

IN THE SUPREME COURT OF THE STATE OF NEVADA

CENTURY SURETY COMPANY,

Appellant,

vs.

DANA ANDREW, AS LEGAL
GUARDIAN OF RYAN T. PRETNER;
AND RYAN T. PRETNER,

Respondents.

Case No. 73756

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APPENDIX TO RESPONDENT'S ANSWERING BRIEF

VOL. 11 OF 11

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CHRONOLOGICAL INDEX TO RESPONDENT’S APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Plaintiff’s Motion for Summary Judgment Case No. 2:12-cv-00978-APG-PAL	9/25/12	1, 2, 3	1 – 346
2.	Plaintiff’s Reply in Support of Motion for Summary Judgment Case No. 2:12-cv-00978-APG-PAL	1/2/13	3, 4, 5, 6, 7	347 – 937
3.	Plaintiff’s Motion for Protective Order Regarding Discovery Designed to Re-Litigate the Factual Findings Made in the Eighth Judicial District Court’s Default Judgment Case No. 2:12-cv-00978-APG-PAL	6/13/13	7, 8, 9, 10, 11	938 – 1640

LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
37-40

Page 37

Page 39

1 BY MR. DAVIS:
 2 Q. Do you recall seeing this letter prior to
 3 today?
 4 A. No.
 5 Q. Do you recall that your side asked
 6 Mr. Vasquez to fill out an affidavit under oath
 7 regarding what happened on the night of the
 8 accident?
 9 A. Say it again, please?
 10 Q. Do you recall that you asked, on behalf of
 11 you and your son, your attorney asked Michael
 12 Vasquez to fill out an affidavit under oath
 13 regarding the details of the accident?
 14 MR. PRINCE: He's asking if you were aware
 15 of that, if you were aware of that.
 16 THE WITNESS: I don't remember.
 17 BY MR. DAVIS:
 18 Q. I want you to look at the attachment to the
 19 letter. You see that's a blank affidavit; correct?
 20 A. I see blank papers. Yes.
 21 MR. DAVIS: Looks like some things are
 22 attached that shouldn't be attached, but -- I'm
 23 going to pull apart after the end of Page 4, the
 24 affidavit, I'm going to pull that stuff out of it,
 25 because it shouldn't have been attached. That's not

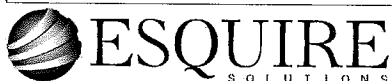
1 A. I don't remember that.
 2 MR. DAVIS: I'll introduce as Exhibit 5 a
 3 letter from Century Insurance to Michael Vasquez.
 4 I know you've seen that one before.
 5 (Exhibit 5 marked for identification.)
 6 BY MR. DAVIS:
 7 Q. Do you recall seeing this letter prior to
 8 today?
 9 A. No.
 10 Q. Do you recall getting a copy of the letter
 11 in which Century Insurance denied coverage to
 12 Mr. Vasquez for the accident?
 13 A. I don't recall.
 14 Q. But you do know that Century Surety denied
 15 coverage to Mr. Vasquez for the accident; correct?
 16 A. Say it again?
 17 Q. You do know that Century Surety denied
 18 insurance coverage to Mr. Vasquez for the accident;
 19 correct?
 20 A. Yes.
 21 Q. Okay. And you know they denied coverage
 22 because they said their investigation showed that he
 23 was not driving in the course and scope of his
 24 business, and he was not driving a company-owned
 25 vehicle at the time of the accident?

Page 38

Page 40

1 part of the same document. You see there is an
 2 order appointing yourself guardian and another
 3 letter which aren't a part of the letter, this
 4 letter.
 5 Counsel, could you hand me that? I don't
 6 want that part of the exhibit for the record.
 7 BY MR. DAVIS:
 8 Q. Do you understand what an affidavit is, sir?
 9 A. Yes.
 10 Q. It's a sworn statement under penalty of
 11 perjury; correct?
 12 A. Yes.
 13 Q. You have to sign with a notary public;
 14 correct?
 15 MR. PRINCE: Well, hang on. Object -- I'm
 16 going to object to the form of the question.
 17 Assumes facts not in evidence and may misstate the
 18 law.
 19 Answer the question if you understand it.
 20 THE WITNESS: Yes.
 21 BY MR. DAVIS:
 22 Q. Now that you've looked at the document, does
 23 it refresh your memory that your lawyer requested
 24 that Mr. Vasquez fill out an affidavit regarding the
 25 accident?

1 A. I don't know that.
 2 Q. So sitting here today, you don't believe you
 3 ever read the denial letter to Mr. Vasquez?
 4 A. I don't remember reading it, but --
 5 Q. Do you remember reading any letters to
 6 Mr. Vasquez from his business insurer?
 7 A. No, I don't remember any letters.
 8 MR. DAVIS: Introduce as Exhibit 6 a Sworn
 9 Affidavit of Michael Anthony Vasquez dated June 12,
 10 2009.
 11 (Exhibit 6 marked for identification.)
 12 BY MR. DAVIS:
 13 Q. You've seen this document before today,
 14 haven't you, sir?
 15 A. No.
 16 Q. You were provided a copy of the Sworn
 17 Affidavit of Michael Vasquez prior to today.
 18 Correct, sir?
 19 A. No.
 20 Q. You received a copy of this affidavit
 21 sometime in 2009; correct?
 22 A. No.
 23 Q. But you knew that Mr. Vasquez had signed a
 24 sworn affidavit provided to your lawyer at her
 25 request?



LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
41-44

Page 41

1 MR. PRINCE: Objection to the form of the
2 question. Assumes facts not in evidence.
3 You can answer the question if you
4 understand.
5 THE WITNESS: No.
6 BY MR. DAVIS:
7 Q. Why don't you go to paragraph eight of this
8 affidavit. You see it says, "Just prior to the
9 accident, I had been at home located at 1886 Via
10 Firenze, Henderson, Nevada, 89044, for approximately
11 four hours."
12 You see that, sir?
13 A. Yes.
14 Q. It says in paragraph nine, "At the time of
15 the accident, I was driving from home, located at
16 1886 Via Firenze, Henderson, Nevada, 89044, and I
17 was going to aunt and uncle's house located at" --
18 blank -- "for the purpose of visit."
19 Do you see that, sir?
20 A. Yes.
21 Q. Okay. Paragraph ten, "The reason I was
22 going to the above location was because to visit" --
23 blank -- "who is my family, asked me to go."
24 You see that, sir?
25 A. Yes.

Page 42

1 Q. Then it says paragraph 11, "At the time of
2 the accident, the owner of the vehicle I was driving
3 was Michael Vasquez, who was myself, and whose last
4 known address is 1886 Via Firenze, Henderson,
5 Nevada, 89044."
6 You see that, sir?
7 A. Yes.
8 Q. So you understand that Mr. Vasquez gave a
9 sworn statement on June 2009 that he was -- that he
10 personally owned the vehicle that he was involved in
11 the accident with your son; right?
12 MR. PRINCE: What are you asking him?
13 BY MR. DAVIS:
14 Q. You understand that on June 12, 2009,
15 Mr. Vasquez gave a sworn affidavit that the vehicle
16 he was driving, the Ford F-150, at the time of the
17 accident, he owned personally?
18 A. No.
19 Q. Well, the affidavit is right in front of
20 you, sir.
21 A. No --
22 MR. PRINCE: What are you asking him?
23 THE WITNESS: -- not at the time.
24 BY MR. DAVIS:
25 Q. Sitting here today, you don't remember

Page 43

1 whether you had this at the time? Is that what
2 you're telling me?
3 A. Didn't I answer the question earlier, that
4 I --
5 MR. PRINCE: You did.
6 THE WITNESS: I answered the question, that
7 I've never seen this document. And what Vasquez
8 does with his attorney, I'm not privy to, so I don't
9 know it.
10 MR. DAVIS: Let's look at Exhibit 7, a fax
11 cover sheet from Progressive to Sylvia Esparza.
12 Off the record for a second.
13 (Discussion off the record.)
14 (Exhibit 7 marked for identification.)
15 BY MR. DAVIS:
16 Q. Back on the record.
17 Now, you see this is a fax from Progressive
18 Insurance to, it was at that time your attorney,
19 Sylvia Esparza?
20 A. Yes.
21 Q. And it's dated June 15, 2009. Do you see
22 that, sir?
23 A. Yes.
24 Q. Okay. And if you see in the second
25 paragraph, it says, "Attached is the affidavit

Page 44

1 completed by Michael Vasquez. As you are no doubt
2 aware, Mr. Vasquez was not doing anything with his
3 work, and it is my understanding that his carrier
4 has denied coverage for the accident."
5 Do you see that sentence, sir?
6 A. Yes.
7 Q. Okay. So that affidavit was sent to your
8 attorney; correct?
9 A. I don't know that.
10 Q. Do you recognize the fax number,
11 (702) 853-0234?
12 A. Question?
13 Q. Do you recognize that fax number,
14 (702) 853-0234?
15 A. No.
16 Q. Any reason to doubt that's not your former
17 attorney's fax number?
18 A. No.
19 Q. Is that your former attorney's address,
20 3340 East Pepper Lane, Suite 105, Las Vegas, Nevada
21 89120?
22 A. Yes.
23 Q. Was your attorney, Sylvia Esparza,
24 communicating primarily with Dana Andrew or with
25 yourself?



LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
45-48

Page 45

Page 47

1 A. Primarily with Dana Andrew. You have to
2 remember, I was at the hospital with Ryan after
3 April.
4 MR. DAVIS: I'll mark as Exhibit 8 the
5 Complaint from the underlying case, Lee Pretner and
6 Dana Andrew versus Michael Vasquez, Case
7 No. A-11-632845-C.
8 (Exhibit 8 marked for identification.)
9 BY MR. DAVIS:
10 Q. Have you ever spoken to Michael Vasquez?
11 A. No.
12 Q. Now, at some point, Dennis Prince became
13 your attorney, took over for Sylvia Esparza;
14 correct?
15 A. Yes.
16 Q. Did you tell Sylvia Esparza to send
17 Mr. Prince copies of your file so you could look at
18 it?
19 MR. PRINCE: I'm going to object to the form
20 of the question.
21 I'm instructing you not to answer based on
22 attorney-client privilege. So don't answer the
23 question.
24 BY MR. DAVIS:
25 Q. You were the plaintiff, one of the

1 approve.
2 Q. You just allowed your attorney to file a
3 legal document that you never saw?
4 MR. PRINCE: Objection to the form of the --
5 objection to the question.
6 Instruct you not to answer on the basis,
7 number one, it's argumentative. Two, you're trying
8 to harass him. And three, protected by
9 attorney-client privilege. So don't answer the
10 question.
11 BY MR. DAVIS:
12 Q. Go to Page 2 of the Complaint, paragraph
13 five. In the second full sentence of that
14 paragraph, it says, "At all times relevant to these
15 proceedings, Vasquez is a principal, officer,
16 director, manager, employee and/or agent of Blue
17 Streak and was in the course and scope of his
18 employment or agency at time of the events described
19 herein."
20 You don't have any knowledge that's true, do
21 you, sir, that Mr. Vasquez was acting in the course
22 and scope of his employment or agency at the time of
23 the accident, do you, sir?
24 MR. PRINCE: Okay. I'm going to object to
25 the form of the question, and I'm going to instruct

Page 46

Page 48

1 plaintiffs in this case, the underlying case. Just
2 for shorthand, when I say underlying case, I mean
3 the lawsuit that you filed against Mr. Vasquez and
4 Blue Streak.
5 MR. PRINCE: He'll understand that as the
6 state court action. He'll understand that.
7 BY MR. DAVIS:
8 Q. You would rather I use the state court
9 action, sir?
10 A. Yes.
11 Q. Okay. You are a plaintiff in the state
12 court action; correct?
13 A. Yes.
14 Q. Okay. And you reviewed the Complaint before
15 it was filed?
16 A. No.
17 Q. Have you ever reviewed the Complaint?
18 A. No.
19 Q. Did you approve the Complaint?
20 A. I can't answer that question if I didn't see
21 the Complaint.
22 Q. So you didn't approve of the Complaint
23 before it was filed. Is that what your testimony
24 is?
25 A. I never saw the Complaint to disapprove or

1 him not to answer.
2 I want to exercise at this point the right,
3 if you want to continue asking any questions about
4 the allegations in the Complaint, to suspend the
5 deposition and move for protective order.
6 Number one, these facts have been judicially
7 established by operation of Nevada law. It's been
8 incorporated into a valid default judgment against
9 both of these defendants. That judgment has never
10 been satisfied as to the judgment debtors, which in
11 this case are the Century insureds, and so you have
12 no basis under any applicable law that I'm aware of
13 to challenge any of the factual findings or any of
14 the factual assertions made in the Complaint
15 whatsoever.
16 So if you're going to ask any further
17 questions, we can -- I'm going to suspend the
18 deposition and file the motion for protective order
19 as allowed under the deposition rules in federal
20 court. Or you can, alternatively, move on to
21 something else.
22 MR. DAVIS: Okay. I dispute your view of
23 the law. That's what this whole case is about.
24 You're incorrect. This is a legal issue that will
25 be resolved by our court. You can't deprive me of



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LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
49-52

Page 49

Page 51

1 my ability to ask him about the Complaint.
 2 MR. PRINCE: I can, but you're asking about
 3 what evidence. It's already been established.
 4 Those facts have been judicially established as a
 5 matter of --
 6 MR. DAVIS: No, they're not, sir. That's
 7 not true.
 8 MR. PRINCE: That is true under the Lomastro
 9 case in Nevada.
 10 MR. DAVIS: You're misstating that case,
 11 so --
 12 MR. PRINCE: Oh, no, I'm not.
 13 MR. DAVIS: That will be decided at a
 14 different --
 15 MR. PRINCE: Well, please don't interrupt
 16 me. I know that to be true, because the Lomastro
 17 case was my case, and so I am very familiar with the
 18 facts of that case and the holding of the Nevada
 19 Supreme Court on that. I appreciate you're from
 20 California and may not understand it, but that is
 21 the case.
 22 And if you are going to ask the question,
 23 I'm just going to exercise the right to suspend the
 24 deposition, and I'll move for protective order.
 25 MR. DAVIS: How about --

1 however you think is best.
 2 MR. DAVIS: If you will, let's stipulate
 3 that I have the right to recall the witness at a
 4 later date to complete questioning on the subject of
 5 the Complaint, on the allegations in the Complaint.
 6 MR. PRINCE: Okay.
 7 MR. DAVIS: And if we need to have a, you
 8 know, court decide whether I can ask those
 9 questions, we can do that at that time.
 10 MR. PRINCE: That's fine.
 11 MR. DAVIS: Okay.
 12 MR. PRINCE: I'll agree to that.
 13 MR. DAVIS: Mark as Exhibit 9 -- I think I'm
 14 correct -- Exhibit 9, the default.
 15 (Exhibit 9 marked for identification.)
 16 MR. PRINCE: I'm going to -- any question
 17 related to the state court proceedings, I'm going to
 18 have the same objection on.
 19 MR. DAVIS: I'm going to ask some questions,
 20 and you decide whether or not you think they're
 21 objectionable.
 22 MR. PRINCE: Okay. Okay.
 23 MR. DAVIS: Just even under your argument in
 24 your motion, summary judgment motion, obviously, you
 25 say that if we could show fraud, we're allowed to

Page 50

Page 52

1 MR. PRINCE: So if you're going to ask any
 2 questions about the Complaint or any allegations --
 3 excuse me -- any allegations, I'm going to exercise
 4 that right.
 5 MR. DAVIS: Okay. How about we do this: I
 6 don't want to waive my right to ask these questions.
 7 I do have other questions to ask, though. I can
 8 either ask the questions, and you can just instruct
 9 him not to answer repeatedly, or we can agree that
 10 -- we can stipulate that you have a standing
 11 objection to questions regarding the Complaint, I
 12 suppose, so I preserve my rights to move to compel
 13 answers.
 14 MR. PRINCE: Oh, I guess -- then I guess I
 15 would say that --
 16 MR. DAVIS: I don't want to waive those --
 17 MR. PRINCE: I'm just saying you're not
 18 waiving any of those rights. I'm giving you -- I'm
 19 agreeing with you. You're not waiving any rights,
 20 but I'm not going to allow him to even be asked the
 21 question and instruct each time not to answer. I'm
 22 just going to suspend and then move for the
 23 protective order.
 24 I don't want to do that necessarily if you
 25 have other questions, but -- so we can approach it

1 get into it, so I should be allowed to ask questions
 2 that go to fraud.
 3 MR. PRINCE: No, I don't agree with that. I
 4 think under the Lomastro case, the state court
 5 judgment has never been collaterally attacked by the
 6 judgment debtors. I realize you have a pending
 7 motion to intervene in the case, to file some kind
 8 of a motion, but on the other hand, we'll deal with
 9 -- the court will deal with the merits of that.
 10 But as of now, that's judicially established
 11 facts, and I guess the question is the
 12 enforceability of that judgment against Century
 13 here.
 14 MR. DAVIS: We dispute those are judicially
 15 established facts --
 16 MR. PRINCE: Okay.
 17 MR. DAVIS: -- for the record.
 18 MR. PRINCE: Okay.
 19 BY MR. DAVIS:
 20 Q. You see Exhibit 9 is a default.
 21 Do you recall that a default was entered
 22 against Michael Vasquez and Blue Streak Auto
 23 Detailing for failing to file an Answer to the
 24 Complaint that was filed on your behalf?
 25 MR. PRINCE: Answer that if you know.



LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
53-56

Page 53

1 THE WITNESS: I don't know that.
2 BY MR. DAVIS:
3 Q. I know you testified that you don't recall
4 or that you never read the Complaint before it was
5 filed or you haven't even read it as of today. You
6 do recall that a Complaint was filed, though;
7 correct?
8 A. Yes.
9 Q. Okay. And you do recall that a default was
10 taken? Do you know what a default is, sir?
11 A. Yes.
12 Q. Okay. Do you recall that a default was
13 taken against Michael Vasquez and Blue Streak Auto
14 Detailing for failing to file an Answer to the
15 Complaint?
16 A. Yes.
17 Q. And that was, if you can see at the top,
18 electronically filed June 27, 2011. Does that
19 refresh your recollection that the default was taken
20 on or about June 27, 2011?
21 A. It seems, if that's the date.
22 MR. DAVIS: Mark as Exhibit 10 a document
23 entitled Notice to Set Aside Default as to Defendant
24 Michael Vasquez Only.
25 (Exhibit 10 marked for identification.)

Page 54

1 BY MR. DAVIS:
2 Q. Have you seen this document prior to today,
3 sir?
4 A. No.
5 Q. Do you recall that the default against
6 Michael Vasquez was set aside?
7 MR. PRINCE: Objection to the form of the
8 question. I'm instructing you not to answer the
9 question.
10 MR. DAVIS: What's the basis of the
11 instruction?
12 MR. PRINCE: On the basis, number one,
13 attorney-client privilege, and two, that this has
14 already been adjudicated in the state court. And it
15 was never -- and you're also lying to him that it
16 was ever set aside, because it wasn't ever set
17 aside, so you're misleading the witness about it was
18 ever set aside.
19 BY MR. DAVIS:
20 Q. Do you recall a document that was filed
21 saying Notice to Set Aside Default as to Michael
22 Vasquez Only?
23 A. No.
24 Q. Other than from your attorney, do you have
25 knowledge that the default was set aside as to

Page 55

1 Defendant Michael Vasquez?
2 MR. PRINCE: It was never set -- well,
3 object to the form of the question, because it
4 assumes facts not in evidence.
5 Answer the question if you understand it.
6 THE WITNESS: No.
7 MR. DAVIS: I appreciate you want to lead
8 the witness with your objection, sir. You've given
9 lots of speech objections, and they're very
10 improper. Just object to the form of the question
11 and --
12 MR. PRINCE: That's what I'm doing.
13 BY MR. DAVIS:
14 Q. Sitting here today, do you understand that
15 if a withdrawal of default is filed, that there is
16 no default against that particular defendant?
17 A. I don't understand the question.
18 MR. PRINCE: Object to the form of the
19 question.
20 BY MR. DAVIS:
21 Q. Do you understand if a default is set aside,
22 that there is no default?
23 MR. PRINCE: Object to the form of the
24 question. Calls for a legal conclusion.
25 You can answer if you know.

