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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SOUTH CAROLINA

Workers' Compensation Commission

Appellate Case No.: 2021-000633

Rachel J. Turner, Employee,..... Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrual, Inc.;
Guarantee Insurance Company; Countrywide Staffing Solutions
Group, Inc.; South Carolina Department of Corrections; State
Accident Fund; and South Carolina Uninsured Employer's Fund,..... Respondents

of which Condustrual, Inc. f/k/a Medustrial Healthcare Staffing
Service, Employer, is the Respondent-Appellant.

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1 BY COMMISSIONER JAMES:

2 I'M SORRY, REPEAT THE NUMBER.

3 BY MR. GOODWYN:

4 PAGE 314 OF WILL'S APAs.

5 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. WHAT IS THIS DOCUMENT?

7 A. IT SAYS "I, RACHEL TURNER, CONSENT AS A CONTRACTOR
8 TO PERMIT CONDUSTRIAL, INC. TO OBTAIN A COPY OF MY
9 SLED REPORT AS REQUIRED BY SOUTH CAROLINA STATE
10 LAW," SIGNED BY HER.

11 Q. ALL RIGHT.

12 A. IN SOME TIME -- SOMETHING, THE 7TH OF 2013. I DON'T
13 KNOW IF THAT'S A TWO.

14 Q. OKAY, 2013?

15 A. IT'S -- YES, IT'S 2013, YES.

16 Q. ALL RIGHT. SO, AGAIN, THE DOCUMENT IS INDICATING
17 THAT SHE IS ACKNOWLEDGING THAT SHE IS A CONTRACTOR?

18 A. YES.

19 Q. ALL RIGHT. LET ME SHOW YOU, THIS IS DOCUMENT THREE
20 -- NUMBER 317 FROM GUARANTEE AND CONDUSTRIAL'S APAs.

21 A. ALL RIGHT.

22 Q. IT'S A NEW HIRE/REHIRE CHECKLIST?

23 A. YES.

24 Q. ALL RIGHT. AND IS THIS FOR RACHEL TURNER?

25 A. YES, IT IS.

1 Q. AND WHAT IS SHE CLASSIFIED AS?

2 A. SHE IS CLASSIFIED IN MEDUSTRIAL MIDLANDS AS A 1099.

3 Q. OKAY. ALL RIGHT. IS THIS HOW

4 CONDUSTRIAL/MEDUSTRIAL DETERMINED WHETHER OR NOT THE
5 INDIVIDUAL IS GOING TO BE AN EMPLOYEE OR AN
6 INDEPENDENT CONTRACTOR?

7 A. WELL, THAT'S CERTAINLY ONE OF THE WAYS THEY DOCUMENT
8 THAT, YES.

9 Q. ALL RIGHT. THIS DOCUMENT, WHAT IS THIS DOCUMENT?
10 THIS IS NUMBER 320.

11 A. IT'S A NEW HIRE/REHIRE FILE CONTENTS, ORDER 1099
12 EMPLOYEE.

13 Q. ALL RIGHT. IS THAT A LITTLE CONTRADICTION, A 1099
14 EMPLOYEE?

15 A. IT IS.

16 Q. OKAY.

17 A. YOU KNOW, THAT GOES TO -- I MEAN, OBVIOUSLY, WE
18 TALKED ABOUT A LOT OF THIS IN MY DEPOSITION, AND IT
19 GOES BACK TO WHAT I SAID ABOUT MS. WALKER LEAVING,
20 TAKING THE \$50,000 CHECK AND RUNNING. YOU KNOW,
21 WHEN THAT HAPPENED, THAT THREW US INTO A LITTLE BIT
22 OF CHAOS WHEN WE WERE INVESTING SOME MONEY INTO
23 TRYING TO, YOU KNOW, START A BUSINESS MODEL, AND SO,
24 WHEN MS. RATHBURN CAME OVER, YOU KNOW, SHE WAS AN
25 INDUSTRIOUS BLUE COLLAR, YOU KNOW, TYPE WORKER,

1 WANTED TO GET IT DONE, SAID SHE KNEW THE BUSINESS
2 AND COULD SAVE THE BUSINESS, AND I'M SURE SHE MEANT
3 WELL, BUT SO, SHE WHAT APPEARS NOW TOOK SOME OF THE
4 PALMETTO DOCUMENTS AND SOME OF THE MEDUSTRIAL
5 DOCUMENTS AND PROBABLY MERGED THOSE, AND AS A PART
6 OF THAT PROCESS, YOU KNOW, SHE ENTERED "1099
7 EMPLOYEE."

8 Q. ALL RIGHT. AND LOOK AT THE TOP OF THE DOCUMENT,
9 IT'S GOT A MEDUSTRIAL LOGO UP THERE.

10 A. YES.

11 Q. AND IT SAYS, WHAT, "HEALTHCARE STAFFING SERVICE"?

12 A. YES.

13 Q. AND WHAT IS THAT SMALL PRINT UNDER THAT?

14 A. "A SERVICE OF CONDUSTRIAL, INC."

15 Q. OKAY. THAT'S -- I MEAN, THAT'S HOW MEDUSTRIAL WAS -
16 --

17 A. YES.

18 Q. --- CLASSIFIED?

19 A. YES.

20 Q. OKAY, I'M LOOKING AT -- THIS IS DOCUMENT 322. DO
21 YOU RECOGNIZE THAT DOCUMENT?

22 A. "SUBSTANCE ABUSE POLICY CONSENT."

23 Q. OKAY. AND DID MS. TURNER SIGN THIS DOCUMENT?

24 A. SHE DID.

25 Q. AND ---

1 A. THAT WAS DATED OCTOBER, I THINK, OF 2014.

2 Q. ALL RIGHT. AND IN THIS CENTER SECTION, THE
3 SENTENCES ALL BEGIN -- OR THREE OF THEM BEGIN WITH
4 CONTRACTOR AGREES OR CONTRACTOR ---

5 A. RIGHT. "CONTRACTOR MAY NOT CONSUME ALCOHOL OR
6 DRUGS. CONTRACTOR MAY NOT REPORT TO WORK UNDER THE
7 INFLUENCE. CONTRACTOR MUST CONSENT TO PRE-PLACEMENT
8 AS WELL AS RANDOM DRUG TESTING," AND, YOU KNOW, I
9 THINK MOST OF THAT WERE ITEMS REQUIRED BY THEIR
10 LICENSURE.

11 Q. OKAY. AGAIN, THIS IS ANOTHER DOCUMENT WHERE MS.
12 TURNER ACKNOWLEDGES THAT SHE IS A CONTRACTOR?

13 A. YES.

14 Q. DID SHE EVER QUESTION THE FACT THAT SHE WAS BEING
15 CLASSIFIED AS A CONTRACTOR DURING HER ---

16 A. PRIOR TO THIS INJURY, NO.

17 Q. ALL RIGHT. THIS IS DOCUMENT 326.

18 A. YES.

19 Q. WHAT IS THIS?

20 A. THAT'S HER TAXPAYER IDENTIFICATION NUMBER,
21 CERTIFICATION W-9 FOR RACHEL TURNER.

22 Q. OKAY.

23 A. SHE SIGNED THAT, ALSO, OCTOBER 8, 2014.

24 Q. ALL RIGHT. IS THIS YET ANOTHER DOCUMENT INDICATING
25 THAT SHE WAS BEING CLASSIFIED AS AN INDEPENDENT

1 CONTRACTOR?

2 A. YES, A W-9, YES.

3 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS NUMBERED
4 330, DOCUMENT 330. WHAT IS THIS DOCUMENT?

5 A. THIS LOOKS LIKE A LETTER SENT TO MS. TURNER DATED
6 SEPTEMBER 24, 2015. WE WERE TRYING TO OFFER SOME
7 SUPPORT AND TRYING TO COMMUNICATE WITH HER WHAT WE
8 WERE WILLING TO DO TO HELP HER UNDER THE SITUATION.
9 IT WAS AN UNFORTUNATE SITUATION. OBVIOUSLY, THE
10 INMATES WERE ABLE TO TAKE THEM HOSTAGE, AND THAT
11 WASN'T A GOOD THING, AND, YOU KNOW, SHE HAD CALLED
12 US AND HAD A FEW CONVERSATIONS. REALLY, THE RESULT
13 OF THIS LETTER WAS A -- A STRING OF CONVERSATIONS.
14 I WAS INITIALLY NOTIFIED ABOUT THE INCIDENT.
15 LISSETTE CALLED ME, I WANT TO SAY THAT WAS -- WAS
16 THAT LABOR DAY?

17 BY COMMISSIONER JAMES:

18 BEFORE YOU GET INTO THAT, MR. GOODWYN ---

19 BY THE WITNESS:

20 YES.

21 BY COMMISSIONER JAMES:

22 --- WHAT NUMBER IS THAT AGAIN?

23 BY MR. GOODWYN:

24 IS IT -- WHAT IS IT, 326?

25 BY MS. RICHARDSON:

1 THREE-THIRTY.

2 BY MR. GOODWYN:

3 OH, 330, I'M SORRY.

4 BY COMMISSIONER JAMES:

5 OKAY. STILL IN...?

6 BY MR. GOODWYN:

7 WILL'S APAs. I'M GOING STRAIGHT THROUGH WILL'S
8 APAs.

9 BY COMMISSIONER JAMES:

10 COUNTRYWIDE ORIGINAL?

11 BY MR. ALFORD:

12 RIGHT.

13 BY MR. GOODWYN:

14 YEAH, COUNTRY AND GUARANTEE'S ORIGINAL.

15 BY COMMISSIONER JAMES:

16 ALL RIGHT. THANK YOU.

17 BY MR. GOODWYN:

18 DO YOU WANT ME TO REFER TO THAT AS
19 COUNTRYWIDE'S ORIGINALS OR GUARANTEE'S ORIGINALS
20 OR...?

21 BY COMMISSIONER JAMES:

22 YOU CAN SAY COUNTRYWIDE/GUARANTEE ORIGINALS.

23 BY MR. GOODWYN:

24 OKAY.

25 BY COMMISSIONER JAMES:

1 AND THE APA NUMBER 330.

2 BY MR. GOODWYN:

3 OKAY.

4 BY COMMISSIONER JAMES:

5 THANK YOU, SIR.

6 BY MR. GOODWYN:

7 SURE.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 A. SO, BASICALLY, SO LISSETTE HAD MADE ME AWARE OF THE
10 SITUATION. I THINK THAT WAS THE LABOR DAY HOLIDAY.
11 I SAY PROBABLY ON TUESDAY, LISSETTE MADE ME AWARE, I
12 WANT TO SAY IT WAS LATER ON IN THAT WEEK, THE 8TH OR
13 9TH, SOMETHING LIKE THAT, LISSETTE AND MS. TURNER
14 AND I GOT ON THE PHONE, AND, YOU KNOW, WE TALKED
15 ABOUT IT, AND, YOU KNOW, SAID, "WHAT'S GOING ON?
16 TELL US WHAT HAPPENED."

17 Q. NOW, IS THAT -- IS THE CONVERSATION YOU'RE TALKING
18 ABOUT BEFORE OR AFTER THAT LETTER WAS ---

19 A. IT WAS BEFORE THIS LETTER.

20 Q. OKAY.

21 A. OKAY. SO -- AND WE HAD THAT CONVERSATION AGAIN.
22 THIS IS PROBABLY SEPTEMBER THE 8TH OR 9TH. LISSETTE
23 AND MS. TURNER AND I WERE ON THE PHONE, YOU KNOW,
24 SAID, "TELL US WHAT'S GOING ON. YOU KNOW, HOW ARE
25 YOU DOING? WHAT HAPPENED?" AND SHE WOULDN'T REALLY

1 GIVE US ANY DETAILS, AND, OF COURSE, AT THE TIME, I
2 SAID, "WELL, SINCE AN INCIDENT HAS OCCURRED, ARE YOU
3 WILLING TO, YOU KNOW, GIVE US A WRITTEN STATEMENT,
4 SO I CAN HAVE YOUR WORDS IN WRITING?" SHE WAS NOT
5 WILLING TO DO THAT, AND AT THAT POINT, SHE HAD SAID
6 "WHAT ARE YOU GOING TO DO FOR ME?" AND, YOU KNOW, I
7 SAID, "WELL, YOU'RE NOT AN EMPLOYEE, SO THIS IS NOT
8 A WORKERS' COMP SITUATION, BUT WE CERTAINLY WILL TRY
9 TO HELP," AND I THINK I PROBABLY GOT A LITTLE BIT
10 FURTHER THAN THAT, AND SHE HUNG UP.

11 Q. OKAY. DID SHE -- AGAIN, AT THAT POINT, DID SHE
12 QUESTION WHAT YOU MEANT BY TELLING HER THAT SHE IS
13 NOT AN EMPLOYEE?

14 A. SHE -- I MEAN, SHE DIDN'T SEEM SHOCKED. SHE SAID,
15 "WELL, I -- I WANT SOME COUNSELING. I WANT SOME
16 MEDICAL BENEFITS," AND I THINK SHE SAID, "WELL,
17 SHOULDN'T THIS BE WORKERS' COMP?"

18 Q. OKAY.

19 A. SO, YOU KNOW, THAT'S WHEN I SAID, "WELL, IT'S NOT
20 WORKERS' COMP. YOU'RE AN INDEPENDENT CONTRACTOR.
21 YOU'RE NOT AN EMPLOYEE. WE'VE HAD THIS DISCUSSION,"
22 AND THAT'S WHEN SHE HUNG UP.

23 Q. DID YOU TRY TO EXPLAIN TO HER THAT SHE WAS
24 RESPONSIBLE FOR HER OWN WORKERS' COMPENSATION UNDER
25 HER CONTRACT?

1 A. I MEAN, I DON'T KNOW IF AT THAT EXACT MOMENT, YOU
2 KNOW, THAT WE HAD, BUT OBVIOUSLY, YOU KNOW, I FELT
3 CONFIDENT BECAUSE OF THE CONVERSATION I HAD HAD WITH
4 HER BEFORE, AND THE DOCUMENTS THEY ALL SIGNED, YOU
5 KNOW. THIS IS "YOU'RE AN INDEPENDENT CONTRACTOR."

6 Q. OKAY.

7 A. THAT'S -- YOU WANTED TO REFUSE SHIFTS AND CHOOSE
8 SHIFTS AND ACCEPT YOUR OWN SCHEDULE AND NEGOTIATE,
9 THIS IS WHERE WE ARE.

10 Q. OKAY. NOW, THAT LETTER, DOES IT OFFER HER LIGHT
11 DUTY WORK?

12 A. WELL -- AS -- YES, AS A RESULT OF THAT, SO, SHE HUNG
13 UP ON ME. WE TRIED TO REACH OUT TO HER A COUPLE OF
14 OTHER TIMES. SHE WOULD NOT TALK TO US. S.C.D.C.
15 CONTACTED US, AND I THINK ONE OF THE
16 REPRESENTATIVES, IT MIGHT HAVE BEEN MR. GUDVANGEN,
17 I'M NOT SURE WHO IT WAS, YOU KNOW, SAID, "WELL, IF
18 YOU ARE CONCERNED ABOUT MS. TURNER, WHAT DO YOU WANT
19 TO DO, AND ARE Y'ALL DOING SOMETHING?" WE EXPLAINED
20 THE SITUATION. AGAIN, YOU KNOW, SHE'S AN
21 INDEPENDENT CONTRACTOR. SO, THERE'S NOT WORKERS'
22 COMP. MR. GUDVANGEN WAS NOT SURPRISED BY THAT, AND
23 IN FACT, AS HE TESTIFIED, HE USED TO WORK FOR US AND
24 ADMITTED HE WAS AN INDEPENDENT CONTRACTOR AND THEN
25 WORKED FOR S.C.D.C.

1 Q. OKAY.

2 A. SO, HE'S KNOWN THAT WHEN HE WAS WITH US THROUGH THE
3 BROKERAGE MODEL AND WHEN HE WENT TO WORK AS A DIRECT
4 EMPLOYEE OF S.C.D.C. HE HAS ALWAYS KNOWN THAT HE
5 WAS A 1099, AND THAT THAT WAS THE BROKERAGE MODEL WE
6 HAD IN PLACE.

7 Q. OKAY.

8 A. SO, HE CALLED AND SAID "YOU KNOW, WHAT'S GOING ON?
9 PEOPLE ARE CONCERNED." WE EXPLAINED SHE WOULDN'T
10 TALK TO US. I THINK IT WAS HIM OR SOMEONE ELSE, YOU
11 KNOW, EXPLAINED "I DON'T KNOW THAT SHE IS DOING
12 WELL." SO, I INSTRUCTED LISSETTE TO DO A WELLNESS
13 CHECK, CALL THE POLICE AND DO A WELLNESS CHECK,
14 BECAUSE SHE IS NOT RESPONDING. THE POLICE WENT BY
15 AND REPORTED BACK TO LISSETTE THAT SHE WAS NOT GOING
16 TO HARM HERSELF. SHE, YOU KNOW, SEEMED TO BE OKAY,
17 NOT ASSIGNING ANY SPECIAL MEANING TO "OKAY." IN
18 OTHER WORDS, THEY DIDN'T SEE A NEED FOR THEIR
19 INTERVENTION. SO, THEY CALLED AND LET US KNOW THAT.
20 SO, AFTER THAT, I THINK LISSETTE MAY HAVE TEXTED HER
21 OR SENT A NOTE. SHE DID TEXT HER. SHE DID CALL
22 LISSETTE BACK. I WANT TO SAY IT WAS THE THREE OF US
23 THAT HAD THE CONVERSATION. SHE BASICALLY BLESSED US
24 OUT FOR CALLING THE COPS. "WHY IN THE HELL DID YOU
25 CALL THE COPS?"

1 Q. OKAY.

2 A. YOU WON'T COMMUNICATE WITH US. YOU KNOW, S.C.D.C.
3 IS TELLING US FROM SOME SOURCE THAT YOU ARE NOT
4 DOING WELL, AND SO WE FOLLOWED UP, TRYING TO SHOW,
5 YOU KNOW, THAT WE ---

6 Q. SO, YOU WERE TRYING TO SHOW CONCERN FOR HER BY DOING
7 THE WELLNESS CHECK, AND SHE CAME AND CUSSED YOU OUT?

8 A. RIGHT. SO, YOU KNOW, SHE BLESSED US OUT, AND THEN
9 SHE WAS DONE AND HUNG UP. SO, I INSTRUCTED LISSETTE
10 TO PUT THIS IN WRITING AND TAKE IT TO HER HOUSE.

11 Q. OKAY. AND THIS -- THE LETTER IS GENERALLY WHAT? I
12 MEAN, YOU DON'T HAVE TO READ EVERY WORD.

13 A. RIGHT.

14 Q. BUT WHAT IS THE -- WHAT WAS THE PURPOSE OF THE
15 LETTER?

16 A. THE GIST OF THE LETTER WAS TO LET HER KNOW THAT WE
17 WERE MAKING AN EFFORT. WE WERE TRYING TO ASSIST HER
18 WITHIN THE CONTEXT OF THE SITUATION AS BEST AS WE
19 COULD. WE OFFERED THE OPTION TO TAKE SHIFTS AT SOME
20 LOW-KEY NURSING HOMES OR SPECIAL-NEED FACILITIES.
21 WE TOLD HER THAT SHE COULD COME INTO OUR OFFICE AT
22 HER CHOOSING AND FILE PAPERWORK, COME AND GO AS YOU
23 PLEASE. WE ASKED IF SHE WANTED TO FORWARD THE
24 MEDICAL BILLS, WE WOULD SEE IF WE COULD, YOU KNOW,
25 TALK TO THE PROVIDER AND NEGOTIATE THOSE DOWN.

1 Q. OKAY. DID SHE RESPOND TO THE LETTER?

2 A. NO.

3 Q. WHAT -- WAS THE LETTER HAND DELIVERED?

4 A. IT WAS.

5 Q. OKAY. ALL RIGHT. SO, YOU GOT NO RESPONSE?

6 A. NO RESPONSE.

7 Q. ALL RIGHT. DID YOU TALK TO MS. TURNER AFTER THIS
8 LETTER WAS DELIVERED UNTIL THIS CASE WAS FILED?

9 A. AFTER THAT, I DID NOT TALK TO HER DIRECTLY. THE
10 NEXT THING I HEARD ABOUT MS. TURNER WAS THE FIRST
11 ATTORNEY SHE RETAINED, AND ACTUALLY I DEALT WITH
12 THREE ATTORNEYS BEFORE MR. SAMUELS BECAME INVOLVED.
13 AND SO I TALKED ON HER BEHALF WITH ALL THREE OF
14 THOSE ATTORNEYS, AND FOR WHATEVER REASONS, THEY
15 DECLINED TO CONTINUE IN THE CASE.

16 Q. ALL RIGHT. DID YOU CONVEY THE SAME GENERAL MESSAGE
17 TO THE ATTORNEYS THAT SHE WAS CONSIDERED TO BE AN
18 INDEPENDENT CONTRACTOR?

19 A. I RELAYED THE SAME MESSAGE TO EACH ATTORNEY, SENT
20 COPIES OF THE INDEPENDENT CONTRACTOR AGREEMENT TO
21 EACH ATTORNEY. I THINK THE -- I FORGET IF IT WAS --
22 IT WAS A YOUNG LADY THAT WAS PRACTICING IN COLUMBIA
23 OR LEXINGTON; I FORGET HER NAME NOW. I THINK IT'S IN
24 THE COMMISSION'S FILE. I THINK SHE FILED A 50 TO
25 FILE THE CLAIM, AND IT WAS AS A RESULT OF HER FILING

1 THAT CLAIM WITH THE NAME MEDUSTRIAL, THAT COVERAGE
2 AND COMPLIANCE GOT INVOLVED, AND I HAD TO -- AND
3 FILL OUT, YOU KNOW, A QUESTIONNAIRE AND ANSWER THE
4 QUESTIONS TO COVERAGE AND COMPLIANCE ABOUT THE WHOLE
5 MEDUSTRIAL/CONDUSTRIAL SITUATION AND HOW THAT PLAYED
6 OUT.

7 Q. OKAY. ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS
8 PAGE 27 OF CONDUSTRIAL'S APA EXHIBITS. DO YOU
9 RECOGNIZE THIS LETTER?

10 A. YES.

11 Q. WHAT IS THAT LETTER? WHO IS IT FROM?

12 A. I THINK THIS WAS A DOCUMENT THAT LISSETTE PUT
13 TOGETHER, LIKE I SAID, I THINK WHEN MS. TURNER WOULD
14 NOT PROVIDE A STATEMENT, I ASKED LISSETTE, YOU KNOW,
15 "TELL ME WHAT YOU KNOW ABOUT THE SITUATION." SO, I
16 THINK THIS WAS IN RESPONSE TO US TRYING TO
17 INVESTIGATE THE CLAIM.

18 Q. OKAY. AND WHO IS THIS ---

19 BY MR. SAMUELS:

20 EXCUSE ME, YOUR HONOR. I'VE GOT PAGE 27 OF
21 CONDUSTRIAL'S?

22 BY MS. RICHARDSON:

23 YEAH, I DON'T...

24 BY MR. GOODWYN:

25 IS THAT --

1 BY THE WITNESS:

2 IT ALSO SAYS 191 IF THAT HELPS.

3 BY MS. RICHARDSON:

4 YEAH.

5 BY MR. GOODWYN:

6 LET ME SEE WHAT YOU'VE GOT. WHAT DO YOU HAVE?

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. FOR CLARIFICATION, WHEN THIS WENT
9 INTO THE RECORD, IT WENT IN AS CONDUSTRIAL 1 THROUGH
10 169.

11 BY MR. GOODWYN:

12 OKAY.

13 BY COMMISSIONER JAMES:

14 THERE ARE, AND I'VE NOTICED IT, SOME OF THE
15 OTHER DOCUMENTS, EVEN IN THE CLAIMANT'S WHERE THERE
16 IS A CONDUSTRIAL TYPED NUMBER. MAYBE THAT WAS
17 SOMETHING WHERE PEOPLE HAVE DONE DISCOVERY THAT IT
18 IS ACTUALLY THE ---

19 BY MR. GOODWYN:

20 ALL RIGHT. LOOK AT 191 THEN.

21 BY COMMISSIONER JAMES:

22 IT LOOKS LIKE IT'S ---

23 BY MR. GOODWYN:

24 THAT'S THE OTHER NUMBER.

25 BY COMMISSIONER JAMES:

1 THAT THE NUMBERING SYSTEM THAT Y'ALL HAVE USED
2 SO FAR HAS BEEN ACTUALLY THE HANDWRITTEN NUMBERS.
3 SO, WE CAN REFER TO IT TWO WAYS.

4 BY MR. GOODWYN:

5 SURE.

6 BY COMMISSIONER JAMES:

7 BUT IT ORIGINALLY WENT IN AS ONE THROUGH 169

8 BY MR. GOODWYN:

9 OKAY. SO, THIS IS WHAT I'M LOOKING AT.

10 BY MR. SAMUELS:

11 OKAY, I'VE GOT IT.

12 BY MR. GOODWYN:

13 OKAY.

14 BY MR. SAMUELS:

15 THANKS.

16 BY MR. GOODWYN:

17 COMMISSIONER, SHOULD I USE THE HANDWRITTEN
18 NUMBER 27 OR THE 191?

19 BY COMMISSIONER JAMES:

20 LET'S ALL STAY ON THE SAME PAGE. LET'S USE THE
21 HANDWRITTEN NUMBER.

22 BY MR. GOODWYN:

23 OKAY.

24 BY COMMISSIONER JAMES:

25 AND THAT WOULD MAKE MORE SENSE. IF YOU WILL

1 LOOK AT THE ONES AFTER THAT, THEY'RE NOT IN
2 SEQUENTIAL ORDER.

3 BY MR. GOODWYN:

4 OH.

5 BY COMMISSIONER JAMES:

6 IF ANYBODY EVER TRIES TO FOLLOW UP BEHIND US,
7 IT WOULD BE VERY DIFFICULT.

8 BY MR. GOODWYN:

9 OKAY.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. ALL RIGHT. I'M GOING TO SHOW YOU -- IT SAYS
12 COMPUTER PRINTOUT 28 OF CONDUSTRIAL'S APAS.

13 A. OKAY.

14 BY MS. RICHARDSON:

15 DID WE TALK ABOUT 27?

16 BY MR. GOODWYN:

17 BRIEFLY, YEAH.

18 BY MS. RICHARDSON:

19 BRIEFLY, THAT'S ALL -- THAT'S ALL YOU GOT WITH
20 THAT. OKAY, NOW WE'RE ON 28.

21 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

22 Q. YEAH, WHAT IS DOCUMENT 28?

23 A. THIS IS JUST -- I GUESS THIS WAS OUR PAYROLL SYSTEM
24 AT THE TIME. I THINK IT WAS THE U.A. SYSTEM. IT'S
25 OBVIOUSLY -- IN OTHER WORDS, WE DON'T USE THIS. IT

1 IS VERY OUTDATED. IT WAS SOMEWHAT SIMPLISTIC, AND
2 THAT'S WHY THE PAGE 27 THAT YOU HANDED ME, IT SAYS
3 "EMPLOYEE PROFILE."

4 Q. OKAY.

5 A. YOU DIDN'T HAVE THE OPTION TO DESIGNATE -- WHERE IT
6 SAYS "EMPLOYEE RACHEL TURNER," YOU DIDN'T HAVE THE
7 OPTION TO CHANGE THAT.

8 Q. OKAY. NOW, ON THIS FORM, IT IS VERY SMALL; I'M
9 SORRY, IT DOES HAVE A BOX HERE, IT SAYS ---

10 A. YES.

11 Q. --- THE WORKERS' COMP -- WHAT DOES IT SAY IN THE
12 WORKERS' COMP BOX?

13 A. "Z-1099."

14 Q. WHAT DOES THAT MEAN?

15 A. IT MEANS SHE WAS A 1099.

16 Q. OKAY. AND UP HERE AT THE TOP WHERE IT SAYS AN
17 EMPLOYEE, COLON, AND THEN RACHEL TURNER, DOES IT SAY
18 EMPLOYEE FOR ALL OF CONDUSTRIAL'S STAFF, THE W2 AND
19 1099s?

20 A. I'M NOT SURE WHAT YOU ARE...

21 Q. OH, UP HERE AT THE TOP WHERE IT SAYS "EMPLOYEE" AND
22 IT ---

23 A. YES.

24 Q. EVEN THOUGH SHE IS CLASSIFIED AS A 1099 INDEPENDENT
25 CONTRACTOR, ---

1 A. RIGHT.

2 Q. --- IT SAYS "EMPLOYEE" UP THERE, BUT I THINK YOU'VE
3 JUST TESTIFIED THERE IS NO WAY TO CHANGE IT FROM
4 EMPLOYEE TO ---

5 A. THAT'S A FUNCTION OF THE SOFTWARE.

6 Q. OKAY.

7 A. THAT WAS A U.A. SOFTWARE SYSTEM THAT WE DO NOT USE
8 ANYMORE.

9 Q. THE FACT THAT IT SAYS "EMPLOYEE" UP THERE, DOES THAT
10 HAVE ANY SIGNIFICANCE AS ---

11 A. NO.

12 Q. --- TO HOW YOU ACTUALLY CLASSIFIED?

13 A. IT HAS NO SIGNIFICANCE. THAT WAS KIND OF A VANILLA
14 PAYROLL SOFTWARE PROGRAM.

15 Q. I WANT TO ASK YOU SOME QUESTIONS. I'M SORRY. I'M
16 TRYING TO MAKE SURE I DON'T GET INTO THE COVERAGE
17 ISSUES HERE. ALL RIGHT, HANG ON. THIS DOCUMENT IS
18 ON COVERAGE. I'M GOING TO ASK YOU SOME QUESTIONS
19 ABOUT THE DECISION FROM THE DEPARTMENT AND
20 WORKFORCE.

21 A. YES.

22 BY MR. SAMUELS:

23 I'M GOING TO OBJECT TO RELEVANCE.

24 BY MR. GOODWYN:

25 IT'S PERSUASIVE.

1 BY MR. SAMUELS:

2 AS A MATTER OF LAW, IT'S NOT PERSUASIVE NOR
3 AUTHORITATIVE.

4 BY COMMISSIONER JAMES:

5 MR. GOODWIN, THAT WAS NOT PLACED WITHIN THE
6 APAs; HOWEVER, IT WAS BROUGHT TO MY ATTENTION.

7 BY MR. GOODWYN:

8 WELL, IT IS IN MY APAs.

9 BY COMMISSIONER JAMES:

10 WELL, IT IS IN THE APAs. WHEREVER IT IS, IT
11 WAS BROUGHT TO THE ATTENTION TO THE COMMISSION THAT
12 THE ARGUMENT WAS GOING TO BE THAT IT HAS ---

13 BY MR. GOODWYN:

14 RIGHT.

15 BY COMMISSIONER JAMES:

16 --- PRECEDENTIAL AND PERSUASIVE AUTHORITY. AS
17 FAR AS THE PERSONAL KNOWLEDGE OF THIS WITNESS, ---

18 BY MR. GOODWYN:

19 WELL, WHAT I WAS GOING TO ASK HIM ABOUT IT WAS
20 IT GOES TO THE IDEA OF WHAT HAVE Y'ALL DONE TO
21 CONFIRM THAT THIS MODEL IS A LEGALLY CORRECT MODEL.
22 THEY'VE GOTTEN -- THEY'VE GOTTEN CONFIRMATION FROM
23 THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE THAT
24 CONFIRMED THEIR BELIEF THAT CLASSIFYING THIS WAY WAS
25 CORRECT. IT GOES TO EITHER CREDIBILITY AND THE FACT

1 THAT WHAT THEY WERE DOING IS -- THEY THOUGHT IT WAS
2 LEGITIMATE. THEY WEREN'T TRYING TO PULL A FAST ONE
3 ON ANYBODY, WHICH IS KIND OF AN ARGUMENT OF THEY
4 KNEW THEY WERE MIS-CLASSIFYING THESE PEOPLE AND JUST
5 TRYING TO GET OUT OF -- GET AWAY WITH PAYING TAXES.
6 THIS GOES TO SHOW NO, THEY WEREN'T. THEY'VE
7 ACTUALLY HAD A GOVERNMENTAL ENTITY LOOK AT IT AND
8 APPROVE IT EVEN THOUGH IT'S NOT CONTROLLING, BUT IT
9 GOES TO ---

10 BY COMMISSIONER JAMES:

11 OKAY. I'LL ALLOW THE QUESTIONS. WHAT I'M
12 TRYING TO DO ON BEHALF OF EVERYBODY THOUGH IS MAKE
13 SURE I'M NOT TRYING A PERIPHERAL -- A PERIPHERAL
14 ISSUE IN THIS CASE, BUT GO AHEAD.

15 BY MR. GOODWYN:

16 RIGHT.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. TO THAT END, YOU KNOW, WE'VE TALKED A MINUTE ABOUT
19 WHAT CONDUCTORIAL DID FIRST AND THEN ALONG THE WAY TO
20 CONFIRM THEIR BELIEF THAT THIS INDEPENDENT
21 CONTRACTOR MODEL WAS IN FACT AN INDEPENDENT
22 CONTRACTOR MODEL AND NOT JUST A SHAM TO CLASSIFY
23 EMPLOYEES AS INDEPENDENT CONTRACTORS TO AVOID TAXES
24 AND OTHER THINGS.

25 A. RIGHT.

1 Q. I UNDERSTAND, AND WE'VE TALKED ABOUT THIS DEPARTMENT
2 OF EMPLOYMENT AND WORKFORCE DECISION. DID YOU GET
3 CONFIRMATION, DID CONDUSTRIAL GET CONFIRMATION FROM
4 THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE THAT AT
5 LEAST THEY BELIEVED MS. TURNER AND PEOPLE CLASSIFIED
6 LIKE HER WERE IN FACT TRUE INDEPENDENT CONTRACTORS?

7 A. YES.

8 Q. DID CONDUSTRIAL ASK THE DEPARTMENT OF EMPLOYMENT AND
9 WORKFORCE TO MAKE THAT BROAD DECISION, OR DID THEY
10 DO THAT ON THEIR OWN?

11 A. NO, WE DID NOT.

12 Q. ALL RIGHT. WAS -- DO YOU KNOW WHY THEY MADE THIS
13 BROAD DECISION WITHOUT BEING ASKED?

14 A. I DON'T.

15 BY MR. SAMUELS:

16 OBJECT TO SPECULATION, YOUR HONOR.

17 BY COMMISSIONER JAMES:

18 SUSTAINED.

19 BY THE WITNESS:

20 YEAH, I DON'T KNOW THE REASON.

21 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

22 Q. OKAY.

23 A. I JUST KNOW THAT I -- WE DID NOT ASK THEM TO MAKE
24 THAT -- YOU KNOW, WE HANDLED THE CASE, OBVIOUSLY, WE
25 WENT THROUGH THE NORMAL PROCESS. THEY SENT A

1 QUESTIONNAIRE. WE ANSWERED THE QUESTIONS. WE
2 PROVIDED ANY PAYMENT RECORDS. WE PROVIDED THE
3 INDEPENDENT CONTRACTOR AGREEMENT. I WAS -- I HAD A
4 TELEPHONE CONFERENCE. I WAS PLACED UNDER OATH AND
5 ASKED QUESTIONS ABOUT THE EMPLOYMENT RELATIONSHIP
6 VERSUS THE INDEPENDENT CONTRACTOR RELATIONSHIP.
7 THEY TOOK OUR QUESTIONNAIRE RESPONSES AND MY
8 TESTIMONY AND RENDERED A DECISION.

9 Q. OKAY. AND THE CLAIMANT IN THAT WORKERS' COMP --
10 EXCUSE ME, THAT UNEMPLOYMENT CASE, WAS THAT CLAIMANT
11 SIMILARLY CLASSIFIED AS MS. TURNER?

12 A. YES.

13 Q. AND I'M GOING TO SHOW YOU WHAT IS LABELED; IT'S
14 PAGES 42 THROUGH 47 OF CONDUSTRIAL'S APAs. IS THIS
15 THE QUESTIONNAIRE TO THE DEPARTMENT OF EMPLOYMENT
16 AND WORKFORCE THAT YOU FILLED OUT THAT YOU WERE
17 REFERRING TO?

18 A. YES.

19 Q. ARE THOSE ACCURATE RESPONSES?

20 A. YES, THEY ARE.

21 Q. ALL RIGHT. I THINK IT MAY BE HELPFUL TO -- TO GO
22 THROUGH SOME OF THESE QUESTIONS BECAUSE AS THEY
23 APPLY TO THIS, THIS SITUATION. I'M GOING TO ASK YOU
24 SOME OF THE QUESTIONS OFF OF THIS FORM, BUT I WANT
25 YOU TO ANSWER THEM WITH RESPECT TO MS. TURNER, AND

1 MAYBE THAT'S NOT NECESSARY. IT SOUNDS LIKE THE
2 ANSWERS WILL BE THE SAME FOR MS. TURNER AS IT WOULD
3 BE FOR ---

4 A. OUR RESPONSES WOULD HAVE BEEN THE SAME.

5 Q. OKAY. ALL RIGHT. YOU HAD A WRITTEN AGREEMENT FOR
6 THE INDEPENDENT CONTRACTOR FOR MS. TURNER?

7 A. SHE SIGNED TWO OF THOSE, ONE IN 2013 AND ONE IN
8 2014.

9 Q. DID YOU GIVE MS. TURNER ANY TRAINING? DID
10 CONDUSTRIAL GIVE MS. TURNER ANY TRAINING?

11 A. NO, WE DID NOT.

12 Q. DID CONDUSTRIAL GIVE MS. TURNER ANY INSTRUCTIONS IN
13 THE WAY HER WORK WAS TO BE PERFORMED?

14 A. NO, WE DID NOT.

15 Q. DID CONDUSTRIAL HAVE THE RIGHT TO CHANGE THE METHODS
16 USED BY MS. TURNER?

17 A. NO, WE DID NOT.

18 Q. DID CONDUSTRIAL DIRECT MS. TURNER ON HOW TO DO HER
19 WORK?

20 A. NO, WE DID NOT.

21 Q. DID -- DID CONDUSTRIAL'S BUSINESS REQUIRE THAT MS.
22 TURNER BE SUPERVISED OR CONTROLLED IN THE
23 PERFORMANCE OF HER SERVICES?

24 A. NO, WE DID NOT, AND WE COULDN'T DO THAT ANYWAY
25 BECAUSE WE WERE ON THE S.C.D.C. SITE.

- 1 Q. OKAY.
- 2 A. AND AT ANY OF THOSE FACILITIES.
- 3 Q. WAS MS. TURNER REQUIRED TO FOLLOW ANY ROUTINE OR
- 4 SCHEDULE ESTABLISHED BY CONDUSTRIAL?
- 5 A. NO.
- 6 Q. DOES MS. TURNER REPORT TO CONDUSTRIAL?
- 7 A. NO, SHE DID NOT.
- 8 Q. DID CONDUSTRIAL PROVIDE ANY SUPPLIES OR MATERIALS TO
- 9 MS. TURNER?
- 10 A. NO, WE DID NOT.
- 11 Q. DOES CONDUSTRIAL REIMBURSE MS. TURNER FOR THE -- IN
- 12 THE PERFORMANCE OF HER SERVICES?
- 13 A. NO, WE DO NOT.
- 14 Q. DID MS. TURNER HAVE ANY HELPERS?
- 15 A. I DON'T -- I DON'T BELIEVE SO, NO.
- 16 Q. THERE WERE NO -- SHE DIDN'T HAVE ANY OF HER OWN
- 17 WORKERS?
- 18 A. I -- I DON'T BELIEVE SO. I GUESS I'M NOT CERTAIN.
- 19 I DON'T BELIEVE SO.
- 20 Q. AND THE LOCATION THAT MS. TURNER PERFORMED HER WORK,
- 21 WAS THAT AT ANY OF CONDUSTRIAL'S LOCATIONS?
- 22 A. NO. THOSE WOULD HAVE BEEN S.C.D.C. PRISONS OR
- 23 LOCATIONS.
- 24 Q. DID YOU GUARANTEE ANY MINIMUM AMOUNT OF PAY FOR MS.
- 25 TURNER?

1 A. NO.

2 Q. DID YOU ALLOW MS. TURNER ANY KIND OF A DRAWING
3 ACCOUNT OR ADVANCES AGAINST PAY?

4 A. NO.

5 Q. WAS MS. TURNER ELIGIBLE FOR ANY PENSIONS, BONUSES,
6 PAID VACATIONS OR SICK PAY?

7 A. NO, SHE WAS NOT.

8 Q. AND I THINK WE KNOW THE QUESTION TO THIS, BUT THIS
9 QUESTION JUST TO CONFIRM, DID CONDUSTRIAL CARRY ANY
10 WORKERS' COMPENSATION INSURANCE FOR MS. TURNER?

11 A. NO.

12 Q. WAS SHE ---

13 A. WE DID CARRY WORKERS' COMP INSURANCE BUT NOT FOR MS.
14 TURNER.

15 Q. WAS SHE REQUIRED TO PROVIDE HER OWN WORKERS'
16 COMPENSATION INSURANCE?

17 A. THAT'S -- I MEAN, THAT WAS HER CHOICE, UNLESS IT WAS
18 PROVIDED FOR HER ELSEWHERE.

19 Q. DID CONDUSTRIAL DEDUCT ANY SOCIAL SECURITY TAXES
20 FROM MS. TURNER'S PAY?

21 A. NO, WE DID NOT.

22 Q. DID CONDUSTRIAL DEDUCT ANY FEDERAL INCOME TAXES FROM
23 MS. TURNER'S PAY?

24 A. NO.

25 Q. DID CONDUSTRIAL REPORT MS. TURNER'S PAY TO THE

1 I.R.S. VIA WHAT FORM?

2 A. 1099.

3 Q. WAS MS. TURNER BONDED BY CONDUCTRIAL?

4 A. NO.

5 Q. WHAT ---

6 BY COMMISSIONER JAMES:

7 CAN YOU HOLD ON ONE SECOND?

8 BY MR. GOODWYN:

9 SURE.

10 BY COMMISSIONER JAMES:

11 MS. FARTHING, DO YOU NEED A BREAK?

12 BY MS. FARTHING:

13 IF YOU DON'T MIND, THAT WOULD BE GREAT.

14 BY COMMISSIONER JAMES:

15 OKAY.

16 (OFF THE RECORD)

17 BY COMMISSIONER JAMES:

18 MR. GOODWYN.

19 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

20 Q. ALL RIGHT. MR. SEARS, I THINK I WAS ASKING YOU SOME
21 QUESTIONS THAT RELATE TO WHETHER OR NOT MS. TURNER,
22 OR SOME OF THE FACTORS THAT RELATE TO WHETHER OR NOT
23 MS. TURNER WAS PROPERLY CLASSIFIED AS AN INDEPENDENT
24 CONTRACTOR.

25 A. YES.

1 Q. WAS MS. TURNER ABLE TO WORK FOR OTHER -- OTHER
2 PEOPLE OR TAKE OTHER NURSING JOBS?

3 A. ABSOLUTELY.

4 Q. WAS MS. TURNER PROHIBITED FROM COMPETING WITH
5 CONDUSTRIAL?

6 A. NO, WHICH SHE WOULD HAVE BEEN DOING IF SHE TOOK
7 OTHER ASSIGNMENTS.

8 Q. COULD CONDUSTRIAL DISCHARGE MS. TURNER AT ANY TIME
9 WITHOUT INCURRING A LIABILITY?

10 A. WELL, WE COULDN'T DISCHARGE HER, BUT SHE COULD COME
11 AND GO AS SHE PLEASED.

12 Q. AND I'M READING THAT RIGHT OFF OF THIS
13 QUESTIONNAIRE. I THINK DISCHARGE, NOT FIRE OR
14 TERMINATE, BUT ---

15 A. RIGHT.

16 Q. --- STOP USING HER. COULD CONDUSTRIAL HAVE STOPPED
17 USING MS. TURNER'S SERVICES WITHOUT INCURRING ANY
18 LIABILITY?

19 A. I MEAN, IN OTHER WORDS, JUST NOT -- IN OTHER WORDS,
20 IF THE BROKERS DIDN'T -- IF SHE JUST STOPPED TAKING
21 SHIFTS?

22 Q. OR ---

23 A. YEAH.

24 Q. --- IF YOU JUST DECIDED YOU DIDN'T WANT TO HIRE HER
25 -- OR NOT HIRE HER, BUT LET HER WORK THESE SHIFTS

1 THROUGH YOU, WOULD CONDUSTRIAL HAVE OCCURRED ANY
2 TYPE OF PENALTY OR LIABILITY BY SAYING "WE DON'T
3 WANT -- WE DON'T WANT TO USE YOU ANYMORE"?

4 A. NO, I DON'T THINK SO. LIKE YOU SAID, IF S.C.D.C.
5 HAD NOTIFIED US THAT THERE HAD BEEN SOME, YOU KNOW,
6 SOME MISCONDUCT, AND THEY SAID "WE DON'T WANT HER
7 ANYMORE," YOU KNOW, WE WOULD HAVE SAID THAT'S --
8 "YOU KNOW, IF WE HAVE OTHER SHIFTS AVAILABLE, WE
9 WILL LET YOU KNOW, BUT, YOU KNOW, BASED ON THAT
10 ACTIVITY, WE DON'T KNOW WHAT SHIFTS WE HAVE FOR YOU
11 AT THIS TIME."

12 Q. OKAY. DID CONDUSTRIAL -- WELL, I'LL SAVE THAT.
13 I'LL GET INTO THAT IN A MINUTE WITH THE OTHER ISSUE.
14 ALL RIGHT. OKAY. I WANT TO ASK YOU SOME QUESTIONS
15 ABOUT THE -- YOU KNOW, THE PERSONNEL SERVICES
16 AGREEMENT.

17 A. OKAY.

18 Q. FIRST, THAT AGREEMENT WAS DATED 2008, CORRECT?

19 A. THAT IS CORRECT.

20 Q. AND YOU DIDN'T START WITH CONDUSTRIAL UNTIL 2009,
21 CORRECT?

22 A. JULY 6TH, 2009.

23 Q. OKAY. AND AFTER YOU STARTED WITH CONDUSTRIAL, WHAT
24 DID YOU LEARN ABOUT HOW THIS AGREEMENT CAME INTO
25 BEING AND THE LANGUAGE IN IT?

1 A. WELL, SEVERAL -- LIKE I SAID, SEVERAL REASONS.
2 NUMBER ONE, OBVIOUSLY, AS GENERAL COUNSEL, I MEAN, I
3 OBVIOUSLY GENERALLY LEARNED ABOUT THE OPERATIONS OF
4 THE BUSINESS, AND THEN, YOU KNOW, AS I SAID, MS.
5 WALKER TOOK THE \$50,000 CHECK AND RAN AND CAME BACK
6 A YEAR-AND-A-HALF LATER AND SUED US AND SAID WE
7 STOLE HER BUSINESS. SO, WE GOT INVOLVED IN
8 LITIGATION OVER ALL OF THAT, AND THAT WAS A MULTI-
9 YEAR EVENT, AND YOU KNOW, OBVIOUSLY, I GUESS I DON'T
10 KNOW HOW MUCH YOU WANT ME TO EXPOUND NOW. THAT'S
11 WHEN WE BECAME FAMILIAR WITH THIS PROCESS AFTER
12 TAKING THE JOB AND ESPECIALLY HAVING TO DEAL WITH
13 THE LAWSUIT AND THE LOGISTICS OF HOW PALMETTO
14 REFERRAL SERVICES FLOWED INTO MEDUSTRIAL AND GOING
15 FORWARD.

16 Q. OKAY. LOOKING AT THIS SECOND, ---

17 A. YES.

18 Q. --- WHAT IS THE ADDRESS LISTED THERE FOR MEDUSTRIAL?

19 A. OH, IT SAYS "MEDUSTRIAL HEALTHCARE, 720 GRAYSON
20 ROAD, SUITE 115, COLUMBIA, SOUTH CAROLINA 29210."

21 Q. IS THAT ALSO THE ADDRESS FOR CONDUSTRIAL?

22 A. YES, AT THAT TIME, YES.

23 Q. OKAY. AND THIS -- DO YOU KNOW WHO DRAFTED THIS
24 AGREEMENT?

25 A. YES, IT CAME FROM S.C.D.C. IT WAS THEIR STANDARD

1 FORM.

2 Q. OKAY. AND AGAIN, OBVIOUSLY, YOU DIDN'T HAVE
3 ANYTHING TO DO WITH THAT AGREEMENT SINCE YOU WEREN'T
4 EVEN WITH CONDUSTRIAL?

5 A. CORRECT.

6 Q. AND DO YOU HAVE ANY KNOWLEDGE AS TO WHAT THE COURSE
7 OF CONDUCT BETWEEN CONDUSTRIAL AND S.C.D.C. WAS AT
8 THE TIME -- AT THE TIME THAT AGREEMENT WAS ENTERED
9 INTO?

10 A. YES, I DO, BECAUSE LIKE I SAID, BECAUSE OBVIOUSLY --

11

12 BY MR. SAMUELS:

13 OBJECT TO HEARSAY, YOUR HONOR.

14 BY MR. GOODWYN:

15 HE SAID ---

16 BY THE WITNESS:

17 BECAUSE OF MY ---

18 BY MR. GOODWYN:

19 HE HASN'T TESTIFIED TO ANY SOMEBODY SAID
20 SOMETHING ELSE.

21 BY MR. SAMUELS:

22 HE WASN'T ---

23 BY MR. GOODWYN:

24 HE JUST SAID HE HAD KNOWLEDGE.

25 BY MR. SAMUELS:

1 HE WASN'T PRESENT AT 2008 WHEN THAT CONTRACT
2 WAS SIGNED. HE HAS ---

3 BY MR. GOODWYN:

4 HE IS THE CORPORATE COUNSEL FOR THIS COMPANY.
5 HE CAN LEARN THINGS THROUGH THAT, ABOUT WHAT
6 HAPPENED IN THE PAST OF THAT COMPANY AND CAN TESTIFY
7 TO THAT. IT'S NOT HEARSAY.

8 BY COMMISSIONER JAMES:

9 WELL, IF -

10 BY MS. FARTHING:

11 WE -- I'M SORRY. I'LL LET YOU RULE. I'M
12 SORRY. GO AHEAD.

13 BY COMMISSIONER JAMES:

14 HE INDICATED THAT HE WAS NOT THERE WITH THE
15 COMPANY WHEN THAT DOCUMENT WAS ---

16 BY MR. GOODWYN:

17 WAS DRAFTED.

18 BY COMMISSIONER JAMES:

19 --- OBTAINED AND DRAFTED OR WHATEVER THE PROPER
20 LANGUAGE YOU WANT TO USE, SO UNLESS YOU ESTABLISH A
21 FOUNDATION FOR THE BASIS OF HOW HE WOULD HAVE
22 ACQUIRED THE KNOWLEDGE ---

23 BY MR. GOODWYN:

24 SURE.

25 BY COMMISSIONER JAMES:

1 --- WITHOUT BEING THERE.

2 BY MR. GOODWYN:

3 ALL RIGHT. ALL RIGHT. I WILL ATTEMPT TO DO
4 THAT.

5 BY MS. FARTHING:

6 AND, COMMISSIONER, SO THIS CAN BE ON THE
7 RECORD, OUR OBJECTION AS WELL, TO THE EXTENT THAT
8 HE'S TRYING TO TESTIFY CONCERNING THE KNOWLEDGE OF
9 MY CLIENT AND THEIR UNDERSTANDING AT THAT TIME, I
10 DON'T THINK HE'S IN A POSITION TO TESTIFY TO THAT AS
11 WELL.

12 BY MR. GOODWYN:

13 I HAVEN'T ASKED THAT. I DON'T...

14 BY MS. FARTHING:

15 YOU'RE TALKING ABOUT THE COURSE OF DEALING
16 BETWEEN THESE TWO COMPANIES, WHICH WOULD IMPLY SOME
17 SORT OF UNDERSTANDING ON OUR PART.

18 BY MR. GOODWYN:

19 NOT NECESSARILY.

20 BY THE WITNESS:

21 WELL, CERTAINLY, ACTUAL PERFORMANCE, I DON'T...

22 BY COMMISSIONER JAMES:

23 WELL, IF FIRST, ---

24 BY MR. GOODWYN:

25 LET ME TRY TO LAY THE FOUNDATION.

1 BY COMMISSIONER JAMES:

2 FIRST, THERE NEEDS TO BE SOME FOUNDATION AS ---

3 BY MR. GOODWYN:

4 SURE.

5 BY COMMISSIONER JAMES:

6 --- TO WHETHER OR NOT. IF HE WASN'T THERE,
7 THEN ---

8 BY MR. GOODWYN:

9 SURE, I WILL ATTEMPT TO LAY THE FOUNDATION.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. MR. SEARS, DID YOU DO ANY INVESTIGATION TO LEARN
12 WHAT THE COURSE OF CONDUCT OF YOUR COMPANY
13 CONDUSTRIAL WAS PRIOR TO YOUR ARRIVAL?

14 A. YES. WHEN I GOT THERE JULY 6TH OF 2009, AS A PART
15 OF MY GENERAL DUTIES, I INVESTIGATED ALL OF THE
16 CONTRACTS, YOU KNOW, IN OTHER WORDS, HOW DO -- HOW
17 DOES THIS WORK, WHAT HAPPENED, WHAT WE NEED TO DO
18 GOING FORWARD, WHAT'S THE STATUS QUO. I MEAN, I DID
19 MY PART AS THE COMPANY ATTORNEY TO, YOU KNOW, HAVE
20 THAT KNOWLEDGE TO DO MY JOB FOR THE COMPANY. I ALSO
21 OBTAINED THAT KNOWLEDGE AS I'VE SAID BECAUSE OF THE
22 LAWSUIT THAT WE WERE IN WITH TAMMY WALKER WHO OWNED
23 THE COMPANY THAT WE PURCHASED THE ASSETS FROM. I
24 MEAN, I WAS A PART -- I WAS A PART OF -- IN OTHER
25 WORDS, FROM 2009 FORWARD, AND I WANT TO SAY WE

1 SETTLED THAT CASE, GOSH, I WANT TO SAY 2013 OR 2014,
2 SO, THAT'S SEVEN YEARS OF ATTENDING DEPOSITIONS,
3 REVIEWING DOCUMENTS, TALKING TO WITNESSES, YOU KNOW,
4 I LEARNED ABOUT THIS ENTIRE PROCESS BECAUSE OF THAT
5 LAWSUIT.

6 Q. DO YOU THINK THERE IS ---

7 BY MR. SAMUELS:

8 PART OF WHICH IS GOING TO BE HEARSAY, YOUR
9 HONOR. NONE OF THOSE DOCUMENTS ARE IN EVIDENCE.

10 BY MR. GOODWYN:

11 NOT NECESSARILY. I MEAN, HE'S THE CORPORATE
12 REPRESENTATIVE. JUST BECAUSE NOBODY ELSE -- JUST
13 BECAUSE THOUGH ALL OF THOSE INDIVIDUALS WHO HE
14 TALKED TO AND LEARNED THAT FROM AREN'T HERE TO
15 TESTIFY DOESN'T MEAN HE CAN'T TESTIFY ON BEHALF OF
16 THE CORPORATION AS TO ---

17 BY MR. BEARD:

18 HE SAID "DOCUMENTS," AND WE WOULD BE ENTITLED
19 TO SEE THE DOCUMENTS THAT HE IS REFERRING TO TO BE
20 ABLE TO CROSS EXAMINE HIM.

21 BY MR. GOODWYN:

22 THAT'S NOT NECESSARILY -- I MEAN, ---

23 BY MR. BEARD:

24 ABSOLUTELY.

25 BY COMMISSIONER JAMES:

1 HOW WOULD THEY CROSS THEM IF THEY DIDN'T HAVE
2 THE BASIS FOR WHAT HIS OPINION IS FOUNDED ON, WHICH
3 WHAT I'M HEARING FROM THE TESTIMONY, IT'S HEARSAY
4 UPON POSSIBLE HEARSAY?

5 BY MR. GOODWYN:

6 I MEAN, YOU'RE SAYING THE CORPORATE ATTORNEY
7 CAN'T TESTIFY THAT "IN MY JOB AS AN ATTORNEY, I'VE
8 REVIEWED MANY DOCUMENTS AND RECORDS, AND THIS IS
9 WHAT -- THIS IS HOW THE CORPORATION HAS BEHAVED;
10 THIS WAS OUR COURSE OF CONDUCT"?

11 BY MS. FARTHING:

12 I WOULD OBJECT TO THAT TO THE EXTENT WITHOUT US
13 HAVING ACCESS TO THOSE SAME DOCUMENTS TO THOSE SAME
14 -- THAT SAME TESTIMONY, TO THOSE SAME INDIVIDUALS TO
15 FIGURE OUT -- TO MAKE OUR OWN INTERPRETATION OF WHAT
16 THAT UNDERSTANDING WAS.

17 BY COMMISSIONER JAMES:

18 SO, IT'S ALMOST LIKE -- I MEAN, IF YOU ARE
19 PRESENTING HIM AS CORPORATE COUNSEL, BUT IT'S ALMOST
20 LIKE HAVING A DOCTOR'S OPINION ---

21 BY MR. GOODWYN:

22 EXACTLY.

23 BY COMMISSIONER JAMES:

24 --- THAT IS BASED ON MANY MANY DIFFERENT
25 DOCUMENTS, AND, OF COURSE, THEY WOULD HAVE THE RIGHT

1 TO CROSS EXAM THOSE, AND MR. SAMUELS, I UNDERSTAND
2 THERE'S STILL THE ISSUE OF THE HEARSAY.

3 BY MR. SAMUELS:

4 WELL, IT'S NOT JUST THAT. IT'S THAT A DOCTOR
5 IS AN EXPERT, AND A DOCTOR CAN FORM HIS OPINION ---

6 BY COMMISSIONER JAMES:

7 RIGHT.

8 BY MR. SAMUELS:

9 --- BASED ON HEARSAY. MR. SEARS IS NOT AN
10 EXPERT. HE IS TESTIFYING AS A FACT WITNESS. SO, HE
11 CANNOT -- FIRST OF ALL, HE CAN'T GIVE HIS OPINION,
12 AND SECOND, HE CANNOT TESTIFY TO THINGS THAT ARE
13 INADMISSABLE HEARSAY.

14 BY COMMISSIONER JAMES:

15 WELL, ---

16 BY MR. GOODWYN:

17 I THINK HE CAN TESTIFY THOUGH AS TO WHAT HE
18 OBSERVED ---

19 BY COMMISSIONER JAMES:

20 MR. GOODWYN, DO YOU HAVE ANOTHER LINE OF
21 QUESTIONS THAT YOU CAN DO RIGHT NOW?

22 BY MR. GOODWYN:

23 SURE.

24 BY COMMISSIONER JAMES:

25 WHEN WE FINISH FOR THE DAY, ---

1 BY MR. GOODWYN:

2 YEAH, YEAH, YEAH.

3 BY COMMISSIONER JAMES:

4 --- WE CAN DISCUSS THIS, BUT I DO NOT SEE ANY -

5 - I DON'T SEE THE FOUNDATION FOR IT, AND ---

6 BY MR. GOODWYN:

7 WELL, LET ME -

8 BY COMMISSIONER JAMES:

9 --- THE FOUNDATION ---

10 BY MR. GOODWYN:

11 ALL RIGHT. THAT'S FINE.

12 BY COMMISSIONER JAMES:

13 --- IS HEARSAY WITH ANOTHER LAYER OF HEARSAY.

14 BY MR. GOODWYN:

15 OKAY. WELL, LET ME JUST -- LET ME JUST COME AT
16 IT A DIFFERENT WAY. I THINK IT WILL BE BETTER.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. WHEN YOU STARTED IN 2009, WHAT DID YOU OBSERVE TO BE
19 THE COURSE OF CONDUCT BETWEEN CONDUSTRIAL AND
20 S.C.D.C.?

21 A. I HAD REGULAR INTERACTION WITH THE BROKERAGE MODEL.
22 I TALKED TO S.C.D.C. PERSONNEL.

23 BY MR. SAMUELS:

24 YOUR HONOR, THAT'S GOING STRAIGHT TO HEARSAY.

25 BY THE WITNESS:

1 THAT'S A STATEMENT AGAINST INTEREST. IT'S ---

2 BY MR. GOODWYN:

3 AND ---

4 BY THE WITNESS:

5 IN OTHER WORDS, I DIRECTED ---

6 BY MR. SAMUELS:

7 AND I ALSO HAVE TO OBJECT TO THE WITNESS ---

8 BY THE WITNESS:

9 OKAY.

10 BY MR. SAMUELS:

11 --- ARGUING THE LAW AND ACTING LIKE A LAWYER.

12 HE IS A WITNESS. HE DOES NOT GET TO ARGUE AN
13 OBJECTION.

14 BY MR. GOODWYN:

15 IT'S HABIT.

16 BY THE WITNESS:

17 SORRY.

18 BY COMMISSIONER JAMES:

19 YEAH, LET'S TRY TO -- I KNOW IT'S HARD.

20 BY THE WITNESS:

21 SORRY. MY FAULT. I'M SORRY.

22 BY MR. GOODWYN:

23 I MEAN, HE CAN TESTIFY TO HIS OBSERVATIONS,
24 WHAT DID HE SEE PEOPLE IN HIS OFFICE DOING, AND THIS
25 IS NOT -- I'M NOT --

1 BY COMMISSIONER JAMES:

2 HOW DOES HE -- HOW DOES ANYONE EFFECTIVELY
3 CROSS EXAMINE HIM BECAUSE OF THE FACTS THAT AGAIN
4 WE'RE LOOKING AT HEARSAY.

5 BY MR. GOODWYN:

6 I DON'T ---

7 BY COMMISSIONER JAMES:

8 I THINK HE CAN TESTIFY ABOUT WHAT OCCURRED
9 AFTER JULY 6TH OF 2009.

10 BY MR. GOODWYN:

11 THAT'S WHAT HE'S TESTIFYING TO. THAT'S WHAT I
12 ASKED HIM. THAT'S WHAT HE'S TESTIFYING TO.

13 BY COMMISSIONER JAMES:

14 OKAY. WELL, THAT WASN'T MY UNDERSTANDING.

15 BY MR. GOODWYN:

16 I SAID AFTER YOU ARRIVED THERE, WHAT WAS THE
17 COURSE OF CONDUCT BETWEEN CONDUSTRIAL AND S.C.D.C.,
18 AND HE STARTS TALKING ABOUT IT, AND "HEARSAY,
19 HEARSAY."

20 BY COMMISSIONER JAMES:

21 AND WELL, THEN I THINK EVERYBODY IS STILL
22 ENTITLED TO MAKE WHATEVER THEIR RESPECTIVE
23 OBJECTIONS ARE, BUT SO, THE TESTIMONY IS COMING FROM
24 JULY 6TH, 2009, FORWARD?

25 BY MR. GOODWYN:

1 RIGHT, FROM AFTER HE STARTED, IF THAT'S HIS
2 START DATE, WHICH I THINK THAT'S WHAT HE'S TESTIFIED
3 TO.

4 BY THE WITNESS:

5 THAT'S MY START DATE.

6 BY COMMISSIONER JAMES:

7 THAT'S -- AND IT'S A VERY GENERAL QUESTION,
8 "WHAT IS THE COURSE OF CONDUCT?"

9 BY MR. GOODWYN:

10 I WANT TO GET A LITTLE CLOSER. REALLY, WHAT I
11 WANT TO ASK AND THE TESTIMONY THAT I WANT TO ELICIT
12 IS WAS IT A SITUATION WHERE -- WAS CONDUSTRIAL
13 PROVIDING INDEPENDENT CONTRACTORS TO S.C.D.C. DURING
14 THAT TIME FRAME.

15 BY THE WITNESS:

16 CAN I ANSWER?

17 BY MR. GOODWYN:

18 ANY OBJECTION TO THAT?

19 BY COMMISSIONER JAMES:

20 HE HAS THE KNOWLEDGE.

21 BY MR. SAMUELS:

22 I KNOW WHERE THEY'RE GOING WITH THIS, YOUR
23 HONOR.

24 BY THE WITNESS:

25 WELL, HE ASKED ME IN MY DEPOSITION, SO OF

1 COURSE, HE DOES.

2 BY MR. SAMUELS:

3 I KNOW WHERE HE'S GOING WITH THIS, AND MAYBE --
4 MAYBE MR. GOODWYN COULD TELL US WHERE HE'S GOING. I
5 KNOW WHERE HE'S GOING. I DON'T MIND SAYING WHERE
6 HE'S GOING, ---

7 BY COMMISSIONER JAMES:

8 WELL, THE NEXT ---

9 BY MR. SAMUELS:

10 --- BUT I DO NOT THINK HE CAN PROVE IT WITHOUT

11 ---

12 BY COMMISSIONER JAMES:

13 WELL, THE NEXT QUESTION -- THE QUESTION THAT
14 MR. GOODWYN JUST ASKED ---

15 BY MR. SAMUELS:

16 --- HEARSAY.

17 BY COMMISSIONER JAMES:

18 --- IS ACCEPTABLE. "WERE THERE INDEPENDENT
19 CONTRACTORS PROVIDED TO S.C.D.C.?" I MEAN, HE CAN
20 ASK THAT QUESTION. NOW, I DON'T KNOW WHAT THE NEXT
21 QUESTION IS.

22 BY MR. SAMUELS:

23 IT'S SOMETHING -- IT IS A CONTENTION THAT THEY
24 HAVE CLASSIFIED THESE NURSES AS INDEPENDENT
25 CONTRACTORS AND PLACED THEM AT S.C.D.C. THAT'S

1 THEIR FUNDAMENTAL CONTENTION. WHAT HE'S TRYING TO
2 SAY IS WE HAVE ALTERED THE CONTRACT THAT WE HAD WITH
3 S.C.D.C. BY PROVIDING INDEPENDENT CONTRACTORS. I
4 DON'T THINK THAT'S SOMETHING HE IS GOING TO BE ABLE
5 TO ELICIT WITHOUT HEARSAY. THAT AIN'T PROOF OF THAT
6 SINCE THERE'S NOT BEEN ANY DOCUMENTS THAT I'VE SEEN
7 THAT WOULD PROVE THAT.

8 BY COMMISSIONER JAMES:

9 BUT THE QUESTION MR. GOODWYN JUST ASKED, JUST
10 THAT PARTICULAR QUESTION. I DO NOT KNOW WHAT THE
11 NEXT IS, AND, MR. GOODWYN, IF YOU WILL REPEAT THE
12 QUESTION SO WE CAN ALL BE SURE OF WHAT THE LAST
13 QUESTION WAS.

14 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. DID CONDUSTRIAL OR WAS CONDUSTRIAL PROVIDING
16 INDEPENDENT CONTRACTORS TO S.C.D.C. WHEN YOU BEGAN
17 AT CONDUSTRIAL IN 2009?

18 A. ON JULY 6TH, ---

19 BY MR. SAMUELS:

20 OBJECT TO THE QUESTION, BECAUSE IT CALLS FOR A
21 LEGAL CONCLUSION.

22 BY THE WITNESS:

23 IT'S NOT A LEGAL -- IT'S WHAT WE WERE DOING.

24 BY MR. GOODWYN:

25 ALL RIGHT. LET ME ---

1 BY THE WITNESS:

2 IT'S THE ACTUAL CONDUCT OF THE PARTY.

3 BY MR. ALFORD:

4 EASY, TEXAS.

5 BY COMMISSIONER JAMES:

6 OKAY. AND, MR. SEARS, I KNOW IT'S HARD. YOU
7 ARE USED TO BEING IN A DIFFERENT CHAIR, BUT ---

8 BY THE WITNESS:

9 YES, MA'AM.

10 BY COMMISSIONER JAMES:

11 --- PLEASE JUST WAIT FOR THE QUESTION.

12 BY THE WITNESS:

13 ALL RIGHT. YES, MA'AM.

14 BY MR. GOODWYN:

15 AND I THINK HE'S SAYING THAT -- MAYBE IF I
16 PHRASED IT LIKE THIS.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. DID YOU -- WAS CONDUSTRIAL SUPPLYING WHAT IT
19 CLASSIFIED AS INDEPENDENT CONTRACTORS TO S.C.D.C. AT
20 THE TIME YOU STARTED IN 2009?

21 A. YES, FROM JULY 6, 2009, THROUGH TODAY, WE ALWAYS
22 PROVIDED 1099s TO S.C.D.C. WITHOUT FAIL. I
23 PERSONALLY INTERACTED WITH S.C.D.C. PERSONNEL.

24 BY MS. FARTHING:

25 COMMISSIONER, I'M GOING TO OBJECT. AGAIN, I

1 UNDERSTAND THAT HE TOOK THE POSITION EARLIER THAT
2 THIS IS STATEMENTS AGAINST A PARTY INTEREST.
3 WITHOUT IDENTIFYING THOSE INDIVIDUALS, I HAVE NO WAY
4 TO EVEN LOOK INTO IF THAT IS ACTUALLY TRUE.

5 BY THE WITNESS:

6 I CAN DO THAT.

7 BY COMMISSIONER JAMES:

8 NO, MR. SEARS. MR. SEARS, PLEASE. AS I
9 UNDERSTAND THE QUESTION, THE ONLY QUESTION -- LET ME
10 MAKE SURE I UNDERSTAND. MR. SEARS SAYS "1099s." I
11 BELIEVE HE MEAN 1099 INDIVIDUALS, NOT DOCUMENTS.

12 BY THE WITNESS:

13 RIGHT, 1099 INDIVIDUALS.

14 BY COMMISSIONER JAMES:

15 HE'S SAYING THEY PROVIDED THEM. I DON'T
16 BELIEVE THAT GIVES ANY INDICATION ---

17 BY MS. FARTHING:

18 BUT THEN HE STARTED TESTIFYING ABOUT HIS
19 INTERACTIONS WITH DEPARTMENT OF CORRECTIONS
20 INDIVIDUALS, AND THAT'S WHEN I CUT HIM OFF, AND
21 THAT'S WHY I STOOD TO OBJECT.

22 BY COMMISSIONER JAMES:

23 OKAY.

24 BY MR. GOODWYN:

25 WELL, HE CAN ANSWER. I MEAN, YOU CAN CROSS

1 EXAMINE AND ASK HIM WHAT INDIVIDUALS, AND IF HE
2 CAN'T NAME THEM, THEN THAT'S FINE, BUT ---

3 BY MS. FARTHING:

4 BUT IF HE DOESN'T ---

5 BY COMMISSIONER JAMES:

6 WELL, THERE HAS TO BE SOME -

7 BY MS. FARTHING:

8 I STILL HAVE TO OBJECT WHEN HE MAKES THE
9 INITIAL TESTIMONY.

10 BY MR. GOODWYN:

11 WHAT'S THE OBJECTION?

12 BY MS. FARTHING:

13 THAT IT'S HEARSAY, AND YOU'RE NOT INDICATING TO
14 ME WHO THESE INDIVIDUALS ARE.

15 BY MR. GOODWYN:

16 HE SAID I TALKED TO SOMEBODY. THAT IS NOT
17 HEARSAY. HE IS NOT SAYING SOMEBODY SAID TO ME
18 SOMETHING. HE'S SAYING I TALKED TO SOME PEOPLE.

19 BY MS. FARTHING:

20 OKAY. IF HE WANTS TO SAY WHAT HE SAID, THAT'S
21 FINE, BUT PRESUMABLY HE'S ALSO GOING TO SAY WHAT
22 THOSE INDIVIDUALS SAID.

23 BY COMMISSIONER JAMES:

24 ALL RIGHT. LET'S -

25 BY MR. GOODWYN:

1 HE HASN'T SAID THAT YET.

2 BY COMMISSIONER JAMES:

3 WAIT. MR. GOODWYN. LET'S ADDRESS THE
4 COMMISSION.

5 BY MR. GOODWYN:

6 OKAY.

7 BY COMMISSIONER JAMES:

8 I UNDERSTAND THE OBJECTIONS BEING MADE TIMELY.

9 BY MS. FARTHING:

10 YES, MA'AM.

11 BY COMMISSIONER JAMES:

12 SO FAR, WHAT I'VE HEARD IS HE HAS INDICATED
13 THAT HE -- I SAID "HE" LOOSELY AS CONDUSTRIAL HAS
14 DONE IS PROVIDED 1099 PERSONS ---

15 BY THE WITNESS:

16 PERSONNEL.

17 BY COMMISSIONER JAMES:

18 PERSONNEL, THANK YOU. TO SOUTH CAROLINA
19 DEPARTMENT OF CORRECTIONS. I HAVEN'T HEARD ANYTHING
20 ELSE YET.

21 BY MS. FARTHING:

22 AND THEN WHERE I STOPPED HIM WAS WHEN HE SAID
23 "I HAD MANY INTERACTIONS WITH PEOPLE OVER AT THE
24 DEPARTMENT OF CORRECTIONS," AND THAT'S WHERE I
25 OBJECT, BECAUSE AGAIN, IT'S HEARSAY WITHOUT ANY KIND

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1 OF WAY FOR ME TO FIGURE OUT ---

2 BY COMMISSIONER JAMES:

3 AND UNTIL THERE IS ANY ADDITIONAL ---

4 BY MS. FARTHING:

5 OKAY.

6 BY COMMISSIONER JAMES:

7 --- FOUNDATION ESTABLISHED, THEN IT WOULD BE
8 HEARSAY AS OPPOSED TO MANY INTERACTIONS, WHICH IS
9 VAGUE. ALL RIGHT.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. ALL RIGHT. I THINK YOU WERE IN THE MIDDLE OF AN
12 ANSWER.

13 A. I THINK SO. SOME OF THE INTERACTIONS WERE WHEN THE
14 ISSUE WITH MS. TURNER CAME UP, AND OTHERS THAT WERE
15 TRYING TO, LIKE I SAID, TAKE THE SHIFTS WITHOUT
16 GOING THROUGH THE BROKERAGE. THERE WERE TWO
17 PERSONNEL I DEALT WITH THAT WERE MID-LEVEL MANAGERS,
18 A JAN -- JAN WRECSICS, I BELIEVE, AND A DORIS
19 JACQUES, I'M NOT SURE WHO THAT WAS, BUT I PERSONALLY
20 TALKED TO THEM ON SEVERAL OCCASIONS.

21 Q. ABOUT WHAT?

22 A. ABOUT THE SHIFTS AND THE OVERTIME, AND CLEARLY SAID
23 "BUT THESE ARE INDEPENDENT CONTRACTORS, SO THEY
24 DON'T GET OVERTIME OR TIME-AND-A-HALF UNLESS YOU
25 AUTHORIZE IT."

- 1 Q. ALL RIGHT. DID YOU EVER RECEIVE ANY OBJECTIONS OR
2 QUESTIONS WHEN YOU WOULD CLASSIFY OR CHARACTERIZE
3 THE NURSES AS INDEPENDENT CONTRACTORS?
- 4 A. NO OBJECTIONS.
- 5 Q. OKAY. DID YOU EVER GET ANY FEEDBACK OR SENSE FROM
6 ANYONE AT S.C.D.C. THAT YOU SPOKE TO THAT THESE
7 NURSES SHOULD BE -- BE CALLED EMPLOYEES, SHOULD BE
8 TREATED AS EMPLOYEES, AS OPPOSED TO INDEPENDENT
9 CONTRACTORS?
- 10 A. IN ALL THE INTERACTIONS THAT I WAS PRIVY TO OR
11 LEARNED OF OR INVESTIGATED, THERE HAS NEVER BEEN ANY
12 INVESTIGATION -- OR ANY OBJECTION RAISED IN THE
13 EIGHT YEARS THAT I'VE BEEN AT CONDUSTRIAL THAT THERE
14 WAS ANY ISSUE WITH SUPPLYING INDEPENDENT
15 CONTRACTORS.
- 16 Q. OKAY. AND AS FAR AS YOU KNOW, HAS CONDUSTRIAL
17 ALWAYS SUPPLIED INDEPENDENT CONTRACTORS?
- 18 A. ALWAYS FOLLOWING THE MODEL THAT WE INHERITED THAT
19 ALSO HAD A CONTRACT WITH S.C.D.C. AND ALSO PROVIDED
20 1099s. WE DIDN'T ALTER OR AMEND ANYTHING. WE
21 CONTINUED TO DO WHAT WAS ALREADY IN PLACE.
- 22 Q. ALL RIGHT.
- 23 A. THE ACTUAL PERFORMANCE OF THE PARTIES.
- 24 Q. IN YOUR INVESTIGATIONS AS WHEN YOU BECAME GENERAL
25 COUNSEL, DID YOU EVER FIND A TIME IN CONDUSTRIAL'S

1 PAST WHERE NURSES SUPPLIED TO S.C.D.C. WERE W-2'D AS
2 OPPOSED TO 1099?

3 A. I HAVE NOT EVER FOUND THAT.

4 Q. OKAY. SO, IS IT FAIR TO SAY THAT AS FAR AS YOU CAN
5 TELL, NURSES EVEN BEFORE YOU ARRIVED WITH
6 CONDUSTRIAL WERE ALWAYS 1099, THE NURSES THAT WENT
7 TO S.C.D.C.?

8 BY MR. SAMUELS:

9 OBJECT TO LEADING, AND IT CALLS FOR
10 SPECULATION.

11 BY COMMISSIONER JAMES:

12 SUSTAINED.

13 BY MR. GOODWYN:

14 WHICH ONE, LEADING OR SPECULATION?

15 BY COMMISSIONER JAMES:

16 WELL, IT'S LEADING BUT ALSO WITHOUT THE
17 FOUNDATION OF THE KNOWLEDGE PRIOR.

18 BY MR. GOODWYN:

19 WELL, HE DID. HE SAYS HE LOOKED AT -- HE
20 LOOKED AT WHETHER THEY WERE 1099 OR W-2. THAT TELLS
21 YOU RIGHT THERE WHETHER THEY WERE CLASSIFIED AS
22 INDEPENDENT CONTRACTOR NURSES. YOU CAN JUST LOOK AT
23 YOUR COMPANY'S PAST RECORDS, AND HE SAID HE DID
24 THAT.

25 BY COMMISSIONER JAMES:

1 ALL RIGHT. AS LONG AS YOU ARE NOT LEADING
2 HIM, MR. GOODWYN.

3 BY MR. GOODWYN:

4 ALL RIGHT.

5 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. BASED ON YOUR INVESTIGATION OF CONDUSTRIAL'S PAY
7 RECORDS FOR THIS GROUP OF NURSES THAT WERE USED AT
8 S.C.D.C., IS IT FAIR TO SAY THAT YOU DIDN'T FIND ANY
9 EVIDENCE THAT THEY WERE EVER CLASSIFIED AS AN
10 EMPLOYEE?

11 BY MR. SAMUELS:

12 OBJECTION, YOUR HONOR. IT ASSUMES FACTS NOT IN
13 EVIDENCE. THERE ARE NO SUCH PAYROLL RECORDS FOR
14 THAT PERIOD OF TIME IN THE RECORD.

15 BY MR. GOODWYN:

16 I DIDN'T SUGGEST THEY WERE. I JUST ASKED HIM
17 FROM HIS MEMORY, FROM HIS RECOLLECTION OF HIS
18 INVESTIGATION.

19 BY MR. ALFORD:

20 AND HOW DO WE -- HOW DO WE CROSS THAT?

21 BY MR. GOODWYN:

22 I MEAN, I THINK THE QUESTION IS FAIR, AND THEY
23 CAN -- THEY CAN CROSS EXAMINE HIM. I MEAN, THEY
24 COULD HAVE DEPOSED HIM AND ASKED HIM THAT QUESTION
25 AND GONE AND SUBPOENAED THE RECORDS, BUT THEY

1 DIDN'T.

2 BY COMMISSIONER JAMES:

3 I THINK THIS IS ACTUALLY A GOOD POINT TO STOP.

4 (THIS HEARING WAS ADJOURNED AT THE HOUR OF 5:28 P.M., TO
5 BE RESUMED ON A SUBSEQUENT DATE.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1514359

EMPLOYEE/CLAIMANT: RACHEL J. TURNER

EMPLOYER: SC DEPARTMENT OF CORRECTIONS - KIRKLAND
MEDUSTRIAL HEALTHCARE STAFFING SERVICE
CONDUSTRIAL, INC.
COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC.

CARRIER: STATE ACCIDENT FUND
GUARANTEE INSURANCE COMPANY
SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 233 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF RACHEL TURNER TAKEN ON THE 12TH DAY OF OCTOBER, 2017.

THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS GIVEN. THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 28TH DAY OF OCTOBER, 2017.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-04-2024

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1514359

EMPLOYEE/CLAIMANT: RACHEL J. TURNER

EMPLOYER: SC DEPARTMENT OF CORRECTIONS - KIRKLAND
MEDUSTRIAL HEALTHCARE STAFFING SERVICE
CONDUSTRIAL, INC.
COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC.

CARRIER: STATE ACCIDENT FUND
GUARANTEE INSURANCE COMPANY
SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 13TH DAY OF
OCTOBER, 2017, COMMENCING AT THE HOUR OF 10:01 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER



JAN L. WHITWORTH
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ALSO ATTENDING: ERIC DAWSON, BECKY BARNETTE,
STEPHEN LUNSFORD

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 BY COMMISSIONER JAMES:

7 TODAY IS OCTOBER THE 13TH, 2017. WE ARE HERE
8 TO RESUME THE HEARING THAT COMMENCED ACTUALLY PRIOR
9 TO YESTERDAY, BUT YESTERDAY WAS THE SECOND DAY OF
10 HEARINGS. MY UNDERSTANDING IS THAT BEFORE WE RESUME
11 TESTIMONY, THAT ONE OF THE PARTIES HAD SOME
12 CLARIFICATION AS TO AN ISSUE. MR. GOODWYN.

13 BY MR. GOODWYN:

14 YES, COMMISSIONER, JUST TO MAKE CLEAR
15 CONDUSTRIAL'S POSITION, AND SOME OF THIS RELATES TO
16 THE COVERAGE ISSUE, BUT I JUST WANT TO GO AHEAD AND
17 GET IT ON THE RECORD. I KNOW WE'RE NOT GOING TO
18 MAYBE TRY THE COVERAGE ISSUES TODAY, BUT I WANT TO
19 GET IT ON THE RECORD.

20 BY COMMISSIONER JAMES:

21 POSITIONS AS TO COVERAGE, CERTAINLY Y'ALL PUT
22 ON RECORD. AS TO THE TESTIMONY, WE ARE TRYING TO AS
23 WE DISCUSSED EVEN AGAIN TODAY, IS TO LAYER THIS, BUT
24 WE ARE ACTUALLY TRYING THE COMPENSABILITY PART,
25 WHICH INCLUDES THE JURISDICTIONAL OF THE EMPLOYEE,

1 WHICH ALSO INCLUDES THE ISSUES BETWEEN CONDUSTRIAL
2 AND COUNTRYWIDE AS FAR AS THE CONTRACT. SO, I'LL
3 JUST GO AHEAD AND STATE THAT AGAIN. SO, THAT'S THE
4 MODE OF TRIAL THAT WE ARE PRESSING FORWARD WITH.

5 BY MR. GOODWYN:

6 OKAY.

7 BY COMMISSIONER JAMES:

8 SO, IF YOU NEED TO SAY -- IN OTHER WORDS, IF
9 YOU NEED TO SAY A POSITION WITH REGARDS TO COVERAGE,
10 YOU CAN, BUT WE'RE JUST NOT TAKING THE TESTIMONY AS
11 TO COVERAGE RIGHT NOW.

12 BY MR. GOODWYN:

13 I UNDERSTAND. FIRST, IT'S CONDUSTRIAL'S
14 POSITION THAT COUNTRYWIDE WAS ACTING AS AN
15 UNLICENSED P.E.O. THAT THEY WERE CO-EMPLOYERS, AND
16 AGAIN, I MAY HAVE MENTIONED THIS EARLIER, BUT I JUST
17 WANT TO REITERATE IT AND MAKE SURE THIS IS CLEAR FOR
18 THE RECORD. COUNTRYWIDE WAS ACTING AS AN UNLICENSED
19 P.E.O., AND P.E.O. STATUTES WOULD APPLY AS IT WOULD
20 RELATE TO COVERAGE. AND AS FAR AS THE APPLICABILITY
21 OF THE EXCLUSIONARY LANGUAGE IN THE COUNTRYWIDE
22 SERVICE AGREEMENT WITH CONDUSTRIAL, THERE'S BEEN A
23 SIGNIFICANT ISSUE RAISED RELATED TO THOSE EXCLUSIONS
24 STATING THAT CERTAIN EMPLOYEES OR A CERTAIN CLASS OF
25 WORKERS, CONDUSTRIAL'S WORKERS WOULD NOT BE COVERED

1 UNDER THAT AGREEMENT, AND THEREFORE THERE WOULD BE
2 NO COVERAGE. IT'S OUR POSITION THAT THOSE
3 EXCLUSIONARY PROVISIONS SHOULD BE FOUND TO BE UN-
4 UNFORCEFUL AS A MATTER OF LAW. THE RESULT IF THOSE
5 EXCLUSIONS ARE ENFORCED IS THAT COMPANIES LIKE
6 CONDUSTRUAL ARE NOT IN COMPLIANCE WITH -- WITH THE
7 REGULATIONS, SPECIFICALLY 40 -- I THINK IT'S 42-5-
8 20, I BELIEVE IT IS, REQUIRING -- REQUIRING
9 EMPLOYERS TO HAVE COVERAGE.

10 BY MS. RICHARDSON:

11 YOUR HONOR, WHAT ARE WE DOING RIGHT NOW? WHAT
12 ---

13 BY MR. GOODWYN:

14 I'M CLARIFYING MY POSITION. CAN YOU PLEASE LET
15 ME CLARIFY MY POSITION?

16 BY MR. BEARD:

17 WELL, WE ARE OBJECTING TO YOU CLARIFYING YOUR
18 POSITION. WE OBJECT AT THIS POINT.

19 BY MR. ALFORD:

20 LET'S TALK TO THE COMMISSIONER.

21 BY COMMISSIONER JAMES:

22 YES.

23 BY MR. ALFORD:

24 I THINK WE HAVE AN OBJECTION.

25 BY MS. RICHARDSON:

1 YOUR HONOR.

2 BY MR. GOODWYN:

3 SHE JUST SAID I COULD DO IT.

4 BY COMMISSIONER JAMES:

5 WELL ---

6 BY MR. GOODWYN:

7 AND YOU DIDN'T OBJECT.

8 BY MS. RICHARDSON:

9 WELL, I DIDN'T KNOW WHERE YOU WERE GOING WITH
10 THIS, BUT FIRST OF ALL, YOU ARE ARGUING ---

11 BY COMMISSIONER JAMES:

12 IF YOU CAN ---

13 BY MS. RICHARDSON:

14 OH, I'M SORRY.

15 BY COMMISSIONER JAMES:

16 --- ADDRESS ME.

17 BY MS. RICHARDSON:

18 COMMISSIONER, EXCUSE ME. MR. GOODWYN IS
19 STARTING TO ARGUE TO THE COURT ISSUES OF LAW THAT HE
20 HAS LAID ABSOLUTELY NO FOUNDATION FOR. HE IS
21 REPRESENTING TO THE COMMISSIONER AREAS OF WORKERS'
22 COMPENSATION LAW THAT HE HAS NOT PUT ANYBODY ON THE
23 STAND TO ATTEST TO THAT THAT IS IN FACT ACCURATE.
24 HE WOULD HAVE TO PUT SOMEBODY FROM THE N.C.C.I. UP
25 THERE TO TESTIFY AS TO, YOU KNOW, WHAT -- ANY OF

1 THIS STUFF. HE CAN'T JUST START MAKING ARGUMENTS
2 THAT HE HAS NEVER BROUGHT UP IN TRIAL YET.

3 BY MR. GOODWYN:

4 THIS IS OUR POSITION.

5 BY COMMISSIONER JAMES:

6 ALL RIGHT. I AM AT THIS POINT IN TIME BECAUSE
7 WE ARE GOING FORWARD, I AM -- EVEN THOUGH I SAID
8 CERTAINLY FEEL FREE, IF -- I WANT TO PROCEED FORWARD
9 WITH THE ISSUE OF THE COMPENSABILITY, ESPECIALLY THE
10 JURISDICTIONAL QUESTION OF EMPLOYEE. SO, LET'S
11 RESERVE THAT ESPECIALLY IF IT'S GOING TO BE
12 SOMETHING THAT IS GOING TO BE A LEGAL ARGUMENT THAT
13 IS GOING TO TAKE TIME THAT VARIOUS PEOPLE MAY WANT
14 TO RESPOND TO OR EITHER ACTUALLY AN OPPORTUNITY TO
15 BRIEF. SO, LET'S WAIT ON THAT ISSUE.

16 BY MR. GOODWYN:

17 AS LONG AS IT'S -- YOU WILL GIVE ME AN
18 OPPORTUNITY TO SET THE RECORD STRAIGHT SO I CAN -- I
19 JUST WANT TO PUT THIS ON THE RECORD, I MEAN, THAT
20 THIS IS OUR POSITION. I HAVE A FEELING THIS IS
21 GOING TO GO UP ON APPEAL, AND I WANT THE RECORD TO
22 BE CLEAR THAT THIS IS OUR POSITION. NOW, I
23 UNDERSTAND I HAVE TO PRODUCE EVIDENCE TO SUPPORT MY
24 POSITION, BUT AM I GOING TO HAVE AN OPPORTUNITY
25 LATER TO PUT THIS ON THE RECORD?

1 BY COMMISSIONER JAMES:

2 I WANT TO HAVE THIS DISCUSSION AT A LATER POINT
3 IN TIME. WE ARE OFF -- WE ARE GETTING OFF TRACK
4 RIGHT NOW, AND I'M JUST TRYING TO KEEP US ON TRACK.
5 FROM WHAT Y'ALL CAN AGREE TO TRY RIGHT NOW IS TO
6 CONTINUE FORWARD WITH WHAT WILL MAKE SENSE AS FAR AS
7 TRYING TO EXPEDITE THIS MATTER -- PROBABLY EXPEDITE
8 IS THE WRONG WORD, BECAUSE IT'S NOT BEEN EXPEDITED.
9 IT'S BEEN A SLOW PROCESS TO GET HERE, BUT IF WE ARE
10 NOT GOING INTO THE COVERAGE ISSUES, THEN LET'S
11 RESERVE THAT FOR NOW.

12 BY MR. GOODWYN:

13 SO, IS IT FAIR TO SAY THAT I'M GOING TO HAVE AN
14 OPPORTUNITY TO PUT THIS ON THE RECORD LATER?

15 BY COMMISSIONER JAMES:

16 WE ARE GOING TO HAVE THAT DISCUSSION. I WANT -
17 - RIGHT NOW, I WANT TO CONTINUE ON TRACK WITH THE
18 WITNESS, BECAUSE WE ARE IN THE MIDDLE OF A WITNESS'
19 TESTIMONY.

20 BY MR. GOODWYN:

21 SURE.

22 BY COMMISSIONER JAMES:

23 I'M GOING TO CONTINUE WITH THE WITNESS, AND
24 THEN WHEN WE HAVE AN APPROPRIATE BREAK, WE WILL
25 ADDRESS THAT, AND SHOULD ANYBODY ELSE MAKE -- MY

1 CONCERN IS RIGHT NOW, AND I KNOW Y'ALL'S CONCERNS
2 ARE DIFFERENT. MY CONCERN IS TIME AT THIS MOMENT,
3 AND SINCE WE ARE NOT ON THE ISSUE OF COVERAGE AT
4 THIS PARTICULAR MOMENT IN TIME, I WANT TO STAY ON
5 TRACK WITH THE COMPENSABILITY ISSUES.

6 BY MR. BEARD:

7 WITH ALL DUE RESPECT, WOULDN'T THE APPROPRIATE
8 TIME TO DO ANY OF THIS BE LIKE A CLOSING ARGUMENT
9 AFTER ALL OF THE EVIDENCE IS IN THE RECORD?

10 BY COMMISSIONER JAMES:

11 AND THAT MAY BE THE CASE, MR. BEARD, BUT I --
12 WE WERE GOING TO START AT 8:30; IT IS NOW 10:10.
13 LET'S KEEP WITH THE TRACK THAT WE ARE ON RIGHT NOW.

14 BY MR. BEARD:

15 SURE.

16 BY COMMISSIONER JAMES:

17 AND THEN WE CAN DISCUSS THE OTHER POSITIONS,
18 ARGUMENTS, TESTIMONY WHEN THAT IS APPROPRIATE.

19 BY MR. GOODWYN:

20 FAIR ENOUGH.

21 BY COMMISSIONER JAMES:

22 ALL RIGHT.

23 BY MR. SAMUELS:

24 YOUR HONOR, I JUST WANT TO BE ON RECORD. I
25 KNOW WE HAD THIS LONG DISCUSSION OFF THE RECORD, BUT

1 I WANTED TO BE ON RECORD AS OBJECTING TO THE MODE OF
2 TRIAL AND NOT ALLOWING THE WITNESS TO TESTIFY IN
3 FULL ON ALL ISSUES THAT ARE PRESENTLY BEFORE YOU
4 WOULD UNNECESSARILY DELAY THE TRIAL, WOULD BE
5 DUPLICATIVE, WOULD CREATE A SITUATION WHERE THIS
6 WITNESS COMPLETES PART OF HIS TESTIMONY TODAY AND
7 THEN WE RECONVENE IN A WEEK OR 30 DAYS OR WHENEVER
8 TO TRY THE SECOND HALF OF THE TRIAL, IT'S
9 BIFURCATING, AND I REQUEST THAT THE ATTORNEYS JUST
10 SIMPLY BE ALLOWED TO TRY THE CASE IN FULL.

11 BY COMMISSIONER JAMES:

12 MA'AM.

13 BY MS. RICHARDSON:

14 AND, YOUR HONOR, I ALSO NEED TO GO ON RECORD
15 THAT GUARANTEE OBJECTS TO THE IDEA THAT WERE THE
16 COURT TO PROCEED, WE'VE ALREADY RAISED THE SUBJECT,
17 THE IDEA THAT THE COURT LACKS THE SUBJECT MATTER
18 JURISDICTION TO DETERMINE THAT GUARANTEE COULD BE IN
19 ANY WAY RESPONSIBLE FOR THE PAYMENT OF BENEFITS TO A
20 PERSON UNDER WHICH HAS NEVER BEEN ASSOCIATED WITH
21 OUR POLICY, AND THE ONLY WAY THAT THE COURT CAN GET
22 THERE IS TO MAKE FINDINGS OF FRAUD OR BAD FAITH, AND
23 THEREFORE, WE WOULD OBJECT TO THE COURT EVER IN ANY
24 EVENT ORDERING GUARANTEE TO PAY BENEFITS THROUGH
25 THIS PROCESS.

1 BY COMMISSIONER JAMES:

2 OKAY. AT THIS POINT IN TIME, PART OF THE
3 INCENTIVE HERE IS ---

4 BY MR. ALFORD:

5 BRIEFLY -- I DISAGREE WITH EVERYTHING HE SAID.
6 I WILL PUT IT ON THE RECORD LATER.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. LET'S JUST AGAIN, PART OF THIS IS
9 TO STREAMLINE. ONE OF THE THINGS WE TALKED ABOUT
10 WAS JUDICIAL ECONOMY. I CONTEMPLATED THE FACT OF
11 TRYING TO PEEL THIS THING APART WOULD HAVE BEEN MORE
12 UNYIELDING, BUT ACTUALLY KEEPING THE ISSUES TOGETHER
13 IS APPEARING TO BE THE OTHER WAY AROUND.

14 NONETHELESS, WE HAVE A WITNESS ON THE STAND, SO WE
15 NEED TO PROCEED WITH TESTIMONY.

16 BY MR. GOODWYN:

17 ARE YOU READY?

18 BY COMMISSIONER JAMES:

19 YES.

20 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. I THINK I WAS ASKING YOU QUESTIONS YESTERDAY
22 RELATING TO CONDUSTRIAL'S RELATIONSHIP WITH THE
23 DEPARTMENT OF CORRECTIONS?

24 A. YES.

25 Q. I BELIEVE YOU HAD TESTIFIED THAT FROM YOUR

1 INVESTIGATION FROM THE TIME THAT YOU HAD STARTED
2 WITH CONDUSTRIAL AND THE RECORDS YOU HAD SEEN
3 BEFORE, CONDUSTRIAL HAD NEVER PROVIDED ANYTHING BUT
4 INDEPENDENT CONTRACTORS TO S.C.D.C.?

5 BY MR. BEARD:

6 COMMISSIONER, THAT TESTIMONY WAS OVER OBJECTION
7 TO HIM REFERENCING DOCUMENTS AND EXHIBITS THAT HE
8 HAD LOOKED AT BEFORE, BECAUSE THOSE ARE NOT
9 AVAILABLE FOR ALL OF US TO LOOK AT TO SEE IF HE IS
10 TELLING THE TRUTH, WITH ALL DUE RESPECT.

11 BY COMMISSIONER JAMES:

12 AND THE QUESTION, MR. GOODWYN, IS?

13 BY MR. BEARD:

14 IT'S HEARSAY.

15 BY THE WITNESS:

16 I MEAN, HE ASKED ME A QUESTION. CAN I ANSWER
17 IT OR NO?

18 BY COMMISSIONER JAMES:

19 WAIT.

20 BY MR. GOODWYN:

21 I WAS JUST TRYING TO BRING US BACK TO KIND OF
22 THE TOPIC THAT WE WERE ON YESTERDAY. HE HAD ALREADY
23 -- HE HAS ALREADY TESTIFIED TO THIS, AND HE WAS
24 RIGHT, IT WAS OVER OBJECTION, BUT THE OBJECTION WAS
25 MADE, AND IT WAS -- IT'S ALREADY BEEN MADE AND RULED

1 ON.

2 BY MR. BEARD:

3 I DON'T THINK IT EVER WAS RULED ON. I THINK
4 THAT'S WHERE WE KIND OF STOPPED.

5 BY COMMISSIONER JAMES:

6 THE LAST QUESTION WAS NOT RULED ON. WE TOOK A
7 BREAK, AND THEN AT THAT POINT, STOPPED, THAT'S
8 CORRECT.

9 BY MR. GOODWYN:

10 AND I APOLOGIZE. I DON'T KNOW EXACTLY WHAT THE
11 LAST QUESTION WAS AT THE VERY END OF THE DAY. I
12 DON'T KNOW IF YOU HAVE IT? IS IT SOMETHING YOU CAN
13 PULL UP?

14 BY COMMISSIONER JAMES:

15 THAT'S UP TO Y'ALL. I DON'T KNOW HOW LONG IT
16 WILL TAKE TO RETRIEVE IT.

17 BY THE COURT REPORTER:

18 I CAN.

19 BY MR. ALFORD:

20 MY RECOLLECTION, IF I MAY, WAS THAT WE ENDED
21 WITH HE WAS INQUIRING OF MR. SEARS OF ABOUT THE
22 COURSE OF DEALING BETWEEN CONDUSTRIAL AND THE
23 DEPARTMENT OF CORRECTIONS, AND IT WAS NOT BASED ON
24 HIS PERSONAL EXPERIENCE BUT BASED ON HIS -- AND I
25 THINK MR. GOODWYN'S ARGUMENT WAS LOOK, HE'S THE

1 GENERAL COUNSEL; HE'S WORKED THERE; HE'S TALKED TO
2 PEOPLE THERE, AND HE'S TALKED TO PEOPLE AT -- HE
3 TRIED TO SAY HE TALKED TO PEOPLE AT THE DEPARTMENT
4 OF CORRECTIONS, WHAT DID THEY SAY; YOU'VE GOT
5 HEARSAY OBJECTIONS. SO, HE WAS TRYING TO, I GUESS,
6 ESTABLISH A COURSE OF DEALING BETWEEN CONDUSTRIAL
7 AND THE DEPARTMENT OF CORRECTIONS. I'M PRETTY SURE
8 THAT'S WHERE WE ENDED.

9 BY MR. GOODWYN:

10 THAT WAS THE GENERAL LINE, BUT THE EXACT LAST
11 QUESTION, WE DON'T KNOW, IT SOUNDS LIKE.

12 BY COMMISSIONER JAMES:

13 WHATEVER, AND WE CAN GO BACK, AND IT WILL TAKE
14 THE COURT REPORTER A FEW MINUTES, BUT THE --
15 WHATEVER THE QUESTION IS, IT WOULD BE THE SAME
16 OBJECTION. IT HAD TO DO WITH THE FOUNDATION.

17 BY MR. GOODWYN:

18 WELL, I THINK WE HAD GOTTEN PAST ALL OF THAT.
19 HE HAD -- I THINK HE TESTIFIED HE HAD LOOKED AT W-2s
20 FROM THE PAST. HE HAD LOOKED AT THE 1099s FROM THE
21 PAST. HE KNEW THAT THEY HAD ALWAYS BEEN INDEPENDENT
22 CONTRACTORS, AND THAT'S HOW HE KNEW FROM HIS OWN
23 PERSONAL EXPERIENCE OF REVIEWING THE COMPANY'S
24 RECORDS.

25 BY MR. BEARD:

1 AND EVERY DEFENDANT IN THE ROOM OBJECTED, AND
2 YOU DID NOT RULE ON THE OBJECTIONS.

3 BY MS. FARTHING:

4 AND I THINK THE ISSUE WAS, AS WE SAID, THAT HE
5 IS REFERENCING DOCUMENTS WE DON'T HAVE ACCESS TO TO
6 CROSS EXAMINE, AND THEN I THINK THE QUESTION HE WAS
7 ABLE TO ASK WAS DID THEY SUPPLY INDEPENDENT
8 CONTRACTORS, AND THAT WAS THE QUESTION HE HAD
9 ANSWERED. SO, I'M NOT SURE EXACTLY WHERE IT WAS
10 LEFT OFF AS TO THE EXACT ANSWER, BUT I GUESS I WOULD
11 DISAGREE WITH THE FACT THAT HE WAS PERMITTED TO
12 ANSWER ALL OF THESE QUESTIONS AND TO PROVIDE THIS
13 INFORMATION OVER OBJECTION.

