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IN THE STARK COUNTY COURT OF COMMON PLEAS
STARK COUNTY, OHIO

DAVID E. JAY,)	CASE NO. 2004-CV-00843
	:	
Plaintiff,)	Judge Christiansen
	:	
vs.)	
	:	
CENTRE LIFE INSURANCE CO., et. al.))	
	:	
Defendants.)	

05 NOV -7 AM 8:33
CLERK OF COURT
STARK COUNTY, OHIO

PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS

Plaintiff reluctantly brings this Motion. This Motion deserves the immediate attention of the Court (as well as others).

For four (4) years, plaintiff has sought discovery from defendants including the deposition of defendant, Centre Life Insurance Company ("CLIC"). Defendants aggressively resisted these efforts. As detailed herein, because the defendants failed to produce documents and witnesses, Mr. Jay was required to dismiss his first filed action at a very, very significant cost.

Yesterday, Mr. Jay learned that his "voluntary" dismissal in March 2003, was the product of defendants' failure to produce discovery and, in at least one instance, the incontrovertibly false representations of defendants.

For 10 years, defendants have engaged in a scheme to conceal the identity of the entity which is ultimately responsible for the claims and benefits of the Massachusetts Casualty policyholders like Mr. Jay. The November 3, 2005, *discovery* deposition of

CLIC has been steadfastly resisted in this case by improper motions for protective order in order to further conceal this information. **Just two days** prior to the start of the jury trial in this case, plaintiff conducted a discovery examination of the only CLIC representative available, its president, Richard Grilli. Many startling revelations which carry serious consequences were uncovered during the examination. Two revelations: (i) DMS' false and perjurious application with the Ohio Department of Insurance; and (ii) defendants' active concealment of evidence regarding "reinsurance" evidence explains why the deposition was so strongly resisted and explains why the "voluntary" dismissal was not at all voluntary. These revelations also obviously require this Court's action.

A. False Application On File With The Ohio Department Of Insurance.

Under oath, Mr. Grilli identified that the Application filed by defendant Disability Management Services, Inc. ("DMS") with the Ohio Department of Insurance fraudulently conceals the fact that DMS is owned 40% by a reinsurer and affiliate of Centre Life Insurance Company ("CLIC").

When examined about the representations made by DMS' president in DMS' Application to the Ohio Department Of Insurance (which application sought Ohio's approval to conduct business as a third party administrator in Ohio), President Grilli testified as follows (See, Exhibit 1, Excerpts Of President Grilli's November 3, 2004,

deposition, pp. 140 - 147; and Exhibit 2, Application Of DMS filed with the Ohio Department Of Insurance):

Q: [By Plaintiff's Counsel] The very back, maybe about ten pages into [this exhibit] is the '96 filing. This suggests the TPA name is Disability Management Services?

A: [President Grilli] Yes.

....¹

¹ During this portion of the examination, plaintiff's counsel and President Grilli were discussing DMS' original application with the Ohio Department of Insurance wherein DMS falsified its answer to the question as to whether it was owned at all by a "reinsurer." The introductory dialogue between President Grilli and the examiner excerpted from the quote in the above text was:

Q: Assuming this is a legitimate document, it's entitled, "Department of Insurance Document." Do you see that?

A: Yes.

Q: This reflects that the company at that time had 10,667 outstanding shares. Do you see that?

A: This is DMS who has the 10,667 shares, not CLIC DMS.

Q: Correct. The company has 10,667 shares out there that have been purchased?

A: Yes.

Q: It lists who the shareholders are three or four pages down the way?

A: Let's see.

Q: Do you see where it says Bob Bonsall is a 30 percent owner of 500 shares?

A: Yes.

Q: John Anderson is a 30 percent owner with 500 shares?

A: Yes.

Q: Then it says on the next page that Centre Reinsurance Services Bermuda Limited is a 40 percent owner and owns 667 shares, right?

A: Yes.

Q: What is the address for that entity?

A: Cumberland House, 1 Victoria Street, P.O. Box HM1788, Hamilton HMHX, Bermuda.

Q: Are you familiar with that entity?

A: No, I am not.

Q: Is that the location of the Bermuda offices for Centre that you were talking about earlier?

A: I believe it is. Oh, no, no. This was, I believe, Centre's old location. What year is this? 2005? No, this could be their current location.

Q: Can you turn back to the substantive part of the application? We're talking about page 1 which shows 10,000 shares outstanding.

A: That must be a misprint.

MR. ELLIS: Objection.

Q: The question at the top is numbered 6. Next page.

Q: Question 8 [of the Application] says, "Has the TPA merged or has the TPA acquired another TPA or substantially changed ownership within the past ten years?" And the answer is, "No." Do you see that?

A: Yes.

Q: If the TPA here is DMS and if it sold 40 percent of its -- if it sold stock worth 40 percent of the total outstanding stock, don't you think that would be a substantial change in ownership?

MR. ELLIS: Objection.

A: What is your question if they issued shares?

Q: If the evidence is that Mr. Anderson and Mr. Bonsall started the company in '95, and after they both started the company as 50/50 owners they then issued more stock to that Centre entity so that Centre became a 40 percent owner, don't you think that is a substantial change in ownership?

MR. ELLIS: Objection.

A: That is conjecture. Substantial could mean to some people greater than 50 percent change.

Q: Let's read the next question. The next question is 9, and here the Department of -- the Ohio Department of Insurance says: "Does the TPA agree that any change in the partners of a licensed TPA or any change in the officers, directors or shareholders of five percent or more of the outstanding stock, or any change in its principal purpose or intention to administer employee benefit claims shall be reported," and it says, "within 20 days of such change." Apparently the Ohio Department of Insurance thinks five percent is something that should be reported. Would you agree with that?

MR. ELLIS: Objection.

A: I don't know what the Ohio department -- it does say five percent, but I'm not -- I don't know what the Ohio department is thinking, but it does say five percent.

MR. ELLIS: I don't want you speculating on stuff you don't know.

A: I don't know. I don't know what the Ohio department is -- I don't work for the Ohio Department of Insurance.

A: The 10,667 is shares authorized. Outstanding is slightly different, but okay.

Q: As the president of Centre Life Insurance Company, would it concern you if there was incorrect information being supplied to the Ohio Department of Insurance by either you or your third-party administrator?

MR. ELLIS: Objection.

A: Yes, I would be concerned if there was information being supplied that was incorrect to any Insurance Department.

Q: You understand that your company is regulated in every single state by every state's insurance laws?

A: Yes.

Q: You understand that there is no federal law that regulates disability insurance?

MR. ELLIS: Objection.

Q: You're the president of Centre Life Insurance Company. Do you understand whether there is any federal law that governs?

A: I do not know. I'm not a lawyer so, therefore, I don't know all the laws that pertain to –

Q: Let's read paragraph 13 at the bottom.

MR. ELLIS: Objection.

Q: **This question says, "Is the TPA owned, in whole or part, by any other organization involved directly or indirectly in any area or aspect of insurance or reinsurance including stop loss coverage to self-fund employee benefit plans?" And the answer is what?**

A: "No."

Q: **Was that a true statement?**

A: **It does not appear to be a true statement.**

Q: Does it concern you that your third-party administrator [DMS] might not accurately represent things to the Ohio Department of Insurance?

MR. ELLIS: Objection.

A: I would need to further investigate what this form is for before I could answer such a question like that. I would need to get the facts and circumstances.

Q: Can you turn to page 9 for me?

MR. ELLIS: Same objection. You're asking about stuff he hasn't seen before or isn't aware of.

MR. ROBERTS: You're objecting to him turning to page 9?

MR. ELLIS: Yes, and any further questions relating to this document.

A: I don't see a labeled page 9.

Q: It's the signature page. You've gone way past it. You know that Bob Bonsall is the president of DMS, right?

A: Yes.

Q: He started the company?

A: Well, I wasn't around at the time, but that's what I understand.

Q: Does he generally tell the truth?

A: Yes.

Q: Do you see his signature there?

A: Well, yes, although a little bit is faded out, but, yes.

Q: You recognize that as his signature?

A: I am not a signature expert. I mean, it looks like his signature, but I can't swear to God. You have to bring somebody in who is an expert in signatures.

Q: Above his signature there is a notary?

A: Yes.

Q: **Above the notary it says, "We do solemnly swear under penalty of perjury that we've completed this application and the statements and exhibits contained herein are true and correct to the best of our knowledge and belief and that we are properly authorized to complete this application on**

behalf of said corporation or partnership." Did I read that correctly?

A: Yes, you read it correctly. (*See, Exh. 1 pp. 140-147*).

Clearly, as testified under oath by the CLIC President, the Application signed by the DMS President, Robert Bonsall, under penalty of perjury (*Exh. 2*) was false. Mr. Bonsall is a witness in this case.

Plaintiff requests that the Court therefore instruct the Jury that DMS' sworn Application filed with the Ohio Department Of Insurance and executed by its President under penalty of perjury contained false information about its ownership by a reinsurer, which owner is an affiliate of CLIC.

As discussed below, although affirmatively concealed prior to yesterday, the reinsurer-owner is ultimately responsible for any judgment in this action. Accordingly, the false statement to the Ohio Department Of Insurance is particularly relevant here.

B. Defendants' Affirmative Concealment In This Action that All Liability to Mr. Jay Rests With The Reinsurer Who Owns 40% Of DMS.

As discussed above, on the eve of the March 2003 trial, Mr. Jay was forced to exercise his right to "voluntarily" dismiss his action. Mr. Jay contends (and the record no doubt shows) that this dismissal was the product of defendants' aggressive discovery tactics and omissions. As detailed below, it is now clear that *prior to* the dismissal defendants answered discovery requests falsely. This improper conduct is clearly the cause of the dismissal. And is, therefore the cause of several hundred

thousands of dollars being spent by plaintiff to refile and further pursue his claims against the defendants.

1. **The 2001 Case Discovery Disputes.**

Numerous letters, motions to compel, and court conferences were necessary in the 2001 case. Plaintiff's present counsel was not representing plaintiff at that time.

The correspondence file inherited by plaintiff's present counsel reveals a September 3, 2002, letter from Mr. Jay's then counsel to Attorney McSherry, counsel for defendants. (*Exhibit 3*). At the top of the 2nd page of that letter (which letter was sent 6 months before Mr. Jay was left with no choice but to dismiss the action), Mr. Jay's counsel writes:

"In response to Interrogatory 6, MCIC objects to the identification of any reinsurer for Mr. Jay's disability claims. Again, this information is highly relevant to Mr. Jay's bad faith claim." *Id.*

Six (6) weeks later, defendants' counsel responded and represented that

"With respect to document request no. 6, MCIC has not had any contact with any reinsurer with regard to the handling of Mr. Jay's claim." (*See, Exhibit 4, October 15, 2002, letter of Attorney McSherry*).