Page 56

1 THE WITNESS: I don't know the answer to
2 that.
3 BY MR. DAVIS:
4 Q. Did you ever advise the Court that
5 Mr. Vasquez's default was set aside?
6 A. I don't understand the question.
7 Q. Did you tell the state court that the
8 default against Michael Vasquez had been set aside?
9 MR. PRINCE: I guess I'll object to the form
10 of the question. You're misleading the witness
11 again, so now I think you're harassing him, and
12 you're engaging in improper conduct directed towards
13 this particular witness. I don't think it's
14 appropriate or fair when you know other facts and
15 information that's available to you.
16 So that's my objection, and I instruct him
17 not to answer the question.
18 MR. DAVIS: Please don't give speech
19 objections.
20 MR. PRINCE: I guess I'm directing my
21 comments towards you.
22 BY MR. DAVIS:
23 Q. Do you understand that a default judgment
24 was entered against Mr. Vasquez, even though he
25 wasn't in default?



LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
57-60

<p style="text-align: right;">Page 57</p> <p>1 A. I don't understand that question.</p> <p>2 Q. As the guardian for your son, Ryan Pretner,</p> <p>3 you communicated with insurance companies; is that</p> <p>4 correct?</p> <p>5 A. You have to be more specific.</p> <p>6 Q. You are and were -- you were then and you</p> <p>7 are today Ryan Pretner's guardian?</p> <p>8 A. Yes.</p> <p>9 Q. And in that role as guardian, you</p> <p>10 communicated with insurance companies that might</p> <p>11 cover the accident; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And in that role as guardian, you</p> <p>14 hired lawyers to represent your son's interests in</p> <p>15 regards to the accident?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. In the role as guardian, you</p> <p>18 communicated with the counsel that you had retained</p> <p>19 for your son? I'm not asking about any specific</p> <p>20 communications, sir.</p> <p>21 A. Minimum.</p> <p>22 Q. And as a guardian, you were a plaintiff in</p> <p>23 the state court lawsuit?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And you're still a guardian today?</p>	<p style="text-align: right;">Page 59</p> <p>1 that you instructed the witness not to answer, I</p> <p>2 have no further questions today.</p> <p>3 (Whereupon, the deposition was</p> <p>4 concluded at 3:20 p.m.)</p> <p style="text-align: center;">-oOo-</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Yes.</p> <p>2 Q. But you're not a plaintiff in the federal</p> <p>3 court lawsuit?</p> <p>4 A. I don't know that.</p> <p>5 Q. You don't know if you're a plaintiff or not</p> <p>6 in the federal lawsuit?</p> <p>7 A. Yeah, I think I am a plaintiff.</p> <p>8 Q. Do you remember that a settlement agreement</p> <p>9 was signed between Progressive Insurance and Michael</p> <p>10 Vasquez and your son through his guardians?</p> <p>11 A. I don't understand the timing there.</p> <p>12 Q. Do you remember that there was a settlement</p> <p>13 reached with Progressive Insurance?</p> <p>14 A. Progressive. Yes.</p> <p>15 MR. PRINCE: Okay.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Did you sign the settlement agreement?</p> <p>18 A. I don't remember signing that.</p> <p>19 Q. Okay. Why didn't you sign it?</p> <p>20 A. I can't answer if I don't remember.</p> <p>21 MR. DAVIS: Let's go off the record for ten</p> <p>22 minutes.</p> <p>23 MR. PRINCE: Okay.</p> <p>24 (Recess taken.)</p> <p>25 MR. DAVIS: I think other than the questions</p>	<p style="text-align: right;">Page 60</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA)</p> <p>3) ss COUNTY OF CLARK)</p> <p>4</p> <p>5 I, Kerrie Keller, a duly commissioned Notary</p> <p>6 Public, Clark County, State of Nevada, do hereby</p> <p>7 certify:</p> <p>8 That I reported the taking of the deposition</p> <p>9 of the witness, LEE PRETNER, at the time and place</p> <p>10 aforesaid;</p> <p>11 That prior to being examined, the witness</p> <p>12 was by me duly sworn to testify to the truth, the</p> <p>13 whole truth, and nothing but the truth; that before</p> <p>14 the proceedings' completion, that reading and</p> <p>15 signing of the deposition has been requested by the</p> <p>16 deponent or a party under Federal Rule 30(e);</p> <p>17 That I thereafter transcribed my said</p> <p>18 shorthand notes into typewriting and that the</p> <p>19 typewritten transcript is a complete, true, and</p> <p>20 accurate transcription of testimony provided by the</p> <p>21 witness at said time to the best of my knowledge,</p> <p>22 15 skills, and ability;</p> <p>23 I further certify that I am not a relative</p> <p>24 or employee of counsel of any of the parties, nor a</p> <p>25 relative or employee of the parties involved in said</p> <p>action, nor a person financially interested in the</p> <p>action.</p> <p>19</p> <p>20 IN WITNESS WHEREOF, I have set my hand in my</p> <p>21 office in the County of Clark, State of Nevada, this</p> <p>22 9th day of November, 2012.</p> <p>23</p> <p>24 _____</p> <p>25 Kerrie Keller, CCR No. 612</p>



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R.App. 001593

LEE PRETNER
ANDREW vs. CENTURY

November 06, 2012
61-63

<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 Our Assignment No. 486160</p> <p>5 Case Caption: Andrew</p> <p>6 vs. Century Surety Company</p> <p>7</p> <p>8 DECLARATION UNDER PENALTY OF PERJURY</p> <p>9 I declare under penalty of perjury</p> <p>10 that I have read the entire transcript of</p> <p>11 my Deposition taken in the captioned matter</p> <p>12 or the same has been read to me, and</p> <p>13 the same is true and accurate, save and</p> <p>14 except for changes and/or corrections, if</p> <p>15 any, as indicated by me on the DEPOSITION ERRATA</p> <p>16 SHEET hereof, with the understanding that I offer</p> <p>17 these changes as if still under oath.</p> <p>18</p> <p>19 Signed on the _____ day of</p> <p>20 _____, 2012.</p> <p>21 _____</p> <p>22 LEE PRETNER</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 61</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____</p> <p>3 Change to: _____</p> <p>4 Reason for Change: _____</p> <p>5 Page No. _____ Line No. _____</p> <p>6 Change to: _____</p> <p>7 Reason for Change: _____</p> <p>8 Page No. _____ Line No. _____</p> <p>9 Change to: _____</p> <p>10 Reason for Change: _____</p> <p>11 Page No. _____ Line No. _____</p> <p>12 Change to: _____</p> <p>13 Reason for Change: _____</p> <p>14 Page No. _____ Line No. _____</p> <p>15 Change to: _____</p> <p>16 Reason for Change: _____</p> <p>17 Page No. _____ Line No. _____</p> <p>18 Change to: _____</p> <p>19 Reason for Change: _____</p> <p>20 Page No. _____ Line No. _____</p> <p>21 Change to: _____</p> <p>22 Reason for Change: _____</p> <p>23</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 LEE PRETNER</p>
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R.App. 001594

EXHIBIT "31"

EXHIBIT "31"

SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
1-4

<p style="text-align: right;">Page 1</p> <p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3 *****</p> <p>4 DANA ANDREW, as Legal Guardian of RYAN T. PRETNER, 5 and RYAN PRETNER, individually,</p> <p>6 Plaintiff,</p> <p>7 vs.</p> <p>8 CENTURY SURETY COMPANY, a 9 foreign corporation; and DOES 1-10, inclusive,</p> <p>10 Defendants.</p> <hr/> <p>13 DEPOSITION OF</p> <p>14 SYLVIA L. ESPARZA, ESQ.,</p> <p>16 April 26, 2013</p> <p>17 10:00 a.m.</p> <p>19 400 South Rampart Boulevard 20 Suite 400 Las Vegas, Nevada</p> <p>23 Christine M. Jacobs, CCR No. 455</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX OF EXAMINATION</p> <p>2 WITNESS: SYLVIA L. ESPARZA, ESQ.</p> <p>3</p> <p>4 EXAMINATION PAGE</p> <p>5 By Ms. Cousineau</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2 For the Plaintiff:</p> <p>3 PRINCE & KEATING DENNIS PRINCE, ESQ. 4 3230 S. Buffalo Drive, #180 Las Vegas, Nevada 89117 5 702 228-6800 702 228-0443 Fax 6 dprince&princekeating.com</p> <p>7 For the Defendant:</p> <p>8 SEDGWICK LLP MARIA LOUISE COUSINEAU, ESQ. 9 801 South Figueroa Street, 19th Floor Los Angeles, California 90017 10 213 426-6900 213 426-6921 Fax 11 maria.cousineau@sedgwicklaw.com</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXHIBITS</p> <p>2</p> <table border="0"> <thead> <tr> <th style="text-align: left;">3 Exhibit</th> <th style="text-align: left;">Description</th> <th style="text-align: left;">Page</th> </tr> </thead> <tbody> <tr> <td>4 1</td> <td>Amended Notice of Deposition of Sylvia L. Esparza, Esq.</td> <td>11</td> </tr> <tr> <td>6 2</td> <td>Subpoena to testify at a deposition or to produce documents in a civil action</td> <td>11</td> </tr> <tr> <td>7 3</td> <td>Documents provided by plaintiff's counsel Bates ESPARAZA 0001-00041</td> <td>21</td> </tr> <tr> <td>9 4</td> <td>Letter to Progressive from Sylvia Esparza dated 5/26/09 ESPARZA 0005</td> <td>39</td> </tr> <tr> <td>10 5</td> <td>Letter from Progressive to Sylvia Esparza dated 6/3/09 ESPARZA 00018</td> <td>47</td> </tr> <tr> <td>11 6</td> <td>Claim log</td> <td>50</td> </tr> <tr> <td>13 7</td> <td>Letter from Progressive to Sylvia Esparza dated 6/10/09 ESPARZA 00019</td> <td>51</td> </tr> <tr> <td>14 8</td> <td>Henderson Police Incident Report</td> <td>57</td> </tr> <tr> <td>15 9</td> <td>State of Nevada Traffic Accident Report</td> <td>62</td> </tr> <tr> <td>16 10</td> <td>Letter from Century Insurance to Sylvia Esparza dated 6/15/09 ESPARZA 00020-24</td> <td>63</td> </tr> <tr> <td>18 11</td> <td>Letter from Progressive to Sylvia Esparza dated 6/15/09 with attached affidavit ESPARZA 00025-29</td> <td>66</td> </tr> <tr> <td>20 12</td> <td>Letter from Progressive to Sylvia Esparza dated 6/23/09 ESPARZA 00030</td> <td>70</td> </tr> <tr> <td>21 13</td> <td>Letter from Progressive to Sylvia Esparza dated 7/24/09 ESPARZA 00031</td> <td>71</td> </tr> <tr> <td>23 14</td> <td>Letter from Progressive to Sylvia Esparza dated 8/14/09 ESPARZA 00032</td> <td>73</td> </tr> <tr> <td>24 15</td> <td>Letter from Progressive to Sylvia Esparza dated 9/16/09 ESPARZA 00033</td> <td>74</td> </tr> </tbody> </table> <p>25</p>	3 Exhibit	Description	Page	4 1	Amended Notice of Deposition of Sylvia L. Esparza, Esq.	11	6 2	Subpoena to testify at a deposition or to produce documents in a civil action	11	7 3	Documents provided by plaintiff's counsel Bates ESPARAZA 0001-00041	21	9 4	Letter to Progressive from Sylvia Esparza dated 5/26/09 ESPARZA 0005	39	10 5	Letter from Progressive to Sylvia Esparza dated 6/3/09 ESPARZA 00018	47	11 6	Claim log	50	13 7	Letter from Progressive to Sylvia Esparza dated 6/10/09 ESPARZA 00019	51	14 8	Henderson Police Incident Report	57	15 9	State of Nevada Traffic Accident Report	62	16 10	Letter from Century Insurance to Sylvia Esparza dated 6/15/09 ESPARZA 00020-24	63	18 11	Letter from Progressive to Sylvia Esparza dated 6/15/09 with attached affidavit ESPARZA 00025-29	66	20 12	Letter from Progressive to Sylvia Esparza dated 6/23/09 ESPARZA 00030	70	21 13	Letter from Progressive to Sylvia Esparza dated 7/24/09 ESPARZA 00031	71	23 14	Letter from Progressive to Sylvia Esparza dated 8/14/09 ESPARZA 00032	73	24 15	Letter from Progressive to Sylvia Esparza dated 9/16/09 ESPARZA 00033	74
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SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
5-8

Exhibit	Description	Page	Page 5	Page 7
2	16 Letter from Progressive to Sylvia Esparza dated 10/12/09 ESPARZA 00035-36	76		1 The person sitting to your right is taking down
3				2 every word being said in this room. As a result, we have
4	17 Fax confirmation to Sylvia Esparza from Vince Johnson dated 11/17/09	77		3 to follow some rules that we would not otherwise follow
5	18 Fax confirmation to Sylvia Esparza from Vince Johnson dated 12/10/09 2nd request	78		4 in normal conversation.
6				5 One is that, the first is that only one of us can
7	19 Letter from Progressive to Sylvia Esparza dated 1/12/10 CF000111	79		6 speak at a time, so I will request that you allow me to
8	20 Letter from Progressive to Sylvia Esparza dated 3/10/10 ESPARZA 00038	81		7 finish my question before you respond, and I will do the
9				8 same thing, allow you to respond totally before I ask the
10	21 Letter from Sylvia L. Esparza, Esq. To Century Insurance dated 6/21/10 ESPARZA 00039	81		9 next question. Do you understand?
11				10 A. Yes.
12	22 email chain between Al Wilson and Sylvia Esparza dated 8/4/10 ESPARZA00040	84		11 Q. If at any time you don't understand my question,
13	23 Fax transmittal from Pamelee Torres to Sylvia Esparza with attached letter dated 4/18/11 ESPARZA 0003-0004	87		12 please just tell me and I'm happy to rephrase it. If you
14				13 do answer it, we will assume that you understood the
15	24 Complete file provided by Sylvia Esparza	91		14 question.
16				15 A. Okay.
17				16 Q. Understood?
18				17 A. Yes.
19				18 Q. The next rule, which you're already doing now,
20				19 is that all responses have to be audible, yes, no, a
21				20 word, as opposed to uh-huh or huh-uh because that just
22				21 becomes a bunch of u's and h's on the record when typed
23				22 up. So if you continue to do that, I would appreciate
24				23 it. Understood?
25				24 A. Yes.
				25 Q. When this deposition is concluded, the original
			Page 6	Page 8
1	Deposition of Sylvia L. Esparza, Esq.			1 will be typed into a booklet transcript and you'll have
2	April 26, 2013			2 an opportunity to read it and make any changes, and we
3	(Prior to the commencement of the			3 will request that you sign it under penalty of perjury.
4	deposition, all of the parties present agreed to waive			4 I have to caution you should you make changes of a
5	statements by the court reporter, pursuant to Rule			5 substantive nature such as a yes or a no, those changes
6	30(b)(4) of NRC.P.)			6 could be the source of comment and could reflect
7	SYLVIA L. ESPARZA, ESQ., having been first			7 negatively upon you should you be called to testify at
8	duly sworn, testified as follows:			8 trial. Understood?
9	EXAMINATION			9 A. Yes.
10	BY MS. COUSINEAU			10 Q. As a result, we ask that you simply provide your
11	Q. Would you state and spell your name for the			11 best testimony today to the extent that's possible. Is
12	record, please.			12 there any reason that you cannot give your best testimony
13	A. Sylvia Esparza. S-y-l-v-i-a, Esparza,			13 today?
14	E-s-p-a-r-z-a.			14 A. No.
15	Q. Ms. Esparza, have you ever had your deposition			15 Q. Are you under any medication or alcohol that
16	taken before?			16 would affect your memory or impair your ability to
17	A. No, I haven't.			17 testify?
18	Q. Have you ever attended a deposition?			18 A. No.
19	A. I think I might have attended a couple			19 Q. The oath that you just took is the same oath
20	depositions.			20 that you would take if you were testifying in court, and
21	Q. I understand you're an attorney. Have you ever			21 I just simply want to remind you you are testifying under
22	taken a deposition?			22 penalty of perjury. Understood?
23	A. No, I haven't.			23 A. Yes.
24	Q. Let me explain some of the ground rules just so			24 Q. Give me a brief -- your educational background.
25	we're both on the same pages.			25 A. Well, graduated from high school went to



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R.App. 001597

SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
9-12

<p style="text-align: right;">Page 9</p> <p>1 Pepperdine University. Graduated from law school in 2 Mexico. Went to University of San Diego Law School. 3 That's it. 4 Q. So your law degree is from the University of San 5 Diego? 6 A. Actually, it's LLM. The law degree was from 7 Mexico. Then I got an LLM from USC and was able to take 8 the bar here in the state of Nevada. 9 Q. And is the LLM in a particular designation? 10 A. I just took a bunch of general courses just so I 11 could be familiar with the bar exam. 12 Q. What is the name of the institution in Mexico 13 from which I graduated? 14 A. It's in Spanish. The acronym is ITESO. 15 Q. What does that stand for? 16 A. Instituto Tecnológico de Estudios Superiores de 17 Occidente. 18 Q. What city is that located? 19 A. Guadalajara. 20 Q. When did you graduate from ITESO? 21 A. I believe it was '99. 1999. 22 Q. And when did you attend USD? 23 A. I believe it was in 2001. 24 Q. Where did you first take a bar exam? 25 A. Here in the state of Nevada.</p>	<p style="text-align: right;">Page 11</p> <p>1 (Exhibit 1 was marked for identification.) 2 Q. (By Ms. Cousineau) I have previously marked as 3 Exhibit 1 the deposition notice, amended deposition 4 notice for today's deposition. Have you seen a copy of 5 that? 6 A. Yes. 7 (Exhibit 2 was marked for identification.) 8 Q. (By Ms. Cousineau) I'm going to hand you what 9 I've marked as Exhibit 2, which is a subpoena regarding 10 your attendance today and the request for production of 11 documents. Did you receive a copy of this subpoena? 12 A. Yes. 13 Q. And did you bring with you any documents? 14 A. Yes. 15 Q. What did you bring? 16 A. I brought my original file for the claim. 17 Q. May I see? 18 A. Yes. 19 MR. PRINCE: For the record, we produced the 20 documents in response to subpoenas you previously served 21 upon her. 22 MS. COUSINEAU: For the record, there are 23 additional documents in here that are not part of the 24 disclosure. 25 MR. PRINCE: Yeah, but they weren't part of the</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. When did you take the Nevada bar? 2 A. The year right after. 2001. 3 Q. To 2002? 4 A. Yes, I think so. 5 Q. And when were you admitted to the Nevada bar? 6 A. 2004. 7 Q. Have you been practicing consistently since 2004 8 in Nevada? 9 A. Yes. 10 Q. Do you have a particular area of practice that 11 you specialize in? 12 A. Yes, immigration. 13 Q. What percentage of your current practice is 14 dedicated to immigration? 15 A. 95 percent. 16 Q. In 2009 what percent of your practice was 17 dedicated to immigration? 18 A. About the same. 95. 19 Q. Currently what's the other 5 percent? 20 A. The other is probably family, a little bit of 21 family, little bit of guardianship, and then a little bit 22 of personal injury. 23 Q. And are those areas the same areas that made up 24 the other 5 percent in 2009? 25 A. Probably yeah, uh-huh.</p>	<p style="text-align: right;">Page 12</p> <p>1 claim either. So she brought some other things that 2 weren't part of your request in response to the 3 subpoena. So she brought that today and some others. 4 THE WITNESS: I think in the initial request 5 they had specifically said correspondence between 6 Progressive and then my letters to Progressive, letters 7 from Progressive to me, letters to Century Surety and 8 letters from Century Surety to me. So that's what I 9 turned over to Mr. Prince. 10 MS. COUSINEAU: I don't have the original 11 subpoena with me, but I understood it was for the entire 12 file. The representation that you made, Dennis, was that 13 you had produced her entire file. 14 MR. PRINCE: In response to -- 15 MS. COUSINEAU: Let me finish my statement, 16 please. And that nothing had been redacted. 17 MR. PRINCE: No, that's not true. She's 18 represented Mr. Pretner in other matters. I said I'd 19 produce all of her file in relationship to the 20 guardianship that was not responsive to your documents. 21 I said we'd produce all documents responsive to the 22 subpoena, which was a complete response of all of her 23 file. There may be a few miscellaneous documents in 24 there relating to authorizations and things like that, 25 which really was not responsive to your subpoena, but</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
13-16