14 BY COMMISSIONER JAMES:

15 ONE OF THE QUESTIONS HAD TO DO WITH THE TIME,
16 AND I REMEMBER THE TIMING WAS CLEARED UP, BUT AS FAR
17 AS THE FOUNDATIONAL OF THE HEARSAY AND WHERE THE
18 INFORMATION WAS ACQUIRED, I DO NOT REMEMBER THAT
19 BEING CLARIFIED.

20 BY MR. GOODWYN:

21 WELL, WHY DON'T I JUST KIND OF PLOW BACK
22 THROUGH IT, AND THEY CAN MAKE OBJECTIONS AS THEY SEE
23 FIT.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. MR. SEARS, DID YOU HAVE AN OPPORTUNITY

1 AS GENERAL COUNSEL TO REVIEW CONDUCTRIAL'S RECORDS,
2 AND WHEN I SAY THE RECORDS: W-2s, 1099s, PAY
3 RECORDS, RELATED TO THE NURSES THAT WERE BEING USED
4 AT S.C.D.C. PRIOR TO YOUR ARRIVAL?

5 A. IN MY ROLES AS GENERAL COUNSEL AND V.P. OF ADMIN,
6 WHICH IS OVER ADMINISTRATIVE TYPE SERVICES, I'VE
7 PERSONALLY PROBABLY LOOKED AT 90 PERCENT OF THE
8 NURSING PERSONNEL, AND THIS IS -- WE'RE TALKING
9 EIGHT YEARS NOW. SO, I'VE PROBABLY -- I COULDN'T
10 SAY 100 PERCENT, I'M NOT 100 PERCENT SURE. I'M
11 CERTAIN I'VE SEEN AT LEAST 90 PERCENT OF THE
12 RECORDS. ONE OF THE REASONS IS BECAUSE PROBABLY
13 2014, WE APPLIED FOR JOINT COMMISSION CERTIFICATION,
14 WHICH IS A SPECIAL HEALTH CARE CERTIFICATION. WE
15 HAD TO GO THROUGH A PROCESS TO GET READY FOR THAT.
16 I WAS DIRECTLY INVOLVED IN THAT PROCESS. AS A
17 RESULT OF THAT PROCESS, I HAD TO REVIEW ALL OF OUR
18 RECORDS, OUR NURSING PERSONNEL. I HAD TO TALK TO
19 OUR EMPLOYEES, OUR MANAGER, OKAY. I REVIEWED THE
20 INDEPENDENT CONTRACTOR DOCUMENTS THAT WE HAD. I HAD
21 TO COMPLETE THOSE DOCUMENTS. I CERTAINLY HAD SOME
22 INTERVIEWS WITH SOME OF THE NURSES, BUT -- AND
23 THAT'S JUST IN THE JOINT COMMISSION CONTEXT. I'VE
24 HAD OCCASION TO DO THAT OVER THE YEARS. CERTAINLY
25 FROM TIME TO TIME, I WOULD SAY EVERY FEW YEARS OR

1 SO, ONE OF THESE 1099s TRIES TO APPLY FOR
2 UNEMPLOYMENT BENEFITS. WE HAVE ONE OF THOSE
3 DOCUMENTS IN THE RECORD NOW, OR AT LEAST IT'S BEEN
4 PROFFERED. I OBVIOUSLY GET INVOLVED IN THAT; I HAVE
5 TO REVIEW THOSE RECORDS AND TALK TO THE PERSONNEL
6 AND TALK TO OUR PERSONNEL. I MEAN, AS A GENERAL
7 COUNSEL FOR EIGHT YEARS, I DON'T KNOW WHAT ELSE I
8 CAN DO. I CAN'T BRING 5000 DOCUMENTS IN HERE.
9 NEITHER DID MR. BURGESS, AND HE TALKED ABOUT A
10 CONTRACT THAT HE WASN'T HERE FOR. SO, I'VE BEEN
11 THERE SINCE 2009. I THINK THE DOOR WAS OPEN WITH
12 THAT QUESTIONING. I MEAN, I DON'T KNOW WHAT ELSE I
13 COULD HAVE DONE.

14 BY MR. BEARD:

15 COMMISSIONER, WITH ALL DUE RESPECT, HE IS A
16 WITNESS, NOT A LAWYER. IN THIS CASE, HE IS ACTING
17 AS A LAWYER. HE -- HE RESPONDS TO EVERY OBJECTION
18 WE MAKE. HE RESPONDS TO EVERYTHING WE SAY. YOU
19 HAVE TO STOP HIM FROM DOING THIS.

20 BY THE WITNESS:

21 I DON'T THINK I'VE DONE THAT TODAY AT ALL.

22 BY COMMISSIONER JAMES:

23 MR. SEARS.

24 BY MR. BEARD:

25 HE'S DOING IT NOW.

1 BY COMMISSIONER JAMES:

2 MR. SEARS, DO NOT RESPOND TO -- I MEAN, YOU
3 HAVE TO ANSWER THE QUESTIONS ---

4 BY THE WITNESS:

5 RIGHT.

6 BY COMMISSIONER JAMES:

7 --- AS ASKED AND NOT PROVIDE LEGAL OBJECTIONS.

8 BY MR. GOODWYN:

9 IF HE HAS AN OBJECTION, I THINK THE OBJECTION
10 WOULD BE UNRESPONSIVE, BUT, THAT'S NOT HIS
11 OBJECTION.

12 BY COMMISSIONER JAMES:

13 WELL, "OPEN THE DOOR" COULD BE A TERM OF ART.
14 LET'S JUST -- I'M JUST REMINDING THE WITNESS AS WE
15 HAD YESTERDAY, JUST NOT TO -- I'M NOT CHASTISING.
16 I'M JUST SAYING LET'S ASK THE QUESTION, ANSWER THE
17 QUESTION, AND NOT PROVIDE THE OUTSIDE OBJECTIONS OR
18 STATEMENTS THAT COULD BE FROM A LAWYER AS OPPOSED TO
19 A WITNESS.

20 BY MR. GOODWYN:

21 I MEAN, HE -- I THINK HE IS ENTITLED TO ANSWER
22 THE QUESTION THE WAY HE SEES FIT. I MEAN, YOU KNOW.

23 BY COMMISSIONER JAMES:

24 I UNDERSTAND THAT, MR. GOODWYN. IT COULD HAVE
25 BEEN PERCEIVED AS AN OBJECTION JUST BECAUSE OF THE

1 WORDS THAT WERE USED. SO, ALL I SAID WAS -- ALL I
2 SAID, I'M JUST REMINDING THE WITNESS. OKAY, THERE'S
3 NO CHASTISING HERE. IT'S JUST REMINDING. OKAY?

4 BY MR. GOODWYN:

5 OKAY.

6 BY MR. BEARD:

7 BUT IF A WITNESS CAN ANSWER ANY WAY THEY WANT
8 TO, THERE'S NO REASON TO HAVE LAWYERS IN THE ROOM.

9 BY COMMISSIONER JAMES:

10 AND I'VE ALREADY -- WE'VE ALREADY ADDRESSED
11 THIS. LET'S MOVE ON. ALL RIGHT.

12 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. ALL RIGHT. IN THE EXTENSIVE INVESTIGATION THAT YOU
14 JUST REFERRED TO, DID YOU HAVE AN OPPORTUNITY TO
15 REVIEW THE RECORDS PRIOR TO YOUR ARRIVAL AT
16 CONDUSTRIAL?

17 A. YOU MEAN BEFORE I GOT THERE IN 2009?

18 Q. RIGHT.

19 A. I DID NOT.

20 Q. OKAY. YOU DIDN'T REVIEW ANY W-2s OR 1099s FROM 2008
21 OR '7?

22 A. IN OTHER WORDS, I DIDN'T REVIEW ANYTHING BEFORE I
23 GOT THERE. YES, AFTER I GOT THERE, I DID REVIEW
24 RECORDS FROM THE PAST.

25 Q. OKAY. ALL RIGHT. AND DO YOU FEEL YOU ARE FAMILIAR

1 ENOUGH WITH THE PAY RECORDS FROM THE TIME BEFORE
2 2009 WHEN YOU ARRIVED TO HAVE BEEN ABLE TO FORM AN
3 OPINION AS TO WHAT THE RELATIONSHIP BETWEEN
4 CONDUSTRIAL AND S.C.D.C. WAS PRIOR TO YOUR ARRIVAL?

5 A. I DO. AS I TESTIFIED YESTERDAY, WE WERE ALSO
6 INVOLVED IN A LAWSUIT WITH MS. WALKER FROM WHEN WE
7 PURCHASED THE ASSETS, AND OBVIOUSLY MY ROLE THERE
8 WAS TO OVERSEE OUTSIDE COUNSEL, AND I REVIEWED
9 DOCUMENTS. SO, I HAD TO SPECIFICALLY REVIEW A LOT
10 OF THIS INFORMATION AS A FUNCTION OF THAT LAWSUIT.

11 Q. OKAY. DID CONDUSTRIAL EVER PROVIDE EMPLOYEES TO
12 S.C.D.C., OR WERE THEY ALWAYS INDEPENDENT
13 CONTRACTORS?

14 A. NOTHING I REVIEWED INVOLVES AN EMPLOYEE.

15 Q. OKAY.

16 A. IT'S ALL BEEN INDEPENDENT CONTRACTORS.

17 Q. ALL RIGHT.

18 BY MR. GOODWYN:

19 ARE THESE ALL OF THE EXHIBITS FROM YESTERDAY?

20 BY THE COURT REPORTER:

21 HERE YOU GO, MR. GOODWYN.

22 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

23 Q. ALL RIGHT. SO, THE PERSONNEL SERVICES AGREEMENT
24 WITH THE DEPARTMENT OF CORRECTIONS FROM 2008, THAT'S
25 NOT THE THE LAST -- THAT'S THE LATER ONE?

1 A. THIS IS THE LATER ONE.

2 Q. RIGHT. AND I DON'T KNOW IF WE HAVE THE EARLIER ONE
3 UP HERE OR NOT. HERE IT IS. WHEN YOU LOOK AT
4 PARAGRAPH 1-A ---

5 A. YES.

6 Q. --- AND THAT FIRST SENTENCE, CAN YOU READ THAT FOR
7 US?

8 BY COMMISSIONER JAMES:

9 AND IN REFERENCE FOR EVERYBODY ELSE, IS THIS
10 CLAIMANT'S APA 254?

11 BY MR. GOODWYN:

12 NO, THIS STARTS AT 269, AND IT'S LABELED
13 CONDUSTRIAL 269 ON HERE, BUT I DON'T ---

14 BY COMMISSIONER JAMES:

15 ACTUALLY, THOSE NUMBERS, AS WE DISCUSSED
16 YESTERDAY, THOSE LABEL NUMBERS ARE NOT THE NUMBERS
17 THAT WE ARE RELYING ON, BECAUSE THIS IS THE
18 CLAIMANT'S SO IT'S NOT CONDUSTRIAL.

19 BY MR. GOODWYN:

20 RIGHT.

21 BY COMMISSIONER JAMES:

22 IT'S 254, THE NUMBER AT THE BOTTOM.

23 BY MR. GOODWYN:

24 OKAY, THIS ONE IS NOT MARKED LIKE THAT, BUT THE
25 ONLY NUMBER ON THIS PARTICULAR COPY ---

1 BY COMMISSIONER JAMES:

2 THAT -- IS THAT AN EXHIBIT?

3 BY MR. BEARD:

4 YES, MA'AM. THAT WAS THE ONE THAT THEY DID NOT
5 HAVE BUT ONE COPY OF, AND SO NONE OF THE REST OF US
6 HAVE THAT DOCUMENT.

7 BY COMMISSIONER JAMES:

8 WHAT YEAR IS THAT? I JUST WANT TO MAKE SURE
9 EVERYBODY IS LOOKING AT THE SAME THING.

10 BY THE WITNESS:

11 THIS IS THE PERSONNEL SERVICE AGREEMENT SOUTH
12 CAROLINA DEPARTMENT OF CORRECTIONS ---

13 BY MR. GOODWYN:

14 2008.

15 BY THE WITNESS:

16 IT HAS THE -- THE DATE ON IT IS SEPTEMBER --
17 WELL, SEPTEMBER 11, 2008, IS WHEN THE DEPARTMENT OF
18 CORRECTIONS SIGNED IT.

19 BY COMMISSIONER JAMES:

20 THAT IS CLAIMANT'S 254.

21 BY MR. GOODWYN:

22 OKAY.

23 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

24 Q. ALL RIGHT. CAN YOU READ THAT FIRST SENTENCE OF
25 PARAGRAPH 1-A FOR US?

1 A. "R.N.s, L.P.N.s ASSIGNED TO S.C.D.C. BY CONTRACTOR
2 ARE EMPLOYEES OF CONTRACTOR AND NOT S.C.D.C."

3 Q. OKAY. FROM YOUR EXPERIENCE AND KNOWLEDGE, DID
4 CONDUSTRIAL AND S.C.D.C. EVER OPERATE IN THAT
5 FASHION?

6 A. THEY DID NOT.

7 Q. OKAY. IN WHAT FASHION DID THEY OPERATE?

8 A. THEY OPERATED IN THE FASHION THAT CONDUSTRIAL,
9 THROUGH ITS DIVISION MEDUSTRIAL, PROVIDED
10 INDEPENDENT CONTRACTORS TO S.C.D.C. AT ALL TIMES
11 RELEVANT TO MY EMPLOYMENT WITH THE COMPANY AND
12 BEFORE BASED ON MY REVIEW OF THE DOCUMENTS BEFORE.

13 Q. ALL RIGHT.

14 A. AND THE SITUATION BEFORE.

15 Q. AND JUSTIN -- WAS IT GUDVANGEN, IS THAT HIS NAME, I
16 BELIEVE IT IS?

17 A. JUSTIN GUDVANGEN, CORRECT.

18 Q. HE WAS A FORMER EMPLOYEE -- EXCUSE ME. HE WAS A
19 FORMER WORKER, INDEPENDENT CONTRACTOR, FOR
20 CONDUSTRIAL THAT WAS SUPPLIED TO S.C.D.C., CORRECT?

21 A. MR. GUDVANGEN DID ACCEPT SHIFTS THROUGH OUR
22 BROKERAGE MODEL BEFORE HE WENT TO WORK FOR S.C.D.C.,
23 YES.

24 Q. OKAY. AND HE HAS ALREADY TESTIFIED IN THIS CASE,
25 AND WERE YOU PRESENT FOR HIS TESTIMONY?

1 A. YES, I WAS.

2 Q. OKAY. AND HE IS NOW AN EMPLOYEE OF S.C.D.C.,
3 CORRECT?

4 A. YES, I BELIEVE HE IS ONE OF THE CHARGE NURSES. I
5 THINK HE IS ONE OF THE PERSONNEL AT ONE OF THE
6 FACILITIES THAT SETS SCHEDULE.

7 Q. OKAY.

8 A. OR SENDS OUT THE SHIFTS TO BE SCHEDULED.

9 Q. ALL RIGHT. ALL RIGHT. SO, HE IS CERTAINLY FAMILIAR
10 THEN WITH THE BUSINESS MODEL THAT WAS ---

11 BY MS. FARTHING:

12 COMMISSIONER, I WOULD OBJECT TO MR. SEARS
13 TESTIFYING TO JUSTIN GUDVANGEN'S UNDERSTANDING OF
14 THE BROKERAGE MODEL. HE HAS TESTIFIED IN THIS
15 CLAIM. HE TESTIFIED CONCERNING HIS UNDERSTANDING OF
16 HIS RELATIONSHIP WITH CONDUSTRIAL. I THINK HIS
17 UNDERSTANDING IS ALREADY IN THE RECORD. I WOULD
18 OBJECT TO MR. SEARS TESTIFYING CONCERNING HIS
19 UNDERSTANDING.

20 BY MR. GOODWYN:

21 FAIR ENOUGH.

22 BY COMMISSIONER JAMES:

23 OF MR. GUDVANGEN, SUSTAINED.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. SO, AFTER THIS -- MS. TURNER'S ACCIDENT,

1 IT LOOKS LIKE IN 2016, DID YOU GO BACK TO S.C.D.C.
2 AND TRY TO MAKE MODIFICATIONS TO THE 2008 AGREEMENT?

3 A. I KNOW THERE WAS A GENERAL CONCERN BEFORE, A GENERAL
4 DISCUSSION PROBABLY BEFORE THIS INCIDENT CERTAINLY
5 THAT CONTINUED ON. THIS INCIDENT OBVIOUSLY DERAILED
6 THAT PROCESS, BUT, YOU KNOW, AS YOU CAN SEE, THIS
7 CONTRACT WAS -- THE INITIAL ONE WAS FROM 2008.
8 THERE HAD NOT BEEN A NEW CONTRACT IN YEARS AND YEARS
9 AND YEARS. SO, I DON'T -- IN OTHER WORDS, SOME OF
10 OUR MANAGERS WITH CONDUSTRIAL MAY HAVE INITIATED THE
11 CONVERSATION FOR A PAY RATE ISSUE. I'M NOT SURE IF
12 IT WAS EITHER THAT OR, YOU KNOW, A DISCUSSION ABOUT
13 PERHAPS THIS CASE BROUGHT UP, WE'RE LOOKING AT A
14 CONTRACT -- LOOKING AT THE CONTRACTS. SO, FOR BOTH
15 OF THOSE REASONS, THERE WERE DISCUSSIONS THAT, YOU
16 KNOW, IT'S PROBABLY TIME TO SIGN A NEW CONTRACT OR
17 REVISE IT OR WHAT HAVE YOU.

18 Q. OKAY. DID YOU MAKE A PROPOSAL FOR CHANGES TO THE
19 PERSONNEL SERVICES AGREEMENT ---

20 A. I DID.

21 Q. --- WITH THE DEPARTMENT OF CORRECTIONS?

22 A. I DID.

23 Q. AND WHO DID YOU GIVE THAT PROPOSAL TO?

24 A. AND, YOU KNOW, I HEARD MR. BURGESS' TESTIMONY. MR.
25 BURGESS IS A VERY NICE PERSON. HE OBVIOUSLY KNOWS

1 ME WELL ENOUGH, WE'VE TALKED ENOUGH WHERE HE CALLS
2 ME "TOM." SOME OF HIS TESTIMONY YESTERDAY WAS NOT
3 ACCURATE.

4 Q. ALL RIGHT. WHAT IN PARTICULAR WAS ---

5 BY MR. SAMUELS:

6 OBJECT TO PITTING WITNESSES, YOUR HONOR.

7 BY COMMISSIONER JAMES:

8 SUSTAINED.

9 BY THE WITNESS:

10 OKAY.

11 BY MR. BEARD:

12 HE STILL HASN'T ANSWERED THE QUESTION OF WHO
13 DID HE GIVE THE DOCUMENT TO.

14 BY THE WITNESS:

15 I SENT THE DOCUMENT TO MR. BURGESS AND ALSO HAD
16 A CONVERSATION WITH MR. BURGESS ABOUT IT.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. OKAY. WHAT WAS THE NATURE OF YOUR CONVERSATION WITH
19 MR. BURGESS?

20 A. VERY SIMPLY, VERY CLEARLY, YOU KNOW, "TOMMY, I WOULD
21 LIKE -- I THINK WE NEED TO REVISE THIS TO ACCURATELY
22 REFLECT THE RELATIONSHIP OF THE PARTIES."

23 Q. OKAY. AND WHAT WAS HIS RESPONSE?

24 A. HE SAID "SEND IT OVER, AND I'LL SEND IT TO MY
25 LAWYERS, AND IF THERE'S A PROBLEM, I'LL LET YOU

1 KNOW."

2 Q. OKAY. WAS THERE ANY PART OF THE CONVERSATION THAT
3 WHERE YOU CONVEYED A DESIRE TO CHANGE THE LANGUAGE
4 IN THAT FIRST SENTENCE FROM "EMPLOYEES" TO
5 "EMPLOYEES AND/OR AGENTS"?

6 A. YES. OBVIOUSLY, THAT'S BEEN AN ISSUE IN THIS CASE,
7 AND AGAIN, BASED ON MY UNDERSTANDING OF THIS
8 RELATIONSHIP FOR EIGHT YEARS, I SAID I WANT THAT
9 BECAUSE OBVIOUSLY I KNEW WHAT THE CLAIMANT'S
10 ATTORNEY WAS GOING TO DO, AND TO AVOID THIS
11 SITUATION IN THE FUTURE, I WANT -- I WOULD LIKE THIS
12 -- ASK TO REVISE THIS SO IT REFLECTS THE ACTUAL
13 RELATIONSHIP BETWEEN THE PARTIES.

14 Q. OKAY. AND WAS IT CLEAR TO YOU THAT MR. BURGESS
15 UNDERSTOOD THAT YOU BELIEVED THE RELATIONSHIP HAD
16 ALWAYS BEEN THAT CONDUSTRIAL WAS PROVIDING
17 INDEPENDENT CONTRACTORS TO S.C.D.C.?

18 BY MR. ALFORD:

19 OBJECT TO THE FORM. I MEAN, I'M SORRY, OBJECT.
20 HE'S ASKING THE QUESTION IS IT CLEAR TO YOU THAT MR.
21 BURGESS UNDERSTOOD SOMETHING. HOW CAN HE ---

22 BY COMMISSIONER JAMES:

23 SUSTAINED.

24 BY MS. FARTHING:

25 I OBJECT, TOO.

1 BY MR. GOODWYN:

2 ALL RIGHT. WELL, LET ME ---

3 BY THE WITNESS:

4 WELL, I CAN GIVE YOU MY REFLECTION OF THAT.

5 BY MR. GOODWYN:

6 LET ME -- I THINK IT WAS SUSTAINED. LET ME
7 REPHRASE THE QUESTION THEN.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. DID MR. BURGESS VOICE ANY SURPRISE THAT YOU WERE
10 STATING THAT THE RELATIONSHIP HAD ALWAYS BEEN
11 INDEPENDENT CONTRACTORS?

12 A. THERE WAS NO SURPRISE, AND IN MY MIND, HE UNDERSTOOD
13 WHAT THE DISCUSSION WAS ABOUT. THERE WERE NO
14 OBJECTIONS RAISED.

15 BY MR. ALFORD:

16 THE SAME OBJECTION, YOUR HONOR, ---

17 BY MS. FARTHING:

18 YEAH.

19 BY MR. ALFORD:

20 --- AND I ASK THAT HIS TESTIMONY BE STRICKEN.

21 BY MS. FARTHING:

22 MR. BURGESS HAS TESTIFIED. HIS UNDERSTANDING
23 IS IN THE RECORD.

24 BY COMMISSIONER JAMES:

25 OF COURSE, THE COMMISSION HAS THAT TO WEIGH. I

1 THINK THE LAST PART OF THE ANSWER HAD TO DO WITH
2 WHETHER THERE WAS AN OBJECTION OR NOT; SO, AND I'VE
3 HEARD THE ANSWER TO THAT. ALL RIGHT, GO AHEAD.

4 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

5 Q. ALL RIGHT. SO, THIS IS THE -- AND I'M LOOKING AT --
6 I'M SORRY. IT'S EXHIBIT 1, IT'S CONDUSTRIAL'S
7 EXHIBIT 1, THE PERSONNEL SERVICES AGREEMENT FROM
8 2016.

9 A. OKAY.

10 Q. WHAT IS THAT -- THAT SAME PARAGRAPH, HOW DOES IT
11 READ IN THAT AGREEMENT?

12 A. AND AGAIN, THERE'S NOT A -- IT SHOULD BE A "ONE"
13 HERE, AND THERE'S NOT A "ONE," BUT AGREED SERVICES,
14 A, "R.N.s, L.P.N.s ASSIGNED TO S.C.D.C. BY
15 CONTRACTOR ARE EMPLOYEES AND/OR AGENTS OF CONTRACTOR
16 AND NOT S.C.D.C."

17 Q. OKAY. AND THAT'S -- THAT'S THE CURRENT AGREEMENT?

18 A. YES.

19 Q. OKAY. AND AGAIN, DOES THAT LANGUAGE MOST ACCURATELY
20 REFLECT WHAT THE RELATIONSHIP BETWEEN CONDUSTRIAL
21 AND S.C.D.C. HAD BEEN BACK TO AT LEAST WHEN YOU
22 BEGAN?

23 A. IT MORE ACCURATELY REFLECTS THE COURSE OF DEALINGS
24 THAT I OBSERVED THE ENTIRE TIME I'VE BEEN GENERAL
25 COUNSEL.

1 Q. OKAY. I WANT TO ASK YOU SOME QUESTIONS ABOUT THESE
2 CERTIFICATES OF INSURANCE. THERE ARE A NUMBER OF
3 CERTIFICATES THAT WERE ADMITTED YESTERDAY. THE
4 FIRST ONE I WANT YOU TO LOOK AT IS -- IT'S MARKED
5 DEFENDANT'S EXHIBIT "D." THIS IS THE 2010
6 CERTIFICATE OF INSURANCE. PLEASE TAKE A LOOK AT
7 THAT FOR ME.

8 A. YES.

9 Q. WHO IS THAT CERTIFICATE OF INSURANCE FOR? WHO WAS
10 THE INSURED?

11 A. THE CERTIFICATE -- WELL, THE INSURED IS A.M.S. STAFF
12 LEASING, L/C/F CONDUSTRIAL, INC.

13 Q. OKAY. AND WHO WAS THE INSURER?

14 A. THE INSURER, ARE YOU TALKING ABOUT THE POLICY OR --
15 INSURER "A" IS COMPANION PROPERTY AND CASUALTY
16 INSURANCE. THE CERTIFICATE HOLDER IS THE SOUTH
17 CAROLINA DEPARTMENT OF CORRECTIONS.

18 Q. OKAY.

19 BY MR. ALFORD:

20 I'M SORRY. WHICH NUMBERED EXHIBIT WAS THAT,
21 YOUR HONOR? I MEAN ---

22 BY COMMISSIONER JAMES:

23 AND IF WE CAN, LET'S REFER TO WHOEVER'S IT CAME
24 FROM.

25 BY MR. BEARD:

1 STATE ACCIDENT FUND.

2 BY COMMISSIONER JAMES:

3 THAT CAME FROM THE STATE ACCIDENT FUND "D."

4 BY MR. ALFORD:

5 "D."

6 BY MS. FARTHING:

7 YES, THE FIRST PAGE OF OUR EXHIBIT.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. CAN YOU LOOK AT THE BOTTOM, THIS BOTTOM LANGUAGE
10 HERE?

11 A. YES.

12 Q. WELL, FIRST -- FIRST, BEFORE YOU DO THAT, WHO IS
13 A.M.S. STAFFING -- STAFF LEASING?

14 A. THAT WAS A P.E.O. THAT WE WERE A MEMBER OF WHEN I
15 ARRIVED HERE IN 2009, AND I THINK WE WERE WITH THEM
16 UNTIL, I THINK, 2013.

17 Q. ALL RIGHT. AND CAN YOU READ THE LAST SENTENCE HERE,
18 IT SAYS -- IT STARTS WITH NUMBER TWO?

19 A. "TWO, INSURED IS AFFORDED WORKERS' COMPENSATION
20 EMPLOYERS LIABILITY AS A CO-EMPLOYER UNDER THE
21 POLICY FOR EMPLOYEES LEASED FROM A.M.S. STAFF
22 LEASING."

23 Q. ALL RIGHT. IS THAT THE SAME OR SIMILAR TYPE OF
24 RELATIONSHIP THAT YOU THOUGHT YOU HAD WITH
25 COUNTRYWIDE?

1 A. YES.

2 Q. WAS IT THE CO-EMPLOYER SITUATION?

3 A. YES, WE FELT LIKE WE HAD A CO-EMPLOYER SITUATION,
4 WHICH IS WHY IT IS IN THE CONTRACT.

5 BY MR. ALFORD:

6 I'M SORRY, WHAT?

7 BY MR. BEARD:

8 THE SAME WITH COUNTRYWIDE.

9 BY THE WITNESS:

10 WITH COUNTRYWIDE.

11 BY MR. GOODWYN:

12 ALL RIGHT. DOES ANYBODY HAVE A CLEAN COPY OF
13 THE COUNTRYWIDE AGREEMENT? I KNOW THERE'S A NUMBER
14 OF THEM IN THE APAs. SOME OF THEM ARE SIGNED; SOME
15 OF THEM AREN'T. I WANT TO REFERENCE -- I MAY HAVE
16 IT HERE I MINE. I JUST -- I KNOW WE WERE LOOKING AT
17 THEM YESTERDAY, AND THEY'RE NOT -- NOT ALL OF THEM
18 HAVE ALL OF THE SIGNATURES.

19 BY MR. ALFORD:

20 MINE IS MARKED UP. I THINK THEY'RE IN EXHIBIT
21 TWO AND SEVERAL OF THE DEPOSITIONS.

22 BY MS. RICHARDSON:

23 OURS IS IN, RIGHT? WE HAVE A CLEAN COPY.

24 BY COMMISSIONER JAMES:

25 IN THE BOOK THAT HASN'T BEEN SUBMITTED ---

1 BY MR. SAMUELS:

2 WELL, IT'S ---

3 BY MS. RICHARDSON:

4 IT'S JUST A COPY OF THE -- WHAT YOU'VE ALREADY
5 SUBMITTED OF WILL HARBISON'S.

6 BY COMMISSIONER JAMES:

7 THERE IS ONE, AND I BELIEVE --

8 BY MS. RICHARDSON:

9 I GUESS I ---

10 BY COMMISSIONER JAMES:

11 --- IT MAY NOT HAVE ALL SIGNATURES. Y'ALL
12 REFERRED TO IT YESTERDAY. I BELIEVE IT WAS PAGE 253
13 OF GUARANTEE COUNTRYWIDE'S ORIGINAL. THERE IS NO
14 PAGE 253.

15 BY MR. GOODWYN:

16 EXHIBIT ---

17 BY MR. SAMUELS:

18 IT'S IN THE CLAIMANT'S AT 243 TO 252.

19 BY MR. GOODWYN:

20 AND I THINK THAT'S THE ONE THAT DIDN'T HAVE ALL
21 OF THE SIGNATURES.

22 BY MR. SAMUELS:

23 THAT DOES NOT HAVE SIGNATURES FROM COUNTRYWIDE.
24 IT HAS SIGNATURES FROM CONDUSTRIAL.

25 BY COMMISSIONER JAMES:

1 OKAY. AND THAT'S THE ONE -- THAT'S THE ONE I
2 SAW THEN; THAT'S THE ONE I REFERRED TO.

3 BY MR. SAMUELS:

4 THAT WAS THE ONE THAT CONDUSTRIAL PROVIDED
5 PURSUANT TO SUBPOENA.

6 BY MR. GOODWYN:

7 ALL RIGHT.

8 BY MR. SAMUELS:

9 IN FACT, IT IS BATE STAMPED CONDUSTRIAL 328 TO
10 CONFIRM THAT THAT VERSION OF THE CONTRACT WAS
11 PROVIDED BY COUNTRYWIDE PURSUANT TO SUBPOENA.

12 BY MS. RICHARDSON:

13 THE FULLY EXECUTED VERSION?

14 BY MR. SAMUELS:

15 OH, EXCUSE ME, NOT COUNTRYWIDE, CONDUSTRIAL.
16 IT WAS PROVIDED BY CONDUSTRIAL.

17 BY MR. ALFORD:

18 IF YOU GO TO...

19 BY MR. GOODWYN:

20 OKAY, I THINK I HAVE ONE HERE. I HAVE ONE, BUT
21 I PULLED IT OUT OF TOM SEARS' DEPOSITION TRANSCRIPT.
22 HOW WOULD YOU PREFER I REFER TO THIS? I CAN MARK IT
23 AS A SEPARATE EXHIBIT.

24 BY COMMISSIONER JAMES:

25 IF IT'S NOT THE SAME THING THAT'S IN ALREADY,

1 IN THE CLAIMANT'S ---

2 BY MR. BEARD:

3 YEAH, OURS IS NOT IN. IT'S NOT STEPHEN'S.

4 STEPHEN'S ONLY HAS SIGNED BY THEM.

5 BY COMMISSIONER JAMES:

6 RIGHT. THAT'S WHAT I WAS GOING TO SAY. THEN,
7 PLEASE, GO AHEAD AND MARK IT SO IT WILL BE PROPERLY
8 IDENTIFIED.

9 BY MR. ALFORD:

10 I WOULD JUST LIKE TO MAKE SURE ---

11 BY COMMISSIONER JAMES:

12 Y'ALL EXCHANGE, YES.

13 BY MR. ALFORD:

14 YES, CAN I JUST GLANCE AT IT FOR A SECOND?

15 BY MR. GOODWYN:

16 THIS IS THE CONTRACT.

17 (COURT REPORTER MARKS DOCUMENT CONDUSTRIAL EXHIBIT TWO,
18 RETAINED IN COMMISSION FILE)

19 (COURT REPORTER MARKS DOCUMENT CONDUSTRIAL EXHIBIT THREE,
20 RETAINED IN COMMISSION FILE)

21 BY COMMISSIONER JAMES:

22 AND PLEASE REFER TO IT AS TRIAL EXHIBIT,
23 BECAUSE THERE ARE SOME THINGS MARKED AS EXHIBITS IN
24 THE APAs.

25 BY MR. BEARD:

1 I ASSUME HE'S NOW GOING TO TRY TO GET IT INTO
2 EVIDENCE.

3 BY MS. RICHARDSON:

4 IT IS THE SAME THING AS WHAT WE HAVE? THANK
5 YOU.

6 BY MR. NEWMAN:

7 JEFF, IS THAT THREE?

8 BY MR. GOODWYN:

9 YEAH, IT WILL BE TWO AND THREE. TWO WILL BE
10 THE CONTRACT. THREE WILL BE THE AGREEMENT.

11 BY MR. ALFORD:

12 SO, THIS WILL BE TWO AND THREE?

13 BY MR. GOODWYN:

14 YEAH, I'M JUST GOING TO COVER UP THE DEPOSITION
15 STICKER.

16 BY COMMISSIONER JAMES:

17 ANY OBJECTIONS TO THOSE TWO DOCUMENTS?

18 BY MR. ALFORD:

19 NO OBJECTIONS.

20 BY COMMISSIONER JAMES:

21 ALL RIGHT. THEN THEY ARE ADMITTED AS TRIAL
22 EXHIBITS TWO AND THREE OF CONDUSTRIAL.

23 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

24 Q. MR. SEARS, TAKE A LOOK AT THE SERVICE AGREEMENT
25 BETWEEN COUNTRYWIDE AND CONDUSTRIAL. ARE YOU

1 FAMILIAR WITH THAT DOCUMENT?

2 A. YES, THIS APPEARS TO BE THE AGREEMENT WE SIGNED WITH
3 COUNTRYWIDE.

4 Q. OKAY. YOU WERE -- TELL ME THIS: YOU JUST TESTIFIED
5 BACK IN 2010 AS IT RELATED TO THIS EXHIBIT "D" AND
6 THE A.M.S. STAFF LEASING THAT YOU HAD A CO-EMPLOYER
7 RELATIONSHIP WITH THEM, AND YOU BELIEVED YOUR
8 RELATIONSHIP WITH COUNTRYWIDE WAS THE SAME, CORRECT?

9 BY MR. ALFORD:

10 I OBJECT, YOUR HONOR. I DON'T HAVE -- I MEAN,
11 HE'S ASKING HIM DO WE HAVE THE SAME RELATIONSHIP. I
12 CAN'T -- I NEED THE UNDERLYING CONTRACT BETWEEN THEM
13 BEFORE I CAN ASCERTAIN WHETHER IT'S THE SAME
14 RELATIONSHIP.

15 BY COMMISSIONER JAMES:

16 MR. GOODWYN.

17 BY MR. GOODWYN:

18 I MEAN, AGAIN, ---

19 BY MR. ALFORD:

20 HOW DO I ---

21 BY MR. GOODWYN:

22 I ASKED HIM IF HE BELIEVES THE RELATIONSHIP IS
23 THE SAME. HE TESTIFIED YES. IF HE WANTS TO ---

24 BY MR. ALFORD:

25 HOW DO I ---

1 BY MR. GOODWYN:

2 --- DIG INTO THAT, THEN -- I MEAN, AGAIN, THE
3 DISCOVERY IS OVER. HE COULD HAVE ASKED HIM THAT AT
4 A DEPOSITION. HE COULD HAVE SUBPOENAED THESE
5 DOCUMENTS. I DON'T ---

6 BY MR. BEARD:

7 THE QUESTION IS JUST NOT PROPER. WE OBJECT,
8 TOO.

9 BY MR. GOODWYN:

10 I THINK YOU HAVE TO EXPLAIN WHY IT'S NOT
11 PROPER.

12 BY MR. BEARD:

13 BECAUSE YOU HAVE TO HAVE THE UNDERLYING
14 CONTRACT TO ASK THE QUESTION.

15 BY MR. ALFORD:

16 HOW DO I KNOW --

17 BY MR. NEWMAN:

18 IT'S A LEADING QUESTION AS WELL.

19 BY COMMISSIONER JAMES:

20 AND IF HE ANSWERS THE QUESTION, AND Y'ALL ALL
21 HAVE ME AT A DISADVANTAGE BECAUSE YOU'VE SEEN THE
22 ACTUAL DOCUMENT. I DON'T KNOW THAT THE RELATIONSHIP
23 IS THE SAME AS IT EVER WAS. I DON'T KNOW WHAT --
24 CAN Y'ALL ESTABLISH FOR THE FACT FINDER SO THAT I
25 UNDERSTAND. CAN Y'ALL ESTABLISH FIRST SO THAT I

1 UNDERSTAND WHAT THE QUESTION -- WHAT THE MEANING IS?

2 BY MR. ALFORD:

3 I MEAN, YEAH, I'M LOOKING FOR RELEVANCE BECAUSE
4 WHATEVER AGREEMENT ---

5 BY MR. GOODWYN:

6 WELL...

7 BY MR. ALFORD:

8 --- HE HAD A LONG TIME AGO, THIS AGREEMENT IS
9 ALL THAT'S RELEVANT.

10 BY COMMISSIONER JAMES:

11 OKAY.

12 BY MR. GOODWYN:

13 WELL, LET ME JUST ASK IT A DIFFERENT WAY, I
14 THINK.

15 BY COMMISSIONER JAMES:

16 OKAY. BECAUSE THE CONTEXT, I WILL SAY AS FAR
17 AS THE FACT FINDER, I'M NOT SURE -- I'M NOT SURE
18 WHAT THE QUESTION REFERS TO.

19 BY MR. GOODWYN:

20 OKAY. WELL, LET ME JUST ASK IT A DIFFERENT WAY
21 THEN. I'LL JUST WITHDRAW THE QUESTION AND ASK IT A
22 DIFFERENT WAY.

23 BY MR. SAMUELS:

24 IT'S ALSO THE BEST EVIDENCE RULE, YOUR HONOR,
25 THAT HE IS ASKING HIM TO COMPARE TWO CONTRACTS, BUT

1 ONLY ONE CONTRACT IS IN EVIDENCE.

2 BY MR. ALFORD:

3 THAT'S MY PROBLEM.

4 BY MR. GOODWYN:

5 WELL, THEN I WON'T ASK HIM TO COMPARE
6 CONTRACTS. LET ME JUST ASK A DIFFERENT QUESTION.
7 ALL RIGHT.

8 BY COMMISSIONER JAMES:

9 AND ALSO JUST FOR THE FACT FINDER SINCE I DON'T
10 HAVE THE DOCUMENT RIGHT NOW. Y'ALL HAVE IT.

11 BY MR. ALFORD:

12 CAN I GIVE YOU A COPY, YOUR HONOR?

13 BY COMMISSIONER JAMES:

14 IF IT'S UNMARKED, YES.

15 BY MR. ALFORD:

16 YES.

17 BY COMMISSIONER JAMES:

18 OR I CAN GET MY STAFF TO MAKE A COPY.

19 BY MR. ALFORD:

20 NO, I WANT YOU TO HAVE ONE, PLEASE, IF YOU WILL
21 BEAR WITH ME.

22 BY COMMISSIONER JAMES:

23 OKAY.

24 BY MR. GOODWYN:

25 DO YOU JUST WANT TO MAKE A COPY OF THE EXHIBIT?

1 BY COMMISSIONER JAMES:

2 I CAN DO THAT. IT MAY BE QUICKER.

3 BY MR. SAMUELS:

4 THE ONE THAT IS AT CLAIMANT'S 243 IS THE
5 IDENTICAL DOCUMENT. IT JUST IS MISSING SOME OF THE
6 SIGNATURES FROM ---

7 BY COMMISSIONER JAMES:

8 OKAY.

9 BY MR. GOODWYN:

10 THAT MIGHT BE EASIER.

11 BY MR. SAMUELS:

12 --- COUNTRYWIDE. SO, THE TYPEWRITTEN CONTRACT
13 IS THE SAME.

14 BY COMMISSIONER JAMES:

15 AND THERE'S AN ADDENDUM. LET ME JUST TAKE THAT
16 AND MAKE A COPY OF IT. IF Y'ALL WILL STAND AT EASE
17 FOR LIKE TWO MINUTES.

18 (OFF THE RECORD)

19 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

20 Q. MR. SEARS, I APOLOGIZE, I'M GOING TO SKIP BACK AND
21 DURING THE BREAK, I REALIZED THERE WERE SOME
22 QUESTIONS ABOUT THE PERSONNEL SERVICES AGREEMENT
23 WITH THE DEPARTMENT OF CORRECTIONS THAT I NEGLECTED
24 TO ASK YOU. IF YOU COULD, LOOK AT THE -- I THINK
25 THE LANGUAGE IS EXACTLY THE SAME IN BOTH THE 2008

1 AND THE 2016 AGREEMENT. IF YOU COULD LOOK AT THE
2 2008 AGREEMENT THOUGH SINCE THAT WAS THE ONE IN
3 FORCE AT THE TIME OF MS. TURNER'S ACCIDENT.

4 A. OKAY.

5 Q. IF YOU LOOK AT THOSE, THE TOP TWO "WHEREAS"
6 PARAGRAPHS.

7 A. YES.

8 Q. CAN YOU READ THE FIRST "WHEREAS" PARAGRAPH FOR US?

9 BY COMMISSIONER JAMES:

10 AND IS THAT CLAIMANT'S 253?

11 BY MR. GOODWYN:

12 I APOLOGIZE. YES.

13 BY COMMISSIONER JAMES:

14 THANK YOU.

15 THE WITNESS ANSWERS:

16 A. "WHEREAS S.C.D.C. DESIRES TO ENGAGE THE SERVICES OF
17 CONTRACTOR TO PROVIDE MEDICAL STAFFING PERSONNEL AS
18 AN INDEPENDENT CONTRACTOR." THE SECOND ONE READS
19 "WHEREAS CONTRACTOR DESIRES TO PROVIDE MEDICAL
20 STAFFING PERSONNEL AS AN INDEPENDENT CONTRACTOR
21 UNDER THE TERMS AND CONDITIONS SET OUT IN THE
22 AGREEMENT."

23 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

24 Q. OKAY. SO, WAS IT -- IS IT -- WAS IT CLEAR FROM THE
25 AGREEMENT THAT BOTH PARTIES WANTED TO GIVE AND

1 RECEIVE INDEPENDENT CONTRACTORS?

2 A. YES.

3 Q. OKAY. ALL RIGHT. ONE OTHER QUESTION, TOO, I THINK
4 I WANTED TO ASK YOU ON THAT SUBJECT, THERE WAS --
5 SOME ISSUE ABOUT THE CERTIFICATES OF INSURANCE THAT
6 WERE PROVIDED TO THE DEPARTMENT OF CORRECTIONS. DID
7 YOU EVER -- OR FIRST LET ME ASK YOU THIS: DID MR.
8 BURGESS OR ANYONE ELSE AT THE DEPARTMENT OF
9 CORRECTIONS EVER ASK YOU FOR A CERTIFICATE OF
10 INSURANCE?

11 A. YES. THE FIRST TIME THOSE REQUESTS WERE MADE I
12 BELIEVE WAS AT THE CONCLUSION OF THE CLAIMANT'S
13 DEPOSITION, AND I BELIEVE MS. FARTHING ASKED
14 AFTERWARDS IF WE HAD A CERTIFICATE OF INSURANCE, AND
15 THAT REQUEST WAS LATER ALSO MADE BY MR. BURGESS.

16 Q. OKAY. AND DID YOU FULFILL THAT REQUEST?

17 A. I -- I TRIED TO, AND I KNOW THERE ARE SEVERAL OF
18 THESE, AND I DON'T -- I'M SORRY, I DON'T KNOW THE
19 EXHIBITS, BUT WHEN THEY TALKED YESTERDAY ABOUT --
20 ANYWAY, I DON'T WANT TO KEEP ---

21 Q. THAT'S FINE.

22 A. RIGHT.

23 Q. I'M NOT ASKING YOU TO SHOW ME WHAT ---

24 A. RIGHT.

25 Q. --- YOU PRODUCED. I JUST --

1 A. WHEN HE ---

2 Q. WERE YOU ABLE TO FULFILL THE REQUEST?

3 A. WHEN THEY ASKED ME TO GET A CERTIFICATE OF
4 INSURANCE, I DID EXACTLY WHAT I THOUGHT I SHOULD
5 HAVE DONE. I CONTACTED COUNTRYWIDE AND SAID "I NEED
6 A CERTIFICATE OF INSURANCE TO SHOW COVERAGE."
7 AGAIN, ACKNOWLEDGING THAT WE DON'T AGREE THAT SHE IS
8 AN EMPLOYEE, SO IS NOT COVERED UNDER THE ACT, BUT
9 THEY WANT TO KNOW THAT THERE IS EVIDENCE OF COVERAGE
10 IN GENERAL.

11 Q. THAT'S FINE.

12 A. SO, I ASKED FOR A CERTIFICATE OF INSURANCE WITH
13 CERTIFICATE HOLDER S.C.D.C. THEY REFUSED TO DO
14 THAT. I ASKED FOR A CERTIFICATE OF INSURANCE, AN
15 INFORMATION COPY. THEY REFUSED TO DO THAT, ALTHOUGH
16 WE HAVE ABOUT 200 FOR SPECIFIC CLIENTS.

17 Q. ALL RIGHT. AND I'M GOING TO GET INTO THAT IN JUST A
18 MINUTE. DID TOMMY BURGESS OR ANYONE ELSE WITH
19 S.C.D.C. REQUEST A CERTIFICATE OF INSURANCE FROM YOU
20 PRIOR TO MS. TURNER'S INJURY?

21 A. I DON'T -- I DON'T BELIEVE THAT I'VE EVER BEEN ASKED
22 TO GIVE A CERTIFICATE OF INSURANCE UNTIL THIS CASE.

23 Q. OKAY. SINCE YOU BROUGHT IT UP, LET'S GO AHEAD AND
24 GET INTO THESE OTHER CERTIFICATES OF INSURANCE
25 BEFORE WE GET BACK INTO THE COUNTRYWIDE AGREEMENT.

1 ALL RIGHT. I HAVE A GROUP OF CERTIFICATES OF
2 INSURANCE THAT I WANT TO ASK YOU QUESTIONS ABOUT.
3 THESE ARE THE CERTIFICATES OF INSURANCE THAT WERE IN
4 MY APAs THAT ARE NOT YET IN. SO, I WANT TO ASK SOME
5 QUESTIONS. IF THERE'S OBJECTIONS, WE CAN DO IT. IF
6 THERE'S NO OBJECTIONS.

7 BY MR. ALFORD:

8 I'M SORRY. THEY'RE ---

9 BY MR. GOODWYN:

10 THIS IS -- YOU SHOULD HAVE RECEIVED MY AMENDED
11 APAs. IT'S JUST THE CERTIFICATES OF INSURANCE.
12 IT'S PAGES 205 THROUGH 221, AND THERE ARE SOME PAGES
13 THAT ARE NOT CERTIFICATES OF INSURANCE THAT I PULLED
14 OUT. I PULLED OUT 214, 215 AND 204, BECAUSE THEY
15 ARE NOT CERTIFICATES OF INSURANCE, BUT ---

16 BY MS. RICHARDSON:

17 YOU PULLED OUT 215 ---

18 BY MR. GOODWYN:

19 YEAH.

20 BY MS. RICHARDSON:

21 --- 214, 215?

22 BY MR. GOODWYN:

23 NOW, ALL OF THESE ARE LIABILITY INSURANCE
24 CERTIFICATES EXCEPT FOR THOSE THREE PAGES.

25 BY MS. RICHARDSON:

1 OKAY. AND I SAY "OKAY," BUT I'M NOT SAYING
2 OKAY.

3 BY MR. ALFORD:

4 NO OBJECTION.

5 BY MR. SAMUELS:

6 NO OBJECTION FROM THE CLAIMANT.

7 BY MR. BEARD:

8 NO OBJECTION.

9 BY MS. FARTHING:

10 NO OBJECTION.

11 BY COMMISSIONER JAMES:

12 ON BEHALF OF THE UNINSURED EMPLOYERS' FUND, ANY
13 OBJECTIONS?

14 BY MS. GLOVER:

15 NO OBJECTION.

16 BY COMMISSIONER JAMES:

17 ALL RIGHT. WE'LL MARK THOSE.

18 BY MR. GOODWYN:

19 IT MAY BE EASIER TO MARK THEM COLLECTIVELY AS
20 ONE EXHIBIT INSTEAD OF 15 DIFFERENT ONES.

21 BY COMMISSIONER JAMES:

22 WE WILL MARK THOSE COLLECTIVELY AS TRIAL
23 EXHIBITS FOR CONDUSTRIAL NUMBER FOUR.

24 (COURT REPORTER MARKS DOCUMENTS CONDUSTRIAL EXHIBIT FOUR,
25 RETAINED IN THE COMMISSION FILE)

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. ALL RIGHT. MR. SEARS, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS TRIAL EXHIBIT FOUR OF CONDUSTRIAL. IT'S A GROUP OF CERTIFICATES OF LIABILITY INSURANCE. ARE YOU FAMILIAR WITH THOSE?

A. YES, I AM.

Q. ALL RIGHT. AND GENERALLY -- WELL, FIRST, TELL ME THIS: ON THESE CERTIFICATES OF LIABILITY INSURANCE, WHO IS THE CARRIER LISTED?

A. THE CARRIER IS LISTED AS GUARANTEE INSURANCE COMPANY.

Q. ALL RIGHT. AND IS THIS THE POLICY PERIOD -- WHAT IS THE POLICY PERIOD FOR THIS?

A. JUNE 30TH OF 2015 THROUGH JUNE 30TH OF 2016.

Q. ALL RIGHT. IS THAT -- WOULD THAT COVER THE PERIOD OF RACHEL TURNER'S INJURY?

A. IT WOULD.

Q. OKAY. AND WHERE DID YOU OBTAIN THESE CERTIFICATES OF INSURANCE?

A. MOST OF THESE AND THEN THIS IS A REPRESENTATIVE COPY OF MANY OTHERS FOR MANY OTHER CLIENTS, BUT THESE WOULD HAVE -- MANY OF THESE WOULD HAVE COME FROM SENDING A REQUEST TO I WANT TO SAY SEARCH@COUNTRYWIDEHR.COM. SO, THEY HAD A -- THEY HAD A STANDARD EMAIL TO REQUEST CERTIFICATES. SOME

1 TIMES I WOULD SEND IT TO A DANIEL RIVERO WHO IS I
2 GUESS AN ADMINISTRATIVE PERSON I HAVE WORKED WITH
3 MANY TIMES, BUT WE WOULD HAVE MADE THESE REQUESTS OF
4 COUNTRYWIDE.

5 Q. OKAY. SO, ALL OF THESE WERE OBTAINED FROM
6 COUNTRYWIDE; ---

7 A. YES.

8 Q. --- IS THAT WHAT YOU'RE SAYING?

9 A. YES.

10 Q. OKAY. AND ON ALL OF THESE, WHO IS LISTED AS THE
11 INSURED?

12 A. WELL, IN THE INSURED BOX, IT INDICATES COUNTRYWIDE
13 STAFFING SOLUTIONS GROUP.

14 Q. ALL RIGHT. AND THEN TAKE A LOOK -- I KNOW IT'S NOT
15 EXACTLY THE SAME LANGUAGE IN EACH OF THESE. WHAT
16 DOES IT SAY DOWN HERE IN THE BOX, THE DESCRIPTION OF
17 OPERATIONS?

18 A. THE DESCRIPTION OF OPERATIONS ---

19 Q. AND THIS IS THE FIRST PAGE OF THE EXHIBIT.

20 A. RIGHT. ON THE FIRST PAGE FOR HENDRY MARINE
21 INDUSTRIES IN TAMPA, FLORIDA. "COVERAGE IS PROVIDED
22 FOR LEASED EMPLOYEES BUT NOT SUBCONTRACTORS OR NON-
23 LEASED EMPLOYEES OF CONDUSTRIAL, INC. LOCATION
24 COVERAGE EFFECTIVE JUNE 30 OF 2015."

25 Q. OKAY. AND WHAT IS THE -- WHAT DOES THE NEXT ONE

1 SAY?
2 A. THE NEXT CERTIFICATE?
3 Q. YEAH, AS FAR AS THAT SAME BOX.
4 A. THAT SAME BOX, "COVERAGE IS PROVIDED FOR LEASED
5 EMPLOYEES BUT NOT SUBCONTRACTORS OR NON-LEASED
6 EMPLOYEES OF CONDUSTRIAL, INC."
7 Q. ALL RIGHT.
8 A. "LOCATION COVERAGE EFFECTIVE JUNE 30 OF 2015."
9 Q. ALL RIGHT. DOES THAT INDICATE TO YOU A DIRECT
10 RELATIONSHIP BETWEEN GUARANTEE AND CONDUSTRIAL?
11 A. YES.
12 Q. OKAY. DID YOU BELIEVE CONDUSTRIAL WAS INSURED BY
13 GUARANTEE?
14 A. YES.
15 Q. DID THIS DOCUMENT CONFIRM THAT?
16 A. YES, MANY OF THESE.
17 Q. ALL RIGHT. DOES THIS -- DOES THE LANGUAGE IN THAT
18 BOX YOU WERE JUST READING INDICATE A LEASED EMPLOYEE
19 RELATIONSHIP BETWEEN CONDUSTRIAL AND COUNTRYWIDE?
20 A. YES, TO THE EXTENT IT WAS A CO-EMPLOYER
21 RELATIONSHIP, YES.
22 Q. ALL RIGHT. AND THIS MAY BE A GOOD SEGUE INTO THE
23 COUNTRYWIDE SERVICE AGREEMENT. I THINK IT'S
24 PROBABLY BETTER TO GIVE THE COMMISSIONER A LITTLE
25 BACKGROUND BEFORE JUMPING RIGHT INTO THE AGREEMENT.

- 1 I THINK WE KNOW WHAT THE AGREEMENT SAYS ITSELF, BUT
2 PRIOR TO BEGINNING YOUR RELATIONSHIP WITH
3 COUNTRYWIDE, WHO WAS CONDUSTRIAL INSURED BY?
- 4 A. GUARANTEE.
- 5 Q. ALL RIGHT. SO, CONDUSTRIAL HAD A DIRECT INSURANCE
6 RELATIONSHIP; THERE WAS NO MIDDLE MAN OR ---
- 7 A. NO MIDDLE MAN.
- 8 Q. OKAY. AND WHEN I SAY "MIDDLE MAN," I MEAN A COMPANY
9 LIKE COUNTRYWIDE THAT PROVIDES ---
- 10 A. RIGHT. IT WAS A DIRECT HIGH DEDUCTIBLE POLICY.
- 11 Q. OKAY. AND WHAT MADE YOU WANT TO -- WELL, WITHOUT
12 GETTING INTO TOO MUCH DETAIL, IS IT FAIR TO SAY THAT
13 EITHER YOU AND/OR GUARANTEE DID NOT WANT TO CONTINUE
14 THE RELATIONSHIP AFTER THAT TIME?
- 15 A. WELL, BEFORE ENTERING THE RELATIONSHIP WITH
16 GUARANTEE, OUR AGENT KEENAN SUGGS HAD ACTUALLY
17 BROUGHT US COUNTRYWIDE AS A P.E.O. POSSIBILITY
18 BEFORE WE WENT WITH GUARANTEE, AND WE DECLINED AT
19 THAT TIME. THEY GAVE US TWO DIFFERENT CONTRACTS
20 FROM TWO DIFFERENT STATES. WE JUST DIDN'T FEEL
21 COMFORTABLE, SO WE WENT INTO THE HIGH DEDUCTIBLE
22 PROGRAM WITH GUARANTEE. WE WERE WITH THEM FROM I
23 GUESS 3/28/14 TO 3/28/15.
- 24 Q. WELL, LET ME ASK YOU THIS: YOU SAID YOUR BROKER
25 BROUGHT YOU COUNTRYWIDE PRIOR TO THAT?

1 A. YES.

2 Q. DID THEY REPRESENT THAT COUNTRYWIDE WAS ACTING AS A
3 P.E.O.?

4 A. YES, THEY DID.

5 BY MR. ALFORD:

6 OBJECTION. HOW MUCH MORE HEARSAY CAN I GET?

7 BY COMMISSIONER JAMES:

8 SUSTAINED.

9 BY MR. GOODWYN:

10 WELL, THAT WITNESS IS GOING TO BE HERE.

11 BY MR. ALFORD:

12 WELL, THEN LET'S HEAR IT FROM THAT WITNESS.

13 BY MR. BEARD:

14 RIGHT.

15 BY MR. GOODWYN:

16 YOU HAVE TO TAKE THEM IN ORDER. I CAN'T HAVE
17 TWO PEOPLE ON THE STAND AT THE SAME TIME. AND I'LL
18 BE HAPPY TO RECALL TOM, BUT I THOUGHT WE WERE TRYING
19 TO STREAMLINE THIS THING.

20 BY MS. RICHARDSON:

21 I'M GOING TO -- I INSIST TO WAIT UNTIL THE
22 OTHER WITNESS TESTIFIES.

23 BY MR. GOODWYN:

24 AND I WANTED TO CALL HER FIRST, BUT...

25 BY COMMISSIONER JAMES:

1 I'M GOING TO SUSTAIN IT, AND THERE IS A
2 POSSIBILITY -- AND I UNDERSTAND THERE'S A
3 POSSIBILITY THAT WITNESSES MAY HAVE TO BE RECALLED
4 AT SOME POINT, BUT AT THIS POINT, IT IS HEARSAY.

5 BY MR. GOODWYN:

6 THEY HAVE A RIGHT TO CROSS EXAMINE THE OTHER
7 WITNESS. I MEAN, SHE'S GOING TO BE CALLED. IT'S
8 NOT HEARSAY IF THEY HAVE A RIGHT TO CROSS EXAMINE
9 HER.

10 BY MR. ALFORD:

11 HEARSAY IS AN OUT OF COURT STATEMENT MADE BY
12 SOMEONE WHO IS NOT A PARTY, AND I CANNOT THINK OF A
13 MORE ACCURATE DESCRIPTION OF THAT THAN ASKING MR.
14 SEARS WHAT A NON-PARTY SAID, RESPECTFULLY.

15 BY MR. GOODWYN:

16 ALL RIGHT. WELL, LET ME PUT IT THIS WAY,
17 BECAUSE IF IT'S NOT BEING OFFERED OR IF IT IS BEING
18 OFFERED FOR WHAT HIS UNDERSTANDING WAS, HOW
19 COUNTRYWIDE WAS BEING PRESENTED TO HIM AND WHAT HIS
20 BELIEF WAS, I THINK THAT'S NOT ---

21 BY MR. ALFORD:

22 BUT IT'S OFFERING IT FOR THE TRUTH OF THE
23 MATTER ASSERTED.

24 BY MR. BEARD:

25 CORRECT.

1 BY MS. RICHARDSON:

2 YOUR HONOR, AND HE'S ---

3 BY COMMISSIONER JAMES:

4 IS THIS NOT TO THE HEART OF A LOT OF THE MAYBE
5 THE SECONDARY LEVEL ISSUES THAT WE HAVE HERE, BUT
6 IT'S PRESENTED AS TESTIMONY TO THE HEART OF THOSE
7 ISSUES?

8 BY MR. GOODWYN:

9 I'M SAYING HE CAN TESTIFY WHAT HIS BELIEF WAS.
10 HE CAN TESTIFY "I BELIEVE I WAS BEING OFFERED A
11 P.E.O."

12 BY MS. RICHARDSON:

13 YOUR HONOR, HE'S TESTIFYING AS TO WHAT HE WAS
14 OFFERED IN 2014 WHEN HE CHOSE A DIRECT POLICY WITH
15 GUARANTEE. I JUST DON'T EVEN SEE HOW THIS IS
16 POSSIBLY RELEVANT TO WHAT CONDUSTRIAL THOUGHT THEY
17 WERE ENTERING INTO IN 2015, WHICH IS THE RELEVANT
18 SITUATION TO THE RACHEL TURNER MATTER. I MEAN, WE
19 ARE REALLY GOING WAY WAY OFF.

20 BY MR. GOODWYN:

21 I THINK IT'S RELEVANT BECAUSE THEY ALWAYS --
22 I'M TRYING TO ESTABLISH THAT THEY ALWAYS BELIEVED
23 COUNTRYWIDE TO BE A P.E.O. EVEN BEFORE THIS
24 CONTRACT. THEY WERE ALWAYS PRESENTED AS A P.E.O.

25 BY MS. RICHARDSON:

1 AND WHO ARE YOU TALKING -- WHO IS HE TALKED
2 ABOUT, COUNTRYWIDE. THERE -- COUNTRYWIDE, THERE IS
3 A COUNTRYWIDE P.E.O., BUT THE ENTITY IN WHICH
4 CONDUSTRIAL HAS CONTRACTED WITH IN THIS MATTER IS
5 C.S.S.G. OKAY. THEY DID NOT CONTRACT WITH A
6 COUNTRYWIDE P.E.O. THERE IS AN ENTITY OUT THERE.
7 THERE ARE A LOT OF DIFFERENT ENTITIES OUT THERE. IN
8 THIS SITUATION, CONDUSTRIAL HAS CONTRACTED WITH
9 C.S.S.G. SO, WHATEVER CONVERSATIONS HE HAD WITH --
10 I DON'T KNOW WHAT ENTITY IN 2014 AND THEN DETERMINED
11 NOT TO ENTER INTO A CONTRACT WITH THEM IN 2014 HAS
12 NOTHING TO DO WITH WHAT ACTUALLY EXISTED ON THE DATE
13 OF RACHEL TURNER'S ACCIDENT.

14 BY COMMISSIONER JAMES:

15 I'M GOING TO GO BACK TO THE ORIGINAL PART OF
16 THE OBJECTION. I AM GOING TO SUSTAIN IT AS BEING
17 HEARSAY. I DO NOT KNOW. I HEAR Y'ALL SAYING THAT
18 THAT WITNESS WILL BE HERE LATER, BUT IF THAT WITNESS
19 IS HERE, THEY CAN TESTIFY, AND THEN THEY WILL
20 ADDRESS WHETHER THERE ARE ANY REBUTTAL WITNESSES.

21 BY MR. GOODWYN:

22 ALL RIGHT.

23 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

24 Q. I'LL ASK YOU THEN, DID YOU BELIEVE COUNTRYWIDE WAS A
25 P.E.O. IN 2014 PRIOR TO GOING WITH GUARANTEE?

1 A. YES, AND IT WAS THE SAME ENTITY THAT WAS BROUGHT TO
2 US IN 2015.

3 Q. ALL RIGHT. LET'S TALK ABOUT -- LET'S TALK ABOUT
4 THAT. SO, YOUR RELATIONSHIP WITH GUARANTEE WAS
5 COMING TO AN END.

6 A. OUR RELATIONSHIP WITH GUARANTEE, WE HAD A HIGH
7 DEDUCTIBLE PROGRAM THAT WAS SUPPOSED TO BE A MULTI-
8 YEAR PROGRAM, AND WE HAD A HIGH DEDUCTIBLE, AND THE
9 LOSS PICK WAS SUPPOSED TO BE ADJUSTED YEAR TO YEAR.
10 IF WE HAD A GOOD YEAR, THEN WE GOT SOME MONEY BACK
11 EVENTUALLY. IF WE HAD A BAD YEAR, THE LOSS PICK
12 WENT UP. WE HAD AN EMAIL BY MR. DOWD, I THINK WHO
13 WAS THE PRESIDENT OF UNDERWRITING, WITHIN 60 DAYS OF
14 RENEWAL THAT CONFIRMED THAT UNDERSTANDING.

15 BY MS. RICHARDSON:

16 OBJECTION.

17 BY THE WITNESS:

18 IT'S NOT ---

19 BY MS. RICHARDSON:

20 AN EMAIL FROM SOMEBODY ELSE COMMUNICATING TO
21 HIM SOMETHING. WHAT?

22 BY MR. ALFORD:

23 IT'S HEARSAY.

24 BY COMMISSIONER JAMES:

25 SUSTAINED.

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. ALL RIGHT. WERE YOU TRYING TO EXPLAIN THE REASON
FOR THE TERMINATION OF THE CONTRACT?

A. THE REASON WE LEFT IS BECAUSE OUR PROGRAM -- WE WERE
INFORMED THAT OUR PROGRAM HAD BEEN CHANGED, THE
NATURE OF OUR CONTRACT.

BY MR. BEARD:

OBJECTION TO HEARSAY.

BY MS. RICHARDSON:

OBJECTION, HEARSAY AGAIN.

BY MR. GOODWYN:

THAT IS NOT HEARSAY. HE CAN SAY WHAT THE
COMPANY -- THE INFORMATION THE COMPANY RECEIVED.

BY MR. BEARD:

NOT IF HE CAN'T IDENTIFY THE PERSON AND THERE'S
SOMEONE THAT CAN HOLD THE COMPANY LIABLE.

BY MR. GOODWYN:

I DON'T HAVE TO GET GUARANTEE TO AGREE THAT
THAT'S WHAT THEY SAID.

BY MR. BEARD:

BUT YOU HAVE TO PRESENT A WITNESS. YOU HAVE TO
PRESENT A NAME. YOU HAVE TO PRESENT AN IDENTITY OF
WHO HE IS TALKING ABOUT. WE OBJECT.

BY THE WITNESS:

MR. DOWD.

1 BY COMMISSIONER JAMES:

2 UNLESS YOU CAN ---

3 BY MR. BEARD:

4 AND, AGAIN, I WOULD ASK ---

5 BY MS. RICHARDSON:

6 MR. DOWD IS NOT ON THE WITNESS LIST.

7 BY COMMISSIONER JAMES:

8 MR. SEARS, YOU HAVE TO WAIT FOR THE QUESTION.

9 BY THE WITNESS:

10 YES, MA'AM.

11 BY COMMISSIONER JAMES:

12 UNLESS YOU CAN ESTABLISH THE FOUNDATION FOR WHO
13 THAT INDIVIDUAL IS, WHAT LEVEL THEY ARE WITH ANY OF
14 THE PARTIES HERE, THE -- AND ESTABLISH WHY -- FIRST
15 OF ALL, IT NEEDS TO BE ESTABLISHED, AND THEN
16 SECONDLY, THAT'S GOING TO CLARIFY WHETHER ITS
17 HEARSAY OR NOT.

18 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

19 Q. ALL RIGHT. CAN YOU EXPLAIN GENERALLY WHY
20 CONDUSTRIAL LEFT OR DID NOT RENEW WITH GUARANTEE AT
21 THE END OF, WHAT WAS IT MARCH 2015?

22 BY MR. BEARD:

23 AND, COMMISSIONER, WE WOULD -- AGAIN, WE WOULD
24 OBJECT TO RELEVANCE. HOW IS THAT RELEVANT AT ALL TO
25 WHAT WE ARE HERE TO DETERMINE IN THIS CASE?

1 BY MR. GOODWYN:

2 I'M TRYING TO GET SOME BACKGROUND ON HOW WE GOT
3 TO CONDUSTRIAL.

4 BY MR. BEARD:

5 WE OBJECT TO RELEVANCE.

6 BY COMMISSIONER JAMES:

7 I WILL ALLOW SOME LENIENCY, BUT I HAVE TO MAKE
8 A DECISION WITH REGARDS TO THE STATE OF ALL PARTIES
9 AT THE TIME OF MS. TURNER'S ACCIDENT.

10 BY MR. GOODWYN:

11 SURE.

12 BY COMMISSIONER JAMES:

13 BUT I'M NOT -- AND THIS IS A QUESTION WITH
14 REGARDS AS TO WHY THEY LEFT GUARANTEE?

15 BY MR. GOODWYN:

16 WELL, LET ME -- ALL RIGHT, LET ME JUST MOVE ON.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. YOU KNOW, MAYBE THE BETTER QUESTION IS HOW MUCH TIME
19 DID YOU HAVE TO TRY TO FIND A NEW CARRIER?

20 A. LESS THAN 30 DAYS.

21 Q. OKAY. AND WHAT EFFORTS DID YOU MAKE TO TRY TO FIND
22 A NEW CARRIER IN THAT 30-DAY PERIOD?

23 A. WE REACHED OUT TO MULTIPLE AGENTS INCLUDING OUR G.L.
24 AND P.L. AGENT KEENAN SUGGS AND SAID "WE NEED HELP.
25 THE SITUATION HAS CHANGED."

1 Q. ALL RIGHT. WAS JO ANN WHITAKER ONE OF THE ---

2 A. YES, SHE WAS.

3 Q. --- BROKERS AT KEENAN SUGGS THAT HELPED YOU?

4 A. YES.

5 Q. OKAY. ALL RIGHT. AND WHAT WERE THE OPTIONS THAT
6 YOU WERE PROVIDED BY YOUR BROKER?

7 A. THERE WERE SEVERAL OPTIONS PRESENTED BY P.E.O. THAT
8 WERE ALREADY BACKED BY GUARANTEE. WE DID NOT PREFER
9 TO DO BUSINESS WITH THEM. WE REJECTED THOSE
10 OPTIONS.

11 Q. OKAY.

12 A. SO, THEY BROUGHT US AN OPTION, SAID "WE BROUGHT YOU
13 COUNTRYWIDE LAST YEAR. WE HAVE THEM AGAIN. WE
14 THINK SOME THINGS HAVE IMPROVED, AND THEY HAVE A
15 DIFFERENT CARRIER, AND WE THINK THIS IS A GOOD
16 SITUATION FOR YOU."

17 Q. OKAY. OBVIOUSLY, YOU ULTIMATELY ENTERED INTO AN
18 AGREEMENT WITH COUNTRYWIDE?

19 A. WE DID.

20 Q. OKAY. WERE YOU PART OF THE NEGOTIATIONS OF THAT
21 AGREEMENT?

22 A. YES.

23 Q. ALL RIGHT. BEFORE WE TALK ABOUT THE AGREEMENT, LET
24 ME ASK YOU, WHO DID YOU DO THE NEGOTIATIONS WITH?

25 A. PRIMARILY SCOTT HANSON WHO WAS THERE PRESIDENT AT

1 THAT TIME AND THEN LATER WITH TED BRYANT WHO WAS
2 THEIR GENERAL COUNSEL.

3 Q. ALL RIGHT. ABOUT HOW MANY MEETINGS WOULD YOU SAY
4 YOU HAD WITH -- WITH THOSE INDIVIDUALS WITH
5 COUNTRYWIDE RELATING TO THE NEGOTIATIONS?

6 A. MR. HANSON CAME TO OUR OFFICE. WE HAD ONE MEETING
7 WITH MR. HANSON IN PERSON, AND THEN MULTIPLE EMAILS
8 AND CONVERSATIONS WITH MR. HANSON AND MR. BRYANT
9 OVER THE PHONE, THROUGH EMAILS IN THE PROCESS OF
10 TRYING TO GET THE CONTRACT FINALIZED.

11 Q. ALL RIGHT. DURING THAT NEGOTIATION PROCESS, DID --
12 WERE YOU REQUIRED TO GIVE BACKGROUND INFORMATION
13 ABOUT THE COMPANY AND INFORMATION ABOUT THE
14 COMPANY'S STAFF?

15 A. YES. WE HAD LOSS RUNS, WORKERS' COMP CODES, PAYROLL
16 DATA, EVERYTHING THAT YOU WOULD NORMALLY SUPPLY TO A
17 CARRIER WHEN YOU ARE TRYING TO OBTAIN WORKERS'
18 COMPENSATION INSURANCE.

19 Q. OKAY. DID YOU TELL THE INDIVIDUALS YOU WERE
20 NEGOTIATING THIS CONTRACT WITH COUNTRYWIDE THAT
21 CONDUSTRIAL HAD A TRADE NAME MEDUSTRIAL THAT IT HAD
22 INDEPENDENT CONTRACTOR NURSES WITH?

23 A. YES, WE DID.

24 Q. AND HOW MANY TIMES?

25 A. IT WAS A NORMAL PART OF THE CONVERSATION. IT'S A

1 NORMAL PART OF THE CONVERSATION WE'VE HAD MANY TIMES
2 WITH MANY AGENTS AND BROKERS.

3 Q. THIS OBVIOUSLY ISN'T THE FIRST TIME YOU'VE HAD TO
4 GET WORKERS' COMPENSATION COVERAGE FOR CONDUSTRIAL'S
5 ENTIRE STAFF, IS IT?

6 A. CORRECT.

7 Q. AND DO YOU MENTION THIS MEDUSTRIAL AND THE FACT THAT
8 THESE WORKERS ARE INDEPENDENT CONTRACTORS IN ALL OF
9 THESE CONVERSATIONS?

10 BY MR. ALFORD:

11 OBJECTION, LEADING.

12 BY COMMISSIONER JAMES:

13 I'LL ALLOW HIM TO ANSWER IT. GO AHEAD.

14 THE WITNESS ANSWERS:

15 A. SINCE I JOINED CONDUSTRIAL IN 2009, THERE HAS NEVER
16 BEEN AN INSURANCE MEETING WHERE WE TALKED ABOUT OUR
17 GENERAL LIABILITY, PROFESSIONAL LIABILITY, WORKERS'
18 COMP THAT WE DIDN'T MENTION THE BROKERAGE MODEL
19 MEDUSTRIAL.

20 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. OKAY. WHAT WAS -- WHAT WAS COUNTRYWIDE'S RESPONSE
22 TO HEARING ABOUT THIS BROKERAGE MODEL WITH THESE
23 INDEPENDENT CONTRACTOR NURSES?

24 A. OBVIOUSLY, THE INDEPENDENT CONTRACTORS WOULDN'T BE
25 COVERED.

1 Q. OKAY. BECAUSE THEY WEREN'T CONSIDERED EMPLOYEES?

2 A. NOT EMPLOYEES. THAT'S NOT WHAT WE'RE PROPOSING TO
3 DO WITH Y'ALL.

4 Q. ALL RIGHT. AND I THINK THIS HAS -- THIS HAS BEEN
5 CLEAR IN THIS CASE THAT PAYROLL AND EMPLOYEE DATA
6 AND LOCATION DATA WERE ALL SUPPLIED TO COUNTRYWIDE,
7 CORRECT?

8 A. YES.

9 Q. ALL RIGHT. AND THESE INDEPENDENT CONTRACTOR NURSES,
10 THEIR PAYROLL DATA WAS NOT SUBMITTED TO COUNTRYWIDE?

11 A. IT WAS NOT SUBMITTED.

12 Q. OKAY. BECAUSE THEY WERE CLASSIFIED AS INDEPENDENT
13 CONTRACTORS?

14 A. CORRECT.

15 Q. ALL RIGHT. THE COUNTRYWIDE SERVICE AGREEMENT
16 ITSELF, ON THE BACK PAGE, THIS HAS A LIST OF W.C.
17 CODES, WORKERS' COMPENSATION CODES FOR THE VARIOUS
18 STATES, AND THEN THE RATES THAT WILL BE CHARGED FOR
19 EACH; IS THAT CORRECT?

20 BY MS. RICHARDSON:

21 WHICH DOCUMENT IS THIS?

22 BY MR. BEARD:

23 WHAT DOCUMENT ARE YOU READING FROM?

24 BY MR. GOODWYN:

25 PARDON?

1 BY MR. BEARD:

2 WHAT DOCUMENT ARE YOU READING FROM?

3 BY MR. GOODWYN:

4 OH, I'M SORRY. I SAID IT AGAIN. THE SERVICE
5 AGREEMENT.

6 BY MR. BEARD:

7 OKAY.

8 BY MS. RICHARDSON:

9 WHAT PAGE?

10 BY MR. GOODWYN:

11 IT'S THE BACK TWO PAGES.

12 BY MS. RICHARDSON:

13 WHICH ONE?

14 BY MR. GOODWYN:

15 EXHIBIT TWO, TRIAL EXHIBIT TWO.

16 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

17 Q. ALL RIGHT. AND I KNOW YOU HAVE REVIEWED THESE --
18 THIS CONTRACT AND THESE PAGES BEFORE?

19 A. YES, I HAVE MANY TIMES.

20 Q. ALL RIGHT. AND ARE YOU FAMILIAR WITH THE NURSING
21 CODES IN SOUTH CAROLINA?

22 A. I MEAN, I'M FAMILIAR TO THE EXTENT THAT, YOU KNOW, I
23 KNEW WE HAD NURSING CODES ON THE CONTRACT, YES.

24 Q. OKAY.

25 A. I'M NOT A SNOPE[SIC] MANUAL EXPERT.

1 Q. OKAY. ARE THE NURSING CODES ---

2 A. SCOPES MANUAL, NOT SNOPEs.

3 Q. ARE THE NURSING CODES 8829 AND 8833?

4 A. I KNOW THERE WERE TWO NURSING CODES ON THE CONTRACT.

5 Q. OKAY. AND COUNTRYWIDE THEN QUOTED -- QUOTED
6 CONDUSTRIAL A PRICE FOR THESE NURSING CODES AS WELL
7 AS ALL THE OTHER CODES?

8 A. FOR ALL THE CODES. FOR THOSE CODES, THEY TOOK IT
9 TO, I GUESS THE CARRIER BEFORE GUARANTEE AND SAID
10 "HERE'S WHAT WE CAN DO," AND THEY SAID "WE CAN
11 PROVIDE YOU WORKERS' COMP FOR THESE CODES AT THIS
12 PRICE," AND OBVIOUSLY THERE'S A MECHANISM IN PLACE
13 AS YOU ADD NEW CODES AND NEW EMPLOYERS, YOU SUBMIT
14 THOSE, AND, YOU KNOW, THOSE ARE ADDED, OR IF THEY
15 DON'T AGREE, THEY DON'T ADD THEM.

16 Q. ALL RIGHT. WHEN YOU WERE NEGOTIATING THE AGREEMENT,
17 THE COUNTRYWIDE SERVICE AGREEMENT, WITH COUNTRYWIDE,
18 WHAT DID YOU BELIEVE YOU WERE NEGOTIATING?

19 A. WE WERE NEGOTIATING WITH THEM TO OFFER US CERTAIN
20 ADMINISTRATIVE SERVICES AND WORKERS' COMPENSATION
21 INSURANCE.

22 Q. OKAY. DID YOU BELIEVE THAT THE WORKERS'
23 COMPENSATION INSURANCE THAT YOU WERE NEGOTIATING
24 WOULD SOMEHOW BE -- WOULD EXCLUDE CERTAIN EMPLOYEES?

25 A. NO.

1 Q. DID YOU BELIEVE ALL OF YOUR EMPLOYEES WOULD BE
2 COVERED?

3 A. YES.

4 Q. ALL RIGHT. CAN YOU READ PARAGRAPH THREE OR JUST THE
5 FIRST THREE LINES THERE OF PARAGRAPH THREE, NOT THE
6 SUBSECTIONS?

7 BY MR. ALFORD:

8 YOUR HONOR, RESPECTFULLY, IF -- RESPECTFULLY,
9 YOUR HONOR, IF WE ARE GOING TO READ FROM THE
10 DOCUMENT, I WOULD ASK HIM TO READ THE WHOLE
11 PARAGRAPH.

12 BY MR. GOODWYN:

13 I CAN ASK QUESTIONS ABOUT WHATEVER SECTIONS I
14 WANT. I DON'T HAVE TO GET -- I MEAN, I DON'T HAVE
15 TO DO IT THE WAY HE WANTS IT.

16 BY COMMISSIONER JAMES:

17 AND IT IS SUBJECT TO CROSS. GO AHEAD.

18 BY MR. ALFORD:

19 ALL RIGHT. WHERE ARE YOU?

20 BY MR. GOODWYN:

21 PARAGRAPH THREE.

22 BY MR. ALFORD:

23 THANK YOU.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. JUST THE FIRST THREE LINES.

1 A. THE HEADING IS "SELECTED STAFFING SLASH EMPLOYEES."
2 IT'S NOT ONE TERM. THAT'S TWO TERMS. "THE PARTIES
3 AGREE THAT ALL LABOR ---

4 BY MR. ALFORD:

5 YOUR HONOR, I WOULD OBJECT TO THE NONRESPONSIVE
6 EDITORIALIZING BY THE WITNESS.

7 BY MR. GOODWYN:

8 HE'S JUST TRYING TO MAKE CLEAR WHAT THE TEXT
9 IS.

10 BY COMMISSIONER JAMES:

11 I THINK THE QUESTION WAS TO READ.

12 BY MR. GOODWYN:

13 I JUST ASKED HIM TO READ IT.

14 BY COMMISSIONER JAMES:

15 OKAY.

16 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

17 Q. CAN YOU READ IT?

18 A. "SELECTED STAFFING SLASH EMPLOYEES. THE PARTIES
19 AGREE THAT ALL LABOR AND SLASH OR EMPLOYMENT
20 PERFORMED BY THE SELECTED STAFFING SLASH EMPLOYEES
21 UNDER THIS AGREEMENT SHALL BE PERFORMED UNDER THE
22 MUTUAL DIRECTION AND CONTROL OF BOTH PARTIES AS CO-
23 EMPLOYERS, AS RECITED THROUGH THIS AGREEMENT,
24 INCLUDING THAT C.S.S.G.," AND THEN THERE ARE A BUNCH
25 OF SUBHEADINGS.

1 Q. OKAY, ALL RIGHT. BASED ON THAT LANGUAGE, WAS IT
2 YOUR UNDERSTANDING THAT COUNTRYWIDE WOULD BE A CO-
3 EMPLOYER WITH CONDUSTRIAL?

4 A. YES. I'M THE ONE THAT -- I'M THE ONE THAT REQUESTED
5 THAT REVISION, AND I'M THE ONE THAT REQUESTED TO
6 MAKE IT SELECTED STAFFING SLASH EMPLOYEES.

7 Q. AND IS THAT CO-EMPLOYER RELATIONSHIP CONSISTENT WITH
8 THE P.E.O. MODEL?

9 BY MR. ALFORD:

10 OBJECTION. CALLS FOR A LEGAL CONCLUSION.

11 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

12 Q. IN YOUR MIND, ---

13 A. YES.

14 BY COMMISSIONER JAMES:

15 I'LL ALLOW HIM TO ANSWER IT.

16 THE WITNESS ANSWERS:

17 A. YES, IT IS. I MEAN, THERE'S -- THERE ARE ITERATIONS
18 OF THAT, BUT, YES, IT'S CONSISTENT WITH A P.E.O.
19 MODEL.

20 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. DID THAT LANGUAGE REAFFIRM IN YOUR MIND THE BELIEF
22 THAT YOU WERE DEALING WITH A P.E.O.?

23 BY MR. ALFORD:

24 OBJECTION TO LEADING.

25 BY MR. BEARD:

1 OBJECT TO LEADING.

2 BY COMMISSIONER JAMES:

3 SUSTAINED.

4 BY THE WITNESS:

5 I DON'T ANSWER YET?

6 BY COMMISSIONER JAMES:

7 NO.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. AND LET ME ASK YOU THIS, TOO. THE PAYROLL FOR THE
10 CONDUCTRIAL EMPLOYEES, HOW WAS IT PRODUCED?

11 A. I MEAN, THAT'S A LONG PROCESS, BUT IN OTHER WORDS,
12 WE -- WE WOULD SUBMIT THE PAYROLL, WHICH OUR CLIENTS
13 -- YOU KNOW, OUR EMPLOYEES WOULD GO OUT AND WORK.
14 THEY WOULD COMPLETE TIME CARDS WITH OUR CLIENTS.
15 OUR CLIENTS WOULD VERIFY THE TIME AND SEND THEM INTO
16 US. WE WOULD SUBMIT THAT PAYROLL TO COUNTRYWIDE.

17 Q. OKAY. NOW, THE PAYROLL AMOUNTS, IS THAT WHAT YOU'RE
18 TALKING ABOUT?

19 A. YES.

20 Q. THE AMOUNTS THAT EACH EMPLOYEE WOULD BE PAID?

21 A. RIGHT, ON A WEEKLY BASIS, YES.

22 Q. ALL RIGHT. WHAT -- WHOSE BANK ACCOUNT WERE THE
23 CHECKS CUT FROM?

24 A. THEY WERE CUT FROM OUR ACCOUNT.

25 Q. OKAY.

1 A. BUT IT'S NOT -- I GUESS THE MONEY CAME FROM OUR
2 ACCOUNT. THEN WE USED A GLOBAL CASH CARD, PAY CARD
3 SYSTEM SINCE BEING OUR EMPLOYEES ARE SPRINKLED OVER
4 MANY STATES, AND SOME, YOU KNOW, GO FROM SITE TO
5 SITE, SO THE GLOBAL CASH CARD ---

6 Q. RIGHT. SO, THEY WEREN'T HARD CHECKS?

7 A. RIGHT, THEY WEREN'T CHECKS.

8 Q. OKAY. BUT THE MONEY WAS DRAFTED FROM THE
9 CONDUSTRIAL ACCOUNT, NOT THE COUNTRYWIDE ACCOUNT,
10 CORRECT?

11 A. YES.

12 Q. OKAY. AND THE W-2s AT THE END OF THE YEAR, WHOSE
13 NAME WERE THEY UNDER?

14 A. CONDUSTRIAL.

15 Q. OKAY. THERE'S BEEN ARGUMENT IN THIS CASE THAT ONLY
16 CERTAIN EMPLOYEES WERE COVERED UNDER THIS AGREEMENT.
17 DID YOU BELIEVE THAT THE AGREEMENT THAT YOU WERE
18 ENTERING INTO WITH COUNTRYWIDE WOULD NOT -- WOULD
19 ONLY COVER A CERTAIN PORTION OF YOUR EMPLOYEES?

20 A. NO. I MEAN, WE HAD JUST COME OUT OF A DIRECT
21 POLICY, NORMAL WORKERS' COMP POLICY. WE HAD NORMAL
22 POLICES THROUGHOUT MY EIGHT YEARS THERE. WE
23 EXPECTED WE WERE ENTERING INTO THE SAME AGREEMENT
24 FOR A COMPREHENSIVE WORKERS' COMPENSATION PROGRAM,
25 WHICH IS ON ONE OF THE LETTERS SUBMITTED.

1 Q. DID YOU HAVE CONCERNS ABOUT COMPLIANCE WITH THE
2 MANDATE UNDER THE WORKERS' COMPENSATION ACT TO
3 PROVIDE WORKERS' COMPENSATION COVERAGE FOR ALL OF
4 YOUR EMPLOYEES?

5 BY MR. BEARD:

6 OBJECT TO THE LEADING.

7 THE WITNESS ANSWERS:

8 A. WE ---

9 BY COMMISSIONER JAMES:

10 SUSTAINED.

11 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

12 Q. DO YOU GENERALLY HAVE CONCERNS ABOUT THAT?

13 BY MR. BEARD:

14 SAME OBJECTION.

15 BY MR. ALFORD:

16 SAME OBJECTION.

17 BY MR. GOODWYN:

18 HOW IS THAT LEADING? I'M ASKING IF HE IS
19 CONCERNED.

20 BY MS. RICHARDSON:

21 CONCERNED ABOUT WHAT?

22 BY MR. GOODWYN:

23 IF HE IS CONCERNED ABOUT MEETING THE
24 REQUIREMENTS OF THE WORKERS' COMPENSATION ACT FOR
25 PROCURING WORKERS' COMPENSATION COVERAGE.

1 BY MR. BEARD:

2 THAT'S WHAT IS LEADING, AND WE OBJECT. YOU
3 CAN'T THEN JUST ASK A QUESTION BECAUSE HE ALREADY
4 HEARD YOUR QUESTION.

5 BY COMMISSIONER JAMES:

6 I'M GOING TO ALLOW HIM -- I'M GOING TO ALLOW
7 IT. YOU JUST NEED TO BE COGNIZANT OF NOT IMPLYING
8 THE ANSWER IN THE QUESTION AS IT IS ASKED.

9 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

10 Q. GO AHEAD.

11 A. CLEARLY WHEN WE ENTERED INTO THIS AGREEMENT, WE FELT
12 LIKE WE WERE ENTERING INTO A WORKERS' COMPENSATION
13 PROGRAM THAT WOULD COMPLY WITH THE REQUIREMENTS OF
14 THE ACT. WE WOULD NOT HAVE JUST LEFT A FULL POLICY
15 AND SAID "OH, LET'S JUST GET 95 PERCENT." WE FELT
16 LIKE WE WERE FULLY COVERED AND FULLY COMPLIANT BY
17 SIGNING THIS AGREEMENT.

18 Q. OKAY.

19 A. AND PAYING PREMIUMS AND SUBMITTED WORKERS' COMP
20 CODES.

21 Q. ALL RIGHT.

22 A. AND ALL OF THAT.

23 Q. THERE'S BEEN ARGUMENT IN THIS CASE FROM COUNTRYWIDE
24 THAT IF EMPLOYEES WERE NOT REPORTED TO THEM, THEY
25 WOULD NOT BE COVERED UNDER THIS POLICY, THEY WOULD

1 NOT CONSIDER THEM THEIR EMPLOYEES FOR THE PURPOSES
2 OF THAT POLICY. WAS THAT YOUR UNDERSTANDING?

3 A. MY UNDERSTANDING WAS THAT, YES, OUR EMPLOYEES AS
4 EMPLOYEES CAME ON OUR PAYROLL AND THEY WERE
5 PROCESSED THROUGH OUR SYSTEM AND ASSIGNED A CODE AND
6 RECEIVED PAY THAT THEY WOULD BE COVERED UNDER THE
7 AGREEMENT. WE CERTAINLY DID NOT CONTEMPLATE A
8 SITUATION WHERE IN ANY -- ESPECIALLY CONSTRUCTION
9 STAFFING, IF WE SIGN SOMEONE UP ON A MONDAY AND THEY
10 GO TO A JOB SITE ON WEDNESDAY, AND OUR PAYROLL
11 RECORDS THROUGH OUR NORMAL BUSINESS OPERATION DON'T
12 GO OUT UNTIL THURSDAY, WE CERTAINLY DIDN'T
13 CONTEMPLATE A SITUATION WHERE AN INJURY ON DAY TWO
14 WOULDN'T BE COVERED BECAUSE PAYROLL DIDN'T GO IN
15 UNTIL DAY FOUR. WHEN WE SIGNED THEM UP ON DAY ONE
16 AND SENT THEM OUT TO WORK THROUGH THE NORMAL
17 OPERATION OF OUR PAYROLL SYSTEM, WE EXPECTED THAT
18 PERSON TO BE COVERED, AND WE MADE A WEEKLY REPORT TO
19 COUNTRYWIDE REPORTING ANY -- YOU KNOW, EMPLOYEES
20 THAT WERE THERE, NEW EMPLOYEES. EMPLOYEES, I GUESS,
21 THAT HAD LEFT WE WOULD TAKE OFF, BUT THAT WAS A
22 NORMAL PROCEDURE, AND I THINK PART OF THAT IS
23 COVERED IN THE ADDENDUM.

24 Q. OKAY. SO, IT SOUNDS LIKE YOU ARE SAYING THAT
25 REPORTS AS TO THE CURRENT STAFFING WERE MADE TO

1 COUNTRYWIDE ON A WEEKLY BASIS?

2 A. THAT IS CORRECT.

3 Q. AND IF AN EMPLOYEE STARTED ON A MONDAY FOR EXAMPLE
4 AND THE REPORT DIDN'T GO OUT UNTIL FRIDAY, HE WOULD
5 BE WORKING FOUR DAYS WITHOUT HAVING BEEN REPORTED TO
6 COUNTRYWIDE?

7 A. HE COULD HAVE -- YEAH, TWO, THREE, FOUR DAYS BEFORE
8 THE NORMAL PAYROLL PROCESS WENT THROUGH.

9 Q. OKAY. IF AN INJURY OCCURRED DURING THAT PERIOD,
10 UNDER COUNTRYWIDE'S THEORY, THEY WOULDN'T BE COVERED
11 UNDER THIS AGREEMENT; IS THAT YOUR UNDERSTANDING?

12 BY MR. ALFORD:

13 OBJECTION. HE'S ASKING -- IT'S A CONFLATION OF
14 COUNTRYWIDE'S THEORY IN THAT QUESTION THAT MAKES THE
15 QUESTION MISLEADING IN A SENSE THAT HE'S MISSTATING
16 A POSITION TO GET A RESPONSE.

17 BY MR. GOODWYN:

18 THAT'S EXACTLY YOUR POSITION. YOU SAID
19 UNREPORTED ---

20 BY MR. ALFORD:

21 DON'T TALK TO ME. TALK TO HER, PLEASE.

22 BY COMMISSIONER JAMES:

23 YEAH.

24 BY MR. GOODWYN:

25 HE'S -- THAT'S EXACTLY HIS POSITION THAT HE HAS

1 STATED MULTIPLE TIMES, AN UNREPORTED WORKER IS NOT
2 COVERED. THAT'S WHAT HE SAID OVER AND OVER AND
3 OVER.

4 BY MR. ALFORD:

5 YOUR HONOR, I'M HAPPY TO CLARIFY THAT IF YOU
6 WANT TO EXCUSE THE WITNESS, I'D BE HAPPY TO CLARIFY
7 WHY THAT IS NOT MY POSITION.

8 BY COMMISSIONER JAMES:

9 I'M GOING TO -- BASED ON THAT AT THIS POINT, I
10 AM GOING TO DENY IT. I WILL ALLOW CLARIFICATION OF
11 THE POSITION AFTER -- AFTER THE WITNESS'S TESTIMONY.

12 BY MR. ALFORD:

13 YES, MA'AM. THANK YOU.

14 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. ALL RIGHT. IN THAT HYPOTHETICAL, WAS IT YOUR
16 UNDERSTANDING THAT THAT TYPE OF EMPLOYEE WHO STARTS
17 ON A MONDAY ---

18 A. RIGHT.

19 Q. --- BUT IS NOT REPORTED TO COUNTRYWIDE UNTIL FRIDAY
20 WOULD BE COVERED?

21 A. YES.

22 Q. OKAY. ALL RIGHT. LET'S TALK ABOUT -- LET'S TALK
23 ABOUT THE SITUATION WITH THE INDEPENDENT CONTRACTOR
24 NURSES THAT WOULD INCLUDE RACHEL TURNER. I BELIEVE
25 WE'VE ESTABLISHED AND YOU'VE TESTIFIED THAT HER

1 PAYROLL AND ALL THE NURSES IN HER CATEGORY'S PAYROLL
2 WERE NOT REPORTED TO COUNTRYWIDE?

3 A. CORRECT.

4 Q. AND THAT WAS BECAUSE THEY WERE CLASSIFIED AS
5 INDEPENDENT CONTRACTORS?

6 A. THEY WERE INDEPENDENT CONTRACTORS. THEY WERE NOT
7 EMPLOYEES.

8 Q. ALL RIGHT. IF SHE IS ULTIMATELY FOUND TO BE AN
9 EMPLOYEE, WOULD YOU EXPECT THIS CONTRACT TO COVER
10 HER?

11 A. YES. IF BY OPERATION OF LAW SHE IS FOUND TO BE AN
12 EMPLOYEE, WE WOULD EXPECT THAT THIS CONTRACT SHOULD
13 KICK IN BECAUSE IT'S NOW AN EMPLOYEE AS A MATTER OF
14 LAW.

15 Q. JUST AS IT WOULD WHEN YOU CONTRACTED DIRECTLY WITH
16 GUARANTEE?

17 BY MR. ALFORD:

18 OBJECTION TO THE FORM, AND HE'S LEADING, AND
19 HE'S ASKING FOR LEGAL CONCLUSIONS.

20 BY COMMISSIONER JAMES:

21 MR. GOODWYN.

22 BY MR. GOODWYN:

23 I'LL WITHDRAW THE QUESTION.

24 BY COMMISSIONER JAMES:

25 ALL RIGHT.

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. I'M GOING TO SHOW YOU THE ADDENDUM TO THE
COUNTRYWIDE SERVICE AGREEMENT THAT WE MARKED AS
TRIAL EXHIBIT THREE TO CONDUSTRIAL -- FOR
CONDUSTRIAL.

A. OKAY.

Q. WHAT -- GENERALLY, WHAT DOES THIS ADDENDUM ADDRESS,
WHAT AREAS?

A. I THINK THIS WAS A MEMORANDUM THAT WAS MEANT TO KIND
OF LAY OUT THE PAYROLL PROCEDURE AND SOME
ADMINISTRATIVE TYPE PAYROLL ISSUES SO THAT THERE
WOULD BE NO AMBIGUITY ABOUT HOW IT WAS SUPPOSED TO
GO.

Q. DOES IT ADDRESS NEW EMPLOYEES AND WHAT THE
PROCEDURES ARE FOR NEW EMPLOYEES?

A. I WOULD HAVE TO LOOK.

Q. TAKE A QUICK LOOK AT IT.

A. IT SAYS "EXISTING INFORMATION WILL BE PROVIDED,
FUTURE NEW HIRES WILL CONTINUE TO COMPLETE
CONDUSTRIAL EMPLOYMENT APPLICATIONS. NEW EMPLOYEES
WILL BE ENTERED DIRECTLY INTO THE C.W. SYSTEM
WEEKLY. WORK REQUESTED BY COUNTRYWIDE CONDUSTRIAL
WILL PROVIDE ALL NEW EMPLOYEES INFO TO C.W. IN
ELECTRONIC FORMAT THAT IS COMPATIBLE WITH
COUNTRYWIDE'S SOFTWARE REQUIREMENTS."

1 Q. ALL RIGHT. THAT'S FINE. I WANT TO -- IF THE
2 COMMISSION WERE TO FIND MS. TURNER TO BE AN
3 EMPLOYEE, COULD YOU NOT REPORT WHAT IS NOW A NEW
4 EMPLOYEE TO COUNTRYWIDE ---

5 A. YES.

6 Q. --- UNDER THIS AGREEMENT?

7 BY MR. ALFORD:

8 OBJECTION. THAT CALLS FOR A LEGAL CONCLUSION
9 BEYOND -- I MEAN ---

10 BY MR. GOODWYN:

11 WELL, LET ME ASK IT THIS WAY. I'LL WITHDRAW
12 THE QUESTION.

13 BY MR. ALFORD:

14 THANK YOU.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. WOULD YOU THEN REPORT HER AS A NEW EMPLOYEE TO
17 COUNTRYWIDE?

18 A. YES, BECAUSE SHE BY OPERATION OF LAW WAS FOUND TO BE
19 AN EMPLOYEE.

20 Q. OKAY. AND DO YOU THINK SHE SHOULD BE COVERED UNDER
21 THAT AGREEMENT ---

22 A. YES.

23 Q. --- IF SHE IS FOUND TO BE AN EMPLOYEE?

24 A. IF SHE IS FOUND TO BE AN EMPLOYEE, I ASSUME THAT
25 GOES BACK TO THE DATE OF HER HIRE, AND IF THAT'S

1 TRUE, THEN WE WOULD HAVE REPORTED HER UNDER THIS
2 PROGRAM FROM DAY ONE OF THE PROGRAM.

3 Q. ALL RIGHT. I'M GOING TO -- I'M REFERRING NOW TO
4 CONDUCTRIAL'S APA EXHIBITS STARTING AT PAGE ONE.
5 THIS IS THE RELIANT PAYROLL SOLUTIONS DOCUMENT. ARE
6 YOU FAMILIAR WITH THAT DOCUMENT?

7 BY MR. BEARD:

8 CAN YOU WAIT UNTIL WE ALL FIND THAT, PLEASE?

9 BY MR. GOODWYN:

10 SURE. JUST LET ME KNOW.

11 BY MS. FARTHING:

12 WHAT PAGE WAS THAT, JEFF?

13 BY MR. GOODWYN:

14 PAGE ONE.

15 BY MR. BEARD:

16 DID Y'ALL FIND IT?

17 BY MR. ALFORD:

18 YEAH, WE GOT IT.

19 BY MR. BEARD:

20 YEAH, WE'RE GOOD.

21 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

22 Q. ALL RIGHT. WHAT IS THIS DOCUMENT GENERALLY?

23 A. I MEAN, IT APPEARS IT'S AN INVOICE, A PAYROLL
24 INVOICE FOR THE PAY PERIOD ENDING 3/28/15. SO, IT
25 APPEARS TO BE THE INVOICE, THE FIRST INVOICE WE

1 RECEIVED FROM COUNTRYWIDE PURSUANT TO OUR
2 RELATIONSHIP.

3 Q. OKAY. AND IN LOOKING AT PAGES THREE AND FOUR, AT
4 THE BOTTOM OF PAGE THREE AND PAGE FOUR, ARE THESE
5 THE EMPLOYEE NURSES THAT YOU WERE REPORTING TO
6 COUNTRYWIDE?

