at or before the time of the decision to settle?

8 A. I think we had this before the final decision
9 was made.

10 Q. Do you have a specific recollection?

11 A. I remember him mentioning that he's cut off.

12 Q. And who was representing him in the WCAB
13 proceedings at that time?

14 A. I was.

15 Q. And what was your reaction, as his lawyer, to
16 that notice of 10/06?

17 A. Well, the reaction was, Dr. Braun, obviously had
18 generated some sort of report to cause them to do this.
19 He could have been basing it, I suppose, upon the letter
20 he sent me. But I think there's additional records
21 indicating that he thought he was through treating with
22 him, that we could petition the court and try to get that
23 turned around. But, there was no guarantee that was going
24 to happen. That Dr. Braun was of the opinion that he was
25 going to be fine, that he was permanent and stationary

1 now.

2 Is he wrong? Is he right? We could argue that
3 in front of the workers' compensation appeals board, but
4 the reality was at that time, he was cut off.

5 Q. Well, I'm -- just to clarify for the record.
6 Did you take any action to challenge or investigate the
7 background of that notice when it was brought to your
8 attention? I'm not implying --

9 A. I don't remember.

10 Q. If you did?

11 A. I don't remember.

12 Q. For example, did you review any records of Dr.
13 Braun generated on or about October six?

14 A I might have I don't remember.

15 Q. Would that have been your custom and practice?

16 A. Yes. I would have pulled out records, whatever
17 I had, to see what the doctor had to say.

18 Q. So, if we assume that Dr. Braun had made
19 records, medical records, justifying to Mr. Hollifield on
20 October 5th or 6th, would it be your custom and practice
21 to get copies of those records?

22 A. I think I was getting them on a regular basis
23 from him.

24 Q. Okay. And looking at your file on "Additional
25 medical records for Dr. Braun," do you see any records

1 from Dr. Braun for the time frame of October?

2 A. Just because they're not here doesn't mean
3 they're not in other boxes. There's a lot of medical
4 records here. I don't see anything in here, no, in this
5 particular folder, but that doesn't mean they aren't here.
6 There are boxes, if you want to go through them.

7 Q. Let's take a look, if we may, at the CorVel file
8 and see what's contained in that?

9 A. Here's the CorVel file. It's not his records,
10 it's her records.

11 Q. Understand. Understand. Looking in the CorVel
12 file for information that you'd received concerning the
13 situation--

14 A. If you really want his records, why don't you go
15 to his records that we have for him, you can look through
16 all of this stuff. I think we have his records here some
17 place?

18 Q. Honestly, at the moment, as I sit here, I don't
19 recall finding -- if I found or where I found copies of
20 Dr. Braun's medical records for October. You have some
21 black notebooks. We can take a moment to look in them to
22 see if --

23 (Discussion off the record.).

24 BY MR. DEYPREY:

25 Q. In this file, back on the record, in drawing

1 your attention to the file entitled "Rick Hollifield",
2 "additional medical records/Dr. Braun" end quote. The
3 last -- bottom page of that appears to be a
4 Word-processor-generated memo. Would you look at that and
5 tell me whether or not it looks like you prepared it
6 yourself on your computer?

7 A. I don't know.

8 Q. Okay. We'll mark that as Exhibit 12, does the
9 format and font and print appear to be similar to that
10 which you generated?

11 (Defendant's Exhibit 12 was marked for identification and
12 is attached hereto.)

13 THE WITNESS: Yes.

14 BY MR. DEUPREY:

15 Q. And can you tell one way or the other whether it
16 is likely something that you prepared?

17 A. Looks like I probably prepared it or had it
18 done.

19 Q. And what does it refer to in general?

20 A. Apparently information regarding a visit that
21 Rick Hollifield had with the doctor.

22 Q. And what was the source of information for the
23 information in Exhibit 12, about that visit of the August
24 27th. Would it have been, for example any of the
25 following conversations with Mr. Hollifield: Review of

1 medical report of August 27th, or something else, or all
2 of those?

3 A. It could have been a conversation with Rick
4 Hollifield, a review of the records, or possibly even a
5 review of those notes from the nurse -- what was her name?
6 Harrah?

7 Q. Harrah?

8 A. Harrah.

9 Q. In this exhibit it states, quote, "Dr. Braun
10 said he will have another surgical procedure scrape ulna
11 bone (left side) and remove pin office procedure," end
12 quote. Do you have any recollection of what information
13 was provided that led to that particular note, what the
14 source was?

15 A. No.

16 Q. Do you now recall what you understood was meant
17 by quote "another surgical procedure, scrape ulna bone
18 (left side)" end quote?

19 A. No.

20 Q. And there is a line that states, quote, "hand
21 therapy, everything hurts," end quote. Do you have any
22 idea where that information came from?

23 A. No.

24 Q. Is it more likely than not that particular
25 source came directly from Mr. Hollifield, the language

1 "everything hurts," end quote?

2 A. It might have come from him. I don't remember.

3 Q. Is that the most likely source?

4 A. I don't know.

5 Q. Further, the note states "not getting any
6 stronger" period. He may be able to bend it further with
7 pulse machine, but can't do it without machine." end
8 quote.

9 What was your understanding of the source of
10 that? What's your understanding of the source of that?

11 A. I don't remember.

12 Q. What is your understanding? What's referring to
13 as "the pulse machine", end quote?

14 A. I don't remember.

15 Q. Now that we've gone through this line by line,
16 do you have any recollection of the source of the
17 information that led to this memo?

18 A. No.

19 Q. Do you now recall when this memo was made?

20 A. No.

21 Q. Well, you'll be happy to hear we are getting to
22 the end of my adgenda.

23 Q. I'd like to lastly ask you about another
24 document, the "CorVel case management report file." I'm
25 sorry -- one other inquiry as well, this will be brief.

1 CorVel. Thank you. There is a report number: 35, could
2 you locate that, please? It's dated 10/16/98.

3 A. Yes I've got it.

4 Q. Could we pull that out and mark that as Exhibit
5 13 please?

6 (Defendant's Exhibit 13 was marked for identification and
7 is attached hereto.)

8 BY MR. DEUPREY:

9 Q. This is attached to an envelope which reflects a
10 postmark of -- what is your best interpretation of that?

11 A. October 2nd or 20th -- wait a minute, 20th.

12 Q. Okay.

13 A. -- it looks like.

14 Q. And let me draw your attention to a portion of
15 that. In the third paragraph from the bottom, there's
16 language which states, quote, "When addressing the issue
17 of future medical care, the doctor said that Mr.
18 Hollifield might need a wrist fusion, paren. (Due to the
19 fact that he was having pain in his wrist) or Mr.
20 Hollifield might need a revision of the distal ulna," end
21 quote.

22 Do you remember reviewing that information when
23 you received that report?

24 A. I don't recall it, no.

25 Q. Did you ever talk to Mr. Hollifield about the

1 results of his visit with or visits with Dr. Braun either
2 on October 5th or 6th or both? In terms of what Dr. Braun
3 said, what was done, what his treatment was, any of those
4 kind of details, any time prior to a decision to settle
5 the case?

6 A. What was your question again.

7 Q. I'll make it simple, do you have any
8 recollection of discussing directly with Mr. Hollifield
9 anything that occurred in connection with his visits with
10 Dr. Braun on October 5th or 6th, before he settled the
11 case?

12 A. I don't have specific recollection, but I'm sure
13 we talked about it.

14 Q. Was it your custom and practice to ask Mr.
15 Hollifield what occurred in his visits with Dr. Braun?

16 A. Yes. And he also offered--he told us what was
17 going on.

18 Q. Do you have any specific recollection of
19 anything specific that Mr. Hollifield told you in '95 of
20 those conversations that he had been told by Dr. Braun?
21 In other words, let me clarify the question. Did Mr.
22 Hollifield ever convey to you any statements that Dr.
23 Braun had made about his condition during the course of
24 the visits in October?

25 A. Not that I can recall today, my recollection is

1 that his statements to Mr. Hollifield were pretty much
2 consistent with what he put in his reports or his letter
3 to me.

4 Q. Just to clarify for the record. If I asked you
5 to repeat any statement Mr. Hollifield made reporting or
6 alleging that Dr. Braun told him anything particular,
7 would you be able to pull up from your memory that he told
8 you that he might, Mr. Hollifield might have, passed on to
9 you?

10 A. Not at this point in time, no, not without
11 looking at notes and reviewing things, no.

12 Q. As you look at the report now, exhibit 13, do
13 you have any recollection of ever having received the
14 information before this moment that Doris Harrah had the
15 understanding that this patient Mr. Hollifield might need
16 another wrist fusion at that time?

17 A. No, it looks like I got this in sometime late
18 October, October 28, I don't remember. But, this document
19 also indicates that the doctor said that he felt that at
20 this point Mr. Hollifield's condition was permanent and
21 stationary, which would indicate that he didn't think he
22 needed any future surgery.

23 Q. Well, well, recognizing that, our focus is
24 whether, prior to this moment, do you have any
25 recollection of ever being told by Doris Harrah by Dr.

1 Braun that he might need another wrist fusion?

2 A. No, never said that.

3 Q. I'm sure that would have gotten your attention
4 if she called you have or contacted you and said, "Dr.
5 Braun told me he might have needed another wrist fusion"?

6 A. No he never told me that.

7 Q. Was your client still experiencing a substantial
8 amount of pain in his forearm, wrist. And is this your
9 best understanding at the time of settlement?

10 MR. SAX: Objection. Calls for speculation.

11 BY MR. DEUPREY:

12 Q. Let me clarify. Let me clarify the question.
13 Based upon your recollection of what Mr. Hollifield was
14 telling you, you were discussing his condition prior to
15 the settlement; do you remember him telling you that he
16 was still experiencing a significant amount of pain in his
17 forearm or wrist?

