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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

PERFECT COMPANY \* Docket 07-CV-7642-S  
\*  
versus \* New Orleans, Louisiana  
\*  
ESSEX INSURANCE COMPANY, et al\* August 17, 2010  
\* \* \* \* \*

TESTIMONY OF BRETT PATIN BEFORE  
THE HONORABLE MARY ANN VIAL LEMMON  
UNITED STATES DISTRICT JUDGE

Appearances:

For the Plaintiff: Shearman-Denenea, LLC  
BY: JOHN DENENEA JR., ESQ.  
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For the Defendant: Baker Donelson Bearman  
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Official Court Reporter: Toni Doyle Tusa, CCR, FCRR  
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I N D E X

PAGE

Brett Patin

Direct Examination

4



1 Q. Just for the record, Mr. Patin, you're aware that you're  
2 not testifying today as an expert witness, correct?

3 A. Correct.

4 Q. Can you tell the jury when your work for Apple Adjusters  
5 ended.

6 A. I'm not sure of the exact date. Probably 2006 or 2007.  
7 You would have to refresh my memory on it.

8 Q. That's okay. It's fair to say that you haven't worked for  
9 Apple Adjusters for approximately three years?

10 A. Correct.

11 Q. I'm not holding you to month or date.

12 A. Correct.

13 Q. Aside from the work that you did on this claim for Apple  
14 Adjusters which ended sometime in 2007, have you been paid any  
15 money by Essex or its lawyers?

16 A. Have I been paid by Essex?

17 Q. Yes, sir.

18 A. Correct. I did go -- when I reviewed the file, I got paid  
19 by Essex, my time to go review the file.

20 Q. Are you telling the jury that they paid you to review your  
21 file? Were you paid to meet with the lawyers?

22 A. I met with the attorney to review my file, go over the  
23 file, because I didn't have any file material with me.

24 Q. How many times did you do so?

25 A. Did I meet with the attorney? One time to review for it;

1 then when it was going to trial, I met with him on two other  
2 occasions, once with you present. So a total of three.

3 Q. We are going to exclude the deposition from that. So you  
4 met three times with Essex's lawyers? Three times, correct?

5 A. Twice if you exclude the deposition.

6 Q. You either got paid or expected to get paid for your time  
7 during all those times, correct?

8 A. Correct.

9 Q. How much were you getting paid for meeting with Essex's  
10 lawyers?

11 A. My hourly rate of \$75 an hour.

12 Q. You have been paid some money already?

13 A. Yes.

14 Q. Is it your understanding that they are going to pay you  
15 for your testimony today?

16 A. I don't know who is paying me for my time. I need to get  
17 paid for my time.

18 MR. TRAHANT: May we approach, Your Honor?

19 THE COURT: Yes.

20 (WHEREUPON the following proceedings were held at the  
21 bench.)

22 MR. TRAHANT: I think, Your Honor, we may have to  
23 remove the jury for this. It's very clear that a fact witness  
24 cannot be compensated, particularly for meetings, preparation  
25 for depositions. This guy knows he is not an expert, and I

1 don't think anything in the law provides for the payment of a  
2 fact witness for the things that this man is testifying to.

3 **THE COURT:** So what would you do, exclude his  
4 testimony?

5 **MR. TRAHANT:** I think that's where we are going,  
6 Judge.

7 **MR. DAVIS:** Your Honor, he performed some  
8 professional services. His agreement is to be paid while he  
9 does his -- the agreement is if he is going to be deposed in  
10 the case, he gets an hourly fee, and also if he has to appear  
11 at trial.

12 **THE COURT:** Why does that not violate the rule for  
13 paying a witness for his testimony?

14 **MR. DAVIS:** From our perspective, he was performing  
15 professional services. So he had a contract with us to do  
16 these things, this is how I'm going to be compensated.