7 A. I THINK THE S.C.8829, I BELIEVE SO.

8 Q. OKAY. AND THE NEXT PAGE, WHAT'S THE CODE ON THE
9 NEXT PAGE?

10 A. THE 8833.

11 Q. OKAY. ALL RIGHT. I DON'T THINK THERE'S ANY
12 DISPUTE, BUT JUST TO MAKE CLEAR, THIS -- IS THIS
13 EVIDENCE THAT COUNTRYWIDE -- OR CONDUSTRIAL WAS
14 REPORTING NURSES TO COUNTRYWIDE DURING THE TERM OF
15 THE AGREEMENT?

16 BY MS. RICHARDSON:

17 YOUR HONOR, I HAVE TO OBJECT. I DON'T THINK
18 MR. GOODWYN HAS ESTABLISHED THE RELEVANCE OF 8829
19 AND 8833 CLASS CODES TO THIS CASE. IT'S MY
20 UNDERSTANDING THAT CLAIMANT WAS A WORKER DELIVERED
21 ASSIGNED TO WORK IN A PRISON FACILITY, AND NOBODY --
22 AND IT'S MY UNDERSTANDING THAT THESE CLASS CODES DO
23 NOT APPLY TO THAT WORKER.

24 BY MR. ALFORD:

25 THAT'S CORRECT. YEAH, 8829 IS A CONVALESCENT

1 OR NURSING HOME.

2 BY MS. RICHARDSON:

3 AND 8833 APPLIES TO NURSES DELIVERED TO
4 HOSPITAL SETTINGS.

5 BY COMMISSIONER JAMES:

6 OKAY. AND Y'ALL ARE CERTAINLY WELCOME TO CROSS
7 EXAMINE AND PRESENT EVIDENCE ---

8 BY MR. ALFORD:

9 YES, MA'AM.

10 BY COMMISSIONER JAMES:

11 --- AS OPPOSED TO -- I DON'T BELIEVE THAT'S
12 ANYTHING I CAN TAKE ANY TYPE OF NOTICE FROM AS FAR
13 AS Y'ALL ACTUALLY TELLING ME.

14 BY MS. RICHARDSON:

15 WELL ---

16 BY COMMISSIONER JAMES:

17 I UNDERSTAND YOUR POSITION.

18 BY MS. RICHARDSON:

19 MR. GOODWYN HASN'T ESTABLISHED THAT THESE NURSE
20 CODES ARE IN FACT RELEVANT TO THIS CASE AT ALL. WE
21 ARE REALLY WASTING OUR TIME HEARING ABOUT THEM UNTIL
22 HE ESTABLISHES WHAT CLASS CODE MS. TURNER ACTUALLY
23 FELL UNDER BY SOME KIND OF EXPERT OPINION.

24 BY COMMISSIONER JAMES:

25 AND THERE ---

1 BY MS. RICHARDSON:

2 MR. SEARS HAS ALREADY TESTIFIED THAT HE DOESN'T
3 KNOW CLASS CODES.

4 BY THE WITNESS:

5 I DON'T THINK I SAID THAT.

6 BY COMMISSIONER JAMES:

7 WAIT, MR. SEARS.

8 BY MS. RICHARDSON:

9 WELL, YOU SAID THAT YOU JUST DON'T HAVE THE
10 AUTHORITY TO OPINE ABOUT THEM.

11 BY THE WITNESS:

12 I DIDN'T SAY THAT.

13 BY COMMISSIONER JAMES:

14 PLEASE ---

15 BY MR. GOODWYN:

16 I DON'T THINK THAT WAS HIS TESTIMONY.

17 BY MS. RICHARDSON:

18 SO, FOR HIM TO SAY THAT THE CLAIMANT WOULD FALL
19 UNDER THESE CLASS CODES WOULD BE COMPLETELY
20 PREJUDICIAL.

21 BY COMMISSIONER JAMES:

22 WELL, I THINK THAT'S A SUBJECT AS FAR AS CROSS
23 EXAMINATION, AND Y'ALL KNOW THE ISSUE AS FAR AS THE
24 COVERAGE AND THE CONTRACT, AND AGAIN, Y'ALL HAVE
25 LIVED IT AND MAY KNOW. AS OF THIS POINT IN TIME, I

1 CANNOT SAY THAT IT IS NOT RELEVANT.

2 BY MR. BEARD:

3 BUT IT'S LEGAL, AND HE'S MAKING A LEGAL OPINION
4 ABOUT A VERY ISSUE IN THIS VERY CASE.

5 BY COMMISSIONER JAMES:

6 AND Y'ALL ---

7 BY MR. BEARD:

8 HE CAN'T DO THAT.

9 BY COMMISSIONER JAMES:

10 AND YOU CAN CROSS EXAMINE AS TO THAT.

11 BY MR. BEARD:

12 BUT WE SHOULDN'T HAVE TO CROSS EXAMINE, BECAUSE
13 HE'S NOT LEGALLY ALLOWED TO DO THAT AS A WITNESS.
14 HE'S NOT THE EXPERT WITNESS WHO WOULD HAVE TO
15 PRESENT THAT EVIDENCE.

16 BY MS. RICHARDSON:

17 HE'S ALREADY TESTIFIED THAT HE DOES NOT KNOW -
18 UNDERSTAND CLASS CODES IN ORDER TO KNOW WHO BELONGS
19 WHERE. HE HAS ALREADY STATED THAT ON THE RECORD.

20 BY COMMISSIONER JAMES:

21 AND THE COMMISSION HAS HEARD THE TESTIMONY
22 ABOUT THE EARLIER AND THIS PARTICULAR STATEMENT.
23 SO, AGAIN, THE COMMISSION CAN WEIGH THE EVIDENCE.

24 BY MR. GOODWYN:

25 ALL RIGHT. I'M GOING TO SKIP AROUND A LITTLE

1 BIT HERE AND JUST KIND OF WORK THROUGH THESE
2 DOCUMENTS. THIS IS -- I'M GOING TO BE GOING THROUGH
3 MY APAs PRETTY MUCH NOW.

4 BY COMMISSIONER JAMES:

5 OKAY.

6 BY MR. GOODWYN:

7 I'M ON PAGE SIX AND SEVEN NOW. IT'S AN EMAIL.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. ARE YOU FAMILIAR WITH THIS EMAIL?

10 A. THIS IS AN EMAIL I SENT TO MATT HARPER ON SEPTEMBER
11 24, 2015.

12 Q. WHO IS MATT HARPER?

13 A. HE WAS AT THIS EMAIL ADDRESS. I DON'T REMEMBER HIS
14 SPECIFIC TITLE, BUT HE WAS ONE OF THE
15 REPRESENTATIVES AT S.C.D.C. THAT HAD CONTACTED OUR
16 COLUMBIA OFFICE AND ME. JUST "WE'VE HEARD FROM MS.
17 TURNER." YOU KNOW, OBVIOUSLY, HE WAS AWARE OF THE
18 HOSTAGE SITUATION. SO, HE JUST WANTED TO KNOW WHAT
19 WAS GOING ON.

20 Q. OKAY. AND WHAT IS THE SIGNIFICANCE OF THIS EMAIL IN
21 YOUR MIND?

22 A. LET ME READ IT, BECAUSE THERE WAS OBVIOUSLY MANY
23 DISCUSSIONS. I THINK -- I THINK THAT HE HAD -- IT
24 SAYS "THANK YOU FOR YOUR CONVERSATION." I THINK HE
25 HAD CALLED, AND I DON'T KNOW IF IT WAS MS. TURNER --

1 I DON'T KNOW WHO GAVE HIM THE INFORMATION, BUT HIS
2 INFORMATION WAS "WE'RE CONCERNED THAT YOU ARE NOT
3 DOING ANYTHING FOR MS. TURNER, OR THE RUMOR IS THAT
4 YOU'RE NOT DOING ANYTHING, AND WHAT'S -- WHAT'S THE
5 DEAL?"

6 Q. OKAY. WHAT DID YOU TELL HIM?

7 A. THE CONVERSATION IN OUR EMAIL WAS THAT "WE ARE VERY
8 MUCH DOING WHAT WE THINK WE CAN DO. WE ARE TRYING
9 TO HELP."

10 Q. OKAY. AND WHAT DID YOU TELL HIM YOU WERE DOING TO
11 HELP IN THE EMAIL?

12 A. I JUST -- I SAID, YOU KNOW, IT CONSISTED OF THE
13 LETTER WE SENT. "WE'VE OFFERED HER OTHER
14 ASSIGNMENTS AT LOW-KEY NURSING HOMES. WE'VE OFFERED
15 TO LET HER COME INTO OUR OFFICE TO ASSIST WITH
16 ADMINISTRATIVE DUTIES. SHE HAS TURNED THESE
17 ASSIGNMENTS DOWN. WE HAVE OFFERED TO WORK WITH HER
18 IN GETTING ANY BILLS PAID IF SHE WILL FORWARD THOSE
19 TO US, BUT SHE IS NOT SHARING THOSE WITH US."

20 Q. OKAY.

21 A. "SO, EVEN THOUGH SHE IS NOT AN EMPLOYEE, WE ARE
22 DOING EVERYTHING WE ARE ABLE TO DO FOR HER, AND WE
23 WILL CONTINUE TO KEEP AN OPEN DIALOGUE WITH HER AND
24 INVITE HER COOPERATION."

25 Q. ALL RIGHT. DO YOU KNOW IF MR. HARPER EVER CONVEYED

1 THE LIGHT-DUTY OFFER TO MS. TURNER?

2 A. I DON'T KNOW THAT.

3 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS MARKED IN
4 CONDUCTORIAL'S APAS, PAGES NINE THROUGH 15. IT'S AN
5 EMAIL CHAIN. I'M NOT SURE IT'S ALL THE SAME CHAIN.
6 WILL YOU TAKE A LOOK AT THAT AND LET ME KNOW IF IT
7 LOOKS LIKE IT'S ALL THE SAME CHAIN TO YOU, OR IS
8 THAT MULTIPLE CHAINS?

9 BY MR. BEARD:

10 COMMISSIONER, WE WOULD OBJECT UNLESS HE IS
11 GOING TO INTRODUCE THE ENTIRE EMAIL CHAIN. THAT'S
12 NOT WHERE IT STOPS. IT ACTUALLY STARTS AT PAGE 8.

13 BY MR. GOODWYN:

14 OKAY.

15 BY MR. BEARD:

16 THAT'S PART OF THE CHAIN.

17 BY MS. RICHARDSON:

18 YES.

19 BY MR. GOODWYN:

20 I APOLOGIZE. I WAS NOT TRYING TO -- NOT TRYING
21 TO SKIP A PART.

22 BY THE WITNESS:

23 OKAY, I'VE REVIEWED IT.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. DOES THAT APPEAR TO BE ONE EMAIL CHAIN?

1 A. YES.

2 Q. OKAY. AND ARE YOU A PARTY TO THE EMAIL CHAIN?

3 BY MR. ALFORD:

4 YOUR HONOR, I'M GOING TO OBJECT TO THE
5 RELEVANCE OF THESE DOCUMENTS. THEY PREDATE WAY MS.
6 TURNER'S INJURY. THEY HAVE NOTHING TO DO WITH ANY
7 RELATIONSHIP OR CLAIMS AGAINST GUARANTEE, AND
8 THEY'RE NOT RELEVANT TO THIS PROCEEDING.

9 BY COMMISSIONER JAMES:

10 AND THEY ARE ALREADY IN THE APAs PREVIOUSLY, SO
11 THEY'VE ALREADY BEEN ADMITTED INTO EVIDENCE.

12 BY MR. ALFORD:

13 OKAY.

14 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. ALL RIGHT. AND YOU ARE ONE OF THE PARTIES ON THIS
16 EMAIL CHAIN?

17 A. YES, I AM.

18 Q. ALL RIGHT. GENERALLY, WHAT IS THE DISCUSSION IN
19 THIS EMAIL CHAIN CONCERNING?

20 A. BASICALLY, THIS EMAIL CHAIN CONCERNS A CLAIM, I
21 THINK IN MY DEPOSITION I TESTIFIED IT WAS IN
22 GEORGIA, BUT I THINK I WAS IN GEORGIA WHEN I HAD THE
23 REVELATORY CONVERSATION WITH THE ADJUSTER THAT
24 PROBABLY THEY THOUGHT IT DIDN'T COVER US, BUT I
25 THINK IT WAS -- IT WAS A RELATIVELY MINOR BACK

1 INJURY, I WANT TO SAY IN THE UPSTATE OF SOUTH
2 CAROLINA, AND I TURNED IN THE CLAIM TO COUNTRYWIDE,
3 AND NORMALLY AFTER THE CLAIM IS TURNED IN, YOU KNOW,
4 I WOULD SAY "WHO IS THE ADJUSTER ASSIGNED? AND
5 DANIEL WOULD OFTEN TELL ME THE ADJUSTER ASSIGNED.
6 SO, I WOULD CONTACT THE ADJUSTER, AND THEY WOULD
7 CONTACT SAY -- IF DANIEL WANTED ME TO INCLUDE HER, I
8 INCLUDED HER. I'M LIKE, YOU KNOW, "TOM SEARS,
9 GENERAL COUNSEL. HERE'S THE ACCIDENT INVESTIGATION,
10 YOU KNOW, WHAT DO YOU NEED FROM ME? ANY FORM 20
11 INFORMATION, LET'S DISCUSS THE INVESTIGATION," BLAH,
12 BLAH, BLAH. SO, I DID THAT FOR THE INJURY IN
13 QUESTION, AND INITIALLY WHEN I CONTACTED THE
14 ADJUSTER, SHE SAID "WHO ARE YOU?"

15 BY MR. BEARD:

16 OBJECT TO WHAT THE ADJUSTER SAID.

17 BY THE WITNESS:

18 SHE DIDN'T KNOW ---

19 BY MR. BEARD:

20 BERKLEY IS NOT A PARTY TO THIS CASE.

21 BY MR. ALFORD:

22 AND IT'S HEARSAY.

23 BY MR. GOODWYN:

24 THAT'S FINE.

25 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. LET ME ASK YOU SOME QUESTIONS. LET ME JUST ASK YOU
2 THIS: IS THIS DURING THE PERIOD JUST BEFORE
3 GUARANTEE'S POLICY WAS -- WENT INTO EFFECT?

4 A. YES. I THINK THEIR POLICY WENT INTO EFFECT ON JUNE
5 30TH.

6 Q. OKAY. WAS THERE A PERIOD BEFORE THAT WHERE THERE
7 WAS NO COVERAGE?

8 BY MS. RICHARDSON:

9 OBJECTION, LEADING.

10 BY MR. ALFORD:

11 I OBJECT.

12 BY THE WITNESS:

13 IT'S ALREADY BEEN TESTIFIED TO.

14 BY MR. BEARD:

15 OBJECTION.

16 BY COMMISSIONER JAMES:

17 SUSTAINED.

18 BY MR. BEARD:

19 THANK YOU.

20 BY THE WITNESS:

21 ALL RIGHT.

22 BY MR. GOODWYN:

23 WHAT, THAT THAT WAS LEADING? IS THAT THE
24 OBJECTION?

25 BY MS. RICHARDSON:

1 YES.

2 BY MR. BEARD:

3 SHE HAS RULED.

4 BY COMMISSIONER JAMES:

5 THE QUESTION WASN'T WHETHER THERE WERE ANY
6 PERIODS. THE QUESTION IMPLIED THE ANSWER.

7 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

8 Q. ALL RIGHT. WERE THERE ANY PERIODS PRIOR TO
9 GUARANTEE'S COVERAGE AND AFTER YOU LEFT GUARANTEE
10 THE PREVIOUS TIME WHERE THERE WAS NO COVERAGE?

11 BY MS. RICHARDSON:

12 WAIT A SECOND.

13 BY MR. BEARD:

14 OBJECT TO LEADING, THAT'S THE EXACT SAME
15 QUESTION, JUST SORT OF SAID A DIFFERENT WAY.

16 BY MR. GOODWYN:

17 WELL, THAT'S THE WAY SHE TOLD ME TO SAY IT.

18 BY MS. RICHARDSON:

19 COMPOUND QUESTION, TOO.

20 BY MR. GOODWYN:

21 IT IS NOT LEADING.

22 BY MS. RICHARDSON:

23 IT'S COMPOUND.

24 BY MR. GOODWYN:

25 I'VE CORRECTED THAT.

1 BY MS. RICHARDSON:

2 IT'S COMPOUND.

3 BY MR. GOODWYN:

4 AND IT'S NOT COMPOUND. I HAVE TO SET THE TIME
5 PERIOD.

6 BY COMMISSIONER JAMES:

7 PLEASE, ADDRESS ME.

8 BY MR. GOODWYN:

9 IT'S NOT COMPOUND.

10 BY COMMISSIONER JAMES:

11 ALL RIGHT.

12 BY MR. GOODWYN:

13 IT'S NOT TWO QUESTIONS. I'M TRYING TO SET A
14 TIME PERIOD AND ASK HIM WERE THERE ANY GAPS OF
15 COVERAGE BETWEEN THE TIME THEY LEFT THE OLD COVERAGE
16 WITH GUARANTEE, WHICH WE'VE ALREADY ESTABLISHED AND
17 THE TIME GUARANTEE GOT BACK ON, WHICH WE'VE ALREADY
18 ESTABLISHED.

19 BY COMMISSIONER JAMES:

20 AND THAT QUESTION, YOU CAN ANSWER THE QUESTION,
21 SIR.

22 THE WITNESS ANSWERS:

23 A. THANK YOU. PART OF THIS EMAIL WAS, THE
24 INVESTIGATION OF THE CLAIM RAISED A QUESTION IN MY
25 MIND AS TO WHETHER WE WERE COVERED.

1 BY MR. BEARD:

2 COMMISSIONER, HE'S TELLING A STORY, NOT
3 ANSWERING THE QUESTION. PLEASE, WE OBJECT, AND WE
4 WOULD ASK THAT YOU PLEASE HAVE HIM ANSWER THE
5 QUESTION, NOT TELL A STORY.

6 BY MR. GOODWYN:

7 IF HE NEEDS TO GIVE SOME BACKGROUND TO GIVE A
8 FULL ANSWER, I THINK HE IS ENTITLED TO DO THAT.

9 BY COMMISSIONER JAMES:

10 HE CAN ANSWER THE QUESTION FIRST.

11 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

12 Q. WELL, YEAH, ANSWER THE QUESTION AND THEN EXPLAIN, I
13 THINK IS THE WAY YOU'RE SUPPOSED TO DO IT IF YOU
14 NEED TO.

15 BY COMMISSIONER JAMES:

16 HE NEEDS TO ANSWER THE QUESTION, AND THEN YOU
17 CAN ASK ANY FOLLOW-UP QUESTIONS.

18 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

19 Q. BUT I THINK THE QUESTION WAS THERE -- WERE THERE ANY
20 PERIODS WHERE THERE WAS NO COVERAGE?

21 A. YES.

22 Q. OKAY. AND AGAIN, AND THAT WAS DISCOVERED IN
23 INVESTIGATING THE CLAIM THAT THESE EMAILS REFER TO?

24 A. YES.

25 Q. WHEN THIS CLAIM AROSE, WHICH WAS A RELATIVELY MINOR

1 BACK CLAIM, AND I INVESTIGATED THE CLAIM, I BECAME
2 VERY CONCERNED THAT WE DID NOT HAVE COVERAGE, AND
3 OBVIOUSLY IF YOU'VE SEEN THE EMAILS, THAT'S NOT WHAT
4 IS IN OUR CONTRACT, AND I TOOK THAT TO COUNTRYWIDE
5 AND SAID "HEY, WHAT'S GOING ON HERE?"

6 Q. ALL RIGHT. LET ME ASK YOU SPECIFICALLY, I'M LOOKING
7 AT PAGE TEN NOW. IT'S AN EMAIL DATED JUNE 29TH. DO
8 YOU SEE THAT EMAIL? I GUESS IT'S THE ONLY EMAIL ON
9 THIS PAGE.

10 A. YES.

11 Q. ALL RIGHT. CAN YOU READ THE FIRST PARAGRAPH THERE?

12 A. YES, THIS IS THE EMAIL FROM ME TO SCOTT HANSON AND
13 TED BRYANT COPYING MR. DURHAM, ANDY SONGER AND
14 ALBERT HYNDSHAW.

15 Q. ALL RIGHT. AND JUST TO REMIND THE COMMISSION, SCOTT
16 HANSON AND TED BRYANT, ARE THEY WITH COUNTRYWIDE?

17 A. THEY ARE BOTH WITH COUNTRYWIDE. AT THE TIME, SCOTT
18 WAS THEIR PRESIDENT, AND MR. BRYANT WAS THERE
19 GENERAL COUNSEL.

20 Q. ALL RIGHT. CAN YOU READ THOSE FIRST THREE LINES
21 THERE FOR US?

22 A. "WE UNDERSTAND THAT THIS IS YOUR MASTER POLICY.
23 THAT HAS NEVER BEEN AN ISSUE, BUT NOT NAMING
24 CONDUSTRIAL IS A HUGE PROBLEM AND IS COMPLETELY
25 CONTRARY TO THE AGREEMENT THAT WE SIGNED AS CO-

1 EMPLOYERS."

2 Q. AND AGAIN, DURING THIS PERIOD, WAS IT STILL YOUR
3 BELIEF THAT YOU WERE CO-EMPLOYERS WITH COUNTRYWIDE?

4 A. YES.

5 Q. AND IS THAT BASICALLY WHAT YOU WERE TELLING HIM IN
6 THIS EMAIL?

7 A. I WAS TELLING HIM THAT APPARENTLY WHEN THE FILE --
8 THE CLAIM WAS FILED, COUNTRYWIDE WAS LISTED AS THE
9 ONLY EMPLOYER, AND CONDUSTRIAL WAS NOT LISTED ON THE
10 FORM 50. SO, THERE WAS CONCERN THAT -- WE HAD HAD
11 SOME ISSUES WITH TIMELY RESPONSES, AND THERE WAS A
12 CONCERN THAT WE WOULD GET DINGED IF WE DIDN'T GET
13 NOTICE. YOU KNOW, SO WE WANTED TO BE NAMED AND
14 ANYTHING THAT HAPPENED IN ANY COMP CASE TO COME TO
15 OUR ATTENTION AS WELL.

16 Q. ALL RIGHT. AND WAS IT YOUR UNDERSTANDING THAT AS
17 CO-EMPLOYERS THAT YOU SHOULD BE NAMED ON THESE
18 INSURANCE CONTRACTS?

19 A. WELL, DEFINITELY WE SHOULD -- IN OTHER WORDS, WE
20 SHOULD DEFINITELY BE NAMED ON ANY FILING WITH THE
21 COMMISSION, IN OTHER WORDS, ANY PLEADING, FORM 50,
22 BECAUSE WE ARE A CO-EMPLOYER. I DIDN'T NECESSARILY
23 THINK THAT WE WOULD BE ALLOWED TO BE NAMED ON A
24 MASTER POLICY.

25 Q. OKAY. ALL RIGHT. HOW WELL DO YOU KNOW RACHEL

1 TURNER?

2 A. NOT EXTREMELY WELL. I MEAN, MY INVOLVEMENT WITH HER
3 IS THE CONVERSATION EIGHT MONTHS BEFORE THE INJURY
4 AND THEN THE CONVERSATIONS AFTER THE INJURY.

5 Q. HAVE YOU SEEN HER A NUMBER OF TIMES DURING THIS
6 LITIGATION?

7 A. YES.

8 Q. HAVE YOU SPOKEN TO HER MULTIPLE TIMES EITHER ON THE
9 PHONE OR IN PERSON ---

10 A. I HAVE.

11 Q. --- SINCE THIS INCIDENT?

12 A. YES.

13 Q. ALL RIGHT. DO YOU THINK YOU HAVE A REASONABLE FEEL
14 FOR HER AND HER PERSONALITY?

15 BY MR. ALFORD:

16 OBJECTION.

17 BY THE WITNESS:

18 I SAW WHAT I SAW.

19 BY MR. SAMUELS:

20 YOUR HONOR, THERE'S AN OBJECTION.

21 BY MR. GOODWYN:

22 IS THERE -- I MEAN, HE ---

23 BY MR. ALFORD:

24 YOUR HONOR, I'LL WITHDRAW THE OBJECTION.

25 BY MR. SAMUELS:

1 I HAVE AN OBJECTION THAT THE ANSWER HE STARTED
2 WAS NOT A SIMPLE YES OR NO. THAT WAS NOT RESPONSIVE
3 TO THE QUESTION.

4 BY MR. GOODWYN:

5 WELL, LET ME REPHRASE IT. I'LL JUST WITHDRAW
6 THE QUESTION AND START WITH SOMETHING DIFFERENT,
7 JUST A DIFFERENT QUESTION. FAIR ENOUGH?

8 BY MR. SAMUELS:

9 FAIR ENOUGH.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. ALL RIGHT. DO YOU FEEL THAT YOU KNOW RACHEL TURNER
12 WELL ENOUGH TO KNOW WHETHER SHE'S EXAGGERATING OR
13 PUTTING ON HER ---

14 BY MR. SAMUELS:

15 YOUR HONOR, I OBJECT. I OBJECT. HE CANNOT
16 EXPRESS A PERSONAL OPINION ON THE CREDIBILITY OF A
17 WITNESS, AND IT IS IMPROPER FOR AN ATTORNEY AND A
18 VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT TO
19 VOUCH FOR OR MAKE AN OPINION ON THE CREDIBILITY OF A
20 WITNESS AND IT'S PITTING WITNESSES.

21 BY MR. GOODWYN:

22 I'M NOT VOUCHING FOR ANYBODY. I DON'T
23 APPRECIATE HIM ACCUSING ME OF VIOLATING THE RULES OF
24 PROFESSIONAL CONDUCT EITHER.

25 BY COMMISSIONER JAMES:

1 I DON'T THINK THAT'S WHAT MR. SAMUELS WAS
2 REFERRING TO. AM I CORRECT, MR. SAMUELS, THAT IT'S
3 -- ARE YOU REFERRING -- I DO NOT NEED TO GET INTO
4 THAT. FIRST OF ALL, HE SAID HE DIDN'T KNOW HER
5 WELL. SECOND OF ALL, I'M NOT GOING TO GET INTO
6 PITTING WITNESSES.

7 BY MR. GOODWYN:

8 OKAY, FAIR ENOUGH.

9 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

10 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS MARKED AS
11 PAGE 35 OF CONDUSTRIAL'S EXHIBITS AND APAs. DO YOU
12 RECOGNIZE THIS DOCUMENT?

13 A. IT APPEARS TO BE A PAYROLL DOCUMENT WITH SOME CODES
14 AND PAY VALUES.

15 Q. ALL RIGHT. DOES THAT LIST AMOUNTS THAT WOULD HAVE
16 BEEN REPORTED TO COUNTRYWIDE?

17 BY MR. ALFORD:

18 I'M SORRY, WHAT NUMBER ARE YOU ON?

19 BY MR. GOODWYN:

20 THIRTY-FIVE.

21 BY MR. ALFORD:

22 THIRTY-FIVE, THANK YOU.

23 THE WITNESS ANSWERS:

24 A. IF THESE WERE FOR EMPLOYEES, YES.

25 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. OKAY. AND WHAT'S THE DESCRIPTION OF THOSE TYPES OF
2 EMPLOYEES?

3 A. PROFESSIONAL HEALTHCARE AND NURSING HOME.

4 Q. OKAY. AND WHAT ARE THE CODES?

5 A. 8833 AND 8829.

6 Q. ALL RIGHT.

7 BY MS. RICHARDSON:

8 I JUST OBJECT ON RELEVANCE, TOO, AGAIN, WE ARE
9 TALKING ABOUT NURSES IN 8833 AND 8829 AGAIN, AND
10 NOBODY HAS ESTABLISHED THE RELEVANCE OF THESE CODES
11 IN THAT CASE.

12 BY MR. ALFORD:

13 THIS CASE.

14 BY COMMISSIONER JAMES:

15 AT THIS POINT IN TIME NOT KNOWING THE REST OF
16 THE ISSUES FROM ALL OF THE PARTIES, I'M GOING TO
17 ALLOW IT AT THIS POINT IN TIME.

18 BY MS. RICHARDSON:

19 OKAY. WELL, I JUST RESERVE THE RIGHT TO STRIKE
20 THIS TESTIMONY IF THERE IS NO FOUNDATION BASED --
21 LAID FOR IT.

22 BY COMMISSIONER JAMES:

23 ALL RIGHT. THANK YOU.

24 BY MR. SAMUELS:

25 YOUR HONOR, ALONG THAT LINE, AND THIS MAY BE

1 COMING IN THE NEXT QUESTION, BUT I WOULD ASK AS PART
2 OF THE FOUNDATION AS TO WHETHER THIS IS A DOCUMENT
3 THAT WAS CREATED EXPRESSLY FOR THIS LITIGATION, OR
4 IF THIS IS A DOCUMENT THAT WAS SOMEHOW SUBMITTED TO
5 COUNTRYWIDE OR GUARANTEE.

6 BY MR. GOODWYN:

7 I'LL ASK HIM.

8 BY COMMISSIONER JAMES:

9 I'M NOT SURE AS TO THE FOUNDATION. IT'S IN
10 EVIDENCE, BECAUSE IT'S ALREADY THERE, BUT AS FAR AS
11 THE DETERMINATION OF THE RELEVANCE AND THE
12 APPLICATION HERE, I DON'T KNOW WHAT THE TESTIMONY IS
13 WITH REGARDS TO THE PARTICULAR DOCUMENT, AND I
14 BELIEVE MR. SEARS SAID IF IT WAS FOR EMPLOYEES.

15 BY MR. GOODWYN:

16 OKAY.

17 BY COMMISSIONER JAMES:

18 SO I DON'T -- IF YOU CAN ESTABLISH HIS
19 KNOWLEDGE AND WHAT THE DOCUMENT PERTAINS TO.

20 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. IS THIS DOCUMENT, DOES IT REPRESENT AMOUNTS PAID TO
22 NURSING EMPLOYEES WITH COUNTRYWIDE?

23 A. CAN I SEE THE DOCUMENT AGAIN?

24 Q. YES.

25 A. IT LOOKS LIKE, LIKE I SAID, IT'S -- IT'S PAY DETAIL

1 FOR TWO COMP CODES LISTING REGULAR PAY, NOT
2 OVERTIME, AND THE TAX, W.C. TAXABLE.

3 Q. ALL RIGHT.

4 A. OKAY. THAT'S -- IN OTHER WORDS, IF THESE WERE
5 EMPLOYEES, THAT'S WHAT WOULD HAVE BEEN REPORTED TO
6 COUNTRYWIDE.

7 Q. I'M GOING TO SHOW YOU AN EMAIL, IT'S DOCUMENT 58 IN
8 COUNTRYWIDE'S APAs.

9 BY MR. BEARD:

10 WHOSE APAs?

11 BY MR. GOODWYN:

12 OURS.

13 BY MR. BEARD:

14 I THOUGHT YOU SAID COUNTRYWIDE?

15 BY MR. GOODWYN:

16 I DID. I'M SORRY. CONDUSTRIAL.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. ALL RIGHT. NOW, WHAT IS THE SUBJECT OF THIS EMAIL?
19 NOT THE SUBJECT LINE, BUT GENERALLY WHAT DOES THE
20 EMAIL CONCERN?

21 A. THIS WAS DATED JANUARY THE 5TH OF 2016. SO, THAT
22 WAS AFTER WE HAD TERMINATED THE RELATIONSHIP. I
23 BELIEVE -- IT SHOWS HERE THE ATTACHMENT IS
24 CONDUSTRIAL INVOICE. SO, I THINK THIS INCLUDED AN
25 INVOICE. BASICALLY, THEY WANTED TO CHARGE US AN

1 EARLY TERMINATION FEE, AND THEY CLAIM THAT THERE WAS
2 AN ADDITIONAL \$148,000 FOR PREMIUMS THAT THEY HAD
3 NOT COLLECTED OR THOUGHT WAS NOW DUE THAT WE WERE
4 LEAVING.

5 Q. OKAY. I THINK PAGES -- I THINK PAGE 59 IS THE
6 SECOND PAGE OF THAT EMAIL, AND ALL IT HAS IS A
7 SIGNATURE ON IT IF YOU WANT TO TAKE A LOOK AT THAT.
8 DOES THAT APPEAR TO BE CORRECT?

9 A. RIGHT, THAT'S THE SIGNATURE LINE OF TED BRYANT, THE
10 COUNTRYWIDE'S GENERAL COUNSEL.

11 Q. AND PAGE 60, WAS THAT THE INVOICE THAT WAS ATTACHED?

12 A. THAT IS THE INVOICE.

13 Q. OKAY. AND WHAT IS CONDUSTRIAL BEING INVOICED FOR?

14 A. THEY HAVE -- WITH THE "X" CODE -- THE ONE "X" CODE
15 AND THE TWO "F" CODES, THEY HAVE GONE BACK AND
16 ATTEMPTED TO CHARGE US FOR U.S.L. & H. COVERAGE.

17 Q. ALL RIGHT. WHICH IS WHAT?

18 A. WHICH IS FEDERAL WORKERS' COMPENSATION COVERAGE.

19 Q. OKAY.

20 A. WHICH WE NEVER OBTAINED FROM THEM. WE ARE -- WE
21 HAVE SEPARATE U.S.L. & H. COVERAGE IN A -- IN A --
22 OH, SHOOT -- A CAPTIVE, AND WE KNEW FROM BEING WITH
23 GUARANTEE DIRECTLY THAT GUARANTEE DIDN'T INSURE
24 U.S.L. & H. EXPOSURE. SO, WE QUESTIONED WHAT IS
25 THIS?

1 Q. OKAY. BUT COUNTRYWIDE WAS ATTEMPTING TO BACK CHARGE
2 YOU FOR SOMETHING?

3 A. THEY WERE.

4 BY MR. ALFORD:

5 YOUR HONOR, IS THERE ANY RELEVANCE TO THIS?

6 BY MR. GOODWYN:

7 YOUR HONOR, THE RELEVANCE IS OUR POSITION IN
8 THIS CASE IS THAT COUNTRYWIDE COULD HAVE ALWAYS DONE
9 AN AUDIT AND FILED -- ASSESSED AN AUDIT PREMIUM.
10 THIS JUST GOES TO SHOW THAT NOT ONLY COULD THEY BUT
11 THEY ACTUALLY DID IN CERTAIN CIRCUMSTANCES SEND THEM
12 AN INVOICE FOR OTHER AMOUNTS THAT THEY SAY THEY
13 OWED. IF THEIR CONTENTION IS NO, WE CANNOT DO THAT.
14 THAT'S NOT THE REMEDY. THE REMEDY IS THERE'S JUST
15 NO COVERAGE, OUR POSITION IS THE OPPOSITE. IT'S
16 THAT ---

17 BY MR. ALFORD:

18 YOUR HONOR, WE NEVER WOULD HAVE AUDITED AN
19 UNINSURABLE RISK THAT'S A 1099 EMPLOYEE. THERE'S NO
20 POINT. I MEAN, IT'S -- IT'S...

21 BY MR. GOODWYN:

22 AND THAT'S NOT TRUE EITHER.

23 BY COMMISSIONER JAMES:

24 WELL, ---

25 BY MR. GOODWYN:

1 YOU CAN AUDIT, AND YOU CAN CHARGE PREMIUMS IF
2 THEY THINK THERE'S A CHANCE THAT THESE PEOPLE COULD
3 BE NAMED EMPLOYEES LATER, THEY COULD AUDIT AND
4 CHARGE PREMIUMS.

5 BY MR. ALFORD:

6 NO, YOUR HONOR, WE ---

7 BY COMMISSIONER JAMES:

8 AND I'M SURE WHEN WE GET TO THAT POINT, WE WILL
9 HEAR ---

10 BY MR. ALFORD:

11 YES, MA'AM.

12 BY COMMISSIONER JAMES:

13 --- SOME TESTIMONY ON THIS. IT'S MY
14 UNDERSTANDING WHEN WE GET TO SOME OF THE COVERAGE
15 ISSUES THAT WE WILL HEAR TESTIMONY IN THAT REGARD.
16 THIS DOCUMENT IS ALREADY IN THE -- IT'S ALREADY IN
17 THE APAs.

18 BY MR. ALFORD:

19 YES, MA'AM.

20 BY COMMISSIONER JAMES:

21 SO, I HAVE TO ALLOW SOME TYPE OF EXPLANATION
22 WITH REGARDS TO THE DOCUMENT.

23 BY MR. GOODWYN:

24 AND JUST TO BE CLEAR, DID YOU WANT ME TO LIMIT
25 THIS EXAMINATION AND NOT ASK QUESTIONS ABOUT THOSE

1 TYPE OF COVERAGE ISSUES?

2 BY COMMISSIONER JAMES:

3 WE ARE ACTUALLY GOING TO TAKE A BREAK FOR LUNCH
4 RIGHT NOW, BECAUSE ONE OF THE ATTORNEYS HAS
5 SOMEWHERE THAT THEY HAVE TO BE.

6 (OFF THE RECORD)

7 BY COMMISSIONER JAMES:

8 WE ARE BACK ON RECORD, AND I BELIEVE THE LAST
9 TYPE OF QUESTION WAS SORT OF DIRECTED TO ME AS TO
10 WHETHER HE SHOULD GO AHEAD AND GET COVERAGE
11 QUESTIONS, AND JUST GO AHEAD AT THIS POINT AND ASK
12 ALL THE NECESSARY QUESTIONS OF THIS WITNESS.

13 BY MR. GOODWYN:

14 OKAY.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. ALL RIGHT, MR. SEARS, I'M GOING TO SHOW YOU A
17 DOCUMENT; IT'S PAGE 61 OF CONDUSTRIAL'S APAs. DO
18 YOU RECOGNIZE THIS LETTER?

19 A. YES.

20 Q. WHAT IS THIS LETTER?

21 A. IT'S A LETTER FROM COUNTRYWIDE'S GENERAL COUNSEL TO
22 A SENIOR VICE PRESIDENT COUNSEL FOR GUARANTEE DATED
23 NOVEMBER 13, 2015.

24 Q. ALL RIGHT. THIS IS A SHORT LETTER. CAN YOU JUST
25 READ THE FIRST TWO PARAGRAPHS, NOT THE "CONTACT ME

1 DIRECTLY" LINE.

2 A. OKAY.

3 BY MS. RICHARDSON:

4 I ---

5 BY THE WITNESS:

6 IT'S IN THE APA, RIGHT?

7 BY COMMISSIONER JAMES:

8 OKAY, MR. SEARS, I'M GOING TO ASK YOU, YOU
9 KNOW, LET THE LAWYERS TALK.

10 BY MS. RICHARDSON:

11 IS MR. SEARS GOING TO TESTIFY -- YOUR HONOR,
12 I'M JUST WONDERING WHAT KIND OF TESTIMONY MR.
13 GOODWIN INTENDS TO ELICIT ABOUT THIS LETTER BECAUSE
14 HIS CLIENT IS NOT A PARTY TO IT. OH, HE'S CC'D ON
15 HERE. EXCUSE ME. OKAY. GO AHEAD.

16 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

17 Q. I'M SORRY, I HAD ASKED YOU TO READ THE FIRST TWO
18 PARAGRAPHS OF THE LETTER.

19 A. OKAY. "DEAR ERIC, I AM WRITING ABOUT OUR CLIENT
20 CONDUSTRIAL, INC. THIS COMPANY HAS BEEN A CLIENT OF
21 COUNTRYWIDE H.R. SINCE MARCH OF 2015 AND REMAINS --
22 REMAIN A CLIENT. I CAN ALSO WRITE THEY ARE ONE OF
23 OUR PREFERRED CLIENTS. AS YOU KNOW, COUNTRYWIDE
24 H.R. AND ITS FAMILY OF COMPANIES PROVIDE HUMAN
25 RESOURCE OUTSOURCING," QUOTE, "H.R.O.," END QUOTE,

1 SERVICES. OUR H.R.O. BUSINESS MODEL CALLS FOR US TO
2 HANDLE MANY ASPECTS OF OUR CLIENT'S BUSINESS
3 OPERATIONS INCLUDING IN THIS MATTER THEIR INSURANCE
4 PROGRAM. THIS ALSO ENCOMPASSES THE WORKERS'
5 COMPENSATION INSURANCE OF THE COMPANY'S EMPLOYEES.
6 THUS, CONDUSTRIAL IS UNDER OUR UMBRELLA AND ENJOYS
7 COVERAGES UNDER OUR WORKERS' COMPENSATION INSURANCE
8 POLICY WITH SEVERAL OF OUR RETAINED CARRIERS
9 INCLUDING GUARANTEE INSURANCE COMPANY."

10 Q. OKAY. I BELIEVE YOU TESTIFIED EARLIER THAT YOU
11 THOUGHT YOU WERE -- COUNTRYWIDE WAS ACTING AS A
12 P.E.O.?

13 A. YES.

14 Q. HAVE YOU EVER HEARD THE TERM "H.R.O." THAT IS
15 REFERENCED IN THAT LETTER?

16 A. UNTIL I SAW THAT LETTER, I HAD NOT HEARD THAT TERM
17 BEFORE.

18 Q. HAVE YOU EVER HEARD THE TERM A.S.O. OR
19 ADMINISTRATIVE SERVICES ORGANIZATION?

20 A. I HAVE HEARD THAT TERM.

21 Q. YOU UNDERSTAND THE DIFFERENCE BETWEEN AN A.S.O. AND
22 A P.E.O.?

23 A. YES.

24 Q. AND AGAIN, THE TERM H.R.O., IS THAT ANYTHING THAT'S
25 ---

1 A. I'M NOT AWARE OF THAT IN THE SPECTRUM. I HAVE NOT -
2 - I HAVE NOT HEARD OF THAT TERM IN DEALING WITH
3 COUNTRYWIDE BEFORE THAT LETTER.

4 Q. ALL RIGHT. HAVE YOU EVER HEARD OF THAT TERM DEALING
5 WITH ANY COMPANY THAT PERFORMS EMPLOYMENT SERVICES?

6 A. NOT FOR US.

7 Q. ALL RIGHT. IN THIS SENTENCE HERE STARTING AT THE
8 END OF THE THIRD LINE OF THE SECOND PARAGRAPH, "THIS
9 ALSO ENCOMPASSES THE WORKERS' COMPENSATION INSURANCE
10 OF THE COMPANY'S EMPLOYEES."

11 A. YES.

12 Q. IF MS. TURNER IS FOUND TO BE AN EMPLOYEE, WOULD YOU
13 EXPECT THERE TO BE COVERAGE BASED ON THIS COVERAGE
14 LETTER?

15 BY MR. ALFORD:

16 OBJECTION.

17 THE WITNESS ANSWERS:

18 A. YES.

19 BY MR. GOODWYN:

20 WHAT IS THE OBJECTION?

21 BY MR. ALFORD:

22 THE OBJECTION IS YOU ARE ASKING HIM ESSENTIALLY
23 FOR A LEGAL CONCLUSION ABOUT THE OUTCOME OF THE
24 CONTRACT.

25 BY MR. GOODWYN:

1 I'M ASKING -- I'M NOT ASKING FOR A LEGAL
2 CONCLUSION. I'M ASKING WHAT WOULD HE EXPECT BASED
3 ON THE COVERAGE LETTER, OR MAYBE I COULD REPHRASE IT
4 AND ASK HIM ---

5 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. DID YOU RELY ON THE PART ON THIS LETTER?

7 A. I RELIED ON THIS LETTER. EVEN WITH MY
8 ADMINISTRATIVE HAT, I WOULD EXPECT THIS LETTER TO
9 MEAN FOR MY COMPANY THAT WE -- THAT SHE -- WE WOULD
10 HAVE WORKERS' COMPENSATION INSURANCE.

11 BY MS. RICHARDSON:

12 OBJECTION, YOUR HONOR.

13 BY MR. ALFORD:

14 IT'S NON-RESPONSIBLE, YOUR HONOR.

15 BY MS. RICHARDSON:

16 HE CAN'T TESTIFY THAT HE RELIED ON THIS LETTER
17 WHEN IT'S DATED AFTER THE DATE OF ACCIDENT.

18 BY COMMISSIONER JAMES:

19 ALL RIGHT. AND CERTAINLY, WE CAN -- THAT CAN
20 BE BROUGHT OUT IN CROSS EXAMINATION, AND OF COURSE,
21 THE COMMISSION IS AWARE OF THE DOCUMENT.

22 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

23 Q. I DID WANT TO ASK YOU SOME FOLLOW-UP QUESTIONS ABOUT
24 THE CERTIFICATES OF INSURANCE THAT WE DISCUSSED
25 EARLIER. THERE WERE SOME OF THESE, AND THEN THE

1 STACK THAT I MARKED.

2 BY MS. FARTHING:

3 WHAT ARE YOU LOOKING AT NOW? I'M SORRY.

4 BY MR. GOODWYN:

5 BACK TO THAT STACK OF CERTIFICATES OF
6 INSURANCE. THAT'S TRIAL EXHIBIT FOUR OF
7 CONDUSTRIAL.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. WHERE DID YOU GET THESE CERTIFICATES OF INSURANCE?

10 A. THESE WOULD HAVE COME BY EMAIL, LIKE I SAID, EITHER
11 DANIEL RIVERO OR SEARCH@COUNTRYWIDEHR.COM WAS HOW
12 THEY WERE DELIVERED TO ME.

13 Q. ALL RIGHT. EACH OF THEM REFERENCES THAT
14 COUNTRYWIDE'S -- I THINK THE WAY IT'S WORDED IS
15 "LEASED EMPLOYEES" ---

16 A. YES.

17 Q. --- ARE COVERED?

18 A. YES.

19 Q. ALL RIGHT. DO YOU HAVE ANY IDEA WHY COUNTRYWIDE
20 WOULD HAVE REFERRED TO CONDUSTRIAL'S EMPLOYEES AS
21 LEASED EMPLOYEES?

22 A. I MEAN, MY EXPERIENCE IS THAT'S COMMON TERMINOLOGY
23 IN A P.E.O. TYPE RELATIONSHIP WHERE THE EMPLOYEES
24 ARE LEASED BETWEEN THE COMPANIES.

25 Q. OKAY. LET'S TAKE A LOOK AT THE COUNTRYWIDE SERVICE

1 AGREEMENT ONCE AGAIN. LET'S SEE IF WE CAN FIND
2 THAT. THIS IS IT. OKAY, THIS IS TRIAL EXHIBIT TWO
3 OF CONDUSTRIAL. I'M GOING TO ASK YOU TO LOOK AT
4 PARAGRAPH SIX. ALL RIGHT. PARAGRAPH SIX, HAVE YOU
5 -- I'LL GIVE YOU A SECOND TO READ IT.

6 A. OKAY.

7 Q. DOES THAT PARAGRAPH -- IS THAT BASICALLY A RIGHT TO
8 AUDIT ---

9 A. YES.

10 Q. --- PARAGRAPH AND ---

11 A. IT GIVES THEM THE RIGHT TO INSPECT THE PREMISES UPON
12 ANY REASONABLE NOTICE, THE RIGHT TO CEASE PROVIDING
13 RECRUIT EMPLOYEES TO A THIRD PARTY BASED ON CERTAIN
14 CRITERIA IN THEIR OPINION. THEY HAVE THE RIGHT TO
15 REFRAIN FROM PROVIDING RECRUIT EMPLOYEES UNDER
16 CERTAIN CRITERIA.

17 Q. DID COUNTRYWIDE EVER CONDUCT AN AUDIT?

18 A. NOT TO -- NOT TO ANY OF OUR WORK SITES, NOT TO ANY
19 OF MY KNOWLEDGE.

20 Q. OKAY. I KNOW YOU'VE TESTIFIED THAT DURING THE
21 NEGOTIATION PROCESS OF THE CONTRACT THAT COUNTRYWIDE
22 WAS TOLD THAT THERE WERE 1099 NURSES?

23 A. YES.

24 Q. WAS THERE EVER ANY FOLLOW-UP QUESTIONS AFTER THE
25 AGREEMENT WAS IN PLACE AS TO THE EXISTENCE OF ANY

1 1099 NURSES OR 1099 EMPLOYEES AT ALL?

2 A. NOT TO MY KNOWLEDGE.

3 Q. OKAY. ALL RIGHT. THANK YOU. I'LL JUST LEAVE IT UP
4 HERE.

5 A. OKAY.

6 Q. I WOULD LIKE TO ASK YOU SOME QUESTIONS ABOUT WHAT'S
7 BEEN MARKED AS PAGES 568 THROUGH 591 IN GUARANTEE'S
8 APAs.

9 BY MS. FARTHING:

10 IN THE INITIAL GROUP OR THE RECENT GROUP?

11 BY MR. GOODWYN:

12 RECENT GROUP.

13 BY MS. RICHARDSON:

14 FIVE-NINETY-ONE?

15 BY MR. GOODWYN:

16 FIVE-SIXTY-EIGHT THROUGH 591. IT'S THE AUDIT
17 INFORMATION SUMMARY.

18 BY MR. BEARD:

19 TAB 26.

20 BY MS. RICHARDSON:

21 THIS IS NOT IN EVIDENCE YET, RIGHT? I'M GOING
22 TO OBJECT TO ---

23 BY MR. GOODWYN:

24 THIS IS THE NEW GROUP THAT HASN'T BEEN ADMITTED
25 YET.

1 BY COMMISSIONER JAMES:

2 OH, OKAY.

3 BY MR. GOODWYN:

4 AND I CAN RECALL HIM LATER, BUT...

5 BY COMMISSIONER JAMES:

6 THIS IS THE OLD. IT'S 568. IT'S ENTITLED
7 "AUDIT INFORMATION AND SUMMARY."

8 BY MS. RICHARDSON:

9 BUT HE'S USING IT OUT OF -- HE MAY HAVE
10 SUBMITTED A DIFFERENT COPY.

11 BY MR. GOODWYN:

12 OH, IF IT'S IN THE -- IF IT'S IN A PRIOR
13 VERSION THAT'S ALREADY IN, I MEAN, THAT'S A
14 DIFFERENT STORY.

15 BY MS. RICHARDSON:

16 I JUST -- WE NEED TO USE MR. HARBISON'S RATHER
17 THAN ---

18 BY MR. GOODWYN:

19 OKAY.

20 BY MS. RICHARDSON:

21 WHATEVER HE SUBMITTED. I DON'T KNOW -- I DON'T
22 KNOW IF MY COPY DIFFERS FROM MR. HARBISON'S OR NOT.

23 BY COMMISSIONER JAMES:

24 I GOT THE NUMBER FROM WHAT YOU CALLED OUT.

25 BY MR. GOODWYN:

1 YEAH, THEN THIS IS IT.

2 BY MS. RICHARDSON:

3 YOU HAVE MR. HARBISON'S COPY.

4 BY MR. GOODWYN:

5 WELL, THIS IS THE COPY YOU SUBMITTED, BUT I
6 THINK YOU SAID YOU JUST COPIED HIS COPY, RIGHT?

7 BY MS. RICHARDSON:

8 NO, I'M NOT SURE IF I DID OR NOT.

9 BY MS. FARTHING:

10 IT IS ALSO IN THE RECENT. IT STARTS AT 568.

11 BY MS. RICHARDSON:

12 THE NUMBERS ARE EXACTLY THE SAME?

13 BY MS. FARTHING:

14 YEAH, ALL OF IT STARTS AT THE SAME NUMBER.

15 BY MS. RICHARDSON:

16 OKAY, ALL RIGHT, GOOD. SO, IT ENDS AT ---

17 BY MR. GOODWYN:

18 YEAH, IT APPEARS TO BE THE SAME DOCUMENT.

19 BY MS. RICHARDSON:

20 YEAH, IT GOES TO 591 AS WELL.

21 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

22 Q. ALL RIGHT. IF YOU COULD, JUST FAMILIARIZE YOURSELF
23 WITH THE DOCUMENT.

24 A. (WITNESS REVIEWS DOCUMENT) OKAY, I'VE LOOKED AT IT.

25 Q. ALL RIGHT. GENERALLY, WAS THIS -- WHO IS THE -- WHO

1 IS THE INSURANCE PERFORMING THE AUDIT FOR THIS AUDIT
2 SUMMARY?

3 A. IT LOOKS LIKE GUARANTEE INSURANCE COMPANY.

4 Q. WHO ARE THEY AUDITING?

5 A. WORLDWIDE STAFFING, INC., COUNTRYWIDE STAFFING
6 SOLUTIONS GROUP AND COUNTRYWIDE P.E.O.

7 Q. ALL RIGHT. AND COUNTRYWIDE STAFFING SOLUTIONS
8 GROUP, THAT'S THE COMPANY YOU HAD -- OR CONDUSTRIAL
9 HAD THE AGREEMENT WITH, CORRECT?

10 A. CORRECT.

11 Q. ALL RIGHT. ON THE FINAL PAGE, 591, CAN YOU READ THE
12 ---

13 BY MS. RICHARDSON:

14 OBJECTION, YOUR HONOR.

15 BY MR. GOODWYN:

16 I HAVEN'T EVEN ASKED A QUESTION YET.

17 BY MS. RICHARDSON:

18 BUT MR. GOODWYN IS ALLEGING THAT THIS IS A
19 FINAL PAGE. MR. SEARS IS NOT THE AUTHOR OF THIS
20 DOCUMENT. HE DOES NOT KNOW WHETHER OR NOT THIS -- I
21 MEAN, THIS ---

22 BY MR. GOODWYN:

23 IT'S THE FINAL PAGE OF THE EXHIBIT.

24 BY MS. RICHARDSON:

25 OF THE EXHIBIT.

1 BY MR. GOODWYN:

2 I DIDN'T GET THE WORDS OUT BEFORE YOU OBJECTED.

3 BY MS. RICHARDSON:

4 BUT YOU SAID THIS IS THE FINAL PAGE OF THIS
5 DOCUMENT SUGGESTED THAT IT COULD BE THE FINAL PAGE
6 OF THE AUDIT AND ---

7 BY MR. GOODWYN:

8 CAN I GET THE QUESTION OUT BEFORE SHE MAKES HER
9 OBJECTION.

10 BY MR. BEARD:

11 COMMISSIONER, HE'S GOT TO -- YOU'VE GOT TO STOP
12 HIM FROM INTERRUPTING EVERY TIME WE TALK.

13 BY MR. GOODWYN:

14 SHE JUST INTERRUPTED ME IN THE MIDDLE OF MY
15 QUESTION.

16 BY MR. BEARD:

17 SHE OBJECTED TO A QUESTION.

18 BY COMMISSIONER JAMES:

19 MR. GOODWYN. MR. BEARD.

20 BY MR. GOODWYN:

21 BUT I HAD NOT FINISHED.

22 BY COMMISSIONER JAMES:

23 MR. GOODWYN. ADDRESS THE COMMISSIONER.

24 BY MR. GOODWYN:

25 I'M SORRY. THEY KEEP INTERRUPTING ME, BUT

1 ACCUSING ME OF INTERRUPTING.

2 BY COMMISSIONER JAMES:

3 I WOULD LIKE TO PROCEED WITH WHERE WE ARE
4 GOING. IF YOU ARE REFERRING TO IT'S THE LAST PAGE
5 OF THE DOCUMENT IN THE EXHIBITS OR UNDER TAB 26,
6 THEN FOR IDENTIFICATION PURPOSES, THEN LET'S PROCEED
7 WITH THE QUESTIONS.

8 BY MR. GOODWYN:

9 ALL RIGHT.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. ON THE LAST PAGE OF THE EXHIBIT, COULD YOU PLEASE
12 READ UNDER THIS COUNTRYWIDE STAFFING SOLUTIONS GROUP
13 SECTION, THE FIRST SENTENCE THERE?

14 A. "THERE WERE LARGE VARIANCES BETWEEN THE PAYROLL
15 REPORTS AND THE SUTA REPORTS, GROSS WAGES BY STATE
16 FOR C.S.S.G." THAT'S THE END OF THE FIRST SENTENCE.

17 Q. OKAY. ALL RIGHT. HAD YOU NOTICED ANY ISSUES WITH
18 YOUR -- AND JUST FOR THE COMMISSION'S SAKE, I'M SURE
19 SHE IS AWARE, BUT SUTA IS WHAT?

20 A. THE STATE UNEMPLOYMENT TAX.

21 Q. OKAY. HAD YOU NOTICED ANY ISSUES WITH CONDUSTRIAL -
22 - BETWEEN CONDUSTRIAL AND COUNTRYWIDE RELATED TO
23 THEIR REPORTING OF THE SUTA TAXES?

24 A. WE HAD BEEN -- WE HAD SOME CONCERNS ABOUT ACCURATELY
25 REPORTING THEM. SO, I THINK OUR ACCOUNTING FOLKS

1 HAD HAD TO TALK TO THEIR ACCOUNTING FOLKS ABOUT
2 FIXING SOME VARIANCES.

3 Q. ALL RIGHT. AND THE LAST TWO LINES UNDER THE CLIENT
4 REVIEW SECTION, CAN YOU READ THE FIRST ONE FOR US,
5 THE FIRST OF THE LAST TWO LINES?

6 A. "SEVENTY-SEVEN CLAIMS NEED THE CODE CORRECTED TO
7 AGREE WITH THE EMPLOYEE'S PAYROLL CODE."

8 Q. ALL RIGHT. AND IN YOUR EXPERIENCE, IS IT UNCOMMON
9 THAT EMPLOYEES ARE MIS-CODED SOMETIMES?

10 BY MR. BEARD:

11 COMMISSIONER, OBJECT TO LEADING THE WITNESS.

12 BY COMMISSIONER JAMES:

13 SUSTAINED.

14 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. HAVE YOU HAD ANY EXPERIENCE WITH THE MISCODING OF
16 EMPLOYEES IN THE PAST?

17 A. FROM TIME TO TIME WHEN WE GET -- WHEN WE WORK WITH A
18 CLIENT AND THEY SUGGEST A CODE OR WE WORK WITH A
19 DIFFERENT CARRIER, THEY SUGGEST "WE DON'T AGREE WITH
20 THAT CODE WITH YOUR OLD CARRIER. WE THINK IT SHOULD
21 BE THIS NEW CODE." SO, SOMETIMES THERE IS SOME
22 DISCUSSION ABOUT THE CODES THAT SHOULD BE USED.

23 Q. AND DOES THAT MEAN THE EMPLOYEE IS NOT COVERED?

24 A. NO.

25 Q. YOU JUST RECODE THEM?

1 A. YES.

2 Q. AND IF THE NEW CODE REQUIRES A HIGHER PREMIUM, WHAT
3 HAPPENS THEN?

4 A. THEY CHARGE US THE DIFFERENCE.

5 Q. OKAY. IS THERE EVER A QUESTION ABOUT COVERAGE OR
6 NON-COVERAGE?

7 A. NO.

8 Q. ALL RIGHT. AND THE LAST -- THE LAST LINE OF THIS
9 AUDIT REPORT?

10 A. "TWENTY-ONE CLAIMANTS COULD NOT BE IDENTIFIED IN THE
11 PAYROLL RECORDS PROVIDED BY THE AUDIT. SEE SEPARATE
12 CLAIMS FILE."

13 Q. OKAY. AND, AGAIN, IF SOMEONE IS NOT IN THE PAYROLL
14 RECORDS, DOES THAT MEAN THEY'RE NOT COVERED FROM
15 YOUR EXPERIENCE?

16 A. NO.

17 Q. WHAT'S -- WHAT'S THE PROCESS FOR HANDLING SOMEBODY
18 NOT IN THE RECORDS?

19 A. IF THEY'RE NOT IN THE RECORDS, YOU DO AN AUDIT, AND
20 IF YOU FIND THE PAYROLL OR CHANGE THE CODE ---

21 BY MS. RICHARDSON:

22 OBJECTION, YOUR HONOR. IS MR. SEARS THE
23 INSURER HERE?

24 BY THE WITNESS:

25 NO.

1 BY MS. RICHARDSON:

2 I'M JUST REALLY CONFUSED.

3 BY MR. GOODWYN:

4 I'M ASKING ---

5 BY MS. RICHARDSON:

6 I THOUGHT HE -- HE'S NOT EVEN AN INSURED, AND
7 HE IS NOW TESTIFYING WHAT AN INSURER'S PRACTICES
8 ARE. I DON'T UNDERSTAND WHAT HIS AUTHORITY IS FOR
9 THAT KIND OF TESTIMONY.

10 BY MR. GOODWYN:

11 HE HAS VAST EXPERIENCE IN H.R. HANDLING
12 WORKERS' COMP ISSUES AND TESTIFYING FROM HIS
13 EXPERIENCE WHEN SOMEBODY IS NOT -- WHEN THE CLAIMANT
14 IS NOT IDENTIFIED ON THE PAYROLL RECORDS, ---

15 BY MS. RICHARDSON:

16 I DON'T --

17 BY MR. GOODWYN:

18 --- WHAT IS HIS EXPERIENCE WITH THE PROCEDURE?

19 BY COMMISSIONER JAMES:

20 WELL, IF YOU CAN ESTABLISH THE FOUNDATION FOR
21 THIS PARTICULAR ISSUE.

22 BY MR. GOODWYN:

23 ALL RIGHT.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. I ASK YOU, AGAIN, WHAT IS YOUR EXPERIENCE IN H.R.?

1 A. I'VE BEEN IN-HOUSE WITH TWO COMPANIES FOR 12 YEARS.
2 I'VE SAT THROUGH A DOZEN AUDITS WHERE I'VE GONE
3 THROUGH THIS EXACT PROCESS. I'VE MET WITH AUDITORS
4 THAT COME ONSITE, AND WE REVIEW CODES AND PAYROLL,
5 AND SAY "I THINK THIS IS RIGHT. I THINK THIS IS
6 WRONG. YOU MISSED THIS. YOU DIDN'T MISS THIS."
7 I'VE DONE IT FOR 12 YEARS.

8 Q. ALL RIGHT.

9 BY MS. RICHARDSON:

10 YOUR HONOR, I WOULD -- I WOULD CONTINUE TO
11 OBJECT. MR. SEARS, FIRST OF ALL, THE ACTUAL
12 INSURANCE POLICY THAT MR. SEARS ALLEGEDLY THINKS
13 THIS AUDIT MAY OR MAY NOT -- THEY HAVEN'T EVEN
14 ESTABLISHED WHAT AUDIT -- WHAT INSURANCE POLICY THIS
15 AUDIT RELATES TO. THE INSURANCE POLICY ITSELF IS
16 NOT EVEN IN EVIDENCE YET, AND NOW HE IS GOING TO
17 OPINE ABOUT I DON'T KNOW WHAT, BUT HE -- HE
18 ABSOLUTELY -- MR. GOODWYN WOULD NEED TO ESTABLISH
19 HIM AS AN EXPERT TO -- TO -- HE NEEDS THE AUDITOR IN
20 HERE TO DISCUSS THE MEANING OF THE AUDIT REPORT.

21 BY MR. GOODWYN:

22 NOW, THIS IS A DOCUMENT THAT GUARANTEE
23 SUBMITTED.

24 BY MS. RICHARDSON:

25 AND WE'RE -- AND WE CAN BRING IT INTO EVIDENCE

1 BECAUSE WE CAN BRING ALONG THE PEOPLE THAT HAVE THE
2 AUTHORITY TO ADDRESS THIS ISSUE, AS YOU COULD HAVE
3 CALLED THEM FOR A WITNESS, TOO, BUT MR. SEARS IS NOT
4 THE APPROPRIATE WITNESS TO BE OPINING ABOUT WHAT THE
5 MEANING OF GUARANTEE'S INSURANCE COMPANY'S AUDIT IS
6 AND A POLICY THAT -- OVER A POLICY THAT'S NOT EVEN
7 INTO EVIDENCE IN THIS CASE YET.

8 **BY COMMISSIONER JAMES:**

9 I AM GOING TO ALLOW HIM TO TESTIFY TO HIS OWN
10 KNOWLEDGE FROM BEING IN HIS POSITION AS GENERAL
11 COUNSEL WHEREAS WHETHER THAT -- HOW FAR THAT
12 KNOWLEDGE GOES OR WHETHER IT APPLIES TO THIS
13 PARTICULAR SITUATION IS FOR OTHER QUESTIONS. ALL
14 RIGHT, YOU CAN GO AHEAD.

15 **DIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

16 Q. GO AHEAD AND ANSWER THE QUESTION.

17 A. CAN YOU REPEAT THE QUESTION, PLEASE?

18 Q. FROM YOUR EXPERIENCE, IF YOU ENCOUNTER THIS TYPE OF
19 AN AUDIT WHERE CLAIMANTS ARE NOT IDENTIFIED IN THE
20 PAYROLL RECORDS, WHAT IS THE PROCEDURE FOR REMEDYING
21 THAT?

22 A. NORMALLY, WE -- LIKE I SAID, AN AUDITOR COMES OUT.
23 WE DISCUSS IT OR BY EMAIL OR CONVERSATION OR HOWEVER
24 IT HAPPENS AND REVIEW THE DOCUMENTS, AND IF IT WAS
25 ONE THAT WAS NOT INCLUDED, IT IS ADDED, AND THE

1 PREMIUM AUDIT IS ADJUSTED. IF THERE IS A
2 CLASSIFICATION PROBLEM, YOU DISCUSS THAT AND
3 HOPEFULLY RESOLVE IT, BUT, I MEAN, THE COVERAGE IS
4 NOT EXCLUDED, IT'S USUALLY A QUESTION OF PREMIUM
5 DOLLARS.

6 Q. OKAY.

7 A. THAT BEING ADDED.

8 Q. WHEN YOU ENTERED INTO THE SERVICE AGREEMENT WITH
9 COUNTRYWIDE, WERE YOU EVER TOLD THAT THERE WAS GOING
10 TO BE CLASSES OF EMPLOYEES THAT WERE NOT GOING TO BE
11 COVERED?

12 A. NO.

13 Q. WAS IT YOUR UNDERSTANDING THAT ALL OF COUNTRYWIDE'S
14 EMPLOYEES -- I MEAN, CONDUSTRIAL'S EMPLOYEES WERE
15 GOING TO BE COVERED UNDER THE AGREEMENT?

16 A. YES. OUR UNDERSTANDING IS THAT WE WERE PURCHASING A
17 COMPREHENSIVE WORKERS' COMPENSATION PROGRAM TO
18 REPLACE THE GUARANTEE POLICY THAT WE LEFT BEHIND.

19 Q. OKAY. ALL RIGHT. LET ME LOOK AT MY NOTES REAL
20 QUICK. I THINK I MAY BE DONE. I'M GOING TO ASK YOU
21 A QUESTION. THESE ARE DOCUMENTS 150 THROUGH 153 IN
22 CONDUSTRIAL'S APAs. ARE YOU FAMILIAR WITH THESE
23 DOCUMENTS?

24 A. (REVIEWS DOCUMENTS) IT APPEARS TO BE I.R.S.
25 GUIDELINES ON THE EMPLOYMENT CONTROL OF AN EMPLOYEE

1 VERSUS A CONTRACTOR, A QUESTION AND A -- A LITTLE
2 QUESTIONNAIRE YOU CAN FILL OUT TO HELP SEE WHERE YOU
3 ARE.

4 Q. ALL RIGHT. DID CONDUSTRIAL COMPLETE THIS
5 QUESTIONNAIRE?

6 A. YES.

7 Q. DO YOU KNOW APPROXIMATELY WHEN IT WAS COMPLETED?

8 A. I DON'T KNOW WHEN. MR. DURHAM COMPLETED THIS.

9 Q. BUT WAS IT PRIOR TO MS. TURNER'S INJURY?

10 A. YES.

11 BY COMMISSIONER JAMES:

12 WHAT PAGE IS THIS?

13 BY MR. GOODWYN:

14 IT'S 150 TO 153 IN CONDUSTRIAL'S APAs.

15 BY COMMISSIONER JAMES:

16 THANK YOU.

17 THE WITNESS ANSWERS:

18 A. I BELIEVE SO, YES.

19 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

20 Q. ALL RIGHT. AND WITH THE RESULTS OF THIS
21 QUESTIONNAIRE, DID THAT INDICATE TO CONDUSTRIAL THAT
22 MS. TURNER WAS PROPERLY CLASSIFIED AS AN INDEPENDENT
23 CONTRACTOR?

24 BY MR. ALFORD:

25 OBJECT TO LEADING.

1 BY MR. GOODWYN:

2 I DON'T KNOW HOW THAT IS LEADING.

3 BY MR. ALFORD:

4 WHAT DID THE RESULTS INDICATE?

5 BY MS. RICHARDSON:

6 YEAH. YOU'RE TESTIFYING FOR HIM.

7 BY COMMISSIONER JAMES:

8 IT IMPLIES THE ANSWER, MR. GOODWYN.

9 BY MR. GOODWYN:

10 OKAY.

11 BY THE WITNESS:

12 THE RESULTS INDICATED ---

13 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

14 Q. WHAT DID THE RESULTS INDICATE?

15 BY COMMISSIONER JAMES:

16 IT'S SUSTAINED.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. OKAY. WHAT DID THE RESULTS INDICATE?

19 A. THE RESULTS INDICATED UNDER THE FACTORS WE EVALUATED
20 THAT THE BROKERAGE MODEL PROPERLY INVOLVED PROVIDING
21 INDEPENDENT CONTRACTORS.

22 Q. OKAY. DID THE COMPLETION OF THIS QUESTIONNAIRE AND
23 THE RESULTS HELP STRENGTHEN CONDUSTRIAL'S BELIEF
24 THAT MS. TURNER HAD BEEN PROPERLY CLASSIFIED?

25 A. YES, AND I MEAN, I BELIEVE THIS WAS COMPLETED

1 SEVERAL MONTHS BEFORE.

2 Q. BEFORE HER INJURY?

3 A. YES.

4 Q. OKAY.

5 BY MR. GOODWYN:

6 ALL RIGHT, YOUR HONOR, I THINK THAT'S -- I
7 THINK THAT'S ALL I HAVE.

8 BY COMMISSIONER JAMES:

9 ALL RIGHT. MR. SAMUELS.

10 BY THE WITNESS:

11 COMMISSIONER, DO YOU MIND IF I RUN TO THE
12 RESTROOM REAL QUICK?

13 BY COMMISSIONER JAMES:

14 YES.

15 BY THE WITNESS:

16 THANK YOU.

17 (OFF THE RECORD)

18 BY COMMISSIONER JAMES:

19 MR. SAMUELS.

20 BY MR. SAMUELS:

21 THANK YOU, YOUR HONOR.

22 CROSS EXAMINATION BY MR. SAMUELS:

23 Q. MR. SEARS, WE'VE MET SEVERAL TIMES THROUGHOUT THIS
24 TRIAL. I'M STEPHEN SAMUELS. I REPRESENT RACHEL
25 TURNER. A LITTLE BIT OF BACKGROUND. I WANT TO

1 LEARN A LITTLE BIT MORE ABOUT YOUR COMPANY
2 CONDUSTRIAL.

3 A. UH-HUH.

4 Q. YOU HAVE AN OFFICE. WHAT IS THE LOCATION OF THE
5 OFFICE RIGHT NOW?

6 A. WHICH OFFICE?

7 Q. THE COLUMBIA OFFICE, THE MAIN OFFICE. WELL, WHICH
8 IS THE MAIN OFFICE?

9 A. THE MAIN OFFICE, THE CORPORATE HEADQUARTERS?

10 Q. YES.

11 A. IS IN GREENVILLE, SOUTH CAROLINA.

12 Q. WHAT IS THE ADDRESS THERE?

13 A. 514 EAST NORTH STREET.

14 Q. AND WHAT IS THE -- WHAT FACILITY DO YOU HAVE ON
15 DUTCH SQUARE?

16 A. CURRENTLY OR IN THE PAST? OFF THE TOP OF MY HEAD, I
17 WOULD HAVE TO SEE AN ADDRESS LIST.

18 Q. ALL RIGHT. DO YOU HAVE OFFICE EMPLOYEES?

19 A. WE HAVE OFFICE STAFF.

20 Q. OKAY. HOW MANY OFFICE STAFF DO YOU HAVE?

21 A. AGAIN, I DON'T KNOW THAT EXACT NUMBER OFF THE TOP OF
22 MY HEAD.

23 Q. CAN YOU GIVE ME AN APPROXIMATE NUMBER OFF THE TOP OF
24 YOUR HEAD?

25 A. YOU MEAN FOR CONDUSTRIAL THROUGHOUT THE COMPANY?

1 Q. YES, SIR.

2 A. PROBABLY A LITTLE BIT LESS THAN 50.

3 Q. OF THOSE 50 PEOPLE, ARE THEY COVERED UNDER WORKERS'
4 COMPENSATION?

5 A. YES.

6 Q. WOULD THEY BE EMPLOYEES WHO ARE COVERED OR WOULD
7 HAVE BEEN COVERED IN DECEMBER 2015 -- OR SEPTEMBER
8 2015 -- SEPTEMBER 5TH, 2015, WOULD THEY BE COVERED
9 UNDER A POLICY THAT YOU OBTAINED THROUGH A
10 RELATIONSHIP WITH COUNTRYWIDE?

11 A. I BELIEVE SO, YES.

12 Q. WOULD THAT INCLUDE YOURSELF?

13 A. I BELIEVE SO, YES.

14 Q. AND BESIDES OFFICE EMPLOYEES, HOW MANY OTHER PEOPLE
15 DO YOU HAVE WORKING UNDER EITHER THE CONDUSTRIAL OR
16 MEDUSTRIAL NAME AS OF 2015?

17 A. I WOULD HAVE TO GO BACK AND CHECK THE RECORDS. I
18 MEAN, WITH SEASONAL WORK, IT DEPENDS ON WHAT TIME OF
19 YEAR YOU'RE TALKING ABOUT. IT COULD HAVE BEEN 500.
20 IT COULD HAVE BEEN UP TO 700.

21 Q. OKAY.

22 A. EMPLOYEES.

23 Q. AND WHAT DID THOSE FIVE TO SEVEN HUNDRED EMPLOYEES
24 DO FOR A LIVING?

25 A. THEY HAD VARIOUS OCCUPATIONS. I'M NOT SURE. I

1 MEAN, THEY WORKED -- MOST OF THEM WORKED IN
2 CONSTRUCTION STAFFING.

3 Q. ALL RIGHT. SO, ISN'T IT TRUE THAT YOU -- YOUR
4 BUSINESS MODEL IS TO PROVIDE -- PART OF IT IS TO
5 PROVIDE CONSTRUCTION LABOR TO BUILDING SITES AND
6 OTHER CONSTRUCTION JOBS?

7 A. THAT'S PART OF THE BUSINESS MODEL, YES.

8 Q. THAT WOULD BE EVERYTHING FROM PLUMBERS TO PIPE
9 FITTERS TO SHEET METAL WORKERS TO FRAMERS TO
10 MECHANICAL CONTRACTORS, ALL KINDS OF TRADES; IS THAT
11 CORRECT?

12 A. IF THOSE CODES ARE APPROVED YES.

13 Q. AND WHEN YOU SEND THOSE PEOPLE OUT TO A JOB,
14 CONSTRUCTION WORKERS, WHO SUPPLIES THE EQUIPMENT?

15 A. SAFETY EQUIPMENT, WE SUPPLY SOME.

16 Q. AND WHAT ABOUT LIFTS, LADDERS, LARGE POWER TOOLS,
17 WHO SUPPLIES THOSE?

18 A. THAT, PROBABLY -- I MEAN, YOU WOULD HAVE TO GET INTO
19 SPECIFICS. THIS IS VERY GENERAL. THAT COULD BE
20 SOMETHING THAT MIGHT HAVE A LITTLE VARIANCE BASED ON
21 CLIENT. ARE YOU TALKING ABOUT SCAFFOLDING,
22 SOMETHING LIKE THAT?

23 Q. SCAFFOLDING IS A GOOD EXAMPLE, YES. WHAT ABOUT
24 SCAFFOLDING, WHO PROVIDES THE SCAFFOLDING?

25 A. THE CLIENT OR THE GENERAL CONTRACTORS.

- 1 Q. ALL RIGHT. WHO SUPERVISES EACH WORKER ON THE JOB?
- 2 A. THE CLIENT.
- 3 Q. OKAY. DOES CONDUSTRIAL HAVE ONSITE SUPERVISORS ON
- 4 THESE JOB SITES?
- 5 A. ON MOST OF THEM, NO.
- 6 Q. DOES CONDUSTRIAL HAVE ONSITE SUPERVISORS AT THE
- 7 DEPARTMENT OF CORRECTIONS OR ANY OTHER STATE
- 8 AGENCIES WHERE YOU ARE PROVIDING NURSES?
- 9 A. NOT TO MY KNOWLEDGE.
- 10 Q. SO, THAT WOULD BE NO?
- 11 A. NOT TO MY KNOWLEDGE, NO.
- 12 Q. YOU ARE A LAWYER; IS THAT CORRECT?
- 13 A. YES.
- 14 Q. STILL AN ATTORNEY WITH AN ACTIVE PRACTICE AND BEEN
- 15 IN PRACTICE IN SOUTH CAROLINA?
- 16 A. YES.
- 17 Q. HOW LONG HAVE YOU BEEN A LAWYER?
- 18 A. SINCE 1994.
- 19 Q. AND HOW MANY YEARS DID YOU PRACTICE AS A WORKERS'
- 20 COMP DEFENSE LAWYER?
- 21 A. PROBABLY TEN OR ELEVEN. I MEAN, I'M STILL -- THAT'S
- 22 STILL A LARGE PART OF MY CURRENT ACTIVITIES.
- 23 Q. WORKERS' COMP DEFENSE?
- 24 A. MAINLY THE WORKERS' COMPENSATION ISSUES OF THE
- 25 COMPANY, YES.

1 Q. AND YOU ARE AWARE THAT THE TERM EMPLOYEE IS A TERM
2 OF ART DEFINED IN WORKERS' COMPENSATION LAW; ISN'T
3 THAT TRUE?

4 A. IN WORKERS' COMPENSATION LAW, YES.

5 Q. AND IT IS DEFINED IN OTHER LAW AS WELL? IT'S
6 DEFINED IN CONTRACTS. IT IS A TERM OF ART WITH A
7 WELL-UNDERSTOOD MEANING, IS IT NOT?

8 A. NOT IN EVERY CONTRACT, I WOULDN'T AGREE THAT THAT'S
9 A UNIFORM STATEMENT FOR EVERY CONTRACT EVER, NO.

10 Q. WOULD YOU AGREE THAT THE TERM EMPLOYEE HAS A COMMON
11 MEANING IN WORKERS' COMPENSATION LAW AND IN THE
12 CONTRACTS INVOLVED IN THIS CASE?

13 A. I DON'T AGREE IT'S THE SAME MEANING, BUT THERE ARE
14 AN INFINITE NUMBER OF PARTIES. THEY CAN HAVE AN
15 INFINITE NUMBER OF AGREEMENTS AND HAVE A CONTRACT
16 THAT ATTEMPTS TO FORMALIZE THAT AGREEMENT. THAT
17 CERTAINLY IS DISTINCT AND SEPARATE FROM A TERM OF
18 ART, A BRIGHT LINE TEST AS ESTABLISHED BY STATUTE OR
19 CASE IN WORKERS' COMP LAW.

20 Q. WOULDN'T YOU THINK IT'S IMPORTANT TO BE PRECISE
21 ABOUT THE MEANING OF THE TERM EMPLOYEE BECAUSE
22 OTHERWISE YOU GET INTO WHETHER OR NOT AN EMPLOYEE IS
23 COVERED BY WORKERS' COMPENSATION, INDEPENDENT
24 CONTRACTOR IS NOT?

25 A. I THINK PARTIES SHOULD TRY TO CONTRACT AND USE THE

1 BEST TERMS THEY CAN TO -- TO MEMORIALIZE THE ACTUAL
2 RELATIONSHIP AND PERFORMANCE BETWEEN THE PARTIES.

3 Q. OKAY. WELL, IN THIS CASE, WOULD YOU AGREE
4 MEDUSTRIAL HAD REQUIRED RACHEL TURNER TO SIGN A
5 NUMBER OF DOCUMENTS, AT LEAST ONE OF WHICH PURPORTS
6 FOR HER TO BE AN INDEPENDENT CONTRACTOR?

7 A. I MEAN, SHE -- SHE WANTED TO ACCEPT SHIFTS FROM US.
8 SO, WHEN SHE CAME IN TO ACCEPT SHIFTS, YES, THERE
9 WERE DOCUMENTS SHE NEEDED TO FILL OUT.

10 Q. IN FACT, SHE WAS REQUIRED TO FILL THEM OUT; ISN'T
11 THAT TRUE?

12 A. IF SHE WANTED TO ACCEPT SHIFTS, YES.

13 Q. AND ONE OF THOSE -- AT LEAST ONE OF THOSE PURPORTED
14 FOR HER TO BE AN INDEPENDENT CONTRACTOR; WOULD YOU
15 AGREE WITH THAT?

16 A. AT LEAST ONE, YES.

17 Q. AT LEAST ONE. AND THAT IS ACTUALLY THE CONTRACT YOU
18 WERE TRYING TO ENFORCE BETWEEN MEDCARE -- EXCUSE ME,
19 MEDUSTRIAL AND MS. TURNER, TO ENFORCE THAT CONTRACT
20 TO SAY THAT SHE IS A WORKER -- THAT SHE IS AN
21 INDEPENDENT CONTRACTOR IN THIS CASE; ISN'T THAT
22 TRUE?

23 A. SHE SIGNED TWO SETS OF DOCUMENTS, AND WE BELIEVE
24 BOTH ARE ENFORCEABLE.

25 Q. AND YOU ARE ALSO TRYING TO ENFORCE A CONTRACT WITH

1 COUNTRYWIDE AS YOU PUT IN YOUR DEPOSITION, QUOTE,
2 "YOUR UNDERSTANDING OF WHAT YOU PURCHASED WAS A FULL
3 WORKERS' COMPENSATION INSURANCE PROGRAM," END QUOTE.
4 IS THAT CORRECT?

5 A. THAT SOUNDS CORRECT.

6 Q. WOULD YOU AGREE THAT THE CONTRACT BETWEEN
7 CONDUSTRIAL AND COUNTRYWIDE IS A CONTRACT BETWEEN
8 TWO SOPHISTICATED PARTIES?

9 A. YOU ASKED THIS IN THE DEPOSITION. I THINK -- I THINK
10 IT'S BETWEEN TWO PARTIES WITH ABOVE AVERAGE
11 INTELLIGENCE, YES.

12 Q. WHO ARE SKILLED AND EXPERIENCED IN THE MEANING OF
13 THE WORDS AND THE EFFECT OF THE TERMS OF THE
14 CONTRACT AND ABLE TO NEGOTIATE THE TERMS OF THE
15 CONTRACT; ISN'T THAT TRUE?

16 A. I DON'T KNOW IF WE HAD ANY SPECIALIZED SKILL THAT
17 ANY OTHER STAFFING COMPANY OR ANY OTHER P.E.O.

18 Q. BUT MORE THAN A NURSE OR A CONSTRUCTION WORKER?

19 A. WELL, THAT WOULD DEPEND ON THE NURSE AND THE
20 CONSTRUCTION WORKER.

21 Q. MORE THAN THE AVERAGE NURSE OR CONSTRUCTION WORKER?

22 A. DEPENDING ON THEIR LEVEL OF EDUCATION, POSSIBLY?

23 Q. ALL RIGHT. AND YOU, IN FACT, NEGOTIATED THE
24 CONTRACT BETWEEN COUNTRYWIDE AND CONDUSTRIAL; ISN'T
25 THAT TRUE?

1 A. I DIDN'T -- IN OTHER WORDS, WE WEREN'T THE AUTHORS
2 OF THE CONTRACT. THEY PRESENTED US WITH THEIR
3 CONTRACT. WE DID ASK FOR AMENDMENTS, YES.

4 Q. YOU ASKED FOR AMENDMENTS, SO YOU NEGOTIATED
5 AMENDMENTS?

6 A. WE DID REQUEST THAT CHANGES BE MADE.

7 Q. AND THEY AGREED TO MAKE THOSE CHANGES?

8 A. THEY DID.

9 Q. AND HOW ABOUT THE CONTRACT BETWEEN THE DEPARTMENT OF
10 CORRECTIONS AND CONDUSTRIAL, OR I SHOULD SAY
11 MEDUSTRIAL, WAS THAT ALSO A NEGOTIATED CONTRACT?

12 A. WHICH ONE?

13 Q. HOW ABOUT THE 2008 ONE, WAS THAT NEGOTIATED?

14 A. I DON'T BELIEVE -- I DON'T BELIEVE THAT ONE WAS,
15 BECAUSE I THINK IT WAS THE DEPARTMENT'S FORM
16 CONTRACT. I THINK IT WAS OFFERED AND SAID SIGN
17 THIS. SO, I DON'T THINK THERE WAS ANY NEGOTIATION.

18 Q. WOULD YOU AGREE THAT CONTRACT WAS VALIDLY SIGNED AND
19 EXECUTED IN GOOD FAITH BY BOTH PARTIES?

20 A. I THINK SO, YES.

21 Q. IN 2016, YOU RENEGOTIATED THAT CONTRACT?

22 A. I REQUESTED THAT SOME CHANGES BE MADE TO THE
23 CONTRACT. I STAYED TO THEIR FORM CONTRACT. I
24 DIDN'T ADDRESS EACH HEADING AND SAY WE HAD TO
25 CHANGE, YOU KNOW, THE SPECIFIC SCOPE, AND WE DID ASK

1 FOR AN AMENDMENT TO THE TERMS. YES.

2 Q. WHAT WAS THE AMENDMENT YOU ASKED FOR?

3 A. WELL, IF YOU WOULD LIKE TO HAND ME THE DOCUMENT OR
4 HAVE ME REFER TO IT, I'M SURE I CAN GO THROUGH
5 THOSE. I MAY HAVE A COPY HERE.

6 BY MS. RICHARDSON:

7 IT IS AN EXHIBIT.

8 BY MR. GOODWYN:

9 IT SHOULD BE UP THERE.

10 BY THE WITNESS:

11 WHICH ONE IS THIS?

12 BY MR. GOODWYN:

13 THAT'S THE LATER ONE.

14 BY THE WITNESS:

15 WHAT IS IT CALLED?

16 BY MR. GOODWYN:

17 PERSONNEL SERVICE ---

18 BY THE WITNESS:

19 NO, NO, WHAT'S THE EXHIBIT NUMBER?

20 BY MR. GOODWYN:

21 OH, TRIAL EXHIBIT ONE.

22 BY MS. RICHARDSON:

23 DO WE HAVE COPIES OF THAT, YOUR HONOR?

24 BY COMMISSIONER JAMES:

25 IS THIS THE DOCUMENT THAT WAS REFERRED TO

1 EARLIER IN THE CLAIMANT'S 254? IS THAT THE
2 DOCUMENT?

3 BY MS. RICHARDSON:

4 CLAIMANT'S 254?

5 BY MR. GOODWYN:

6 NO.

7 BY MR. SAMUELS:

8 NO, THAT'S THEIR ---

9 BY MR. GOODWYN:

10 YOUR HONOR, I THINK THIS IS TRIAL EXHIBIT ONE.

11 BY MS. RICHARDSON:

12 YEAH.

13 BY THE WITNESS:

14 THAT'S WHAT IT SAYS.

15 BY MR. GOODWYN:

16 THEY'RE NOT SURE THEY HAVE COPIES.

17 BY COMMISSIONER JAMES:

18 ALL RIGHT.

19 BY MS. RICHARDSON:

20 CAN WE GET SOME COPIES OF THAT, TOO?

21 BY COMMISSIONER JAMES:

22 YOU'RE LOOKING AT 2016, SORRY.

23 BY MS. RICHARDSON:

24 YEAH.

25 BY MR. SAMUELS:

1 TRIAL EXHIBIT.

2 BY MS. RICHARDSON:

3 IS THERE SOMEWHERE WE CAN GET SOME COPIES OF
4 THAT BECAUSE WE KEEP USING IT, AND NOBODY HAS A COPY
5 OF IT YET?

6 BY MR. SAMUELS:

7 THIS WAS IN MR. SEARS' DEPOSITION.

8 BY MS. RICHARDSON:

9 WHICH IS NOT ADMITTED INTO EVIDENCE, RIGHT?

10 BY MR. SAMUELS:

11 RIGHT. BUT IT'S THE SAME EXHIBIT.

12 BY MS. RICHARDSON:

13 RIGHT, WELL.

14 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

15 Q. MR. SEARS, WHAT WAS CHANGED BETWEEN 2008 AND 2016 IN
16 THE TWO CONTRACTS?

17 A. MAINLY, WE ASKED THEM TO CHANGE WHEREVER THEY ONLY
18 HAD THE TERM "EMPLOYEE" WHERE APPROPRIATE, WE ASKED
19 THEM TO CHANGE THAT TO "EMPLOYEES AND/OR AGENTS" AND
20 ALSO A FEW PLACES, TOO, REPLACE THE WORD "EMPLOYEE"
21 WITH "PERSONNEL."

22 Q. WHAT WAS THE PURPOSE OF ADDING TO THE WORD EMPLOYEE,
23 SOME PLACES TAKING OUT THE WORD EMPLOYEE?

24 A. BECAUSE THE OLD CONTRACT DID NOT ACCURATELY REFLECT
25 THE COURSE OF DEALINGS BETWEEN THE PARTIES, AND WE

1 WANTED THIS CONTRACT TO ACCURATELY REFLECT THE BEST
2 WAY POSSIBLE THE ACTUAL CONDUCT BETWEEN THE PARTIES.

3 Q. ISN'T IT TRUE THAT WHAT THE ORIGINAL CONTRACT SAID
4 IS THAT CONDUCTRIAL WOULD REQUIRE TO PROVIDE
5 EMPLOYEES WHO WERE COVERED BY WORKERS' COMPENSATION
6 AS PART OF PROVIDING NURSING SERVICES?

7 A. NO, I DON'T AGREE WITH THAT.

8 Q. AND THEN THE NEW CONTRACT, THE PURPOSE BEHIND THAT
9 WAS TO GIVE YOU SOME WIGGLE ROOM TO SAY THESE PEOPLE
10 WERE NOT EMPLOYEES, BUT NOW YOU ARE GOING TO CALL
11 THEM AGENTS?

12 BY MR. GOODWYN:

13 OBJECTION, YOUR HONOR. THE QUESTION ASSUMES HE
14 ANSWERED "YES" TO THE PREVIOUS QUESTION. HE IS
15 ASSUMING FACTS NOT IN EVIDENCE.

16 BY MR. SAMUELS:

17 IT'S CROSS EXAMINATION, YOUR HONOR.

18 BY MR. GOODWYN:

19 YOU CAN'T ASSUME FACTS NOT IN EVIDENCE EVEN ON
20 CROSS.

21 BY COMMISSIONER JAMES:

22 MR. SAMUELS, WOULD YOU REPEAT THE QUESTION?

23 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

24 Q. THE QUESTION ESSENTIALLY ---

25 BY MR. GOODWYN:

1 GRADY, I CAN RESPOND WITHOUT YOU COMMENTING
2 BACK THERE.

3 BY COMMISSIONER JAMES:

4 MR. GOODWYN, Y'ALL -- LET'S ---

5 BY MR. GOODWYN:

6 I MEAN, EVERY TIME I MAKE A COMMENT, HE IS
7 OVER THERE MAKING SOME SNIDE REMARK, AND I'M TIRED
8 OF IT, ALL OF IT. I MEAN...

9 BY COMMISSIONER JAMES:

10 EVERYBODY NEEDS TO ADDRESS THE COMMISSION. MR.
11 SAMUELS, THE LAST QUESTION, IF YOU WILL REPEAT IT.

12 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. THE LAST QUESTION WAS WASN'T THE PURPOSE OF THE --
14 OF CHANGING THE TERM "EMPLOYEE" AS IT APPEARED IN
15 THE 2008 CONTRACT TO EITHER "EMPLOYEE AND/OR AGENT"
16 OR TO "PERSONNEL" WAS DESIGNED SO THAT YOU HAVE
17 WIGGLE ROOM WHERE YOU DIDN'T HAVE TO COVER THESE
18 NURSES UNDER WORKERS' COMPENSATION AS PART OF THAT
19 CONTRACT?

20 A. NO, THE CHANGES WERE NOT MADE TO TRY TO PRESENT A
21 WIGGLE ROOM OR ANY OTHER NEGATIVE CONNOTATION THAT
22 YOU ARE ASSUMING IN THE QUESTION. THE PURPOSE OF
23 THE CHANGE, WHICH I'VE ALREADY ANSWERED, WHICH WAS
24 TO MORE ACCURATELY REFLECT THE RELATIONSHIP BETWEEN
25 THE PARTIES IN THE COURSE OF DEALINGS THAT HAD

1 OCCURRED FOR EIGHT YEARS.

2 Q. HOW MANY NURSES DO YOU HAVE WORKING FOR SOUTH
3 CAROLINA STATE GOVERNMENT RIGHT NOW?

4 A. OFF THE TOP OF MY HEAD, I WOULD NOT KNOW THAT
5 ANSWER.

6 Q. WE'VE HEARD A NUMBER APPROXIMATELY 120 TO 130. IS
7 THAT ABOUT A BALLPARK?

8 A. THAT'S NOT AT ANY ONE TIME. THAT COULD BE OVER A
9 YEAR. IN OTHER WORDS, DIFFERENT NURSES HAVE
10 DIFFERENT SHIFTS. SOMETIMES THEY'RE TRAVEL NURSES.
11 THEY LEAVE FOR A MONTH. THAT WAS -- THAT WAS A
12 GENERAL FIGURE, YES. I CANNOT GIVE YOU A SPECIFIC
13 ANSWER ALSO DIRECTED TO A SPECIFIC CLIENT SITTING
14 HERE.

15 Q. CAN WE AGREE THAT IT'S A SUBSTANTIAL NUMBER?

16 A. I WOULDN'T AGREE IT'S A SUBSTANTIAL NUMBER.

17 Q. SOME WEEKS, IT COULD BE TEN. SOME WEEKS IT COULD BE
18 30 DEPENDING ON WHO HAS ACCEPTED SHIFTS THROUGH OUR
19 BROKERAGE MODEL VERSUS IF S.C.D.C. FILLED THOSE
20 THROUGH A COMPETITOR FIRST. IT'S A FLUID OPERATION
21 EVERY WEEK.

22 BY COMMISSIONER JAMES:

23 MR. SAMUELS, BEFORE YOUR NEXT QUESTION, MAY I
24 OBTAIN THAT EXHIBIT SO I CAN GET COPIES FOR
25 EVERYONE?

1 BY THE WITNESS:

2 THIS ONE, YOUR HONOR?

3 BY COMMISSIONER JAMES:

4 YES. THANK YOU, SIR.

5 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

6 Q. MR. SEARS, LET ME ASK YOU ABOUT ANOTHER DOCUMENT. I
7 BELIEVE THIS IS S.C.D.C. EXHIBIT "D," WHICH WOULD BE
8 AN EMAIL WITH THE CERTIFICATE OF SERVICE. THE EMAIL
9 DATED AUGUST 4TH, 2017, AND THAT'S ACTUALLY TOMMY
10 BURGESS SENDING IT TO MS. FARTHING. THE ORIGINAL
11 EMAIL WAS FROM HOLLY SEEBY TO TOMMY BURGESS.

12 A. RIGHT.

13 Q. OKAY. NOW, IN THAT EMAIL, IT SAYS "GOOD AFTERNOON,
14 MR. BURGESS, AND HAPPY THURSDAY. ATTACHED IS THE
15 ADDITIONAL C.R. THAT MR. SEARS AND MR. DURHAM SPOKE
16 WITH YOU ABOUT LAST WEEK."

17 A. CORRECT.

18 Q. WHAT WAS THE CONVERSATION ABOUT?

19 A. MR. BURGESS CALLED AND OBVIOUSLY AS A RESULT OF THIS
20 LITIGATION AND I ASSUME CONVERSATIONS WITH HIS
21 ATTORNEYS AND PROBABLY HIS SUPERVISORS SAID THAT WE
22 WANT TO MAKE SURE THIS IS WAFFLE HOUSE, SCATTERED,
23 SMOTHERED AND COVERED. SO, THAT CONVERSATION WAS I
24 WANT TO MAKE SURE THAT -- I WANT YOU TO GIVE ME A
25 CERTIFICATE TO MAKE SURE THAT THE TURNER SITUATION

1 DOESN'T HAPPEN AGAIN TO THE BEST OF OUR ABILITY.

2 Q. ALL RIGHT. AND ALONG WITH THAT, YOU PROVIDED A
3 CERTIFICATE OF INSURANCE, WHICH IS THE SECOND PAGE
4 OF EXHIBIT "D"; IS THAT CORRECT?

5 A. THAT IS CORRECT, YES.

6 Q. AND THIS CERTIFICATE OF INSURANCE HAS AN INSURED AS
7 CONDUSTRIAL, INCORPORATED, AND THE CERTIFICATE
8 HOLDER IS THE SOUTH CAROLINA DEPARTMENT OF
9 CORRECTIONS; IS THAT CORRECT?

10 A. THAT IS CORRECT.

11 Q. ALL RIGHT. DOES THIS CERTIFICATE PROVIDE WORKERS'
12 COMPENSATION INSURANCE TO THE WORKERS, TO THE NURSES
13 WHO ARE CURRENTLY WORKING AT S.C.D.C. UNDER THE
14 CONDUSTRIAL NAME?

15 A. IT IS OUR BEST ATTEMPT TO COVER THAT RISK GIVEN THE
16 STATE OF INSURANCE AS WE KNOW IT. THIS -- WE
17 OBTAINED THE CERTIFICATE OUT OF AN ABUNDANCE OF
18 CAUTION IN TRYING TO WORK WITH S.C.D.C., BECAUSE
19 THEY ALSO HAVE A CERTIFICATE FROM OUR CURRENT
20 P.E.O., WHICH SHOWS COVERAGE FOR CONDUSTRIAL. THE
21 QUESTION OBVIOUSLY HAS BEEN RAISED BY THIS CASE, IS
22 THAT SUFFICIENT? WE -- THE OUTCOME OF THIS CASE
23 WILL ANSWER THAT QUESTION. WE OBVIOUSLY THOUGHT IT
24 WOULD BE IF THEY WERE FOUND TO BE AN EMPLOYEE, BUT
25 OUT OF AN ABUNDANCE OF CAUTION AND TO SERVICE THIS

1 CLIENT, WE ATTEMPTED TO OBTAIN A POLICY THAT WOULD
2 BE A SAFETY NET, AND THAT IS WHAT THIS CERTIFICATE
3 OF INSURANCE REPRESENTS.

4 Q. BUT THAT'S PART OF MY QUESTION. IF ANOTHER NURSE OR
5 IF RACHEL TURNER WOULD RECOVER AND GO BACK TO WORK
6 AT S.C.D.C. AND GET HURT, ---

7 A. RIGHT.

8 Q. --- GET HELD HOSTAGE AGAIN, GET STABBED, ANY OF
9 THOSE THINGS, SLIP AND FALL INSIDE THE PRISON, IS
10 THAT NURSE GOING TO BE COVERED UNDER A WORKERS --
11 UNDER THAT WORKERS' COMP POLICY?

12 A. AGAIN, IT DEPENDS ON HER STATUS AS AN EMPLOYEE OR AN
13 INDEPENDENT CONTRACTOR, AND AGAIN, IN WORKING WITH
14 OUR AGENTS IN TRYING TO TAKE CARE OF S.C.D.C., WE
15 THINK ONE OF THE POLICIES THAT ARE IN P LACE
16 HOPEFULLY WILL TAKE CARE OF THAT RISK.

17 Q. SO, YOU WOULD AGREE FOR THAT POLICY TO COVER ONE OF
18 THOSE NURSES, THAT NURSE WOULD HAVE TO BE AN
19 EMPLOYEE?

20 A. I'M NOT -- LIKE I SAID, THOSE QUESTIONS WILL BE
21 ANSWERED BY THIS CASE. MY BEST ANSWER IS WE HAVE
22 WORKED DILIGENTLY TO OBTAIN TWO POLICIES THAT WE
23 HOPE WE HAVE A SAFETY NET AND TO AVOID THIS
24 SITUATION.

25 Q. WHEN YOU APPLIED FOR THAT POLICY, THAT CERTIFICATE

1 OF INSURANCE, DID YOU PROVIDE THE PAYROLL FOR THE
2 NURSES WHO ARE WORKING FOR THE DEPARTMENT OF
3 CORRECTIONS TO YOUR AGENT AND TO THAT CARRIER?

4 A. I BELIEVE SO, YES, FOR 1099 PERSONNEL.

5 Q. DID YOU REPRESENT TO THAT CARRIER AND OBTAINING THAT
6 AND ALLOWING THEM TO SET THE PREMIUM BASED ON THOSE
7 PAYROLL THAT THOSE NURSES WEREN'T EMPLOYEES AND THAT
8 YOU INTENDED FOR THEM TO BE COVERED UNDER WORKERS'
9 COMPENSATION.

10 A. WE DIDN'T REPRESENT THAT THEY WERE EMPLOYEES. WE
11 INFORMED THEM THAT THEY WERE 1099s.

12 Q. SO, THEN IN TAKING THIS CERTIFICATE, GIVING IT TO
13 S.C.D.C. AND MAKING THE REPRESENTATION THAT WE HAVE
14 SATISFIED YOUR REQUEST TO PROVE THAT OUR NURSES
15 WORKING IN YOUR FACILITY ARE COVERED, WERE YOU
16 LYING?