This discovery dispute apparently made its way to the trial Court judge and defendants were compelled to reveal information regarding reinsurance. Another three months later (and approximately 2 months pretrial), the Court's order triggered the following false representation from defendants in a letter sent by defendants' counsel:

“Swiss Re reinsured Mr. Jay’s last policy (the most recently issued policy) for 6%. **None of Mr. Jay’s other policies are reinsured.**” (See, Exhibit 5, January 17, 2005, letter of Attorney McSherry).

For good measure, Attorney McSherry sent another letter four weeks later again misinforming plaintiff about the reinsurance issue. (See, Exhibit 6, p. 2, ¶ 5).

Because lawyers live by a Code and have taken an oath to represent matters to their fellow bar members and the Court honestly, Mr. Jay’s counsel accepted this representation as true. It, however, was a false statement.

On November 3, 2005, four and one-half years after filing this action, two and one-half years after the false reinsurance representation, Mr. Jay finally (2 days pretrial) was afforded the opportunity to conduct a discovery deposition of the defendant CLIC. On the issue of “reinsurance,” Mr. Jay received the following testimony from the CLIC President:

Q: So based on your knowledge, you would conclude that Mr. Jay -- he happens to have six policies. You would conclude that **all of his policies in full have reinsurance protection through an entity other than Centre Life Insurance Company; is that right?**

A: **Yes.**

Q: That entity is one of these entities that is a parent or a parent of a parent or a sister, brother or aunt of Centre Life Insurance Company?

A: Yes. It would be a sister of Centre Life Insurance Company.

Q: Which is ultimately all backed by Zurich Financial Services?

A: It’s ultimately all owned by Zurich Financial Services.

Q: But at least there is security and protection for Mr. Jay beyond Centre Life Insurance Company?

A: Yes.

...

Q: Sir, when we were off the record -- excuse me. Right before we broke I asked you questions and I forgot where we left off, which I was curious as to whether Mr. Jay, whose policies are with Mass Casualty, **whether they are fully reinsured as far as you are aware through some other entity.**

A: **Yes, they are fully reinsured by another Centre affiliate. CRUS.**

Q: Is CRUS an entity that has employees and actually sells some product or service or good, or does it sell reinsurance?

A: It generally sells reinsurance to either third parties or entities or other Centre entities within the Centre Group of companies. (*Exh. 1, pp. 42-43*).

...

Q: Sir, let me re-visit the topic of reinsurance briefly and we'll be done. **Mr. Jay's policies are subject ultimately to some reinsurance treaty [CLIC] has with an affiliated company, right?**

A: **Yes.**

Q: So that parent company of Centre Life Insurance Company is ultimately responsible for any benefit claim or other type of amount that needs to be paid?

A: No, no. The company responsible is the company who accepted the business. So in this case for policyholders of MCIC, CLIC is the entity that is responsible and the reinsurance would be CRUS, but it wouldn't be the parent of CRUS who is responsible.

Q: The reinsurer, whoever the reinsurer is?

A: CRUS.

Q: [MCIC has] transferred the risk to them. The risk was transferred away from Centre Life and not the insurance company and onto the reinsurer?

A: **Correct, along with the premium, but correct, yes.** (*Exh. 1, 148-149*).

...

Q: Are you familiar with the financial condition of the reinsurer?

A: Somewhat limited, yes.

Q: Is it a larger financial entity Centre Life Insurance Company?

A: In terms of assets, liabilities, capital?

Q: Assets.

A: Well, assets are not the way to look at it. Capital is the way to look at it.

Q: Is it larger?

A: Yes, substantially larger in capital.

MR. ROBERTS: Thank you. No further questions. (*Id.*, pp. 157-158).

Four conclusions are incontrovertible from the above: (i) the 40% owner of DMS, Centre Reinsurance U.S. ("CRUS"), is the true party interest – it receives the premiums paid and is responsible for all payments to Mr. Jay; (ii) following a Court order to disclose information about the reinsurer, the defendants and/or their counsel, falsely stated that Mr. Jay's policies were not covered by reinsurance; (iii) it took many, many months for Mr. Jay to even receive this *false* response to his proper discovery request; and (iv) a short time later, because he had been denied discovery, Mr. Jay dismissed his action.

While defendants and/or their counsel absolutely must be sanctioned for this improper behavior, it is important to recognize that the false and misleading statements were intentional. CLIC has just under \$2 Billion in assets. And CRUS is "substantially larger." In this bad faith case, the punitive damage award is to be tied to the defendants' worth. Defendants were attempting to shield the worth of the real party in interest. Defendants were also attempting to create the fiction that the real party in

interest was not a 40% owner of DMS (which explains the false statement to the Ohio Department Of Insurance).

C. Because This Is Not Defendants Or Their Counsel's First Transgression, Discipline Sufficient to Correct Their Behavior is Warranted.

When Mr. Jay's present counsel filed his first memorandum in this action, for the benefit of the Court (and in an effort to forewarn defendants about continuing such behavior) he educated the Court about the improper tactics of defendants and/or their counsel. Specifically, in two respective prior actions involving defendants and these lawyers, the Chief Judge of The United States District Court For The Southern District of Ohio and a Magistrate Judge repeatedly sanctioned (financial and evidentiary) defendants and/or their counsel for the very same conduct here. (*See, June 2005 Motion To Compel of Plaintiff, Exh. 2, see also, Reply Memorandum to June 2005 Motion To Compel, Doc. 77*).

In one Order, the Chief Judge found that defendants and/or their counsel "*appear to intentionally misunderstand*" Court orders. The Magistrate found that in his judgment there appeared to be a "*systemic*" problem with defendants responding to discovery. Separately, the same Magistrate Judge determined that sanctions on defendants' counsel were proper for the "*making of completely baseless allegations*" of misconduct against Mr. Jay's present counsel. Because the grounds for these Orders

were well founded and because they continue in this case, it is absolutely incumbent on this Court to materially sanction defendants and/or their counsel.²

In addition, defendant has twice in the last two years been adjudged responsible for bad faith. On November 3, 2005, President Grilli testified:

Q: During your tenure as president, has any jury concluded that Mass Casualty and DMS acted in bad faith?

MR. ELLIS: Objection.

A: Am I supposed to answer?

Q: If you know.

A: I know of one instance, yes.

Q: Did that occur in Ohio?

A: No, what I'm referring to did not occur in Ohio, no.

Q: Do you know what I'm referring to?

A: I believe I do, but I am not -- and perhaps there was some bad faith there with the *Jeffries* case I believe you're referring to.

Q: You're correct.

A: Off the top of my head, I do not recollect whether there was bad faith or not. If there was, I don't recollect.

Q You're mindful that that is what a unanimous jury concluded?

MR. ELLIS: Objection. Again, this was a settlement effort and not a trial.

Q: What was the other case that I did not know of but you did?

² It is no doubt obvious to the Court that since Attorney Roberts' April 2005 appearance in this action it has been defendants' strategy in this case to paint Attorney Roberts in a bad and false light. Defendants' hyperbolic and vitriolic attacks on Mr. Roberts are shameful. Defendants have made "slinging mud" at plaintiff's counsel their number 1 priority. The reasons for defendants' venomous and uncivil attitude are many, including: (i) as the result of representing other Massachusetts Casualty policyholders, plaintiff's counsel has a wealth of uncomplimentary knowledge regarding the defendants; (ii) has obtained a summary jury verdict of bad faith against defendant; and (iii) has recovered a \$2 million settlement from defendants. Defendants' allegations regarding misconduct are incontrovertibly false.

A: Well, this other case does not involve the Mass Casualty book of business.

Q: Does it involve DMS?

A: Yes, it involves DMS.

Q: On Equitable?

A: Yes.

Q: That was within the past two years?

A: Yes. (*Id.*, pp. 69-70).

Some lawyers will not adjust their improper behavior unless sanctioned. These acts are sanctionable.

**D. This Pattern Of Improper Behavior Is Inexcusable And
Must Be Immediately Remedied By This Court.**

This Court must act without delay.

This Court must award Mr. Jay the full costs of all legal expenses he incurred in the discovery in the 2001 case and all costs associated with this 2004 case plus interest. Mr. Jay, who is disabled, unemployed and not receiving benefits suffered dearly by defendants improper behavior. Defendants' false statements and behavior in discovery also nearly prevented Mr. Jay from bringing this case at all, and certainly negatively impacted his ability to recover.

Defendants likely believed they could steamroll Mr. Jay -- like they no doubt do with other policyholders. They also probably gambled that he would die pretrial. This conduct must be punished. An immediate award of Mr. Jay's expenses is absolutely warranted.

Second, this Court should instruct the jury (a precise instruction is forthcoming from plaintiff's counsel) that "this Court has determined that the defendants were not honest in responding to Mr. Jay's discovery requests in this action which delayed the trial for several years. You should consider that in your deliberations."

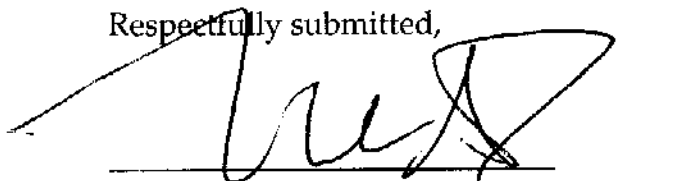
Conclusion

Litigation and the legal profession are governed by rules that must be filed. If ever a case required sanctions -- this is it. What is worse than a party/lawyer lying about discoverable information ordered produced by a court? Which false information caused significantly delayed justice at great, great expense.

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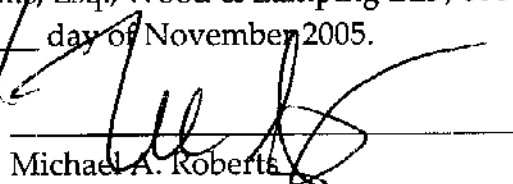
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by fax and regular mail on William R. Ellis, Esq., Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202, this 7 day of November 2005. (copy)



Michael A. Roberts

2 IN THE STARK COUNTY COURT OF COMMON PLEAS

3 STARK COUNTY, OHIO

4 ----- x

5 DAVID E. JAY,

6 Plaintiff,

Index No.

7 -against-

2004-CV-00843

8 CENTRE LIFE INSURANCE COMPANY, et al.,

9 Defendants.

10 ----- x

11

12 DEPOSITION of the Defendant, CENTRE LIFE
13 INSURANCE COMPANY, by RICHARD GRILLI, taken by the
14 Plaintiff pursuant to Notice, held at the offices
15 of Barrister Reporting Service, Inc., 120
16 Broadway, New York, New York, on November 3, 2005,
17 at 10:15 a.m., before a Notary Public of the State
18 of New York.