17 **THE COURT:** I'm going to deny the motion to exclude  
18 his testimony. Go forward, and we'll talk about the payment  
19 and what the appropriate action might be after. Let's go  
20 forward.

21 (WHEREUPON the following proceedings were held in  
22 open court.)

23 **BY MR. TRAHANT:**

24 **Q.** Now, in doing your work, Mr. Patin, the adjusting work --

25 **THE DEPUTY CLERK:** Excuse me. The jurors are having

1 a hard time hearing the witness.

2           **THE COURT:** Can you sit a little closer or pull the  
3 microphone closer to your mouth. Just speak up so they can  
4 hear you.

5           **THE WITNESS:** Okay.

6           **THE COURT:** Thank you.

7 **BY MR. TRAHANT:**

8 **Q.** In doing the work that you do now, the claims adjusting  
9 work, Mr. Patin, do you consider basically the entire insurance  
10 industry to be your available clients?

11 **A.** Yes, I guess. I mean, I would work for most insurance  
12 companies.

13 **Q.** All the different estimates that we are going to look at,  
14 the estimate that you looked at from the Permanent Construction  
15 Company representative, your estimate, you've worked with all  
16 these software programs, correct?

17 **A.** A few of them, correct.

18 **Q.** Simsol you have worked with?

19 **A.** Simsol and Xactimate.

20 **Q.** In fact, Simsol was the software program that you used to  
21 estimate the damage in this case, correct?

22 **A.** I believe so.

23 **Q.** Now, in addition to what you've been paid, you've also  
24 done some work for Mr. Davis' firm in the past, correct?

25 **A.** Not that I can recall.

1 Q. Do you remember testifying that you took a ride with one  
2 of the lawyers to look at a house in New Orleans?

3 A. Yeah, but that wasn't on my file, I don't believe. It was  
4 on Ernie Bode's, a friend of mine's file. We just happened to  
5 be riding together.

6 Q. But it was work for Mr. Davis' firm, correct?

7 A. I didn't get paid for that, if you consider it work. I  
8 was just riding with a friend.

9 Q. You would agree with me, Mr. Patin, that there was a  
10 significant differential between your estimate and the  
11 Permanent Construction estimate?

12 A. Correct.

13 Q. It's true, is it not, that at no time while you were  
14 handling this claim did Ms. Conrad or anybody else on her  
15 behalf or on behalf of the Perfect Company say that the amount  
16 that you came up with in your estimate was acceptable to settle  
17 the claim?

18 A. Correct.

19 Q. Just so that the jury understands, it was never your  
20 understanding, nobody ever told you, "We accept and we are  
21 willing to settle the claim," based on the amount that you came  
22 up with, correct?

23 A. Was it my understanding? Nobody ever told me that, but it  
24 was my understanding the claim was settled.

25 Q. Nobody on her behalf, Mr. Patin, ever told you, "We are

1 satisfied with the amount of the estimate and that's the end of  
2 it"?

3 A. Nobody ever told me that they accepted the estimate, if  
4 that's what you are asking me.

5 Q. In fact, you are aware that additional funds were paid for  
6 damage beyond the time that you made your estimate?

7 A. I was not aware of that until the day of the deposition,  
8 which y'all made me aware of that.

9 Q. You were informed that additional money was paid for  
10 damages, correct?

11 A. I found that out on the day of the deposition.

12 Q. In maintaining your claims file on this case, did you send  
13 everything to the Baton Rouge office of Apple Adjusters?

14 A. Correct.

15 Q. Can you tell the jury, when you're preparing your  
16 documents that go into the claims file, how are documents  
17 transmitted to Essex?

18 A. How they got transmitted to Essex? I wasn't aware of how  
19 they got transmitted to Essex. What I did was I was working in  
20 Mandeville for Apple Adjusters. The Baton Rouge office would  
21 send me a copy of the loss notice. I would handle the claim  
22 and, in turn, send it to Baton Rouge, who was responsible for  
23 getting it to Essex. How they got it to them, I don't know.  
24 My part was getting it from Mandeville to Baton Rouge.