17 A. NO.

18 Q. IS THAT A FRAUDULENT STATEMENT?

19 A. NO.

20 Q. IS THAT A FRAUDULENT CERTIFICATE?

21 A. NO, IT'S NOT, AND YOU KNOW IT'S NOT.

22 Q. DOES IT COVER THE NURSES?

23 A. TO THE BEST OF OUR ABILITY, YES.

24 BY MR. GOODWYN:

25 OBJECTION, YOUR HONOR, ASKED AND ANSWERED.

1 BY COMMISSIONER JAMES:

2 SUSTAINED.

3 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. SO, THE ANSWER IS AS LONG AS YOU TRY TO MAINTAIN
5 THAT THOSE NURSES ARE INDEPENDENT CONTRACTORS, THAT
6 COVERAGE DOES NOT APPLY TO THEM?

7 A. I DIDN'T SAY THAT AT ALL. I DIDN'T SAY THAT AT ALL.
8 DID I?

9 Q. ACTUALLY, SIR, WHAT YOU SAID WAS IT DEPENDS ON THEIR
10 STATUS AS TO WHETHER THEY ARE EMPLOYEES OR
11 INDEPENDENT CONTRACTORS. WHAT IS CONDUSTRIAL'S
12 POSITION AS TO WHAT THEIR STATUS IS TODAY, EMPLOYEES
13 OR INDEPENDENT CONTRACTORS?

14 A. THEY'RE STILL INDEPENDENT CONTRACTORS, AND THEY
15 ALWAYS HAVE BEEN.

16 Q. AND THEREFORE NOT COVERED BY THAT CERTIFICATE OF
17 INSURANCE?

18 A. I DIDN'T SAY THAT EITHER. I SAID WE HAVE TWO
19 POLICES. OBVIOUSLY, THIS CASE WILL ANSWER THAT
20 QUESTION. WE BELIEVE THAT THIS POLICY IF SHE IS
21 FOUND TO BE AN EMPLOYEE WILL IMPACT HER. S.C.D.C.
22 SAID WE WANT SOME ASSURANCE THAT YOU THINK THAT
23 THESE NURSES WILL BE COVERED. SO, WE WENT INTO THE
24 MARKET PLACE AND SAID WE HAVE SOME 1099s, BUT A
25 CLIENT IS REQUESTING COVERAGE THAT HOPEFULLY WILL

1 COVER THAT RISK, AND THIS IS THE POLICY WE OBTAINED,
2 AND THAT IS THE CERTIFICATE THAT WE SENT TO S.C.D.C.

3 Q. ALL RIGHT, MR. SEARS, I'LL MOVE ON TO THE NEXT
4 QUESTION. I'M GOING TO ASK YOU ABOUT THE PURPORTED
5 INDEPENDENT CONTRACTOR AGREEMENT THAT IS TITLED
6 "LICENSED PROFESSIONAL INDEPENDENT CONTRACTOR
7 AGREEMENT." THE SPECIFIC ONE I WILL START WITH IS
8 AT PAGES 233 TO -- EXCUSE ME, 233 TO 237, CLAIMANT'S
9 APA SUBMISSIONS DATED FEBRUARY 8TH, 2013. DO YOU
10 HAVE THAT IN FRONT OF YOU?

11 A. I DO NOT.

12 BY MS. FARTHING:

13 STEPHEN, CAN YOU TELL US WHAT PAGE YOU'RE
14 LOOKING AT AGAIN? I'M SORRY.

15 BY MR. SAMUELS:

16 IT'S 233 TO 234 OF CLAIMANTS' APAs.

17 BY MS. FARTHING:

18 THANK YOU.

19 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

20 Q. MR. SEARS, I'LL HAND YOU YOUR DEPOSITION, WHICH HAS
21 THAT SAME EXHIBIT SO YOU MAY REFERENCE IT.

22 A. OKAY.

23 Q. WOULD YOU AGREE THAT MS. TURNER IS NOT A
24 SOPHISTICATED INDIVIDUAL IN TERMS OF CONTRACT
25 NEGOTIATIONS?

1 A. I WOULD NOT AGREE WITH THAT. SHE'S AN L.P.N. SHE
2 HAS HAD TO GO THROUGH SPECIALIZED TRAINING ABOVE --
3 ABOVE AVERAGE INTELLIGENCE TO OBTAIN THAT DEGREE OR
4 THAT LICENSURE.

5 Q. DOES EVERY NURSE WORKING FOR MEDUSTRIAL OR
6 CONDUSTRIAL AND PLACED AT THE SOUTH CAROLINA
7 DEPARTMENT OF CORRECTIONS OR THE SOUTH CAROLINA
8 DEPARTMENT OF MENTAL HEALTH SIGN THIS SAME
9 AGREEMENT?

10 A. EVERY INDEPENDENT CONTRACTOR THAT GOES THROUGH THE
11 BROKERAGE MODEL THAT WORKS FOR S.C.D.C. SIGNS THIS
12 AGREEMENT TO THE BEST OF MY KNOWLEDGE, YES.

13 Q. OKAY. AND DOES THAT PERSON HAVE THE ABILITY TO
14 NEGOTIATE ANY CHANGES?

15 A. NOT IF THEY WANT TO WORK FOR THE BROKERAGE MODEL.

16 Q. ALL RIGHT. SO, WOULD YOU AGREE THEN THAT THIS IS A
17 NON-NEGOTIABLE TAKE IT OR LEAVE IT ADHESION
18 CONTRACT?

19 A. I DON'T -- YOU KNOW, IN OTHER WORDS, IF CERTAIN
20 TERMS WERE -- IF SOMEONE CAME TO US AND WANTED TO
21 TALK ABOUT CERTAIN TERMS, THAT'S ALWAYS A
22 POSSIBILITY, BUT IF THEY'RE GOING TO WORK IN THE
23 BROKERAGE MODEL, WHICH WE INHERITED, WHICH ALLOWS
24 YOU TO REFUSE SHIFTS, PICK SHIFTS AS YOU WILL,
25 CERTAINLY ONE OF THE NON-NEGOTIABLE PORTIONS OF THE

1 AGREEMENT IS THAT YOU ARE NOT AN EMPLOYEE; YOU'RE AN
2 INDEPENDENT CONTRACTOR.

3 Q. SO, THIS IS A NON-NEGOTIABLE AGREEMENT?

4 A. I SAID THERE IS A TERM IN THERE THAT I WOULD
5 CONSIDER TO BE NON-NEGOTIABLE, YES.

6 Q. AND BY COURSE OF DEALING, YOU'VE NEVER ALTERED THIS
7 CONTRACT AT THE REQUEST OF ANY SINGLE NURSE, HAVE
8 YOU?

9 A. I'VE NEVER BEEN ASKED TO.

10 Q. NEVER OFFERED TO?

11 A. NEVER BEEN ASKED TO.

12 Q. YOU NEVER EXPLAINED TO THEM THAT THEY COULD -- THAT
13 THEY COULD NEGOTIATE. WHAT YOU TOLD THEM IS "IF YOU
14 WANT TO WORK HERE, YOU'VE GOT TO SIGN THIS," RIGHT?

15 A. IF YOU WANT TO WORK THROUGH THE BROKERAGE MODEL FOR
16 S.C.D.C., THAT IS AN INDEPENDENT CONTRACTOR
17 BROKERAGE MODEL. FOR MOST OF THE NURSES, THAT'S NOT
18 A QUESTION, BECAUSE THAT'S WHAT THOSE PERSONNEL
19 WANTED TO DO WHEN WE TOOK OVER THE BUSINESS AND
20 SINCE THAT TIME, CERTAINLY, MS. TURNER NEVER ASKED
21 ANY OF THOSE QUESTIONS.

22 Q. IS IT YOUR CONTENTION THAT THIS CONTRACT SHOULD BE
23 INTERPRETED STRICTLY, IT SHOULD BE FOLLOWED BY BOTH
24 PARTIES?

25 A. I THINK -- IN OTHER WORDS, I THINK --

1 BY MR. GOODWYN:

2 YOUR HONOR, I'M GOING TO OBJECT TO HIM BEING
3 ASKED TO TAKE A LEGAL POSITION IN THE CASE. THAT'S
4 MY JOB IS TO ASSERT MY CLIENT'S LEGAL POSITION.
5 IT'S NOT HIS JOB TO TESTIFY AS TO WHAT THE CLIENT'S
6 POSITION IS.

7 BY COMMISSIONER JAMES:

8 MR. SAMUELS.

9 BY MR. SAMUELS:

10 HE CAN SPEAK TO WHAT HIS POSITION IS. THAT'S
11 CONSISTENT WITH WHAT WE'VE HEARD IN ARGUMENT THAT
12 THEY INTEND TO ENFORCE THIS CONTRACT. HE HAS
13 ALREADY TESTIFIED TO THAT, AND NOW, I'M ASKING HIM
14 IF HE -- IF HE IS INTENDING THAT BOTH SIDES SHOULD
15 COMPLY WITH THE CONTRACT.

16 BY COMMISSIONER JAMES:

17 SIR, YOU CAN ANSWER THE QUESTION.

18 THE WITNESS ANSWERS:

19 A. OKAY. I DO THINK THAT BOTH SIDES SHOULD COMPLY WITH
20 THE CONTRACT IN ANY COURSE OF DEALINGS OR COURSE OF
21 PERFORMANCE AS INCLUDED IN THE RELATIONSHIP OF THE
22 PARTIES.

23 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

24 Q. LET ME ASK YOU TO TAKE A LOOK AT PAGE 236. THERE'S
25 A PARAGRAPH UNDER LIABILITY INSURANCE.

1 A. I DON'T HAVE A PAGE 236.

2 Q. I APOLOGIZE. IT SHOULD -- LOOK AT THE BATE STAMP
3 244, CONDUSTRIAL 244.

4 A. IT DOESN'T SAY THAT EITHER.

5 Q. PARAGRAPH EIGHT.

6 A. YOU'RE LOOKING AT PARAGRAPH EIGHT? YES, I HAVE
7 THAT.

8 Q. YES, SIR. THAT ONE IS ENTITLED "LIABILITY INSURANCE
9 INDEMNIFICATION."

10 A. YES.

11 Q. WHAT DOES THAT PROVIDE ABOUT INDEMNIFICATION?

12 A. I MEAN, I THINK THE PARAGRAPH SPEAKS FOR ITSELF,
13 BECAUSE THE INDEPENDENT STATUS OF THE INDEPENDENT
14 CONTRACTOR. "INDEPENDENT CONTRACTOR IS SOLELY AND
15 COMPLETELY ACCOUNTABLE FOR THE SERVICES PROVIDED TO
16 THE CLIENT, AND NEITHER THE CLIENT NOR THE BROKER
17 SHALL HAVE THE LIABILITY WHATSOEVER TO ANY PARTY FOR
18 SUCH SERVICES PROVIDED BY THE CONTRACTOR. THE
19 BROKER WILL NOT INDEMNIFY THE INDEPENDENT CONTRACTOR
20 FOR ANY LIABILITY INCURRED BY THE INDEPENDENT
21 CONTRACTOR. THE INDEPENDENT CONTRACTOR UNDERSTANDS
22 THAT THE BROKER WILL ACT IN GOOD FAITH TO DESCRIBE
23 REQUIREMENTS SET FORTH BY THE CLIENT," ET CETERA, ET
24 CETERA.

25 Q. I WILL SPARE YOU FROM READING IT ALL.

- 1 A. OKAY.
- 2 Q. BUT YOU WILL AGREE THAT ONE OF THE TERMS WITHIN THAT
- 3 PARAGRAPH, "THE INDEPENDENT CONTRACTOR SHALL
- 4 INDEMNIFY AND HOLD HARMLESS THE BROKER AND THE
- 5 CLIENT WITH RESPECT TO ANY LOSS, CLAIM, COST,
- 6 DAMAGE, OR EXPENSE INCLUDING REASONABLE ATTORNEY'S
- 7 FEES AND COURT COSTS, WHICH THE BROKER/CLIENT MAY
- 8 SUSTAIN, SUFFER, INCUR BY REASON OF ANY RIGHTS,
- 9 ACTIONS OR CLAIMS AGAINST THE BROKER OR CLIENT
- 10 ARISING OUT OF THIS AGREEMENT OR OUT OF ANY ACT OR
- 11 OMISSION OF THE INDEPENDENT CONTRACTOR." WOULD YOU
- 12 AGREE THAT'S ONE OF THE TERMS?
- 13 A. I AGREE THAT THAT'S WHAT IT SAYS.
- 14 Q. AND THERE'S ALSO A LAST SENTENCE DESCRIBING WHAT
- 15 THAT INDEMNIFICATION WOULD INCLUDE. WHAT WOULD IT
- 16 INCLUDE?
- 17 A. WOULD YOU LIKE ME TO READ IT?
- 18 Q. YES, SIR, I WOULD.
- 19 A. "SUCH INDEMNIFICATION SHALL INCLUDE, WITHOUT
- 20 LIMITATION, ANY WORKERS' COMPENSATION," QUOTE,
- 21 "OVERTIME," CLOSED QUOTE, "TAX LIABILITY OR OTHER
- 22 CLAIMS BROUGHT OR LIABILITIES IMPOSED BY ANY PERSON
- 23 OR ENTITY AGAINST THE BROKER OR THE CLIENT RELATING
- 24 TO THE INDEPENDENT CONTRACTOR'S STATUS AS AN
- 25 INDEPENDENT CONTRACTOR, INCLUDING WITHOUT LIMITATION

1 ANY PRELIMINARY OR FINAL DETERMINATION OF ANY COURT
2 OR GOVERNMENTAL AGENCY."

3 Q. SO, PER THE CONTRACTOR, IF MS. TURNER IS SUCCESSFUL
4 IN HER WORKERS' COMPENSATION CLAIM, SHE HAS TO
5 INDEMNIFY BOTH CONDUSTRIAL AND S.C.D.C.?

6 A. WE WILL CERTAINLY LOOK AT ALL AVAILABLE OPTIONS.

7 Q. INCLUDING PAYING MR. GOODWYN'S LEGAL FEES?

8 A. I DON'T KNOW HOW THAT -- ARE YOU ASKING ME ABOUT THE
9 CONTRACT OR SOMETHING ELSE?

10 Q. I'M ASKING YOU IF THAT'S ONE OF THE THINGS THAT YOU
11 EXPECT TO ENFORCE AGAINST MS. TURNER? THAT SHE CAN
12 WIN THIS CASE, THAT SHE CAN WIN HER WORKERS'
13 COMPENSATION CASE, AND TURN AROUND AND BE REQUIRED
14 TO PAY BACK EVERYTHING SHE GETS PLUS YOUR COMPANY'S
15 COST AND PLUS S.C.D.C.'S COST. IS THAT SOMETHING
16 YOU INTEND TO ENFORCE AGAINST HER?

17 A. WE INTEND TO ASSESS ALL AVAILABLE OPTIONS UNDER THE
18 CONTRACT AND ANY APPLICABLE LAW.

19 Q. IT DOESN'T OCCUR TO YOU THAT THAT PROVISION MIGHT BE
20 UNCONSCIONABLE?

21 A. NO, IT DOES NOT.

22 Q. YOU THINK THAT'S A FAIR AND REASONABLE TERM THAT
23 SOMEBODY WOULD ACTUALLY NEGOTIATE THAT YOU AS A
24 LAWYER WOULD RECOMMEND YOUR CLIENT SIGN A PROVISION
25 LIKE THAT?

1 BY MR. GOODWYN:

2 YOUR HONOR, I'M GOING TO OBJECT. HE'S ASKING
3 WHAT SOMEBODY WOULD NORMALLY NEGOTIATE. IT CALLS
4 FOR HIM TO SPECULATE WHAT THE GENERAL PUBLIC MAY
5 NEGOTIATE.

6 BY COMMISSIONER JAMES:

7 MR. SAMUELS, IF YOU WANT TO ESTABLISH HIS
8 EXPERIENCE WITH REGARDS TO IT; OTHERWISE, IF IT'S A
9 GENERAL SPECULATION QUESTION, THEN NO, I AGREE WITH
10 MR. GOODWYN.

11 BY MR. SAMUELS:

12 I'LL MOVE ON, YOUR HONOR.

13 BY THE WITNESS:

14 WOULD YOU LIKE THIS BACK?

15 BY MR. SAMUELS:

16 YEAH, I WOULD. THANK YOU. I APPRECIATE IT.

17 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

18 Q. AFTER MS. GOODWYN WAS -- EXCUSE ME, MS. TURNER WAS
19 ASSAULTED AND HELD HOSTAGE AND INJURED, WHEN DID YOU
20 REPORT THAT EVENT TO YOUR INSURANCE COMPANY?

21 A. I HAVE TO LOOK AT THE DATE TO BE SURE, BUT AGAIN, IF
22 YOU HAVE SOME DOCUMENT THAT WOULD REFRESH MY
23 RECOLLECTION, I'D BE GLAD TO TELL YOU. SITTING HERE
24 TWO YEARS AGO, I CAN'T GIVE YOU THE EXACT DATE.

25 Q. DID YOU REPORT IT IMMEDIATELY? WAS IT A MONTH? WAS

1 IT SIX MONTHS? WAS IT WHEN YOU GOT THE FORM 50 FROM
2 YOUR LAWYER; WHEN DID IT HAPPEN?

3 A. SITTING HERE RIGHT NOW, I DON'T RECALL.

4 Q. WHEN YOUR COMPANY FIRST HAD CONTACT WITH MS. TURNER,
5 AFTER SHE HAD BEEN ASSAULTED, ONE OF THE FIRST
6 THINGS SHE ASKED FOR WAS WORKERS' COMP; ISN'T THAT
7 TRUE?

8 A. I THINK THE FIRST SHE ASKED FOR WS "I WANT SOME
9 COUNSELING, AND IW ANT SOMEONE TO PAY MY BILLS." I
10 MEAN, I -- I DON'T KNOW IF SHE INITIATED IT OR I
11 SAID IT, BECAUSE -- EITHER I SAIS YOU'RE ASKING FOR
12 WORKERS' COMP OR SHE SAID SHOULDN'T THIS BE WORKERS'
13 COMP?" SO, YES, THAT CONVERSATION DID TAKE PLACE.

14 Q. YOU WOULD AGREE SHE ASKED FOR WORKERS' COMP
15 SPECIFICALLY?

16 A. I WOULD AGREE THAT THE SUBJECT WAS DISCUSSED.

17 Q. AT THAT POINT, YOUR RESPONSE WAS "NO, YOU ARE AN
18 INDEPENDENT CONTRACTOR. YOU DON'T GET WORKERS'
19 COMP," RIGHT/

20 A. I SAID "WORKERS' COMPENSATION IS NOT AVAILABLE TO
21 YOU INT HIS SITUATION. YOU ARE NOT AN EMPLOYEE.

22 Q. NOW, THERE IS A LETTER THAT WAS DELIVERED TO HER
23 AFTER FINDING OUT HOW BAD OFF SHE WAS THAT PURPORTED
24 TO OFFER HER LIGHT-DUTY WORK?

25 A. WELL, I DON'T - OKAY, I CAN ANSWER YOUR QUESTION. I

1 DON'T KNOW THAT IT WAS ISSUED JUST BECAUSE WE FOUND
2 OUT HOW BAD SHE WAS. IT WAS A NATURAL PROGRESSION
3 OF OUR ATTEMPTS TO SPEAK WITH HER AND IT DIDN'T
4 PURPORT TO OFFER LIGHT DUTY. THERE WAS AN ACTUAL
5 BONAFIDE OFFER OR "THERE ARE SOME THINGS WE CAN DO
6 TO KEEP YOU WORKING TO TRY TO ASSIST YOU IN THIS
7 SITUATION."

8 Q. WOULD SHE HAD BECOME AN EMPLOYEE AT THAT TIME?

9 A. NO, SHE WOULD NOT.

10 Q. SHE WOULD HAVE STILL BEEN AN INDEPENDENT CONTRACTOR?

11 A. SURE.

12 Q. WORKING IN THE OFFICE UNDER THE DIRECTION OF
13 SOMEBODY IN YOUR OFFICE DOING LIGHT DUTY DOING WHAT
14 SHE WS TOLD, AND YOU STILL SAY SHE'S AN INDEPENDENT
15 CONTRACTOR?

16 A. NOBODY SAID THAT THOSE THINGS WERE GOING TO HAPPEN.
17 SHE WAS TOLD THAT SHE COULD COME AND GO AS SHE
18 PLEASES. SHE WAS ALSO TOLD THAT WE COULD TRY TO
19 FIND HER SOME SHIFTS IN A NURSING HOME THAT IS STILL
20 CONSISTENT WITH THE BROKERAGE MODEL. NO, NOBODY
21 SAID "COME IN HERE, AND WE'RE GOING TO CONTROL YOU
22 AND TELL YOU WHAT TO DO."

23 Q. WOULD YOU AGREE THAT WHATEVER SHE HAS TO DO IN TERMS
24 OF RETURNING TO WORK, SHE IS LIMITED BY WHAT HER
25 DOCTORS TELL HER SHE CAN DO?

1 A. AT THE TIME UNTIL I GUESS THE FIRST HEARING, I WAS
2 NOT AWARE OF ANY MEDICAL RESTRICTIONS OF HER WORKING
3 AT ALL.

4 Q. GOING BACK TO THE INDEPENDENT CONTRACTOR AGREEMENT,
5 DID CONDUSTRIAL ENSURE THAT SHE HAD COMPLIED WITH
6 THE TERMS OF THAT CONTRACT BEFORE ALLOWING HER TO
7 WORK AS A NURSE FOR MEDUSTRIAL?

8 A. I'M NOT SURE, YOU WILL HAVE TO BE MORE SPECIFIC, AND
9 I WOULD LIKE TO SEE A COPY.

10 Q. ALL RIGHT.

11 BY MR. SAMUELS:

12 JEFF, MAY I - I CAN LOOK AT MY COPY THAT'S
13 LESS CUMBERSOME. I HAVE A COPY IF I CAN GET THAT.

14 BY MR. GOODWYN:

15 A PERSONNEL SERVICES AGREEMENT?

16 BY MR. SAMUELS:

17 PROFESSIONAL INDEPENDENT CONTRACTOR.

18 BY MR. GOODWYN:

19 OH.

20 BY THE WITNESS:

21 LET ME JUST MAKE SURE.

22 BY THE WITNESS:

23 ARE YOU REFERRING TO THE FIRST ONE?

24 BY MR. SAMUELS:

25 YES, SIR.

1 BY THE WITNESS:

2 I THINK IT'S THE SAME.

3 BY MR. SAMUELS:

4 IT'S 8 FEBRUARY, 2013.

5 BY THE WITNESS:

6 OKAY.

7 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

8 Q. DID CONDUSTRIAL REQUIRE HER TO SHOW SHE HAD A
9 NURSING LICENSE?

10 A. YES, I THINK WE DID, BECAUSE THAT WAS A REQUIREMENT
11 TO GO INTO S.C.D.C. AND TO HOLD - WE CERTAINLY MADE
12 SURE SHE HAD THE LICENSE THAT SHE PURPORTED TO HAVE,
13 WHICH SHE IS REQUIRED TO DO UNDER STATE AGENCY.

14 Q. AND CERTIFICATIONS?

15 A. WHATEVER -- WHATEVER IS REQUIRED TO BE AN L.P.N. IF
16 SHE PUT HERSELF FORWARD AS A L.P.N. ELIGIBLE TO WORK
17 AT S.C.D.C., WE MADE SURE THAT SHE MET THE
18 REQUIREMENTS OF S.C.D.C. TO GO INTO THEIR FACILITY.

19 Q. CERTIFICATE OF INSURANCE FOR PROFESSIONAL LIABILITY?

20 A. I THINK EARLY ON BEFORE I GOT THERE, YES. I KNOW WE
21 TALKED ABOUT THAT IN MY DEPOSITION. I KNOW THAT
22 SUBSEQUENT TO MY ARRIVING WHEN WE TOOK OVER THIS
23 BUSINESS MODEL, OUR AGENTS AND OUR CARRIERS REQUIRED
24 US TO HAVE PROFESSIONAL LIABILITY OVERALL. SO, THAT
25 WAS SOMETHING THAT WE OBTAINED.

1 Q. THAT'S NOT MY QUESTION THOUGH. AS I LOOK AT THE
2 CONTRACT UNDER PARAGRAPH EIGHT THAT WE'VE ALREADY
3 LOOKED AT, ---

4 A. RIGHT.

5 Q. --- IT SAYS, QUOTE, "THE INDEPENDENT CONTRACTOR
6 SHALL MAINTAIN THROUGHOUT THE TERM OF THIS AGREEMENT
7 AND SHALL PROVIDE TO THE BROKER A CERTIFICATE OF
8 PROFESSIONAL LIABILITY AND MALPRACTICE INSURANCE IN
9 THE AMOUNT OF \$1,200,000 AND CONTAIN AN EXPRESS
10 PROVISION THAT SUCH POLICY CANNOT BE CANCELLED IN 30
11 DAYS PRIOR WRITTEN NOTICE TO THE BROKER TO INTEND TO
12 DO SO," END QUOTE.

13 A. OKAY.

14 Q. SO, YOUR CONTRACT REQUIRES THAT SHE PROVIDE YOU A
15 CERTIFICATE OF INSURANCE IF SHE IS GOING TO BE AN
16 INDEPENDENT CONTRACTOR. DID YOU EVER GET A
17 CERTIFICATE OF INSURANCE FROM HER?

18 A. WITHOUT LOOKING AT HER FILE RIGHT NOW, I WOULDN'T
19 KNOW. I KNOW THAT WE EITHER OBTAINED A CERTIFICATE
20 OR COVERED THE -- COVERED THE RISK OURSELVES SINCE
21 OUR AGENTS AND CARRIER REQUIRED US TO COVER THAT
22 RISK, BECAUSE IT FLOWED TO CLIENTS AND PATIENTS AS
23 OPPOSED TO INDIVIDUALLY ON THE COMP COVERAGE, WHICH
24 YOU ARE DISCUSSING HERE.

25 Q. WELL, WHEN YOU HIRED HER, DID YOU REQUIRE HER TO

1 FILL OUT AN EMPLOYMENT APPLICATION?

2 A. NOT AN EMPLOYMENT APPLICATION, NO.

3 Q. MR. SEARS, I'M GOING TO SHOW YOU PAGES 261 AND 262
4 AND TAB "H" OF CLAIMANT'S APA SUBMISSIONS.

5 A. OKAY.

6 Q. I'M GOING TO HAND YOU THIS DOCUMENT.

7 A. YES.

8 Q. DO YOU RECOGNIZE THAT DOCUMENT?

9 A. YES.

10 Q. WHAT DOES THE DOCUMENT SAY IT'S CALLED?

11 A. AT THE TOP OF THE DOCUMENT, IT DOES SAY "EMPLOYMENT
12 APPLICATION." THERE ARE SEVERAL DOCUMENTS IN HER
13 FILE.

14 Q. SO, YOU WOULD AGREE WITH ME THAT SHE FILLED OUT AN
15 EMPLOYMENT APPLICATION ---

16 A. NO.

17 Q. --- WHEN SHE WAS HIRED?

18 A. I WOULD NOT AGREE WITH THAT. AS I EXPLAINED IN THE
19 DEPOSITION AND EXPLAINED ON DIRECT, WHEN MS. WALKER
20 TOOK OUR \$50,000 CHECK AND LEFT AND WE THOUGHT THAT
21 THIS BUSINESS MODEL WAS GOING AWAY, WE HAD TO
22 SCRAMBLE, AND THERE WAS A GOOD BIT OF CHAOS TO NOT
23 LOSE THE BUSINESS MODEL. I THINK THAT MS. RATHBURN
24 AND WHOEVER ELSE WAS THERE AT THE TIME WERE SOME
25 WELL INTENTIONED BLUE COLLAR WORKERS WHO WERE TRYING

1 TO DO THE BEST THEY COULD. I THINK THEY TRIED TO DO
2 A CUT AND PASTE WITH SOME PALMETTO REFERRAL
3 DOCUMENTS AND SOME MEDUSTRIAL DOCUMENTS. SO, THERE
4 ARE A FEW DOCUMENTS IN THERE LIKE THIS THAT SAYS
5 "EMPLOYMENT APPLICATION" AT THE TOP. THE MAJORITY
6 OF THE DOCUMENTS THAT SHE WOULD HAVE REVIEWED
7 CLEARLY SAY "INDEPENDENT CONTRACTOR."

8 Q. WHEN DID THIS LADY LEAVE WITH THE \$50,000?

9 A. SHE LEFT PROBABLY SOMETIME IN 2007, YES.

10 Q. 2007?

11 A. YES.

12 Q. 2007?

13 A. RIGHT. THIS IS MANY YEARS LATER.

14 Q. OKAY.

15 A. RIGHT.

16 Q. AND YOU JOINED CONDUSTRIAL IN ---

17 A. YES.

18 Q. --- 2009?

19 A. I DID.

20 Q. AND ONE OF THE FIRST THINGS YOU DID WAS TO FIX ALL
21 THIS MESS AND MAKE SURE ALL OF YOUR PAPERWORK WAS
22 CONSISTENT, WASN'T IT?

23 A. THAT'S ACTUALLY NOT ONE OF THE FIRST THINGS I DID.
24 WHEN I JOINED CONDUSTRIAL IN JULY OF 2009, I JOINED
25 THEM BECAUSE THEY HAD RECENTLY FILED FOR CHAPTER 11

1 BANKRUPTCY ORGANIZATION BECAUSE A MINORITY OWNER
2 MADE OFF WITH ALMOST A MILLION DOLLARS AND TWO OF
3 OUR CLIENTS, LEFT US WITH A MILLION DOLLARS OF DEBT.
4 SO, THE FIRST FOUR YEARS I WAS THERE, MY PRIMARY JOB
5 WAS TO KEEP THE COMPANY ALIVE, AND WE -- I THINK THE
6 BANKRUPTCY CASE WAS DISMISSED IN THE FALL OF 2012,
7 YES. SO, OF COURSE, AFTER THAT, WE STILL HAD TO
8 DEAL WITH STATE AND FEDERAL TAX AGENCIES TO WORK OUT
9 PAYMENT PLANS, AND WE HAD TO SECURE CREDITORS. SO,
10 I DIDN'T WALK INTO THE DOOR AND RUN DOWN AND PICK UP
11 THESE DOCUMENTS.

12 Q. WELL, WOULDN'T YOU AGREE THAT THESE DOCUMENTS THAT
13 WE ARE LOOKING AT, THIS PARTICULAR ONE SIGNED
14 FEBRUARY 7TH, 2013, THAT'S SIX YEARS AFTER THE LADY
15 TOOK YOUR MONEY; THAT'S FOUR YEARS AFTER YOU'VE BEEN
16 THERE?

17 A. OKAY.

18 Q. ARE YOU STILL BLAMING THE LADY TAKING YOUR MONEY SIX
19 YEARS AGO IN WHY YOUR DOCUMENTS SAY THAT THIS LADY
20 IS FILLING OUT AN EMPLOYMENT APPLICATION TO BE AN
21 EMPLOYEE?

22 A. YOU'RE -- I BELIEVE YOU'RE TRYING TO TWIST MY WORDS.
23 I BELIEVE WHAT I EXPLAINED IS WHEN THE GENESIS OF
24 THE BROKERAGE MODEL OCCURRED, I'VE EXPLAINED TO YOU
25 THAT WHEN I CAME IN, THERE WAS A MORE PRESSING

1 MATTER. SO, I DIDN'T RUN DOWN TO MEDUSTRIAL AND
2 LOOK AT DOCUMENTS. BUSINESS WAS GOING ON. IN OTHER
3 WORDS, THERE WAS NOT -- WHEN YOU ARE RECOVERING FROM
4 CHAPTER 11, YOU HAVE TO PUT OUT THE FIRES. THERE
5 WAS NO FIRE HERE AT THAT TIME. CERTAINLY, WHEN WE I
6 GUESS -- AGAIN, I DON'T KNOW THE EXACT TIME, BUT
7 CERTAINLY WHEN WE WENT THROUGH THE J -- JOINT
8 COMMISSION CERTIFICATION, J.CO, WHATEVER YOU CALL
9 IT, THAT WAS THE TIME THAT WE WERE CALLED UPON TO
10 REVIEW THESE IN MORE DETAIL. I'M SURE THERE WAS
11 SOME REVIEW PRIOR TO THAT, BUT THIS WAS NOT -- IN
12 OTHER WORDS, THE BROKERAGE MODEL WAS WORKING. IT
13 WAS NOT SQUEAKING. THERE WAS NOT A FIRE. NO ONE
14 WAS COMPLAINING ABOUT THIS OR RAISING ANY OBJECTIONS
15 OR ISSUES. SO, CERTAINLY THERE WAS AT LEAST NOTHING
16 ON MY PART, "HEY, YOU BETTER GO GRAB THAT AND LOOK
17 AT IT, BECAUSE SOMETHING IS NOT WORKING."

18 Q. AND THAT J.CO CERTIFICATION, WAS THAT THE TIME THAT
19 Y'ALL WITHHELD MS. TURNER'S PAYCHECK UNTIL SHE
20 BROUGHT YOU SOME DOCUMENTS?

21 A. I DON'T -- I WOULDN'T KNOW ANYTHING ABOUT THAT
22 SITTING HERE.

23 Q. THIS DOCUMENT THAT WE ARE LOOKING AT ---

24 A. THIS IS ONE OF MANY.

25 Q. --- SIX YEARS LATER ---

1 A. YEAH.

2 Q. --- SHE FILLED OUT ----

3 A. RIGHT.

4 Q. --- WHEN SHE WAS FIRST HIRED, IT SAYS "EMPLOYMENT
5 APPLICATION"; IS THAT RIGHT? ISN'T THAT TRUE?

6 A. SHE FILLED OUT ONE OF MANY DOCUMENTS. THIS WAS THE
7 SAME TIME THAT SHE FILLED OUT THE INDEPENDENT
8 CONTRACTOR AGREEMENT AND SEVERAL OTHER DOCUMENTS
9 THAT ALSO INDICATED INDEPENDENT CONTRACTOR.

10 Q. SO, SHE FILLS OUT ALL OF THESE DOCUMENTS. SOME SAY
11 INDEPENDENT CONTRACTOR. SOME SAY SHE'S AN EMPLOYEE.
12 HOW DOES SHE KNOW WHAT THE RELATIONSHIP IS?

13 BY MR. GOODWYN:

14 OBJECTION.

15 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

16 Q. SHE DOESN'T FROM THE DOCUMENTS.

17 BY MR. GOODWYN:

18 OBJECTION.

19 BY THE WITNESS:

20 SHE DOES.

21 BY MR. GOODWYN:

22 I OBJECT. HE IS ASKING HIM TO TESTIFY AS TO
23 HOW RACHEL TURNER KNOWS SOMETHING.

24 BY MR. SAMUELS:

25 FAIR ENOUGH. I'LL MOVE ON.

1 BY COMMISSIONER JAMES:

2 ALL RIGHT.

3 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. ON THIS PARTICULAR DOCUMENT, ---

5 A. YOU MEAN THIS ONE DOCUMENT?

6 Q. THIS ONE DOCUMENT.

7 A. OKAY.

8 Q. I'M STILL LOOKING AT IT.

9 A. NOT THE CONTINUUM, THE BALANCE OF THE DOCUMENTS.

10 Q. PAGE 261.

11 A. OKAY.

12 Q. IT SAYS "EMPLOYMENT APPLICATION."

13 A. RIGHT.

14 Q. AND AT THIS POINT, SHE ALSO INDICATES THAT SHE HAS
15 NO MALPRACTICE INSURANCE.

16 A. WELL, YES, IT APPEARS SOMEONE WROTE "N/A."

17 Q. I'M GOING TO MOVE YOU ON TO ANOTHER DOCUMENT. THIS
18 IS AT PAGE 263 OF CLAIMANT'S APA SUBMISSIONS. I'LL
19 HAND YOU A COPY. HAVE YOU SEEN THIS DOCUMENT
20 BEFORE?

21 A. I'M SURE I'VE SEEN THIS IN THE REVIEW OF HER
22 PERSONNEL FILE AT SOME POINT.

23 Q. WOULDN'T YOU AGREE THAT THIS IS A FEDERAL GOVERNMENT
24 FORM I-9 EMPLOYMENT ELIGIBILITY VERIFICATION?

25 A. IT IS.

1 Q. IT IS SOMETHING THE FEDERAL GOVERNMENT REQUIRES YOU
2 TO DO WITH EMPLOYEES, NOT INDEPENDENT CONTRACTORS OR
3 SUBCONTRACTORS; ISN'T THAT TRUE?

4 A. I WOULD HAVE TO CONFIRM THAT. THAT SOUNDS RIGHT.

5 Q. IN FACT, IN SECTION ONE, IT SPECIFICALLY SAYS
6 "EMPLOYEE INFORMATION VERIFICATION," CORRECT?

7 A. THAT'S -- THAT'S THE BOILERPLATE LANGUAGE ON THE
8 FORM, YES.

9 Q. THE FEDERAL GOVERNMENT'S BOILERPLATE LANGUAGE?

10 A. IT'S THE GOVERNMENT'S FORM I-9, YES.

11 Q. AND THE FORM ---

12 A. RIGHT.

13 Q. --- THAT MEDUSTRIAL/CONDUSTRIAL MADE RACHEL TURNER
14 FILL OUT, CORRECT?

15 A. AS I'VE ALREADY INDICATED, OUR GIRLS WERE CERTAINLY
16 WELL INTENTIONED AND THOUGHT THEY WERE TRYING TO DO
17 PROPER DOCUMENTATION WHEN WE APPLIED FOR JOINT
18 COMMISSION CERTIFICATION, WE CERTAINLY WENT THROUGH
19 AND LOOKED AT THESE AND SAID -- IN OTHER WORDS, THIS
20 NEEDS TO BE STREAMLINED. THIS NEEDS TO BE MORE
21 UNIFORM. THESE WERE BOTH INCLUDED WITH SEVERAL
22 DOCUMENTS THAT YOU MAY OR MAY NOT TRY TO GET INTO
23 LATER TO GIVE A COMPLETE AND ACCURATE REVIEW OF THE
24 SITUATION, BUT SHE SIGNED SEVERAL DOCUMENTS THAT
25 ALSO SAID "INDEPENDENT CONTRACTOR."

- 1 Q. I'M GOING TO SHOW YOU ANOTHER DOCUMENT, PAGE 264,
2 CLAIMANT'S APA SUBMISSIONS. I'M GOING TO HAND YOU
3 THIS DOCUMENT. WHAT IS THIS DOCUMENT ENTITLED AS,
4 MR. SEARS?
- 5 A. IT SAYS "CONDUSTRIAL FAIR CREDIT REPORTING ACT
6 DISCLOSURE AND AUTHORIZATION."
- 7 Q. ARE YOU AWARE THAT THE FAIR CREDIT REPORTING ACT
8 ONLY ALLOWS AN EMPLOYER TO OBTAIN AN AUTHORIZATION
9 FROM AN EMPLOYEE. IT IS AGAINST FEDERAL LAW TO
10 ATTEMPT TO OBTAIN THIS INFORMATION THROUGH THIS FORM
11 FROM AN INDEPENDENT CONTRACTOR?
- 12 A. I WOULD HAVE TO LOOK AT THOSE STATUTES TO VERIFY
13 THAT. I MEAN, I'M TAKING YOUR WORD FOR IT RIGHT
14 NOW.
- 15 Q. I APPRECIATE THAT. WOULD YOU AGREE THAT BY SIGNING
16 THIS AUTHORIZATION, SHE IS ALLOWING CONDUSTRIAL TO
17 OBTAIN CONSUMER REPORTS ABOUT HER, TO CONSIDER THIS
18 INFORMATION AND MAKING DECISIONS REGARDING HER
19 EMPLOYMENT WITH THE COMPANY" USING THE WORD
20 "EMPLOYMENT"?
- 21 A. WHO IS USING THE WORD "EMPLOYMENT"?
- 22 Q. THE FORM THAT ---
- 23 A. RIGHT.
- 24 Q. THE FORM ITSELF, ---
- 25 A. RIGHT.

1 Q. --- IS USING THE WORD "EMPLOYMENT" ---

2 A. WELL, I THINK ---

3 Q. --- THAT CONDUSTRIAL IS USING ---

4 A. RIGHT.

5 Q. --- TO OBTAIN BACKGROUND INFORMATION ON RACHEL
6 TURNER THAT THEY CAN ONLY OBTAIN FOR PURPOSES OF
7 HIRING HER AS AN EMPLOYEE?

8 A. I DON'T THINK THAT THIS DOCUMENT WAS PROCESSED, AND
9 ACTUALLY THE DOCUMENT YOU SENT ME MAKES MY POINT.
10 SHE WAS NOT A CONDUSTRIAL EMPLOYEE. SHE WAS NOT
11 PART OF THE CONDUSTRIAL BUSINESS MODEL. SHE WAS A
12 PART OF THE CONDUSTRIAL BROKERAGE MODEL. SHE -- IN
13 OTHER WORDS, THIS WAS SOMETHING THAT WE WOULD HAVE
14 GIVEN TO OUR W-2 EMPLOYEES IN THE CONDUSTRIAL
15 SYSTEM. THIS IS NOT SOMETHING THAT A MEDUSTRIAL
16 INDEPENDENT CONTRACTOR WOULD SIGN. I DO THINK THAT
17 PROBABLY MS. RATHBURN WAS TRYING TO BE OVERLY
18 CAUTIOUS, BUT THERE'S NO CONSPIRACY HERE. THIS IS -
19 - WE HAD A GOOD -- WE HAD A GOOD FAITH MANAGER THAT
20 CAME OVER FROM PALMETTO REFERRALS THAT TRIED TO DO
21 THE BEST SHE CAN TO SALVAGE A BUSINESS MODEL AND DID
22 SALVAGE THAT MODEL, AND IT WENT ALONG AND WORKED
23 WITH S.C.D.C. AND MEDUSTRIAL AT THE TIME OF THIS
24 DOCUMENT FOR FIVE OR SIX YEARS. NO ONE RAISED A
25 QUESTION OR CONCERN. THOSE HAVE CERTAINLY BEEN

1 RAISED NOW, AND THEY'VE BEEN ADDRESSED, BUT THIS WAS
2 A GOOD FAITH EFFORT BY MS. RATHBURN IN MOVING OVER
3 TO MEDUSTRIAL TO TRY TO MOVE THE BROKERAGE MODEL
4 FORWARD FOR US.

5 Q. AND THAT HAD ALL HAPPENED HOW MANY YEARS BEFORE?

6 A. I'VE ALREADY ANSWERED THAT.

7 Q. SIX YEARS BEFORE? SEVEN?

8 A. I'VE ANSWERED THAT.

9 Q. ALL RIGHT. BUT THE ANSWER WAS SIX OR SEVEN?

10 BY MR. GOODWYN:

11 YOUR HONOR, OBJECT. IT'S BEEN ASKED AND
12 ANSWERED. HE'S BEATING A DEAD HORSE.

13 BY THE WITNESS:

14 I HAVE ANSWERED.

15 BY MR. SAMUELS:

16 BUT THE ATTORNEY HAS TO MAKE THE OBJECTION, NOT
17 THE WITNESS, YOUR HONOR.

18 BY MR. GOODWYN:

19 I JUST DID.

20 BY COMMISSIONER JAMES:

21 OKAY. AND I WILL RULE ON THAT, BUT ALSO AGAIN
22 CAUTION EVERYBODY WITH REGARDS TO THE OBJECTIONS DO
23 NEED TO BE FROM THE COUNSEL.

24 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

25 Q. I GUESS THAT'S ONE OF THE THINGS THAT CONFUSES ME A

1 LITTLE BIT, MR. SEARS. DOES MEDUSTRIAL HAVE ANY
2 LEGAL SIGNIFICANCE?

3 A. NO.

4 Q. DOES MEDUSTRIAL HAVE THE ABILITY TO CONTRACT?

5 A. IT'S NOT -- IT'S NOT A SEPARATE LEGAL ENTITY. IT
6 DOESN'T HAVE A TAX I.D. IT DOESN'T HAVE A STATE
7 I.D. IT DOESN'T HAVE EMPLOYEES. I'VE EXPLAINED ALL
8 THIS.

9 Q. IT'S A TRADE NAME?

10 A. IT'S A DIVISION OR A SERVICE.

11 Q. A DIVISION THAT IS KIND OF AN INTERNAL DIVISION WITH
12 YOUR OWN COMPANY?

13 A. IT IS AN INTERNAL DIVISION.

14 Q. YET THE CONTRACT SIGNED WITH THE SOUTH CAROLINA
15 DEPARTMENT OF CORRECTIONS PURPORTS TO BE BETWEEN
16 MEDUSTRIAL AND S.C.D.C.?

17 A. THAT NAME IS ON THE CONTRACT, YES.

18 Q. IS THAT AN ENFORCEABLE CONTRACT SINCE IT DOESN'T SAY
19 CONDUSTRIAL?

20 A. YES, I THINK SO. MEDUSTRIAL IS A MONIKER FOR
21 CONDUSTRIAL. THE PARTIES UNDERSTOOD THE
22 RELATIONSHIP.

23 Q. JUST AS ---

24 A. IN OTHER WORDS, S.C.D.C. WHO THEY WERE CONTRACTING
25 WITH, AND CONDUSTRIAL/MEDUSTRIAL KNEW WHO THEY WERE

1 CONTRACTING WITH.

2 Q. AND PRESUMABLY THE NURSES ALSO KNEW THAT THEY WERE
3 WORKING FOR CONDUSTRIAL?

4 A. WELL, THEY WEREN'T WORKING FOR CONDUSTRIAL. THEY
5 WERE INDEPENDENT CONTRACTORS.

6 Q. THEY WERE GETTING PAID FOR THEIR WORK BY
7 CONDUSTRIAL?

8 A. IN OTHER WORDS, CONDUSTRIAL'S NAME WAS ON THE CHECK,
9 BUT THEY WEREN'T CONDUSTRIAL EMPLOYEES.

10 Q. YOU HAVE A WEBSITE; DOES YOUR COMPANY HAVE A
11 WEBSITE?

12 A. WE HAVE TWO WEBSITES.

13 Q. WHAT ARE THE WEBSITES FOR? I GUESS, UNDER WHAT
14 IDENTITY? WHY DO YOU HAVE TWO?

15 A. AGAIN, FOR THE SAME REASON THAT THERE IS A
16 MEDUSTRIAL DIVISION, AS HAS BEEN EXPLAINED, WHEN MR.
17 DURHAM TOOK OVER THE BROKERAGE, HE OBVIOUSLY THOUGHT
18 THAT CONDUSTRIAL WOULDN'T LEND ITSELF -- IN OTHER
19 WORDS, WHAT DOES THAT HAVE TO DO WITH NURSE
20 STAFFING. SO, HE WANTED TO OFFER A DIFFERENT TRADE
21 NAME, A DIVISION, SERVICE THAT WOULD SEPARATE ITSELF
22 OUT. HE SAID "HEY, LET'S CALL IT MEDUSTRIAL," WHICH
23 I STILL THINK IS ALSO KIND OF SCARY, BUT HE WANTED
24 TO DISTINGUISH THE BROKERAGE MODEL.

25 Q. I'M GOING TO SHOW YOU PAGE 305 IN CLAIMANT'S APA

1 SUBMISSIONS. THIS IS ALREADY IN EVIDENCE. CAN YOU
2 IDENTIFY WHAT I'M SHOWING YOU?

3 A. IT APPEARS TO BE A PAGE -- PROBABLY PART OF A PAGE
4 FROM THE MEDUSTRIAL WEBSITE. I'M NOT SURE WHAT
5 VERSION THIS IS OR WHEN IT CAME FROM.

6 Q. WELL, ISN'T IT TRUE THAT YOU ACTUALLY RECENTLY
7 CHANGED THE MEDUSTRIAL WEBSITE SO IT NO LONGER USES
8 THE WORD "EMPLOYEE"?

9 A. I -- IN OTHER WORDS, I DON'T HAVE ANYTHING TO DO
10 WITH DESIGNING THE WEBSITE. I WOULDN'T SAY THAT WAS
11 TRUE. I MEAN, IT'S -- THE WEBSITES HAVE BEEN
12 MODIFIED OR -- WE'VE HAD DIFFERENT I.T. PROVIDERS.
13 WE'VE HAD DIFFERENT -- BECAUSE I KNOW WE'VE HAD
14 CONTRACTS WITH DIFFERENT FOLKS TO HANDLE THE
15 WEBSITE. SO, THERE HAVE BEEN CHANGES OVER THE
16 YEARS. THAT'S -- THAT'S THE EXTENT WHICH I KNOW.

17 Q. WHO IS THE COMPANY THAT HANDLES YOUR WEBSITE NOW?

18 A. AS I TALK TO YOU TODAY, I WOULD HAVE TO LOOK IT UP.
19 I DON'T KNOW.

20 Q. IN THIS WEBSITE, WOULD YOU AGREE THAT IT SAYS
21 "MEDUSTRIAL HEALTHCARE SERVICES, A DIVISION OF
22 CONDUSTRIAL, INC."?

23 A. IT DOES SAY THAT.

24 Q. SO, SOMEBODY GOING TO THIS WEBSITE WOULD KNOW THAT
25 MEDUSTRIAL WAS A DIVISION OF CONDUSTRIAL; IS THAT

1 CORRECT?

2 A. I THINK SO, YES.

3 Q. OKAY. AND THEY WOULD KNOW THAT "MEDUSTRIAL IS
4 COMMITTED TO PROVIDING MEDICAL FACILITIES AND
5 OFFICES WITH HIGHLY QUALIFIED TRAINED NURSES, NURSE
6 ASSISTANTS AND OTHER MEDICAL STAFF TO MEET THEIR
7 SUPPLEMENTAL EMPLOYEE NEEDS," CORRECT?

8 A. THEIR SUPPLEMENTAL EMPLOYEE NEEDS. IT DOES SAY
9 THAT, YES.

10 Q. OKAY. AND IN FACT, THERE IS A PULL DOWN TAB FOR
11 EMPLOYEE SUPPORT, ISN'T THERE?

12 A. THERE IS A TAB THAT SAYS "EMPLOYEE SUPPORT," YES.

13 Q. AND THAT'S WHERE THE NURSES WOULD GO WHEN THEY WANT
14 TO FIND OUT INFORMATION; ISN'T THAT TRUE?

15 **BY MR. GOODWYN:**

16 YOUR HONOR, I WOULD OBJECT TO THE FORM. I
17 THINK HE'S GOT TO CLARIFY WHETHER THESE ARE THE
18 EMPLOYEE NURSES HE IS TALKING ABOUT OR THE
19 INDEPENDENT CONTRACTOR NURSES. THERE WERE BOTH.

20 **BY MR. SAMUELS:**

21 WELL, LET'S BE CLEAR.

22 **CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

23 Q. THERE IS NO -- THERE IS NO PULL DOWN ON THIS WEBSITE
24 AND WAS NOT A PULL DOWN IN 2015, '16, UNTIL VERY
25 RECENTLY FOR ANY IDEA TO LEAD ANYBODY TO BELIEVE

1 THAT THESE NURSES WERE NOT EMPLOYEES; ISN'T THAT
2 TRUE?

3 A. I DON'T AGREE WITH THAT AT ALL. I DON'T EVEN --
4 WHAT -- WHAT ITERATION OF THE WEBSITE IS THIS? IS
5 THIS WHEN SHE CAME IN 2013; IS IT 2015? I DON'T SEE
6 IT MARKED ANYWHERE.

7 BY MR. BEARD:

8 THE LAST PAGE, STEPHEN. IT HAS 2014 ON IT.

9 BY MR. SAMUELS:

10 WELL, THANKS.

11 BY MR. BEARD:

12 I THINK IT'S THE BACK OF THAT PAGE.

13 BY MS. RICHARDSON:

14 PAGE 307.

15 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

16 Q. IT'S 2014.

17 A. DOES THAT MEAN THAT WAS THE COPYRIGHT OR THE ---

18 Q. THAT MIGHT SEEM TO BE THE COPYRIGHT -- THIS WAS
19 PRINTED ON 5/18/17.

20 A. OKAY.

21 Q. SO, THIS WEBSITE WAS ACTUALLY UP IN MAY OF THIS
22 YEAR.

23 A. IT'S POSSIBLE, YES. I DON'T DISPUTE WHAT YOU HAVE
24 HERE.

25 Q. AND YOU TALK ABOUT SERVICES, CAREERS, EMPLOYEE

1 SUPPORT, LOCATIONS. THERE IS NOTHING IN THERE ABOUT
2 OWNING OR OPERATING YOUR OWN BUSINESS OR WORKING AS
3 AN INDEPENDENT CONTRACTOR, IS THERE, MR. SEARS?

4 A. WITHOUT LOOKING AT THE WEBSITE, I CAN'T ANSWER YOUR
5 QUESTION FULLY. I KNOW THAT NO ONE HAS EVER COME IN
6 OFF THE WEBSITE AND SAID "I'M HERE TO SIGN UP AS AN
7 EMPLOYEE."

8 Q. I'M GOING TO SHOW YOU PAGE 261 AGAIN, SIR.

9 A. OKAY.

10 Q. AND YOUR TESTIMONY WAS THAT YOU KNOW NOBODY HAS EVER
11 COME IN OFF THE WEBSITE TO TRY TO SIGN UP AS AN
12 EMPLOYEE; IS THAT RIGHT?

13 A. I SAID I'M NOT AWARE THAT ANYONE HAS COME IN AND
14 SAID -- I THINK I SAID, YOU KNOW, "I SAW THE
15 WEBSITE. I'M HERE TO BE AN EMPLOYEE."

16 Q. OKAY. SO, HERE, WHERE IT'S SHOWING YOU THE FIRST
17 PAGE OF THE EMPLOYMENT APPLICATION FILLED OUT BY
18 RACHEL TURNER.

19 A. I WOULDN'T SAY THIS IS THE FIRST PAGE.

20 Q. I'M GOING TO TELL YOU IT'S THE FIRST PAGE OF THE
21 PAGES YOU PRODUCED.

22 A. OKAY. I DON'T KNOW THAT THEY WERE PRODUCED IN THE
23 ORDER OF THE APPLICATION.

24 Q. THE APPLICATION ITSELF IS A TWO-PAGE DOCUMENT,
25 CORRECT?

- 1 A. I -- I THINK THERE ARE MORE PAGES THAN THAT. THE
2 INDEPENDENT CONTRACTOR AGREEMENT IS IN THERE.
- 3 Q. THE INDEPENDENT CONTRACTOR AGREEMENT IS A SEPARATE
4 DOCUMENT; WOULDN'T YOU AGREE?
- 5 A. NO, I THINK IT'S ALL ONE PACKET.
- 6 Q. THE ENTIRE PACKET OF ALL THE FORMS THAT RACHEL
7 TURNER SIGNED?
- 8 A. IN OTHER WORDS, WE DIDN'T -- WHEN SHE CAME IN, I
9 BELIEVE THAT SHE WAS GIVEN A PACKET TO SIGN.
- 10 Q. AND SHE WAS TOLD TO SIGN ALL OF THOSE THINGS?
- 11 A. I DON'T KNOW. I DON'T THINK ANYONE SAID -- IN OTHER
12 WORDS, SHE WAS GIVEN A PACKET. SIT DOWN. YOU ARE
13 HERE. YOU CAN ASK QUESTIONS. WE CAN TALK ABOUT IT.
14 IN OTHER WORDS, SHE ---
- 15 Q. YOU WEREN'T PRESENT WHEN SHE FILLED OUT HER
16 APPLICATION, WERE YOU?
- 17 A. I WAS NOT.
- 18 Q. OKAY. SO, YOU HAVE NO PERSONAL KNOWLEDGE, BUT BASED
19 ON THIS, WOULDN'T YOU AGREE, MR. SEARS, THAT THE
20 APPLICATION ASKS "WERE YOU REFERRED? PLEASE
21 INDICATE WHO REFEREED YOU?" WHAT BOX DID SHE CHECK?
- 22 A. SHE DID CHECK THE INTERNET.
- 23 Q. THE INTERNET. YOUR WEBSITE IS ON THE INTERNET;
24 ISN'T THAT TRUE?
- 25 A. BUT IF I MAY LOOK AT THAT. IF I MAY LOOK AT THAT?

1 AT THE TOP OF THAT, IT ACTUALLY SAYS "REFERRED BY
2 KRISTI WARNER," AND THAT'S NOT THE INTERNET.

3 Q. FAIR ENOUGH. WHEN MS. TURNER FIRST CAME TO WORK AT
4 MEDUSTRIAL, WERE YOU USING A STAFFING AGENCY AT THAT
5 TIME OR A P.E.O.?

6 A. I DON'T UNDERSTAND THAT QUESTION.

7 Q. HAVE YOU HEARD OF A COMPANY NAMED A.M.S. BUSINESS
8 SOLUTIONS OR A.M.S. STAFF LEASING?

9 A. SHE CAME IN FEBRUARY OF 2013. I THINK CONDUSTRIAL
10 WAS STILL WORKING WITH A.M.S. STAFF LEASING.

11 Q. AND I'M GOING TO SHOW YOU A THREE PAGE DOCUMENT
12 PAGES 265 TO 267. LET THE RECORD REFLECT I JUST
13 SHOWED YOU THAT DOCUMENT. HAVE YOU SEEN THIS
14 DOCUMENT BEFORE, MR. SEARS?

15 A. YES, I BELIEVE SO. I BELIEVE THIS IS ONE OF THE
16 DOCUMENTS THAT A.M.S. STAFF LEASING GAVE US WHEN WE
17 WERE WITH THEM.

18 Q. AND WHAT DOES IT SAY IN THAT LITTLE BOX AT THE TOP
19 RIGHT?

20 A. IT SAYS "EMPLOYEE IS TO KEEP THIS PAGE."

21 **BY COMMISSIONER JAMES:**

22 IS THIS THE CLAIMANT'S SUBMISSIONS?

23 **BY MR. SAMUELS:**

24 YES, YOUR HONOR, 265 THROUGH 267.

25 **CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

1 Q. MR. SEARS, WOULD YOU AGREE LOOKING AT PAGE THREE OF
2 THIS DOCUMENT, THIS WAS SIGNED BY RACHEL TURNER?

3 A. OKAY, YES.

4 Q. AND IN FACT, THE THIRD PAGE IS ALSO IDENTIFIED AS AN
5 APPLICATION FOR EMPLOYMENT?

6 A. IT DOES SAY THAT AT THE TOP, YES.

7 Q. LOOKING AT THAT THIRD PAGE, SHE WAS REQUIRED TO
8 CHECK HER, QUOTE, "I UNDERSTAND I WILL BE AN
9 EMPLOYEE OF A.M.S. WORKING FOR ONE OF ITS CLIENTS."
10 IS THAT CORRECT?

11 A. IT -- IT'S ONE OF THE CHECK BOXES ON HERE, YES, BUT
12 SHE ACTUALLY NEVER DID THAT.

13 Q. THAT'S NOT MY QUESTION, SIR.

14 A. RIGHT.

15 Q. SHE SIGNED THAT BOX SAYING SHE IS AN EMPLOYEE; ISN'T
16 THAT TRUE?

17 A. SHE DID FILL OUT THIS DOCUMENT, YES. SHE WAS GIVEN
18 THIS DOCUMENT WHEN SHE CAME IN.

19 Q. A DOCUMENT THAT A PERSON OF COMMON SENSE AND
20 INTELLIGENCE WOULD BELIEVE WAS MAKING YOU -- WAS
21 MAKING THAT PERSON AN EMPLOYEE; ISN'T THAT TRUE?

22 BY MR. GOODWYN:

23 I WOULD OBJECT TO THE FORM.

24 THE WITNESS ANSWERS:

25 A. I DON'T KNOW WHAT WAS IN HER HEAD. I KNOW SHE

1 TESTIFIED TO US THAT SHE DIDN'T READ ANY OF THIS.
2 SO, I DON'T KNOW HOW SHE COULD HAVE MADE THAT
3 DECISION IF SHE DIDN'T READ IT.

4 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

5 Q. WELL, OBJECTIVELY, SOMEBODY SIGNING THIS THOUGH,
6 IT'S AN APPLICATION FOR EMPLOYMENT, CORRECT?

7 A. NOT IF THERE IS AN INDEPENDENT CONTRACTOR AGREEMENT
8 AND AN EQUAL NUMBER OF DOCUMENTS THAT SAY THAT YOU
9 ARE. I MEAN, AS I'VE SAID BEFORE, WE HAD -- THIS IS
10 A BLUE COLLAR MANAGER THAT WAS TRYING TO DO HER BEST
11 TO PROVIDE DOCUMENTATION FOR THE BROKERAGE MODEL.
12 DID THEY DO EVERYTHING PERFECTLY, NO, BUT UP UNTIL
13 THIS CASE FOR THE EIGHT YEARS I'VE BEEN HERE, NO ONE
14 ELSE HAS APPARENTLY HAD THIS PROBLEM COMPREHENDING
15 WHAT THEY WERE SIGNING.

16 Q. REALLY? DIDN'T YOU EARLIER TESTIFY THAT YOU HAD A
17 NUMBER OF THE NURSES APPLY FOR UNEMPLOYMENT?

18 A. I DIDN'T SAY A NUMBER OF NURSES, NO. I SAID ---

19 Q. YOU SAID SEVERAL?

20 A. I SAID EVERY FEW YEARS IT SEEMS LIKE ONE OF THEM
21 DOES, YES.

22 Q. EVERY FEW YEARS?

23 A. YES.

24 Q. SO, MORE THAN ONE NURSE HAS TRIED TO APPLY FOR
25 UNEMPLOYMENT ---

1 A. I'VE BEEN HERE EIGHT YEARS. PROBABLY HAD ABOUT
2 FOUR, OR MAYBE THREE, MAYBE FIVE.

3 Q. OKAY.

4 A. SOMEWHERE IN THERE.

5 Q. AND YOU'VE CONTESTED ALL OF THOSE ON THE GROUNDS
6 THAT THESE PEOPLE ARE EMPLOYEES?

7 A. WE NOT ONLY CONTESTED ---

8 Q. NOT EMPLOYEES?

9 A. --- THOSE; WE PREVAILED IN EVERY CASE USING THIS --
10 THE INDEPENDENT CONTRACTOR AGREEMENT AT ISSUE IN
11 THIS CASE IN EVERY ONE WITHOUT EXCEPTION.

12 Q. DD YOU USE THESE EMPLOYMENT DOCUMENTS AS WELL?

13 A. WE SUBMITTED THE ENTIRE PACKET.

14 Q. AND WITH ALL DUE RESPECT, THAT IS NOT WHAT WAS
15 PROVIDED TO ME IN THE SUBPOENA RESPONSE.

16 A. I THINK IT WAS PROVIDED. YOU WANTED THE DOCUMENTS
17 USED IN THE CASE OF THE LADY IN QUESTION.

18 Q. RIGHT.

19 A. RIGHT. I DID SEND YOU WHAT WE SENT IN THAT CASE.

20 Q. AND THAT DID NOT INCLUDE ANY EMPLOYMENT RELATED
21 DOCUMENTS?

22 A. I THINK IT DID. YOU WOULD HAVE TO PULL THAT UP.
23 OBVIOUSLY, AS I SAID, I THINK THAT WAS AFTER WE HAD
24 DONE THE JOINT COMMISSION AUDIT AND FIGURED OUT THAT
25 WE NEEDED TO CLEAN UP THE PROCESS.

1 Q. PAGE 265, WHICH IS THE FIRST PAGE OF THIS A.M.S.
2 BUSINESS SOLUTIONS AND STAFF LEASING SUBSTANCE ABUSE
3 POLICY?

4 A. YES.

5 Q. WHAT SORT OF DISCIPLINARY ACTION CAN BE TAKEN
6 AGAINST AN EMPLOYEE ACCORDING TO THIS DOCUMENT?

7 A. WELL, WHAT -- YOU'RE TALKING ABOUT THE A.M.S. STAFF
8 LEASING ACCIDENT INJURIES PROCEDURES?

9 Q. NO, I'M TALKING ABOUT THE OTHER ONE.

10 A. THE SUBSTANCE ABUSE?

11 Q. YES, SIR.

12 A. IT'S QUITE SMALL. "AN EMPLOYEE'S FAILURE TO COMPLY
13 WITH ANY PART OF THIS POLICY WILL RESULT IN
14 DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION
15 OF EMPLOYMENT."

16 Q. UNDER THE CLEAR TERMS OF THIS DOCUMENT, RACHEL
17 TURNER COULD BE TERMINATED?

18 A. NO.

19 Q. MR. SEARS, LET ME SHOW YOU ANOTHER DOCUMENT. THIS
20 WILL BE PAGES 268 THROUGH 270 OF THE CLAIMANT'S APA
21 SUBMISSIONS.

22 A. OKAY.

23 Q. HAVE YOU EVER HEARD OF THE SECOND INJURY FUND?

24 A. I HAVE.

25 Q. WHAT'S THE SECOND INJURY FUND?

1 A. WELL, I DON'T BELIEVE IT'S HERE NOW. OBVIOUSLY, IT
2 WAS A MECHANISM OF THE WORKERS' COMP COMMISSION THAT
3 WOULD INDUCE EMPLOYERS TO HIRE EMPLOYEES WITH AN
4 INJURY SO THEY COULD RECOVER IF THEY HAD A
5 SUBSEQUENT INJURY.

6 Q. ALL RIGHT. SOMETHING YOU WERE VERY FAMILIAR WITH
7 WHEN YOU WERE PRACTICING WORKERS' COMP?

8 A. MANY YEARS AGO, YES.

9 Q. AND ISN'T IT TRUE THAT EMPLOYERS WOULD OFTEN TIMES
10 HAVE EMPLOYEES FILL OUT A QUESTIONNAIRE SO THAT THE
11 EMPLOYEE WOULD HAVE SUFFICIENT -- THE EMPLOYER WOULD
12 HAVE SUFFICIENT KNOWLEDGE TO GET REIMBURSEMENT FROM
13 THE SECOND INJURY FUND IF THERE WERE A WORK-RELATED
14 INJURY LATER?

15 A. I MEAN, I'M NOT SURE WHAT EVERY EMPLOYER DOES, BUT
16 YES, THAT SEEMS LIKE SEVERAL EMPLOYERS WOULD HAVE
17 DONE THAT.

18 Q. DID CONDUSTRIAL DO THAT?

19 A. CONDUSTRIAL DID IT FOR ITS EMPLOYEES, YES.

20 Q. OKAY. I'M GOING TO SHOW YOU PAGES 268 AND 270.
21 THEY ARE IN EVIDENCE. WOULD YOU AGREE THAT THIS IS
22 A POST OFFER OF EMPLOYMENT MEDICAL INJURY FORM?

23 A. THIS IS A STANDARD FORM, YES. IT DOES SAY THAT AT
24 THE TOP.

25 Q. AND IT'S IDENTIFIED AS A CONDUSTRIAL FORM?

1 A. IT IS A CONDUSTRIAL FORM. IT IS NOT A MEDUSTRIAL
2 FORM.

3 Q. AND THEY ARE THE SAME LEGAL ENTITY, CORRECT,
4 CONDUSTRIAL AND MEDUSTRIAL?

5 A. CERTAINLY, MEDUSTRIAL IS A DIVISION OF CONDUSTRIAL,
6 BUT WHEN THE BROKERAGE NURSES COMPLETED THEIR
7 PACKET, OBVIOUSLY THE INTEND WAS THAT THEY WOULD
8 SIGN THE MEDUSTRIAL PAPERWORK, NOT THE CONDUSTRIAL
9 PAPERWORK, BECAUSE THEY ARE NOT EMPLOYEES. THEY
10 WERE NOT UNDER THE CONSTRUCTION STAFFING MODEL. SO,
11 YES, AGAIN, THE PEOPLE RUNNING THAT OFFICE WELL
12 INTENTIONED DID INCLUDE SOME CONDUSTRIAL PAPERWORK
13 ALONG WITH THE MEDUSTRIAL PAPERWORK OF WHICH YOU
14 HAVE SHOWN ME NONE AND INCLUDING THE INDEPENDENT
15 CONTRACTOR AGREEMENT, TWO OF WHICH SHE ALSO SIGNED.

16 Q. SO, THIS FORM STATES "COMPLETION OF THIS REPORT IS
17 REQUESTED TO ASSIST YOUR EMPLOYER IN MEETING THE
18 KNOWLEDGE REQUIREMENT OF THE INSURANCE INDUSTRY
19 SECOND INJURY FUND." THAT'S A REFERENCE TO THE
20 WORKERS' COMP SECOND INJURY FUND, IS IT NOT?

21 A. THE DOCUMENT SPEAK FOR ITSELF, YES.

22 Q. AND ON THE THIRD PAGE, WHO SIGNED IT?

23 A. MS. TURNER DID SIGN IT.

24 Q. AND UNDER WHAT TITLE, DID SHE SIGN IT?

25 A. OBVIOUSLY, SHE WASN'T A WITNESS. SHE DID SIGN IT

1 UNDER THE EMPLOYEE TITLE.

2 Q. THE WORD NEXT TO HER NAME WHERE SHE SIGNED. SHE WAS
3 TOLD TO SIGN WHERE IT SAYS "EMPLOYEE"; ISN'T THAT
4 TRUE?

5 A. SHE WASN'T TOLD TO -- I DON'T AGREE WITH THAT. I
6 DON'T THINK SHE WAS TOLD TO SIGN IT ANYWHERE. I
7 THINK SHE WAS GIVEN THE DOCUMENTS, AND YOU'RE A
8 SMART PERSON; PLEASE GO THROUGH THESE.

9 Q. ALL RIGHT. SO, YOUR CONTENTION IS THIS DOCUMENT
10 DOESN'T MAKE HER AN EMPLOYEE ---

11 A. ABSOLUTELY.

12 Q. --- BECAUSE IT SAYS CONDUSTRIAL?

13 A. THAT'S NOT MY ONLY CONTENTION, BUT THAT'S PART OF
14 IT, YES.

15 Q. THAT'S PART OF IT?

16 A. RIGHT.

17 Q. OKAY. I'M GOING TO SHOW YOU PAGE 271. THIS IS IN
18 EVIDENCE. CAN YOU IDENTIFY THAT DOCUMENT, MR.
19 SEARS?

20 A. IT APPEARS TO SAY "FACILITY AND CLIENT
21 REQUIREMENTS."

22 Q. WOULD YOU AGREE IT SPECIFICALLY IS ADDRESSED TO
23 NURSING PERSONNEL?

24 A. "OUR CLIENTS EXPECT ALL NURSING PERSONNEL TO DRESS
25 AND ACT PROFESSIONAL AT ALL TIMES." IT DOES APPEAR,

1 YES.

2 Q. SO, WE CAN AGREE, THIS IS A MEDUSTRIAL DOCUMENT, IS
3 IT NOT?

4 A. I DON'T KNOW IF THEY COPIED IT FROM SOMEWHERE ELSE.
5 IT DOES HAVE A MEDUSTRIAL LOGO. THEY WERE USING IT,
6 YES.

7 Q. OKAY. SO, LET'S LOOK DOWN AT THE BOTTOM.

8 A. RIGHT.

9 Q. DO YOU SEE DOWN AT THE BOTTOM, IT SAYS "FAILURE TO
10 COMPLY WITH ANY OF THE ABOVE WILL PREVENT YOU FROM
11 WORKING AS AN EMPLOYEE OF MEDUSTRIAL UNTIL SUCH TIME
12 AS THE NONCOMPLIANT ISSUE HAS BEEN RESOLVED."

13 A. IT DOES SAY THAT ON HERE.

14 Q. THAT'S PRETTY CLEAR THAT PERSON IS AN EMPLOYEE OF
15 MEDUSTRIAL WHEN YOU SIGN IT, ISN'T IT?

16 A. NO, IT'S NOT. YOU'RE TAKING THIS OUT OF CONTEXT,
17 AND IT SUGGESTS TO ME THAT I SEE WHERE IT LOOKS LIKE
18 MEDUSTRIAL WAS -- IN OTHER WORDS, THE FACT THAT
19 MEDUSTRIAL IS IN ALL CAPS HERE, IT LOOKS LIKE IT WAS
20 CHANGED TO THAT FROM SOME OTHER NAME. I DON'T KNOW
21 WHY IT WOULD BE LISTED IN ALL CAPS. SO, THIS LOOKS
22 TO BE ---

23 Q. THIS IS YOUR COMPANY'S FORM, SIR.

24 A. WELL, IT SAYS "MEDUSTRIAL." YES, IT WAS A DOCUMENT
25 THAT OUR MANAGER USED FOR A PERIOD OF TIME, YES.

1 Q. YOUR MANAGER THAT HAD AUTHORITY TO HIRE AND FIRE?

2 A. WELL, SHE DIDN'T HAVE AUTHORITY TO HIRE AND FIRE,
3 BECAUSE THEY WEREN'T EMPLOYEES. THERE WERE NO
4 EMPLOYEES THAT WORKED FOR S.C.D.C. SHE DIDN'T HAVE
5 ANY AUTHORITY TO HIRE AND FIRE. THEY WEREN'T
6 EMPLOYEES.

7 Q. ALL RIGHT. SO, LET'S LOOK AT WHAT IT SAYS UNDER
8 "SALARIES OR INCOME, OVERTIME, HOLIDAY PAY AND
9 PAYROLL."

10 A. YES.

11 Q. "OUR CLIENTS REQUIRE THAT YOU NEVER DISCUSS YOUR
12 RATE OF PAY WITH THEIR EMPLOYEES. YOUR PAY SHOULD
13 BE KEPT CONFIDENTIAL. FAILURE TO DO SO COULD RESULT
14 IN IMMEDIATE TERMINATION." ISN'T THAT A WARNING TO
15 THE EMPLOYEE THAT IF YOU DISCUSS YOUR PAY WITH
16 SOMEBODY AT S.C.D.C., THAT YOU CAN BE TERMINATED BY
17 MEDUSTRIAL?

18 A. NO. WE DISCUSSED THIS WHEN WE LOOKED AT THE
19 MEDUSTRIAL CONTRACT. THAT CONTRACT DRAFTED BY
20 S.C.D.C. SAYS THAT DISCUSSING PAY COULD BE -- I
21 DON'T KNOW IF IT SAID DISMISSAL OR TERMINATION, BUT
22 THAT WAS THEIR TERM TO TAKE THEM OFF OF THEIR SITE.

23 Q. YOU'RE TALKING ABOUT THE S.C.D.C. CONTRACT THAT SAYS
24 MEDUSTRIAL IS GOING TO SUPPLY EMPLOYEES COVERED
25 UNDER WORKERS' COMP INSURANCE; THAT'S THE ONE YOU'RE

- 1 REFERRING TO?
- 2 A. I'M TALKING ABOUT MEDUSTRIAL -- BOTH MEDUSTRIAL
- 3 CONTRACTS AND EVERYTHING INVOLVED IN THE
- 4 RELATIONSHIP AS WE HAVE DISCUSSED SEVERAL TIMES.
- 5 Q. MEDUSTRIAL PLACES PEOPLE AT OTHER PLACES BESIDES
- 6 S.C.D.C., DON'T THEY?
- 7 A. THEY DO.
- 8 Q. THIS DOESN'T SPECIFY WHETHER THIS IS THE DEPARTMENT
- 9 OF CORRECTIONS, DOES IT?
- 10 A. IT DOESN'T.
- 11 Q. IT JUST SAYS ALL OUR CLIENTS, ANY CLIENT, IF YOU
- 12 DIVULGE YOUR SALARY TO ANY CLIENT, YOU AS AN
- 13 EMPLOYEE CAN BE TERMINATED?
- 14 A. IT DOESN'T SAY THAT. IT -- AS I SAID, MY
- 15 INTERPRETATION, WHICH YOU ASKED FOR, "FAILURE TO DO
- 16 SO COULD RESULT IN IMMEDIATE TERMINATION." I'M NOT
- 17 SURE IF THIS CAME FROM S.C.D.C. OR NOT, BUT I READ
- 18 THIS THE SAME AS I READ THE S.C.D.C. CONTRACT. IF
- 19 YOU DISCUSS YOUR PAY -- IT DOESN'T MATTER TO US IF
- 20 THEY DISCUSS THEIR PAY. THAT WAS A CLIENT CONCERN.
- 21 IT DIDN'T -- IT DIDN'T MATTER TO CONDUSTRIAL
- 22 BROKERAGE AT ALL. THEY WERE ENCOURAGED TO WORK FOR
- 23 OTHER AGENCIES. THEY WOULD HAVE TO TALK ABOUT THEIR
- 24 PAY.
- 25 Q. IT HAS TO HAVE MATTERED TO MEDUSTRIAL, SIR. YOU

1 MADE HER SIGN THIS FORM THAT SAYS SHE WILL BE
2 TERMINATED IF SHE DOES IT.

3 A. WE DIDN'T -- WE DIDN'T DO THAT. THIS, AS I'VE
4 EXPLAINED, YOU -- AGAIN, I THINK YOU'RE TRYING TO
5 TWIST MY WORDS. I'VE ANSWERED THIS THREE TIMES.
6 THERE WERE SOME DOCUMENTS INCLUDED AT THE BEGINNING
7 THAT WERE IN ADDITION TO WHAT SHOULD HAVE BEEN
8 INCLUDED. THERE'S NOTHING UNDERHANDED HERE. THIS
9 WAS A GOOD FAITH BLUE COLLAR WORKER TRYING TO
10 PROVIDE DOCUMENTATION, AND IT APPEARS SHE HAD DONE
11 THAT. WHEN WE WENT FOR THE JOINT COMMISSION
12 CERTIFICATION, WE NOTICED THAT WE NEEDED TO AMEND
13 SOMETHING SO THAT IT WAS MORE UNIFORM, BUT THERE IS
14 JUST AS MANY DOCUMENTS, WHICH YOU HAVE NOT HANDED ME
15 THAT WE HAVE EXPLORED THAT INDICATE SHE WAS AN
16 INDEPENDENT CONTRACTOR AND INCLUDING TWO SEPARATE
17 INDEPENDENT CONTRACTOR AGREEMENTS SIGNED A YEAR
18 APART AFTER ALL OF THESE DOCUMENTS.

19 Q. WHICH YOUR ATTORNEY WENT THROUGH WITH YOU ON DIRECT
20 EXAMINATION, RIGHT?

21 A. PROBABLY.

22 Q. I'M GOING TO SHOW YOU ANOTHER DOCUMENT, SIR. THIS
23 WOULD BE PAGE 272 OF CLAIMANT'S APA SUBMISSIONS.

24 A. YES.

25 Q. CAN YOU IDENTIFY THIS DOCUMENT?

1 A. IT'S TERMS OF EMPLOYMENT FORM FROM -- WITH THE
2 CONDUSTRIAL LOGO ON THERE.

3 Q. IS IT SIGNED?

4 A. YES, IT IS SIGNED.

5 Q. WHO SIGNED IT?

6 A. MS. RATHBURN SIGNED IT, AND AN EMPLOYEE, I PRESUME
7 YOU'RE TELLING ME THAT MS. TURNER SIGNED IT.

8 Q. WELL, SHE HAS IDENTIFIED THAT SHE SIGNED IT, AND IT
9 WAS PRODUCED AS PART OF HER PERSONNEL FILE.

10 A. I HAVE NO REASON TO DOUBT THAT.

11 Q. ALL RIGHT, WOULD YOU AGREE THAT THIS IS A "LIST OF
12 COMPANY RULES, REGULATIONS AND GUIDELINES THAT WE
13 REQUIRE THAT YOU COMPLY WITH THROUGHOUT YOUR CAREER
14 AT CONDUSTRIAL."

15 A. "YOUR CAREER WITH CONDUSTRIAL" AS AN EMPLOYEE, YES.

16 Q. WHICH AGAIN SIGNED BY A MANAGER WITH AUTHORITY AT
17 CONDUSTRIAL AND BY THE EMPLOYEE RACHEL TURNER.

18 A. NOT SIGNED AS AN EMPLOYEE. SHE WASN'T AN EMPLOYEE.
19 I'VE ANSWERED THIS QUESTION. YOU CAN -- HOWEVER
20 MANY DOCUMENTS YOU WANT ME TO ANSWER TO CUT THROUGH
21 THIS, I BELIEVE I'VE ANSWERED THAT QUESTION.

22 Q. I JUST NEED TO KNOW YOUR POSITION, SIR, ON EACH OF
23 THESE DOCUMENTS.

24 A. NO.

25 Q. AND WOULD YOU AGREE THE PERSON SIGNING AS EMPLOYEE

1 IS ALSO REQUIRED TO INITIAL ALL OF THE BOXES ON THE
2 LEFT?

3 A. WHAT DOES IT SAY HERE? I MEAN, IT APPEARS SHE DID
4 INITIAL THE BOXES ON THE LEFT.

5 Q. AND YOU'VE SEEN THIS FORM BEFORE, HAVEN'T YOU?

6 A. I'VE SEEN IT BEFORE, YES.

7 Q. DO YOU STILL USE IT?

8 A. PROBABLY, YES, FOR OUR CONDUSTRIAL EMPLOYEES.

9 Q. THIS SAYS IN THE OTHER DOCUMENT "AGREE THAT IF YOU
10 DISCUSS YOUR PAY, AND IN FACT, YOU DISCUSS YOUR PAY
11 WITH ANOTHER EMPLOYER CONTRACTOR, IT WILL RESULT IN
12 DISCIPLINARY ACTION UP TO AND INCLUDING
13 TERMINATION."

14 A. IF THAT'S WHAT IT SAYS, THAT'S WHAT IT SAYS.

15 Q. OKAY. IT SAYS "IF WE SEND YOU TO A JOB AND YOU DO
16 NOT REPORT AS INSTRUCTED TO THE JOBSITE WITHOUT
17 NOTIFICATION, YOU WILL BE IMMEDIATELY TERMINATED AND
18 WILL NOT BE ELIGIBLE FOR REHIRE." IT SAYS THAT,
19 TOO, DOESN'T IT?

20 A. READ THAT PART AGAIN; I'M SORRY.

21 Q. "IF WE SEND YOU TO A JOB AND YOU DO NOT REPORT AS
22 INSTRUCTED TO THE JOB SITE WITHOUT NOTIFICATION, YOU
23 WILL BE IMMEDIATELY TERMINATED AND WILL NOT BE
24 ELIGIBLE FOR REHIRE." IT SAYS THAT, RIGHT?

25 A. I THINK SO, YES.

- 1 Q. AND ISN'T THAT THE MODEL WITH MS. TURNER?
- 2 A. NO, THAT'S NOT THE MODEL.
- 3 Q. YOU SENT HER TO KIRKLAND INSTITUTION.
- 4 A. THAT'S NOT THE MODEL AT ALL. THAT'S NOT THE MODEL
- 5 AT ALL.
- 6 Q. YOU DON'T TELL HER WHERE TO GO?
- 7 A. NO, WE DON'T TELL HER WHERE TO GO. SHIFTS COME IN
- 8 FROM S.C.D.C. AND OTHER CLIENTS AND EITHER SHE CALLS
- 9 AND INQUIRES, OR WE CALL AND SAY "DO YOU WANT THIS
- 10 SHIFT"? WE DON'T TELL THEM "YOU'VE GOT TO GO
- 11 THERE." WE SAY "DO YOU WANT THIS SHIFT?" "YES, I
- 12 DO." "WELL, THEN HERE'S WHERE IT IS."
- 13 Q. AND THE S.C.D.C. SCHEDULE IS MADE OUT A MONTH IN
- 14 ADVANCE?
- 15 A. I BELIEVE THAT'S WHAT WE'VE HEARD THROUGH THE CASE,
- 16 YES.
- 17 Q. AND ONCE SHE HAS AGREED TO WORK ON THAT SCHEDULE,
- 18 SHE IS REQUIRED TO GO, AND IF SHE DOESN'T GO, PER
- 19 THIS DOCUMENT, SHE IS TERMINATED?
- 20 A. NO, THAT'S NOT ACCURATE. WE'VE HAD -- IN FACT,
- 21 THAT'S COVERED IN THE INDEPENDENT CONTRACTOR
- 22 AGREEMENT. IF THEY ACCEPT A SHIFT AND GO, I THINK
- 23 THERE'S A LIQUIDATED DAMAGES CLAUSE. IT CERTAINLY
- 24 IS COMPLETELY DIFFERENT THAN THIS, AND WE HAVE
- 25 ENFORCED THAT.

1 Q. AND YOU'VE HAD HER SIGN BOTH.

2 A. I DIDN'T HAVE HER SIGN BOTH. I'VE ALREADY TESTIFIED
3 ABOUT THE CONDUSTRIAL DOCUMENTS THAT WERE
4 INTERMIXED.

5 Q. WHAT HAPPENS IF SHE WERE TO USE PROFANITY ACCORDING
6 TO THIS FORM?

7 A. I MEAN, IT SAYS WHAT IT SAYS. I -- I MEAN...

8 Q. IT SAYS "PROFANITY IN ANY FORM WILL NOT BE TOLERATED
9 AND IS GROUNDS FOR TERMINATION."

10 A. RIGHT.

11 Q. "REPRESENT YOURSELF AND CONDUSTRIAL IN A
12 PROFESSIONAL MANNER."

13 A. IT SAYS WHAT IT SAYS.

14 Q. AND THAT ONLY APPLIES TO W-2 EMPLOYEES, NOT W-9
15 EMPLOYEES, RIGHT?

16 A. WHAT IS A W-9 EMPLOYEE.

17 Q. EXCUSE ME. I APOLOGIZE. I MEANT 1099 EMPLOYEE.

18 A. THIS IS MEANT FOR A W-2 EMPLOYEE, YES.

19 Q. WHEN YOU ARE A W-2 EMPLOYEE, YOU ARE HIRED, AND
20 THERE IS A TAX FORM YOU FILL OUT, RIGHT?

21 A. THERE IS SUPPOSED TO BE A TAX FORM, YES.

22 Q. CALLED A W-4?

23 A. YES.

24 Q. OKAY.

25 A. I UNDERSTAND THAT MS. TURNER WAS GIVEN A W-4 WHEN

1 SHE CAME IN 2013.

2 Q. AND I'M SHOWING YOU PAGE 273. IS THAT THE W-4 FORM
3 FILLED OUT BY MS. TURNER?

4 A. IT IS A 2012 FORM. IT DOES APPEAR SHE SIGNED IT.

5 Q. ON FEBRUARY 7, 2013?

6 A. I DON'T -- DO THEY -- ARE THEY SUPPOSED TO UPDATE
7 THESE EVERY YEAR? I'M NOT SURE. BUT THIS IS A 2012
8 FORM, NOT 2013.

9 Q. I CAN'T ANSWER THAT, SIR. THIS WAS SOMETHING THAT
10 WAS PRODUCED AS PART OF HER PERSONNEL FILE.

11 A. OKAY.

12 Q. YOU WOULD AGREE IT WAS PRODUCED AS PART OF HER
13 PERSONNEL FILE?

14 A. IT WAS.

15 Q. SO, THE FORM SHE FILLED OUT WAS A FORM TO HAVE TAXES
16 WITHHELD FROM HER PAYCHECK, AND THAT WAS A FORM
17 GIVEN TO HER AS PART OF THE HIRING PROCESS AT
18 MEDUSTRIAL; ISN'T THAT TRUE?

19 A. IT WAS NOT PART OF THE HIRING PROCESS, BECAUSE THERE
20 WAS NO HIRING PROCESS. SHE WASN'T HIRED, AND EVERY
21 PAYCHECK SHE RECEIVED FOR THREE YEARS DID NOT HAVE
22 TAXES TAKEN OUT. SHE SAW THAT EVERY WEEK AND NEVER
23 SAID A WORD, EVERY WEEK FOR THREE YEARS, A NEW
24 CHANCE TO SAY SOMETHING ABOUT IT EVERY WEEK FOR
25 THREE YEARS. I THINK SHE ALSO WENT TO A TAX

1 PREPARER AND PREPARED TAX FORMS REPRESENTING TO THE
2 FEDERAL GOVERNMENT THAT SHE DIDN'T HAVE TAXES TAKEN
3 OUT EVERY YEAR.

4 Q. SIR, I WOULD ASK YOU TO LIMIT YOUR ANSWERS ---

5 A. I WAS EXPLAINING.

6 Q. --- TO BE RESPONSIVE TO MY QUESTIONS.

7 A. I THOUGHT IT WAS. SORRY.

8 Q. ALTHOUGH WOULD YOU AGREE THAT WHAT SHE HAD TO TAKE
9 TO HER TAX PREPARER WAS BASED ON THE FORM -- THE
10 INCOME FORM PROVIDED TO HER BY CONDUSTRIAL, EVEN
11 THOUGH SHE FILLED OUT A W-4 REQUESTING A W-2,
12 EXPECTING A W-2, Y'ALL SENT HER A 1099?

13 A. I DON'T AGREE THAT SHE EXPECTED A W-2 EVER, AND SHE
14 WAS FREE TO OBJECT TO THAT AND TAKE WHATEVER SHE
15 WANTED TO TO HER TAX PREPARER. SHE COULD HAVE TAKEN
16 HER OWN NOTES ON TAXES SHE THOUGHT SHOULD HAVE BEEN
17 WITHHELD THAT SHE THOUGHT THEY SHOULD HAVE BEEN.
18 SHE WAS FREE TO TAKE PAY STUBS. SHE WAS FREE TO
19 MAKE ANY REQUEST FOR THAT. SHE INDICATED ON THE TAX
20 RETURN HERSELF THAT IT WAS NOT EMPLOYMENT INCOME.

21 Q. SO, BY OCTOBER 9TH, 2014, YOU HAD HER COME BACK IN
22 AND SIGN NEW PAPERWORK; ISN'T THAT TRUE?

23 A. THAT SOUNDS LIKE IT'S IN THE NEIGHBORHOOD. I MEAN,
24 I DON'T HAVE ANY OF THOSE DOCUMENTS BEFORE ME.

25 Q. BUT YOU UNDERSTAND SHE CAME BACK IN AND WAS REQUIRED

1 TO SIGN NEW PAPERWORK TO CONTINUE WORKING?

2 A. SHE WASN'T REQUIRED TO DO THAT TO CONTINUE WORKING.

3 I -- IT WAS EITHER PART OF A STATE REQUIREMENT THAT
4 YOU HAVE TO UPDATE YOUR CREDENTIALS EVERY YEAR, AND
5 IT COULD HAVE BEEN -- I DON'T HAVE THE SPECIFIC TIME
6 FRAME. THAT COULD HAVE BEEN THE BEGINNING OF THE
7 JOINT COMMISSION CERTIFICATION PROCESS. FOR ONE OF
8 THOSE REASONS, WE NEEDED TO HAVE HER CREDENTIALS TO
9 UPDATE.

10 Q. AT THAT TIME, YOU TOOK THE OPPORTUNITY TO HAVE HER
11 SIGN A NEW INDEPENDENT CONTRACTOR AGREEMENT?

12 A. I BELIEVE SO, YES. THERE IS -- THERE IS SUCH A
13 DOCUMENT, YES.

14 Q. AND IN SOME OTHER DOCUMENTS AS WELL?

15 A. I BELIEVE SO, YES.

16 Q. BEFORE THAT, I WANT TO SHOW YOU ONE OTHER DOCUMENT
17 STILL 2013.

18 A. OKAY.

19 Q. THIS IS CLAIMANT'S 274, WHICH WERE PRODUCED PURSUANT
20 TO SUBPOENA. THIS IS NOT DATED THE SAME DATE AS THE
21 PREVIOUS DOCUMENTS. WOULD YOU AGREE THAT THIS
22 DOCUMENT IS DATED FEBRUARY 14TH, 2013?

23 A. IT SAYS -- WELL, IT SAYS "RACHEL TURNER 2/14/13,"
24 YES. OKAY.

25 Q. WHAT WAS THE PURPOSE OF HAVING MS. TURNER SIGN THIS

1 DOCUMENT?

2 A. I MEAN, SITTING HERE, I DON'T -- I'M NOT SURE. I
3 MEAN, OBVIOUSLY, IT HAD SOMETHING TO DO WITH THE
4 DEPARTMENT OF MENTAL HEALTH.

5 Q. WELL, DOESN'T IT ACTUALLY SAY "HAVE HER AFFIRM AND
6 VERIFY THAT," QUOTE, "I AM ORIENTED AT D.M.H.
7 THROUGH MEDUSTRIAL HEALTHCARE. I AM AN EMPLOYEE OF
8 CONDUSTRIAL INCORPORATED. I WILL WORK MY FIRST 40
9 HOURS THROUGH MEDUSTRIAL, AND IF I WANT MORE HOURS,
10 IT IS MY RESPONSIBILITY TO NOTIFY MY EMPLOYER"; DO
11 YOU AGREE WITH THAT?

12 A. THAT IS WHAT IT SAYS, YES.

13 Q. AT THAT TIME, SHE WAS VERIFYING HER UNDERSTANDING
14 THAT SHE IS AN EMPLOYEE OF CONDUSTRIAL,
15 INCORPORATED? NO WHERE IN THAT DOCUMENT DOES IT
16 STATE SHE WAS AN INDEPENDENT CONTRACTOR, DOES IT?

17 A. I DON'T THINK SO. I DON'T -- I DON'T KNOW IF THIS
18 WAS SIGNED WITH OTHER THINGS OR BY ITSELF OR NOT.

19 Q. AND IN FACT, SHE ALSO HAS TO AGREE THAT IF SHE WANTS
20 THE DEPARTMENT OF MENTAL HEALTH TO HIRE HER, SHE HAS
21 TO GIVE A 90-DAY NOTICE TO CONDUSTRIAL IN WRITING
22 AND WORK THROUGH CONDUSTRIAL UP UNTIL SHE CAN THEN
23 JOIN THE DEPARTMENT OF MENTAL HEALTH STAFF?

24 A. CERTAINLY, THAT IS WHAT IT SAYS. THIS MAY HAVE BEEN
25 VERBIAGE THAT WAS GIVEN TO US BY D.M.H. AND PUT ON

1 MEDUSTRIAL LETTERHEAD. IT MAY HAVE BEEN.

2 Q. AND DOCUMENT THAT, ADD TERMS AND CONDITIONS
3 INCLUDING A TERM OF EMPLOYMENT AND DEFINITIONS OF AN
4 EMPLOYEE VERIFICATION, SHE IS AN EMPLOYEE, THAT MS.
5 TURNER HAD TO SIGN IN 2015?

6 A. I DON'T AGREE WITH THAT. SHE SIGNED ALL OF THESE IN
7 CONNECTION WITH MANY OTHER DOCUMENTS AT A SESSION
8 THAT WAS MADE CLEAR TO HER SHE WAS AN INDEPENDENT
9 CONTRACTOR.

10 Q. I'M GOING TO SHOW YOU PAGE 275, CLAIMANT'S APA
11 SUBMISSIONS.

12 A. YES.

13 Q. WHAT IS THIS DOCUMENT TITLED, MR. SEARS?

14 A. IT SAYS "ATTENDANCE POLICY."

15 Q. AND WHAT IS THE EFFECTIVE DATE ON IT?

16 A. MARCH 12, 2013.

17 Q. IS IT SIGNED?

18 A. IT IS SIGNED.

19 Q. WHO HAS SIGNED IT?

20 A. I PRESUME MS. TURNER SIGNED IT.

21 Q. AND WHERE SHE SIGNED IT, IT SAYS "EMPLOYEE
22 SIGNATURE"?

23 A. YES.

24 Q. AND HOLLY SEEBY ALSO SIGNED IT, CORRECT?

25 A. YES, SHE DID, YES.

1 Q. AND SHE IS A MANAGER, DIRECTOR OF OPERATIONS AND
2 PROJECT COORDINATOR?

3 A. SHE COULD HAVE BEEN PROJECT COORDINATOR AT THAT
4 TIME, YES.

5 Q. SHE SIGNED IT OCTOBER 9TH -- THEY BOTH SIGNED IT
6 OCTOBER 9TH, 2014, RIGHT?

7 A. THEY DID.

8 Q. WHAT WAS THE PURPOSE OF THIS DOCUMENT?

9 A. AS I SIT HERE, I DON'T KNOW.

10 Q. WHAT DOES THE DOCUMENT SAY?

11 A. IT SAYS IT WAS AN ATTENDANCE POLICY.

12 Q. AND WHAT DOES IT SAY ITS PURPOSE IS?

13 A. TO SET GUIDELINES REGARDING NO CALL, NO SHOW,
14 TARDINESS AND ABSENTEES FOR EMPLOYEES OF MEDUSTRIAL
15 HEALTHCARE.

16 Q. AND I KNOW YOU WANT TO SAY THAT SHE IS NOT AN
17 EMPLOYEE, BUT YOU WILL AGREE, I'M JUST GOING TO JUMP
18 IN BEFORE YOU GET TO SAY THAT. BUT IN TERMS OF THIS
19 POLICY, WHAT DOES THIS POLICY SAY AS TO WHAT HAPPENS
20 IF THERE IS A NO CALL, NO SHOW?

21 A. "SERIOUS MATTER, THE FIRST INCIDENCE RESULTS IN A
22 FINAL WRITTEN WARNING. THE SECOND MAY RESULT IN
23 TERMINATION OF EMPLOYMENT AND ADDITIONAL
24 DISCIPLINARY STEPS."

25 Q. SO, BY BOTH MS. SEEBY AND MS. TURNER SIGNING THIS

1 DOCUMENT, THAT ACKNOWLEDGES, WOULD YOU NOT AGREE,
2 THE AUTHORITY OF MEDUSTRIAL HEALTHCARE TO TERMINATE
3 AN EMPLOYEE FOR NO CALL, NO SHOW?

4 A. NO. LIKE I SAID, SHE WASN'T AN EMPLOYEE, BUT THESE
5 EVENTS HAPPENED WITH NO REPERCUSSIONS MANY TIMES.

6 Q. I MOVE YOU ON TO PAGE 276, CLAIMANT'S APA
7 SUBMISSIONS. MR. SEARS, DO YOU AGREE THESE ARE THE
8 FACILITY AND CLIENT REQUIREMENTS?

9 A. I THINK THIS IS THE SAME DOCUMENT THAT YOU HANDED ME
10 BEFORE. IT LOOKS LIKE IT WAS SIGNED LATER.

11 Q. AND THAT IS BASICALLY EXACTLY MY POINT. SO, ON
12 OCTOBER 9TH, 2014, YOU HAVE HER SIGN ANOTHER
13 DOCUMENT VERIFYING WHAT THE FACILITY REQUIREMENTS
14 CAN DO AND HOW FAILURE TO COMPLY CAN RESULT IN
15 TERMINATION, CORRECT?

16 A. THE LANGUAGE APPEARS TO BE THE SAME.

17 Q. I'M GOING TO SHOW YOU ANOTHER DOCUMENT, PAGE 282,
18 CLAIMANT'S APA SUBMISSIONS. DO YOU RECOGNIZE THIS
19 DOCUMENT?

20 A. IT APPEARS TO BE AN APPLICATION FORM WAY BACK.

21 Q. ARE YOU FAMILIAR WITH THE DOCUMENT; DO YOU KNOW WHAT
22 IT IS FOR?

23 A. I'M SURE IT'S PART OF THE CONDUSTRIAL APPLICATION
24 PROCESS.

25 Q. WOULDN'T YOU AGREE THAT DOCUMENT VERIFIES THAT YOU

- 1 ARE A 90-DAY PROBATIONARY EMPLOYEE WHEN YOU SIGN IT?
- 2 A. I THINK THE DOCUMENT SAYS THAT, BUT ONCE AGAIN, THAT
- 3 SHOWS MS. TURNER HAD BEEN AT THE BROKERAGE WITH US
- 4 SINCE 2013, SO CLEARLY SHE WAS WELL BEYOND ANY 90
- 5 DAYS, AND WE WOULDN'T BE STARTING THIS PROCESS OVER
- 6 JUST BECAUSE SHE CAME IN TO UPDATE HER
- 7 CERTIFICATION.
- 8 Q. WOULDN'T YOU AGREE THAT IT REQUIRES YOU TO VERIFY
- 9 THAT YOU ARE A AT-WILL EMPLOYEE?
- 10 A. I WOULD AGREE WITH THAT.
- 11 Q. DO YOU NOT AGREE THAT THIS DOCUMENT SAYS, QUOTE, "MY
- 12 EMPLOYMENT RELATIONSHIP WITH THE COMPANY IS
- 13 TERMINABLE AT WILL FOR ANY REASON BY EITHER PARTY?
- 14 A. THE DOCUMENT DOES SAY THAT, YES.
- 15 Q. AND DOES THE DOCUMENT ALSO SAY "NEITHER THE
- 16 ACCEPTANCE OF THIS APPLICATION OR THE SUBSEQUENT
- 17 ENTRY INTO ANY TYPE OF EMPLOYMENT RELATIONSHIP
- 18 EITHER IN A POSITION APPLYING FOR -- OR IN ANY OTHER
- 19 POSITION AND REGARDLESS OF THE CONTENTS OF EMPLOYEE
- 20 HANDBOOKS, PERSONNEL MANUALS, BENEFIT PLANS, POLICY
- 21 STATEMENTS AND THE LIKE AS THEY MAY EXIST FROM TIME
- 22 TO TIME OR OTHER COMPANY PRACTICES SHALL SERVE TO
- 23 CREATE AN ACTUAL IMPLIED CONTRACT OF EMPLOYMENT OR
- 24 ANY RIGHT TO REMAIN AN EMPLOYEE FOR COMPANY X OR
- 25 OTHERWISE TO CHANGE IN ANY RESPECT THE EMPLOYMENT

1 AT-WILL RELATIONSHIP BETWEEN IT AND THE UNDERSIGNED,
2 AND THAT RELATIONSHIP CANNOT BE ALTERED EXCEPT BY
3 WRITTEN INSTRUMENT SIGNED BY THE OWNER MANAGING
4 MEMBER OF THE COMPANY." DO YOU AGREE IT SAYS THAT?