<p style="text-align: right;">Page 13</p> <p>1 nevertheless she has her original file here.</p> <p>2 Q. (By Ms. Cousineau) Prior to producing this file</p> <p>3 here today, did you remove any documents?</p> <p>4 A. I might have taken some documents that were</p> <p>5 related to the guardianship, child custody issues. There</p> <p>6 was a bunch of -- I have, like, a lot of paper relating</p> <p>7 to not necessarily this claim but the accident, you know,</p> <p>8 medical, and there was some child custody issues. Of</p> <p>9 course we had to file a guardianship.</p> <p>10 Q. Okay. And when did you remove the documents</p> <p>11 that you just described?</p> <p>12 A. Yesterday, I think, I went through and I</p> <p>13 didn't -- this actually was most of the file. There</p> <p>14 might have been some other miscellaneous stuff in there</p> <p>15 that was related to the guardianship.</p> <p>16 Q. You said other documents relating to the</p> <p>17 accident?</p> <p>18 A. No. I mean guardianship. There was</p> <p>19 guardianship in the file, and we had to file some</p> <p>20 documents for child custody. There might have been some</p> <p>21 documents related to, for example, the loss of his home.</p> <p>22 MR. PRINCE: Your subpoena relates to the claim</p> <p>23 and that has nothing to do with those issues.</p> <p>24 THE WITNESS: In the first deposition the notice</p> <p>25 that they gave me defined what correspondence they</p>	<p style="text-align: right;">Page 15</p> <p>1 Mr. Prince to produce?</p> <p>2 A. I think I had one of my assistants make copies.</p> <p>3 Q. Are you licensed to practice in any other state?</p> <p>4 A. I'm licensed to practice in Mexico.</p> <p>5 Q. When did you obtain your license in Mexico?</p> <p>6 A. I don't remember if it was 1999 or 2000.</p> <p>7 Q. Have you ever practiced in Mexico?</p> <p>8 A. Yes.</p> <p>9 Q. When?</p> <p>10 A. Well, I mean I practiced while I was going to</p> <p>11 law school, but not in an attorney, obviously, capacity</p> <p>12 but like a law student. And I'm trying to think. Maybe</p> <p>13 shortly thereafter a little bit. I don't remember to be</p> <p>14 honest. If I did practice, it was a very short period of</p> <p>15 time.</p> <p>16 Q. You live here now?</p> <p>17 A. Yes.</p> <p>18 Q. And when did you -- are you a US citizen?</p> <p>19 A. Yes.</p> <p>20 Q. When did you become a US citizen?</p> <p>21 A. I was born here.</p> <p>22 Q. When did you actually live in Mexico?</p> <p>23 A. I believe it was from 19 -- let me see. I</p> <p>24 graduated early from Pepperdine in '93, and then right</p> <p>25 after '94 I might have gone for -- there's like six</p>
<p style="text-align: right;">Page 14</p> <p>1 wanted, so I went ahead and took that, exactly what they</p> <p>2 asked for, which were letters to Progressive and then</p> <p>3 letters back to me and letters to Century Surety.</p> <p>4 Q. (By Ms. Cousineau) In 2009, how many employees</p> <p>5 did you have?</p> <p>6 A. Maybe three excluding myself.</p> <p>7 Q. Can you identify them for me?</p> <p>8 A. Vanessa Valdez. I think Anna Sanchez. Sorry.</p> <p>9 Anna Deltoro, I think, is her name. And then I think I</p> <p>10 had another person. I don't remember. I kind of had a</p> <p>11 bad turnover in the last couple of years. Maybe Lizette</p> <p>12 Cortez I think.</p> <p>13 Q. The documents that you removed from this</p> <p>14 personal injury file where are they now?</p> <p>15 A. They're in my office.</p> <p>16 Q. And when you received the subpoena, which is</p> <p>17 marked as Exhibit 2, where was the original of this file</p> <p>18 maintained?</p> <p>19 A. In my office.</p> <p>20 Q. When you received the initial subpoena for the</p> <p>21 production of your file, where was your file, the</p> <p>22 original of your file located?</p> <p>23 A. In my office.</p> <p>24 Q. Did you yourself or your staff make copies of</p> <p>25 the personal injury file documents to provide to</p>	<p style="text-align: right;">Page 16</p> <p>1 months. Then I came back to Las Vegas, and then I left</p> <p>2 again, and then I enrolled in law school there in '95, I</p> <p>3 think it was.</p> <p>4 Q. Were you born in Nevada?</p> <p>5 A. Yes, here in Las Vegas.</p> <p>6 Q. From 2009 to 2011, did you have any associates</p> <p>7 also licensed to practice law?</p> <p>8 A. No. No.</p> <p>9 Q. Between '09 and 2011 did you have any business</p> <p>10 partners?</p> <p>11 A. No.</p> <p>12 Q. Have you ever maintained a web site for your</p> <p>13 legal practice?</p> <p>14 A. No.</p> <p>15 Q. When did you first meet Ryan Pretner?</p> <p>16 A. High school. We were high school sweethearts.</p> <p>17 Q. And what year was that?</p> <p>18 A. 1989 I'd say.</p> <p>19 Q. And did you continue to date Mr. Pretner while</p> <p>20 you were in college?</p> <p>21 A. Yes.</p> <p>22 Q. And did you continue to date him while you were</p> <p>23 in law school?</p> <p>24 A. No.</p> <p>25 Q. When did you -- did you sometime after law</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
17-20

Page 17

1 school regain your friendship with Mr. Pretner?
2 A. Yes.
3 Q. When was that time?
4 A. I believe it was sometime in 2006 where we
5 connected and started dating in 2007.
6 Q. And were you dating in January 2009 at the time
7 of the accident?
8 A. Yes.
9 Q. I understand you are currently married to him?
10 A. Correct.
11 Q. When did you get married?
12 A. We had a ceremony November 20th, 2010, but
13 actually the marriage was April, I want to say, 5 or 6.
14 I'm not sure about the date.
15 Q. Of what year?
16 A. Of 2011.
17 Q. Why was there a five-month delay?
18 A. There was a guardianship in place, and so in
19 order to get married we had to get permission from the
20 guardianship court. And we had hired somebody to do that
21 and then at the last minute they wanted a medical
22 evaluation in order for the judge to grant the order for
23 permission to marry. And so we had already, you know,
24 reserved everything, so I was getting married on that
25 day. So we went forward on the ceremony but didn't

Page 18

1 actually get the order until a few months later and then
2 we went ahead and got married.
3 Q. So when did the court grant the order permitting
4 you to marry?
5 A. I don't remember the exact date, but it was
6 obviously sometime before April 5th or 6th.
7 Q. Is that guardianship still in place?
8 A. Yes, it is.
9 Q. And are there two guardians for Mr. Pretner?
10 A. Correct.
11 Q. You represented Lee Pretner in his guardianship
12 petition; correct?
13 A. Correct.
14 Q. Is there a reason in the documents that were
15 produced the order appointing the guardian was included
16 but not the petition? Is there a reason that was not in
17 the documents?
18 A. I don't remember.
19 MR. PRINCE: What documents are you referring
20 to?
21 THE WITNESS: Anything related to the
22 guardianship, I don't remember providing that to be
23 honest. Because it specifically asked for letters from
24 me to Vasquez, which I think is in that personal injury,
25 and then letters back and forth. Those were, like, the

Page 19

1 definitions, and so then I just gave exactly that to
2 Mr. Prince.
3 MS. COUSINEAU: I'm going to attach what was
4 produced in a moment.
5 THE WITNESS: Okay.
6 MR. PRINCE: Even your current subpoena doesn't
7 have anything to do with the guardianship. It only
8 speaks to Mr. Pretner's claim against Michael Vasquez for
9 damages and that's not part of that.
10 Q. (By Ms. Cousineau) Did you represent Dana Andrew
11 in her petition for guardianship?
12 A. Yes, I did.
13 Q. Why are there two guardians?
14 A. Well, his father is older, a lot older. He's,
15 like, 78 years old, and it just seemed more reasonable to
16 have Dana on there. And I believe that he has listed her
17 has a beneficiary on certain benefits, and so to me it
18 was kind of clear that perhaps his desire would be to
19 have his sister involved at the time.
20 Q. Where do you and Ryan Pretner live today?
21 A. 9822 Buttermilk Falls, Las Vegas, Nevada 89178.
22 Q. How would you describe Ryan's current health
23 condition?
24 A. I think he's stable. In general, he's doing a
25 lot better from the accident, but he has severe memory

Page 20

1 deficits and his speech is delayed. In general he has
2 everything delayed, I guess, I think also. His gait is a
3 little strange, a little off, a little slow. He has a
4 fixed nerve palsy in the left eye so it doesn't move the
5 same with the other right eye. And mostly it's just a
6 memory problem for him.
7 Q. Is he able to work?
8 A. He's still on disability and he does work at a
9 bike shop for two hours a day on Tuesday and Fridays, but
10 it's more like occupational therapy for him still. He
11 would like to go back to work but that may take some
12 time.
13 Q. How did you yourself learn of the accident?
14 A. His sister called me on the day of the accident.
15 Q. What did she tell you?
16 A. She said that he had been hit and that he was at
17 UMC Hospital.
18 Q. How long did he remain in a coma?
19 A. About two months.
20 Q. During that time did you stay in communication
21 with the family?
22 A. Yes.
23 Q. When did Lee Pretner retain you to file the
24 guardianship papers?
25 A. I think it was shortly thereafter. I mean they



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
21-24

Page 21

1 hadn't paid me any sums of money or anything like that.
 2 It was just, you know, Ryan and I were together I'm an
 3 attorney, I knew this had to be done in order for them to
 4 be able to do certain things and so they wouldn't have
 5 questions because he was in a coma unable to speak, write
 6 or anything like that and so I stepped in to do that.
 7 MS. COUSINEAU: I'm going to mark as Exhibit 3
 8 the documents that were provided by Mr. Prince in his
 9 disclosure, and they are Bates stamped Esparza 0001
 10 through 00041.
 11 (Exhibit 3 was marked for identification.)
 12 Q. (By Ms. Cousineau) Did you see these documents
 13 with the Bates labels prior to their production in this
 14 case?
 15 A. I didn't see them with the Bate labels, but I
 16 saw them obviously before I gave it to him. When my
 17 assistant had made the copies, I reviewed what she made
 18 copies of.
 19 Q. What did you instruct your assistant to copy?
 20 A. All the letters that I wrote to Progressive, all
 21 the letters that I wrote to Century Surety, all the
 22 letters I received from Progressive, all the letters I
 23 received from Century Surety, and basically any
 24 correspondence from those two. And I think also it had
 25 something about Michael Vasquez, so, anything I have from

Page 22

1 him, but I don't think I ever dealt with him personally,
 2 so I don't think I had anything from him personally.
 3 Q. Did you ask -- the assistant that did the copies
 4 who was that?
 5 A. I think the assistant that did these copies
 6 she's not an employee, she's a bookkeeper, and her name
 7 is Rosanna Magno.
 8 Q. Rosanna?
 9 A. Magno.
 10 Q. M-a-g?
 11 A. N-o.
 12 Q. She's not actually employed by you?
 13 A. Right. She's a bookkeeper. So I just employ
 14 her for bookkeeping purposes and personal. And because I
 15 considered this file like a personal, I kind of had her
 16 deal with making copies for this.
 17 Q. Why did you consider it a personal matter?
 18 A. Because of my relationship to Ryan.
 19 Q. Your relationship to Ryan? Is that what you
 20 said?
 21 A. Correct.
 22 Q. The document, excuse me, the file that you
 23 produced today includes a letter dated February 10, 2009,
 24 to the Henderson Police Department for the \$5 check for
 25 the police reports. Did you ever receive those reports?

Page 23

1 A. I did.
 2 Q. And where are those reports today?
 3 A. I have, like I said, this file is very big.
 4 I mean there's a lot of different files, and I don't have
 5 it organized like I normally would have. It's in my
 6 office and behind me on a desk and there's just a bunch
 7 paper. So it might be in there, but it wasn't in that
 8 one.
 9 Q. And prior to coming here today, did you review
 10 any loose documents and determine if any of those were
 11 responsive to the subpoena?
 12 A. When I initially received the subpoena, I went
 13 through everything that I had, and so anything that was
 14 related to Progressive and Century Surety, any
 15 correspondence related exactly just to that is what I
 16 pulled. So I didn't do it a second time around.
 17 Q. And if you located loose correspondence, did you
 18 place them in this file named personal injury?
 19 A. Yes.
 20 Q. And they stayed in that file after the, after
 21 you sent the copies to Mr. Prince?
 22 A. Correct.
 23 Q. What other files do you have relating to Ryan
 24 Pretner and this accident other than this one that's
 25 marked personal injury?

Page 24

1 A. Well, we filed the guardianship, so there's a
 2 guardianship file that has all the files relating to the
 3 guardianship. And then there's another file relating to
 4 his child support. His ex-wife wanted to maintain the
 5 same level of support even though he was in a coma.
 6 Q. And did you represent Ryan in that?
 7 A. I didn't. I had another friend represent him,
 8 but I have copies of that file.
 9 Q. Any other files?
 10 A. There may be a file regarding his home, loss of
 11 his home, like outstanding bills that were maybe coming
 12 in at that time.
 13 Q. Did you represent him in any foreclosure
 14 proceedings or in communications with creditors?
 15 A. We might have sent some -- I might have sent
 16 some letters in the beginning explaining the
 17 circumstances.
 18 Q. But you didn't represent him in any foreclosure
 19 proceeding?
 20 A. No. I think at one point we decided that we
 21 weren't going to pursue or try to save the house or
 22 anything like that. We just let it go.
 23 Q. Any other files relating to the accident?
 24 A. I don't think so.
 25 Q. Where do you maintain all the medical records



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
25-28

<p style="text-align: right;">Page 25</p> <p>1 that you said you have?</p> <p>2 A. They're also there. I might have a file that</p> <p>3 says medical records, but you didn't really request all</p> <p>4 the records. There was some bills coming in, so I just</p> <p>5 kind of put them in a file as they were coming in, but we</p> <p>6 didn't request all the records.</p> <p>7 Q. You didn't consider that part of the claim, the</p> <p>8 file relating to the claim?</p> <p>9 A. I didn't request the records. I never requested</p> <p>10 the record for --</p> <p>11 Q. I misunderstood. I thought you said you had</p> <p>12 numerous medical records.</p> <p>13 A. A bill would come in and then his father would</p> <p>14 give it to me or give it to Dana or something like that,</p> <p>15 and then at that moment we might have kept it. We were</p> <p>16 dealing a lot with UMC at the time, so -- but I never</p> <p>17 requested records for Ryan at that time, or I didn't ever</p> <p>18 request any records I don't think.</p> <p>19 Q. When you say never requested, you're referring</p> <p>20 to you never requested from any of the healthcare</p> <p>21 practitioners that they provide you a copy of all their</p> <p>22 records?</p> <p>23 A. To be honest I don't remember. I mean it's</p> <p>24 '09. I don't think that I did. I might have requested</p> <p>25 or I might sent out -- to be honest, I don't know if I</p>	<p style="text-align: right;">Page 27</p> <p>1 including messages in files when you got a phone message</p> <p>2 on a particular file?</p> <p>3 MR. PRINCE: Object to the form. Vague and</p> <p>4 ambiguous. For Ryan or for her professional practice?</p> <p>5 MS. COUSINEAU: For her professional practice.</p> <p>6 MR. PRINCE: Okay.</p> <p>7 THE WITNESS: I think that -- not a standard</p> <p>8 practice. I mean if I addressed the phone call or</p> <p>9 something and I thought it was important to keep that</p> <p>10 message, I would keep it. If not, if I had addressed the</p> <p>11 phone call or, or then I would probably throw the message</p> <p>12 away. There's, you know, there's a carbon copy when you</p> <p>13 make a message so I'd have those.</p> <p>14 Q. (By Ms. Cousineau) And do you keep your message</p> <p>15 pads for a certain number of years, the carbon copy you</p> <p>16 just described?</p> <p>17 A. Yeah. I don't know to be honest. I'd have to</p> <p>18 check to see with one of my assistants to see if we have,</p> <p>19 like if we throw them out on a yearly basis or something</p> <p>20 like that. I don't remember.</p> <p>21 Q. Did you take any notes of any conversations you</p> <p>22 had with anybody relating to the claim to either</p> <p>23 Progressive or Century?</p> <p>24 A. No, I don't think I did. I'm trying to think if</p> <p>25 I wrote on the paper. I might have wrote on a sticky.</p>
<p style="text-align: right;">Page 26</p> <p>1 did or not. I don't think I did. I don't have like a --</p> <p>2 it would be huge. That's for sure. I know it would be</p> <p>3 huge from UMC or Craig or anything like that, and I don't</p> <p>4 have those for sure. I might have wanted to or I might</p> <p>5 have said that I was going to, but I don't think I did.</p> <p>6 Q. And did you look for any medical records prior</p> <p>7 to bringing this file here today?</p> <p>8 A. No, I didn't look for any medical records.</p> <p>9 Q. Any other files that you have relating to Ryan</p> <p>10 Pretner and the accident?</p> <p>11 A. I don't think so.</p> <p>12 Q. I notice in the documents in the file that you</p> <p>13 produced today there are phone call message documents on</p> <p>14 the far left side. Did you have a standard practice in</p> <p>15 your law firm in 2009 of how a phone message would get to</p> <p>16 you relating to any particular claim?</p> <p>17 A. Not a standard practice. I mean whoever answers</p> <p>18 the phone takes the message and let's me know they</p> <p>19 called, and usually I'll say put it in the file if I</p> <p>20 return the call or something like that.</p> <p>21 Q. In 2009 was there a particular place where</p> <p>22 message notices like this that's in your file were left</p> <p>23 for you to see?</p> <p>24 A. On my desk.</p> <p>25 Q. Did you yourself have any standard practice of</p>	<p style="text-align: right;">Page 28</p> <p>1 But no, I mean I really had very short communications</p> <p>2 with Progressive. I don't even think I spoke to actually</p> <p>3 somebody from Century Surety.</p> <p>4 Q. Did you have a standard practice in 2009 if you</p> <p>5 did take notes of any conversations of putting those</p> <p>6 notes in your file?</p> <p>7 A. Yeah, I think I do in general.</p> <p>8 Q. Prior to bringing this personal injury file here</p> <p>9 today, did you remove any handwritten notes regarding any</p> <p>10 communications?</p> <p>11 A. No.</p> <p>12 Q. So the documents you reviewed, you removed from</p> <p>13 this personal injury file prior to bringing you here</p> <p>14 today were guardianship papers?</p> <p>15 A. Correct.</p> <p>16 Q. And what else?</p> <p>17 A. Well, anything that wasn't specified in the</p> <p>18 request.</p> <p>19 Q. Well, what was in this file that you removed?</p> <p>20 A. Yeah, I mean anything relating to guardianship</p> <p>21 if there was anything in there. I don't remember to be</p> <p>22 honest. It wasn't that much in that particular file, but</p> <p>23 I don't remember -- if anything that wasn't exactly what</p> <p>24 you asked for is what I took out.</p> <p>25 Q. Well, this most recent subpoena was for your</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
29-32

