

In The Matter Of:

*American Automobile Insurance Company v.
First Mercury Insurance Company, et al.*

*Meg Sutton
April 27, 2016*

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EXHIBIT A

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

-----X

AMERICAN AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

-against-

Index No.:
13cv439

FIRST MERCURY INSURANCE COMPANY;
STANDARD E&S, LLC; ZIA TANSPORT, INC.;
BERGSTEIN ENTERPRISES, LTD.,

Defendants.

-and-

FIRST MERCURY INSURANCE COMPANY,

Counterclaimant,

-against-

AMERICAN AUTOMOBILE INSURANCE COMPANY,

Counterdefendant.

-----X

77 Water Street
New York, New York

April 27, 2016
9:08 A.M.

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EXAMINATION BEFORE TRIAL of MEG SUTTON, a
Non-Party Witness herein, taken by the attorney
for the respective parties, pursuant to Subpoena,
held at the above-stated time and place, before
Melissa Leonetti, RPR, a Notary Public of the
State of New York.

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A P P E A R A N C E S :

AKIN GUMP
Attorneys for the Plaintiff
580 California Street, Suite 1500
San Francisco, California 94104

BY: SHAWN HANSON, ESQ.

KELEHER & MCLEOD
Attorneys for the Defendants
201 3rd Street, NW, Suite 1200
Albuquerque, New Mexico 87102

BY: W. SPENCER REID, ESQ.

ALSO PRESENT:

JUAN TORRES, VIDEOGRAPHER

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1 M. SUTTON

2 THE VIDEOGRAPHER: The time is 9:08
3 a.m., and this begins media number 1 of the
4 video deposition of Ms. Meg Sutton in the
5 matter American Automobile Insurance Company
6 versus First Mercury Insurance Company on
7 April 27, 2016.

8 My name is Juan Torres with NextGen
9 Reporting, and I'm the legal video
10 specialist.

11 Will counsel please introduce
12 themselves, beginning with the party noticing
13 this proceeding.

14 MR. HANSON: Shawn Hanson for American
15 Auto.

16 MR. REID: Spencer Reid for First
17 Mercury and for the witness.

18 THE VIDEOGRAPHER: Will the court
19 reporter swear in the witness.

20 M E G S U T T O N, after having first been duly
21 sworn by a Notary Public of the State of New York,
22 was examined and testified as follows:

23 EXAMINATION BY

24 SHAWN HANSON, ESQ.:

25 Q. Can you state your name and business

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12

1 M. SUTTON

2 A. No.

3 MR. REID: Just to put you on notice,
4 she has a commitment that requires her to
5 leave at about 4:30.

6 MR. HANSON: Okay. I honestly don't
7 expect that to be a problem.

8 THE WITNESS: Great.

9 Q. If it looks like it will be -- and I
10 think there's like a zero percent chance of that --
11 I'll let you know well before that.

12 A. Fantastic.

13 Q. But you have to walk out the door at
14 4:30; do I have that right?

15 A. Yes, please.

16 Q. To get to where you need to go?

17 A. Yes. Thank you.

18 Q. Can you state the reasons that you left
19 Crum & Forster for LIU.

20 A. I left for the new position. It's a SVP
21 position as opposed to I was a vice president at
22 Crum.

23 Q. In preparation for your deposition today,
24 did you review any documents with respect to this
25 litigation or the -- the claim involved?

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1 M. SUTTON

2 A. I reviewed the documents provided to me
3 by counsel.

4 Q. Okay. Can you -- do you have those with
5 you or did you -- can you say what they were?

6 MR. REID: That's a privileged matter.
7 The documents I selected and sent to her.

8 MR. HANSON: So you're going to
9 instruct her not to answer the question?

10 MR. REID: Yes.

11 Q. And you're going to follow that
12 instruction?

13 A. Yes, sir.

14 Q. Let me just get it clear. You received a
15 set of documents that you reviewed from counsel; is
16 that right?

17 A. Yes.

18 Q. Did you actually review them?

19 A. Yes.

20 Q. When did you review them?

21 A. Over the last few days.

22 Q. Okay. Do you remember what any of the
23 documents were?

24 A. Yes.

25 Q. Okay. Did any of the documents that you

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M. SUTTON

reviewed -- did you review all the documents you were provided?