5 A. I AGREE -- DID YOU JUST READ THE HIGHLIGHTED
6 PORTION?

7 Q. I JUST READ THE HIGHLIGHTED PORTION.

8 A. I TRUST THAT YOU READ WHAT WAS ON THE PAGE, SO, YES.

9 Q. THEREBY THIS DOCUMENT EMPHASIZES AND CONFIRMS THAT
10 ON OCTOBER 9TH, 2014, MS. TURNER WHO SIGNED THIS
11 DOCUMENT IS AN AT-WILL EMPLOYEE OF CONDUSTRIAL?

12 A. NO, I DON'T THINK IT SAYS THAT AT ALL. LIKE I SAID,
13 THE TERMS OF THE DOCUMENT CONTRADICT A RELATIONSHIP
14 ON ITS FACE. IT SAYS SHE WOULD BEGIN A 90-DAY
15 PROBATIONARY PERIOD. SHE HAD ALREADY BEEN ACCEPTING
16 SHIFTS OF THE BROKERAGE FOR OVER A YEAR AND
17 CONTINUED TO DO SO IN EXACTLY THE SAME MANNER WITH
18 THE SAME PAY. NOTHING ABOUT THE TAKING OF SHIFTS OR
19 THE REFUSING OF SHIFTS OR THE GOING INTO S.C.D.C.
20 CHANGED WHEN SHE SIGNED THAT DOCUMENT.

21 BY MR. GOODWYN:

22 YOUR HONOR, IS IT SAFE TO SAY THAT MY WITNESS
23 CAN GO NOW? I THINK THESE OTHER ATTORNEYS ARE GOING
24 TO BE AS LONG OR LONGER THAN MR. SAMUELS.

25 BY COMMISSIONER JAMES:

1 I BELIEVE SO, YES.

2 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

3 Q. MR. SEARS, LET'S GO BACK TO THE EMPLOYMENT AND WORK
4 -- DEPARTMENT OF EMPLOYMENT AND WORKFORCE FOR A
5 SECOND.

6 A. OKAY.

7 Q. THIS CASE WE'VE TALKED ABOUT INVOLVED A NURSE NAMED
8 CHRISTIN SAYLES; ISN'T THAT RIGHT?

9 A. SOUNDS RIGHT.

10 Q. OKAY. AND THESE ARE THE DOCUMENTS THAT HAVE BEEN
11 PRODUCED AS HAVING BEEN SUBMITTED TO THE DEPARTMENT
12 OF EMPLOYMENT AND WORKFORCE. THESE ARE IN
13 CONDUSTRIAL'S APA SUBMISSIONS, FIRST PAGES 42
14 THROUGH 47, WHICH ARE THE QUESTIONNAIRE; DO YOU
15 AGREE WITH THAT?

16 A. IT APPEARS TO BE A QUESTIONNAIRE, YES.

17 Q. OKAY. AND THEN A LICENSED PROFESSIONAL INDEPENDENT
18 CONTRACTOR AGREEMENT COVERING PAGES 48 THROUGH 51.
19 WOULD YOU AGREE WITH THAT?

20 A. THAT SOUNDS APPROPRIATE, YES.

21 Q. AND THEN SEVERAL PAGES OF WHAT APPEAR TO BE TIME
22 SHEETS OF CHRISTIN SAYLES RUNNING FROM PAGES 52
23 THROUGH 57?

24 A. YES.

25 Q. NOTHING COMPARABLE TO THE LITANY OF DOCUMENTS I JUST

1 REVIEWED TO YOU ARE INCLUDED IN THIS PACKAGE, ARE
2 THEY?

3 A. WE SUPPLIED WHAT THEY ASKED US TO SUPPLY.
4 CERTAINLY, YOU'VE PROVIDED DIFFERENT DOCUMENTS FROM
5 THE PAST. WHAT WERE THE DATE OF THESE DOCUMENTS,
6 2015?

7 Q. THEY APPEAR TO BE 2015, YES, SIR. ACTUALLY, SHORTLY
8 BEFORE MS. TURNER WAS ASSAULTED.

9 A. CORRECT.

10 Q. IN FACT, EVEN THE TIME SHEET, WOULD YOU AGREE HERE
11 AT PAGE 52 OF CONDUSTRIAL'S APA SUBMISSIONS, IT SAYS
12 "CONTRACTOR" IN ONE PART, AND THEN IT ALSO SAYS "THE
13 TIME SHEET MUST BE PERSONALLY FILLED OUT AND SIGNED
14 BY EMPLOYEE AND SUPERVISOR."

15 A. IT SAYS WHAT IT SAYS.

16 Q. OKAY.

17 A. YEAH.

18 Q. LET ME GO THROUGH THIS QUESTIONNAIRE WITH YOU, WHICH
19 IS PAGES 42 THROUGH 47 OF CONDUSTRIAL'S APA
20 SUBMISSIONS, AND UNLESS MR. GOODWYN HAS AN EXTRA
21 COPY FOR YOU, I'M GOING TO HAVE TO STAND NEXT TO YOU
22 IF THAT'S OKAY.

23 BY MR. GOODWYN:

24 YOU SAID 40 ---

25 BY MR. SAMUELS:

1 IT'S 42 THROUGH 43.

2 BY MR. BEARD:

3 IS THAT OF YOURS?

4 BY MR. SAMUELS:

5 ON CONDUSTRIAL'S.

6 BY MR. GOODWYN:

7 FORTY-TWO - FORTY-TWO THROUGH FORTY-SEVEN?

8 BY MR. SAMUELS:

9 OH, YOU'RE RIGHT, 47.

10 BY THE WITNESS:

11 THANK YOU.

12 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. TO BEGIN WITH, MR. SEARS, WHO IS THE PERSON WHO
14 FILLED OUT THIS DOCUMENT?

15 A. I WOULD HAVE COMPLETED SOME OF IT, BUT ALSO SOME OF
16 THIS IS NOT MY HANDWRITING. SO, IT PROBABLY WAS AMY
17 WOODRUFF.

18 Q. IS THAT AMY WOODRUFF WITH THE TITLE PAYROLL AT PAGE
19 47, THE VERY LAST PAGE?

20 A. YES.

21 Q. BUT YOU HAD A LOT OF INPUT AND MAY HAVE FILLED OUT
22 THE SUBSTANTIVE PARTS ABOUT IT?

23 A. I CERTAINLY FILLED OUT PART OF THIS, YES.

24 Q. OKAY. WERE YOU THE PERSON THAT COMPLETELY CROSSES
25 OUT "WORKER" AND REPLACES IT WITH "I.C."?

1 A. I THINK SHE DID SOME OF THOSE, AND YOU CAN SEE SOME
2 OF THE WRITING IS DIFFERENT. SO, I THINK SHE DID
3 SOME, AND I DID SOME.

4 Q. CHRISTIN SAYLES WAS A NURSE?

5 A. I WOULD HAVE TO GO BACK AND LOOK. IN OTHER WORDS,
6 AS I SIT HERE, I DON'T REMEMBER IF SHE WAS AN L.P.N.
7 OR AN R.N.

8 Q. BUT A NURSE OF ONE KIND OR THE OTHER?

9 A. I BELIEVE SO. AGAIN, WITHOUT MORE INFORMATION, I'LL
10 GIVE YOU MY BEST GUESS.

11 Q. AND AS A NURSE, THAT WOULD BE UNDER MEDUSTRIAL OR
12 CONDUSTRIAL?

13 A. UNDER MEDUSTRIAL.

14 Q. OKAY. BUT YOU FILLED OUT THE FORM HERE TO SAY
15 "CONDUSTRIAL, INCORPORATED."

16 A. WELL, I DIDN'T FILL IT OUT. I DID -- AMY DID FILL
17 OUT CONDUSTRIAL, YES, BECAUSE THE APPLICATION WAS
18 MADE THROUGH THE UNEMPLOYMENT SYSTEM UNDER -- THEY
19 GAVE THEM OUR UNEMPLOYMENT NUMBER. SINCE MEDUSTRIAL
20 HAS NO EXISTENCE, THIS WAS THE ONLY EXPLANATION FOR
21 PURPOSES OF THE DEPARTMENT OF EMPLOYMENT AND
22 WORKFORCE.

23 Q. GOTCHA, MAKES PERFECT SENSE.

24 A. OTHERWISE, IT'S A PHANTOM COMPANY THAT MEANS
25 NOTHING.

1 Q. AND THE BUSINESS IS DESCRIBED AS CONSTRUCTION
2 STAFFING, MEDICAL STAFFING, MEDICAL BROKERAGE FOR
3 INDEPENDENT CONTRACTORS?

4 A. THAT'S WHAT IT SAYS.

5 Q. AND ACTUALLY WE HAD SAID "NURSE," BUT I ACTUALLY
6 STAND CORRECTED. APPARENTLY, THIS PARTICULAR PERSON
7 WAS WORKING AS A SITTER IN A LONG-TIME CARE FACILITY
8 WAITING FOR A C.N.A. POSITION TO OPEN UP; IS THAT
9 RIGHT?

10 A. THAT'S WHAT IT SAYS. I'M NOT SURE OF HER SPECIFIC
11 LEVEL AS I SIT HERE.

12 Q. OKAY. SO, A COUPLE OF QUESTIONS.

13 A. OKAY.

14 Q. AND THIS IS BASICALLY -- SO, WE HAVE CONSTRUCTION
15 WORKERS, AND WE HAVE HEALTHCARE WORKERS, RIGHT?

16 A. BASICALLY.

17 Q. DO YOU AGREE WITH THAT?

18 A. YES.

19 Q. AND AS FAR AS YOU ARE CONCERNED, CONDUCTRIAL'S
20 POSITION IS THE CONSTRUCTION WORKERS ARE EMPLOYEES;
21 THE HEALTHCARE WORKERS ARE INDEPENDENT CONTRACTORS?

22 A. AS I'VE SAID THAT'S NOT UNIFORMLY TRUE. THE
23 MAJORITY -- WHEN MEDUSTRIAL WAS STARTED, IT WAS
24 STARTED AS A BROKERAGE MODEL INVOLVING INDEPENDENT
25 CONTRACTORS. WE HAVE A FEW CLIENTS, I THINK

1 PRIMARILY IN THE UPSTATE, THAT WERE PAYROLL ACCOUNTS
2 OR A NURSING HOME THAT SAID WE WANT YOU TO HANDLE
3 OUR EMPLOYEES, AND WE AGREED TO DO THAT, BUT NONE OF
4 THOSE WERE IN PRISON FACILITIES.

5 Q. OKAY. SO, SOME NURSES ARE EMPLOYEES, AND SOME ARE
6 INDEPENDENT CONTRACTORS THAT ARE PAID BY
7 CONDUSTRIAL?

8 A. THE FEW THAT I JUST REFERRED TO, A PAYROLL ACCOUNT
9 THEY WANTED US TO TAKE OVER. THEY WERE PROCESSED AS
10 W-2. THE MAJORITY OF THE PERSONNEL ESPECIALLY
11 RELEVANT TO THIS CASE ARE 1099s THAT WORK AS THEY
12 SEE FIT.

13 Q. OKAY. SO, FIRST QUESTION, IS THE WORKER GIVEN ANY
14 TRAINING BY THE FIRM? IS THE NURSE GIVEN ANY
15 TRAINING BY CONDUSTRIAL?

16 A. WHERE IS THAT LISTED?

17 Q. IT'S ON THE SECOND PAGE, PAGE 43, QUESTION 3-A.

18 A. RIGHT, THE ANSWER IS "NO."

19 Q. OKAY. HOW ABOUT THE CONSTRUCTION WORKERS, ARE THEY
20 GIVEN ANY TRAINING?

21 A. YES.

22 Q. BY THE FIRM?

23 A. YES.

24 Q. WHAT TRAINING -- WHAT TRAINING DOES CONDUSTRIAL
25 OFFER THE CONSTRUCTION WORKERS?

1 A. IT DEPENDS ON THE CLIENT AND THE RISK. WE HAVE
2 GENERALIZED SAFETY TRAINING. WE ALSO PROVIDE -- IN
3 OTHER WORDS, OSHA REQUIRES US TO WORK AS A PARTNER
4 WITH SOME OF OUR CLIENTS. SO, IF THERE IS
5 SCAFFOLDING -- IF THERE IS SCAFFOLDING WORK, WE TRY
6 TO PROVIDE SOME SCAFFOLDING SAFETY INSTRUCTION.
7 SOMETIMES THAT'S A CASE BY CASE BASIS WITH A CLIENT.

8 Q. WHO IS THE PERSON THAT PROVIDES THAT TRAINING?

9 A. THAT HAS SEVERAL DIFFERENT ANSWERS. IT DEPENDS ON
10 THE REGION, THE CLIENT. SOMETIMES IT'S A CLIENT'S
11 REPRESENTATIVE THAT WE LET THEM DO IT. SOMETIMES
12 IT'S -- WE HAVE SOME SAFETY TRAINERS THAT HANDLE
13 THAT INTERNALLY FOR US.

14 Q. WHAT ARE THEIR NAMES?

15 A. WELL, ONE OF THEM WAS BRANDON HESTER. HE'S NO
16 LONGER THERE. IAN THOMPSON IS ONE, AND KEVIN
17 OPANTE.

18 Q. SO, IAN THOMPSON, KEVIN OPANTE ARE STILL EMPLOYED BY
19 CONDUSTRIAL?

20 A. THEY ARE.

21 Q. WHERE DO THEY WORK?

22 A. ONE WORKS IN GREENVILLE. ONE WORKS IN CHARLESTON.

23 Q. OKAY. WHAT SITE DO THEY WORK AT?

24 A. THEY WORK AT A CONDUSTRIAL SITE.

25 Q. OKAY.

- 1 A. AT ONE OF OUR SATELLITE OFFICES.
- 2 Q. ISN'T IT TRUE THAT THE NURSES HAVE TO GO THROUGH AN
- 3 ORIENTATION AND TRAINING PROGRAM AT S.C.D.C. BEFORE
- 4 THEY CAN WORK THERE?
- 5 A. I BELIEVE -- I BELIEVE SO, YES. WITH S.C.D.C., YES,
- 6 THEY DO.
- 7 Q. YOUR CONTENTION IS THE NURSES ARE NOT GIVEN
- 8 INSTRUCTIONS ON THE WAY THEIR WORK IS TO BE DONE?
- 9 A. NOT BY CONDUSTRIAL OR MEDUSTRIAL, NO.
- 10 Q. BUT BY S.C.D.C., YES?
- 11 A. MY UNDERSTANDING OF THAT IS YES.
- 12 Q. OKAY.
- 13 A. THEY DON'T CONSULT US IN DOING THAT OTHER THAN I
- 14 THINK THEY PROVIDED US WITH WHATEVER MATERIALS THEY
- 15 -- THEY HAVE TO GO THROUGH BEFORE THEY ACCEPT SHIFTS
- 16 THERE, WE HAVE PASSED THAT ALONG.
- 17 Q. THE POINT IS IN THE QUESTION, ---
- 18 A. RIGHT.
- 19 Q. --- "IS THE WORKER GIVEN INSTRUCTIONS ON THE WAY THE
- 20 WORK IS TO BE DONE?" YOU'VE ANSWERED "NO" BUT IN
- 21 FACT WHEN THEY ARE INSIDE S.C.D.C. ACTUALLY WORKING,
- 22 THEY ARE GIVEN INSTRUCTIONS.
- 23 A. NOT BY US.
- 24 Q. BY S.C.D.C. THEY ARE UNDER THE SUPERVISION OF
- 25 S.C.D.C., ARE THEY NOT?

1 A. WELL, THIS ANSWER WAS ADDRESSED FOR CONDUSTRIAL.
2 SO, THE ANSWER FOR CONDUSTRIAL IS "NO."

3 Q. I UNDERSTAND. I JUST WANT TO MAKE SURE ---

4 A. RIGHT. SO, THE ANSWER IS ACCURATELY NO.

5 Q. I JUST WANT TO MAKE SURE ---

6 A. BECAUSE WE WEREN'T RESPONDING FOR S.C.D.C. OR ANY
7 OTHER ENTITY BUT CONDUSTRIAL. THE ANSWER FOR
8 CONDUSTRIAL IS "NO," PERIOD.

9 Q. FAIR ENOUGH. NEXT QUESTION, 3-D, "DOES THE FIRM
10 HAVE THE RIGHT TO CHANGE THE METHODS USED BY THE
11 WORKER OR DIRECT THAT PERSON HOW TO DO THE WORK?"
12 WOULD YOU AGREE THAT S.C.D.C. HAS THE AUTHORITY TO
13 CHANGE THE METHODS OR DIRECT THE NURSE IN HOW TO DO
14 THE WORK?

15 A. MY UNDERSTANDING IS ONCE THEY GO ONTO S.C.D.C.
16 PROPERTY, THAT S.C.D.C. PERSONNEL DIRECTS THEM IN
17 WHAT THEY DO FOR THE DAY, BUT IN THIS QUESTIONNAIRE,
18 THE FIRM REFERS TO CONDUSTRIAL. SO, THE ANSWER IS
19 "NO."

20 Q. OKAY. HOW ABOUT 3-E, "DOES THE OPERATION OF THE
21 FIRM'S BUSINESS REQUIRE THAT THE WORKER BE
22 SUPERVISED OR CONTROLLED IN THE PERFORMANCE OF THE
23 SERVICE?"

24 A. "NO."

25 Q. WELL, HOLD ON A SECOND. WHERE -- WHERE IS THE

1 SERVICE PERFORMED?

2 A. THE SERVICE IS PERFORMED AT THE S.C.D.C. LOCATION.

3 Q. AND S.C.D.C. SUPERVISES OR CONTROLS THE PERFORMANCE
4 OF THE NURSE WHILE THEY ARE AT S.C.D.C., RIGHT?

5 A. I THINK S.C.D.C. DOES, CORRECT.

6 Q. OKAY.

7 A. BUT IT SAYS "DOES THE OPERATION OF THE FIRM'S
8 BUSINESS," WHICH IS THE BROKERAGE MODEL. IT DOESN'T
9 REQUIRE ANY SUPERVISION. WHAT THEY DO FOR THE
10 CLIENT WHEN THEY GET THERE IS A QUESTION S.C.D.C.
11 CAN ANSWER, BUT THIS RESPONSE WAS OBVIOUSLY FOR
12 CONDUSTRIAL.

13 Q. I UNDERSTAND HOW YOU ARE TRYING TO PARSE THESE
14 QUESTIONS AND THE WAY YOU ANSWERED THEM IN THIS
15 UNEMPLOYMENT CASE. I JUST WANT TO MAKE IT CLEAR
16 THAT CONDUSTRIAL -- I MEAN, THE WAY YOU MAKE MONEY
17 OFF THE NURSES IS BY GETTING PAID A CERTAIN AMOUNT
18 PER HOUR FROM YOUR CLIENT AND THEN PAYING A CERTAIN
19 AMOUNT TO YOUR NURSE, AND YOUR PROFIT IS THE CUT?

20 A. FOR CONDUSTRIAL, YES.

21 Q. YEAH. SO, IF THEY'RE NOT WORKING AT S.C.D.C. BEING
22 SUPERVISED BY S.C.D.C. CHARGE NURSES AND DOCTORS AND
23 SO FORTH, THEN THEY AIN'T WORKING; YOU AREN'T MAKING
24 ANY MONEY.

25 A. I DON'T FOLLOW THAT.

1 Q. YOU WOULDN'T AGREE THAT IF THE NURSE DIDN'T GET
2 PAID, YOU DON'T GET PAID?

3 A. I MEAN, I'M SURE THAT'S TRUE IN A VERY GENERAL SENSE
4 FOR ANY SELF CONTRACTOR, INDEPENDENT CONTRACTOR
5 EMPLOYEE SITUATION. WHOEVER YOUR AGENT IS PROBABLY
6 HAS TO BE PAID FOR YOU TO GET PAID.

7 Q. QUESTION 4-A, "THE FIRM ENGAGES THE WORKER FOR A
8 PARTICULAR JOB, INDEFINITE PERIOD, OTHER?" YOU'VE
9 WRITTEN "I.C. WORKS AS THEY SEE FIT. THEY CAN QUIT
10 AT ANY TIME." THE SAME AS AN EMPLOYEE, RIGHT?

11 A. WELL, THEY CAN'T QUIT. THEY CAN JUST REFUSE TO
12 ACCEPT SHIFTS OR IF THEY DECIDE TO TRAVEL, THERE
13 HAVE BEEN OCCASIONS WHERE WE'VE CALLED THEM AND SAY
14 WE HAVE -- WE HAVE SHIFTS THROUGH THE BROKERAGE, AND
15 FOR EXAMPLE "I'M GOING TO OKLAHOMA NEXT MONTH. I'LL
16 TALK TO YOU WHEN I GET BACK." THAT'S WHAT HAPPENS.

17 Q. "DOES THE WORKER REPORT TO THE FIRM OR ITS
18 REPRESENTATIVE?" DO THEY?

19 A. WHERE IS THAT?

20 Q. THAT IS 4-C.

21 A. NO, THEY DON'T REPORT TO US.

22 Q. AREN'T THEY REQUIRED TO CALL IN IF THEY ARE GOING TO
23 BE LATE FOR WORK?

24 A. THIS SAYS "DOES THE I.C. REPORT TO THE FIRM OR ITS
25 REPRESENTATIVE?" THEY DON'T REPORT TO US FOR ANY

1 JOB ACTIVITY. THEY CAN ACCEPT A SHIFT OR NOT,
2 ACCEPT A SHIFT OR NOT, CALL IN. THERE IS A
3 PROVISION THAT ONCE THEY ACCEPT A SHIFT, THEY HAVE
4 TO NOTIFY US AND S.C.D.C. AFTER THEY'VE SAID THEY
5 WILL BE THERE THAT THEY WON'T BE THERE.

6 Q. SO -- AND THAT WOULD BE THE REPORTING IN?

7 A. I DON'T -- I DON'T THINK THAT WAS WHAT WAS MEANT BY
8 THIS. I THINK IT WAS -- AGAIN, THIS IS INDEPENDENT
9 CONTRACTOR EMPLOYEE TYPE QUESTIONNAIRE IN A BROAD
10 SENSE OF WHETHER OR NOT THEIR EMPLOYMENT DUTIES. I
11 THINK YOU'RE ASKING A QUESTION THAT WAS NOT
12 CONTEMPLATED BY THIS REPORT.

13 Q. OKAY. I JUST WANT TO MAKE SURE WE UNDERSTAND YOUR
14 MENTAL STATE WHEN YOU FILLED OUT THE REPORT.

15 A. WELL, MY MENTAL STATE WAS "DOES THE I.C. REPORT TO
16 THE FIRM OR ITS REPRESENTATIVE?" THEY DO NOT FOR
17 PURPOSES OF EMPLOYMENT.

18 Q. AND YOU DID SAY "YES" TO "DOES THE WORKER FURNISH A
19 TIME RECORD TO THE FIRM?" AND THEY DO DO THAT,
20 CORRECT?

21 A. YES. WELL, IT'S RECEIVED FROM S.C.D.C., BUT, YES.

22 Q. IN TERMS OF THE KIND AND VALUE OF TOOLS AND
23 EQUIPMENT FURNISHED BY THE FIRM OR THE WORKER, 5-A,
24 YOU PUT "NO" TO BOTH, CORRECT?

25 A. CORRECT.

1 Q. IN FACT, TOOLS AND EQUIPMENT WHEN WE ARE TALKING
2 ABOUT NURSES, SO THE NURSES, WOULD YOU AGREE THAT
3 S.C.D.C. PROVIDES THE VAST MAJORITY OF TOOLS AND
4 EQUIPMENT THEY USE?

5 BY MS. FARTHING:

6 COMMISSIONER, JUST WITH REGARD TO WHAT THE
7 DEPARTMENT EITHER DID OR DIDN'T DO, I BELIEVE MR. --
8 NURSE GUDVANGEN TESTIFIED TO THAT, AND I THINK THAT
9 KIND OF STANDS FOR ITSELF. AS FAR AS HE IS TRYING
10 TO MAKE REPRESENTATIONS AS TO WHAT THE DEPARTMENT OF
11 CORRECTIONS DID OR DID NOT DO, WE WOULD JUST OBJECT,
12 AS I'M NOT SURE TOM SEARS IS THE CORRECT WITNESS TO
13 TESTIFY AS TO THAT.

14 BY COMMISSIONER JAMES:

15 IF HE HAS FOUNDATIONAL KNOWLEDGE.

16 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

17 Q. HAVE YOU EVER BEEN IN THE MEDICAL FACILITIES AT
18 S.C.D.C.?

19 A. I HAVE NOT.

20 Q. YOU EVER BEEN TO ANY OF THE JOB SITES WHERE YOUR
21 CARPENTERS AND OTHER CONSTRUCTION WORKERS WORK?

22 A. I HAVE.

23 Q. AND WOULD YOU AGREE THAT IT IS THE OVERALL
24 CONSTRUCTION COMPANY WHO IS PROVIDING THE MAJOR
25 EQUIPMENT: BOBCATS, LIFTS, SCAFFOLDS AND SO FORTH?

- 1 A. THAT'S A QUESTION THAT HAS A THOUSAND DIFFERENT
2 ANSWERS. IT'S CASE SPECIFIC, CLIENT SPECIFIC, JOB
3 SPECIFIC.
- 4 Q. YOU INDICATE AT 5-C "WHAT EXPENSES ARE INCURRED BY
5 THE WORKER IN THEIR PERFORMANCE OF SERVICES FOR THE
6 FIRM?" "NOT APPLICABLE."
- 7 A. "N.A.," YES.
- 8 Q. NO EXPENSES INCURRED?
- 9 A. THEY DON'T INCUR ANY EXPENSES FOR US.
- 10 Q. IT DOESN'T SAY THAT, SIR. THE QUESTION IS "WHAT
11 EXPENSES ARE INCURRED BY THE WORKER IN THE
12 PERFORMANCE FOR THE FIRM?" I MEAN ---
- 13 A. I DON'T ---
- 14 Q. --- THE NURSES AREN'T -- THE NURSES AREN'T PAID FOR
15 SUBSTITUTES. THEY ARE NOT BUYING MEDICATIONS. THEY
16 ARE NOT ---
- 17 A. THAT'S NOT SOMETHING ---
- 18 Q. --- BUYING SUPPLIES.
- 19 A. THAT'S NOT SOMETHING THEY DISCUSS WITH US OR IS OUR
20 BUSINESS. SO, THE ANSWER FOR CONDUSTRIAL IS NOT
21 APPLICABLE. WE DON'T KNOW.
- 22 Q. JUMP DOWN TO 12-A, "DOES THE WORKER PERFORM SERVICES
23 FOR THE FIRM UNDER THE FIRM'S BUSINESS NAME, THE
24 WORKER'S OWN BUSINESS NAME?" AND YOU'VE ADDED "IN
25 THEIR OWN NAME."

1 A. RIGHT.

2 Q. WOULDN'T YOU AGREE THAT CONTRADICTS THE EARLIER
3 DOCUMENTS I SHOWED YOU WHERE THE CLIENT -- CLIENT
4 AND FACILITY EXPECTATION SAYS YOU ARE REPRESENTING
5 CONDUSTRIAL, REPRESENTING MEDUSTRIAL?

6 A. I'VE ANSWERED THE QUESTION ON THOSE. THOSE WERE NOT
7 APPROPRIATE DOCUMENTS. WE ARE A BROKERAGE. WE
8 DON'T -- IN OTHER WORDS, THEY ARE NOT WORKING IN OUR
9 NAME. RACHEL TURNER WORKS FOR RACHEL TURNER AS
10 INDICATED ON HER TAX RETURNS. RACHEL TURNER.

11 Q. AND YOU WOULD AGREE THOUGH JUST TO CLARIFY, I THINK
12 YOU MAY OR MAY NOT HAVE ANSWERED, YOU WOULD AGREE
13 THAT THE FACILITY EXPECTATIONS SIGNED BY RACHEL
14 TURNER IN A FORM DRAFTED BY MEDUSTRIAL OR
15 CONDUSTRIAL STATES THAT YOU ARE REPRESENTING YOU --
16 THE WORKER IS REPRESENTING MEDUSTRIAL?

17 A. I WOULD HAVE TO LOOK AT THE DOCUMENT YOU'RE TALKING
18 ABOUT TO REFRESH MY RECOLLECTION.

19 Q. I WOULD BE HAPPY TO DO THAT, SIR.

20 A. OKAY.

21 Q. I'M GOING TO SHOW YOU AGAIN PAGE 271. I'LL SHOW YOU
22 -- I'M NOT SURE WHAT PAGE NUMBER IT IS. IT'S
23 CONDUSTRIAL BATE STAMP 88. IT'S THE FACILITY AND
24 CLIENT EXPECTATIONS DATED OCTOBER 9TH, 2014. WOULD
25 YOU AGREE THIS DOCUMENT STATES, QUOTE, "NOT ONLY DO

1 YOU REPRESENT MEDUSTRIAL AND THE FACILITY, YOU ARE
2 ALSO REPRESENTING YOURSELF"?

3 A. THAT PIECE OF PAPER DOES SAY THAT, YES. IT
4 COMPLETELY CONTRADICTS THE INDEPENDENT CONTRACTOR
5 AGREEMENT THAT SHE SIGNED TWICE.

6 Q. AND SHE SIGNED THIS DOCUMENT TWICE AS WELL, DID SHE
7 NOT?

8 A. SHE SIGNED -- SHE MAY HAVE, YES.

9 Q. WELL, ---

10 BY MR. GOODWYN:

11 WHAT PAGE IS THAT, STEPHEN?

12 BY MR. SAMUELS:

13 IT'S 271, AND THERE'S A LATER ONE THAT IS CUT
14 OFF.

15 BY MR. BEARD:

16 TWO-SEVENTY-ONE IS YOURS?

17 BY MR. SAMUELS:

18 THEY'RE BOTH MINE, YES.

19 BY MR. BEARD:

20 OKAY, GOT IT.

21 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

22 Q. YOU SAID SHE MAY HAVE SIGNED IT. WOULD YOU AGREE
23 THAT THESE ARE BOTH SIGNED, 10/19/14?

24 A. THAT APPEARS TO BE HER SIGNATURE, YES.

25 Q. ALL RIGHT. I GUESS THE ONE THING WE CAN AGREE ON IS

1 THOSE DOCUMENTS ARE CONTRADICTORY, AREN'T THEY?

2 A. THEY APPEAR TO BE.

3 Q. MR. SEARS, ARE YOU DOING ALL RIGHT, OR DO YOU NEED A
4 BREAK?

5 A. I'M DOING ALL RIGHT RIGHT NOW.

6 Q. DO YOU HAVE THE SEPTEMBER 12TH, 2008, CONTRACT
7 BETWEEN THE DEPARTMENT OF CORRECTIONS AND MEDUSTRIAL
8 HEALTHCARE IN FRONT OF YOU?

9 BY MR. GOODWYN:

10 IT'S UP THERE.

11 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

12 Q. IT'S PAGE 253.

13 A. YOU SAID THE 2008 DOCUMENT?

14 Q. YES, SIR.

15 A. I THINK I DO, YES.

16 Q. WOULD YOU AGREE THAT THIS IS A VALID CONTRACT
17 BETWEEN THE DEPARTMENT OF CORRECTIONS AND MEDUSTRIAL
18 HEALTHCARE?

19 A. SUBJECT TO THE COURSE OF DEALINGS AND COURSE OF
20 PERFORMANCE ESTABLISHED BY THE PARTIES FOR EIGHT
21 YEARS, YES.

22 Q. SO, YOU ARE CONTENDING IF I FOLLOW YOU THAT THIS
23 CONTRACT WAS SOMEHOW ALTERED BY A COURSE OF DEALING
24 BETWEEN THE PARTIES FOR EIGHT YEARS?

25 A. I'M NOT -- AND I'M -- POSSIBLY. I'M NOT SURE IT WAS

1 ALTERED. THAT RELATIONSHIP WAS PRESENT BEFORE THIS
2 CONTRACT WAS SIGNED THROUGH THE SIGNING OF THE
3 CONTRACT AND CONTINUING.

4 Q. ARE YOU CONTENDING THIS CONTRACT CAN BE ALTERED BY
5 THE PERFORMANCE OF THE PARTIES?

6 A. YES, IT WAS.

7 Q. DOES IT ---

8 A. THE PARTIES ACTUALLY PERFORMED THE CONTRACT IN A
9 DIFFERENT WAY IN AN AMENDED OR ALTERED OR CHANGED
10 WAY FROM THE LANGUAGE HERE EVERYDAY FOR NINE YEARS.

11 Q. WHAT DID THE DEPARTMENT OF CORRECTIONS DO THAT
12 DIFFERED FROM THE CONTRACT?

13 A. I DON'T UNDERSTAND WHAT YOU ARE ASKING ME.

14 Q. WELL, YOU SAID THE PARTIES ---

15 A. YES.

16 Q. --- ACTED DIFFERENTLY FROM THE CONTRACT. WHAT DID -
17 - WHAT DID THE DEPARTMENT OF CORRECTIONS DO THAT WAS
18 NOT 100 PERCENT CONSISTENT WITH THIS CONTRACT?

19 A. THEY ACCEPTED 1099s ON A DAILY BASIS.

20 Q. DO YOU PROVIDE FORM 1099s TO THE DEPARTMENT OF
21 CORRECTIONS FOR YOUR NURSES?

22 A. I DON'T THINK WE EVER SENT THE 1099 FORMS.

23 Q. DID YOU PROVIDE THE DEPARTMENT OF CORRECTIONS THE
24 INDEPENDENT CONTRACTOR AGREEMENT THAT YOU HAD WITH
25 YOUR NURSES?

1 A. IF THEY HAD ASKED FOR IT, WE WOULD HAVE PROVIDED IT.

2 Q. SO, THE ANSWER IS NO, YOU DIDN'T?

3 A. I'M SAYING I DON'T KNOW.

4 Q. DID YOU TELL ANYBODY IN MANAGEMENT AT THE DEPARTMENT
5 OF CORRECTIONS THAT THE NURSES WERE NOT COVERED
6 UNDER CONDUCTORIAL'S WORKERS' COMP INSURANCE?

7 A. I DON'T -- IN OTHER WORDS, WE DID HAVE SEVERAL
8 DISCUSSIONS THAT THEY WERE INDEPENDENT CONTRACTORS,
9 AND ALL THAT GOES WITH IT. I DON'T KNOW IF ANYONE
10 SPECIFICALLY USED THE WORDS. I DON'T KNOW IF ANYONE
11 ASKED. I DON'T THINK ANYONE ASKED, AND I DON'T --
12 THERE WAS NOT A DISCUSSION THAT SAID "YOU'RE NOT
13 COVERED."

14 Q. SO, THAT WAS NOT SOMETHING THAT THE DEPARTMENT OF
15 CORRECTIONS LEARNED UNTIL MS. TURNER'S INJURY
16 CREATED A CLAIM, AND THE DEPARTMENT OF CORRECTIONS
17 RECEIVED A FORM 50 NAMING THEM AS AN UPSTREAM
18 EMPLOYER?

19 A. I COULDN'T SPEAK FOR THEM. I KNOW THE RELATIONSHIP
20 EXISTED THE SAME WAY FOR US SINCE DAY ONE. OUR
21 PREDECESSOR DIDN'T HAVE A CERTIFICATE OF WORKERS'
22 COMPENSATION INSURANCE. I THINK THEY KNEW THAT. I
23 AM SPECULATING. WE OPERATED UNDER THE SAME MODEL.
24 THEY KNEW WE WERE RUNNING 1099s.

25 **BY MS. FARTHING:**

1 COMMISSIONER, AGAIN, I WOULD OBJECT TO HIM
2 IMPLYING ANYTHING ABOUT WHAT THE DEPARTMENT OF
3 CORRECTIONS KNEW. HE HAS YET TO PROVIDE ANYBODY OR
4 ANYBODY'S NAME THAT HAD ANY KIND OF AUTHORITY WITH
5 REGARD TO THE CONTRACT OR ANY KIND OF MANAGERIAL
6 POSITION WITH THE DEPARTMENT OF CORRECTIONS THAT
7 WERE AWARE THAT THESE INDIVIDUALS ARE 1099 AND THE
8 EFFECT OF THAT. SO, I CAN'T GO AND INVESTIGATE THIS
9 WITHIN MY OWN CLIENT'S DEPARTMENT TO DISCOVERY THAT.
10 HE JUST KEEPS SAYING THAT THERE WAS THIS
11 UNDERSTANDING THAT THIS IS HOW IT WAS OPERATING, BUT
12 NOT GIVING ME ANYTHING TO LOOK INTO THAT.

13 BY MR. GOODWYN:

14 HIS TESTIMONY WAS TOMMY BURGESS UNDERSTOOD.
15 HE'S TOLD TOMMY BURGESS.

16 BY MS. FARTHING:

17 AND TOMMY BURGESS TESTIFIED THAT HE DID NOT.

18 BY MR. GOODWYN:

19 SO, THERE'S SOME CONFLICTING TESTIMONY.

20 BY COMMISSIONER JAMES:

21 AND THAT'S -- THAT'S THE TESTIMONY, AND YOU CAN
22 CROSS HIM.

23 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

24 Q. CAN YOU IDENTIFY ANY SPECIFIC INDIVIDUAL AT S.C.D.C.
25 THAT YOU TOLD EXPLICITLY THAT THE NURSES WORKING AT

1 THE DEPARTMENT OF CORRECTIONS PLACED THERE BY
2 CONDUSTRIAL WERE NOT COVERED BY CONDUSTRIAL OR
3 MEDUSTRIAL'S WORKERS' COMPENSATION INSURANCE?

4 A. I KNOW I HAD CONVERSATIONS WITH JAN WRECSICS AND
5 DOLORES JACKS (PHONETIC) OR JACQUES, HOWEVER THAT IS,
6 THAT WE DISCUSSED THAT OUR PERSONNEL WERE
7 INDEPENDENT CONTRACTORS.

8 Q. BUT WORKERS' COMP NEVER CAME UP IN THAT DISCUSSION;
9 IS THAT CORRECT? I BELIEVE THAT'S YOUR TESTIMONY.
10 I WANT TO VERIFY IT.

11 A. THAT'S MY TESTIMONY, YES.

12 Q. OKAY. IF YOU WOULD LOOK AT PAGE 254 UNDER AGREED
13 SERVICES, LINE A.

14 A. THIS IS THE 2008 CONTRACT?

15 Q. YES, SIR.

16 A. YES, OKAY.

17 Q. WHAT DOES THAT FIRST SENTENCE STATE?

18 A. I READ THIS ON DIRECT. "R.N.s, L.P.N.s ASSIGNED TO
19 S.C.D.C. BY CONTRACTOR ARE EMPLOYEES OF CONTRACTOR
20 AND NOT S.C.D.C."

21 Q. AND WOULD YOU AGREE THAT IT WAS A TERM OF THIS
22 CONTRACT THAT YOU HAD WITH S.C.D.C., YOU
23 CONDUSTRIAL, HAD WITH S.C.D.C. THAT THE NURSES WOULD
24 BE EMPLOYEES?

25 A. I DON'T AGREE WITH THAT. I'VE SAID THAT SEVERAL

1 TIMES. IF YOU LOOK AT THE TWO WHEREAS AS WAS
2 REVIEWED BY MR. DURHAM AND MS. RATHBURN AND
3 EXPLAINED, THE WHEREAS -- THE SECOND WHEREAS SEEMS
4 TO INDICATE THAT MEDICAL TO THEM -- MEDICAL STAFFING
5 PERSONNEL ARE PROVIDED AS INDEPENDENT CONTRACTORS.
6 I'M AWARE THERE ARE DIFFERENT INTERPRETATIONS OF
7 THAT LANGUAGE, BUT WHEN MS. RATHBURN CAME FROM AN
8 EXISTING RELATIONSHIP AND SIGNED THIS CONTRACT, SHE
9 WAS CONTINUING WHAT THEY DID ---

10 BY MR. SAMUELS:

11 I'M GOING TO OBJECT TO WHATEVER ---

12 BY THE WITNESS:

13 I'M ANSWERING YOUR QUESTION.

14 BY MR. SAMUELS:

15 I UNDERSTAND, BUT I WILL ASK THE COMMISSIONER
16 TO STOP THE TESTIMONY AND STRIKE THE TESTIMONY AS TO
17 WHAT MS. RATHBURN MAY OR MAY NOT HAVE UNDERSTOOD.
18 MY QUESTION IS THE PLAIN LANGUAGE OF THE CONTRACT.

19 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

20 Q. YOU USED THE ---

21 A. IT'S NOT JUST THE PLAIN LANGUAGE OF THE CONTRACT.
22 IT'S THE COURSE OF PERFORMANCE ESTABLISHED BETWEEN
23 THE PARTIES FOR NINE YEARS, EVERY DAY. YOU KEEP
24 WANTING TO IGNORE THAT.

25 Q. DID THE CONTRACT ALLOW THE TERMS OF THE CONTRACT,

1 CONDUSTRIAL'S OBLIGATION TO PROVIDE EMPLOYEES
2 COVERED UNDER WORKERS' INSURANCE, WAS THAT ALLOWED
3 TO BE CHANGED ---

4 A. WHAT IS YOUR ---

5 Q. --- BY THE COURSE OF DEALING?

6 A. WHAT IS YOUR QUESTION?

7 BY MR. GOODWYN:

8 I'M GOING TO OBJECT TO THE FORM, YOUR HONOR.
9 HE IS ASKING QUESTIONS THAT ARE ASSUMING THAT THE
10 CONTRACT REQUIRES THE EMPLOYEES TO HAVE WORKERS'
11 COMP, AND CLEARLY THE CONTRACT SAYS THEY ARE GOING
12 TO BE PROVIDING INDEPENDENT CONTRACTORS.

13 BY MR. SAMUELS:

14 I'M -- WAIT --

15 BY MS. FARTHING:

16 I DISAGREE WITH IT BEING CLEARLY WHAT THE TERMS
17 OF THE CONTRACT ARE.

18 BY MR. SAMUELS:

19 IT NO WHERE SAYS THEY ARE TO PROVIDE
20 INDEPENDENT CONTRACTORS.

21 BY MR. GOODWYN:

22 IN THE TWO PARAGRAPHS RIGHT UP HERE. HE JUST
23 SAID IT. THE WHEREAS PARAGRAPHS CLEARLY SAY THEY
24 ARE TO BE INDEPENDENT CONTRACTORS. I UNDERSTAND
25 THERE'S SOME CONTRADICTORY LANGUAGE LATER, BUT JUST

1 TO SAY THAT THEY ARE EMPLOYEES IS ASSUMING THAT IS
2 TRUE.

3 BY MS. FARTHING:

4 AND I BELIEVE MR. BURGESS' TESTIMONY EARLIER
5 WAS THAT THAT CAN BE INTERPRETED MULTIPLE WAYS.

6 BY COMMISSIONER JAMES:

7 WELL, LET'S RESERVE ARGUMENT AND JUST STICK TO
8 TESTIMONY RIGHT NOW.

9 BY MR. GOODWYN:

10 BUT THE QUESTION ASSUMES THE FACT THAT THEY ARE
11 EMPLOYEES UNDER THE AGREEMENT. THAT'S A FACT ENDED
12 QUESTION. IT COULD EASILY BE INTERPRETED THAT THEY
13 ARE INDEPENDENT CONTRACTORS.

14 BY COMMISSIONER JAMES:

15 MR. SAMUELS, DO YOU WANT TO REPHRASE THE
16 QUESTION, SIR?

17 BY MR. SAMUELS:

18 I'LL REPHRASE THE QUESTION.

19 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

20 Q. SO, THE SENTENCE THAT I JUST ASKED YOU TO READ,
21 "R.N.s, L.P.N.s ASSIGNED TO S.C.D.C. BY CONTRACTOR
22 ARE EMPLOYEES OF CONTRACTOR AND NOT S.C.D.C." YOU
23 WOULD AGREE THAT USES THE TERM "EMPLOYEES," DOES IT
24 NOT?

25 A. YES, THE WORD "EMPLOYEE" IS IN THERE.

1 Q. OKAY. AND THEN LET'S GO ONTO PAGE 258, PARAGRAPH
2 SIX.

3 A. OKAY. YES.

4 Q. WHAT IS THE FIRST PARAGRAPH -- FIRST LINE IN THE
5 FIRST PARAGRAPH IN SECTION SIX STATE?

6 A. "CONTRACTOR SHALL PROVIDE WORKERS' COMPENSATION
7 INSURANCE COVERAGE FOR CONTRACTOR'S EMPLOYEES WHO
8 ARE ASSIGNED TO S.C.D.C.," AND IF WE WOULD HAVE
9 ASSIGNED ANY EMPLOYEES, THEY WOULD HAVE BEEN COVERED
10 BY WORKERS' COMP. WE HAD COVERAGE AT ALL TIME
11 RELEVANT TO THIS CONTRACT, WELL DEPENDING ON WHAT
12 COUNTRYWIDE PROVIDED.

13 Q. AND SO ONCE AGAIN, SINCE THIS INCIDENT RECENTLY IN
14 2017, S.C.D.C. CAME SPECIFICALLY TO YOU. TOMMY
15 BURGESS CAME SPECIFICALLY TO YOU AND SAID "GET ME A
16 CERTIFICATE OF INSURANCE THAT WILL COVER THESE
17 NURSES IF YOU WANT TO KEEP DOING BUSINESS WITH US."
18 THAT HAPPENED; ISN'T THAT TRUE?

19 A. SOMETHING LIKE THAT, YES.

20 Q. YEAH, AND YOU PROCURED A CERTIFICATE OF INSURANCE
21 THAT YOU CONTEND MAY OR MAY NOT COVER THEM DEPENDING
22 ON ---

23 A. WE PROVIDED HIM WITH TWO.

24 Q. --- WHAT HAPPENS IN THIS LITIGATION?

25 A. WE PROVIDED HIM WITH TWO. HE SAID IF YOU WANT TO DO

1 THE BUSINESS, AND AGAIN, WE ARE ALL HERE BECAUSE WE
2 ARE TRYING TO ANSWER THAT QUESTION. I DON'T KNOW
3 THE ANSWER ANY MORE THAN YOU DO, BUT TRYING TO
4 PROTECT OUR BUSINESS AND DO RIGHT BY THE CLIENT IN A
5 DIFFICULT SITUATION, WE PROVIDED ONE CERTIFICATE
6 BASED ON THE P.E.O. WE ARE WITH NOW, AND WE PROCURED
7 ANOTHER POLICY FOR 1099s JUST IN CASE. NOT OUT OF
8 FEAR OR WRONGDOING AS YOU'VE IMPLIED OR ALLEGED OR
9 THAT WE DID SOMETHING WRONG AND WE GOT CAUGHT.
10 TRYING TO PROVIDE SERVICE TO A CLIENT TO MAKE SURE
11 THEY WERE HAPPY, AND THAT A SAFETY NET WAS PROVIDED
12 UNTIL WE KNOW THE ANSWER TO THIS QUESTION THAT WE
13 ARE HERE FOR TODAY.

14 Q. THIS QUESTION THAT'S ALREADY ANSWERED BY THIS
15 CONTRACT THAT SAYS ---

16 A. I DISAGREE.

17 BY MR. GOODWYN:

18 OBJECT TO THE FORM.

19 BY MR. SAMUELS:

20 EMPLOYEES ---

21 BY MR. GOODWYN:

22 OBJECT TO THE FORM.

23 BY COMMISSIONER JAMES:

24 WELL, LET HIM FINISH THE QUESTION.

25 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

1 Q. THIS CONTRACT ---

2 BY COMMISSIONER JAMES:

3 THIS IS CROSS EXAMINATION. LET HIM FINISH THE
4 QUESTION.

5 BY MR. GOODWYN:

6 THE QUESTION IS THIS QUESTION IS ALREADY
7 ANSWERED.

8 BY COMMISSIONER JAMES:

9 MR. GOODWYN, JUST LET HIM -- JUST LET HIM
10 FINISH THE STATEMENT.

11 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

12 Q. THIS CONTRACT THAT SAYS "EMPLOYEES WILL BE COVERED
13 UNDER WORKERS' COMP INSURANCE," AND THE EMPLOYEES
14 ARE THE NURSES; ISN'T THAT TRUE? IS THAT WHAT IT
15 SAYS?

16 A. I THINK YOU'RE -- I THINK YOU JUST SAID TWO
17 DIFFERENT THINGS, AND SOME OF THAT WAS
18 EDITORIALIZING. IF WE PROVIDED EMPLOYEES, YES, THEY
19 SHOULD HAVE BEEN COVERED BY WORKERS' COMP. RIGHT?
20 OKAY. THERE WAS A COURSE OF DEALINGS TO PROVIDE
21 INDEPENDENT CONTRACTORS. WE ARE HERE ON THAT
22 QUESTION. MR. BURGESS SAID "I WANT SOME
23 ASSURANCES." SO, WE PROVIDED HIM THE CERTIFICATE OF
24 INSURANCE FROM OUR P.E.O., WHICH MAY OR MAY NOT GET
25 IT DONE BASED ON THE ANSWER TO THIS QUESTION, IF A

1 CONTRACTOR WAS FOUND TO BE AN EMPLOYEE. IF NOT, WE
2 WENT OUT AND GOT ANOTHER POLICY OF INSURANCE, WHICH
3 WAS NOT EASY FOR 1099s TO PROVIDE A SAFETY NET FOR
4 OURSELVES AND OUR CLIENT. I'VE SAID THAT FIVE TIMES
5 NOW.

6 Q. AND A SAFETY NET FOR THE NURSES, OR IS THAT NOT AN
7 ISSUE FOR YOU?

8 A. THAT -- THAT -- IS THAT A QUESTION?

9 Q. YES, SIR, THAT IS A QUESTION.

10 A. THAT DOESN'T MEAN ANYTHING. IN OTHER WORDS, I MEAN,
11 OBVIOUSLY TO PROVIDE WORKERS' COMP AS NEEDED FOR THE
12 CONTRACT, THE BROKERAGE.

13 Q. ON PAGE 259, LAST PAGE OF THE CONTRACT, AT LINE "E."
14 ALL RIGHT.

15 A. YES.

16 Q. WOULD YOU PLEASE READ THAT OUT LOUD?

17 A. "THIS AGREEMENT CONSTITUTES THE ENTIRE CONTRACT
18 BETWEEN THE PARTIES. NO OTHER PRIOR OR
19 CONTEMPORANEOUS PROMISE, OBLIGATION, STATEMENT OR
20 UNDERSTANDING BETWEEN THE PARTIES WHETHER WRITTEN OR
21 ORAL SHALL BE VALID OR BINDING."

22 Q. WHICH IN ANOTHER WAY IT'S SAYING THE CONTRACT IS THE
23 CONTRACT. YOU CANNOT ALTER IT BY A COURSE OF
24 DEALING. ISN'T THAT TRUE?

25 A. I DON'T AGREE WITH THAT AT ALL. OUR ACTIVITY WASN'T

1 WRITTEN OR ORAL. IT WAS A COURSE OF DEALINGS THAT
2 WAS OBSERVED EVERY DAY, AND IT WAS PRESENT PRIOR TO
3 THE SIGNING, AT THE SIGNING AND BEYOND THE SIGNING.
4 IT WASN'T SOMETHING NEW THAT WAS INTRODUCED LATER.

5 Q. AND THAT COURSE OF DEALING IS PROVIDING A
6 CERTIFICATE OF INSURANCE IN 2010 AND 2011 TO THE
7 DEPARTMENT OF CORRECTIONS THAT PURPORTS TO COVER THE
8 NURSES THAT ARE WORKING THERE AND YET DOES NOT
9 BECAUSE YOU HAVE MISCLASSIFIED THEM AS EMPLOYEES IN
10 VIOLATION OF YOUR CONTRACT WITH THE DEPARTMENT OF
11 CORRECTIONS. IS THAT NOT TRUE, SIR?

12 A. THAT IS NOT TRUE AT ALL. IT SOUNDS LIKE
13 EDITORIALIZING AGAIN, AND CLASSIFYING SOMETHING WITH
14 YOUR OPINION. THAT IS NOT WHAT I'VE TESTIFIED TO AT
15 ALL. THAT'S NOT WHAT THE SITUATION IS AT ALL. WE
16 DIDN'T MISCLASSIFY ANYONE.

17 Q. DID THE CERTIFICATE OF INSURANCE THAT INDICATED
18 THERE WAS WORKERS' COMPENSATION INSURANCE THAT WAS
19 PROVIDED TO THE DEPARTMENT OF CORRECTIONS IN 2010,
20 2011, PROVIDE COVERAGE FOR ANY OF THE NURSES THAT
21 WERE WORKING THERE?

22 A. I'M NOT -- I'M NOT SURE WHAT YOU'RE ASKING. WHAT?
23 YOU'RE SAYING THE ---

24 Q. I BELIEVE - IS THAT EXHIBIT "D"?

25 A. IT SAYS EXHIBIT "D."

1 BY MS. FARTHING:

2 YES, IT IS.

3 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. IS IT YOUR CONTENTION THAT THAT CERTIFICATE OF
5 INSURANCE PROVIDED TO S.C.D.C. STATING THAT THERE
6 WAS WORKERS' COMPENSATION INSURANCE IN FACT DID NOT
7 COVER THE NURSES THAT WERE WORKING THERE AT THE TIME
8 UNDER THE CONDUSTRIAL ---

9 A. THIS CERTIFICATE WOULD HAVE COVERED ANY EMPLOYEES.
10 THIS HAS BEEN A CONSISTENT MESSAGE THROUGHOUT. THIS
11 IS NOT TRYING TO PULL A FAST ONE OR ANYTHING THAT
12 Y'ALL KEEP -- CERTAIN FOLKS KEEP TRYING TO IMPLY.
13 WE CAME INTO THIS WITH INDEPENDENT CONTRACTORS IN A
14 RELATIONSHIP WITH S.C.D.C. THAT THEY HAD BEEN
15 PARTICIPATING IN FOR A LONG TIME AND PROVIDED
16 INDEPENDENT CONTRACTORS. WE HAVEN'T VARIED IN THAT
17 IN NINE YEARS. IT'S BEEN OPEN, NOTHING HIDDEN. YOU
18 KNOW, I WOULD WANT TO KNOW MORE ABOUT THE
19 CIRCUMSTANCES. I DON'T -- I WAS HERE IN 2010. I
20 DIDN'T GET A REQUEST FOR THIS CERTIFICATE. SO, I
21 MEAN, I'M NOT SURE -- I'M GLAD THEY GOT IT. I'M NOT
22 SURE HOW THEY GOT IT. IT DIDN'T -- I KNOW IT DIDN'T
23 COME FROM ME. EVERY TIME MR. BURGESS HAS ASKED ME
24 FOR A CERTIFICATE, I HAVE PROVIDED ONE.

25 Q. DO YOU QUESTION THE AUTHENTICITY OF THAT

1 CERTIFICATE?

2 A. I DON'T -- I'M SURE IT'S NOT -- I MEAN, I DON'T KNOW
3 WHERE IT CAME FROM, WHICH IS EXACTLY WHAT I SAID,
4 NOTHING MORE, NOTHING LESS. WE WERE WITH A.M.S. AT
5 THE TIME. THIS APPEARS TO BE A VALID CERTIFICATE.
6 I DON'T KNOW WHERE IT CAME FROM. IT DIDN'T COME
7 FROM ME. THAT'S ALL I SAID.

8 Q. ALL RIGHT, SIR. LET ME ASK YOU ABOUT CONDUCTRIAL
9 EXHIBIT ONE, WHICH IS THE AMENDED PERSONNEL SERVICES
10 AGREEMENT FROM 2016.

11 A. OKAY.

12 BY COMMISSIONER JAMES:

13 THAT'S THE TRIAL EXHIBIT?

14 BY MR. SAMUELS:

15 THAT'S THE TRIAL EXHIBIT.

16 BY COMMISSIONER JAMES:

17 RIGHT, OKAY.

18 BY THE WITNESS:

19 THANK YOU, COMMISSIONER.

20 YES, SIR.

21 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

22 Q. ALL RIGHT, MR. SEARS, THANK YOU. SO, UNDER AGREED
23 SERVICES "A," WOULD YOU AGREE WITH ME THE SENTENCE
24 IN THE 2008 AGREEMENT SAID "R.N.s, L.P.N.s ASSIGNED
25 TO S.C.D.C. BY CONTRACTOR ARE EMPLOYEES OF

1 CONTRACTOR AND NOT S.C.D.C."? IN THE 2016 AGREEMENT
2 CHANGED THAT TO "R.N.s, L.P.N.s ASSIGNED TO S.C.D.C.
3 BY CONTRACTOR ARE EMPLOYEES AND/OR AGENTS OF
4 CONTRACTOR AND NOT S.C.D.C."?

5 A. YES, IT HAS CHANGED.

6 Q. THAT IS A CHANGE YOU SPECIFICALLY REQUESTED, IS IT
7 NOT?

8 A. I DID REQUEST THAT CHANGE, YES.

9 Q. AND THE PURPOSE OF THAT CHANGE WAS SO THAT YOU COULD
10 HAVE AGENTS ESSENTIALLY YOU COULD CHOOSE BETWEEN
11 EMPLOYEES OR AGENTS THAT YOU SENT OVER THERE, AND IF
12 THEY WERE AGENTS, YOU EXPLICITLY WOULDN'T HAVE TO
13 COVER THEM UNDER WORKERS' COMP; ISN'T THAT TRUE?

14 A. THAT'S NOT TRUE. IT'S -- AND WE WEREN'T TRYING TO
15 CREATE ANYTHING OR CHANGE ANYTHING. I REQUESTED THE
16 CHANGE TO ACCURATELY REFLECT THE COURSE OF
17 PERFORMANCE, COURSE OF DEALINGS BETWEEN THE PARTIES
18 FOR EIGHT YEARS, WHAT HAD ACTUALLY BEEN HAPPENING ON
19 A DAILY BASIS FOR EIGHT YEARS.

20 Q. ALL RIGHT. SO, THE NURSES THEN THAT ARE WORKING AT
21 THE DEPARTMENT OF CORRECTIONS UNDER THIS NEW
22 CONTRACT, ARE THEY EMPLOYEES OR AGENTS?

23 A. THEY ARE INDEPENDENT CONTRACTORS.

24 Q. I'M CONFUSED. THE CONTRACT SAYS -- NOW SAYS
25 "EMPLOYEES AND/OR AGENTS."

1 A. RIGHT.

2 Q. WHICH ARE THEY? ARE THEY EMPLOYEES OR AGENTS?

3 A. AN INDEPENDENT CONTRACTOR CAN BE AN AGENT.

4 Q. WHY DIDN'T YOU SAY INDEPENDENT CONTRACTOR? WHY
5 DIDN'T YOU REQUEST A CHANGE THAT SAYS INDEPENDENT
6 CONTRACTOR; WOULDN'T THAT RESOLVE ALL OF THIS
7 AMBIGUITY?

8 A. BECAUSE AGENTS WAS A TERM -- EMPLOYEES AND/OR AGENTS
9 IS A SUCCINCT TERM THAT ALLOWS A BROADER DEFINITION.
10 I COULD HAVE WRITTEN EIGHT MORE PARAGRAPHS, BUT
11 OBVIOUSLY THAT'S NOT WHAT THEY WERE LOOKING FOR, AND
12 WE DIDN'T WANT TO IMPUGN UPON THEIR FORM CONTRACT.
13 I TRIED TO SUGGEST THE BEST AMENDMENT. BREVITY IS
14 THE SOUL OF WIT SOMETIMES, THAT WOULD COVER THE
15 ACTUAL RELATIONSHIP OF THE PARTIES WITHOUT ADDING
16 SENTENCES AND SENTENCES.

17 Q. WELL, BREVITY IS THE SOUL OF WIT, BUT CLARITY IS ITS
18 CLOSEST FRIEND.

19 A. OH, GOT ME.

20 Q. AND WOULD YOU NOT AGREE THAT INDEPENDENT CONTRACTOR
21 WOULD BE A COMPLETELY UNAMBIGUOUS TERM WHERE
22 EVERYBODY WOULD KNOW THAT IF YOU PUT IT IN THE
23 CONTRACT AND THEN PUT IN YOU DON'T HAVE TO COVER
24 INDEPENDENT CONTRACTORS WITH WORKERS' COMP
25 INSURANCE, YOU WOULDN'T HAVE A PROBLEM ANYMORE.

1 A. WELL, TO ME, THIS WAS BRIEF AND CLEAR.

2 Q. OKAY.

3 A. THAT IS WHY I SUGGESTED THE CHANGE.

4 BY MR. SAMUELS:

5 THANK YOU, MR. SEARS. I AM SURE THE OTHER
6 ATTORNEYS HAVE SOME QUESTIONS FOR YOU.

7 BY MR. GOODWYN:

8 DO YOU MIND IF WE TAKE A QUICK BATHROOM BREAK?

9 BY COMMISSIONER JAMES:

10 LET'S TAKE A BREAK. YES.

11 (OFF THE RECORD)

12 BY COMMISSIONER JAMES:

13 MR. SAMUELS, JUST TO MAKE SURE, WE'RE BACK ON
14 THE RECORD. HAVE YOU HAD AN OPPORTUNITY TO ASK ALL
15 OF YOUR QUESTIONS AT THIS POINT WITH REGARDS TO BOTH
16 LAYERS, COMPENSABILITY AND COVERAGE?

17 BY MR. SAMUELS:

18 THAT'S CORRECT, YOUR HONOR.

19 BY COMMISSIONER JAMES:

20 ALL RIGHT. AND THEN WE WILL GO TO CONDUSTRIAL,
21 AND MR. NEWMAN, YOU ARE GOING TO DO THE ISSUES ---

22 BY MR. NEWMAN:

23 COUNTRYWIDE.

24 BY MR. ALFORD:

25 COUNTRYWIDE.

1 BY COMMISSIONER JAMES:

2 I MEANT -- I'M SORRY. THANK YOU. COUNTRYWIDE
3 WITH REGARDS TO THE COMPENSABILITY ISSUES. OKAY.

4 CROSS EXAMINATION BY MR. NEWMAN:

5 Q. MR. SEARS, GIVEN THE HOUR AND THE FACT THAT I WANT
6 TO ALLOW PLENTY OF TIME FOR THESE OTHER FOLKS TO DO
7 THEIR THING, I'M GOING TO TRY AND MOVE PRETTY
8 QUICKLY THROUGH THIS.

9 A. YES, SIR.

10 Q. YOU WOULD AGREE THAT AS A PROFESSION, NURSING IS
11 PERHAPS SOMEWHAT UNIQUE IN THAT PEOPLE ARE PLACED AS
12 INDEPENDENT CONTRACTORS IN SOME SETTINGS AND AS
13 EMPLOYEES IN OTHERS?

14 A. YES, IT'S POSSIBLE AND PLAUSIBLE, YES.

15 Q. OKAY. AND CONDUSTRUAL ACTUALLY HAD PEOPLE PLACED IN
16 BOTH CAPACITIES?

17 A. AS EMPLOYEES IN A LIMITED NUMBER, WE THINK BASED ON
18 SPECIFIC CLIENT REQUESTS, BUT SUBJECT TO THAT, YES.

19 Q. ALL RIGHT. AND THERE ARE FROM THE PERSPECTIVE OF
20 THE INDIVIDUAL NURSE, CERTAIN ADVANTAGES TO ONE
21 VERSUS THE OTHER.

22 A. YES.

23 Q. IS THAT CORRECT?

24 A. YES, SIR. I THINK THAT'S THEIR PERCEPTION, YES,
25 SIR.

1 Q. ALL RIGHT. LET'S GO THROUGH SOME OF THOSE THINGS,
2 AND LET'S -- WELL, AS FAR AS THE EMPLOYEE NURSES,
3 NURSES WHO ARE ACTUAL EMPLOYEES, WHILE THEY MIGHT BE
4 ABLE TO EXPRESS A PREFERENCE AS TO THEIR ASSIGNED
5 SHIFTS, ULTIMATELY THERE SHIFTS ARE ACTUALLY
6 ASSIGNED TO THEM, CORRECT?

7 A. IN OTHER WORDS, IF IT'S AN EMPLOYEE ---

8 Q. RIGHT.

9 A. --- AND ITS IN THE CONTEXT OF OUR CLIENTS THAT HAVE
10 EMPLOYEES, ---

11 Q. RIGHT.

12 A. --- LIKE WE EXPECT HER TO BE HERE, YOU KNOW, 40
13 HOURS OR 48 HOURS NEXT WEEK.

14 Q. RIGHT. SO, THEY ARE EXPECTED TO SIGN UP TO THE
15 SHIFTS THAT ARE ASSIGNED TO THEM, CORRECT?

16 A. RIGHT. IT'S NOT -- THEY CAN'T PICK AND CHOOSE.
17 THEY'RE LIKE YOU'VE GOT TO COVER -- WE ARE EXPECTING
18 SUSIE NURSE TO COVER "C" HALL NEXT WEEK, AND SHE
19 NEEDS TO BE THERE, AND IT'S NOT AN OPTION.

20 Q. RIGHT.

21 A. YOU'VE GOT TO BE THERE.

22 Q. RIGHT. INDEPENDENT CONTRACTOR NURSES BY CONTRAST
23 PICK AND CHOOSE THEIR SHIFTS, CORRECT?

24 A. RIGHT. IN THE CONTEXT OF OUR EXPERIENCE, WE'VE HAD
25 THESE NURSES, L.P.N.s, WHAT HAVE YOU, SOME AS HE HAS

1 POINTED OUT, S.C.D.C. WOULD SEND US A SCHEDULE A
2 MONTH IN ADVANCE. SOME OF THOSE SHIFTS WERE --
3 ALREADY HAD NURSE PERSONNEL THROUGH OUR BROKERAGE ON
4 THERE, AND WE WERE TOLD TO ASSUME THAT MEANT THAT
5 THEY HAD HAD A DISCUSSION.

6 Q. RIGHT.

7 A. AND, SO, THEY WERE JUST LETTING US KNOW, WE ARE
8 USING YOUR BROKERAGE PLACES. THEY'RE ALREADY THERE.
9 SOME OF THOSE WERE NOT FILLED, AND WE WERE EXPECTED
10 TO CALL -- CALL NURSES, OR IF NURSES HAVE SAID "GIVE
11 ME THREE SHIFTS" TO FILL THOSE GAPS EITHER THROUGH
12 CALLING NURSES TO SEE IF THEY WANTED TO TAKE IT OR
13 HAVING FILLED THAT SAYS "I WANT SHIFTS NEXT WEEK TO
14 FILL THAT." TOWARDS THE END OF THE MONTH, SOME OF
15 THE SCHEDULED S.C.D.C. PERSONNEL WOULD HAVE FALLEN
16 OFF AND SAID "WELL, THEY'RE NOT THERE. THEY'RE NOT
17 GOING TO MAKE IT," AND THEY WOULD HAVE CALLED AND
18 SAID "CAN YOU TRY AND FIND SOMEONE ELSE TO TRY TO
19 FILL THIS SHIFT?" AND WE WOULD HAVE TRIED TO ASSIGN
20 THOSE SHIFTS.

21 Q. OKAY. SO, IN THE CASE OF A NURSE WHO IS AN
22 INDEPENDENT CONTRACTOR NURSE, SHE WOULD TYPICALLY
23 GET A CALL FROM THE DEPARTMENT OF CORRECTIONS IN
24 THIS INSTANCE, "WE HAVE THIS SHIFT AVAILABLE. ARE
25 YOU INTERESTED?" AND SHE IS PERFECTLY FREE TO SAY

1 "YES" OR "NO" OR "MY SON HAS A FOOTBALL GAME THAT
2 AFTERNOON. I CAN'T BE THERE"?

3 A. THAT IS CORRECT.

4 Q. ALL RIGHT. NOW, AS IT RELATES TO EMPLOYEE NURSES,
5 YOU TAKE OUT STATE AND FEDERAL TAXES, UNEMPLOYMENT,
6 SOCIAL SECURITY, THE STANDARD WITHHOLDINGS; IS THAT
7 CORRECT?

8 A. THAT IS CORRECT.

9 Q. BY CONTRAST AGAIN, INDEPENDENT CONTRACTOR NURSES
10 HAVE NONE OF THAT TAKEN?

11 A. THAT IS CORRECT.

12 Q. EMPLOYEE NURSES DON'T -- CAN'T NEGOTIATE THEIR RATES
13 OF PAY THROUGHOUT THE PROCESS?

14 A. THAT IS CORRECT.

15 Q. THEY ARE LOCKED INTO A TERM OF I GUESS HOURLY RATE
16 TYPICALLY; IS THAT THE WAY IT WORKS?

17 A. YES, SIR. THAT'S MY UNDERSTANDING.

18 Q. AND INDEPENDENT CONTRACTORS ON THE OTHER HAND ARE
19 ABLE TO NEGOTIATE THEIR ---

20 A. THEY ARE ABLE TO NEGOTIATE. ONE EXAMPLE WITH
21 S.C.D.C. WOULD CONTACT US AND SAY, YOU KNOW, "FOR A
22 HOLIDAY, OUR EMPLOYEES WANT OFF. CAN YOU FILL
23 THESE?" WE WOULD TRY TO FIND NURSES THAT WANTED TO
24 FILL THE SHIFTS. THEY WOULD SAY "WELL, THAT'S
25 THANKSGIVING. I'M NOT GOING IN FOR LESS THAN 25."

1 SO, WE WOULD HAVE TO WORK THAT OUT, AND THEY
2 NEGOTIATED THEIR RATES BEFORE THEY ACCEPTED THE
3 SHIFT.

4 Q. RIGHT. INDEPENDENT CONTRACTOR NURSES ARE NOT ONLY
5 ALLOWED AS I UNDERSTAND IT BUT ARE ENCOURAGED TO
6 WORK FOR OTHER AGENCIES.

7 A. THAT'S CORRECT.

8 Q. WOULD THAT ALSO BE CORRECT?

9 A. YES, SIR, THAT IS CORRECT.

10 Q. OKAY. OF COURSE, EMPLOYEE NURSES DON'T SIGN AN
11 INDEPENDENT CONTRACTOR AGREEMENT?

12 A. THAT IS CORRECT.

13 Q. AND INDEPENDENT CONTRACTOR NURSES DO?

14 A. THAT IS CORRECT, YES, SIR.

15 Q. ALL RIGHT. EMPLOYEE NURSES ARE ONLY ALLOWED A
16 CERTAIN AMOUNT OF VACATION TIME?

17 A. THAT IS CORRECT.

18 Q. AND THERE ARE RULES ABOUT HOW THEY SIGN UP FOR THAT
19 OR LET YOU KNOW WHEN THEY ARE PLANNING TO GO?

20 A. YES, SIR.

21 Q. THE SAME WOULD NOT BE TRUE FOR INDEPENDENT
22 CONTRACTOR NURSES; THEY CAN DO IT WHENEVER THEY WANT
23 TO?

24 A. THERE ARE NO RULES.

25 Q. OKAY.

1 A. THEY CAN TAKE OFF A MONTH TO GO TO OKLAHOMA. THEY
2 CAN DECIDE NOT TO WORK NEXT WEEK.

3 Q. ALL RIGHT. YOUR COMPANY OR ANY COMPANY AS IT
4 RELATES TO EMPLOYEE NURSES FILE TAX DOCUMENTS AND
5 INFORMATION WITH THE STATE AND FEDERAL TAX
6 AUTHORITIES, SOCIAL SECURITY ADMINISTRATION?

7 A. YES, SIR.

8 Q. UNEMPLOY -- I MEAN, EMPLOYMENT SECURITY COMMISSION?

9 A. YES, SIR.

10 Q. THAT'S NOT THE CASE WITH REGARD TO INDEPENDENT
11 CONTRACTOR NURSES?

12 A. THAT IS CORRECT.

13 Q. PRESUMABLY INDEPENDENT CONTRACTOR NURSES ARE ABLE TO
14 DEDUCT BUSINESS EXPENSES FROM THEIR TAX RETURNS;
15 WOULD THAT BE YOUR UNDERSTANDING?

16 A. I BELIEVE SO, YES, SIR.

17 Q. ALL RIGHT. DEPENDING ON YOUR PERSPECTIVE, WOULD YOU
18 AGREE THAT ALL OF THESE THINGS, UNIQUE FEATURES
19 WE'VE DISCUSSED AT IT RELATES TO INDEPENDENT
20 CONTRACTOR NURSES ARE PERCEIVED BY THOSE FOLKS AS
21 BEING ADVANTAGES?

22 A. I WOULD -- I WOULD THINK SO, YES.

23 Q. THERE'S A CERTAIN LEVEL OF FLEXIBILITY ASSOCIATED
24 WITH ---

25 BY MR. SAMUELS:

1 OBJECT TO SPECULATION, YOUR HONOR. HE CAN'T
2 KNOW WHAT'S IN THE MIND OF ONE NURSE OR ANOTHER
3 NURSE.

4 BY COMMISSIONER JAMES:

5 ALL RIGHT. SUSTAINED.

6 CROSS EXAMINATION RESUMED BY MR. NEWMAN:

7 Q. ALL RIGHT. WOULD YOU AGREE THAT THERE'S MORE
8 FLEXIBILITY ASSOCIATED WITH THE INDEPENDENT
9 CONTRACTOR MODEL IF YOU WILL VERSUS THE EMPLOYEE
10 MODEL?

11 A. YES. THEY CAN TAKE OFF WHEN THEY WANT. THEY CAN
12 CHOOSE WHEN THEY WANT TO WORK. THEY CAN CHOOSE WHEN
13 THEY DON'T WANT TO WORK.

14 Q. ALL RIGHT. AND AS HAS BEEN DISCUSSED HERE
15 THROUGHOUT THE LAST TWO DAYS AND A THIRD DAY BEFORE
16 THAT, MS. TURNER OPERATED AS AN INDEPENDENT
17 CONTRACTOR NURSE?

18 A. YES.

19 Q. AS FAR AS YOUR COMPANY WAS CONCERNED, THAT'S ALL SHE
20 EVER WAS WAS AN INDEPENDENT CONTRACTOR?

21 A. AT ALL TIMES RELEVANT TO THIS CLAIM, IT IS OUR
22 POSITION THAT SHE OPERATED AND ACTED AND UNDERSTOOD
23 SHE WAS AN INDEPENDENT CONTRACTOR.

24 Q. AND ALL OF THE NURSES AT THE DEPARTMENT OF
25 CORRECTIONS WERE SIMILARLY INDEPENDENT CONTRACTOR

1 NURSES?

2 A. YES, I BELIEVE SO, YES.

3 Q. ALL RIGHT. SO, MS. TURNER WOULD HAVE EXPERIENCED
4 THE BENEFITS OF BEING ABLE TO PICK AND CHOOSE HER
5 SHIFTS?

6 A. THAT IS CORRECT.

7 Q. SHE WOULD HAVE HAD THE BENEFIT OF BEING ABLE TO
8 NEGOTIATE HER RATES?

9 A. THAT IS CORRECT.

10 Q. SHE WOULD HAVE BEEN -- HAD THE OPPORTUNITY TO AND
11 BEEN ENCOURAGED TO ACCEPT JOBS WITH OTHER AGENCIES?

12 A. THAT IS CORRECT, AND I THINK SHE OFFERED SOME
13 TESTIMONY ABOUT WANTING TO WORK FOR ONE OF OUR
14 COMPETITORS IN THE HEARING. I DON'T RECALL THAT
15 SPECIFICALLY, BUT SHE WAS ENCOURAGED TO DO THAT, AS
16 WERE THEY ALL.

17 Q. SHE HAD THE FREEDOM TO REFUSE WORK?

18 A. SHE DID.

19 Q. SHE HAD NO WITHHOLDINGS, SOCIAL SECURITY,
20 UNEMPLOYMENT, STATE OR FEDERAL TAXES TAKEN OUT OF
21 HER ---

22 A. THAT IS CORRECT.

23 Q. --- PAY? SHE COULD TAKE, GO OFF ON VACATION ANY
24 TIME SHE WANTED TO?

25 A. THAT IS CORRECT.

1 Q. AND SHE COULD DEDUCT CERTAIN BUSINESS EXPENSES FROM
2 HER TAXES?

3 A. THAT IS MY UNDERSTANDING; THAT IS CORRECT.

4 Q. ALL RIGHT. IF SHE WERE NOT TO HAVE WANTED TO ACCEPT
5 THE ADVANTAGES OF AN INDEPENDENT CONTRACTOR STATUS,
6 COULD SHE HAVE RATHER THAN COMING TO CONDUSTRIAL,
7 COULD SHE HAVE JUST GONE DIRECTLY TO THE DEPARTMENT
8 OF CORRECTIONS AND SAID "I WANT TO BE AN EMPLOYEE
9 INSTEAD"?

10 A. SHE COULD HAVE, AND THERE WAS TESTIMONY -- SHE HAS
11 OFFERED TESTIMONY ON THAT AS WELL. I DON'T REMEMBER
12 HER REASONING FOR NOT DOING THAT.

13 Q. OKAY.

14 A. BUT SHE WAS FREE TO DO THAT AT ANY TIME.

15 Q. ALL RIGHT. DID SHE EVER OBJECT TO ANY OF THESE
16 ADVANTAGES TO INDEPENDENT CONTRACTORS?

17 A. NO, SHE DID NOT.

18 Q. ALL RIGHT. SO, BASICALLY SHE ENJOYED THE BENEFITS
19 OF BEING AN INDEPENDENT CONTRACTOR?

20 A. FOR HER ENTIRE TENURE WITH US THROUGH THE HOSTAGE
21 SITUATION, THAT IS CORRECT.

22 Q. ALL RIGHT. WOULD YOU AGREE THAT MS. TURNER WAS
23 NEVER -- OR WAS NOT AND HAS NEVER BEEN AN EMPLOYEE
24 OF COUNTRYWIDE STAFFING?

25 A. YES. AS WE SIT HERE TODAY, WE DIDN'T BELIEVE --

1 WELL, WE DIDN'T BELIEVE SHE WAS AN EMPLOYEE OF OURS.
2 SO, BY EXTENSION, WE ALSO DIDN'T BELIEVE SHE WAS AN
3 EMPLOYEE OF COUNTRYWIDE.

4 Q. OKAY. AND CONDUCTORIAL NEVER REPORTED HER PAYROLL TO
5 COUNTRYWIDE BY VIRTUE OF THAT?

6 A. THAT IS CORRECT.

7 Q. AT THE POINT AT WHICH THE -- FOLLOWING THIS
8 ACCIDENT, THAT THE DEPARTMENT OF CORRECTIONS ASKED
9 THAT YOU PRODUCE A CERTIFICATE OF INSURANCE, WAS IT
10 YOUR UNDERSTANDING THAT THEY DIDN'T HAVE ONE AT THAT
11 POINT, AND THAT WAS THE REASON FOR THEIR REQUEST?

12 A. WELL, MR. BURGESS ASKED -- OR MS. FARTHING MAY HAVE
13 ASKED AND/OR MR. BURGESS ASKED FOR A CERTIFICATE.
14 THEY SAID "CAN YOU GO FIND THAT YOU HAVE PROOF OF
15 INSURANCE?" I SAID "I WILL DO MY BEST."

16 Q. AND THE REASON WAS IS BECAUSE THEY DIDN'T HAVE ONE?

17 A. THAT WAS MY UNDERSTANDING.

18 Q. ALL RIGHT.

19 BY MR. NEWMAN:

20 THANK YOU, SIR.

21 BY THE WITNESS:

22 THANK YOU.

23 BY MR. BEARD:

24 WOULD YOU PREFER FOR ME TO DO THE
25 COMPENSABILITY FIRST WHILE WE'RE DOING IT?

1 BY COMMISSIONER JAMES:

2 YEAH, LET'S STAY WITH THAT. ALL RIGHT, MR.
3 BEARD.

4 BY MR. BEARD:

5 THANK YOU, YOUR HONOR.

6 CROSS EXAMINATION BY MR. BEARD:

7 Q. MR. SEARS, JUST SO I KNOW BECAUSE I WASN'T HERE THE
8 FIRST DAY OF THIS TRIAL, WERE YOU PRESENT WHEN MS. -
9 --

10 A. TURNER.

11 Q. --- TURNER, WHEN SHE TESTIFIED?

12 A. I WAS.

13 Q. AND, SO, I ASSUME YOU HAVE SEEN THESE DOCUMENTS THAT
14 ARE IN EVIDENCE. I ASSUME YOU HAVE REVIEWED THE
15 INFORMATION ALONG WITH YOUR ATTORNEY INCLUDING TAX
16 RETURNS AND THINGS OF THAT NATURE?

17 A. I MEAN, YES. I MEAN, I DOUBT THAT I HAVE PUT MY
18 FINGER ON EVERYTHING, BUT I'VE TRIED TO REVIEW
19 EVERYTHING I COULD.

20 Q. OKAY. IN LISTENING TO WHAT I'VE HEARD YESTERDAY AND
21 TODAY IN YOUR TESTIMONY, IT SEEMS TO ME, THE
22 UNDERSTANDING AT LEAST THAT I'M GETTING FROM THE
23 TESTIMONY IS THAT WHEN YOU WENT TO WORK FOR
24 CONDUSTRIAL, YOU IMMEDIATELY REVIEWED EVERY CONTRACT
25 IN EXISTENCE OR FAIRLY QUICKLY THEREAFTER, YOU

1 REVIEWED ALL OF THESE CONTRACTS, ALL OF THE
2 DOCUMENTS THAT WE'VE TALKED ABOUT HERE TODAY, AND
3 YOU GOT THOSE AND DECIDED WHICH ONES KIND OF PASSED
4 MUSTER AND WHICH ONES DIDN'T, AND YOU MADE WHATEVER
5 REVISIONS AND CHANGES YOU WERE GOING TO MAKE EARLY
6 ON. IS THAT A FAIR STATEMENT?

7 A. I DON'T THINK THAT'S COMPLETELY ACCURATE, BECAUSE AS
8 I TESTIFIED, WHEN I GOT THERE JULY 6TH OF 2009, WHEN
9 I INTERVIEWED, THEY MADE IT CLEAR, "WE ARE GOING
10 INTO CHAPTER 11 REORGANIZATION. WE DON'T KNOW IF WE
11 ARE GOING TO BE HERE IN SIX MONTHS." SO, WHEN I
12 CAME IN, MY PRIMARY JOB WAS TO KEEP THE COMPANY
13 ALIVE AND TO GET US OUT OF CHAPTER 11. I MEAN, I --
14 SO, I DIDN'T HAVE A CHANCE TO REVIEW ALL THE
15 CONTRACTS IMMEDIATELY. I MEAN, IN OTHER WORDS, AT
16 THAT POINT FOR THE FIRST THREE YEARS I WAS HERE, I
17 WAS COMPLETELY REACTIVE. IF THERE WAS A SQUEAKY
18 WHEEL CONTRACT, I LOOKED AT IT. IF IT WAS
19 IMPLICATED IN OUR CHAPTER 11, I ADDRESSED IT. YOU
20 KNOW, OTHER THAN THAT, I GOT TO THOSE THINGS
21 WHenever I COULD, AND SOME OF THOSE WERE, YOU KNOW,
22 NOT RIGHT AWAY.

23 Q. OKAY. IT'S FAIR TO SAY AT LEAST THE CONTRACT, THE
24 INITIAL CONTRACT FROM 2008 WITH THE DEPARTMENT OF
25 CORRECTIONS IS NOT SOMETHING THAT YOU FELT WAS

1 SIGNIFICANT ENOUGH TO CHANGE AT LEAST EARLY ON WHEN
2 YOU GOT THERE, IN YOUR LEGAL OPINION, WHICH YOU WERE
3 HIRED AS A LEGAL PERSON; IS THAT CORRECT?

4 A. I GUESS I WOULD -- I THINK THERE ARE A LOT OF LAYERS
5 THERE. MY ANSWER IS WHEN I BECAME ACQUAINTED WITH
6 THE COMPANY AND WAS TOLD ABOUT THE SITUATION,
7 BUSINESS WAS OPERATING AS IT SEEMED TO BE, IT SHOULD
8 HAVE BEEN OPERATING SO TO SPEAK, AND THERE WAS --
9 LIKE I SAID, THERE WAS NOT A SQUEAKY WHEEL.

10 Q. AND SO AT LEAST AGAIN, OBVIOUSLY TO YOU AT THAT
11 TIME, THERE WAS NOT A SQUEAKY WHEEL; THERE WAS NO
12 REASON AT LEAST IN YOUR OPINION FOR YOU TO CHANGE
13 THE 2008 CONTRACT IN ANY WAY, SHAPE OR FORM UNTIL
14 WHAT HAPPENED HAPPENED IN THIS CASE; IS THAT FAIR?

15 A. I MEAN, I WOULD SAY THAT CERTAINLY THIS CASE, I
16 MEAN, BROUGHT EVERYTHING TO THE FOREFRONT, YES.

17 Q. OKAY. DO YOU HAVE THE 2008 CONTRACT IN FRONT OF
18 YOU?

19 A. I DO.

20 Q. I HAVE JUST A FEW QUESTIONS ABOUT THE CONTRACT. THE
21 LETTER AT PAGE 253 OF THE DOCUMENT IS ADDRESSED TO
22 MEDUSTRIAL HEALTHCARE TO A NATASHA RATHBURN. WHO IS
23 THAT AND WHO IS THAT COMPANY?

24 A. I DO NOT HAVE THAT.

25 Q. YOU DO NOT HAVE THE COVER LETTER?

1 A. I DO NOT HAVE THE COVER LETTER.

2 Q. THAT'S THE LETTER THAT GOES IN FRONT OF THAT.

3 A. YES, THAT APPEARS TO BE INDUSTRIAL HEALTHCARE
4 NATASHA RATHBURN. MS. RATHBURN WAS THE PERSON THAT
5 CAME OVER FROM PALMETTO REFERRAL SERVICES WHEN
6 CONDUSTRIAL BOUGHT THE ASSETS AND STARTED
7 MEDUSTRIAL. MS. RATHBURN CAME OVER AND SAID SHE WAS
8 GOING TO BE THE MANAGER.

9 Q. OKAY.

10 A. OKAY.

11 Q. AND IMPORTANT TO ME ON THAT DOCUMENT THOUGH IS THAT
12 IT IS ADDRESSED TO MEDUSTRIAL HEALTHCARE; IS THAT
13 CORRECT?

14 A. THAT IS CORRECT.

15 Q. OKAY. AND IN THE LETTER, IT REQUESTS -- IT SAYS "AS
16 PER THE CONTRACT, PLEASE SEND COPIES OF CERTIFICATES
17 OF INSURANCE AND LICENSE." MY QUESTION IS, NUMBER
18 ONE, TO THIS DAY, AS WE STAND HERE RIGHT NOW, HAS
19 MEDUSTRIAL HEALTHCARE EVER PROVIDED A CERTIFICATE OF
20 INSURANCE TO THE DEPARTMENT OF CORRECTIONS?

21 A. YOU MEAN, ---

22 Q. IN THE NAME MEDUSTRIAL HEALTHCARE?

23 A. NO, BECAUSE MEDUSTRIAL DOESN'T HAVE ANY LEGAL
24 EXISTENCE.

25 Q. OKAY. AS WE STAND HERE TODAY, ---

1 A. RIGHT.

2 Q. --- IS THE COMPANY MEDUSTRIAL HEALTHCARE LICENSED
3 UNDER THE STATE OF SOUTH CAROLINA AS INDICATED ON
4 THE VERY FIRST SENTENCE OF THE CONTRACT?

5 A. AGAIN, THE ANSWER IS MEDUSTRIAL IS NOT A LEGAL
6 ENTITY.

7 Q. OKAY. SO, THE CONTRACT THAT SAYS "THIS AGREEMENT IS
8 MADE AND ENTERED INTO BY AND BETWEEN ---

9 A. RIGHT.

10 Q. --- THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND
11 MEDUSTRIAL HEALTHCARE ---

12 A. RIGHT.

13 Q. --- WITH AN ADDRESS FOR MEDUSTRIAL HEALTHCARE ---

14 A. RIGHT.

15 Q. --- LICENSED UNDER THE STATE OF SOUTH CAROLINA,"
16 THEY ARE NOT LICENSED UNDER THE STATE OF SOUTH
17 CAROLINA, BECAUSE THEY HAVE NO LEGAL EXISTENCE; IS
18 THAT CORRECT?

19 BY MR. GOODWYN:

20 OBJECT TO THE FORM.

21 THE WITNESS ANSWERS:

22 A. CONDUSTRIAL IS.

23 CROSS EXAMINATION RESUMED BY MR. BEARD:

24 Q. NO, I'M TALKING ABOUT MEDUSTRIAL.

25 A. YEAH, I UNDERSTAND. MEDUSTRIAL HAS ALWAYS BEEN,

1 ALWAYS BEEN A DIVISIONAL SERVICE OF CONDUSTRIAL.

2 Q. OKAY. IS THERE ANYTHING IN THIS CONTRACT ---

3 A. YES.

4 Q. --- FROM PAGE ONE TO PAGE LAST THAT IDENTIFIES
5 CONDUSTRIAL?

6 A. NO.

7 Q. ANYTHING?

8 A. I DON'T -- I WOULD HAVE TO LOOK THROUGH IT, BUT I DO
9 BELIEVE AT THE TIME, IT DID SAY MEDUSTRIAL.

10 Q. OKAY. AND THE PERSON WHO SIGNED THE CONTRACT ON
11 BEHALF OF MEDUSTRIAL WAS THE DIRECTOR NATASHA M.
12 RATHBURN, AND AGAIN, THE CONTRACTOR WAS LISTED AGAIN
13 AS MEDUSTRIAL HEALTHCARE, A NONLEGAL ENTITY WITH NO
14 LEGAL SIGNIFICANCE WHO SIGNED A CONTRACT; IS THAT
15 CORRECT?

16 A. SHE -- NATASHA DID SIGN THAT. AT THE TIME SHE
17 SIGNED IT, SHE WAS A CONDUSTRIAL EMPLOYEE.

18 Q. OKAY. WELL, IS THERE ANY WAY TO KNOW THAT BY
19 READING THIS CONTRACT? IS THERE ANY WAY FOR ANY
20 SINGLE LAWYER STANDING IN THIS ROOM TODAY TO KNOW
21 THAT BY READING THIS CONTRACT, THAT CONDUSTRIAL HAS
22 ANYTHING TO DO WITH THIS CONTRACT?

23 A. WELL, YES, IF YOU WENT AND LOOKED UP MEDUSTRIAL ON
24 THE WEBSITE AND SAW IT WAS A DIVISION OF
25 CONDUSTRIAL. IF YOU ARE JUST LOOKING AT THIS PIECE

1 OF PAPER AND NOTHING ELSE, IT WOULD PROBABLY BE
2 DIFFICULT TO KNOW THAT.

3 Q. IN OTHER WORDS, IF WE LOOK AT THE FOUR CORNERS OF
4 THE DOCUMENT, IT SAYS MEDUSTRIAL, MEDUSTRIAL ONLY.
5 CONDUSTRIAL DOES NOT EXIST IN THE FOUR CORNERS OF
6 THE DOCUMENT; IS THAT CORRECT?

7 A. IT DOES SAY MEDUSTRIAL, YES.

8 Q. AND AM I CORRECT, CONDUSTRIAL DOES NOT EXIST IN THE
9 FOUR CORNERS OF THIS DOCUMENT

10 A. WELL, IT EXISTS, BUT IT IS NOT MENTIONED IN THIS
11 DOCUMENT, YES.

12 Q. SO, IT'S NOT WITHIN THE FOUR CORNERS OF THE
13 DOCUMENT?

14 A. IT'S ---

15 Q. THE WORD "CONDUSTRIAL" IS NOT WITHIN THE FOUR
16 CORNERS ---

17 A. THE WORD "CONDUSTRIAL IS NOT WITHIN THE FOUR CORNERS
18 OF THE DOCUMENT.

19 Q. OKAY. SO, AS I READ AND UNDERSTAND THIS DOCUMENT
20 AND I UNDERSTAND THE POSITION THAT I'VE HEARD SORT
21 OF THE TESTIMONY ON TODAY, WHEN YOU ENTERED INTO
22 THIS AGREEMENT OR WHEN MEDUSTRIAL ENTERED INTO THIS
23 AGREEMENT WITH THE DEPARTMENT OF CORRECTIONS, ---

24 A. YES.

25 Q. --- NOT A SINGLE PERSON IS COVERED UNDER SECTION

1 ONE, PART "A" OF THIS CONTRACT THAT YOU WERE
2 PROVIDING TO THE DEPARTMENT OF CORRECTIONS TO DO
3 SERVICES ON BEHALF OF YOU; IS THAT CORRECT?

4 A. I DON'T UNDERSTAND. I MEAN, AS I'VE TESTIFIED, I
5 UNDERSTAND WHAT S.C.D.C. SENT THE CONTRACT OVER TO
6 NATASHA THAT HAD BEEN WORKING WITH THEM. SHE
7 CONTINUED TO OPERATE UNDER THAT COURSE OF DEALINGS.
8 PEOPLE WERE PROVIDED, AND I THINK -- I THINK WE DID
9 COMPLY WITH THE ACTUAL PERFORMANCE OF THE PARTIES IN
10 THE COURSE OF DEALINGS WITH THE PARTIES.

11 Q. BUT -- NO, WHAT I SAID IS SECTION "A" HAS NO
12 SIGNIFICANCE BECAUSE IT TALKS ABOUT WORKERS'
13 COMPENSATION AND THOSE THINGS. YOU DIDN'T PROVIDE
14 WORKERS' COMPENSATION; IS THAT CORRECT?

15 A. WE WOULD HAVE PROVIDED WORKERS' COMPENSATION FOR ANY
16 EMPLOYEES, YES.

17 Q. BUT YOU'VE NEVER PROVIDED AN EMPLOYEE, ACCORDING TO
18 YOUR POSITION, ---

19 A. RIGHT.

20 Q. --- TO THE DEPARTMENT OF CORRECTIONS?

21 A. MY UNDERSTANDING IS NO EMPLOYEES HAVE BEEN PROVIDED,
22 THAT IS CORRECT.

23 Q. SO, THE WORDS OF THE CONTRACT ARE BASICALLY
24 MEANINGLESS; THIS CONTRACT IS MEANINGLESS ---

25 BY MR. GOODWYN:

1 OBJECT TO THE FORM.

2 CROSS EXAMINATION RESUMED BY MR. BEARD:

3 Q. --- AS TO MANY OF THESE POINTS IN THE DOCUMENT, IS
4 THAT RIGHT?

5 BY MR. GOODWYN:

6 HE IS ASKING HIM TO DRAW A LEGAL CONCLUSION.

7 WHETHER ---

8 BY MR. BEARD:

9 HE'S THE LAWYER THAT DRAFTED THE ---

10 BY MR. GOODWYN:

11 --- THEY'RE MEANINGFUL.

12 BY MR. BEARD:

13 --- SECOND CONTRACT.

14 BY MR. GOODWYN:

15 CAN I GET MY OBJECTION OUT?

16 BY THE WITNESS:

17 I DIDN'T -- THAT'S NOT TRUE.

18 BY MR. BEARD:

19 I THOUGHT YOU TOLD ME I COULD RESPOND.

20 BY COMMISSIONER JAMES:

21 WAIT.

22 BY MR. GOODWYN:

23 CAN I PLEASE --

24 BY MR. BEARD:

25 YOU'RE THE ONE WHO SAID WE COULD RESPOND.

1 BY MR. GOODWYN:

2 CAN I JUST GET MY OBJECTION OUT BEFORE YOU
3 INTERRUPT?

4 BY COMMISSIONER JAMES:

5 Y'ALL ADDRESS ME. ADDRESS THE COMMISSION.

6 BY MR. GOODWYN:

7 CAN I PLEASE GET MY OBJECTION OUT BEFORE HE
8 INTERRUPTS ME?

9 BY COMMISSIONER JAMES:

10 ALL RIGHT. WHAT IS YOUR OBJECTION?

11 BY MR. GOODWYN:

12 IT'S THAT HE'S ASKING THE WITNESS IF THE
13 CONTRACT HAS A LEGAL MEANING, WHICH IS A QUESTION OF
14 LAW FOR THE COMMISSION TO DETERMINE. HE'S ASKING IF
15 IT IS MEANINGFUL.

16 BY COMMISSIONER JAMES:

17 THERE HAVE BEEN SOME OF THE SAME TYPE QUESTIONS
18 ASKED OF MR. BURGESS EARLIER WITH REGARDS TO --
19 MAYBE NOT EXACTLY LEGAL OPINION, BUT WITH REGARDS TO
20 WHAT HE -- HIS CONCEPTION OF THE MEANING IS.

21 MR. BEARD, CAN YOU REPEAT THE QUESTION, PLEASE?

22 BY MR. BEARD:

23 SURE.

24 CROSS EXAMINATION RESUMED BY MR. BEARD:

25 Q. YOU FOUND IT SIGNIFICANT ENOUGH IN 2016 AFTER THIS

1 INCIDENT OCCURRED TO REQUEST AND CHANGE YOUR
2 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS; IS THAT
3 FAIR?

4 A. I DIDN'T INDICATE EARLIER THAT I DRAFTED THAT SECOND
5 CONTRACT. I DIDN'T DRAFT IT. IT WAS STILL THEIR
6 FORM CONTRACT, AND I ASKED THEM TO REVISE IT, AND
7 THEY DID, AND THEIR ATTORNEYS APPROVED THAT.

8 Q. YOU DRAFTED THE CHANGES TO THE CONTRACT; IS THAT
9 CORRECT?

10 A. I SUGGESTED THE CHANGES. I SAID "PLEASE, CHANGE
11 THIS TO SAY THIS IF YOU WOULD," YES.

12 Q. THE CHANGES WERE YOUR CHANGES; IS THAT CORRECT?

13 A. I BELIEVE SO, YES.

14 Q. OKAY. AND THAT'S BECAUSE AS AN ATTORNEY WHO
15 REPRESENTS THEIR COMPANY AS THEIR GENERAL COUNSEL,
16 YOU UNDERSTOOD THERE WAS A PROBLEM, CORRECT?

17 A. I DIDN'T UNDERSTAND -- I UNDERSTOOD THAT THIS CASE
18 WAS GOING ON, AND I UNDERSTOOD THAT THERE WERE GOING
19 TO BE CHALLENGES TO THE CONTRACT AND THE
20 RELATIONSHIP, AND I WANTED THE CONTRACT TO MORE
21 ACCURATELY REFLECT THE RELATIONSHIP AND THE CONDUCT
22 OF THE PARTIES. YES.

23 Q. OKAY.

24 A. I DIDN'T DO IT OUT OF A FEELING THERE WAS SOMETHING
25 WRONG.

1 Q. WHEN YOU WERE PERFORMING UNDER THE CONTRACT BY
2 ALLOWING WHAT YOU CALL THE INDEPENDENT CONTRACTORS
3 OR AGENTS TO WORK FOR THE DEPARTMENT OF CORRECTIONS,
4 YOU NEVER REVEALED TO THE DEPARTMENT OF CORRECTIONS
5 THAT NONE OF THOSE FOLKS HAD WORKERS' COMPENSATION
6 COVERAGE, DID YOU?

7 A. I DON'T -- IN OTHER WORDS, WE DIDN'T -- WE DIDN'T
8 DECEIVE OR HIDE ANYTHING. LIKE I SAID, WHEN IT --
9 WHEN IT STARTED, PALMETTO REFERRAL SERVICES WAS
10 DOING THIS SAME MODEL BEFORE WE GOT THERE. WHEN MR.
11 DURHAM TOOK OVER, HE CONFIRMED THAT THERE WAS NO
12 WORKERS' COMP INSURANCE. EVERYONE INVOLVED IN THE
13 OCCASION SAID THIS IS HOW WE DO IT. HE CONSULTED
14 NELSON MULLINS. THIS IS OKAY. INDEPENDENT CONTRACT
15 AGREEMENTS WERE SIGNED. WE DIDN'T DECEIVE ANYONE.

16 Q. I DIDN'T ASK YOU IF YOU HAD DECEIVED ANYONE.

17 A. RIGHT.

18 Q. I WAS VERY SPECIFIC IN MY QUESTION. MY QUESTION WAS

19 --

20 A. RIGHT.

21 Q. --- YOU NEVER REVEALED TO THE DEPARTMENT OF
22 CORRECTIONS THAT NONE OF THE INDIVIDUALS WHO
23 CONTRACTED WITH THEM THROUGH YOU HAD WORKERS'
24 COMPENSATION COVERAGE, CORRECT?

25 A. I CAN ONLY SAY THAT FOR MYSELF, AND AS Y'ALL POINTED

1 AND OBJECTED TO MANY THINGS I DID IN 2008, I HAVEN'T
2 BEEN PRESENT FOR EVERY CONVERSATION. I KNOW THAT
3 WHEN I WAS THERE, I DIDN'T REVEAL IT, BECAUSE I
4 NEVER HAD AN OCCASION TO DISCUSS THE SITUATION.

5 Q. OKAY. BY THE SAME TOKEN, YOU'VE NEVER REVEALED TO
6 COUNTRYWIDE THE SAME THING. YOU NEVER REVEALED TO
7 COUNTRYWIDE THAT THESE FOLKS WERE EVEN IN EXISTENCE,
8 DID YOU?

9 A. THAT'S NOT ACCURATE.

10 Q. THAT'S NOT ACCURATE?

11 A. THAT'S NOT ACCURATE AT ALL.

12 Q. OKAY. YOU NEVER REVEALED THOSE FOLKS TO COUNTRYWIDE
13 AS NEEDING WORKERS' COMPENSATION COVERAGE, DID YOU?

14 A. TO THE EXTENT THAT WE DID DISCUSS MEDUSTRIAL AND THE
15 INDEPENDENT CONTRACTORS IN THE INITIAL MEETING WITH
16 SCOTT HANSON AND SAID "THEY ARE INDEPENDENT
17 CONTRACTORS." RIGHT, SO WE DID NOT REQUEST WORKERS'
18 COMP INSURANCE FOR INDEPENDENT CONTRACTORS THEN.