<p style="text-align: right;">Page 29</p> <p>1 entire file regarding the claim.</p> <p>2 MR. PRINCE: No. No. No. No.</p> <p>3 THE WITNESS: The claim says -- I looked at</p> <p>4 that, and the claim said that, it says Ryan -- claim</p> <p>5 means Ryan Pretner's claim against Michael Vasquez and/or</p> <p>6 Blue Streak for damages arising out of the accident.</p> <p>7 So my interpretation of that was anything</p> <p>8 relating to Ryan's claim against Michael Vasquez and Blue</p> <p>9 Streak. So I didn't think the guardianship had anything</p> <p>10 to do with the claim against Blue Streak and the child --</p> <p>11 the reduction in child support, anything like that.</p> <p>12 Q. (By Ms. Cousineau) Did you remove from this</p> <p>13 personal injury file documents relating to the child</p> <p>14 support?</p> <p>15 A. I don't know exactly. It wasn't as organized as</p> <p>16 a normal file would have been because I considered it a</p> <p>17 personal matter. So I don't remember what all of the</p> <p>18 different documents that were in there. I know that that</p> <p>19 file, that particular file wasn't very fat anyways, but</p> <p>20 there was some things. I don't remember if there was</p> <p>21 something of child support in there.</p> <p>22 Q. Has this file always had a label identifying it</p> <p>23 as personal injury?</p> <p>24 A. Yes.</p> <p>25 Q. When were you first retained by Lee Pretner to</p>	<p style="text-align: right;">Page 31</p> <p>1 insurance claims?</p> <p>2 MR. PRINCE: Other than what she just testified</p> <p>3 to?</p> <p>4 MS. COUSINEAU: I'm trying to pinpoint it in</p> <p>5 time so that we can --</p> <p>6 THE WITNESS: I think that the first time I sent</p> <p>7 this letter out was May 2009. So sometime before that</p> <p>8 but not -- it had to be sometime after March I know, but</p> <p>9 obviously right around May is when I sent the first</p> <p>10 letter out.</p> <p>11 Because the other letters, I think, are -- the</p> <p>12 initial letters from Progressive, I believe, are sent to</p> <p>13 Lee. Lee, March 5th, March 10th. Okay. So maybe March</p> <p>14 10th, 2010, because there's a letter here from</p> <p>15 Progressive that's addressed to me. So I mean I don't</p> <p>16 know if Lee had told Progressive that I was representing</p> <p>17 him at that time.</p> <p>18 Q. (By Ms. Cousineau) Actually, that's a document</p> <p>19 dated March 10, 2010?</p> <p>20 A. Sorry.</p> <p>21 Q. It's okay.</p> <p>22 A. I know the first letters that were out in '09</p> <p>23 from Progressive I think they were addressed to Lee.</p> <p>24 Q. Why do you say that you know it was after</p> <p>25 March? What is the significance of March 2009 to your</p>
<p style="text-align: right;">Page 30</p> <p>1 represent Ryan, Ryan's interest in the claim to</p> <p>2 Progressive?</p> <p>3 A. Again, I wasn't ever -- we've never signed a</p> <p>4 contract or anything like that for services. But I</p> <p>5 recall whenever I sent out the first letter, I guess, we</p> <p>6 had spoken about that, and he agreed that that's what we</p> <p>7 should do.</p> <p>8 So maybe like sometime in March, I guess, the first</p> <p>9 letter that went out. Or was it May? Looks like my</p> <p>10 first letter was in May. But we might have talked about</p> <p>11 this sometime in March.</p> <p>12 Q. So was there a specific request that you</p> <p>13 represent Ryan's interest in the claim?</p> <p>14 A. Yes.</p> <p>15 MR. PRINCE: So based on that, I'm going to</p> <p>16 instruct her to be careful with the attorney-client</p> <p>17 privilege based on the communications after that point</p> <p>18 with the guardians and Ryan.</p> <p>19 Q. (By Ms. Cousineau) And there is no, if I</p> <p>20 understood your testimony, there's no written document</p> <p>21 retaining you to represent Ryan's interest in the claim</p> <p>22 either to Century or Progressive; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And can you pinpoint in time when it was that</p> <p>25 you were requested to represent Ryan's interest in the</p>	<p style="text-align: right;">Page 32</p> <p>1 retention?</p> <p>2 A. In reviewing this file, I think that March was</p> <p>3 the first time that I saw a letter from Progressive.</p> <p>4 Q. And that was the March 2010 letter we were</p> <p>5 looking at?</p> <p>6 A. No. I think it was March of 2009.</p> <p>7 Q. Addressed to you?</p> <p>8 A. I'm not sure. That's -- when I looked at this</p> <p>9 file -- so March 5, 2009, they were addressing Lee. So</p> <p>10 he was still -- they were just having direct</p> <p>11 communication with him at that time. And then, I guess,</p> <p>12 May 26, 2009, is when I sent out the first letter. So it</p> <p>13 might have been May. And then thereafter Progressive</p> <p>14 began to address me.</p> <p>15 Q. So you're saying May 2009 is when you were first</p> <p>16 retained to represent Ryan's interests?</p> <p>17 A. I think so.</p> <p>18 Q. Did you have a standard protocol in 2009 for</p> <p>19 filing correspondence in particular file folders relating</p> <p>20 to a matter?</p> <p>21 A. Yes, I did, but I didn't use any of my standard</p> <p>22 practices relating to this file because I consider it a</p> <p>23 personal matter. So I was trying to handle it without my</p> <p>24 staff getting involved.</p> <p>25 Q. Okay. Your standard practice for a matter that</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
33-36

Page 33

1 was not a personal matter was that your office would open
2 mail and file it in appropriate --
3 A. Correct.
4 Q. -- files?
5 A. Correct.
6 Q. And you didn't follow that standard practice in
7 here because this was not -- this was a personal matter?
8 A. Correct.
9 Q. So how did communications that you received
10 relating to Ryan Pretner and the insurance claims how did
11 they get to your file?
12 A. Well, if we received any mail, I think I did
13 instruct my staff back then to just give it to me.
14 Anything from Progressive or Century Surety or anything
15 that had to do with Ryan Pretner, they were just to give
16 it to me and not open it. And anything that came on the
17 fax machine, to put on my desk and then I would go
18 through it and then put it in the file.
19 Q. So you physically did the filing of the
20 materials that are in the personal injury file that you
21 produced?
22 A. Yes.
23 Q. And prior to producing that file today did you
24 examine any loose documents to determine if there was
25 additional correspondence that should be in that file

Page 34

1 that is not?
2 A. I did when I first got the first notice
3 requesting specific documents. I went through anything I
4 had relating to this case, and I took out every letter
5 that I had sent to Progressive, any letter I received
6 from Progressive, anything that had to do with Century
7 Surety, any correspondence with Century Surety. So I
8 took out everything that I had and then I gave it to my
9 bookkeeper and I told her to run a copy and then I
10 provided it to Mr. Prince.
11 Q. When you say you took it out, you took it out of
12 what?
13 A. Well, most of it was here, and then -- most of
14 it was here, I think, and then there might have been some
15 loose correspondence in other files.
16 Like I said, I went through everything I had and
17 then anything that was relating, you know, to the
18 specific request is what I took out and then I put it
19 here. But most of it was here. Didn't take very long to
20 go through. I mean I have a lot of paper, but it was
21 easy to, you know, say Progressive, Progressive what was
22 on, you know, anything that had to do with Progressive.
23 Q. Okay. And that's what I'm just trying to find
24 out.
25 A. Yeah.

Page 35

1 Q. Prior to providing the documents to Mr. Prince
2 to produce to us, you went through other files and
3 removed and provided to Mr. Prince anything that was
4 correspondence between you and either Century or
5 Progressive?
6 A. Correct.
7 Q. Did you also look at the loose materials that
8 you said are on the desk behind you?
9 A. Yes.
10 Q. And did you do the same thing?
11 A. Yes.
12 Q. Any communications?
13 A. Yes.
14 Q. Do you recall if there were any such
15 communications that you then put in this file and
16 produced, provided to Mr. Prince to produce?
17 A. Well, the only communications I had were letters
18 and maybe some messages. And then I sent one e-mail or
19 two e-mails, I think, and then we printed those and that
20 was it. There wasn't anything else.
21 Q. Prior to producing, providing the documents to
22 Mr. Prince, did you search your email archives for any
23 communications to or from Century Surety?
24 A. I know that I sent one or two e-mails to Century
25 Surety, and I knew specifically they only sent one or

Page 36

1 two. I was really clear that that was something that I
2 did, and so I went through around that date and then
3 printed.
4 Q. And did you --
5 A. I didn't go through from 2009 to present because
6 I knew that I only e-mailed once or twice.
7 Q. And did you actually search for any e-mails sent
8 to Century Surety?
9 A. Yes.
10 Q. And did you print those?
11 A. Yes.
12 Q. Did you also look for any e-mails sent to or
13 received from Progressive relating to this file?
14 A. I don't think so because I know we didn't
15 email.
16 Q. Did you search for any -- prior to producing
17 your file today, did you search for any communications
18 via email whatsoever that related to the claim against
19 Vasquez and Blue Streak?
20 A. I don't think I made any e-mails. I
21 specifically remember emailing just to follow up on
22 trying to get a copy of the insurance policy from Century
23 Surety and that was it.
24 Q. Okay. But just so I get an answer to my
25 question, as I understand it then, you did not search



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
37-40

Page 37

1 your email archives to determine whether there were
2 additional emails sent or received that related to Ryan
3 Pretner's claim against Vasquez and/or Blue Streak;
4 correct?
5 A. I might have done a brief kind of whatever was
6 in my inbox, I might have done a brief kind of going
7 through it, but I know that I was specifically looking
8 for an email that I know that I sent to Century Surety
9 and a response I got from them.
10 Q. Okay. You said you might have done a brief
11 review of your inbox. Do you recall having done that or
12 not?
13 A. I think I did.
14 Q. And this was when? Back in January?
15 A. No. This was back in November when I got the
16 first notice, I believe.
17 Q. And did you do any search of your email archive
18 either received emails or sent emails after receiving
19 Exhibit 2, which is the current subpoena, to locate any
20 communications that related to Ryan Pretner's claim
21 against Vasquez or Blue Streak?
22 A. No, I didn't.
23 Q. In 2009, did you have any standard practice with
24 regard to voicemail messages you received and how you
25 would document those voicemail messages if at all?

Page 38

1 A. I mean just whoever took a message would give it
2 to me, put it on my desk, and I would look at it.
3 Q. Now I'm referring to voicemail messages.
4 A. We don't have -- I don't think we have -- the
5 office itself you can leave a voicemail on the main
6 voicemail like if we're not -- from 9:00 to 5:00 someone
7 is always going to answer the phone. Someone's always
8 there. So outside of business hours, then you can leave
9 a voicemail, and so whoever comes in in the morning will
10 retrieve those voicemails and then put it on a message
11 pad and then distribute it accordingly.
12 Q. So you yourself didn't have your own voicemail
13 where messages could be left personally for you; correct?
14 A. No, I did not.
15 Q. Is that true as of today?
16 A. Yes.
17 Q. Did you ever speak to Michael Vasquez?
18 A. No, I did not.
19 Q. Did you ever speak to Charles Holland of Century
20 Surety?
21 A. I don't think so. I think we -- let's see. I
22 think I might have written him a letter.
23 MR. PRINCE: No. No. The question was did you
24 speak to him on the phone?
25 THE WITNESS: Right. No, I did not speak to

Page 39

1 him. I don't think I spoke to him. I don't think so.
2 Q. (By Ms. Cousineau) If you look at Exhibit 3,
3 which is a copy of the files produced by Mr. Prince, the
4 document Bates 0001, how did you obtain that document?
5 A. Lee Pretner gave it to me.
6 Q. You spoke to Vincent Johnson at Progressive on
7 several occasions; correct?
8 A. Yes, I did.
9 Q. Does your original file indicate when you
10 received the March 5, 2009, letter from Progressive to
11 Lee Pretner?
12 A. I have a copy of the letter, but I don't have,
13 like, when I actually received it.
14 Q. There's no notation on it for when you received
15 it?
16 A. No.
17 (Exhibit 4 was marked for identification.)
18 Q. (By Ms. Cousineau) I'm going to hand you what
19 I've marked as Exhibit 4, which is a document from the
20 file, from the documents produced by Mr. Prince, and this
21 is Esparza 0005 through 9 -- I'm sorry, through 10. This
22 is a letter you sent to Progressive Insurance; correct?
23 A. Correct.
24 Q. Did you consider this a time limit demand?
25 A. Yes, but I don't practice personal injury a lot,

Page 40

1 so I'm not even sure what a time limit demand is. Give
2 them a time limitation, but ultimately I knew that I
3 wasn't going to be representing Ryan in this case, that
4 we would be turning it over to somebody else who handles
5 personal injury matters because of the magnitude of his
6 injury and damages.
7 Q. If you knew you were not going to be
8 representing him, why did you send out Exhibit 4?
9 A. Well, because at that time I believe I just -- I
10 mean I sent out some others to let them know that I was
11 representing them and to see if we could try to collect
12 the policy limits on any insurance that we knew that was
13 out there because of the magnitude of the injury, but
14 that's all. I mean my concern, my primary focus at that
15 time was Ryan's healthcare.
16 Q. You enclosed an affidavit. The first page of it
17 on page 0007 the copy is poor, but on the rest of it,
18 this was an affidavit you enclosed with your May 26,
19 2009, letter; correct?
20 A. Correct.
21 Q. Why did you include that?
22 A. We just wanted to get some information from
23 Mr. Vasquez.
24 Q. Who is the we?
25 A. The family. Me, Lee Pretner, and Dana.



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
41-44

Page 41

1 Q. Was that affidavit a form that you used in other
2 personal injury cases?
3 A. I might have. I have a couple of templates from
4 other colleagues that have provided to me some personal
5 injury templates and I think I might have that in my
6 files.
7 Q. So is this in fact a form that you had used in
8 other personal injury cases?
9 A. I'm not sure if I've used this one. I know that
10 I had it. I don't know if I used it before. I practice
11 very little personal injury, so I'm not sure.
12 Q. The letter itself was that a form that a
13 colleague had provided you to use?
14 A. I probably had that one also.
15 Q. But was that a form that a colleague had
16 provided or that you created yourself?
17 A. Yeah, I think I might have had -- maybe this is
18 a form that a colleague had provided to me.
19 Q. Do you recall that that was the case? I don't
20 want you to guess.
21 A. Right. I'm not sure. I guess I might have had
22 something similar and then I just added a little bit more
23 language.
24 Q. You say in here: Mr. Pretner is willing to
25 enter into a settlement agreement containing a covenant

Page 42

1 not to execute in favor of your insured for the policy
2 limits. Why did you include that sentence?
3 A. I think that -- I mean from other conversations
4 with other colleagues who practice personal injury, I
5 think that we understood that that was the appropriate
6 thing to do. But again, I don't practice a lot of
7 personal injury, so --
8 Q. Did you in May 26, 2009, did you have available
9 to you a form "covenant not to execute"?
10 A. Maybe. I'm not sure to be honest. I might have
11 had something like that.
12 Q. Is there a reason you did not include with this
13 letter a proposed covenant not to execute?
14 A. I think that we wanted to see what their
15 response was going to be.
16 Q. And their response was to request you to send
17 the covenant not to execute; correct?
18 A. I think so.
19 Q. So once that was their response, was there a
20 reason you didn't provide it?
21 A. Yes, because again, we always knew that we were
22 going to turn this case over to somebody else who handles
23 personal injury, who has expertise in this because of the
24 magnitude of the injury.
25 Q. When did you first know that you eventually

Page 43

1 wanted to turn this over to another lawyer?
2 A. I'm not sure. I mean I think that we kind of
3 always knew that, but we just wanted to -- we weren't
4 going to hire somebody at that moment just because we
5 were focusing on Ryan's medical care, and so it just
6 seemed easier for me to write letters on behalf of Ryan
7 and not really employ somebody at that time.
8 I also knew that we had a two-year statute of
9 limitations, so my focus was on Ryan's healthcare, and I
10 knew we had time to address anything much later.
11 Q. Why was it easier to write letters on his behalf
12 and not hire an attorney that would have ultimately
13 handled the matter for you?
14 A. It just, it was a catastrophic injury at the
15 time and we were just focused on his medical care. So
16 going out and finding an appropriate attorney was
17 another -- wasn't important at that time since we knew we
18 had a two-year statute of limitations, and the most
19 important thing at that time was Ryan's medical care.
20 Q. And again, the "we" you are referring to is Lee
21 Pretner and yourself?
22 A. Yes. And Dana Andrew.
23 Q. And the affidavit that you sent, you said that
24 you and Lee and Dana wanted to get additional information
25 from Mr. Vasquez; correct?

Page 44

1 A. Correct.
2 Q. And that was to determine whether there, one of
3 the things you were attempting to determine is whether
4 there was additional insurance available; correct?
5 A. Correct.
6 Q. Were you aware that Lee Pretner continued to
7 communicate with Progressive even after you wrote to them
8 saying you were representing them?
9 A. I don't remember if he was or wasn't.
10 Q. Were you aware that Lee Pretner was
11 communicating with Progressive, I'm sorry, with Century
12 Surety after you had written to Century stating that you
13 would be representing the interest of Ryan?
14 A. I'm not aware.
15 Q. I'm sorry?
16 A. I'm not aware if he was or wasn't.
17 MS. COUSINEAU: We've been going about an hour.
18 Let's take a quick break.
19 (Break was taken.)
20 Q. (By Ms. Cousineau) Let's go back on the record.
21 Let me see the original file for a moment. I'm going to
22 hand it back to you. Would you tell me, there's three,
23 four pieces of paper that are attached to this, the
24 inside left side of this file. What is the top little
25 post-it note?



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
45-48

Page 45	<p>1 A. It's a post-it note with just Progressive, 2 Ryan's name, the date of accident, person who was in the 3 accident, Michael Vasquez, claim number, adjuster and 4 address. 5 Q. And do you recognize the handwriting on that 6 document? 7 A. Yes. 8 Q. Whose handwriting is it? 9 A. The handwriting in black ink is mine and the 10 handwriting in pencil looks like my bookkeeper, Rosanna 11 Magno. 12 Q. And what is written in pencil? 13 A. The claim number, the name of the adjuster, and 14 the address. 15 Q. And that's Vince Johnson? 16 A. Correct. 17 Q. And the address of Progressive; correct? 18 A. Correct. I think so. I'm not sure. Look at 19 the letterhead. Yes, it is. It's the address to 20 Progressive. 21 Q. And the next piece of paper? What is that? 22 A. There's a phone message. 23 Q. What's the date? 24 A. June 2nd. 25 Q. Can you tell what year?</p>	Page 47	<p>1 number, and the message is regarding Ryan Pretner, and it 2 looks like there's a claim number. 3 Q. And the third? 4 A. The third is from Progressive Insurance with the 5 claim number regarding Ryan Pretner, a phone number, and 6 then it says needs to know if you are withdrawing from 7 the case as Ryan's lawyer. 8 MR. PRINCE: Take a break for a second? 9 MS. COUSINEAU: Off the record. 10 (Break was taken.) 11 (Exhibit 5 was marked for identification.) 12 Q. (By Ms. Cousineau) Back on the record. I'm 13 going to hand you what I've marked as Exhibit 5, which is 14 also from the documents produced by Mr. Prince, and it is 15 Esparza 00018, letter dated June 3, 2009, from 16 Progressive to you. In this letter, Mr. Johnson requests 17 a copy of the proposed covenant not to execute; correct? 18 A. Correct. 19 Q. Did you at any time after receiving this, let's 20 say, in the 30 days after receiving this June 3 letter, 21 did you attempt to find another attorney to represent 22 Ryan's interest? 23 A. No, I don't think so. Not at this time. 24 Q. And did you -- you didn't send a proposed 25 covenant not to execute in response to this June 3, 2009,</p>
Page 46	<p>1 A. Didn't put the date, the year. 2 Q. Do you recognize the handwriting? 3 A. No, but it's signed by Anna D. So I'm assuming 4 that was my other assistant. 5 Q. And then the third piece of paper on there? 6 A. It's another phone message. 7 Q. Is there a date? 8 A. It says April 12, 2010. 9 Q. Who took that message? 10 A. Vanessa Valdez. 11 Q. I'm sorry. Vanessa what? 12 A. Valdez. The third one is another phone message 13 from Progressive. 14 Q. What's the date of the third one? 15 A. 9/14/2009. 16 Q. And who took that third message? 17 A. I think this was from my bookkeeper Rosanna 18 Magno. 19 Q. Tell me what the first phone message that's 20 dated June 2nd, what does that say? 21 A. It says it's from Vince Johnson from 22 Progressive, the phone number, and then the message is 23 regarding Ryan Pretner. 24 Q. And the second one, what does that one say? 25 A. This one is from Vince Johnson, his phone</p>	Page 48	<p>1 letter, did you? 2 A. Correct. 3 Q. And that's because you knew that you were 4 ultimately not going to handle the claim? 5 A. Correct. 6 Q. You never notified Progressive that you were no 7 longer representing Mr. Pretner, did you? 8 A. Not in writing I don't think. I know that 9 towards the end I did tell Mr. Johnson that we were 10 possibly going to find another attorney to handle the 11 claim, and once we did that we would let him know. 12 Q. Understood. But you never notified him that you 13 were no longer handling the claim; isn't that correct? 14 A. Not me personally. I think that once we 15 retained Mr. Prince that, I think, he notified. 16 Q. And you never notified Century Surety that you 17 were no longer representing Mr. Ryan's interest; correct? 18 A. Correct. 19 Q. What was your involvement in locating and 20 retaining Dennis Prince to handle, to represent Ryan's 21 interest in the claims? 22 A. I went to all those meetings with the attorneys, 23 the various attorneys to see who we would ultimately 24 retain. 25 Q. What other lawyers did you meet with?</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
49-52