19

20

21

22 *****

23 BARRISTER REPORTING SERVICE, INC.

120 Broadway

24 New York, New York 10271

212-732-8066

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1
 2 APPEARANCES:
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 11 BY: WILLIAM R. ELLIS, ESQ.
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 13
 14 ALSO PRESENT:
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 Disability Management Services
 16 1350 Main Street
 Springfield, Massachusetts 01103
 17
 18 J.D. MARTINEZ
 19 Videographer
 Digital Media Productions
 20
 21 xxxxx
 22
 23
 24
 25

3

1
 2 THE VIDEO OPERATOR: We are on
 3 the record.
 4 This is the videotape
 5 deposition of Mr. Richard Grilli taken
 6 in the case of David E. Jay versus
 7 Centre Life Insurance Company, et al.,
 8 filed in the Stark County Court of
 9 Common Pleas, State of Ohio.
 10 Today's date is November 3,
 11 2005. The time on the videotape
 12 record is 10:15 a.m. This deposition
 13 is being held at 120 Broadway, Suite
 14 111, New York, New York City.
 15 My name is J.D. Martinez
 16 representing Digital Media Productions
 17 of 120 Broadway, New York, New York.
 18 Would everyone please introduce
 19 yourselves for the record.
 20 MR. ROBERTS: On behalf of the
 21 plaintiff, Mr. Jay, this is Mike
 22 Roberts.
 23 MR. ELLIS: On behalf of the
 24 defendant, Bill Ellis.
 25 THE WITNESS: Richard Grilli,

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1
 2 president of Centre Life Insurance
 3 Company.
 4
 5 RICHARD GRILLI,
 6 having been first duly sworn before a
 7 Notary Public of the State of New York,
 8 was examined and testified as follows:
 9
 10 EXAMINATION BY
 11 MR. ROBERTS:
 12 Q Good morning. I was a little late
 13 getting here this morning, so I appreciate
 14 your patience with me.
 15 I'm Mike Roberts. I have the
 16 privilege of representing David Jay in this
 17 action, David Jay versus Centre Life
 18 Insurance Company and Disability Management
 19 Services.
 20 Could you introduce yourself, please,
 21 to the jury?
 22 A Sure. Richard Grilli, president of
 23 Centre Life Insurance Company.
 24 Q Mr. Grilli, do you have a business
 25 card on you?

5

1 GRILLI
 2 A Yes.
 3 Q Do you hold any other positions -- the
 4 business card says, "Centre," at the top and
 5 it has you as president of Centre Life
 6 Insurance Company with an e-mail address at
 7 CentreSolutions.com. At the bottom it says,
 8 "A member of the Zurich Financial Services
 9 Group." Did I read that correctly?
 10 A Yes.
 11 Q Do you have any other positions that
 12 you hold within the Zurich Financial Services
 13 Group?
 14 A Yes, I am a senior vice president of
 15 the Centre Group of companies, and here is a
 16 business card as well of that.
 17 Q Anything else?
 18 A No. That's it.
 19 Q Do you coach a children's basketball
 20 team or anything?
 21 A No.
 22 Q What is the Centre Group?
 23 A The Centre Group is a group of
 24 companies that were organized in the late
 25 1980's to conduct insurance and reinsurance

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1 GRILLI

2 are some rights, and certainly in the

3 property and casualty business which I worked

4 in prior to this job at Centre and with my

5 experience prior to that there were some

6 rights that policyholders or corporations had

7 who had entered into P&C transactions to go

8 after the insurer and collect.

9 Q So based on your knowledge, you would

10 conclude that Mr. Jay -- he happens to have

11 six policies. You would conclude that all of

12 his policies in full have reinsurance

13 protection through an entity other than

14 Centre Life Insurance Company; is that right?

15 A Yes.

16 Q That entity is one of these entities

17 that is a parent or a parent of a parent or a

18 sister, brother or aunt of Centre Life

19 Insurance Company?

20 A Yes. It would be a sister of Centre

21 Life Insurance Company.

22 Q Which is ultimately all backed by

23 Zurich Financial Services?

24 A It's ultimately all owned by Zurich

25 Financial Services.

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1 GRILLI

2 Q But at least there is security and

3 protection for Mr. Jay beyond Centre Life

4 Insurance Company?

5 A Yes.

6 MR. ROBERTS: Let's go off to

7 change the tape.

8 THE VIDEO OPERATOR: Going off

9 the record, 11:24. End of tape number

10 1.

11 (Whereupon, a discussion was

12 held off the record.)

13 THE VIDEO OPERATOR: Returning

14 to the record, 11:36 a.m. Beginning

15 of tape number 2.

16 Q Sir, when we were off the record --

17 excuse me. Right before we broke I asked you

18 questions and I forgot where we left off,

19 which I was curious as to whether Mr. Jay,

20 whose policies are with Mass Casualty,

21 whether they are fully reinsured as far as

22 you are aware through some other entity.

23 A Yes, they are fully reinsured by

24 another Centre affiliate. CRUS.

25 Q Now, Centre Life Insurance Company

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1 GRILLI

2 doesn't actively seek new policyholders or

3 sell policies presently?

4 A That is correct.

5 Q Is CRUS an entity that has employees

6 and actually sells some product or service or

7 good, or does it sell reinsurance?

8 A It generally sells reinsurance to

9 either third parties or entities or other

10 Centre entities within the Centre Group of

11 companies.

12 Q Does it sell reinsurance to entities

13 outside the Centre Group?

14 A I am not that familiar with their

15 day-to-day operations. They are a company

16 located in Bermuda, so that question is best

17 asked by the president of CRUS, I would say,

18 or some individual who works on a day-to-day

19 basis with CRUS.

20 Q Have you ever been to the Bermuda

21 entity? Have you ever been down to Bermuda

22 to see the facilities down there?

23 A I have been to Bermuda to see Centre's

24 offices, yes.

25 Q Are there a lot of employees down

45

1 GRILLI

2 there? We're in Manhattan, so by scale.

3 A The amount of employees is less than

4 the amount of employees in Manhattan, but

5 there are a number of employees. I think we

6 have two floors of a building.

7 Q We were telling the jury about selling

8 reinsurance, and what that means is a company

9 in the business of reinsurance through some

10 sophisticated actuaries and accountants

11 sitting in some room somewhere advised the

12 company that if we could get these premiums

13 paid to us and take the risk associated with

14 a potential claim, we're betting we can make

15 money. That's the business, right?

16 A Yes, that's the business.

17 Q So when Zurich or the Centre Group

18 decided: Hey, let's go get that Mass

19 Casualty block of business -- you said '96,

20 but I think your lawyer, Mr. Ellis, and I

21 would stipulate that it's the fall of '98

22 that the transaction occurred?

23 A Right. I said '96. I meant either

24 '98 or early '99, around that time period.

25 Q I think it was October '98. Then it

<p style="text-align: right;">66</p> <p>1 GRILLI</p> <p>2 cannot pick up the Baltimore Sun, you cannot</p> <p>3 turn on the TV without seeing this guy</p> <p>4 advertising. If you've been two miles away</p> <p>5 from an asbestos facility, come and see him</p> <p>6 for free. He will file the claim for you.</p> <p>7 He will do that all for free. All gratis.</p> <p>8 If you are successful, he gets his fee once</p> <p>9 you get paid. So there are many lawyers like</p> <p>10 that who are willing to work on that kind of</p> <p>11 basis, certainly in the asbestos area.</p> <p>12 There's plenty of people who don't</p> <p>13 have the means to hire lawyers, but it hasn't</p> <p>14 stopped him from collecting billions of</p> <p>15 dollars. I would say that's probably the</p> <p>16 case with other areas including Workers'</p> <p>17 Comp, too. I'm sure there are lawyers who</p> <p>18 are willing to work on a contingency subject</p> <p>19 to success.</p> <p>20 Q It's your judgment that there are all</p> <p>21 kinds of lawyers out there that would take</p> <p>22 any case and, therefore, you probably don't</p> <p>23 have policyholders who are not working, not</p> <p>24 getting benefits and not healthy who would</p> <p>25 decide: I just don't have the energy to</p>	<p style="text-align: right;">68</p> <p>1 GRILLI</p> <p>2 A Yes. Lawsuits are a disaster for us.</p> <p>3 Let me explain that.</p> <p>4 Q I was going to ask you a question.</p> <p>5 A Go ahead.</p> <p>6 Q This is your job. You do it.</p> <p>7 A If we have denied a claim that is a</p> <p>8 valid claim, we're going to pay eventually</p> <p>9 that claim plus all the back benefits anyway.</p> <p>10 We're going to pay interest. We're going to</p> <p>11 pay legal costs. It is not in our financial</p> <p>12 interest to deny any claim that is valid. It</p> <p>13 just makes no sense.</p> <p>14 Conversely, from DMS's perspective</p> <p>15 they have a financial incentive pursuant to</p> <p>16 our admin agreement with them where they get</p> <p>17 paid on cost plus. The more claims they</p> <p>18 have, the more costs there are for us, the</p> <p>19 more profit they make due to their margin, so</p> <p>20 it's in their incentive not to deny claims;</p> <p>21 just the opposite, to agree on more claims</p> <p>22 because their financial incentive is they</p> <p>23 want to make more money.</p> <p>24 If there is more claims, there are</p> <p>25 more claims handlers. More claims handlers,</p>
<p style="text-align: right;">67</p> <p>1 GRILLI</p> <p>2 fight them?</p> <p>3 A I don't know. I'm not in their</p> <p>4 position.</p> <p>5 Let's go to the insurance company</p> <p>6 complaints which I don't think costs a lot of</p> <p>7 money. Individuals, from what I've seen, one</p> <p>8 of them did it himself without a lawyer, so</p> <p>9 we have not seen a substantial number of</p> <p>10 insurance company complaints. Just the</p> <p>11 opposite. They're disappearing. Nobody</p> <p>12 seems to be complaining.</p> <p>13 Q Do you have statistics on that to back</p> <p>14 that up? Is that something you gave me here</p> <p>15 this morning?</p> <p>16 A No, but I think in Andy's report, I</p> <p>17 think there is a page that works out of that.</p> <p>18 Q Andy's report that hasn't been</p> <p>19 provided to me is that the one you're talking</p> <p>20 about?</p> <p>21 A I don't know what has been provided to</p> <p>22 you.</p> <p>23 Q You say that you take comfort that</p> <p>24 things are going well, there's less lawsuits</p> <p>25 and you're comfortable with that?</p>	<p style="text-align: right;">69</p> <p>1 GRILLI</p> <p>2 more costs. More costs, more profit.</p> <p>3 Q During your tenure as president, has</p> <p>4 any jury concluded that Mass Casualty and DMS</p> <p>5 acted in bad faith?</p> <p>6 MR. ELLIS: Objection.</p> <p>7 A Am I supposed to answer?</p> <p>8 Q If you know.</p> <p>9 A I know of one instance, yes.</p> <p>10 Q Did that occur in Ohio?</p> <p>11 A No, what I'm referring to did not</p> <p>12 occur in Ohio, no.</p> <p>13 Q Do you know what I'm referring to?</p> <p>14 A I believe I do, but I am not -- and</p> <p>15 perhaps there was some bad faith there with</p> <p>16 the Jeffries case I believe you're referring</p> <p>17 to.</p> <p>18 Q You're correct.</p> <p>19 A Off the top of my head, I do not</p> <p>20 recollect whether there was bad faith or not.</p> <p>21 If there was, I don't recollect.</p> <p>22 Q You're mindful that that is what a</p> <p>23 unanimous jury concluded?</p> <p>24 MR. ELLIS: Objection.</p> <p>25 Again, this was a settlement</p>