18 A. I don't remember him saying that.

19 Q. Now, thinking back, do you remember, regardless
20 of the source, having an understanding at the time that
21 the case was settled that at that time in point latter
22 part of October that your client was still experiencing a
23 significant amount of pain in his forearm or wrist?

24 A. My recollection is that he wasn't.

25 Q. Do you have a specific recollection that you

1 had a understanding at that time that he had not have a
2 specific amount of the pain, I think he had pain but, I
3 guess it depends on how you describe significant. But, I
4 would say no. I don't recall him indicating that he had
5 significant amounts of pain I think he had some
6 discomfort.

7 Q. But not severe?

8 A. No. No.

9 Q. Is that correct?

10 A. Correct. Yes

11 Q. Did Doris Harrah--going back to Exhibit 13, ever
12 call you or contact you in any way to discuss her
13 understanding, based upon this report, that her client may
14 need a revision of the distal ulna?

15 A. No.

16 Q. Does this report marked Exhibit 13, refresh your
17 recollection as to the source of the information on
18 Exhibit 12 where it states, quote, "Dr. Braun said he will
19 have another procedure scrape ulna bone" end quote?

20 A. No. It could have been done after we settled it.
21 I don't know.

22 Q. Do you think you would have prepared or caused
23 to be prepared the memo Exhibit 12 some time after you
24 decided to settle the case?

25 A. Probably not, but I might have, I don't

1 remember. Everyone knew he needed a pin removed.

2 Q. Moving on to the next topic and hopefully that
3 will be our last. Now, going to the order of credit for a
4 \$128,090 which is in the pleading file Number 2084 of the
5 file, did you need to have that in front of you? Can I
6 ask questions?

7 A. I don't know. Ask me a question.

8 Q. I wanted to know what, as the lawyer
9 representing Mr. Hollifield, that order of credit meant in
10 terms of the future obligation of Argonaut to pay for
11 medical expenses?

12 A. Well, my understanding, they would get a figure *credit*
13 of \$120,000, ^{or} whatever it was, and before they had to pay
14 any more money to him ~~they would~~ -- he would have to incur
15 that amount of expense or ^{pay} be entitled to that amount of
16 money in the form of a ~~TD or whatever~~. *credit*. *2*

17 Q. So \$128, including medical expenses and
18 temporary disability payments?

19 A. Right, that's my understanding, a *credit* TD. *1*

20 Q. Do you have any idea of even a ballpark figure
21 of how much has been incurred for all of those things
22 since the order of credit was made in January of '99 to
23 the present.

24 MR. SAX: Objection. Objection. He was not an
25 attorney of record after that period of time for purposes

1 of this case.

2 MR. DEUPREY: He was until December of 2000,
3 according to the substitution.

4 MR. SAX: But you're asking for through the
5 present.

6 BY MR. DEUPREY:

7 Q. Oh, okay. Do it through December of 2000?

8 A. What was?

9 Q. Up until the time you substituted out of the
10 workers' comp lawyer for Mr. Hollifield, December of 2000,
11 how much, in ballpark terms, had been further incurred by
12 Mr. Hollifield?

13 A. I don't know.

14 Q. Do you have any records to show that?

15 A. No, no.

16 Q. As his workers' comp attorney for that period,
17 do you have an idea of where that information might be
18 obtained?

19 A. No. I presumed he would never reach that figure.

20 Q. And what was the--going now to hopefully the
21 last topic, what was the meaning and significance of the
22 order suspending action as of December 10/99 appending a
23 filing of a permanent and stationary report?

24 A. I don't know if that was as a result of the
25 workers' comp attorney for Argonaut trying to get some

1 sort of order to conclude the workers' comp case and the
2 result was this order indicating that they got credit for
3 \$120,000 and change.

4 Q. Was there a hearing on December 8th as suggested
5 by previous testimony, a hearing?

6 A. Workers' comp hearing?

7 Q. Uh-huh.

8 A. There may have been, but I was not there.

9 Q. What would that hearing have involved?

10 A. I'm not sure what happened at that hearing.
11 Again, we had agreed to allow them to have that amount of
12 the credit, which probably meant that he wasn't going to
13 get any more money from the workers' comp case.

14 Q. Was that part of the agreed settlement of both
15 Olsen Steel and workers' comp?

16 A. Yes. We had to settle the workers' comp lien
17 because they had a lien against any recovery.

18 Q. You had to top that off, put a figure on it, so
19 it would be resolved?

20 A. Yes. And it turned out that the third, ^{part 2} the 
21 liability insurance ^{and} was Argonaut and the workers' comp ^{carrier} was
22 Argonaut which made it more difficult. Sometimes you can
23 get them to take less on a lien.

24 Q. At any time before you substituted out as the
25 workers' comp lawyer in December of 2000, Reid Abrams or

1 any of the other treating doctors did any workers' comp
2 reports to your knowledge?

3 A I never received anything from. *Dr Abrams. P*

4 Q. You were the attorney of record.

5 A. They didn't send me anything.

6 Q. So, if Reid Abrams or another doctor did a p&s
7 report; you won't know about it?

8 A. I don't recall getting anything.

9 Q. You're being shown a document, does that refresh
10 your recollection about something?

11 MR. SAX: It's a document that may clarify why
12 he never received anything.

13 MR. DEUPREY: Okay I'll wait until I'm informed
14 of what it is and all of that.

15 MR. SAX: Service was waived.

16 BY MR. DEUPREY:

17 Q. It was not served on you or anyone else?

18 A. What the heck -- it is a conference dated --
19 I've never seen this document before so --.

20 Q. Take a moment to look at that and tell me --

21 A. It appears to be a workers' comp form of some
22 kind indicating that there was a conference, and it looks
23 like Rick Hollifield appeared for himself and there were
24 -- again -- this is regarding a lien I don't know if you
25 want to go into this, but I don't know why you're showing

1 it.

2 MR. HOLLIFIELD: It was waived.

3 MR. DEUPREY: What are we all looking at here?

4 MR. SAX: Actually, this is not from his files,
5 this is from my clients files, and it involves a matter
6 which is otherwise confidential. That has nothing to do
7 with this case.

8 MR. DEUPREY: Is it part of the workers' comp
9 file?

10 MR. SAX: If it is, you should obtain it from
11 the.

12 MR. DEUPREY: It came up, and the deponent is
13 looking at it I think I have a right to see it if I can
14 get it from the file, Richard.

15 MR. SAX: All right. I want no mention of the
16 other matters here that are not germane to this case. Put
17 that on the record.

18 BY MR. DEUPREY:

19 Q. This for the record is apparently signed by a
20 workers' comp judge and refers to an appearance. Can't
21 see a date on it, do you see a date on it?

22 MR. SAX: That document has nothing to do with
23 this case, it regards a lien and his recovery. He might
24 it get in the workers' comp case.

25 MR. DEUPREY: A Lien by workers' comp lawyer?

1 MR. SAX: I don't want to discuss what it was a
2 lien regarding. I would make this out as a date down
3 below, looks like part of the--it is off. 12/08/98; is that
4 correct?

5 MR. DEUPREY: I can't make it out.

6 MR. SAX: My best estimate is 12/08/98.

7 BY MR. DEUPREY:

8 Q. So, that must have been a document in
9 relationship to the hearing that we are talking about?

10 A. Yes.

11 Q. Do you have any idea why you did not attend?
12 Was there a waiver?

13 A. I didn't know about it.

14 Q. That's a good reason.

15 MR. SAX: What was the date of his substitution
16 out.

17 MR. DEUPREY: December of 2000. You understand
18 my confusion as to why he didn't get notice of it.

19 BY MR. DEUPREY:

20 Q. Do you have any idea why you didn't get notice?

21 A. Well, I can guess that Rick actually substituted
22 himself on that date ~~and~~ and then by order of court, they
23 may have done it. The substitution we filed -- may have
24 been.

25 Q. Okay. Well, that's all I have. I thank you

1 very much for your time. Sorry it took so long.

2 What sort of the stipulations would you like to
3 add for this original transcript?

4 I would offer the original be sent directly to
5 Mr. Goetz; that he be able to sign it under the penalty of
6 perjury Sometime in the next 30 days. Once he reviews it
7 and signs it, any changes can be communicated to me
8 through you Richard. Would that be acceptable?

9 THE WITNESS: Fine with me.

10 MR. SAX: Yes.

11 MR. DEUPREY: Right now you are the attorney of
12 record, correct? Are you currently representing Mr.
13 Hollifield? I'll get the changes through you. Further
14 stipitate if we don't receive a a signed copy, the
15 certified can be used as an original. If for any reason
16 the original is not available, when it's needed at or
17 before the time of trial, that a true and accurate copy
18 maybe used. To the extent this stipulation waives the
19 court reporter's duties, she is relieved.

20 Did we cover everything?

21 MR. SAX: I think.

22 MR. DEUPREY: Do you want to keep custody of
23 the original since you and Dean are--

24 MR. SAX: Yes.

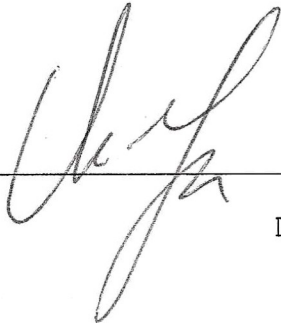
25 MR. DEUPREY: Getting these exhibits copied so

1 that they can be returned to your file, and we can have a
2 complete file. We go off the record to discuss that
3 unless there is something to talk about on the record. I
4 understand that I'll be able to look at those files at
5 some point before your deposition is set.

6
7 (Ending time is 5:24.)
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1
2 I declare under penalty of perjury,
3 Under the laws of the State of California,
4 That the foregoing is true and correct.