Page 49	Page 51
<p>1 MR. PRINCE: I'm instructing you not to answer 2 the question based on attorney-client privilege. 3 MS. COUSINEAU: On the names of the lawyers 4 she -- 5 MR. PRINCE: That's correct. 6 Q. (By Ms. Cousineau) And I failed to ask you this 7 in the beginning. Mr. Prince is representing you here 8 today? 9 A. Correct. 10 Q. Did you meet with Mr. Prince prior to this 11 deposition to prepare for it? 12 A. I came to his office this morning. 13 Q. Did you meet with him prior to this deposition 14 at his office to prepare for the deposition? 15 A. I met at his office today at 8:30. 16 Q. And how long did you meet? 17 A. Well, I was there at 8:30, but I didn't actually 18 get to talk to him until maybe ten minutes before 9:00 19 and then it seemed really fast. Maybe 15, 20 minutes. 20 Q. Did you meet with Mr. Prince on any other date 21 prior to today to prepare for this deposition? 22 A. No. 23 Q. Did you speak to him on the phone prior to today 24 to prepare for this deposition? 25 A. No.</p>	<p>1 Q. And according to this log on page 36, 2 Mr. Johnson reports that on June 11, 2009, at 12:38, he 3 called attorney Esparza and left a message for call 4 back. Does your file reflect a message from Mr. Johnson 5 on June 11, 2009? 6 A. No. 7 MS. COUSINEAU: He reports on June 10 at 11:07 8 that he was sending a letter to attorney Esparza about 9 the UMC lien and requesting the covenant not to execute. 10 (Exhibit 7 was marked for identification.) 11 Q. (By Ms. Cousineau) I'm going to hand you what 12 I've marked as Exhibit 7, which is another document from 13 those provided by Mr. Prince, and this is Esparza 00019. 14 This is a letter dated June 10, 2009, and it is in your 15 original file; correct? 16 A. Correct. Take a real quick look. June 10, 17 2009, yes. 18 Q. And after you received this June 10, 2009, 19 letter, again, you didn't send him a proposed covenant 20 not to execute; correct? 21 A. Correct. 22 Q. Did you call him to discuss the UMC lien? 23 A. I'm not sure. I don't know. I don't remember. 24 Q. According to your file, as of June 10, 2009, had 25 you made a demand to Century Surety?</p>
Page 50	Page 52
<p>1 Q. Did you meet or speak to anyone else in his 2 office prior to today to prepare for the deposition? 3 A. No. 4 Q. Have you ever seen the claim logs from 5 Progressive that were linked to the claim you made for 6 the injuries that Ryan suffered in the accident? 7 A. Have I ever seen the claim what? 8 Q. Logs. 9 A. No. 10 MS. COUSINEAU: I'm going to mark as Exhibit 6 11 pages CF 000 232 through 237 from the documents produced 12 by Progressive in response to a subpoena. 13 (Exhibit 6 was marked for identification.) 14 Q. (By Ms. Cousineau) Have you ever seen claim logs 15 from an insurance company before today? 16 A. No. 17 Q. Looking at page 236, and this, this claim log 18 works in reverse order, so the earliest entry is on the 19 bottom of page 237 and moves up. According to this 20 letter, Mr. Johnson writes on June 9, 2009, at 4:11 p.m. 21 that he had called attorney and left a message for a call 22 back. My question is whether your file reveals any 23 message from Vince Johnson on June 9, 2009? 24 A. No, there's no June 9th. There's a June 2nd, 25 but it doesn't have the date, the year.</p>	<p>1 A. As of June 10, 2009, yes. We mailed a letter in 2 May of 2009. 3 Q. Is that letter in your file? 4 A. The May letter, yes. 5 Q. May I see? 6 A. Yes. 7 Q. Is there a reason this letter was not provided 8 to Mr. Prince to produce to us the first time your file 9 was subpoenaed? 10 A. It's my understanding that I did send it to 11 Mr. Prince. 12 MS. COUSINEAU: Do you find it in exhibit -- 13 MR. PRINCE: Yes, it's there. 13 and 14, and 14 you have two of those in your own file. I need to take a 15 quick call. 16 (Brief pause in proceedings.) 17 Q. (By Ms. Cousineau) All right. I apologize. I 18 skipped that. Looking at page 13 and 14, how did you 19 learn of Century Insurance Group as it related to the 20 accident? 21 A. I don't remember. 22 Q. How did you learn of Blue Streak Auto Detailing 23 as it related to the accident? 24 A. I think that with Blue Streak I think we might 25 have looked up Michael Vasquez in the business records to</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
53-56

Page 53

1 see if he had any businesses, I think, and the name of
2 Blue Streak came up.
3 Q. Does your file reflect having done so?
4 A. No, I don't think I did it actually. I think
5 that his sister did it. I do have actually a copy of a
6 printout from his business license search results. I
7 don't know if I did this one or Dana did it and she gave
8 it to me.
9 Q. And does your file reflect how you learned of
10 Century Surety?
11 A. No, it doesn't. It doesn't.
12 Q. There is a claim number on your letter to
13 Century dated May 26, 2009. Do you know where you
14 received that claim number?
15 A. Maybe from Lee, Lee Pretner, Ryan's dad.
16 Q. Is there a reason you didn't include the
17 affidavit that you had sent to Progressive on this same
18 date? Let me ask that question again. You sent an
19 affidavit with your May 26, 2009, letter to Progressive.
20 Is there a reason you didn't include that same affidavit
21 in this letter to Century Surety?
22 A. No, I don't. I think I maybe thought it was a
23 duplicate in terms of the information was going to be
24 from Michael Vasquez, and so whatever information went on
25 that affidavit would be the same for Blue Streak. I'm

Page 54

1 not sure to be honest. That's my assumption.
2 Q. At the time that you sent this May 26, 2009,
3 letter to Charles Holland of Century Insurance, did you
4 know what the policy limits were on any policy issued by
5 Century?
6 A. I think that we did. I think that we knew it
7 was a million dollars.
8 Q. And the "we" you're referring to again is Lee
9 Pretner and Dana Andrew?
10 A. Correct.
11 Q. Where did you learn that it was a million dollar
12 policy?
13 A. Maybe through Lee. I think Lee had established
14 initial contact with Century Surety.
15 Q. As of May 26, 2009, what was your understanding
16 of Blue Streak Auto Detailing's role in the accident, if
17 any?
18 A. Michael Vasquez was, works for Blue Streak Auto
19 Detailing, and he was driving a truck to use for his
20 business, the Blue Streak Auto Detailing.
21 Q. You knew that as of May 26th, 2009?
22 A. I think so. I think in the police report maybe
23 it said that he worked for Blue Streak. I'm not sure to
24 be honest.
25 Q. Well, other than the police report can you think

Page 55

1 of any other place where you would have learned that the
2 truck he was driving was a truck he used in his auto
3 detailing business?
4 A. I think that information was known fairly soon.
5 I think that maybe from the accident, the police officer
6 asked a lot of questions and asked Michael Vasquez, I
7 think, and I think that was where we found out that he
8 worked for Blue Streak Auto Detailing, a mobile detailing
9 company.
10 Q. And you think the -- you read the transcripts or
11 the reports of those interviews?
12 A. I think so.
13 Q. And it's your recollection that those reports
14 reflect that he was working at the time of the accident?
15 A. To be honest, I don't know if it was from the
16 written report. It might be in there as well, but I
17 think that -- I'm not sure to be honest how we knew, but
18 I knew fairly early on we knew it was a mobile detailing
19 company that he worked for and was driving that vehicle.
20 Q. I'm trying to determine how you came to
21 understand that the vehicle he was driving was a vehicle
22 he used in his business.
23 A. I think he was -- I thought that he was actually
24 transporting water. Like I think he had something
25 connected to the truck. I'm not sure. I think maybe he

Page 56

1 had some advertising on the truck or his plates had Blue
2 Streak or something like that, yeah.
3 Q. Is that why you sent the affidavit to
4 Progressive to determine whether or not he was in fact
5 working at the time of the accident?
6 A. I think we just sent the affidavit just to get
7 information, as much information as we possibly could
8 regarding his insurance, and just whatever his take was
9 on the accident.
10 Q. And is there anything in your file that you
11 produced today that documents in any way that he was,
12 that Michael Vasquez was in fact driving a truck that he
13 used in his business at the time of the accident? You
14 can flip through your file. Take as much time as you
15 need.
16 A. Yeah. We don't have anything that says that. I
17 mean I know that he answered his affidavit and he says
18 that he wasn't working at that time but that's it. I
19 don't have anything else.
20 Q. So there's nothing in your file that reflects
21 any documentation of the fact that he was working at the
22 time of the accident?
23 A. No.
24 Q. Or that he was driving a truck that he used in
25 his business at the time of the accident, correct?



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
57-60

Page 57

1 A. Correct.

2 Q. And in fact, the police reports are consistent

3 in that they show he was not working at the time of the

4 accident; isn't that right?

5 MR. PRINCE: Objection. Form and foundation.

6 Calls for speculation. You can answer if you know.

7 THE WITNESS: I don't know. I mean I don't

8 really know. I don't remember what the report says.

9 Q. (By Ms. Cousineau) This is the report from the

10 Henderson Police Department?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes. I don't know what the -- you're saying

14 that the police report indicates he was not working at

15 the time. I don't remember what the police report says.

16 Q. And you didn't include the police report in the

17 documents that you produced either today or originally;

18 correct?

19 A. Correct.

20 (Exhibit 8 was marked for identification.)

21 Q. (By Ms. Cousineau) I'm going to hand you what

22 I've marked as Exhibit 8, which is from the Century claim

23 file but it is the incident report from the Henderson

24 Police Department, and it is Bates CF 00114 through 117.

25 Is this the Henderson police report you were

Page 58

1 referring to?

2 A. It looks like it. There is another report,

3 though, as well in addition to this one.

4 Q. There's a state of Nevada report as well;

5 correct?

6 A. Correct.

7 Q. Can you point to me somewhere in here the

8 information you were referring to when you said you

9 thought the incident report may have indicated he was

10 driving a truck that was related to his business?

11 MR. PRINCE: Hang on. I'm going to lodge an

12 objection, make an inquiry. What's the purpose of asking

13 her any questions regarding -- I've kind of sat here

14 quietly and patiently waiting to ask questions about the

15 course and scope issue. It's a judicially determined

16 fact, and so there's a final judgment order, and the

17 District Court in Clark County, Nevada has concluded that

18 fact is a final order. So what's the purpose of going

19 into this inquiry?

20 MS. COUSINEAU: Well, you know our position,

21 that it is something we can -- that it is not judicially

22 determined as against Century. That's our legal

23 argument. And that it was a fraud on the Court to

24 suggest that in fact he was in the course and scope of.

25 MR. PRINCE: Okay. Then I'm going to suspend

Page 59

1 the deposition at this point and file a motion for

2 protective order if that's the position there was a fraud

3 upon the Court because you lost the right to litigate

4 those issues, you never litigated those issues. And so

5 we're going to suspend the deposition and file a motion

6 for protective order precluding you from asking any

7 further questions of this particular witness on any of

8 these topics.

9 So if you have questions other than the course

10 and scope issue, please, I'm encouraging you to finish

11 that line of questioning. I'll file the motion for

12 protection order, and if the Court orders her to come

13 back and answer those questions on course and scope

14 issues and things that are unrelated to your client's

15 investigation, we'll deal with it then. She'll be made

16 available even without a subpoena.

17 MS. COUSINEAU: I'm not sure I can separate

18 them, so I will request that you simply lodge your

19 objection, if I pose a question that you feel is going

20 into that area.

21 MR. PRINCE: I guess I don't want to lose the

22 right to suspend the deposition. Anything related to the

23 course and scope issue and what factual information she

24 had or didn't have or anything related to that issue, I

25 don't think that's a relevant area of a inquiry for you.

Page 60

1 If you want to talk about communications with your

2 client, then I guess do that, but beyond that, that's

3 going to be my objection.

4 MS. COUSINEAU: So the information that

5 Mr. Pretner's lawyer had in her file is something you are

6 not going to allow me to question about right now as it

7 relates to course and scope?

8 MR. PRINCE: That's correct. Because that's a

9 judicially determined fact. It is a fact. And this is

10 now a covered claim as a result of that fact.

11 MS. COUSINEAU: And you know that that is a

12 legal issue that we are challenging, that it hasn't been

13 determined that we are judicially estopped from

14 relitigating any issue of course and scope.

15 MR. PRINCE: I believe that that's not the case

16 for you to try to intervene in a state court action to

17 participate in a litigation to set aside the judgment,

18 which was unsuccessful and that was not appealed. So

19 that is a final order, and the order denying your

20 client's attempt to intervene and set aside the default

21 judgment was also denied, which is now a final order.

22 MS. COUSINEAU: Actually, we were denied

23 intervention and that is not an appealable order. The

24 question, the question is we are still entitled -- we

25 don't need to argue this on the record -- but we are



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
61-64

Page 61

1 still litigating whether it is a judicial estoppel
2 whether we are estopped from relitigating the course and
3 scope issue.
4 MR. PRINCE: Okay.
5 MS. COUSINEAU: I will -- I understand your
6 objection. If in fact you think a question that I'm
7 asking relates to the course and scope, you can simply
8 pose that objection.
9 MR. PRINCE: Well, then I'm going to instruct
10 her not to answer because I either want to suspend it and
11 go deal with it, or we can have a stipulation that I'll
12 lodge my objection and instruct her and that will be part
13 of any motion for protective order if necessary.
14 MS. COUSINEAU: I would presume so.
15 MR. PRINCE: Okay. Okay. That's fine.
16 Q. (By Ms. Cousineau) You testified a moment ago
17 that you believed there was something in the Henderson
18 report that it to Mr. Vasquez driving for his business at
19 the time of the accident. Having looked at Exhibit 8,
20 have you been able to locate it?
21 MR. PRINCE: Again, lodge my objection and
22 instruct the witness not to respond. That's not a
23 relevant area of inquiry. It's not reasonably calculated
24 to lead to discovery of admissible evidence. There's a
25 final judgment of a judicially determined fact against

Page 62

1 Blue Streak and Vasquez that he was driving in the course
2 and scope of his employment. Please don't answer.
3 Q. (By Ms. Cousineau) Are you going to follow
4 Mr. Prince's instruction?
5 A. Yes.
6 MS. COUSINEAU: Mark as Exhibit 9 a copy of the
7 state of Nevada traffic accident report.
8 (Exhibit 9 was marked for identification.)
9 Q. (By Ms. Cousineau) Actually, what I've marked as
10 Exhibit 9 is not only the state of Nevada but also
11 another copy of the Henderson police report and the
12 supplemental Henderson reports. Are these the reports
13 you have in your office?
14 A. I think I have these.
15 Q. And is there something in the Nevada traffic
16 accident report that you reviewed in May of 2009 that led
17 you to conclude that Mr. Vasquez may have been driving
18 for his business at the time of the accident?
19 MR. PRINCE: Lodge the objection and instruct
20 the witness not to answer.
21 MS. COUSINEAU: All right. I have a long series
22 of questions relating to Exhibits 8 and 9 based on your
23 instruction I will forego.
24 MR. PRINCE: Okay.
25 MR. COUSINEAU: And reserve my right to

Page 63

1 requestion depending on the results of your motion.
2 MR. PRINCE: Okay.
3 (Exhibit 10 was marked for identification.)
4 Q. (By Ms. Cousineau) Ms. Esparza, I've marked as
5 Exhibit 10, a letter dated June 15, 2009, from Century
6 Surety to you, and this is from the documents provided by
7 Mr. Prince, Esparza 0020 through 0024, and this letter is
8 also contained in the original file that you brought with
9 you today; correct?
10 A. Yes.
11 Q. When you received this letter, did you attempt
12 to call Mr. Holland to discuss the content of his denial
13 letter that's attached?
14 A. No.
15 Q. Why not?
16 A. Because he denied coverages.
17 Q. And you felt there was no reason to call him to
18 discuss the issue?
19 A. No, we did but we just -- I knew that we were
20 going to hire another attorney to handle this claim, so
21 we thought that, you know, their position was incorrect.
22 Q. Okay. You and your clients didn't hire another
23 attorney until sometime in 2011; correct?
24 A. Correct.
25 Q. And you're saying that when you received this

Page 64

1 June 15th, 2009, letter you felt that the denial was
2 incorrect; is that right?
3 A. Correct.
4 Q. But you didn't contact Mr. Holland or write to
5 Mr. Holland and voice any objection to his June 5, 2009,
6 letter, did you?
7 A. Not at that time.
8 Q. You didn't do so at any time, did you?
9 A. Yes, I guess, not personally.
10 Q. To your knowledge did Lee Pretner do so?
11 A. He might have.
12 Q. To your knowledge --
13 MR. PRINCE: Hang on. Let me clarify your
14 question. Are you asking in his individual capacity
15 or -- because I represent Lee Pretner also.
16 Q. (By Ms. Cousineau) Let me ask the question
17 again. Prior to the retention of Dennis Prince, to your
18 knowledge did Lee Pretner contact Mr. Holland and object
19 to any of the information in this June 5, 2009, letter?
20 A. He might have. I don't remember. I don't know.
21 Q. I hesitate with the "might" because I don't want
22 you to guess. If you know he did --
23 A. I don't know.
24 Q. -- or you have some basis upon which to believe
25 that he did, I'm entitled to that, but I don't want you



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
65-68

<p style="text-align: right;">Page 65</p> <p>1 to guess.</p> <p>2 A. Yeah, I don't know.</p> <p>3 Q. You said we knew this was incorrect. How did</p> <p>4 you know that this denial was incorrect?</p> <p>5 A. Well, we thought it was incorrect.</p> <p>6 Q. And that "we" is you and Lee Pretner?</p> <p>7 A. And Dana.</p> <p>8 Q. Why did you believe it was incorrect?</p> <p>9 MR. PRINCE: Instruct you not to answer based</p> <p>10 upon the attorney-client privilege.</p> <p>11 Q. (By Ms. Cousineau) Why did you, Sylvia Esparza,</p> <p>12 believe that this was incorrect?</p> <p>13 MR. PRINCE: Again, I'm going to object on the</p> <p>14 form and attorney-client privilege and attorney work</p> <p>15 product privilege.</p> <p>16 Q. (By Ms. Cousineau) Was the information that led</p> <p>17 you to believe this is incorrect, information that you</p> <p>18 only obtained from your clients?</p> <p>19 MR. PRINCE: I would, again, object to any</p> <p>20 question regarding her mental thought process. Her</p> <p>21 analysis concerning whether she thought it was correct or</p> <p>22 incorrect is covered by one or more privilege including</p> <p>23 the work product privilege, so please don't answer.</p> <p>24 MS. COUSINEAU: I didn't ask a question that</p> <p>25 required her to divulge any work product. It was simply</p>	<p style="text-align: right;">Page 67</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Upon receipt of this letter, you did not call</p> <p>4 Vincent Johnson to say you had an understanding that he</p> <p>5 was doing something connected with his work; correct?</p> <p>6 A. I don't, I don't think I called him.</p> <p>7 Q. And in every conversation -- did you ever</p> <p>8 discuss with Mr. Johnson whether or not Michael Vasquez</p> <p>9 was doing something connected with his work at the time</p> <p>10 of the accident?</p> <p>11 A. I don't think so.</p> <p>12 Q. And Mr. Vasquez signed the affidavit that you</p> <p>13 had requested he sign, and he did so on June 12, 2009,</p> <p>14 before a notary public; is that right?</p> <p>15 A. Yes, looks like it.</p> <p>16 Q. And in the affidavit that he provided at your</p> <p>17 request, he told you that he was driving from his home</p> <p>18 and was going to his aunt and uncle's house to visit;</p> <p>19 correct?</p> <p>20 MR. PRINCE: Are you asking what the affidavit</p> <p>21 says?</p> <p>22 MS. COUSINEAU: Yes.</p> <p>23 MR. PRINCE: That's a yes or no.</p> <p>24 THE WITNESS: Yes.</p> <p>25 Q. (By Ms. Cousineau) And in the affidavit he</p>
<p style="text-align: right;">Page 66</p> <p>1 a yes or no.</p> <p>2 MR. PRINCE: No, because it requires her to go</p> <p>3 through some analysis of what information she based her</p> <p>4 belief on that it was incorrect, and that would include</p> <p>5 the analysis. So I believe it's still an appropriate</p> <p>6 objection. So I'm asserting the attorney work product</p> <p>7 objection on behalf of my clients including Ms. Esparza.</p> <p>8 (Exhibit 11 was marked for identification.)</p> <p>9 Q. (By Ms. Cousineau) I'm going to hand you what</p> <p>10 I've marked as Exhibit 11, which is from your documents</p> <p>11 produced by Mr. Prince, Esparza 0025 through 29.</p> <p>12 Is this letter and its enclosure included in your</p> <p>13 original file that you produced today?</p> <p>14 A. Yes.</p> <p>15 Q. And you received this letter dated June 15,</p> <p>16 2009; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Upon receipt of this letter, did you call</p> <p>19 Vincent Johnson to discuss the information that's in the</p> <p>20 second paragraph of his, of the letter?</p> <p>21 A. I don't think so.</p> <p>22 Q. And Mr. Johnson writes to you: As you are no</p> <p>23 doubt aware, Mr. Vasquez was not doing anything connected</p> <p>24 with his work, and it is my understanding that his</p> <p>25 carrier has denied coverage for the accident. Do you see</p>	<p style="text-align: right;">Page 68</p> <p>1 identified the Ford F150 as being insured by Progressive;</p> <p>2 correct?</p> <p>3 MR. PRINCE: You're asking if that's what the</p> <p>4 affidavit says?</p> <p>5 MS. COUSINEAU: Yes.</p> <p>6 MR. PRINCE: Okay. That's a yes or no question.</p> <p>7 THE WITNESS: Yes.</p> <p>8 Q. (By Ms. Cousineau) And did you investigate</p> <p>9 whether any other insurance company issued a policy for</p> <p>10 the Ford F150?</p> <p>11 A. No.</p> <p>12 Q. Did you investigate to whom the Ford F150 was</p> <p>13 registered?</p> <p>14 A. I don't think so.</p> <p>15 Q. That information was actually included on the</p> <p>16 police report, wasn't it?</p> <p>17 A. Perhaps.</p> <p>18 Q. Yet after you received this affidavit and the</p> <p>19 letter dated June 15, 2009, you continued to believe that</p> <p>20 there was, that Mr. Vasquez was doing something related</p> <p>21 to his business at the time of the accident; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Why did you continue to believe that?</p> <p>24 MR. PRINCE: Object again to your question.</p> <p>25 Instruct her not to answer the question based upon the</p>



