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

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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 3RD DAY OF
NOVEMBER, 2017, COMMENCING AT THE HOUR OF 9:36 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

 COPY

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
WHITWORTH COURT REPORTING
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705

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ALSO ATTENDING: TOM SEARS, ERIC DAWSON, BECKY BARNETTE

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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 NOVEMBER THE 3RD, 2017. WE ARE
8 RESUMING TESTIMONY THIS MORNING IN REGARDS TO THE
9 MATTER OF RACHEL TURNER VERSUS CONDUSTRIAL,
10 INCORPORATED, ET AL, W.C.C. FILE NUMBER 1514359.

11 MR. GOODWYN, YOU ARE STILL ON YOUR CASE IN
12 CHIEF, AND YOUR WITNESS BEING CALLED IS?

13 BY MR. GOODWYN:

14 TONY DURHAM.

15 BY COMMISSIONER JAMES:

16 MR. DURHAM, IF YOU WOULD RAISE YOUR RIGHT HAND
17 FOR ME, PLEASE, SIR?

18 * * * * * * * * * * * * * * * *

19 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
20 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
21 MATTER HEREIN:

22 TONY DURHAM

23 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

24 BY COMMISSIONER JAMES:

25 ALL RIGHT. MR. GOODWYN.

DIRECT EXAMINATION BY MR. GOODWYN:

Q. MR. DURHAM, WHAT -- HOW ARE YOU EMPLOYED?

A. I AM THE OWNER/PRESIDENT OF CONDUSTRIAL,
INCORPORATED.

Q. OKAY. HOW OLD ARE YOU?

A. I AM SIXTY YEARS OLD.

Q. ALL RIGHT. TELL US A LITTLE BIT ABOUT YOUR
EDUCATIONAL BACKGROUND.

A. I HAVE A BACHELOR'S OF BUSINESS MANAGEMENT. I WENT
TO THE UNIVERSITY OF SOUTH CAROLINA AND TO SOUTHERN
WESLEYAN UNIVERSITY IN THE UPSTATE. SO, I HAVE A
BACHELOR'S IN BUSINESS.

Q. OKAY. TRY TO SPEAK UP ---

BY MS. FARTHING:

COMMISSIONER, CAN HE SPEAK UP A LITTLE BIT?

BY THE WITNESS:

OH, I'M SORRY.

BY MS. FARTHING:

YEAH, IN THE BACK OF THE ROOM, IT'S KIND OF
HARD.

BY THE WITNESS:

I'M SORRY.

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. OKAY, NO PROBLEM.

A. I HAVE A BACHELOR'S IN BUSINESS. I WENT TO THE

1 UNIVERSITY OF SOUTH CAROLINA, AND THEN I LATER WENT
2 TO SOUTHERN WESLEYAN UNIVERSITY AND COMPLETED MY
3 DEGREE.

4 Q. OKAY. WHAT YEAR DID YOU GRADUATE?

5 A. MY FINAL GRADUATION WAS IN 1995.

6 Q. ALL RIGHT. SO, WHAT DID YOU DO BEFORE 1995 WORK
7 WISE AFTER YOU COMPLETED HIGH SCHOOL?

8 A. OKAY, I WAS IN THE UNIVERSITY OF SOUTH CAROLINA. I
9 WENT TO WORK WITH SEVERAL DIFFERENT POLITICIANS HERE
10 WORKING CAMPAIGNS FOR SENATOR THURMOND, GOVERNOR
11 CAMPBELL, SEVERAL PEOPLE ASSOCIATED WITHIN THAT
12 CROWD AT THAT TIME IN THE LATE '70s, EARLY '80s, AND
13 I EVENTUALLY WAS HELPING ONE OF THE COMPANIES THAT I
14 WORKED WITH GET SOME S.B.A. LOANS AND STUFF LIKE
15 THAT, TRYING TO REPRESENT THEM THROUGH THAT. I
16 WOUND UP ACTUALLY GOING TO WORK WITH THEM. THAT WAS
17 WHY I DIDN'T FINISH AT SOUTH CAROLINA. I HAD 112
18 HOURS. I WAS LIKE I'LL GO BACK NEXT SUMMER. SO, I
19 LEFT AND WENT TO WORK IN THAT, AND THEN -- SO, THAT
20 WAS WHY 20 YEARS LATER, I WENT BACK TO JUST FINISH
21 MY DEGREE.

22 Q. OKAY.

23 A. DURING THAT PERIOD OF TIME, I'VE BEEN IN THE
24 CONSTRUCTION AND CONSTRUCTION STAFFING BUSINESS
25 SINCE -- SINCE THAT PERIOD OF TIME.

1 Q. OKAY.

2 A. SO, OVER 35 YEARS.

3 Q. HOW LONG HAVE YOU BEEN AN OWNER IN THE CONSTRUCTION
4 STAFFING BUSINESS?

5 A. IN THE CONSTRUCTION STAFFING BUSINESS, I OPENED
6 CONDUSTRIAL IN 2002. SO, I'VE BEEN HERE A LITTLE
7 OVER 15 YEARS.

8 Q. OKAY. SO, YOU WERE JUST WORKING FOR SOMEONE ELSE IN
9 THE STAFFING INDUSTRY?

10 A. IN THE STAFFING INDUSTRY, I WORKED FOR ANOTHER
11 COMPANY, WHICH WAS THE LARGEST COMPANY OUT OF
12 CLEVELAND, OHIO, TRADESMEN INTERNATIONAL. I WORKED
13 FOR THEM FOR SEVERAL YEARS OUT OF SOUTH CAROLINA.

14 Q. OKAY. SO, AS OF THE DATE THAT THIS -- THE AGREEMENT
15 WITH CONDUSTRIAL AND COUNTRYWIDE WAS ENTERED INTO,
16 YOU HAD BEEN AN OWNER OF YOUR STAFFING COMPANY
17 CONDUSTRIAL FOR, WHAT, ABOUT 13 YEARS, IT SOUNDS
18 LIKE?

19 A. YES. WE ACTUALLY ENTERED INTO OUR AGREEMENT WITH
20 THEM IN 2015, IN MARCH. SO, YEAH, I HAD BEEN THERE
21 13 YEARS, A LITTLE OVER 13 YEARS AT THAT POINT.

22 Q. OKAY. ALL RIGHT. AND JUST EXPLAIN TO THE
23 COMMISSION GENERALLY, WHAT -- WHAT IS CONDUSTRIAL?
24 WHAT DO Y'ALL -- WHAT DO YOU DO?

25 A. OUR CORE BUSINESS IS WE ARE HEAVY CONSTRUCTION,

1 HEAVY MANUFACTURING. THAT IS OUR CORE BUSINESS. WE
2 DO SKILLED TRADES FOR COMPANIES. WE ARE A FULL-TIME
3 EMPLOYER. ALL OF OUR EMPLOYEES COME ON FOR US AS
4 FULL-TIME EMPLOYEES, AND THEY HAVE FULL-TIME
5 BENEFITS JUST AS THEY WOULD FOR ANYONE ELSE. THEY
6 HAVE HOLIDAYS, VACATIONS, FULL-TIME HEALTH
7 INSURANCE, ET CETERA, ET CETERA, JUST AS ALL MY
8 MANAGEMENT WOULD HAVE, SO THE FIELD EMPLOYEES HAVE
9 IT. IT'S KIND OF A HYBRID BETWEEN WHAT PEOPLE UP
10 NORTH WOULD CALL A UNION HALL AND WHAT WE IN THE
11 SOUTH WOULD CALL TEMPORARY STAFFING, BUT WE ARE NOT
12 UNION. WE ARE OBVIOUSLY OPEN SHOP, BUT WE PROVIDE
13 THE SAME KIND OF BENEFITS, THE SAME KIND OF SCENARIO
14 IF THEY WORKED UNDER A UNION HALL, BECAUSE WE HAVE
15 REPRESENTATIVES THAT REP THOSE INDIVIDUALS, THOSE
16 FIELD WORKERS. IN OTHER WORDS, AS AN EXAMPLE, AND
17 THIS IS THROUGHOUT THE WHOLE COMPANY, IF YOU ARE A
18 WELDER AND YOU CAME TO WORK FOR ME, YOU COME ON FULL
19 TIME; YOU HAVE FULL-TIME BENEFITS. I HAVE -- YOU
20 HAVE AN ASSIGNED REP, AND THAT REP'S JOB IS TO KEEP
21 YOU EMPLOYED 40 HOURS A WEEK MINIMUM, 52 WEEKS A
22 YEAR UNLESS YOU DON'T WANT TO WORK, AND THAT'S THEIR
23 JOB. SO, THEY DON'T HAVE TO GO OUT AND FIND THE
24 JOBS. THE PROBLEM WITH CONSTRUCTION IS THAT EVERY
25 JOB ENDS. THE MINUTE IT STARTS, IT'S WORKING ITSELF

1 OUT OF A JOB. SO, IF YOU ARE ONLY HIRED FOR AN
2 ASSIGNMENT, AND I'VE HAD THIS -- THIS IS A GREAT
3 SELLING POINT WHEN WE'VE HAD EMPLOYEES THAT
4 SOMETIMES HAVE LEFT AND THEN COME BACK, "YOU KNOW, I
5 GET IT NOW." IF THAT JOB ENDS, IF THEY'RE BUILDING
6 THIS BUILDING, AND THAT JOB IS ENDING, IF THEY DON'T
7 NEED THOSE WELDERS, PIPEFITTERS, CARPENTERS, THEY
8 WILL LAY THOSE GUYS OFF AND KEEP THEIR OWN GUYS.
9 SO, THOSE FOLKS ARE BACK TO GROUND ZERO AS FAR AS
10 BENEFITS AND EVERYTHING ELSE, AND THEY'VE GOT TO GO
11 FIND A JOB. SO, MY JOB IS TO HAVE STAFF IN PLACE TO
12 HAVE THEM A JOB READY TO GO TO WHEN THIS JOB ENDS,
13 AND THAT WAY THEY WORK THROUGH ME; THEY WORK ON MY
14 FEDERAL I.D., MY HEALTH PLANS, ALL OF MY COVERAGES,
15 AND THEY NEVER SEE A GAP. SO, THEY MIGHT WORK FOR
16 TEN DIFFERENT CONSTRUCTION COMPANIES IN A YEAR
17 PERIOD, BUT AS FAR AS THEY'RE CONCERNED, THEY ONLY
18 WORK FOR ONE. THEY GET ONE W-2, ONE HEALTH PLAN.
19 EVERYTHING IS PROVIDED BY US, AND THAT'S OUR CORE
20 BUSINESS, AND THEN OBVIOUSLY THAT'S ---

21 Q. OKAY. WELL, I WAS ASKING YOU ABOUT THE NURSING AND
22 THE MEDUSTRIAL SIDE, AND I UNDERSTAND THAT
23 CONDUSTRIAL WAS THE NAME OF YOUR COMPANY WHEN YOU
24 FORMED IT; IS THAT CORRECT?

25 A. CONDUSTRIAL?

1 Q. RIGHT.

2 A. YES, THAT'S ALWAYS BEEN OUR NAME.

3 Q. ALL RIGHT. AND ---

4 A. AND WE ONLY HAVE ONE FEDERAL I.D. EVERYTHING IS
5 UNDER CONDUSTRIAL.

6 Q. RIGHT. AND SO, AND IT'S THE TESTIMONY IN THE CASE
7 AND I KNOW YOU KNOW, BUT MEDUSTRIAL IS A NAME THAT -
8 - THAT IS WHAT?

9 BY MR. ALFORD:

10 OBJECTION, LEADING.

11 BY MR. GOODWYN:

12 ALL RIGHT. I'LL GET TO IT THE HARD WAY.

13 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

14 Q. WHAT IS MEDUSTRIAL?

15 A. OKAY. WHEN BY DEFAULT I GOT IN THE HEALTHCARE
16 STAFFING BUSINESS, WE JUST NEEDED -- WE FELT LIKE
17 THE NAME CONDUSTRIAL WAS -- LED ITSELF -- BECAUSE IN
18 THERE, YOU'VE GOT "CON," WHICH IS CONSTRUCTION AND
19 "INDUSTRIAL," WHICH IS OBVIOUSLY INDUSTRIAL
20 BUSINESS. WE FELT LIKE THAT WASN'T SOMETHING THAT
21 THE LADIES AND NURSES WOULD FEEL COMFORTABLE WITH,
22 PERHAPS NOT HEARING. SO, WE TALKED -- I TALKED TO
23 MY STAFF. WE CAME UP WITH A BUNCH OF DIFFERENT
24 IDEAS, KIND OF THREW IT AROUND, ET CETERA, AND WE
25 CAME UP WITH -- "SO, LET'S JUST CALL THAT

1 MEDUSTRIAL." SO, IT'S A MONIKER. IT'S A -- IT'S A
2 -- THAT'S WHAT I'VE ALWAYS DESCRIBED IT AS.
3 MEDUSTRIAL IS A MONIKER. IT HAS NO LEGAL STANDING.
4 IT HAS NOTHING. IT'S LIKE GOING TO BELK'S AND WHEN
5 YOU GET SOMETHING FROM MEDUSTRIAL, IT'S LIKE YOU
6 WENT TO BELK'S IN THE LADIES DEPARTMENT, AND YOU PUT
7 ON A PAIR OF PANTS AND YOU BOUGHT THE PAIR OF PANTS
8 IN THE LADIES DEPARTMENT, BUT YOU BOUGHT IT FROM
9 BELK'S. IF YOU COME TO MEDUSTRIAL, YOU BOUGHT IT
10 FROM THE MEDICAL DEPARTMENT, BUT YOU DEALT WITH
11 CONDUSTRIAL. ALL THE POLICIES, EVERYTHING THAT'S
12 EVER BEEN WRITTEN, WHATEVER, IS CONDUSTRIAL, BUT
13 WHEN THE LADIES OR NURSES OR WHATEVER WILL TALK,
14 THEY WILL USE THAT NAME AS IN "I WORK AT
15 MEDUSTRIAL," AND THAT'S A -- THAT'S A NICKNAME THAT
16 WE USED TO JUST DEFINE THAT BASICALLY YOU'RE IN THE
17 MEDICAL DEPARTMENT OF CONDUSTRIAL.

18 Q. ALL RIGHT. AND ABOUT WHAT YEAR DID YOU COME UP WITH
19 THIS MEDUSTRIAL DEPARTMENT OF CONDUSTRIAL?

20 A. OKAY, SO, YOU WANT ME TO TELL HOW, YOU KNOW, I GOT
21 TO THAT OR ---

22 Q. WELL, LET ME BACK UP AND ASK THIS.

23 A. ALL RIGHT.

24 Q. WHEN YOU FIRST CREATED CONDUSTRIAL, DID YOU HAVE ANY
25 NURSES WORKING FOR CONDUSTRIAL?

1 A. NO.

2 Q. ALL RIGHT. ABOUT WHAT YEAR DID YOU START HAVING
3 NURSES WORKING FOR CONDUSTRIAL?

4 A. OKAY. IN 2006, I WAS APPROACHED ABOUT TAKING ON A
5 MEDICAL DEPARTMENT, A COMPANY CALLED PALMETTO
6 HEALTHCARE STAFFING. THEY CAME, MADE A PROPOSAL.
7 IT WAS BROUGHT TO ME BY ONE OF OUR LEGAL FIRMS THAT
8 ALWAYS REPRESENTED OUR COMPANY. IT SO HAPPENS THAT
9 LAW FIRM ALSO REPRESENTED THIS OTHER FIRM. THIS
10 OTHER FIRM HAD ISSUES. PALMETTO HEALTHCARE STAFFING
11 APPARENTLY HAD SOME ISSUES AS IT WAS BROUGHT TO ME.
12 IT WAS THE INFORMATION GIVEN TO ME AND ALL THE
13 DOCUMENTS AND EVERYTHING WAS IT HAD OUTGROWN ITS
14 ABILITY TO PAY ITS WAY BECAUSE IT HAS GROWN SO
15 EXPONENTIALLY FAST.

16 Q. ALL RIGHT. WERE THESE NURSES EMPLOYEE NURSES OR
17 INDEPENDENT CONTRACTOR NURSES?

18 A. NO, I DIDN'T KNOW ANY OF THAT AT THAT POINT, BUT I
19 WILL KNOW THAT A LITTLE LATER. IT TURNS OUT THEY
20 WERE ALL INDEPENDENT CONTRACTORS, BUT IF YOU -- CAN
21 YOU GIVE ME ---

22 Q. YEAH, GO AHEAD.

23 A. OKAY.

24 Q. GO AHEAD.

25 A. SO, WE GOT THAT PROPOSAL. WE REVIEWED IT, ET

1 CETERA, ET CETERA, DID ALL OUR DUE DILIGENCE ON IT.
2 AT THE END OF THE DAY, WE ARE LIKE "I DON'T FEEL
3 COMFORTABLE WITH IT." THEY COULDN'T BACK UP THEIR
4 DOCUMENTS WITH -- FINANCIAL DOCUMENTS WITH BANK
5 RECORDS, ET CETERA, ET CETERA. SO, I TURNED IT
6 AWAY. ABOUT A MONTH-AND-A-HALF LATER OR SO, THEY
7 CONTACTED ME AGAIN, AND SAID, "YOU KNOW, WE'VE
8 RETHOUGHT THAT." THEY FELT LIKE OUR WHAT YOU CALL
9 IT WAS OUT OF LINE, ASKED ME TO REVIEW IT AGAIN. I
10 DID REVIEW IT AGAIN, TURNED IT DOWN AGAIN. OKAY.
11 AND THEN I GOT A CALL AGAIN ABOUT TWO MONTHS LATER,
12 AND I WAS ASKED "YOU NEED -- WILL YOU MEET WITH
13 THESE PEOPLE?" AND THEY CAME UP THERE, AND THE
14 OWNER, THE LADY WHO OWNED PALMETTO HEALTHCARE
15 STAFFING, CAME THERE AND MET WITH ME, AND THEY WERE
16 IN A REAL LURCH, OKAY. WHAT HAPPENED, SHE HAD A TON
17 OF ISSUES. SHE COULDN'T MEET HER PAYROLL. SHE --
18 SHE HAD BOUNCED A BUNCH OF PAYROLL, ET CETERA, ET
19 CETERA. IT WAS -- IT WAS A DISASTER. AS I WAS
20 SITTING THERE IN THAT CONFERENCE ROOM WITH ALL OF
21 THESE PEOPLE, LITERALLY SHE GOT SEVERAL CALLS FROM
22 THE SHERIFF'S OFFICE NOTIFYING HER OF THIS BEING
23 ARRESTED, ET CETERA, ET CETERA. AT WHICH TIME, I
24 CONTACTED HER ATTORNEY, HER ATTORNEY HAPPENED -- ALL
25 OF THEM WORKED AT THE SAME LAW FIRM. CONFIRMED TO

1 ME THAT "YES, SHE'S IN A WORLD OF TROUBLE. OKAY.
2 IF YOU DON'T GIVE HER THE MONEY TO HELP HER GET OUT
3 OF THIS, SHE'S GOING TO GO TO JAIL." SO, WE DIDN'T
4 HAVE AN AGREEMENT DRAWN UP, BUT WHAT WE DID WAS --
5 I'M LIKE, "WHAT ARE WE GOING TO DO HERE?" YOU HAVE
6 A -- AND ALL OF THIS IS IN THE COURT DOCUMENTS THAT
7 YOU CAN FIND. IT WAS A VERBAL AGREEMENT. THEY HAD
8 NOT HAD TIME TO DRAW UP THE STUFF, BUT THIS LADY HAD
9 \$50,000 OF PAYROLL CHECKS THAT HAD BOUNCED, AND MOST
10 OF THEM WERE FOR NURSES THAT WORKED AT S.C.D.C.,
11 OKAY? OF COURSE, I DIDN'T KNOW ANYTHING ABOUT
12 S.C.D.C. AT THAT POINT OTHER THAN THEY WERE A CLIENT
13 OF HERS, SO I DIDN'T -- I DIDN'T KNOW ANYTHING. SO,
14 THEY'RE LIKE "IF YOU GIVE HER THIS, WE HAVE AN
15 AGREEMENT. WE'LL HAVE A FINALIZED AGREEMENT DRAWN
16 UP WITHIN THE NEXT TWO DAYS. WE HAVE A VERBAL. YOU
17 CAN GIVE HER THAT MONEY. SHE CAN GO PICK UP THESE
18 CHECKS, AND EVERYTHING WILL STAY COPESETIC.
19 OTHERWISE, IT'S GOING TO IMplode." I DIDN'T KNOW
20 ANYTHING ABOUT MEDICAL HEALTHCARE STAFFING. OKAY, I
21 WASN'T IN THE MEDICAL HEALTHCARE STAFFING. I KNOW
22 WAY TOO MUCH ABOUT THE CONSTRUCTION CONDUSTRIAL
23 STAFFING. I WISH I DIDN'T KNOW A LOT OF WHAT I DO
24 KNOW, BUT YOU LEARN IT SOMETIMES THE WAY YOU'RE
25 GOING TO LEARN IT. I GAVE HER \$50,000, OKAY, AND