5 Executed on 3-19, 2001
6 At Salmon Beach, California.

7
8
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11 
12 _____
13 DEAN GOETZ
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1 STATE OF CALIFORNIA)SS:

2 COUNTY OF SAN DIEGO)

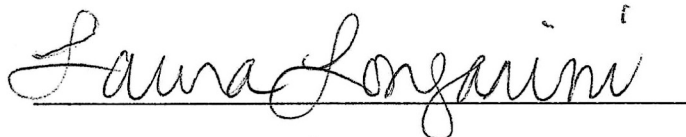
3
4 I, Laura Ann Longarini, C.S.R. No.12384, do hereby
5 certify:

6 That the foregoing deposition of Dean A. Goetz was
7 taken before me at the time and place therein set forth,
8 at which time the witness was put under oath by me;

9 That the testimony of the witness and all objections
10 made at the time of the examination were recorded
11 stenographically by me, were thereafter transcribed under
12 my direction and supervision and that the forgoing is a
13 true record of same.

14 I further certify that I am neither counsel for nor
15 related to any party to said action, nor in any way
16 interested in the outcome thereof.

17 In witness whereof, I have subscribed my name on
18 this 25th day of February, 2001.

19
20
21 

22 Laura Ann Longarini, C.S.R.No.12384
23
24
25

INDEX

FRIDAY, FEBRUARY 9, 2001

WITNESS

EXAMINATION

DEAN A. GOETZ

(By Mr. Deuprey)

3

EXHIBITS INDEX

DEAN A. GOETZ

NUMBER	DESCRIPTION	INTRODUCED	IDENTIFIED
--------	-------------	------------	------------

1	Ten-Page Packet/Plaintiff	10	10
---	---------------------------	----	----

Rick Hollifield's mediation

Brief. Dated: Tuesday, April

11,1998.

2	Three-page Document from	16	16
---	--------------------------	----	----

Summit Settlement Service.

Dated: October 7,1998.

Regarding Structure

Settlement for Rick Hollifield.

3	Seven-page Packet:"Likely/	21	21
---	----------------------------	----	----

Worst Results." Written by:

Mr.Goetz Re: Settlement

agreement.

4	Letter from Dr.Braun.	56	56
---	-----------------------	----	----

1		Dated: August 18,1998.		
2		To Mr. Goetz.		
3	5	Two page document.	57	57
4		CorVel Case Management		
5		Report. Dated: September		
6		10, 1998. Medical Summary.		
7	6	Letter from Dr.Braun.	75	75
8		Dated: August 27,1998.		
9		To Ms. Cumpian.		
10	7	Letter from Dr.Braun.	88	88
11		Dated: August 27, 1998.		
12		To Ms. Cumpian.		
13	8	Medical supplemental report	89	89
14		Dated: August 27, 1998.		
15		Report by Dr. Braun.		
16	9	Medical supplemental report	90	90
17		Dated: October 5, 1998.		
18		Report by Dr. Braun.		
19	10	Seven-page Packet.	95	95
20		To Dr. Braun		
21		From Dean Goetz		
22		Dated: August 3, 1998		
23		Regarding: Rick Hollifield		
24	11	MENTIONED	96	96
25	11	OBJECTED TO	101	101

1	12	One-Page Notation	109	109
2	13	Two Page CorVelcase		
3		Management Report	112	112
4		Medical summary Dated:		
5		October 16, 1998.		

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Errata Sheet

[illegible]

1 DEAN A. GOETZ
2 Attorney at Law
3 603 N. Highway 101, Suite H
4 Solana Beach, CA 92075
State Bar No. 65949

5 Telephone: (619) 481-8844
6 Attorney for Plaintiff RICK A. HOLLIFIELD

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, EL CAJON BRANCH
10

11 RICK A. HOLLIFIELD, [REDACTED]

12 [REDACTED]
13 Plaintiffs,

14 vs.

15 OLSEN STEEL, INC., a California
16 corporation and DOES 1 to 100,
inclusive

17 Defendants.
18

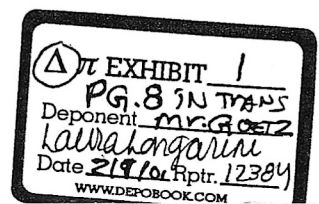
PLAINTIFF RICK HOLLIFIELD'S
MEDIATION BRIEF

Date: Tuesday, August 11, 1998
Time: 1:00 p.m.
Place: 501 W. Broadway
Suite 1770
San Diego, CA 92101-3595

Honorable Harry McCue

19 I. FACTS

20 Plaintiff RICK A. HOLLIFIELD (hereinafter "HOLLIFIELD") was employed by
21 Kvaas Construction (hereinafter "KVAAS") working as a laborer (steel worker) on the
22 Metropolitan Waste Water Treatment Center site located at 5240 Convoy Street, San Diego,
23 California on or about August 28, 1996. KVAAS was the general contractor on site and
24 Defendant OLSEN STEEL, INC. (hereinafter "OLSEN") was a subcontractor on this job site.
25 OLSEN provided all the steel channels for this job site. OLSEN delivered the steel and moved
26 the steel around the job site as necessary with their cranes and lifts. Large tilt up concrete
27 buildings were being constructed at the site and KVAAS was responsible for placing and
28



1 securing the steel beams on the concrete walls. Many of the steel channels were attached with
2 bolts to the concrete walls while the walls were on the ground. However, some of the steel
3 channels could not be attached to the walls until the walls were tilted up and in position.

4 HOLLIFIELD's duties included attaching the steel channels to the concrete walls.
5 HOLLIFIELD was injured when he and Danny Privett were attaching a twenty-two foot steel
6 channel (12 inches wide and 20.7 pounds per foot/total weight was 455 pounds) to a wall in
7 room 122 of one of the tilt up concrete buildings. HOLLIFIELD and Privett were working in a
8 room which had all four walls in place with several open doorways and an open roof.

9 Kurt Roll, an employee of Defendant OLSEN STEEL, used a sky track lift to pick up
10 the steel channel (outside the building) and lift it up over the wall. He lost sight of the steel
11 channel when the channel was lowered over the thirty foot (30') wall. Ken Younghusband was
12 acting as a signalman for Kurt Roll. However, Younghusband and Roll did not have visual
13 contact, nor did they have radios. Construction safety rules require a radio when a sky lift
14 (crane) operator does not have constant visual contact with his signalman. (See attached Exhibit
15 1) Clearly, Roll and Younghusband were negligent in the operation of the sky track. They
16 violated a very clear standard safety rule.

17
18 As the 455 pound steel channel (attached by one center cable rope only) was being
19 lowered over the north wall of room 122 the steel channel hung up on a steel ledger on the east
20 wall. Younghusband had to walk out of the room in order to signal Roll, the crane operator.
21 The delay between recognition of the need to have Mr. Roll stop the crane from lowering the
22 steel channel and the actual signal caused slack of approximately 18 to 24 inches to develop in
23 the cable which was attached to the steel channel. The channel wedged on the ledger nearest
24 HOLLIFIELD.

25 All construction experts would agree that slack in a cable in a situation such as the one
26 which occurred here is a dangerous situation and the slack was a contributing factor in Mr.
27 Hollifield's fall and resultant injury.
28

1 Mr. McKibben, HOLLIFIELD's expert, clearly states that the primary, and probably
2 sole cause of HOLLIFIELD's fall was the slack in the cable.

3 There are several versions of what occurred after the steel channel was hung up on
4 one end.

5 Version no. 1: HOLLIFIELD had his hand on the channel to keep it from swinging
6 toward him and to allow him to move the channel into its proper location. The steel channel
7 wedged onto a steel ledger on the east wall. The channel was to be attached to the north wall
8 and HOLLIFIELD was working from his ladder which was placed on the East wall. The steel
9 channel was raised by DEFENDANT's sky track releasing it from the wedged situation. It was
10 then lowered, but due to the slack in the cable the steel channel dropped two to four feet
11 suddenly and unexpectedly which caused HOLLIFIELD to lose his balance and fall.

12 Version no. 2: HOLLIFIELD had his hand on the channel to keep it from swinging
13 toward him and to allow him to move the channel into its proper location. The steel channel
14 wedged onto a steel ledger on the east wall. HOLLIFIELD was pushing the channel away from
15 him in an attempt to dislodge the channel. The channel released and due to the slack in the
16 channel it dropped two to four feet causing HOLLIFIELD to lose his balance and fall.

17 II. ISSUES

18 The main issue in the case will be liability, since all parties agree that HOLLIFIELD
19 has suffered a very severe and permanent injury. HOLLIFIELD severely fractured (crushed) his
20 left wrist joint. He has had eleven surgical procedures so far, and he currently has virtually no
21 grip strength in his left (dominant) hand and almost no movement in his wrist. He will be
22 permanently disabled and not able to continue working in the construction field. At age 31 he
23 was finally making good wages and had a bright future as a journeyman steelworker and now his
24 excellent potential earning capacity is gone.
25
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III. LIABILITY

Plaintiff contends that the third party defendants (OLSEN STEEL, INC) through its employees Kurt Roll and Ken Younghusband negligently operated a crane in such a manner as to cause slack in the cable which resulted in a sudden drop of the channel causing HOLLIFIELD to lose his balance and fall from his ladder.

It is irrefutable that Roll and Younghusband violated OSHA rules by failing to use radios as required. This was a "blind drop" and it requires radios. Olsen claimed at his deposition that he could see Younghusband's hands through the doorways and that he received sufficient hand signals. Howard Cayton, the site safety inspector, investigated the scene and concluded that it was impossible to stand in room 122 and signal to the crane operator from the doorways. Younghusband claims that he relayed his signals from room 122 to a co-employee, Jose Lopez, who was standing in the doorway who then relayed the signals to Roll. An electrician in adjoining room 124 says there was no relay signalman. Even if there was a relay signalman, this violates the OSHA safety rule requiring direct eye visual contact between signalman and crane operator. Hollifield and Privett, who were on the ladders in the room, both state that Younghusband was the only signalman, and he was in the room with them and the ladder from time to time walked out of the room. **It doesn't matter which version is accurate because in every version Olsen Steel is negligent.**

Defendants contend that HOLLIFIELD's use of his ladder was negligent and that this was the primary cause of the accident. HOLLIFIELD placed his ladder and used it in the safest manner possible given the circumstances which were presented to him. If his ladder had been facing the wall as required by some ladder safety standards, HOLLIFIELD certainly would have been knocked off the ladder by the channel as it came over the wall. Even if HOLLIFIELD's ladder had been held by someone below, he still would have been knocked off the ladder as the channel came over the wall if he had placed his ladder on the wall where the channel was to be installed.

