

CAUSE NO. 09-CV-0147

IN RE:

HURRICANE IKE LITIGATION

§
§
§
§
§
§

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
56TH JUDICIAL DISTRICT

Realtime Translation
CaseView®

ORAL AND VIDEOTAPED DEPOSITION OF



JAMES OLIVER

FEBRUARY 28, 2014

COPY



Systems Technology for the Litigation World

Litigation Group • Court Reporting • Video Production • Videoconferencing

For U.S. & International Services
800 - 745 - 1101

CAUSE NO. 09-CV-0147

IN RE:) IN THE DISTRICT COURT OF
)
 HURRICANE IKE LITIGATION,)
)
) GALVESTON COUNTY, TEXAS
)
)
) 56TH JUDICIAL DISTRICT
)

ORAL AND VIDEOTAPED DEPOSITION
 OF JAMES OLIVER
 FEBRUARY 28, 2014

ORAL AND VIDEOTAPED DEPOSITION OF
 JAMES OLIVER, produced as a witness at the instance of
 the Plaintiff and duly sworn, was taken in the above
 styled and numbered cause on February 28, 2014, from
 10:06 a.m. to 2:11 p.m., before KATERI A. FLOT-DAVIS,
 CSR, CCR, in and for the State of Texas, reported by
 machine shorthand, at the offices of Deats, Durts, Owen &
 Levy, 1204 San Antonio, Ste. 203, Texas, pursuant to the
 Texas Rules of Civil Procedure and the provisions stated
 on the record herein.

A P P E A R A N C E S

FOR THE PLAINTIFF:

J. STEVE MOSTYN
CAROLINE MAIDA
The Mostyn Law Firm
The Mostyn Law Firm
3810 W. Alabama Street
Houston, Texas 77027

FOR THE PLAINTIFFS STEERING COMMITTEE:

A. CRAIG EILAND (Remote Counsel)
AARON S. RANKIN
Law Offices of A. Craig Eiland
2211 The Strand
Ste. 201
Galveston, Texas 77550

SHAUN W. HODGE
The Hodge Law Firm
2211 The Strand
Ste. 202
Galveston, Texas 77550

FOR THE JAMES OLIVER:

PHILLIP DURST
Deats, Durts, Owen & Levy
1204 San Antonio
Ste. 203
Austin, Texas 78701

FOR THE DEFENDANT TEXAS WINDSTORM INSURANCE ASSOCIATION:

ANDREW T. MCKINNEY
Litchfield Cavo, LLP
One Riverway
Ste. 1000
Houston, Texas 77056-1944

Also Present:

Ray Aguirre
Peter Jennings
Chris Gillespie

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

Appearances..... 2

JAMES OLIVER

Examination by Mr. Mostyn..... 19

Examination by Mr. McKinney..... 145

Signature and Changes..... 149

Reporter's Certificate..... 151

EXHIBITS

NO.	DESCRIPTION	PAGE
1	10/28/2010 memorandum to Karen Barratt from James W. Oliver, Re: (1) TWIA - Hurricanes Dolly and Ike information, (2) Funding of losses 2008, attachments; TWIA0004187 - TWIA0004205.....	19
2	3/22/2011 memorandum to TWIA Board of Directors from James W. Oliver, Re: Legal Opinion about Payments of TWIA Losses above \$2.1 Billion for Hurricane Ike; TDI-1078.....	108
3	4/22/2009 e-mail string between Jim Oliver, Melanie Durst, Re: TWIA Upfront \$\$; two pages.....	143

1 THE VIDEOGRAPHER: Today is Friday,
2 February 28, 2014. The time is 10:06 a.m. We're on the
3 record, beginning Tape 1.

4 JAMES OLIVER,
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 Q. (BY MR. WEXLER) Mr. Oliver, would you --
8 Mr. Oliver, would you state your name, please, just for
9 the record.

10 A. James William Oliver.

11 Q. And you and I have, over the last six years or
12 so, known each other in a -- in a -- I guess in a
13 professional capacity; is that correct?

14 A. In the -- in -- not in the last three years,
15 but prior to that for three years, yes, sir.

16 Q. Yes, sir. You were the -- is it -- the term
17 General Manager of TWIA; is that correct?

18 A. That's correct.

19 Q. And can you tell the ladies and gentlemen of
20 the jury what that -- what those job duties were,
21 please.

22 A. Basically, I was like the -- well, I --
23 basically, the Chief Executive Officer of the Texas
24 Windstorm Insurance Association and the Texas FAIR Plan,
25 so I was in charge of the operations day-to-day and

1 implementing any changes that the Board of Directors at
2 both companies required.

3 Q. And did -- you dealt with matters that had to
4 do, I guess, with the underwriting side, correct?

5 A. Correct.

6 Q. And the claims side?

7 A. Yes.

8 Q. And issuing the policies and so forth, correct?

9 A. Yes.

10 Q. Would you state -- would you believe that
11 Mr. Warren had a more detailed knowledge of the claims
12 side of Texas Windstorm Insurance Association?

13 A. Definitely.

14 Q. And would you believe -- would you agree that
15 not all of your time was spent on claims -- let me just
16 rephrase that.

17 That only a portion of your -- would you
18 agree with me, Mr. Oliver, that only a portion of your
19 time was spent on claims, while Mr. Warren was the
20 person who was in charge of all claims?

21 A. Yes.

22 Q. When did you start at -- and it -- commonly
23 referred to as TWIA, correct?

24 A. Yes, T-W-I-A, TWIA.

25 Q. TWIA.

1 A. Yeah.

2 Q. Yeah, TWIA or T-W-I-A.

3 A. July of 2000.

4 Q. And you left -- was it in 2011?

5 A. No. Was it -- '11? Yeah. This is '14. Yeah,
6 2011. I actually left in March.

7 Q. I just had a memory of why, yeah.

8 A. Yeah. I left in March of 2011.

9 Q. Texas Windstorm Insurance Association is -- is
10 often referred to as the insurer-of-last-resort for the
11 coast, correct?

12 A. For windstorm and hail, yes.

13 Q. It is -- or let's talk about some -- some
14 changes here.

15 In 2009, there were some changes in the
16 legislation that governs TWIA regarding how it would be
17 funded, correct?

18 A. Yes.

19 Q. And I believe there were some changes in some
20 wording regarding the for-profit members that had to do
21 with issues regarding IRS tax status.

22 Are you familiar with that?

23 A. I don't recall exactly what it was, Mr. Mostyn.

24 Q. Do you recall that prior to 2009, the Section
25 2010 that dealt with TWIA said that the profits or

1 losses would be shared equally amongst the members?

2 A. No.

3 Q. Were you -- do you recall if that term -- the
4 fact that the profit and losses would be shared equally
5 amongst the members caused the IRS to not grant TWIA tax
6 exempt status?

7 A. That's not correct.

8 Q. Okay. Could you clarify that for me.

9 A. Yes. The losses, after premiums, reinsurance,
10 and other types of coverage that we had, would -- would
11 be shared by the association members, which would be the
12 insurance companies.

13 And then after a \$300 million of losses,
14 they would receive tax credits from the State of Texas
15 for their premium taxes.

16 Q. Yeah. Are you familiar, though, if the
17 statute, up until 2010, said the profits would be shared
18 amongst the members in --

19 A. No. The profits weren't. The profits went
20 into the Catastrophe Reserve Trust Fund, and that
21 started in 1993, I believe.

22 Q. Yeah. Let me ask you. I'm trying to be real
23 specific on the question here. Are you aware if the
24 statute said that the profits would be shared -- prior
25 to 2009, that the profits would be shared amongst the

1 **members?**

2 A. I don't believe they did.

3 **Q. Yeah. And that's not my question.**

4 A. Okay.

5 **Q. Not whether it was implemented that way or not,**
6 **but whether or not it was written that way in the**
7 **statute. Are you familiar if it was written that way in**
8 **the statute?**

9 A. I -- I'm not -- apparently I'm not, because --

10 **Q. Okay.**

11 A. -- I don't -- I don't remember, is the answer.

12 **Q. Okay. And so in practice, what we saw is that**
13 **any profits would be put into what was called a**
14 **Catastrophic Reserve Trust Fund, correct?**

15 A. Correct.

16 **Q. And I guess since you have left in 2011, and**
17 **that happened during session, I recall. That's -- that**
18 **was kind of that look on my face. It was during the**
19 **2011 session, correct?**

20 A. Yes, sir, uh-huh.

21 **Q. I believe it was after -- some point after**
22 **you'd given some testimony at the Texas Legislature,**
23 **correct?**

24 A. About -- there were two sets of testimony, but
25 **yeah, probably six weeks later, yeah, uh-huh.**

1 Q. Now, my recollection of that is that testimony
2 was somewhat contentious between you and some of the
3 members of the Insurance Committee?

4 A. Two members in particular, yes.

5 Q. And which two members were those?

6 A. Mr. Smithee and Mr. Taylor.

7 Q. And those -- do you recall what the -- what the
8 contention was? I mean, and do you feel that's a
9 correct terminology, that there was some contention?

10 A. I think that's fair, yeah.

11 Q. And it appeared to me, as I was watching it
12 across the street --

13 A. Yeah.

14 Q. -- that you'd had about enough of some of the
15 insinuations and accusations being made in the hearing.

16 A. Yes.

17 Q. Okay. And could you tell us -- it was -- it
18 was -- would you believe that after that hearing is when
19 began the process of removing you from the General -- or
20 began -- I wouldn't say the process, but would you say
21 that was the start of kind of what tipped the point to
22 your removal as the General Manager of TWIA?

23 A. I believe so, yes.

24 Q. And what reason were you given for -- first of
25 all, who removed you? Who asked you to -- to step down?

1 A. I don't remember the date, but following a
2 board meeting, rather lengthy board meeting, at the
3 South Austin Marriott, the chairman, who was Mike Gerik
4 at the time, and the lead counsel, Mike Perkins, visited
5 with me and indicated with me that the board had made a
6 decision to go in a different direction, and that they
7 would be terminating my employment.

8 **Q. Any indications of why at that time?**

9 A. No, sir. I asked and -- in fact, I asked if I
10 had done anything wrong, and the answer was, "No, we're
11 just going in a different direction." It was repeated,
12 the words "different direction."

13 **Q. Were you given an explanation at any subsequent**
14 **time?**

15 A. In June of that same year, 2011, I was told
16 that it was for cause, but wasn't told what the cause
17 was, just for cause.

18 **Q. Any time since then, have they indicated to**
19 **you -- has anyone on behalf of TWIA indicated to you**
20 **what the cause was?**

21 A. No, sir.

22 **Q. And I believe your termination resulted in --**
23 **or this process of your termination and your termination**
24 **resulted in a -- did you file a lawsuit against them?**

25 A. Yes. Not right then, but later on. I don't

1 remember the exact date.

2 **Q. And prior to filing this lawsuit, you had**
3 **inquired as to the cause of why you were terminated?**

4 A. Correct.

5 **Q. Do you have a belief as to why you were**
6 **terminated?**

7 A. I have a belief. I don't know if it's a fact,
8 but I have a belief, yes.

9 **Q. Could you tell us what that is, please.**

10 A. When -- going back to what you said initially,
11 about the different hearings at the Capitol, there was
12 one, if I remember correctly, in 2010, late, maybe
13 December, and then another in January of 2010. There
14 were questions that were asked about my terminating
15 the -- two of the lead claims people and why I had
16 provided severance packages for those two people.

17 And then after that, the next board
18 meeting -- or maybe -- I don't know if it's the next
19 board meeting or the one after that, sometime in early
20 March --

21 **Q. Go ahead. I'm sorry.**

22 A. Yeah, that's all right. Sometime in early
23 March, the Insurance Commissioner visited with the Board
24 of Directors in a closed session for approximately
25 five hours, at which time a couple of board members, one

1 in particular, came out and said to me, "Hey, we've got
2 your back. He wants you to leave. We want to keep
3 you."

4 **Q. Who wants you to leave?**

5 A. The Commissioner of Insurance.

6 **Q. Okay. Mr. Geeslin?**

7 A. Geeslin, correct.

8 And so I said, "Okay." And then that
9 meeting went on, and then we had another meeting within
10 a couple weeks. And he came back to that meeting, as
11 well, because after the first meeting, they said they
12 would be looking for a new General Manager over time;
13 that I would assist in that process and stay on as a
14 consultant to assist in the transition and the transfer
15 of knowledge and so forth.

16 Apparently he and whoever was advising him
17 at the legislature told him, "No, we want him out of
18 there." And he came back at the next meeting, and that
19 was the meeting that I mentioned that --

20 **Q. Do you have a belief of who was advising him at**
21 **the legislature?**

22 A. The same two gentlemen that I mentioned
23 earlier, Smithee and Taylor. That's just my belief. I
24 don't know that for a fact.

25 **Q. I understand. And that's -- that -- that's the**

1 question I asked you.

2 A. Yeah.

3 Q. The two individuals that were terminated that
4 you referred to were Mr. Reggie Warren, who was -- I
5 believe title was Vice-President of Claims, correct?

6 A. Correct.

7 Q. Vice-President of Claims, right?

8 A. Uh-huh.

9 Q. And a gentleman by the name of Mr. Bill Knarr,
10 who was -- whose title, I believe, was Manager of
11 Catastrophe Claims; is that correct?

12 A. Catastrophe Manager, yeah.

13 Q. Yes.

14 A. Uh-huh.

15 Q. And would you count that those folks were
16 number -- basically on a hierarchy chart, they were --
17 number one, being Mr. Reggie Warren over claims, and
18 number -- in the claims side of things, number one being
19 Mr. Reggie Warren for claims and number two being
20 Mr. Knarr of claims, correct?

21 A. There was one other person that was probably of
22 an equivalent level to Mister -- Reggie clearly was the
23 number one claims person --

24 Q. Uh-huh.

25 A. But then Kevin --

1 **Q. McFarlin?**

2 A. -- McFarlin was probably of an equal level with
3 Bill Knarr under Reggie.

4 **Q. And what was Mr. McFarlin's title, if you**
5 **recall?**

6 A. I -- I think he was Claims Manager, but I'm not
7 certain of that. I don't remember the exact title.

8 **Q. Now, just to go back -- and one of the things**
9 **that happens in a depo that seems kind of odd, instead**
10 **of you and I -- I'm going to ask you questions that**
11 **you're -- you're going to look at me and say, you know**
12 **this, right?**

13 A. Uh-huh.

14 **Q. And so -- but I've gotta get a record, and I've**
15 **gotta -- I've gotta get a -- an understanding of -- for**
16 **the jury, if -- if we get into the issue, kind of**
17 **understanding the structure of TWIA. Okay?**

18 A. Okay. Sure.

19 **Q. Texas Windstorm Insurance Association has**
20 **members which are -- and -- and correct me if I'm wrong,**
21 **because you certainly know this better than I do,**
22 **Mr. Oliver, at least at the time you were there. But**
23 **they have members, and those members are the for-profit**
24 **insurance companies who sell insurance in Texas but do**
25 **not write on the 14 coastal counties; is that correct?**

1 A. No. I wouldn't characterize it that way.

2 **Q. Okay. Would you tell -- I'll tell you what.**

3 **We'll try it this way: Tell me what the members are.**

4 A. Okay. The members of the association are the
5 property insurance companies -- that's important.

6 They're the property insurance companies that write
7 property insurance throughout the state of Texas.

8 **Q. And I guess it -- it doesn't matter if they**
9 **write -- it has some impact if they write in the coastal**
10 **counties or not -- how does that work? You understand**
11 **what I'm saying?**

12 A. Uh-huh.

13 **Q. Yeah.**

14 A. Yeah. To answer your question you didn't quite
15 ask: It doesn't matter whether they write on the coast
16 or not.

17 **Q. It does?**

18 A. No, It doesn't.

19 **Q. Right.**

20 A. They're still members of the association.

21 **Q. Right.**

22 A. As long as you write property insurance in
23 Texas, you're a member of the association.

24 And then some of those insurance companies,
25 if they do write business directly, windstorm and hail,

1 receive credits towards their assessments, and it
2 reduces the charge that they would receive if they
3 received an assessment.

4 Q. Is it -- and it's -- it's 14 coastal counties,
5 right, or am I wrong? Is it 13? I'm having --

6 A. 14 coastal counties, plus a little sliver of
7 Harris County.

8 Q. Yeah, up there by the -- by the -- I guess the
9 ship channel, right?

10 A. Correct, yeah.

11 Q. Just out of curiosity, how did that come about?
12 Do you know how?

13 A. I did know. I don't recall exactly. That
14 little piece came in there. I'm not --

15 Q. Yeah.

16 A. -- quite sure, but I think it was probably the
17 result of lack of market in that area.

18 Q. And so what would happen is, if you write part
19 of the coastal counties, such as -- prior to Ike, there
20 were insurance companies that would write the northern
21 half of Galveston, right?

22 Prior to Ike occurring, there were --
23 there -- the availability of windstorm coverage by the
24 for-profit companies was -- was -- was available on the
25 northern half of Galveston County. Would you agree with

1 **that?**

2 A. No.

3 **Q. Okay. Not at all?**

4 A. Very limited.

5 **Q. Okay.**

6 A. Not in Galveston County, for sure.

7 **Q. If you wrote -- if they do write in one of**
8 **these 14 coastal counties, so to make sure I'm clear,**
9 **they would get a credit for what they wrote against**
10 **their assessment, right?**

11 A. Yes.

12 **Q. How did that work?**

13 A. There's an actuarial formula --

14 **Q. Okay.**

15 A. -- actually. I obviously don't remember that.
16 But there's actually an actuarial formula that's based
17 on their statewide writings, their writings on the
18 coast, and then it's -- mathematical formula.

19 **Q. And do you remember -- I have the funding chart**
20 **here, but when Ike -- when -- when Dolly and Ike**
21 **occurred, the funding mechanism for the levels that were**
22 **available, do you have that still in -- in your mind?**

23 A. Sort of.

24 **Q. Okay.**

25 A. I can -- I can do the best I can. You want to

1 give me the chart or --

2 Q. Well, if -- that's what -- if she has it here,
3 we're going to do the chart.

4 A. Yeah. I can explain the chart better than I
5 can do it off the top of my head.

6 Q. Here we go.

7 MR. MOSTYN: There's nothing here. Where
8 would that be? It might make for a good visual.

9 (Discussion off the record.)

10 Q. (BY MR. MOSTYN) I'm going to give you -- I'm
11 going to go ahead and hand this to you, and I think it
12 will help a little bit. We'll mark that as Exhibit
13 No. 1.

14 I'm sorry, Mr. Oliver. What I'm going to
15 do is in -- is I'm just going to -- I'm going to slide
16 them to her, and she'll slide them to you.

17 A. Yeah.

18 Q. Because we've got --

19 A. Because she's gotta mark them.

20 Q. Yeah. She's got a pretty good distance here.

21 A. Okay.

22 (Exhibit No. 1 marked.)

23 MS. MAIDA: No. 1.

24 MR. MOSTYN: Mr. Durst.

25 MR. DURST: Thank you, sir.

1 MS. MAIDA: What number is that?

2 MR. MOSTYN: Exhibit No. 1.

3 MR. GILLESPIE: What number is that?

4 MR. MOSTYN: To pull up?

5 MS. MAIDA: 261.

6 MR. MOSTYN: 261.

7 Q. (BY MR. MOSTYN) The last chart, the last page
8 of this is -- is -- is a second-event funding,
9 Mr. Oliver, for 2008. That's on the last page of
10 Exhibit 1.