25 Q. Now, we are going to talk about it, but you know there are

1 some discrepancies with certain of your reports being provided  
2 to Essex and when they were, in fact, provided, correct?

3 A. Correct. I mean, you mentioned that again in the  
4 deposition. I wasn't aware of it.

5 Q. Well, the jury wasn't at the deposition, Mr. Patin. I  
6 appreciate your eagerness to tell me, but what I'm trying to  
7 get clear is that you understand -- and we are going to talk  
8 about the documents -- that there are discrepancies as to when  
9 you prepared a report and when Essex claims it received that  
10 report, correct?

11 A. Again, yes, there was a discrepancy, but I was not aware  
12 of them on my end. Again, I report to Baton Rouge. Once it  
13 got to Baton Rouge, basically it was their responsibility to  
14 get it to Essex. That's why I brought it up. You told me  
15 about it at the deposition.

16 Q. This is what I want the jury to understand. You have  
17 Essex Insurance Company, Mr. Hinton, Apple, and then you,  
18 correct?

19 A. Well, I'm part of Apple, yes.

20 Q. In a chain of communication, Mr. Patin, it has to go to  
21 Apple, to Hinton at CSC, and then up to Essex, correct?

22 A. The chain of command from me was to Mandeville to  
23 Baton Rouge. If I told you the chain of command past where it  
24 went from Bill to Essex, I would just be making an assumption.

25 Q. I don't want you to do that.

1 A. Okay.

2 Q. You know what scope notes are, correct, Mr. Patin?

3 A. Correct.

4 Q. Can you tell the jury what scope notes are.

5 A. Sure. Normally, when we go out and look at a risk, I'll  
6 write down the notes of the damage, description of the damage,  
7 and then go back and prepare an estimate and send the estimate  
8 in based on my scope notes.

9 Q. Your normal routine, customary procedure is that when you  
10 go out to adjust a loss, you take notes, correct?

11 A. Correct.

12 Q. Did you take any scope notes when you inspected the  
13 building at 3300 Canal?

14 A. Actually, we went off of the scope notes of the contractor  
15 that was there. We had agreed to go off of his scope notes.

16 Q. So you didn't take any yourself, correct?

17 A. I took his scope notes and made marks on his scope.

18 Q. But my question to you, Mr. Patin, is you did not go  
19 through, you didn't take your measurements, you didn't scope  
20 out on grid paper the property? In terms of making your  
21 estimate, which we are going to take a look at, you didn't do  
22 the things that you normally do before you prepare an estimate,  
23 correct?

24 A. No, I did not do a diagram on that claim. No, I didn't.

25 Q. Additionally, you didn't mark any measurements on the

1 property, did you?

2 A. I did spot-check the contractor's estimates off of his  
3 estimate because we were using his as the scope notes, which we  
4 agreed upon.

5 Q. I understand that. But in terms of making any notes,  
6 taking any measurements and writing it down, you didn't do any  
7 of that, correct?

8 A. I did take notes on it. I did mark stuff down. We used  
9 his scope notes as the scope, and I did make marks and make  
10 comments on his scope notes. So I did have a scope of damages,  
11 using his as the basis, which was agreed to do upon the  
12 insurance consultant and the contractor.

13 Q. We are going to talk about what you did with his  
14 estimate -- the Permanent Construction estimate, correct?

15 A. Correct.

16 Q. We are going to talk about what you did with that. What  
17 I'm trying to make clear -- and I think we are in agreement, we  
18 may just be talking past one another -- is that in terms of  
19 writing down separate notes, writing down separate  
20 measurements, doing scope notes on grid paper, none of that  
21 exists in this claims file that was produced by you, correct?

22 A. Correct.

23 Q. Now, when you went through with the contractor,  
24 Mr. Loricen from Permanent Construction, were you scratching  
25 things off of his estimate as you went through?