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1 GRILLI
 2 effort and not a trial.
 3 Q What was the other case that I did not
 4 know of but you did?
 5 A Well, this other case does not involve
 6 the Mass Casualty book of business.
 7 Q Does it involve DMS?
 8 A Yes, it involves DMS.
 9 Q On Equitable?
 10 A Yes.
 11 Q That was within the past two years?
 12 A Yes.
 13 Q You just told the jury that you're
 14 comfortable that DMS did a great job;
 15 lawsuits are going down, but that obviously
 16 is not a good reflection?
 17 A That is just one case in a whole -- in
 18 a period of a number of years.
 19 Q How much of your time during the week
 20 is devoted to Centre Life's business versus
 21 other jobs you have in the Centre Group?
 22 A 50 percent, I would guess. It's hard
 23 to say.
 24 Q Different weeks are different. I
 25 suspect one week might require a lot of your

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1 GRILLI
 2 time from one company versus another?
 3 A Yes.
 4 Q We were talking about the positive
 5 side of the ledger being premiums and
 6 investment income, and the negative side of
 7 the ledger being DMS expense, commissions,
 8 claims being paid, settlements and these
 9 administrative costs for Centre Group
 10 employees who may contribute some time during
 11 the day to Centre Life Insurance Company
 12 activities and, therefore, on a prorated
 13 basis those costs are absorbed by Centre
 14 Life; is that right? Did I say that
 15 correctly?
 16 THE WITNESS: Can we repeat the
 17 question?
 18 MR. ROBERTS: I might be
 19 quicker if I say it quickly.
 20 Q Positive side of the ledger, you got
 21 premiums coming in and investment income
 22 being made, right?
 23 A Yes.
 24 Q Negative side of the ledger, you have
 25 DMS administrative costs under the agreement,

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1 GRILLI
 2 correct?
 3 A Yes. I wouldn't characterize it as
 4 negative side.
 5 Q Does it add to your bottom line or
 6 take away from your bottom line to pay that
 7 monthly fee or whatever it is to DMS?
 8 A It's a subtraction to the bottom line.
 9 Yes it's a subtraction.
 10 Q So you have that, you have litigation
 11 expenses for outside counsel, right?
 12 A Yes.
 13 Q You have claim expenses, you have
 14 commission to agents and you have settlements
 15 with policyholders, right?
 16 A Yes.
 17 Q You have these costs, they're shared
 18 costs, but costs of Centre Group employees
 19 who perform financial functions, actuarial
 20 functions and overseeing of investment
 21 functions?
 22 A And other things, too. Legal
 23 functions. Right.
 24 Q Let's talk about the settlement costs,
 25 okay.

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1 GRILLI
 2 I get injured on the way back to
 3 Cincinnati today and I have a NOVUS 3000, and
 4 it says I'm 42. For my life I get a benefit
 5 every month because I can't be a lawyer
 6 anymore. Tomorrow I call up Andy Cohen and I
 7 say, "Andy, I'm going to make a claim."
 8 What happens at Centre Life when a
 9 policyholder says, "Claim"? What happens
 10 financially?
 11 A Well, I don't think anything happens
 12 financially at Centre Life. This gets
 13 reported to DMS. They're responsible for
 14 handling the claims.
 15 Q Can you tell the jury what a reserve
 16 is, the disability reserve?
 17 A Yes. There's two types of reserve,
 18 disable life reserve and a disable reserve.
 19 I think it's -- it's either disabled life or
 20 disabled reserve and an active life reserve.
 21 Disable reserve are people on claim, and it's
 22 a reserve generated by the actuaries or
 23 calculated by the actuaries.
 24 Q That's the reserve I'm talking about,
 25 that one. I'm 42. Something happens to me.

<p style="text-align: right;">138</p> <p>1 GRILLI</p> <p>2 B-E-A-L, of Millerman who was acting in the</p> <p>3 capacity of actuary, but they are not an</p> <p>4 employee -- they're not an officer. They're</p> <p>5 not employees. They're outside.</p> <p>6 Q Are the names of all these folks on</p> <p>7 this form, do they have other jobs within the</p> <p>8 Centre Group or Zurich Financial Services</p> <p>9 Company?</p> <p>10 A Yes, they have other jobs, and they</p> <p>11 work partially part-time for Centre Life</p> <p>12 Insurance Company.</p> <p>13 MR. ROBERTS: I'm going to mark</p> <p>14 as 68 filings made, you may or may not</p> <p>15 be aware of, by the State of Ohio by</p> <p>16 DMS as third-party administrator.</p> <p>17 (Whereupon a list of filings</p> <p>18 made by the State of Ohio by DMS was</p> <p>19 marked as Plaintiff's Exhibit 68 for</p> <p>20 identification, as of this date.)</p> <p>21 Q Have you seen these forms before?</p> <p>22 A No, I have not seen these forms.</p> <p>23 Q DMS doesn't send these to you so you</p> <p>24 have a record of their state filings?</p> <p>25 A They might send them to us. There is</p>	<p style="text-align: right;">140</p> <p>1 GRILLI</p> <p>2 Q The very back, maybe about ten pages</p> <p>3 in is the '96 filing. This suggests the TPA</p> <p>4 name is Disability Management Services?</p> <p>5 A Yes.</p> <p>6 Q Assuming this is a legitimate</p> <p>7 document, it's entitled, "Department of</p> <p>8 Insurance Document." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q This reflects that the company at that</p> <p>11 time had 10,667 outstanding shares. Do you</p> <p>12 see that?</p> <p>13 A This is DMS who has the 10,667 shares,</p> <p>14 not CLIC DMS.</p> <p>15 Q Correct. The company has 10,667</p> <p>16 shares out there that have been purchased?</p> <p>17 A Yes.</p> <p>18 Q It lists who the shareholders are</p> <p>19 three or four pages down the way?</p> <p>20 A Let's see.</p> <p>21 Q Do you see where it says Bob Bonsall</p> <p>22 is a 30 percent owner of 500 shares?</p> <p>23 A Yes.</p> <p>24 Q John Anderson is a 30 percent owner</p> <p>25 with 500 shares?</p>
<p style="text-align: right;">139</p> <p>1 GRILLI</p> <p>2 an individual who works at Centre who is in</p> <p>3 the legal department who is involved in</p> <p>4 regulatory filings with states. They might</p> <p>5 get this. I don't believe I've ever seen</p> <p>6 this.</p> <p>7 Q Assume for me that it is a legitimate</p> <p>8 document. It appears to be signed by a</p> <p>9 Mr. Andy Cohen as an officer of the company.</p> <p>10 I believe it's signed under oath.</p> <p>11 This reflects on the first page that</p> <p>12 in Ohio there are 7,076 individual policies</p> <p>13 that DMS is the administrator for. Does that</p> <p>14 sound about right?</p> <p>15 A I wouldn't know.</p> <p>16 Q Do you know how many of those policies</p> <p>17 might be Mass Casualty policies?</p> <p>18 A I don't know.</p> <p>19 Q Can you turn towards the back of that?</p> <p>20 MR. ELLIS: I object to</p> <p>21 questions on the document. It's</p> <p>22 something that he's unfamiliar with</p> <p>23 and hasn't seen and is not part of the</p> <p>24 evidence in this case, to my</p> <p>25 knowledge, at this point.</p>	<p style="text-align: right;">141</p> <p>1 GRILLI</p> <p>2 A Yes.</p> <p>3 Q Then it says on the next page that</p> <p>4 Centre Reinsurance Services Bermuda Limited</p> <p>5 is a 40 percent owner and owns 667 shares,</p> <p>6 right?</p> <p>7 A Yes.</p> <p>8 Q What is the address for that entity?</p> <p>9 A Cumberland House, 1 Victoria Street,</p> <p>10 PO Box HM1788, Hamilton HMHX, Bermuda.</p> <p>11 Q Are you familiar with that entity?</p> <p>12 A No, I am not.</p> <p>13 Q Is that the location of the Bermuda</p> <p>14 offices for Centre that you were talking</p> <p>15 about earlier?</p> <p>16 A I believe it is. Oh, no, no. This</p> <p>17 was, I believe, Centre's old location.</p> <p>18 What year is this? 2005? No, this</p> <p>19 could be their current location.</p> <p>20 Q Can you turn back to the substantive</p> <p>21 part of the application? We're talking about</p> <p>22 page 1 which shows 10,000 shares outstanding.</p> <p>23 That must be a misprint.</p> <p>24 MR. ELLIS: Objection.</p> <p>25 Q The question at the top is numbered 6.</p>