11 A. Uh-huh.

12 Q. This would be an event funding, as it says,
13 available for Ike, correct?

14 A. Ike and Dolly both.

15 Q. Well, the reason I say "second-event funding,"
16 it says "Available for Hurricane Ike."

17 A. Right.

18 Q. I think the original -- I think what --

19 A. Dolly had already used up some --

20 Q. Had used the operating account, correct?

21 A. Not all of it, but a portion of the reserve
22 fund, yes, sir.

23 Q. Because my recollection is, is the original
24 funding for losses would go into the operating -- come
25 out of the operating account, correct?

1 A. Correct.

2 Q. Which was -- was it 160 million in 2008 when
3 you all started? Can you recall?

4 A. You mean --

5 Q. How much was in the operating account before
6 Dolly hit? Do you recall?

7 A. Let's see -- I don't. I don't recall --

8 Q. Okay.

9 A. -- what the --

10 Q. But the first layer that's missing off the
11 second-event funding would be available funds in the
12 operating account, correct?

13 A. Correct.

14 Q. And you had to keep some to operate, but you
15 could pay -- particularly in a situation where there
16 wasn't a major disaster like a hurricane, you could pay
17 for -- hail claims and so forth, you all would pay out
18 of the operating account, correct?

19 A. No. Let me make a distinction.

20 Q. Okay.

21 A. There's -- there's the reserve fund, which was
22 owned by the State of Texas, controlled by the Insurance
23 Department, and then our operating account was the cash
24 on hand or cash flow.

25 Q. Okay. The Catastrophic Reserve Trust Fund

1 was -- are you -- are you sure it was owned by the State
2 of Texas or just maintained and kept by the State of
3 Texas?

4 A. No. It's owned by the State of Texas and
5 maintained by the -- and controlled by the Texas
6 insurance department. We would, at the end of each
7 year, would true up our results for the year, and if
8 there was any profit, that would be then sent by our
9 accounting vice-president to the Texas Department of
10 Insurance, and then to the controller who held it.

11 Q. You -- yeah. You're aware underneath the
12 statute, though, sir, it says that that -- those funds
13 are held in trust for the payment of claims by -- for
14 Texas Windstorm --

15 A. Correct.

16 Q. -- Association?

17 A. Correct. But the State held it.

18 Q. Held it, right --

19 A. Right.

20 Q. -- but could not touch it for general revenue
21 and was not commingled with general revenue?

22 A. Well, that's a question because we had several
23 times when the legislators tried to take it.

24 Q. I understand what the politicians tried to do.

25 A. Yeah.

1 Q. I'm -- I'm telling you that underneath the
2 statute, it said it was to be held in trust for --

3 A. Yes, sir. I agree.

4 Q. -- the payment of these claims?

5 A. I agree.

6 Q. I -- I guess the choice is the State of Texas
7 or Goldman Sachs. Which is best, I do not know.

8 A. We didn't get any interest on it much so...

9 Q. And so then we would go to a -- this one here,
10 I -- it's kind of -- I don't remember this one, the "30
11 Million Assessment to Pool (Reimbursable)."

12 A. Uh-huh.

13 Q. So you would have a -- so you would go through
14 what was in the catastrophic reserve trust fund,
15 correct?

16 A. Correct.

17 Q. Which was the -- the profits that were held by
18 the State, correct?

19 A. Uh-huh. Correct.

20 Q. And then there would be a 200 million
21 assessment, correct?

22 A. This is for Ike now, yes.

23 Q. Yes, sir.

24 A. Uh-huh.

25 Q. And let me back up because I'm -- you're still

1 looking at a chart that is not the Ike chart.

2 My recollection is there must have been
3 \$100 million assessment that was available for Dolly; is
4 that correct?

5 A. Correct, yeah.

6 Q. Okay.

7 A. That's why there's only 200 million left of the
8 nonreimbursable assessment.

9 Q. Can you tell me -- and I gave you this to kind
10 of refresh -- fresh your memory.

11 A. Uh-huh.

12 Q. Are -- can you tell us the layers before Dolly
13 that were available.

14 A. Yeah. There was -- we had the reserve trust
15 fund, and I don't remember the exact balance of that
16 fund, but --

17 Q. I think it was about 400-something million?

18 A. I think it was 500 million.

19 Q. Was it?

20 A. Yeah, something.

21 Q. Okay.

22 A. But anyway, in that neighborhood.

23 And then we had a \$300 million assessment
24 of the insurance companies that was nonreimbursable, so
25 they don't get any money back for that or any tax

1 credits or anything.

2 Q. Right. And then you had multiple layers --
3 going forward before an event occurred, you had multiple
4 layers of reinsurance that went up to about 1.5 billion
5 in reinsurance, correct?

6 A. We had 1.5 billion in reinsurance that I
7 purchased, of which 60 million we -- was placed with
8 Lehman Brothers Re in Bermuda. And when Lehman Brothers
9 went down, that -- so that additional 60 million.

10 So it was -- it was 1-point -- it ended up
11 being 1.5 billion that was recoverable, minus the 60
12 million that Lehman Brothers left us holding, yeah.

13 Q. I guess in that situation, it was better for
14 the State to be holding.

15 One of the -- and then after that, just so
16 the -- so we have an understanding, after that,
17 underneath the statute in effect at the time that Dolly
18 and Ike occurred, there would be unlimited assessments
19 made. On this, it says to the pool, but that would be
20 to the members, correct?

21 A. Correct. That would be those property
22 insurance companies that we talked about earlier.

23 Q. All right.

24 And they would have to pay that assessment
25 based upon -- this is kind of a simplified way of saying

1 it, but based upon their pro rata share of homeowners
2 that they wrote in the state minus any credit they would
3 get, correct?

4 A. It's more complicated than that, but that's --

5 Q. And you got -- I -- I --

6 A. -- in essence, that's what it is.

7 Q. I'd love to hear --

8 A. Yeah. I don't have the formula.

9 Q. Okay. But it's basically if you write
10 22 percent of the state, you owe 22 percent of the
11 assessment minus credits and some other things that are
12 in the actuarial form, right?

13 A. Correct.

14 Q. Basic premise being the larger of an insurance
15 carrier you are, the larger your assessment would be,
16 correct?

17 I mean, the larger of a property insurance
18 carrier -- the larger percentage of property insurance
19 you wrote in the state reflected the size of the
20 percentage of your assessment?

21 A. Not always.

22 Q. Okay. Tell me -- explain it to me.

23 A. Well, for a long time, some of the larger
24 carriers wrote a lot more business on the coast and had
25 sufficient credits that they were not necessarily the

1 highest.

2 **Q. Okay.**

3 A. Now, as TWIA became more and more the company
4 of last resort totally on the coast, then it began to
5 fall, as you indicate, to pretty much if your market
6 share is X, and you're the highest market share in the
7 state or the second highest, you're probably going to be
8 the second highest assessment. But it -- it varied over
9 time based on their credits.

10 **Q. And the board of TWIA -- or how the board -- do**
11 **you recall that how the board was selected for TWIA**
12 **changed in 2009 in legislation? Are you familiar with**
13 **that?**

14 A. Yes. I think I recall.

15 **Q. In that the -- are you familiar with an issue**
16 **with the IRS -- are you -- will you -- will you agree**
17 **with me that in 2008, the tax status with the Internal**
18 **Revenue Service was -- was not of a tax-exempt**
19 **organization?**

20 A. Correct. We paid federal tax.

21 **Q. And were you familiar with an issue that some**
22 **of that had to do with how the board was picked and**
23 **controlled?**

24 A. That and -- that and some other things, but
25 yes, I'm very familiar with it.

1 Q. And tell me what the other things were,
2 Mr. Oliver.

3 A. Selection of the board, profits of the company,
4 had to -- and then there were some wording, and I don't
5 remember now or recall what it was. There was some
6 wording in the statute itself separate of that that
7 needed to change.

8 Q. Well, you remember -- are you familiar with the
9 wording that changed in 2009 that substituted "insureds'
10 losses operating expenses of the association" -- well,
11 let me back that up.

12 That the 2009 amendment substituted the
13 language "insureds' losses and operating expenses of the
14 association in excess of premium and other revenue for
15 the" was substituted for the language that said "the
16 writing, expenses and profits" -- "profits and losses of
17 the association will be shared," are you familiar with
18 the language as it occurred in 2009?

19 A. I -- I vaguely recall that there -- I know
20 there were changes in the wording, and I was involved in
21 that, but I don't recall at this point, since it's been
22 so long, exactly what the wording was, though.

23 Q. Do you remember if the wording and what it said
24 in 2210.052, said, "Each member of the association shall
25 participate in the writing, expenses, profits and losses

1 of the association and the proportion that the net
2 direct premium of that member during the preceding
3 calendar year bear" -- "bears to the aggregate net
4 direct premium by all members."

5 And my key is, is that underneath the
6 statute as it existed when Ike hit, that profits were
7 something that the members could share in in the
8 statute?

9 A. That -- it may have said that in the statute,
10 if that's -- I don't know that, but it may have said
11 that, yes.

12 Q. Have you ever thought what the balance of the
13 Catastrophe Reserve Trust Fund would be today if Ike and
14 Dolly hadn't occurred?

15 A. Probably well over a billion dollars.

16 Q. And underneath the language, if the language
17 had not been changed, the profits could have been shared
18 amongst the members?

19 MR. MCKINNEY: Objection. Form.

20 A. I started in 2000, as I mentioned. No one ever
21 asked for the profits.

22 Q. (BY MR. MOSTYN) At some point you said maybe
23 some of the politicians looked at the trust fund?

24 A. The politicians looked at it to give the money
25 to different state causes, but nothing to do with the

1 insurance companies.

2 Q. They were looking, maybe, to use the money to
3 fill some budget gaps?

4 A. Correct.

5 Q. And was that prior to Ike and Dolly? I assume,
6 because there was no money left after Ike, correct?

7 A. Yes. In fact, you probably know better than I,
8 but back in the 2007 Legislative Session, when they were
9 having difficulty balancing the budget, that was when we
10 were asked what our thoughts were about "borrowing," is
11 the term they used, the reserve trust fund to help
12 balance the budget.

13 But then we would certainly get the money
14 back. And we pointed out that because the State's
15 fiscal year was September 1st, I believe --

16 Q. Correct.

17 A. -- right in the middle of hurricane season, to
18 borrow the money, when we might need it the most, would
19 be a mistake.

20 And we met with a number of people, we,
21 being me and my general counsel, at the State and then
22 the legislature and explained that this wouldn't be a
23 good idea, and they backed away.

24 Q. And that indicates, though, Mr. Oliver, that
25 the money didn't belong to the State? It was -- it was

1 held by the State, correct?

2 A. Probably, yes.

3 Q. So basically, what we had at the time that
4 Dolly comes in is you have some funds that were
5 available from the operating account, correct?

6 A. Cash on hand, yes, uh-huh.

7 Q. And you would pay claims on cash on hand,
8 right?

9 A. Correct.

10 Q. You had, then, whatever was in the catastrophic
11 reserve trust fund, which was, you think, about 500
12 million, correct?

13 A. In that neighborhood, yes.

14 Q. And then you had a \$300 million assessment that
15 was available?

16 A. Nonreimbursable.

17 Q. Nonreimbursable?

18 A. Uh-huh.

19 Q. And what that means is that they could not take
20 any tax credit for that assessment, correct?

21 A. Against their premium taxes, correct.

22 Q. And to clarify that: On the last level of
23 assessments, if they had premium taxes, they could take
24 a credit for what they had paid in assessments, correct?

25 A. Yes.

1 Q. Do you know if they could take the credit if
2 they had reinsurance that paid for the assessment?

3 A. I don't know the answer to that.

4 Q. Okay. Because there's been some discussion on
5 whether they're -- they could --

6 A. Uh-huh.

7 Q. -- and that would be, as you can imagine,
8 actually financially beneficial to them.

9 A. Sure. I don't know the answer, though.

10 Q. Okay. You don't know if that ever came up in
11 any -- you don't know the answer never --

12 A. I don't recall it ever coming up when I was
13 there.

14 Q. There was a -- and then after the -- the 500
15 million cata -- catastrophic reserve trust fund, the 300
16 million in assessments, and then we had about
17 1.5 billion in reinsurance, correct?

18 A. Yes.

19 Q. We had, which I didn't know until today, you
20 had 60 million with Lehman that just went away, right?

21 A. Correct.

22 Q. So while it was there, it wasn't available,
23 right?

24 A. Correct.

25 Q. And then we have a situation above that where

1 you can do -- underneath the statute in place at the
2 time, you could do unlimited assessments to the members,
3 correct?

4 A. Correct.

5 Q. Let's to the first page of this -- this is from
6 you, Mr. Oliver, Exhibit 1, correct?

7 We could have saved ourselves from
8 guessing, I guess, if I would have read the first
9 sentence that said this money -- that "...TWIA had 470
10 million in the" catastrophic "Reserve Trust Fund," which
11 you're memory's pretty good.

12 A. Uh-huh.

13 Q. Do you see it says, "In 2008, TWIA had 470
14 million in the Catastrophe Reserve Trust Fund."

15 A. Uh-huh. I see that.

16 Q. "In addition, TWIA assessed insurance companies
17 for 530 million, of which 230 million is subject to
18 premium tax credits over an" approximately "five-year
19 period."

20 Do you see that?

21 A. Yes.

22 Q. Can you -- I was unaware and a little confused.
23 The 230 million that was subject to premium tax credits,
24 at -- at what level was that done? Is that above the
25 assessments? Above the -- the reinsurance? Is that --

1 **at that level?**

2 A. No, sir. It wasn't. It was -- it was
3 before -- before we got to the reinsurance. The
4 reinsurance had a deductible of -- I have to look. I
5 can't remember exactly, but it was -- it was like 600
6 million. So it wouldn't pay until we got over a loss of
7 600 million.

8 So in order to fill that gap between zero
9 and 600 million, we had to make the assessments.

10 **Q. So you had 1.5 -- here -- here's what I'm**
11 **interested in: When did you all -- when, at the end of**
12 **the deal, do you run out of reinsurance under this --**
13 **this -- this financing system?**

14 A. Well, reinsurance is an event.

15 **Q. I got you.**

16 A. It's not -- it's not an aggregate.

17 **Q. I got you.**

18 A. Whereas the reserve fund was an aggregate.

19 **Q. So reinsurance for Dolly had a deductible, and**
20 **reinsurance for Ike had a deductible?**

21 A. Correct. And we didn't reach the deductible
22 for Dolly.

23 **Q. Okay.**

24 A. We did reach it for Ike.

25 So basically, we paid Dolly out-of-pocket

1 with the reserve trust fund, in other words, cash on
2 hand, and that depleted it, as it indicates here, 100
3 million out of the reserve trust fund for Dolly. The
4 rest of it came out of cash on hand.

5 **Q. Yeah, I remember you all had 100-something**
6 **million in cash on hand?**

7 A. We had a lot more than that actually.

8 **Q. Okay.**

9 A. But yeah. But we -- we had to keep a certain
10 amount, obviously, on hand at all times for operating
11 costs, to pay people's salaries and benefits and light
12 and heat and all that sort of thing. And then so we
13 used 100 million of the assessments -- excuse me -- the
14 reserve trust fund for Dolly, and then paid the rest out
15 of -- okay.

16 And then when we got to Hurricane Ike, we
17 only had 200 million left over -- excuse me. We only
18 had 370 million left over, but we had to get to that
19 600-million deductible for the reinsurance. So the
20 difference came out of the re -- the insurance
21 companies.

22 **Q. So -- so add it up to me. And here's what I'm**
23 **asking you to do.**

24 A. Uh-huh.

25 **Q. You had 370 million that was available in**

1 **the -- the catastrophic reserve trust fund.**

2 A. Yeah. I don't -- let me see if I -- let me
3 reread this because I -- I don't recall exactly. Let's
4 see what it says here.

5 All right. So we had 470 million in the
6 reserve trust fund.

7 **Q. Uh-huh.**

8 A. And we assessed the insurance companies 530
9 million, and 300 million, as you've mentioned before, is
10 subject to the tax credits.

11 **Q. Is not subject?**

12 A. Not subject to tax credits, and 230 million of
13 the 530 million, that covered Dolly and Ike up to the
14 deductible for Ike of 600 million.

15 **Q. Okay. And then here's my question: And then**
16 **you have 1.5 --**

17 A. Million --

18 **Q. -- billion on top of that?**

19 A. Correct.

20 **Q. Okay. So like any other insurance policy, you**
21 **have the available policy limit, but you must meet your**
22 **deductible first?**

23 A. Correct.

24 **Q. Okay. And that gave you, then, basically this**
25 **number I've seen repeatedly, 2.1 billion?**

1 A. Right. Had the loss not exceeded 2.1 billion,
2 we would have been covered under what we just discussed.

3 **Q. All right. And anything over 2.1 billion would**
4 **have to go into this final layer of assessment, which**
5 **provided some premium tax credit?**

6 A. Correct.

7 **Q. And this funding mechanism wasn't set up by**
8 **TWIA; it was set up by the Legislature, correct?**

9 A. That's correct. Well, let me back up.

10 They allowed us to do it certain ways, but
11 we purchased the reinsurance and all that. We -- we
12 made the decision to buy the billion and a half of
13 reinsurance, and so forth.

14 **Q. Curiosity: If -- if you hadn't bought the**
15 **reinsurance, how would the funding had worked, or were**
16 **you required to go buy reinsurance?**

17 A. No requirement. It said we could. We had the
18 option of buying it.

19 **Q. Okay.**

20 A. Had we not bought it --

21 **Q. That would --**

22 A. -- that billion and a half would have been
23 assessed to the insurance companies.

24 **Q. Because, you know, there were some years after**
25 **this where there was no reinsurance; isn't that correct?**

1 **You may be gone by then.**

2 A. Yeah, no. The years that I was there, we
3 bought reinsurance every year, yeah. I -- it may have
4 happened after I left. I don't know. I don't know what
5 their deal was.

6 There was -- no.

7 **Q. Go ahead.**

8 A. I'll let you ask.

9 **Q. No. Go ahead. What were you going to say?**

10 A. Well, there was -- there was a lot of --
11 because reinsurance was very, very expensive, as you
12 know, there -- and you know, you've heard all this. But
13 there was a lot of feedback from the Legislature
14 about -- some members of the Legislature, about, wow,
15 look at this huge cost of reinsurance, you're wasting
16 all this money that ought to be going in the reserve
17 trust fund.

18 **Q. Yeah, I was about to -- well, the thought that**
19 **was running through my mind is it became like a**
20 **political soup, right --**

21 A. Yes.

22 **Q. -- with a bunch of cooks in the kitchen trying**
23 **to add different ingredients, right?**

24 A. Correct.

25 **Q. And some of the cooks didn't have a clue how to**

1 **make the soup?**

2 A. Well, it would -- it -- it's easy when you
3 don't have a loss to say, wow, you spent a hundred
4 million dollars for reinsurance. That would have been a
5 reserve trust fund and, you know, this.