1 Even Mr. Younghusband, the signalman, admitted in his deposition that he would have
2 placed his ladder precisely where HOLLIFIELD placed his ladder given the circumstances.
3 Furthermore, photographs taken by the safety expert after the incident clearly demonstrate that
4 it is not necessary to have someone hold the bottom of the ladder in order to use a ladder safely.

5 Plaintiffs contend that this is a clear case of negligence on the part of OLSEN and that
6 any contributory negligence of HOLLIFIELD is negligible

7 IV. INJURIES

8 The injuries suffered by Rick Hollifield are as follows:

- 9 1. Severe comminuted (crushing) fracture to his distal left wrist:
- 10 2. Destruction of the joint between the radius and proximal carpal row;
- 11 3. Severe, acute, carpal tunnel syndrome;
- 12 4. Chest, ribs and forehead contusions;
- 13 5. Severely bruised left shoulder;
- 14 6. Head trauma;

15 The symptoms which accompanied these injuries are as follows:

- 16 1. Permanent loss of range of motion in wrist and distal radial ulna joint;
- 17 2. Complete loss of grip strength in left hand;
- 18 3. Post-traumatic arthritis of the left wrist;
- 19 4. Tingling, numbness and stiffness in the left hand and fingers;
- 20 5. Abdominal pain and nausea;
- 21 6. Left chest pain;
- 22 7. Severe occipital headaches;
- 23 8. Left shoulder pain;
- 24 9. Reactive depression and sleep disorder;

25 The surgeries required as a result of the injuries include the following:

- 26 1. 8/28/96 Dr. Kupfer
- 27 1) Reduction of distal radius fracture
- 28

- 1 2) Application of an temporary external fixator and long arm splint
- 2 2. 8/30/96 Dr. Braun
- 3 - Forearm fasciotomy; decompress median nerve in the wrist and the
- 4 3. 9/5/96 Open reduction surgery to left distal radius and internal fixation of
- 5 intra-articular depressed fracture with bone graft; modification of
- 6 4. 11/19/96 Remove deep threaded pins from wrist; remove external fixator and
- 7 application of fiberglass case
- 8 5. 3/20/97 Osteotomy of the left radius; internal fixation plate applied
- 9 6. 10/30/97 1) Osteotomy and fusion procedure at the distal radius-proximal
- 10 carpal row level with bone graft
- 11 2) Arthroplasty distal radius - ulnar joint
- 12 3) Application of external fixator with two longitudinal
- 13 fixation bars
- 14 7. 11/10/97 Applied short-arm cast incorporating the fixator into the cast
- 15 materials.
- 16 8. 1/13/98 Removal of external fixator and deep pins in the area of left wrist
- 17 and radius
- 18 9. 1/21/98 Removal of pin along the radial border of the wrist. Three deep
- 19 wires continue to remain in place to secure the fusion area. Short-
- 20 arm fiberglass cast over Gortex liner was applied.
- 21 10. 3/9/98 Re-apply short-arm fiberglass case over Gortex lining from thumb
- 22 and mid-palm to the proximal forearm
- 23 11. 6/11/98 Bone plating and bone graft procedure in the area just proximal to
- 24 the left wrist. Bone fragments were taken from hip.

25 Even after eleven surgeries, HOLLIFIELD's left wrist has still not healed. He is still

26 wearing a cast, and he still doesn't know if he will ever have any movement in his left wrist. The

27 numerous surgeries and recovery periods have left him with a very small left arm. The atrophy

28 of his left arm is very obvious and embarrassing. The best Mr. Hollifield can hope for is a left

wrist which doesn't cause him constant pain. His left wrist will be virtually immobilized due to

the fusions, and he will have almost no grip strength in his left hand. He will not be able to

perform any manual labor or any activity which requires gripping or lifting or holding an object.

1 He will have life long pain in his left wrist but the degree of pain is not yet known.

2 V. LOSS OF INCOME

3 At the time of the accident Mr. Hollifield was working for KVAAS as a laborer hoping
4 to become a journeyman steel worker. He was earning \$20.55 per hour for KVAAS. His job
5 prior to the KVAAS job paid \$19.30 per hour.

6 Mr. Hollifield graduated from high school but he has no other formal education. He
7 was not a good student. It is going to be very difficult for Mr. Hollifield to be retrained to
8 perform well in any occupation which will pay even half as much as he was making as a laborer,
9 let alone a steel worker.

10 This is not simply a wrist injury case. **This is a very devastating injury case**
11 **because Mr. Hollifield's whole life has changed as a result of this accident.** At the time of
12 the accident, Mr. Hollifield was only 31 years of age, which means he had at least 34 more wage
13 earning years. Please see attached Exhibit 2 which sets forth the estimated loss of earnings.

14 VI. MEDICAL EXPENSES AND DAMAGES

15 The medical expenses incurred thus far by Mr. Hollifield are set forth in the attached
16 Statement of Medical Expenses and they have been paid by Argonaut Insurance Company.
17 **Argonaut is the workers compensation insurance representing KVAAS and Argonaut is**
18 **the insurance company representing the Defendant in this law suit, OLSEN STEEL, INC.**

21 VII. CONCLUSION

22 Defendant was negligent in not properly supervising, training and managing its
23 employees, not adhering to the Construction Safety Standards and not providing the signalman
24 with adequate electronic communication equipment so he could immediately inform the crane
25 operator of a dangerous situation in the lowering of the steel channel. Defendant's negligence
26 and carelessness caused a dangerous condition which caused Plaintiff to be injured.

1 In evaluating this claim one must consider that this claim is truly a **personal injury**
2 which was **suffered by Rick Hollifield** . He has incurred extreme pain and suffering as a result
3 of defendant's negligence. No one can accurately anticipate all of the monetary, emotional,
4 psychological and personal damages that Rick will surely suffer as a result of his injuries but he
5 only has one opportunity to be compensated for his injuries. Rick has been unable to return to
6 work and will **never be able to return to his chosen profession**. He is struggling to maintain
7 his psychological stability because of inactivity, lack of scheduling, and essentially too much free
8 time on his hands with too much to think about. Rick has separated from his wife of nearly five
9 years because of tension due to the injury and his lack of activity, loss of daily structure,
10 financial constraints, and increased tension around the house. Instead of looking forward to
11 promotions and stability as a result of employment longevity, Rick now looks at permanent
12 disability, extended vocational rehabilitation and entry level employment.

13 Dated: August 17, 1998

14 Respectfully Submitted:

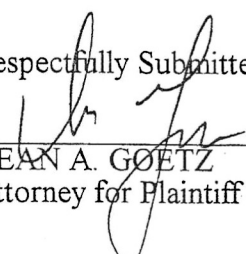
15 
16 DEAN A. GOETZ
17 Attorney for Plaintiff
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Exhibit 2

Rick Hollifield

D/O/B 1-27-65

Age 33

I. Loss of Income

Facts:

1. Earnings at time of injury: \$20.55 per hour or \$822 per week or \$42,744 per year.
 2. Expected earnings due to injury: \$8 per hour or \$320 per week or \$16,640 per year.
 3. Expected earnings if Hollifield had become a journeyman steelworker: \$29.25 per hour.
-
-

A. Loss of Earnings to Date

Earnings Loss from August 28, 1996 to August 28, 1998:
 $\$26,104 \times 2 \text{ years} = \$52,208.$

B. Future Loss of Earnings

32 years at \$26,104 per year = \$835,328

Total Loss of Earnings \$887,536

If one assumes that Hollifield would have become a journeyman steel worker within 4 years, the loss of earnings would be greater.

$(\$60,840 - \$16,640 = \$44,200 \times 30 \text{ years} = \$1,326,000 + \$52,208 = \$1,378,208)$

STATEMENT OF DAMAGES

RICK A. HOLLIFIELD

DATE OF INJURY: AUGUST 28, 1996

Age: 33

I. SPECIAL DAMAGES

A. Medical Expenses

Medical bills incurred to date: \$ 105,608

B. Future Medical Expenses

Estimated future medical expenses: \$ 60,000

C. Loss of Income

\$ 887,536

D. Cost of Retraining

2 years at \$30,000 per year \$ 60,000

TOTAL SPECIAL DAMAGES:

\$1,113,144

II. GENERAL DAMAGES

A. Pain and Suffering

Pain, suffering & trauma incurred
at time of injury: \$ 20,000

Pain, suffering & trauma associated
with 7 major wrist surgeries: \$ 175,000

Pain, suffering & trauma associated
with 4 minor wrist surgeries: \$ 40,000

Loss of enjoyment of life: \$ 400,000
No sports; no physical activities involving
wrist movement; loss of self-esteem

Pain & Suffering associated with constant wrist
joint pain, including arthritic pain and
numbness, lack of motion and stiffness
in wrist, loss of grip strength and arm
strength. \$ 400,000

TOTAL GENERAL DAMAGES:

\$1,035,000

TOTAL DAMAGES:

\$2,148,144



SUMMIT SETTLEMENT SERVICES

Structured Settlement Specialists

SAN DIEGO OFFICE

P.O. BOX 231130

317 N. EL CAMINO REAL, SUITE 400

ENCINITAS, CA 92024

760-944-0022

FAX: 760-944-2950

TOLL FREE: 888-673-8853

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TALLAHASSEE • TULSA

WASHINGTON, D.C. • WAUSAU



October 7, 1998

Via FAX (619) 481 2139

Page 1 of 2

Dean A. Goetz, Esq.
Law Offices of Dean A. Goetz
603 North Coast Highway 101, Suite H
Solana Beach, California 92075

RE: Structured Settlement for Rick Hollifield

Dear Mr. Goetz:

Attached please find the proposal you requested for your client, Rick Hollifield. The proposal includes four sub-options, each based upon a cost to the defendant of \$100,000. The payment periods are: 10 years, 15 years, 20 years, or 30 years.