<p style="text-align: right;">142</p> <p>1 GRILLI</p> <p>2 Next page.</p> <p>3 A The 10,667 is shares authorized.</p> <p>4 Outstanding is slightly different, but okay.</p> <p>5 Q Question 8 says, "Has the TPA merged?</p> <p>6 Or has the TPA acquired another TPA or</p> <p>7 substantially changed ownership within the</p> <p>8 past ten years?" And the answer is, "No."</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q If the TPA here is DMS and if it sold</p> <p>12 40 percent of its -- if it sold stock worth</p> <p>13 40 percent of the total outstanding stock,</p> <p>14 don't you think that would be a substantial</p> <p>15 change in ownership?</p> <p>16 MR. ELLIS: Objection.</p> <p>17 A What is your question if they issued</p> <p>18 shares?</p> <p>19 Q If the evidence is that Mr. Anderson</p> <p>20 and Mr. Bonsall started the company in '95,</p> <p>21 and after they both started the company as</p> <p>22 50/50 owners they then issued more stock to</p> <p>23 that Centre entity so that Centre became a</p> <p>24 40 percent owner, don't you think that is a</p> <p>25 substantial change in ownership?</p>	<p style="text-align: right;">144</p> <p>1 GRILLI</p> <p>2 five percent.</p> <p>3 MR. ELLIS: I don't want you</p> <p>4 speculating on stuff you don't know.</p> <p>5 THE WITNESS: I don't know. I</p> <p>6 don't know what the Ohio department</p> <p>7 is -- I don't work for the Ohio</p> <p>8 Department of Insurance.</p> <p>9 Q As the president of Centre Life</p> <p>10 Insurance Company, would it concern you if</p> <p>11 there was incorrect information being</p> <p>12 supplied to the Ohio Department of Insurance</p> <p>13 by either you or your third-party</p> <p>14 administrator?</p> <p>15 MR. ELLIS: Objection.</p> <p>16 A Yes, I would be concerned if there was</p> <p>17 information being supplied that was incorrect</p> <p>18 to any Insurance Department.</p> <p>19 Q You understand that your company is</p> <p>20 regulated in every single state by every</p> <p>21 state's insurance laws?</p> <p>22 A Yes.</p> <p>23 Q You understand that there is no</p> <p>24 federal law that regulates disability</p> <p>25 insurance?</p>
<p style="text-align: right;">143</p> <p>1 GRILLI</p> <p>2 MR. ELLIS: Objection.</p> <p>3 A That is conjecture. Substantial could</p> <p>4 mean to some people greater than 50 percent</p> <p>5 change.</p> <p>6 Q Let's read the next question. The</p> <p>7 next question is 9, and here the Department</p> <p>8 of -- the Ohio Department of Insurance says:</p> <p>9 "Does the TPA agree that any change in the</p> <p>10 partners of a licensed TPA or any change in</p> <p>11 the officers, directors or shareholders of</p> <p>12 five percent or more of the outstanding</p> <p>13 stock, or any change in its principal purpose</p> <p>14 or intention to administer employee benefit</p> <p>15 claims shall be reported," and it says,</p> <p>16 "within 20 days of such change."</p> <p>17 Apparently the Ohio Department of</p> <p>18 Insurance thinks five percent is something</p> <p>19 that should be reported.</p> <p>20 MR. ELLIS: Objection.</p> <p>21 Q Would you agree with that?</p> <p>22 A I don't know what the Ohio</p> <p>23 department -- it does say five percent, but</p> <p>24 I'm not -- I don't know what the Ohio</p> <p>25 department is thinking, but it does say</p>	<p style="text-align: right;">145</p> <p>1 GRILLI</p> <p>2 MR. ELLIS: Objection.</p> <p>3 Q You're the president of Centre Life</p> <p>4 Insurance Company. Do you understand whether</p> <p>5 there is any federal law that governs?</p> <p>6 A I do not know. I'm not a lawyer so,</p> <p>7 therefore, I don't know all the laws that</p> <p>8 pertain to --</p> <p>9 Q Let's read paragraph 13 at the bottom.</p> <p>10 MR. ELLIS: Objection.</p> <p>11 Q This question says, "Is the TPA owned,</p> <p>12 in whole or part, by any other organization</p> <p>13 involved directly or indirectly in any area</p> <p>14 or aspect of insurance or reinsurance</p> <p>15 including stop loss coverage to self-fund</p> <p>16 employee benefit plans?"</p> <p>17 And the answer is what?</p> <p>18 A "No."</p> <p>19 Q Was that a true statement?</p> <p>20 A It does not appear to be a true</p> <p>21 statement.</p> <p>22 Q Does it concern you that your</p> <p>23 third-party administrator might not</p> <p>24 accurately represent things to the Ohio</p> <p>25 Department of Insurance?</p>

<p style="text-align: right;">146</p> <p>1 GRILLI</p> <p>2 MR. ELLIS: Objection.</p> <p>3 A I would need to further investigate</p> <p>4 what this form is for before I could answer</p> <p>5 such a question like that. I would need to</p> <p>6 get the facts and circumstances.</p> <p>7 Q Can you turn to page 9 for me?</p> <p>8 MR. ELLIS: Same objection.</p> <p>9 You're asking about stuff he hasn't</p> <p>10 seen before or isn't aware of.</p> <p>11 MR. ROBERTS: You're objecting</p> <p>12 to him turning to page 9?</p> <p>13 MR. ELLIS: Yes, and any</p> <p>14 further questions relating to this</p> <p>15 document.</p> <p>16 A I don't see a labeled page 9.</p> <p>17 Q It's the signature page. You've gone</p> <p>18 way past it.</p> <p>19 You know that Bob Bonsall is the</p> <p>20 president of DMS, right?</p> <p>21 A Yes.</p> <p>22 Q He started the company?</p> <p>23 A Well, I wasn't around at the time, but</p> <p>24 that's what I understand.</p> <p>25 Q Does he generally tell the truth?</p>	<p style="text-align: right;">148</p> <p>1 GRILLI</p> <p>2 the record, 3:06 p.m.</p> <p>3 (Whereupon a discussion was</p> <p>4 held off the record.)</p> <p>5 THE VIDEO OPERATOR: Returning</p> <p>6 to the record 3:06 p.m.</p> <p>7 Q Sir, let me re-visit the topic of</p> <p>8 reinsurance briefly and we'll be done.</p> <p>9 Mr. Jay's policies are subject</p> <p>10 ultimately to some reinsurance treaty you</p> <p>11 have with an affiliated company, right?</p> <p>12 A Yes.</p> <p>13 Q So that parent company of Centre Life</p> <p>14 Insurance Company is ultimately responsible</p> <p>15 for any benefit claim or other type of amount</p> <p>16 that needs to be paid?</p> <p>17 A No, no. The company responsible is</p> <p>18 the company who accepted the business. So in</p> <p>19 this case for policyholders of MCIC, CLIC is</p> <p>20 the entity that is responsible and the</p> <p>21 reinsurance would be CRUS, but it wouldn't be</p> <p>22 the parent of CRUS who is responsible.</p> <p>23 Q The reinsurer, whoever the reinsurer</p> <p>24 is?</p> <p>25 A CRUS.</p>
<p style="text-align: right;">147</p> <p>1 GRILLI</p> <p>2 A Yes.</p> <p>3 Q Do you see his signature there?</p> <p>4 A Well, yes, although a little bit is</p> <p>5 faded out, but, yes.</p> <p>6 Q You recognize that as his signature?</p> <p>7 A I am not a signature expert. I mean,</p> <p>8 it looks like his signature, but I can't</p> <p>9 swear to God. You have to bring somebody in</p> <p>10 who is an expert in signatures.</p> <p>11 Q Above his signature there is a notary?</p> <p>12 A Yes.</p> <p>13 Q Above the notary it says, "We do</p> <p>14 solemnly swear under penalty of perjury that</p> <p>15 we've completed this application and the</p> <p>16 statements and exhibits contained herein are</p> <p>17 true and correct to the best of our knowledge</p> <p>18 and belief and that we are properly</p> <p>19 authorized to complete this application on</p> <p>20 behalf of said corporation or partnership."</p> <p>21 Did I read that correctly?</p> <p>22 A Yes, you read it correctly.</p> <p>23 MR. ROBERTS: Why don't we go</p> <p>24 off the record for a moment.</p> <p>25 THE VIDEO OPERATOR: Going off</p>	<p style="text-align: right;">149</p> <p>1 GRILLI</p> <p>2 Q You transferred the risk to them. The</p> <p>3 risk was transferred away from Centre Life</p> <p>4 and not the insurance company and on to the</p> <p>5 reinsurer?</p> <p>6 A Correct, along with the premium, but</p> <p>7 correct, yes.</p> <p>8 Q You've heard of the terminology "risk</p> <p>9 transference"?</p> <p>10 A Yes.</p> <p>11 Q When Mr. Jay purchased his policies,</p> <p>12 was he transferring the risk of ill health on</p> <p>13 to the insurance company?</p> <p>14 MR. ELLIS: Objection.</p> <p>15 A Well, he was entering into a</p> <p>16 disability company. I don't know if you</p> <p>17 would say ill health.</p> <p>18 Q Transferring the risk?</p> <p>19 A Yes. I'd say he paid the premium for</p> <p>20 a disability policy subject to the terms and</p> <p>21 conditions of that policy. MCIC at that time</p> <p>22 is the entity who issued that policy.</p> <p>23 Q Subject to passing some underwriting</p> <p>24 regimen?</p> <p>25 A Well, I wasn't around at that time,</p>

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1 GRILLI
 2 die or terminate their policies.
 3 The incurred claim and change in
 4 policyholder reserves in total is going up,
 5 and the percent of premiums earned are what I
 6 consider the loss ratio is also increasing
 7 over time, although I see in 2004 it went
 8 down slightly, but it's still substantially
 9 above 100 percent.
 10 Q Mr. Grilli, Mr. Roberts is contending
 11 in this case that after purchasing the MCIC
 12 block of business, DMS was hired to deny
 13 claims and thus improve the bottom line of
 14 CLIC.
 15 If that were the case, would this be
 16 the pattern that would develop in the
 17 numbers?
 18 MR. ROBERTS: Objection.
 19 Leading. Objection. Foundation.
 20 He already testified he's not
 21 an actuary.
 22 A No. You would expect the incurred
 23 claim amount -- well, you would expect the
 24 incurred claim amount to be going down and
 25 the ratio to be going down, and it's just the

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1 GRILLI
 2 opposite.
 3 MR. ELLIS: Thank you.
 4 Q Mr. Grilli, you were also shown the
 5 financial reporting to Centre showing the
 6 rolling number of claims as you described it
 7 which was Exhibit -- one of the exhibits
 8 marked by Mr. Roberts. I hand you my copy of
 9 it.
 10 A Right.
 11 Q Does that generally reflect at least
 12 in some form the claims handled by DMS?
 13 A Yes.
 14 Q This is an exhibit Mr. Roberts gave to
 15 you, correct?
 16 A Yes. This is a reflection of the
 17 claims handled, yes.
 18 MR. ROBERTS: Objection.
 19 For the record, each of those
 20 last two exhibits are things that
 21 we've been asking for for four years,
 22 and I was given them this morning a
 23 moment before starting the deposition
 24 amid days before trial, so to suggest
 25 that I gave them to him is a little

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1 GRILLI
 2 bit of a misnomer.
 3 Q With regard to your affidavit, when
 4 you reviewed the affidavit, were you able to
 5 determine anyway that DMS or Centre Life
 6 Insurance Company could account for claims
 7 accepted and claims rejected?
 8 A Can you repeat the question?
 9 Q To your knowledge, can DMS or Centre
 10 Life Insurance Company track or report claims
 11 accepted or claims rejected?
 12 MR. ROBERTS: Objection.
 13 Foundation.
 14 A Well, first of all, Centre Life cannot
 15 at all. We do not have the systems or the
 16 ability. This has been outsourced to a TPA.
 17 I've never seen any report from DMS
 18 that talks about claims accepted nor
 19 rejected. It's somewhat -- the definition,
 20 you have to define what is accepted and what
 21 is rejected, and you can have a claim that is
 22 both accepted, rejected, accepted. The
 23 reports that we have seen are the amount of
 24 claims that are being handled.
 25 I've never seen this. I don't believe