6 But then when you have a \$1.5 billion loss
7 and you hit the reinsurers for it --

8 **Q. Yeah, they probably would have terminated you a**
9 **lot quicker --**

10 A. Yeah.

11 **Q. -- if you had not bought \$1.5 billion in**
12 **reinsurance?**

13 A. Yeah. But they -- after the fact, we got a lot
14 of second guesses, yeah.

15 **Q. I know.**

16 A. And then they shut up after the 1.5 billion.

17 **Q. And then, believe it or not, after you left,**
18 **they criticized the new manager for buying reinsurance**
19 **again.**

20 A. Really?

21 **Q. Yeah.**

22 A. Really? Okay.

23 **Q. And then there was a discussion on whether you**
24 **have reinsurance, and then when you're -- if I recall**
25 **correctly, they either bought none or bought extremely**

1 **little.**

2 A. Yeah.

3 **Q. Just -- okay.**

4 A. I don't know. We always bought it, so I don't
5 know.

6 **Q. Okay. So that's why I frequently have heard**
7 **there was about 2.1 billion available for Ike, right?**

8 A. Yes, sir.

9 **Q. And that's technically not correct in my**
10 **question, because there was 2.1 billion available for**
11 **Ike before we hit unlimited reassessments?**

12 A. That's a -- yes, correct.

13 **Q. And what was the procedure, or what would**
14 **happen if one of the companies was unable to pay their**
15 **assessment? Did it get disbursed to the others?**

16 A. Yes. If a company would not pay it, for
17 whatever reason, bankruptcy or whatever, and we would
18 then spread that assessment portion out among the
19 remaining companies.

20 **Q. One of the things that an insurance company has**
21 **to do is -- is -- is set reserves on claims, correct?**

22 A. Yes.

23 **Q. And can you explain what that is?**

24 A. Well, you -- you initially go out -- well,
25 there's two kind of reserves. There's bulk reserves,

1 and there's individual case reserves. Case reserves,
2 you send an adjuster out to the site, whatever it is.

3 That adjuster evaluates the risk, makes an
4 estimate, and then you estimate what the ultimate
5 payment might be as best you can, recognizing
6 occasionally you'll have to make adjustments up and
7 down, both.

8 Bulk reserving is where you try to estimate
9 what the overall amount of the loss is based on how many
10 risks you have in the area, the severity of the storm,
11 the initial investigation as to certain losses, to give
12 you some idea of averages, and then you come up with
13 bulk reserves. Because different folks kind of want to
14 know, well, okay, you haven't -- you haven't settled all
15 the claims and you aren't for a year or two, but can you
16 give us an idea of what the total loss might be.

17 And you say, well, based on what we see so
18 far, and, you know, you play with the numbers, it's
19 2 billion or whatever number it might be.

20 **Q. Uh-huh. And originally, you had noted, I -- I**
21 **believe in a September 17th, 2008 board meeting, in a --**
22 **in a thumbnail, that you had about 42 billion in insured**
23 **property in the six counties that were affected by the**
24 **storm.**

25 A. I -- I don't remember the number, but that

1 sounds reasonable.

2 Q. Yeah. And that if you had a -- a 10 percent
3 impacted, it would be -- that's not hard math. It would
4 be 4 billion -- -

5 A. Yeah.

6 Q. -- correct?

7 A. Yeah.

8 Q. And I think that initially was more of a -- a
9 general estimation, right?

10 A. Yeah, that --

11 Q. That was pretty quick right after the storm,
12 that's September 17th, 2008.

13 A. Yeah, that -- that's just a -- here's what we
14 have and if it's 10 percent, yeah, without even looking
15 at anything, yeah.

16 Q. Right.

17 A. Yeah.

18 Q. And then at some point, you do a little more
19 looking, and I think you come to the determination
20 that -- that you think the storm is going to come in
21 around 2.5 billion; is that correct?

22 A. That was my estimate early on, yeah.

23 Q. And I believe you request, at that point, that
24 there be an assessment of \$830 million, don't you,
25 correct?

1 A. That's correct.

2 Q. And I believe the board rejected that, correct?

3 A. They did, yes.

4 Q. And that vote, if I am correct, was along the
5 lines of the for-profit members voting -- the for-profit
6 insurance company members voting no, and the consumer --
7 or -- or -- the consumer reps on the board voting yes;
8 is that correct?

9 A. I -- I don't recall what the vote was.

10 Q. And any way it goes, you ended up getting 430
11 million, not 830 million, correct?

12 A. That sounds right, yeah.

13 Q. And this \$400 million that we are talking about
14 brought you -- or you -- do you recall if this
15 \$430 million brought you to the capacity, was -- was not
16 on top of the 2.1, but that \$400 million brought you to
17 the ability to pay 2.1 billion total?

18 A. Brought us to the deductible for the
19 reinsurance, yeah.

20 Q. Right. And then -- which then took you to
21 2.1 billion total?

22 A. Yes.

23 Q. Was there inquire -- can you tell me, in
24 regards to the assessments, I have e-mails from
25 Mr. Taylor, Senator Taylor, then-Representative Taylor,

1 inquiring about would there be more assessments and such
2 things as that. Were there other politicians that --
3 did you ever speak with Mr. Taylor about assessments?

4 A. Yes.

5 Q. Did you ever speak with Mr. Taylor about
6 lawsuits?

7 A. Yes.

8 Q. Did you ever talk -- did Mr. Taylor ever talk
9 to you with specificity about my lawsuits, Mostyn Law
10 Firm lawsuits?

11 A. Yes.

12 Q. Was Mr. Taylor's feelings -- would you describe
13 Mr. Taylor's feelings towards me as adversarial?

14 A. Yes.

15 Q. Hostile?

16 A. Yes.

17 Q. Other than Mr. Taylor, did you have
18 conversations with Representative Smithee about
19 assessments?

20 A. Yes.

21 Q. And conversations with Mr. Smithee about
22 lawsuits?

23 A. Yes.

24 Q. And was there specific conversations with
25 Representative Smithee regarding the clients represented

1 by my law firm, meaning my lawsuits?

2 A. Yes.

3 Q. And was Mr. Smithee hostile towards
4 represent -- the clients that I was representing in
5 particular?

6 A. No.

7 Q. Okay. That came more from Mr. Taylor; is that
8 correct?

9 A. Correct.

10 Q. In regards to the assessments, when you
11 requested \$830 million, correct?

12 A. Yes, sir.

13 Q. Did you receive pushback from the members of
14 the board who were going to have to pay the assessment?

15 A. No.

16 Q. Okay.

17 A. Not because of the -- not pushback about the
18 assessment. It was more let's see how the storm
19 develops, and if you need more money, we'll get you more
20 money. But right now to get to the deductible for
21 reinsurance, and we don't know, it's going to take
22 awhile -- property losses don't develop, as you know,
23 initially.

24 We didn't know for really a year or two how
25 many -- how much we would get, and then of course, you

1 begin getting litigation and so forth.

2 So the -- the feeling was on the board,
3 take this amount, get you to the reinsurance, and then
4 later on, if you need more, come back and we'll talk
5 about it.

6 Q. And I think that's actually indicated in some
7 of the board minutes -- there was meeting -- minutes of
8 these meetings that were kept, correct?

9 A. Yeah. Absolutely.

10 Q. And I believe in the minutes of these meetings,
11 it -- that is indicated that, basically, that they
12 would -- let's see how far this takes us, and if there's
13 a need, we'll come back later and do an assessment,
14 correct?

15 A. Correct.

16 Q. Now, did Mister -- Representative Taylor ever
17 call you about -- or talk to you about concerns
18 regarding additional assessments?

19 A. Yes.

20 Q. Okay. And in what year or years do you
21 recall -- I -- I -- I believe there was some
22 communication in 2008. Do you recall that, initially,
23 when the initial numbers were there?

24 A. I -- yeah. I don't recall the years, exactly.
25 It was probably '8, '9 and '10, to be honest with you,

1 because there was conversations in every year, and it
2 did include assessment conversations.

3 **Q. And at some point, the conversation turns to**
4 **that, as the litigation is going, that this need to**
5 **maybe look back at assessments is -- is -- that was**
6 **originally not done, you may need to go back and look at**
7 **having to do that, correct?**

8 A. Yeah. We had a number of discussions, and it's
9 in the board notes, meetings, I'm sure, at different
10 board meetings in 2009 and 2010, as the claims began to
11 develop, litigation occurred, and it was clear that --
12 when it became clear, I believe, it may have been 2010
13 by then, but that we might exceed 2.1 billion, that we
14 may need to make additional assessments.

15 We hadn't gotten there yet, and we had
16 plenty of cash on hand.

17 And then the question was: Well, we'd been
18 collecting premiums --

19 **Q. Uh-huh.**

20 A. -- in 2009 and 2010, and we really had very low
21 catastrophe years. Just pay it out of your existing
22 premiums and see how that goes.

23 **Q. Were you paying it out of the cash on hand?**

24 A. Correct.

25 **Q. And I believe Commissioner Geeslin had sent --**

1 were you there when he sent a letter regarding he didn't
2 believe it needed -- should be done that way?

3 A. Yes. I was.

4 Q. Do you -- and he believed that, I guess, an
5 assessment needed to be done?

6 A. I don't recall him saying specifically it
7 needed to be done. What I recall is he said you need to
8 review it.

9 Q. Okay.

10 A. I -- I think that's right, but I don't --

11 Q. Okay.

12 A. -- remember --

13 Q. Are you aware that, several months ago, there
14 was a vote on whether -- do you know where the -- the
15 total on payouts on Ike is -- is at?

16 A. No.

17 Q. Okay.

18 A. I have no idea.

19 Q. The 830 million that you requested -- and it
20 would have taken you to 2.5 billion, correct?

21 A. Yeah -- yeah. I think so. That -- that sounds
22 right, yeah.

23 Q. And so -- and then at the time, instead of 830
24 million, they agreed to 400 million, which took you to
25 2.1 billion, right?

1 A. I think it was 430 million.

2 **Q. 430 --**

3 A. Yeah.

4 **Q. -- and is the 30 to deal with that little --**

5 A. Yeah, the little -- that -- no --

6 **Q. What is that?**

7 A. Well, it's --

8 **Q. There's a little carve-out on your chart,**
9 **right, that says --**

10 A. Yeah. That -- that extra 30 million had to do
11 with -- if you remember correctly, the -- the
12 catastrophe reserve trust fund had 470 million --

13 **Q. I gotcha.**

14 A. -- and that picks up that extra 30 million,
15 yeah.

16 **Q. Okay. I'm just -- I'm not great at math,**
17 **but --**

18 A. That's all right.

19 **Q. -- I can -- I can find holes that I need to**
20 **plug in my mind, at least.**

21 So what we saw or what happened was, is
22 instead of going to 2.5 billion in -- in -- in funds
23 available for Ike, if you'd done the 830 million, it
24 would have taken you to 2.5 billion, right?

25 A. Uh-huh.

1 Q. They did 2.1 billion assessment?

2 A. Correct.

3 Q. Or assessment up to 2.1 billion, correct?

4 A. Well, not --

5 Q. They -- they --

6 A. -- assessment --

7 Q. -- assessed which would have given you capacity
8 to pay up to 2.1 billion?

9 A. We -- we paid two-hundred and -- excuse me --
10 we paid -- 530 million was assessed. That got us up to
11 2.1 billion is how it worked.

12 Q. And were you aware that the -- the payouts now
13 on Ike -- when you left, how high were they? Do you
14 know? Were you -- about when you -- when you left, what
15 the number was?

16 A. I don't recall the exact number. It was -- it
17 was right at 2.1. It may have been slightly less than
18 2.1 billion, but there was a lot of pending litigation,
19 so...

20 Q. And I think on this thing here, on what we were
21 looking at, which I marked as Exhibit No. 1, that was in
22 October 28th of 2010. Yeah, it says "TWIA" -- the --
23 the third paragraph there, Mr. Oliver says, "TWIA has
24 received 4,250 lawsuits" and --

25 A. Uh-huh.

1 Q. -- you had approximately 2200, 2250 remaining,
2 right?

3 A. Yes.

4 Q. Do -- this document doesn't indicate where
5 those were reserved, or am I missing that?

6 A. No. It doesn't. It -- those would -- you --
7 you mean, the 2,000 remaining suits?

8 Q. Yes, sir.

9 A. They would have been case reserved, individual
10 reserves on each case.

11 Q. Right, right. You could have -- what you could
12 have -- frequently would -- would be totaled to predict
13 where it may be going, correct?

14 A. Correct. Yeah.

15 Q. Were --

16 A. Based on, you know, what we'd settled the
17 others for to some extent.

18 Q. Yeah. And actually, at some point, after we
19 had a sample size of about 2,000, while there was some
20 variations up and down, the average cost per suit was --
21 was pretty predictable. Do you recall?

22 A. Yes. Within reason, yeah.

23 Q. Yeah. There's going to be some outliers, but
24 the -- throwing out some outliers, there -- became
25 pretty predictability?

1 A. Right.

2 Q. At least on -- on my side.

3 A. Yes. That's right.

4 Q. And by this time, it appears in here we had --
5 it looks like we had settled the -- the slab class
6 action, correct?

7 A. Yes.

8 Q. And that had been, I guess, already accounted
9 for in these numbers, correct?

10 A. Yes.

11 Q. Okay. And I'm looking here, it says Ike had
12 paid 1,780,000, right, and expected -- No. 2,
13 Mr. Oliver.

14 It says had paid 1,780,000 and expected to
15 pay at least 2.1 billion, right?

16 A. Yes.

17 Q. Okay. And I've got -- hold on, wait a minute.
18 Were you aware that, several months ago, that the -- the
19 current -- were you aware -- let me back up.

20 Were you aware that the current payout on
21 Ike lawsuits has exceeded 2.5 billion?

22 A. No.

23 Q. Were you aware that the current board voted not
24 to assess --

25 A. No.

1 Q. -- the carriers?

2 A. No.

3 Q. And were you aware that vote was -- can you
4 predict how that vote went?

5 A. I can guess, but the board makeup is different
6 now because you only have four insurance company
7 members, I believe.

8 Q. We have five. Something I've gotta look at.
9 That's how I thought, too. But it was along lines --
10 I'll look at it during --

11 A. They --

12 Q. -- the break.

13 A. -- because the Commissioner appoints them, so I
14 don't --

15 Q. Right. The commissioner appoints under the new
16 statute, but it has to be approved by --

17 A. Yeah. But I thought it was four. I may be
18 wrong, but I -- because it may have changed and I don't
19 know, so...

20 Q. Yeah. It was -- because the vote was four
21 insurance people, four against, USA abstaining, and --
22 and four for -- for the -- for the assessment.

23 A. Oh, okay.

24 Q. But I have the same recollection from reading
25 the statute that it was supposed to be five, four, so

1 I'm actually going to look at that during our break.

2 We've got 30 seconds left on this tape --

3 A. Okay.

4 Q. -- so we're going to take a break and go to the
5 restroom.

6 A. Okay.

7 Q. Okay?

8 A. Yup.

9 Q. Thank you.

10 A. Okay.

11 THE VIDEOGRAPHER: The time is 11:05 a.m.
12 We're off the record, ending Tape 1.

13 (Brief Recess Taken.)

14 THE VIDEOGRAPHER: The time is 11:23 a.m.
15 We're back on the record, beginning Tape 2.

16 Q. (BY MR. MOSTYN) Mr. Oliver, just -- I forgot
17 to ask you: Are you -- are you employed in the
18 insurance industry right now?

19 A. No, sir.

20 Q. You're basically retired, or are you working
21 somewhere else?

22 A. I am retired. I have a number of volunteer
23 jobs.

24 Q. Right. But you're working without pay?

25 A. Yes, sir.

1 Q. Okay. In 2000 -- I -- you were still, I guess,
2 general manager of TWIA when the Texas Department of
3 Insurance decided to put TWIA under what they called
4 administrative oversight, correct?

5 A. What year did you say?

6 Q. 2011, was it?

7 A. Yes.

8 Q. Okay.

9 A. 2011.

10 Q. And I guess that was -- happened -- I think
11 that happened in February of 2011?

12 A. I believe that's correct, yes.

13 Q. And you left some -- do you know how many
14 months after that? A month or two?

15 A. I think it was probably 4 to 6 weeks. I don't
16 remember exactly the dates.

17 Q. And they cite in their letter that that had to
18 do with basically two employees, Mr. Warren -- or
19 concerns about two employees -- or -- or let me get this
20 right.

21 Basically had to do -- it evolved around
22 concerns about two employees, Mr. Warren and Mr. Knarr,
23 correct?

24 A. I -- I don't recall that --

25 Q. Okay.

1 A. -- no.

2 **Q. You -- what is your recollection of the reason**
3 **for the oversight?**

4 A. Well, first and foremost, they indicated that
5 we were in a difficult financial situation, i.e., losses
6 from Ike in particular.

7 **Q. Uh-huh.**

8 A. And that they indicated that there was a
9 possible fraud situation that might have occurred.

10 **Q. Involving, I believe, the payment of adjusters**
11 **for work they had not done, correct?**

12 A. No. That wouldn't have been it. But --

13 **Q. Well, could --**

14 A. -- yeah.

15 **Q. -- could you tell me what your recollection of**
16 **the fraud situation was?**

17 A. There was one adjuster, not adjusters --

18 **Q. Okay.**

19 A. -- In particular. And, yes, that was the
20 investigation that was underway.

21 **Q. And I believe I have a -- and just for the**
22 **purposes of the deposition, we had to enter into an -- a**
23 **Protective Order. We -- we haven't gotten the documents**
24 **with Texas -- we just got them, Texas Department of**
25 **Insurance, but to the extent that I use one of them,**

1 I'll -- I'll note on the record that it's not to be
2 shared.

3 Do you remember the name of the adjuster?

4 A. No. I know his relationship, but I don't know
5 his name -- I can't remember his name offhand. I'd
6 recognize it if you said it, but I can't remember --

7 Q. What was his relationship?

8 A. He was the brother-in-law of Bill Knarr.

9 Q. And he was working where? At GAB Robins?

10 A. I don't recall exactly. I believe that's
11 correct, yes, and -- but I'm not certain, either.

12 Q. Didn't I have some other letter regarding --
13 from Paula Smith regarding Oliver Con -- Convo? Do you
14 know what that is about? Fraud and Oliver -- that's
15 after you left. Are you familiar with it?

16 MR. MCKINNEY: Objection. Form.

17 A. I don't know anything about that.

18 Q. (BY MR. MOSTYN) So at the time that TDI does
19 administrative oversight, the ability to assess the
20 company was still available to TWIA, correct?

21 A. Yes.

22 Q. Did -- did -- did you feel that you all were in
23 a financial position that made your continuation
24 precarious?

25 A. No.

1 **Q. And can you explain why?**

2 A. Because we never had less than \$500 million in
3 cash on hand.

4 **Q. And you had the ability to go to --**

5 A. Assess for those --

6 **Q. Other losses?**

7 A. -- those losses over 2.1 billion.

8 **Q. Do you feel like the folks you could assess had**
9 **the ability to pay them?**

10 A. 98 percent or 99 percent did, yes.

11 **Q. You were talking about companies like State**
12 **Farm, correct?**

13 A. Yes.

14 **Q. Farmers?**

15 A. Yes.

16 **Q. Allstate?**

17 A. Yes.

18 **Q. And then you got one instance, they allege one**
19 **instance, I guess, of someone being paid, Bill Knarr's**
20 **brother-in-law, correct?**

21 A. Who alleged?

22 **Q. TDI, I think complain -- for -- the reasons for**
23 **oversight was that there may have been a fraud on the**
24 **payment of -- of an adjuster or paying an adjuster who**
25 **wasn't working; is that correct?**

1 A. Correct. That we had pointed out to them.
2 They didn't catch it, but yeah.

3 **Q. Yeah. And I believe they complained you didn't**
4 **point it out timely?**

5 A. That's correct.

6 **Q. Anything else?**

7 A. For the oversight?

8 **Q. Yes, sir.**

9 A. I don't recall anything. There may have been,
10 but I don't recall anything.

11 **Q. What is your reason that you believe that --**
12 **and do you know they still remained under oversight?**
13 **You understand that, correct?**

14 A. That's my understanding, yes.

15 **Q. What is your -- what do you -- what was your**
16 **belief of why the oversight was done?**

17 A. I believe that certain legislators insisted on
18 it.

19 **Q. And those legislators being Mr. Taylor?**

20 A. Yes.

21 **Q. And Mr. Smithee?**

22 A. Yes.

23 **Q. Anyone else?**

24 A. I don't know if there's anyone else.

25 **Q. And why do you believe they wanted the company**

1 on -- under oversight of the Texas Department of
2 Insurance?