The original of this correspondence with enclosures has been forwarded to your office via First Class Mail. If you have any questions or if you would like to see additional packages, please telephone our office toll-free at (888) 673-8853.

Sincerely,

SUMMIT SETTLEMENT SERVICES

Dorothy M. Scanlan
Settlement Specialist

DMS:de
ENCLS

File
Notes
Memor

*I discussed
w/ Rick
3:45pm on 10/8/98
Don't want structure
He wants to settle*

Δ π EXHIBIT <u>2</u>	
Deponent	<u>Kaurahongarin</u>
Date	<u>12/3/94</u>
WWW.DEPOBOOK.COM	

**RICK HOLLIFIELD**

D.O.B.: 01/22/1965 (Age: 33.7)
Normal Life Expectancy 46.0 Years

Payment Description	Costs	Guaranteed Payout	Expected Payout
1) MONTHLY INCOME PAYMENTS FOR 10 YEARS \$1,039.48 payable monthly, beginning 12/01/1998 (Age 33.9) for 10 years certain only. Last guaranteed payment is due 11/01/2008.	\$100,000.00	\$124,737.60	\$124,737.60
2) MONTHLY INCOME PAYMENTS FOR 15 YEARS \$791.06 payable monthly, beginning 12/01/1998 (Age 33.9) for 15 years certain only. Last guaranteed payment is due 11/01/2013.	\$100,000.00	\$142,390.80	\$142,390.80
3) MONTHLY INCOME PAYMENTS FOR 20 YEARS \$674.94 payable monthly, beginning 12/01/1998 (Age 33.9) for 20 years certain only. Last guaranteed payment is due 11/01/2018.	\$100,000.00	\$161,985.60	\$161,985.60
4) MONTHLY INCOME PAYMENTS FOR 30 YEARS \$570.42 payable monthly, beginning 12/01/1998 (Age 33.9) for 30 years certain only. Last guaranteed payment is due 11/01/2028.	\$100,000.00	\$205,351.20	\$205,351.20

Annuity to be brokered through Summit Settlement Services, Encinitas, CA.

Annuity to be underwritten by First Colony Life Insurance Company

AM Best's rated A++ (financial size XI)

S&P rated AA Moody's rated Aa2

This quote is good for 7 days from October 07, 1998

THIS SETTLEMENT IS CONTINGENT UPON VERIFICATION OF DATE OF BIRTH

SUMMIT SETTLEMENT SERVICES

760-944-0022

760-944-0022

WHAT IS A PERIODIC PAYMENT SETTLEMENT?

A periodic payment plan is a claim settlement arrangement to compensate for personal injury. Such an arrangement may include an initial "up-front" cash payment plus a schedule of future benefits designed to meet future financial needs or objectives.

SHOULD YOU CONSIDER A PERIODIC PAYMENT SETTLEMENT?

A periodic payment settlement offers the following significant advantages over a lump sum settlement:

TAX-FREE BENEFITS TO YOU: Pursuant to I.R.C. 104 (a) (2) of the Internal Revenue Code of 1986, as amended, all payments are "tax-free." The Code allows for the tax-free accrual of interest on the sum of money used to fund your periodic payments. As a result, you receive greater benefits than would otherwise be available to you had you chosen to invest the money yourself.

GUARANTEED PAYMENTS: Unlike a lump sum settlement, a periodic payment settlement will provide guaranteed benefits at specified payment dates to assure you of financial security.

FLEXIBILITY TO MEET INDIVIDUAL NEEDS: A periodic payment settlement can be designed to meet your needs. You may wish to provide for future education expenses, supplement a retirement fund, or simply provide for financial security. The plan can be "tailor-made" to meet your objectives.

MAXIMUM SECURITY: Benefits will not be affected by changes in the financial marketplace or the economy and will provide a secure source of funds in the future.

WOULD YOU BE BETTER OFF WITH A LUMP SUM SETTLEMENT AND INVESTING IT YOURSELF?

In doing so, you would most likely incur substantial tax liabilities on the income produced by your investments. Private investment income is simply not eligible for the tax-free benefits available under the Code. And, in contrast to private investments, there are no brokerage fees or expenses when selecting a periodic payment settlement.

In addition, periodic settlements are virtually risk free. Investments in stock and other equities can be speculative, carrying with them the risk of loss. Even less speculative investments, such as bonds and certificates of deposit, are subject to the risk of investment fluctuation.



In summary, a periodic payment settlement provides a competitive rate of return, tax-free benefits, and financial security not available with other investments.

Settlement Options

Two settlement options are available to settle your claim. The first would pay the entire amount at the time of settlement in the form of a single lump sum payment. A second alternative option is a periodic payment settlement, commonly referred to as a "structured settlement," that could pay an initial cash payment plus a series of benefits over a period of time. The amount and frequency of the payments can be designed to meet individual needs and objectives.

While the lump sum settlement is the traditional approach to settling liability claims, the many advantages of periodic payment settlements have made them popular and a frequently selected settlement option.

Likely result

Economic Damages

medical expenses \$120,000
Loss of Income ~~\$500,000~~ 300,000
Total economic damages ~~\$620,000~~ 420,000

Non-Economic Damages \$250,000

Total Damages \$870,000 670,000

Liability apportionment

Hollifield 10%

Kavass 40%

Olsen 50%

WCAB pay out to date: \$160,000

Olsen pays

50% of non-economic damages = \$125,000 42

720 620,000 economic damages less 10% (H) = 558,000 less wcab lien 160,000 - 348,000 = 0 = 558,000 202 358

Total to be paid by Olsen is ~~\$683,000~~ 483,000 218

WCAB

still must pay all bills

additional \$100,000

Total cost to Argonaut Insurance ~~\$783,000~~

~~443,000~~
443

218
121
443
—

150,000

110
325-330

Δ π EXHIBIT 3

Deponent

Laura Longanni

Date Apr 12 2004

WWW.DEFOBOOK.COM

Start at \$685,000-

Settle at \$300,000

Best possible result

Economic Damages

medical expenses	\$110,000
Loss of Income	<u>\$500,000</u>
Total economic damages	\$610,000

Non-Economic Damages \$300,000

Total Damages \$910,000

Liability apportionment

Hollifield 30%

Kavass 10%

Olsen 60%

WCAB pay out: \$160,000

Olsen pays

60% of non-economic damages = \$180,000

610,000 economic damages less 30% (H)=427,000 less wcab lien 146,000= 281,000

Total to be paid by Olsen is **\$461,000**

No additional monies would be paid by WCAB.

Worst possible result

Liability apportionment

Hollifield 70%

Kavass 30%

Olsen 0%

Recovery: ZERO from Olsen Steel

WCAB pay out: \$160,000 to date

WCAB additional pay out

Medicals	\$10,000
T.D.	\$30,000
Rehab	\$20,000
P.D.	<u>\$30,000</u>
Total	\$90,000

Likely result

Economic Damages

medical expenses	\$110,000
Loss of Income	<u>\$250,000</u>
Total economic damages	\$360,000

Non-Economic Damages \$100,000

Total Damages \$460,000

Liability apportionment

Hollifield 30%

Kavass 30%

Olsen 40%

WCAB pay out: \$160,000

Olsen pays

60% of non-economic damages = \$ 60,000

360,000 economic damages less 30% (H)=252,000 less wcab lien 112,000= 140,000

Total to be paid by Olsen is **\$200,000**

No additional monies from WCAB

net after attorney fees \$120,000

Third party case

meds	-	110,000
LOI		300,000
P&S		<u>300,000</u>
Total Value		710,000

50/50	350,000	net payout
-------	---------	------------

Workcomp case**Pd out already**

meds pd	110,000
TD	<u>30,000</u>
	140,000

To be paid

Pdis	30,000
fut meds	30,000
rehab	25,000
td	<u>40,000</u>
total	125,000

230

Still must pay out

Perm Disability 30,000

waive meds and TD and Rehab

Scenario 1

Go to trial and get verdict for \$1,000,000

50% on Olsen

50% on Kvass

0% on Hollifield

No requirement that WCAB lien be paid at all.

Hollifield gets 1 million new money and he gets WCAB benefits.

Scenario 2

Trial

Verdict \$1,000,000

50% Olsen

50% Hollifield

Scenario 3

Trial

60% Hollifield

40% Olsen

Best possible result *no fault*

Economic Damagēs

medical expenses	\$110,000
Loss of Income	<u>\$500,000</u>
Total economic damages	\$610,000

Non-Economic Damages \$300,000

Total Damages \$910,000

Liability apportionment

Hollifield 30%

Kavass 10%

Olsen 60%

WCAB pay out: \$160,000

Olsen pays

60% of non-economic damages = \$180,000

610,000 economic damages less 30% (H)=427,000 less wcab lien 160,000-91,000= 368,000

Total to be paid by Olsen is **\$548,000**

No additional monies would be paid by WCAB.