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1 GRILLI
 2 DMS tracks these claims this way, either, but
 3 I'm not at DMS.
 4 MR. ROBERTS: Objection.
 5 Foundation.
 6 Move to strike.
 7 MR. ELLIS: Let's go off the
 8 record for just a moment.
 9 THE VIDEO OPERATOR: Going off
 10 the record, 3:26.
 11 (Whereupon, a discussion was
 12 held off the record.)
 13 THE VIDEO OPERATOR: Returning
 14 to the record, 3:26 p.m.
 15 MR. ELLIS: Thank you.
 16 That is all the questions I
 17 have, Mr. Grilli.
 18 THE WITNESS: Thank you.
 19
 20 EXAMINATION (CONTINUED)
 21 BY MR. ROBERTS:
 22 Q Are you familiar with the financial
 23 condition of the reinsurer?
 24 A Somewhat limited, yes.
 25 Q Is it a larger financial entity than

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1 GRILLI
 2 Centre Life Insurance Company?
 3 A In terms of assets, liabilities,
 4 capital?
 5 Q Assets.
 6 A Well, assets are not the way to look
 7 at it. Capital is the way to look at it.
 8 Q Is it larger?
 9 A Yes, substantially larger in capital.
 10 MR. ROBERTS: Thank you.
 11 No further questions.
 12 MR. ELLIS: That's all.
 13 Thank you very much.
 14 THE VIDEO OPERATOR: Going off
 15 the record, 3:27 p.m.
 16 (Time noted: 3:27 p.m.)
 17

 RICHARD GRILLI

18
 19 Subscribed and sworn to before me
 20 this day of 2005
 21
 22

 NOTARY PUBLIC

23
 24
 25

160

1
 2 CERTIFICATE
 3 I, VILMA TORRES, hereby certify that the
 4 Deposition of RICHARD GRILLI was held before me on
 5 the 3rd day of November, 2005; that said witness
 6 was duly sworn before the commencement of
 7 testimony; that the testimony was taken
 8 stenographically by myself and then transcribed by
 9 myself; that the party was represented by counsel
 10 as appears herein;
 11 That the within transcript is a true
 12 record of the Deposition of said witness;
 13 That I am not connected by blood or
 14 marriage with any of the parties; that I am not
 15 interested directly or indirectly in the outcome
 16 of this matter; that I am not in the employ of any
 17 of the counsel.
 18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand this day of , 2005.
 20
 21

 VILMA TORRES

22
 23
 24
 25

159

1
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 3

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OHIO DEPARTMENT OF INSURANCE

2100 Stella Court Columbus, Ohio 43266-0566 (614) 644-2665

APPLICATION FOR RECOGNITION OF THIRD PARTY ADMINISTRATOR (TPA)

#17A
00043

APPLICATION MUST BE TYPED OR PRINTED, ALL QUESTIONS ANSWERED, AND ACCOMPANIED BY ARTICLES OF INCORPORATION, TOGETHER WITH ALL AMENDMENTS THERETO AS OF THE DATE OF THIS APPLICATION, CERTIFIED BY THE SECRETARY OF STATE IN STATE OF DOMICILE, OR THE APPLICATION WILL BE RETURNED. ATTACH SEPARATE SHEETS IF MORE SPACE IS NEEDED FOR ANY RESPONSE.

issue date 1/28/97

Disability Management Services, Inc.			06-1427246
TPA Name		TPA IRS Number	
One Hartfield Boulevard, Suite 304, East Windsor		(860)	623-1313
Principal Address (Do NOT Use P.O. Box Number)		City	Telephone Number
Hartford	CT	06088	July 24, 1995
County	State	Zip Code	Incorporation Date Or Date First Established

1. Addresses and telephone numbers of all branches.

- See Attachment (None) () _____ *W*

_____ () _____

_____ () _____

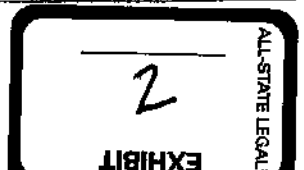
2. If the TPA is a corporation, indicate (a) total number of shares authorized: 10,667; (b) classes of shares authorized (specify voting or nonvoting): _____; (c) number of voting shares issued (by class) 667; (d) number of nonvoting shares issued (by class): _____. See Attachment.

3. Does the TPA agree that it will not, by the method of dividend payments or otherwise, refund or rebate to its clients a portion of the insurance premiums the clients paid for insurance coverage in a manner which violates O.R.C. Section 3933.01 or Section 3911.18? Yes XX No ____

4. Does the TPA agree that it will not provide any administrative functions until it has in its possession a license for the TPA from the Superintendent of Insurance? Yes XX No ____

5. What business, other than administration of claims, is the TPA organization now engaged in, affiliated directly or indirectly with, or presently deriving income from? State fully, and attach additional sheets if necessary. If none, state "none."

DMS also provides consulting services in connection with disability income claim management.



6. Will the TPA continue such business affiliations after being licensed as a TPA? Yes X No ___ N/A ___
7. Has the TPA done business under a different name within the last 10 years? Yes ___ No XX If yes, by what name(s) has the TPA been known and explain changes. _____
-
8. Has the TPA merged, or has the TPA acquired another TPA, or substantially changed ownership within the last 10 years? Yes ___ No XX If yes, provide name(s) and year(s) and explain changes. _____
-
9. Does the TPA agree that any change in the partners of a licensed TPA, or any change in the officers, directors or shareholders of 5% or more of outstanding stock of a licensed TPA, or any change in the TPA's principal purpose or intention to administer employee benefit claims shall be reported by such TPA on a Form (TPN), provided by the Department of Insurance, and filed with the Department of Insurance within 20 days of such change? Yes XX No ___
10. Has the TPA or any of its partners, officers, shareholders or employees ever been refused a license (TPA or other), or had a license suspended or revoked by this or any other insurance department, or voluntarily surrendered a license in lieu of suspension or revocation? Yes ___ No XX If yes, attach explanation.
11. Does the TPA operate in any other state that requires TPAs to be licensed? Yes ___ No XX If yes, list the states in which you operate. Disability Management Services, Inc. operates in Connecticut,
however, Connecticut does not require TPAs to be licensed DMS anticipates
operating in several states which require licenses and is currently pursuing
12. (For Foreign TPAs) If your home state licenses TPAs, attach a current original Home State Certification (dated no earlier than 90 days before application submission date) or a certified copy of the TPA's license. Home State Certification attached? Yes ___ N/A XX
13. Is the TPA owned, in whole or part, by any other organization(s) involved, directly or indirectly, in any area or aspect of insurance or reinsurance, including stop-loss coverage to self-funded employee benefit plans? Yes ___ No XX If yes, indicate name, relationship and nature of business. _____
-
14. How long has the TPA been operating as a claim payor? Not applicable
15. How long has the TPA been engaged in the sales and service of self-funded benefit programs, including those established under I.R.C. Section 125? Not applicable

23. Bank Reference(s).

<u>Bank of Boston</u>	<u>Linda McCarthy, Asst.</u>	<u>(203) 727-5340</u>
<u>Connecticut</u>	<u>Sales & Service Manager</u>	<u>()</u>
<u>Bank</u>	<u>Contact/Title</u>	<u>Telephone Number</u>

24. Have any legal actions by plan sponsors or insurance companies been brought against the TPA or any of the principals during the past three (3) years? Yes ___ No XX If yes, attach details.

25. Are there any pending Insurance Department complaints, and/or were there any during the last year? Yes ___ No XX If yes, attach details regarding nature of action and status.

26. Has any person in the TPA ever been convicted of mishandling or misappropriating any insurance carrier or client funds? Yes ___ No XX If yes, attach details.

27. Does the TPA carry any type of professional liability and/or E&O insurance for TPA activities? Yes XX No ___ If yes, provide:

Name of Carrier	<u>Evanston Insurance Company</u>
Policy Number	<u>MG700183</u>
Limit of Liability	<u>\$1,000,000/claim</u>
Term	<u>1 year</u>
Amount of Deductible	<u>\$10,000</u>

28. Have there been any claims filed against the above-mentioned policies, or any policies which they replaced, within the last three (3) years? Yes ___ No XX If yes, attach details.

29. Is the TPA audited annually by an outside firm? A) Financial Yes XX No ___ B) Operational/Procedural Yes See attachment If yes, provide name(s) and address(es): Ronald J. Begansky, CPA

33 Hartford Avenue, P.O. Box 588, Granby, CT 06035

30. Does an employee of the TPA assist in all solicitations and proposal presentations? Yes ___ No X See attachment

31. Does the TPA pay all claims from accounts owned or exclusively controlled by Plan Sponsors? Yes X No ___ If no, does the TPA maintain one or more claims payment accounts? Yes ___ No ___ If yes, are accounts held in trust and segregated from the TPA firm's assets? Yes ___ No ___ If yes, name trustees of all accounts. If no, please explain. _____

See attachment

32. Does the TPA maintain a separate complaint file? Yes XX No ___

33. Is an Affidavit attached that states that the TPA (and its Officers) shall be responsible for the supervision of the actions of any and all personnel and subcontractors who adjust or settle claims on behalf of the TPA? Yes XX No ___

LIST THE SHAREHOLDERS, OFFICERS, DIRECTORS, PARTNERS, OWNERS


#34


A. Social Security No. [REDACTED]		B. Last Name, First Name, MI. of shareholders of 5% or more of outstanding stock, officers, directors & partners Bonsall, Jr., Robert A.	
C. Total number of each type of shares held (specify type); % of ownership (if partner specify general or limited) 500 shares of common stock 30% owner		D. Title (Shareholder, Officer, Director or Partner) Shareholder, President, Treasurer, Director	
E. Will be active as an agent/collector for <input type="checkbox"/> Life <input type="checkbox"/> A&H <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> TPA			
F. Full Residence Address & Home Phone No. 34 Glendale View Drive Hampden, MA 01136 (413) 566-3681		G. Business or Employment other than Third Party Administration (indicate other licenses held & all professional designations) N/A	H. Name & Address of other Business or Employment N/A
I. Position/Title in other Business or Employment (Example: Officer, Director, Manager, Salesperson) N/A		J. Ownership Interest in other Business or Employment (Example: Shareholder, Partner, Owner) N/A	


A. [REDACTED]		B. Anderson, John R.	
C. 500 shares of common stock 30% owner		D. Shareholder, Vice President and Secretary	
E. <input type="checkbox"/> Life <input type="checkbox"/> A&H <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> TPA			
F. 208 Birch Road Longmeadow, MA 01106 (413) 567-4467		G. N/A	H. N/A
I. N/A		J. N/A	



97 APR 23 11:05 AM '05

A. [REDACTED]		B. Charsky, Donald	
C. None		D. Director	
E. <input type="checkbox"/> Life <input type="checkbox"/> A&H <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> TPA			
F. 17 Hopestill Brown Pond Sudbury, MA 01776 (508) 443-8570		G. President of Lifeplans, Inc. in Waltham, MA	H. Two University Office Park 51 Sawyer Road Waltham, MA 02154
I. President		J. Shareholder of less than 5% of Lifeplans.	