3 A. Well, as you remember, that -- those hearings
4 that I went to in December and January, whatever the
5 dates were, they were upset that, one, a -- a possible
6 fraud may have occurred, and also, that I would have
7 provided any kind of --

8 **Q. Severance.**

9 A. -- severance, particularly including a truck.

10 **Q. Yeah, that's all window dressing, don't you**
11 **think?**

12 A. What do you mean by "window dressing"?

13 **Q. Do you feel -- well, I mean, there -- there --**
14 **when I'm -- was looking at this thing, right, there's**
15 **supposedly some person being paid that you all have told**
16 **them about, right?**

17 A. Correct.

18 **Q. And then you provided severance package for an**
19 **employee, right?**

20 A. Two employees, that's --

21 **Q. Two employees.**

22 A. Uh-huh.

23 **Q. Which is not uncommon, right?**

24 A. In the --

25 **Q. Does --**

1 A. -- private market, it's very common, yeah.

2 **Q. Do you feel there's some other reasons it was**
3 **going on?**

4 A. Yeah. I'm sure there were some behind the
5 scenes I don't know about, but I don't know what it
6 would have been.

7 **Q. When Mr. Taylor spoke with you about**
8 **assessments, did he -- did he discuss with you his**
9 **desire that there not be any more assessments?**

10 A. No. I don't recollect that.

11 **Q. What -- what was his conversations with you**
12 **about assess -- assessments?**

13 A. How much were the assessments. He would keep
14 asking, "Are you going to have to make more
15 assessments?"

16 And then he had to -- I had to refresh his
17 memory as to, you know, what was subject to tax credits
18 and what wasn't subject to tax credits.

19 We'd talk about reinsurance and how far we
20 had gone into getting our reimbursements from
21 reinsurance, things of that nature. But I don't
22 recollect him ever saying anything about, you know,
23 being concerned about additional assessments --

24 **Q. Okay.**

25 A. -- that were nonreimbursable.

1 **Q. Was there a concern that lawsuits would drive**
2 **the need to make additional assessments discussed?**

3 A. Yes. He -- I'm -- I recollect that that was
4 mentioned.

5 **Q. And was Mr. Taylor upset over the number of**
6 **lawsuits?**

7 A. Yes. Definitely.

8 **Q. And did he have a position on whether you**
9 **should settle or try those lawsuits?**

10 A. You want the short answer or the long answer?

11 **Q. Well, just give me what he told you.**

12 A. He -- it -- it waffled.

13 **Q. Right.**

14 A. Sometimes was -- you know, initially, get them
15 all settled. Then when the amounts became more -- you
16 know, the number of suits became more obvious and he
17 developed some antagonistic relationships with some of
18 the trial lawyers, he went the other way and said,
19 "Don't settle them, you know. You need to be fighting
20 these people, they're" --

21 **Q. They're what?**

22 A. Well, just, you know, they're -- they're
23 getting money they shouldn't get.

24 **Q. And the -- the antagonistic relationship was**
25 **between myself and Mr. Taylor; is that correct?**

1 **A. According --**

2 A. He mentioned other --

3 **Q. Yeah, I'm going to go through --**

4 A. Oh.

5 **Q. Would you say I was at the top of the list?**

6 A. Yes.

7 **Q. And were you aware that I was a major**
8 **contributor to his opponents in elections?**

9 A. Yes, I was.

10 **Q. Did he make that aware to you?**

11 A. No. He didn't say it, but I was aware of it.

12 **Q. Well, who were the other trial lawyers? I**
13 **guess Mr. Eiland?**

14 A. Yes.

15 **Q. Was he upset that Mr. Eiland was, in his**
16 **perception, making money on this?**

17 A. Specifically that he was making money and that
18 he was a legislator.

19 **Q. Now, Mr. Taylor is a legislator, right?**

20 A. Correct.

21 **Q. Not much of a screen door over there at the**
22 **Capitol? You understand that?**

23 A. Yes.

24 **Q. And he was making money from TWIA selling agent**
25 **policies, correct?**

1 A. He -- agent commissions --

2 **Q. Commissions, yes.**

3 A. -- for his agency, yes.

4 **Q. Yes.**

5 A. Uh-huh.

6 **Q. Anybody else he had a -- that he expressed a**
7 **specific hostility towards?**

8 A. I don't recall. There were a couple of others.
9 I do remember one fella he mentioned one time, because
10 he got in the press, a fella named Mitch Toups.

11 **Q. Uh-huh.**

12 A. He just said that in passing. But I don't
13 recall the others. But there -- he -- you know, if they
14 got in the press because they were saying, you know,
15 these are bad -- you know, the stuff you guys do.

16 But then he might bring it up, you know.

17 But I don't recall the others. I know the
18 three of you, for sure.

19 **Q. And -- and would you say me in particular?**

20 A. I would say 90 percent you, yes.

21 **Q. And -- in the beginning, would that have been**
22 **in '09, or do you know when that would have been?**

23 A. It was throughout '09 and '10 both. I mean --

24 **Q. Yeah.**

25 A. -- it was a different time. So I can't recall

1 them all.

2 **Q. Because the lawsuits really started to come in**
3 **after that '09 session, correct?**

4 A. Yeah. There were a few before then, but they
5 really started summer of '09, into '010 and then early
6 '11, and of course, I left after that. But yes. We
7 hadn't received that many in early '09.

8 **Q. Did Mr. Taylor express to you that you all**
9 **should not be paying clients -- should not be settling**
10 **lawsuits of clients that were represented by my law**
11 **firm?**

12 A. I don't recollect him ever saying specifically
13 we shouldn't be paying clients in your law firm.

14 **Q. Did he encourage you at some point, then, to go**
15 **try the lawsuits for clients represented by my law firm?**

16 A. Yes.

17 **Q. And my law firm in particular?**

18 A. Yes.

19 **Q. The fact that folks who had made the decision**
20 **to hire my law firm, according to Mr. Taylor, in**
21 **particular, he was expressing a belief that those cases**
22 **should be tried instead of settled, correct?**

23 A. At some point. Initially, it was all settle,
24 and then as they increased in numbers, it was try them.

25 **Q. Well, do you know if that was after it**

1 **increased in the amount of money I gave his opponents?**

2 A. I have no idea.

3 Could -- could I take a second to ask my
4 attorney --

5 **Q. Yes, sir.**

6 A. -- a question?

7 **Q. Yes, sir. Yes, sir. We had that agreement**
8 **before --**

9 A. Yeah, okay.

10 **Q. -- so please go ahead.**

11 MR. MOSTYN: You all can just step back
12 there. You don't have to take that mic off --

13 THE WITNESS: Oh --

14 MR. MOSTYN: --I don't think because it
15 will pick up your question.

16 MR. MCKINNEY: Should we go off the record
17 while this is happening?

18 MR. MOSTYN: You want to just go off?

19 THE VIDEOGRAPHER: The time is 11:37 a.m.
20 We're off the record.

21 (Brief Recess Taken.)

22 THE VIDEOGRAPHER: The time is 11:39 a.m.
23 We're back on the record.

24 **Q. (BY MR. MOSTYN) Mr. Oliver, we -- we took a**
25 **break, and -- and I'm going to re -- I forgot the**

1 question myself that was up, so I -- I'm going to reask
2 you a couple questions --

3 A. Sure.

4 Q. -- to clarify a few things.

5 A. Okay.

6 Q. Other -- we were talking in -- in particularity
7 about Mr. Taylor. Were there other legislators that you
8 recall that had a hostility similar to Mr. Taylor's
9 regarding the lawsuits filed by my law firm?

10 A. Yes.

11 Q. And -- and who were they?

12 A. Lieutenant Governor Dewhurst, and is it Senator
13 Ogden? Yeah. Steve Ogden? Was that his name?

14 Q. Uh-huh.

15 A. Yeah. They met with me at some length at one
16 point.

17 Q. And when -- do you recall what year that was?

18 A. I believe it would have been 2010, because they
19 were looking into the legislative session in 2011, and
20 Ogden, I believe, was the Senate budget person, and he
21 was concerned about budget balancing and where we're
22 getting money. And they wanted to know about what kind
23 of assessments we would be making the -- for the
24 insurance companies that would be subject to tax
25 credits, because obviously, the tax credits would allow

1 for less revenue to go into the State.

2 **Q. And do you know in -- when in 2010 that was?**

3 A. I don't recall the exact date. It would have
4 been in the fall or -- or -- or -- you know, early
5 winter before 2011.

6 **Q. Was it a -- during an election cycle?**

7 A. You -- you know, it -- yeah, it would --
8 definitely would have been before 2011. So yeah, it was
9 in '10 so -- I don't remember.

10 **Q. Did -- was there any discussion about me**
11 **spending over \$3 million of -- in political ads against**
12 **the Republican Party or Mr. Perry?**

13 A. Did I have a discussion with Mr. Perry or --

14 **Q. No, did these two discuss --**

15 A. -- with those two?

16 **Q. -- discuss my political spending with you?**

17 A. Not directly. Not the \$3 million, but you were
18 discussed.

19 **Q. Was the -- my political party affiliation**
20 **discussed?**

21 A. Yes.

22 **Q. And the fact that I identify myself as a member**
23 **of a scoundrel party called the Democratic Party?**

24 MR. MCKINNEY: Form.

25 A. They did not say "scoundrel party."

1 Q. (BY MR. MOSTYN) Well, was the fact that I'm
2 identified as a Democrat discussed with these two
3 Republican legislators?

4 A. It was mentioned, yes, sir.

5 Q. Was the fact that I am a large contributor to
6 the Democratic Party mentioned by these two particular
7 legislators?

8 A. No. I don't recall that the -- any money being
9 discussed.

10 Q. Okay. Was there anything discussed that I was
11 funding or participating in any political ads?

12 A. Yes.

13 Q. Was there a discussion that I was taking money
14 that I was making from the Texas Windstorm Insurance
15 lawsuits and using that to fund political ads?

16 A. Yes.

17 Q. And was there a discussion that they wanted
18 that to stop?

19 A. I don't recall the exact words, so I want to be
20 fair on this.

21 Q. Uh-huh.

22 A. But you had been critical of Lieutenant
23 Governor Dewhurst at the time or preceding when I was
24 there for some reason. I don't remember what it was.
25 You all were in some dust up or something about

1 something, which is fine, and --

2 **Q. Probably about funding of Pre-K.**

3 A. I don't remember what it was. But he was quite
4 upset about money from Texas Windstorm going to your law
5 firm, in particular, and perhaps to other Democratic
6 causes, but he didn't specify what.

7 And -- and then also in particular, he
8 didn't -- he was very clear he didn't want me -- and my
9 general counsel was with me at the time --

10 **Q. Who was that?**

11 A. It was Mike Perkins. He was in -- we were in
12 his office, and Ogden was there. And he made a point
13 that you've got to -- you've got to try these cases and
14 various profanities and, you know, that sort of thing.
15 And -- and, you know --

16 **Q. Could you --**

17 A. -- "You guys got to quit paying these stupid
18 losses and try these cases," you know, this and that
19 kind of thing.

20 So he -- he was more angry at me, but it
21 was clear he was angry at you in particular, because,
22 you know, you and I both know, you were the lead
23 attorney in -- with the trial lawyers on the coast,
24 so...

25 **Q. And the lead contributor to the Democratic**

1 **Party, correct?**

2 A. Yeah. He didn't mention that, but he did --
3 you were clearly of concern to him. And, again, it was
4 something else that you guys had not agreed on going on,
5 too, that I -- it was unrelated to windstorm.

6 **Q. Was there discussion about me funding ads**
7 **against the then-governor, Rick Perry?**

8 A. No. There were -- I don't remember us talking
9 about funding at all. I -- I do remember him just
10 saying you -- "A lot of these funds, you know, are going
11 to the Democratic Party."

12 And you guys somehow -- somebody -- and I
13 don't remember now exactly what it was, but there was
14 some issue. And he said, "Who told Mostyn about this?"
15 You know, because it had come out that you and I had had
16 dinner together and various things of that nature.

17 **Q. Yeah, there were --**

18 A. And I don't remember what it was, Mr. Mostyn,
19 but I -- I -- I just remember he was upset. Ogden was
20 upset.

21 **Q. There was some kind of claim that there was**
22 **some leak or something. Do you recall that?**

23 A. Yes. And I don't know what that was. He
24 wanted to know if we leaked it, and I don't recall what
25 it was about. You -- you're right. It was -- and --

1 and he was mad about that. And then he was also mad
2 about the money going from Windstorm into your pocket
3 and other trial lawyers.

4 Q. Yeah. Because Mister -- when was -- when did
5 Geeslin leave?

6 A. In 2011.

7 Q. Yeah, because when -- Kitzman came in?

8 A. Yeah. From South Carolina, yeah.

9 Q. Yeah. She wanted to know, as a condition of
10 settling the lawsuits, where the leak was, and I can't
11 remember what the --

12 A. Is that still going on?

13 Q. There was a -- yeah. I'm not aware of a leak
14 that would have gone out, you know. And it was -- I
15 mean, did -- did you feel that you were maybe let go
16 because they believed you were speaking with me?

17 A. I don't know the answer to that, but I -- I --
18 and I don't recall the issue anymore.

19 Q. Because it was expressed to me that they
20 thought they'd gotten rid of the leaks, but they felt
21 the leaks were still continuing to me.

22 MR. MCKINNEY: Objection. Form.

23 A. Do you have a question?

24 Q. (BY MR. MOSTYN) Yeah, I just -- I'm now
25 more --

1 A. Okay.

2 **Q. -- kind of -- I'm -- I'm digging up memories in**
3 **my mind, too.**

4 A. Uh-huh.

5 **Q. The profanities that the Lieutenant Governor**
6 **David Dewhurst used, were those directed at -- at me or**
7 **my clients or --**

8 A. No. I don't believe that they were directed at
9 you or your clients. It was more directed at the
10 situation. There was two things going on: One was this
11 leak thing that I knew nothing about --

12 **Q. I -- that's --**

13 A. -- and I -- I had no idea. And he went -- he
14 kept coming back to it, "Are you sure you or someone at
15 your organization" --

16 And I -- I -- it's -- to this day, I don't
17 know what he was talking about. But he was really upset
18 about it. And Ogden apparently knew, whatever that was.

19 And then the second issue was: "Do you
20 know that all this money you're paying to these trial
21 lawyers is going directly to the Democratic Party, a lot
22 of it?" So that was the only other thing.

23 **Q. The -- the profanity was used how?**

24 A. Just speaking generally -- this --

25 **Q. "Fucking money"?**

1 A. Yeah. This --

2 MR. MCKINNEY: Objection. Form.

3 A. That was one of the words.

4 **Q. (BY MR. MOSTYN) Did he use the term "fucking**
5 **money"?**

6 A. I don't recall the exact terms.

7 **Q. Okay.**

8 A. I -- I know it was profanity. I know that
9 there was two issues. One was the leak, and that seemed
10 to make him the maddest.

11 And then we got into the budget issues and
12 the payment of losses and, you know: One, are there
13 going to be tax credits; and No. Two -- additional tax
14 credits, and No. Two was the issue of this money that we
15 gave you guys partly --

16 **Q. Going to the Democratic candidates?**

17 A. Yes.

18 **Q. And this was in 2010, an election time?**

19 A. I don't remember exactly when it was, but yeah.

20 **Q. Okay. And as a result of that, I recall some**
21 **periods of time where we would stop settling cases.**

22 **Did -- did you all take action on that and**
23 **not settle our cases for a period of time?**

24 A. No.

25 MR. MCKINNEY: Objection. Form.

1 A. No.

2 **Q. (BY MR. MOSTYN) Did -- in response to your**
3 **conversation, did you stop settling cases with the folks**
4 **represented -- or did TWIA stop settling cases for folks**
5 **represented by my law firm?**

6 A. When I was there, which may be another reason
7 they didn't -- got rid of me, but when I was there, I
8 told them, "There's no way we're going to stop."

9 However, after the oversight occurred, the
10 Department of Insurance told us to stop doing it for a
11 period of time.

12 But before that oversight occurred, we
13 never stopped. We -- the only time we stopped was when
14 we were at loggerheads over some legal issue of some
15 sort.

16 **Q. Right. And I know from time -- but there were**
17 **periods -- and I can't remember when, Mr. Oliver. I**
18 **don't know if -- and I -- and I -- I think you're right.**
19 **I think it was right after oversight.**

20 A. Right. And then definitely TDI told us to stop
21 paying them. They wanted to review it all and take them
22 in and look at them, and then they realized they were
23 way over their head and --

24 **Q. Yeah. They had young, inexperienced lawyers**
25 **that were review -- reviewing these cases, correct.**

1 MR. MCKINNEY: Objection. Form.

2 A. Yeah. They knew more than we did to start.
3 It's what they thought, but anyway.

4 Q. (BY MR. MOSTYN) What did you -- let me make
5 sure I got a question that's --

6 What did you think of TWIA's ability -- I
7 mean, sorry -- Texas Department of Insurance ability
8 when they took over oversight to review lawsuits?

9 A. They didn't have any.

10 Q. Do you remember who was doing that for them?

11 A. Oh, Lord, no. There was a bunch of young --
12 they -- it was -- they had several people at our office,
13 but mostly they shipped them over to the department so
14 we didn't know who was looking at them.

15 But then the commissioner, the new
16 commissioner, Kitzman, ultimately admitted, "We know
17 nothing about this," and they went out and hired some
18 outside firm to take over the claims.

19 Q. Alvarez & Marsal?

20 A. Correct.

21 Q. Are you aware that -- are you aware if -- if
22 Alvarez & Marsal was recommended to be hired by Governor
23 Perry?

24 A. I don't know anything about that. That was
25 after I left.

1 **Q. Did anyone -- did anyone say anything to you**
2 **regarding the payment of my claims from TDI, and me in**
3 **particular?**

4 A. Yes.

5 **Q. And who was that?**

6 A. Commissioner Geeslin at the time.

7 **Q. And what did Commissioner Geeslin say?**

8 A. Just that, you know, "We're paying a lot of
9 money." We being TWIA, "is paying a lot of money out
10 the door to trial lawyers for a lot of lawsuits," you
11 know, or "what is the validity of those," and all that
12 sort of thing.

13 And then some of his people, and I don't
14 recall their names, would say, "Well, boy, there seems
15 to be an inordinate number of lawsuits from the Mostyn
16 Law Firm."

17 **Q. Yeah. Did they -- and did Geeslin and them**
18 **mention anything to do with the money would be going to**
19 **politics?**

20 A. No. I don't recall that.

21 **Q. Or that my Democratic affiliations?**

22 A. No. I never remember Geeslin saying that.

23 **Q. There is no question that my law firm**
24 **represented the largest majority of any clients,**
25 **correct?**

1 A. That's my understanding, yes, uh-huh.

2 **Q. Mr. Oliver, did you feel that my law firm's**
3 **legal work was -- was good?**

4 MR. MCKINNEY: Objection. Form.

5 A. I'm not sure how to answer that.

6 **Q. (BY MR. MOSTYN) Well, I don't know. Maybe --**

7 MR. DURST: It calls for speculation.

8 A. I think you represented your clients admirably,
9 yes. How's that? I -- I believe that firmly.

10 **Q. (BY MR. MOSTYN) It's hard for you to say**
11 **"good" when you're on the receiving end, right?**

12 A. Correct. But -- but I think you represent your
13 clients admirably. I think you did what they wanted you
14 to do.