19 Q. YOU DIDN'T PROVIDE THE PAYROLL FOR THOSE FOLKS AND
20 PAY A PREMIUM FOR THOSE FOLKS, ---

21 A. WE DID NOT.

22 Q. --- WHICH WOULD HAVE THEN GONE ON TO THEIR INSURANCE
23 CARRIER, GUARANTEE, CORRECT?

24 A. WELL, NOT INITIALLY BECAUSE THEY WEREN'T INITIALLY
25 WITH GUARANTEE, BUT ---

1 BY MR. GOODWYN:

2 I'M GOING TO OBJECT. THESE SOUND LIKE COVERAGE
3 QUESTIONS. AREN'T THOSE COMING FROM BETH. I MEAN,
4 THEY'RE GOING TO GET TWO CRACKS AT HIM ON THE
5 COVERAGE ISSUE IF THE WAY WE'RE GOING. I MEAN, I
6 DON'T MIND HIM ASKING MERITS QUESTIONS AND THEM
7 DIVIDING IT UP, BUT THIS IS NOT DIVIDING IT UP.
8 THESE ARE DIRECT COVERAGE QUESTIONS.

9 BY MR. BEARD:

10 IT'S NOT A COVERAGE QUESTION. IT'S GOING TO
11 THE -- IT'S PART OF THE CONTRACTS.

12 BY COMMISSIONER JAMES:

13 THE CONTRACTS AS WE DISCUSSED EARLY THIS
14 MORNING IS PART OF THE ISSUE OF EMPLOYMENT, AND SO I
15 WILL ALLOW THE PERSON QUESTIONING COMPENSABILITY TO
16 QUESTION THOSE ISSUES.

17 BY MR. GOODWYN:

18 ALL RIGHT. IS SHE GOING TO BE ABLE TO ASK
19 ABOUT THE CONTRACTS, TOO?

20 BY COMMISSIONER JAMES:

21 IT DEPENDS ON WHAT CONTEXT IT IS. I'M NOT
22 GOING TO ALLOW DUPLICATE QUESTIONING THOUGH. I
23 UNDERSTAND, AND WE'VE DISCUSSED THIS ALL ALONG THAT
24 SOME OF THESE -- SOME OF THE QUESTIONS, WHICH WAS
25 ONE OF MY CONCERNS WITH TRYING TO SORT OF LAYER IT

1 WAS IN TERMS OF TRYING TO BIFURCATE, IT IS THAT SOME
2 OF THE QUESTIONS DO RUN TOGETHER. I WILL TRY MY
3 BEST, AND OF COURSE, Y'ALL CAN HELP BY OBJECTING TO
4 MAKE SURE THERE AREN'T ANY DUPLICATE QUESTIONS, BUT
5 WE DID KNOW AND WE DISCUSSED IT ALL ALONG, ALL OF
6 US, THAT THE CONTRACT AND THE COVERAGE QUESTIONS
7 WOULD KIND OF MERGE TOGETHER AT SOME POINT IN SOME
8 PLACES.

9 BY MR. GOODWYN:

10 ALL RIGHT. I'LL TRY TO KEEP TRACK.

11 CROSS EXAMINATION RESUMED BY MR. BEARD:

12 Q. PAGE FIVE OF THE 2008 CONTRACT UNDER INSURANCE.

13 A. YES.

14 Q. WHERE IT SAYS "CONTRACTOR SHALL PROVIDE WORKERS'
15 COMPENSATION INSURANCE COVERAGE FOR CONTRACTOR'S
16 EMPLOYEES WHO ARE ASSIGNED TO THE DEPARTMENT OF
17 CORRECTIONS."

18 A. YES.

19 Q. THAT SENTENCE WOULD NEVER BE APPLICABLE TO YOU UNDER
20 YOUR MODEL; IS THAT CORRECT?

21 A. I DIDN'T HEAR.

22 Q. YES, SIR.

23 A. I'M SORRY.

24 Q. THE QUESTION WAS THE SENTENCE SAYS "CONTRACTOR,"-
25 THAT'S YOU, CORRECT?

1 A. YES.

2 Q. "SHALL PROVIDE WORKERS' COMPENSATION INSURANCE
3 COVERAGE FOR CONTRACTOR'S EMPLOYEES WHO ARE ASSIGNED
4 TO THE DEPARTMENT OF CORRECTIONS." NOW, YOU WOULD
5 THEN TURN THAT EMPLOYEES TERM INTO THE WAY IT'S BEEN
6 THE WHOLE TIME THAT THESE FOLKS HAVE BEEN IN
7 EXISTENCE, SO YOU CALL THEM INDEPENDENT CONTRACTORS.
8 MY POINT BEING, THAT SENTENCE NEVER APPLIES TO A
9 SINGLE PERSON THAT YOU HAVE WORKING AT THE
10 DEPARTMENT OF CORRECTIONS IF IT IS CONTRACTED
11 THROUGH YOU?

12 A. IF THEY WERE EMPLOYEES, WE WOULD HAVE PROVIDED
13 WORKERS' COMPENSATION INSURANCE, YES.

14 Q. IN THE TIME YOU'VE WORKED ---

15 A. YES.

16 Q. --- FOR CONDUCTORIAL, ---

17 A. THEY HAVE NOT ---

18 Q. --- HAVE YOU ---

19 A. --- WE HAVE NOT PROVIDED ---

20 Q. --- EVER PROVIDED AN EMPLOYEE TO THE DEPARTMENT OF
21 CORRECTIONS?

22 A. NOT TO MY KNOWLEDGE, NO.

23 Q. OKAY. SO, THIS CONTRACT HAS NEVER BEEN APPLICABLE
24 AT LEAST THAT SENTENCE, CORRECT?

25 A. I THINK IT COULD BE. IN OTHER WORDS, THIS IS THEIR

1 BOILERPLATE. I THINK THEY SAID THEY GIVE THIS TO
2 EVERY AGENCY. SO, WE SIGNED THE CONTRACT THEY SENT.
3 IF WE PROVIDED AN EMPLOYEE, WE CERTAINLY UNDERSTAND
4 THAT WORKERS' COMP INSURANCE NEEDED TO BE PROVIDED.

5 Q. AND IN 2016, WHEN YOU CHANGED THE CONTRACT, ---

6 A. RIGHT.

7 Q. --- IT STILL DOESN'T APPLY TO A SINGLE PERSON WHO
8 WORKS AT THE DEPARTMENT OF CORRECTIONS THROUGH THE
9 CONTRACT WITH YOU; IS THAT CORRECT?

10 A. AT THE PRESENT TIME, RIGHT. IN OTHER WORDS, WE ARE
11 STILL FOLLOWING THE BROKERAGE MODEL, YES.

12 Q. SO, EVER? THE "PRESENT TIME" INCLUDES FOREVER SINCE
13 YOU'VE BEEN THE GENERAL COUNSEL, CORRECT?

14 A. FOR -- SINCE I CAME IN AND JOINED JULY 6TH, 2009, MY
15 UNDERSTANDING, AND LET ME BE CLEAR ON THIS, THAT WE
16 PROVIDED INDEPENDENT CONTRACTORS TO S.C.D.C. THAT'S
17 MY UNDERSTANDING.

18 **BY MR. BEARD:**

19 COMMISSIONER, I'M LOOKING AT PAGES 313, OR THE
20 NEXT DOCUMENT I'M GOING TO LOOK AT IS 313 FROM WILL
21 HARBISON'S DOCUMENTS. I BELIEVE THAT ONE IS ALREADY
22 IN EVIDENCE. PLEASE, CORRECT ME IF I'M WRONG. I
23 THINK IT'S UNDER TAB 9, OR I DON'T KNOW WHAT HIS
24 TABS WERE ACTUALLY.

25 **BY COMMISSIONER JAMES:**

1 AND JUST FOR THE RECORD, MR. HARBISON'S
2 DOCUMENTS WE WILL BE REFERRING TO ARE THE ORIGINAL
3 COUNTRYWIDE/GUARANTEE DOCUMENTS THAT WERE PLACED IN.
4 ALL RIGHT. THERE'S A DOCUMENT ALREADY IN EVIDENCE
5 ENTITLED FACILITY EXPECTATIONS.

6 BY MR. BEARD:

7 YES, MA'AM. THAT'S IT.

8 CROSS EXAMINATION RESUMED BY MR. BEARD:

9 Q. WHOSE DOCUMENT IS THAT? WHO CREATES -- OR WHO
10 CREATED THAT DOCUMENT?

11 A. HONESTLY, I'M NOT SURE. IT SAYS "FACILITY
12 EXPECTATIONS." YOU KNOW, WE DON'T OWN OR OPERATE
13 ANY FACILITIES.

14 Q. OKAY.

15 A. I MEAN, AS YOU HAND THIS TO ME, I DON'T KNOW WHO
16 WOULD HAVE DRAFTED THIS.

17 Q. DOES THAT APPEAR TO BE MS. TURNER'S SIGNATURE AT THE
18 BOTTOM? I DON'T KNOW IF YOU CAN RECOGNIZE HER
19 SIGNATURE.

20 A. I MEAN, I GUESS WHAT I'M SAYING IS I DON'T -- IT
21 APPEARS TO BE.

22 Q. OKAY.

23 A. BUT IT'S -- LET'S SEE. I MEAN, I'M SORRY. MY
24 VISION IS NOT AS GOOD AS IT USED TO BE. IT APPEARS
25 -- I MEAN, SOME OF THE LANGUAGE HERE IS SIMILAR TO

1 SOMETHING THAT WAS IN THE INDEPENDENT CONTRACTOR
2 AGREEMENT ABOUT THE NOTICE OF CANCELLATION.

3 Q. WHAT IS THE DATE MS. TURNER SIGNED THAT DOCUMENT?

4 A. FEBRUARY 7 OF 2013.

5 Q. SO, THAT WOULD HAVE BEEN BEFORE THIS INCIDENT,
6 CORRECT?

7 A. THAT IS CORRECT.

8 Q. AND THE BOTTOM PARAGRAPH, WHICH IS CANCELLATIONS, NO
9 CALL, NO SHOW, DOES THAT REFERENCE EMPLOYEES OR
10 INDEPENDENT CONTRACTORS?

11 A. YOU'RE TALKING ABOUT THE "X," THE YELLOW "X"?

12 Q. YES, SIR, THE HIGHLIGHTED FIRST SECTION.

13 A. "ALL INDEPENDENT CONTRACTORS ARE REQUIRED TO GIVE
14 FOUR HOUR NOTICE OF CANCELLATION PRIOR TO THE
15 SHIFT'S START TIME TO AVOID PAYING A PENALTY." DOWN
16 BELOW IS ALSO A HIGHLIGHTED NOTE. "IF A CONTRACTOR
17 NO CALL NO SHOWS ON HIS OR HER FIRST SHIFT WITH
18 MEDUSTRIAL, THE CONTRACTOR WILL BE REMOVED FROM THE
19 MEDUSTRIAL REGISTRY."

20 Q. OKAY. AND SO AT LEAST ON FEBRUARY THE 7TH, 2013,
21 MS. TURNER SIGNED A DOCUMENT DECLARING HERSELF AN
22 INDEPENDENT CONTRACTOR; WOULD YOU AGREE?

23 A. THAT IS CORRECT.

24 Q. OKAY.

25 BY MR. BEARD:

1 COMMISSIONER, THE NEXT DOCUMENT I'M LOOKING AT
2 IS EXHIBIT -- OR PAGE 317 OF THE HARBISON DOCUMENTS
3 OR I THINK YOU REFERRED TO THEM AS
4 COUNTRYWIDE/GUARANTEE ORIGINAL DOCUMENTS.

5 CROSS EXAMINATION RESUMED BY MR. BEARD:

6 Q. WHOSE DOCUMENT IS THAT?

7 A. THAT IS A CONDUSTRIAL DOCUMENT.

8 Q. ALL RIGHT. AND CONDUSTRIAL OR MEDUSTRIAL? YEAH,
9 THAT IS A CONDUSTRIAL.

10 A. IT SAYS "CONDUSTRIAL."

11 Q. OKAY.

12 A. YEAH.

13 Q. AND IT DOESN'T APPEAR TO BE SIGNED BY MS. TURNER.
14 IT IS SIGNED BY WHO?

15 A. IT IS SIGNED BY NATASHA RATHBURN.

16 Q. OKAY. THERE IS SOMETHING ON THIS DOCUMENT THAT SAYS
17 "DEFAULT WORKMAN'S COMPENSATION CODE." WHAT DOES
18 THAT MEAN, AND WHAT DOES IT SAY; WHAT IS THAT
19 NUMBER?

20 A. I DON'T -- WELL, AND THIS SAYS -- I THINK WHEN IT
21 SAYS "999," THAT MEANS NON WORKERS' COMP.

22 Q. WHAT IS O-C-I-P?

23 A. WELL, AND SHE WOULD HAVE BEEN -- THAT'S PROBABLY THE
24 CODE WE ASSIGNED UNDER THE CONDUSTRIAL MODEL WITH
25 THEIR TERM, I'M TRYING TO BE AS SIMPLE AS POSSIBLE.

1 I WENT TO BE CLEAR AND BRIEF. SOMETIMES WE WERE
2 PROVIDED -- WE WOULD GO ON JOBS WITH CONTRACTORS AND
3 SUBCONTRACTORS AND UNDER CONTROL INSURANCE PROGRAM,
4 CONTRACTOR CONTROLLED INSURANCE PROGRAM. SO, IN
5 THOSE SITUATIONS, WE WOULD NOT PROVIDE THE COMP.
6 SO, I THINK AT THE TIME, THE CODE WE HAD TO INDICATE
7 A NO COMP SITUATION WAS 999, WHICH IS PROBABLY SHE
8 WROTE THAT.

9 Q. OKAY. DOES THAT CODE HAVE ANY LEGAL SIGNIFICANCE?

10 A. I DON'T BELIEVE SO.

11 Q. OKAY.

12 BY MR. BEARD:

13 COMMISSIONER, EXHIBIT PAGE 318, ALSO FROM THE
14 HARBISON DOCUMENTS.

15 CROSS EXAMINATION RESUMED BY MR. BEARD:

16 Q. AND I THINK YOU MIGHT HAVE ALREADY TESTIFIED ABOUT
17 THIS DOCUMENT, BUT I'M NOT 100 PERCENT SURE; THAT'S
18 WHY I'M ASKING.

19 A. OKAY.

20 Q. WHAT IS THE TITLE OF THIS DOCUMENT, AND WHOSE
21 DOCUMENT IS THIS?

22 A. THIS IS A MEDUSTRIAL DOCUMENT. IT SAYS "DIVISION OF
23 CONDUSTRIAL INDEPENDENT CONTRACTOR APPLICATION,"
24 DATED OCTOBER 9, 2014.

25 Q. OKAY. AND WHO SIGNED THE DOCUMENT AS THE

1 INDEPENDENT CONTRACTOR?

2 A. RACHEL TURNER.

3 Q. ALL RIGHT. AND WOULD YOU AGREE THAT THAT WAS LESS
4 THAN ONE YEAR BEFORE THE INCIDENT THAT WE ARE HERE
5 FOR NOW?

6 A. YES.

7 Q. WHO IS HOLLY SEEBY?

8 A. SHE IS CURRENTLY THE MANAGER OF MEDUSTRIAL COLUMBIA.
9 AT THE TIME, I'M NOT -- SHE STARTED WITH US AS A
10 PROJECT COORDINATOR AND NOW IS THE MANAGER. I'M NOT
11 SURE OF THE EXACT TIME LINE WHEN SHE CHANGED
12 POSITIONS.

13 Q. IM GOING TO SHOW YOU ---

14 BY MR. BEARD:

15 COMMISSIONER, WHAT IS PAGE 322 OF MR.

16 HARBISON'S DOCUMENT.

17 CROSS EXAMINATION RESUMED BY MR. BEARD:

18 Q. --- AND ASK YOU WHOSE DOCUMENT IS THAT, AND WHAT IS
19 THAT DOCUMENT?

20 A. IT'S A MEDUSTRIAL DOCUMENT. IT SAYS "A SERVICE OF
21 CONDUSTRIAL." IT IS A SUBSTANCE ABUSE POLICY
22 CONSENT STATEMENT.

23 Q. AND AGAIN, IS THAT DOCUMENT ONE -- OR LESS THAN A
24 YEAR BEFORE THIS INCIDENT?

25 A. YES, IT IS.

1 Q. AND DO ALL OF THE REFERENCES ON THE DOCUMENT REFER
2 TO MS. TURNER AS A CONTRACTOR?

3 A. YES, THEY DO.

4 Q. OKAY.

5 A. AND SHE SIGNED IT.

6 BY MR. BEARD:

7 PAGE 327 THROUGH 329, YOUR HONOR, ALSO THE
8 HARBISON DOCUMENTS. I BELIEVE THESE ARE ALREADY IN
9 EVIDENCE. IS THAT CORRECT?

10 BY COMMISSIONER JAMES:

11 YES, IN THE ORIGINAL SET.

12 BY MR. BEARD:

13 OKAY.

14 CROSS EXAMINATION RESUMED BY MR. BEARD:

15 Q. I'VE HIGHLIGHTED A DATE OF SEPTEMBER -- WELL, FIRST
16 OF ALL, DO YOU KNOW WHAT THIS DOCUMENT IS?

17 A. YES, I BELIEVE THIS IS A DAILY LOG THAT WAS COMPILED
18 BY LISSETTE COLLACHI WHEN I HAD ASKED HER TO DEVELOP
19 A TIME LINE OF WHAT HAD HAPPENED.

20 Q. OKAY. AND I'M GOING TO SHOW YOU WHAT IS MARKED AS
21 PAGE 330 OF MR. HARBISON'S DOCUMENT, AND THAT
22 APPEARS -- I THINK YOU WERE QUESTIONED EARLIER A
23 LITTLE BIT ABOUT THIS LETTER.

24 A. YES, SIR.

25 Q. YOU SAID YOU INSTRUCTED MS. COLLACHI TO WRITE THIS

1 LETTER; IS THAT CORRECT?

2 A. YES.

3 Q. OKAY. MY QUESTION ABOUT THESE DOCUMENTS AND THE
4 REFERENCES THAT I'VE JUST ASKED YOU IS DID MS.
5 TURNER EVER PROVIDE YOU OR ANYONE AT MEDUSTRIAL OR
6 CONDUSTRIAL WITH ANY MEDICAL DOCUMENTATION STATING
7 THAT SHE WAS INCAPABLE OF PERFORMING THESE LIGHT-
8 DUTY POSITIONS OR THESE SEDENTARY POSITIONS THAT YOU
9 WERE OFFERING TO HER AS AN ALTERNATIVE TO GOING BACK
10 INTO THE CORRECTION FACILITY?

11 A. NO, SHE NEVER PROVIDED US WITH ANY MEDICAL
12 DOCUMENTATION.

13 Q. OKAY.

14 A. SHE ALSO NEVER PROVIDED US WITH ANY STATEMENTS ABOUT
15 THE INCIDENT UNTIL WE OBTAINED THOSE FROM SLED OR
16 S.C.D.C., I'M NOT SURE.

17 Q. DID CONDUSTRIAL OR MEDUSTRIAL GUARANTEE TO MS.
18 TURNER OR ANY OF THE FOLKS WHO WERE IN HER ROLE ANY
19 SET NUMBER OF HOURS ---

20 A. NO.

21 Q. --- WORKING FOR THE DEPARTMENT OF CORRECTIONS?

22 A. NO, SIR.

23 Q. WAS THERE ANY SPECIFIC AMOUNT OF WORK OR TYPE OF
24 WORK THAT SHE WOULD BE DOING THAT YOU WERE IN
25 CONTROL OF?

1 A. NO.

2 Q. WAS MS. TURNER SPECIFICALLY REQUIRED TO ACCEPT ANY
3 OFFERS OF HOURS OR PARTICULAR TIME SLOTS TO WORK IN,
4 OR DID SHE HAVE CONTROL OVER THAT HERSELF?

5 A. SHE CONTROLLED WHAT SHE ACCEPTED AND REJECTED 100
6 PERCENT.

7 Q. DID CONDUSTRIAL HAVE ANYTHING TO DO WITH THAT
8 CHOICE? COULD YOU GO IN AND SAY "WE DON'T HAVE
9 ANYBODY ELSE, SO WE'RE GOING TO FORCE YOU TO GO DO
10 IT"?

11 A. NO.

12 Q. OKAY.

13 A. WE COULD NOT DO THAT.

14 Q. WERE THE MEDICAL WORKERS LIKE MS. TURNER ENCOURAGED
15 TO WORK OTHER PLACES?

16 A. YES, IT'S IN THE AGREEMENT. IT WAS UNDERSTOOD WORK
17 WHERE YOU WANT TO WORK.

18 Q. AND DID MEDUSTRIAL OR CONDUSTRIAL OR EVEN THE
19 DEPARTMENT OF CORRECTIONS TO YOUR KNOWLEDGE PROVIDE
20 ANY TRAINING TO THESE FOLKS WHO WERE BEING
21 CONTRACTED IN LIKE MS. TURNER?

22 A. I KNOW THAT MEDUSTRIAL AND CONDUSTRIAL DID NOT. I
23 BELIEVE S.C.D.C. DID PROVIDE SOME TRAINING.

24 Q. OKAY. DID CONDUSTRIAL REIMBURSE THESE FOLKS IF THEY
25 WENT AND GOT TRAINING ON THEIR OWN?

1 A. NO, I DON'T BELIEVE SO. I KNOW THERE -- I WILL SAY
2 THAT MY UNDERSTANDING IS, AND I KNOW THERE WAS
3 SOMETHING IN THE CONTRACT ABOUT THAT, AND MY
4 UNDERSTANDING OF WHAT HAPPENED IS WE WERE NOT
5 NOTIFIED OF -- IN OTHER WORDS, TIME WAS SUBMITTED TO
6 US AS PURE TIME. IF SOME OF THAT WAS TRAINING,
7 WITHOUT CONFERRING WITH S.C.D.C., I WOULDN'T -- I
8 COULDN'T BE SURE. IN OTHER WORDS, WE RECEIVED TIME
9 CARD REPORTS THAT SHOWED PURE TIME, AND THAT'S ALL
10 WE KNEW, AND WE COMPENSATED BASED ON THOSE TIME
11 REPORTS.

12 Q. OKAY.

13 A. SO, I MEAN, I DON'T KNOW -- WE DIDN'T KNOW EXACTLY
14 WHAT THEY SPENT, WHAT THEY DID DURING THOSE HOURS
15 OTHER THAN S.C.D.C. SAID THEY WORKED THOSE HOURS.

16 Q. AND AS I READ THE CONTRACT, IS IT ACCURATE TO STATE
17 THAT IF MS. TURNER OR SOMEONE LIKE HER TOOK A
18 PARTICULAR SLOT AND WAS UNABLE TO FILL THE SLOT,
19 THEY COULD SECURE SOMEONE ON THEIR OWN TO FILL THAT
20 SLOT?

21 A. YES.

22 Q. OKAY. AND IF THEY WERE UNSUCCESSFUL AND SOMEHOW
23 COST YOUR COMPANY A COMMISSION, YOU HAD THE RIGHT TO
24 GO AFTER HER FOR THAT COMMISSION; IS THAT CORRECT?

25 A. WELL, AND I THINK IT WAS -- IT WAS OBVIOUSLY LEAVING

1 A POSITION UNMANNED. YOU DON'T KNOW WHO IS SICK,
2 WHO NEEDS IT, SO COVERAGE WAS, YOU KNOW, THE KEY
3 REASON. IT WASN'T -- IT WASN'T PURELY FINANCIAL.
4 IF YOU ACCEPTED A SHIFT AND DIDN'T HAVE IT COVERED,
5 THERE WAS A LITTLE DAMAGES, A PENALTY THERE FOR NOT
6 SHOWING UP.

7 Q. DID YOU ENFORCE THAT? DID CONDUSTRIAL ENFORCE THAT?

8 A. FROM MY UNDERSTANDING, YES.

9 Q. DOES CONDUSTRIAL OR MEDUSTRIAL PROVIDE ANY -- ANY
10 EQUIPMENT WHATSOEVER TO ANY OF THESE NURSING FOLKS
11 WHO ARE WORKING AT THE DEPARTMENT OF CORRECTIONS?

12 A. NO.

13 Q. DID YOU ASSIST WITH OR PAY BACK ANY OF THESE
14 INDIVIDUALS IF THEY HAD CONTINUED EDUCATION
15 REQUIREMENTS OR TOOK CLASSES OR THINGS OF THAT
16 NATURE TO UPGRADE?

17 A. NO.

18 Q. DID YOU PAY THEM OR ASSIST PAYING THEM FOR ANY OF
19 THE LICENSURES THAT THEY WERE REQUIRED TO HAVE?

20 A. NO.

21 Q. DID YOU PROVIDE THEM OR PAY FOR ANY OF THEIR
22 UNIFORMS?

23 A. NO. IN FACT, I THINK MS. TURNER TESTIFIED THAT ONE
24 YEAR SHE DEDUCTED NEARLY \$5000 FOR UNIFORM EXPENSE,
25 AND WE DIDN'T HAVE ANYTHING TO DO WITH ANY OF THAT.

1 Q. ALL RIGHT. AND DID YOU PROVIDE THEM ANY TYPE OF
2 INSURANCE BENEFITS OR ANY TYPE OF NORMAL EMPLOYMENT
3 BENEFITS THAT A PERSON WHO IS AN EMPLOYEE WOULD GET?

4 A. NO.

5 Q. AND WAS THAT FOR NOT ONLY HER BUT ANYONE THAT HAD A
6 POSITION OVER AT THE DEPARTMENT OF CORRECTIONS ---

7 A. RIGHT.

8 Q. --- PER YOUR CONTRACT?

9 A. YOU ARE A 1099 INDEPENDENT CONTRACTOR. THOSE
10 BENEFITS WERE NOT PROVIDED.

11 Q. IF MS. TURNER NEEDED MEDICAL CARE OR HAD GOT SICK
12 AND HAD TO GO TO THE DOCTOR, DID CONDUSTRIAL OR
13 MEDUSTRIAL PROVIDE ANY OF THE PAYMENT FOR HER
14 MEDICAL BILLS?

15 A. NO, WE DID NOT.

16 Q. AND AS I UNDERSTAND IT, ON ALL 1099s, YOU WITHHELD
17 AND I THINK -- I THINK MR. NEWMAN ASKED, YOU DIDN'T
18 WITHHOLD ANY TYPE OF TAXES AT ALL WHATSOEVER FROM
19 THESE FOLKS?

20 A. WE DIDN'T WITHHOLD ANY TAXES WHATSOEVER.

21 Q. OKAY. SO, THEY GOT A GROSS CHECK?

22 A. THEY GOT A GROSS CHECK. THEY GOT A GROSS PAY CARD
23 DEPOSIT.

24 Q. ALL RIGHT. AND IT WAS BASED ON SOME SORT OF FEE
25 SCHEDULE IF THEY WERE AN L.P.N. WORKING IN A

1 PARTICULAR FACILITY, THEY MAY GET SO MUCH AN HOUR.

2 R.N.s GOT MORE PER HOUR, THINGS LIKE THAT?

3 A. IT WAS BASED ON THE RATES GIVEN TO US BY S.C.D.C.

4 Q. OKAY. SO, THAT WAS DICTATED BY THE DEPARTMENT OF
5 CORRECTIONS?

6 A. THAT IS CORRECT.

7 Q. COULD YOU FIRE MS. TURNER OR ANYONE LIKE HER?

8 A. NO. WELL, THEY COULD -- I MEAN, IF SOMEONE WANTED
9 TO, THEY COULD STOP TAKING SHIFTS FOR A YEAR.

10 OBVIOUSLY, THERE -- YOU KNOW, THEIR LICENSURE WOULD
11 NEED TO BE CERTIFIED, I GUESS IF THEY TOOK A YEAR,
12 BUT THEY COULD COME AND GO AS THEY PLEASED. I MEAN,
13 AND IF, YOU KNOW, ON OCCASIONAL, I'M SURE WITH
14 S.C.D.C. AND OTHER FACILITIES, IF THEY TOLD US IT
15 WAS A D.N.R., DO NOT RETURN, IF WE COULD -- IN OTHER
16 WORDS, IF THEY LOST THEIR LICENSE, THEY CAN'T
17 FULFILL THE SHIFTS ANYWAY BY STATE AGENCY -- OR BY,
18 YOU KNOW, BECAUSE OF THE LICENSE, BUT IF THEY WERE A
19 D.N.R. AT S.C.D.C. AND THERE WAS A POSSIBILITY TO
20 TAKE SHIFTS AT ANOTHER FACILITY, THAT WOULD HAVE
21 STILL BEEN AN OPTION. WE'VE -- WE'VE DONE THAT MANY
22 TIMES.

23 Q. AND WOULD YOU AGREE OR DO YOU DISAGREE THAT YOU ARE
24 IN A BETTER BARGAINING POSITION VIS-A-VIS YOUR
25 CONTRACT THAN THESE FOLKS YOU WERE CONTRACTING WITH

1 TO DO THE JOB? YOU WERE IN A MUCH STRONGER POSITION
2 WITH REGARDS TO THE CONTRACT?

3 A. WITH THE INDEPENDENT CONTRACTORS?

4 Q. YES, SIR.

5 A. I MEAN, IF I UNDERSTAND WHAT YOU'RE ASKING, I GUESS
6 -- I MEAN, I GUESS I'M NOT SURE OF THE ANSWER FROM
7 MY PERSPECTIVE BECAUSE THEY WERE ABLE TO COME AND GO
8 AS THEY PLEASED.

9 Q. WELL, LET ME ASK IT THIS WAY.

10 A. YEAH.

11 Q. WHETHER YOU INTENDED TO BE A BULLY IN THE CONTRACT
12 OR NOT AND WHETHER WE ALL THINK YOU'RE A BULLY ---

13 A. RIGHT.

14 Q. --- OR NOT, IT WAS YOUR INTENTION IN THAT CONTRACT
15 VIS-A-VIS MS. TURNER AND ANYONE LIKE HER FOR HER TO
16 BE AN INDEPENDENT CONTRACTOR REGARDLESS OF HOW THAT
17 MAKES YOU LOOK; IS THAT CORRECT?

18 A. BUT, YES, BECAUSE THE BROKERAGE MODEL THAT WE
19 INHERITED AND CONTINUED WAS AN INDEPENDENT
20 CONTRACTOR BROKERAGE AND WE -- WE FELT THAT WAS HOW
21 IT NEEDED TO PROCEED, AND THAT'S HOW THE MODEL
22 OPERATED, AND SO WE SAID IF YOU'RE GOING TO OPERATE
23 WITH S.C.D.C., THIS IS THE MODEL THAT HAS TO BE
24 FOLLOWED.

25 Q. AND AS FAR AS YOU ARE CONCERNED, MS. TURNER

1 UNDERSTOOD ALL OF THAT AND AGREED TO THAT, AND BY
2 VIRTUE OF THAT AGREEMENT, AT LEAST IN THE TAX
3 RETURNS THAT WE'VE SEEN FROM '13 THROUGH '15 ON A
4 COUPLE OF OCCASIONS, SHE NEVER PAID ONE DOLLAR OF
5 TAXES AND YET GOT REFUNDS FROM THE FEDERAL
6 GOVERNMENT; IS THAT CORRECT?

7 A. THAT'S CORRECT.

8 BY MR. SAMUELS:

9 OBJECT. HE CANNOT SPEAK TO MS. TURNER'S
10 UNDERSTANDING.

11 BY THE WITNESS:

12 I REVIEWED THEM.

13 CROSS EXAMINATION RESUMED BY MR. BEARD:

14 Q. YOU SAID YOU'VE SEEN THE ---

15 A. I REVIEWED THE TAX RETURNS, AND WHAT YOU DESCRIBED
16 IS ACCURATE.

17 Q. THE STATE ACCIDENT EXHIBIT "D" DOCUMENT, DO YOU HAVE
18 THAT?

19 A. JUST THE CERTIFICATE?

20 Q. YES, SIR.

21 A. YES, I DO.

22 Q. OR, NO, THE -- OR, YEAH, THAT'S IT. I'M SORRY. THE
23 ONLY MENTION OF GUARANTEE INSURANCE COMPANY IN ANY
24 OF THOSE CERTIFICATES OF INSURANCE DOESN'T LIST THE
25 DEPARTMENT OF CORRECTIONS; IS THAT CORRECT?

1 BY MR. GOODWYN:

2 I OBJECT.

3 BY THE WITNESS:

4 ARE YOU -- OH, HE'S TALKING -- I'M SORRY.

5 YOU'RE TALKING ABOUT THE MULTIPLE?

6 CROSS EXAMINATION RESUMED BY MR. BEARD:

7 Q. YES, SIR.

8 A. OKAY.

9 Q. IS THAT "D"?

10 A. YES. IT SAYS DEFENSE -- OR DEFENSE EXHIBIT 4, TRIAL
11 EXHIBIT 4.

12 BY MR. GOODWYN:

13 THAT'S THE TRIAL EXHIBIT 4.

14 BY MR. BEARD:

15 ERIN, WHERE IS Y'ALL "D"?

16 BY MS. FARTHING:

17 I ONLY DID ONE CERTIFICATE. I ONLY INTRODUCED
18 THE FIRST PAGE OF THAT.

19 BY MR. BEARD:

20 OKAY. IS THAT THE ONE WITH GUARANTEE ON IT?

21 BY MS. FARTHING:

22 NO. THAT'S IN 2010 OR 2011.

23 CROSS EXAMINATION RESUMED BY MR. BEARD:

24 Q. LET ME JUST ASK YOU A BETTER QUESTION, WHILE WE ARE
25 HERE, MR. SEARS.

1 A. OKAY.

2 Q. YOU'VE BEEN SHOWN MULTIPLE CERTIFICATES OF INSURANCE
3 TODAY; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. DO ANY OF THE CERTIFICATES OF INSURANCE ANYWHERE ON
6 THEM SAY THE WORD "MEDUSTRIAL"? ANYWHERE?

7 A. NO.

8 Q. AND OF COURSE IT COULD NEVER DO THAT BECAUSE
9 MEDUSTRIAL IS NOT A LEGAL ENTITY, CORRECT?

10 A. IT IS ---

11 Q. CORRECT?

12 A. IT IS SIMPLY A DIVISION OR SERVICE OF CONDUSTRIAL.

13 Q. OKAY. SO, IN REALITY ANY CERTIFICATES OF INSURANCE
14 THAT YOU PROVIDED TO THE DEPARTMENT OF CORRECTIONS
15 FOR THE FOLKS THAT WERE WORKING FOR THEM THROUGH YOU
16 WERE BASICALLY MEANINGLESS BECAUSE IT DIDN'T APPLY
17 TO ANY OF THEM, CORRECT?

18 BY MR. GOODWYN:

19 OBJECT TO THE FORM. IT'S CALLING FOR A LEGAL
20 CONCLUSION ABOUT WHAT THAT MEANS.

21 BY MR. BEARD:

22 I MEAN ---

23 BY COMMISSIONER JAMES:

24 HOLD ON A SECOND.

25 BY MR. GOODWYN:

1 HE'S ASKING THE WITNESS TO CALL FOR A LEGAL
2 CONCLUSION AS TO WHAT THE MEANING OF, DO THEY HAVE
3 ANY LEGAL EFFECT. WELL, THAT'S FOR THE COURT TO
4 DETERMINE, NOT FOR HIM.

5 BY MR. BEARD:

6 AND WITH ALL DUE RESPECT, I THINK ALL DAY
7 DURING DIRECT AND MOST OF THE CROSS THAT I'VE HEARD
8 SO FAR, HE HAS BEEN TESTIFYING ABOUT HIS
9 UNDERSTANDING OF INDEPENDENT CONTRACTORS AND
10 EMPLOYEES AND ALL THE DEFINITIONS OF THOSE THINGS
11 THAT WE ARE TALKING ABOUT IN THIS CASE.

12 BY COMMISSIONER JAMES:

13 I'LL ALLOW THE QUESTION.

14 BY THE WITNESS:

15 MR. BEARD, CAN YOU REPEAT THE QUESTION?

16 CROSS EXAMINATION RESUMED BY MR. BEARD:

17 Q. SURE. NOT A SINGLE CERTIFICATE OF INSURANCE THAT
18 WAS PROVIDED TO THE DEPARTMENT OF CORRECTIONS ON
19 BEHALF OF CONDUSTRIAL FOR THE PERSONS WHO ARE
20 WORKING FOR THEM THROUGH A CONTRACT THROUGH YOUR
21 COMPANY, IT DIDN'T COVER A SINGLE PERSON, DID IT?
22 NOT A SINGLE PERSON IS COVERED BY THAT CERTIFICATE
23 OF INSURANCE?

24 A. WELL, AND SOMETHING THAT WE DIDN'T GET IN TO. WE
25 PROVIDED GENERAL LIABILITY AND PROFESSIONAL

1 LIABILITY CERTIFICATES THAT THEY SHOULD HAVE THAT
2 WERE ON BEHALF OF CONDUSTRIAL, BUT IN THE CONTEXT OF
3 WORKERS' COMP, YEAH, IN OTHER WORDS, ---

4 Q. THAT'S WHAT WE'RE TALKING ABOUT.

5 A. RIGHT.

6 Q. THAT'S ALL WE'RE TALKING ABOUT IN HERE.

7 A. IN THE WORKERS' COMP UP UNTIL THE LAST ONE, THE
8 POLICY THAT WE SPECIFICALLY TRIED TO GO GET TO ACT
9 AS A SAFETY NET, OTHER THAN THAT ONE, WHICH WAS
10 AFTER THE ACCIDENT, I MEAN, IN OTHER WORDS, WE HAD
11 INSURANCE, BUT THAT INSURANCE FLOWED TO EMPLOYEES OF
12 CONDUSTRIAL, NOT INDEPENDENT CONTRACTORS.

13 Q. SO, THE ANSWER TO MY QUESTION IS NOT A SINGLE
14 CERTIFICATE OF INSURANCE THAT WAS PROVIDED TO THE
15 DEPARTMENT OF CORRECTIONS FOR THE NURSES WHO WERE
16 THERE THROUGH A CONTRACT WITH YOUR COMPANY, IT
17 DIDN'T COVER A SINGLE PERSON ON ANY OF THOSE
18 CERTIFICATES OF INSURANCE, CORRECT?

19 A. SINCE -- SINCE -- MY UNDERSTANDING IS THEY WERE ALL
20 INDEPENDENT CONTRACTORS, THEN -- IN OTHER WORDS,
21 THEY WEREN'T COVERED BY WORKERS' COMP. SO, I GUESS
22 THE ANSWER IS YES.

23 BY MR. BEARD:

24 COMMISSIONER, I'M LOOKING AT WHAT IS MARKED
25 PAGE SIX OF CONDUSTRIAL'S DOCUMENTS.

CROSS EXAMINATION RESUMED BY MR. BEARD:

Q. THIS EMAIL, MR. SEARS, IS AN EMAIL FROM YOU TO YOU INDICATED MATTHEW HARPER IS SOMEONE AT THE DEPARTMENT OF CORRECTIONS. DO YOU KNOW WHAT THAT PERSON'S TITLE IS?

A. I DON'T KNOW WHAT HIS TITLE IS. I APOLOGIZE, BUT THAT -- THAT WAS A GENTLEMAN AT THE DEPARTMENT OF CORRECTIONS THAT HAD CONTACTED OUR MEDUSTRIAL COLUMBIA OFFICE AND HAD THEN BEEN REFERRED TO ME.

Q. OKAY. AND I'VE HIGHLIGHTED A SENTENCE, AND IF YOU WOULD JUST READ THAT SENTENCE FOR ME.

A. OKAY. THIS WAS ME REPLYING TO MR. HARPER. "WHEN SHE SIGNED UP WITH MEDUSTRIAL, SHE WAS ADDED AS AN INDEPENDENT CONTRACTOR BASED ON HER DECISION TO BE ABLE TO TURN DOWN ASSIGNMENTS AND TO BE ABLE TO WORK FOR MORE THAN ONE AGENCY, BOTH OF WHICH ARE COUNTER TO ANY EMPLOYMENT RELATIONSHIP WITH ONE EMPLOYER."

Q. AND THAT WAS YOUR EXPLANATION OF WHY WORKERS' COMPENSATION WAS NOT BEING PROVIDED TO HER BASED UPON HER -- MY UNDERSTANDING WAS, SHE HAD COMPLAINED TO THIS GENTLEMAN MAYBE AND YOU HAD GOTTEN A PHONE CALL?

A. I BELIEVE SO, YES.

Q. OKAY. AND SO, THIS WAS YOUR EXPLANATION OF WHY IT WASN'T COVERED?

1 A. YES.

2 Q. BECAUSE YOU AND MS. TURNER HAD MADE A STUDIED
3 ATTEMPT BETWEEN THE TWO OF YOU FOR HER TO BE AN
4 INDEPENDENT CONTRACTOR. THAT WAS THE INTENT FROM
5 THE BEGINNING, CORRECT?

6 A. THAT WAS THE INTENT FROM THE BEGINNING.

7 Q. OKAY.

8 BY MR. SAMUELS:

9 OBJECT TO THE EXTENT IT SPEAKS TO THE INTENT OF
10 MS. TURNER. HE HAS NO WAY OF KNOWING THAT.

11 BY COMMISSIONER JAMES:

12 SUSTAINED AS TO THAT ISSUE.

13 CROSS EXAMINATION RESUMED BY MR. BEARD:

14 Q. AND WE'VE SHOWN MANY DOCUMENTS, AND YOU'VE BEEN
15 SHOWN MANY DOCUMENTS THAT MS. TURNER HERSELF SIGNED
16 INDICATING SHE WAS AN INDEPENDENT CONTRACTOR?

17 A. YES.

18 Q. OKAY. PAGES 17 AND 18 OF CONDUSTRIAL'S RECORDS,
19 THIS WAS A DOCUMENT THAT YOU RESPONDED TO THE
20 COVERAGE AND COMPLIANCE DEPARTMENT OF THE WORKERS'
21 COMP COMMISSION, CORRECT?

22 A. THAT APPEARS TO BE THE CASE, YES.

23 Q. AND ARE YOU THE ONE WHO FILLED THIS OUT?

24 A. YES.

25 Q. IS THAT YOUR -- IS THAT YOUR SIGNATURE AT THE

1 BOTTOM?

2 A. YES.

3 Q. ON PAGE 17?

4 A. YES.

5 Q. OKAY. WOULD YOU AGREE THAT WHEN YOU READ THAT, IS
6 THAT -- THAT'S AN EFFORT BY YOU TO KIND OF SHIFT
7 LIABILITY JUST IN CASE YOUR ARRANGEMENTS WITH THE
8 DEPARTMENT OF CORRECTIONS FALL THROUGH, ISN'T IT?

9 A. WELL, IT'S NOT A -- IT WASN'T AN ATTEMPT TO SHIFT
10 LIABILITY. IT WAS -- THEY'RE SENDING A COVERAGE
11 REQUEST FOR MEDUSTRIAL HEALTHCARE STAFFING, AND AS
12 YOU SEE HERE THERE IS NO SUCH ENTITY. THIS IS MY
13 ATTEMPT TO EXPLAIN THAT THERE IS NO MEDUSTRIAL.

14 Q. OKAY. BUT THE ONLY CONTRACT THAT WE HAVE IN
15 EXISTENCE FROM THE TIME THAT THIS OCCURRED IS WITH
16 AN ENTITY CALLED MEDUSTRIAL THAT IS REPRESENTED TO
17 BE LICENSED IN THE STATE OF SOUTH CAROLINA AND
18 SOMEONE IS SIGNING ON THEIR BEHALF IN A CONTRACT,
19 CORRECT?

20 A. CORRECT. AS WE'VE DISCUSSED, THAT WAS THEIR
21 BOILERPLATE AGREEMENT. YOU KNOW, I MEAN, WE'VE ALL
22 DONE THIS. I THINK SOMEBODY DID THE CUT AND PASTE
23 AND ADDED MEDUSTRIAL WHEREVER YOU PUT THAT NAME IN,
24 BUT I -- OBVIOUSLY IT WAS -- I MEAN, IT WAS OUR
25 UNDERSTANDING THAT WE WERE ENTERING INTO A CONTRACT.

1 Q. OKAY. AND THE CONTRACT ONLY SAID MEDUSTRIAL?

2 A. IT ONLY SAID MEDUSTRIAL.

3 Q. OKAY. AND AS I LOOK THROUGH ALL OF THESE DOCUMENTS
4 AND I'VE LISTENED TO MOST OF THE TESTIMONY, IT SEEMS
5 TO ME IT KIND OF DEPENDS FROM YOUR PERSPECTIVE ON
6 WHO YOU ARE TALKING TO WHETHER YOU CALL YOURSELF
7 MEDUSTRIAL OR CONDUSTRIAL THROUGHOUT THESE DOCUMENTS
8 AND REPRESENTATIONS; IS THAT A FAIR STATEMENT?

9 A. WELL, NO, I DON'T THINK THAT'S A FAIR STATEMENT. I
10 MEAN, I THINK ONCE CONDUSTRIAL ADDED THE MEDUSTRIAL
11 DIVISION, I MEAN, I THINK THERE'S ALWAYS BEEN A
12 MEDUSTRIAL DIVISION THAT'S THE MEDICAL STAFFING, AND
13 CONDUSTRIAL IS THE CONSTRUCTION STAFFING, W-2
14 EMPLOYMENT SIDE. I WILL ADMIT THAT OUR PEOPLE DON'T
15 ALWAYS USE THOSE PHRASES AS CONSISTENTLY AS I WOULD
16 LIKE. IN OTHER WORDS, IT'S -- WHEN I USE THOSE
17 TERMS AND SINCE I'VE BEEN HERE, IT ALWAYS REFERRED
18 TO A SPECIFIC DIVISION OR AREA.

19 Q. OKAY. THE LAST QUESTION I HAVE FOR YOU, MR. SEARS,
20 IS PAGES 18 AND 20 OF CLAIMANT'S APAs. PAGE 18
21 LOOKS LIKE AN INMED DIAGNOSTIC SERVICES DOCUMENT.
22 IT'S GOT INSURANCE ON HERE, AND IT LOOKS LIKE IT
23 SAYS "CONSUMER HEALTH SOLUTIONS."

24 A. OKAY.

25 Q. DO YOU HAVE ANY IDEA WHO THAT IS?

1 A. I HAVE NO IDEA.

2 Q. IS THAT A COMPANY THAT YOU PROVIDING ANY TYPE OF
3 GROUP INSURANCE OR ANY KIND OF MEDICAL INSURANCE FOR
4 MS. TURNER?

5 A. NO, IT'S NOT.

6 Q. ALL RIGHT. ON PAGE 20, IT INDICATES PRIMARY
7 INSURANCE FOR MS. TURNER WITH CONSUMER CHOICE. DO
8 YOU KNOW WHO THAT IS?

9 A. I DON'T.

10 Q. IS THAT ANY INSURANCE COMPANY OR GROUP PROVIDER THAT
11 YOU PROVIDE TO YOUR EMPLOYEES?

12 A. NO, IT'S NOT.

13 Q. OKAY.

14 BY MR. BEARD:

15 THANK YOU, SIR. THAT'S ALL I HAVE.

16 BY MR. GOODWYN:

17 ARE WE GOING TO KEEP GOING?

18 BY COMMISSIONER JAMES:

19 LET'S GO OFF THE RECORD.

20 (OFF THE RECORD)

21 BY COMMISSIONER JAMES:

22 OKAY.

23 CROSS EXAMINATION BY MR. ALFORD:

24 Q. MR. SEARS, I'M GREGG ALFORD. WE MET BRIEFLY. I
25 WOULD LIKE TO TALK QUICKLY ABOUT YOU ENTERED INTO

1 THIS AGREEMENT WITH COUNTRYWIDE, CORRECT?

2 A. YES.

3 Q. NOW, WHEN I SAY "YOU," WHO WAS THE PARTY TO THIS
4 AGREEMENT; WHO WERE THE PARTIES? I THINK IT'S TRIAL
5 EXHIBIT TWO OR ONE.

6 A. RIGHT. COUNTRYWIDE PAYROLL AND H.R. SOLUTIONS,
7 D/B/A STAFFING SOLUTIONS GROUP AND CONDUSTRIAL, INC.

8 BY COMMISSIONER JAMES:

9 AND LET ME JUST CLARIFY THAT. IT'S CONDUSTRIAL
10 TRIAL EXHIBIT 2, BECAUSE WE'VE BEEN DOING THEM PER
11 PARTY.

12 BY MR. ALFORD:

13 OKAY.

14 BY COMMISSIONER JAMES:

15 OKAY. ALL RIGHT.

16 CROSS EXAMINATION RESUMED BY MR. ALFORD:

17 Q. AND I'M SORRY, SIR, THE PARTIES WERE?

18 A. WELL, I'M READING THE DOCUMENT: "COUNTRYWIDE PAYROLL
19 AND H.R. SOLUTIONS, INC. D/B/A COUNTRYWIDE STAFFING
20 SOLUTIONS GROUP, A TENNESSEE CORPORATION, AND
21 CONDUSTRIAL, INC., WITH PRINCIPLE OFFICE LOCATED AT
22 514 EAST NORTH STREET, GREENVILLE, SOUTH CAROLINA
23 29601."

24 Q. ALL RIGHT. AND WERE YOU INVOLVED IN NEGOTIATING
25 THIS AGREEMENT?

- 1 A. I DID REQUEST AMENDMENTS, YES.
- 2 Q. OKAY. SO, YOU WERE INVOLVED IN NEGOTIATING?
- 3 A. RIGHT, THIS WAS THEIR AGREEMENT, AND WE REQUESTED
- 4 AMENDMENTS, YES.
- 5 Q. AND DID YOU GET THE AMENDMENTS?
- 6 A. I THINK MOST OF THEM, YES.
- 7 Q. OKAY. MEDUSTRIAL IS NOT A PARTY TO THIS AGREEMENT;
- 8 IS THAT CORRECT?
- 9 A. MEDUSTRIAL IS NOT A LEGAL ENTITY.
- 10 Q. BUT THEY'RE NOT IN THE FOUR CORNERS OF THIS
- 11 DOCUMENT, AND THE ---
- 12 A. WELL, THEY WOULD BE ---
- 13 Q. EXCUSE ME, CAN I PLEASE FINISH MY QUESTION? JUST
- 14 LET ME FINISH.
- 15 A. ALL RIGHT. YOU DON'T NEED TO LECTURE ME. I WILL.
- 16 Q. OKAY. DOES THE WORD "MEDUSTRIAL" APPEAR ANYWHERE IN
- 17 THE FOUR CORNERS OF THIS DOCUMENT OR IN THE -- AND
- 18 WHEN I TALK ABOUT THIS DOCUMENT, THERE'S ALSO ---
- 19 A. WELL, THAT'S A SEPARATE DOCUMENT, RIGHT?
- 20 Q. OKAY, BUT IT ALSO -- IT ALSO REFERS TO BEING A PART
- 21 OF THIS ONE.
- 22 A. IS THAT ---
- 23 Q. IT WAS SIGNED ---
- 24 A. --- TRIAL EXHIBIT THREE?
- 25 Q. YES, SIR, AND THEY WERE SIGNED SIMULTANEOUSLY,

- 1 CORRECT, TO YOUR KNOWLEDGE?
- 2 A. YES, OR WITHIN A FEW DAYS.
- 3 Q. OKAY. AND DOES THE WORD "MEDUSTRIAL" APPEAR
- 4 ANYWHERE IN THESE DOCUMENTS?
- 5 A. PROBABLY NOT. I MEAN, I HAVEN'T ---
- 6 Q. WELL, WOULD YOU TRUST ME IF I SAID IT DIDN'T?
- 7 A. YES.
- 8 Q. OKAY. I MEAN, YOU DON'T HAVE ANY REASON TO THINK
- 9 IT'S IN THERE?
- 10 A. RIGHT.
- 11 Q. OKAY. YOU COULD HAVE PUT IT IN THERE OR YOU COULD
- 12 HAVE ASKED FOR THAT IF YOU HAD WANTED IT, RIGHT?
- 13 A. YES, EXCEPT IT'S NOT A SEPARATE LEGAL ENTITY.
- 14 Q. OKAY.
- 15 A. RIGHT.
- 16 Q. OKAY. YOU TESTIFIED AND YOUR ATTORNEY MADE AN
- 17 ARGUMENT THAT YOU THOUGHT COUNTRYWIDE WAS A P.E.O.?
- 18 A. YES.
- 19 Q. WITHIN THE FOUR CORNERS OF THAT DOCUMENT OR THE
- 20 ADDENDUM, DOES IT SAY THAT THEY ARE A P.E.O.?
- 21 A. THIS DOCUMENT DOES NOT.
- 22 Q. OKAY. COULD YOU HAVE REQUIRED THAT OF THEM?
- 23 A. I MEAN, WHEN THEY CAME TO US -- IN OTHER WORDS, WHEN
- 24 THEY SIGNED THIS, THERE'S NOTHING ABOUT THEIR NAME
- 25 THAT SUGGESTS THEY'RE A P.E.O. OR NOT.

1 Q. BUT YOUR TESTIMONY RIGHT NOW UNDER OATH IS THAT YOU
2 THOUGHT THEY WERE A P.E.O.?

3 A. ABSOLUTELY.

4 Q. OKAY.

5 A. THAT'S WHAT THEY SAID WHEN THEY -- THAT'S WHAT THE
6 AGENT SAID WHEN HE REFERRED THEM TO US. THAT'S WHAT
7 MR. HANSON SAID WHEN WE HAD THE MEETING. NOTHING
8 ABOUT THEIR NAME SUGGESTS OTHERWISE, AND CERTAINLY
9 THAT WASN'T ANYTHING WE WERE AWARE OF AT THE TIME WE
10 SIGNED THIS DOCUMENT.

11 Q. OKAY. IS YOUR DEPOSITION ---

12 BY MR. ALFORD:

13 IS HIS DEPOSITION AVAILABLE? I THINK IT WAS IN
14 MR. HARBISON'S?

15 BY COMMISSIONER JAMES:

16 IT HAS NOT BEEN ADMITTED, AND Y'ALL HAVE THAT.
17 SOMEBODY HAS THE ORIGINAL.

18 BY MR. ALFORD:

19 I THOUGHT IT WAS IN MR. HARBISON'S APAs.

20 BY MR. SAMUELS:

21 I HAVE THE ORIGINAL.

22 BY MR. ALFORD:

23 CAN WE ---

24 BY MS. RICHARDSON:

25 I CAN GIVE YOU A COPY.

1 BY MR. ALFORD:

2 YEAH, WHATEVER IS EASIEST. I DON'T MIND -- I
3 WOULD JUST LIKE FOR HIM TO HAVE ACCESS TO IT.

4 BY COMMISSIONER JAMES:

5 IT WAS POSSIBLY LISTED ON THE PREHEARING BRIEF,
6 BUT IT WAS NOT SUBMITTED AT THE ORIGINAL HEARING.

7 BY MR. ALFORD:

8 I WOULD LIKE TO PUT IT INTO EVIDENCE, PUT IT IN
9 THE RECORD.

10 BY COMMISSIONER JAMES:

11 WE'LL LOCATE THE ORIGINAL.

12 BY MR. ALFORD:

13 YES, MA'AM.

14 BY COMMISSIONER JAMES:

15 MR. SAMUELS, DID YOU SAY YOU HAD THE ORIGINAL?

16 BY MR. SAMUELS:

17 I DO, YOUR HONOR.

18 BY COMMISSIONER JAMES:

19 OKAY.

20 BY MR. SAMUELS:

21 DO YOU NEED IT?

22 BY COMMISSIONER JAMES:

23 IT LOOKS LIKE I MIGHT. I'M NOT SURE. IF YOU
24 WOULD JUST GIVE IT TO ME. I'M NOT SURE IF THIS IS
25 GOING TO BE USED FOR THIS WITNESS.

1 BY MR. ALFORD:

2 IT IS. AND I DON'T KNOW HOW THIS RECORD WILL
3 EVER BE...

4 BY COMMISSIONER JAMES:

5 THE RECORD REMAINS AS IS, AND I UNDERSTAND WHAT
6 YOU ARE ABOUT TO QUESTION. THE RECORD REMAINS AS IS
7 FROM THE VERY BEGINNING. A STATEMENT WAS ISSUED IN
8 THE BEGINNING. I USUALLY DO THAT WITH EVERY HEARING
9 AS TO EVERYTHING THAT WAS SUBMITTED IN, AND THE ONLY
10 THING ADDITIONAL THAT HAS BEEN SUBMITTED HAVE BEEN
11 THE TRIAL EXHIBITS OF TODAY, WHICH HAVE BEEN FOUR BY
12 CONDUSTRIAL, ONE BY SOUTH CAROLINA DEPARTMENT OF
13 CORRECTIONS AND ONE BY COUNTRYWIDE.

14 BY MR. ALFORD:

15 YES, MA'AM.

16 BY COMMISSIONER JAMES:

17 AND, WE'LL MAKE SURE NEXT TIME WE RECONVENE
18 THAT EVERYBODY UNDERSTANDS.

19 BY MR. ALFORD:

20 WHAT'S IN THERE.

21 BY COMMISSIONER JAMES:

22 AND THIS MAY BE OPENED AT THIS POINT.

23 BY MR. ALFORD:

24 YES, MA'AM. THANK YOU.

25 BY COMMISSIONER JAMES:

1 OKAY.

2 CROSS EXAMINATION RESUMED BY MR. ALFORD:

3 Q. SIR, DO YOU RECALL GIVING THAT DEPOSITION?

4 A. ACTUALLY, THIS DEPOSITION TOOK PLACE OVER A COUPLE
5 OF DAYS.

6 Q. OKAY.

7 A. WE HAD TO STOP AND START.

8 Q. ALL RIGHT. BUT YOU RECALL GIVING IT?

9 A. YES, I GAVE A DEPOSITION.

10 Q. ALL RIGHT. AND YOU WERE UNDER OATH AT THE TIME; IS
11 THAT RIGHT?

12 A. YES.

13 Q. AND YOU JUST TOLD ME THAT YOU DON'T RECALL OR THAT
14 YOU BELIEVE THAT COUNTRYWIDE WAS A P.E.O.?

15 A. AT THE TIME THEY CAME TO TALK WITH US, I DID BELIEVE
16 THAT, YES.

17 Q. AT THE TIME YOU SIGNED THE AGREEMENT, YOU BELIEVE
18 THEY WERE ACTING AS A P.E.O.?

19 A. I THINK SO, YES.

20 Q. OKAY. YOU TESTIFIED EARLIER YOU DIDN'T KNOW
21 ANYTHING ABOUT SOMETHING CALLED AN A.S.O.?

22 A. I DIDN'T SAY THAT. I SAID I WAS FAMILIAR WITH
23 A.S.O.

24 Q. OH, OKAY. WHAT IS THAT?

25 A. THAT'S AN ADMINISTRATIVE SERVICES ORGANIZATION.

1 Q. OKAY.

2 A. RIGHT.

3 Q. SIR, WOULD YOU TURN TO PAGE 142 OF YOUR DEPOSITION?

4 A. SURE.

5 Q. OKAY. SO, WOULD YOU READ FROM LINE ONE TO LINE
6 EIGHT OF YOUR DEPOSITION?

7 A. "YES, YOU KNOW, WE ALSO AT THE TIME WE JOINED
8 COUNTRYWIDE BECAUSE OF THE KIND OF -- YOU KNOW, WE
9 HAD 30 DAYS OR LESS TO GET IT DONE. I MEAN, REALLY
10 THE INTENT WAS FOR THEM TO ACT MORE LIKE AN A.S.O.
11 IT WASN'T A TRUE P.E.O., BECAUSE THEY DIDN'T TAKE
12 OVER OUR EMPLOYEES. IT WAS MORE OF A CO-EMPLOYER
13 SITUATION." ABSOLUTELY.

14 Q. OKAY, SO ---

15 A. THAT'S NOT INCONSISTENT WITH WHAT I SAID.

16 Q. YOU WEREN'T THINKING THEY WERE A P.E.O.?

17 A. THEY WERE A P.E.O. THEY CAME TO US AND SAID "WE'RE
18 A P.E.O."

19 Q. WHERE DOES IT SAY THAT IN THE DOCUMENT?

20 A. WELL, THIS IS MY TESTIMONY.

21 Q. I UNDERSTAND.

22 A. IT'S NOT THE END ALL, BE ALL.

23 Q. SIR, I'M ASKING IF YOU DON'T MIND, ---

24 A. YEAH.

25 Q. --- WHERE IN THE CONTRACTUAL AGREEMENTS BETWEEN

1 CONDUSTRIAL AND COUNTRYWIDE IS THERE A REFERENCE OR
2 A REQUIREMENT TO BEING A P.E.O.?

3 A. WELL, IT DOESN'T SAY THAT THEY ARE, AND IT DOESN'T
4 SAY THEY ARE NOT.

5 Q. OKAY. AND, SIR, IN FACT, YOU KNEW BEFORE THE
6 INCIDENT WITH MS. TURNER, YOU KNEW THAT COUNTRYWIDE
7 WAS NOT A P.E.O., DIDN'T YOU?

8 A. WE HAD -- WE HAD FOUND OUT THAT THEY HAD NOT
9 REGISTERED AS A P.E.O. IN SOUTH CAROLINA, CORRECT.

10 Q. BEFORE THE INCIDENT TOOK PLACE?

11 A. PROBABLY, YES. I DON'T REMEMBER WHEN IT WAS, BUT WE
12 DID FIND OUT THEY WERE NOT REGISTERED AS A P.E.O.

13 Q. OKAY.

14 A. YEAH.

15 Q. AND YOU'VE TALKED A LOT ABOUT -- AND I THINK YOUR
16 TESTIMONY WAS THAT THE OWNER OF YOUR COMPANY BOUGHT
17 THIS OTHER BROKERAGE?

18 A. RIGHT.

19 Q. I THINK YOU CALLED IT THE BROKERAGE MODEL?

20 A. RIGHT.

21 Q. AND THAT WAS UNIQUE TO THE NURSING SCENARIO?

22 A. I DON'T KNOW IF IT WAS UNIQUE. THAT'S WHAT THE ---

23 Q. I MEAN, I'M SORRY. THAT WAS A BAD QUESTION. LET ME
24 REPHRASE THAT. WITH RESPECT TO THE OTHER ENDEAVORS
25 THAT CONDUSTRIAL IS INVOLVED IN, THAT WAS SORT OF A

- 1 SEPARATE SEGMENT OF THE BUSINESS?
- 2 A. THAT WAS DIFFERENT THAN WHAT CONDUSTRIAL HAD DONE
- 3 BEFORE, YES.
- 4 Q. OKAY. AND IN FACT, I THINK YOU CALLED IT THE 1099
- 5 BROKERAGE MODEL OR SOMETHING LIKE THAT?
- 6 A. RIGHT.
- 7 Q. OKAY. AND IS IT YOUR CONTENTION THAT COUNTRYWIDE
- 8 THROUGH THIS AGREEMENT WAS TO PROVIDE WORKERS'
- 9 COMPENSATION INSURANCE FOR MEDUSTRIAL'S 1099 PEOPLE?
- 10 A. NO.
- 11 Q. OKAY.
- 12 A. WHEN WE ENTERED INTO THE CONTRACT, WE WERE NOT
- 13 LOOKING FOR COUNTRYWIDE TO PROVIDE WORKERS' COMP
- 14 INSURANCE FOR INDEPENDENT CONTRACTORS.
- 15 Q. OKAY. SIR, IN FACT, WHEN WE TALK ABOUT RACHEL
- 16 TURNER, THERE WAS A POINT IN TIME WHERE -- WHEN YOU
- 17 GOT THE NOTICE FROM THE WORKERS' COMP COMMISSION,
- 18 AND I THINK IT'S UP THERE -- YOU HAVE THE EXHIBIT,
- 19 AND THE ONE WHERE YOU HAND WROTE THE RESPONSE ON?
- 20 A. I MEAN, I DON'T KNOW IF I HAVE IT. ARE YOU TALKING
- 21 ABOUT WHAT MR. BEARD HANDED ME?
- 22 Q. YES, SIR.
- 23 A. THE COVERAGE AND COMPLIANCE QUESTIONNAIRE?
- 24 Q. I'VE GOT ONE FOR YOU.
- 25 A. OKAY.

1 Q. SOMEWHERE. I HAD FOUR OF THEM.

2 BY MR. ALFORD:

3 YOU GUYS HAVE THIS, RIGHT?

4 CROSS EXAMINATION RESUMED BY MR. ALFORD:

5 Q. DO YOU RECOGNIZE THAT DOCUMENT, SIR?

6 A. YES.

7 BY MR. ALFORD:

8 I DON'T BELIEVE THAT'S BEEN ENTERED AS AN
9 EXHIBIT. I WOULD LIKE TO MARK IT AND ENTER IT,
10 PLEASE.

11 BY COMMISSIONER JAMES:

12 ACTUALLY ---

13 BY MR. ALFORD:

14 I MEAN, IF IT HAS.

15 BY COMMISSIONER JAMES:

16 MR. BEARD, CAN YOU GIVE THE PAGE NUMBER AGAIN?

17 BY MR. BEARD:

18 YES, MA'AM. LET ME LOOK IT UP REAL QUICK HERE.

19 I BELIEVE IT'S IN -- I THINK IT'S IN CONDUSTRIAL'S.

20 BY MR. GOODWYN:

21 I THINK IT IS, TOO.

22 BY MR. ALFORD:

23 IT'S 251. IT SAYS CONDUSTRIAL 251 ON THIS ONE.

24 BY MR. BEARD:

25 THAT'S WHAT IT IS.

1 BY MR. GOODWYN:

2 IT'S 17 IS WHAT I'VE GOT.

3 BY COMMISSIONER JAMES:

4 CONDUSTRIAL 17.

5 BY MR. ALFORD:

6 MAYBE THAT'S THE BATE STAMP.

7 BY COMMISSIONER JAMES:

8 ACTUALLY, LET'S MAKE SURE.

9 BY MR. BEARD:

10 YES, IT'S PAGE 17 AND 18 OF CONDUSTRIAL.

11 BY MR. ALFORD:

12 SEVENTEEN AND EIGHTEEN.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT. THANK YOU, SIR.

15 CROSS EXAMINATION RESUMED BY MR. ALFORD:

16 Q. SO, TELL ME HOW THIS WORKS. YOU GET THIS BLANK FORM
17 IN THE MAIL?

18 A. EITHER EMAILED OR FAXED. THIS IS PRETTY CLEAN TO BE
19 A FAX, OR MAYBE THROUGH THE MAIL. WHEN THE FIRST
20 ATTORNEY TO TAKE MS. TURNER'S CASE, I SAID -- I
21 THINK MR. SAMUELS IS THE FOURTH ATTORNEY TO TAKE IT.
22 WHEN SHE FILED THE CLAIM, SHE LISTED MEDUSTRIAL AS
23 THE EMPLOYER. SO, OBVIOUSLY, THEY DID A SEARCH FOR
24 MEDUSTRIAL, DIDN'T FIND ANY INSURANCE, AND SAID WAIT
25 A MINUTE, WE'VE GOT AN UNQUALIFIED SELF-INSURED OR

1 SOMEONE WHO IS UNINSURED. I THINK I SPOKE WITH GREG
2 LINE AT ONE POINT. I THINK THAT'S RIGHT, AND OUT OF
3 THAT CONVERSATION, THIS DOCUMENT CAME -- CAME TO US.

4 Q. AND WHAT DID YOU DO WITH IT THEN? AND WHEN YOU GOT
5 IT, DID YOU TRY -- DID YOU CONTACT COUNTRYWIDE?

6 A. I DON'T RECALL THAT. PROBABLY THE ANSWER IS NO. I
7 PROBABLY DID NOT.

8 Q. OKAY. WHY WOULD YOU NOT HAVE DONE THAT?

9 A. I'M NOT SURE WHY I WOULD.

10 Q. OKAY.

11 BY COMMISSIONER JAMES:

12 I'M SORRY; WHAT WAS THE QUESTION?

13 BY MR. ALFORD:

14 I ASKED HIM IF HE HAS CONTACTED COUNTRYWIDE,
15 AND HE SAID HE DIDN'T RECALL AND HE WASN'T SURE WHY
16 HE WOULD.

17 BY THE WITNESS:

18 CORRECT.

19 BY COMMISSIONER JAMES:

20 OKAY, THANK YOU.

21 CROSS EXAMINATION RESUMED BY MR. ALFORD:

22 Q. DO YOU NOT RECALL CONTACTING TED BRYANT AND ASKING
23 HIM FOR CONFIRMATION THAT THERE WAS COVERAGE FOR
24 THIS?

25 A. I MEAN, OBVIOUSLY TO ANSWER THAT QUESTION, I HAVE

1 DOZENS AND DOZENS OF CALLS AND EMAILS FROM MR.
2 BRYANT, AND WE TALKED ABOUT MANY THINGS. I'M SURE -
3 - I'M SURE WHEN WE FILED THE CLAIM, WE DID
4 EVERYTHING WE WOULD DO IN A CLAIM AND ASK FOR A
5 DEFENSE.

6 BY MR. ALFORD:

7 YOUR HONOR, WHAT I WOULD LIKE TO DO, I WOULD
8 LIKE TO INTRODUCE THESE DOCUMENTS.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. AND I WANT TO HAND YOU SOME DOCUMENTS THAT WE JUST
11 GOT FROM KEENAN AND SUGGS.

12 A. OKAY.

13 Q. IT'S A SERIES OF EMAILS.

14 A. OKAY. HAVE WE SEEN THOSE BEFORE?

15 Q. YOU WROTE MANY OF THEM.

16 A. OKAY.

17 Q. SO, WHY DON'T YOU TAKE A SECOND AND LOOK AT THEM.

18 A. OKAY. (PERUSING DOCUMENTS)

19 BY MR. ALFORD:

20 AND I'M SORRY, I DON'T HAVE AN EXTRA SET FOR
21 THE COURT.

22 BY COMMISSIONER JAMES:

23 WE CAN GET TAMARA TO MAKE A SET.

24 BY MS. FARTHING:

25 I HAVE COPIES.

1 BY COMMISSIONER JAMES:

2 YOU DO?

3 BY MS. FARTHING:

4 DO YOU STILL HAVE THE WHOLE PACKET?

5 BY MR. ALFORD:

6 YEAH, IT IS.

7 CROSS EXAMINATION RESUMED BY MR. ALFORD:

8 Q. SIR, IF YOU WOULD TAKE A MOMENT AND GO THROUGH THOSE
9 AND JUST FAMILIARIZE YOURSELF WITH THEM, BECAUSE I'M
10 GOING TO WANT TO TALK ABOUT THEM.

11 A. OKAY. ARE THESE SEQUENTIAL?

12 Q. THEY ARE, AND THE PROBLEM WITH EMAILS BEING -- WELL,
13 THEY ARE TO A POINT, AND THEN A NEW SET STARTS, BUT.

14 A. I'M JUST WONDERING, ARE YOU TELLING ME THAT NOTHING
15 HAS BEEN LEFT OUT?

16 Q. TO MY KNOWLEDGE, NOTHING HAS BEEN LEFT OUT. THESE
17 ARE PRODUCED BY KEENAN AND SUGGS, AND FRANKLY, THEY
18 WOULD HAVE BEEN DOCUMENTS THAT YOU WOULD HAVE.

19 A. WELL, NOT NECESSARILY. I MEAN, YOU GAVE ME LIKE 20
20 PAGES HERE; SO.

21 Q. I TELL YOU WHAT. WHY DON'T YOU GO LOOK AT PAGES
22 EIGHT THROUGH ONE, HOW ABOUT THAT.

23 A. (PERUSES DOCUMENTS) ALL RIGHT. I'VE READ THE FIRST
24 EIGHT PAGES.

25 Q. ALL RIGHT, SIR, THANK YOU. SO, PAGE EIGHT REALLY

- 1 DOESN'T MATTER. IT'S JUST THE END OF AN EMAIL.
- 2 A. SURE.
- 3 Q. PAGE SEVEN, IT LOOKS LIKE 16 MAY AT 4:34 P.M. YOU
- 4 SEND SCANNED IMAGE FROM CONDUSTRIAL TO JO ANN
- 5 WHITAKER. SHE'S THE KEENAN AND SUGGS LADY, RIGHT?
- 6 A. CORRECT.
- 7 Q. AND YOU TALKED TO HER ABOUT INSURANCE, RIGHT?
- 8 A. YES.
- 9 Q. OKAY. SO, YOU SEND IT TO HER, AND WHAT DO YOU TELL
- 10 HER?
- 11 A. "I'M SENDING THIS TO YOU JUST IN CASE. I'M WAITING
- 12 TO SEE HOW OUR P.E.O. COUNTRYWIDE AND OUR CARRIER
- 13 GUARANTEE RESPOND TO THIS SITUATION, WOULD WE
- 14 POTENTIALLY REPORT THIS TO OUR G.L. CARRIER. PLEASE
- 15 DO NOT DO THAT YET, BUT LET'S DO SOME RESEARCH AND
- 16 BE PREPARED, AS WE HAVE TO FILE A FORM 51 DENIAL
- 17 WITHIN THE NEXT 30 DAYS."
- 18 Q. OKAY. THE NEXT EMAIL FROM YOU, I'M ON PAGE SIX.
- 19 A. OKAY.
- 20 Q. STARTING SHE ASKED FOR A COPY OF THE CONTRACT,
- 21 RIGHT?
- 22 A. CORRECT.
- 23 Q. OKAY. YOU SEND IT TO HER, RIGHT?
- 24 A. CORRECT.
- 25 Q. OKAY. YOU SAY "THE CONTRACT WITH S.C.D.C. WAS

1 SIGNED IN 2008, AND THERE ARE SEVERAL PROVISIONS
2 THAT ARE VERY AMBIGUOUS IN LIGHT OF HOW WE HAVE
3 MUTUALLY OPERATED IN THE LAST SEVERAL YEARS. I CAN
4 EXPLAIN THIS BETTER ON THE PHONE TOMORROW, AND I
5 WILL GET YOU THE I.C. AGREEMENT THE LADY SIGNED,"
6 INDEPENDENT CONTRACTOR, RIGHT?

7 A. CORRECT.

8 Q. OKAY. THEN ON PAGE -- I THINK THIS ONE SETS UP
9 BACKWARDS, BUT ON PAGE -- WELL, ON PAGE FIVE, YOU
10 ARE SENDING AN EMAIL TO TED BRYANT AT 1:49; IS THAT
11 RIGHT?

12 A. YES.

13 Q. OKAY. AND WHAT DO YOU -- HAVE YOU CALLED HIM, DO
14 YOU THINK?

15 A. WAIT A MINUTE. ARE YOU TALKING ABOUT ON FRIDAY,
16 OCTOBER 16 AT 1:49?

17 Q. YES, SIR.

18 A. THIS WAS ACTUALLY TO DANIEL RIVERO WITH COUNTRYWIDE.

19 Q. OKAY. OKAY. AND WHAT HAVE YOU -- YOU'VE SENT HER
20 THIS DOCUMENT, RIGHT?

21 A. RIGHT.

22 Q. FROM THE COMMISSION?

23 A. I DON'T KNOW IF IT'S THIS OR NOT.

24 Q. OKAY. BUT YOU SENT HER SOMETHING ABOUT THIS CLAIM,
25 RIGHT?

- 1 A. YES.
- 2 Q. OKAY. AND YOU ASK -- YOU SAY "MY PORTION IS
3 COMPLETE. HOW ARE YOU LOOKING?"
- 4 A. RIGHT.
- 5 Q. "YOU DO NEED TO EMAIL THIS BACK INTO THEM TODAY.
6 THANK YOU."
- 7 A. YES.
- 8 Q. DO YOU REMEMBER WHAT IT WAS YOU WANTED TO EMAIL BACK
9 IN?
- 10 A. I HONESTLY DON'T. I MEAN, I JUST...
- 11 Q. OKAY.
- 12 A. WITHOUT -- WITH THIS AND NOTHING MORE, I DON'T. I
13 MEAN, OBVIOUSLY, IT HAD SOMETHING TO DO WITH THE
14 CLAIM.
- 15 Q. OKAY. AND ---
- 16 A. I MEAN, IT'S POSSIBLE THIS DOCUMENT -- WELL, YEAH.
17 I JUST -- NO -- WELL, WITH WHAT YOU'VE GIVEN ME, I
18 DON'T -- I DON'T KNOW.
- 19 Q. OKAY.
- 20 A. AT THIS TIME.
- 21 Q. BUT THEN YOU GET A RESPONSE FROM TED BRYANT, RIGHT?
- 22 A. YEAH, AND I'LL BE HONEST, I'M WONDERING IF THIS
23 TRAIL IS COMPLETE AND SOMEONE HASN'T DELETED SOME.
24 SO, I'M CERTAINLY GOING TO...
- 25 Q. WELL, LET ME JUST SAY, HE RESPONDS AND WHAT'S ---

1 A. HE RESPONDS -- YES -- YEAH, I REMEMBER THIS EMAIL.

2 Q. OKAY. AND APPARENTLY, Y'ALL HAVE HAD SOME
3 DISAGREEMENT ABOUT WHETHER OR NOT MEDUSTRIAL'S
4 OPERATIONS ARE GOING TO BE INCLUDED IN THE AGREEMENT
5 YOU HAVE WITH COUNTRYWIDE, RIGHT?

6 A. NO. I MEAN, I THINK THE -- THE -- OBVIOUSLY, YOU
7 CAN SEE FROM HIS EMAIL, HE ACCUSED US OF RUNNING A
8 SHADOW COMPANY AND HIDING IT FROM THEM.

9 Q. HE SAID, "TOM, WE HAVE NOT MISUNDERSTOOD ANYTHING.
10 WE WERE PRESENTED WITH A CLAIM RELATED TO AN ENTITY
11 CALLED MEDUSTRIAL THAT HAD NEVER BEFORE BEEN
12 DISCLOSED TO US."

13 A. NOW, YOU'VE SKIPPED ONE.

14 Q. HAVE I?

15 A. I THOUGHT YOU WERE ASKING ME ABOUT FRIDAY, OCTOBER
16 16, AT 3:48 P.M. THAT ONE IS 4:24 P.M.

17 Q. ALL RIGHT. WELL, GIVE ME -- READ THE 3:28 ONE TO
18 ME.

19 A. ALL RIGHT. "TOM, I'M WRITING IN REGARDS TO AN ISSUE
20 THAT HAS ARISEN CONCERNING A COMPANY CALLED
21 MEDUSTRIAL AND A CLAIM ARISING ABOUT AN INDEPENDENT
22 CONTRACTOR MEDUSTRIAL RETAINED. SPECIFICALLY, THIS
23 ISSUE CAME TO ME FROM AN EMAIL YOU SENT TO DANIEL
24 RIVERO ON OCTOBER 16. I SEE FROM YOUR EMAIL THAT
25 MEDUSTRIAL IS AFFILIATED WITH OR A SUBSIDIARY OF

1 CONDUSTRIAL. WE DO NOT HAVE ANY RECORDS OR
2 INFORMATION ABOUT MEDUSTRIAL, ITS PAYROLL, PREFERRED
3 CLASS CODES, BUSINESS OPERATIONS, OR ANY INFORMATION
4 WHATSOEVER. I HAVE REVIEWED PERSONALLY ALL
5 CONDUSTRIAL MATERIALS IN OUR POSSESSION AND FIND NO
6 MENTION OF MEDUSTRIAL. OF COURSE, THIS MEANS OUR
7 INSURANCE COMPANY PARTNER, GUARANTEE INSURANCE
8 COMPANY, HAS NO INFORMATION ABOUT MEDUSTRIAL. IN
9 ORDER FOR US TO HANDLE A MEDUSTRIAL MATTER ON YOUR
10 BEHALF, THERE IS SIGNIFICANT INFORMATION WE NEED
11 ABOUT THE ENTITY. THERE WILL ALSO BE RELATED FEES
12 AND CHARGES ASSOCIATED WITH ADDING MEDUSTRIAL TO THE
13 PROGRAM. IN DIRECT RESPONSE TO YOUR OCTOBER 16TH
14 EMAIL, THE CLAIM IS NOT COVERED UNDER OUR WORKERS'
15 COMPENSATION INSURANCE PROGRAM WITH GUARANTEE. YOU
16 WRITE IN THE THIRD SENTENCE OF YOUR OCTOBER 16TH
17 EMAIL, 'THIS CLAIM INVOLVES AN INDEPENDENT
18 CONTRACTOR THAT IS NOT AN EMPLOYEE.' AS YOU KNOW,
19 INDEPENDENT CONTRACTORS ARE NOT COVERED UNDER THE
20 RELEVANT WORKERS' COMPENSATION INSURANCE PROGRAM.
21 ONLY EMPLOYEES ARE COVERED BY WORKERS COMPENSATION
22 INSURANCE."

23 Q. OKAY. AND IT GOES ON THE NEXT PAGE. THIS MATTER...

24 A. "THIS MATTER WILL NOT BE SUBMITTED TO GUARANTEE.

25 ALSO, WE ARE WRITING TO MAKE SURE YOU DO NOT SUBMIT

1 THIS CLAIM OR OTHERWISE SUBMIT INFORMATION ABOUT OUR
2 GUARANTEE INSURANCE POLICY ON THE SOUTH CAROLINA
3 NOTICE OF CLAIM. PLEASE NOTE OUR INSURANCE PROGRAM
4 THROUGH GUARANTEE DOES NOT PROVIDE COVERAGE FOR THIS
5 CLAIM AND REPORTING TO SOUTH CAROLINA THAT GUARANTEE
6 DOES PROVIDE SUCH COVERAGE WOULD BE INAPPROPRIATE,
7 WHICH YOU AS A SEASONED EXPERIENCED WORKERS'
8 COMPENSATION ATTORNEY WOULD APPRECIATE AND
9 UNDERSTAND. IF YOU WOULD LIKE TO INCLUDE
10 MEDUSTRIAL'S OPERATIONS UNDER YOUR CURRENT PROGRAM
11 WE HAVE WITH CONDUSTRIAL, PLEASE LET US KNOW, AND
12 I'LL GET YOU IN TOUCH WITH THE PROPER PEOPLE. THANK
13 YOU, TED BRYANT."

14 Q. OKAY. AND THEN YOU RESPOND TO HIM BEGINNING AT THE
15 BOTTOM OF PAGE THREE.

16 A. "MEDUSTRIAL HAS NO LEGAL EXISTENCE. WE WILL KNOW
17 OWE ANY OTHER FEES OR COSTS. THIS FORM IS SEEKING
18 TO CONFIRM COVERAGE FOR CONDUSTRIAL AND SOUTH
19 CAROLINA IN GENERAL. IT MUST BE FILLED OUT. UNLESS
20 YOU ARE NOT PROVIDED THE COVERAGE THAT YOU ARE
21 REPRESENTED AND CHARGED FOR. IF YOU DO NOT ANSWER
22 THE FORM, WE WILL ANSWER THE FORM AND DIRECT THE
23 COMMISSION TO YOU. ONCE AGAIN, YOU HAVE TOTALLY AND
24 COMPLETELY MISUNDERSTOOD THE SITUATION."

25 Q. OKAY. WHAT WAS THE SITUATION?

1 A. THAT HE'S ACTING LIKE MEDUSTRIAL IS SOME SUBSIDIARY
2 OR HIDDEN BUSINESS THAT WE HAVE TRIED TO OPERATE IN
3 SECRET WITHOUT THEM.

4 Q. BUT YOU WOULD AGREE WITH ME THAT MEDUSTRIAL'S
5 OPERATION WAS NOT PART OF THE COUNTRYWIDE AGREEMENT?

6 A. I WOULD AGREE THAT THE INDEPENDENT CONTRACTORS UNDER
7 MEDUSTRIAL WERE NOT COVERED BY THE AGREEMENT, BUT I
8 WOULD NOT AGREE THAT THEY DIDN'T KNOW ABOUT IT,
9 BECAUSE I MYSELF AND SEVERAL OTHER PEOPLE ARE GOING
10 TO TESTIFY WE TOLD THEM ABOUT IT AT THE FIRST
11 MEETING LIKE WE'VE DONE A DOZEN TIMES OVER EIGHT
12 YEARS.

13 Q. ALL RIGHT, SIR. I GUESS THAT WILL TAKE ME TO THE
14 AGREEMENT.

15 A. OKAY.

16 Q. THE AGREEMENT THAT YOU HAVE WITH COUNTRYWIDE.

17 A. CORRECT.

18 Q. ALL RIGHT, SIR. IF YOU WOULD BE KIND ENOUGH TO LOOK
19 AT, IT'S ALMOST THE LAST PAGE EXCEPT FOR THE
20 SIGNATURES. LET ME SEE. I'M ON PAGE SIX OF THAT
21 AGREEMENT.

22 A. OKAY.

23 Q. READ PARAGRAPH 20, PLEASE, SIR.

24 A. "THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING
25 AND AGREEMENT BETWEEN THE PARTIES HERETO. THIS

- 1 AGREEMENT MAY BE MODIFIED OR AMENDED ONLY BY WRITTEN
2 MODIFICATION OR AMENDMENT SIGNED BY BOTH PARTIES."
- 3 Q. ALL RIGHT, SIR. SO, IT DOESN'T REALLY MATTER WHAT
4 YOU TOLD ANYBODY, DOES IT?
- 5 A. WHEN?
- 6 Q. ANY TIME AFTER YOU SIGNED THIS AGREEMENT OR ANYTHING
7 ANYBODY TOLD YOU BEFORE?
- 8 A. WELL, IT DOES MATTER.
- 9 Q. ARE YOU TELLING ME YOU TOLD THESE PEOPLE ABOUT THIS
10 BEFORE ---
- 11 A. I'M ABSOLUTELY SAYING THAT WE TOLD SCOTT HANSON
12 ABOUT MEDUSTRIAL BEFORE THIS WAS SIGNED.
- 13 Q. OKAY.
- 14 A. LIKE WE'VE DONE A DOZEN TIMES BEFORE.
- 15 Q. RIGHT. AND THEN YOU DIDN'T INCLUDE IT IN THE
16 AGREEMENT, RIGHT?
- 17 A. IT DOESN'T HAVE A SEPARATE LEGAL EXISTENCE. IT ---
- 18 Q. YOU DIDN'T -- I'M SORRY.
- 19 A. CONDUSTRIAL MEANS MEDUSTRIAL.
- 20 Q. OKAY. THAT'S FINE, BUT -- BUT THAT -- I MEAN, I
21 DON'T THINK IT'S FINE, BUT ---
- 22 A. I UNDERSTAND.
- 23 Q. --- TO AVOID BICKERING OVER IT, I'LL TRY TO ASK THE
24 QUESTION DIFFERENTLY.
- 25 A. WELL, LET ME KNOW BETTER WHAT I CAN DO TO ANSWER

1 YOUR QUESTION.

2 Q. NO, NO, NO. IT'S SOMETHING WE'RE PROBABLY NOT EVER
3 GOING TO AGREE ON.

4 A. RIGHT.

5 Q. IF -- I GUESS WHAT I'M TRYING TO UNDERSTAND IS YOU
6 COULD HAVE PUT THE 1099 OPERATION INTO THIS
7 AGREEMENT OR YOU COULD HAVE TRIED?

8 A. I DON'T SEE WHY WE WOULD HAVE.

9 Q. YOU COULD HAVE AND YOU DIDN'T; IS THAT CORRECT?

10 A. NO, I DON'T SEE WHY WE WOULD HAVE.

11 Q. I DIDN'T ASK YOU IF YOU WOULD HAVE.

12 A. RIGHT.

13 Q. I SAID YOU COULD HAVE AND YOU DID NOT?

14 BY MR. GOODWYN:

15 OBJECTION, ASKED AND ANSWERED.

16 BY THE WITNESS:

17 I DON'T AGREE WITH THAT. I DON'T AGREE WITH
18 THAT.

19 BY COMMISSIONER JAMES:

20 AND I'M NOT SURE I'VE HEARD AN ANSWER.

21 BY MR. GOODWYN:

22 HE SAID "NO, WHY WOULD WE?" HE ASKED HIM
23 AGAIN. "NO, WHY WOULD WE?" HE ASKED HIM A THIRD
24 TIME.

25 BY COMMISSIONER JAMES:

1 ALL RIGHT, THANK YOU.

2 BY MR. ALFORD:

3 NO, HE SAID "I DON'T KNOW WHY WE WOULD," BUT,
4 OKAY.

5 CROSS EXAMINATION RESUMED BY MR. ALFORD:

6 Q. ALL RIGHT. LOOK, I JUST WANT TO CLEAR IT UP.

7 A. DO YOU WANT ME TO EXPLAIN MY REASON OR WHAT?

8 Q. WELL, LET ME ASK AND THEN YOU CAN EXPLAIN. IS THAT
9 FAIR?

10 A. YES, SIR.

11 Q. YOU -- YOU HELPED NEGOTIATE THIS AGREEMENT. YOU GOT
12 -- THIS SETS UP A SYSTEM WHERE YOU NOTIFY
13 COUNTRYWIDE OF WHO YOUR EMPLOYEES ARE?

14 A. RIGHT.

15 Q. WHAT THEY MAKE, WHAT THEIR COMP CODES ARE?

16 A. YEAH.

17 Q. WHAT THE LOCATIONS THEY'RE GOING TO BE WORKING AT?

18 A. YES.

19 Q. AND THEN THEY TAKE ALL OF THAT DATA, PUT IT INTO
20 THEIR SYSTEM?

21 A. RIGHT.

22 Q. SPIT OUT PAYCHECKS AND SEND MONEY FOR TAXES AND
23 WITHHOLDING AND WORKERS' COMP COVERAGE, RIGHT?

24 A. RIGHT.

25 Q. OKAY. AND AS THE AGREEMENT OPERATED, YOU COULD PUT

1 SOMEBODY IN OR TAKE SOMEBODY OUT, RIGHT?

2 A. WHEN YOU SAY "SOMEBODY," DO YOU MEAN AN EMPLOYEE?

3 Q. YEAH, AN EMPLOYEE OR A LOCATION OR A CLIENT.

4 A. I GUESS. OBVIOUSLY, PURSUANT TO THIS AGREEMENT, WE
5 WOULD HAVE TO REPORT NEW CODES AND ---

6 Q. RIGHT, EXACTLY

7 A. RIGHT.

8 Q. SO, IN A WAY, THE EXHIBIT WHERE YOU WOULD DISCLOSE
9 YOUR LOCATIONS AND YOUR CLIENTS AND WHAT WORK IS
10 BEING DONE WAS SORT OF AN ONGOING THING, RIGHT?

11 A. I WOULD THINK SO, YES.

12 Q. OKAY. BECAUSE THE PAYROLL WOULD CHANGE. SOMETIMES
13 YOU HAVE 500 PEOPLE. SOMETIMES YOU HAVE 600 PEOPLE?

14 A. CORRECT.

15 Q. OKAY. AND IN THAT VAIN, YOU COULD HAVE TRIED TO PUT
16 ANYBODY YOU WANTED IN, RIGHT? YOU HAD TO SEND IT TO
17 THEM, AND THEY COULD SAY "YES" OR "NO"?

18 A. I BELIEVE, IF I'M FOLLOWING YOU, YES, I THINK SO.

19 Q. RIGHT.

20 A. OKAY.

21 Q. SO, FOR EXAMPLE, I THINK AT SOME POINT, YOU WANTED
22 TO SEND SOME PEOPLE DOWN TO WORK IN SOME E.P.A.
23 TOXIC WASTE SITE IN MISSISSIPPI?

24 BY MS. BECKY BARNETTE:

25 I DON'T KNOW IF IT WAS THAT CLIENT.

1 BY MR. ALFORD:

2 OKAY.

3 BY MS. BECKY BARNETTE:

4 THAT WAS A DIFFERENT CLIENT.

5 BY MR. BEARD:

6 YOU CAN'T ---

7 BY MS. BECKY BARNETTE:

8 OH, SORRY.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. DID YOU EVER ASK THEM TO PUT SOMEBODY IN, AND THEY
11 SAID "NO"?

12 A. I DON'T RECALL THAT, BUT I WOULDN'T NECESSARILY BE
13 THE PERSON ASKING THAT QUESTION. I MEAN, AS THE
14 GENERAL COUNSEL, I WOULDN'T BE DOING DAY-TO-DAY
15 PROCEDURAL OPERATIONAL THINGS.

16 Q. OKAY. BUT YOU WOULD AGREE WITH ME, AND I THINK
17 BEFORE I FORGET, YOU READ THE ENTIRE AGREEMENT.
18 ALSO, WOULD YOU READ PARAGRAPH 22, THE TITLE OF IT
19 AND THE -- PAGE SIX.

20 A. "SUPREMACY OF THE AGREEMENT. THIS AGREEMENT
21 SUPERCEDES ALL PREVIOUS AGREEMENTS OR UNDERSTANDINGS
22 BETWEEN THE PARTIES HERETO, AND ALL OTHER SUCH
23 AGREEMENTS OR UNDERSTANDINGS, WHETHER ORAL OR
24 WRITTEN, SHALL BECOME NULL AND VOID AS OF THE DATE
25 OF THE EXECUTION HEREOF."

1 Q. SO, ANY UNDERSTANDING OR THING YOU MIGHT HAVE TOLD
2 THEM ABOUT MEDUSTRIAL, IF IT'S NOT IN THIS
3 AGREEMENT, IT'S NOT PART OF THE DEAL?

4 A. WELL, IT ---

5 BY MR. GOODWYN:

6 OBJECT TO THE FORM.

7 BY MR. ALFORD:

8 WHAT'S WRONG WITH THE FORM?

9 BY MR. GOODWYN:

10 "IT'S NOT PART OF THE DEAL," WHAT DO YOU ---

11 BY MR. ALFORD:

12 THIS CONTRACT.

13 BY MR. GOODWYN:

14 WHAT DO YOU MEAN?

15 BY MR. ALFORD:

16 IT'S NOT PART OF THIS CONTRACT.

17 BY COMMISSIONER JAMES:

18 WELL, IT'S CROSS EXAMINATION, SO.

19 THE WITNESS ANSWERS:

20 A. WHEN WE MET WITH MR. HANSON, WE TOLD HIM ABOUT
21 MEDUSTRIAL AND SAID "BUT THEY'RE 1099s SO WE ARE NOT
22 ASKING YOU FOR INSURANCE FOR 1099s."

23 CROSS EXAMINATION RESUMED BY MR. ALFORD:

24 Q. OKAY. AND YOU NEVER PAID A PREMIUM?

25 A. DIDN'T PAY A PREMIUM.

1 Q. NEVER EVEN TOLD COUNTRYWIDE WHO RACHEL TURNER --
2 RACHEL TURNER WAS?

3 A. NO. I DON'T THINK WE DID.

4 Q. IN FACT, YOU DIDN'T. YOU DIDN'T TELL THEM WHO
5 RACHEL TURNER WAS UNTIL THIS CLAIM CAME UP, RIGHT?

6 A. THAT'S CORRECT BECAUSE SHE WAS CHALLENGING THE
7 JURISDICTION. SHE WAS CHALLENGING COMP
8 JURISDICTION. SHE WAS SAYING "I FEEL I'M NO LONGER
9 AN INDEPENDENT CONTRACTOR. I FEEL LIKE I'M AN
10 EMPLOYEE." ONCE SHE SAID, "NOW, I FEEL LIKE I'M AN
11 EMPLOYEE," THAT'S WHEN WE TURNED IN THE POLICY. IN
12 A DIRECT POLICY, CHALLENGES TO JURISDICTION ARE
13 DEFENDED AND COVERED.

14 Q. RIGHT.

15 A. WE WERE TRYING TO DO THE SAME THING.

16 Q. AND YOU TESTIFIED EARLIER THAT IT WAS YOUR OWNER'S
17 BUSINESS DECISION TO MAINTAIN THIS BROKERAGE MODEL,
18 RIGHT?

19 A. I MEAN, YES. HE -- YES.

20 Q. OKAY.

21 A. YES, YES.

22 Q. WOULD YOU READ PARAGRAPH TWO OF THE AGREEMENT,
23 PLEASE?

24 A. OF THE COUNTRYWIDE AGREEMENT?

25 Q. YES, SIR, TWO AND TWO-A.

- 1 A. OKAY. "CLIENT OBLIGATIONS. CLIENT SHALL MAKE ANY
2 AND ALL STRATEGIC, OPERATIONAL AND OTHER BUSINESS-
3 RELATED DECISIONS REGARDING ITS BUSINESS. SUCH
4 DECISIONS AND RELATED OUTCOMES SHALL EXCLUSIVELY BE
5 THE RESPONSIBILITY OF THE CLIENT, AND C.S.S.G. SHALL
6 BEAR NO RESPONSIBILITY..." DO YOU WANT ME TO READ
7 THE WHOLE THING?
- 8 Q. YEAH, JUST TO THE END OF THE SENTENCE.
- 9 A. ALL RIGHT. "OR LIABILITY FOR ANY ACTIONS OR
10 INACTIONS BY CLIENT OR BY ANY LEASED EMPLOYEE,"
11 PERIOD.
- 12 Q. OKAY. IT WAS YOUR BUSINESS -- YOUR COMPANY'S
13 BUSINESS DECISION TO HAVE THESE 1099 EMPLOYEES OUT
14 THERE WITHOUT WORKERS' COMPENSATION INSURANCE?
- 15 A. YES.
- 16 Q. OKAY. AND YOU ---
- 17 A. BUT WE HAD INSURANCE, JUST WE DIDN'T -- THERE WAS --
18 1099s ARE NOT COVERED BECAUSE THEY'RE NOT EMPLOYEES.
- 19 Q. OKAY.
- 20 A. OBVIOUSLY, WE HAD INSURANCE THROUGH THIS AGREEMENT.
- 21 Q. OKAY.
- 22 A. MAYBE I MISUNDERSTOOD WHAT YOU WERE SAYING.
- 23 Q. WELL, LET'S GET IT CLEAR, BECAUSE IT'S IMPORTANT.
- 24 A. YEAH.
- 25 Q. SO, I'LL ASK IT AGAIN.

1 A. OKAY.

2 Q. MEDUSTRIAL AND/OR CONDUSTRIAL HAD INDEPENDENT
3 CONTRACTORS THAT THEY CHOSE TO LEAVE IN THE 1099
4 BROKERAGE MODEL AND NOT PROVIDE WORKERS'
5 COMPENSATION FOR?

6 A. RIGHT, BECAUSE THEY'RE NOT EMPLOYEES.

7 Q. OKAY. AND THAT WAS Y'ALL'S BUSINESS DECISION,
8 RIGHT?

9 A. YES.

10 Q. OKAY. AND THEN I'M GOING TO JUST QUICKLY GO THROUGH
11 PARAGRAPH ONE. C.S.S.G. SERVICES, YOU ARE REQUIRED
12 -- AND I'M JUST GOING TO -- YOU ARE REQUIRED TO GIVE
13 THEM TIMELY ACCURATE AND COMPLETE INFORMATION AND
14 PAYMENT PROVIDED BY CLIENT. YOU NEVER DID THAT FOR
15 RACHEL TURNER?

16 A. IS THIS PARAGRAPH ONE?

17 Q. YES, SIR, ONE.

18 A. I'M SORRY, ONE-C?

19 Q. I'M ACTUALLY JUST AT ONE, AND THEN I'LL START
20 WORKING MY WAY DOWN.

21 A. OKAY. PARAGRAPH ONE IS "WILL PERFORM THE FOLLOWING
22 WITH RESPECT TO SELECTIVE STAFFING/EMPLOYEES
23 PERFORMING SERVICES FOR CLIENT BASED ON TIMELY,
24 ACCURATE, AND COMPLETE INFORMATION AND PAYMENT
25 PROVIDED BY CLIENT. A: FURNISH AND/OR PROVIDE

1 SELECTED STAFFING/EMPLOYEES TO PERFORM THE TYPE OF
2 WORK DESCRIBED UNDER EXHIBIT "B" UNDER CLIENT'S
3 SUPERVISION AT THE LOCATIONS SPECIFIED ON EXHIBIT
4 "B."

5 Q. ALL RIGHT, STOP.

6 A. OKAY.

7 Q. DID YOU EVER DISCLOSE ANY PRISON LOCATIONS TO
8 COUNTRYWIDE?

9 A. IN OTHER WORDS, I DON'T KNOW THE ABSOLUTE ANSWER. I
10 KNOW THAT WE DID NOT PROVIDE -- IF IT WAS A PRISON
11 LOCATION THROUGH S.C.D.C. INVOLVING INDEPENDENT
12 CONTRACTORS, WE LIKELY DID NOT PROVIDE THAT.

13 Q. OKAY. AND I THINK IN YOUR DEPOSITION, AND WE CAN
14 PULL IT OUT IF YOU WANT, YOU TESTIFIED THAT YOU
15 DIDN'T.

16 A. I THINK THAT'S WHAT I SAID NOW. MAYBE I DIDN'T
17 SOUND AS CONFIDENT.

18 BY MR. GOODWYN:

19 OBJECT TO THE FORM. IF HE WANTS TO IMPEACH HIM
20 WITH HIS DEPOSITION TESTIMONY, HE CAN, BUT HE CAN'T
21 JUST SIMPLY REFERENCE THE DEPOSITION.

22 BY MR. ALFORD:

23 I'LL MOVE ON. I'LL MOVE ON.

24 CROSS EXAMINATION RESUMED BY MR. ALFORD:

25 Q. WITH RESPECT TO PARAGRAPH "C," PAY, WITHHOLD AND

1 TRANSMIT, ---

2 A. YEAH.

3 Q. --- FEDERAL, STATE OR LOCAL TAXES THAT ARE OR MAY BE
4 ASSESSED UPON LABOR OR EMPLOYMENT FURNISHED UNDER
5 THIS AGREEMENT, PROVIDE UNEMPLOYMENT INSURANCE AND
6 WORKERS' COMPENSATION BENEFITS AND HANDLE
7 UNEMPLOYMENT AND WORKERS' COMPENSATION CLAIMS
8 INVOLVING SELECTED STAFFING/EMPLOYEES." NOW, YOU
9 DIDN'T ANTICIPATE RACHEL TURNER EVER BEING IN THIS
10 AGREEMENT?