A. No.

Q. Okay. How did you make the selection of what documents you reviewed?

A. Well, some of the documents I reviewed in detail. Some of the documents I flipped through.

Q. Okay. What documents did you review in detail?

MR. REID: Objection as to form.

Direct the witness not to answer.

MR. HANSON: Okay.

Q. Did any of the documents refresh your recollection about the events involving this litigation or the underlying claim?

A. Yes.

Q. Can you tell me in what -- and this is a little bit of a difficult question -- but generally speaking, can you tell me in what manner they refreshed your recollection?

A. Yes. I had almost no recollection of specifics until I reviewed the documents.

Q. Okay. I would imagine in your current job you're involved at some level with literally

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1 M. SUTTON

2 thousands of insurance claims?

3 A. Correct.

4 Q. Is that fair?

5 Maybe multiple thousands?

6 A. Yes, sir.

7 Q. Okay. And at your job at Crum & Forster,
8 more or less you would have been involved with
9 thousands of claims as well?

10 A. Correct.

11 Q. Okay. So it's fair to say under the
12 circumstances that your entire ability to testify
13 today from personal knowledge is as a result of the
14 documents that you reviewed as provided to you by
15 counsel; is that right?

16 A. I wouldn't agree that my entire ability
17 to testify is based solely on the document review.

18 Q. Okay. But a significant part of your
19 ability to testify is based on that?

20 A. Yes, given the passage of time.

21 Q. Yes. Okay.

22 Did you review -- in the insurance
23 business, I've heard the term claims handling
24 notes. Have you ever heard that term?

25 A. Yes.

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1 M. SUTTON

2 A. I don't think so.

3 Q. Did you have any involvement in the
4 decision to retain Ms. Sluga and her firm to do this
5 file work?

6 A. No.

7 Q. Other than yourself, do you know if Ms.
8 Sluga interviewed other employees?

9 MR. REID: Object as to form and direct
10 her not to answer.

11 Q. You can just answer that one yes or no.
12 Do you know if she -- do you know if she interviewed
13 others at Crum & Forster about the Udy claim?

14 A. Yes.

15 Q. Okay. Who?

16 MR. REID: Direct the witness not to
17 answer.

18 Q. Are you going to follow that, ma'am?

19 A. Yes.

20 Q. Did you discuss with other employees at
21 Crum & Forster their interviews by Ms. Sluga?

22 A. No.

23 Q. Did you discuss Ms. Sluga in any fashion
24 with Mr. Neidich?

25 A. I don't recall.

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1 M. SUTTON

2 Q. Mr. Weiss?

3 A. I don't recall.

4 Q. Answer this one yes or no, please, ma'am.

5 Do you know if as a result of Ms.

6 Sluga's work some writing was developed by her?

7 MR. REID: Object as -- to the

8 question. Direct the witness not to answer.

9 Q. Did you review any writings or reports
10 generated by Ms. Sluga?

11 MR. REID: Object to the form. Direct
12 the witness not to answer.

13 Q. Did anyone ever tell you, generally or
14 specifically, what, if any, conclusions that Ms.
15 Sluga reached as a result of her work?

16 MR. REID: Direct the witness not to
17 answer.

18 MR. HANSON: Can she answer that one
19 yes or no, just so I know whether we need to
20 have a fight about it or not?

21 MR. REID: No. Just direct the witness
22 not to answer.

23 MR. HANSON: Okay. Fair enough.

24 Q. Other than your meeting with Ms. Sluga,
25 have you ever met her since then?

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1 M. SUTTON

2 Crum & Forster, but I can't tell you when or what it
3 was about.

4 Q. Okay. I want to focus just on the
5 meeting that you had with Ms. Sluga in connection
6 with the Udy file. Okay? Can you tell me generally
7 what was said by you in that meeting.