15 **Q. And that we did it -- that there was a reason**
16 **for you paying our law firm?**

17 A. Oh, yes. I mean, I was directly involved with
18 you and others, primarily you and Craig Eiland, in the
19 slab settlements, as you know, and -- which was the one
20 time we interacted directly. And I thought overall, we
21 were able to come to some reasonable conclusions. And
22 our reinsurers, who are the best judge of that, agreed
23 when they looked over on six or so audits.

24 **Q. Yeah. And let's talk about that one occasion.**
25 **Have you heard allegations that you and I**

1 **were somehow friends?**

2 A. No. Never.

3 **Q. Even one?**

4 A. Well, maybe because we had dinner together
5 once. But your wife was there, as well, if I remember
6 correctly.

7 **Q. Well, you and my wife are friends?**

8 A. No. Well, I don't want to say.

9 **Q. No. Well, I mean, here's the point: I -- I've**
10 **heard allegations that I somehow was a friend of yours.**
11 **Do you -- other than a professional relationship, have**
12 **you and I ever interacted?**

13 A. No. We interacted at the Capitol and -- and
14 for some of these losses, particularly the slab losses.
15 But no, other than that we were business friends, yeah.

16 **Q. Have I ever offered to -- and these are going**
17 **to sound absurd, but I got -- I want to go ahead since**
18 **I've got you here.**

19 A. Uh-huh.

20 **Q. Have I ever offered to pay you money to settle**
21 **my cases?**

22 A. Absolutely not.

23 **Q. Have I ever offered to give you anything to**
24 **settle cases?**

25 A. Absolutely not.

1 Q. Have I ever been pretty much anything other
2 than adversarial to you or towards TWIA? And I mean in
3 an adversarial process of litigation.

4 A. Yeah -- yes. You -- that's it, other than
5 adversarial.

6 Q. I mean, I don't mean personally adversarial to
7 you.

8 A. No. You've never been personally adversarial
9 to me.

10 Q. But there is no relationship between you and
11 I -- there has been allegations --

12 A. Really?

13 Q. Oh, yes.

14 -- that I paid you to settle my cases.

15 A. That's false. Totally wrong.

16 Q. And then somehow I paid Kitzman, I guess, too,
17 right?

18 MR. MCKINNEY: Objection. Form.

19 A. I don't know.

20 Q. (BY MR. MOSTYN) When -- when -- did you
21 ever -- going back, is there anybody else other than
22 Mr. Taylor, Mr. Ogden, Mr. Dewhurst, that had had
23 particular conversations regarding my lawsuits?

24 A. Representative Eiland.

25 Q. Uh-huh.

1 A. Senator Hegar.

2 Q. And let me ask it this way: Is there anybody
3 else who expressed a particular interest in not settling
4 my lawsuits --

5 A. No.

6 Q. -- or a hostility towards my lawsuits?

7 A. No. Those others were just information.

8 Q. Right. I mean, I understand, right, I mean, if
9 I get the largest -- have the largest number of
10 claims --

11 A. Uh-huh.

12 Q. -- lawsuits or folks that we represented, folks
13 had, including Commissioner Geeslin, interest in knowing
14 about those lawsuits, correct?

15 A. Yes.

16 Q. And then the interest in knowing if you were
17 settling lawsuits for a valid reason, correct?

18 A. Yes.

19 Q. But other than -- did Mr. Taylor -- I think we
20 went over this, and I apologize, my memory's --

21 A. Okay.

22 Q. -- 40 minutes later, I can't recall. But
23 Mr. Taylor had expressed a -- a -- a party affiliation
24 of mine of being a Democrat?

25 A. Yes.

1 Q. He expressed that the money that I was making,
2 I was going to fund Democratic candidates?

3 A. He did.

4 Q. And he expressed an interest that those cases
5 should not be settled, but tried, correct, at the later
6 point?

7 A. Yeah. At -- at -- at the early point, he
8 wanted them all settled. That's before we had a lot of
9 them, you know. And then when more came in, he then
10 said, "No. You need to try some of these and stop
11 settling them."

12 Q. Okay. At the early point, right --

13 A. Uh-huh.

14 Q. -- was that -- was I discussed at all at the
15 early point?

16 A. I don't recollect.

17 Q. Yeah.

18 A. Uh-huh.

19 Q. And then at the latter point, would that have
20 been in 2010?

21 A. Yes.

22 Q. And would that have been near or around the
23 time that you had the conversations with Lieutenant
24 Governor Dewhurst and then-Senator Steve Ogden?

25 A. Yes.

1 **Q. Was he in part of those conversations?**

2 A. No.

3 **Q. Did you have more than one conversation with**
4 **Mr. Taylor about that subject matter?**

5 A. Oh, yes, uh-huh, sure.

6 **Q. Did you have e-mail correspondence with him, or**
7 **were they all personal conversations?**

8 A. No. No e-mails that I remember --

9 **Q. And I believe --**

10 A. -- or that I recollect anyway.

11 **Q. I believe they would often call you to the**
12 **Capitol?**

13 A. Correct. I'd generally get a call from --
14 well, sometimes he'd call me directly, but normally from
15 his Chief of Staff, and then I'd go over and meet with
16 him.

17 **Q. And how many occasions do you believe you had**
18 **meetings with then-Representative Taylor, who is now**
19 **Senator Taylor, regarding the folks represented by my**
20 **law firm?**

21 A. Gosh, I don't -- I don't know, Mr. Mostyn.
22 Probably three or four, maybe more.

23 **Q. Okay.**

24 A. I don't recall exactly.

25 **Q. And I -- on those occasions, was the subject**

1 matter similar, meaning the discussion of me being a
2 Democrat? The money going to fund Democrats? Those
3 type of conversations?

4 A. No. It varied.

5 Q. Can you tell me, the best of your recollection,
6 and I know it's awhile back.

7 A. Yeah.

8 Q. But the best of your recollection.

9 A. Well, it started out, as I told you before,
10 with in probably 2009, probably after the session in
11 2009, in particular, when we started receiving the
12 lawsuits of -- to any numbers. We had some before that.

13 It started out with, "We'll get them all
14 settled. We need to get this thing put to bed. The
15 people down here need to be paid." So he was very clear
16 about that. And there wasn't any mention then of any
17 particular trial lawyer.

18 And then as we got into 2010, and, you
19 know, candidly, when you ramped up a bit and got into
20 the press a little bit, then I was called over there on
21 a number of occasions to talk about some of the things
22 you'd indicated in the press and that sort of thing.

23 And then it became, "Well, this is
24 difficult. He's got so many, and, you know, you need to
25 tail this back."

1 And then he was talking some about the
2 Texans for Lawsuit Reform, as well, that he apparently
3 was --

4 **Q. Were they in any of your meetings?**

5 A. No. But he mentioned that, that they were --
6 he was concerned about information he'd received through
7 them, that some of the money you were funneling into
8 Democratic causes.

9 **Q. Donating to Democratic candidates?**

10 A. Yeah.

11 **Q. Report --**

12 A. "Funneling" is the wrong word. Donating --

13 **Q. It may have been his word. I'm just --**

14 A. No, no, I don't know what his word was. But
15 you were donating --

16 **Q. I -- I was expressing --**

17 A. -- you were supporting their candidate.

18 **Q. I was expressing my constitutional right to**
19 **support a candidate that -- of my choosing, correct?**

20 MR. MCKINNEY: Objection. Form.

21 A. I don't know about your constitutional right,
22 but he was pointing out that some of the money was going
23 to candidates to support their election.

24 **Q. (BY MR. MOSTYN) Are you familiar with Citizens**
25 **Versus United (sic) which says that --**

1 A. I --

2 Q. -- money is political speech?

3 A. I am.

4 Q. And therefore, political -- the giving of money
5 is constitutionally protected under the First Amendment?

6 A. Yes.

7 Q. So Mr. Taylor was concerned of my expression of
8 my rights under the First Amendment of the Constitution
9 to the United States?

10 A. No.

11 MR. MCKINNEY: Objection. Form.

12 A. No. He wasn't concerned about your rights
13 under the Constitution. He was concerned about you
14 taking money from TWIA and spending the money.

15 Q. (BY MR. MOSTYN) On candidates for the
16 Democrats?

17 A. Right.

18 Q. I --

19 A. But he wasn't concerned about you --
20 especially --

21 Q. He didn't have much concern about the
22 Constitution?

23 A. I can't say that, either.

24 Q. Yeah.

25 A. He never mentioned the Constitution.

1 **Q. What about -- okay.**

2 And then on how many -- because it sounds
3 like maybe more -- the three or four that you were
4 referring to before --

5 A. Well, I also had a meeting with -- I got called
6 to the Capitol a lot.

7 **Q. I know.**

8 A. You saw me over there often.

9 **Q. Well, yeah, because, you know, I was there a**
10 **lot and --**

11 A. I also had a meeting with Senator Fraser, and I
12 believe Smithee was in that meeting, I'm not sure, for a
13 while. He left. And then I can't remember who else was
14 there, but there were two or three other senators in the
15 meeting on the same issues, you know, payment of claims,
16 assessments, and you guys need to start trial -- I mean,
17 trying some of these cases. That would have been in
18 2010.

19 **Q. And -- and -- and I want -- I want to -- and**
20 **did those meetings delve into the area of my party**
21 **affiliations or donations?**

22 A. They -- they delved into you being the lead
23 attorney. I don't recall, in that meeting, anything
24 mentioned about your party affiliation, but there was
25 certainly an understanding, because they were all

1 Republicans.

2 **Q. Understanding of what, Mr. Oliver?**

3 A. That you're a Democrat.

4 **Q. And that that was a problem with -- possibly in**
5 **you all settling the cases?**

6 A. No. There was no -- nobody ever said, don't
7 settle them. They just said --

8 **Q. Well, you said -- in that -- in that meeting,**
9 **no one said, don't settle them, right?**

10 A. Right. Nobody said, don't settle them. They
11 just said, you know, "You're aware that Mr. Mostyn is
12 very aggressive, and you need to watch what he's doing.
13 And you need to try some cases if they -- if there's
14 merit to trying to them." So...

15 **Q. That's okay, right?**

16 A. Yeah.

17 **Q. If there's merit to trying to them.**

18 But in that particular meeting with Senator
19 **Fraser and Smithee, and I think you'd said earlier about**
20 **Smithee, there was no concern that the money that was**
21 **being paid to me would be making its way to Democratic**
22 **campaigns?**

23 A. As best as I can recall, that was never
24 mentioned in that meeting, yes.

25 **Q. That was mentioned by Representative Taylor,**

1 **correct?**

2 A. Absolutely.

3 **Q. On numerous occasions?**

4 A. On at least two or three occasions, yeah.

5 **Q. It was -- it was represented by Lieutenant**
6 **Governor David Dewhurst in your meeting?**

7 A. Definitely, yes.

8 **Q. What about Senator Steve Ogden?**

9 A. No. He was just listening.

10 **Q. Okay. Anybody else want to discuss my**
11 **political contributions with you?**

12 A. There -- there may have been, to be perfectly
13 candid with you, because I got called over there a lot
14 to different legislators, either House or Senate, and
15 you know, I -- I don't recall all those conversations
16 because they occurred over a two-year period three years
17 ago, so --

18 **Q. No one else sticks out?**

19 A. That's why I'm having to sort of -- as -- as
20 you're reminding me, I'm thinking of things.

21 **Q. Well, we're both living it, so you -- I'm not**
22 **on camera, but you can see my face with kind of the --**

23 A. Yeah.

24 **Q. I'm scratching my head recalling things.**

25 A. I'm sure there were others that I talked to,

1 and I'm sure your name came up, because you were being
2 very aggressive in the press and otherwise, but I don't
3 recall what was said, to be honest with you, Mr. Mostyn.

4 **Q. With the conversations with Mr. Taylor, was**
5 **there ever conversations about -- we talked about the**
6 **fact that there was conversations regarding going and**
7 **trying these lawsuits, correct?**

8 A. Correct.

9 **Q. And then there was concerns about paying me**
10 **money?**

11 A. Not about paying you money, but about the fact
12 that when settlements were made, you received --

13 **Q. Part of the --**

14 A. -- your compensation for --

15 **Q. And I was taking that compensation and donating**
16 **it to Democrats?**

17 A. With Taylor, yes.

18 **Q. And that we wanted to -- to stop that or delay**
19 **that? What was the conversation?**

20 A. No, no. Just you -- you need to be looking at
21 these carefully, and if appropriate, you need to try one
22 or more to set a precedent so he'll quit suing you.

23 **Q. Yeah. Do you know what the outcome was of the**
24 **other carriers that tried -- decided to try these**
25 **lawsuits?**

1 A. I know -- I recollect a few cases that my
2 lawyers were -- would fill me in on periodically, and
3 the success rate was pretty low.

4 Q. Do you remember a -- a -- a hearing on
5 February 27th, 2011 in which Chairman Taylor -- Chairman
6 Smithee stated to you that he had read some of the
7 e-mails that had been generated over -- after Ike, and
8 he said -- I mean, in quote, do you remember him saying,
9 "I'm flabbergasted"?

10 A. I don't remember the exact words, no, sir, but
11 I do remember he was upset about something, yeah.

12 Q. And do you remember him saying, "I mean, they
13 can't try a case on the coast"? Do you recall that?

14 A. No, I don't remember that.

15 Q. He said, "I mean, they'll lose, because instead
16 of talking about the cost of shingles, they're going to
17 talk about bribes and kickbacks and corruptions and just
18 callous disregard of their policyholders."

19 Do you remember that?

20 A. I do -- I do remember -- not those words, but I
21 do remember the issues, him saying if it hadn't been for
22 some of the things that you've pointed out that I don't
23 agree with -- but it's a separate issue -- but that you
24 can't -- you can't try a case -- the reason you can't
25 try a case is because you have this dirty laundry, for

1 lack of a better term.

2 Q. And they can't go try any of those cases. Do
3 you remember Chairman Smithee saying --

4 A. I don't recall exactly what his words were, no.

5 Q. Now, since you've left, were you aware that
6 there's been about three million pages of e-mails
7 additional turned over to me?

8 A. Only recently have -- have I been made aware of
9 that, but not up until recently, yeah.

10 Q. Have you seen e-mails from TWIA -- from
11 Mr. Knarr, have you ever seen an e-mail in which he --
12 he instructed adjusters not to keep engineer reports
13 that were not favorable, to not keep those engineer
14 reports and -- and to destroy them?

15 MR. MCKINNEY: Excuse me. Could -- could
16 you read that question back because there --

17 MR. MOSTYN: I'll -- I'll re-ask it.

18 Q. (BY MR. MOSTYN) Have you ever seen an e-mail
19 in which Mr. Knarr instructs adjusters not to keep
20 copies of engineering reports?

21 MR. MCKINNEY: If that was sent in response
22 to litigation that was pending, that's going to be a
23 privileged matter and --

24 MR. MOSTYN: Well, you can -- it's not. It
25 was well before we ever had a lawsuit. And you can

1 preserve your privilege, but you can't instruct him not
2 to answer if you don't know what I'm even referring to.
3 I'm asking --

4 MR. MCKINNEY: If he -- if it's a
5 privileged matter, I can ask that he not answer.
6 He's -- certainly he's not my client. I can't instruct
7 him.

8 Q. (BY MR. MOSTYN) Mr. Oliver, in relationship to
9 cases not in litigation during the claims-handling
10 process, had you ever seen an e-mail in which Mr. Knarr
11 instructed adjusters not to keep engineering reports?

12 A. Okay. Okay. I -- I'd have to see the e-mail
13 to tell you whether I'd seen it or not.

14 Q. Do you recall?

15 A. I -- I recall something of that nature, but I
16 don't know exactly what you're referring to. If you
17 show me an e-mail, I could tell you if I've seen it or
18 not.

19 Q. Underneath -- would you agree -- let me back
20 up.

21 Underneath Texas law, is it your
22 understanding that if you delay the payment of a claim,
23 that you would have -- if finally adjudicated, to have
24 owed it, you'd have to owe interest and penalties?

25 MR. MCKINNEY: Objection. Form.

1 A. Broadly speaking, yes. There's timeframes and
2 so forth, but broadly speaking, yes.

3 **Q. (BY MR. MOSTYN) In regards to the settlement**
4 **of lawsuits, was there concerns from you that if you**
5 **didn't settle the lawsuits, that the potential damage**
6 **award could be larger?**

7 A. Yes.

8 MR. MCKINNEY: Excuse me. Pardon me.

9 THE WITNESS: Oops. Excuse me.

10 MR. MCKINNEY: The problem with that
11 question is that gets directly into the mental process
12 of the litigant, and it's work product. And I would
13 respectfully request that the witness not answer any
14 questions regarding TWIA's mental processes, TWIA's
15 litigation strategies, anything along those lines.

16 Those are privileged matters, and we can
17 take that up with the Court later, if necessary, but I
18 believe it's privileged.

19 MR. MOSTYN: I'll rephrase.

20 **Q. (BY MR. MOSTYN) When you -- I'm going to**
21 **actually move somewhere else. Then I'm going to come**
22 **back to that.**

23 A. Okay.

24 **Q. These conversations you had, you already**
25 **described the one with Lieutenant Governor David**

1 Dewhurst as use of profanity and -- and pounding the
2 table, correct?

3 A. Stood up, yeah.

4 Q. Yelling?

5 A. Uh-huh.

6 Q. That would be kind a -- of a hostile meeting;
7 would you agree?

8 A. To say the least, yeah.

9 Q. And then with Mr. Taylor's meetings with you,
10 in which you all discussed the payment of lawsuits --
11 were those hostile or how -- how would you describe the
12 temperament of those meetings?

13 A. No, I don't think they were hostile.

14 Q. Okay.

15 A. It was just matter of fact.

16 Q. Yeah. Okay. And so would you agree that
17 Mr. Taylor lacked an understanding of how the litigation
18 process worked?

19 A. Yes.

20 Q. Would you say that Mr. Taylor lacked an
21 understanding of how the policies worked?

22 A. Yes.

23 Q. Would you say that Mr. Taylor lacked an
24 understanding of how the assessments worked?

25 A. Yes. We tried to educate him, and I think he

1 eventually understood, but initially, certainly, he
2 didn't understand.

3 Q. Did it take multiple times of trying to educate
4 Mr. Taylor?

5 A. Yes.

6 Q. Were you -- you weren't there.

7 Was there discussions of -- with -- in the
8 meeting with Lieutenant Governor Dewhurst and Senator
9 Ogden, who you said listened, correct?

10 A. Yes.

11 Q. And you and your general counsel, correct?

12 A. Correct.

13 Q. Was there discussions of any other law -- any
14 other plaintiff's lawyers' cases other than mine?

15 A. Yes.

16 Q. Who was that?

17 A. Not specific names, but it was a very general
18 discussion about all the lawsuits.

19 Q. Was there any other lawyers mentioned by name
20 other than me?

21 A. No.

22 Q. In Mr. Taylor's conversations with --

23 A. No. Wait a minute. I -- I -- I back up on
24 that. Yes. Mr. Eiland's name was mentioned.

25 Q. And what was the discussion about Mr. Eiland?

1 A. Just that he's in the House, and he's also
2 suing you, and he's in -- on the Windstorm Committee,
3 and that kind of thing.