1 SHE WAS TO GO PICK UP ALL OF THOSE THINGS, AND SHE
2 WAS TRANSFERRING HER BUSINESS PALMETTO HEALTHCARE
3 STAFFING TO OUR OFFICE IN COLUMBIA ON GRAYSTONE
4 BOULEVARD, AND IT WAS GOING TO OPERATE HER AND HER
5 STAFF FROM THERE. BASICALLY, SHE TOOK MY MONEY AND
6 HIT THE ROAD, AND DIDN'T PICK UP THE NURSES' CHECKS
7 OR NOTHING, OKAY? ONLY ONE PERSON THAT WORKED FOR
8 THEM STAYED WITH ME. NATASHA RATHBURN STAYED WITH
9 ME, AND SHE WAS -- JUST SO HAPPENED TO HAVE BEEN THE
10 PERSON THAT DEALT WITH THE SOUTH CAROLINA DEPARTMENT
11 OF CORRECTIONS, I FOUND OUT LATER. SO, HERE I HAD
12 PAID FOR HER COMPANY AND BOUGHT HER CONTRACTS, DONE
13 ALL OF THESE THINGS. SO, WE CONTINUED WITH --
14 NATASHA MOVED INTO THE OFFICE, AND SHE CONTINUES HER
15 SERVICE THAT SHE ALREADY HAD, AND IT WAS KIND OF A
16 LEARNING PROCESS OF ME FIGURING OUT AND LEARNING
17 WHAT I NEEDED TO KNOW. SO, NATASHA, I ASKED HER, I
18 SAID "HEY, I NEED TO SEE THE CONTRACTS, ET CETERA.
19 CAN YOU SEND ME THIS STUFF?" YOU KNOW, BECAUSE I'VE
20 NEVER SEEN THIS STUFF. SO, THEN BETWEEN HER AND
21 THEIR ATTORNEY, THEY SENT ME COPIES OF THE CONTRACT,
22 AND SO I SEEN THE CONTRACT WITH S.C.D.C., AND YOU
23 KNOW, I'M LIKE LOOKING -- READING THROUGH IT OR
24 WHATEVER, AND IT JUST SO HAPPENED IT'S WORD FOR WORD
25 THE SAME CONTRACT THAT I GOT TWICE LATER, OKAY? SO,

1 I LOOKED AT IT, I WAS LIKE OKAY, WHATEVER. AND THEN
2 WHEN THEY STARTED INVOICING, I'M LIKE CALLING HER
3 GOING "HEY, WHAT'S THE PROBLEM?" AND SIMULTANEOUSLY
4 UPON THAT SAME WEEK, OKAY, WE FOUND -- SHE'S LIKE I
5 FOUND OUT -- I'M, LIKE, "WHAT ARE YOU DOING? THESE
6 NURSES, YOU'RE PAYING THEM X AMOUNT OF DOLLARS, BUT
7 YOU'RE ONLY INVOICING THIS AMOUNT OF DOLLARS. HOW -
8 - THAT DOESN'T MAKE ANY SENSE, BECAUSE YOU'RE NOT
9 COVERING COSTS," ET CETERA, ET CETERA. "THEY'RE ALL
10 INDEPENDENT CONTRACTORS." I'M LIKE, "WHAT DO YOU
11 MEAN THEY'RE INDEPENDENT CONTRACTORS?" AND SHE SAYS
12 "THAT'S THE WAY THEY'VE ALWAYS BEEN, BECAUSE THAT'S
13 HOW IT WAS ALWAYS DONE," ET CETERA, ET CETERA. SO,
14 WHAT I DID THEN, I REACHED BACK OUT TO THE ATTORNEYS
15 THAT REPRESENTED BOTH THAT COMPANY AND MY COMPANY
16 WHO HAPPENED TO BE THE SAME LAWYERS, AND THEY SENT
17 ME COPIES OF ALL THE DOCUMENTS THAT THEY HAD GIVEN
18 HER TO USE FOR US TO USE AS THE SAME DOCUMENT,
19 BECAUSE IT STILL HAD HER PALMETTO HEALTHCARE
20 STAFFING IN THOSE DOCUMENTS.

21 Q. ALL RIGHT. ARE YOU TALKING ---

22 A. INDEPENDENT CONTRACTORS.

23 Q. WHAT KIND OF DOCUMENTS ARE YOU TALKING ABOUT? ARE
24 YOU TALKING ABOUT THE INDEPENDENT ---

25 A. INDEPENDENT CONTRACTOR AGREEMENTS.

1 Q. --- CONTRACTOR AGREEMENTS?

2 A. YES.

3 Q. OKAY.

4 A. THEY ARE ALL INDEPENDENT CONTRACTORS. BILL
5 CONFIRMED THAT TO ME. HERE'S THE AGREEMENT ME AND
6 BO DREW UP FOR HER TO USE WHEN SHE STARTED THIS
7 SERVICE.

8 Q. OKAY. AND ---

9 A. SO, OKAY, LET ME FINISH ONE LAST THING.

10 Q. SURE.

11 A. IF YOU DON'T MIND, PLEASE. AND SO ANY WAY, AT THIS
12 POINT, ALL OF THESE NURSES THAT WORK FOR S.C.D.C.
13 START CALLING ME, AND I'M LIKE, "WHAT DO YOU MEAN?"
14 THEY'RE LIKE, "WE'VE GOT ALL THESE BOUNCED CHECKS
15 NOW, THESE OTHER CHECKS, NOBODY PICKED THEM UP.
16 NOBODY HAS PAID THEM." I TALKED TO 'EM. SOME OF
17 THESE LADIES WERE IN -- WERE SINGLE MOTHERS. THEY
18 HAD BOUNCED CHECKS, ET CETERA, ET CETERA. SO, WHAT
19 I DID WAS I WENT AND I MADE ALL THOSE LADIES' CHECKS
20 GOOD, OKAY? I PAID EVERYBODY'S CHECK. WHEN I PAID
21 EVERYBODY'S CHECK, THAT WAS WHEN I CONFIRMED THAT
22 THEY WERE ABSOLUTELY INDEPENDENT CONTRACTORS,
23 BECAUSE I HAD THEIR CHECKS, AND I'M LIKE GOING, "YOU
24 DIDN'T HAVE ANY DEDUCTIONS. YOU HAVE NO NOTHING.
25 YOU HAVE NOTHING HERE," OKAY? AND SHE'S LIKE "YEAH,

1 I'M AN INDEPENDENT CONTRACTOR." EVERYONE OF 'EM. I
2 MEAN, WE'RE TALKING A DOZEN LADIES OR MORE, YOU
3 KNOW, AND SO AT THAT POINT, I CONFIRMED. NATASHA
4 SHOT ME STRAIGHT ON THEY WERE ALL OPERATING AS
5 INDEPENDENT CONTRACTORS. BILL HAD GAVE ME THE
6 INDEPENDENT CONTRACT THAT NELSON MULLINS DESIGNED
7 FOR 'EM, AND THEY WERE ALL OPERATING AS INDEPENDENT
8 CONTRACTORS.

9 Q. ALL RIGHT.

10 A. AND THAT WAS MY FIRST KNOWLEDGE OF ALL THAT.

11 Q. ALL RIGHT. AND IS THAT THE TIME WHEN YOU CAME UP
12 WITH THE MEDUSTRIAL NAME?

13 A. YES.

14 Q. OKAY.

15 A. THAT WAS WHEN WE CAME UP WITH, YOU KNOW, THAT WAS
16 WHEN WE THREW IT AROUND TO EVERYBODY AND DECIDED TO
17 DO IT.

18 Q. ALL RIGHT. AND DID YOU -- AND DID YOU HAVE
19 QUESTIONS AS TO WHETHER OR NOT THESE NURSES WERE
20 TRULY INDEPENDENT CONTRACTORS, OR DID YOU -- MAYBE I
21 SHOULD PHRASE IT LIKE DID YOU THINK THAT THEY MAY
22 HAVE BEEN MISCLASSIFIED AS INDEPENDENT CONTRACTORS
23 WHEN YOU FIRST ---

24 A. YEAH, I MEAN, IT WAS OUTSIDE OF THE NORM OF WHAT I
25 NORMALLY DEAL WITH, BECAUSE I'M USED TO -- I'M USED

1 TO PEOPLE DOING THIS KIND OF THING, IN CONSTRUCTION,
2 PEOPLE ARE ALL THE TIME TRYING TO SAY THAT A
3 CARPENTER IS AN INDEPENDENT CONTRACTOR AND NOT PUT
4 HIM AS AN EMPLOYEE, AND THEN THEY PAY HIM LESS, ET
5 CETERA, ET CETERA, AND THAT'S JUST DISALLOWED
6 BECAUSE YOU'RE DICTATING -- BECAUSE WE ARE DICTATING
7 WHERE HE WORKS, WHEN HE WORKS, THE HOURS HE WORKS,
8 ET CETERA, ET CETERA. SO, AT THAT POINT, I REACH
9 OUT TO MY -- BOTH MY AGENTS THAT WROTE OUR INSURANCE
10 POLICIES, HAD THEM COME AND MEET AND GO OVER THE
11 WHOLE THING, AND THEN ONCE I TALKED WITH THE NURSES,
12 AND I REALIZED WHAT WAS GOING ON, I'M LIKE, "WE -- I
13 WOULD RATHER YOU BE AN EMPLOYEE. OKAY. I WOULD
14 RATHER YOU BE," BUT I'M LIKE "IF YOU'RE AN EMPLOYEE,
15 YOU'VE GOT TO TAKE ON RESPONSIBILITIES OF BEING AN
16 EMPLOYEE, WHICH MEANS YOU DON'T WORK FOR -- WE DON'T
17 ALLOW DUAL EMPLOYMENT, BECAUSE WHAT HAPPENS IS YOU
18 GO WORK FOR SOMEBODY ELSE, YOU DO ALL THIS SIDE
19 WORK," ET CETERA, ET CETERA. THEY GET INJURED, AND
20 THEN THEY COME BACK AND FILE ON THE CLAIM WITH THE
21 COMPANY THAT HAS THE POLICY, AND THAT'S A BIG NO-NO
22 WITH ALL OF OUR CARRIERS THAT WE'VE EVER HAD, IS
23 DUAL EMPLOYMENT, AND THAT WAS ONE OF THE WAYS WE
24 WERE ALWAYS ABLE TO GET THE -- BEEN ABLE TO GET --
25 SECURE THE INSURANCE POLICIES THAT WE HAVE BECAUSE

1 THE STAFFING INDUSTRY IS AN EXTREMELY HARD INDUSTRY
2 TO GET INSURANCE FOR, AND THAT WE DID NOT ALLOW DUAL
3 EMPLOYMENT. THEY CAN'T WORK FOR JOE BLOW AGENCY
4 HERE AND CONDUSTRIAL, THIS AGENCY. YOU AGREE TO A
5 PRICE. THAT'S WHAT WE PAY UNTIL YOU GET YOUR
6 REVIEW, AND WE GIVE YOU AN ASSIGNMENT WITHIN THE
7 LOCALITY OF YOUR -- 35 MILES OF YOUR OFFICE, AND YOU
8 GO TO WORK. IF YOU DON'T, THEN YOU'RE GOING TO BE
9 TERMINATED. BUT THESE LADIES DIDN'T WANT TO DO
10 THAT. THEY'RE LIKE "NO, I DON'T WANT TO DO THAT,"
11 AND THEN I REALIZED WHEN I STARTED GETTING INTO THE
12 INVOICES, I'M LIKE "WHAT IS THE DEAL? WHY IS THIS
13 LADY PAID LAST WEEK THIS MUCH AND NOW, NATASHA, YOU
14 PAID HER THIS MUCH," AND SOMETIMES SHE LITERALLY
15 WOULD HAVE TO PAY HER WITHIN A DOLLAR OR MORE OF
16 LESS THAN WHAT WE MADE, AND I'M LIKE "YOU'RE KILLING
17 ME HERE PROFIT WISE," BECAUSE THAT'S WHAT I'M
18 LOOKING AT IS MONEY.

19 Q. RIGHT.

20 A. I'M LOOKING AT PROFIT, OKAY? AND SHE'S LIKE "WELL,
21 SHE WOULDN'T GO." I'M LIKE "WHAT THE HELL YOU
22 MEAN?" EXCUSE ME. I'M LIKE, "WHAT DO YOU MEAN SHE
23 WOULDN'T GO?" SHE SAYS, AND I'VE CONFIRMED THIS
24 BECAUSE I TALKED TO ALL OF THEM MYSELF, "THEY WANT
25 TO NEGOTIATE THEIR PRICE, THEIR RATE FOR EVERY

1 SINGLE -- EVERY SINGLE SHIFT." SO, IF YOU ---

2 BY MR. SAMUELS:

3 OBJECT TO HEARSAY, YOUR HONOR.

4 BY COMMISSIONER JAMES:

5 ALL RIGHT.

6 BY MR. GOODWYN:

7 THIS IS A -- THIS IS A -- DID HE NEGOTIATE OR
8 DID HE HAVE TO NEGOTIATE RATES WITH HIS NURSES? I
9 THINK THAT'S A FAIR QUESTION. IT'S NOT HEARSAY AS
10 TO HE NEGOTIATED THE RATES WITH THE NURSES. HE WAS
11 APPROACHED BY NURSES ABOUT NEGOTIATING RATES. I
12 DON'T THINK THAT'S HEARSAY.

13 BY COMMISSIONER JAMES:

14 AS LONG AS WE DON'T GET INTO THE -- INTO ANY OF
15 THE ACTUAL CONVERSATIONS. ALL RIGHT. LET'S MOVE
16 ON.

17 THE WITNESS RESUMES ANSWER:

18 A. SO, THAT'S WHEN I'M LIKE, I WOULD SPEAK WITH THEM
19 MYSELF. I WOULD OFTEN DO IT WITH A CONFERENCE CALL
20 BETWEEN ME AND NATASHA AND WHOEVER THE NURSES WERE.
21 THEN I'M LIKE, "HEY, YOU CAN'T DO THIS," AND THEY'RE
22 LIKE "NO, WE ARE NOT EMPLOYEES. WE ARE NOT GOING TO
23 ---

24 BY MR. SAMUELS:

25 OBJECT TO HEARSAY, YOUR HONOR.

1 BY COMMISSIONER JAMES:

2 SUSTAINED.

3 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

4 Q. OKAY. I THINK WHAT THEY'RE SAYING IS YOU CAN SAY
5 THERE WERE NEGOTIATIONS, BUT YOU CAN'T SAY EXACTLY
6 WHAT THE -- WHAT THE BACK AND FORTH WAS IN THE
7 NEGOTIATIONS.

8 A. OKAY. ALL I CAN SAY I GUESS IS THAT I TRIED TO GET
9 PEOPLE TO GO TO WORK FOR THE WAGE THAT THEY SHOULD
10 HAVE BEEN PAID, AND EVERY TIME IT WAS A NEGOTIATION
11 FOR WHETHER THEY WOULD GO TO WORK OR NOT. THAT IS
12 NOT AN EMPLOYEE. THAT'S -- THAT BECAME THE
13 SCENARIO.

14 Q. LET ME ASK YOU ON THAT SAME POINT, WERE THE NURSES
15 ABLE TO CHOOSE WHICH SHIFTS THEY WORKED?

16 A. ABSOLUTELY. THEY COULD TURN DOWN SHIFTS, TAKE
17 SHIFTS. THEY WOULD -- WE WOULD -- I WOULD GET
18 CONTACTED, ME AND NATASHA, THAT A SHIFT HAD BECOME
19 AVAILABLE, THAT WE HAD NO KNOWLEDGE OF THAT THEY --
20 WE'RE GOING ON SUCH AND SUCH SHIFT.

21 Q. OKAY.

22 A. WE WOULD GET NOTIFIED.

23 Q. WERE THEY ABLE TO TAKE VACATIONS ANY TIME THEY
24 WANTED?

25 A. THEY COULD COME AND GO AS THEY PLEASE.

1 Q. OKAY.

2 A. THEY WEREN'T PAID VACATIONS, BECAUSE THEY WEREN'T
3 EMPLOYEES, BUT THEY COULD COME AND GO AS THEY
4 PLEASED.

5 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT IS CLAIMANT'S
6 -- EXCUSE ME, CONDUCTORIAL'S APAs - LET'S SEE, IT
7 LOOKS LIKE PAGE 150. YOU MIGHT NEED YOUR GLASSES.
8 YOU'VE GOT THEM ON, GOOD, FOR THIS ONE.

9 BY MR. BEARD:

10 DID YOU SAY PAGE 150?

11 BY MR. GOODWYN:

12 YES, 150, IN MY PACKAGE. I DON'T KNOW IF THAT
13 PAGE IS ACTUALLY NUMBERED, BUT IT'S BETWEEN MY 149
14 AND 151.

15 BY COMMISSIONER JAMES:

16 I'M SORRY, MR. GOODWYN, WHAT DID YOU JUST SAY?

17 BY MR. GOODWYN:

18 THEY WERE JUST TRYING TO FIND IT. I NOTICED ON
19 MY COPY OF THAT, THE -- IT'S NOT NUMBERED.

20 BY MR. BEARD:

21 IS THIS THE I.R.S. FORM?

22 BY MR. GOODWYN:

23 YES.

24 BY MR. BEARD:

25 OKAY.

1 BY MR. GOODWYN:

2 IT'S ---

3 BY COMMISSIONER JAMES:

4 SO, IT'S NOT ---

5 BY MR. GOODWYN:

6 OH, IT IS NUMBERED. IT'S NUMBERED -- IT IS
7 NUMBERED IN THE WRONG CORNER. SO, I COULDN'T SEE IT
8 WHEN I WAS FLIPPING THROUGH MINE.

9 BY COMMISSIONER JAMES:

10 IS IT STILL 150?

11 BY MR. GOODWYN:

12 IT'S STILL 150.

13 BY COMMISSIONER JAMES:

14 OKAY.

15 BY MR. GOODWYN:

16 JUST THE NUMBER IS NOT IN THE RIGHT PLACE.

17 BY COMMISSIONER JAMES:

18 THANK YOU, SIR.

19 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

20 Q. ALL RIGHT. ARE YOU GENERALLY AWARE OF THE POTENTIAL
21 PROBLEM ASSOCIATED WITH CALLING SOMEBODY AN
22 INDEPENDENT CONTRACTOR AND THEN IF THEY MAY NOT
23 PROPERLY BE CLASSIFIED THAT WAY?

24 A. ABSOLUTELY.

25 BY MR. ALFORD:

1 OBJECTION, LEADING.

2 BY MR. GOODWYN:

3 IS HE AWARE OF THAT PROBLEM? THAT'S NOT
4 LEADING.

5 BY MR. ALFORD:

6 IT'S -- YOU KNOW WHAT, I'LL WITHDRAW IT. LET'S
7 JUST KEEP GOING. LET'S JUST KEEP GOING.

8 BY COMMISSIONER JAMES:

9 GO FORWARD.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. IS THAT A CONCERN FOR YOU AS YOU OPERATE YOUR
12 BUSINESS?

13 A. ABSOLUTELY.

14 Q. WHAT ARE -- WHAT ARE THE PROBLEMS THAT YOU ARE AWARE
15 OF WITH POTENTIALLY MISCLASSIFYING INDEPENDENT
16 CONTRACTORS?

17 (INTERRUPTION)

18 BY THE WITNESS:

19 I'M SORRY. SAY AGAIN, JEFF. I'M SORRY.

20 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. THE WALL WAS FALLING DOWN. WHAT ARE -- OR WHAT
22 POTENTIAL PROBLEMS ARE YOU AWARE OF WITH
23 MISCLASSIFYING SOMEONE AS AN INDEPENDENT CONTRACTOR?

24 A. WELL, THE MAIN PROBLEM IS ALL WE'RE DEALING WITH
25 HERE TODAY. I MEAN, YOU WIND UP WITH PEOPLE THAT

1 CLAIM TO BE AN INDEPENDENT CONTRACTOR AND MAY NOT
2 HAVE COVERAGE. YOU KNOW, THE -- MY EXPERIENCE PRIOR
3 TO THIS CONDUSTRIAL THING WAS ALWAYS IN
4 CONSTRUCTION, AND -- AND WHAT YOU DID IN
5 CONSTRUCTION WAS THEY -- A LOT OF TIMES YOU WOULD
6 HAVE ACTUAL SUBCONTRACTORS THAT DIDN'T HAVE WORKERS'
7 COMPENSATION, AND THEY WOULD HAVE TO SUBMIT ALL OF
8 THEIR PAYROLL TO YOU, WORK ON THEIR JOB ALL WEEK,
9 AND THEN YOU WOULD ACTUALLY DING THEM IN THEIR CHECK
10 FOR THEIR WORKERS' COMPENSATION, AND THEY WOULD
11 DEDUCT IT AND ADD IT TO THE AUDIT PREMIUM THAT WOULD
12 GO TO THE CARRIER. I MEAN, THAT'S -- YOU KNOW,
13 THAT'S A BIG DEAL. THAT WAS A STANDARD THING IN
14 THIS CASE, OKAY. DO YOU WANT TO ASK?

15 Q. WELL, I DID WANT TO ASK YOU A FOLLOW-UP ---

16 A. YEAH, GO AHEAD.

17 Q. --- QUESTION ---

18 A. GO AHEAD. GO AHEAD.

19 Q. ON THAT ISSUE. IN THE YEARS THAT YOU'VE BEEN
20 OPERATING THE INDUSTRIAL SIDE, CONSTRUCTION AND
21 INDUSTRIAL SIDE OF YOUR BUSINESS, HAVE YOU EVER
22 TRIED TO PLAY THAT GAME ---

23 A. NO.

24 Q. --- OF CLASSIFYING ---

25 A. NO.

1 Q. --- PEOPLE AS INDEPENDENT ---

2 A. NO.

3 Q. --- CONTRACTORS?

4 A. NO, NO, NO. ABSOLUTELY NOT.

5 Q. OKAY. HAVE YOU EVER HEARD OF ANYBODY ELSE TRYING TO
6 DO THAT?

7 A. ON?

8 Q. NOT WITH YOUR COMPANY, JUST OUTSIDE OF YOUR ---

9 A. OH, IT'S EVERY DAY.

10 Q. ALL RIGHT.

11 A. IT'S ALL THE TIME. IT'S -- AND IT'S NOT FAIR, YOU
12 KNOW.

13 Q. WHY DON'T YOU -- WHY DON'T YOU TRY TO PLAY THAT
14 GAME?

15 A. BECAUSE I DON'T WANT TO BE IN PLACES LIKE THIS. I
16 DON'T WANT, ONE, MY EMPLOYEES -- THEY'RE MY
17 EMPLOYEES. THOSE PEOPLE THAT ARE MY EMPLOYEES, IT'S
18 MY RESPONSIBILITY TO TAKE CARE OF 'EM, YOU KNOW.
19 SO, I WANT THEM TO BE COVERED FOR WHATEVER POTENTIAL
20 HAZARD THAT THERE IS OUT THERE. I MEAN, THAT'S JUST
21 RESPONSIBLE BUSINESSMAN AND A RESPONSIBLE HUMAN
22 BEING, YOU KNOW.