1 A. Making notes and marks. It was as we discussed it. He  
2 and I were both walking through it together and using his as a  
3 reference.

4 Q. Do you recall testifying that you scratched things off?

5 A. Do I recall testifying?

6 Q. Sure.

7 A. I don't know.

8 MR. TRAHANT: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 THE WITNESS: I never got to review this.

11 THE COURT: He is going to give you a page number and  
12 a line number.

13 BY MR. TRAHANT:

14 Q. I would like you to take a look before it's published to  
15 the jury, Mr. Patin, at page 34, lines 1 through 14.

16 A. Page 34, I see it.

17 THE COURT: In the upper right-hand corner right  
18 under your name.

19 THE WITNESS: This is the deposition?

20 MR. TRAHANT: Yes, sir.

21 THE WITNESS: That was supposed to be mailed to me to  
22 be able to read over it, which I never did. Which page number  
23 again?

24 MR. TRAHANT: 34.

25 THE COURT: It's the page before 35. It's not

1 numbered in the same place as the others and you can't see the  
2 numbers because they are hidden.

3 **MR. TRAHANT:** You have to take the clip off, sir.

4 **THE COURT:** It's the page before 35.

5 What line?

6 **BY MR. TRAHANT:**

7 **Q.** Beginning at 1 going through 14.

8 **A.** I mean, if it's written down, I guess I said it. But, I  
9 mean, I know I made marks, I said, on the paper.

10 **MR. TRAHANT:** May I publish that for the jury?

11 **THE COURT:** Yes, please.

12 **BY MR. TRAHANT:**

13 **Q.** Page 34. Particularly, Mr. Patin, what I'm refreshing  
14 your recollection on is down here between lines 12 and 14,  
15 where you describe that you were scratching stuff off. You  
16 were referring to his estimate, correct?

17 **A.** Correct. Yes, sir.

18 **Q.** Can you give the jury any examples of what it was you  
19 scratched off.

20 **A.** If we went into a room and we both looked at it together  
21 and we agreed that it wasn't related to the water damage or the  
22 windstorm, that item, we would scratch it off. It could have  
23 been -- I couldn't tell you without looking at it, but maybe  
24 like wallpaper or something else that didn't pertain to the  
25 wind loss, we just scratched it off.

1 Q. Maybe you misunderstood my question. What I was asking  
2 you is can you give an example of an item or two or three or  
3 five that you scratched off.

4 A. I wouldn't know the items. I mean, I don't know what  
5 you're getting at. I mean, what we did was we walked into each  
6 room with this scope. If we looked at it and we didn't feel it  
7 was wind-related, we would discuss that and say if it -- if it  
8 wasn't wind-related, we wouldn't add it to the scope or take it  
9 off the scope.

10 MR. TRAHANT: Your Honor, may I present the witness  
11 with the Permanent Construction report?

12 THE COURT: Okay.

13 MR. TRAHANT: For the record, what I have presented  
14 the witness is Exhibit 10, and this is the totality of the  
15 Permanent Construction report.

16 THE COURT: What's the question?

17 BY MR. TRAHANT:

18 Q. First off, you're familiar with that as being the  
19 Permanent Construction estimate, correct?

20 A. Correct.

21 Q. From what you're telling me, what you are testifying to  
22 with the jury, there should be a version of that document where  
23 you scratched things off and also made changes, correct?

24 A. There should be.

25 Q. When you keep an activity log of things that you do on a

1 claim, Mr. Patin, do you commit that to the file?

2 A. The activity log?

3 Q. Yes, sir.

4 A. Well, on some files they are done by time and expense, and  
5 you keep a detailed account of everything you did because  
6 that's how you get paid, by how much time you spent. Some of  
7 them are done by a fee basis and the time and activity log  
8 isn't sent to the company.