A.  B. Larson III, Philip E.	
C. None	D. Director
	E. <input type="checkbox"/> Life <input type="checkbox"/> A&B <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> TPA
F. 80 Bloomfield Street Apt. 6C Hoboken, NJ 07030 (201) 792-5494	G. ZC ReSource Ltd.
	H. One Chase Manhattan Plaza 34th Floor New York, New York 10005
I. Assistant Vice-President	J. N/A

A.  B. Sweeney, Eileen M.	
C. None	D. Director
	E. <input type="checkbox"/> Life <input type="checkbox"/> A&B <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> TPA
F. 247 W. 12th Street Apt. 2D New York, New York 10014 (212) 243-8150	G. ZC ReSource Ltd.
	H. One Chase Manhattan Plaza 34th Floor New York, New York 10005
I. Managing Director	J. N/A

A.  B. Miller, Stephen A.	
C. None	D. Director
	E. <input type="checkbox"/> Life <input type="checkbox"/> A&B <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> TPA
F. 390 Old Stage Road Glastonbury, CT 06033 (860) 659-0135	G. Travelers Insurance Co.
	H. One Tower Square Hartford, CT 06183
I. Second Vice President	J. N/A

A.  B. Centre Reinsurance Services (Bermuda) Limited (S)	
C. 667 shares of preferred stock 40% owner	D. Shareholder
	E. <input type="checkbox"/> Life <input type="checkbox"/> A&B <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input type="checkbox"/> TPA
F. Cumberland House One Victoria Street P.O. Box HM 1788 Hamilton HM HX Bermuda	G. N/A
	H. N/A
I.  N/A	J. N/A

A. Social Security No. [REDACTED]	B. Last Name, First Name, MI, of shareholders of 5% or more of outstanding stock, officers, directors & partners Bonsall, Jr., Robert A. (see above)		
C. Total number of each type of shares held (specify type); if of ownership of partner specify general or limited		D. Title (Shareholder, Officer, Director or Partner)	
E. Will be active as an agent/policymaker for <input type="checkbox"/> Life <input type="checkbox"/> Multiple Lines (P&C)		<input type="checkbox"/> AGE <input type="checkbox"/> Inactive <input type="checkbox"/> Title <input type="checkbox"/> TPA	
F. Full Residence Address & Home Phone No.	G. Business or Employment other than Third Party Administrations (indicate other licenses held & all professional assignments)	H. Name & Address of other business or employment	
I. Position/Title in other business or employment (Example: Officer, Director, Manager, Salesperson)		J. Ownership interest in other business or employment (Example: Shareholder, Partner, Owner)	

A. [REDACTED]	B. Anderson, John R. (see above)		
C.		D.	
E.		<input type="checkbox"/> Life <input type="checkbox"/> Multiple Lines (P&C)	
F.		G.	H.
I.		J.	

A. [REDACTED]	B. Midghall, Jr., John G. AS		
C. N/A	D. Claims consultant E. <input type="checkbox"/> Life <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> AGE <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> Title <input type="checkbox"/> TPA		
F. 14 Lancaster Avenue Springfield, MA 01118	G. N/A	H. N/A	
I. N/A		J. N/A	

A.		B. Sweeney, Karen	
C.		D. Claims consultant	
N/A		E. <input type="checkbox"/> Life <input type="checkbox"/> AGH <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> TPA	
F. 134 Polaski Avenue Chicopee, MA 01013		G. N/A	H. N/A
I. N/A		J. N/A	

A.		B.	
C.		D.	
		E. <input type="checkbox"/> Life <input type="checkbox"/> AGH <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input type="checkbox"/> TPA	
F.		G.	H.
I.		J.	

A.		B.	
C.		D.	
		E. <input type="checkbox"/> Life <input type="checkbox"/> AGH <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input type="checkbox"/> TPA	
F.		G.	H.
I.		J.	

A.		B.	
C.		D.	
		E. <input type="checkbox"/> Life <input type="checkbox"/> AGH <input type="checkbox"/> Title <input type="checkbox"/> Multiple Lines (P&C) <input type="checkbox"/> Inactive <input type="checkbox"/> TPA	
F.		G.	H.
I.		J.	

WE DO SOLEMNLY SWEAR UNDER PENALTY OF PERJURY THAT WE HAVE COMPLETED THIS APPLICATION AND THE STATEMENTS AND EXHIBITS CONTAINED HEREIN ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF, AND THAT WE ARE PROPERLY AUTHORIZED TO COMPLETE THIS APPLICATION ON BEHALF OF SAID CORPORATION OR PARTNERSHIP.

SUBSCRIBED AND SWORN BEFORE ME

THIS 22ND DAY OF November, 19 96

Gregory J. Mirabella
Notary Signature Commission

GREGORY J. MIRABELLA
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2001

Robert A. Bonsall, Jr.
Robert A. Bonsall, Jr.

President (Corporation)

11-22-96
Date

John R. Anderson
John R. Anderson

Secretary (Corporation)

11-22-96
Date

General Partner (Limited Partnership)

Date

Partner

Date

Partner

Date

Partner

Date

Sole Proprietor

Date

ADD SIGNATURE LINES FOR ADDITIONAL PARTNERS. ALL PARTNERS OF GENERAL OR LIMITED PARTNERSHIPS MUST SIGN THIS APPLICATION.

97 J11 00 11:05
NOTARY PUBLIC

State of Ohio
Department of Insurance

Attachment

Question 1

Disability Management Services, Inc. does not maintain any branch offices.

Question 2

Disability Management Services, Inc. has authorized the issuance of a total of 10,667 shares, consisting of 667 shares of Convertible Preferred Stock and 10,000 shares of Common Stock. Both classes of stock are entitled to vote. As of the date of this application, 667 shares of Convertible Preferred Stock and 1,000 shares of Common Stock have been issued.

Questions 21 & 22

Currently, Disability Management Services, Inc. performs disability income claim management for several insurers, which includes the investigation, adjudication, management and administration of such insurers disability income claims. This service is performed on a "per claim" basis as submitted to Disability Management Services, Inc. by the insurer, some of which are expected to relate to Ohio residents. It is difficult to anticipate in advance of receipt of claims the number of Ohio cases.

In 1996, Disability Management Services, Inc. anticipates managing up to 1,000 new individual disability income and medical reimbursement claims (notices of loss) in addition to approximately 1,000 existing claims.

Question 29

B. Disability Management Services, Inc. is not annually audited by an outside firm for operations. However, pursuant to its contract with Travelers Insurance Company, Travelers may hire outside auditors to review the operations and procedures of Disability Management Services, Inc. at any time.

Question 30

Disability Management Services, Inc. does not solicit or perform proposal presentations.

Question 31

Under the administrative agreements between the insurers and Disability Management Services, Inc. all funds come from and go directly to the insurers. Disability Management Services, Inc. does not directly disburse benefit proceeds to policyholders or manage fiduciary or claims payment accounts.

ALLEN
SCHULMAN
AND ASSOCIATES
Attorneys at Law

Lawyers on Your Side[®]

Carnegie Building
236 3rd St. S.W.
Canton, OH 44702
Phone 330-456-4400
Toll-Free 1-877-653-LAWS
Fax 330-156-3641

E-mail: info@schulmanlaw.com
www.schulmanlaw.com

Allen Schulman
Sanders J. Mestel (1938-1985)
Timothy B. Saylor
Christopher J. Van Blargan
Nicole L. Roth

September 2000
FAXED

Jeff McSherry, Esq. (513-852-6087)
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202-2491

Re: *David Jay*

Dear Mr. McSherry:

It was a pleasure seeing you again at Mr. Jay's deposition. I wish to extend to you my thanks for your professionalism.

I am writing to follow up on your discovery responses to Plaintiff's Second Set of Interrogatories and Requests for Production of Documents. In your Response to Request for Production of Documents No. 4, you state that MCIC has no policy procedure, guidebook or manual for the processing of disability claims. From the information in our possession, we know that David Gilbert prepared or ordered the preparation of such a guide or manual sometime in the mid-1990s. We would ask that you check directly with Mr. Gilbert to ascertain this fact.

In your Response to Request for Production of Documents No. 7, you object to the production of underwriting manuals for the MCIC policies in affect from 1989 to present. These documents are highly relevant to Plaintiff's claim for bad faith, as they would certainly provide the company's definition of total disability and residual disability. Similarly, the specimen copies of all 2,000, 3,000 and 4,000 disability insurance policies would also provide the company's also highly relevant, as it would demonstrate whether MCIC's definitions have changed from the date of Mr. Jay's purchase to the date of his disability claim.

In your Response to Request for Production of Documents No. 9, MCIC states that it cannot determine the meaning of the phrase "Table of Organization". By "Table of Organization", we mean any document or chart indicating the structural organization of MCIC including departments and the names of department heads.

*Underwriting
Manual*

*Specimen
copies*

ALL-STATE LEGAL[®]
EXHIBIT
3

Jeff McSherry
September 3, 2002
Page 2

Revised

In response to Interrogatory No. 6, MCIC objects to the identification of any reinsurer for Mr. Jay's disability claims. Again, this information is highly relevant to Mr. Jay's bad faith claim. Mr. Jay has a right to determine whether the reinsurer contacted MCIC and/or exerted any influence on the management of Mr. Jay's claim.



Please provide appropriate responses to Plaintiff's Discovery Requests within 10 days of the date of this letter, to avoid the necessity of filing a motion to compel.

In addition, as we are rapidly approaching trial in this matter, it is necessary for us to begin depositions. We intend to take the depositions of Tina Girod, Don Saddler and Kathy Kellehar of Concentra. We would also like take the depositions of the following Massachusetts Casualty Employees in early October.