23 Q. ALL RIGHT. AND I THINK YOU MAY HAVE COVERED THIS,
24 BUT DID YOU -- IF YOU COULD HAVE MADE THESE
25 INDEPENDENT CONTRACTORS THAT MS. TURNER WAS A PART

1 OF EMPLOYEES, WOULD YOU HAVE?

2 A. ABSOLUTELY, WITHOUT ANY DOUBT.

3 Q. OKAY. AND AGAIN, YOU MAY HAVE COVERED THIS, BUT WHY
4 DIDN'T YOU DO THAT?

5 A. 'CAUSE THEY WOULDN'T DO IT.

6 Q. OKAY.

7 A. BUT THEY WOULDN'T DO IT, AND EVERYBODY THERE -- THIS
8 IS LIKE A -- THIS GROUP OF NURSES THAT WORKS LIKE
9 THROUGH THAT THING, IT'S -- IT'S DIFFERENT FROM --
10 IT'S LIKE A GROUP THAT ALL KNOW EACH OTHER, AND THEY
11 WILL KNOW WHEN WE CALL WHO DIDN'T SHOW UP THAT
12 NIGHT, AT THAT LOCATION, AND THAT'S WHEN THE
13 NEGOTIATION GOES ON ABOUT WELL, WILL YOU GO FOR
14 THIS? WILL YOU GO FOR THAT? AND THEY WANT TO COME
15 AND GO AS THEY PLEASE. THEY WANT TO SET THEIR OWN
16 TIME. THAT WAS HOW I GOT INTO THE OVERTIME DEBACLE
17 WITH THEM SETTING THEIR OWN HOURS WHEN I DIDN'T
18 AGREE TO HOURS. YOU KNOW, I'M LIKE "WE DIDN'T AGREE
19 TO THAT. IF YOU'RE GOING TO GET PAID BY ME, YOU'VE
20 GOT TO DO IT WITHIN THE TERMS OF WHAT I TOLD YOU YOU
21 CAN WORK," BUT THEY WANT TO DO THEIR OWN THING. YOU
22 CAN'T HAVE IT BOTH WAYS, YOU KNOW WHAT I MEAN?

23 Q. RIGHT. RIGHT.

24 A. YOU'VE GOT TO PICK YOUR PATH.

25 Q. OKAY.

1 A. AND JUST LET -- SO, JUST SO YOU KNOW, THAT'S WHY I
2 MADE SURE EVERYBODY SIGNED SPECIFIC CONTRACTS. THIS
3 WASN'T JUST AN OFF-THE-CUFF NOTICE THAT "OKAY,
4 YOU'RE GOING TO OPERATE AS AN INDEPENDENT." NO,
5 YOU'RE GOING TO SIGN YOUR LIFE AWAY OVER HERE, OKAY?

6 Q. ALL RIGHT. HAVE YOU -- HAVE YOU REVIEWED THE
7 MATERIALS IN RACHEL TURNER'S PERSONNEL FILE, THE
8 DOCUMENTS SHE SIGNED?

9 A. YES.

10 Q. AND IS IT FAIR TO SAY THERE ARE SOME INDICATIONS IN
11 THERE THAT SHE -- FORMS THAT SAYS -- THAT REFER TO
12 HER TO BEING AN EMPLOYEE?

13 A. YEAH, AND WHAT THAT COMES FROM IS SOMEONE NOT AS
14 ASTUTE AS THOSE OF US IN THE ROOM ABOUT THINGS THAT
15 THEY SIGN, YOU KNOW WHAT I MEAN? SO, WHAT I DID
16 WAS, I'M LIKE REGARDLESS -- WHY DID YOU GET HER -- I
17 DIDN'T EVEN ASK, AND I WOULD SEE THE FILE COME IN,
18 "WHY DID YOU GET HER TO SIGN THAT?" OR "WHY DID YOU
19 GET THAT PERSON TO SIGN THAT?" YOU KNOW, IT WASN'T
20 JUST WITH HER. IT WOULD BE WITH OTHERS, BUT I'M
21 LIKE "YOU'VE GOT TO MAKE SURE THAT THEY SIGN THE
22 CONTRACT EVERY SINGLE PAGE, EVERY SINGLE THING,"
23 BECAUSE ONCE THEY SIGN THAT CONTRACT, YOU CAN SIGN A
24 W-4, YOU CAN SIGN ANYTHING ELSE, BUT ONCE YOU SIGN
25 THAT CONTRACT, IT NEGATES THE REASONING OR VALUE OR

1 WHATEVER OF THOSE THINGS.

2 Q. AND WHEN YOU SAY "THE CONTRACT," ARE YOU REFERRING
3 TO THE INDEPENDENT ---

4 A. THE INDEPENDENT CONTRACT. ONCE THEY SIGN THE
5 INDEPENDENT CONTRACT, IT'S EXPLICIT OF ALL THE
6 THINGS THAT ARE EXCLUDED. SO, I'M LIKE "OKAY, GET
7 THEM ALL TO SIGN THAT. MAKE SURE THAT EVERYBODY
8 SIGNS EVERYTHING, EVEN IF YOU'VE GOT THEM TO SIGN
9 THE W-4 OR WHATEVER," YOU KNOW, AND SOME OF THAT
10 COMES BACK, BECAUSE THESE LADIES ARE GOING TO GET
11 1099s, ET CETERA, SO YOU'VE STILL GOT TO HAVE -- YOU
12 KNOW, I KNOW WHAT THEY'RE TRYING TO DO; THEY'RE
13 TRYING TO GET THERE STUFF FROM THEM THAT WOULD GIVE
14 THEM THEIR TAX I.D. NUMBERS OR THEIR -- OR EXCUSE,
15 SOCIAL SECURITY NUMBERS, ET CETERA, SO WE CAN SEND
16 THE DOCUMENTS, AND -- YOU KNOW, AT THE END OF THE
17 DAY, I FELT LIKE AND I STILL FEEL LIKE THAT
18 REGARDLESS OF ALL YOU SIGNED, YOU CAN SIGN ANYTHING,
19 BUT IF WE COME UP HERE AND SIGN A CONTRACT THAT
20 EXCLUDES ALL OF THOSE THINGS, THAT NEGATES ANYTHING
21 ELSE THAT YOU SIGNED.

22 Q. OKAY. BACK TO THE DOCUMENT I WAS SHOWING YOU HERE,
23 DID YOU -- DID YOU COMPLETE THE DOCUMENT, THIS
24 I.R.S. QUESTIONNAIRE?

25 A. I'VE ACTUALLY DONE THIS MORE THAN ONCE.

1 Q. OKAY.

2 A. WHAT THIS - WHEN THIS FIRST CAME UP WAS WHEN THEY
3 WANTED TO BE INDEPENDENT CONTRACTORS, AND WE ARE
4 ARGUING WITH THEM. WE ARE ARGUING WITH THE CARRIER.
5 WE ARE TRYING TO GET COVERAGE. WE ARE TRYING TO DO
6 THIS, THAT, AND WE DID THE -- YOU KNOW, THE I.R.S.
7 HAS THIS THING THAT IS MORE THAN ONE PAGE, BUT THAT
8 YOU DO TO DETERMINE WHETHER OR NOT THEY FALL UNDER
9 THE GUIDELINES OF BEING AN INDEPENDENT CONTRACTOR.

10 Q. ALL RIGHT.

11 A. SO, WE COMPLETED THEM, AND IN EVERYTHING, AND I DID
12 IT WITH ME AND MY INSURANCE PEOPLE, AND IT'S -- YOU
13 KNOW, IT'S BASICALLY 99.9 PERCENT INDEPENDENT
14 CONTRACTOR. SO, I MEAN, I DON'T KNOW WHAT MORE -- I
15 DID MY DUE DILIGENCE. RIGHT OR WRONG, I DID IT.
16 THAT'S WHAT I DID.

17 Q. OKAY. DID THAT HELP BOLSTER YOUR CONFIDENCE THAT
18 YOU HAD MADE THE RIGHT CLASSIFICATION OF THESE
19 WORKERS?

20 A. ABSOLUTELY. SUPPOSEDLY, THIS IS THE BIBLE, OKAY?
21 SUPPOSEDLY, THIS IS THE BIBLE.

22 Q. OKAY.

23 A. AND -- AND THIS IS WHAT THE CARRIERS WOULD EVEN
24 REQUEST "HAVE YOU COMPLETED THIS?" I'VE COMPLETED
25 IT. I'VE SENT IT TO THEM. I'VE GIVEN TO THEM

1 DOZENS OF TIMES.

2 BY MS. RICHARDSON:

3 WHAT IS THIS?

4 BY MR. GOODWYN:

5 THIS IS ---

6 BY MS. RICHARDSON:

7 OH, GOT IT. GOT IT.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. ON THAT SAME POINT, HAVE NURSES, THESE INDEPENDENT
10 CONTRACTOR NURSES THAT RACHEL -- RACHEL TURNER WAS A
11 PART OF THE GROUP OF, TRIED TO FILE FOR UNEMPLOYMENT
12 CLAIMS CLAIMING TO BE EMPLOYEES?

13 A. YEAH, I HAD -- I'VE HAD LIKE I THINK THREE OF THEM.
14 IT'S ALL PRIOR TO THIS THING WITH THIS THING WITH
15 RACHEL, AND, YOU KNOW, I WOULD IMMEDIATELY CALL THEM
16 UP, "HEY, WHAT ARE YOU DOING? ONE -- THERE'S TWO
17 THINGS. ONE, YOU'RE AN INDEPENDENT CONTRACTOR.
18 THERE'S BEEN NO WAGES REPORTED TO YOU -- FOR YOU TO
19 THE DEPARTMENT OF WORKFORCE." SECOND OF ALL, IN
20 EVERY ONE OF THESE CASES AS WELL, THEY DIDN'T HAVE
21 TO BE UNEMPLOYED. THEY COULD HAVE BEEN WORKING. SO
22 -- SO, EITHER WAY -- AND SO AT THE END OF THE DAY,
23 EVERY ONE OF THEM WAS FOUND AND ADJUDICATED BY THE
24 DEPARTMENT OF WORKFORCE -- UNEMPLOYMENT WORKFORCE
25 THAT THEY WERE CORRECT, AND THEY SENT US A WRITTEN -

1 - AND YOU SHOULD HAVE COPIES OF IT, ---

2 Q. WELL, I WAS GOING ---

3 A. --- THAT THEY'VE AGREED WITH US, THEY WERE ALWAYS
4 INDEPENDENT CONTRACTORS, AND THEY DIDN'T -- THEY
5 WEREN'T ELIGIBLE FOR UNEMPLOYMENT.

6 Q. I TURN YOUR ATTENTION TO PAGE 36 OF CONDUSTRIAL'S
7 APAs. IS THIS ONE OF THOSE WRITTEN OPINIONS THAT
8 YOU WERE REFERRING TO FROM THE DEPARTMENT OF
9 EMPLOYMENT AND WORKFORCE?

10 A. YES, SIR, AND THIS IS ONE THAT CAME SINCE TOM'S BEEN
11 WITH ME SINCE 2009, BUT THERE WERE ONE OR TWO PRIOR
12 TO THIS EVEN BEFORE TOMMY CAME WITH ME, AND WERE
13 FOUND TO BE THE SAME WAY.

14 Q. ALL RIGHT.

15 A. THEY WERE ALL INDEPENDENT CONTRACTORS.

16 BY MR. BEARD:

17 WHAT IS THAT, JEFF?

18 BY MR. GOODWYN:

19 PARDON?

20 BY MR. BEARD:

21 WHAT IS HE LOOKING AT?

22 BY MS. RICHARDSON:

23 WHAT IS IT?

24 BY MR. GOODWYN:

25 IT IS EXHIBIT 14, PAGE 36, I BELIEVE IS WHERE

1 IT STARTS OF CONDUSTRIAL.

2 BY MR. BEARD:

3 EXHIBIT 14?

4 BY MR. GOODWYN:

5 YEAH, OF CONDUSTRIAL'S APAs.

6 BY MR. BEARD:

7 AND YOU SAID PAGE ---

8 BY MR. GOODWYN:

9 PAGE 36 IS WHERE IT STARTS.

10 BY MR. BEARD:

11 THIRTY-SIX.

12 BY MR. GOODWYN:

13 IT'S MY APAs.

14 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. AND DID THIS FINAL DECISION HERE, DID IT GO BEYOND
16 JUST THE DECIDING THE INDEPENDENT CONTRACTOR STATUS
17 FOR THIS ONE EMPLOYEE? DID IT MAKE A BROADER
18 RULING?

19 A. YES. I MEAN, NOT JUST THAT ONE, BUT LIKE I TOLD
20 YOU, THERE'S AT LEAST TWO PRIOR TO THAT ONE BEFORE
21 TOM CAME TO WORK WITH ME, AND ONCE THEY AGREED WITH
22 US, AND I THOUGHT IT WAS AFFIRMATION THAT THEY ARE
23 ABSOLUTELY INDEPENDENT CONTRACTORS. I MEAN, I DON'T
24 KNOW WHAT MORE -- WHAT BETTER RULING WE CAN GET THAN
25 FOR THE STATE TO REVIEW IT AND AGREE WITH US THAT

1 THEY WERE INDEPENDENT CONTRACTORS. SO, THAT
2 INCREASED MY CONFIDENCE THAT THE DOCUMENTS PROVIDED
3 TO ME FOR INDEPENDENT CONTRACTING NURSES THAT WANTED
4 TO DO THAT WAS MORE THAN PROPER.

5 Q. OKAY. I'M GOING TO SHOW YOU ONE OTHER DOCUMENT,
6 STARTING AT PAGE 42 OF CONDUSTRIAL'S APAs. DO YOU
7 RECOGNIZE THIS DOCUMENT?

8 A. JEFF, I KNOW WHAT THIS DOCUMENT IS. I RECOGNIZE IT
9 AS A DOCUMENT. I DON'T RECOGNIZE THIS SPECIFIC
10 PERSON. IN OTHER WORDS, I'VE -- I'VE NOT DEALT WITH
11 THIS SPECIFIC CLAIM. I KNOW THAT THIS IS FOR HER
12 FILING HER CLAIM, ET CETERA, BUT I'VE NOT DEALT WITH
13 CHRISTIN SAYLES' CLAIM MYSELF.

14 Q. OKAY. IS THAT A DOCUMENT THAT WOULD BE KEPT IN THE
15 ORDER AND COURSE OF BUSINESS WITH CONDUSTRIAL?

16 A. IS THAT A DOCUMENT THAT WOULD BE KEPT IN THE COURSE
17 OF BUSINESS?

18 Q. YEAH. I MEAN, IS THAT A DOCUMENT THAT CONDUSTRIAL
19 WOULD KEEP?

20 A. NO, NO, THIS IS NOT MY DOCUMENT. THIS IS PROVIDED
21 BY THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE.

22 Q. OKAY. WHO IS IT COMPLETED BY?

23 A. IT IS COMPLETED BY -- THIS ONE HERE WAS COMPLETED BY
24 TOM OR ONE OF OUR EMPLOYEES. I THINK. HOLD ON A
25 SECOND. I'M TRYING TO SEE. THIS -- THIS DOCUMENT

1 IS A QUESTIONNAIRE THAT IS SENT TO US FOR A REQUEST
2 OF INFORMATION.

3 Q. FROM THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE?

4 A. FROM DEPARTMENT OF EMPLOYMENT AND WORKFORCE.

5 Q. WAS THAT PART OF ONE OF THESE UNEMPLOYMENT CLAIMS?

6 A. THIS IS A RECENT CLAIM. THAT'S WHY I'M TELLING YOU
7 IT'S NOT ONE THAT I HAVE PERSONALLY DEALT WITH, BUT
8 THAT IS A TYPICAL DOCUMENT THAT WOULD BE SENT TO US
9 WHEN SOMEBODY FILED AN UNEMPLOYMENT CLAIM.

10 Q. ARE THE QUESTIONS BEING ASKED RELATED TO WHETHER OR
11 NOT THE WORKER IS AN INDEPENDENT CONTRACTOR OR ---

12 A. THAT'S WHAT ---

13 Q. --- AN EMPLOYEE?

14 A. THAT'S WHAT IT IS. IT'S AN INTERROGATORY FROM THEM
15 TO US FOR THE INFORMATION IN REFERENCE TO THIS
16 SPECIFIC CLAIM.

17 Q. ALL RIGHT. CAN YOU TAKE JUST A QUICK SECOND AND
18 REVIEW THE RESPONSES, AND I'M GOING TO ASK YOU IF
19 THE RESPONSES IN THERE ARE ACCURATE.

20 A. (REVIEWS DOCUMENT) YES.

21 Q. OKAY. SO, AND IN RESPONSE TO ---

22 A. I MIGHT HAVE MISUNDERSTOOD WHAT YOU WERE ASKING.

23 Q. NO, NO.

24 A. I WASN'T TRYING TO MAKE IT DIFFICULT.

25 Q. NO.

1 A. I JUST DIDN'T WANT TO SAY THAT WAS MY DOCUMENT,
2 BECAUSE THAT'S NOT MY DOCUMENT.

3 Q. RIGHT, RIGHT, RIGHT. ALL RIGHT. SO, IS IT FAIR TO
4 SAY THEN THAT THE CONSISTENT AFFIRMATION FROM THE
5 DEPARTMENT OF EMPLOYMENT AND WORKFORCE THAT YOU
6 PROPERLY CLASSIFIED THESE INDEPENDENT CONTRACTORS AS
7 INDEPENDENT CONTRACTORS BOLSTERS YOUR BELIEF THAT
8 YOU PROPERLY CLASSIFIED THEM?

9 A. I WOULD SAY IT WAS, IT DOES, YEAH.

10 Q. OKAY. HAVE YOU EVER HAD ANY AGENCY, DEPARTMENT OF
11 EMPLOYMENT AND WORKFORCE, WORKERS' COMPENSATION
12 COMMISSION OR ANY OTHER AGENCY RULE THAT YOUR --
13 THESE 1099 NURSES WERE ANYTHING BUT INDEPENDENT
14 CONTRACTORS?

15 **BY MR. SAMUELS:**

16 OBJECT TO RELEVANCE, YOUR HONOR. IT'S NOT
17 BINDING IN THIS CASE.

18 **BY MR. GOODWYN:**

19 IT GOES TO HIS GOOD FAITH BELIEF THAT HE WAS
20 PROPERLY CLASSIFYING.

21 **BY COMMISSIONER JAMES:**

22 I'LL ALLOW IT, BUT WE CAN MOVE ON. WE ARE
23 TRYING THE ISSUE OF MS. TURNER, OKAY?

24 **BY MR. GOODWYN:**

25 SURE.

1 BY COMMISSIONER JAMES:

2 YOU CAN ANSWER IT, SIR.

3 BY THE WITNESS:

4 I FORGOT WHAT THE QUESTION WAS.

5 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. HAVE YOU EVER HAD ANY AGENCY, DEPARTMENT OF
7 EMPLOYMENT AND WORKFORCE OR THE WORKERS'
8 COMPENSATION COMMISSION OR ANY OTHER AGENCY FIND
9 THAT THE 1099 NURSES THAT MS. TURNER WAS A CLASS OF
10 ---

11 A. NO.

12 Q. --- WERE MISCLASSIFIED?

13 A. NO, I HAVEN'T

14 Q. OKAY. ALL RIGHT. LET ME GO BACK TO THE INDEPENDENT
15 CONTRACTOR AGREEMENT ITSELF THAT YOU HAD MS. TURNER
16 AND THE OTHER INDEPENDENT CONTRACTOR NURSES SIGN.
17 WHO -- WHERE DID YOU GET THAT; WHO DRAFTED THAT FOR
18 YOU?

19 A. NELSON MULLINS RILEY SCARBOROUGH. IT WAS DONE BY
20 TWO ATTORNEYS. BILL FOSTER WHO IS MY -- ALWAYS MY
21 ATTORNEY, AND THEN BO, I CAN'T THINK OF BO'S LAST
22 NAME EVER, BUT BO.

23 Q. OKAY.

24 A. HE'S THE OTHER ATTORNEY IN THE LABOR DEPARTMENT
25 THERE.

1 Q. ALL RIGHT. WERE YOU ASSURED THAT THESE DOCUMENTS
2 WERE VALID AND WOULD HOLD UP?

3 A. ABSOLUTELY. I WAS ASSURED.

4 Q. ALL RIGHT.

5 A. AND THEY HAVE.

6 Q. OKAY. THEY'VE NEVER -- NOBODY HAS EVER RULED
7 AGAINST YOU THAT YOU KNOW OF?

8 A. NO ONE HAS EVER RULED AGAINST IN ANY FASHION, NO.

9 Q. DID YOU EVER -- I'M JUST KIND OF GOING BACK TO THE -
10 - YOUR TESTIMONY EARLIER WHERE YOU WERE TESTIFYING
11 THAT THE NURSES DID NOT WANT TO BE EMPLOYEES; THEY
12 WANTED THE FREEDOM OF BEING AN INDEPENDENT
13 CONTRACTOR.