9 Q. Now, what I'm talking about, sir, are phone calls, phone  
10 calls that you make, phone calls that you receive, activity  
11 that you conduct in a case. It's your normal, routine practice  
12 and procedure to document that in the file, correct?

13 A. Sure, sometimes I will document it on the file, on the  
14 back of a file, or write it up on a piece of paper in the file.

15 Q. Can you tell me if, in your review of this claims file,  
16 you have seen one documented phone call between you and  
17 Ms. Conrad?

18 A. No. Well, can I take that back? Other than in e-mails.

19 Q. What I'm talking about is your activity in making or  
20 receiving a phone call that you would normally, I think you  
21 said, either commit to the file or write on a note. Those  
22 don't exist in this case, correct?

23 A. No, sir. I didn't see them.

24 Q. Now, you would also agree that by the time you got  
25 involved in this claim, it was understandable that Ms. Conrad

1 didn't want you to go to the property without her there,  
2 correct?

3 A. Correct.

4 Q. Did Ms. Conrad [*sic*] ever send a letter or e-mail or make  
5 a phone call and say can you be there on such-and-such a date  
6 and she said no?

7 A. Did she ever send an e-mail?

8 Q. Sure. Did you ever ask her can you be there on  
9 such-and-such a date and she said no?

10 A. No.

11 Q. In your normal, routine practice and procedure, if she  
12 told you, "I can't meet with you," on a particular date, that  
13 would be documented in the claims file, correct?

14 A. Not necessarily. I mean, if we couldn't meet like on a  
15 Tuesday and she changed it to Wednesday and I have  
16 documentation of when I met with her, I probably wouldn't have  
17 wrote that down.

18 Q. I want you to take a look at page 285, please. Now, I'm  
19 not going to drag you through all the documents in the case,  
20 Mr. Patin, the jury has seen most of what I want to talk to you  
21 about, but I am going to ask you: Your company and you were  
22 retained in this case in February of 2006, correct?

23 A. Correct. Yes, sir.

24 Q. We heard Mr. Hinton testify that for nearly two and a half  
25 months, from February 9, 2006, when your company was retained,

1 until April 30, 2006, he didn't have any status from your  
2 company. This is a memo, and first I want to know: When was  
3 the first time you ever saw that memo or the fax?

4 A. This fax, if it was sent to Bill, I probably got a phone  
5 call from Bill because I think we went over it in the  
6 deposition. You showed me some documentation that I hadn't  
7 seen.

8 Q. Let me back up a little bit. Had you ever seen that  
9 document before your deposition?

10 A. Not that I can recall.

11 Q. So in terms of a status to Mr. Hinton, during that nearly  
12 three-month period, is there anything that we will find  
13 documented in the claims file between February 9 and April 30,  
14 2006?

15 A. From my file? Probably not the file that I had.

16 Q. You would agree with me that when you were given this  
17 file, Mr. Patin, it was assigned to you, you were not even  
18 aware at any point in time that all of the documents prepared  
19 by the first or the second adjuster, Zack Varnedoe, had been  
20 provided to your company?

21 A. No, I was not aware of that.

22 Q. Let's take a look at 271. Now, on May 18, 2006,  
23 Mr. Hinton e-mails all pdfs of photographs, documents,  
24 basically everything that the first adjuster did, to  
25 Mr. Schulenberg, who is the president of Apple, correct?

1 A. Correct.

2 Q. Just so the jury understands, you're communicating with  
3 Mr. Hinton through Mr. Schulenberg, correct?

4 A. Correct.

5 Q. Now, in this e-mail, Mr. Hinton says, "Bill, Brett called  
6 me today on this file. Please see that he gets this. It might  
7 help him."

8 It is true that from your involvement in this case  
9 until the time you were no longer working the file, not only  
10 did you not see these documents, nobody ever let you know that  
11 they were sent to Apple, correct?