Worst possible result

Liability apportionment

Hollifield 70%

Kavass 30%

Olsen 0%

Recovery: ZERO from Olsen Steel

WCAB pay out: \$160,000 to date

WCAB additional pay out

Medicals	\$10,000
T.D.	\$30,000
Rehab	\$20,000
P.D.	<u>\$30,000</u>
Total	\$90,000

Likely result

w/finer

Economic Damagēs

medical expenses	\$110,000
Loss of Income	<u>\$250,000</u>
Total economic damages	\$360,000

Non-Economic Damages \$100,000

Total Damages \$460,000

Liability apportionment

Hollifield 30%

Kavass 30%

Olsen 40%

WCAB pay out: \$160,000

Olsen pays

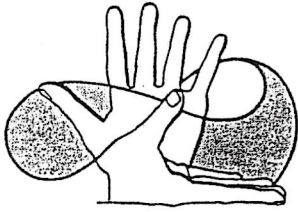
60% of non-economic damages = \$ 60,000

360,000 economic damages less 30% (H)=252,000 less wcab lien 160,000-138,000=-12,000=
240,000

Total to be paid by Olsen is **\$300,000**

No additional monies from WCAB

net after attorney fees \$185,000



August 18, 1998

Ric. ard M. Braun MD
Dori J. Neill Cage MD
Gregory R. Mack MD

Surgery of the Hand and Upper Extremity
Orthopaedic Surgery
Surgery of Peripheral Nerves

Dean A. Goetz, Esq.
603 North Coast Highway
Suite 101
Solana Beach, California 92075

Ms. Diana Cumpian
Argonaut Insurance
120 South State College, Suite 100
Brea, California 92621

RE: HOLLIFIELD, Rick
CLM: 62X103499

Dear Mr. Goetz:

I am in receipt of your letter of August 3, 1998 regarding Rick Hollifield.

The patient's diagnosis involves a fracture of the distal left forearm and injury to the left wrist which the patient sustained while at work on August 28, 1996.

The patient's prognosis has improved with surgical treatment. On his last visit, Mr. Hollifield appeared to have healed the distal radius fracture which has given us great difficulty in management during the last year. The appropriate bone plating and grafting appears to have solved the problem of bone union in this area. In addition, because of articular damage to the distal radial surface, it was necessary to fuse the distal radius to the proximal carpal row. This is a more difficult and time consuming procedure than a total wrist fusion, but will allow the patient movement in the second carpal row. This mid carpal row motion will give the patient improved function in his hand. Mr. Hollifield has never required a total wrist fusion. A total wrist fusion would carry extra morbidity and increased disability for Mr. Hollifield. For this reason, I have worked diligently toward avoiding this procedure and have fused the proximal carpal row to the distal radius with some difficulty. This will allow Mr. Hollifield about 30° of motion in his wrist which will be helpful to him in grasping and holding objects. The prognosis for the success of this plan is good at this time because of the recent radiographs which show healing in both of these areas.

Δ π EXHIBIT 4

Deponent Laura Longarini
Date 8/23/98
WWW.DEPOBOOK.COM

RE: HOLLIFIELD, Rick
August 18, 1998
Page 2

The patient's injury occurred when he fell at work and sustained a high velocity, high impact injury to his distal left forearm. His recovery period has been complicated by many factors. He underwent a carpal tunnel release because of compression injury to the median nerve in the wrist. He had difficulty in healing the distal radial fracture because of malalignment problems and the difficulty in securing a bone graft. He had further difficulty in incorporating bone graft into the fusion of the distal radius-proximal carpal row. All of these problems appear to be behind Mr. Hollifield at this time. He has healed his fracture of the distal radius. He has healed the radius to proximal carpal row fusion. His wrist is straight and well aligned. His fingers move well. His sensation and median nerve function is normal. The recovery period which has been prolonged, has been justified because of the need to treat all of these areas simultaneously with the goal of providing this patient the best possible use of his hand in a longterm prognosis. The simplicity of a wrist fusion may sound appealing, but the patient's problem has involved more than his wrist joint and has been difficult to deal with because of the fracture in the distal radius as well as the injury to the wrist joint itself. Furthermore, fusion of the middle carpal row which would cost the patient loss of all motion in the wrist, has never been necessary and is presently a functional joint allowing the patient some motion in the wrist.

Future medical expenses will involve another surgical procedure which is considered a minor consequence. A pin must be removed from the wrist joint. In addition, some bone debridement of bone grafted areas would be reasonable. These procedures can be performed in about one hour in an outpatient surgical setting. The cost of these operations would probably be about \$1,000-\$1,200 for the surgical and assistant fee if an assistant is used for the case. If there is an anesthesiologist required, then his fee would probably be about \$400. The cost of a surgical center would be about \$1,200 for this procedure. Following this, therapy would be necessary as Mr. Hollifield must build strength into his hand and forearm. Fortunately, his forearm and wrist are painfree at this time and he is able to use his fingers for strengthening the forearm musculature. Cost of therapy is hard to determine, but may involve 12-14 weeks of therapy treatments given three times weekly. Each therapy treatment bills at about \$75.

The length of future disability involves both temporary and permanent disability factors. I would predict that the patient's temporary disability status and a permanent and stationary report will be completed before the end of the year. Thus, I feel that the length of his future temporary disability would be about 3-4 months. A permanent and stationary report

RE: HOLLIFIELD, Rick
August 18, 1998
Page 3

should be generated before the end of 1998. This will involve review of the patient's history, physical findings, disability, loss of pre-injury capacity, and recommendations for further work restriction. I believe that Mr. Hollifield will probably not return to his job in the construction industry. For this reason, I would anticipate that a qualified injured worker status with vocational rehabilitation would be reasonable to anticipate in this case.

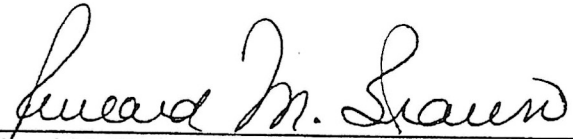
The permanent and stationary report on Mr. Hollifield will contain all of the necessary requirements for appropriate disability evaluation. I understand that all parties in this case have become somewhat anxious to see this matter brought to a permanent and stationary status and I can assure you that I feel the same way. Mr. Hollifield has done well, but has required a very complex treatment program. At present, it should be noted that his forearm is straight, symptomatically improved to the point where he has very little pain in his wrist or forearm, and will allow him to return to work using his left hand for grasping and holding activities. His eventual disability will obviously be presented in the permanent and stationary report and should not be prematurely evaluated at this time.

I am very grateful to case manager, Doris Harrah, RN, for her assistance in managing this difficult situation for a long time. I believe that she has kept this case moving forward although we have required multiple operations to bring this situation to what I believe will be a satisfactory result for Mr. Hollifield and one of reasonable disability while still allowing this patient to re-enter the open labor market.

DISCLOSURE

"I declare under a penalty of perjury that the information contained in this report and its attachment, if any, is true and correct to the best of my knowledge and belief, except as to the information that I have indicated I received from others. As to that information, I declare under a penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true".

Signed this 27 day of August, 1998, at San Diego, California


Richard M. Braun, M.D.

RMB:dlh 08/21
cc: Doris Harrah, RN

FOR CONFIDENTIAL USE ONLY

CASE MANAGEMENT REPORT

Patient/Claimant:	Rick Hollifield	Account File #:	Date: 9/10/98	Page: 1
Referred By:	Deanna Cumpain	D/L:	8/28/96	S.S.#:
Insured:	Kvaas Construction	CorVel File #:	26-1480-9	Report No.: 34

PROGRESS REPORT #34MEDICAL SUMMARY

On 8/25/98, a call was placed to the Hand Center to confirm Mr. Hollifield's 8/27/98 appointment with Dr. Braun. A call was also placed to Mr. Hollifield to confirm his 8/27/98 appointment.

On 8/27/98, I attended Mr. Hollifield's appointment with Dr. Braun at the Hand Center as scheduled. Mr. Hollifield was complaining of some pain in his left wrist at a level 3.

When doctor reviewed the x-ray taken that day, doctor said that everything looked well aligned. Doctor mentioned that the bone is healing and that the fused area is healed. When measuring grip strength, Mr. Hollifield's strength was 12 pounds.

Dr. Braun stated that a pin was put in place at the last surgery, and that that pin would need to be removed as an outpatient in approximately 2 months.

When asked about continued treatment, doctor said that he wanted Mr. Hollifield to continue the use of the bone stimulator and to continue hand therapy 3 times a week. Doctor said he wanted to see Mr. Hollifield back in his office in one month.

Following the doctor appointment, a call was placed to the claims examiner, and a detailed message was left informing her of the outcome of Dr. Braun's 8/27/98 appointment.

On 8/31/98, a call was placed to the Hand Center to determine the date and time of Mr. Hollifield's follow up appointment with Dr. Braun. I was told that an appointment had tentatively been scheduled for Mr. Hollifield on 10/1/98 at 4:00 PM, but had not been confirmed with him as of yet.

Later in the day, a copy of the 6/11/98 operative report was reviewed and sent to the claims examiner.

On 9/3/98, I received and reviewed a copy of Dr. Braun's 8/27/98 letter to the claims examiner. In that letter, doctor mentioned that Mr. Hollifield's grip strength was increasing and that he had 12 pounds of grip strength. Doctor also said that Mr. Hollifield exhibited 20 degrees of flexion extension of the left wrist and that he was making progress in hand therapy. Doctor went on to say that Mr. Hollifield is using his bone stimulator and doing a home strengthening program. Finally, doctor stated that Mr. Hollifield remains TTD and would be seen again in one month.

RECOMMENDATIONS

1. Follow up with the Hand Center to determine Mr. Hollifield's progress.
2. Follow up with Mr. Hollifield to determine his status and progress.
3. Attend Mr. Hollifield's 10/1/98 appointment at the Hand Center and confirm that appointment prior to attending.