14 A. (NODS HEAD UP AND DOWN)

15 Q. ON THAT LINE, DID YOU EVER HAVE MS. TURNER OR ANY OF
16 THE OTHER NURSES COMPLAIN ABOUT NOT HAVING TAXES
17 TAKEN OUT OF THEIR CHECK BECAUSE THEY THOUGHT THEY
18 WERE EMPLOYEES?

19 A. NO, THAT WAS ALWAYS THE -- ONE OF THE BIG THINGS
20 THAT -- BECAUSE WHAT I WOULD DO IN EVERY CASE, AND I
21 EVEN DREW UP DOCUMENTS AND HAD IT SENT TO THEM,
22 OKAY, EXPLAINING THE DIFFERENCE IF THEY WOULD WORK
23 AS EMPLOYEES, THE THINGS THAT -- TO ALL THE NURSES,
24 CLIENTS, ET CETERA, ET CETERA, BECAUSE I WAS TRYING
25 TO GET THE CLIENTS HELP ME MAKE THEM EMPLOYEES,

1 OKAY? AND I SHOWED THEM WHAT THEY WERE LOSING BY
2 NOT BEING EMPLOYEES, AND I LAID IT OUT. "THIS IS
3 WHAT YOU ARE. THIS IS WHAT YOU GET AS AN EMPLOYEE,
4 AND IF YOU WERE AN EMPLOYEE, YOU WOULD GET ALL THESE
5 ADDITIONAL THINGS."

6 Q. ALL RIGHT. WHAT -- WHAT TYPES OF THINGS ARE YOU
7 REFERRING TO?

8 A. FOR EXAMPLE, AGAIN, ALL OF THE BENEFIT PACKAGES.
9 ONE, YOU WOULD GET THE BENEFIT OF HEALTH INSURANCE.
10 YOU WOULD GET THE BENEFIT OF VACATIONS. YOU WOULD
11 GET THE BENEFIT OF HOLIDAYS. YOU WOULD GET THE
12 BENEFIT OF A FULL-TIME HEALTH INSURANCE PLAN. YOU
13 WOULD GET DRUG CARDS. YOU WOULD GET 50 MILLION
14 DIFFERENT THINGS THAT DRAMATICALLY CHANGES, AND THEN
15 WHEN WE WOULD HAVE THE DISCUSSION, BECAUSE IT ALWAYS
16 -- EVERYBODY ALWAYS WANTS TO BE AN EMPLOYEE, BUT
17 THIS IS A TOTALLY ADVERSE ROUTE TO THAT, AND THEY'RE
18 LIKE "YOU KNOW, WE'RE..." COHESIVELY, I WOULD HEAR
19 IN THE MEETINGS, "WE'RE LICENSED. WE'RE
20 PROFESSIONALS. WE CAN DO AS WE WANT. I WANT TO BE
21 RESPONSIBLE FOR MY OWN STUFF."

22 Q. OKAY.

23 A. SO, THAT'S WHAT WAS DONE. I MEAN, THAT'S JUST WHAT
24 WAS DONE.

25 Q. AND WAS THAT THE CONSISTENT RESPONSE YOU RECEIVED?

1 A. SIR?

2 Q. WAS THAT THE CONSISTENT RESPONSE YOU RECEIVED?

3 A. ALL THE TIME, EVERY TIME.

4 Q. OKAY. NOW, IF -- AS PART OF THE TRADEOFF OF BEING
5 AN EMPLOYEE TO INDEPENDENT CONTRACTOR, IF YOU WERE
6 TO MAKE THEM AN EMPLOYEE, DID YOU TELL THEM THAT
7 THEY WOULD BE PAID LESS?

8 A. THEY WOULD NOT BE PAID LESS, BUT THE PAY IS NON
9 NEGOTIABLE. THE PROBLEM IS THAT THE NET PAY IS
10 LESS, BECAUSE THEN THEY HAVE THE TAXES TAKEN OUT.
11 THEY HAVE THEIR PART OF THE WITHHOLDING TAKEN OUT.
12 I MEAN, AS I.C.s, THEY DON'T HAVE ANY WITHHOLDING.
13 SO, THAT'S -- THAT'S THEIR BIG THING IS THEY DON'T
14 WANT THE WITHHOLDING TAXES, BECAUSE, YOU KNOW, I
15 REMEMBER -- I REMEMBER ONE LADY, I DON'T REMEMBER
16 WHO SHE WAS OR WHATEVER, BUT I WILL NEVER FORGET
17 THIS. THEY'RE LIKE "WELL, I'LL DO IT IF I CAN CLAIM
18 99 DEPENDANTS." I'M LIKE, "YOU CAN'T CLAIM 99
19 DEPENDANTS." I'M LIKE "THAT'S A VIOLATION IN
20 ITSELF."

21 Q. OKAY.

22 A. YOU KNOW, SO, I MEAN, IT'S STUPID. IT'S REALLY
23 SHORT SIDED.

24 Q. ALL RIGHT. NOW, IF THIS GROUP OF NURSES IS
25 CLASSIFIED AS INDEPENDENT CONTRACTORS VERSUS

1 EMPLOYEES, DOES THAT SAVE SOME EXPENSES FOR
2 CONDUSTRIAL?

3 A. NO.

4 Q. WHAT ABOUT WORKERS' COMPENSATION PREMIUMS?

5 A. IT SAVES ME WORKERS' COMPENSATION PREMIUMS. IT DOES
6 SAVE ME THAT, BUT THE FACT OF THE MATTER IS, AND
7 I'VE PROVIDED THOSE DOCUMENTS. I DON'T KNOW WHAT
8 ALL YOU'VE PROVIDED, BUT THE BILL RATES FOR
9 EMPLOYEES ARE MUCH GREATER THAN THE BILL RATES FOR
10 INDEPENDENT CONTRACTORS. SO, THAT WAS ALWAYS ONE OF
11 THE REASONS WHY THE CLIENT DIDN'T WANT TO ALLOW
12 THESE WOMEN TO BE EMPLOYEES EITHER.

13 Q. WHAT DO YOU MEAN THE BILL RATES?

14 A. SO, IF I'M BILLING A LADY OUT AT -- JUST SAY I PAID
15 A LADY 25 BUCKS AN HOUR.

16 Q. BILLING TO WHO? I THINK THAT'S MY QUESTION.

17 A. LET'S SAY I'M PAYING A NURSE \$25 AN HOUR, AND I AM
18 INVOICING THE SOUTH CAROLINA DEPARTMENT OF
19 CORRECTIONS OR WHOEVER, YOU KNOW, IF THEY WERE AN
20 EMPLOYEE, THAT RATE IS GOING TO BE 60/65 PERCENT
21 ABOVE THAT PAY RATE, BUT AS INDEPENDENT CONTRACTORS,
22 IT'S ABOUT 30 PERCENT ABOVE THEIR PAY RATE, SO, IT'S
23 A BIG DIFFERENCE.

24 Q. OKAY. WHY -- WHY THE DIFFERENCE?

25 A. WHY THE DIFFERENCE, BECAUSE OF THE -- THEY GET THE

1 BENEFIT OF THE NO MATCHING TAXES, NO WORKERS' COMP,
2 NO VACATIONS, NO HOLIDAYS, NO -- NO NOTHING. I
3 MEAN, THAT'S ALL A COST TO ME THAT I HAVE TO PAY
4 OUT. I HAVE TO PASS THAT ALONG.

5 Q. SO, DO YOU -- I MEAN, DO YOU MAKE ANY MORE OR LESS
6 MONEY IN EITHER SITUATION?

7 A. I MAKE A LOT LESS MONEY WITH THEM BEING INDEPENDENT
8 CONTRACTORS.

9 Q. OKAY, SO ---

10 A. ABSOLUTELY, AND NOT COUNTING THE HASSLE. I MEAN, I
11 HAVE 850 EMPLOYEES. WHY DO I WANT TO FOOL WITH 15
12 NURSES WORKING AS INDEPENDENT CONTRACTORS WHEN I
13 HAVE TO PAY ADDITIONAL PREMIUMS FOR MEDICAL
14 MALPRACTICE INSURANCE THAT I CARRY FOR ALL OF THEM,
15 WHEN IF I DO THEM AS EMPLOYEES, MY PREMIUM FOR THAT
16 IS DRAMATICALLY LESS, BUT BECAUSE THEY HAVE TO BE
17 INDEPENDENTS, AND I EXPLAIN ALL OF THAT TO THE
18 MEDICAL MALPRACTICE CARRIER. MY PREMIUMS ARE ALMOST
19 DOUBLE WHAT THEY WOULD BE OTHERWISE, SO, NO, IT'S NO
20 BENEFIT TO ME IN ANY FASHION.

21 Q. OKAY. THERE'S BEEN AN ARGUMENT IN THIS CASE THAT
22 ONE OF THE MOTIVATIONS THAT YOU HAD TO CLASSIFY ---

23 A. WELL, WHOEVER SAID THAT IS AN IDIOT, OKAY?

24 Q. WELL, LET ME FINISH MY QUESTION. I UNDERSTAND. I
25 MEAN, THIS IS WHY WE ARE HERE TO DEVELOP ALL THE

1 FACTS IN THE CASE, BUT IT SOUNDS LIKE WHAT YOU ARE
2 SAYING, YOU ACTUALLY MAKE MORE MONEY MAKING THEM AN
3 EMPLOYEE AS OPPOSED TO AN INDEPENDENT CONTRACTOR?

4 A. ABSOLUTELY.

5 Q. OKAY. SO, THERE IS NO FINANCIAL INCENTIVE TO YOU TO
6 CLASSIFY THESE PEOPLE ---

7 A. ABSOLUTELY NOT.

8 Q. --- AS INDEPENDENT CONTRACTORS? OKAY. I DIDN'T ASK
9 YOU THIS AT THE BEGINNING, BUT I KNOW YOU'VE TOLD ME
10 THAT YOU -- YOU'RE A DIABETIC AND MAY NEED SOME
11 BREAKS FROM TIME TO TIME.

12 A. I AM.

13 Q. JUST WHILE WE ARE HERE, CAN YOU JUST LET US KNOW IF
14 AND WHEN YOU NEED A BREAK.

15 A. I WILL.

16 Q. I LET THE COMMISSIONER KNOW ABOUT THAT.

17 A. THANK YOU VERY MUCH.

18 Q. AND I THINK SHE SAID SHE WILL TRY TO ACCOMMODATE
19 YOU.

20 A. I APPRECIATE THAT.

21 BY COMMISSIONER JAMES:

22 CERTAINLY.

23 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

24 Q. LET ME ASK YOU -- SWITCH GEARS HERE AND ASK YOU SOME
25 QUESTIONS ABOUT THE WORKERS' COMPENSATION COVERAGE

1 THAT YOU HAD IN THE -- IN THE RELATIONSHIP
2 NEGOTIATIONS WITH COUNTRYWIDE. YOU TESTIFIED THAT
3 CONDUSTRIAL HAS -- IS FOCUSED ON HEAVY CONSTRUCTION;
4 IT WAS A LOT OF HEAVY CONSTRUCTION?

5 A. HEAVY CONSTRUCTION, HEAVY MANUFACTURING.

6 Q. DOES THAT MAKE IT DIFFICULT SOMETIMES TO FIND A
7 WORKERS' COMPENSATION CARRIER?

8 A. CLASS 5000 CODES ARE THE WORST CODES OF ALL IN
9 WORKERS' COMPENSATION.

10 Q. OKAY. LET'S TALK ABOUT THE YEAR PRIOR TO THIS
11 AGREEMENT WITH COUNTRYWIDE. WHO WAS YOUR CARRIER,
12 WORKERS' COMPENSATION CARRIER?

13 A. THE YEAR PRIOR TO COUNTRYWIDE?

14 Q. RIGHT.

15 A. THAT WOULD HAVE BEEN GUARANTEE INSURANCE
16 CORPORATION.

17 Q. OKAY. AND WITH GUARANTEE, WELL LET ME BACK UP. I
18 DON'T THINK WE'VE ESTABLISHED THIS YET. YOU
19 TESTIFIED ALL ABOUT THE GROUP OF INDEPENDENT
20 CONTRACTOR NURSES THAT YOU HAVE.

21 A. YES.

22 Q. DID YOU AT SOME POINT HAVE OR ACQUIRE, START USING,
23 SOME EMPLOYEE NURSES?

24 A. YES, I HAVE SOME EMPLOYEE NURSES.

25 Q. OKAY. AND ABOUT HOW MANY DID YOU HAVE BACK IN 2014?

1 A. MOST -- I WOULD SAY THE EMPLOYEE NURSES ARE PROBABLY
2 -- AND THERE AGAIN, YOU KNOW, I'M JUST GOING BY THEY
3 WORK OUT OF THREE DIFFERENT OFFICES, AND WHAT WE ARE
4 DEALING WITH HERE IS MOSTLY RELEGATED TO THE
5 COLUMBIA OFFICE. PROBABLY HAD 15, 20 EMPLOYEE
6 NURSES, AND THEN YOU HAVE ABOUT -- IN ANY ONE WEEK,
7 YOU HAVE ABOUT 15 -- 12 TO 18 I WOULD SAY, THE
8 AVERAGE, THAT WOULD WORK AS INDEPENDENT CONTRACTORS,
9 AND THE VAST MAJORITY OF THOSE WERE SOUTH CAROLINA
10 DEPARTMENT OF CORRECTIONS. BUT THE OTHER LADIES
11 THAT WORKED IN NURSING HOMES, ET CETERA, ET CETERA,
12 WERE USUALLY A LOT OF TIMES THEY'RE ALL EMPLOYEES.

13 Q. ALL RIGHT. THERE WAS SOME TESTIMONY OR SOME
14 REPRESENTATIONS YESTERDAY THAT YOU HAVE 130 OR SO
15 INDEPENDENT CONTRACTOR NURSES WITH CONDUSTRIAL.

16 A. WELL, RIGHT THERE IS A PERFECT EXAMPLE OF WHY
17 THEY'RE INDEPENDENT CONTRACTORS, BECAUSE AT ANY
18 TIME, THERE IS ONLY 12 TO 18 MAX. OKAY, A LOT OF
19 TIMES IT'S THE LOW 12.

20 Q. ARE YOU TALKING ABOUT AT ANY PARTICULAR WEEK?

21 A. ANY PARTICULAR WEEK THAT WILL WORK AT THE SOUTH
22 CAROLINA DEPARTMENT OF CORRECTIONS, AND THAT'S WHERE
23 THE INDEPENDENT CONTRACTORS COME FROM, BUT BECAUSE
24 THEY DON'T WANT TO TAKE SHIFTS UNLESS THEY ARE
25 AVAILABLE OR THEY'RE TAKING SHIFTS ELSEWHERE, THESE

1 ARE -- IN OTHER WORDS, IT'S 12 PEOPLE, BUT IT MIGHT
2 NOT BE THE SAME 12 PEOPLE EVERY WEEK. SO, AT THE
3 END OF THE DAY, YOU CAN SAY "HOW MANY PEOPLE DO
4 Y'ALL HAVE WORKING?" "I HAVE 12 PEOPLE," BUT IT
5 TAKES MAYBE A HORSE STABLE OF 180 TO FILL THOSE
6 PEOPLE'S ORDERS, BECAUSE THEY WON'T WORK AS
7 EMPLOYEES, THEY WON'T TAKE 40-HOUR ASSIGNMENTS.

8 Q. OKAY.

9 A. THEY ONLY WANT THEM AS THEY WANT THEM. SO, NO, IT'S
10 -- I WISH I HAD 180 OF THEM WORKING. I WOULD HAVE
11 ABOUT A 50 MILLION DOLLAR A YEAR ASSIGNED TO THAT
12 BUSINESS INSTEAD OF THIS 1 MILLION DOLLAR BUSINESS
13 THAT IS DRIVING ME NUTS.

14 Q. OKAY.

15 A. OKAY, SO, YEAH, I DON'T KNOW WHO SAID THAT, BUT
16 THAT'S -- THAT'S RIDICULOUS. IT'S 15 NURSES MAX.

17 Q. I UNDERSTAND.

18 A. YEAH, I SAID THAT ---

19 Q. HANG ON ONE SECOND.

20 **BY MS. FARTHING:**

21 CAN WE TAKE A BRIEF BREAK?

22 **BY COMMISSIONER JAMES:**

23 YES.

24 **BY MS. FARTHING:**

25 THANK YOU.

(OFF THE RECORD)

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. MR. DURHAM, I ASKED YOU SOME QUESTIONS ABOUT YOUR
RELATION -- CONDUSTRIAL'S RELATIONSHIP WITH S.C.D.C.
I THINK YOU TESTIFIED EARLIER THAT THE RELATIONSHIP
WITH S.C.D.C. HAD ALREADY BEEN ESTABLISHED BY THE
PRIOR, BY THE COMPANY THAT YOU BOUGHT, THIS GROUP OF
INDEPENDENT NURSES; IS THAT CORRECT?

A. YES. WHEN I FIRST BOUGHT HER COMPANY, WE TOOK OVER
THAT SERVICE, AND WE OPERATED UNDER HER AGREEMENTS
THAT SHE HAD IN PLACE AND PROVIDED PEOPLE FOR
SEVERAL WEEKS UNDER THAT, AND THEN THAT WENT KAPOOEE
DUE TO ISSUES THAT HAD NOTHING TO DO WITH ME. IT
HAD ---

BY COMMISSIONER JAMES:

I'M SORRY, WENT TO WHAT?

BY THE WITNESS:

WENT -- IT WENT THROUGH -- I SAID "KAPOOEE."

BY COMMISSIONER JAMES:

OKAY.

BY THE WITNESS:

IT WENT ---

BY COMMISSIONER JAMES:

I JUST DIDN'T...

BY THE WITNESS:

1 IT WENT KAPOOEE, AND THAT WAS DUE TO A CLAIM BY
2 ONE OF THE PEOPLE'S COMPANIES THAT I BOUGHT HER
3 ASSETS, WHICH WAS A CONTRACT THAT THEY HADN'T BEEN
4 PAID BY S.C.D.C. AND THEN SO HERE I HAD BOUGHT THAT
5 CONTRACT, BUT I DIDN'T OWN THOSE RECEIVABLES, OKAY.
6 SO, IT -- IT KIND OF LIKE BECAME A MUSHROOM CLOUD,
7 AND SO AT THAT POINT, S.C.D.C. DIDN'T WANT TO DO
8 ANYTHING WITH US, BECAUSE WE WERE PROVIDING THE SAME
9 NURSES, ET CETERA, ET CETERA, UNTIL SUCH TIME THAT
10 THAT GOT, AS YOU INDICATED, DONE AWAY WITH. SO,
11 AFTER A FEW WEEKS OF ME PROVIDING THE LADIES UNDER
12 THE OLD CONTRACT THAT I HAD -- YOU KNOW, IF IT WENT
13 AWAY, THEN IT CAME BACK AGAIN IN 2008.

14 Q. OKAY. AND I'M GOING TO SHOW YOU THIS WHAT IS PAGE
15 254 OF THE CLAIMANT'S APAs. THIS IS A DOCUMENT
16 ENTITLED "PERSONNEL SERVICES AGREEMENT, SOUTH
17 CAROLINA DEPARTMENT OF CORRECTIONS." IS THAT THE
18 AGREEMENT THAT YOU ENTERED INTO WITH THE DEPARTMENT
19 OF CORRECTIONS IN 2008?

20 A. IT IS.

21 Q. AND WHO SIGNED IT ON BEHALF OF CONDUSTRIAL?

22 A. NATASHA RATHBURN.

23 Q. ALL RIGHT. AND LET ME -- I NOTE THE AGREEMENT IS
24 LISTED AS BETWEEN MEDUSTRIAL AND THE DEPARTMENT OF
25 CORRECTIONS.

1 A. YES.

2 Q. WHY WAS THAT?

3 A. JUST BECAUSE THEY WERE USED TO TALKING WITH HER, AND
4 HER CARD SAID "MEDUSTRIAL," BUT EVERYTHING THAT WAS
5 EVER MEDUSTRIAL, AND YOU CAN BE PROVIDED THESE IF
6 YOU NEED THEM, AND YOU PROBABLY HAVE THEM, IT ALWAYS
7 SAYS "MEDUSTRIAL, HEALTHCARE SERVICE OF
8 CONDUSTRIAL."

9 Q. OKAY.

10 A. IT ALWAYS SAYS THAT UNDER ALL ---

11 Q. AND WE'VE SEEN THAT ON A NUMBER OF DOCUMENTS.

12 A. LETTERHEAD AND HER CARDS AND EVERYTHING, BUT THAT
13 WAS HOW THEY WROTE THE CONTRACT TO HER, AND SHE WAS
14 THE LADY THAT HAD ORIGINALLY DEALT WITH THE SOUTH
15 CAROLINA DEPARTMENT OF CORRECTIONS, THAT I -- THAT
16 STAYED WITH ME WHEN I HIRED -- WHEN I BOUGHT THAT
17 FROM PALMETTO.

18 Q. OKAY.

19 A. SHE WAS THE LADY THAT HAD ALL OF THE -- DEALT WITH
20 EVERYTHING, YOU KNOW.

21 Q. ALL RIGHT. DID YOU PERSONALLY -- WERE YOU
22 PERSONALLY INVOLVED IN THE NEGOTIATIONS WITH THIS
23 CONTRACT?

24 A. YES, I WAS.

25 Q. ALL RIGHT. AND WHAT -- CAN YOU READ THOSE TWO FIRST

1 "WHEREAS" LINES FOR US.