8 MR. REID: Object. Direct the witness
9 not to answer.

10 Q. Okay. Can you tell me -- again, focusing
11 on that meeting, can you tell me what Ms. Sluga said
12 to you?

13 MR. REID: Same instruction.

14 Q. Okay. Did Ms. Sluga's partner speak
15 during the meeting?

16 MR. REID: Same objection. Same
17 direction.

18 Q. Okay. Can you tell me what, if anything,
19 you said to Ms. Sluga's partner?

20 MR. REID: Same objection. Same
21 instruction.

22 Q. Can you tell me what, if anything, Ms.
23 Sluga's partner said to you?

24 MR. REID: Same objection. Same
25 instruction.

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1 M. SUTTON

2 Q. Who arranged for you to meet with Ms.
3 Sluga?

4 A. I don't know.

5 Q. Okay. What did you understand the
6 business purpose of the meeting with Ms. Sluga and
7 her partner to be?

8 MR. REID: Same objection. Same
9 instruction.

10 Q. Did Mr. Neidich, in his job at claims
11 supervisor during the pendency of the Udy claim,
12 have job responsibilities that required him to
13 review or audit the Udy file?

14 A. Yes.

15 Q. What was the work he did in connection
16 with that, if you know?

17 A. Specifically, I wouldn't know. But
18 generally, a supervisor such as Paul would have an
19 obligation to look at a file at least every six
20 months and on a more regular diary that he would set
21 for a claim that called for it at his discretion.

22 Q. And who set the -- the requirement that
23 it be every six months?

24 A. That was a -- that was a standard
25 operating procedure in the claim departments that

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1 M. SUTTON

2 committee meetings?

3 A. Yes.

4 Q. Okay. You described kind of standard
5 operating procedure for the large loss committee
6 prior to the verdict. Did that standard operating
7 procedure apply as well to the work of the large
8 loss committee post-verdict?

9 MR. REID: I'm going to object as to
10 form, assert attorney/client privilege, and
11 direct the witness not to answer.

12 Q. Again, focusing on the work of the large
13 loss committee post-verdict. Did you make any
14 presentations to the large loss committee?

15 A. No.

16 Q. Did you provide any written information,
17 either on paper or electronically, to the large loss
18 committee post-verdict?

19 A. No.

20 Q. Do you know if -- did the -- to your
21 knowledge, did the committee review any writings or
22 other written materials in connection with its work
23 post-verdict?

24 MR. REID: Same objection. Same
25 instruction.

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1 M. SUTTON

2 Q. Who made a presentation to the large loss
3 committee post-verdict, if you recall?

4 MR. REID: Same objection. Same
5 instruction.

6 Q. Do you remember saying anything during
7 the large loss committee meetings post-verdict?

8 MR. REID: Same objection. Same
9 instruction.

10 Q. Do you remember what others -- or if
11 others said anything during the post-verdict large
12 loss committee meetings?

13 MR. REID: Same objection. Same
14 instruction.

15 Q. After the work of the large loss
16 committee was complete post-verdict, did you do
17 anything?

18 A. No.

19 Q. Did you send any emails?

20 MR. REID: You mean ever again after
21 this meeting?

22 Q. Post-meeting, in connection with the work
23 of the meeting, did you send an email?

24 A. Not that I recall.

25 Q. Do you know if others sent an email?

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1 M. SUTTON

2 A. I don't.

3 Q. What did the large loss committee do in
4 connection with the Udy claim post-verdict?

5 MR. REID: Same objection. Same
6 instruction.

7 Q. Did the company take any action at the
8 direction of the large loss committee post-verdict?

9 MR. REID: Same instructions. Same
10 objections.

11 Q. And you're going to follow that
12 objection, ma'am?

13 A. Yes.

14 Q. And that instruction?

15 A. Right.

16 Q. Okay. Other than preparing for your
17 deposition and being deposed today, what was the
18 last job task you did in connection with the Udy
19 claim?