12 A. I wasn't aware of it. I mean, it wouldn't have -- didn't  
13 make any difference to my adjustment of the claim.

14 Q. Well, isn't it clear from reading that e-mail that  
15 Mr. Hinton wanted Mr. Schulenberg to give you these documents  
16 because they might help you?

17 A. Yeah, I guess.

18 Q. Do you know of any reason in the world why Mr. Schulenberg  
19 would not have provided you with these documents that  
20 Mr. Hinton contends would help you?

21 A. My honest opinion? Probably because it wouldn't help me  
22 in this case. I mean, when I get a file, it's better for me to  
23 go out with a fresh, clear mind to go out on a loss and look at  
24 it versus having somebody else's figures in my head.

25 Q. I want to direct your attention to your deposition,

1 Mr. Patin. I would like you to take a look at page 54. Start  
2 at the bottom, line 25, and go through line 3 of the next page,  
3 which is 55.

4 **MR. TRAHANT:** Your Honor, may I publish that  
5 exchange?

6 **THE COURT:** Yes.

7 **BY MR. TRAHANT:**

8 **Q.** Now, in fairness to the jury, can you tell them when you  
9 gave this deposition, Mr. Patin.

10 **A.** It was last Friday, a week ago Friday; not this past  
11 Friday but the Friday before.

12 **Q.** The question is, "Do you know of any reason, Mr. Patin,  
13 why Mr. Schulenberg would not have provided these documents to  
14 you?"

15 What was your answer?

16 **A.** No, I guess. In fairness to me, you promised this to be  
17 mailed to me, too, for me to read.

18 **MR. TRAHANT:** Your Honor, may we approach for a  
19 minute?

20 **THE COURT:** Well, I think that -- come on.

21 (WHEREUPON the following proceedings were held at the  
22 bench.)

23 **THE COURT:** He was explaining that he had a right to  
24 sign it, and the note says that the witness chose in an  
25 off-the-record discussion to waive the reading and signing. So

1 it's the second time he has referenced it.

2 **MR. TRAHANT:** I think it's unfair, Judge. He is  
3 making it sound like I could even provide him with a copy of  
4 the deposition to begin with. The court reporter does that.

5 **THE COURT:** I think what I should do is read that to  
6 the jury, and then we are going to break and come back at 1:00.  
7 Thank you.

8 (WHEREUPON the following proceedings were held in  
9 open court.)

10 **THE COURT:** I need to advise the jury that at  
11 page 141 of the deposition that there's a discussion where  
12 Mr. Davis says, "I never mentioned to you reading and signing  
13 since you have done these before. You have the right to read  
14 and sign your deposition, meaning if you see things that should  
15 be corrected or you want to correct something, you can correct  
16 those things. I'm not your attorney. I can't give you advice.  
17 Some people do, some people don't."

18 It's followed by an annotation by the court  
19 reporter that said, "The witness chose in an off-the-record  
20 discussion to waive the reading and signing."

21 So at this point we are going to take a break  
22 until 1:00, and we'll see you back at 1:00. Thank you.

23 (WHEREUPON the jury exited the courtroom.)

24 **MR. TRAHANT:** Your Honor, will you give an  
25 instruction to the witness not to --

1           **THE COURT:** We are breaking now, but you are  
2 instructed not to discuss your testimony with anyone. Thank  
3 you. We will see you at 1:00.

4                                   **(END OF EXCERPT)**

5                                   \* \* \*

6                                   **CERTIFICATE**

7                   I, Toni Doyle Tusa, CCR, FCRR, Official Court  
8 Reporter for the United States District Court, Eastern District  
9 of Louisiana, do hereby certify that the foregoing is a true  
10 and correct transcript, to the best of my ability and  
11 understanding, from the record of the proceedings in the  
12 above-entitled and numbered matter.

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15                                   s/ Toni Doyle Tusa  
16                                   Toni Doyle Tusa, CCR, FCRR  
17                                   Official Court Reporter  
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