2 A. "WHEREAS, S.C.D.C. ENGAGES -- DESIRES TO ENGAGE THE
3 SERVICES OF CONTRACTOR TO PROVIDE MEDICAL STAFFING
4 PERSONNEL AS AN INDEPENDENT CONTRACTOR. WHEREAS,
5 CONTRACTOR DESIRES TO PROVIDE MEDICAL STAFFING
6 PERSONNEL AS AN INDEPENDENT CONTRACTOR UNDER THE
7 TERMS AND CONDITIONS SET OUT IN THE AGREEMENT."

8 Q. OKAY. IS THAT ACCURATE? WAS THAT THE INTENT OF THE
9 PARTIES?

10 A. YES, YES.

11 Q. OKAY. AND YOU ARE GOING TO BE ASKED SOME QUESTIONS,
12 THERE -- IT'S REFERENCED "TO EMPLOYEES," LATER IN
13 THE AGREEMENT. WHY IS THAT? CAN YOU EXPLAIN WHAT
14 THE DISCREPANCY IS BETWEEN THE "WHEREAS" CLAUSES
15 INDICATING "INDEPENDENT CONTRACTORS ARE DESIRED,"
16 BUT THE WORD "EMPLOYEE" IS USED LATER?

17 A. OKAY. I HAD JUST AS MUCH PROBLEM WITH IT PROBABLY
18 AS EVERYBODY ELSE THAT IS HERE, AND SO, YOU KNOW, I
19 DEALT -- GOT INVOLVED WITH IT, ET CETERA, AND THIS
20 WAS THE EXACT SAME CONTRACT THAT I HAD BEEN PROVIDED
21 WORD FOR WORD EXCEPT THE CHANGE OF MEDUSTRIAL FROM
22 PALMETTO HEALTH CARE, THAT THEY HAD BEEN OPERATING
23 UNDER PREVIOUSLY, AND THAT I HAD PROVIDED THE PEOPLE
24 UNDER.

25 Q. OKAY, SO ---

1 A. AND THEY WERE ALL INDEPENDENT CONTRACTORS, AND --
2 AND WHILE I WAS NOT HAPPY WITH IT, IT DIDN'T EXCLUDE
3 INDEPENDENT CONTRACTORS. ABSOLUTELY, THEY ALL KNEW
4 IT WAS INDEPENDENT CONTRACTORS.

5 BY MS. FARTHING:

6 COMMISSIONER, WE'RE GETTING AGAIN INTO THESE
7 ISSUES THAT HAVE COME UP TIME AND TIME AGAIN, AND I
8 KNOW THAT THERE'S BEEN DISCUSSION ABOUT NOT GETTING
9 INTO THE WEEDS ABOUT THIS COURSE OF DEALING AND THAT
10 THE CONTRACT WILL SPEAK FOR ITSELF, BUT AGAIN, HE
11 KEEPS ELICITING THIS TESTIMONY ABOUT THIS COURSE OF
12 DEALING, AND IT PUTS ME IN A POSITION WHERE I HAVE
13 TO RESPOND TO IT, AND I HAVE TO ADDRESS IT. I THINK
14 WE'VE ALREADY DISCUSSED AT LENGTH OFF THE RECORD
15 ABOUT THE FACT THAT THIS IS REALLY IRRELEVANT TO
16 THIS CLAIM, THAT THE CONTRACT WILL SPEAK FOR ITSELF.

17 BY MR. GOODWYN:

18 THERE HAS BEEN -- MR. SEARS TESTIFIED ABOUT IT,
19 AND THE OTHER WITNESSES HAVE TESTIFIED ABOUT IT.

20 BY MS. FARTHING:

21 AND I OBJECTED EVERY TIME THOSE WITNESSES
22 TESTIFIED.

23 BY MR. GOODWYN:

24 AND IT'S ALL COME IN. I THINK IT'S VERY UNFAIR
25 AT THIS POINT TO START EXCLUDING TESTIMONY. I MEAN,

1 I'M NOT GOING TO GET MUCH FURTHER THAN THIS. I
2 MEAN, I DIDN'T SPECIFICALLY ASK HIM ABOUT WHAT THEY
3 KNEW, WHO KNEW WHAT.

4 BY MS. FARTHING:

5 YOU LED HIM TO IT.

6 BY MR. GOODWYN:

7 I'M JUST -- I'M ASKING ABOUT THIS AGREEMENT
8 RIGHT NOW, AND I DON'T THINK WE NEED TO GET TOO MUCH
9 FURTHER INTO IT. I THINK YOU KNOW THAT ---

10 BY COMMISSIONER JAMES:

11 ALL RIGHT.

12 BY MR. GOODWYN:

13 --- WHAT OUR POSITION IS, AND EVERYBODY FROM
14 OUR SIDE THINKS THAT THEY KNEW, AND THEY'RE GOING TO
15 SAY WHATEVER THEY'RE GOING TO SAY, BUT WHETHER IT'S
16 RELEVANT OR NOT, SO BE IT, BUT I'M MOVING ON.

17 BY COMMISSIONER JAMES:

18 WELL, FIRST OF ALL, IF IT'S CHARACTERIZED AS
19 EVERYBODY KNEW AND THERE'S NOT A FOUNDATION FOR IT,
20 LET'S -- LET'S NOT GO INTO THAT.

21 BY MR. GOODWYN:

22 I MEAN, I CAN ---

23 BY COMMISSIONER JAMES:

24 "EVERYBODY" IS VERY ---

25 BY MR. GOODWYN:

1 --- LAY THE FOUNDATION.

2 BY COMMISSIONER JAMES:

3 --- IS VERY BROAD, AND SECONDLY, IF WE NEED TO
4 TAKE UP THE ISSUE OF WHETHER THIS IS GOING TO BE AN
5 ACTUAL ISSUE THAT IS DETERMINED IN A WORKERS' COMP
6 SETTING AND NEEDS TO BE DETERMINED IN THE WORKERS'
7 COMP SETTING, WE CAN IF IT'S GOING TO GO FURTHER
8 THAN THAT.

9 BY MR. GOODWYN:

10 OKAY.

11 (OFF THE RECORD)

12 BY MR. GOODWYN:

13 AND ANOTHER POINT I WOULD LIKE TO MAKE ON THIS
14 ISSUE IS THE CONTRACT DOESN'T NECESSARILY SPEAK FOR
15 ITSELF. THE COURSE OF DEALINGS CAN AFFECT IT.
16 THERE CAN BE ORAL MODIFICATIONS TO WRITTEN
17 CONTRACTS. I THINK THAT TESTIMONY WOULD BE ALLOWED.
18 IF THIS CONTRACT IS RELEVANT TO ANYTHING IN THE
19 CASE, THEN I THINK WE ARE ENTITLED TO ELICIT THAT
20 TESTIMONY.

21 BY COMMISSIONER JAMES:

22 MR. SAMUELS.

23 BY MR. SAMUELS:

24 YOUR HONOR, THE CONTRACT AS WE POINTED OUT
25 EARLIER, HAS A PROVISION IN IT THAT CANNOT BE

1 ALTERED OR MODIFIED BY ANYTHING OTHER THAN A WRITTEN
2 AGREEMENT.

3 BY MR. GOODWYN:

4 THERE IS CASE LAW THAT SAYS THAT EVEN IF IT
5 SAYS THAT, IT CAN BE MODIFIED BY AN ORAL AGREEMENT.
6 I'VE TRIED THAT ISSUE ---

7 BY MS. FARTHING:

8 BUT, COMMISSIONER, WE ARE GETTING INTO THE
9 PAROL EVIDENCE RULE, WHICH I THINK WE HAVE DISCUSSED
10 OFF THE RECORD, IS NOT APPLICABLE BECAUSE THE RULES
11 OF EVIDENCE DON'T APPLY IN THIS MATTER, BUT IT'S THE
12 PAROL EVIDENCE RULE. UNLESS THERE IS SOMETHING IN
13 THE CONTRACT THAT IS SPECIFICALLY AMBIGUOUS OR
14 SPECIFICALLY NOT CLEAR, THIS DOESN'T GET IN.

15 BY MR. GOODWYN:

16 THAT'S NOT -- THE CONTRACT LAW IS ANY CONTRACT
17 WRITTEN EVEN IF IT SAYS IT CAN'T BE MODIFIED EXCEPT
18 BY WRITING CAN BE MODIFIED BY AN ORAL CONTRACT. I
19 MEAN, I HAVE ---

20 BY MS. FARTHING:

21 NOT UNLESS THERE'S AMBIGUITY ---

22 BY MR. GOODWYN:

23 --- LITIGATED THAT ISSUE A NUMBER OF TIMES.

24 NO. THAT ---

25 BY MS. FARTHING:

1 --- WITHIN THE TERMS -

2 BY MR. GOODWYN:

3 THAT'S NOT ---

4 BY MS. FARTHING:

5 --- OF THE CONTRACT.

6 BY MR. GOODWYN:

7 THAT'S NOT THE LAW.

8 BY MS. FARTHING:

9 IT'S THE PAROL EVIDENCE RULE.

10 BY MR. GOODWYN:

11 THAT'S NOT THE LAW.

12 BY COMMISSIONER JAMES:

13 DON'T OVER TALK WITH EACH OTHER.

14 BY MR. GOODWYN:

15 AND I CAN PULL THAT LAW. I MEAN, I'VE
16 LITIGATED THAT PARTICULAR ISSUE A NUMBER OF TIMES.

17 BY MS. FARTHING:

18 IT'S NOT LEGAL BY THE PAROL EVIDENCE RULE.

19 BY MR. SAMUELS:

20 I WOULD LIKE TO MAKE ONE -- TWO POINTS.

21 BY COMMISSIONER JAMES:

22 YES, SIR.

23 BY MR. SAMUELS:

24 ONE IS ON THE -- GENERALLY ON EVIDENCE IN
25 WORKERS' COMPENSATION CASES, I KNOW WE HAVE A

1 STATUTE THAT SAYS THE RULES OF EVIDENCE DO NOT
2 APPLY. I BELIEVE THAT RULE REFERS TO THE RULES OF
3 EVIDENCE, THESE RULES OF EVIDENCE DON'T APPLY. WE
4 STILL HAVE RULES OF EVIDENCE, AND WE WOULD FALL BACK
5 TO THE COMMON LAW, AND THE PAROL EVIDENCE RULE IS
6 COMMON LAW. SO, I WOULD CONTEND THAT THAT ACTUALLY
7 DOES APPLY IN THIS CASE.

8 BY COMMISSIONER JAMES:

9 WELL, THERE'S ANOTHER ISSUE HERE, AND THAT'S
10 WHY I'M GOING TO ASK ALL COUNSEL IS EVEN IF THIS
11 CONTRACT IS DIFFERENT, TELL ME WHAT IF ANY IMPACT
12 THAT IT CAN HAVE ON THE WORKERS' COMP, BECAUSE
13 THERE'S A LOT -- THERE'S A LOT OF CONTRACTS HERE,
14 AND I KNOW EVERYBODY IS -- HAS VOICED THAT THEY --
15 ALMOST EVERYBODY. I DON'T KNOW IF EVERYBODY, IS DO
16 THEY FEEL LIKE A CONTRACT MAY NOT BE HONORED OR
17 SOMETHING WASN'T THIS, THAT AND THE OTHER. SO,
18 THERE MAY BE SOME BREACH OF CONTRACT ISSUES THAT YOU
19 ARE ALL DISCUSSING, BUT THAT IS NOT FOR THIS ARENA
20 TO TRY. SO, TELL ME WHERE THAT WOULD BE DISPOSITIVE

21 ---

22 BY MR. GOODWYN:

23 I THINK IT CAN ---

24 BY COMMISSIONER JAMES:

25 --- IN THE WORKERS' COMP AREA.

1 BY MR. GOODWYN:

2 I THINK IT GOES TO THE EMPLOYEE/INDEPENDENT
3 CONTRACTOR ISSUE. THAT THE ASSERTION THAT WE WERE
4 SUPPLYING EMPLOYEES. IF WE CAN DEBUNK THAT AND SAY
5 EVERYBODY KNEW THEY WERE INDEPENDENT CONTRACTORS, I
6 THINK THAT SUPPORTS OUR ARGUMENT THAT SHE IN FACT
7 WAS AN INDEPENDENT CONTRACTOR.

8 BY MR. SAMUELS:

9 TO THE EXTENT --

10 BY COMMISSIONER JAMES:

11 SAY THAT AGAIN, MR. GOODWYN.

12 BY MR. GOODWYN:

13 S.C.D.C., I THINK THERE'S SOME TESTIMONY THAT
14 "OH, WE DIDN'T KNOW THEY WERE INDEPENDENT
15 CONTRACTORS. WE THOUGHT THEY WERE EMPLOYEES. A
16 LOOK AT THE CONTRACT, IT SAYS EMPLOYEES."

17 BY COMMISSIONER JAMES:

18 BUT ---

19 BY MR. GOODWYN:

20 IF WE CAN DEBUNK THAT, THEN I THINK THAT
21 SUPPORTS THE WHOLE THEORY THAT SHE IN FACT WAS AN
22 INDEPENDENT CONTRACTOR. IT JUST GOES TO THAT --
23 GOES TO THAT POINT.

24 BY COMMISSIONER JAMES:

25 BUT IF SHE -- THE NEXT LEVEL WITH REGARDS TO

1 THIS IS CONTROL -- IF INDEED OR MAYBE EVEN THERE'S A
2 DIFFERENT THEORY OF LAW THAT'S BEEN DISCUSSED. SO,
3 LET'S JUST DISCUSS THE STRAIGHT LINE THEORY. IF
4 INDEED THE -- THERE IS EMPLOYMENT WITH YOUR CLIENT,
5 THEN THERE'S A QUESTION -- YOU KNOW, THEN THERE'S A
6 QUESTION OF UPSTREAM, BUT HOW DOES THAT CHANGE --
7 HOW DOES THAT CHANGE THE RELATIONSHIP? AND I
8 UNDERSTAND -- WE ARE NOT DELVING INTO ALL THE LEGAL
9 ISSUES RIGHT NOW. HOW DOES THAT CHANGE THE
10 RELATIONSHIP BETWEEN YOUR CLIENT AND S.C.D.C. IN THE
11 COMP WORLD?

12 BY MR. GOODWYN:

13 I SEE WHAT YOU'RE SAYING ABOUT THAT, YEAH,
14 THERE MAY BE A BREACH OF CONTRACT LATER BETWEEN US,
15 BUT THAT'S NOT -- THAT'S NOT WHAT WE ARE LITIGATING
16 TODAY.

17 BY COMMISSIONER JAMES:

18 RIGHT. THAT'S WHAT I'M SAYING.

19 BY MR. GOODWYN:

20 BUT THE REASON I'M GETTING INTO IT IS TO
21 BASICALLY REFUTE THEIR ASSERTION THAT "HEY, THEY
22 WERE EMPLOYEES. WE THOUGHT THEY WERE EMPLOYEES,"
23 KNOWING THAT EVERYBODY KNEW THAT ---

24 BY COMMISSIONER JAMES:

25 BUT IF IT'S NOT DISPOSITIVE, THEN WE ARE TRYING

1 A PERIPHERAL ISSUE.

2 BY MS. FARTHING:

3 MAY I RESPOND?

4 BY COMMISSIONER JAMES:

5 YES.

6 BY MS. FARTHING:

7 MY TESTIMONY IS IN RESPONSE TO THEIR TESTIMONY
8 THAT THERE WAS NO EXPECTATION THAT THIS -- THAT THE
9 TERMS OF THIS CONTRACT WOULD BE ADHERED TO. WE WERE
10 ONLY LOOKING AT IT WITHIN THE TERMS OF THOSE FOUR
11 CORNERS OF THE CONTRACT. THE TESTIMONY THAT I HAVE
12 ELICITED THUS FAR HAS BEEN IN RESPONSE TO TESTIMONY
13 THAT THEY HAVE ELICITED THAT THERE WAS THIS
14 EXPECTATION AND THIS UNDERSTANDING. THAT'S THE
15 REASON WHY. I DON'T -- I THINK THEY ARE READING
16 INTO SOME SORT OF -- BASICALLY, MINE HAS BEEN TO
17 ENSURE THAT THERE'S NOT THIS OPEN-ENDED TESTIMONY
18 THAT PRESENTS THIS IDEA THAT THE DEPARTMENT OF
19 CORRECTIONS HAD WITHOUT ANY KIND OF REFUTATION. I
20 AGREE THAT THAT'S PROBABLY NOT RELEVANT TO CERTAIN
21 ASPECTS. THIS COURSE OF DEALING IS NOT RELEVANT OR
22 PROPER BEFORE THIS COMMISSIONER. THE OTHER ASPECT
23 OF IT IS, AND I KNOW YOU SAID YOU DON'T WANT TO GET
24 INTO LEGAL ARGUMENTS, IS THAT THERE IS -- THERE HAVE
25 BEEN SOME PARTIES WHO PUT FORTH THE POSITION THAT

1 SHATTO WOULD APPLY, AND THAT SHE WAS A DIRECT
2 EMPLOYEE. THE CONTRACT SPECIFICALLY PROVIDES THAT
3 SHE WAS NOT A DEPARTMENT OF CORRECTIONS EMPLOYEE.
4 SEVERAL WITNESSES AT THIS POINT HAVE TESTIFIED THAT
5 SHE IS NOT THE DEPARTMENT OF CORRECTIONS EMPLOYEE.
6 SO, THERE IS AN ASPECT TO THAT THAT IS ADDRESSED AT
7 LEAST IN PART IN THIS CONTRACT, BUT HAS ALREADY BEEN
8 ELICITED BY A NUMBER OF OTHER WITNESSES AS FAR AS
9 THEIR TESTIMONY, BUT AS FAR AS THIS COURSE OF
10 DEALING, ALL IT'S GOING TO DO -- ALL IT IS GOING TO
11 DO IN THIS CASE IS DELAY IT AND EXTENT IT
12 UNNECESSARILY, BECAUSE I CAN'T ALLOW THAT TESTIMONY
13 TO BE OUT THERE WITHOUT SOME SORT OF REFUTATION BY
14 THE DEPARTMENT OF CORRECTIONS.

15 **BY COMMISSIONER JAMES:**

16 ALL RIGHT. ANYBODY WHO WANTS TO SPEAK TO IT
17 BESIDES MS. FARTHING, I WANT TO KNOW WHY THE COURSE
18 OF DEALINGS -- WE ARE TALKING SPECIFICALLY RIGHT
19 NOW, WHY THE COURSE OF DEALINGS BETWEEN THESE TWO
20 PARTIES SPECIFICALLY, CONDUSTRIAL AND SOUTH CAROLINA
21 DEPARTMENT OF CORRECTIONS, WHERE IS THAT GOING TO BE
22 DISPOSITIVE OF A COMP ISSUE.

23 **BY MR. GOODWYN:**

24 I THINK IT'S -- AGAIN, IT'S THE INDEPENDENT
25 CONTRACTOR/EMPLOYEE RELATIONSHIP ISSUE.

1 BY COMMISSIONER JAMES:

2 BUT WHERE IS -- BUT TELL ME WHAT -- UNDER WHAT
3 THEORY AND WHAT STREAM OF PARTIES WE HAVE HERE AS TO
4 WHERE WILL THAT ALTER OR COULD AFFECT ANY OUTCOME.

5 MR. SAMUELS.

6 BY MR. SAMUELS:

7 YOUR HONOR, WHAT'S REALLY GOING ON HERE IS
8 CONDUSTRIAL HAS A PROBLEM. THE PROBLEM THEY HAVE IS
9 THAT THEY HAVE A CONTRACT WITH THE DEPARTMENT OF
10 CORRECTIONS, WHICH REQUIRES THEM TO PROVIDE R.N.s
11 AND L.P.N.s WHO ARE EMPLOYEES WHO ARE COVERED UNDER
12 WORKERS' COMP INSURANCE AS WELL AS PROFESSIONAL
13 LIABILITY AND SO FORTH.