4 **Q. Any discussions about Mr. Eiland's political**
5 **contributions?**

6 A. No. Huh-uh.

7 **Q. With Mr. Taylor, was -- was there -- there was,**
8 **I guess, conversations about Mr. Eiland's cases?**

9 A. Yes. Mr. Eiland was mentioned by Mr. Taylor,
10 correct.

11 **Q. Was -- what was the -- what was the -- the**
12 **thrust of that conversation?**

13 A. Same thing, that he's a legislator, House
14 legislator on the Insurance Committee, and he's suing
15 TWIA. Seemed to be a problem.

16 **Q. And seemed to be a problem, I think, for**
17 **Mr. Smithee, as well, correct?**

18 A. No. I never heard Smithee mention that.

19 **Q. Okay.**

20 A. I never heard Smithee mention it.

21 **Q. Was there any mention by Mr. Taylor of**
22 **Mr. Eiland's political contributions?**

23 A. No, no.

24 **Q. What about his political affiliation?**

25 A. No.

1 **Q. Okay.**

2 A. No, not that I recall.

3 **Q. In the discussions with Mister -- with**
4 **Lieutenant Governor Dewhurst, was that a discussion**
5 **about trying, in particular, cases in which I**
6 **represented individuals?**

7 A. Well, my memory's a little foggy, but most of
8 the discussions about you centered around this leak,
9 whatever that was, and that you were involved somehow.

10 And then that shifted to -- and Ogden did
11 participate in that, because he wanted to know about the
12 budget implications --

13 **Q. Uh-huh.**

14 A. -- from the tax credits.

15 And then Dewhurst mentioned your name,
16 "Well, you know Mostyn is going to get a lot of money
17 out of this from all these lawsuits."

18 So that was mentioned as a separate issue.

19 The biggest issue that involved you with
20 Dewhurst was this leak, whatever that was.

21 **Q. And was there a general sentiment that -- from**
22 **them, from Lieutenant Governor Dewhurst, that you needed**
23 **to be more aggressive towards folks represented by my**
24 **law firm or my lawsuits?**

25 A. Not yours in particular; in general. I mean,

1 your name gets mentioned sort of as a generic for
2 everybody --

3 **Q. Uh-huh.**

4 A. -- in that case. As I said, it's hard now to
5 remember exactly, because he was very clearly upset
6 about you and this leak, and then it went into the
7 discussion about the lawsuits and the tax credits.

8 And then one other issue, which was the
9 issue of, "Well, if you can't try these cases in
10 Galveston because you have a difficult judge," from our
11 point of view now --

12 **Q. Sure.**

13 A. Okay. "-- then why don't you change the
14 venue?"

15 And, you know, he pointed out that he'd
16 been involved in litigation. That's what he'd do.

17 And I said, "Well, that's easier said than
18 done, and it may not work out, and then you've really
19 done the wrong thing."

20 So it was -- you know, there was that, but
21 I -- there wasn't anything specifically about you or
22 your party affiliation.

23 Again, he was so mad about this leak,
24 whatever that was, and I don't --

25 **Q. Well, you said before, I mean, he talked about**

1 **me being a Democrat, right?**

2 A. Yeah, yeah. He mentioned you were a Democrat.
3 That was part of the process of the -- of the leak. It
4 had to do with --

5 **Q. Oh.**

6 A. Yeah.

7 **Q. And they mentioned that the money would end up**
8 **in campaigns, correct?**

9 A. Yes.

10 **Q. So you're called to the Lieutenant Governor's**
11 **Office to discuss individual people's lawsuits?**

12 A. Not --

13 **Q. Well, you're discussing lawsuits which involves**
14 **individual people, right?**

15 A. Yeah. It was more of a big picture, but yeah.

16 **Q. And then the Lieutenant Governor of Texas is**
17 **giving you advice on how he thinks you could**
18 **successfully defend these lawsuits, correct?**

19 A. He definitely did that, yeah.

20 MR. MOSTYN: Tell you what, I'm ready to go
21 to lunch. Is that okay?

22 MR. DURST: Sure. Let's get off the
23 record, then, for a minute.

24 MR. MOSTYN: Yeah.

25 MR. DURST: And we'll discuss our schedule.

1 THE VIDEOGRAPHER: The time is 12:18 p.m.
2 We're going off the record, ending Tape 2.

3 (Brief Recess Taken.)

4 THE VIDEOGRAPHER: The time is 1:12 p.m.
5 We're back on the record, beginning Tape 3.

6 Q. (BY MR. MOSTYN) Mr. Oliver, I'm -- off the
7 record, I had advised you, and I think maybe on the
8 record, I had advised you that, you know, we were in
9 possession of some 3 million e-mails from TWIA. It has
10 been my observation from looking at this, and would you
11 agree that this statement is generally true, that, in
12 regards to the specificity of handling a claim, I have
13 not seen you on any of those e-mails.

14 Do you -- were you -- is your recollection
15 that, in regards to any particular claim, that you
16 didn't directly handle those claims? Does that make
17 sense?

18 A. Yes, yes. The answer is that I did directly
19 handle some claims, but it's how I did it, they --

20 Q. Okay. How -- what -- what type of claims did
21 you particularly directly handle?

22 A. If I received a call from the Department of
23 Insurance --

24 Q. Uh-huh.

25 A. -- about a complaint or a legislator or

1 directly from the policyholders, which I received many
2 of, I had a group of our internal claim examiners that I
3 would take -- that I'd write down the name and what the
4 issue was, and I'd say, "I want you to look at this
5 claim for me and tell me what's going on and give them a
6 time frame."

7 And they would come back, and we'd discuss
8 it, and then they with handle it from there.

9 So yeah, there wouldn't be any e-mails from
10 me in the file, but I -- I might well have said, no,
11 settle that or, you know, pay for that roof or -- or,
12 no, you know, that looks like something we've already
13 paid enough for. You know, there can be some variable.

14 **Q. On the -- would that be the limitation of it,**
15 **that generally, in response to some complaint, you would**
16 **look at a file?**

17 A. From somebody, generally speaking. Well, with
18 the exception of the slab losses where I was directly
19 involved and --

20 **Q. I believe we've settled all of those, right?**

21 A. God, I hope so.

22 And I think some -- there were probably
23 some cases where there were some individual issues like
24 unsealed shingles or something of that nature that, you
25 know, where I would have made a general statement after

1 discussions with our counsel to our people about how to
2 deal with those type of claims in general.

3 Q. And in specificity on a particular claim, it
4 was not your job duties at Texas Windstorm Insurance
5 Association to handle -- or supervise the initial
6 adjustment of the claim?

7 A. Correct.

8 Q. I'm also in possession of e-mails that were
9 ordered to be turned over, which involved the use of
10 certain racist or derogatory terms.

11 Are you aware of that?

12 A. I've read about them in the paper, yes, sir.

13 Q. All right. And were you aware that I've not
14 seen your name appear on any single one of those type of
15 e-mails?

16 A. My attorney indicated that he didn't think I
17 was.

18 Q. Right. And that is my -- what I have seen.

19 A. Uh-huh.

20 Q. And is it -- that your recollection, as well,
21 that you don't recall seeing anything like that?

22 A. I do not recall.

23 Q. Is that the type of thing if you think you had
24 seen, you may have addressed that issue?

25 A. Had I seen what appears -- what I've read in

1 the newspaper, primarily quoted from you, some of the
2 things that were said, someone would have received some
3 sort of disciplinary action.

4 **Q. Do you have any knowledge if you participated**
5 **or worked on in any way the League City claim?**

6 A. I don't recollect ever seeing it at all.

7 **Q. What about the City of Galveston?**

8 A. Yes. I -- I -- I didn't work on it, but I was
9 updated on it, the City of Galveston.

10 **Q. And was that during the claims-handling**
11 **process?**

12 A. Yes.

13 **Q. Or in the litigation?**

14 A. No. The claims-handling process.

15 **Q. And what was your update? Do you recall?**

16 A. Well, that requires a bit of an explanation.
17 You gonna kick me?

18 At the beginning of the storm or just when
19 the storm was about to hit, I told Mr. Warren, who was
20 in charge of claims, that we needed to get out quickly
21 to all of the infrastructure-type losses, big commercial
22 losses, the University of Texas Medical Center, school
23 districts, municipalities, so that people could get back
24 to their lives. Even if their own home was destroyed,
25 at least their kids could get back to school, because

1 immediately afterwards, people were commuting from areas
2 in Houston and west, and, you know, it was a nightmare
3 for folks.

4 So there were certain individual things
5 like the City of Galveston, the County of Galveston, and
6 others, that I asked about at different intervals, how's
7 that going? Have we paid them? You know, those kind of
8 things.

9 I didn't get directly involved in looking
10 at the file, per se. I -- whoever was handling it, I
11 talked to and they'd tell me. And I'd say, "Okay,
12 cool." And -- and I didn't get any feedback. If I
13 didn't get any negative feedback.

14 Now, if I got some sort of complaint or
15 something, then I would obviously look into it more
16 thoroughly.

17 **Q. Now, what -- all of the complaints that were**
18 **made to TDI, those weren't relayed up to you, though,**
19 **were they, sir?**

20 A. No. We had an individual that they were sent
21 to, and then they were -- generally speaking, and then
22 we answered the complaint. And then -- but there were
23 times when I would get direct calls from them.

24 **Q. And it seems to me there you're referring to**
25 **specifically at -- the TDI complaint when you say you'd**

1 **answer a complaint, correct?**

2 A. Correct.

3 **Q. Now --**

4 A. Yes.

5 **Q. -- you could have other -- so all the TDI**
6 **complaints weren't sent up to you --**

7 A. No.

8 **Q. -- right?**

9 A. No, no, no. We --

10 **Q. In fact, I don't see you hardly ever on any of**
11 **the responses.**

12 A. No. I -- I would get phone calls -- very
13 similar -- handled a very similar way to the way I
14 mentioned on the claims.

15 If I got a phone call, I would go back to
16 the people that were involved with handling that, and
17 say, I've got this for Steve Mostyn, tell me about it.

18 They'd tell me about it. If I thought I
19 should --

20 **Q. I actually see one of those e-mails here, yeah.**

21 A. Yeah. You know, and if they -- they would tell
22 me about it, and then we would -- you know, if I felt
23 like I needed to give them some direction, I would. If
24 not, then I'd say, fine, what you're doing is fine. Go
25 ahead and answer it, that kind of thing.

1 Q. And then to be clear, then, on nonformal
2 complaints, meaning complaints from -- that weren't made
3 through the formal process at TDI -- those, all of those
4 were not -- or most of those were not brought to your
5 attention, correct?

6 A. Yeah. I would say the majority of them
7 weren't, but there -- certainly there were a lot that --

8 Q. There were?

9 A. -- were.

10 Q. But there were --

11 A. I took hundreds of calls on those sorts of
12 things.

13 Q. But there were thousands of complaints,
14 correct?

15 A. Correct, yeah.

16 Q. Now, in the beginning, you had fielded calls
17 from even Representative Taylor asking about getting a
18 constituent's home paid for or something looked into,
19 correct?

20 A. I had some legislators call me, including
21 Mr. Taylor, asking for us to take a look at a particular
22 claim, yeah.

23 Q. In -- in that time period, you were -- told me
24 that -- I believe that's during the time period you told
25 me that there was encouragement to get things settled,

1 **correct?**

2 A. Yeah. Probably late 2008 and a portion of
3 2009, maybe 6 to 9 months in 2009, and then it shifted,
4 as I mentioned to you earlier.

5 **Q. This is going to be No. 271 for pulling up**
6 **purposes. We're going to mark it as Exhibit No. 2.**

7 **(Exhibit No. 2 Marked.)**

8 **(Discussion off the record.)**

9 **Q. (BY MR. MOSTYN) Okay. Mr. Oliver, we have**
10 **a -- I handed you what's been marked as Exhibit No. 2,**
11 **and I -- I think you've had a chance to read over that;**
12 **is that correct?**

13 A. I have.

14 **Q. And that was an e-mail from you to the -- the**
15 **TWIA Board, correct?**

16 A. Yes.

17 MR. DURST: Memo.

18 MR. MOSTYN: Memo.

19 A. Yeah.

20 MR. MOSTYN: You're correct.

21 A. Yeah, it was a memo.

22 MR. MOSTYN: Thank you, Mr. Durst.

23 A. Well, it would have been an e-mail, by the way.

24 **Q. (BY MR. MOSTYN) Right.**

25 MR. DURST: I'll shut up.

1 Q. (BY MR. MOSTYN) Thank you, Mr. Oliver.

2 And so -- and -- and -- and this is near --
3 at or near the time that your employment ended, correct?

4 A. Yeah. Very close to it, yes.

5 Q. And -- and -- and in here, you're addressing
6 the possibility that, as you continue to resolve the
7 ongoing litigation, that you could reach -- at this
8 point, projections would have been 2.3 billion, correct?

9 A. Correct.

10 Q. And that you all needed to decide, I guess, the
11 issue whether or not you were going to pay that from
12 cash on hand, if you go above that, or do an assessment,
13 correct?

14 A. Correct.

15 Q. And was there a legal -- I'm not asking you
16 what was in it, but was there a legal opinion -- did you
17 all obtain a legal opinion on how -- on what you could
18 do?

19 A. Yes.

20 Q. Okay. Are you familiar with the recent AG's
21 ruling concerning this issue?

22 A. No.

23 Q. Okay. The question was: Could you use cash on
24 hand, and he said yes.

25 A. Uh-huh.

1 Q. But one of the things about using -- one of the
2 things about using cash on hand is, is you are using
3 money that otherwise would go into the catastrophic
4 reserve trust fund, right?

5 A. As profits for that year, yes --

6 Q. Yes.

7 A. -- that's correct, Uh-huh.

8 Q. So TWIA has profits, correct?

9 A. Yes. If they don't use up the premiums that
10 come in during that year, the earned premiums, then --

11 Q. They go with --

12 A. -- the profits would inure to the reserve trust
13 fund.

14 Q. And fortunately, we haven't had another
15 hurricane --

16 A. Uh-huh.

17 Q. -- since Ike, I guess, correct?

18 A. Yeah. I think there was a tropical storm but
19 no hurricanes that I know of.

20 Q. Was there any limitation inside the statute
21 on -- on the reasons for which you could do an
22 assessment? And what I mean by that is could you assess
23 to pay to settle lawsuits? Was -- to assess to pay for
24 extra contractual damages, things like that?

25 MR. MCKINNEY: Objection. Form.

1 Q. (BY MR. MOSTYN) All right.

2 A. Does the statute -- ask me again.

3 Q. The -- the -- the statute allows you to do
4 assessments, right?

5 A. Correct.

6 Q. Is there any limitation on that you could only
7 do that for policy contract damages or policy payment
8 amounts?

9 A. That --

10 Q. Does that make sense?

11 A. -- I don't recall any limitations of -- of what
12 made up the assessments. It was just how much we paid
13 is what I recall.

14 Q. Right. And then there was no limitations that
15 you were aware of in the resolution of these thousands
16 of lawsuits that you could not pay for extra contractual
17 damages if you wanted to in the settlement, correct?

18 A. I don't recall there being any, no.

19 Q. And, in fact, that happened on numerous
20 occasions, correct?

21 A. You know, I don't recall us paying any extra
22 contract because we didn't go to court, which would have
23 been the ruling for extra contract. It was alleged in
24 the lawsuit, and then we ended up settling it. And so
25 there was never a breakdown of extra contracts.

1 So I'd say to my knowledge -- it may have
2 happened after I left that -- we never paid any extra
3 contract.

4 **Q. Okay. And I'm going to not follow up because I**
5 **got an ADR statute sitting on me about whether I can**
6 **discuss that or not. Okay?**

7 A. Okay.

8 **Q. And so do you have -- do you have any**
9 **recollection of conversation that you could not -- or**
10 **any belief that you could not pay extra contracting?**

11 A. I don't recall --

12 MR. MCKINNEY: Sorry.

13 THE DEPONENT: Whoops. I'm sorry.

14 MR. MCKINNEY: That's going to be a
15 privileged discussion such as -- because it involves the
16 discussion of TWIA's legal liability.

17 **Q. (BY MR. MOSTYN) Well, I'm talking about prior**
18 **to the occurrence of Ike, had you all ever had that**
19 **conversation if there was a -- you'd had litigation.**
20 **We'd had litigation in --**

21 A. Rita.

22 **Q. Yeah. Was there ever a conversation regarding**
23 **whether or not the Texas Windstorm Insurance Association**
24 **could -- would be prohibited from paying extra**
25 **contractual damages?**

1 MR. DURST: Excuse me. That would still be
2 a privileged discussion, because there was litigation
3 after Rita.

4 Q. (BY MR. MOSTYN) Well, I'm not talking about in
5 response to any litigation. I'm talking about in
6 general, prior to anticipation of litigation that we are
7 here on, or in regards to any other litigation, did you
8 all ever have conversations or concerns at TWIA that you
9 would be unable to pay for extra contractual damages?

10 A. Yes, we did.

11 Q. You did have conversations about the --

12 MR. DURST: Hold on. One person at a time.

13 MR. MCKINNEY: If that's based on
14 discussions with lawyers, that's going to be
15 attorney-client communication.

16 A. It -- it --

17 MR. DURST: Hold on. Hold on.

18 A. Okay. I was going to say it's not with
19 lawyers.

20 MR. DURST: Okay.

21 Q. (BY MR. MOSTYN) Okay. Who were those
22 conversations with?

23 MR. DURST: Hold on. Let me just put on
24 the record.

25 THE DEPONENT: I'm sorry, go ahead.

1 MR. DURST: Sure. And so you can answer
2 questions from Mr. Mostyn or anyone. We're trying to
3 cooperate, but if there's an objection, to please do not
4 disclose any conversations with TWIA lawyers or TWIA
5 litigation while you were general manger. To the extent
6 that he's asking about policies or the rules, of course,
7 or conversations not involving lawyers.

8 But we are going to follow the
9 instruction -- or the objection. Unless the parties can
10 agree otherwise or a judge rules, don't disclose
11 attorney-client or work product --

12 THE DEPONENT: Gotcha.

13 MR. DURST: -- from when you were there.

14 THE DEPONENT: Okay.

15 Q. (BY MR. MOSTYN) So does the TWIA policy
16 contain in it the right to bring a -- a contractual --
17 inside the contract between the insured and the insurer,
18 does the policy contain the right to bring a cause of
19 action under 541 of the Insurance Code?

20 MR. DURST: Same instruction.

21 Q. (BY MR. MOSTYN) Yeah, I'm just asking does the
22 policy contain it.

23 MR. DURST: Okay.

24 A. I don't believe the policy itself says so, but
25 I believe -- I may be wrong, but I -- the -- certainly

1 541 does, you know, that it allows for certain things.

2 Q. (BY MR. MOSTYN) Yeah. I'm just asking, do
3 you -- are you -- from your -- or from your
4 recollection, your pall if -- recall if the policy
5 itself provides --

6 A. I -- I don't recall the policy saying anything,
7 but I -- I can -- I'd have to go through the policy
8 again. It's been a while.

9 THE DEPONENT: Um --

10 MR. DURST: Hold on. Wait for a question.

11 THE DEPONENT: No. For you.

12 MR. DURST: Wait for a question.

13 THE DEPONENT: Well, no, it's something I
14 want to ask you.

15 MR. DURST: I know.

16 MR. MOSTYN: Go ahead.

17 THE DEPONENT: Okay. I'm sorry.

18 MR. MOSTYN: You all want to take --

19 MR. DURST: Hold on. Hold on.

20 THE DEPONENT: Sorry.

21 (Discussion off the record.)