11 A. WE DIDN'T. WE THOUGHT AN INDEPENDENT CONTRACTOR WAS
12 AN INDEPENDENT CONTRACTOR, YES.

13 Q. OKAY. AND THAT WAS A BUSINESS DECISION YOU MADE TO
14 LEAVE THEM OUT THERE UNCOVERED?

15 A. THEY WEREN'T EMPLOYEES, SO WE DIDN'T PROVIDE
16 WORKERS' COMP INSURANCE FOR NON-EMPLOYEES.

17 Q. OKAY. BUT YOU HAD A MECHANISM IN YOUR CONTRACTUAL
18 AGREEMENT WITH HER TO ENSURE THAT SHE HAD WORKERS'
19 COMPENSATION COVERAGE. IN FACT, YOU ---

20 A. YOU ARE TALKING ABOUT HER INDEPENDENT CONTRACTOR
21 AGREEMENT?

22 Q. YES, SIR, I AM.

23 A. I DON'T -- I WOULD LIKE FOR YOU TO SHOW ME WHERE. I
24 MEAN, I WOULD HAVE TO BE REFRESHED ON THAT.

25 BY COMMISSIONER JAMES:

1 MR. ALFORD, THE DOCUMENTS Y'ALL WERE JUST
2 REFERRING TO HAVE NOT BEEN MARKED, AND WHEN I SAY
3 REFERRING TO, I'M TALKING ABOUT THE EMAILS.

4 BY MR. ALFORD:

5 OH, THE EMAILS. I WOULD LIKE TO MARK THE ONES
6 THAT WE HAVE IDENTIFIED THUS FAR. WHAT I WOULD
7 REALLY LIKE TO DO IS PUT THEM ALL TOGETHER AND KEEP
8 THEM AS ONE EXHIBIT, SO WE'RE NOT -- SO, I'M GOING
9 TO HAVE TO BREAK UP --

10 BY COMMISSIONER JAMES:

11 YOU NEED TO HAVE THEM IDENTIFIED.

12 BY MR. ALFORD:

13 WHAT I'LL DO, YOUR HONOR, AT THE END, IS I WILL
14 MOVE TO ADMIT EVERYTHING THAT I -- IS THAT OKAY?

15 BY COMMISSIONER JAMES:

16 AND WHAT WE USUALLY DO IS MARK THEM AT THE
17 ADMISSION, AND I KNOW IN CIVIL TRIAL, YOU MARK THEM

18 ---

19 BY MR. ALFORD:

20 THAT'S FINE.

21 BY COMMISSIONER JAMES:

22 --- AND THEN -- SO, WHENEVER THEY ARE TO BE
23 ADMITTED, WE USUALLY DO IT.

24 BY MR. ALFORD:

25 YES, MA'AM.

1 BY COMMISSIONER JAMES:

2 WE DON'T USUALLY MARK FOR IDENTIFICATION.

3 BY MR. ALFORD:

4 I AM HAPPY TO DO THAT. COULD WE PLEASE THEN
5 MARK, I GUESS, EIGHT THROUGH ONE OR ONE THROUGH
6 EIGHT OF THE EMAIL STACK.

7 BY COMMISSIONER JAMES:

8 FOR ADMISSION?

9 BY MR. ALFORD:

10 YES, MA'AM.

11 BY COMMISSIONER JAMES:

12 ARE THERE ANY OBJECTIONS?

13 BY MR. GOODWYN:

14 NO OBJECTION.

15 BY MR. BEARD:

16 NO OBJECTION.

17 BY MR. SAMUELS:

18 NO OBJECTION.

19 BY COMMISSIONER JAMES:

20 ALL RIGHT. LET ME GET THE FIRST EIGHT PAGES.

21 BY THE WITNESS:

22 ARE THESE THE ONES? IS THIS AN EXTRA COPY?

23 BY MR. ALFORD:

24 YES, SIR, IF YOU WILL GIVE THEM TO HER, AND SHE
25 WILL GIVE THEM BACK.

1 BY THE WITNESS:

2 OKAY.

3 BY MR. SAMUELS:

4 IF IT WILL SIMPLIFY, I HAVE NO OBJECTION TO THE
5 ENTIRE PACKAGE GOING IN.

6 BY MR. ALFORD:

7 DOES ANYBODY HAVE ANY OBJECTION TO THE ENTIRE
8 PACKAGE GOING IN?

9 BY MR. GOODWYN:

10 NO.

11 BY MS. FARTHING:

12 NO.

13 BY MR. ALFORD:

14 CAN WE JUST DO THE WHOLE PACKAGE AS ONE
15 EXHIBIT, AND THEN I CAN COME BACK TO THEM, BECAUSE I
16 HAVEN'T READ THE OTHER ONES YET?

17 BY THE COURT REPORTER:

18 ARE THESE IN ORDER?

19 BY MR. ALFORD:

20 YES, MA'AM. THANK YOU.

21 (COURT REPORTER MARKS EMAILS AS C.S.S.G. EXHIBIT THREE,
22 RETAINED IN THE COMMISSION FILE)

23 BY COMMISSIONER JAMES:

24 AND THAT WOULD BE, JUST TO MAKE SURE, THIS IS
25 COUNTRYWIDE'S EXHIBIT THREE?

1 BY THE COURT REPORTER:

2 YES, MARKED AS "C.S.S.G. THREE."

3 BY COMMISSIONER JAMES:

4 ALL RIGHT, THANK YOU.

5 CROSS EXAMINATION RESUMED BY MR. ALFORD:

6 Q. ALL RIGHT, SIR. I BELIEVE THE LICENSED PROFESSIONAL
7 INDEPENDENT CONTRACT AGREEMENT IS DEFENDANT'S TRIAL
8 EXHIBIT TWO, IS THAT RIGHT?

9 A. NO, THAT'S THE LATER ONE. THAT'S THE ONE FROM 2013.
10 I DON'T HAVE 2014.

11 Q. OKAY. ARE THEY -- WOULD YOU LOOK AT THE PARAGRAPH
12 ON LIABILITY INSURANCE AND INDEMNIFICATION.

13 BY COMMISSIONER JAMES:

14 WHAT PAGE IN THE RECORD ARE YOU ON?

15 BY MR. ALFORD:

16 I'M SO SORRY THAT I'M NOT GOOD AT THAT. DOES
17 ANYBODY KNOW WHAT PAGE IN THE RECORD ---

18 BY COMMISSIONER JAMES:

19 WHAT DOCUMENT ARE YOU ON, AND THEN WE CAN FIND
20 IT?

21 BY MR. SAMUELS:

22 WHICH YEAR?

23 BY MR. ALFORD:

24 I AM USING THE NEWER ONE, BECAUSE THAT
25 PARAGRAPH HASN'T CHANGED.

1 BY MR. SAMUELS:

2 THAT IS AT PAGE 241 OF THE CLAIMANT'S APA
3 SUBMISSIONS.

4 BY COMMISSIONER JAMES:

5 THANK YOU, MR. SAMUELS.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. ALL RIGHT, SIR, AND SO I'M BACK TO YOUR COMPANY'S
8 BUSINESS DECISIONS.

9 A. OKAY.

10 Q. WE AGREE THAT YOU HAD THOSE EMPLOYEES OUT THERE --
11 I'M SORRY. I DON'T WANT TO CONFLATE TERMS. YOU HAD
12 YOUR 1099 PEOPLE OUT THERE, ---

13 A. UH-HUH.

14 Q. --- AND THEY DID NOT HAVE ANY WORKERS' COMPENSATION
15 COVERAGE?

16 A. WE DID NOT PROVIDE THAT BECAUSE THEY WERE NOT
17 EMPLOYEES.

18 Q. GOT IT, OKAY. BUT YET YOU HAD THIS AGREEMENT IN
19 PARAGRAPH EIGHT WHERE YOU SAY THAT THEY ARE REQUIRED
20 TO HAVE INSURANCE, AT LEAST MALPRACTICE AND
21 LIABILITY INSURANCE, IN THE AMOUNT OF A MILLION-TWO,
22 RIGHT?

23 A. I DO SEE THAT THEY "SHALL MAINTAIN THROUGHOUT THE
24 TERM OF THIS AGREEMENT AND SHALL PROVIDE TO THE
25 BROKER A CERTIFICATE OF PROFESSIONAL LIABILITY AND

1 MALPRACTICE INSURANCE IN THE AMOUNT OF 1.2 MILLION
2 DOLLARS AND CONTAINING AN EXPRESS PROVISION THAT
3 SUCH POLICY CANNOT BE CANCELLED WITHOUT 30 DAYS
4 PRIOR WRITTEN NOTICE TO THE BROKER OF THE INTENT TO
5 DO SO."

6 Q. OKAY.

7 A. UNLESS I'VE MISSED IT, I DON'T SEE A SIMILAR
8 PARAGRAPH ABOUT WORKERS' COMP.

9 Q. ALL RIGHT. YOU REPRESENTED TO THE DEPARTMENT OF
10 CORRECTIONS THAT THE PEOPLE YOU WERE SENDING THERE
11 HAD WORKERS' COMPENSATION?

12 A. NO. WE REPRESENTED THAT EMPLOYEES WE SENT WOULD
13 HAVE WORKERS' COMPENSATION.

14 Q. ALL RIGHT, SIR. IF YOU WOULD LOOK AT THE PERSONAL -
15 - PERSONNEL SERVICES AGREEMENT WITH THE SOUTH
16 CAROLINA DEPARTMENT OF CORRECTIONS.

17 A. OKAY. WHICH, THE OLD ONE?

18 Q. OLD OR NEW, BECAUSE IT DIDN'T CHANGE.

19 A. RIGHT, OKAY.

20 Q. FOR MY PURPOSES.

21 A. PARAGRAPH SIX?

22 Q. NO, SIR. ACTUALLY, I'M ON PARAGRAPH ONE-A.

23 A. OKAY. OH, YES, OKAY.

24 Q. OKAY. CONTRACTOR - AND I'M AT THE LAST SENTENCE.

25 A. OKAY.

1 Q. "CONTRACTOR SHALL BE RESPONSIBLE FOR WITHHOLDING
2 FEDERAL AND STATE INCOME TAXES, PAYING FEDERAL AND
3 STATE SOCIAL SECURITY TAXES, UNEMPLOYMENT INSURANCE
4 AND MAINTAINING WORKERS' COMPENSATION INSURANCE IN
5 AN AMOUNT AND UNDER SUCH TERMS AS REQUIRED BY THE
6 STATE OF SOUTH CAROLINA."

7 A. RIGHT.

8 Q. OKAY. WHAT DID YOUR COMPANY DO TO ENSURE THAT THE
9 PEOPLE THAT YOU SENT THERE UNDER THIS AGREEMENT
10 COULD MEET THE REQUIREMENTS OF THAT PARAGRAPH?

11 A. ARE YOU TALKING ABOUT -- ARE YOU TALKING ABOUT THE
12 PERSONNEL SERVICES AGREEMENT?

13 Q. YES, SIR.

14 A. I THINK AS I'VE TESTIFIED IN GREAT DETAIL MANY
15 TIMES, IT WAS OUR CLEAR UNDERSTANDING BEFORE TAKING
16 OVER THE BUSINESS AND TAKING OVER THE BUSINESS THAT
17 THESE WERE INDEPENDENT CONTRACTORS, AND AS
18 INDEPENDENT CONTRACTORS, THEY'RE NOT COVERED AS
19 EMPLOYEES FOR WORKERS' COMPENSATION INSURANCE. IF
20 WE SENT EMPLOYEES, WE WERE REQUIRED TO PROVIDE
21 WORKERS' COMPENSATION INSURANCE. IF WE DIDN'T SEND
22 EMPLOYEES, THEY DIDN'T HAVE WORKERS' COMPENSATION
23 THROUGH US.

24 Q. HOW WOULD THEY HAVE GOTTEN IT?

25 A. THEY COULD HAVE PROCURED IT, I GUESS, THEMSELVES.

1 Q. DID YOU EVER IN ANY OF THE DOCUMENTS THAT YOU HAVE
2 IN THE APPLICATIONS, AND I KNOW YOU'RE GOING TO SOME
3 ARE CONDUSTRIAL, SOME ARE MEDUSTRIAL.

4 A. RIGHT.

5 Q. SOME SAY EMPLOYEE. SOME SAY INDEPENDENT CONTRACTOR.
6 IN ANY OF THOSE AGREEMENTS, WHAT WAS YOUR MECHANISM
7 TO MAKE SURE THAT THOSE PEOPLE HAD WORKERS'
8 COMPENSATION COVERAGE?

9 A. IN OTHER WORDS, WE DID NOT -- THEY WEREN'T
10 EMPLOYEES. IT WAS A BROKERAGE MODEL. SO, I DON'T
11 KNOW IF THERE IS ANYTHING -- I DON'T KNOW THERE WAS
12 ANYTHING THAT WE REQUIRED THEM TO DO IT, BECAUSE
13 THAT'S EXERTING A MANNER OF CONTROL. I MEAN, YOU --

14 -

15 Q. I MEAN, YOU REQUIRED THEM TO DO A LOT OF OTHER
16 THINGS.

17 A. WELL, NOT REALLY. WE REQUIRED THEM TO COMPLY WITH,
18 MAKE SURE YOU'RE A NURSE, YOU KNOW. MAKE SURE YOU
19 HAVEN'T DONE DRUGS, BECAUSE THAT'S ALSO A STATE
20 REQUIREMENT. I MEAN, THE DOCUMENTS SPEAK FOR
21 THEMSELVES.

22 Q. AND I GUESS I'M JUST CONFUSED BECAUSE WHEN I READ
23 THIS DOCUMENT, ---

24 A. RIGHT.

25 Q. --- IF I'M THE SOUTH CAROLINA DEPARTMENT OF

1 CORRECTIONS, ---

2 A. YEAH.

3 Q. --- I THINK YOU'RE SENDING ME PEOPLE THAT HAVE
4 WORKERS' COMP.

5 A. UNLESS YOU'VE BEEN DOING IT BEFORE US AND DURING US
6 AND PEOPLE HAVE BEEN COMING THAT ARE INDEPENDENT
7 CONTRACTORS, AND THEY KNOW THEY'RE INDEPENDENT
8 CONTRACTORS, WHICH MEANS THEY DON'T HAVE INSURANCE.

9 Q. THEN WHY DID YOU SEND THEM CERTIFICATES OF
10 INSURANCE?

11 A. WHEN?

12 Q. YOU SENT -- MR. BURGESS TESTIFIED, AND YOU WERE
13 HERE, YOU ---

14 A. RIGHT, YES.

15 Q. --- SENT THEM A NUMBER OF CERTIFICATES OF INSURANCE.

16 A. I DID BECAUSE HE WAS ASKING "IS THERE PROOF OF
17 INSURANCE?" THIS WAS A PART OF THIS LITIGATION.
18 THROUGH ERIN AND THEN MR. BURGESS CALLED AND SAID
19 "IS THERE SOME PROOF THAT YOU HAVE INSURANCE?" I
20 SAID, "YES," AND THAT'S WHY I SENT HIM, I THINK ---

21 Q. YOU SENT HIM ONE FROM A SCAFFOLDING COMPANY.

22 A. RIGHT, BECAUSE GUARANTEE AND COUNTRYWIDE WOULDN'T
23 GIVE ME A MASTER CERTIFICATE -- CERTIFICATE OF
24 INSURANCE TO SHOW THAT WE HAD INSURANCE.

25 Q. FOR A PRISON?

- 1 A. NOT FOR A PRISON, TO SHOW THAT WE HAD INSURANCE. WE
2 WEREN'T TRYING TO BAMBOOZLE HIM. HE WANTED TO KNOW
3 THAT WE HAD INSURANCE. I TRIED TO GET A CERTIFICATE
4 FROM Y'ALL.
- 5 Q. WHY WOULD HE -- I'M SORRY, GO AHEAD.
- 6 A. I DON'T KNOW.
- 7 Q. BUT WHY WOULD HE CARE WHETHER OR NOT YOU HAD
8 WORKERS' COMP INSURANCE UNLESS IT WAS PERTAINING TO
9 THIS AGREEMENT? WHY WOULD HE CARE?
- 10 A. I'M SURE HE WANTED TO KNOW IF WE HAD WORKERS' COMP
11 INSURANCE.
- 12 Q. BUT WORKERS' COMP INSURANCE WOULDN'T MATTER TO HIM
13 IF YOU ARE SENDING PEOPLE OUT THERE THAT DON'T HAVE
14 COVERAGE.
- 15 A. IT WOULD IF THEY WERE EMPLOYEES. I MEAN, YOU'RE --
16 YOU'RE...
- 17 Q. ALL RIGHT. CAN I ASK THIS QUESTION? I'M SORRY.
- 18 A. SURE. I MEAN, I GUESS WHAT I'M SAYING IS I'M TIRED
19 OF THE IMPLICATION THAT WE DID -- I MEAN, IT'S BEEN
20 BRIEFED. IT'S ---
- 21 Q. WELL, I'M REALLY SORRY. I'M TIRED, TOO.
- 22 A. I MEAN, I'VE HEARD IT FROM YOU. I'M TIRED. WE
23 DIDN'T -- WE -- YOU KEEP ACTING LIKE WE DID
24 SOMETHING WRONG. WE DIDN'T DO ANYTHING WRONG.
- 25 Q. WELL, HERE'S MY ---

1 A. I MEAN, THAT'S -- YOU CAN OPINE THAT ALL DAY. IT
2 DIDN'T MEAN A DADGUM THING.

3 Q. WHAT I THINK DOESN'T MATTER.

4 A. WELL, APPARENTLY THAT'S NOT TRUE.

5 Q. WELL, SIR, I'M NOT TRYING TO FIGHT WITH YOU. I'M
6 JUST TRYING TO FIGURE OUT WHAT'S GOING ON, AND MY
7 CONCERN IS DID YOU EVER TELL THE PEOPLE AT THE SOUTH
8 CAROLINA DEPARTMENT OF CORRECTIONS THAT YOU WERE
9 SENDING THEM INDEPENDENT CONTRACTORS WHO DID NOT
10 HAVE WORKERS' COMPENSATION COVERAGE OR WHO YOU HAD
11 NOT CONFIRMED HAD WORKERS' COMPENSATION COVERAGE?

12 A. I CAN SPEAK FOR -- INITIALLY FOR ME.

13 Q. YES, SIR.

14 A. I NEVER HAD THAT CONVERSATION. I DIDN'T -- I DIDN'T
15 START SPEAKING TO THESE PEOPLE UNTIL -- LIKE I SAID,
16 WITH THE BANKRUPTCY AND EVERYTHING, I DIDN'T START
17 SPEAKING TO THEM UNTIL LATER.

18 Q. WELL, GIVE ME ---

19 A. MR. BURGESS HAD ASKED ME ---

20 Q. '08? '09? '10?

21 A. NO, I WASN'T THERE IN '08. I MEAN, THIS MIGHT HAVE
22 BEEN '12 OR '13.

23 Q. OKAY.

24 A. I'M SAYING I DON'T RECALL THE FIRST TIME ---

25 Q. OKAY.

1 A. --- I TALKED WITH HIM, BUT AFTER THIS LITIGATION, HE
2 ASKED ME FOR CERTIFICATES OF INSURANCE. I COULD NOT
3 GET A CERTIFICATE FROM COUNTRYWIDE OR GUARANTEE.

4 Q. THAT SAID THE PRISON?

5 A. THAT SAID ANYTHING. THEY WOULDN'T EVEN GIVE ME AN
6 INFORMATIONAL CERTIFICATE. WOULDN'T GIVE ME
7 ANYTHING.

8 Q. BECAUSE THE CERTIFICATES THAT YOU HAVE GOTTEN ---

9 A. RIGHT.

10 Q. --- AND YOUR ATTORNEY WAS KIND ENOUGH TO PUT A BUNCH
11 OF THEM IN, ---

12 A. SURE.

13 Q. THE CERTIFICATES THAT YOU'VE GOT ---

14 A. RIGHT.

15 Q. --- UNDER YOUR AGREEMENT WITH COUNTRYWIDE ---

16 A. YES.

17 Q. --- WERE VERY SPECIFIC ABOUT LOCATIONS AND ABOUT NOT
18 COVERING SUBCONTRACTORS, RIGHT?

19 A. YES.

20 Q. SO, YOU WANTED A CERTIFICATE THAT YOU COULD SEND TO
21 THE PRISON SYSTEM AND SAY "HEY, I'M COVERED, AND
22 YOU'RE COVERED."

23 A. NO, THAT'S NOT -- HE ASKED FOR PROOF OF INSURANCE.
24 I DIDN'T GET IN HIS HEAD, AND THIS IS NOT SOME
25 SCHEME OR CONSPIRACY FROM MY PERSPECTIVE. THEY'VE

1 ALWAYS KNOWN THAT THEY WERE INDEPENDENT CONTRACTORS
2 AND WHAT THAT MEANS, OKAY. THEY CAN OFFER DIFFERENT
3 TESTIMONY.

4 Q. DOES IT SAY THAT ANYWHERE IN THIS AGREEMENT?

5 A. WHAT?

6 Q. IN YOUR SERVICES AGREEMENT, DOES IT SAY OTHER THAN
7 IN THE WHEREAS CLAUSE, ---

8 A. RIGHT.

9 Q. --- DOES IT SAY "I AM SENDING YOU INDEPENDENT
10 CONTRACTORS WHO DON'T HAVE WORKERS' COMP INSURANCE"?

11 A. IT DOES SAY THAT IN THE WHEREAS CLAUSE, I AM SENDING
12 YOU INDEPENDENT CONTRACTORS.

13 Q. I UNDERSTAND IN THERE.

14 A. RIGHT.

15 Q. BUT DOWN IN THE AGREEMENT, YOU SAY THAT THE
16 EMPLOYEES ARE GOING TO HAVE... SO, DID YOU EVER --
17 DID YOU EVER DENOTE TO THEM THAT DISTINCTION? DID
18 YOU EVER WRITE ANYWHERE OR EMAIL?

19 A. I NEVER -- I NEVER HAD A CONVERSATION WHERE I FELT
20 LIKE THAT WAS -- THAT CAME UP OR I NEEDED TO SAY
21 THAT. I INFORMED MANY PEOPLE THAT I TALKED TO THAT
22 THEY WERE INDEPENDENT CONTRACTORS, AND TO ME, THAT
23 MEANS THAT THEY ARE NOT COVERED BY US FOR WORKERS'
24 COMP. IN THE EMAIL THAT YOU HAD ME LOOK AT A WHILE
25 AGO TO MR. HARPER, DID I SEEM HESITANT OR AFRAID OR

1 SUSPICIOUS WHEN I TOLD HIM, THIS IS THE SITUATION
2 WHERE SHE SIGNED ON AS AN INDEPENDENT -- I MEAN, I
3 TOLD HIM GOING BACK TO DAY ONE, "SHE SIGNED UP AS AN
4 INDEPENDENT CONTRACTOR. SHE IS NOT COVERED BY US."
5 THAT WAS A STRAIGHT FORWARD EMAIL.

6 Q. AND IN FACT ---

7 A. NOT LIKE, "OH, YOU CAUGHT ME." NOT LIKE, "OH, YOU
8 CAUGHT ME."

9 Q. AND IN FACT, THE PRESIDENT OF YOUR COMPANY WROTE AN
10 EMAIL SAYING SHE IS NOT COVERED, RIGHT?

11 A. AS AN INDEPENDENT CONTRACTOR, CORRECT.

12 Q. SHE IS NOT COVERED.

13 A. YEAH.

14 Q. AND NOW, BECAUSE YOUR COMPANY HAS FAILED TO PROTECT
15 ITSELF, YOU'RE LOOKING TO PUT IT OFF ON COUNTRYWIDE
16 AND THEN ON G.I.S.?

17 BY MR. GOODWYN:

18 OBJECT TO THE FORM.

19 BY MR. ALFORD:

20 I CAN ASK THE QUESTION.

21 BY THE WITNESS:

22 THAT'S ---

23 BY MR. GOODWYN:

24 OBJECT TO THE FORM.

25 BY MR. ALFORD:

1 WHAT'S WRONG WITH THE FORM?

2 BY COMMISSIONER JAMES:

3 WHAT'S THE OBJECTION?

4 BY MR. GOODWYN:

5 HE SAID "BECAUSE YOUR COMPANY HAS FAILED TO
6 PROTECT ITSELF." THAT'S ASSUMING FACTS NOT IN
7 EVIDENCE. HE SAYS THAT'S NOT TRUE. THAT'S NOT HIS
8 POSITION. THAT'S NOT A FACT.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. DOES YOUR COMPANY HAVE ---

11 BY MR. ALFORD:

12 I'M SORRY, MA'AM.

13 BY COMMISSIONER JAMES:

14 GO AHEAD.

15 BY MR. ALFORD:

16 I'LL TRY TO ---

17 BY COMMISSIONER JAMES:

18 REPHRASE.

19 BY MR. ALFORD:

20 YES.

21 CROSS EXAMINATION RESUMED BY MR. ALFORD:

22 Q. DOES YOUR COMPANY HAVE A WORKERS' COMPENSATION
23 POLICY FOR MRS. TURNER?

24 A. WELL, NOT FOR MRS. TURNER, RIGHT? I MEAN, ARE YOU
25 TALKING ABOUT IF SHE CAME BACK NOW OR FOR THE THREE

1 YEARS SHE WAS THERE?

2 Q. DURING THE TIME THAT SHE WAS ---

3 A. RIGHT.

4 Q. --- THAT SHE WAS INJURED?

5 A. NO, WE DON'T BECAUSE SHE WAS NOT AN EMPLOYEE.

6 Q. OKAY.

7 A. THAT'S BEEN OUR POSITION ALL THE WAY THROUGH.

8 Q. OKAY. AND YOU COULD HAVE PROTECTED YOURSELF SOMEHOW

9 THOUGH?

10 A. I THINK WE DID.

11 Q. HOW?

12 A. SHE'S NOT AN EMPLOYEE; SHE'S AN INDEPENDENT

13 CONTRACTOR. THIS WASN'T -- THIS WASN'T HIDDEN.

14 THIS WASN'T A CONSPIRACY. THIS IS HOW THEY WERE

15 OPERATING BEFORE WE CAME IN TO THE DEAL. THIS IS

16 HOW WE CONTINUED TO OPERATE AFTER WE STARTED THE

17 BROKERAGE. THEY WERE INDEPENDENT CONTRACTORS. I

18 MEAN, YOU ---

19 Q. DO YOU -- I'M SORRY.

20 A. MR. GUDVANGEN THAT WAS WITH US AS AN INDEPENDENT

21 CONTRACTOR WENT TO WORK FOR THEM. HE KNEW THE DEAL.

22 Q. DO YOU RECALL HIS TESTIMONY?

23 A. OBVIOUSLY NOT VERBATIM.

24 Q. THAT HE WOULDN'T HAVE GONE OUT THERE AND WORKED IF

25 HE HAD KNOWN HE DIDN'T HAVE WORKERS' COMP COVERAGE.

1 A. WELL, TO ME, THIS WAS BRIEF AND CLEAR.

2 Q. OKAY.

3 A. THAT IS WHY I SUGGESTED THE CHANGE.

4 BY MR. SAMUELS:

5 THANK YOU, MR. SEARS. I AM SURE THE OTHER
6 ATTORNEYS HAVE SOME QUESTIONS FOR YOU.

7 BY MR. GOODWYN:

8 DO YOU MIND IF WE TAKE A QUICK BATHROOM BREAK?

9 BY COMMISSIONER JAMES:

10 LET'S TAKE A BREAK. YES.

11 (OFF THE RECORD)

12 BY COMMISSIONER JAMES:

13 MR. SAMUELS, JUST TO MAKE SURE, WE'RE BACK ON
14 THE RECORD. HAVE YOU HAD AN OPPORTUNITY TO ASK ALL
15 OF YOUR QUESTIONS AT THIS POINT WITH REGARDS TO BOTH
16 LAYERS, COMPENSABILITY AND COVERAGE?

17 BY MR. SAMUELS:

18 THAT'S CORRECT, YOUR HONOR.

19 BY COMMISSIONER JAMES:

20 ALL RIGHT. AND THEN WE WILL GO TO CONDUSTRIAL,
21 AND MR. NEWMAN, YOU ARE GOING TO DO THE ISSUES ---

22 BY MR. NEWMAN:

23 COUNTRYWIDE.

24 BY MR. ALFORD:

25 COUNTRYWIDE.

1 THAT, CORRECT?

2 A. AFTER CONSULTATION WITH CLIENT AND A REASONABLE TIME
3 TO CURE, YES.

4 Q. OKAY. SO, THEY CAN TELL YOU WE'RE NOT -- I MEAN, SO
5 THAT WOULD BE THAT INSTANCE WHERE YOU MIGHT SIGN A
6 GUY UP ON MONDAY, ---

7 A. YEAH.

8 Q. --- AND YOU DON'T GET HIM INTO THE PAYROLL SYSTEM
9 UNTIL THE FRIDAY, AND THEN WE GET THE CODE, AND WE
10 LOOK AT -- I MEAN, COUNTRYWIDE GETS THE CODE AND
11 LOOKS AT IT AND SAYS "HEY, MAN, WE'RE NOT -- NO, NO,
12 WE'RE NOT WORKING AT THAT SITE."

13 A. THAT'S ONE OF THE SITUATIONS, YES.

14 Q. OKAY. AND THEN THIS WOULD BE WHERE THEY COULD SAY
15 TO YOU "WE'RE NOT DOING IT." AND THEN WHAT IS THE
16 LAST -- WHAT IS THE LAST SENTENCE THAT SAYS
17 ALTERNATIVELY; WHAT DOES THAT SAY?

18 A. "CLIENT MAY CONTINUE ---

19 Q. COULD YOU READ THAT?

20 A. "CLIENT MAY CONTINUE RELATIONSHIP WITH SUCH THIRD
21 PARTY IN ITS REASONABLE BUSINESS DISCRETION IF IT
22 OBTAINS OTHER INSURANCE COVERAGE FOR PROVISION OF
23 ITS SELECTIVE STAFFING/EMPLOYEES APART FROM THOSE
24 PROVIDED UNDER THIS AGREEMENT AND HOLDS C.S.S.G.
25 HARMLESS FOR THE PROVISION OF ANY SUCH PERSONNEL."

1 OKAY.

2 Q. OKAY, SO, THIS AGREEMENT EXPRESSLY -- YOU'VE TAKEN A
3 POSITION IN YOUR EARLIER TESTIMONY -- WELL, WE WERE
4 COMPREHENSIVE -- COMPREHENSIVE, YOU KNOW, WORKERS'
5 COMP.

6 A. RIGHT.

7 Q. COMPREHENSIVE COVERAGE, EVERYTHING.

8 A. RIGHT.

9 Q. OKAY. THIS SPECIFICALLY CONTEMPLATES THAT THERE
10 MIGHT BE SOMETHING OUTSIDE OF THIS AGREEMENT, A
11 RELATIONSHIP THAT YOU MIGHT BE IN, RIGHT, THAT
12 WOULDN'T BE ACCEPTED IN THIS AGREEMENT? NOW, YOU
13 CAN KEEP GOING IF YOU WANT.

14 A. NO. I DON'T THINK IT'S IN THE CONTEXT OF WHAT WE
15 ARE DISCUSSING HERE.

16 Q. WELL, I'M JUST ASKING THE QUESTION.

17 A. I THINK -- I THINK WHAT THIS MEANS TO US AND WHAT WE
18 NEGOTIATED IS IF WE SAY WE WANT TO WORK WITH A.B.C.
19 SCAFFOLDING COMPANY IN TEXAS, BECAUSE WE THINK
20 THEY'VE GOT A KICK ASS SAFETY PROGRAM AND ALTHOUGH
21 IT SCARES Y'ALL BECAUSE OF THE WORD SCAFFOLDING IS
22 IN THEIR NAME, WE THINK WE CAN DO THIS, AND ---

23 Q. AND WE SAY "NO."

24 A. AND THEY SAID "NO," THIS -- AND THIS IS THEIR
25 LANGUAGE; I DIDN'T ADD THIS. THIS IS THEIR

1 LANGUAGE. IT SAYS "WELL, IF YOU WANT TO KEEP
2 ONGOING WITH THEM, YOU CAN, BUT, WE'RE OUT."

3 Q. AND IF SOMETHING HAPPENS, YOU'VE GOT TO HOLD US ---

4 A. RIGHT.

5 Q. --- HARMLESS, RIGHT?

6 A. RIGHT.

7 Q. OKAY.

8 A. THIS IS NOT -- THE TURNER CASE IS NOT THAT SITUATION
9 ---

10 Q. WELL, ---

11 A. --- IN MY OPINION.

12 Q. AND COULD IT BE, SIR, THAT IT'S NOT THAT SITUATION
13 BECAUSE YOU NEVER DISCLOSED THAT RELATIONSHIP TO
14 COUNTRYWIDE?

15 A. NO, WE DID DISCLOSE IT.

16 Q. DID YOU DISCLOSE IT WITHIN THE CONTRACTUAL
17 PROVISIONS AND REQUIREMENTS OF THIS AGREEMENT SO AS
18 TO OBTAIN COVERAGE FOR HER?

19 A. SHE WAS AN INDEPENDENT CONTRACTOR. SO, WE DIDN'T
20 TRY TO OBTAIN -- SHE WAS AN INDEPENDENT CONTRACTOR.

21 Q. SO, NOW -- SO, NOW, YOU WANT TO PUT HER INTO THIS
22 AGREEMENT?

23 A. IF -- WE DON'T WANT TO. MR. SAMUELS WANTS TO. IF
24 THE COMMISSION FINDS THAT SHE IS AN EMPLOYEE AS A
25 MATTER OF LAW, THEN WE THINK YOU HAVE A

1 RESPONSIBILITY TO STEP IN UNDER OUR INSURANCE
2 PROGRAM AND COVER HER AS AN EMPLOYEE GOING BACK TO
3 DAY ONE. IF SHE WAS AN EMPLOYEE ON DAY ONE, SHE
4 WOULD HAVE BEEN INCLUDED IN THIS PROCESS. IF THE
5 LAW TAKES HER BACK TO DAY ONE, THE PROPER PROCEDURE
6 IN OUR OPINION IS WITH A DIRECT POLICY LIKE
7 GUARANTEE, WHICH THEY'VE DONE FOR HOWEVER LONG
8 THEY'VE BEEN DOING IT, IS YOU HAVE TO STEP IN AND
9 DEFEND THE CLAIM AND PAY THE CLAIM AND DO AN AUDIT.

10 Q. BUT YOU DON'T HAVE ---

11 A. DO AN AUDIT.

12 Q. BUT YOU DON'T HAVE A DIRECT POLICY, DO YOU?

13 A. I SAID LIKE A DIRECT POLICY OF GUARANTEE, RIGHT.

14 Q. BUT YOU DON'T HAVE ONE?

15 A. WELL, THAT'S FOR HER TO DECIDE.

16 Q. WELL, ---

17 A. WE ARE CO-EMPLOYERS. WE PAID PREMIUM AND GOT
18 CERTIFICATES THAT SAID GUARANTEE WAS COVERING.

19 Q. HOW IS IT THAT YOU THINK WE WERE A CO-EMPLOYER UNDER
20 THIS AGREEMENT WITH MRS. TURNER?

21 A. I THINK YOU WERE A CO-EMPLOYER WITH CONDUSTRIAL,
22 BECAUSE THAT'S WHAT IT SAYS. IF MS. TURNER ---

23 Q. WITH RESPECT TO MRS. TURNER.

24 A. YOU WERE FOUND TO BE CO-EMPLOYER -- WELL, THE
25 CONTRACT SAYS YOU ARE A CO-EMPLOYER WITH

1 CONDUSTRIAL. IF SHE IS FOUND TO ---

2 Q. FOR WHO?

3 BY MR. GOODWYN:

4 CAN HE FINISH HIS ANSWER?

5 BY THE WITNESS:

6 YEAH.

7 BY MR. GOODWYN:

8 I THINK HE'S GETTING TO THAT.

9 BY COMMISSIONER JAMES:

10 YES, LET HIM FINISH.

11 BY MR. ALFORD:

12 YES, SIR -- YES, MA'AM.

13 THE WITNESS RESUMES ANSWER:

14 A. I GUESS WHAT I WAS TRYING TO SAY IS THIS CONTRACT
15 SAYS THAT THERE IS A RELATIONSHIP BETWEEN
16 COUNTRYWIDE AND CONDUSTRIAL FOR TO PROVIDE INSURANCE
17 FOR ITS EMPLOYEES AND OTHER THINGS. IF MS. TURNER
18 IS FOUND TO BE AN EMPLOYEE, WE THINK SHE IS COVERED
19 UNDER THIS AGREEMENT, BECAUSE SHE IS FOUND AS A
20 MATTER OF LAW TO GO BACK IN TIME TO THE BEGINNING,
21 AND SHE'S AN EMPLOYEE, WHICH MEANS SHE WOULD HAVE
22 BEEN COVERED UNDER THIS AGREEMENT, AND THE PROPER
23 REMEDY AND THE EFFICIENT REMEDY AND THE POLICY
24 REMEDY IS TO ASSESS AN AUDIT PREMIUM AGAINST US FOR
25 THAT PAYROLL.

CROSS EXAMINATION RESUMED BY MR. ALFORD:

Q. BUT DOESN'T THAT READ OUT PARAGRAPH SIX OF THIS CONTRACT?

A. I DON'T AGREE WITH THAT.

Q. WHAT IF I TOLD YOU THAT COUNTRYWIDE WOULD NOT ALLOW PRISON STAFFING TO BE -- WHAT IF WE THOUGHT THAT WAS TOO DANGEROUS?

A. WELL, AGAIN, MY TESTIMONY IS AND OTHERS IS GOING TO BE THAT WE TOLD THEM ABOUT THAT, AND TO MR. HANSON, AND IT -- WHATEVER HAPPENED FROM THERE, OBVIOUSLY, THEY DIDN'T COME BACK AND SAY -- AND SPECIFICALLY "NO PRISONS FOR YOU," OKAY.

Q. WELL, BUT THEY SAID IF YOU WANT PRISONS OR OTHER LOCATIONS, YOU GOT TO TELL US ABOUT IT.

A. THAT'S NOT WHAT IT SAYS. IT SAYS ---

Q. WAIT A MINUTE.

A. IT SAYS IF THEY -- TO ME, IT SAYS IF WE TELL YOU NO ON SOMETHING, THEN YOU CAN GO BACK AND DO THAT ON YOUR OWN.

Q. OKAY, NO.

A. RIGHT.

Q. WE SAY NO.

A. OKAY. WELL, NO ONE HAS SAID "NO" YET.

Q. I BELIEVE IN NO UNCERTAIN TERMS, MR. BRYANT TOLD YOU "NO."

1 A. HE SAID WE ARE NOT COVERING MEDUSTRIAL BECAUSE IT'S
2 A SHADOW ENTITY THAT YOU DIDN'T DISCLOSE TO US.
3 NONE OF THAT IS TRUE.

4 Q. YOU NEVER PUT MEDUSTRIAL INTO THIS AGREEMENT.

5 BY MR. GOODWYN:

6 OBJECT TO THE FORM. THAT'S NOT A QUESTION.

7 CROSS EXAMINATION RESUMED BY MR. ALFORD:

8 Q. DID YOU?

9 BY COMMISSIONER JAMES:

10 IT'S CROSS EXAMINATION.

11 BY MR. ALFORD:

12 SORRY.

13 THE WITNESS ANSWERS:

14 A. I THINK WE DID. MEDUSTRIAL IS A SERVICE OF
15 CONDUSTRIAL.

16 CROSS EXAMINATION RESUMED BY MR. ALFORD:

17 Q. BUT YOU AND I HAVE BEEN THROUGH THIS.

18 A. YEAH, WE DON'T AGREE.

19 Q. ASKED AND ANSWERED, BUT -- BUT I'VE GOT TO DO IT
20 AGAIN. THE WORD "MEDUSTRIAL" DOESN'T APPEAR IN THIS
21 DOCUMENT?

22 A. WELL, I THINK IT DOES BECAUSE CONDUSTRIAL INCLUDES
23 MEDUSTRIAL, BUT YOU ARE RIGHT, THE ACTUAL WORD
24 "MEDUSTRIAL" -- I CAN GIVE YOU THIS, ---

25 Q. OKAY.

1 A. --- THE ACTUAL WORD "MEDUSTRIAL" IS NOT IN THIS
2 AGREEMENT.

3 Q. OKAY. AND WOULD YOU AGREE WITH ME THAT THERE IS
4 NOTHING IN THE CODES THAT YOU SUBMITTED AS POTENTIAL
5 COMP CODES TO US THAT TALKS ABOUT A PRISON WORKER AT
6 ALL?

7 A. NO, WE -- WE DID SUPPLY TWO MEDICAL CODES.

8 Q. OKAY. TWO MEDICAL CODES.

9 A. RIGHT.

10 Q. A NURSING HOME?

11 A. RIGHT.

12 BY MR. ALFORD:

13 AND I DON'T EVEN -- WHAT WAS THE OTHER?

14 BY MS. BECKY BARNETTE:

15 A HOSPITAL.

16 CROSS EXAMINATION RESUMED BY MR. ALFORD:

17 Q. AND A HOSPITAL.

18 BY COMMISSIONER JAMES:

19 MA'AM.

20 BY MR. ALFORD:

21 SORRY.

22 BY MS. BECKY BARNETTE:

23 OH, I'M SORRY.

24 BY MR. ALFORD:

25 I MEAN, I COULD HAVE GONE AND LOOKED. I

1 MEAN...

2 CROSS EXAMINATION RESUMED BY MR. ALFORD:

3 Q. WAS IT A HOSPITAL AND A NURSING HOME?

4 A. I WOULD HAVE TO LOOK AT THE -- I CALL IT THE SNOPE'S
5 MANUAL -- THE SNOPE'S MANUAL TO REFRESH MYSELF, BUT
6 IF THAT'S WHAT THEY SAY, THAT'S WHAT THEY SAY,
7 RIGHT.

8 Q. OKAY. YOU WOULD AGREE WITH ME -- I MEAN, YOU'VE
9 BEEN IN THE RISK BUSINESS A LONG TIME, RIGHT?

10 A. BEEN IN THE WHAT?

11 Q. IN THE HUMAN RESOURCES, WORKERS' COMP WORLD FOR A
12 LONG TIME?

13 A. YES.

14 Q. OKAY. I MEAN, YOU'RE -- I MEAN, YOU'RE A
15 KNOWLEDGEABLE GUY?

16 A. PROBABLY.

17 Q. OKAY.

18 A. MAYBE.

19 Q. MORE THAN ME ABOUT THIS STUFF?

20 A. MAYBE NOT.

21 Q. MOST PEOPLE ARE. WOULD YOU AGREE WITH ME THAT
22 WORKING IN A PRISON FILLED WITH DANGEROUS INMATES IS
23 RISKIER FROM A WORKERS' COMP PERSPECTIVE THAN
24 WORKING AT A CONVALESCENCE HOME OR A HOSPITAL?

25 A. IN SOME CASES, YES. IN SOME CASES, NO. I MEAN, IN

1 FACT -- IN MY UNDERSTANDING IN SOME OF THESE
2 PRISONS, THEY ARE SUPPOSED TO BE IN A PILL ROOM WITH
3 FOUR GUARDS, AND THERE'S NOT SUPPOSED TO BE A RISK,
4 AND THE INMATES COME THROUGH THAT ARE -- THAT ARE
5 GUARDED OR PROTECTED OR IN AN ENVIRONMENT WHERE THEY
6 CAN'T DO HARM, AND THEY GET THEIR MEDICINE OR
7 THEY'RE SICK.

8 Q. IS IT YOUR UNDERSTANDING OR IS IT YOUR TESTIMONY ---

9 A. RIGHT.

10 Q. --- THAT YOU BELIEVE THAT IN THE INSURANCE WORLD, IN
11 THE COMP WORLD, THAT PRISON WORKERS AND POLICE
12 OFFICERS ISN'T DEEMED A RISKIER AND A MORE EXPENSIVE
13 RISK TO COVER?

14 A. OKAY, WELL, THE 1099 HEALTHCARE PERSONNEL WERE NOT
15 POLICE OFFICERS, AND THEY WEREN'T PRISON WORKERS.
16 THEY'RE NOT SECURITY GUARDS. I HAVE HEARD IN THE
17 INDUSTRY THAT SOMETIMES N.C.C.I. OR CARRIERS FOR
18 WHATEVER REASON TRY TO CODE THEM AS SECURITY
19 OFFICERS. I THINK THAT'S LUDICROUS.

20 Q. COULD IT BE FOR THE EXACT REASON OF WHAT HAPPENED TO
21 MRS. TURNER? COULD THAT BE WHY?

22 BY MR. GOODWYN:

23 OBJECT TO THE FORM AS TO WHY SOMEBODY FROM
24 N.C.C.I. ---

25 BY THE WITNESS:

1 I DON'T THINK THAT'S WHY.

2 BY MR. GOODWYN:

3 --- MAY CODE SOMETHING IN OTHER WAYS. IT CALLS
4 FOR SPECULATION.

5 BY COMMISSIONER JAMES:

6 SUSTAINED.

7 BY THE WITNESS:

8 I DON'T AGREE THAT THE NURSES SHOULD BE A
9 SECURITY OFFICER. SHE DOESN'T HAVE A GUN OR ANY
10 OTHER -- OR THE JOB ACTIVITIES TO DEFEND AND
11 PROTECT. SHE IS SUPPOSED TO BE ---

12 CROSS EXAMINATION RESUMED BY MR. ALFORD:

13 Q. YET YOU SENT HER THERE?

14 A. WE DIDN'T SEND HER THERE. SHE SIGNED UP FOR A SHIFT
15 TO GO THERE.

16 Q. YOU, YOUR COMPANY, WAS THE NEXUS BETWEEN MRS. TURNER
17 AND THE PRISON?

18 A. IT WASN'T THE NEXUS. THAT SEEMS TO IMPLY A POWER
19 WORD THAT BRINGS EVERYTHING TOGETHER. IT WASN'T A
20 NEXUS. WE WERE A BROKERAGE. THEY SENT US THE
21 SHIFTS. SHE FILLED THE SHIFTS, AND SHE WENT AND DID
22 WHAT S.C.D.C. TOLD HER TO DO.

23 Q. IF SHE HADN'T COME TO YOU, ---

24 A. RIGHT.

25 Q. --- SHE WOULDN'T HAVE BEEN IN THE PRISON?

1 A. THAT'S NOT TRUE EITHER.

2 Q. UNDER YOUR AGREEMENT, SHE WOULDN'T HAVE BEEN AT THE

3 PRISON?

4 A. WELL, I ---

5 Q. SHE MIGHT COULD HAVE GONE FOR SOMEBODY ELSE.

6 A. ARE YOU ASKING ME SOMETHING OR TELLING ME SOMETHING?

7 Q. I'M ASKING.

8 A. ALL RIGHT. I'M NOT SURE WHAT YOU'RE ASKING.

9 Q. WHO TOLD HER ABOUT THE SHIFTS AT THE PRISON?

10 A. I MEAN, OBVIOUSLY, SHE CAME THROUGH OUR BROKERAGE.

11 Q. OKAY. WHO OFFERED HER THE SHIFTS AT THE PRISON?

12 A. WELL, AND THAT DEPENDS WEEK TO WEEK. SOMETIMES THE

13 SCHEDULE SHOWED UP, AND HER NAME WAS ALREADY ON IT.

14 SOMETIMES, SHE ---

15 Q. SIR, THE FIRST TIME -- I'M SORRY. I UNDERSTAND.

16 A. RIGHT.

17 Q. AND LET ME BE A LITTLE MORE CLEAR. SIR, THE FIRST

18 TIME THAT SHE DID A SHIFT AT THE PRISON, ---

19 A. RIGHT.

20 Q. --- WHO OFFERED IT TO HER?

21 A. WELL, I WOULD SAY S.C.D.C. OFFERED IT TO US, AND WE

22 CALLED HER AMONG OTHER PEOPLE AND SAID "DO YOU WANT

23 THIS SHIFT?"

24 Q. OKAY.

25 A. AND SHE PROBABLY OBVIOUSLY SAID "YES."

1 Q. SO, IT WENT THROUGH YOU?

2 A. IT DID GO THROUGH US AS A BROKERAGE CLEARLY.

3 Q. ALL RIGHT. THAT'S ALL I WAS TRYING TO ASK.

4 A. OKAY.

5 Q. BECAUSE THAT'S THE CONNECTION, RIGHT? IF YOU DON'T
6 LIKE THE WORD NEXUS; THAT'S THE CONNECTION. THAT'S
7 THE JUNCTION POINT.

8 A. OKAY.

9 Q. IS THAT A YES?

10 A. YES.

11 Q. THANK YOU.

12 BY COMMISSIONER JAMES:

13 WHILE YOU ARE LOOKING FOR YOUR OTHER QUESTION,
14 JUST LET ME LET THE PEOPLE IN THE ROOM KNOW THAT
15 WHEN WE WERE HERE LAST TIME THAT AT SOME POINT, AND
16 I CAN'T REMEMBER THE EXACT POINT, THE LIGHTS IN THIS
17 ROOM WILL AUTOMATICALLY GO OUT, AND THERE WILL BE
18 ENOUGH FOR US TO SEE, BUT DO NOT BE ALARMED, AND WE
19 WILL MAKE SURE WE GO AND HIT THE SWITCH AGAIN. JUST
20 TO LET EVERYBODY KNOW.

21 BY MR. ALFORD:

22 YES, MA'AM. CAN I HAVE ONE SECOND, YOUR HONOR?

23 BY COMMISSIONER JAMES:

24 CERTAINLY.

25 CROSS EXAMINATION RESUMED BY MR. ALFORD:

1 Q. SIR, BACK TO THE CONTRACT.
2 A. WHICH ONE?
3 Q. YEAH, YOU'RE RIGHT. THE COUNTRYWIDE.
4 A. OKAY.
5 Q. NOW, ONE OF THE DUTIES THAT YOU ALL HAD, AND I'M
6 UNDER ---
7 A. PARAGRAPH TWO?
8 Q. YES, SIR, TWO-C. SUBMIT TIMELY, COMPLETE, AND
9 ACCURATE PAYROLL INFORMATION (INCLUDING GROSS WAGES
10 EARNED, ANY DEDUCTIONS, TIME WORKED, LEAVE/TIME OFF
11 STATUS, WORKER CLASSIFICATION CODE, AND OVERTIME
12 EXEMPT STATUS) FOR EACH ASSIGNED EMPLOYEE FOR" --
13 I'M SORRY, "FOR EACH APPLICABLE PAYROLL PERIOD AT
14 LEAST THREE BANKING DAYS PRIOR TO THE DATE ON WHICH
15 PAYROLL IS TO BE ISSUED BY C.S.S.G. ALL INFORMATION
16 PROVIDED BY CLIENT TO C.S.S.G. WILL BE COMPLETE,
17 ACCURATE AND NOT MISLEADING. CLIENT IS NOT
18 RESPONSIBLE FOR THE SECURITY AND TRANSMISSION OF
19 INFORMATION PRIOR TO ACTUAL RECEIPT BY C.S.S.G."
20 A. OKAY.
21 Q. DID I READ THAT RIGHT?
22 A. YES.
23 Q. OKAY. TO DATE, HAVE YOU EVER SUBMITTED TO
24 COUNTRYWIDE, AND WHEN I SAY "YOU," I MEAN YOUR
25 COMPANY, ---

1 A. RIGHT.

2 Q. --- NOT YOU PERSONALLY. HAS YOUR COMPANY EVER
3 SUBMITTED TO COUNTRYWIDE THE PAYROLL INFORMATION
4 INCLUDING GROSS WAGES EARNED, DEDUCTIONS, WORK, TIME
5 OFF, LEAVE STATUS, WORKER CLASSIFICATION CODE AND
6 OVERTIME EXEMPT STATUS FOR MRS. TURNER?

7 A. NO.

8 Q. OKAY.

9 A. WELL, EXCEPT FOR -- EXCEPT FOR, I GUESS, WHEN WE
10 FILED THE CLAIM. IN OTHER WORDS, WE DIDN'T SEND IT
11 THROUGH A PAYROLL SYSTEM. IN FILING THE COMP CLAIM,
12 I MEAN, I'M SURE PAYROLL INFORMATION WAS SENT, BUT
13 IT WASN'T THROUGH A SYSTEM WHERE WE EXPECTED
14 PAYMENT.

15 Q. OKAY, BUT YOU NEVER FOLLOWED THE TERMS OF THIS
16 AGREEMENT?

17 A. WELL, WE DID FOLLOW THE TERMS OF THE AGREEMENT. SHE
18 WASN'T AN EMPLOYEE. SO, WE ---

19 Q. BUT IF YOU WANTED TO MAKE HER ONE, YOU'VE NEVER
20 FOLLOWED THE TERMS OF THIS AGREEMENT?

21 A. WE NEVER WANT TO MAKE HER ONE. WE DON'T THINK SHE
22 IS ONE. IF SHE WAS -- IF SHE WAS AN EMPLOYEE, WE
23 WOULD HAVE DONE THAT, BUT WE NEVER THOUGHT SHE WAS
24 AN EMPLOYEE. WE STILL DON'T THINK SHE IS AN
25 EMPLOYEE. SO, WE WOULD NOT HAVE DONE THAT.

1 Q. BUT IF YOUR COMPANY MADE A BUSINESS DECISION TO PUT
2 -- BECAUSE OF YOUR BROKERAGE MODEL ---

3 A. RIGHT.

4 Q. --- TO CREATE A SCENARIO WHERE AN INDEPENDENT
5 CONTRACTOR COULD BE DEEMED AN EMPLOYEE, ISN'T THAT A
6 STRATEGIC OPERATIONAL AND BUSINESS-RELATED DECISION
7 THAT YOU MADE? AND YOU DIDN'T ---

8 A. I DON'T THINK SO. I DON'T THINK -- I THINK IT'S
9 OBVIOUSLY ---

10 Q. DID WE MAKE IT?

11 A. I THINK THE COMMISSION IS GOING TO MAKE IT.

12 Q. NO, NO.

13 A. I MEAN ---

14 Q. I'M SORRY, SIR.

15 A. YEAH.

16 Q. YOU'RE MISUNDERSTANDING MY QUESTION.

17 A. OKAY.

18 Q. I UNDERSTAND WHAT YOU'RE TELLING ME THAT ULTIMATELY
19 THE COMMISSION AND THEN -- BUT I'M ASKING YOU.

20 A. RIGHT.

21 Q. WHO SHOULD BEAR THE BURDEN, AND I THINK THE CONTRACT
22 ANSWERS THIS QUESTION, BUT YOUR COMPANY CREATED A
23 SITUATION, AND I DON'T -- LOOK, I'M NOT OPINING
24 WHETHER SHE WAS AN EMPLOYEE OR AN INDEPENDENT
25 CONTRACTOR. I'M NOT ASKING YOU TO, ALL RIGHT, BUT

1 YOU HAD A SITUATION WHERE BASED ON A BUSINESS
2 DECISION BY YOUR OWNER, YOU ELECTED TO MAINTAIN THE
3 1099 BROKERAGE SYSTEM, CORRECT?

4 A. WE CERTAINLY OPERATED A 1099 -- WHEN WE BOUGHT THE
5 ASSETS AND KEPT IT GOING, WE MADE A DECISION TO
6 OPERATE THE MODEL WITH 1099s.

7 Q. OKAY.

8 A. YES.

9 Q. SO, THAT'S YOUR BUSINESS DECISION?

10 A. YES.

11 Q. OKAY. IS THAT A RISK ANYWHERE IN THIS AGREEMENT
12 THAT COUNTRYWIDE AGREED TO ASSUME?

13 A. I THINK BY OPERATION OF LAW, YES. IN OTHER WORDS,
14 IF SHE WAS AN INDEPENDENT CONTRACTOR, I DON'T -- IF
15 SHE REMAINS AN INDEPENDENT CONTRACTOR, I DON'T THINK
16 SHE IS INVOLVED IN THIS AGREEMENT. IF SHE IS FOUND
17 TO BE AN EMPLOYEE BY OPERATION OF LAW IN THIS CASE,
18 I THINK SHE BECOMES AN EMPLOYEE BACK TO DAY ONE, AND
19 AS I'VE ALREADY EXPLAINED, I THINK SHE IS IMPLICATED
20 IN THIS AGREEMENT, AND THE REMEDY IS TO CONDUCT AN
21 AUDIT.

22 Q. OR -- OR THE REMEDY IS TO GIVE COUNTRYWIDE, WHICH
23 YOU HAVE TAKEN FROM US, THE ABILITY UNDER PARAGRAPH
24 SIX TO REJECT A WORK ENVIRONMENT.

25 A. I DON'T -- I DON'T -- I THINK THAT THIS -- THIS

1 CONTRACT DOESN'T SPEAK TO THIS SITUATION. THERE'S
2 NO WHERE IN THIS CONTRACT THAT IT TALKS ABOUT IF A
3 COURT OF LAW DETERMINES AN EMPLOYEE ---

4 Q. RIGHT.

5 A. RIGHT.

6 Q. SO, IT DOESN'T SPEAK TO THIS SITUATION.

7 A. RIGHT.

8 Q. BECAUSE YOU MADE A BUSINESS DECISION, YOUR COMPANY,
9 NOT YOU PERSONALLY.

10 A. I UNDERSTAND.

11 Q. MADE A BUSINESS DECISION TO OPERATE SOMETHING THAT
12 THIS CONTRACT DOESN'T APPLY TO.

13 A. I AGREE THAT WHEN WE MADE THIS CONTRACT WITH
14 COUNTRYWIDE, WE DID NOT INTEND TO INCLUDE
15 INDEPENDENT CONTRACTORS.

16 Q. OKAY. NOR DID YOU ADVISE US THAT THERE WAS A RISK
17 THAT SOMEONE THAT WAS AN INDEPENDENT CONTRACTOR
18 COULD BE PUT INTO OUR AGREEMENT WITHOUT OUR CONSENT?

19 A. I DON'T -- I DON'T KNOW THAT I AGREE WITH THAT. MY
20 TESTIMONY IS GOING TO BE THAT WE TOLD -- I'M
21 STARTING TO FORGET HIS NAME ---

22 Q. HANSON?

23 A. HANSON, SCOTT HANSON, ABOUT IT AND SAID "BUT THEY'RE
24 INDEPENDENT CONTRACTORS. SO, THEY'RE NOT PART OF
25 THIS."

1 Q. OKAY. BUT HOWEVER THAT WENT, THAT WAS YOUR
2 ELECTION?

3 A. WELL, IF HE WAS WORRIED ABOUT IT, WHY DIDN'T HE COME
4 BACK AND SAY "WE'VE GOT TO ACCOUNT FOR THAT IN THE
5 CONTRACT"? IN OTHER WORDS, IF YOU'RE SAYING --
6 YOU'RE SAYING YOU DIDN'T INFORM HIM OF A RISK THAT
7 MIGHT HAPPEN. I MEAN, I DON'T KNOW IF WE ARE MUCH
8 SMARTER THAN SCOTT HANSON.

9 Q. WHY WOULD HE ---

10 A. WHY DIDN'T HE APPRECIATE IT AS WELL.

11 Q. YOU HAD THE OPPORTUNITY, SIR, TO PUT -- TO BRING
12 EMPLOYEES TO US, RIGHT?

13 A. EMPLOYEES, YES.

14 Q. OKAY. AND WE'VE GOT THIS SYSTEM WHERE WE WILL COVER
15 EMPLOYEES.

16 A. CORRECT.

17 Q. BUT WE HAVE A RIGHT OF PRIOR APPROVAL. YOU CAN'T
18 JUST GIVE US ANYBODY.

19 A. THE CONTRACT DOES SAY THAT, YES.

20 Q. OKAY. AND UNDER YOUR THEORY NOW, WE DON'T HAVE --
21 WE DON'T HAVE THAT RIGHT ANYMORE BECAUSE OF THE WAY
22 YOU OPERATED YOUR 1099 MODEL?

23 A. I DON'T AGREE WITH THAT ASSESSMENT. I THINK IF THE
24 COMMISSION DETERMINES THAT SHE IS AN EMPLOYEE AS A
25 MATTER OF LAW, I THINK THAT SHE IS INVOLVED IN ONE

1 OF THE MEDICAL CODES IN A TYPE OF RISK THAT
2 COUNTRYWIDE IS ALREADY AWARE OF, A SIMILAR RISK, AND
3 THAT IF SHE IS FOUND TO BE AN EMPLOYEE AS A MATTER
4 OF LAW, THAT THIS CONTRACT IS IMPLICATED, AND THAT
5 THE CLAIM NEEDS TO BE DEFENDED AND PAID BY
6 GUARANTEE, AND THAT AN AUDIT NEEDS TO BE RENDERED
7 AGAINST US. THAT'S MY OPINION. MAYBE I'M WRONG.

8 Q. OKAY. AND ---

9 A. MAYBE NOT.

10 Q. --- RESPECTFULLY, THAT -- THIS CONTRACT IS OVER,
11 RIGHT?

12 A. YES.

13 Q. TERMINATED, DONE?

14 A. RIGHT.

15 Q. OKAY.

16 A. BUT IT WAS IN EFFECT ON SEPTEMBER 5 OF 2015.

17 Q. OKAY. AND I GO BACK AND ASK YOU, AT ANY TIME OTHER
18 THAN SUBMITTING A CLAIM FOR SOMEONE THAT YOU
19 YOURSELF ---

20 A. RIGHT.

21 Q. --- AND YOUR PRESIDENT SAY ISN'T PART OF THIS
22 AGREEMENT, HAVE YOU EVER TRIED TO SEE IF COUNTRYWIDE
23 WOULD APPROVE THAT TYPE OF OPERATION?

24 A. I DON'T -- IN OTHER WORDS, I'M NOT -- I WASN'T PRIVY
25 TO EVERY CONVERSATION, AND OBVIOUSLY OUR

1 ADMINISTRATIVE PEOPLE TALKED TO THEIR ADMINISTRATIVE
2 PEOPLE. SO, I CAN'T SIT HERE AND TELL YOU I KNOW
3 EVERYTHING THAT WAS SAID BETWEEN THE TWO ENTITIES.
4 I KNOW THE CONVERSATIONS I'VE HAD, AND I'VE TRIED TO
5 TESTIFY ABOUT THOSE.

6 Q. ALL RIGHT. SIR, WOULD YOU MIND GOING BACK TO THE
7 KEENAN SUGGS DOCUMENTS.

8 A. OKAY.

9 Q. ALL RIGHT. IS THAT TRIAL EXHIBIT THREE?

10 A. YES.

11 Q. THANK YOU. ALL RIGHT. SO, AFTER ALL OF THIS
12 HAPPENS, ---

13 A. RIGHT.

14 Q. --- YOU BEGIN TO COMMUNICATE WITH JO ANN WHITAKER;
15 IS THAT RIGHT?

16 A. YES.

17 Q. OKAY. AND YOU'RE ASKING JO ANN TO TRY TO FIND A WAY
18 TO COVER THIS TYPE OF 1099 BROKERAGE, AND I'M
19 PARAPHRASING IN THE INTEREST OF TIME.

20 A. RIGHT.

21 Q. YOU BEGIN TO COMMUNICATE WITH HER ABOUT A
22 METHODOLOGY TO TRY TO COVER THESE 1099 PEOPLE?

23 A. TO MAKE SURE BECAUSE WHEN THIS HAPPENED AND BASED ON
24 COUNTRYWIDE AND GUARANTEE'S RESPONSE, WHICH WE ARE
25 LIKE "HOLY CRAP, THEY'RE GOING TO SAY THAT THEY

1 DON'T OWE US A DEFENSE."

2 (MR. STEPHEN LUNSFORD EXITS THE HEARING ROOM)

3 BY MS. FARTHING:

4 THAT WAS GENERAL COUNSEL FOR THE DEPARTMENT OF
5 CORRECTIONS.

6 BY COMMISSIONER JAMES:

7 OKAY. I JUST WANTED TO MAKE SURE I DIDN'T LOSE
8 ANY ATTORNEY.

9 BY MS. FARTHING:

10 YOU DID, BUT NOT ONE THAT IS A PARTY OF RECORD.

11 CROSS EXAMINATION RESUMED BY MR. ALFORD:

12 Q. AND YOU ARE SAYING ---

13 A. THEY'RE GOING -- AT THAT POINT, WE SAID "WE THINK
14 THEY'RE GOING TO TRY TO PUT ALL OF THIS ON US. IS
15 THERE ANYTHING WE CAN DO?"

16 Q. OKAY.

17 A. AND DO WE NEED TO START TALKING ABOUT SOMETHING THAT
18 WON'T LET -- THAT MAYBE WILL HOPEFULLY PREVENT THIS
19 IN THE FUTURE.

20 Q. OKAY.

21 A. I WOULDN'T HAVE REPORTED THE CLAIM -- ANOTHER WAY TO
22 SAY THIS, ANSWER THIS IS I WOULDN'T HAVE REPORTED
23 THE CLAIM TO COUNTRYWIDE AND GUARANTEE IF I DIDN'T
24 THINK THAT THEY HAD SOME DUTY TO DEFEND THE
25 JURISDICTIONAL ISSUE THROUGH OUR AGREEMENT. I

1 REPORTED IT WITH THE ANTICIPATION THAT THAT WAS
2 GOING TO WORK. WHEN THE RESPONSE WAS, "NO, WE'RE
3 NOT GOING TO DO IT. YOU RAN A SHADOW COMPANY," I
4 THINK I DID ONE OF THE THINGS I'M SUPPOSED TO DO TO
5 PROTECT MY COMPANY, WHICH IS "IS THIS A LOOPHOLE; IS
6 THIS A GAP? THERE SHOULDN'T BE A GAP, BUT THEY'RE
7 SAYING THERE IS A GAP. IS THERE SOMETHING WE NEED
8 TO DO?"

9 Q. ALL RIGHT. LET'S TALK ABOUT WHAT -- WHAT SHE TOLD
10 YOU.

11 A. OKAY.

12 Q. BECAUSE SHE IS THE PERSON THAT YOU -- BECAUSE
13 PRESUMABLY IF YOU WOULD HAVE BROUGHT THIS RISK TO
14 COUNTRYWIDE, RIGHT, AND SAID "HEY, I NEED TO GET
15 THESE PEOPLE COVERED," WE WOULD HAVE HAD THE
16 OPPORTUNITY TO THEN TAKE IT TO G.I.C., RIGHT?

17 A. IF THEY WERE EMPLOYEES.

18 Q. IF YOU TRIED TO PUT THEM INTO OUR AGREEMENT?

19 A. RIGHT, IF THEY WERE EMPLOYEES.

20 Q. IF YOU WANTED TO PUT PEOPLE IN OUR AGREEMENT, THE --
21 -

22 A. WE WOULDN'T TRY TO PUT 1099s. YOU'RE SAYING IF WE -
23 - YOU'RE SAYING IF THESE FOLKS WERE EMPLOYEES OR?

24 Q. IF THEY WERE -- YEAH, I MEAN, IN OTHER WORDS, IF YOU
25 SET UP A SCENARIO WHERE SOMEONE CAN BECOME AN

1 EMPLOYEE BY OPERATION OF LAW, ---

2 A. RIGHT.

3 Q. --- OKAY, WHAT DID SHE TELL YOU ABOUT THE ABILITY TO
4 GET COVERAGE FOR YOUR 1099 -- WORKERS' COMP COVERAGE
5 FOR YOUR 1099 BROKERAGE PEOPLE?

6 A. I DON'T -- ARE YOU TALKING ABOUT A SPECIFIC EMAIL
7 HERE?

8 Q. WELL, I'LL TELL YOU WHAT. LET'S LOOK AT PAGE NINE
9 AT KEENAN SUGGS 17.

10 A. OKAY.

11 Q. AND SHE SENDS YOU AN EMAIL AT 2:48.

12 A. WHAT DATE?

13 Q. 10 JUNE.

14 BY COMMISSIONER JAMES:

15 WHAT PAGE IS THAT?

16 BY MS. GLOVER:

17 PAGE 17, COMMISSIONER.

18 BY COMMISSIONER JAMES:

19 THANK YOU.

20 THE WITNESS ANSWERS:

21 A. YEAH, SHE -- OKAY, SHE SAYS -- LET'S -- JUNE 24.

22 THEY'RE SOMEWHAT OUT OF ORDER, I THINK. I WOULD
23 LIKE TO SEE WHAT --

24 CROSS EXAMINATION RESUMED BY MR. ALFORD:

25 Q. OKAY, I'LL TELL YOU WHAT, LET'S DO IT THIS WAY: I

1 THINK I CAN PARSE THIS DOWN A LITTLE BIT.

2 A. YEAH.

3 Q. WHY DON'T YOU LOOK AT PAGE -- WELL, KEENAN AND SUGGS
4 24.

5 A. OKAY.

6 Q. AND SHE ON JUNE 24TH, ---

7 A. RIGHT.

8 Q. --- SENT YOU AN EMAIL?

9 A. OKAY. YES. YOU'RE TALKING ABOUT FRIDAY, JUNE 24TH
10 AT 12:02?

11 Q. YES, SIR, I AM.

12 A. "TOM, I THOUGHT I WOULD SHARE THIS ARTICLE WITH YOU
13 THAT I FOUND IN MY RESEARCH. REALLY GOOD RESEARCH."

14 Q. ALL RIGHT. VERY INFORMAL. THEN UNDERNEATH THAT?

15 A. "I SPOKE WITH MY FRIEND WHO WORKS AT BOTH PROPEL AND
16 NOW TRIGEN AND THE WORKERS' COMP SPECIALIST AT
17 WORLDWIDE AT N.C.C.I., AND HERE ARE THE FINDINGS AND
18 ISSUES/THINGS TO CONSIDER," AND I GUESS THESE WERE
19 HER SUGGESTIONS AT THE TIME.

20 Q. OKAY.

21 A. "IF YOU ADD TO P.E.O., YOU WILL HAVE TO ADD PAYROLL
22 AND PAY FOR IT. A P.E.O. WILL PROBABLY RESIST SINCE
23 THE "INDEPENDENT CONTRACTORS" CAN ALSO WORK FOR
24 OTHERS AND COULD CLOUD WHEN AND WHERE THEY WERE
25 HURT," WHICH IS ONE OF THE MAIN REASONS WE WANT THEM

1 TO BE INDEPENDENT CONTRACTORS.

2 Q. LET'S JUST KEEP READING, AND THEN WE CAN ---

3 A. RIGHT.

4 Q. --- TALK ABOUT THEM.

5 A. OKAY, YOU'RE RIGHT. "IF YOU DO AN ASSIGNED RISK
6 POLICY, YOU WILL NEED TO REPORT ALL PAYROLL (COST
7 RESTRICTIVE AS RATES ARE HIGHER THAN P.E.O.) YOU
8 YOU ARE NOT ELIGIBLE TO DO A GHOST ONLY POLICY WITH
9 N.C.C.I. IF CONTRACT SAYS YOU WILL PROVIDE WORKERS'
10 COMP FOR ALL EMPLOYEES, EVEN IF THE INDEPENDENT
11 PURCHASE THEIR OWN, DOES THAT ACTUALLY SATISFY YOUR
12 CONTRACTUAL REQUIREMENT? NO CLUE HOW ANY OF THIS
13 MIGHT AFFECT YOU FROM A TAX PERSPECTIVE (SEE
14 RESEARCH PAPER FOR SOME IDEAS) OR HOW THE S.C. LABOR
15 BOARD WOULD RESPOND TO YOUR SITUATION."

16 Q. OKAY. "FROM THE CONVERSATION..."?

17 A. RIGHT. "FROM THE CONVERSATION WITH N.C.C.I., IF THE
18 NURSES ARE UNINSURED, THEY WOULD BE CONSIDERED
19 EMPLOYEES FOR WORKERS' COMP. YOU CAN OBTAIN AN
20 ASSIGNED RISK POLICY OUTSIDE YOUR P.E.O. ARRANGEMENT
21 BY APPLYING FOR COVERAGE WITH A COPY OF THE LEASING
22 CONTRACT WITH THE NURSES, THE LEASING APPLICATION,
23 AND IT WILL BE BASED ON THEIR PAYROLL. YOU CAN ALSO
24 REQUIRE THE NURSES TO PROVIDE THEIR OWN WORKERS'
25 COMP, AND THEY CAN PURCHASE INDIVIDUAL GHOST

1 POLICIES AND PROVIDE YOU THE CERTIFICATES. YOU NEED
2 TO DETERMINE IF THAT WILL SATISFY YOUR CONTRACT
3 WORDING WITH THE STATE. THIS IS NOT AN INEXPENSIVE,
4 SIMPLE ANSWER IN YOUR SITUATION. UNFORTUNATELY, THE
5 BOTTOM LINE LOOKS LIKE FIVE OPTIONS," AND SHE LISTS
6 THOSE.

7 Q. ALL RIGHT.

8 A. "ATTEMPT TO AMEND CONTRACTS TO ADDRESS 1099 STATUS.
9 DISCUSS WITH P.E.O. AND SEE IF THEY WILL WORK
10 SOMETHING OUT WITH YOU; HAVE NURSES PURCHASE AND
11 PROVIDE PROOF OF WORKERS' COMP COVERAGE (YOU WILL
12 NEED TO DECIDE IF GHOST OR REAL MEETS YOUR
13 CONTRACTUAL ARRANGEMENT WITH STATE AND INDIVIDUAL
14 CONTRACTS). OBTAIN ASSIGNED RISK POLICY BASED ON
15 ACTUAL PAYROLL OF YOUR 1099s, WALK AWAY."

16 Q. ALL RIGHT.

17 A. THAT WAS HER -- YEAH.

18 Q. SO, IT'S HARD TO DO IS HER ASSESSMENT?

19 A. SAID IT WAS HARD TO DO.

20 Q. IT'S EXPENSIVE?

21 A. COULD BE, YES.

22 Q. THAT'S WHY YOU DIDN'T DO IT, ISN'T IT?

23 A. NO. WE'VE DONE IT NOW.

24 Q. HAVE YOU?

25 A. YEAH, THAT WAS THE CERTIFICATE THAT ERIN SENT -- I'M

1 SORRY, I DON'T REMEMBER THIS, THE CERTIFICATE THAT
2 WAS ISSUED TO THE SOUTH CAROLINA DEPARTMENT OF
3 CORRECTIONS, PRODUCER ARTHUS J. GALLAGHER. WHAT'S
4 THE DATE? POLICY DATE IS 7/22/2017 THROUGH
5 7/22/2017, ASSIGNED RISK POLICY.

6 Q. ALL RIGHT. AND THEN PAGE 23. IT ACTUALLY STARTS ON
7 22, I THINK. JO ANN WHITAKER SENDS YOU ALL AN EMAIL
8 AT 2:20 -- I'M SORRY, 3:23 P.M. ON 24 JUNE. WHAT
9 DOES SHE TELL YOU?

10 A. ARE YOU TALKING ABOUT WHEN I GOT OFF THE PHONE?

11 Q. YES, SIR.

12 A. "I JUST GOT OFF THE PHONE WITH THE GUY WHO HEADS UP
13 THE SPECIALTY WORKERS' COMP MARKETPLACE THAT I USE."
14 I DON'T KNOW WHO THAT IS. "THEY CANNOT DO A GHOST
15 POLICY FOR YOU EITHER." THAT'S WHAT SHE WAS TELLING
16 ME, BECAUSE AT ONE POINT MANY YEARS AGO, I KNEW A
17 LOT OF SMALLER BUSINESSES AND APPARENTLY IF YOU ARE
18 A SMALLER BUSINESS, YOU CAN STILL GET A GHOST
19 POLICY, AND SO, I STARTED ASKING ABOUT THAT. SHE
20 SAID THEY DON'T -- IN OTHER WORDS, THE CARRIERS KIND
21 OF FROWN ON THAT. GHOST POLICIES ARE BECOMING A
22 THING OF THE PAST.

23 Q. YES, SIR. CAN WE JUST READ IT, AND THEN I'LL TAKE
24 ANY COMMENTS YOU'VE GOT.

25 A. ALL RIGHT.

1 Q. THANK YOU.

2 A. ALL RIGHT. "THEY CAN'T DO A GHOST POLICY FOR YOU
3 EITHER. THEY WOULD REQUIRE YOU TO REPORT ANY PAY ON
4 THE UNINSURED WORKERS PAYROLL. THEY HAVE A \$5000
5 MINIMUM PREMIUM FOR THE INDEPENDENT CONTRACTORS.
6 SO, IF YOU GO THAT ROUTE, IT WOULD BE BETTER OFF IN
7 ASSIGNED RISK. THEY TOO SAY THE FOLLOWING:
8 RENEGOTIATE THE CONTRACT AND POSSIBLY HAVE
9 INDEPENDENTS PROVIDE PROOF OF INSURANCE (THEY CAN
10 BUY GHOST THROUGH ASSIGNED RISK)" OR, I MEAN, THIS
11 IS BASICALLY WHAT SHE SAID BEFORE, "OR RESTRUCTURE
12 THE WAY YOU ARE HANDLING INDEPENDENTS AND HAVE THEM
13 AS EMPLOYEES. THEY FURTHER SAY THAT YOU CAN TRY TO
14 NEGOTIATE WITH THE P.E.O." DO YOU WANT ME TO READ
15 MORE?

16 Q. YEAH.

17 A. OKAY. "TO REPORT THE PAYROLL, AND YOU WILL NEED TO
18 HAVE CLEAR EVIDENCE THAT THEY WOULD NOT LATER
19 EXCLUDE DUE TO INDEPENDENT STATUS. YOU MAY WANT TO
20 DISCUSS HYPOTHETICALLY WITH YOUR P.E.O. WORKERS'
21 COMP MARKETS, THE ASSIGNED RISK, NOR THE P.E.O. WANT
22 TO STICK THEIR NECK OUT FOR A LARGE POTENTIAL
23 EXPOSURE FOR WHICH THEY RECEIVE TWELVE-FIFTY. I
24 HAVEN'T EVEN GOTTEN INTO THE CLASS CODE AND THE
25 LOCATION OF THEIR WORK. I HAVE EXHAUSTED ALL

1 AVENUES OF THOUGHT THAT I HAVE AND RESEARCHED TO THE
2 SAME ANSWER. ALL AGREE THAT AS UNINSURED
3 INDEPENDENT CONTRACTORS, ANY WORKERS COMP POLICY IN
4 YOUR NAME OR IN P.E.O. WILL REQUIRE YOU TO INSURE
5 THEM AS EMPLOYEES. N.C.C.I. STATED THEY CONSIDER
6 THEM DIRECT EMPLOYEES WHEN THEY ARE UNINSURED
7 ELSEWHERE. IF YOU WANT US TO OBTAIN ASSIGNED RISK
8 PRICING FOR YOU, GIVE ME A PAYROLL FIGURE, AND I CAN
9 PULL A RATE. IF YOU WANT TO TAKE IT FURTHER, I WILL
10 NEED A COPY OF THE LEASING CONTRACT AND LEASING
11 APPLICATION. I AM HEADED OUT EARLY THIS AFTERNOON,
12 SO CALL ME MONDAY IF YOU WANT TO DISCUSS FURTHER."

13 Q. ALL RIGHT. SO, I GUESS IN SUMMARY ---

14 BY COMMISSIONER JAMES:

15 WHAT PAGE IS THAT?

16 BY MS. RICHARDSON:

17 TWENTY-THREE. .

18 BY MR. ALFORD:

19 TWENTY-THREE.

20 BY COMMISSIONER JAMES:

21 TWENTY-THREE, THANK YOU.

22 CROSS EXAMINATION RESUMED BY MR. ALFORD:

23 Q. IT'S NOT AN EASY RISK TO PLACE, IS IT?

24 A. I GUESS NOT.

25 Q. AND ADDED TO IT THAT IT'S A PRISON.

1 A. I DON'T -- LIKE I SAID, WHEN YOU SAY THAT, I
2 UNDERSTAND WHAT YOU'RE SAYING, BUT WE INSURE WELDERS
3 AND SCAFFOLD FOLKS THAT ARE MUCH RISKIER CODES, AND
4 WE HAVE THAT COVERAGE. SO, I DON'T -- I GUESS FROM
5 THE THEORY OF RELATIVITY, I DON'T SEE HOW NURSES
6 THAT ARE SUPPOSED TO BE IN A CONTROLLED GUARDED
7 ENVIRONMENT OFFERS MORE RISK THAN THAT.

8 Q. ALL RIGHT, SIR.

9 A. THAT'S MY OPINION. THAT'S WHAT I'M SAYING.

10 Q. I APPRECIATE YOUR TIME. I'M SORRY IF I'VE BEEN A
11 LITTLE TESTY WITH YOU, BUT FINAL QUESTION. YOU
12 NEVER PUT THEM IN -- YOU NEVER PUT THESE PEOPLE IN
13 THIS AGREEMENT, DID YOU?

14 A. IN WHAT?

15 Q. YOU NEVER PUT THE 1099 BROKERAGE PEOPLE INTO THE
16 COUNTRYWIDE AGREEMENT?

17 BY MR. GOODWYN:

18 OBJECTION, YOUR HONOR, ASKED AND ANSWERED,
19 LIKE, A DOZEN TIMES. HE'S GONE THROUGH THIS SAME
20 LINE.

21 BY MR. ALFORD:

22 I THINK MEDUSTRIAL IS PART ---

23 BY COMMISSIONER JAMES:

24 SUSTAINED.

25 BY MR. ALFORD:

1 --- OF CONDUSTRIAL. THE WORK -- SORRY,
2 COMMISSIONER.

3 BY COMMISSIONER JAMES:

4 ALL RIGHT. I BELIEVE THAT IT HAS BEEN ASKED.
5 IT MAY HAVE BEEN ASKED BY ANOTHER INDIVIDUAL. IT
6 MAY HAVE BEEN ASKED BY MR. ALFORD, ---

7 BY MR. ALFORD:

8 OH, I'VE ASKED IT.

9 BY COMMISSIONER JAMES:

10 --- BUT AT THIS POINT IN TIME, AND I BELIEVE
11 THAT IT HAS ALSO BEEN ANSWERED, BUT, YOU KNOW, I
12 DON'T WANT TO CUT ANYBODY SHORT OF THE POSSIBILITY
13 THAT IT ISN'T.

14 BY MR. ALFORD:

15 I UNDERSTAND. THANK YOU, SIR.

16 BY THE WITNESS:

17 THANK YOU.

18 BY COMMISSIONER JAMES:

19 ALL RIGHT.

20 BY THE WITNESS:

21 MAY I RUN TO THE RESTROOM VERY QUICKLY?

22 BY COMMISSIONER JAMES:

23 YES, SIR.

24 (OFF THE RECORD)

25 BY COMMISSIONER JAMES:

1 ALL RIGHT, MS. RICHARDSON, WHEN YOU'RE READY.

2 CROSS EXAMINATION BY MS. RICHARDSON:

3 Q. HELLO, MR. SEARS, I KNOW IT'S GETTING LATE.

4 A. THAT'S OKAY.

5 Q. BUT I GUESS WE WILL ALL FEEL MUCH BETTER TOMORROW TO
6 HAVE THIS BEHIND US.

7 A. YES, MA'AM.

8 Q. I'VE ALREADY INTRODUCED MYSELF TO YOU INFORMALLY,
9 BUT MY NAME IS BETH RICHARDSON, AND I REPRESENT
10 GUARANTEE INSURANCE COMPANY.

11 A. OKAY.

12 Q. AND I'LL BE ADDRESSING THE COVERAGE ASPECT OF THIS
13 MATTER.

14 A. VERY GOOD.

15 Q. I SAW YOU EARLIER AT LUNCH, AND YOU WERE EATING WITH
16 YOUR ATTORNEY AND SOME OTHER INDIVIDUALS. WHO WERE
17 YOU EATING WITH?

18 A. I WAS EATING WITH MR. GOODWYN, WHO IS RIGHT THERE,
19 AND THEN TONY DURHAM WHO IS OUR OWNER AND JO ANN
20 WHITAKER WHO IS DOWN HERE TO TESTIFY.

21 Q. AND WHO IS JO ANN WHITAKER?

22 A. SHE IS ONE OF OUR AGENTS. SHE USED TO WORK WITH
23 KEENAN SUGGS. SHE IS NOT WITH THEM NOW, BUT IN, I
24 GUESS AT PROBABLY AT MOST TIMES RELEVANT TO THIS
25 CASE, SHE WAS ONE OF THE PEOPLE THAT WORKED WITH US

1 AT KEENAN SUGGS.

2 Q. OKAY.

3 A. SHE WASN'T THE AGENT, BUT SHE WAS KIND OF THE RIGHT-
4 HAND PERSON. I DON'T REMEMBER HER TITLE.

5 Q. OKAY. SO, IS SHE A BROKER? DOES SHE ---

6 A. I DON'T THINK SHE'S THE BROKER. LIKE I SAY, SHE'S -
7 - LIKE ALBERT HYNDSHAW THAT YOU'VE HEARD US TALK
8 ABOUT WAS THE AGENT, AND LIKE I SAID THE BEST WAY I
9 CAN DESCRIBE IT, AND IT'S BEEN A LONG DAY, JO ANN IS
10 KIND OF LIKE THE RIGHT-HAND PERSON. I MEAN, SHE IS
11 WITH THE INSURANCE COMPANY. I DON'T -- I DON'T
12 THINK SHE'S A BROKER.

13 Q. DOES SHE HAVE -- YOU DON'T KNOW WHAT HER TITLE IS
14 WITH KEENAN AND SUGGS?

15 A. I DON'T KNOW, RIGHT.

16 Q. OKAY. AND WHEN DID SHE BECOME YOUR AGENT?

17 A. I THINK SHE -- I THINK SHE HAD BEEN WORKING WITH MR.
18 DURHAM, AND, YOU KNOW, OBVIOUSLY, THEY CAN CONFIRM
19 THE OUTER LIMITS, BUT WHEN I ARRIVED THERE IN 2009,
20 SHE WAS WORKING WITH MR. DURHAM. I GUESS AT THAT
21 POINT, IT MIGHT HAVE BEEN SULLIVAN INSURANCE GROUP,
22 AND THEN -- SO, SHE AS WORKING WITH JOE SULLIVAN AND
23 ALBERT HYNDSHAW AND JO ANN WITH THEM, AND THEY WERE
24 SUBSEQUENTLY PURCHASED A FEW YEARS LATER BY KEENAN
25 SUGGS, AND THOSE PEOPLE CONTINUED TO REPRESENT US,

1 AND THEN I GUESS WITHIN THE LAST YEAR OR TWO, THAT
2 AGENCY WAS ACQUIRED BY HUB, AND BUT I THINK, JO ANN
3 HAS ACTUALLY BEEN GONE FROM THAT GROUP FOR A LITTLE
4 BIT LONGER THAN A YEAR.

5 Q. DO YOU KNOW WHY SHE LEFT?

6 A. NO, I DON'T.

7 Q. AND SO, SHE HAS ALWAYS BEEN THE AGENT OR
8 REPRESENTING THE INTERESTS OF CONDUSTRIAL; IS THAT
9 CORRECT?

10 A. I THINK SHE -- I THINK SHE'S BEEN INVOLVED WITH OUR
11 GENERAL LIABILITY, PROFESSIONAL LIABILITY THAT KIND
12 OF THING I THINK -- AND MAYBE HAS PROVIDED SOME
13 ADVICE ON WORKERS' COMP AND VARIOUS INSURANCE ISSUES
14 AT LEAST SINCE I'VE BEEN THERE SINCE 2009 MAYBE EVEN
15 GOING BACK A LITTLE BIT BEFORE.

16 Q. SO, IF SHE -- YOU SAID SHE HAS ALWAYS BEEN INVOLVED
17 IN THE GENERAL LIABILITY AND PROFESSIONAL LIABILITY,
18 ---

19 A. RIGHT.

20 Q. --- BUT YOU THINK SHE MAY HAVE BEEN INVOLVED IN THE
21 WORKERS' COMPENSATION ASPECT, OR DO YOU -- OR WHEN
22 DID YOU FIRST EVER INTERACT WITH HER WITH REGARDS TO
23 WORKERS' COMPENSATION?

24 A. I MEAN, I DON'T -- IN OTHER WORDS, WHEN I GOT TO
25 CONDUSTRIAL, WE WERE WITH -- WE WERE WITH A.M.S.

1 STAFF LEASING. WE WERE WITH THEM FOR, I WANT TO
2 SAY, UNTIL 2013. SO, SHE WOULD NOT HAVE -- SHE
3 WOULD NOT HAVE HAD A DIRECT -- OR IN OTHER WORDS,
4 SHE WOULD NOT HAVE HELPED US DIRECTLY WITH WORKERS'
5 COMP AT THAT POINT IN TIME OTHER THAN MAYBE ANSWER
6 QUESTIONS, GENERAL ADVICE, CONSIDERING ALTERNATIVES.
7 OKAY. SO, AFTER THAT, I MEAN, I'M GIVING YOU MY
8 BEST RECOLLECTIONS. I MEAN, I -- I THINK WE TALKED
9 TO THEM. I THINK THEY DID TRY TO HELP US AFTER
10 A.M.S. TO FIND COVERAGE IN 2013, I WANT TO SAY WHEN
11 WE WENT WITH GUARANTEE, I THINK THAT WAS IN 2013.
12 2014 -- NO, THAT WAS -- I THINK THAT WAS MARCH 28TH
13 OF 2014 THROUGH MARCH 28TH, 2015, WHEN WE WERE WITH
14 GUARANTEE. I WANT TO SAY THERE WAS AN AGENT OUT OF
15 GEORGIA THAT HELPED US, WILL ROBINSON -- ROBISON. I
16 THINK HE HELPED US, BUT I THINK THERE WERE GENERAL
17 CONVERSATIONS WITH JO ANN AND ALBERT AND THE FOLKS
18 AT KEENAN SUGGS. I THINK AS I TESTIFIED TO EARLIER,
19 THEY ACTUALLY BROUGHT US COUNTRYWIDE THE FIRST TIME
20 IN SOMETIME 2014, AND THEN LIKE I SAID, SHE JUST --
21 AND THEN SHE'S GIVEN US -- OBVIOUSLY, SHE HAD ALWAYS
22 HELPED PLACE THE GENERAL LIABILITY PROFESSIONAL
23 LIABILITY AUTO, THAT LINE OF COVERAGES. THAT'S WHAT
24 I CAN TELL YOU. YOU CAN ASK ME MORE IF YOU NEED
25 MORE.

1 Q. OKAY. SO, WHEN YOU WERE PROCURING OR LOOKING FOR
2 WORKERS' COMPENSATION INSURANCE FOR YOUR EMPLOYEES,
3 IT NEVER -- YOU DIDN'T ASK YOUR AGENTS TO PROCURE
4 WORKERS' COMPENSATION COVERAGE FOR WORKERS SENT TO
5 STATE PRISONS, DID YOU?

6 A. I DON'T -- ARE YOU SAYING OVER THE ENTIRE CONTINUUM?

7 Q. BEFORE THE DATE OF THE ACCIDENT, HAVE YOU EVER ASKED
8 ANY OF YOUR AGENTS TO PROCURE WORKERS' COMPENSATION
9 INSURANCE FOR ANY WORKERS THAT YOU MIGHT HAVE SENT
10 TO A STATE PRISON WHETHER THEY BE EMPLOYEES OR
11 1099s?

12 A. RIGHT. WELL, IF THEY ARE EMPLOYEES, THEY WOULD HAVE
13 BEEN INCLUDED IN OUR GENERAL REQUEST FOR COMP
14 INSURANCE, WHEREVER THAT MIGHT HAVE BEEN. I CAN'T
15 SAY FOR SURE. I MEAN, THAT'S -- YOU'RE REACHING
16 BACK EIGHT OR NINE YEARS. I DON'T KNOW IF WE HAD
17 TRIED TO -- I DON'T KNOW IF WE HAD TRIED TO PLACE
18 THE 1099 COVERAGE AT ONE POINT WITH LIKE A GHOST
19 POLICY OR NOT. I DON'T RECOLLECT THAT SPECIFICALLY.

20 Q. WELL, YOU NEVER HAVE HAD A WORKERS' COMPENSATION
21 POLICY FOR ANY 1099 OR EMPLOYEE -- BEFORE THE DATE
22 OF THE ACCIDENT, ---

23 A. RIGHT.

24 Q. --- YOU NEVER HAD A WORKERS' COMPENSATION POLICY FOR
25 ANY EMPLOYEE OR 1099 SENT TO A STATE PRISON?

1 A. THAT MAY BE RIGHT. AS I SIT HERE TODAY, I DON'T
2 RECOLLECT.

3 Q. YOU DON'T KNOW OF. YOU CAN'T TELL ME EVERY SINGLE -
4 - YOU CAN'T TELL ME OF A PARTICULAR INSURANCE POLICY
5 THAT COVERED AN EMPLOYEE GOING TO A STATE PRISON
6 FACILITY?

7 A. THAT COVERED AN EMPLOYEE OR AN INDEPENDENT
8 CONTRACTOR OR BOTH?

9 Q. THAT COVERED A 1099 GOING TO A STATE PRISON
10 FACILITY?

11 A. I DON'T -- AS I SIT HERE, I DON'T RECOLLECT THAT,
12 NO.

13 Q. AND THE -- I'M JUST NOT -- TELL ME, WHEN YOU HAVE A
14 1099 -- WHY -- I KNOW YOU INHERITED THIS 1099 MODEL,
15 AND YOU SORT OF RAN WITH IT, BUT, YOU KNOW, YOU'RE A
16 BUSINESS; YOU MUST LOOK AT THE PROFITS AND THE MONEY
17 THAT'S COMING IN THROUGH THAT TO DETERMINE WHETHER
18 OR NOT THAT'S A MODEL THAT YOU SHOULD WALK AWAY FROM
19 OR IS WORTH LETTING, YOU KNOW, KEEP RUNNING ITSELF.
20 SO, DOES THIS 1099 MODEL MAKE MONEY FOR
21 MEDUSTRIAL/CONDUSTRIAL?

22 A. WE'LL SEE AFTER WHAT THE OUTCOME OF THIS CASE IS.

23 Q. OH, BUT BEFORE -- BEFORE YOU KNEW THAT YOU COULD BE
24 IN A POT OF HOT WATER, ---

25 A. RIGHT.

1 Q. --- DID THIS, DID THE MEDUSTRIAL/CONDUSTRIAL MODEL
2 OR THE MEDUSTRIAL MODEL MAKE MONEY?

3 A. I MEAN, I THINK SO. I MEAN, LIKE I SAID, AS GENERAL
4 COUNSEL, I DON'T -- I DON'T REGULARLY PARTICIPATE IN
5 PROFIT AND LOSS CONVERSATIONS. I HAVE A GENERAL
6 SENSE OF HOW WE'RE DOING. IF SOMETHING HAPPENS, I
7 GET PULLED IN. I MEAN, OBVIOUSLY, I THINK -- I
8 THINK IT HAS MADE MONEY OVER THE YEARS. YES, I
9 THINK SO.

10 Q. CERTAINLY, IF YOU DON'T HAVE TO PAY WORKERS'
11 COMPENSATION PREMIUMS FOR A WORKER AND YOU ARE
12 RECEIVING MONEY FOR STAFFING THEM, THAT'S BETTER --
13 YOU MAKE MORE MONEY THAN IF YOU HAVE TO PAY WORKERS'
14 COMPENSATION PREMIUMS FOR THEM; IS THAT CORRECT?

15 A. POTENTIALLY, YES. I MEAN, LIKE I WOULD SAY THAT --
16 LIKE I SAID BEFORE, I DON'T KNOW -- MAYBE IF I KNOW
17 EXACTLY WHERE YOU'RE GOING IS, BUT IF WE WERE
18 LOOKING TO SAVE MONEY BY DOING SOMETHING SHIFTY, WE
19 WOULD HAVE PROBABLY LOOKED AT THE WELDING CODES
20 OTHER THAN A NURSE CODE. SO, I MEAN, THAT'S -- IN
21 OTHER WORDS, THAT WAS ---

22 Q. I DIDN'T SAY ANYTHING ABOUT DOING ANYTHING SHIFTY.

23 A. RIGHT.

24 Q. I'M JUST SAYING ---

25 A. OKAY.

1 Q. --- IF YOU HAVE AN INDEPENDENT CONTRACTORS, ---

2 A. RIGHT.

3 Q. --- AND YOU SEND THEM OUT, YOU'RE NOT PAYING
4 WORKERS' COMPENSATION PREMIUMS ON THEM; IS THAT
5 CORRECT?

6 A. THAT IS CORRECT, YES.

7 Q. OKAY. AND SO, YOU'RE -- SO, PRESUMABLY THEY ARE A
8 LESS COSTLY -- THEY ARE A LESS COSTLY EMPLOYEE TO
9 YOU; IS THAT CORRECT?

10 A. YES, IN GENERAL, I WOULD SAY YES, BUT I WOULD ADD A
11 CAVEAT IN THIS SPECIFIC CASE, MY UNDERSTANDING IS
12 THE CONTRACT WE HAD IN 2008, THAT WE DIDN'T RAISE
13 OUR RATES AT ALL FOR THE LAST EIGHT YEARS. SO..

14 Q. BUT THAT'S -- THAT'S IN YOUR BUSINESS MODEL.

15 A. RIGHT.

16 Q. AS FOR AS FAR AS JUST ---

17 A. CERTAINLY.

18 Q. --- LOOKING AT IT AT A WORKER THAT IS SENT OUT TO
19 SOMEBODY AS A 1099, ---

20 A. RIGHT.

21 Q. --- WHAT YOU CAN RECEIVE, YOU KNOW, DESPITE WHATEVER
22 YOUR ARRANGEMENT IS WITH THE CLIENT THAT YOU ARE
23 STAFFING IS GREATER THAN IF YOU HAD TO PAY THE
24 WORKERS' COMPENSATION RATE ON THEM, THE PREMIUM ON
25 THEM?

- 1 A. I CERTAINLY -- YES, I THINK THAT IS LARGELY TRUE.
- 2 Q. AND SO THIS MODEL IS A MORE PROFITABLE MODEL FOR YOU
- 3 THAN SENDING AN EMPLOYEE TO THE STATE PRISON,
- 4 BECAUSE YOU WOULD HAVE TO PAY WORKERS' COMPENSATION
- 5 PREMIUM ON THE EMPLOYEE, CORRECT?
- 6 A. MAYBE. I MEAN, I'M WONDERING IF -- I GUESS ---
- 7 Q. WELL, YOUR CONTRACT REQUIRES YOU WITH S.C.D.C.
- 8 DEFINITELY REQUIRES YOU -- IF YOU SEND AN EMPLOYEE -
- 9 --
- 10 A. RIGHT.
- 11 Q. --- TO THE STATE PRISON, YOU HAVE TO PAY WORKERS'
- 12 COMPENSATION PREMIUM?
- 13 A. RIGHT, BUT I THINK IF WE HAD TO RENEGOTIATE ALL OF
- 14 THAT, THEN WE WOULD HAVE TO INSIST THEY RAISE THEIR
- 15 RATES, WHICH HAVE NOT BEEN RAISED FOR US SINCE 2008.
- 16 Q. BUT YOU HAVEN'T -- YOU HAVEN'T ASKED TO ENGAGE IN
- 17 THAT CONVERSATION, HAVE YOU?
- 18 A. I THINK MY PERSONNEL HAS ASKED TO ENGAGE IN THAT
- 19 CONVERSATION MANY TIMES.
- 20 Q. AND THEY'VE SAID "NO," CORRECT?
- 21 A. RIGHT. THEY SAID ---
- 22 Q. OKAY. SO, YOU DON'T REALLY HAVE A CHOICE. YOU HAVE
- 23 -- YOU'RE USING THE 1099 MODEL BECAUSE YOU CAN'T
- 24 AFFORD THE EMPLOYEE MODEL; IS THAT CORRECT?
- 25 A. NO, THAT'S NOT ACCURATE. THAT'S NOT WHY WE STARTED

1 IT AT ALL. IT'S NOT A FINANCIAL DECISION. WHEN WE
2 -- LIKE I SAID, WE'VE BEEN RUNNING A CONSTRUCTION
3 STAFFING MODEL WITH EMPLOYEES FOR 15 YEARS.

4 Q. RIGHT.

5 A. OKAY. IN OTHER WORDS, THIS IS NOT -- IN OTHER
6 WORDS, IF WE WERE GOING TO TAKE A CHANCE, THIS AIN'T
7 THE CODE AND THE SITUATION WE TAKE A CHANCE. THE
8 REASON WE -- THAT WE RAN THE BROKERAGE MODEL IS
9 BECAUSE WHEN WE STARTED OUT, WHAT WE LEARNED FROM
10 MS. WALKER THAT WE PURCHASED IT, FROM FROM MS.
11 RATHBURN WHO STAYED AND MANAGED IT, AND FROM THE
12 NURSES THAT WERE THERE, THAT IF YOU WANT TO KEEP
13 THEM, YOU'VE GOT TO LET THEM HAVE THE CHOICE. IF
14 YOU MAKE THEM -- IF YOU PUSH THEM INTO BEING
15 EMPLOYEES, THEY WON'T -- THEY WON'T STAY HERE.
16 THAT'S WHAT THEY WANTED. THAT'S WHAT -- AGAIN, WE
17 WERE TOLD THIS IS WHAT IS WORKING WITH S.C.D.C.
18 THIS IS THE RELATIONSHIP THAT IS WORKING, AND THESE
19 NURSES WANT THAT.