14 BY MR. GOODWYN:

15 AND WE DON'T READ IT LIKE THAT. I MEAN, ---

16 BY MR. SAMUELS:

17 THAT'S ---

18 BY COMMISSIONER JAMES:

19 LET HIM FINISH.

20 BY MR. GOODWYN:

21 OKAY.

22 BY MR. SAMUELS:

23 THAT'S THE PROBLEM THEY HAVE. THAT THAT
24 CONTRACT IS UNAMBIGUOUS THAT THERE IS THAT
25 REQUIREMENT, AND IT'S OBVIOUS THAT THE DEPARTMENT OF

1 CORRECTIONS HAD THAT REQUIREMENT, BECAUSE THEY
2 DIDN'T WANT TO GET INTO THIS MESS WHERE THEY FIND
3 OUT THAT AN UNINSURED EMPLOYEE GETS HURT IN THEIR
4 VERY DANGEROUS LEVEL THREE SECURITY PRISON, AND
5 THEY'RE BROUGHT INTO A CASE THAT THEY THOUGHT THEY
6 HAD PROTECTED THEMSELVES AGAINST BY HAVING A
7 CONTRACT WITH THIS AGENCY, WITH MEDUSTRIAL OR
8 CONDUSTRIAL, THE SAME CONTRACT THEY HAD WITH MED
9 FIRST. MED FIRST, OF COURSE, COMPLIES WITH THE
10 CONTRACT. CONDUSTRIAL DOESN'T. WHAT CONDUSTRIAL IS
11 NOW TRYING TO DO IS TRY TO GET THEIR WAY OUT OF THAT
12 CONTRACT AND TRY TO PUT FORTH EVIDENCE THAT SOMEHOW
13 THE CONTRACT HAD BEEN CHANGED BY SOME COURSE OF
14 DEALING TO WHERE S.C.D.S. ACQUIESCED TO UNINSURED
15 INDEPENDENT CONTRACTORS BEING ON THEIR PREMISES, AND
16 THE REASON THAT -- ALL OF THAT IS IMPORTANT IN A
17 LEGAL SENSE IS THE SULLIVAN CASE THAT CAME DOWN A
18 COUPLE OF MONTHS AGO, ONE OF THE ISSUES THAT THE
19 COURT OF APPEALS FOUND SIGNIFICANT HAD TO DO WITH A
20 HEATING AND AIR CONDITIONING COMPANY, AND THE
21 HEATING AND AIR CONDITIONING COMPANY TRIED TO MAKE
22 ONE OF THEIR EMPLOYEES A SUBCONTRACTOR, AND THERE
23 WAS NO COVERAGE FOR THAT. SO, IT WAS -- SO, THE
24 ISSUE THERE WAS EMPLOYEE/INDEPENDENT CONTRACTOR.
25 ONE OF THE THINGS IN THAT CASE IS THAT THAT HEATING

1 AND AIR CONDITIONING COMPANY HAD TO GET PERMITS FOR
2 THEIR JOBS, AND THE CITY THAT THEY WERE GETTING THE
3 PERMITS FROM REQUIRED ONLY EMPLOYEES, NO
4 SUBCONTRACTORS. SO, BECAUSE THE EMPLOYER OR
5 PUNITIVE EMPLOYER WAS ENGAGING IN A CONTRACT WITH A
6 GOVERNMENTAL ENTITY THAT HAD SPECIFIC REQUIREMENTS
7 THAT ESSENTIALLY WOULD MEAN EVERYBODY IS GOING TO BE
8 COVERED UNDER WORKERS' COMP. IT WAS VERY ANALOGOUS
9 TO THIS SITUATION. THE CITY THERE WAS TRYING TO DO
10 THE EXACT SAME THING THAT THE DEPARTMENT OF
11 CORRECTIONS WAS DOING HERE, AND THAT'S MAKE SURE
12 THAT ANYBODY WHO CAME OVER FROM CONDUSTRIAL WAS AN
13 EMPLOYEE COVERED UNDER WORKERS' COMP. THAT'S WHAT'S
14 IMPORTANT. THAT'S WHY CONDUSTRIAL IS GOING TO GREAT
15 LENGTHS TO TRY TO SAY "NO, NO, NO, THE CONTRACT HAS
16 MANY THINGS. IT DOESN'T SAY WHAT IT SAYS." IT'S
17 "WE HAD THIS COURSE OF DEALINGS THAT EVERYBODY KNEW
18 ABOUT," AND THE EVIDENCE WON'T SUPPORT THAT. EVEN
19 IF IT WERE PROBATIVE, AND I AGREE WITH MS. FARTHING
20 THAT THEY CAN'T GET INTO THAT ANYWAY, BECAUSE THE
21 CONTRACT SPEAKS FOR ITSELF.

22 **BY MR. GOODWYN:**

23 WE CERTAINLY DISAGREE, BECAUSE THE CURRENT
24 CONTRACT SAYS "EMPLOYEES OR AGENTS." CLEARLY,
25 THEY'RE OKAY WITH INDEPENDENT CONTRACTORS. THAT'S

1 WHAT THE CURRENT CONTRACT SAYS.

2 BY MS. FARTHING:

3 WE OBJECT. WE HAVE TESTIMONY CONCERNING THAT
4 WAS NOT THE UNDERSTANDING.

5 BY MR. SAMUELS:

6 IN FACT, WE HAD TESTIMONY THAT -- THAT
7 CONDUSTRIAL CHOSE NOT TO USE THE WORD "INDEPENDENT
8 CONTRACTOR" TO TRY TO MAKE IT AMBIGUOUS.

9 BY MR. GOODWYN:

10 THAT WAS NOT THE TESTIMONY.

11 BY MR. SAMUELS:

12 IT IS CERTAINLY INFERENCE THAT CAN BE DRAWN
13 FROM THE TESTIMONY.

14 BY MR. GOODWYN:

15 RIGHT. BUT THAT WASN'T THE TESTIMONY. THAT'S
16 YOUR INFERENCE.

17 BY COMMISSIONER JAMES:

18 WELL, LET'S -- LET'S -- EVEN IF THERE HAS BEEN
19 SOME PREVIOUS TESTIMONY ON THIS ISSUE, I AGAIN ASK
20 THE QUESTION, WHAT -- AND I'M TRYING TO PULL UP THIS
21 CASE WHILE Y'ALL ARE -- WHILE Y'ALL ARE TALKING.

22 BY MR. SAMUELS:

23 IS IT SULLIVAN, YOUR HONOR?

24 BY COMMISSIONER JAMES:

25 YES.

1 BY MR. SAMUELS:

2 I THINK I MAY HAVE ONE COPY I CAN GET FOR YOU.

3 BY MR. GOODWYN:

4 DO YOU HAVE THE CITE; HAVE YOU FOUND THE CITE,
5 COMMISSIONER?

6 BY COMMISSIONER JAMES:

7 APPARENTLY, I'M SPELLING IT WRONG.

8 BY MR. SAMUELS:

9 IT WAS IN THE ADVANCE SHEETS, AND IT WAS A CASE
10 THAT WE HAD DISCUSSED EARLIER ON -- I'M SORRY, I
11 SAID "SULLIVAN." IT'S SELLERS.

12 BY COMMISSIONER JAMES:

13 OKAY. THAT'S WHY -- THAT'S WHY I'M NOT
14 FAMILIAR WITH IT, AND I CAN'T FIND IT.

15 BY MR. SAMUELS:

16 YES, YOUR HONOR, I APOLOGIZE. IT'S *SELLERS V.*
17 *TECH SERVICE AND BUILDERS MUTUAL*, P.D. NUMBER 5508,
18 ISSUED BY THE COURT OF APPEALS AUGUST 9TH, 2017, AND
19 TO QUOTE FROM THE OPINION, THIS IS QUOTE, "IN
20 OBTAINING PERMITS WITH THE CITY FOR THE JOB IN WHICH
21 SELLERS WAS INJURED, TECH SERVICES REPRESENTED THAT
22 THE SUBCONTRACTORS OR INDEPENDENT CONTRACTORS WOULD
23 BE INVOLVED." AND THE COURT MAKES THAT POINT AS THE
24 RECORD ILLUSTRATES AND THE COMMISSION RECOGNIZED
25 SEVERAL FACTS ILLUSTRATING TECH SERVICES HELD

1 SELLERS OUT AS ITS EMPLOYEE. THAT'S ONE OF THEM.
2 SO, AS FAR AS THE DEPARTMENT OF CORRECTIONS WAS
3 CONCERNED, MS. TURNER WAS HELD OUT TO THEM AS AN
4 EMPLOYEE BECAUSE THAT'S WHAT THE CONTRACT REQUIRED,
5 AND THEY WOULDN'T HAVE ALLOWED HER ON THE PREMISES
6 IF SHE WAS AN UNINSURED INDEPENDENT CONTRACTOR.

7 BY MR. GOODWYN:

8 WE NEED TO ---

9 BY COMMISSIONER JAMES:

10 ALL RIGHT.

11 BY MR. GOODWYN:

12 AND I THINK WE -- WE'RE TRYING TO REFUTE THAT
13 SAYING SHE WAS NEVER HELD OUT AS AN EMPLOYEE. IT
14 WAS ALWAYS AN INDEPENDENT CONTRACTOR.

15 BY COMMISSIONER JAMES:

16 THEN AS OPPOSED TO THE COURSE OF DEALING
17 BETWEEN THESE TWO PARTIES, MR. SAMUELS, ARE YOU
18 SAYING THAT THIS IS RELEVANT TO HER ISSUE AND THE
19 DETERMINATION ULTIMATELY IN THIS CASE AS TO
20 CONDUCTUAL'S ACTIVITIES AND ALSO AS TO WHETHER
21 THERE IS A QUESTION UNDER SHATTO AS GOING STRAIGHT
22 TO THE DEPARTMENT OF CORRECTIONS? ARE YOU SAYING
23 THIS IS ULTIMATELY AN ISSUE?

24 BY MR. SAMUELS:

25 I'M SAYING IT'S ULTIMATELY AN ISSUE FOR THE

1 DETERMINATION OF INDEPENDENT CONTRACTOR ---

2 BY COMMISSIONER JAMES:

3 ALL RIGHT.

4 BY MR. SAMUELS:

5 --- VERSUS EMPLOYEE BECAUSE THE CONTRACT
6 REQUIRED THEM TO PROVIDE EMPLOYEES, AND SO FAR,
7 THEY'VE PRESENTED NO SPECIFIC EVIDENCE, NOTHING IN
8 WRITING THAT EVER SAID "THESE NURSES ARE INDEPENDENT
9 CONTRACTORS" THAT THEY PROVIDED TO THE DEPARTMENT OF
10 CORRECTIONS.

11 BY COMMISSIONER JAMES:

12 AND I UNDERSTAND YOUR -- I UNDERSTAND ALL OF
13 YOUR ARGUMENTS AND POSITIONS. WHAT I'M SAYING IS
14 WHETHER IT COMES IN, BECAUSE AT THIS POINT BECAUSE
15 OUR LIMITED EVIDENTIARY RULES, AND THE QUESTION IS
16 WHETHER IT'S RELEVANT TO THE DETERMINATION THAT HAS
17 TO BE MADE IN THIS WORKERS' COMPENSATION ACTION.

18 BY MR. GOODWYN:

19 CERTAINLY THE INDEPENDENT CONTRACTOR/EMPLOYEE
20 ISSUE HAS TO BE MADE.

21 BY COMMISSIONER JAMES:

22 WELL, IF IT HAS SOME ASPECT ON THAT, THEN IT --
23 THEN IT WILL NEED TO BE TRIED. WHETHER IT HAS TO DO
24 -- AND AGAIN, I'M NOT -- I'M NOT TRYING THE BREACH
25 OF CONTRACT ACTION. I MEAN, SURE, THAT'S -

1 BY MR. GOODWYN:

2 RIGHT.

3 BY COMMISSIONER JAMES:

4 THAT'S NOT THE PLACE OF THE COMMISSION TO TRY.

5 BY MR. GOODWYN:

6 AND I'LL DIRECT MY QUESTIONS MORE TOWARDS THE
7 OTHER SIDE OF IT.

8 BY COMMISSIONER JAMES:

9 OKAY. ALL RIGHT. YOU CAN CONTINUE.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. OKAY. MR. DURHAM, DID YOU EVER RECEIVE ANY
12 INDICATION FROM THE DEPARTMENT OF CORRECTIONS THAT
13 THEY WERE NOT SATISFIED WITH THE RELATIONSHIP YOU
14 HAD PROVIDING THESE INDEPENDENT CONTRACTORS?

15 BY MR. SAMUELS:

16 OBJECTION, YOUR HONOR, ---

17 BY MS. FARTHING:

18 COMMISSIONER, OBJECTION.

19 BY MR. SAMUELS:

20 --- THERE'S NO TESTIMONY THAT ANY PERSON WITH
21 BINDING AUTHORITY AT THE DEPARTMENT OF CORRECTIONS
22 HAD ANY KNOWLEDGE THAT MS. TURNER AND THESE OTHER
23 NURSES HAD BEEN MISCLASSIFIED IN CONTRAVENTION OF
24 THE CONTRACT AS INDEPENDENT CONTRACTORS.

25 BY MR. GOODWYN:

1 THEY WEREN'T MISCLASSIFIED.

2 BY MS. FARTHING:

3 AND THE TESTIMONY HAS BEEN THE EXACT OPPOSITE.

4 BY MR. GOODWYN:

5 WELL, LET ME ASK -- I'LL ASK HIM. I WILL TRY
6 TO LAY THAT FOUNDATION.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. THANK YOU, SIR.

9 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

10 Q. OKAY. DID YOU EVER HAVE ANY CONVERSATIONS WITH
11 ANYONE AT THE DEPARTMENT OF CORRECTIONS RELATING TO
12 THE EMPLOYEE/INDEPENDENT CONTRACTOR STATUS?

13 A. ABSOLUTELY.

14 Q. OKAY. WHAT WAS THE NATURE OF THOSE CONVERSATIONS,
15 AND WHO WAS IT?

16 BY MS. FARTHING:

17 AGAIN, ---

18 BY COMMISSIONER JAMES:

19 MR. GOODWYN, YOU HAVE TO ESTABLISH WHO HE SPOKE
20 WITH.

21 BY MR. GOODWYN:

22 WELL, THAT'S WHY I FOLLOWED WITH "WHO WAS IT?"

23 BY COMMISSIONER JAMES:

24 OH.

25 BY MS. FARTHING:

1 YOU SAID "WHAT WAS THE CONVERSATION?"

2 BY MR. GOODWYN:

3 AND THEN I SAID "AND WHO WAS IT WITH?"

4 BY COMMISSIONER JAMES:

5 OKAY.

6 BY MS. FARTHING:

7 BUT WHO IT WAS WITH WAS IMPORTANT BEFORE THE
8 NATURE OF ---

9 BY MR. GOODWYN:

10 I UNDERSTAND. I PUT IT IN THE WRONG ORDER. I
11 APOLOGIZE.

12 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. ALL RIGHT. WHO WERE THESE CONVERSATIONS WITH?

14 A. THE CONVERSATION THAT WE HAD DIRECTLY WAS WITH DAVID
15 TATARSKY, WHO WAS GENERAL COUNSEL -- REPRESENTATIVE
16 TO GENERAL COUNSEL FOR THE SOUTH CAROLINA DEPARTMENT
17 OF CORRECTIONS.

18 Q. OKAY. AND WHAT WAS THE NATURE OF THE CONVERSATION?

19 A. WHAT BROUGHT UP THE CONVERSATION ACTUALLY WAS NOT
20 THE INDEPENDENT CONTRACTOR. CAN I EXPLAIN WHAT
21 BROUGHT UP THE CONVERSATION ---

22 Q. SURE.

23 A. --- AND WHY I EVER HAD TO GET IN TOUCH WITH HIM AND
24 ---

25 Q. SURE.

1 A. --- WHAT LED TO IT? WHAT BROUGHT UP THE
2 CONVERSATION WAS THAT THESE LADIES WERE ALL
3 INDEPENDENT CONTRACTORS, AND THEREFORE THEY WERE
4 EXCLUDED FROM OVERTIME PAYMENT, OKAY?

5 Q. OKAY.

6 A. SO, WHAT HAPPENED WAS WHEN THEY WERE GETTING -- THEY
7 WERE ASSIGNED -- WE WOULDN'T ASSIGN THEM FOR OVER --
8 -

9 BY COMMISSIONER JAMES:

10 CAN YOU JUST STOP FOR JUST A MINUTE? WHAT IS
11 THE TIME FRAME OF THIS?

12 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. YEAH, CAN YOU EXPLAIN TO HER WHAT TIME FRAME WE'RE
14 TALKING ABOUT?

15 A. THIS ACTUALLY HAPPENED IN -- WE FIRST STARTED DOING
16 BUSINESS WITH THEM IN 2008. WHEN WE GOT THE
17 CONTRACT, IT WAS JUST KIND OF NOTHING FOR SEVERAL
18 MONTHS, PROBABLY YEAR OR A YEAR-AND-A-HALF. AFTER
19 THE END OF 2010 TO 2011, THE BUSINESS STARTED TO
20 RAMP UP, AND THAT'S WHEN WE STARTED ---

21 BY COMMISSIONER JAMES:

22 BUT WHEN IS THIS CONVERSATION?

23 BY THE WITNESS:

24 THIS CONVERSATION HAPPENED IN 2011, AND THAT'S
25 THE EMAIL DOCUMENTS THAT WILL HAVE THE DATES ON IT,

1 THE EXACT DATE IN 2011.

2 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

3 Q. OKAY. THERE WERE SOME OVERTIME ISSUES, YOU WERE
4 SAYING WITH -- THAT HAD BEEN RAISED?

5 A. YES. THAT'S WHAT BROUGHT THE WHOLE THING UP, AND I
6 USED IT AS AN OPPORTUNITY TO DELVE INTO THE OTHER
7 STUFF.

8 Q. OKAY.

9 A. WHAT HAPPENED WAS THESE NURSES WERE -- WE ONLY WOULD
10 ASSIGN THEM FOR 40 HOURS, OKAY? BUT WHAT WOULD
11 HAPPEN IS LIKE I TOLD YOU THEY WOULD GIVE US -- THEN
12 THEY WOULD MAKE THEIR OWN SCHEDULES AND WIND UP
13 WORKING OVER 40 HOURS. SO, THEN THEY WOULD SAY "I
14 NEED TO BE PAID OVERTIME," AND I'M LIKE "YOU'RE AN
15 INDEPENDENT CONTRACTOR."

16 BY COMMISSIONER JAMES:

17 ALL RIGHT. I NEED FOR Y'ALL TO STAY WITH THE
18 QUESTION. IT'S QUESTION, ANSWER. SO, IF YOU -- I'M
19 KIND OF NOT SURE I'VE HEARD THE DISCUSSION WITH MR.
20 TATARSKY YET.

21 BY THE WITNESS:

22 I'M GOING ---

23 BY MR. GOODWYN:

24 WELL, HE'S GOT TO PREFACE -- BUT HE'S GIVING
25 THE BACKGROUND OF WHAT THE DISCUSSION WAS ABOUT AND

1 WHY THEY WERE HAVING THE DISCUSSION.

2 BY COMMISSIONER JAMES:

3 BUT CAN WE NOT JUST HAVE THE DISCUSSION? AND
4 I'M NOT SURE -- I'M NOT ALL -- I WANT TO GET TO THE
5 2011 DISCUSSION.

6 BY MR. GOODWYN:

7 OKAY.

8 BY COMMISSIONER JAMES:

9 ALL RIGHT.

10 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. SO, YOU HAD SOME OVERTIME ISSUES THAT RAISED THE
12 ISSUE OF INDEPENDENT CONTRACTOR, CORRECT?

13 A. AND SO THEN WE REACHED OUT TO MR. TATARSKY FOR SOME
14 GUIDANCE.

15 Q. OKAY. AND WHAT TYPE OF GUIDANCE DID YOU RECEIVE?

16 A. MR. TATARSKY TOLD TOM AND I, HE SAID, "IF THESE
17 GIRLS ARE GOING TO WORK OVER 40 HOURS THROUGH YOU AT
18 ONE OF OUR FACILITIES, WE'VE GOT TO PAY THEM
19 OVERTIME." I SAID, "OKAY." I SAID, "THEN THAT'S
20 NOT WHAT AN INDEPENDENT CONTRACTOR IS." I SAID, SO
21 -- AND THIS IS ALL IN THESE EMAILS.

22 BY MR. SAMUELS:

23 YOUR HONOR, IF THERE'S -- ASSUMING THEY HAVE
24 THESE EMAILS, THEY'RE GOING TO PRODUCE THESE EMAILS,
25 BUT I WOULD SUGGEST IF HE IS GOING INTO EMAILS, THEN

1 WE PROBABLY NEED TO SEE THE EMAILS.

2 BY MR. GOODWYN:

3 AND I DON'T HAVE IT WITH ME. I CAN GET IT AT
4 LUNCH, I THINK.

5 BY MS. FARTHING:

6 THAT'S GREAT.

7 BY MR. SAMUELS:

8 SO EMAILS HAVE NEVER BEEN PRODUCED.

9 BY MR. BEARD:

10 YEAH, THESE ARE OTHER DOCUMENTS.

11 BY MS. FARTHING:

12 SO, HE IS TESTIFYING CONCERNING SOMETHING THAT
13 IS APPARENTLY IN THESE EMAILS THAT I HAVE NO ACCESS
14 TO.

15 BY MR. BEARD:

16 AND THEY ARE SUBJECT TO A LOT OF SUBPOENAS.

17 BY MS. FARTHING:

18 YEAH, RIGHT.

19 BY COMMISSIONER JAMES:

20 CAN WE MOVE ON TO -- IS IT POSSIBLE TO MOVE ON
21 TO ANOTHER SUBJECT MAYBE AS OPPOSED TO THE CONTRACT
22 WITH ---

23 BY MR. GOODWYN:

24 COUNTRYWIDE?

25 BY COMMISSIONER JAMES:

1 --- THE SOUTH CAROLINA DEPARTMENT OF
2 CORRECTIONS? CAN WE MOVE ON TO MS. TURNER OR
3 SOMETHING ELSE, AND THEN AT LUNCH, WE CAN ---

4 BY MR. GOODWYN:

5 REVISIT LATER? SURE.

6 BY MS. FARTHING:

7 THANK YOU.

8 BY COMMISSIONER JAMES:

9 --- ADDRESS ALL OF THESE OTHER THINGS?

10 BY MR. GOODWYN:

11 SURE.

12 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. ALL RIGHT. WE'LL COME BACK TO THIS CONVERSATION.
14 LET'S GO BACK TO WHAT I STARTED TO GET INTO EARLIER
15 WAS THE RELATIONSHIP WITH GUARANTEE WHERE YOU WERE
16 JUST BEFORE YOU GOT IN WITH COUNTRYWIDE. ALL RIGHT.
17 YOU HAD SOME -- I THINK YOU TESTIFIED DURING 2014,
18 YOU HAD STARTED STAFFING SOME EMPLOYEE NURSES AS
19 WELL?