22 MR. DURST: We appreciate the opportunity.

23 THE DEPONENT: Yeah. Thank you.

24 Q. (BY MR. MOSTYN) Sure.

25 A. Okay. Fire away.

1 Q. Mr. Oliver, it's my understanding that, at the
2 end of 2010, that you received a 6 percent raise and a
3 bonus?

4 A. That sounds right. I don't remember the exact
5 amount, but yes, I did get a raise and a bonus, correct.

6 Q. And then three months later, you're asked to
7 leave?

8 A. Correct.

9 Q. Do you believe that was done at the assistance
10 of Representative Taylor and Smithee?

11 A. I believe definitely Mr. Taylor. And I believe
12 probably Mr. Smithee, as well, and perhaps others, by
13 the way, but...

14 Q. And you had mentioned before that --

15 A. Excuse me, I'm sorry.

16 Q. -- when you had had these meetings -- and the
17 reason I bring that up, it strikes me as odd that you
18 give an employee a pay raise and a bonus in December and
19 then terminate them.

20 A. Well, that was --

21 MR. MCKINNEY: Objection. Form.

22 A. -- awarded by the Board of Directors --

23 Q. (BY MR. MOSTYN) Okay.

24 A. -- not --

25 Q. How did Smithee and Taylor have the ability

1 to -- to -- they're not your bosses. I mean...

2 A. They --

3 MR. DURST: Hold on. We need a question.

4 THE DEPONENT: Well, he said I thought --

5 **Q. (BY MR. MOSTYN) Yeah. I mean, how do you feel**
6 **that they had the ability to influence your employment?**

7 A. They influenced the Insurance Commissioner, who
8 then met with the Board on several occasions, wrote
9 letters to the Board and indicated that -- he indicated
10 they wanted changes.

11 **Q. And did the letter set forth the reasons?**

12 A. No.

13 **Q. We had discussed previously that you had pushed**
14 **back on the desire not to settle the cases, my cases,**
15 **but to try them, correct? When your -- in your meetings**
16 **with Mr. Taylor, or is that in regards to Lieutenant**
17 **Governor Dewhurst, or both?**

18 A. Really, with all of the legislators I talked
19 to, I said we need to settle the cases as is
20 appropriate. If we find one or more that it would be
21 appropriate to try in what would be a difficult venue
22 for us, and then, you know, folks on the jury that had
23 suffered from Hurricane Ike, et cetera, then that's what
24 we needed to do.

25 But either to not settle them or to just

1 willy-nilly settle them was silly, because that's not
2 appropriate. I've been in insurance for 40 years. I --
3 that wouldn't be what you do.

4 **Q. Do you think that -- when you met with --**
5 **with -- with -- with Lieutenant Governor David Dewhurst,**
6 **Mr. Oliver, did you indicate to them in that meeting**
7 **that you were not going to stop settling the lawsuits?**

8 A. I said we would continue to settle lawsuits as
9 long as we could do so within some reason, yeah.

10 **Q. Okay. What was their reaction to that?**

11 A. I don't think they objected to settling them as
12 much as they were -- kept saying -- Dewhurst in
13 particular, Ogden listened, but he kept saying, "You
14 need to try one. You need to try one. You need to try
15 one."

16 And I said, you can't try them all. We got
17 bad facts on some of them. I mean, that's a -- you
18 can't have 125, 130,000 claims in the two companies and
19 not have some bad facts. So, you know, it'd be silly to
20 try those. We might -- we'll try to settle them. But
21 yes, if we can find one that makes sense to -- to bring
22 to court, we will.

23 That's probably what I told him.

24 **Q. Then what about Mr. Taylor, did you tell him**
25 **similar?**

1 A. Yeah. I would have said the same thing to
2 everybody.

3 **Q. Do you feel that that pushback had anything to**
4 **do with your termination?**

5 A. I -- I have no way to know on that. I don't
6 know what was in their heart in that regard.

7 **Q. Did you -- in any of these meetings in -- in**
8 **which -- the meeting with -- with Lieutenant Governor**
9 **Dewhurst took where -- place where?**

10 A. In his conference room.

11 **Q. In -- in the Capitol?**

12 A. Yeah. At his -- you know, he has his office,
13 and then he has a conference room, in his conference
14 room next to his office.

15 **Q. At that office and conference room is when the**
16 **discussions about my political donations were discussed,**
17 **as well?**

18 A. I don't -- yeah, yeah. It would have been at
19 the same time, yeah, absolutely, yeah.

20 **Q. And -- And the meeting with Mister -- with**
21 **Representative Taylor, were those in his offices at the**
22 **Capitol?**

23 A. Taylor would have been a combination of at his
24 office and on the telephone --

25 **Q. Okay.**

1 A. -- because he would call from down at the
2 coast.

3 **Q. Would he call from his Capitol -- his -- his**
4 **district office or do you know?**

5 A. I don't -- and I think -- sometimes yeah,
6 sometimes from his agency office, his insurance agency
7 office. So it varied. So it could be his insurance
8 agency. It have been his Capitol office down there. It
9 could have been at -- from the Capitol, and I did visit
10 him at his office there.

11 And then he came over to our office on, at
12 least, one occasion that I can remember. It may have
13 been more than one, but I can recall one in particular.

14 **Q. What was that about?**

15 A. Same general thing, just to get an update and
16 all that. He wanted to see our office and that sort of
17 thing.

18 **Q. Did you ever have any conversations with anyone**
19 **from the Governor's Office regarding settlement of the**
20 **lawsuits and --**

21 A. Yes.

22 **Q. And who was that?**

23 A. I don't recall her name. It was a lawyer that
24 worked for the Governor's staff. I don't -- I'm sorry.

25 **Q. Do you know her title?**

1 A. I wish I could remember her name. I'm sorry.
2 I don't remember her name, and I don't -- yeah, I don't
3 think I ever knew her title, just that she was a lawyer
4 and -- and on the Governor's staff. And she would then
5 update the Chief of Staff for the Governor and the
6 Governor as appropriate.

7 **Q. What were the topics of those conversations?**

8 A. They were just pretty generic. You know,
9 here's the losses, here's how many, you know. Here's
10 what assessments we made. Here's what could be made if
11 it grows more, you know, those kind of things.

12 **Q. No specificity about particular lawyers or**
13 **claims?**

14 A. No, huh-uh. Not with her, no.

15 **Q. With anybody else from the Governor's Office?**

16 A. No. She was the only one directly from the
17 Governor's Office.

18 **Q. What about anybody from Texans For Lawsuit**
19 **Reform?**

20 A. No, I never talked directly to anybody there.

21 **Q. Just Mr. Taylor's reference to them?**

22 A. Yes.

23 **Q. And then what about a gentleman named**
24 **Mr. Toomey?**

25 THE REPORTER: Mr. Toomey?

1 MR. MOSTYN: Toomey, T-O-O-M-E-Y.

2 A. I didn't talk with Mr. Toomey, but he wrote
3 letters to us during the dustup that you and Mr. Taylor
4 had in the press, you remember, related to whether you
5 should get certain information and that sort of thing
6 and --

7 Q. (BY MR. MOSTYN) You're talking about the
8 situation where Mr. Taylor requested information on --
9 on, I guess, all of our lawsuits and claimants?

10 A. Yeah. Yeah, and you went to court to stop
11 that. And Mr. Taylor and then Mr. Toomey wrote letters
12 to TWIA. I don't remember how many, at least one I know
13 of, I can remember. I don't recall what it said, other
14 than, you know, we were in between you guys --

15 Q. Yes.

16 A. -- and we didn't want to be there. We were
17 perfectly willing to give you whatever you wanted. And
18 I'd have given it to Taylor. But there was a -- I mean,
19 give Taylor whatever you wanted, not in deference to
20 you, I mean, for any reason to avoid dealing with you,
21 but just simply -- but you'd gone to court and gotten an
22 injunction.

23 And -- and I told Taylor, and I told
24 Toomey -- or I mean, I didn't tell Toomey, but I told
25 Taylor and others, "Look, we're not going to defy a

1 Court Order."

2 **Q. How many letters did Mr. Toomey write to --**

3 A. I don't remember. It was at least one I know
4 but --

5 **Q. And what was the gist of that letter?**

6 A. And -- and the gist in general -- and I don't
7 remember the details by any means. It -- it just was,
8 you know, we support Mr. Taylor, and you need to do
9 whatever, you know -- give this information to him kind
10 of thing. He's entitled to it as a legislator kind of
11 thing.

12 **Q. In what -- in what capacity was he writing you**
13 **that letter?**

14 A. I -- if I remember correctly, and I could be
15 wrong, the lawsuit reform folks, he was mentioning them.
16 But I may be wrong. I -- I could be wrong on that,
17 so --

18 **Q. I -- I just wonder, because, you know --**

19 A. Yeah.

20 **Q. -- did anybody else write you letters?**

21 A. Yeah. Well, yeah. There was -- there was a
22 group that supported Taylor, and we heard from them.
23 Had a -- there were a few letters. There weren't many,
24 but there were some letters of support.

25 And then, you know, there was a lot of

1 press that went on at the same time. So we saw a lot of
2 things in the press, you know so-and-so is quoted as
3 saying, you should do this, and that sort of thing.

4 But there weren't but a hand -- there
5 weren't even a handful of letters, maybe two, three,
6 four letters. I don't recall at this point exactly.

7 **Q. Anybody else you recall a letter from?**

8 A. No, huh-uh.

9 **Q. Was Mr. Toomey's letter on a TLR letterhead; do**
10 **you know?**

11 A. I can't answer that.

12 **Q. And do you know the purpose for which**
13 **Mr. Taylor wanted the information?**

14 A. No. I have no idea why he wanted it.

15 **Q. Do you know that he requested information on**
16 **the lawsuits by the law firm who represented the folks,**
17 **correct?**

18 A. Right. He -- he wanted a breakdown of what
19 your fees were, is what he wanted.

20 **Q. And my fees in particular, correct?**

21 A. Right. And we explained that on settlements,
22 they're indivisible (sic). It's between you and your
23 client. We pay you, say, \$50,000, and you divide that
24 according to whatever your contract is with your client.

25 **Q. Do you know why he wanted to see what my law**

1 **firm's fees were?**

2 A. I have no idea.

3 **Q. Have any idea? Any belief?**

4 MR. MCKINNEY: Form.

5 A. Well, you know, I could -- my own opinion?

6 **Q. (BY MR. MOSTYN) Yes, sir.**

7 A. Yeah. He -- what we talked about earlier in
8 the deposition, that -- that he was concerned that money
9 was being given to candidates that supported your
10 position in the Democratic party would be my -- that's
11 my opinion. That's not anybody else's.

12 **Q. Were you aware that in that request, that he**
13 **also requested such things as my clients' policy**
14 **amounts, any information regarding what they claimed in**
15 **the lawsuit and so forth?**

16 A. Right. And we told them he couldn't have that.
17 We'd redact it if we, in fact -- and eventually the AG
18 said to redact it, you know, if we -- we should redact
19 any personal information, and we would have done that
20 anyway.

21 **Q. But that was in his request, correct?**

22 A. It was.

23 **Q. Did the Lieutenant Governor's office ever**
24 **contact you about that request?**

25 A. No, not that I recall.

1 **Q. In 2009, the law changes on how funds are done**
2 **at TWIA, correct?**

3 A. Yes, sir.

4 **Q. And you go from unlimited assessments, correct?**

5 A. Uh-huh.

6 **Q. Which basically, then -- would you -- and I --**
7 **I just want your opinion: What did that do to the**
8 **financial stability of TWIA?**

9 A. I think it made it significantly lower for if
10 there was a serious storm or series of storms.

11 **Q. Can you explain to the ladies and gentlemen of**
12 **the jury why?**

13 A. Well, as we've already discussed, just to put
14 it in context --

15 **Q. Please do.**

16 A. -- prior -- prior to 2009, we had the ability
17 to assess the insurance companies, property and casualty
18 insurance companies, on an unlimited basis, which means
19 until the last company was standing in Texas, we'd be
20 able to get money to pay claims.

21 After 2009, we were limited to -- I think
22 it was 800 million, but I may be wrong, in -- in a
23 combination of things, and to buy a certain amount of
24 bonds or to purchase a certain amount of bonds, place
25 them in the marketplace. But it only covered us up to a

1 certain point. And then above that, we could buy
2 reinsurance and that sort of thing.

3 But it limited us, and I don't remember the
4 exact number. But it seems to me that that first year
5 out, we probably had, like, somewhere between 1.8 and
6 2.1 billion of funding. If we had any more loss above
7 it, like we did in Ike, we would have been out of luck,
8 because we didn't have an ability to -- to assess the
9 insurance companies.

10 **Q. Do you know why that was done?**

11 A. Why it was there?

12 **Q. Changed?**

13 A. The Legislature made the change. I mean, I was
14 involved in the meetings at the Capitol, as were you,
15 and yeah. I mean, I assume the insurance companies held
16 back their assessment. I know they didn't want to be on
17 the hook for that.

18 And the legislators didn't want to give us
19 too much bonding authority because it would have
20 impacted inland residents because the coastal residents
21 couldn't have afforded the payback of those bonds once
22 they were issued.

23 **Q. The insurance companies were -- basically, a**
24 **cap was put on in 2009 on what they could be assessed,**
25 **right?**

1 A. Right. I think it was -- I -- I believe it was
2 800 million total, but I'm not certain of that.

3 **Q. And then were you there when the proposed**
4 **legislation was done on limiting the ability of an**
5 **insured to bring a cause of action in 2011?**

6 A. No. I -- I don't recall any of that.

7 **Q. Okay. So it would just --**

8 A. That was sort of in the midst of my turmoil and
9 then -- yeah.

10 **Q. Sorry.**

11 A. That's all right. Hey. That's all right.

12 **Q. I'm not laughing at you, Mr. Oliver --**

13 A. I understand.

14 **Q. -- just misery, you know.**

15 A. Yeah.

16 **Q. I -- I was there. And I -- I may have wanted**
17 **to go with you at the end of -- by the end of June, if**
18 **you were to ask me, do you wish you would have gone away**
19 **with Mr. Oliver, I would have said "yes."**

20 You -- you -- so that was a chuckle of
21 commiseration.

22 A. Can -- well --

23 **Q. Go ahead.**

24 THE DEPONENT: I was going to say, can we
25 go off the record for a second? I want to show him a

1 cartoon I keep in my wallet about that very time.

2 MR. DURST: When we take the next break.

3 MR. MOSTYN: All right. And we'll wrap it
4 here for --

5 THE DEPONENT: It has nothing to do with
6 any of this.

7 MR. MOSTYN: I got you. I got you.

8 THE DEPONENT: You'll get a kick out of it.
9 Go ahead.

10 Q. (BY MR. MOSTYN) In regards to -- you had made
11 a statement in the newspaper one time that if you all
12 had paid for lifted shingles, you would have bought
13 every roof in Galveston County.

14 Do you recall that?

15 A. I recall something like that, yeah.

16 Q. Did you testify at the administrative oversight
17 hearing on lifted shingles?

18 A. I think there were a couple of hearings.
19 We'd -- you'd have to be -- I --

20 Q. Did you testify at either one on lifted
21 shingles? Do you recall?

22 A. I don't recall. I could have, yeah. I just
23 don't recall. I could have, but I don't recall.

24 Q. And were you -- when was the settlement entered
25 into with TDI? Do you -- were you there?

1 A. It was after I left.

2 **Q. After you left? Okay.**

3 A. We -- we litigated it when I was there.

4 **Q. And then settled it afterwards?**

5 A. Uh-huh.

6 **Q. Was the position of TWIA -- I'm not going to**
7 **get into that.**

8 **Mr. Oliver, tell me at the rate at which --**
9 **from my recollection and -- and your -- you lived this.**
10 **So after Rita, there was a sudden escalation of**
11 **for-profit carriers or -- pulling off of the coast in**
12 **writing policies. Is that -- is that recollection**
13 **correct? I mean, you all's number of policies went up**
14 **quickly.**

15 A. It -- it started really in 2003 with USAA, and
16 it escalated, as you suggest, after 2005. But it wasn't
17 just Rita. It was Katrina and the Florida hurricanes
18 you remember that crisscrossed --

19 **Q. Five, yeah.**

20 A. -- crisscrossed Florida. And the insurance
21 companies began using, more and more in the 2000s, late
22 '90s, early 2000s, modeling to determine what their
23 ultimate catastrophic losses were or would be.

24 And so many of them, when they started
25 getting that modeled and took a look at what potential

1 losses they had, and then looked at how much their
2 reinsurance was going to cost, they began shedding those
3 policies.

4 And, again, it started in 2003, kind of
5 moved up steadily, and then it escalated, as you
6 suggest, after Rita and Katrina and the Florida
7 hurricanes.

8 **Q. And you would agree that -- I -- the -- you --**
9 **can you tell me approximately, roughly, if you can**
10 **recall, how many policies or the dollar amount you all**
11 **had insured in 2000, around 2000?**

12 A. Yeah. Actually I can, surprisingly. I guess
13 I'm a numbers guy.

14 When I went to work there in 2000, we had
15 68,000, give or take a few policies.

16 **Q. And do you know approximately the --**

17 A. The exposure?

18 **Q. Yes, sir.**

19 A. I don't recall the exposure. I remember it was
20 68,000 policies.

21 **Q. Okay. And then when Ike hit, you had around**
22 **230,000; is that right?**

23 A. Again, give or take a few, and about 72 billion
24 or so in exposure.

25 **Q. Total exposure?**

1 A. All the way along the coast, correct.

2 **Q. And then from Ike -- and then in 2008, you have**
3 **two hurricanes. You have Dolly --**

4 A. Correct.

5 **Q. -- which affects -- affected -- do you know how**
6 **many counties that it --**

7 A. It was primarily northern Cameron, up
8 through -- across Padre Island up through northern
9 Cameron, Port Isabel, and then it ran north up into
10 Kennedy County, and then it kind of disappeared.
11 Although we did get a few claims from Corpus Christi,
12 but...

13 **Q. They weren't mine.**

14 **Anyway, and then in Ike, you had six**
15 **counties involved, primarily. And I get that from one**
16 **of the memos just as a --**

17 A. Yeah, primarily, that's correct, yes. We
18 got -- we had them in all 14 counties, but primarily six
19 counties.

20 **Q. Yeah. It was big, right?**

21 A. Yeah. Oh, yeah.

22 **Q. In fact, one of the largest sized hurricanes,**
23 **meaning in -- in -- in actual distance, to hit the**
24 **coast, I think, ever?**

25 A. Yeah. Well, it was very large and a very -- a

1 huge surge.

2 Q. And that, I think, from the memo, you had about
3 42 billion in exposure there, correct, from those
4 counties, if as I recall, from the memos?

5 A. Those -- those six counties?

6 Q. Yes.

7 A. That sounds about right. I can't be certain,
8 but that sounds about right, yeah.

9 Q. And do you know if since 2009, the amount of
10 exposure or the amount of policies -- well, you will
11 know from '9 to '11 -- has it continued to expand?

12 A. I believe so, yes.

13 Q. And up until the time you left, was it
14 expanding?

15 A. Yes.

16 Q. And so in 2009, you had or 2000 -- excuse me.

17 In 2009, when the Texas Legislature met,
18 you had an increasing exposure amount, correct?

19 A. Correct.

20 Q. And then as implemented by statute, a
21 decreasing ability to address that exposure, correct?

22 A. Correct.

23 Q. And do you know what the proposed changes were
24 in -- did you ever -- I know you've already -- there was
25 a lot of junk swirling around in 2011.

1 Did you ever work on the proposed changes
2 on how to fund TWIA in 2011?

3 A. No. Huh-uh.

4 Q. You would agree with the statement that it is
5 extremely fortunate that we haven't, at least, in the
6 time that you were there since 2009 -- well, I'm not
7 going to say that.