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SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
69-72

<p style="text-align: right;">Page 69</p> <p>1 fact that you, I believe you're judicially estopped from 2 arguing any issues concerning course and scope of a 3 judicially determined fact finding the insureds, Blue 4 Streak and Vasquez, that he was in fact acting in the 5 course and scope of his agency and employment with Blue 6 Streak at the time of the loss involving Ryan Pretner. 7 So therefore, any discussion -- you even have 8 information in your client's file. It's all after- 9 acquired information. You can't rely upon it for any 10 purpose in denying this claim or supplementing your 11 denial of this claim. So I'm instructing her not to 12 answer based upon my prior arguments and comments. 13 Q. (By Ms. Cousineau) Ms. Esparza, are you aware of 14 any document that suggests or that suggests that 15 Mr. Vasquez was operating, doing something related to his 16 business at the time of the accident? 17 MR. PRINCE: Same objection and the same 18 instruction. 19 Q. (By Ms. Cousineau) Are you aware of any person 20 that has information to suggest that Michael Vasquez was 21 operating in the course and scope of his employment at 22 the time of the accident? 23 MR. PRINCE: Answer that question yes or no. 24 THE WITNESS: I'm not aware. 25 (Exhibit 12 was marked for identification.)</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Correct. 2 (Exhibit 13 was marked for identification.) 3 Q. (By Ms. Cousineau) I'm going to hand you what I 4 marked as Exhibit 13, which is a letter dated July 24, 5 2009, from Vincent Johnson to you. It says he has called 6 you several times since July 8th and have not received a 7 call back. 8 Does your file reflect any phone messages in July 9 2009 from Vincent Johnson? 10 A. No. 11 Q. Does your original file that you produced today 12 does it have a copy of the lien release that Mr. Johnson 13 says is enclosed with this letter? 14 A. No, I don't remember seeing that. Oh, I'm 15 sorry. There is a release, a full release of all 16 claims? Is that what you're talking about? 17 Q. No. 18 A. Of UMC? No. I don't see that. 19 MR. PRINCE: Here. Are you asking about the 20 release or the UMC lien? What were you asking? 21 MS. COUSINEAU: The letter says we received the 22 enclosed lien release from UMC on Ryan's bill. 23 THE WITNESS: Right. I don't have this in the 24 original file. 25 Q. (By Ms. Cousineau) You have a release of all</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. (By Ms. Cousineau) I'm going to hand you what I 2 marked as Exhibit 12, a letter dated June 23, 2009, from 3 Progressive to Sylvia Esparza, and this is from the 4 Esparza documents, 0030. The original of this letter is 5 it in your file? 6 A. I think so. Let me just double check. June 3? 7 Q. June 23. 8 A. Oh, June 23. Yes, June 23, yes. 9 Q. Do you have one that was sent via mail as well 10 as one that was sent via fax? 11 A. It looks like just a fax because it says fax, 12 and I don't have an original I guess. 13 Q. Did you respond to this letter? 14 A. No. 15 Q. You didn't provide a proposed covenant not to 16 execute; correct? 17 A. Correct. 18 Q. And you didn't advise whether or not a release 19 of all claims was acceptable to your clients; correct? 20 A. Correct. 21 Q. Again, that was because you knew that another 22 lawyer was going to be hired? 23 A. Correct. 24 Q. So it was your attempt to allow that next 25 whoever was hired to address all these issues?</p>	<p style="text-align: right;">Page 72</p> <p>1 claims? 2 A. Yes. 3 Q. And is that attached to a particular letter? 4 A. I think it came with this letter, with the July 5 24, 2009, letter. 6 Q. With the original of the July 24th, 2009, 7 letter? 8 A. Correct. 9 MR. PRINCE: 36. 10 Q. (By Ms. Cousineau) That was my confusion, 11 because 36 is an attached version of that and we don't 12 seem to have the original July 24th, 2009, the 13 attachments to the July 24th, 2009 letter. Page 32 is a 14 separate request. 15 But in your original you're saying that it's 16 attached? 17 A. The release of all claims is attached. It's not 18 stapled if that's what you're asking, but I think I got 19 those together. 20 Q. And Mr. Johnson writes in his second paragraph 21 as it pertains to Mr. Vasquez "his commercial insurance 22 does not apply to this claim." 23 Upon receipt of this July 24th, 2009, letter you 24 didn't call Mr. Johnson and discuss that sentence with 25 him; correct?</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
73-76

Page 73	<p>1 A. I don't think so.</p> <p>2 Q. And did you have Mr. Pretner or his guardian</p> <p>3 sign the release that Mr. Johnson sent to you?</p> <p>4 A. No.</p> <p>5 Q. Did you inform Mr. Johnson after receiving the</p> <p>6 July 24th letter that your client would not sign the</p> <p>7 release he had sent?</p> <p>8 A. I don't recall calling him about it. He might</p> <p>9 have called, and I would have -- I might have told him</p> <p>10 they're not signing it.</p> <p>11 Q. Do you have any notation in your file or any</p> <p>12 communication in your file that would tell you whether</p> <p>13 you did that or not?</p> <p>14 MR. PRINCE: Did what?</p> <p>15 Q. (By Ms. Cousineau) That you spoke to Mr. Johnson</p> <p>16 and told him that your client would not sign the release.</p> <p>17 A. No, I don't have any to show that.</p> <p>18 (Exhibit 14 was marked for identification.)</p> <p>19 Q. (By Ms. Cousineau) I'm going to hand you what I</p> <p>20 marked as Exhibit 14, which is another copy of that July</p> <p>21 24, 2009, letter faxed to you on August 14, 2009. Do you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 Q. The fax suggests that it is four pages long.</p> <p>25 Does your file reflect a four-page fax from</p>	Page 75	<p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. Because he was, I believe, still at the Craig</p> <p>4 Hospital, and I was flying every weekend to see him</p> <p>5 during all these letters here. I wasn't in the office as</p> <p>6 much and my primary focus was Ryan. I spoke to the</p> <p>7 family obviously all the time, but that was my focus was</p> <p>8 Ryan.</p> <p>9 Q. Is there a reason that you told Progressive or</p> <p>10 Mr. Johnson that you had sporadic contact with the</p> <p>11 family?</p> <p>12 MR. PRINCE: Who said that?</p> <p>13 Q. (By Ms. Cousineau) Do you recall telling</p> <p>14 Mr. Johnson that you only speak to the family from time</p> <p>15 to time?</p> <p>16 A. Probably because I didn't want to let them know</p> <p>17 that I was actually involved with Ryan and that personal</p> <p>18 relationship.</p> <p>19 Q. Why not?</p> <p>20 A. Just because I thought it would be awkward that</p> <p>21 I was, you know, his partner and also representing him.</p> <p>22 Q. You said that you extended the offer to your</p> <p>23 client. Was that to Dana Andrew and Lee Pretner or to</p> <p>24 Ryan?</p> <p>25 A. Probably at that time it was Lee and Dana. I</p>
Page 74	<p>1 Progressive --</p> <p>2 A. No.</p> <p>3 Q. -- on August 14th, '09?</p> <p>4 A. No, it doesn't.</p> <p>5 Q. Do you know what happened -- does your file</p> <p>6 reflect whether in fact it was one page or four?</p> <p>7 A. It doesn't.</p> <p>8 Q. So as of August 14, 2009, anyway, you had not,</p> <p>9 you apparently had not told Mr. Johnson that your clients</p> <p>10 would not sign the release; correct?</p> <p>11 A. Correct.</p> <p>12 (Exhibit 15 was marked for identification.)</p> <p>13 Q. (By Ms. Cousineau) I'm going to hand you what I</p> <p>14 marked as Exhibit 15, which is page 33 out of the</p> <p>15 documents produced or provided by Mr. Prince. Is the</p> <p>16 original of this letter in your original file?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall what, if anything, you did upon</p> <p>19 receipt of Exhibit 15?</p> <p>20 A. No, I don't recall.</p> <p>21 Q. The letter asks you to extend the offer to your</p> <p>22 client as soon as possible. Did you do so?</p> <p>23 A. Yes.</p> <p>24 Q. And did you notify Mr. Johnson of your client's</p> <p>25 response to that offer?</p>	Page 76	<p>1 think that he wasn't even speaking at that time.</p> <p>2 Q. And what was their response to that offer?</p> <p>3 A. We, I think, had all agreed that we weren't --</p> <p>4 that we were going to wait until he hired an attorney to</p> <p>5 decide what we were going to do.</p> <p>6 Q. And at this point when they have confirmed the</p> <p>7 \$100,000 offer again, is there a reason you didn't hire</p> <p>8 an attorney at that point?</p> <p>9 A. Yeah. We never hired an attorney at that point</p> <p>10 because Ryan was -- he wasn't speaking. He wasn't</p> <p>11 mobile. I mean he was in a really bad state.</p> <p>12 (Exhibit 16 was marked for identification.)</p> <p>13 Q. (By Ms. Cousineau) I'm going to hand you what</p> <p>14 I've marked as Exhibit 16, which is an October 12, 2009,</p> <p>15 fax of that same July 24, 2009, letter that we looked at</p> <p>16 which is Exhibit 13.</p> <p>17 As of October 12, 2009, you had still not notified</p> <p>18 Vince Johnson that your client would not sign the</p> <p>19 release; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Are you aware of any communications between</p> <p>22 October 9, excuse me, October 12, 2009, and March 10,</p> <p>23 March 10 of 2010? Does your file reflect any</p> <p>24 communications between you and Progressive?</p> <p>25 A. Between October?</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
77-80

Page 77

1 Q. Between the day of Exhibit 16 --
 2 A. Right.
 3 Q. -- and March 10, 2010?
 4 A. No.
 5 (Exhibit 17 was marked for identification.)
 6 Q. (By Ms. Cousineau) Hand you what I've marked as
 7 Exhibit 17 which is from a Progressive claim file
 8 CF000058. It's a fax confirmation of a letter or fax to
 9 you dated November 17, 2009, from Vince Johnson.
 10 Is there a copy of this fax in your file?
 11 A. Yes. I think I misspoke. When you asked me
 12 that, I looked at the next letter, which is March 10,
 13 2010, and attached, I guess, behind that is that fax. So
 14 it is in my file. I thought I didn't have any
 15 correspondence from Progressive prior to or in between
 16 that time period you gave me, but I guess I did. I had
 17 the 11/16/2009 fax that you just showed to me in my
 18 original.
 19 MR. PRINCE: That's in the -- it's 37.
 20 Q. (By Ms. Cousineau) Did you respond to the fax
 21 from Mr. Johnson?
 22 A. I don't remember. It's not in the original
 23 file, but we might have responded.
 24 Q. You might have filled out this form and returned
 25 it to Mr. Johnson? Is that what you said?

Page 78

1 A. Yeah.
 2 Q. If you had, would you typically make a copy of
 3 that before sending it back to Mr. Johnson?
 4 A. Typically.
 5 Q. But it's not in your file?
 6 A. Correct. It's not in the file.
 7 (Exhibit 18 was marked for identification.)
 8 Q. (By Ms. Cousineau) I'm going to hand you what
 9 I've marked as Exhibit 18, which is that same November
 10 fax confirmation of that same November 17, '09 form
 11 resent to you December 10, 2009. Is this second request
 12 in your file?
 13 A. It's not.
 14 Q. So at least as of December 10, 2009, you had not
 15 returned this Medicare secondary payer mandatory
 16 reporting form; correct?
 17 A. I guess not.
 18 Q. Is there a reason you did not return it?
 19 A. No. I think that his sister Dana was handling
 20 some of the -- she was handling most of the medical
 21 billing, Medicare, and the disability related kind of
 22 claims, and so I might have given it to her. I don't
 23 remember to be honest.
 24 Q. Do you have a specific recollection of giving
 25 this form to Dana Andrew?

Page 79

1 A. I don't.
 2 Q. Do you recall that you spoke to Vince Johnson
 3 and told him you were not sure if Ryan was Medicare
 4 eligible but you would find out that information?
 5 A. Maybe I did.
 6 Q. Do you have a recollection of doing so?
 7 A. I don't remember.
 8 (Exhibit 19 was marked for identification.)
 9 Q. (By Ms. Cousineau) Hand you what I've marked as
 10 Exhibit 19, which is Progressive claim file 000111. Can
 11 you look through your original file and tell me if
 12 there's a copy of this letter in your file?
 13 A. Yes.
 14 Q. And you're looking at it right there?
 15 A. Yes.
 16 Q. I don't believe this was produced in the initial
 17 set of documents. Is there a reason it was not?
 18 A. I think it's -- I see a 0002 Bates stamp. March
 19 10, 2012?
 20 Q. January 12, 2010.
 21 A. Oh, January 2010. It's not in my original file.
 22 MR. PRINCE: What's not in the original file?
 23 The January 12?
 24 THE WITNESS: The January 12, 2010, letter that
 25 she just provided.

Page 80

1 Q. (By Ms. Cousineau) According to this letter from
 2 Vince Johnson, you had a conversation with him in which
 3 you said you had not spoken to your client in some time.
 4 Do you recall such a conversation with Vincent Johnson?
 5 A. I don't recall.
 6 Q. Mr. Johnson asks you to call your client and get
 7 back to him as soon as possible about settling the claim
 8 and he requests you to return the fax of the Medicare
 9 status.
 10 MR. PRINCE: Object to the form of the
 11 question. She said she doesn't have that letter in her
 12 file.
 13 MS. COUSINEAU: I understood.
 14 MR. PRINCE: What are you asking her about it
 15 for then? I mean ask her whatever you want I guess, but
 16 you're saying he's making another request and she doesn't
 17 have it at this moment.
 18 Q. (By Ms. Cousineau) Is it your belief that you
 19 didn't receive this letter?
 20 A. I don't think so. I mean I don't know. I don't
 21 have it in the original. I went through everything that
 22 I have and I tried to pull everything from Progressive
 23 and Century Surety, so --
 24 Q. Exhibit 18 was not in your file either, was it?
 25 MR. PRINCE: Yes. Oh, no. You're right. It



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
81-84

Page 81

1 doesn't have that one. Yeah, 17 not 18.
 2 Q. (By Ms. Cousineau) But do you recall receiving
 3 Exhibit 18?
 4 A. I don't remember if it was -- numerous times I
 5 do remember receiving something about Medicare, but --
 6 (Exhibit 20 was marked for identification.)
 7 Q. (By Ms. Cousineau) I'm going to hand you what
 8 I've marked as Exhibit 20, which is March 10, 2010,
 9 letter which I believe you said is in your file; right?
 10 Your original file?
 11 A. Yes, March 10, 2010. Yes, it's in my file.
 12 Q. As of March 10, 2010, you did in fact still
 13 represent Ryan Pretner; is that right?
 14 A. Yes. We had not retained any attorney yet.
 15 Q. Did you respond to Mr. Johnson's request to
 16 advise him whether or not your client was willing to
 17 accept a settlement offer?
 18 A. I do not notify Vincent Johnson? No, I didn't.
 19 Q. And you did not advise him whether or not Ryan
 20 Pretner had qualified for Medicare; correct?
 21 A. I don't remember if I did or didn't.
 22 (Exhibit 21 was marked for identification.)
 23 Q. (By Ms. Cousineau) Hand you what I've marked as
 24 Exhibit 21. It's a June 21, 2010, letter from you to
 25 Mr. Holland. And there is a copy of this letter in your

Page 82

1 original file; is that right?
 2 A. Correct.
 3 Q. Why did you send this letter to Century Surety
 4 or Century Insurance Group?
 5 A. I believe at this time we might have been
 6 looking for attorneys and maybe they wanted a copy of the
 7 insurance, the whole policy.
 8 Q. I hesitate whenever I hear the word "maybe." Do
 9 you have a recollection that's why you were doing that?
 10 A. I don't. No, I don't. I know that we
 11 started -- I don't remember the time frame of when
 12 exactly we started looking for attorneys, but this might
 13 have been that reason. That seems logical to me.
 14 Q. Do you have a recollection of somebody
 15 requesting that you have, you obtain a complete copy of
 16 the Century policy?
 17 A. I do.
 18 Q. Do you recall who that was?
 19 A. We visited, like, 15 attorneys. I don't
 20 remember the names.
 21 Q. Your letter says: "I believe your last
 22 correspondence included a copy of the declaration page
 23 not the entire insurance policy."
 24 What correspondence were you referring to there?
 25 A. The letter when they denied the claim was

Page 83

1 June -- the June 15th, 2010, letter he attaches the
 2 letter that he sent to his insured, Michael Vasquez, and
 3 that attachment, I guess, is what I'm calling a copy of
 4 the declaration page.
 5 Q. What is the declaration page? Or what do you
 6 understand a declaration page to be?
 7 A. I think that's what I thought it was, that this
 8 was the declaration page.
 9 Q. The denial letter?
 10 A. No, the attachment. There's a letter and then
 11 they attached, looks like, a part of the policy.
 12 Q. That's actually part of the letter, is it not?
 13 A. Yes. Yes, it is.
 14 Q. As of June 21 in 2010, did you have an
 15 understanding of what a declaration page was?
 16 A. No, I guess. I guess not.
 17 Q. That was something that another attorney had
 18 recommended you refer to?
 19 A. Perhaps.
 20 Q. And then you asked for the entire insurance
 21 policy within seven business days; correct?
 22 A. Correct.
 23 Q. Did you receive that?
 24 A. No, I did not.
 25 (Exhibit 22 was marked for identification.)