20 A. WE HAD SOME EMPLOYEE NURSES ALL ALONG FROM THE TIME
21 THAT WE STARTED DOING -- YOU KNOW, WE'VE HAD SOME
22 EMPLOYEE NURSES ALL ALONG SINCE WE STARTED THE
23 MEDUSTRIAL THING, ---

24 Q. SURE.

25 A. --- WHICH ACTUALLY STARTED, YOU KNOW, STAFFING

1 PROBABLY IN 2007, YOU KNOW, WITH A FEW NURSES.

2 Q. ALL RIGHT. AND WERE THOSE NURSES REPORTED TO
3 GUARANTEE DURING THAT TIME?

4 A. YES.

5 Q. OKAY. ALL RIGHT. AND WHAT HAPPENED AT THE END --
6 WELL, LET ME ASK YOU THIS FIRST: THE CONTRACT, THE
7 POLICY WITH GUARANTEE, WHEN DID THAT END? IN THE
8 2014/2015 CALENDAR YEAR?

9 A. YEAH.

10 Q. WHAT WAS THE POLICY PERIOD?

11 A. I WANT TO SAY THAT ONE ENDED IN MARCH OF 2000-AND --
12 -

13 Q. WELL, I THINK THE ---

14 A. IT WAS IN THAT YEAR.

15 Q. THE CONTRACT ---

16 A. I'VE GOT TWO DIFFERENT DATES. I'VE GOT ONE THAT
17 ENDED IN MARCH. I'VE GOT ANOTHER ONE THAT ENDED
18 YEAR END, AND I'M TRYING TO REMEMBER.

19 Q. ALL RIGHT. WELL, COUNTRYSIDE SERVICE AGREEMENT?

20 A. THEY STARTED ON MARCH THE 28TH OF 2015.

21 **BY MS. RICHARDSON:**

22 WHO IS "THEY"?

23 **DIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

24 Q. THE COUNTRYWIDE AGREEMENT BEGAN MARCH 28TH?

25 A. CORRECT.

1 Q. OKAY. WOULD THAT HAVE COINCIDED WITH THE END OF THE
2 GUARANTEE POLICY, OR SHOULD IT HAVE AT LEAST?

3 A. I WANT TO SAY THAT THERE'S A GAP BETWEEN -- AND
4 THERE AGAIN, I COULD GO BACK AND CONFIRM IT
5 ABSOLUTELY, BUT AT THE END OF THE YEAR, WE WERE --
6 THE POLICY WITH GUARANTEE ACTUALLY ENDED IN 2014,
7 DECEMBER 31ST, OKAY, AND THEN THERE WAS LIKE A THREE
8 MONTH PERIOD THERE THAT WE WERE WITH AN INTERIM
9 COVERAGE WITH AN A.S.O. OUT OF -- OUT OF GEORGIA,
10 AND THEN -- THEN WE SWITCHED OVER TO -- WE JUST DID
11 A SCOUT CAMP THING, BECAUSE WE DIDN'T HAVE -- WE
12 NEEDED TO DO SOMETHING ELSE, AND THEN WE WENT WITH
13 GUARANTEE ON MARCH THE 28TH.

14 Q. ALL RIGHT. HAD ---

15 BY MS. RICHARDSON:

16 WAIT, WAIT.

17 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. NO, YOU SAID YOU WENT WITH GUARANTEE MARCH 28TH; DO
19 YOU MEAN COUNTRYWIDE?

20 A. YEAH, IT WAS COUNTRYWIDE.

21 BY MS. RICHARDSON:

22 THANK YOU, JEFF.

23 BY THE WITNESS:

24 TOO MANY GUARANTEE AND COUNTRYWIDES.

25 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. ALL RIGHT. HAD COUNTRYWIDE APPROACHED OR MARKETED
2 CONDUSTRIAL PRIOR TO 2015 OR THE END OF 2015?

3 A. YES, THE PRECEDING YEAR WHEN WE WENT WITH GUARANTEE
4 INITIALLY, OUR OWN POLICY WITH GUARANTEE, THEY HAD
5 COME AND MADE A PROPOSAL TO US, OKAY? AND AT THE
6 END OF THE DAY, WE HAD RUN IT DOWN THAT THEY WERE AN
7 UNLICENCED P.E.O., ET CETERA, ET CETERA, AND I
8 CONFRONTED SCOTT HANSON WITH ALL THAT STUFF, AND
9 THEN WE ALSO HAD A PROBLEM WITH THEY COULDN'T
10 PROVIDE COVERAGES. WE TALKED WITH A COUPLE OF
11 CARRIERS, AND THE CARRIER SAID "YEAH," BUT THEY ONLY
12 HAVE ASSIGNED RISK. THERE'S A MILLION PROBLEMS WITH
13 THIS ISSUE. SO, AT THE END OF THE DAY, I SENT SCOTT
14 A THING THAT SAID "DUDE, YOU'RE NOT A LICENSED
15 P.E.O. WE'RE JUST GOING TO MOVE ON ---

16 Q. OKAY.

17 A. --- AND DO SOMETHING ELSE," AND THAT'S WHEN WE WENT
18 WITH GUARANTEE'S DIRECT POLICY.

19 Q. ALL RIGHT. AND I'M GOING TO SHOW YOU THIS EMAIL AND
20 THE ATTACHMENT TO THE EMAIL. DO YOU RECOGNIZE THAT?

21 A. YES.

22 BY MR. ALFORD:

23 CAN YOU TELL US WHAT THAT IS, PLEASE?

24 BY MR. GOODWYN:

25 THAT'S THE EMAIL FROM SCOTT HANSON IN NOVEMBER

1 2014 THAT I GAVE Y'ALL EARLIER TODAY.

2 BY MR. ALFORD:

3 ALL RIGHT.

4 BY MS. RICHARDSON:

5 CAN WE ---

6 BY MR. ALFORD:

7 HANG ON A MINUTE.

8 BY MS. RICHARDSON:

9 ONE THING I WOULD LIKE TO RAISE IS I'M NOT
10 REALLY OPPOSED TO THE EMAIL ITSELF, BUT THIS EMAIL
11 DOES NOT INDICATE THAT IT HAS ANY ATTACHMENT TO IT,
12 AND THEN THERE'S TWO LIKE WEBSITE PAGES ARE STAPLED
13 TO THIS EMAIL, AND SO I'M GOING TO OBJECT TO THESE
14 TWO PAGES.

15 BY MR. GOODWYN:

16 I HAVEN'T OFFERED IT AS EVIDENCE YET. I'M
17 TRYING TO LAY A FOUNDATION FOR IT. I THINK WHEN I
18 MOVE TO OFFER IT INTO EVIDENCE, I THINK THAT'S THE
19 APPROPRIATE TIME FOR THE OBJECTION.

20 BY COMMISSIONER JAMES:

21 ALL RIGHT.

22 BY MS. RICHARDSON:

23 WELL, I WOULD JUST SAY THAT THESE -- I MEAN, WE
24 COULD JUST GO AHEAD. THESE WEBSITE PAGES HAVE NO
25 DATE ON THEM.

1 BY MR. GOODWYN:

2 AGAIN, CAN I GET TO THAT POINT BEFORE THE
3 OBJECTION IS MADE? I HAVEN'T EVEN ASKED IT.

4 BY COMMISSIONER JAMES:

5 OKAY, GO AHEAD.

6 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

7 Q. ALL RIGHT. IS THIS AN EMAIL BETWEEN -- OR TELL THE
8 COURT WHO THE EMAIL IS BETWEEN.

9 A. IT IS FROM SCOTT HANSON WHO IS THE PRESIDENT OF
10 COUNTRYWIDE.

11 Q. ALL RIGHT. AND TO WHO?

12 A. TO ME.

13 Q. AND WHAT IS THE DATE OF THE EMAIL?

14 A. NOVEMBER THE 12TH, 2014.

15 Q. ALL RIGHT. AND IT'S A SHORT EMAIL. CAN YOU JUST
16 READ IT FOR THE COURT?

17 A. YES. "HI, TONY, I HOPE THIS FINDS YOU WELL. ABOUT
18 A YEAR AGO, WE WERE WORKING THROUGH QUOTING
19 CONDUSTRIAL, BUT THE TIMING WAS NOT GREAT. THE
20 REASON I AM REACHING OUT TO YOU NOW IS BECAUSE
21 COUNTRYWIDE H.R. IS NOW SET UP AS A P.E.O. IN THE
22 STATES THAT YOU OPERATE IN. I BELIEVE OUR OFFERING
23 WOULD BE A GREAT FIT FOR YOUR COMPANY. PLEASE SEE
24 THE ATTACHED MARKETING BROCHURE, WHICH IS FOR YOUR
25 REVIEW. IF YOU HAVE A FEW MINUTES LATER THIS WEEK,

1 I WOULD LIKE TO HAVE A PHONE CALL AND SHARE WHAT I
2 HAVE TO OFFER. I LOOK FORWARD TO HEARING BACK FROM
3 YOU. SCOTT."

4 Q. ALL RIGHT. IS THE ATTACHMENT TO THAT EMAIL, IS THAT
5 WHAT WAS ATTACHED TO THE EMAIL?

6 A. YES, THAT'S THE ATTACHMENT THAT WAS ON THE EMAIL.

7 Q. OKAY. AND WHAT IS THE ATTACHMENT?

8 BY MS. RICHARDSON:

9 YOUR HONOR, THERE IS NO INDICATION THAT THERE
10 IS AN ATTACHMENT TO THIS EMAIL. I KNOW THAT IT SAYS
11 HE ATTACHED SOMETHING, BUT THERE IS NO ATTACHMENT
12 INDICATION ON THIS EMAIL.

13 BY MR. GOODWYN:

14 I DON'T KNOW HOW THESE EMAILS SHOW UP OR WHAT
15 HIS EMAIL SYSTEM IS, YOUR HONOR, BUT THE EMAIL
16 CLEARLY SAYS THERE'S AN ATTACHMENT TO IT. HE SAYS
17 THERE WAS AN ATTACHMENT, AND THAT'S IT. I THINK
18 THAT'S A PRETTY GOOD FOUNDATION FOR THE ATTACHMENT.

19 BY MR. ALFORD:

20 YOUR HONOR, CAN I HAVE JUST ONE MOMENT?

21 BY COMMISSIONER JAMES:

22 OKAY.

23 BY MR. ALFORD:

24 JUST ONE SECOND.

25 (OFF THE RECORD)

1 BY MR. ALFORD:

2 WE'RE FINE NOW. NO OBJECTION.

3 BY COMMISSIONER JAMES:

4 ALL RIGHT.

5 BY MR. GOODWYN:

6 OKAY. YOUR HONOR, I MOVE TO ADMIT THIS THREE
7 PAGE EMAIL WITH ATTACHMENT AS CONDUSTRIAL'S EXHIBIT.
8 I'M NOT SURE WHAT NUMBER WE ARE UP TO.

9 BY COMMISSIONER JAMES:

10 SIX.

11 BY MR. GOODWYN:

12 SIX.

13 (COURT REPORTER MARKS DOCUMENT CONDUSTRIAL EXHIBIT SIX,
14 RETAINED IN THE COMMISSION FILE)

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. CAN YOU JUST READ THE FIRST SENTENCE OF THE
17 MARKETING BROCHURE THAT'S ATTACHED TO THE EMAIL?

18 A. YES, SIR. IT SAYS "WHO WE ARE, COUNTRYWIDE H.R. IS
19 A FULL SERVICE PROFESSIONAL EMPLOYMENT ORGANIZATION
20 (P.E.O.)"

21 Q. OKAY. AT THAT TIME, WERE YOU LOOKING FOR A P.E.O.?

22 A. I WAS -- I WOULDN'T SAY THAT I WAS LOOKING AT THAT
23 TIME, BUT I'M ALWAYS -- IN OTHER WORDS, IT WASN'T --
24 IT WASN'T A WHAT YOU CALL IT, A NECESSITY, BUT I WAS
25 -- I'M ALWAYS LOOKING FOR WHAT -- THIS IS -- IN MY

1 BUSINESS, THE WORKERS' COMP IS A CHANGING
2 KALEIDOSCOPE EVERY TIME IT'S UP FOR RENEWAL, SO I
3 ALWAYS WANT TO HAVE MULTIPLE OPPORTUNITIES, SO WHEN
4 HE SENT ME THAT, THEN THAT'S SOMETHING I WOULD HAVE
5 REACHED OUT FOR.

6 Q. OKAY. SO, THE YEAR BEFORE WITH GUARANTEE, WAS THAT
7 A DIRECT RELATIONSHIP BETWEEN ---

8 A. YES, IT WAS.

9 Q. --- CONDUSTRIAL AND GUARANTEE?

10 A. YES, IT WAS. CORRECT. THAT WAS OUR OWN POLICY WITH
11 GUARANTEE.

12 Q. HAD YOU EVER BEEN WITH A P.E.O. PRIOR TO THAT TIME?

13 A. YEAH, I HAD BEEN WITH A P.E.O. FOR MANY MANY YEARS,
14 A.M.S. STAFF LEASING OUT OF DALLAS, TEXAS.

15 Q. OKAY. ARE YOU FAMILIAR WITH WHAT AN A.S.O. OR
16 ADMINISTRATIVE SERVICES ORGANIZATION IS?

17 A. YES.

18 Q. HAD YOU EVER HAD YOUR COMPANY SET UP AS AN A.S.O. --
19 WITH AN A.S.O.?

20 A. WELL, YEAH. ALL OF THOSE ARE -- YOU KNOW, THE
21 P.E.O. AND STAFF -- TEMPORARY STAFFING ARE REALLY
22 THE ONLY LEGAL ENTITIES THAT HAVE LEGAL STANDING.
23 THOSE ARE ALL MONIKERS USED BY DIFFERENT THINGS TO
24 SEPARATE THEIR -- THEIR SERVICE. A P.E.O. HAS A
25 STANDARD BASIC SERVICE, AND THAT'S WHAT SCOTT

1 DESCRIBES HERE, JUST LIKE ANY OTHER P.E.O. WE WILL
2 SEND YOU WHAT THEY'LL DO, AND THEY WILL ALL READ
3 EXACTLY THE SAME THING. OKAY?

4 Q. OKAY. AN A.S.O. IS A SITUATION WHERE THEY SEPARATE
5 OUT SERVICES, AND THEY'RE A LOT OF TIMES ABLE TO
6 HAVE YOUR OWN POLICY IN AN A.S.O. AGREEMENT. WHEN
7 YOU GO INTO A P.E.O. ALL THAT A P.E.O. DOES,
8 THEY'LL GO TO LIKE GUARANTEE OR A.I.G. OR WHOEVER,
9 AND THEY WILL HAVE THIS GIANT DEDUCTIBLE POLICY
10 WHERE THEY HAVE LIKE MAYBE A HALF A MILLION TO A
11 MILLION DOLLAR SPECIFIC DEDUCTIBLE, AND THEY HAVE
12 MUCH LOWER INSURANCE RATES OBVIOUSLY BECAUSE OF
13 THAT, AND THEN THEY BRING IN OTHER PEOPLE INTO THAT
14 MASTER POLICY, AND YOU PAY A DIFFERENT RATE THAN
15 WHAT THEY PAY FOR INSURANCE. THEY HAVE THE -- THE
16 INSURED HAS LESS -- THEY ARE ABLE TO WRITE THE PAPER
17 TO PUT THE CERTIFICATES OUT. THEY HAVE LESS
18 LIABILITY, AND THE P.E.O. TAKES ON SOME OF THE
19 LIABILITY BY -- BY THE WAY OF THEIR DEPOSIT FOR
20 THEIR CASH OR LETTER OF CREDIT TO COVER ANYTHING
21 THAT'S IN BETWEEN THOSE -- THE DELTA IN BETWEEN
22 THOSE TWO SPECIFIC DEDUCTIBLES, AND THEN THEY CHARGE
23 ME THE OTHER RATE, AND THAT'S WHERE THEY MAKE THEIR
24 MONEY, AND IF WE HAVE A BAD CLAIMS YEAR, WE ALL
25 LOSE. IF WE HAVE A GOOD CLAIMS YEAR, EVERYBODY

1 MAKES MONEY.

2 Q. OKAY. DURING THIS TIME WHEN YOU WERE LOOKING FOR
3 COVERAGE TO REPLACE THE OLD GUARANTEE POLICY, I
4 THINK YOU SAID EVERY YEAR IT'S AN ADVENTURE WITH
5 WORKERS' COMP, RIGHT?

6 A. YES.

7 Q. WERE YOU COMMITTED TO ANY ---

8 BY MS. RICHARDSON:

9 I OBJECT. JEFF, I THINK YOU'RE CHARACTERIZING
10 TESTIMONY INACCURATELY, BECAUSE I THINK MR. DURHAM
11 HAS TESTIFIED THAT THE GUARANTEE -- PREVIOUS
12 GUARANTEE POLICY ENDED ABOUT THREE MONTHS, AND THERE
13 WAS THIS INTERIM CHANGE.

14 BY MR. GOODWYN:

15 RIGHT.

16 BY MS. RICHARDSON:

17 SO, I JUST WOULD LIKE TO CORRECT THAT FOR THE
18 RECORD.

19 BY MR. GOODWYN:

20 SORRY, I DIDN'T MEAN TO MAKE THAT SOUND
21 MISLEADING. JUST...

22 BY MS. RICHARDSON:

23 CAN YOU JUST REPHRASE YOUR QUESTION PROPERLY?

24 BY MR. GOODWYN:

25 SURE.

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. DURING THIS PERIOD, I THINK MAYBE I UNDERSTOOD WRONG, BUT THE GUARANTEE POLICY ENDED, I THINK YOU SAID, AT THE END OF THE CALENDAR YEAR 2014?

A. I'M ALMOST POSITIVE -- NO, WAIT A MINUTE. I'M GETTING MIXED UP, BECAUSE THERE'S A -- THAT THREE-MONTH GAP ALWAYS CAUSES ME CONFUSION. THE THREE-MONTH GAP HAPPENED AFTER --- AFTER A.M.S. WENT OUT OF BUSINESS, AND THAT'S WHEN I HAD THE ---

Q. OKAY. WHEN DID A.M.S. GO OUT OF BUSINESS?

A. OKAY. A.M.S. WENT OUT OF BUSINESS AT THE END OF 2013, AND THAT'S WHEN I WOULD HAVE WENT TO THAT GAP POLICY 'TIL MARCH THE 28TH, AND THEN I WENT MARCH THE 28TH WITH -- WITH GUARANTEE. THAT'S CORRECT.

Q. OKAY.

A. THAT'S CORRECT.

Q. OKAY. SO, NOW, THAT YOU'VE THOUGHT BACK ---

A. THAT WAS NOT -- IT WAS PRIOR TO GUARANTEE, NOT AFTER GUARANTEE. I'M SORRY. I GET CONFUSED.

Q. OKAY. JUST AS LONG AS WE GET THAT STRAIGHT. SO, ANYWAY, ---

A. I'M SORRY.

Q. --- YOU THINK NOW THE GUARANTEE POLICY DID RUN RIGHT UP ON TO AND INTO THE SAME TIME THE COUNTRYWIDE ---

A. IT DID.

1 Q. --- ARRANGEMENT BEGAN?

2 A. IT DID. AND THAT'S ALL CONFIRMABLE. I'M JUST...

3 Q. OKAY.

4 A. WITHOUT ME HAVING MY COMPUTER HERE AND ABSOLUTELY, -

5 --

6 Q. SURE.

7 A. --- I'M JUST HAVING TO GO BY MY -- AND THERE'S A
8 MILLION DIFFERENT POLICIES, AGAIN.

9 Q. RIGHT. NOW, DURING THAT PERIOD WHERE YOU WERE
10 SEARCHING FOR SOME REPLACEMENT COVERAGE FOR
11 GUARANTEE, THE GUARANTEE POLICY, WERE YOU COMMITTED
12 TO ANY PARTICULAR FORM, BE IT A DIRECT POLICY,
13 P.E.O., A.S.O.?

14 A. NO, I JUST HAD ASKED ALBERT TO GET ME -- TO GET ME
15 SOME OPPORTUNITIES, GET ME SOME OPTIONS.

16 Q. AND THAT'S ALBERT HYNDSHAW?

17 A. CORRECT.

18 Q. OKAY. DID YOU -- DID YOU SUGGEST COUNTRYWIDE TO HIM
19 BASED ON THIS ---

20 A. NO.

21 Q. --- SOLICITATION OR ---

22 A. ABSOLUTELY NOT.

23 Q. OKAY. SO, HE WAS ABLE TO LOCATE COUNTRYWIDE ON HIS
24 OWN?

25 A. YEAH. AND, YOU KNOW, ALBERT, YOU KNOW -- YES, HE

1 WAS.

2 Q. OKAY.

3 A. I WON'T SAY WHAT HE SAID, YES.

4 Q. THAT'S FINE. AND WHAT WAS YOUR UNDERSTANDING OF
5 WHAT COUNTRYWIDE WAS OFFERING?

6 A. WELL, WHAT THEY WERE OFFERING IS THEIR SERVICE
7 INITIALLY WAS THE FULL P.E.O. JUST AS DESCRIBED IN
8 THEIR BROCHURES AND EVERYTHING ELSE, A P.E.O.
9 ARRANGEMENT.