8 After '09, there simply was no ability to
9 deal with a storm that would exceed -- as the law was
10 written, that would exceed 2.1 billion, correct?

11 A. No. I'd put it another way.

12 Q. Go ahead, please.

13 A. There are two issues. One is what would, in
14 part, be the total amount, potentially, and that's the
15 important thing, the way the legislation was written.

16 The other is the real world, and in the
17 real world, you have to buy reinsurance to cover part of
18 that 2.1 billion, and you have to be able to place those
19 bonds.

20 Q. Yeah.

21 A. And the probability of placing those bonds,
22 particularly in 2009, when the economy was down the
23 commode, was not real good. And so especially with the
24 payback being restricted to just the coast and not
25 spread statewide, which the inland legislators were

1 pushing back from. So it's really kind of a two-fold
2 answer.

3 Yes, in theory, you could go to
4 2.1 billion, but in practicality -- and I dealt a lot
5 with the finance authority here on the bonds and with
6 bond people and everything -- the reality of getting
7 those bonds placed and the reality of getting that
8 amount of reinsurance that you could afford to pay was
9 almost zero. So, in fact, the actual potential funding
10 would have been far less.

11 **Q. Do you have any estimate of what it would have**
12 **been? How much were the bonds? How much in bonds was**
13 **authorized?**

14 A. If -- if -- if I recollect correctly, there
15 was -- there was one set of bonds that would be paid
16 back by the insurance companies, so that would have been
17 fine.

18 **Q. Then the others went to the --**

19 A. The others went to the coastal people, and the
20 ones that went to the coast were going to be the ones
21 that were going to be difficult to place. And I believe
22 that was about in the neighborhood of 800 million or
23 something like that. I don't remember the exact number,
24 Mr. Mostyn.

25 But it -- from a practical point of view,

1 that wasn't going to happen.

2 **Q.** On the -- prior to 2009, I assume, from reading
3 these e-mails and so forth and a discussion of doing
4 assessments at a later date, there was no -- you could
5 do an assessment as long as a claim was made during the
6 period? Is that how that worked for that year? Do you
7 see what I'm saying? So --

8 A. Yes.

9 **Q.** Can you help me out on that?

10 A. If --

11 **Q.** Let me -- the question is --

12 A. -- any loss is within a calendar year.

13 **Q.** Right. For --

14 A. January to December.

15 MR. DURST: One at a time.

16 **Q.** (BY MR. MOSTYN) For any claimed loss, a claim
17 made in a calendar year, you could do assessments for
18 that year -- for claims made in any year, right?

19 A. No. It would be claims that occurred in that
20 year.

21 **Q.** Okay. Yeah.

22 A. And there is a difference.

23 **Q.** There is a difference, yeah. A claim -- when
24 the claim occurred depended -- is different than when
25 the claim is made?

1 A. Correct.

2 Q. The occurrence is the event that caused the
3 claimed damages, right?

4 A. Correct.

5 Q. When the claim is made is when the person
6 actually notifies the insurance company of the claim?

7 A. Correct.

8 Q. And in the insurance business, there are --
9 maybe not in property, but in other areas I'm aware of,
10 there are different types of policies which are claim
11 made or claim occurrence, correct?

12 A. Correct.

13 Q. So for an occurrence that occurred in 2008, you
14 could do an assessment at a later date as long as the
15 occurrence was made in that year, correct?

16 A. Correct.

17 Q. And -- and the reinsurance, would it be on the
18 same calendar?

19 A. It -- it would be on an occurrence basis, as
20 well.

21 Q. Yeah. In the same calendar period?

22 A. Correct.

23 Q. The assessment, was it on a per occurrence or
24 per occurrence per year?

25 A. All occurrences during that year.

1 **Q. Okay. So Dolly and Ike were added together?**

2 A. They get put together, yeah.

3 To -- to backtrack a second on the
4 reinsurance, reinsurance is on a paid basis.

5 **Q. Yeah. I -- right.**

6 A. That's the only difference.

7 **Q. But it relates to occurrence that happened in**
8 **that time period?**

9 A. Correct.

10 **Q. And were you aware of any issues with any of**
11 **the lawsuits that you've settled where the reinsurance**
12 **refused to -- to pay that claim?**

13 A. No.

14 **Q. Including the slab settlement?**

15 A. No.

16 **Q. And just so we're clear on the record, the**
17 **payment of claims -- let me ask you this: How quick**
18 **were you all into the reinsurance?**

19 A. Wow. I don't recall, but it was well after two
20 thousand -- into late 2009 or even in early 2010 before
21 we actually went, because as I said, you have to make
22 payments for the reinsurance to apply. You can't do it
23 on a -- on a --

24 **Q. You can't reserve it?**

25 A. You can't reserve it, right. It has to be

1 paid. So it was probably late 2009 at the earliest, and
2 it may have been later than that. I don't recall right
3 now, so at least, a year after -- at -- at least one
4 year after the storm, at -- at a minimum.

5 **Q. And the reinsurance policy that you had**
6 **purchased, would the correct terminology be it would be**
7 **for the -- any occurrences in the year 2008? Is that**
8 **how you would describe it?**

9 A. No.

10 **Q. Okay. Tell me.**

11 A. The reinsurance was individual occurrence.

12 **Q. I'm sorry. It would -- it would be per**
13 **occurrence in a given year?**

14 A. Correct.

15 **Q. Okay. And the reinsurance that you would**
16 **purchase --**

17 A. No. Wait. Let me back up on that.

18 **Q. Okay.**

19 A. It's per occurrence, but once you have one
20 loss, say, Ike, you then have to buy what's called a
21 reinstatement of reinsurance, which means you pay an
22 additional premium. And part of that assessment we made
23 to the insurance companies was to help pay for that
24 reinstatement of the reinsurance.

25 **Q. Let me ask you this question: To -- to -- to**

1 reinstate it would be for another occurrence, right?

2 A. Correct. For another storm that might come
3 along.

4 Q. You gotta ante back up --

5 A. Right.

6 Q. -- basically.

7 So claims paid from about 600 million up to
8 2.1 was paid by reinsurance, correct?

9 A. Except for that 30 million.

10 Q. Except for the -- the 30 million --

11 A. Which is mentioned here, Lehman Re.

12 Q. Yeah.

13 THE REPORTER: I didn't hear it.

14 THE DEPONENT: I'm sorry. Except for the
15 30 million that Lehman Re went bankrupt on.

16 (Discussion off the record.)

17 Q. (BY MR. MOSTYN) That was paid by reinsurance,
18 except for the 30 million, 600 to 2.1 million?

19 A. Correct.

20 Q. And did the reinsurance policy that you
21 purchased on behalf of Texas Windstorm Insurance
22 Association, did it cover payments for extra contractual
23 damages?

24 A. Yes.

25 Q. And that is something that can be negotiated

1 **and purchased or not, correct?**

2 A. Yes. I mean, I -- we did. I --

3 **Q. You did; others may not, right?**

4 A. Correct.

5 **Q. I mean, it's not a standard -- it doesn't come**
6 **standard with the car, right?**

7 A. Right.

8 **Q. Then after 2.1 billion, there was payments made**
9 **or the discussion of having payments made out of cash on**
10 **hand, correct?**

11 A. Correct.

12 **Q. Or doing another assessment, correct?**

13 A. Correct.

14 **Q. Why was not -- why was there not another**
15 **assessment done?**

16 A. We -- we were receiving feedback from the Texas
17 Department of Insurance that we should let the board
18 review that issue, you know, because it's the board's
19 decision, not mine, and there were sort of mixed signals
20 for a while.

21 It was -- initially, it was pay it out of
22 cash because -- future cash, 2009 cash and 2010, you
23 know, because we don't want to make any more
24 assessments. That was coming from the department.

25 And then it was, wait a minute, maybe you'd

1 better consider assessing. And that's when TDI asked me
2 to put in front of the board a discussion for perhaps an
3 assessment, and that's this e-mail that -- or the memo
4 you gave me here.

5 **Q. And you just pointed to Exhibit Number --**

6 A. That's -- make sure. Yeah, that's Exhibit
7 No. 2. I'm just making sure. Marilyn Hamilton called
8 me. Yeah.

9 **Q. And that was -- who did you say called you?**

10 A. Marilyn Hamilton.

11 **Q. Okay. I'm sorry. I thought I heard somebody**
12 **else.**

13 A. Yeah. No. I'm sorry.

14 **Q. And that was, I guess, never resolved by the**
15 **time you left, correct?**

16 A. Correct, yeah. It wasn't resolved. They
17 talked about it, but it wasn't resolved.

18 **Q. Was there a general feeling amongst --**
19 **Mr. Oliver, what strikes me as odd is that you have**
20 **board members deciding if the companies that they are**
21 **paid by are going to be required to pay money. Do you**
22 **see what I'm saying?**

23 MR. MCKINNEY: Objection. Form.

24 **Q. (BY MR. MOSTYN) Was there ever a discussion of**
25 **any conflicts of interest?**

1 A. No.

2 MR. MOSTYN: Mark this, please.

3 THE DEPONENT: I'll get it.

4 (Discussion off the record.)

5 (Exhibit No. 3 marked.)

6 A. Okay.

7 **Q. (BY MR. MOSTYN) Can you explain the -- who**
8 **Melanie Durst is? Do you recall?**

9 A. Yeah. She was a staff member in -- if I
10 remember correctly, in Senator Fraser's staff at the
11 time.

12 **Q. And can you --**

13 MR. DURST: Can we just, excuse me, put on
14 the record that I have no idea who that is and is
15 certainly no relation to me.

16 THE DEPONENT: Okay. I didn't think of
17 that.

18 MR. MCKINNEY: I'm not sure I accept your
19 representation.

20 **Q. (BY MR. MOSTYN) Mr. Oliver --**

21 A. Uh-huh.

22 **Q. -- is this about the future legislation? Is**
23 **that what this is, or is this about past? Because it**
24 **talks about the use of bonds.**

25 A. Let me reread it here again.

1 Yeah. It's about future.

2 **Q. Okay.**

3 A. This -- this wouldn't be related to -- to
4 anything to do with Ike or -- or Dolly, either one.

5 **Q. Yeah. Because there was no bonds prior to Ike**
6 **or Dolly?**

7 A. No, huh-uh.

8 MR. MOSTYN: That's all I have, Mr. Oliver.

9 THE DEPONENT: That's it?

10 MR. MOSTYN: For today. Now, me and
11 Mr. Durst will argue about what that means later.

12 MR. DURST: That's correct. We have a Rule
13 11 Agreement.

14 MR. MOSTYN: That sets forth we both
15 reserve our --

16 MR. DURST: Exactly. No party is waiving
17 any rights. But those are all your questions for today?

18 MR. MOSTYN: That is -- well, I may come
19 back.

20 MR. DURST: Of course.

21 MR. MOSTYN: Right, yeah.

22 MR. MCKINNEY: Do you mind if we swap
23 places so I can --

24 MR. MOSTYN: Sure.

25 MR. MCKINNEY: -- stare at the witness.

1 (Discussion off the record.)

2 EXAMINATION

3 BY MR. MCKINNEY:

4 Q. I'm Andrew McKinney. We met --

5 A. Yes.

6 Q. -- off the record. I represent TWIA.

7 A. Yes.

8 Q. And I just want to try to figure out, when
9 you're talking about reinsurance, it sounded a lot like
10 excess insurance to me; that is, a Policy of Insurance
11 that kicks in after you've exhausted certain underlying
12 limits and obligations.

13 Am I missing your -- what the reinsurance
14 was that TWIA bought or that you bought for TWIA?

15 A. Reinsurance is purchased to curtail some of the
16 loss, depending on the type of -- you know, the type of
17 risks that you have.

18 You can buy -- there's several kinds.
19 There's quota share reinsurance where you share a
20 percentage with the reinsurance companies. There's
21 excess reinsurance.

22 What we bought was excess property
23 reinsurance, which is purchased with a specific
24 deductible in this case -- they call it retention, but
25 I'll call it deductible.

1 **Q. Right.**

2 A. And then you -- they pay over that up to
3 whatever limits that you purchased.

4 **Q. And was the deductible a stated deductible of**
5 **"X" amount flat or, for example, if in a particular**
6 **year, TWIA exhausted all of its available cash, went**
7 **through its assessments and was out of money, say, at**
8 **midyear, would your -- is that when the -- the**
9 **reinsurance would kick in?**

10 MR. MOSTYN: Objection. Form.

11 **Q. (BY MR. MCKINNEY) I'm trying to describe a**
12 **hypothetical here.**

13 MR. MOSTYN: Form.

14 A. No.

15 **Q. (BY MR. MCKINNEY) All right. When -- when**
16 **would it kick in?**

17 A. Reinsurance was on an occurrence basis, so --

18 **Q. Right.**

19 A. -- individual storm basis.

20 **Q. Okay.**

21 A. So it had nothing to do with our overall
22 financials in that regard.

23 **Q. Then let me tweak the hypo.**

24 Let's say you have an occurrence at the
25 beginning of the year, and it's a mass occurrence. And

1 so by midyear, you have paid out all of your cash on
2 hand and paid out whatever assessments you could bring
3 in. And at that point, is that when the reinsurance
4 would kick in?

5 A. No.

6 Q. All right. What -- what would it take to kick
7 it in?

8 A. Again --

9 Q. How much would you have to spend?

10 A. It would -- it -- you're -- you're mixing
11 apples and oranges but --

12 Q. That's what I was afraid of --

13 A. Yeah. Okay.

14 Q. -- when I'm asking these questions.

15 A. The assessments were based on our financials
16 and whether we needed money for storm damage, and in the
17 case of we needed money to reinstate premiums. So it
18 could be multiple storms, as it was in 2008 with Dolly
19 and Ike.

20 Q. Okay.

21 A. The reinsurance applied to just an individual
22 storm and was unrelated to assessments or anything else.
23 It was as of a certain level, and then it paid above
24 that level. So when that storm reached a total payment
25 of 600 million, it paid up to -- as I told Mr. Mostyn,

1 to 2.1 billion.

2 Q. Was the retained limit underlying the
3 reinsurance -- was it a flat amount, or was it tied in
4 any way to how much cash TWIA had on hand?

5 MR. MOSTYN: Objection. Form.

6 A. A flat amount.

7 Q. (BY MR. MCKINNEY) Okay.

8 A. Uh-huh.

9 Q. So TWIA could have, hypothetically, a billion
10 in the bank, but if the retained limit was 500 million,
11 it would be at that point that the reinsurance would
12 kick in?

13 A. Correct.

14 MR. MCKINNEY: Thank you. That's all I
15 have.

16 THE DEPONENT: Okay.

17 MR. MOSTYN: Nothing else. Pursuant -- we
18 are just -- we've got a Rule 11 on what you and I are
19 going to argue about later, maybe, if it comes up.

20 MR. DURST: Perfect.

21 MR. MOSTYN: Thank you.

22 MR. DURST: Thank you.

23 THE VIDEOGRAPHER: The time is 2:11 p.m.
24 We're off the record, ending with Tape 3.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHANGES AND SIGNATURE

WITNESS NAME: JAMES OLIVER

DATE: 02/28/2014

PAGE LINE	CHANGE	REASON
-----------	--------	--------

1 I, JAMES OLIVER, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.
4
5
6

JAMES OLIVER

7
8
9
10 THE STATE OF _____)
11 COUNTY OF _____)
12
13

14 Before me, _____, on this day
15 personally appeared JAMES OLIVER, known to me (or proved
16 to me under oath or through _____)
17 (description of identity card or other document)) to be
the person whose name is subscribed to the foregoing
instrument and acknowledged to me that they executed the
same for the purposes and consideration therein
expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, 2013.
20
21

22 _____
NOTARY PUBLIC IN AND FOR
23 THE STATE OF _____
24 COMMISSION EXPIRES: _____
25

1 CAUSE NO. 09-CV-0147

2
3 IN RE:) IN THE DISTRICT COURT OF
4 HURRICANE IKE LITIGATION,)
5) GALVESTON COUNTY, TEXAS
6)
7) 56TH JUDICIAL DISTRICT
8)
9)

10 REPORTER'S CERTIFICATION

11 ORAL AND VIDEOTAPED DEPOSITION OF

12 JAMES OLIVER

13 OCTOBER 27, 2002

14
15
16 I, Kateri A. Flot-Davis, Certified Shorthand
17 Reporter in and for the State of Texas, hereby certify
18 to the following:

19 That the witness, JAMES OLIVER, was duly sworn by
20 the officer and that the transcript of the oral
21 deposition is a true record of the testimony given by
22 the witness;

23 That the deposition transcript was submitted on
24 _____ to the witness or to the attorney
25 for the witness for examination, signature and return to

1 me by _____;

2
3 That the amount of time used by each party at the
4 deposition is as follows:

5
6 MR. MOSTYN - 2 HOURS:53 MINUTE(S)

7
8 MR. MCKINNEY 3 MINUTE(S)

9
10 That pursuant to information given to the
11 Deposition officer at the time said testimony was taken,
12 the following includes counsel for all parties of
13 record:

14
15 FOR THE PLAINTIFF:

16 J. STEVE MOSTYN
CAROLINE MAIDA
17 The Mostyn Law Firm
The Mostyn Law Firm
18 3810 W. Alabama Street
Houston, Texas 77027

19
20 FOR THE PLAINTIFFS STEERING COMMITTEE:

21 A. CRAIG EILAND (Remote Counsel)
AARON S. RANKIN
22 Law Offices of A. Craig Eiland
2211 The Strand
Ste. 201
23 Galveston, Texas 77550
24
25

1 SHAUN W. HODGE
2 The Hodge Law Firm
3 2211 The Strand
4 Ste. 202
5 Galveston, Texas 77550

6 FOR THE JAMES OLIVER:

7 PHILLIP DURST
8 Deats, Durts, Owen & Levy
9 1204 San Antonio
10 Ste. 203
11 Austin, Texas 78701

12 FOR THE DEFENDANT TEXAS WINDSTORM INSURANCE ASSOCIATION:

13 ANDREW T. MCKINNEY
14 Litchfield Cavo, LLP
15 One Riverway
16 Ste. 1000
17 Houston, Texas 77056-1944

18 I further certify that I am neither counsel for,
19 related to, nor employed by any of the parties or
20 attorneys in the action in which this proceeding was
21 taken, and further that I am not financially or
22 otherwise interested in the outcome of the action.

23 Further certification requirements pursuant to Rule
24 203 of TRCP will be certified to after they have
25 occurred.

 Certified to by me this _____.



Kateri A. Flot-Davis

Kateri A. Flot-Davis,

Texas CSR 8462

Expiration Date: Dec 31, 2015

Worldwide Court Reporters, Inc.

Firm Registration #223

3000 Wesleyan, Ste. 235

Houston, Texas 77027

(800) 745-1101

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
3 deposition officer on _____;

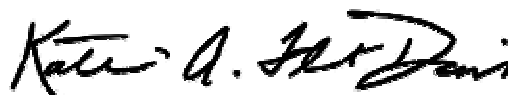
4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
7 to _____, Custodial Attorney;

8 That \$_____ is the deposition officer's
9 charges to the Plaintiff for preparing the original
10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
12 with Rule 203.3, and that a copy of this certificate was
13 served on all parties shown herein on and filed with the
14 Clerk.

15 Certified to by me this _____ day of
16 _____, 2013.

17
18 
19 _____

20 Kateri A. Flot-Davis,
Texas CSR 8462

Expiration Date: December 31, 2015

21
22 Worldwide Court Reporters, Inc.

23 Firm Registration #223

3000 Weslayan, Ste. 235

24 Houston, Texas 77027

(800) 745-1101
25