20 Q. OKAY.

21 A. SO, THAT IS WHY WE STAYED.

22 Q. OKAY. SO, YOU KNEW FROM THE BEGINNING THOUGH THAT
23 THE BROKERAGE MODEL IS THE ONE THAT YOU CAN HAVE THE
24 WORKERS TO STAFF, BECAUSE THE NURSES ONLY WANTED TO
25 WORK UNDER THE 1099 -- FROM YOUR UNDERSTANDING, THE

1 WORKERS -- THE NURSES ONLY WANTED TO BE 1099s; IS
2 THAT WHAT YOU'RE SAYING?

3 A. YES.

4 Q. OKAY.

5 A. FROM MY UNDERSTANDING WHEN IT STARTED, THE BROKERAGE
6 MODEL WAS IN PLACE BECAUSE OF MS. WALKER, AND THE
7 NURSING PERSONNEL THAT WERE GOING TO KEEP THAT MODEL
8 GOING WANTED THE CHOICE TO TURN DOWN SHIFTS, TO PICK
9 WHERE THEY WANTED TO WORK, WHICH IS NOT AN EMPLOYEE.
10 SO, THAT'S WHY WE SAID WE'VE GOT TO -- WE PROBABLY
11 NEED TO KEEP IT THAT WAY.

12 Q. AND FROM THE VERY BEGINNING, THIS BROKERAGE MODEL IS
13 STAFFING TO THE SOUTH CAROLINA DEPARTMENT OF
14 CORRECTIONS, RIGHT, PRISON FACILITY?

15 A. I THINK SINCE -- RIGHT, SINCE THE CONTRACT IN 2008,
16 YES.

17 Q. DID YOU EVER LOOK INTO THE RISK INVOLVED IN STAFFING
18 SOMEBODY IN A PRISON FACILITY?

19 A. I DON'T UNDERSTAND WHAT THAT MEANS. WHAT -- I DON'T
20 UNDERSTAND.

21 Q. WELL, WHEN YOU'RE SENDING A 1099 WORKER INTO A
22 PRISON FACILITY, ---

23 A. RIGHT.

24 Q. --- DID YOU EVER LOOK INTO WHAT KIND OF LIABILITY
25 THAT MIGHT HAVE FOR MEDUSTRIAL/CONDUSTRIAL?

- 1 A. I DON'T THINK I WAS EVER ASKED TO LOOK INTO THAT.
- 2 Q. OKAY. BUT YOU ARE THE GENERAL COUNSEL FOR
- 3 MEDUSTRIAL/CONDUSTRIAL?
- 4 A. YES.
- 5 Q. AND YOU ARE RESPONSIBLE FOR ASSESSING THE LIABILITY
- 6 OF YOUR COMPANY, CORRECT?
- 7 A. NOT ALWAYS. I'M THERE TO PERFORM THE DUTIES OF A
- 8 GENERAL COUNSEL. PART OF WHICH MEANS WHEN I'M ASKED
- 9 TO DO THAT, I WILL, BUT AS I EXPLAINED THE FIRST
- 10 SEVERAL YEARS I WAS THERE, I WAS TRYING TO KEEP THE
- 11 COMPANY ALIVE AND OUT OF BANKRUPTCY.
- 12 Q. YEAH.
- 13 A. SO, I WAS NOT ASKED TO ASSESS THAT RISK.
- 14 Q. OKAY. SO, WHO -- WHO TELLS YOU WHAT YOUR DUTIES ARE
- 15 AS GENERAL COUNSEL?
- 16 A. I REPORT TO MR. DURHAM.
- 17 Q. OKAY. AND SO YOU ONLY DO WHAT HE ASKS YOU TO DO?
- 18 YOU NEVER TRY TO SPOT ISSUES FOR HIM OR ---
- 19 A. YES, I ALSO TRY TO ---
- 20 Q. --- TO PROTECT THE COMPANY?
- 21 A. YES, I TRY TO SPOT ISSUES AND PROTECT THE COMPANY,
- 22 YES.
- 23 Q. OKAY. AND IT NEVER OCCURRED TO YOU THAT IT COULD BE
- 24 A BIG RISK THAT MEDUSTRIAL/CONDUSTRIAL IS TAKING BY
- 25 SENDING WORKERS TO A STATE PRISON FACILITY?

1 A. I DON'T -- I WOULDN'T AGREE WITH THAT. I FEEL LIKE
2 YOU ARE TRYING TO IMPUTE SOME FAULT AGAINST ME.

3 Q. WELL, I'M JUST ASKING ---

4 A. I DISAGREE WITH THAT.

5 Q. I'M JUST ASKING YOU A PLAIN QUESTION.

6 A. YEAH.

7 Q. YOU KNEW THAT YOUR COMPANY -- THE COMPANY WAS
8 SENDING 1099 WORKERS TO A STATE PRISON FACILITY, ---

9 A. RIGHT.

10 Q. --- AND I'M ASKING DID IT EVER OCCUR TO YOU THAT
11 THAT IS A RISKY -- RISKY BUSINESS OPERATION?

12 A. WELL, SEE, I DON'T -- I DON'T -- LIKE I SAID, FROM
13 MY PERSPECTIVE, KNOWING THAT I'M SENDING SCAFFOLDING
14 WORKERS AND WELDERS WITH A HOT ARC AND EVERYTHING
15 ELSE, RELATIVELY SPEAKING, SENDING NURSES INTO
16 WHAT'S SUPPOSED TO BE A WELL-GUARDED PRISON
17 FACILITY, RELATIVELY IS NOT THE GREATEST RISK I
18 WOULD FIND. WHEN I WAS -- THE SITUATION --

19 Q. I JUST ---

20 A. GO AHEAD. SORRY.

21 Q. NO, NO PROBLEM. WHAT DO YOU KNOW ABOUT THE SOUTH
22 CAROLINA DEPARTMENT OF CORRECTIONS' SYSTEM?

23 A. I MEAN, THAT'S A -- I MEAN, WE COULD TALK FOR TWO
24 HOURS. CAN YOU ASK A MORE SPECIFIC QUESTION?

25 Q. OKAY. WELL, WHAT DO YOU KNOW SPECIFICALLY ABOUT THE

1 ONE IN WHICH RACHEL TURNER WAS BEING STAFFED, THE
2 KIRKLAND CORRECTIONAL INSTITUTE?

3 A. I MEAN, I DON'T ---

4 Q. DO YOU KNOW IT'S A STATE PRISON FACILITY?

5 A. YES, I WOULD ASSUME SO.

6 Q. DO YOU KNOW THAT IT'S SECURITY LEVEL THREE?

7 A. I DID NOT KNOW THAT.

8 Q. DO YOU KNOW THAT THE KIRKLAND CORRECTIONAL
9 INSTITUTION RECEIVES AND HOUSES THE MOST DANGEROUS
10 CRIMINALS IN THE STATE, THAT THE STATE OF SOUTH
11 CAROLINA CONVICTS?

12 BY MR. GOODWYN:

13 OBJECT TO THE FORM. IMPROPER FOUNDATION. THAT
14 FACT HAS NOT BEEN ESTABLISHED.

15 BY MS. RICHARDSON:

16 OKAY.

17 BY MR. GOODWYN:

18 MAY I SEE WHAT YOU'RE ABOUT TO SHOW HIM?

19 BY MS. RICHARDSON:

20 SURE. IT'S A PRINTOUT FROM THE SOUTH CAROLINA
21 DEPARTMENT OF CORRECTIONS' WEB PAGE.

22 BY MR. GOODWYN:

23 HAS THIS BEEN CERTIFIED?

24 BY MS. RICHARDSON:

25 NO, IT HASN'T BEEN CERTIFIED.

1 BY MR. GOODWYN:

2 I OBJECT TO THIS DOCUMENT BEING USED TO CERTIFY
3 THIS -- ANY FACT THAT SHE IS TRYING ---

4 BY MS. RICHARDSON:

5 YOUR HONOR, THIS ---

6 BY MR. GOODWYN:

7 SHE NEEDS AN EXPERT IN HERE, YOUR HONOR, TO
8 TESTIFY TO THAT.

9 BY MS. RICHARDSON:

10 I DO NOT NEED AN EXPERT TO USE A DOCUMENT
11 PRINTED FROM A PUBLIC -- FROM THE SOUTH CAROLINA
12 DEPARTMENT OF CORRECTIONS WEB PAGE. I THINK YOUR
13 HONOR CAN TAKE JUDICIAL NOTICE THAT THIS IS A
14 DOCUMENT FROM A -- FROM A GOVERNMENT AUTHORITY AND
15 ENTITY.

16 BY COMMISSIONER JAMES:

17 IS IT A -- IS IT PUBLISHED LIKE CERTAIN REPORTS
18 ARE PUBLISHED? AND OF COURSE, I DON'T KNOW ---

19 BY MR. GOODWYN:

20 IT'S JUST A WEBSITE.

21 BY MS. RICHARDSON:

22 IT'S ---

23 BY COMMISSIONER JAMES:

24 BUT WHAT I'M ASKING IS THAT ---

25 BY MS. RICHARDSON:

1 IT IS A ---

2 BY COMMISSIONER JAMES:

3 WHETHER THERE ARE LINKS TO CERTAIN DOCUMENTS
4 THAT ARE PUBLISHED DOCUMENTS THAT MAY APPEAR THAT
5 YOU CAN HAVE ACCESS TO THEM ON THE WEB?

6 BY MR. GOODWYN:

7 THAT'S NOT WHAT THAT IS. THAT'S JUST A ---

8 BY MS. RICHARDSON:

9 THIS IS THE DEPARTMENT OF CORRECTIONS OF SOUTH
10 CAROLINA GOVERNMENT -- IT'S AN OFFICIAL -- IT'S
11 THEIR OFFICIAL GOVERNMENT SITE. IT'S LIKE GOING TO
12 THE I.R.S. SITE AND PRINTING OUT THE I.R.S. RULES.

13 BY MR. GOODWYN:

14 IT'S ALSO HEARSAY. SOMEBODY IS SAYING THAT
15 THIS IS A FACT. I DON'T HAVE A CHANCE TO CROSS
16 EXAMINE THIS PERSON.

17 BY MS. RICHARDSON:

18 OKAY. WELL, I'M NOT ASKING HIM FOR THE TRUTH
19 OF THE MATTER. I'M JUST SAYING ---

20 BY MR. GOODWYN:

21 YES, YOU DID.

22 BY MS. RICHARDSON:

23 OKAY, WELL, I'LL ASK IT IN A DIFFERENT WAY.
24 YOUR HONOR, I THINK THIS IS ADMISSIBLE; I CAN USE
25 IT.

1 BY COMMISSIONER JAMES:

2 I HAVEN'T SEEN IT, BUT THERE ARE CERTAIN
3 DOCUMENTS THAT GOVERNMENT ENTITIES AND CERTAIN
4 PUBLISHED FACTS THAT ARE PUT -- THAT ARE PUT ON
5 THEIR WEBSITES AS WELL AS PUT IN PRINT, BUT GOING
6 THROUGH THE WEBSITE IS ONE WAY OF ACCESSING WHAT WE
7 ALSO PUBLISH IN PRINT.

8 BY MR. GOODWYN:

9 AND WE DON'T KNOW THAT THAT'S THE CASE HERE.

10 BY COMMISSIONER JAMES:

11 I MEAN, YOU BOTH HAVE ME ---

12 BY MS. RICHARDSON:

13 IT HAS THE WEBSITE ADDRESS ON THE BOTTOM. IT
14 SAYS "COPYRIGHT 2007 TO 2017 FROM THE SOUTH CAROLINA
15 DEPARTMENT OF CORRECTIONS." IT IS A PUBLISHED --
16 THIS WEB PAGE THAT I PRINTED OUT BY THE COPYRIGHT
17 TITLE ON THE BACK, I MEAN, I THINK SAYS THAT THE
18 SOUTH CARLINA DEPARTMENT OF CORRECTIONS AUTHORIZED
19 THE INFORMATION THAT IT PUTS ON ITS OWN WEB PAGE.
20 THAT WOULD MAKE IT A GOVERNMENT DOCUMENT ON WHICH --

21 -

22 BY MR. GOODWYN:

23 IT'S NOT CERTIFIED.

24 BY MR. ALFORD:

25 IT'S A STATEMENT BY A PARTY.

1 BY MS. RICHARDSON:

2 --- THE COURT COULD TAKE JUDICIAL NOTICE.

3 BY MR. ALFORD:

4 AND IT'S A STATEMENT BY A PARTY UNDER THE RULES
5 OF EVIDENCE.

6 BY MR. BEARD:

7 RIGHT. THE DEPARTMENT OF CORRECTIONS IS IN
8 THIS CASE.

9 BY MR. ALFORD:

10 THEY'RE A PARTY THAT'S IN THE ROOM.

11 BY MR. GOODWYN:

12 IT'S STILL HEARSAY. I MEAN, I CAN'T CROSS
13 EXAMINE THE PERSON --

14 BY MS. RICHARDSON:

15 WELL, I THINK THAT -- I THINK ALSO MR. SEARS
16 HAS OPENED THE DOOR TO THIS, BECAUSE HE HAS
17 TESTIFIED THAT HE DOESN'T THINK THAT THE DEPARTMENT
18 OF CORRECTIONS IS A VERY DANGEROUS PLACE, NO MORE
19 DANGEROUS THAN WELDERS AND SCAFFOLD'ERS. I THINK I
20 AM ALLOWED TO TEST TO WHAT HIS KNOWLEDGE IS ABOUT
21 THAT.

22 BY MR. GOODWYN:

23 SHE CAN'T -- STILL CAN'T PRESENT FACTS THAT ARE
24 HEARSAY. SHE CAN'T USE HEARSAY TO TRY TO CONTRADICT
25 HIM.

1 BY COMMISSIONER JAMES:

2 AT THIS POINT, ---

3 BY MR. GOODWYN:

4 AND RELEVANCY, TOO.

5 BY COMMISSIONER JAMES:

6 UNDERSTANDING AT THIS POINT, IT'S CROSS
7 EXAMINATION. SHE IS NOT SEEKING TO ACTUALLY PRESENT
8 THE DOCUMENT INTO EVIDENCE WITH ANY TYPE OF TRUTH AS
9 TO ANY ISSUE IN THIS PARTICULAR CASE. NOW, IF ---

10 BY MR. GOODWYN:

11 IF SHE'S NOT OFFERING THE DOCUMENT, THEN THAT'S
12 FINE. I MEAN, SHE CAN ---

13 BY MS. RICHARDSON:

14 OKAY. LET ME TRY TO ASK IT A DIFFERENT WAY.
15 WE CAN GO BACK TO THIS, OKAY.

16 BY COMMISSIONER JAMES:

17 AND Y'ALL CAN SEE IT FROM WHERE YOU ARE, BUT
18 THERE ARE FOLDERS -- THERE IS PUBLISHED INFORMATION
19 FROM VARIOUS AGENCIES, AND IT'S THE SAME THING YOU
20 GET IN PRINT.

21 BY MR. GOODWYN:

22 AND THERE MAY BE, BUT SHE HASN'T -- SHE HASN'T
23 OFFERED THIS PUBLISHED DOCUMENT. SHE'S NOT SAYING
24 THAT ---

25 BY MS. RICHARDSON:

1 THIS IS ---

2 BY MR. GOODWYN:

3 --- IT'S PUBLISHED SOMEWHERE.

4 BY MS. RICHARDSON:

5 THIS IS NOT HEARSAY. IT'S A PUBLIC RECORD OR
6 REPORT. IT'S AN EXCEPTION TO THE HEARSAY RULE.
7 IT'S EXCEPTION NUMBER EIGHT -- RULE 803, HEARSAY
8 EXCEPTIONS. AVAILABILITY OF DECLARANT IS IMMATERIAL
9 IN THIS CASE WHEN IT IS A PUBLIC RECORD OR REPORT.

10 BY MR. GOODWYN:

11 JUST BECAUSE SOMETHING IS ON THEIR WEBSITE
12 DOESN'T MAKE IT A PUBLIC RECORD.

13 BY MS. RICHARDSON:

14 IT SAYS "COPYRIGHT 2007 TO 2017 BY THE SOUTH
15 CAROLINA DEPARTMENT OF CORRECTIONS."

16 BY COMMISSIONER JAMES:

17 I'M GOING TO ALLOW IT FOR PURPOSES OF CROSS.

18 EXAMINATION RESUMED BY MS. RICHARDSON:

19 Q. OKAY. SO, MR. SEARS, I THINK WE WERE TALKING ABOUT
20 PRISON FACILITIES AND THE -- AND YOUR -- YOU HAD
21 STATED THAT YOU DIDN'T THINK THAT THEY WERE VERY
22 DANGEROUS.

23 A. I DIDN'T SAY THAT AT ALL.

24 Q. OKAY.

25 A. I WOULD APPRECIATE IT -- DON'T -- PLEASE DON'T

1 RESTATE WHAT YOU THINK I SAID AND ---

2 Q. WELL, THAT'S WHAT I -- PLEASE, CORRECT ME.

3 A. OKAY.

4 Q. WHAT DID YOU SAY ABOUT THE PRISON FACILITY?

5 A. I SAID RELATIVELY SPEAKING -- YOU SAID "DO YOU
6 APPRECIATE HOW DANGEROUS IT IS?" I SAID RELATIVELY
7 SPEAKING WITH THE RISKS I DEAL WITH, AND I'M
8 OBVIOUSLY NOT BEING VERBATIM WITH THAT, BUT I DEAL
9 WITH WELDERS WITH A HOT ARC AND SCAFFOLDING AT
10 HEIGHTS AND THINGS LIKE OF THAT NATURE THAT THIS IS
11 A RISK THAT -- YOU SAID "DO YOU INVESTIGATE THINGS
12 THAT ARE RISKY?" THIS IS NOT SOMETHING THAT WOULD
13 HAVE JUMPED OUT TO ME AS RISK NUMBER ONE.

14 Q. AND YOU ARE JUST SPEAKING FROM YOUR PERSONAL
15 VIEWPOINT; YOU REALLY DON'T -- YOU'RE NOT SPEAKING
16 FROM AN UNDERWRITING PERSPECTIVE?

17 A. WELL, CLEARLY I'M NOT AN UNDERWRITER.

18 Q. RIGHT. OKAY. AND SO, YOU MADE THE BUSINESS
19 DECISION TO DETERMINE THAT THIS WAS NOT AS RISKY AS
20 WELDERS OR SCAFFOLD'ERS?

21 A. AND I DON'T THINK I DETERMINED THAT EITHER.

22 Q. BUT IF YOU HAD DETERMINED THAT IT WAS VERY RISKY,
23 WOULD THAT BE SOMETHING THAT YOU THINK YOUR WORKERS'
24 COMPENSATION CARRIER SHOULD KNOW ABOUT?

25 A. I DON'T -- I DON'T FOLLOW WHAT YOU'RE ASKING ME

1 THERE.

2 Q. OKAY, WELL, ALL RIGHT, LET'S GO BACK. THE KIRKLAND
3 CORRECTIONAL INSTITUTE, WOULD YOU STILL SAY THAT YOU
4 DON'T THINK THAT IT'S A DANGEROUS FACILITY IF YOU
5 LEARNED THAT IT HOUSES THE MOST DANGEROUS AND
6 VIOLENT OFFENDERS IN THE STATE THAT ARE CONVICTED BY
7 THE STATE OF SOUTH CAROLINA?

8 A. IT DOESN'T HOUSE THOSE IN THE MEDICAL WING, CORRECT?

9 Q. I THINK THE MEDICAL UNIT TREATS THE PATIENTS ---

10 A. RIGHT.

11 Q. --- WHO ARE HOUSED AT THE SOUTH CAROLINA DEPARTMENT
12 OF CORRECTIONS AT THE CORRECTIONAL -- AT THE
13 KIRKLAND CORRECTIONAL INSTITUTION ---

14 A. RIGHT.

15 Q. --- WHO ONLY HOUSE THE MOST DANGEROUS AND VIOLENT
16 OFFENDERS. SO, ANYBODY THAT A NURSE IS TREATING AT
17 THE KIRKLAND CORRECTIONAL INSTITUTE WOULD BE ONE OF
18 THESE INDIVIDUALS.

19 BY MR. GOODWYN:

20 YOUR HONOR, I'M GOING TO OBJECT. SHE IS
21 TESTIFYING HERE AS TO WHAT GOES ON OUT AT KIRKLAND.
22 SHE CAN ASK HIM A QUESTION, BUT SHE CAN'T JUST SIT
23 THERE AND TESTIFY THIS IS WHAT GOES ON; THIS IS WHAT
24 GOES ON; THIS IS WHAT GOES ON. WHAT SAY YOU? I
25 MEAN...

1 BY COMMISSIONER JAMES:

2 ALL RIGHT. MS. RICHARDSON, IF YOU CAN ASK HIM
3 A QUESTION.

4 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

5 Q. WOULD YOU CHANGE YOUR MIND ABOUT THE SAFETY OF THE
6 KIRKLAND CORRECTIONAL INSTITUTE IF YOU FOUND OUT
7 THAT IT WAS A SECURITY LEVEL THREE FACILITY?

8 A. I WOULD HAVE TO DO MORE RESEARCH.

9 Q. WHAT ABOUT IF YOU READ ON THE KIRKLAND CORRECTIONAL
10 INSTITUTE WEBSITE THAT THIS -- THAT KIRKLAND -- THE
11 KIRKLAND CORRECTIONAL INSTITUTE IS A SPECIALIZED
12 HOUSING UNIT WHERE THE MOST DANGEROUS AND VIOLENT
13 OFFENDERS ARE HOUSED, WOULD THAT CHANGE YOUR MIND?

14 A. I WOULD STILL HAVE TO DO MORE RESEARCH.

15 Q. OKAY. AND WHAT ABOUT IF YOU FOUND OUT THAT LEVEL
16 THREE FACILITIES ARE HIGH SECURITY INSTITUTIONS
17 DESIGNED PRIMARILY TO HOUSE VIOLENT OFFENDERS WITH
18 LONGER SENTENCES AND INMATES WHO EXHIBIT BEHAVIORAL
19 PROBLEMS?

20 BY MR. GOODWYN:

21 OBJECTION, IT ASSUMES FACTS NOT IN EVIDENCE.

22 BY MS. RICHARDSON:

23 WOULD THAT CHANGE YOUR MIND?

24 BY MR. GOODWYN:

25 OBJECTION. IT ASSUMES FACTS NOT IN EVIDENCE.

1 BY MS. RICHARDSON:

2 I'M JUST ASKING IF HE WOULD CHANGE HIS MIND?

3 BY MR. GOODWYN:

4 THERE'S STILL AN OBJECTION THAT HAS TO BE RULED
5 ON BEFORE YOU CAN ASK A QUESTION.

6 BY COMMISSIONER JAMES:

7 ALL RIGHT.

8 BY MS. RICHARDSON:

9 I'M TALKING TO THE COMMISSIONER.

10 BY COMMISSIONER JAMES:

11 AT THIS POINT, I AM NOT -- AGAIN, Y'ALL HAVE A
12 DOCUMENT THAT I AM NOT PRIVY TO. IF IT IS PUBLISHED
13 BY THE DEPARTMENT OF CORRECTIONS, THEN -- YOU KNOW,
14 AS A PARTY TO THE ACTION AND IS -- I'M NOT REALLY
15 SURE RIGHT NOW, BUT THIS IS BEING -- IT'S NOT PROVEN
16 TO BE ANY PARTICULAR FACT RIGHT NOW. I'M GOING --
17 I'M GOING TO ALLOW THE QUESTIONING.

18 BY MS. RICHARDSON:

19 IT'S AN EXCEPTION TO THE HEARSAY RULE. SO.

20 BY COMMISSIONER JAMES:

21 I'M ---

22 BY MR. GOODWYN:

23 I DIDN'T OBJECT TO HEARSAY GROUNDS.

24 BY MS. RICHARDSON:

25 WHAT ARE YOU OBJECTING TO?

1 BY MR. GOODWYN:

2 IT ASSUMES FACTS NOT IN EVIDENCE. YOU'RE ---

3 BY MS. RICHARDSON:

4 NO, I'M JUST ASKING IF HE WOULD CHANGE HIS MIND

5
6 BY MR. GOODWYN:

7 --- JUST ASSERTING ALL OF THESE FACTS.

8 BY MS. RICHARDSON:

9 I'M READING FROM THE PUBLIC RECORD, AND IT'S
10 NOT HEARSAY. I CAN DO THAT.

11 BY MR. GOODWYN:

12 GO AHEAD.

13 BY MS. RICHARDSON:

14 OKAY. I GUESS MAYBE THIS WILL TAKE CARE OF IT.
15 I WOULD LIKE TO MOVE INTO EVIDENCE THE KIRKLAND
16 CORRECTIONAL INSTITUTION WEB PAGE DESCRIBING THE
17 TYPES OF OFFENDERS THAT IT HOUSES ALONG WITH THE
18 DESCRIPTION OF WHAT A LEVEL THREE INSTITUTION IS AT
19 THIS TIME.

20 BY MR. GOODWYN:

21 I OBJECT TO HEARSAY AND RELEVANCE. I'M NOT
22 REALLY SURE HOW IT'S RELEVANT.

23 BY MS. RICHARDSON:

24 I THINK THAT MR. SEARS HAS TESTIFIED THAT HE
25 NEEDS TO INFORM HIS -- INFORM TWO LEVELS, NOT ONLY

1 THE PERSON THAT HE CONTRACTED WITH TO PROVIDE HIM
2 WORKERS' COMPENSATION INSURANCE BUT THEN THE INSURER
3 WOULD ALSO BE ALLOWED TO KNOW OF THE LOCATION OF THE
4 FACILITIES OF THE WORKERS IN WHICH THE INSURER AND
5 C.S.S.G. WAS ALLEGEDLY GOING TO PROVIDE WORKERS'
6 COMPENSATION FOR.

7 BY COMMISSIONER JAMES:

8 ANY OTHER OBJECTIONS OR COMMENTS WITH REGARDS
9 TO THE RULING BY ANY OF THE PARTIES, OR THE ISSUE
10 SHOULD I SAY?

11 BY MR. ALFORD:

12 NO.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT.

15 BY MR. GOODWYN:

16 YOU DON'T HAVE COPIES?

17 BY MS. RICHARDSON:

18 I DON'T HAVE COPIES OF THIS.

19 BY COMMISSIONER JAMES:

20 I WILL OVERRULE AND ALLOW THE SUBMISSION.

21 BY MS. RICHARDSON:

22 ALL RIGHT.

23 BY COMMISSIONER JAMES:

24 THIS WOULD BE -- AND WE DO NEED TO MARK IT.

25 THIS WOULD BE ---

1 BY MS. RICHARDSON:

2 YES, THIS WOULD BE GUARANTEE'S ---

3 BY COMMISSIONER JAMES:

4 GUARANTEE'S ONE.

5 BY MS. RICHARDSON:

6 --- ONE AND TWO. THE DESCRIPTION OF THE
7 KIRKLAND CORRECTIONAL INSTITUTE IS EXHIBIT ONE, AND
8 THEN THE DESCRIPTION OF THE INSTITUTION AND LEVEL
9 THREE SECURITY IS EXHIBIT TWO.

10 BY COMMISSIONER JAMES:

11 THOSE ARE BOTH ON THE DEPARTMENT OF
12 CORRECTIONS' WEBSITE?

13 BY MS. RICHARDSON:

14 YES, THEY ARE. COPYRIGHTED 2007 TO 2017 BY THE
15 DEPARTMENT OF CORRECTIONS ITSELF.

16 BY COMMISSIONER JAMES:

17 IF YOU WILL, LET THE COURT REPORTER JUST MARK
18 THOSE.

19 (COURT REPORTER MARKS DOCUMENT GUARANTEE EXHIBIT ONE,
20 RETAINED IN THE COMMISSION FILE)

21 (COURT REPORTER MARKS DOCUMENT GUARANTEE EXHIBIT TWO,
22 RETAINED IN COMMISSIONER FILE)

23 BY MS. RICHARDSON:

24 THANK YOU VERY MUCH.

25 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

1 Q. MR. SEARS, WOULD IT CHANGE YOUR MIND AT ALL ABOUT
2 THE KIRKLAND CORRECTIONAL INSTITUTE IF YOU FOUND OUT
3 THAT INMATES AT LEVEL THREE FACILITIES ARE ONLY
4 CLOSELY SUPERVISED IN THEIR ACTIVITIES AND MOVEMENTS
5 WITHIN THIS INSTITUTION ARE HIGHLY RESTRICTED?

6 A. I WOULD NEED TO KNOW A LOT MORE INFORMATION THAN
7 THAT.

8 Q. OKAY. WOULD IT CHANGE YOUR MIND IF YOU KNEW THAT
9 THE HOUSING CONSISTS OF SINGLE AND DOUBLE CELLS, AND
10 ALL PERIMETERS ARE DOUBLE FENCED WITH EXTENSIVE
11 ELECTRONIC SURVEILLANCE?

12 A. I WOULD WANT TO KNOW WHAT THEY WOULD HAVE TO DO WITH
13 THE MEDICAL AREA WHERE OUR INDEPENDENT CONTRACTORS
14 WERE LOCATED.

15 Q. HAVE YOU EVER LOOKED INTO -- WELL, I GUESS YOU HAVE
16 NEVER DONE ANY RESEARCH ON THE KIRKLAND CORRECTIONAL
17 INSTITUTE; IS THAT CORRECT?

18 A. I HAVEN'T SPECIFICALLY RESEARCHED THE KIRKLAND
19 INSTITUTE.

20 Q. SO, YOU ARE NOT EVEN REALLY SURE ABOUT WHAT -- WHAT
21 IS -- HOW DANGEROUS KIRKLAND CORRECTIONAL IS? YOU
22 WOULD HAVE NO BASIS TO DETERMINE HOW -- YOU DON'T
23 HAVE ANY BASIS TO DETERMINE WHETHER OR NOT THE
24 KIRKLAND CORRECTIONAL INSTITUTE IS -- YOU HAVE NO
25 BASIS TO BELIEVE THAT THE KIRKLAND CORRECTIONAL

1 INSTITUTION WOULDN'T BE A VERY DANGEROUS PLACE TO GO
2 TO WORK?

3 A. I DON'T AGREE WITH THAT EITHER.

4 Q. WELL, WHAT BASIS DO YOU -- WHAT RESEARCH HAVE YOU
5 DONE ON THE KIRKLAND CORRECTIONAL INSTITUTE?

6 A. LIKE I SAID, I'VE TALKED TO OUR PERSONNEL OVER THE
7 COURSE OF PROVIDING INDEPENDENT CONTRACTORS THERE.
8 ACTUALLY, I'VE BEEN IN THE PRISON SYSTEM. I'VE HAD
9 TO MEDIATE CASES IN THE PRISONS. I'VE BEEN IN THE --
10 --

11 Q. I ACTUALLY BELIEVE THAT YOU JUST TESTIFIED EARLIER
12 IN THIS HEARING THAT YOU'VE NEVER BEEN IN ---

13 A. I SAID I'VE NEVER BEEN TO KIRKLAND. THERE'S MORE
14 THAN ONE PRISON.

15 Q. OKAY. SO, YOU DON'T KNOW ANYTHING ABOUT THE
16 KIRKLAND CORRECTIONAL INSTITUTE?

17 A. I DIDN'T SAY I DIDN'T KNOW ANYTHING EITHER.

18 Q. DO YOU KNOW ANYTHING ABOUT THE SAFETY OF THE
19 KIRKLAND CORRECTIONAL INSTITUTE?

20 A. IN OTHER WORDS, I'M SURE THERE'S THINGS I'VE SEEN
21 ABOUT IT OR READ ABOUT IT OR DISCUSSED WITH MY
22 PERSONNEL. I CAN'T HAVE TOTAL RECALL RIGHT NOW FOR
23 YOU AFTER EIGHT YEARS, AND YOU JUST SHOWED ME
24 SOMETHING RIGHT NOW -- I MEAN, I -- I'VE TALKED
25 ABOUT KIRKLAND. I KNOW THAT THEY'RE -- IT'S A

1 PRISON, I DIDN'T -- I DIDN'T APPRECIATE THE SYSTEM
2 OF LEVEL ONE, TWO OR THREE. CERTAINLY, I'VE HAD
3 GENERAL DISCUSSIONS ABOUT THE MEDICAL AREA WHERE
4 GUARDS ARE SUPPOSED TO PROTECT PERSONNEL.

5 Q. YOU DIDN'T KNOW THAT IT HOUSES SOME OF THE MOST
6 DANGEROUS -- IT HOUSES THE MOST DANGEROUS AND
7 VIOLENT OFFENDERS CONVICTED BY THE STATE OF SOUTH
8 CAROLINA, DID YOU, BEFORE TODAY?

9 A. FOR WHAT PERIOD OF TIME?

10 Q. IT HAS SINCE 1975.

11 A. IS -- HAS IT HELD THAT RANKING SINCE THEN, OR HAS IT
12 GONE UP AND DOWN?

13 Q. THAT'S WHAT IT SAYS. DO YOU KNOW -- DID YOU KNOW
14 BEFORE TODAY THAT IT HOUSES THE MOST DANGEROUS AND
15 VIOLENT -- IT REPRESENTS THAT IT HOUSES THE MOST
16 DANGEROUS AND VIOLENT OFFENDERS CONVICTED BY THE
17 STATE OF SOUTH CAROLINA? DID YOU KNOW THAT BEFORE
18 TODAY?

19 A. I HAVE NOT SEEN THAT WEBSITE BEFORE TODAY, THAT
20 WEBSITE INFORMATION.

21 Q. OR THAT IT WAS A LEVEL THREE FACILITY?

22 A. I DON'T REMEMBER SPECIFICALLY BEING GIVEN A DEF CON
23 THREE OR ANYTHING LIKE THAT.

24 Q. YOU WERE TALKING ABOUT WELDERS AND SCAFFOLD'ERS?

25 A. RIGHT.

- 1 Q. DO THEY HAVE INSURANCE WITH CONDUSTRIAL?
- 2 A. THEY'RE EMPLOYEES; THEY DO. YES, MA'AM.
- 3 Q. OKAY. SO, WHERE ARE THEY EMPLOYED RIGHT NOW? I
- 4 MEAN, WHO -- WHO PROVIDES THEIR WORKERS'
- 5 COMPENSATION INSURANCE?
- 6 A. OKAY, WHICH QUESTION DO YOU WANT ME TO ANSWER?
- 7 Q. THE WELDERS, THE WELDERS.
- 8 A. RIGHT, WHICH QUESTION DO YOU WANT ME TO ANSWER?
- 9 Q. WHO PROVIDES THEIR WORKERS' COMPENSATION INSURANCE?
- 10 A. AND YOU ASKED -- SO, ARE YOU ASKING ME WHERE THEY
- 11 WORK, OR WHAT ARE YOU ASKING?
- 12 Q. WHO PROVIDES THE WELDERS' WORKERS' COMPENSATION
- 13 INSURANCE FOR CONDUSTRIAL RIGHT NOW?
- 14 A. OKAY, AS OF TODAY?
- 15 Q. YES.
- 16 A. WE ARE IN A P.E.O. FIRST STAR H.R. THEY PROVIDE THE
- 17 COVERAGE.
- 18 Q. OKAY. AND THIS P.E.O. ALSO PROVIDES WORKERS
- 19 COMPENSATION INSURANCE FOR THE SCAFFOLD'ERS?
- 20 A. I USED THAT AS AN EXAMPLE. FOR ALL OF OUR APPROVED
- 21 CODES, THEY -- THEY DO PROVIDE WORKERS' COMP
- 22 INSURANCE.
- 23 Q. HAVE YOU TALKED TO YOUR P.E.O. ABOUT COVERING
- 24 WORKERS THAT YOU SEND TO THE SOUTH CAROLINA
- 25 DEPARTMENT OF CORRECTIONS?

- 1 A. I HAVE NOT HAD A PERSONAL CONVERSATION WITH THEM,
2 NO.
- 3 Q. ARE YOU AWARE OF ANYBODY IN YOUR COMPANY THAT HAS
4 HAD A CONVERSATION WITH THEM ABOUT IT?
- 5 A. I'M NOT SURE IF THOSE CONVERSATIONS HAVE BEEN HAD OR
6 NOT.
- 7 Q. YOU'RE NOT SURE?
- 8 A. NO.
- 9 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THEY MAY HAVE
10 BEEN HAD?
- 11 A. I DON'T HAVE ANY REASON TO THINK EITHER WAY.
- 12 Q. HAS AN AGENT OF CONDUSTRIAL EVER HAD A CONVERSATION
13 WITH A P.E.O. ASKING IF THEY WOULD COVER AN EMPLOYEE
14 OR A WORKER WHO WAS SENT TO A PRISON FACILITY FOR
15 YOU?
- 16 A. CERTAINLY WITHOUT REFERRING BACK TO EMAILS,
17 DOCUMENTS AND MEMOS, I WOULD HAVE TO REFRESH MY
18 RECOLLECTION TO GIVE YOU A COMPREHENSIVE ANSWER.
- 19 Q. DO YOU THINK THAT YOU'VE EVER ASKED ANYBODY TO LOOK
20 INTO THE QUESTION FOR YOURSELF?
- 21 A. I MEAN, I THINK -- I THINK I'VE -- I'M SURE I'VE
22 ASKED PEOPLE TO -- WHEN THIS SITUATION CAME UP TO
23 SEE IF THEY COULD COVER OUR 1099s, YES, WHICH I
24 THINK IS THE CERTIFICATE OF INSURANCE THAT WE
25 PROVIDED OR WAS IN EVIDENCE THAT WE OBTAINED EARLIER

1 THIS YEAR.

2 Q. RIGHT. SO, YOU --- IN ORDER TO ENSURE THAT THE
3 WORKERS THAT YOU SENT TO THE SOUTH CAROLINA STATE
4 PRISON FACILITY HAD WORKERS' COMPENSATION INSURANCE,
5 YOU'VE GONE OUT AND GOTTEN AN ASSIGNED RISK POLICY;
6 IS THAT CORRECT?

7 A. YES.

8 Q. OKAY. AND THAT ASSIGNED RISK POLICY IS A POLICY
9 THAT COVERS CONDUSTRIAL DIRECTLY; IT'S A DIRECT
10 POLICY WITH CONDUSTRIAL?

11 A. IT'S A DIRECT POLICY.

12 Q. FOR YOUR 1099 WORKERS?

13 A. YES.

14 Q. OKAY. DID YOU LOOK INTO OTHER -- OTHER WAYS TO GET
15 INSURANCE FOR THESE WORKERS?

16 A. SUCH AS?

17 Q. I'M ASKING YOU. DID YOU LOOK INTO ANY OTHER METHODS
18 FOR GETTING INSURANCE FOR THESE WORKERS?

19 A. I GUESS I'M NOT SURE WHAT YOU'RE ASKING. I MEAN, I
20 ---

21 Q. WAS THERE ANY OTHER PLACE THAT CONDUSTRIAL TURNED TO
22 TO GET WORKERS' COMPENSATION INSURANCE OTHER THAN
23 THE ASSIGNED RISK POOL?

24 A. I GUESS WE COULD HAVE ASKED DIFFERENT AGENTS AND
25 BROKERS, YES.

1 Q. DID YOU DO THAT?

2 A. I THINK WE DID ASK DIFFERENT AGENTS AND BROKERS.

3 Q. OKAY. DID ANYBODY SAY YES?

4 A. OBVIOUSLY THE AGENT SAID YES THAT GOT US THE POLICY.

5 Q. IN THE ASSIGNED RISK POOL?

6 A. RIGHT.

7 Q. RIGHT, OKAY.

8 A. OUR AGENT -- WE HAD AN AGENT THAT PROCESSED THAT FOR
9 US AND HELPED MAKE THAT HAPPEN. YEAH, WE WENT TO
10 OUR AGENTS.

11 Q. AND THEN IN THE ASSIGNED RISK POOL, AREN'T THE
12 PREMIUMS THAT THEY CHARGE ON THESE KINDS OF -- OR
13 ANY KIND OF WORKER -- IF YOU CAN'T FIND INSURANCE IN
14 THE VOLUNTARY MARKET AND YOU HAVE TO TURN TO THE
15 ASSIGNED RISK MARKET, THE PREMIUMS THAT YOU ARE
16 GOING TO HAVE TO PAY ARE MUCH HIGHER THAN IN THE
17 VOLUNTARY MARKET; ISN'T THAT CORRECT?

18 A. I THINK IN A GENERAL SENSE, THAT'S PROBABLY TRUE.
19 RIGHT.

20 Q. AND DO YOU KNOW IF IT'S GOING TO BE AN AFFORDABLE
21 MODEL FOR MEDUSTRIAL TO HAVE TO COVER ITS 1099
22 WORKERS AT THE SOUTH CAROLINA DEPARTMENT OF
23 CORRECTIONS?

24 A. I DON'T -- IN OTHER WORDS, I HAVEN'T UNDERTAKEN THAT
25 ANALYSIS, AND I THINK WE JUST OBTAINED THAT POLICY.

1 SO, I DON'T -- YOU KNOW, I DON'T -- WE WILL HAVE TO
2 WAIT AND SEE.

3 Q. THAT'S BEEN A BUSINESS DECISION SO FAR OF
4 MEDUSTRIAL?

5 A. WHAT IS THAT?

6 Q. UNTIL AFTER RACHEL TURNER'S ACCIDENT, YOU WEREN'T
7 PAYING ANY WORKERS' COMPENSATION INSURANCE FOR ANY
8 OF THE 1099 WORKERS THAT YOU WERE SENDING TO STATE
9 PRISON FACILITIES; IS THAT CORRECT?

10 A. I THINK, YES, THAT'S PROBABLY RIGHT. YES.

11 Q. OKAY. ON THE DATE OF RACHEL TURNER'S ACCIDENT,
12 YOU'VE ALREADY TESTIFIED THAT SHE -- YOU CLASSIFIED
13 HER AS A 1099, AND SHE WENT TO THE SOUTH CAROLINA
14 DEPARTMENT OF CORRECTIONS, AND THEREFORE YOU DIDN'T
15 NEED TO PROVIDE WORKERS' COMPENSATION INSURANCE FOR
16 HER, CORRECT?

17 A. SHE WAS A 1099; SHE WAS NOT AN EMPLOYEE.

18 Q. RIGHT.

19 A. WE DID NOT COVER 1099s, YES.

20 Q. OKAY. AND SO, YOU'VE ALSO TESTIFIED THAT IT'S YOUR
21 POSITION TODAY THAT IF THE WORKERS' COMPENSATION
22 COMMISSION DETERMINES HER TO BE AN EMPLOYEE, YOU
23 THINK SHE HAS INSURANCE COVERAGE?

24 A. I THINK IF SHE BECOMES AN EMPLOYEE, I THINK THAT WE
25 WILL SUBMIT HER THROUGH THE CONTRACT WE HAD WITH

1 COUNTRYWIDE TO PROVIDE WORKERS' COMP INSURANCE FOR
2 OUR EMPLOYEES.

3 Q. OKAY. THROUGH THE CONTRACT?

4 A. RIGHT.

5 Q. OKAY. AND IS THERE ANY OTHER METHOD BY WHICH YOU
6 THINK THAT -- IF SHE IS DETERMINED AN EMPLOYEE TODAY
7 ---

8 A. RIGHT.

9 Q. --- YOU COULD SOME HOW REACH OUT AND GRAB SOME
10 INSURANCE FOR YOURSELF?

11 A. I'M NOT ---

12 BY MR. GOODWYN:

13 YOUR HONOR, I'M GOING TO OBJECT.

14 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

15 Q. OTHER THAN THROUGH THE CONTRACT?

16 BY MR. GOODWYN:

17 I OBJECT TO THE EXTENT THAT SHE IS TRYING TO
18 LIMIT OUR POSITION IN THE CASE. AGAIN, IT IS
19 COUNTRYWIDE'S -- OR CONDUSTRIAL'S ATTORNEY'S JOB TO
20 STATE THE POSITION FOR THE COMPANY. SHE IS ASKING
21 HIM TO RESTATE ALL OF OUR POSITIONS HERE ON THE
22 STAND. THAT'S NOT -- I MEAN, IT'S AN IMPROPER
23 QUESTION TO DO THAT.

24 BY MS. RICHARDSON:

25 I DON'T THINK SO, YOUR HONOR. I THINK HE'S

1 ALLOWED TO TELL ME WHERE HE THINKS HE IS GOING TO
2 GET HIS INSURANCE FROM.

3 BY COMMISSIONER JAMES:

4 I'M GOING TO ALLOW IT.

5 BY MR. GOODWYN:

6 I MEAN, TO THE EXTENT SHE IS ASKING ---

7 BY MR. BEARD:

8 SHE HAS RULED.

9 BY MR. GOODWYN:

10 --- FOR HIM TO ARTICULATE LEGAL THEORIES.

11 BY COMMISSIONER JAMES:

12 I DON'T KNOW THAT SHE'S ASKING FOR A LEGAL
13 THEORY.

14 BY MR. GOODWYN:

15 IT'S NOT A FACT.

16 BY COMMISSIONER JAMES:

17 IT'S ---

18 BY MR. GOODWYN:

19 WELL, IT SOUNDS LIKE THAT'S WHAT SHE SAID.

20 BY COMMISSIONER JAMES:

21 AND, CERTAINLY, MR. GOODWYN, YOU CAN CLARIFY
22 LATER WHAT YOUR LEGAL THEORIES ARE.

23 BY MR. GOODWYN:

24 OKAY. JUST AS LONG AS WE ARE NOT LIMITED BY --
25 I MEAN, IF HE OMITTS A THEORY THAT I'VE PUT FORTH, I

1 DON'T WANT TO BE BOUND BY SOME OMISSION HE MAY MAKE
2 ON THE STAND.

3 BY COMMISSIONER JAMES:

4 ALL RIGHT. I'M GOING TO ALLOW THE QUESTION AND
5 THE ANSWER. GO AHEAD.

6 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

7 Q. OKAY. SO, YOU BELIEVE THAT IF THE COMMISSION
8 DETERMINES RACHEL TURNER TO BE AN EMPLOYEE UNDER THE
9 WORKERS' COMPENSATION ACT, THAT YOU MIGHT BE ABLE TO
10 HAVE ULTIMATELY GUARANTEE PAY THEIR WORKERS'
11 COMPENSATION CLAIM BECAUSE OF YOUR CONTRACT WITH
12 C.S.S.G.; IS THAT CORRECT?

13 A. YES.

14 Q. IT'S THROUGH THAT CONTRACT THAT YOU MAY HAVE
15 INSURANCE FROM GUARANTEE INSURANCE COMPANY; IS THAT
16 CORRECT?

17 A. I BELIEVE SO, YES.

18 Q. OKAY. AND IT'S BECAUSE OF WHATEVER IT STATES INSIDE
19 THAT CONTRACT THAT ALLOWS YOU TO PROCURE WORKERS'
20 COMPENSATION INSURANCE; IS THAT CORRECT?

21 A. I DON'T KNOW WHAT YOU'RE ASKING THERE.

22 Q. SO, DOES THAT CONTRACT -- IS YOUR AGREEMENT WITH
23 C.S.S.G. ---

24 A. YES.

25 Q. --- WHAT ALLOWS YOU TO GET WORKERS' COMPENSATION

1 INSURANCE FOR RACHEL TURNER, WHAT IT STATES IN THAT
2 CONTRACT?

3 A. I THINK IF SHE IS FOUND TO BE AN EMPLOYEE AS A
4 MATTER OF LAW THAT OUR POSITION IS THAT GUARANTEE
5 NEEDS TO PAY THE CLAIM THROUGH THE CONTRACT WITH
6 COUNTRYWIDE AND PERFORM AN AUDIT.

7 Q. OKAY. WHAT ABOUT THE CONTRACT GIVES YOU A RIGHT TO
8 SEEK WORKERS' COMPENSATION INSURANCE FOR RACHEL
9 TURNER?

10 A. EVERYTHING IN IT.

11 Q. OKAY. TELL ME -- TELL ME SOMETHING ABOUT IT; WHAT
12 ABOUT IT?

13 A. I JUST SAID, EVERYTHING IN IT.

14 Q. "EVERYTHING IN IT," CAN YOU NAME --

15 A. IT'S A CONTRACT FOR -- IT IS A CONTRACT THAT WE
16 ENTERED INTO TO PROVIDE WORKERS' COMPENSATION FOR
17 OUR EMPLOYEES, AND IF SHE IS FOUND TO BE AN
18 EMPLOYEE, SHE FALLS INTO WHAT I WOULD SUBMIT IS
19 COVERED UNDER THE COUNTRYWIDE AGREEMENT.

20 Q. OKAY. THE CONTRACT, DO YOU HAVE THE CONTRACT THERE?
21 I BELIEVE IT'S ---

22 A. ARE YOU TALKING ABOUT THE COUNTRYWIDE?

23 Q. YEAH, COUNTRYWIDE CONTRACT.

24 A. YES.

25 Q. OKAY. I MEAN, I THINK WE'VE ALREADY COVERED THAT

1 CONTRACTUALLY SPEAKING, YOU'VE AGREED IT SAYS HERE
2 IN SECTION ONE, ABOUT -- IT SAYS "C.S.S.G.
3 SERVICES." IF YOU COULD JUST READ THE FIRST PART TO
4 THE COLON.

5 BY COMMISSIONER JAMES:

6 AND IT'S BEEN A WHILE SINCE THE DOCUMENT WAS
7 REFERENCED. SO, I'M GOING TO GO BACK JUST FOR
8 PURPOSES OF THE RECORD TO INDICATE THAT THIS WAS
9 CONDUSTRIAL TRIAL EXHIBIT ---

10 BY THE WITNESS:

11 TWO.

12 BY MS. RICHARDSON:

13 TWO, AND THE PROCEDURAL AMENDMENT IS THREE,
14 YEAH.

15 BY THE WITNESS:

16 OKAY, WHAT IS IT YOU WANT ME TO LOOK AT AGAIN?

17 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

18 Q. SECTION ONE, JUST THE PREAMBLE BEFORE YOU GET TO
19 "A."

20 A. OKAY. WHICH I HAVE READ BEFORE SEVERAL TIMES.

21 Q. YEAH.

22 A. "C.S.S.G. (THROUGH ONE OF ITS SUBSIDIARIES AT ITS
23 OPTION) WILL PERFORM THE FOLLOWING WITH RESPECT TO
24 SELECTED STAFFING/EMPLOYEES PERFORMING SERVICES FOR
25 CLIENT BASED ON TIMELY, ACCURATE, AND COMPLETE

1 INFORMATION AND PAYMENT PROVIDED BY CLIENT."

2 Q. OKAY. AND SO, DID YOU EVER TIMELY -- YOU HAVE NEVER
3 TIMELY, ACCURATELY, OR COMPLETELY PROVIDED ANY
4 INFORMATION ABOUT RACHEL TURNER, HAVE YOU?

5 A. I WILL IF SHE IS FOUND TO BE AN EMPLOYEE AS A MATTER
6 OF LAW.

7 Q. AS OF -- AS OF SEPTEMBER -- AS OF THE DATE OF THE
8 ACCIDENT, ---

9 A. RIGHT.

10 Q. --- MEDUSTRIAL OR CONDUSTRIAL HAS NEVER PROVIDED
11 TIMELY, ACCURATE, OR COMPLETE INFORMATION ABOUT
12 RACHEL TURNED TO C.S.S.G., HAS IT?

13 A. I DON'T THINK THAT'S AN ACCURATE CHARACTERIZATION.
14 SHE WAS AN INDEPENDENT CONTRACTOR ---

15 Q. DID YOU AS OF SEPTEMBER 15TH, ---

16 A. RIGHT.

17 Q. --- 2015, ---

18 A. RIGHT.

19 Q. --- HAD YOU EVER PROVIDED ANY INFORMATION ABOUT
20 RACHEL TURNER OR ANY WORKER BEING DELIVERED TO THE
21 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TO C.S.S.G.
22 ---

23 A. PROBABLY NOT.

24 Q. --- PURSUANT TO -- OKAY. AND HAD YOU EVER PROVIDED
25 ANY PAYMENT TO C.S.S.G. FOR RACHEL TURNER OR ANY

1 OTHER WORKER THAT MEDUSTRIAL DELIVERED TO THE SOUTH
2 CAROLINA DEPARTMENT OF CORRECTIONS AS OF SEPTEMBER
3 15TH, 2015?

4 A. AND I'M A LITTLE BIT -- IN OTHER WORDS, I CAN ANSWER
5 THAT FOR RACHEL -- OR FOR RACHEL TURNER, AND I'M A
6 LITTLE BIT UNCOMFORTABLE IF YOU ARE ASKING ME TO
7 MAKE A BROAD ---

8 Q. JUST FOR WORKERS DELIVERED TO SOUTH CAROLINA
9 DEPARTMENT OF CORRECTIONS.

10 A. WELL, AGAIN, YOU'RE TRYING TO ASK ME ABOUT A BROAD
11 CLASS OF INDIVIDUALS.

12 Q. OKAY. FOR RACHEL TURNER.

13 A. I CAN TALK ABOUT RACHEL TURNER. I -- IN OTHER
14 WORDS, YOU SAID DID WE SUBMIT ANY PAYROLL FOR MS.
15 TURNER?

16 Q. YES, RACHEL TURNER TO C.S.S.G.

17 A. PROBABLY NOT.

18 Q. OKAY. AND THEN 1-A SAYS, CAN YOU READ THAT?

19 A. YES. "FURNISH AND/OR PROVIDE SELECTED
20 STAFFING/EMPLOYEES TO PERFORM THE TYPE OF WORK
21 DESCRIBED ON EXHIBIT "B" UNDER CLIENT'S SUPERVISION
22 AT THE LOCATION SPECIFIED ON EXHIBIT "B."

23 Q. OKAY. AND CAN YOU TELL ME WHAT IS EXHIBIT "B"?

24 A. LET'S SEE HERE. I DON'T SEE AN EXHIBIT "B" IN THE
25 COPY THAT WAS HANDED TO ME.

1 Q. OKAY. WHAT IS PAGES EIGHT AND NINE OF THIS
2 CONTRACT?

3 A. I THINK THAT'S EXHIBIT "A." THIS IS A LIST OF THE
4 STATES AND THE COMP CODES AND I GUESS SOME OF THE
5 BASIC PAYMENT DATA.

6 Q. AND WHERE IS EXHIBIT "A" REFERENCED IN THIS
7 AGREEMENT.

8 A. LET'S SEE. I WILL HAVE TO GO BACK AND READ IT.

9 Q. DO YOU THINK THAT WHAT LOOKS LIKE EXHIBIT "A" IS
10 ACTUALLY EXHIBIT "B"?

11 A. YOU'RE ASKING ME TO SPECULATE.

12 Q. YOU DON'T KNOW?

13 A. I DON'T KNOW.

14 Q. OKAY. THIS IS ---

15 A. I KNOW ---

16 Q. --- CONDUSTRIAL'S CONTRACT THOUGH, RIGHT?

17 A. WELL, IT'S NOT CONDUSTRIAL'S; IT'S COUNTRYWIDE'S.

18 Q. ACTUALLY I THINK YOU ENTERED INTO THIS CONTRACT WITH
19 C.S.S.G., NO? IT'S CONDUSTRIAL'S CONTRACT?

20 A. IT'S COUNTRYWIDE'S CONTRACT.

21 Q. WELL, YOU ARE IN AGREEMENT WITH -- YOU ARE IN A
22 CONTRACT WITH ANOTHER PARTY PURSUANT TO THIS
23 CONTRACT?

24 A. BUT TO THE EXTENT YOU ARE IMPLYING THAT IT'S OUR
25 CONTRACT THAT WE CREATED AND TRIED TO NEGOTIATE AND

1 WROTE THESE TERMS, THAT'S INACCURATE. THIS IS
2 COUNTRYWIDE'S CONTRACT ENTERED INTO WITH CONDUSTRIAL
3 THAT THEY PRESENTED TO US, AND THEN WE REQUESTED
4 AMENDMENTS. I WOULD NOT CALL THIS CONDUSTRIAL'S
5 CONTRACT. I WOULD CALL IT COUNTRYWIDE'S.

6 Q. ARE YOU SUGGESTING THAT THIS IS AN ADHESION
7 CONTRACT?

8 A. I DIDN'T SAY THAT EITHER, DID I?

9 Q. OKAY. ARE YOU -- YOU ARE -- YOU'VE ALREADY ADMITTED
10 YOU ARE A SOPHISTICATED COMMERCIAL PARTY WITH THE
11 ABILITY TO WALK INTO OR WALK AWAY FROM A BUSINESS
12 DEAL, AREN'T YOU?

13 A. I DON'T SEE WHAT THAT HAS TO DO WITH THIS QUESTION.

14 Q. WELL, YOU ARE SUGGESTING THAT SOMEHOW YOU DIDN'T
15 AGREE TO THIS LANGUAGE.

16 A. I DIDN'T SAY THAT EITHER.

17 Q. AND -- OKAY.

18 A. JUST APPARENTLY WE ARE NOT COMMUNICATING. I'M NOT
19 SAYING ANY OF THE THINGS THAT YOU ARE SAYING I'M
20 SAYING.

21 Q. ALL RIGHT.

22 A. MY SIMPLE POINT WAS YOU CALL IT CONDUSTRIAL ---

23 Q. CAN YOU READ SECTION 21 FOR ME?

24 A. YES. I'VE READ THIS BEFORE AS WELL. "RULE OF
25 CONSTRUCTION. SINCE BOTH PARTIES HERETO HAVE HAD

1 THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY
2 COUNSEL, THE RULE OF CONSTRUCTION REGARDING
3 AMBIGUITIES TO BE CONSTRUED AGAINST THE DRAFTER WILL
4 NOT BE OPERABLE AND IS HEREBY VOIDED."

5 Q. ALL RIGHT. GOING BACK TO THE LIST OF CLASS CODES,
6 WHICH YOU DON'T KNOW WHAT THIS IS, EXHIBIT "A,"
7 EXHIBIT "B," YOU'RE NOT SURE?

8 A. WELL, I DO KNOW WHAT IT IS. IT'S EXHIBIT "A."

9 Q. EXHIBIT "A."

10 A. I NEVER SAID I WASN'T SURE EITHER.

11 Q. OKAY. WHERE IS EXHIBIT "A" IN THIS CONTRACT?

12 A. WELL, IF YOU WILL NOTICE, AGAIN, THIS WAS
13 COUNTRYWIDE'S CONTRACT THAT THEY PRESENTED TO US.
14 IT SAYS "EXHIBIT A" AT THE BOTTOM OF PAGE SEVEN, AND
15 THEN THESE -- THESE CODES FOLLOW.

16 Q. OKAY. NOW, WOULD THIS BE THE KIND OF THING THAT YOU
17 -- WOULD THIS BE THE LIST OF CODES THAT YOU WOULD
18 HAVE EXPECTED TO BE COVERED BY THIS CONTRACT?

19 A. I'M SURE THIS WAS AN INITIAL LIST. I'M SURE AS
20 TESTIMONY HAS STATED BEFORE AND AS ANY BUSINESS IN
21 THIS SITUATION, YOU GROW AND YOU CHANGE, AND YOU ADD
22 CODES AND YOU MOVE CODES, AND YOU GO INTO DIFFERENT
23 STATES. SO, I MEAN, CERTAINLY, THIS WAS A BEGINNING
24 LIST, BUT ONE THAT I THINK EVERYONE INVOLVED KNEW
25 WOULD BE SUPPLEMENTED OR COULD BE SUPPLEMENTED.

1 Q. TO YOUR KNOWLEDGE, HAVE YOU EVER SUBMITTED RACHEL
2 TURNER'S CLASS CODE TO C.C.S.G.[SIC] FOR APPROVAL?

3 A. WHAT CLASS CODE DO YOU THINK SHE IS?

4 Q. WELL, I'M ASKING YOU. HAVE YOU EVER SUBMITTED
5 RACHEL TURNER'S CLASS CODE TO C.C.S.G.[SIC] FOR
6 APPROVAL?

7 A. WE DID NOT SUBMIT THE INDEPENDENT CONTRACTORS, SO I
8 GUESS ---

9 Q. YOU'VE NEVER -- HAVE YOU EVER ASSESSED WHAT THE
10 INDEPENDENT CONTRACTORS' CLASS CODE IS TO SUBMIT
11 THEM FOR APPROVAL UNDER ANY POLICY?

12 A. I'M NOT -- I'M NOT CONVINCED THAT ONE OF THE NURSING
13 CODES INCLUDED IS NOT ACCURATE.

14 Q. WELL, I'M NOT ASKING YOU THAT. I'M ASKING YOU HAVE
15 YOU EVER SUBMITTED RACHEL TURNER'S CLASS CODE FOR
16 APPROVAL?

17 A. IN OTHER WORDS, IF HER CLASS CODE IS SIMILAR TO THE
18 NURSING CODES THAT ARE SUBMITTED, ---

19 Q. DOES SHE WORK IN ---

20 A. --- THEN YES.

21 Q. DOES SHE WORK IN A HOSPITAL?

22 A. I DON'T KNOW IF SHE EVER WORKED IN A HOSPITAL OR
23 NOT.

24 Q. DID SHE WORK FOR A HOSPITAL WHILE YOU SENT HER TO
25 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

1 A. I DON'T KNOW THAT. I WOULD HAVE TO GO BACK AND LOOK
2 AT ALL OF HER ASSIGNMENTS. I DON'T KNOW THAT OFF
3 THE TOP OF MY HEAD.

4 Q. I'M JUST SAYING, IN THE INSTANCE THAT ---

5 A. RIGHT.

6 Q. --- YOU SENT HER TO THE SOUTH CAROLINA DEPARTMENT OF
7 CORRECTIONS, ---

8 A. RIGHT.

9 Q. --- DO YOU THINK THE SOUTH CAROLINA DEPARTMENT OF
10 CORRECTIONS IS A HOSPITAL FACILITY, AKIN TO A
11 HOSPITAL FACILITY?

12 A. I DON'T -- I MEAN, IT'S NOT A HOSPITAL. I DON'T
13 KNOW THE EXTENT TO WHICH -- I HEARD SOMETHING
14 EARLIER, SOMEBODY TALKED ABOUT THE CONTRACTING WITH
15 THE HOSPITALS TO PROVIDE CARE. IN OTHER WORDS, AS I
16 SIT HERE TODAY AFTER EIGHT HOURS OF TESTIMONY, YOU
17 KNOW, I DON'T HAVE A CLEAR ANSWER WITHOUT REFRESHING
18 MY RECOLLECTION.

19 Q. OKAY. WELL, I THINK WE CAN ALL AGREE THAT A
20 HOSPITAL FACILITY IS NOT A LEVEL THREE SECURE MAX
21 PRISON FACILITY; IS THAT CORRECT? CAN YOU AGREE
22 WITH THAT?

23 A. IT MOST CASES, YES.

24 Q. OKAY. SO, IF YOU HAVE NEVER SUBMITTED -- YOU'VE
25 NEVER SOUGHT APPROVAL FOR A CLASS CODE OF WORKER

1 SPECIFICALLY WORKING AT A PRISON FACILITY PURSUANT
2 TO THIS AGREEMENT, ---

3 A. I'M NOT PREPARED TO AGREE WITH THAT EITHER.

4 BY MR. GOODWYN:

5 I OBJECT.

6 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

7 Q. WELL, YOU JUST SAID ---

8 BY MR. GOODWYN:

9 I OBJECT TO THE QUESTION. IT -- AGAIN ---

10 BY MS. RICHARDSON:

11 OKAY. LET'S BREAK IT DOWN.

12 BY MR. GOODWYN:

13 PLEASE LET ME GET MY OBJECTION OUT BEFORE YOU
14 BEGIN YOUR NEXT QUESTION.

15 BY MS. RICHARDSON:

16 OKAY.

17 BY MR. GOODWYN:

18 I OBJECT. THE QUESTION ASSUMES FACTS NOT IN
19 EVIDENCE THERE. SHE IS SAYING THAT "YOU NEVER GOT A
20 PRISON CLASS CODE APPROVED." WELL, SHE HASN'T
21 POINTED TO A PRISON CLASS CODE AND SAID "IS THIS --
22 HAVE YOU GOTTEN THIS CLASS CODE APPROVED?" AT LEAST
23 ON MY RESEARCH, THERE ARE ONLY TWO NURSING CODES IN
24 THERE, AND THEY SUBMITTED BOTH OF THEM. IF SHE'S
25 GOT AN ALTERNATE CODE, SHOW US.

1 BY MS. RICHARDSON:

2 I THINK HE HAS ALREADY TESTIFIED THAT HE HAS
3 NEVER SOUGHT -- HE HAS NEVER SOUGHT -- HE HAS NEVER
4 ASKED FOR ANY WORKER WHO IS DELIVERED TO THE SOUTH
5 CAROLINA DEPARTMENT OF CORRECTIONS TO BE APPROVED
6 UNDER THE CONTRACT. I MEAN, HE SAID THAT. THEY ARE
7 INDEPENDENT CONTRACTORS. HE HAS NEVER SOUGHT
8 WORKERS' COMPENSATION INSURANCE COVERAGE FOR THEM.

9 BY COMMISSIONER JAMES:

10 OKAY. AND ---

11 BY MR. GOODWYN:

12 SO, I DON'T KNOW HOW THAT'S RELEVANT TO THE
13 OBJECTION.

14 BY MS. RICHARDSON:

15 I WILL REPHRASE MY QUESTION.

16 BY COMMISSIONER JAMES:

17 IF YOU ---

18 BY MS. RICHARDSON:

19 I WILL REPHRASE MY QUESTION.

20 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

21 Q. IF YOU LOOK BACK AT THE COUNTRYWIDE CONTRACT UNDER
22 "CLIENT'S OBLIGATION TWO-C," CAN YOU READ THE FIRST
23 SENTENCE, PLEASE?

24 A. I'M SORRY, YOU SAID "COUNTRYWIDE TWO-C"?

25 Q. YEAH, TWO-C, FIRST TWO SENTENCES, PLEASE.

1 A. WHICH I HAVE READ BEFORE. "SUBMIT TIMELY, COMPLETE
2 AND ACCURATE PAYROLL INFORMATION (INCLUDING GROSS
3 WAGES EARNED, ANY DEDUCTIONS, TIME WORKED,
4 LEAVE/TIME OFF STATUS, WORKER CLASSIFICATION CODE,
5 AND OVERTIME EXEMPT STATUS) FOR EACH ASSIGNED
6 EMPLOYEE FOR EACH APPLICABLE PAYROLL PERIOD AT LEAST
7 THREE BANKING DAYS PRIOR TO THE DAY ON WHICH PAYROLL
8 IS TO BE ISSUED BY C.S.S.G. ALL INFORMATION
9 PROVIDED BY CLIENT TO C.S.S.G. WILL BE COMPLETE,
10 ACCURATE AND NOT MISLEADING. CLIENT IS RESPONSIBLE
11 FOR THE SECURITY AND TRANSMISSION OF INFORMATION
12 PRIOR TO ACTUAL RECEIPT BY C.S.S.G." OKAY.

13 Q. YES. AND I THINK YOU -- YOU'VE ALREADY TESTIFIED
14 THAT ON THE DATE OF THE ACCIDENT, YOU HAD NEVER
15 SUBMITTED ANY PAYROLL INFORMATION FOR RACHEL TURNER;
16 IS THAT CORRECT?

17 A. I DID NOT SUBMIT ANY PAYROLL INFORMATION FOR RACHEL
18 TURNER; THAT IS CORRECT.

19 Q. OKAY. AND SO, THEN HOW IS SHE COVERED -- YOU'VE
20 ALSO TESTIFIED THAT SOMEHOW YOU THOUGHT THAT IF THE
21 WORKERS' COMPENSATION COMMISSION DETERMINED HER TO
22 BE AN EMPLOYEE IN THIS CASE EVEN THOUGH SHE HASN'T
23 YET BEEN COVERED UNDER THIS CONTRACT, YOU THINK
24 SOMEHOW THEN C.S.S.G. COULD CONDUCT LIKE AN AUDIT
25 AND BRING HER IN; IS THAT CORRECT?

1 A. I THINK THAT'S SOMETHING ALONG TO THAT EFFECT, I'VE
2 DISCUSSED, YES.

3 Q. BUT, LIKE ANY OTHER WORKER, THEY COULD SAY "WE DON'T
4 INSURE A WORKER AT A PRISON FACILITY," ISN'T THAT
5 CORRECT?

6 A. I DON'T KNOW THAT I AGREE WITH THAT EITHER. I MEAN,
7 IT'S NOT SOME WORKER AT A PRISON FACILITY.

8 Q. DOES THE AGREEMENT ALLOW C.S.S.G. TO REJECT CLASS
9 CODES AND LOCATIONS?

10 A. ON OCCASION, YES.

11 Q. OKAY.

12 A. BUT IT SEEMS TO CONTEMPLATE THAT THE SITUATION IF WE
13 WERE ABLE TO HAVE THAT CONVERSATION PRIOR ---

14 Q. OKAY. BUT YOU ---

15 A. --- TO, RIGHT.

16 Q. BUT THEY HAVE THE ABILITY TO REJECT A CLASS CODE AND
17 LOCATION?

18 A. AND I THINK IT WAS WITH REASONABLE -- LET'S SEE.
19 THEY DID AFTER CONSULTATION WITH US AND A REASONABLE
20 TIME TO CURE.

21 Q. OKAY. YOU'VE TALKED A LITTLE BIT ABOUT THIS IDEA OF
22 BEING A CO-EMPLOYER UNDER THIS AGREEMENT. JUST
23 BECAUSE THE COMMISSIONER DETERMINES THAT RACHEL
24 TURNER IS AN EMPLOYEE OF YOURS FOR PURPOSES OF THE
25 ACT DOES NOT MAKE C.S.S.G. HER CO-EMPLOYER UNDER

1 THIS AGREEMENT.

2 BY MR. GOODWYN:

3 I OBJECT TO THE FORM.

4 BY THE WITNESS:

5 ARE YOU ASKING A QUESTION ---

6 BY MS. RICHARDSON:

7 YES.

8 BY THE WITNESS:

9 --- OR TELLING ME YOUR OPINION?

10 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

11 Q. YES, DOES IT? A DETERMINATION BY ---

12 BY MR. GOODWYN:

13 IT CALLS FOR A LEGAL CONCLUSION AS WELL.

14 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

15 Q. WELL, WHAT IS THE MEANING OF CO-EMPLOYER UNDER YOUR
16 AGREEMENT THEN?

17 A. I THINK IT MEANS WHAT IT SAYS. WE ARE CO-EMPLOYERS.
18 IN OTHER WORDS, FOR ANY SELECTED STAFFING/EMPLOYEES,
19 ---

20 Q. YES.

21 A. --- THEN WE ARE -- WE BOTH ACT AS THE EMPLOYER ---

22 Q. SO, YOU HAVE TO ---

23 A. --- ACCORDING TO THIS AGREEMENT.

24 Q. RIGHT. YOU HAVE TO COMPLY WITH THE AGREEMENT AND
25 BRING EMPLOYEES UNDER THE AGREEMENT, MEANING THAT

1 YOU HAVE TO SUBMIT THEM FOR PAYROLL, AND THEIR CLASS
2 CODES AND LOCATIONS HAVE TO BE APPROVED BEFORE
3 C.S.S.G. AGREES TO BECOME A CO-EMPLOYER WITH
4 CONDUSTRIAL UNDER THE AGREEMENT; IS THAT CORRECT?

5 A. I THINK IN THE NORMAL COURSE OF BUSINESS, YES.

6 Q. OKAY.

7 A. THIS IS NOT THE NORMAL COURSE OF BUSINESS.

8 Q. YOU TALKED A LITTLE BIT ABOUT HOW NELSON MULLINS HAD
9 REVIEWED YOUR INDEPENDENT CONTRACT -- OR MAYBE THEY
10 DRAFTED YOUR INDEPENDENT CONTRACTOR AGREEMENT; IS
11 THAT CORRECT?

12 A. THEY DID.

13 Q. OKAY. AND THEN YOU -- I BELIEVE THAT YOU MENTIONED
14 THAT THEY FOUND THAT THE CONTRACT WAS ALL WELL AND
15 GOOD AND THAT -- IS IT YOUR TESTIMONY THAT THEY ALSO
16 LOOKED AT THE INDEPENDENT CONTRACTOR IN RELATION TO
17 WORKERS' COMPENSATION INSURANCE?

18 A. I'M NOT SURE WHAT YOU'RE ASKING.

19 Q. OKAY. DID NELSON MULLINS EVER LOOK AT THE ISSUE OF
20 WORKERS' COMPENSATION INSURANCE WITH REGARD TO YOUR
21 INDEPENDENT CONTRACTORS?

22 A. I'M NOT SURE OF THAT. I WOULD HAVE TO REFRESH MY
23 RECOLLECTION.

24 Q. OKAY. SO, YOU DON'T HAVE ANY KNOWLEDGE THAT WOULD
25 ASSURE YOU THAT -- FROM NELSON MULLINS THAT YOUR

1 INDEPENDENT CONTRACTORS WOULD BE SOMEHOW COVERED BY
2 WORKERS' COMPENSATION INSURANCE IN ANY -- IN ANY
3 WAY?

4 A. I DON'T KNOW WHAT YOU'RE ---

5 Q. DID YOU ASK NELSON MULLINS TO LOOK AT WHETHER OR NOT
6 YOUR INDEPENDENT CONTRACTORS WERE COVERED BY
7 WORKERS' COMPENSATION INSURANCE; DID NELSON MULLINS
8 REVIEW THAT ISSUE FOR YOU?

9 A. AS I SIT HERE TODAY, I WOULD HAVE TO REFRESH MY
10 RECOLLECTION TO GIVE YOU A BETTER ANSWER.

11 Q. OKAY. DID ---

12 A. I'M NOT SURE.

13 Q. DID YOU SHOW NELSON MULLINS ALL OF THOSE EMPLOYEE
14 AGREEMENTS THAT SAY MEDUSTRIAL AND THEN CONDUSTRIAL
15 SURROUNDING THE INDEPENDENT CONTRACTOR AGREEMENT
16 THAT THEY DRAFTED?

17 A. WHAT -- WHAT AGREEMENTS ARE YOU TALKING ABOUT? ARE
18 YOU TALKING ABOUT THE APPLICATION?

19 Q. ALL OF THE -- THE AGREEMENTS THAT MR. SAMUELS WENT
20 OVER WITH YOU TODAY, SOME ON CONDUSTRIAL LETTERHEAD;
21 SOME ON MEDUSTRIAL LETTERHEAD, THE FAIR CREDIT
22 REPORTING ONE, THE -- YOU KNOW, SHOW UP AND LOOK
23 THIS ONE WAY, AN OTHER THING? I MEAN, DID YOU SHARE
24 ALL OF THE DOCUMENTATION THAT CONDUSTRIAL/MEDUSTRIAL
25 HAD AN EMPLOYEE LIKE RACHEL TURNER SIGN WHEN THEY

1 DRAFTED THAT INDEPENDENT CONTRACTOR AGREEMENT FOR
2 YOU?

3 A. I MEAN, I WASN'T HERE THEN, SO I CAN'T SPEAK
4 DIRECTLY TO IT, BUT WHAT I HAVE TESTIFIED TO BEFORE
5 IS THAT NELSON MULLINS WAS REPRESENTING OUR
6 PREDECESSOR, AND MY UNDERSTANDING WAS ALREADY
7 INVOLVED IN THAT ANALYSIS, AND WHEN WE BOUGHT THE
8 ASSETS, SAID "OKAY, NOW, IT'S SWITCHING FROM
9 PALMETTO REFERRAL SERVICES TO MEDUSTRIAL, AND HERE'S
10 AN INDEPENDENT CONTRACTOR AGREEMENT TO GO FORWARD."

11 Q. WHAT YEAR WAS THAT?

12 A. WHENEVER -- WELL, THE CONTRACT WAS SIGNED IN 2008.
13 AGAIN, I WOULD HAVE TO REFRESH MY RECOLLECTION. I
14 DON'T KNOW IF THAT WAS 2006 OR 2007. IT'S SOMEWHERE
15 IN THAT NEIGHBORHOOD.

16 Q. OKAY.

17 A. ALL RIGHT.

18 Q. SO, COME 2013, YOU ARE RELYING ON AN OPINION FROM
19 2006 IN THE INDEPENDENT -- ABOUT INDEPENDENT
20 CONTRACTOR EMPLOYEE ISSUES?

21 A. WHAT OPINION DO YOU THINK I'M RELYING ON?

22 Q. THE NELSON MULLINS OPINION.

23 A. ABOUT WHAT?

24 Q. THAT THE INDEPENDENT CONTRACTOR AGREEMENT WAS
25 PROTECTING Y'ALL?

1 A. THE AGREEMENT THAT -- THE INDEPENDENT CONTRACTOR
2 AGREEMENT THAT MS. TURNER SIGNED IS THE SAME
3 AGREEMENT THAT NELSON MULLINS DRAFTED BACK IN '07 OR
4 '08.

5 Q. YES.

6 A. A MATTER OF FACT, MR. DURHAM FELT VERY COMFORTABLE
7 WITH THAT AGREEMENT. SO, I WAS INSTRUCTED NOT TO
8 CHANGE IT.

9 Q. OKAY. YOU NEVER THOUGHT THAT MAYBE IT'S ALMOST A
10 DECADE OLD, WE MIGHT NEED TO HAVE AN ATTORNEY RE-
11 REVIEW THAT THING?

12 A. MR. DURHAM SAID "IT'S PROTECTED US. I'M COMFORTABLE
13 WITH IT. LEAVE IT AS IT IS."

14 Q. DID YOU EVER ADVISE MR. DURHAM THAT THE LAW IN THIS
15 AREA IS RAPIDLY CHANGING, AND THAT WE SHOULD --
16 PRUDENT BUSINESS PRACTICES WOULD REQUIRE US TO RE-
17 REVIEW THESE DOCUMENTS?

18 A. I DON'T AGREE THAT IT'S RAPIDLY CHANGING. I
19 CERTAINLY HAVE LOOKED AT IT OVER THE YEARS. IT'S --
20 UP UNTIL NOW, IT'S OBVIOUSLY PROVEN ITSELF. IN
21 OTHER WORDS, ANY TIME THAT UNEMPLOYMENT IS
22 CHALLENGED, IT'S WORKED. IT'S HELD UP. I MEAN,
23 UNLESS A DECISION GOES AGAINST US IN THIS CASE, IT
24 HASN'T BEEN CHALLENGED OR MITIGATED OR PUT DOWN YET.

25 Q. HAVE YOU EVER HAD A 1099 WORKER FILE A WORKERS'

1 COMPENSATION CLAIM WHO WORKED FOR A PRISON FACILITY?

2 A. ACTUALLY, TO THE BEST OF MY KNOWLEDGE, NO, NOT UNTIL
3 THIS ONE.

4 Q. YES.

5 A. THAT DOESN'T MEAN ANYTHING MORE THAN THE OTHER. IT
6 JUST MEANS THEY HAVEN'T FILED A CLAIM.

7 BY THE WITNESS:

8 COMMISSIONER, IN A MINUTE, I'M NOT DIABETIC OR
9 ANYTHING, BUT MY HEAD IS BUZZING. I THINK I'VE GOT
10 TO HAVE LIKE A SODA OR SOMETHING IN A MINUTE.

11 BY COMMISSIONER JAMES:

12 CERTAINLY, WE WILL.

13 BY MR. ALFORD:

14 DO YOU NEED THE SNACK BOX? WE'VE GOT A SNACK
15 BOX.

16 BY THE WITNESS:

17 WELL, IS THERE A VENDING MACHINE OR A SODA
18 NEARBY?

19 BY MR. ALFORD:

20 I CAN GO GET HIM ONE IF YOU WANT.

21 BY COMMISSIONER JAMES:

22 YES.

23 (OFF THE RECORD)

24 BY COMMISSIONER JAMES:

25 BACK ON THE RECORD.

CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

Q. ALL RIGHT, MR. SEARS, WE ARE ALMOST DONE. WITH REGARD TO THE INSURANCE -- WORKERS' COMPENSATION INSURANCE THAT YOU THOUGHT YOU HAD IN PLACE THROUGH C.S.S.G. ---

A. YES.

Q. --- THAT APPLIES TO RACHEL TURNER'S INCIDENT, HAVE YOU EVER HAD ANY CONVERSATIONS WITH GUARANTEE INSURANCE COMPANY BEFORE THE DATE OF THE ACCIDENT?

A. ABOUT?

Q. THE WORKERS' COMPENSATION INSURANCE POLICY THAT YOU THOUGHT -- THE WORKERS' COMPENSATION INSURANCE THAT YOU THOUGHT YOU WERE PROCURING THROUGH C.S.S.G., ---

A. RIGHT.

Q. --- HAVE YOU EVER HAD A CONVERSATION ABOUT GUARANTEE'S WORKERS' COMPENSATION INSURANCE POLICY WITH C.S.S.G.?

A. I MEAN, I GUESS WHAT I'M SAYING IS, I MEAN, WE DID PROCURE INSURANCE WITH GUARANTEE THROUGH COUNTRYWIDE. I MEAN, WE ---

Q. HAVE ---

A. I MEAN, WE HAVE OVER 200 CERTIFICATES THAT SHOW THAT WE DO, AT LEAST WE WERE TOLD THAT WE DID. SO, AND I KNOW THEY'VE PROCESSED MANY CLAIMS FOR US DURING THAT PERIOD. I DID TALK TO SEVERAL OF THE ADJUSTERS

1 AS A PART OF THE PROCESS IN CLAIMS. WE DID MAKE
2 REQUESTS TO HAVE CLAIMS REVIEWS. WE ASKED
3 COUNTRYWIDE PERSONNEL, "I WOULD LIKE TO HAVE A
4 REGULAR CLAIM'S REVIEW WITH AN ADJUSTER OR WHOEVER
5 YOU WANT TO PULL IN." THAT NEVER HAPPENED.

6 Q. YOU ASKED C.S.S.G. TO HAVE A CLAIM'S REVIEW?

7 A. YEAH, DANIEL RIVERO, I HAVE.

8 Q. DID YOU -- DANIEL RIVERO IS NOT A GUARANTEE EMPLOYEE,
9 IS SHE?

10 A. SHE'S NOT A GUARANTEE EMPLOYEE.

11 Q. OKAY. SHE ---

12 A. WELL, THEY INSTRUCTED ME ---

13 Q. HAVE YOU -- I'M SORRY. GO AHEAD.

14 A. I'M ANSWERING YOUR QUESTION. THEY INSTRUCTED ME ON
15 THE CLAIMS THAT WENT THROUGH, I TALKED TO THE
16 ADJUSTERS FROM GUARANTEE. DONNA MANFRE WAS ONE.
17 THERE WAS A LADY IN FLORIDA; I CAN'T REMEMBER HER
18 NAME, BUT I DEALT WITH DONNA MANFRE ON SOUTH
19 CAROLINA CLAIMS, BUT I WAS INSTRUCTED BY GEORGE AND
20 DANIEL, "WE DON'T WANT YOU CALLING GUARANTEE." IN
21 OTHER WORDS, "DEALING WITH AN ADJUSTER IS OKAY. WE
22 DON'T WANT YOU CALLING GUARANTEE," AND PART OF THAT
23 WAS BECAUSE OF THE CLAIM WE HAD WITH BERKLEY
24 RIVERPORT WHERE I DID CONTACT AN UNDERWRITER THERE
25 WHEN THEY SAID "WE DON'T KNOW WHO YOU ARE, AND WE

1 DON'T OWE YOU COVERAGE," I SAID "WELL, THAT DOESN'T
2 NEED TO HAPPEN AGAIN," BUT GEORGE AND DANIEL AND
3 PROBABLY TED SAID "YOU'RE NOT TO CONTACT THEM AGAIN
4 OTHER THAN THE ADJUSTERS," SO I DID NOT.

5 Q. BECAUSE C.S.S.G. IS THE INSURED ON GUARANTEE'S
6 POLICY; ISN'T THAT CORRECT?

7 A. I THINK IT WAS COUNTRYWIDE'S MASTER POLICY, YES, AND
8 I DON'T KNOW IF ALL THREE ENTITIES ARE UNDER THE
9 SAME POLICY OR NOT.

10 Q. HAVE YOU EVER SEEN A COPY OF THE POLICY BEFORE THE
11 DATE OF THE ACCIDENT, MR. SEARS?

12 A. WE'VE ASKED TO SEE IT, AND WE'VE BEEN DENIED THAT.

13 Q. YOU -- SO, YOU'VE NEVER -- DID YOU EVER ASK FOR A
14 COPY OF THE POLICY ---

15 A. I JUST ---

16 Q. --- BEFORE THE DATE OF THE ACCIDENT?

17 A. I JUST SAID I DID, AND THEY DENIED THAT.

18 Q. OKAY. WAS THAT IN WRITING?

19 A. IT'S POSSIBLE. I WOULD HAVE TO GO BACK. I KNOW
20 THAT I WOULD HAVE TALKED WITH EITHER GEORGE OR DANIEL
21 OR TED, AND WITHOUT ME REVIEWING MY EMAILS, I DON'T
22 KNOW IF I PUT IT IN WRITING.

23 Q. BUT IT WOULDN'T SURPRISE YOU, AND I THINK YOU'VE
24 WRITTEN THIS IN AN EMAIL THAT ---

25 A. RIGHT.

1 Q. --- C.S.S.G. IS THE LISTED INSURED ON THE MASTER
2 POLICY; ISN'T THAT CORRECT?

3 A. IT CERTAINLY IS THEIR MASTER POLICY, YES.

4 Q. OKAY.

5 BY MS. RICHARDSON:

6 I DON'T HAVE ANY MORE QUESTIONS. THANKS VERY
7 MUCH.

8 BY THE WITNESS:

9 THANK YOU. THANK YOU FOR THE SNACK.

10 BY COMMISSIONER JAMES:

11 MS. FARTHING.

12 BY MS. FARTHING:

13 THANK YOU.

14 CROSS EXAMINATION BY MS. FARTHING:

15 Q. GOOD EVENING. TAKING ---

16 BY COMMISSIONER JAMES:

17 MR. SEARS, IF IT MAKES YOU MORE COMFORTABLE TO
18 STAND UP AT TIMES, I MEAN, JUST I KNOW YOU'VE BEEN
19 SITTING FOR A WHILE.

20 BY THE WITNESS:

21 THANK YOU.

22 BY COMMISSIONER JAMES:

23 ALL RIGHT. MS. FARTHING.

24 BY MS. FARTHING:

25 THANK YOU.

CROSS EXAMINATION RESUMED BY MS. FARTHING:

1 Q. MR. SEARS, I KNOW WE'VE MET ON A NUMBER OF
2 OCCASIONS. MY NAME IS ERIN FARTHING, AND I'M THE
3 ATTORNEY FOR THE SOUTH CAROLINA DEPARTMENT OF
4 CORRECTIONS AND THE STATE ACCIDENT FUND IN THIS
5 CLAIM, AND KIND OF TAKING INTO ACCOUNT THAT
6 EVERYBODY HAS BEEN HERE FOR ABOUT 12 HOURS TODAY, I
7 WILL TRY TO BE AS BRIEF AS POSSIBLE, BUT I DO HAVE
8 SOME QUESTIONS THAT I NEED TO ASK YOU, AND MOST OF
9 THEM ARE GOING TO CONCERN THIS CONTRACT WITH THE
10 DEPARTMENT OF CORRECTIONS. AND I KNOW EARLIER YOU
11 MENTIONED, I GUESS YOU TOOK THE POSITION THAT THE
12 TWO LAST PARAGRAPHS AT THE VERY BEGINNING OF THE
13 CONTRACT, AND I'M LOOKING AT THE 2008 CONTRACT.
14

15 A. OKAY.

16 Q. DESIGNATED THESE PERSONNEL, THESE NURSING, MEDICAL
17 STAFFING PERSONNEL AS AN INDEPENDENT CONTRACTOR; IS
18 THAT CORRECT?

19 BY COMMISSIONER JAMES:

20 AND LET'S REFER BECAUSE WE HAVEN'T LOOKED AT
21 THAT DOCUMENT IN A WHILE.

22 BY MS. FARTHING:

23 YEAH.

24 BY COMMISSIONER JAMES:

25 JUST IN CASE WHOEVER IS BEHIND US AND READING

1 THIS RECORD, THAT MY INFORMATION IS THAT'S THE
2 CLAIMANT'S 254?

3 BY MS. FARTHING:

4 YEAH, IT BEGINS AT 253, AND 253 IS THE COVER
5 LETTER, BUT THE CONTRACT ITSELF BEGINS AT 254, YES,
6 MA'AM.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT.

9 BY THE WITNESS:

10 I AM LOOKING AT THOSE TWO PHRASES "WHEREAS."

11 CROSS EXAMINATION RESUMED BY MS. FARTHING:

12 Q. YES, SIR, AND I THINK IT WAS YOUR TESTIMONY EARLIER
13 THAT THAT PARAGRAPH INDICATES THAT THE MEDICAL
14 STAFFING PERSONNEL TO BE PROVIDED BY THE CONTRACTOR
15 WERE INDEPENDENT CONTRACTORS; IS THAT CORRECT?

16 A. THAT IS MY UNDERSTANDING. IN OTHER WORDS, WHEN I
17 READ THOSE TWO "WHEREAS," CERTAINLY IT'S POSSIBLE TO
18 HAVE MORE THAN ONE INTERPRETATION, BUT WHEN I GOT TO
19 CONDUSTRIAL AND INVESTIGATED THIS SITUATION AND HAD
20 THIS CONTRACT, WHAT WAS EXPLAINED TO ME WAS THAT --
21 ESPECIALLY THE SECOND "WHEREAS" MEANS THAT WE WERE
22 PROVIDING INDEPENDENT CONTRACTORS.

23 Q. OKAY. IS THERE ANOTHER POSSIBLE INTERPRETATION THAT
24 IT IS IN FACT THE CONTRACTOR, WHICH IS MEDUSTRIAL
25 THAT IS BEING REFERRED TO AS THE INDEPENDENT

1 CONTRACTOR IN THAT SENTENCE AND ACTUALLY IN BOTH
2 SENTENCES?

3 A. I THINK IN THE FIRST ONE, YES, "DESIRES TO ENGAGE
4 SERVICE OF CONTRACTOR TO PROVIDE MEDICAL STAFFING."
5 I MEAN, I THINK IN THE FIRST ONE, I WOULD DEFINITELY
6 AGREE WITH YOU.

7 Q. OKAY.

8 A. THE SERVICES OF CONTRACTOR. THE SECOND ONE,
9 "WHEREAS CONTRACTOR DESIRES TO PROVIDE MEDICAL
10 STAFFING PERSONNEL AS AN INDEPENDENT CONTRACTOR
11 UNDER THE TERMS AND CONDITIONS SET OUT IN THE
12 AGREEMENT." ALL I CAN SAY IS IT'S POSSIBLE TO HAVE
13 MORE THAN ONE INTERPRETATION.

14 Q. 'CAUSE IT ACTUALLY REFERENCES "THE ACTIONS OF
15 CONTRACTOR" IN THAT SECOND PARAGRAPH AND "THEIR
16 DESIRE TO PROVIDE THE SERVICE TO THE DEPARTMENT OF
17 CORRECTIONS," CORRECT?

18 A. I KNOW WHAT IT SAYS. YES, IT SAYS -- I MEAN, IT
19 SPEAKS FOR ITSELF. LIKE I SAID, IN SPEAKING WITH
20 MS. RATHBURN AND OTHERS AT CONDUSTRIAL WHEN I GOT
21 THERE, THEIR INTERPRETATION WAS THAT RIGHT THERE
22 SAYS WE PROVIDE INDEPENDENT CONTRACTORS.

23 Q. OKAY. BUT INDEPENDENT CONTRACTOR SINGULAR IN THAT
24 PARAGRAPH, IN BOTH PARAGRAPHS AS A MATTER OF FACT,
25 CORRECT? "AN INDEPENDENT CONTRACTOR"?

1 A. I UNDERSTAND THAT, YES, IT IS SINGULAR.

2 Q. AND PRESUMABLY THIS CONTRACT PRESUPPOSED THAT THERE
3 WAS THIS IDEA THAT YOU WERE GOING TO PROVIDE
4 MULTIPLE MEDICAL PERSONNEL? IN FACT, I THINK IT
5 INDICATES THEY ARE GOING -- IN PARAGRAPH ONE,
6 GENERAL ENGAGEMENT: "S.C.D.C. HEREBY ENGAGES
7 CONTRACTOR TO PROVIDE QUALIFIED NURSING
8 PROFESSIONALS." SO, THAT'S -- ASSUME -- I GUESS
9 PRESUPPOSING THIS FACT THAT YOU ARE GOING TO PROVIDE
10 MANY INDIVIDUALS, NOT JUST ONE?

11 A. YES, CERTAINLY, I THINK THIS AGREEMENT WAS TO GOVERN
12 ALL SUCH INTERACTIONS.

13 Q. OKAY. MS. RATHBURN, IS SHE STILL EMPLOYED WITH
14 CONDUSTRIAL?

15 A. SHE IS NOT.

16 Q. WHERE IS SHE NOW?

17 A. GOOD QUESTION.

18 Q. OKAY.

19 A. COULD BE IN PRISON.

20 Q. OKAY.

21 A. SHE -- AS I THINK AS I TESTIFIED IN MY DEPOSITION,
22 WE ENDED UP HAVING TO TERMINATE HER I WANT TO SAY IN
23 2013 BECAUSE SHE NOT ONLY FAILED A DRUG TEST, SHE
24 ATTEMPTED TO FALSIFY A DRUG TEST, AND FOR OTHER
25 REASONS. SHE HAD SOMETHING HIDDEN IN A STALL WHEN

1 IT WAS TIME FOR HER TEST. SO, SHE WAS TERMINATED.
2 OTHER PEOPLE THAT WORK THERE POINTED OUT TO US AT A
3 LATER DATE THAT MS. RATHBURN HAD BEEN ARRESTED FOR,
4 I THINK, DRUG RELATED OFFENSES.

5 Q. OKAY. LOOKING BACK TOO AT THIS "WHEREAS" IN THIS
6 REFERENCE TO THIS INDEPENDENT CONTRACTOR, THROUGHOUT
7 THE REST OF THE CONTRACT, THE NURSING PERSONNEL AND
8 THE MEDICAL STAFFING PERSONNEL ARE NOT REFERRED TO
9 EVER AGAIN AS INDEPENDENT CONTRACTORS, CORRECT?

10 A. I DON'T -- I AGREE WITH YOU, I DON'T SEE THAT PHRASE
11 OTHER THAN IN THOSE TWO WHEREAS.

12 Q. OKAY. IN FACT, UNDER THE AGREED SERVICES PARAGRAPH
13 ONE-A, I KNOW YOU'VE KIND OF READ THIS A NUMBER OF
14 TIMES. THEY'RE ACTUALLY DEFINED AS BEING EMPLOYEES
15 OF CONTRACTOR AND NOT S.C.D.C., CORRECT?

16 A. IT DOES SAY THAT "R.N.s, L.P.N.s ASSIGNED TO
17 S.C.D.C. BY CONTRACTOR ARE EMPLOYEES OF CONTRACTOR,
18 NOT S.C.D.C."

19 Q. AND I KNOW THAT YOU'VE TESTIFIED AND TALKED ABOUT A
20 NUMBER OF TIMES THE USE OF THE EMPLOYEE IN THAT
21 PARAGRAPH AND ALSO THE PARAGRAPH -- PARAGRAPH SIX ON
22 PAGE 258, ---

23 A. RIGHT.

24 Q. --- THAT YOU'VE TESTIFIED CONCERNING THE USE OF
25 "EMPLOYEE" IN BOTH OF THOSE PARAGRAPHS, BUT IN FACT,

1 THE USE OF "EMPLOYEE" OR CONTRACTOR'S EMPLOYEE" AND
2 CONTRACTOR" IN THIS PARAGRAPH, IN THIS CONTRACT IS
3 DEEMED TO BE MEDUSTRIAL HEALTHCARE, CORRECT?

4 A. WHAT ARE YOU ASKING? I'M SORRY.

5 Q. SO, JUST FOR -- "CONTRACTOR" REFERS TO MEDUSTRIAL
6 HEALTHCARE, CORRECT, WITHIN THE TERMS OF THIS
7 CONTRACT?

8 A. WHICH ---

9 Q. WITH CONTRACTOR WITH THE BIG C?

10 A. I MEAN, YEAH, I THINK CONTRACTOR PROBABLY REFERS TO
11 MEDUSTRIAL HEALTHCARE.

12 Q. OKAY. THE USE OF "CONTRACTOR'S EMPLOYEES" OR
13 "MEDUSTRIAL'S EMPLOYEES" IS USED IN THE CONTEXT OF
14 THIS CONTRACT MORE THAN 20 TIMES.

15 A. YOU SAID THE USE OF THE WORD "CONTRACTOR"?

16 Q. "EMPLOYEES OF CONTRACTOR" OR "CONTRACTOR'S
17 EMPLOYEES" OR REFERRING TO THE NURSING PERSONNEL AS
18 EMPLOYEES IS USED MORE THAN 20 TIMES WITHIN THE --
19 WITHIN THE CONTEXT OF THIS PARAGRAPH.

20 A. OKAY. SOUNDS -- SOUNDS -- SOUNDS GOOD.

21 Q. OKAY. INCLUDING IN THE PARAGRAPH CONCERNING
22 PAYMENTS FROM DEPARTMENT OF CORRECTIONS TO
23 MEDUSTRIAL FOR THE SERVICES RENDERED BY THESE
24 INDIVIDUALS WITH THE DEPARTMENT OF CORRECTIONS?

25 A. OKAY. WHAT -- WHAT PARAGRAPH IS THAT?

1 Q. THAT IS PARAGRAPH FOUR-A. IT INDICATES THAT
2 "S.C.D.C. SHALL PAY CONTRACTOR THE HOURLY RATES OF
3 PAY UPON RECEIPT OF AN INVOICE, WHICH DOCUMENTS THE
4 SERVICES PROVIDED INCLUDES THE NAMES OF CONTRACTOR'S
5 EMPLOYEES."

6 A. RIGHT.

7 Q. OKAY. SO -- AND I GUESS IN DISCUSSING THAT
8 PARAGRAPH SIX AND THE REQUIREMENT FOR MEDUSTRIAL TO
9 PROVIDE WORKERS' COMPENSATION COVERAGE FOR
10 CONTRACTOR'S EMPLOYEES, ---

11 A. RIGHT.

12 Q. --- ARE YOU ATTEMPTING TO INTERPRET CONTRACTOR'S
13 EMPLOYEES DIFFERENTLY IN THAT PARAGRAPH THAN
14 THROUGHOUT THE REMAINDER OF THAT CONTRACT?

15 A. I DON'T -- I DON'T THINK THE INTERPRETATION IS
16 DIFFERENT. I KNOW THAT WE TALKED ABOUT THIS IN MY
17 DEPOSITION. YOU KNOW, AGAIN, I THINK WE ARE -- I
18 THINK WE ARE HAVING A HYPER TECHNICAL DISCUSSION
19 ABOUT THIS. WHEN WE TOOK OVER THE GOOD FAITH ACTION
20 OF CONDUSTRIAL THROUGH MEDUSTRIAL WAS TO OPERATE THE
21 CONDUSTRIAL -- THE INDEPENDENT CONTRACTOR BROKERAGE
22 MODEL THAT WE INHERITED THAT WAS ALREADY IN PLACE
23 WITH S.C.D.C., AND THIS BOILERPLATE STANDARD
24 CONTRACT WAS SENT TO MS. RATHBURN TO SIGN, BECAUSE
25 SHE WAS FAMILIAR WITH THE ACCOUNT THROUGH PALMETTO,

1 AND SHE SIGNED IT, BUT AT THE TIME SHE SIGNED IT,
2 SHE KNEW THAT INDEPENDENT CONTRACTORS WERE BEING
3 PROVIDED ON A DAILY BASIS.

4 Q. OKAY. BUT AGAIN, THE REFERENCE TO CONTRACTOR'S
5 EMPLOYEES ---

6 A. YEAH.

7 Q. --- IN PARAGRAPH SIX, IS IT ANY DIFFERENT THAN ANY
8 OTHER REFERENCE TO THESE INDIVIDUALS AS CONTRACTOR'S
9 EMPLOYEES THROUGHOUT THE REMAINDER OF THE CONTRACT,
10 CORRECT? FOR INSTANCE, IT SAYS, LOOK AT NUMBER "B."

11 A. RIGHT.

12 Q. OR THE LETTER "B," ONE-B, THE VERY END OF IT SAYS
13 "SUCH A DISCLOSURE TO S.C.D.C." -- THIS ACTUALLY
14 TALKS ABOUT ---

15 A. YEAH.

16 Q. --- THE PROHIBITION AGAINST THE MEDUSTRIAL NURSES
17 ADVISING THE SOUTH CAROLINA DEPARTMENT OF
18 CORRECTIONS' NURSES OF THEIR COMPENSATION. I
19 BELIEVE YOU ACTUALLY -- MR. SAMUELS SHOWED YOU AN
20 AGREEMENT THAT MEDUSTRIAL HAD HAD MS. TURNER SIGN,
21 AND YOU ACTUALLY INDICATED THAT YOU THOUGHT THAT
22 MIGHT HAVE COME FROM THE DEPARTMENT OF CORRECTIONS
23 BECAUSE IT WAS ONE OF THEIR POLICIES, THAT THIS WAS
24 NOT TO BE DISCUSSED BETWEEN THE NURSES PROVIDED BY
25 MEDUSTRIAL AND THE NURSES WORKING AT THE DEPARTMENT