Δ π EXHIBIT <u>5</u>	
Deponent	_____
Laura Longoria	
Date	Sept. 12 1998

Advocating CareSM

FOR CONFIDENTIAL USE ONLY

Patient/Claimant: Rick Hollifield

Account File #:26-1480-33

Date: 9/10/98 Page: 2

The next report is due on: 10/1/98

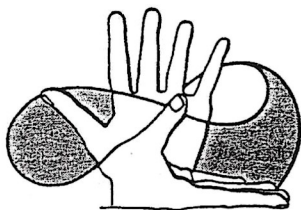
Respectfully submitted,


Doris Harrah, R.N., B.S.N., CCM
Medical Case Manager

DH/kf

cc: office file/case file

✓ Dean Goetz, Esq.
603 N. Coast Highway 101, Suite "H"
Solana Beach, CA. 92075



August 18, -1998

Richard M. Braun MD
Dori J. Neill Cage MD
Gregory R. Mack MD

Surgery of the Hand and Upper Extremity
Orthopaedic Surgery
Surgery of Peripheral Nerves

Dean A. Goetz, Esq.
603 North Coast Highway
Suite 101
Solana Beach, California 92075

Ms. Diana Cumpian
Argonaut Insurance
120 South State College, Suite 100
Brea, California 92621

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CLM: 62X103499

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RE: HOLLIFIELD, Rick
August 18, 1998
Page 2

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RE: HOLLIFIELD, Rick
August 18, 1998
Page 3

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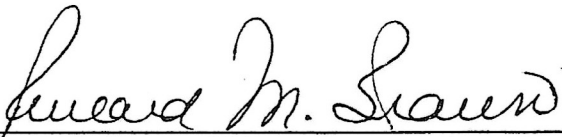
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DISCLOSURE

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Signed this 27 day of August, 1998, at San Diego, California


Richard M. Braun, M.D.

RMB:dlh 08/21
cc: Doris Harrah, RN

August 27, 1998

Ms. Diana Cumpian
Argonaut Insurance
120 S. State College #100
Brea, CA 92621

RE: HOLLIFIELD, Rick
CLM: 62X103499

Dear Ms. Cumpian:

Rick Hollifield was seen at THE HAND CENTER on 08-27-98. A conference was held with the patient, therapist, and case manager Ms. Dorris Harrah, R.N. Mr. Hollifield continues to make good progress following the osteotomy performed in his distal radius-forearm area in June 1998. At two months, he has good alignment in his forearm and wrist. He continues to show about 20° of extension and similar flexion in the wrist, which would not have been present if this patient had a wrist fusion. Fusion of the proximal carpal row to the radius has allowed Mr. Hollifield to maintain this 40° range.

The patient's grip strength is gradually improving. He can now grip with about 12 pounds without difficulty. We have purposely asked the patient to avoid strong gripping because of the osteotomy site, which he is at risk. Radiographs of this area appear to show slow healing, as would be expected. The patient continues to use a bone stimulator as we have advised.

Overall, Mr. Hollifield is making satisfactory progress following his radial osteotomy, which now allows the forearm to be well-positioned. He will require a strengthening program at THE HAND CENTER and will also participate in a strengthening program at home. He will continue to use his bone stimulator. He will remain temporarily disabled and will be seen again in about one month when a progress report will be forwarded.

Δ π EXHIBIT <u>6</u>	
Deponent	<u>hollifield</u>
Date	<u>Rptr. 12384</u>
WWW.DEPOBOOK.COM	

RE: HOLLIFIELD, RICK
August 27, 1998
Page 2

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Signed this _____ day of _____, 1998, at San Diego, California

Richard M. Braun, M.D.

RMB:jh 08/31
D:08/27 R:08/27

cc: Dorris Harrah, R.N.
Dean A. Goetz, Esq.

August 27, 1998

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Argonaut Insurance
120 S. State College #100
Brea, CA 92621

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62

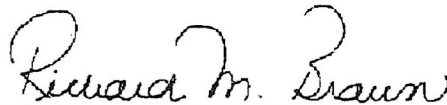
Δ π EXHIBIT <u>7</u>	
Deponent	<u>Laura Longarini</u>
Date	<u>Rptr. 12/28/98</u>
WWW.DEPOBOOK.COM	

RE: HOLLIFIELD, RICK
August 27, 1998
Page 2

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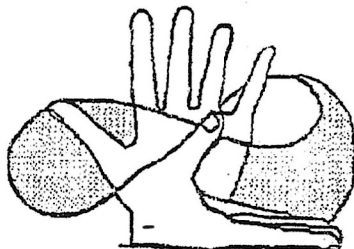
Signed this _____ day of _____, 1998,
at San Diego, California



Richard M. Braun, M.D.

RMB:jh 08/31
D:08/27 R:08/27

cc: Dorris Harrah, R.N.
Dean A. Goetz, Esq.



RICHARD M. BRAUN M.D.
Dori Neill Cage M.D.
Gregory R. Mack M.D.

Orthopaedic Surgery • Surgery of the Hand

Acct # : 7308
Claim No. : 62X103499
Injured Employee : HOLLIFIELD, RICK
Employer : KVAAS CONSTRUCTION
Date of Injury : 08/28/96
Insurance : ARGONAUT INSURANCE
120 S. STATE COLLEGE #100
BREA, CA 92621

DR. REF:
FAX:
ADJ: DIANA CUMPIAN
PHN: 714-257-7822
FAX: 714-256-2294
CASE MNGR: DORRIS HARRAH, RN
FAX: 268-7338
ATTORNEY: DEAN A. GOETZ
FAX: 481-2139
Pt. Phone #: 442-1823

- ☐ Preliminary Report - Date _____
☒ Supplemental Report - Date 8/27/98
☐ Hillcrest ☒ THE HAND CENTER ☐ Reservoir Office
1. Present Diagnosis healing osteotomy forearm
Visit Type: ☐ Post op ☒ Routine ☐ Treatment ☐ New Patient ☐ Other
2. Symptoms and Physical findings when patient seen reasonable progress
Healing of osteotomy / must continue therapy
3. Therapy 3 times a week for 4 weeks.
Items Pending: ☐ Authorization Requested
- ☐ Records ☐ Chem Panel ☐ CBC ☐ Rheum Panel
☐ CT Scans ☐ MRI ☐ Bone Scan ☐ Arthrogram
☐ EMG/NCV ☐ Xrays-Plan ☐ HAND CENTER Evaluation
4. ☒ Temporarily disabled from _____ to 10-01-98
☐ Permanent and stationary as of _____ ☐ QIW/Rehab
☐ Returned to full duty on _____
☐ Returned to modified duty on _____ with the following restrictions:
____ No lifting more than _____ lbs. _____ Keyboarding/typing:
____ No climbing: stairs, ladders _____ () None
____ No work at shoulder level or above _____ () Limited to _____
____ No using R/L hand(s) _____ Work in Splint(s) R/L Y N
____ No bending, no stooping, no squatting, no kneeling
____ No grasping or gripping with R/L hand(s) repetitively
____ No sitting/standing greater than _____ min each hour in 8 hr
____ Limit working hours to _____ hours per day
5. Next appointment none
6. Narrative dictated: ☐ No ☒ Yes ☐ Next Visit
7. Comments See Narrative - good progress
8. Time spent: ☐ 15 min. ☒ 30 min. ☐ 45 min. ☐ 1 hr. ☐ other _____
- Date 8/27/98 Signed Braun M.D.

Orthopaedic Surgery • Surgery of the Hand

DR. REF:
FAX:
ADJ: DIANA CUMPIAN
PHN: 657-0805
FAX: 657-0819
NCM: DORRIS HARRAH, RN
FAX: 268-7338
ATY: DEAN A. GOETZ
FAX: 481-2139
Pt. Phone #: 442-1823

☐ Reservoir Office

Items Pending: ☐ Authorization Requested

☐ Records ☐ Chem Panel ☐ CBC ☐ Rheum Panel

☐ CT Scans ☐ MRI ☐ Bone Scan ☐ Arthrogram

☐ EMG/NCV ☐ Xrays-Plan ☐ HAND CENTER Evaluation

5. Next appointment 2 days
6. Narrative dictated: ☐ No ☒ Yes ☐ Next Visit
7. Comments patient was ready for PR assignment on Oct 2
but he complained of pain over ureost pin site. Therefore
8. Time spent: ☐ 15 min. ☐ 30 min. ☐ 45 min. ☐ 1 hr. ☐ other

Date 10/5/98 Signed [Signature] M.D.

I'll continue his TTD for 2 wks and will remove the pen as an office procedure later this week.

$\Delta \pi$ EXHIBIT 9
Deponent Laura Longorini
Date Apr 1, 12384
WWW.DEPOBOOK.COM

Permanent and Stationary
Has residual Disability
Requiring work restrictions

will not return to previous
job & is a qualified injured
worker who requires vocational
rehabilitation and future
medical care.

10/13
Pink Hollowfield
Please show me
distray on 10/15
then I'll be able to
decide on P+S status
Bran

$\Delta \pi$ EXHIBIT <u>9</u>	
Deponent	<u>Laura Longoria</u>
Date	<u>Rptr. 12384</u>
WWW.DEPOBOOK.COM	

To: Rick Hollifield
Company:
Fax #: (619) 442-1823
Date: November 16, 2000
Pages: 6 (including cover sheet)

FACSIMILE

Here are the documents you requested. Enclosed please find the August 3, 1998 correspondence to Dr. Braun and the August 18, 1998 correspondence received from Dr. Braun. If you have any questions, please feel free to call.

Dr. Braun etc. 8-27-98
to Ins. Co. 8-3-98 letter
from Dean to Dr. Braun
fax no. 619-442-1823
Rick Hollifield

From the offices of . . .