Page 84

1 Q. (By Ms. Cousineau) Marked as Exhibit 22 is two
 2 pages from the file documents that were provided, Esparza
 3 0040 and 41.
 4 Starting with the bottom email, it appears to be one
 5 from you to Charles Holland on June 21, 2010; correct?
 6 A. Correct.
 7 Q. And this is the same date as your letter which
 8 is Exhibit 21; is that right?
 9 A. Correct.
 10 Q. So at the same time that you sent him a letter,
 11 you also e-mailed him and requested an entire copy of the
 12 policy; is that right?
 13 A. Yes.
 14 Q. Why did you send it both ways, both in a letter
 15 form and email?
 16 A. Because I just wanted to make sure he got it,
 17 and since we were giving him seven days, I think I just
 18 wanted a prompt response.
 19 Q. When you looked for any documents responsive to
 20 the subpoena, did you look for this specific email to
 21 Charles Holland on June 21, 2010?
 22 A. I looked for this email because I knew that we
 23 had e-mailed him.
 24 Q. Did you find the actual email to him as opposed
 25 to this string of emails?



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
85-88

Page 85

1 A. I think I found this one.
 2 Q. Did you print that out? You didn't print that
 3 out and put it in the file; correct?
 4 MR. PRINCE: It's here.
 5 MS. COUSINEAU: This is a string of emails.
 6 MR. PRINCE: Who cares?
 7 MS. COUSINEAU: I do.
 8 MR. PRINCE: For what reason? I mean she
 9 appears to have -- I mean she's giving it to you, but
 10 that is the -- that is the email.
 11 Q. (By Ms. Cousineau) Did you in fact search your
 12 emails to see if you had in your system the email you
 13 sent to Charles Holland dated June 21, 2010, without any
 14 response on the email?
 15 A. I looked for this email, and I saw that I
 16 emailed him and the response and I printed it all
 17 together. I thought it would be more efficient.
 18 Q. So you did find the original email of June 21,
 19 2010, to Charles Holland?
 20 A. I'm sorry. I don't remember if I saw the
 21 original email or if I got the response and I pulled that
 22 and printed it. I don't remember how it was, but I know
 23 that I got what I -- I knew I sent an email, and I knew I
 24 got a response.
 25 Q. Now, the next email in this trail is from

Page 86

1 somebody named -- from you to Albert Wilson. Who is
 2 Albert Wilson?
 3 A. I think he was the new person who had replaced
 4 Mr. Holland.
 5 Q. How did you know on July 20, 2010, to send an
 6 email to Albert Wilson with the request for the policy?
 7 A. Because we followed up with the letter, with
 8 this letter. I think my assistant did this. I told her
 9 to follow up and see if -- where is the, you know, the
 10 policy. And at that point she said that he had been
 11 replaced with this person, and then they gave me an
 12 email of that person.
 13 Q. Who is the "they" gave you the email of this
 14 person?
 15 A. Century Surety.
 16 Q. So somebody at Century Surety gave you Albert
 17 Wilson's email address to forward your initial
 18 communication?
 19 A. Correct.
 20 Q. And did you look in your system for any emails
 21 from Albert Wilson dated July 20, 2010, or earlier?
 22 A. Did I look for any emails prior to July 20,
 23 2010? I did because I wasn't sure of the exact date, I
 24 think, or maybe I did a -- I have this letter so I knew
 25 it had to be around this time frame.

Page 87

1 Q. Did you search your email--
 2 A. Yeah.
 3 Q. -- archives to see if you had any other emails
 4 to Albert Wilson other than this one dated July 20, 2010?
 5 A. I think I did.
 6 Q. What did you determine?
 7 A. I think I didn't have any. I think that's all I
 8 had.
 9 Q. When you say "I think," do you actually recall
 10 doing so or are you guessing?
 11 A. No. I think I did. I did review the emails and
 12 I don't --
 13 Q. And it's your understanding that you obtained
 14 Mr. Wilson's email from a phone conversation between your
 15 assistant and somebody at Century Surety?
 16 A. Correct.
 17 Q. And then Mr. Wilson responded to you on August
 18 4, 2010; correct?
 19 A. Yes.
 20 Q. And did you find any -- when you searched your
 21 emails, did you find any other emails from Mr. Wilson?
 22 A. No.
 23 (Exhibit 23 was marked for identification.)
 24 Q. (By Ms. Cousineau) I've marked as Exhibit 23 a
 25 fax transmittal dated April 18, 2011, from Pamelee Torres

Page 88

1 at Progressive to Sylvia Esparza, and it's Esparza 03 and
 2 04 from the documents provided by Mr. Prince.
 3 Did you respond to this letter from Pamelee Torres?
 4 A. I don't recall responding.
 5 Q. Did you have a lien on the file?
 6 A. I was never going to charge Ryan for
 7 representation.
 8 Q. Did you let Pamelee Torres know you had no
 9 attorney lien on the claim?
 10 A. No, I did not.
 11 Q. Why not?
 12 A. Again, we were going to hire another attorney to
 13 handle the matter.
 14 Q. And it was your understanding that the new
 15 attorney would handle that issue for you?
 16 A. Well, anything, I guess, related to the
 17 accident.
 18 Q. But the reason you didn't respond to this letter
 19 is you understood the new attorney that was hired would
 20 notify Progressive that you have no attorney lien on the
 21 claim; correct?
 22 A. It was my understanding that the new attorney
 23 would notify Progressive if they were now representing
 24 Ryan and anything related to Ryan's case.
 25 Q. You attended the interviews with the potential



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
89-92

<p style="text-align: right;">Page 89</p> <p>1 attorneys that were going to take over the claim, 2 correct? 3 A. Yes. 4 Q. And you provided the information you had to 5 those attorneys? 6 MR. PRINCE: Object to the form of the 7 question. Assumes facts not in evidence. Go ahead and 8 answer. 9 THE WITNESS: I'm sorry. Go ahead answer? 10 MR. PRINCE: You can go ahead and answer. 11 THE WITNESS: Yeah, we definitely didn't bring 12 everything. We might have brought the accident report 13 and he gave a description of what had occurred. 14 Q. (By Ms. Cousineau) When you say you definitely 15 didn't bring everything, what are you referring to? 16 A. I mean, well, like all the letters from 17 Progressive. And I don't remember exactly what we 18 brought, but we didn't -- I didn't bring this entire -- I 19 didn't bring this original file with me. 20 Q. But you provided those attorneys the information 21 that you had garnered thus far regarding the claim; 22 correct? 23 A. If they asked for it. I mean we go in for a 24 consultation, they ask you questions depending on those 25 questions we answered. So they didn't ask, you know, how</p>	<p style="text-align: right;">Page 91</p> <p>1 answer based upon the attorney-client privilege. 2 MS. COUSINEAU: Let's take a little break. 3 (Break was taken.) 4 MS. COUSINEAU: I'm going to mark as Exhibit 24, 5 the original file and ask the court reporter to take it 6 and make a copy and return the original to you, but we'll 7 attach a copy of your original as Exhibit 24. 8 (Exhibit 24 was marked for identification.) 9 Q. (By Ms. Cousineau) You testified earlier that 10 you understood that Michael Vasquez may have been 11 transporting water at the time of the accident. What 12 were you referring to? 13 A. The mobile detailing companies they sometimes 14 have, like, a trailer that has water to wash the 15 vehicles. 16 Q. Was that something you read or learned somehow? 17 A. Yeah, I thought that was -- I thought that's 18 what -- I don't remember where I got that information, 19 but I thought that was what was either said with the 20 police or was discovered later. 21 Q. Do you have any recollection of the source of 22 that information? 23 A. I think they're just from conversations that I 24 had with Dana and Lee and whatever they had gathered or 25 found out that I thought that's what was said.</p>
<p style="text-align: right;">Page 90</p> <p>1 many times has Progressive contacted you, have you 2 notified -- I mean if they didn't ask them, we didn't 3 answer. 4 Q. Did you -- the attorneys that you met with did 5 you tell them that Progressive had offered their \$100,000 6 policy limit? 7 MR. PRINCE: Instruct you not to answer based on 8 the attorney-client privilege that's in connection with 9 legal advice, legal consultation. That's not an 10 appropriate area of inquiry and certainly not appropriate 11 to any of the claims by our defenses by your client or 12 even reasonably not calculated to lead to admissible 13 evidence. 14 MS. COUSINEAU: I'm sorry. There was an 15 instruction in there as well? 16 MR. PRINCE: Yes, not to answer. 17 Q. (By Ms. Cousineau) You're following that 18 advice? 19 A. Yes. 20 Q. Did you participate in the decision to retain 21 Mr. Prince as the attorney that would represent Ryan's 22 interest? 23 A. Yes. 24 Q. And when was that decision made? 25 MR. PRINCE: Objection. Instruct you not to</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. And did you see any documents that suggested 2 that in fact he was transporting water at the time of the 3 accident? 4 A. No, not specifically. 5 Q. How about generally? 6 A. Well, I think that this incident report said 7 Vasquez stated he had just gotten off of work. And I 8 don't remember, I thought that that, for some reason that 9 opened up that maybe he was transporting water or 10 something like that. 11 Q. As far as you know, was there a trailer attached 12 to the truck Mr. Vasquez was driving at the time of the 13 accident? 14 A. I don't remember. 15 Q. Do you have any information in your file that 16 suggests he was pulling a trailer at the time of the 17 accident? 18 A. I don't think so. I don't recall that we 19 received anything saying he was specifically pulling a 20 trailer. 21 Q. And did you receive anything that specifically 22 said he was transporting water for purposes of his 23 business? 24 A. Nothing in writing. I think that these were 25 conversations.</p>



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
93-96

Page 93

1 MR. PRINCE: Don't reveal conversations if it
2 was in your representative capacity.
3 Q. (By Ms. Cousineau) Well, you already stated that
4 this likely came from conversations with Dana or Lee.
5 What did you learn from either of them that suggested to
6 you that Mr. Vasquez was transporting water relating to
7 his business at the time of the accident?
8 A. I don't know for sure. I'm saying that we
9 had -- in conversations with them I think that that might
10 have been a conversation that had came up that perhaps he
11 was transporting water. I'm not saying that that's what
12 actually happened. I don't know if they had heard that
13 or somebody told them or the police because I told them
14 or something like that, that that was a possibility that
15 he might have been transporting water. But I never
16 followed up if in fact he was transporting water or
17 anything like that.
18 Q. You yourself did no investigation of the issue
19 of his course and scope of his employment, course and
20 scope of employment at the time of the accident; is that
21 right?
22 A. Right. We requested the police reports and --
23 but we, you know, I didn't do any -- I didn't do anything
24 else other than request the police report.
25 Q. And requested an affidavit from Mr. Vasquez?

Page 94

1 A. Correct, yes, and wrote some letters to
2 Progressive. But I didn't hire an investigator or
3 anything like that or talk to Mr. Vasquez or anything
4 like that.
5 Q. And you obtained or received no other documents
6 to suggest he was in fact working at the time of the
7 accident; isn't that correct?
8 A. I don't know. I mean I know that the affidavit
9 says he wasn't but I don't know if that's accurate. I
10 don't know if that's true.
11 Q. And I appreciate that. The question is you have
12 no other -- you have no documents in your file that
13 suggests that he was in fact working at the time of the
14 accident; isn't that accurate?
15 A. I don't know if we got that because of the
16 police report that said he was coming from work and so
17 therefore it was related to work. It's a mobile
18 detailing company so I guess he could -- you know, it's
19 mobile so you can do your business anywhere, so --
20 Q. Let me have the court reporter read that
21 question one more time and perhaps you didn't understand
22 it.
23 (The last question was read back.)
24 MR. PRINCE: Object to the form of the
25 question. And she's asking is that your entire file.

Page 95

1 THE WITNESS: Yes. That's the entire file. I'm
2 sorry. But this, in this file, there is nothing to
3 suggest that. But I think that the police report -- he
4 indicated that he was coming home from work and that's
5 what, I think, triggered the whole thing that he was
6 working or could have been working or something like
7 that.
8 Q. (By Ms. Cousineau) Other than that reference are
9 you aware of any documents which suggest that Mr. Vasquez
10 was in the course and scope of his employment at the time
11 of the accident?
12 A. No documents.
13 Q. Are you aware of any person that has evidence to
14 suggest that he was working or in the course and scope of
15 his employment at the time of the accident?
16 A. I'm not aware of a specific person, no.
17 Q. Are you aware a category of person or?
18 A. I know Dana and Lee had conversations regarding
19 that he was working, and I don't remember -- I wasn't
20 present during those conversations, so I don't remember
21 the specifics, what was said, what wasn't said, but I
22 know that they had conversations, I don't know with who,
23 the adjuster, with somebody, that led them to believe
24 that he was working.
25 Q. And then Progressive responded to that inquiry

Page 96

1 by Mr. Pretner to Progressive by assuring him that
2 Mr. Vasquez said he was not; correct?
3 MR. PRINCE: I'm going to object to the form of
4 the question and instruct you not to answer. She's not
5 answering any more questions on course and scope issues.
6 Just because you're framing it that way doesn't mean that
7 Nevada law recognizes it the same way you do or the way
8 Progressive did or the way something was done.
9 So she's done answering any course and scope
10 issues because that is a judicial fact now.
11 Q. (By Ms. Cousineau) If you look at Exhibit 4 for
12 a moment again, and I have a series of questions on that
13 issue, but as I understand you are going to seek a
14 motion --
15 MR. PRINCE: I am. I've been pretty liberal
16 with you on that.
17 Q. (By Ms. Cousineau) If I understood your
18 testimony, at the time that you sent this letter, May 26,
19 2009, to Progressive even though you made a demand in
20 here, you had no intent to settle the claim for
21 Mr. Pretner at that time; correct?
22 MR. PRINCE: Object to the form. That misstates
23 her testimony.
24 THE WITNESS: We had requested the policy
25 limits, and so we thought that we wanted to see if we



SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
97-100

Page 97

1 would get the policy limits to both Progressive and
 2 Century, but because Progressive said yes and Century
 3 said no, we knew that those would be tied, so we couldn't
 4 accept on either of those.
 5 I mean but I don't know if I knew that at that
 6 time or -- but we weren't go to accept it at that time.
 7 We wanted to, I guess, settle with both Progressive and
 8 Century. And so had they given us, I guess, policy
 9 limits on both, we would have settled.
 10 Q. But as I understood your testimony earlier, the
 11 reason you never sent a covenant not to execute to
 12 Progressive was because you knew that they were going to
 13 be hiring a different attorney and you would not be the
 14 person to resolve the claim; correct?
 15 A. I guess if they wouldn't have -- if they would
 16 have given us the policy limits, then I guess we would
 17 have settled.
 18 MR. PRINCE: You mean Century? You're referring
 19 to Century?
 20 THE WITNESS: I think both. I mean I knew that
 21 it would be tied I guess.
 22 Q. (By Ms. Cousineau) You didn't have a response
 23 from Century --
 24 A. Correct.
 25 Q. -- until sometime later in June 2009; isn't that

Page 98

1 right?
 2 A. Yes. It was two weeks. Two weeks later.
 3 Q. If that was the reason you decided not to settle
 4 the claim, why didn't you communicate that to
 5 Progressive?
 6 MR. PRINCE: Hang on. What's the purpose of
 7 your inquiry, Maria? Respectfully. What does it matter
 8 what they did do at Progressive or didn't do at
 9 Progressive? It has nothing to do with the claims
 10 asserted against Century. Nothing.
 11 I mean the Progressive investigation,
 12 evaluation, and adjustment process was independent of
 13 that, of Century. Century wasn't relying upon anything
 14 Progressive did. So I'm trying to figure out are you
 15 just asking her and trying to litigate your claim through
 16 the Progressive claim? Because that would be
 17 inappropriate.
 18 Perhaps, and I don't mean you're harassing or
 19 being offensive, I think you're being the perfect
 20 professional. I'm not trying to suggest that, but I'm
 21 trying to understand the basis of the inquiry in case I
 22 need to make another instruction. If you're going to
 23 help resolve the issue, maybe we can do it.
 24 MS. COUSINEAU: I don't even remember what the
 25 question was, but

Page 99

1 MR. PRINCE: You're trying to ask why they
 2 didn't settle with Progressive and dealing with the
 3 question about why they settled with Progressive and why
 4 they didn't. And my question is what's the purpose of
 5 that so they can determine whether it's a appropriate
 6 scope of inquiry?
 7 MS. COUSINEAU: I've asked my question. If you
 8 would like to have it read --
 9 MR. PRINCE: I'm instructing her not to answer
 10 the question.
 11 Q. (By Ms. Cousineau) Is there a reason you didn't
 12 communicate with Century again after June, after you
 13 received their denial letter with regard to that claim?
 14 A. Yes, because they denied the claim.
 15 Q. And once Mr. Prince was retained, what further
 16 involvement did you have in the claim, if any?
 17 A. I didn't have any more involvement.
 18 Q. And you provided Mr. Prince a copy of your file;
 19 correct?
 20 A. Yes. Yes.
 21 Q. And you did so as part of him taking over this
 22 claim?
 23 A. Correct.
 24 MS. COUSINEAU: I have no further questions.
 25 MR. PRINCE: Okay.

Page 100

1 THE REPORTER: Mr. Prince, do you need a copy?
 2 MR. PRINCE: We'll order a copy. I do want to
 3 stay on the record and just acknowledge that on my way
 4 into the deposition today I was served with a subpoena
 5 by, I believe, an employee of the Kolesar & Leatham Law
 6 Firm. That subpoena is to the Prince & Keating Law
 7 Firm. I'm not acknowledging that's an appropriate method
 8 of services of Prince & Keating how it was done here
 9 today, but we'll respond by way of either objection or
 10 motion to quash.
 11 (The deposition concluded at 1:00 p.m.)
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SYLVIA L. ESPARZA, ESQ.
ANDREW vs. CENTURY SURETY

April 26, 2013
101-104

Page 101

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss. COUNTY OF CLARK)

4 I, CHRISTINE M. JACOBS, a certified shorthand
5 reporter for the state of Nevada, do hereby certify:
6 That I reported the deposition of the witness,
7 SYLVIA L. ESPARZA, ESQ., commencing on April 26, 2013,
8 commencing at the hour of 10:00 a.m.
9 That prior to being examined, the witness was by me
10 duly sworn to testify to the truth, the whole truth, and
11 nothing but the truth;
12 That I thereafter transcribed my said shorthand
13 notes into typewriting and that the typewritten
14 transcription of said deposition is a complete, true and
15 accurate transcription of my said shorthand notes taken
16 down at said time.
17 I further certify that I am not a relative or
18 employee of an attorney or counsel involved in said
19 action.
20 IN WITNESS WHEREOF, I have hereunto set my hand
21 in my office in the County of Clark, State of Nevada,
22 this 7th day of May 2013.
23 _____ CHRISTINE M. JACOBS, CCR 455
24
25

Page 103

1 DEPOSITION ERRATA SHEET

2 Page No. _____ Line No. _____ Change to: _____
3 _____
4 Reason for change: _____
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22 Reason for change: _____
23 _____
24 SIGNATURE: _____ DATE: _____
25 SYLVIA L. ESPARZA

Page 102

1 DEPOSITION ERRATA SHEET

2
3 Assignment No. 510217
4 Case Caption: ANDREW vs. CENTURY SURETY COMPANY
5
6
7
8 DECLARATION UNDER PENALTY OF PERJURY
9
10 I declare under penalty of perjury that I have
11 read the entire transcript of my deposition taken in the
12 captioned matter or the same has been read to me, and the
13 same is true and accurate, save and except for changes
14 and/or corrections, if any, as indicated by me on the
15 DEPOSITION ERRATA SHEET hereof, with the understanding
16 that I offer these changes as if still under oath.
17 Signed on the _____ day of _____, 2013.
18 _____
19 SYLVIA L. ESPARZA
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Page 104

1 DEPOSITION ERRATA SHEET

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25 SYLVIA L. ESPARZA



EXHIBIT "32"

EXHIBIT "32"

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*Dana Andrew as Legal Guardian of
Ryan T. Pretner and Ryan T. Pretner*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANA ANDREW, as Legal Guardian of
RYAN T. PRETNER, and RYAN T.
PRETNER, individually,

Plaintiffs,

vs.

CENTURY SURETY COMPANY, a foreign
corporation; DOES I through X, inclusive,

Defendants.