- Spencer McNeil ✓
- Brian Wentworth ✓
- Diane Thomas ✓
- John Midghall ✓
- Jeff Champagne ✓
- Robert J. Martin ✓
- David Gilbert ✓
- Jerry Daugherty ✓
- Peter Goodwin ✓
- James McMullin ✓

While we do not have immediate plans to do so, we may also wish to depose the following MCIC and Disability Management employees.

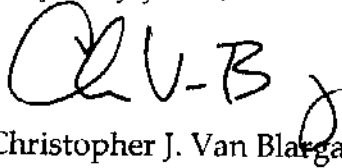
- Lisa Doherty ✓
- Linda Harris ✓
- Loretta Braga ✓
- Joan H. Brasier ✓
- William H. Hughes ✓
- Linda Damon ✓
- Don Scott ✓
- Kelly Breslin ✓
- Dr. Hall ✓

Jeff McSherry
September 3, 2002
Page 3

I would ask that you provide three consecutive dates in October to complete these depositions. I am currently preparing a motion for letters rogatory in the event that we are unable to agree to mutually convenient dates.

Finally, in addition to the witnesses previously identified by Plaintiff, we intend to call Don Kotnik as a witness in this case.

Very truly yours,

A handwritten signature in black ink, appearing to read "CJVB" with a stylized flourish at the end.

Christopher J. Van Blarigan

CJVB:hmt

Enclosures

WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
CINCINNATI, OHIO 45202-2491
TELEPHONE (513) 852-6000
FAX (513) 852-6087

JEFFREY P. MCSHERRY
DIRECT DIAL: (513) 852-6008
E-MAIL: jpmcsherry@woodlamping.com

October 15, 2002

Chris Van Blargan, Esq.
Allen Schulman & Assoc. Co., L.P.A.
236 Third Street, SW
Canton, OH 44702

**Re: David E. Jay v. Massachusetts Casualty Insurance Company, et al.
Case No. 2001CV01080**

Dear Mr. Van Blargan:

Per your request, the following will serve to respond to your additional discovery inquiries which have arisen in response to Massachusetts Casualty's and Disability Management Services' Responses to Plaintiff's Interrogatories and Requests for Production of Documents.

With respect to document request no. 4, this answer is correct. There is not a claims manual/guidelines that has been adopted by MCIC or DMS.

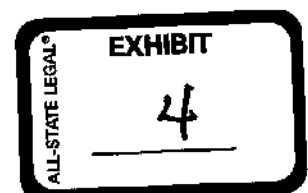
With respect to document request no. 7, the objection stands since the handling of Mr. Jay's claim is not in any way related to underwriting manuals/guidelines.

With respect to document request no. 9, there are no documents which are responsive with regard to MCIC. However, for your convenience I have enclosed a copy of a chart of those DMS employees who currently handle the MCIC block of business.

With respect to document request no. 6, MCIC has not had any contact with any reinsurer with regard to the handling of Mr. Jay's claim.

While I know that plaintiff will continue to fail and/or refuse to produce the materials we have been requesting since the inception of Mr. Jay's claim, I nonetheless believe it is my obligation to continue to try to request the information and documentation we have requested pre-suit to evaluate Mr. Jay's claim as well as post-suit for purposes of litigating this matter. I know these requests from DMS and myself have been well documented in multiple letters and I simply ask that you carefully review what we have requested from your client over the past year or so. This is designed to help your client and to evaluate his claim for purposes of benefits.

75th Anniversary
SINCE 1927



Chris Van Blargan, Esq.
October 15, 2002
Page 2

We look forward to Mr. Jay's compliance. Thank you.

Very truly yours,



Jeffrey P. McSherry

JPM/rh
Enclosure
151073.1

WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
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JEFFREY P. MCSHERRY
DIRECT DIAL: (513) 852-6008
E-MAIL: jpmcsherry@woodlamping.com

January 17, 2003

FEDERAL EXPRESS

Christopher J. Van Blargan Esq.
Allen Schulman & Assoc. Co., L.P.A.
236 Third Street, SW
Canton, OH 44702

**Re: David E. Jay v. Massachusetts Casualty Insurance Company, et al.
Case No. 2001CV01080**

Dear Mr. Van Blargan:

Pursuant to the Agreed Protective Orders which have now been executed by both parties, enclosed please find the underwriting materials which relate to the definitions of total and residual disability under Mr. Jay's policies as well as the DMS/MCIC contract. These are "attorneys' eyes only" documents and subject to the Agreed Protective Orders entered into in this case. Also, Swiss Re reinsured Mr. Jay's last policy (the most recently issued policy) for 6%. None of Mr. Jay's other policies are reinsured.

Very truly yours,

Jeffrey P. McSherry

JPM/smk
Enclosures
163585.1

*underwriting
materials*

Reinsured

75th
Anniversary
SINCE 1927



WOOD & LAMPING LLP

SINCE 1927

ATTORNEYS AT LAW

600 VINE STREET, SUITE 2500
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 FAX (513) 852-6087

JEFFREY P. MCSHERRY
 DIRECT DIAL: (513) 852-6008
 E-MAIL: jpmcsherry@woodlamping.com

February 13, 2003

VIA FACSIMILE (330-456-3641)

Allen Schulman, Jr., Esq.
 Allen Schulman & Assocs. Co., L.P.A.
 236 3rd Street, S.W.
 Canton, OH 44702

**Re: David E. Jay v. Massachusetts Casualty Insurance Company, et al.
 Case No. 2001CV01080**

Dear Mr. Schulman:

This letter will serve to confirm our telephone conversations on February 12 and 13, 2003 which were an attempt by the parties to resolve all discovery disputes remaining between them. The following will summarize what issues we were able to resolve with respect to discovery.

Plaintiff's Third Set of Interrogatories and Requests for Production of Documents

MCIC will provide to Plaintiff a list of its directors and officers from 1998 to present. The only remaining issues are Plaintiff's request for reserve information (Interrogatory no. 7) and Plaintiff's request for "all lawsuits in which MCIC was a party from 1995 to present." (Interrogatory no. 11).

DMS 30(B)(5) Notice Duces Tecums

As an initial matter, DMS desires the Court to rule on its pending Motion to Dismiss and Motion for Summary Judgment and to dismiss all claims against DMS since there is no privity of contract between Plaintiff and DMS. However, in an effort to resolve the four new DMS 30(B)(5) Notices that were issued by Plaintiff, DMS is prepared to provide the following witnesses and documents in response to Plaintiff's four new 30(B)(5) Notices:

30(B)(5) Notice No. 1

With respect to your request for a witness to testify about the selection of third-party physicians for independent medical examinations, it is my understanding that you are particularly interested in Psychiatric Disability Consultants ("PDC"). PDC is a separate legal entity. Rather than necessitating a subpoena being issued to PDC, I was going to attempt to

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arrange for Cindy Palmer of PDC to answer questions as to how PDC receives requests from DMS and how examinations are then set up. You indicated a deposition of this individual would be unnecessary if we can identify whether DMS has an ownership interest in PDC. I will check on this issue. We will also check on the number of times DMS has utilized Drs. Kenny and Noffsinger, but consistent with the Court's prior Order, no reports of these physicians will be provided.

As we discussed, the selection of vendors issue has been resolved per our previous responses to Plaintiff's discovery requests.

30(B)(5) Notice No. 2

This 30(B)(5) Notice relates to the operation and management of DMS' claims department from 1998 to present. Jeff Champagne will be able to testify as to this issue as well as to the interpretation of the terms "total disability" and "residual disability." Despite our objections, Mr. Champagne will also address how bonuses are determined. Also, we will provide to the Court the computer handbook Mr. Champagne referenced at his recent deposition. This handbook will be provided to the Court for an *in camera* inspection to determine whether or not it is discoverable. To the extent it is turned over to Plaintiff, there must be an Agreed Protective Order in place to protecting the confidentiality of this document.

As we discussed, the Administrative Services Agreement between DMS and MCIC is the "source of authority" permitting DMS to accept or deny disability claims. I direct your attention to the "Administrator's Duties" section of the Agreement which clearly sets forth that this is DMS' role. The section you pointed to in the MCIC Agreement merely gives MCIC the authority to deal with claims to the extent the other provisions of the Agreement do not provide to the contrary.

Handwritten note: "DMS should be dismissed!!"

With respect to communications between DMS and Swiss Re, only one of Mr. Jay's five policies is reinsured to the extent of 6%. There are no communications from Swiss Re directing DMS how to handle Mr. Jay's claim. This is an area of dispute.

Handwritten note: "Case"

With respect to the documents identified in Plaintiff's Notice, there are no claims manuals. The computer booklet Mr. Champagne referenced will be produced to the Court for an *in camera* inspection. DMS cannot produce the number of disability claims accepted and denied for MCIC from 1998 to present since this is entirely irrelevant to Mr. Jay's claim. There are no written incentive or bonus programs.

Handwritten note: "NOT WHAT WE ASKED FOR"

Handwritten note: "Claims stats"

30(B)(5) Notice No. 3

Plaintiff's Notice requests Eileen Sweeney and Robert Bonsall, the Presidents of Centre Life Insurance Company and DMS respectively, or "other corporate representatives of DMS," to

Handwritten note: "Champagne: bases"

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testify about the "relationship" between DMS and MCIC and other entities, the terms of the Assignment Agreement between DMS and MCIC, and the contents of DMS' financial records including profit and loss statements and corporate tax returns from 1998 to 2002. This 30(B)(5) Notice is defective on its face since Plaintiff can only designate the issues it wishes a witness to testify about. Since Plaintiff has the DMS/MCIC Agreement clearly setting forth the terms of the Agreement, the terms of the Agreement are self-evident. However, Jeff Champagne will be testifying about how DMS actually carries out its role in handling claims. Moreover, DMS' financial records such as profit and loss statements and corporate tax returns are irrelevant in this action, particularly with respect to DMS since DMS cannot be held liable for breach of contract or bad faith damages in this case. The ownership of DMS and other companies is irrelevant based upon the claims Plaintiff has asserted in this lawsuit, i.e., breach of contract and bad faith. There is no claim for "piercing of the corporate veil" and/or "alter ego" liability. However, if the Court determines that the Assignment Agreement can be discussed, DMS will designate a representative to discuss the terms of the Assignment Agreement.

1/3/03

no

BS

30(B)(5) Notice No. 4

This Notice requests someone from DMS to testify about all lawsuits brought against DMS from 1995 to present in any jurisdiction and also in the State of Ohio. DMS must stand by its objection to this Notice Duces Tecum.

It is also my understanding that we have resolved the issue with respect to the Novus 4000 policy and underwriting materials. You have agreed that Plaintiff is no longer seeking these documents. We have also agreed to conduct some depositions after the discovery cutoff of February 24, 2003.

If you have any questions or need any clarifications, please do not hesitate to contact me.

Very truly yours,

Jeffrey P. McSherry

JPM/smk