Dean Goetz
Solana Beach Law Center
603 North Highway 101
Solana Beach, CA 92075
(858) 481-8844 phone
(858) 481-2139 fax

Δ π EXHIBIT 10

Deponent
Laura Longorini
Date Rptr. 12384
WWW.DEPOBOOK.COM

DEAN A. GOETZ
ATTORNEY AT LAW
THE OCEAN BUILDING
603 NORTH COAST HIGHWAY 101
SOLANA BEACH, CALIFORNIA 92075
(619) 481-8844 FAX (619) 481-2139

August 3, 1998

Dr. Richard M. Braun, M.D.
770 Washington Street, Suite 301
San Diego, CA 92103
FACSIMILE 619-297-9076

Re: My Client/Your Patient: Rick Hollifield
Date of Accident: 8/28/96

Dear Dr. Braun:

As you know, I represent Rick Hollifield concerning injuries he sustained on August 28, 1996.

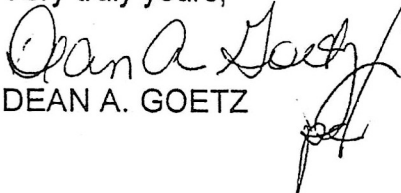
Please prepare a brief medical/legal letter for this office regarding the above-referenced patient. I have enclosed a medical authorization, signed by my client, which will allow you to release the requested information.

Please include in your report the following information:

1. Diagnosis;
2. Prognosis;
3. Description of injury and recovery period;
4. Cost of future medical expenses;
5. Length of future disability (if any); and,
6. Any other information which you believe is important in evaluating the medical injuries and the condition of Mr. Hollifield.

Thank you for your cooperation in this matter.

Very truly yours,


DEAN A. GOETZ

DAG:pc
Enc.

MEDICAL INFORMATION AUTHORIZATION

I hereby revoke all prior authorizations to release medical information, effective immediately.

TO: Dr. Richard M. Braun, M.D.

Re: Name: Rick Hollifield
Date of Incident: 8/26/96
Date of Birth: 1/22/65
Social Security No. 568-06-7414

I hereby authorize you to release to my attorney, DEAN A. GOETZ, his representative, designee, agent, or the bearer of this document, either orally or in writing, any and all records of history, examination, diagnosis, treatment, x-rays, prognosis, and any other information, including charges for services rendered, relating to my medical condition while under your care and treatment.

This authorization is provided to you in compliance with the terms of the confidentiality of the Medical Information Act of 1980, Section 56 of the California Civil Code, and shall remain valid for five (5) years or until the termination of patient's claim or lawsuit, whichever is earlier.

A copy of this authorization shall be deemed as valid as the original. I understand that I have a right to receive a copy upon request.

Dated: 2/12/98, 1998

Rick Hollifield
RICK HOLLIFIELD
Client

TRANSMISSION VERIFICATION REPORT

TIME: 11/16/2000 10:33
NAME: XXXXXXXXXXXXX
FAX : 6194812139
TEL : 6194818844

DATE, TIME-
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

11/16 10:29
16194421823
00:03:29
06
OK
STANDARD

Hollifield

last appointment with Dr. Braun August 27, 1998

Dr. Braun said he will have another surgical procedure scrape ulna bone (left side) and remove a pin office procedure

hand therapy everything hurts

not getting any stronger. He may be able to bend it further with pulse machine but can't do it without machine.

Physical therapist thinks it is bad injury may get more strength but that is about it.

1-1

$\Delta \pi$ EXHIBIT <u>12</u>	
Deponent	<u>Laura Longorini</u>
Date	<u>Rptr 12/28/94</u>
WWW.DEPOBOOK.COM	

CASE MANAGEMENT REPORT

Patient/Claimant:	Rick Hollifield	Account File #:	Date: 10/16/98	Page: 1
Referred By:	Deanna Cumpain	D/L:	8/28/96	S.S.#:
Insured:	Kvaas Construction	CorVel File #:	26-1480-9	Report No.: 35

PROGRESS REPORT #35MEDICAL SUMMARY

On 9/18/98, Maureen Wallace, R.N., B.S.N., C.C.M., was working with Mr. Hollifield while I was on vacation. According to her notes of that day, she stated that she had spoken with Mr. Hollifield and that he stated that he was having anxiety attacks because he will go to use his left hand and find that he cannot use it the way he used to. Mr. Hollifield said that he was having, perhaps, three or four of those attacks per month. It was suggested that he keep a diary of episodes of increased pain, anxiety attacks, or anything else that seemed unusual and relay that information to his doctor. Mr. Hollifield was also complaining of left wrist pain when his hand turns certain ways.

Hand therapy was being provided on a three time per week basis at that point in time. Mr. Hollifield had also stated that he was not taking any pain medication.

When I returned from vacation on 9/28/98, I received a message from the hand center, informing me that Dr. Braun was unable to see Mr. Hollifield on 10/1/98, and requesting a rescheduling to 10/2/98.

On 10/1/98, I again received another call from the Hand Center requesting to move the time of the appointment to better accommodate Mr. Hollifield.

On 10/2/98, I received a call from Mr. Hollifield confirming the new time for his doctor appointment and informing me that he had stated that his attorneys would be at his doctor appointment.

On 10/2/98, this nurse attended Mr. Hollifield's follow up appointment with Dr. Braun as scheduled. After an extremely long wait, the doctor came out at 5:00 p.m. asking where Mr. Hollifield was. He was told by his receptionist that Mr. Hollifield was calling every few minutes to see how the doctor's appointments were running. The receptionist said that Mr. Hollifield was on his way and therefore, I continued to wait until he got there.

After another long wait period, Mr. Hollifield arrived. The occupational therapist took measurements and stated that Mr. Hollifield had about 50 ° of motion in his wrist and 2/3 of normal for pronation and supination.

After doctor spoke with Mr. Hollifield and examined his wrist, the doctor said that he felt at this point Mr. Hollifield's condition was permanent and stationary.

When addressing the issue of future medical care, the doctor said that Mr. Hollifield might need a wrist fusion (due to the fact that he was having pain in his wrist) or Mr. Hollifield might need a revision of the distal ulna.

When I asked Dr. Braun why the fusion was not done earlier, doctor explained by stating that Mr. Hollifield would have developed a pseudoarthrosis if the fusion had been done earlier and doctor also said that if the fusion was done earlier, the base of the fracture would not have healed. Finally when addressing any type of future surgery, the doctor said that surgery should be provided to relieve pain or improve Mr. Hollifield's function.

When I asked about any additional hand therapy, the doctor said that he felt that no more hand therapy was needed at this point.

Δ π EXHIBIT / 3

Deponent

Laura Longorini

Date

Rptr. 12384

Advocating CareSM

When asked about vocational rehabilitation, the doctor stated that Mr. Hollifield was in his estimation a qualified injured worker and that he had lost 50% or more of the grasping function and pushing and pulling function. The doctor said that he would only be able to do some light gripping and could only lift less than five pounds. The doctor also said that doctor visits, pain and anti-inflammatory medications, splints, etc., should also be included in future medical care.

When asked if Mr. Hollifield might be able to do computer work, the doctor stated that he felt Mr. Hollifield could, but that he would need a split keyboard so that he did not develop shoulder problems in addition to his wrist problem. It should be noted that no attorney was present at the 10/2/98 doctor visit.

On 10/5/98, a call was placed to the Hand Center requesting a copy of the doctor's 10/2/98 status report (doctor did not have time to fill it out on the evening of 10/2/98).

A call was also placed to the claims' examiner and a detailed message was left regarding the outcome of the 10/2/98 doctor visit.

Later that day, I received a copy of doctor's status report along with a copy of the hand therapist's report and both reports were sent to the claims' examiner.

On 10/5/98 I also placed a call to Dr. Braun's office and was told that doctor planned to remove a pin from Mr. Hollifield's left wrist as an office procedure before 10/6/98 at 1:45 p.m. The claims' examiner was informed of doctor's plan.

Yesterday, a call was placed to Dr. Braun's office requesting a copy of doctor's 10/2/98 P&S report but I was told it was not available as yet.

CLIENT SUMMARY

A call was placed to Mr. Hollifield yesterday to determine if pin removal had relieved some of the sharp pain that he was having in his left wrist. I was told that it did relieve some of the pain "a little bit" and that his left hand and wrist felt like it was getting a little better. When asked if he felt he had any additional movement in that wrist, Mr. Hollifield said that there was a little more movement in the joint since the pin was removed.

RECOMMENDATIONS

1. Follow up with Dr. Braun's office to obtain a copy of the P&S report.
2. Address any additional issues needed should the P&S report not be complete.
3. Continue to monitor this client's status until the P&S report is received and deemed complete.
4. Upon receipt of the P&S report, speak with the claims' examiner regarding file direction.

The next report is due on: 11/5/98

Respectfully submitted,

Doris Harrah, R.N. - 1/9.
Doris Harrah, R.N., B.S.N. C.C.M.

DH:cg

cc: Office File/Case File
✓ Dean Goetz, Esq.
603 N. Coast Highway 101, Suite "H"
Solana Beach, CA. 92075



Jan White & Associates
Certified Court Reporters

February 28, 2001

Dean A. Goetz
603 N. Coast Hwy 101
Solana Beach, CA 92075

Re: Hollifield vs. Richard Braun

Dear Mr. Dean Goetz:

Enclosed please find the original transcript of your deposition, taken February 9, 2001, in the above-referenced action, for your review and signature.

If you wish to make any changes in your testimony, please do so in ink on the page in the front of your deposition titled "Errata Sheet." You may make changes to the form or substance of your answers only by writing legibly on the errata sheet, noting the page and line number of each change.

At the end of your testimony, there is a penalty of perjury page. Please sign your full name and fill in the date of signature. Attorney **Richard Sax, Esq.**, who, pursuant to stipulation of counsel, will take custody of the original deposition. You have 30 days in which to complete this procedure.

If you have any questions regarding this procedure, please do not hesitate to contact me at your convenience.

Sincerely,

Kristie Nielsen
Administrative Assistant

Cc: Dan H. Deuprey, Esq.
Richard L. Sax, Esq.