CASE NO.: 2:12-cv-00978

**PLAINTIFFS' DESIGNATION OF
EXPERT WITNESS**

Plaintiffs, Dana Andrew, as Legal Guardian of Ryan T. Pretner, and Ryan Pretner, by and
through their counsel of record, Prince & Keating, hereby disclose the following expert who may
testify at the time of trial:

1. Bernard Feldman
ICW Group Insurance Services
11455 El Camino Real
San Diego, California 92130-2045

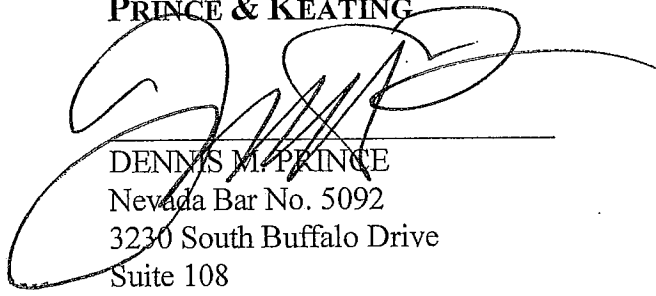
Mr. Feldman is an expert in the areas of claims handling, claims practices and claim
litigation. Mr. Feldman is expected to offer his expert opinions as to the claims handling issues
which are the subject matter of this litigation. Mr. Feldman's initial and supplement reports,

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curriculum vitae, fee schedule, testimony history are attached hereto as Exhibit "1".

DATED this 12 day of December, 2012.

PRINCE & KEATING



DENNIS M. PRINCE
Nevada Bar No. 5092
3230 South Buffalo Drive
Suite 108
Las Vegas, Nevada 89117
Attorney for Plaintiffs
*Dana Andrew as Legal Guardian of
Ryan T. Pretner and Ryan T. Pretner*

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CERTIFICATE OF MAILING

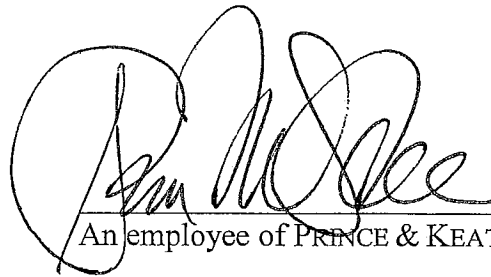
I hereby certify that on the 13th day of December, 2012, I caused service of the foregoing

Plaintiffs' Designation of Expert Witness to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following:

Alan J. Lefebvre, Esq.
William D. Schuller, Esq.
Kolesar & Leatham
400 South Rampart Boulevard, Suite 400
Las Vegas, NV 89145
(702) 362-7800 phone
(702) 362-9472 facsimile

Maria Louise Cousineau, Esq.
Sedgwick, LLP
801 South Figueroa Street, 19th Floor
Los Angeles, CA 90017
(213) 426-6900 phone
(213) 426-6921 facsimile

Attorneys for Defendant
Century Surety Company



An employee of PRINCE & KEATING

Exhibit ^{RE} 1
R.App. 001626

REPORT OF BERNARD M. FELDMAN

The following is my expert disclosure report pursuant to Nevada statutes discussing my expert opinions in the matter of Andrew v. Century Surety.

I.

QUALIFICATIONS

My qualifications are listed in my resume, attached hereto as Exhibit A. To the best of my knowledge, the following is a list of cases in which I served as an expert at trial or deposition the last four years or prior:

A. Trials

1. Humphrey v. American Home; Sedgwick, Detert, Moran & Arnold – San Diego Superior.
2. Voight v. Mercury Casualty; Hagar & Dowling – Orange County Superior.
3. SBN v. Pacific National; Sedgwick, Detert, Moran & Arnold – L.A. Superior.
4. Rivas et. al. v. Allstate; Luce, Forward – L.A. Superior.
5. Rush v. The Exchange; Ford, Walker – Arbitration – JAMS S.D.
6. Olsen v. 20th Century; Hill, Jensen, Evan, Crandall & Wade – L.A. Superior.
7. Meeks v. Allstate; Luce, Forward – L.A. Superior.
8. Gehlhar v. F.I.E.; Hollins, Schechter & Condas – Orange County Superior.
9. Boll v. State Farm; Elam & Burke – Idaho Superior.
10. Romero v. Guide One; Robert Toolen – L.A. Superior.
11. Coulter v. Progressive; Ford, Walker – L.A. Superior.

12. Ekokobe v. FIE; Picker, Chow - Riverside Superior.

13. Hanstead v. Truck Insurance Exchange; Hollins, Schechter – L.A. Superior.

14. Allen v. Questrel; Ford, Walker – L.A. Superior.
15. Walker v. FIE; Shea, Stokes, & Carter – L.A. Superior.
16. Estep v. CIG; J. Baratta – Fresno Superior.
17. Chen v. The Exchange; Ford, Walker – L.A. Superior.
18. Beckwith v. The Exchange; Gilbert Kelly – San Diego Superior.
19. Crosby v. Mercury Casualty; L. O'Connor – Orange County Superior.
20. NAS v. W.E. Love; Alan Jampol Umpire – Los Angeles Arbitration.
21. Guide One v. Platinum; Rhonda Ijams Umpire – Orange County Arbitration.
22. Buon Gusto Trattoria Inc. v. Truck; Hollins, Schechter – Long Beach Superior
23. CTL v. Seneca; Lebeau/Thelen – Bakersfield Superior.
24. Starnet v. Legacy; Crandall, Wade, & Lowe – Long Beach, CA Arbitration.
25. Totaro v. Farmers; Feldman/Graf – Minden Nevada Superior.
26. Martin v. American Family; Matthew Sharp – Reno Superior.
27. Martinez v. Farmers; Eric Riezman – L.A. Superior.
28. Kmart v. Hartford; Sherman Spitz – L.A. Superior.
29. Freedman v. United National; David Jones – L.A. Federal Court.
30. Tupola v. Mercury; Hager & Dowling – Judicate West L.A.
31. Graciano v. Mercury; Hager & Dowling – San Diego Superior.
32. Seahaus v. Sequoia; Steve Scott – San Diego Superior.

A. Depositions

-
1. Rivas et. al. v. Allstate; Luce, Forward – L.A. Superior.

2. Rush v. Exchange; Ford, Walker, Haggarty & Behar - S.D. Superior, Vista

 3. Meeks v. Allstate; Luce, Forward – L.A. Superior.
 4. Chasan v. Farmers; Broening, Oberg, Woods – Phoenix Superior.
 5. Byrd v. F.I.E.; Hollins, Schechter & Condas – L.A. Superior.
 6. Sivret v. State Farm; Livingston & Mattesich – Fed Crt CA East District.
 7. Gehlhar v. Fire Ins. Exchange; Peterson, Picker, Chow & Freisleben - Orange County Superior Court.
 8. Kotlar v. Hartford; Ropers, Majeskie – L.A. Superior.
 9. Vital Services v. F.I.E.; Chapin, Shea – San Diego Superior.
 10. Romero v. Guide One; Cooksey, Toolen – L.A. Superior.
 11. Cal Fed v. F.I.E.; Alan Friesleben – San Diego Superior.
 12. Foster v. State Farm; Luce, Forward – L.A. Superior.
 13. Coulter v. Progressive; Ford, Walker – L.A. Superior.
 14. Pulte v. Ohio Casualty; Gordon & Rees - San Diego Superior.
 15. Choder v. FIE; Gordon & Rees - Marin Superior.
 16. Ekokobe v. FIE; Picker, Chow - Riverside Superior.
 17. Hanstad v. Truck Insurance Exchange; Hollins, Schechter; L.A. Superior.
 18. Allen v. Morales; Ford, Walker; Arbitration Judicate West Long Beach.
 19. Tritchler v. Allstate; Steptoe & Johnson – Phoenix Superior.
 20. Bierstein v. Farmers; Gordon & Rees – L.A. Superior.
 21. Yount v. The Exchange; Ford, Walker – San Diego Superior.
 22. MM Fab v. Hartford; Michelman & Robinson – Orange County Superior.
 23. Booth v. Farmers; Broening, Oberg – Phoenix Superior.
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24. RLI v. CNA; Canon & Nelm – Orange County Superior.
25. ~~Crown Professional v. State Farm; Crandall, Wade – L.A. Superior.~~
26. Walker v. FIE; Shea, Shokes, Carter – L.A. Superior.
27. DelGrande v. Allstate; O’Hagan, Smith & Amundsen – Chicago Superior.
28. Chen v. The Exchange; Ford, Walker – L.A. Superior.
29. Beckwith v. Exchange; Gilbert Kelly – Vista Superior.
30. Treweek v. CIG; Henderson & Borgeson – Pasadena Superior.
31. Benhar v. Affiliated FM; Michelman & Robinson – L.A. Superior.
32. Boun Gusto Trattoria v. Truck; Hollins, Schecter – Orange County Superior.
33. CTL v. Seneca; Lebeau, Thelen - Visalia Superior.
34. Oakey v. Farmers; Lemons, Grundy - Reno Superior.
35. Vargas v. FIE; Tharpe & Howell - L.A. Superior.
36. Taylor v. Mercury; Hager & Dowling - Ventura Superior.
37. Thane International v. Hartford; Mendes & Mount – U.S. Federal Court.
38. Fischlein v. Interstate; Hager & Dowling – San Diego Superior.
39. Martin v. American Family; Matthew Sharp – Reno Superior.
40. Totaro v. Farmers; Feldman/Graf – Minden Nevada Superior.
47. Russo v. State Farm; Pacific Law Partners – L.A. Superior.
48. Fard v. Sequoia; Kessel and Associates – L.A. Superior.
49. Martinez v. Farmers; Leist Law Group – L. A. Superior.
50. Elshir v. Sequoia; Kessel and Associates – L.A. Superior.
51. Gregg et al v. Progressive; Prince & Keating – Reno Superior.
52. Glenoaks v. Truck; Tharpe & Howell – L.A. Superior.

53. Merrill v. FIE; Tharpe & Howell – Long Beach Superior.

54. American Casualty v. UNIC; John Hendricks – Las Vegas Superior.
55. Kmart v. Hartford; Mendes & Mount – Los Angeles Superior.
56. Freedman v. United National; David Jones – L.A. Federal Court
57. Ryckman v. FIE; Scott Zonder – Los Angeles Superior.
58. Seahaus v. Sequoia; Steve Scott – San Diego Superior.
59. Graciano v. Mercury; Hager & Dowling – San Diego Superior.
60. TRB v. Fireman’s Fund; Hager & Dowling – Bakersfield Superior.
61. American Diary v. Hartford; Mendes & Mount – Fresno Federal Court.
62. LMA v. National Union; Gordon & Reese – Los Angeles Federal Court.

II.

ASSIGNMENT

I was retained on behalf of Lee Pretner and Dana Andrew as legal guardians of Ryan T. Pretner (Andrew) to serve as an expert witness in this litigation. My task is to review materials submitted to me which are listed and attached as Exhibit B and determine if the claim handling by Century Surety (Century) employees was reasonable and falls within Insurance Industry standards. In order to make this determination, I have critically reviewed all of the material provided. With regard to my assignment, I am billing at the rate of \$375 per hour (\$425 per hour for testimony).

III.

SUMMARY OF OPINIONS

In order to concisely and accurately report my summary of opinions, I will structure this report based upon Insurance Industry standards with regard to the handling of a claim.

A. Investigation

The standard in the Insurance Industry is to promptly, reasonably, and objectively gather facts with regard to an insurance claim.

In this case, Century received notice of a catastrophic vehicle versus bicycle accident that occurred on January 12, 2009. The notice from their agent was received on March 27, 2009. The Century claim handler, Charles Holland, began his investigation by obtaining coverage information. He found the Century insured was Blue Streak Auto Detailing and the Garage Liability policy contained a one million dollar limit of liability. He also found information that indicated no coverage would be available unless the vehicle was being used for business purposes. It is also important to note that a defense would be required by his company if there were any allegations that the vehicle was being used for business purposes.

To investigate this severe loss Mr. Holland hired Dynamic Claim Services to obtain a telephone statement from the driver of the vehicle, Michael Vasquez. Mr. Vasquez was not asked to do a full investigation. He was directed to contact the driver and determine if his activities were business or personal in nature.

It is industry standard that any investigation, especially an investigation into an accident as serious as this one, be unbiased and thorough. Mr. Chorak of Dynamic Claim Services was not asked to meet with Mr. Vasquez, photograph the potentially insured vehicle involved, or to seek any witnesses who might provide information about the nature of Mr. Vasquez's trip. Instead, Mr. Chorak was directed to take the statement and to determine whether or not coverage would be provided by asking a specific, leading question during the interview. In the Century claim file there is an instruction to Mr. Chorak that includes the following: "On the errands or shopping, have him detail what he was doing, who he was shopping for, was there ANY business errand or shopping, don't ask him that but to conclude that part, so this was all personal, no business? might be a good question." This type of biased, leading, incomplete investigation falls well below industry standards. It led to a denial of coverage on June 5, 2009.

Century received a copy of a complaint that named Mr. Vasquez and Blue Streak Auto Detailing. The complaint included allegations of Negligent Entrustment and Respondeat Superior that very clearly alleged the vehicle was being used for business purposes. Without doing any further investigation, and after acknowledging the allegations against Blue Streak Auto Detailing, House Counsel, Lisa Henderson, again denied coverage.

Had Century completed the most elementary investigation, they ~~would have found that Mr. Vasquez was going to his uncle's house to pick up mail that included business mail for Blue Streak.~~ They would have

also found that Blue Streak was a mobile detailing company with advertising on the truck involved in this catastrophic accident. Since their underwriters knew and accepted the fact that this was a mobile operation the claim handlers should have known that virtually any use of the vehicle would be considered business use in Nevada.

Century's investigation of this claim falls well below Insurance Industry standards. The investigation was unreasonable, and did not develop the information necessary to fairly evaluate the coverage aspects of this claim.

B. Evaluation

During the evaluation stage of claim handling the standard in the Insurance Industry is to promptly and reasonably evaluate a claim giving at least as much consideration to the position of an insured as to the company's position.

In this case, Century's evaluation was based on a limited, biased investigation. They determined that to deny the claim, their investigation needed only to show the involved vehicle was not being used for any business purpose. Had they evaluated this claim giving equal consideration to the insured, they would have realized that their company accepted the underwriting risks associated with a mobile auto detailing business. This exposure would have included most, if not all, use of a vehicle with advertising on the sides. A fair evaluation would have included a determination of what type of mail Mr. Vasquez was retrieving from his uncle's home.

Most importantly, however, a fair evaluation by both claim handlers and house counsel would have come to the very elementary conclusion that a lawsuit containing allegations directly against Blue Streak Auto Detailing had to be defended. The file reflects that Century was satisfied that Mr. Vasquez had personal auto coverage with Progressive. Again, this would do nothing to protect Century's insured as Progressive would never answer the lawsuit on behalf of Blue Streak.

Century allowed a default judgment to be entered against their insured. This judgment not only saddles their insured with a huge verdict, but also indicates that the court found Mr. Vasquez to be in the course and scope of his employment.

Had Century wanted to contest issues of course and scope and agency, there was a very simple way to do it. They needed to answer the complaint on behalf of their insured and then file a declaratory relief action asking a court to determine if their policy provided coverage. They chose not to do this and left their insured without the protection their

policy promises.

Century's evaluation of this case was unreasonable and falls far outside industry standards. They completely failed to give equal consideration to their insured's position.

C. Conclusion

Claims can be concluded in a number of ways including settlement, a denial of coverage, a compromised agreement with regard to contested or questionable coverage, or if a case cannot be concluded any other way, litigation.

In this case, Century completely failed their insured. They issued a coverage denial that was self serving and was the result of an investigation and evaluation that was meant to protect only the company.

The manner in which Century investigated, evaluated, and concluded this claim was unreasonable and fell outside Insurance Industry standards. My opinions in this regard are based upon over 38 years of handling, supervising, and auditing Insurance Industry claims.

I might be asked to review additional material that I have not yet received. I am prepared to review any additional material when asked to do so and I will supplement this report if my opinions change.

Respectfully Submitted,

Bernard M. Feldman
Dated: September 17, 2012

Work Phone **858/350-2627**
Home/Office Phone **858/350-7547**
Fax **858/350-7549**

Bernard Martin Feldman

Experience

January, 2002 - Present	<u>Vice Chairman ICW Group</u> <u>Insurance/Claims Consultant</u>
May, 1987 - January, 2002	<u>President & CEO, ICW Group,</u> <u>Insurance Company of the West</u> Responsible for all company operations.
February, 1986 – May, 1987	<u>Executive Vice President, Chief Operating</u> <u>Officer, Insurance Company of the West</u> Responsible for all operations including claims, underwriting and field operations.
January, 1985 – February, 1986	<u>Senior Vice President, Chief Administrative</u> <u>Officer, Insurance Company of the West</u> Responsible for internal operating departments.
May, 1983 – January, 1985	<u>Vice President, All Claim Departments,</u> <u>Insurance Company of the West</u> Technical and administrative responsibility for all claim departments including Workers' Compensation.
May, 1982 – May, 1983	<u>Vice President, Property Casualty Claims,</u> <u>Insurance Company of the West</u> Technical and administrative responsibility for entire claim effort within the company.
September, 1980 – May, 1982	<u>Director of Claims, Allianz Insurance</u> <u>Company Home Office</u> Responsible for the entire technical claim effort within the company.
March, 1979 – September, 1980	<u>General Liability Supervisor, Fireman's</u> <u>Fund Insurance Company Home Office</u>

close supervision of 350 complex liability files, emphasis on cases involving products, completed operations, construction site accidents, and errors and omissions.

August, 1978 – March, 1979

Liability Supervisor, Fireman's Fund Insurance Company, Los Angeles Direct supervision of the field auto/liability adjusters and supervised a large volume of litigated files.

October, 1973 – August, 1978

Field Liability Adjuster/Investigator, Fireman's Fund Insurance Company, Santa Ana Handling of litigated files with serious potential. Average pending caseload of approximately 200 files which involved all areas of liability law.

EDUCATION:

Bachelor of Arts Degree in Business Management from California State Polytechnic College, Pomona, California – 1973.

Insurance Principles – American Educational Institute – Santa Ana College – 1975.

Insurance Adjusters Educational Program – Accident Reconstruction – Von Haenel & Associates – 1977

Legal Aspects of Claims Handling – Santa Ana College – 1978

Legal Principles of Claims Handling – American Educational Institute – 1979

CPCU Section I – Risk Management – 1980

INDUSTRY ACTIVITIES:

Various speaking engagements (Agents' Groups, CPCU, Bar Associations, Reinsurance Symposiums, etc.).

Former Member - Pacific Claim Executives Association.

Young Presidents' Organization.

World Presidents' Organization.

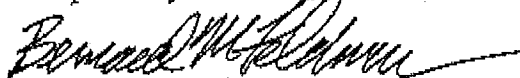
Supplementary report of Bernard Feldman

My September 17, 2012 report indicated that I might be asked to review additional material. I stated I would supplement my report if my opinions changed. I have now reviewed the depositions of James Karp, Lisa Henderson, and Daniel Mayer. These people handled or supervised this claim on behalf of Century Surety. The depositions strongly support the opinions I reached in my earlier report that the claim handling on behalf of Century Surety was unreasonable and fell outside insurance industry standards. In addition to the issues raised in my original report, these depositions reflect poor claim handling in the following areas:

1. The depositions reflect that the company did not train these claim employees on Nevada statutes or laws and they made no attempt to obtain assistance from someone familiar with insurance coverage statutes and laws in the state. In fact, the depositions indicated that very little training was provided to the claim staff and that Mr. Mayer did not recall that training materials were even maintained.
2. The claim employees stated they understood the principle of comparing the "four corners of the complaint" to the policy to determine if there was a potential for coverage. They simply chose not to do it.
3. While they understood they could have offered a defense while asking a court to declare whether or not they were obligated to defend the insured, they decided to allow their insured to face alone allegations well in excess of the policy limit.
4. They allowed a default judgment to be entered against their insured even after learning Mr. Pretner suffered catastrophic injuries with 2.6 million dollars of indicated medical expenses.
5. There was no procedure in place to insure that Lisa Henderson's supervisor, Mr. Mayer, would actively review her decision to not provide their insured a defense when the potential for coverage clearly triggered Century Surety's obligation to provide a defense under the policy.

After reading these depositions, it is very clear to me that the Century Surety claim handlers endorsed and/or ratified decisions that did not provide equal consideration to their insured's interests. They failed to understand and/or completely disregarded insurance industry claim handling standards in Nevada and virtually every other venue in the country.

Respectfully submitted,



Bernard M. Feldman
December 13, 2012

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SER.# : BRDA2J345580

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TO : Maria L. Cousineau, Esq. Fax No.: (213) 426-6921
William D. Schuller, Esq. (702) 362-9472

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Dennis M. Prince, Esq. **DATE:** 12/13/12

RE : *Andrew v. Century Surety*

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