20 A. I participated in that meeting, the last
21 large loss meeting.

22 Q. Once that committee work was done, while
23 you were at Crum & Forster, you did nothing else in
24 connection with the Udy claim, correct?

25 A. That's correct.

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1 M. SUTTON

2 Q. Did you talk to Mr. Weiss about what you
3 had learned?

4 A. I don't remember.

5 Q. Did you talk to Ms. Sluga about what you
6 had learned?

7 MR. REID: Objection as to form.

8 Q. You're going to follow that instruction?

9 A. Yes.

10 Q. Did you talk to Mr. Eisenmann about what
11 you learned in that review?

12 A. I don't remember.

13 Q. Did you talk with Mr. Libby?

14 A. No.

15 Q. Okay.

16 We talked about a large loss committee
17 meeting post-verdict. We talked about your review
18 post-verdict. Which of those things happened
19 first?

20 A. I don't remember.

21 Q. Okay.

22 Do you recall discussing the
23 information you learned in your review in the
24 post-verdict large loss committee meetings?

25 MR. REID: Object. Instruct the

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1 M. SUTTON

2 witness not to answer.

3 A. I was going to strike my last answer. I
4 do remember.

5 Q. Okay.

6 A. The large loss committee meeting was
7 first. It was the same day as the verdict.

8 Q. Okay. Who presented the information
9 about the Udy claim to the large loss committee
10 post-verdict?

11 MR. REID: Objection. Instruct the
12 witness not to answer.

13 Q. How long after the large loss committee
14 meeting post-verdict was your post-verdict review?

15 A. I don't remember.

16 Q. Have you ever discussed the Udy claim
17 with anyone from American Automobile or Fireman's
18 Fund or any other insurer?

19 A. No.

20 Q. Do you know if the Udy claim was
21 reinsured, in whole or in part?

22 A. Yes.

23 Q. How was it reinsured, if you recall?

24 A. There was a -- there was quota share
25 reinsurance 90 percent seated.

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1 M. SUTTON

2 MR. REID: Bergstein Enterprises.

3 A. Bergstein. That there was a separate
4 tower of coverage for Bergstein that hadn't
5 responded to the claim.

6 Q. Okay. Anything else?

7 A. No. That's it.

8 Q. Okay. And did you -- when you learned
9 that information, what, if anything, did you do?

10 A. I -- I don't have a specific
11 recollection. I -- yeah, I don't have a specific
12 recollection.

13 Q. Did you go back and look at the file to
14 see what had been told to claims handlers for First
15 Mercury at Crum & Forster about the policies?

16 A. Yeah, I might have done that.

17 Q. Do you remember doing that?

18 A. Not specifically.

19 Q. Okay. Do you remember -- other than your
20 review of the file, possibly, did you talk to
21 anybody about those circumstances to further
22 understand what had happened?

23 A. I don't remember a specific conversation.

24 Q. Did you talk with Ms. Strahs about what
25 had been disclosed?

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1 M. SUTTON

2 A. I haven't spoken to Carolyn since she
3 left the company.

4 Q. Did you talk with Mr. Neidich?

5 A. Not a specific conversation that I
6 recall.

7 Q. Did you talk with Mr. Weiss about it?

8 A. I don't recall a conversation about it
9 with Mr. Weiss.

10 Q. Mr. Trezise?

11 MR. REID: Object as to form and
12 instruct the witness not to answer.

13 Q. Did you talk to anyone in the large loss
14 committee about those circumstances about what had
15 or hasn't been disclosed?

16 MR. REID: Object to the form. Direct
17 the witness not to answer.

18 Q. When you reviewed the file, did you see
19 the name of the insured's insurance agent?

20 A. I have no idea.

21 Q. When you reviewed the file, did you look
22 at the claims handling notes?

23 A. Yes.

24 Q. Okay. Is it part of standard operating
25 procedure for your unit that claims handlers are to

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1 M. SUTTON

2 Q. Do you know if Mr. Neidich ever did?

3 A. I don't.

4 Q. Did you ever talk with either of them
5 about that topic?

6 A. Not that I recall.

7 Q. You did your file review and you saw this
8 email now that had an incorrect fact, in your view,
9 in it, right?

10 A. I think omission is more accurate.

11 Q. Omission, okay. Did you talk about that
12 with anyone?

13 A. I think it's important to keep this in
14 context that none of this comes to light until after
15 the verdict.

16 Q. I understand.

17 A. So --

18 Q. And you're doing your file review, right,
19 and you see this email that has this omission in it?

20 A. Uh-huh.

21 Q. And you go, this is an omission. What
22 did you do with that information? Did you talk to
23 anybody about it?

24 A. We probably would have discussed that at
25 the large loss committee.

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1 M. SUTTON

2 Q. But do you remember doing that?

3 A. Not specifically.

4 Q. Why would that have been important to the
5 large loss committee?

6 MR. REID: Objection as to form.

7 Direct the witness not to answer.

8 Q. As you sit here today, do you remember
9 discussing the omission with the large loss
10 committee, yes or no?

11 MR. REID: Same instructions.

12 Q. When you spoke with Carolyn Strahs at the
13 time the claim was getting transferred, did you
14 discuss coverage with her?

15 MR. REID: Objection to the form.

16 Assumes facts not in evidence.

17 A. I already testified that I didn't know if
18 I talked to Carolyn or got an email from her or
19 what.

20 Q. Do you recall communicating with her in
21 any fashion about the topic of coverage?

22 A. No.

23 Q. At some point did you learn that --

24 MR. HANSON: Let me strike that.

25 Q. You were getting the trial reports from

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1 M. SUTTON

2 these questions under the assumption that it's
3 before the trial.

4 Q. And that's how I meant them.

5 A. Yeah. Okay. So -- I'm sorry. Can you
6 just ask that last question again.

7 Q. Did Mr. Neidich ever tell you that at any
8 point prior, he valued the case at a bigger number
9 than Mr. Yarbrough?

10 A. No, I don't recall Mr. Neidich telling me
11 that he valued the case higher than Mr. Yarbrough.

12 Q. When you were provided with the
13 deposition excerpts for Mr. Weiss and Mr. Neidich,
14 were you -- what did you understand you were
15 supposed to do with those excerpts?

16 MR. REID: Object as to form. Request
17 the witness not answer the question.

18 Q. I think this is clear from earlier, but I
19 want to make sure it's clear. Did you read the
20 excerpts for -- that you were provided?

21 MR. REID: Asked and answered.

22 Q. You can answer it one more time.

23 A. Yes.

24 Q. Did you read them for the purpose of
25 giving testimony that was consistent with that given

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1 M. SUTTON

2 by the people who had already been deposed?

3 MR. REID: Object to the form of that
4 question. It's argumentative. And my
5 communications/discussions are
6 attorney/client privilege.

7 MR. HANSON: Are you instructing her
8 not to answer the question?

9 MR. REID: Yes, I am.

10 Q. During the time the Udy file was in your
11 unit, did the unit have a policy and procedure for
12 how to deal with policy limit demands?

13 A. I don't recall if there was a written
14 procedure in place at that time.

15 Q. Or even just a regular practice in the
16 unit.

17 A. The practice was to raise it to your
18 supervisor, as I recall. I don't think it got
19 reduced to a formalized process until later.

20 Q. So just so it's clear for the record.
21 You receive a demand at or within your policy
22 limits; the practice -- typical practice would be
23 that the person who received that would take it to
24 their supervisor; do I have that right?

25 A. No.

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C E R T I F I C A T E

I, Melissa Leonetti, RPR, a Notary Public of the State of New York do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place.

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto signed this 7th day of May, 2016.


Melissa Leonetti