10 Q. OKAY.

11 A. BUT WE WEREN'T WILLING TO DO A FULL P.E.O.
12 ARRANGEMENT, AND SO WE GAVE THEM THE CRITERIA AS I
13 HAD GIVEN ALBERT, AND ALBERT GAVE IT TO THEM, AND
14 SAID "THEY'RE NOT GOING TO DO THIS. IF YOU WANT TO
15 DO A HYBRID OF IT, OF Y'ALL'S P.E.O. ARRANGEMENT,
16 THEY WOULD BE WILLING TO ACCEPT IT. IF YOU ARE NOT
17 WILLING TO DO THAT, WE ARE NOT GOING -- THEY'RE NOT
18 GOING TO ACCEPT IT. THEY'RE GOING TO GO WITH ONE OF
19 THE OTHER OPTIONS." THAT WAS WHAT AT THE END OF THE
20 DAY GOT DONE. I WAS GIVEN -- THE SELLING POINT TO
21 ME WAS THEY HAD AMTRUST AND BERKSHIRE HATHAWAY,
22 WHICH WAS A-PLUS RATED PAPER, AND THE OTHER P.E.O.
23 OPPORTUNITIES THAT HAD COME TO ME WERE ALL INSURED
24 BY GUARANTEE. BECAUSE I WASN'T HAPPY WITH THE WAY
25 MY GUARANTEE POLICY HAD ENDED, I WASN'T WILLING TO

1 GO TO A P.E.O. THAT WAS COVERED WITH GUARANTEE
2 PAPER.

3 Q. OKAY.

4 A. SO, I SAID "YOU HAVE AMTRUST. YOU HAVE BERKSHIRE
5 HATHAWAY. I WILL CONFIRM THAT. THAT WAS THE
6 SELLING POINT FOR WHY WE WENT TO COUNTRYWIDE.

7 Q. ALL RIGHT. DID YOU IN FACT EVER -- WERE YOU EVER
8 PLACED WITH AMTRUST OR BERKSHIRE HATHAWAY?

9 A. NO, WE NEVER HAD ANY COVERAGE WITH ANY OF THOSE
10 PEOPLE.

11 Q. OKAY.

12 A. WE HAD NO COVERAGE AT THE TIME WE SPLIT WITH THEM
13 UNTIL WHATEVER POINT THEY ACTUALLY GOT A GUARANTEE
14 POLICY. IT TURNS OUT THEY HAD NO COVERAGE.

15 Q. OKAY. DID YOU EVER GET REFUNDED ANY PREMIUMS?

16 A. I HAVEN'T BEEN REFUNDED ANYTHING.

17 Q. OKAY. ALL RIGHT. SO, DURING THE NEGOTIATION
18 PROCESS WITH COUNTRYWIDE, WAS THAT ALL BROKERED
19 THROUGH ALBERT HYNDSHAW?

20 A. YEAH, ALBERT -- THAT'S THE ONLY WAY I WAS GOING TO
21 DO IT, BECAUSE OF THE ISSUES THEY HAD IN 2014 WITH
22 THEM NOT BEING LICENSED, ET CETERA, ET CETERA, AND
23 THEM NOT HAVING PROPER COVERAGES AND ALL THESE
24 THINGS THAT LED TO THE ELUDED TO THAT WE HAD
25 PROBLEMS AND IT WASN'T A GOOD TIME FOR US.

1 Q. OKAY.

2 A. I WASN'T WILLING TO DO THAT DIRECT, SO THAT'S WHY
3 ALBERT AND HIS FIRM -- NOT ALBERT -- HIS FIRM HAS
4 HANDLED MY INSURANCE SINCE I HAVE BEEN OPENED. SO,
5 BUT ALBERT HADN'T BEEN MY AGENT ALL OF THOSE YEARS,
6 BUT HE WAS AT THAT TIME.

7 Q. OKAY.

8 A. SO, I ASKED HIM TO HANDLE ALL OF THIS STUFF SO THAT
9 HE COULD FLUSH IT OUT.

10 Q. ALL RIGHT. DID YOU HAVE DIRECT CONVERSATIONS WITH
11 SCOTT HANSON OR ANYONE ELSE WITH COUNTRYWIDE ABOUT
12 THE NATURE OF CONDUSTRIAL'S BUSINESS?

13 A. DOZENS AND DOZENS AND DOZENS.

14 Q. OKAY. AND THIS IS ALL PRIOR TO THE CONTRACT BEING
15 EXECUTED ON MARCH 28TH?

16 A. PRIOR TO, AFTERWARD.

17 Q. ALL RIGHT. I WANT TO TALK ABOUT THE PERIOD PRIOR TO
18 FOR A MINUTE.

19 A. YEAH.

20 Q. ABOUT HOW MANY CONVERSATIONS WOULD YOU SAY YOU HAD
21 WITH SCOTT HANSON OR OTHER REPRESENTATIVES PRIOR TO
22 THE EXECUTION OF THE COUNTRYWIDE SERVICE AGREEMENT?

23 A. I MEAN, IT'S ALL A GUESSTIMATE, BUT I MEAN,
24 CERTAINLY, IT ---

25 Q. JUST A BALLPARK.

1 A. FIFTY OR ABOVE.

2 Q. OKAY. DURING THOSE CONVERSATIONS, DID YOU EVER
3 MENTION THE INDEPENDENT CONTRACTOR NURSES THAT WERE
4 BEING RUN THROUGH S.C.D.C.?

5 A. ABSOLUTELY. I ALWAYS BRING IT UP TO THEM, BECAUSE
6 THERE'S TWO THINGS THAT'S A PROBLEM WITH INSURING MY
7 COMPANY. THERE'S TWO PIECES. THE FIRST PIECE IS
8 THE U.S.L. & H. COVERAGE, OKAY? MOST INSURANCE
9 COMPANIES HAVE THAT BY WAY OF THE FACT THAT THEIR
10 REINSURERS WILL NOT ALLOW THOSE COVERAGES; THEY
11 CAN'T WRITE THAT COVERAGE, AND GUARANTEE IS AN
12 EXAMPLE, OKAY? SO, WHAT I HAD TO DO WHEN I WENT TO
13 THE U.S.L. -- WHEN I WENT ORIGINALLY TO THE U.S. --
14 THE GUARANTEE POLICY, MY DIRECT, I HAD TO GET OTHER
15 U.S.L. & H. COVERAGE THROUGH A DIFFERENT CAPTIVE.
16 SO, I ALWAYS MAKE SURE I TELL EVERYONE THAT, AND I
17 HAD THIS COVERED THROUGH ANOTHER U.S.L. & H. AMERICAN
18 EQUITY UNDERWRITERS CAPTIVE.

19 Q. SURE.

20 A. SO, I ALWAYS EXPLAINED THOSE TWO PIECES: ONE, THE
21 U.S.L. & H., WHICH IS A BIG DEAL, THE OTHER THE 15,
22 20 NURSES THAT WORK AS INDEPENDENT CONTRACTORS.
23 THAT'S THE TWO THINGS THAT ARE TOTALLY DIFFERENT
24 FROM OUR COMPANY THAN A LOT OF THE OTHER STAFFING
25 COMPANIES.

1 Q. OKAY. IN YOUR PRIOR YEARS, HAD YOU DONE THE SAME
2 THING WHEN YOU WERE TALKING WITH OTHER INSURANCE
3 COMPANIES? DID YOU LET THEM KNOW ABOUT THE
4 INDEPENDENT CONTRACTORS?

5 A. ABSOLUTELY, EVERY TIME WITHOUT A DOUBT.

6 Q. WHEN YOU -- IN THE YEAR PRIOR WHEN YOU WERE INSURED
7 BY GUARANTEE, DID YOU LET GUARANTEE KNOW THAT YOU
8 HAD INDEPENDENT CONTRACTOR NURSES?

9 A. ABSOLUTELY. I MEAN, WHEN I SAY "GUARANTEE," I DON'T
10 TALK TO GUARANTEE. I DON'T TALK TO A.I.G.
11 OBVIOUSLY, WE CAN'T TALK DIRECTLY WITH THEM.
12 EVERYTHING IS DONE THROUGH A BROKER, THROUGH THEIR
13 AGENT. I DIVULGE ALL OF THAT TO MY AGENTS. MY
14 AGENTS ARE THE ONE THAT WRITE ALL OF THOSE
15 COVERAGES. THEY ARE THE ONES THAT DID IT. THEY ARE
16 THE ONES THAT REPRESENT IT. IF WE COULD TALK
17 DIRECTLY WITH THE CARRIER ABOUT OUR COVERAGE, IT
18 WOULD BE DIFFERENT, BUT YOU'VE GOT TO DO THAT THE
19 WAY THEY HAVE IT SET UP, WHICH IS THROUGH AN ALBERT,
20 THROUGH A WILL HARBISON, THROUGH A -- WELL, NOT ---

21 Q. NOT HARBISON, YEAH.

22 A. WELL, ROBINSON. I'M SORRY.

23 Q. THAT'S ALL RIGHT.

24 A. MY BAD.

25 Q. SOUNDS SIMILAR. ALL RIGHT. DO YOU RECOGNIZE THIS

DOCUMENT?

BY MR. GOODWYN:

THIS IS THE SECOND DOCUMENT I GAVE Y'ALL TODAY,
THE SPREADSHEET.

BY MR. ALFORD:

WHAT IS THAT ONE?

BY MR. GOODWYN:

IT'S THE SPREADSHEET I GAVE YOU EARLIER TODAY.

BY MR. SAMUELS:

WHILE HE'S LOOKING AT THAT, CAN I GET MY APA
BACK?

BY MR. GOODWYN:

OH, YES, THANK YOU.

BY MR. SAMUELS:

THANK YOU.

BY MR. ALFORD:

HOW LONG HAS THIS BEEN...

DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. DO YOU RECOGNIZE THAT DOCUMENT?

BY MR. ALFORD:

YOUR HONOR, CAN I JUST HAVE A MOMENT? HE GAVE
ME THAT THIS MORNING, AND I HAVEN'T HAD A CHANCE TO
DIGEST IT. CAN I JUST HAVE A SECOND TO LOOK AT IT?

BY COMMISSIONER JAMES:

YES.

(OFF THE RECORD)

BY COMMISSIONER JAMES:

ALL RIGHT. WE'RE ON RECORD.

BY MR. ALFORD:

YOUR HONOR, MAY IT PLEASE THE COURT, GREGG ALFORD. I AM -- I AM STRUGGLING A BIT WITH WHAT I WOULD JUST CALL THE ROLLING DISCLOSURE OF DISCOVERY AND WHEN I GET DOCUMENTS, AND, YOU KNOW, WHEN I HAND SOMEONE A DOCUMENT, BECAUSE MY UNDERSTANDING OF HOW DISCOVERY WORKS IS ALL OF THIS STUFF IS SUPPOSED TO BE PRODUCED AND IN AND WE HAVE AN OPPORTUNITY TO ANALYZE IT, AND THEN WHEN I ASK OPPOSING COUNSEL WHERE DID THIS COME FROM, AND "WELL, I'M ABOUT TO ASK HIM AND TELL YOU." I'M BEING AMBUSHED. THAT'S NOT PROPER.

BY COMMISSIONER JAMES:

ALL RIGHT.

BY MR. ALFORD:

IT'S NOT APPROPRIATE.

BY COMMISSIONER JAMES:

OKAY. WELL, THE ---

BY MR. GOODWYN:

THIS, I ASKED HIM TO GO BACK AND LOOK FOR DOCUMENTS RESPONSIVE TO THE SUBPOENA. THIS WAS ONE OF THE DOCUMENTS I GOT. WHETHER IT'S RESPONSIVE TO

1 THE SUBPOENA OR NOT, THIS IS ONE OF THE DOCUMENTS
2 THAT I GOT.

3 BY COMMISSIONER JAMES:

4 WELL ---

5 BY MR. GOODWYN:

6 BUT I'M GOING TO ASK HIM ABOUT IT.

7 BY MR. BEARD:

8 I WOULD ALSO LIKE A REPRESENTATION FOR THE
9 RECORD SINCE THAT'S APPARENTLY WHAT THEY DID THIS
10 MORNING, THAT THEY GO BACK AND LOOK IN THEIR
11 COMPUTER AND FIND ONE THREE-PAGE DOCUMENT ALLEGEDLY
12 FROM 2014 THAT CREATES THESE, WHATEVER THIS
13 ACCOUNTING THAT THEY HAVE, AND THEY'RE GOING TO SIT
14 HERE AND TELL YOU IN OPEN COURT -- I WANT THEM TO
15 REPRESENT THAT THIS IS THE ONLY DOCUMENT IN THIS
16 COMPUTER, AND THEY ARE BOUND TO GET IT OFF, WHEN THE
17 MAN JUST TESTIFIED "IF I HAD MY COMPUTER IN FRONT OF
18 ME, I COULD PULL THESE THINGS UP FOR YOU." I MEAN,
19 THERE'S A PROBLEM HERE, AND GREGG IS 100 PERCENT
20 ACCURATE ---

21 BY MR. ALFORD:

22 AND, YOUR HONOR, I'M GOING TO TELL YOU --

23 BY MR. BEARD:

24 --- WITH THE WAY THIS HAS BEEN GOING ON.

25 BY MR. ALFORD:

1 I'M JUST GOING TO TELL YOU, I'VE GOT EMAILS
2 THAT WERE PRODUCED, THAT THE GENTLEMAN WAS KIND
3 ENOUGH TO BRING OVER, PURSUANT TO YOUR RULING ON THE
4 SUBPOENA ---

5 BY MR. BEARD:

6 KEENAN SUGGS.

7 BY MR. ALFORD:

8 --- TO KEENAN AND SUGGS. I HAVE EMAILS OF
9 EXCHANGES THAT THEY HAVEN'T PRODUCED, AND THEN I
10 DON'T KNOW ---

11 BY COMMISSIONER JAMES:

12 AND AN EMAIL FROM -- I SAY HANSON'S OFFICE. I
13 DON'T KNOW WHO ---

14 BY MR. ALFORD:

15 FROM MR. DURHAM.

16 BY MS. RICHARDSON:

17 NOT AN EMAIL, LIKE, 50 EMAILS.

18 BY MR. GOODWYN:

19 AND THEY'RE -- AND IN ALL FAIRNESS ---

20 BY MR. ALFORD:

21 AND SOME OF THEM -- SOME OF THEM ARE TO MY
22 CLIENT. SOME OF THEM ARE BACK AND FORTH BETWEEN MY
23 CLIENT.

24 BY MR. GOODWYN:

25 IN ALL FAIRNESS ---

1 BY MR. ALFORD:

2 BUT I'VE NEVER SEEN THEM BEFORE. I MEAN, I
3 CAN'T ---

4 BY MR. GOODWYN:

5 THEIR COMPUTER SYSTEMS HAVE CHANGED. THEY
6 MIGHT NOT BE IN POSSESSION OF THESE EMAILS.

7 BY MR. ALFORD:

8 THEY SEEM TO BE IN POSSESSION OF SELECT EMAILS,
9 AND THAT'S MY -- THAT'S MY PROBLEM HERE TODAY.

10 BY MR. GOODWYN:

11 THAT'S NOT ---

12 BY MS. FARTHING:

13 ARE THEY GOING TO INCLUDE THE EMAILS WE
14 DISCUSSED EARLIER WITH DAVID TATARSKY?

15 BY MR. ALFORD:

16 BUT THESE TWO -- WHERE -- I MEAN, IF WE CAN
17 FIND THESE -- LOOK, YOUR HONOR, I'M SORRY IF I'M
18 GETTING A LITTLE BIT..., BUT I'M --

19 BY COMMISSIONER JAMES:

20 WHAT ARE THE AGE OF THE OTHER EMAILS?

21 BY MS. GLOVER:

22 2014.

23 BY COMMISSIONER JAMES:

24 THE ONES THAT YOU ARE REFERRING TO?

25 BY MS. RICHARDSON:

1 2014, 2015.

2 BY MR. ALFORD:

3 MARCH 2ND, 2015. THIS IS -- THE OTHER ONE IS
4 NOVEMBER 2014. SO...

5 BY COMMISSIONER JAMES:

6 SO, THE EMAIL THAT IS PRODUCED NOW THAT Y'ALL
7 ARE DISCUSSING PUTTING IN OR QUESTIONING ON IS 2014.
8 SUBSEQUENT EMAILS THAT ARE PRODUCED IN THE PACKET
9 FROM SUGGS AND KELLY [SIC] ARE FROM 2014 AND '15?

10 BY MR. GOODWYN:

11 THESE ARE -- THE DOCUMENT NOW IS NOT AN EMAIL;
12 IT'S A SPREADSHEET.

13 BY MR. ALFORD:

14 THAT'S A 2014 SPREADSHEET FROM BACK IN NOVEMBER
15 DURING THE FIRST ANALYSIS.

16 BY MR. BEARD:

17 AND REPRESENTED AS BEING THE ONLY DOCUMENT THAT
18 THEY COULD FIND IN THEIR ENTIRE COMPUTER ---

19 BY MR. GOODWYN:

20 THAT'S NOT ---

21 BY MR. BEARD:

22 --- THAT THEY BROUGHT WITH THEM TODAY.

23 BY MR. GOODWYN:

24 THAT'S NOT WHAT I REPRESENTED.

25 (INDISTINCT ARGUING)

1 BY MR. BEARD:

2 WELL, SURE IT IS. THEN WHERE ARE THE REST OF
3 THE EMAILS?

4 BY MR. GOODWYN:

5 NO, IT'S NOT. YOU DON'T TELL ME WHAT I
6 REPRESENT.

7 BY MR. BEARD:

8 THEN WHERE ARE THE REST OF THE DOCUMENTS?

9 BY COMMISSIONER JAMES:

10 MR. GOODWYN.

11 BY MR. GOODWYN:

12 I MEAN, I'M TIRED OF HIM TELLING YOU THAT I
13 SAID SOMETHING THAT I DIDN'T SAY.

14 BY COMMISSIONER JAMES:

15 ALL RIGHT. STOP TALKING OVER EACH OTHER. ALL
16 RIGHT. HAVE YOU FINISHED, MR. BEARD?

17 BY MR. BEARD:

18 I WANT TO KNOW WHERE THE REST OF THE DOCUMENTS
19 ARE.

20 BY COMMISSIONER JAMES:

21 ALL RIGHT. MR. GOODWYN.

22 BY MR. GOODWYN:

23 AGAIN, MY UNDERSTANDING IS THAT THEY HAVE
24 CHANGED COMPUTERS. I WILL HAVE TO ASK HIM. I
25 HAVEN'T HAD A DETAILED DISCUSSION WITH HIM. I CAN

1 GO HAVE THAT DISCUSSION AND THEN COME BACK AND TELL
2 YOU.

3 BY MR. BEARD:

4 COMMISSIONER, YOU RULED THAT THEY HAD TO GIVE
5 US THE DOCUMENTS. IF HE HASN'T HAD THE CONVERSATION
6 BEFORE THIS MORNING, THEN HE IS IN CONTEMPT OF YOUR
7 RULING. WE WANT THE DOCUMENTS, AND WE SHOULDN'T BE
8 SITTING HERE GOING FORWARD WITH THIS WITNESS OR ANY
9 OTHER WITNESS THAT THEY WANT TO PUT UP WITHOUT THE
10 DOCUMENTS, OR YOU SHOULD ABSOLUTELY END THEIR CASE.

11 BY MR. ALFORD:

12 AND RESPECTFULLY, YOUR HONOR, HE JUST TESTIFIED
13 "WELL, IF I HAD MY COMPUTER, I COULD TELL YOU ALL
14 THIS STUFF," SO, I'M STRUGGLING WITH THIS WHAT I
15 FEEL LIKE IS A SELECTIVE PRODUCTION BENEFICIAL TO
16 THEIR CASE THAT DOESN'T SHOW THE ENTIRE KALEIDOSCOPE
17 IF YOU WILL.

18 BY COMMISSIONER JAMES:

19 I RULED ON THE MORNING OF OCTOBER THE 31ST. WE
20 HAD A 7:30 CONFERENCE CALL THAT THE MOTION TO QUASH
21 WAS DENIED. I AM GOING TO -- I'M GOING TO TAKE A 30
22 MINUTE ADJOURNMENT, AND I WANT TO KNOW WHERE THE
23 REST OF THE DOCUMENTS ARE. IF THERE ARE EMAILS, IF
24 THERE'S A REASON -- WHERE ARE THE REST OF THE
25 DOCUMENTS THAT ARE SUPPOSED TO BE PRODUCED?

1 BY MR. GOODWYN:

2 I THINK THE ANSWER -- I MEAN, THE DOCUMENTS
3 THEY'RE REFERRING TO ARE APPLICATION DOCUMENTS FOR
4 THE CURRENT INSURANCE, WHICH IS NOT WHAT WE ARE
5 TALKING ABOUT NOW, BUT THE -- WHAT I UNDERSTAND IS
6 THEY DON'T -- THEY DON'T -- THEY DIDN'T KEEP COPIES.
7 YOU FEEL OUT AN APPLICATION OR THE AGENT DOES, YOU
8 SIGN IT, AND IT GOES OFF TO THE INSURANCE COMPANY.
9 THEY DON'T KEEP COPIES. THAT'S WHAT THEY ARE
10 LOOKING FOR.

11 BY COMMISSIONER JAMES:

12 THAT'S NOT WHAT I UNDERSTAND. I HAVEN'T SEEN
13 ANY OF THESE DOCUMENTS. THEY HAVEN'T COME IN. BUT
14 I WANT TO KNOW IN THE NEXT 30 MINUTES THAT EVERY BIT
15 OF THIS -- WHETHER THIS SUBPOENA HAS BEEN COMPLIED
16 WITH OR NOT IS WHAT I WANT TO KNOW.

17 BY MR. GOODWYN:

18 AND I SAY -- AND WE'VE TALKED ABOUT THAT.

19 BY COMMISSIONER JAMES:

20 SO, I WANT YOU TO GO DOWN THE LIST OF WHAT ---

21 BY MR. GOODWYN:

22 OKAY.

23 BY COMMISSIONER JAMES:

24 --- THE SUBPOENAED DOCUMENTS WERE.

25 BY MR. GOODWYN:

1 SURE.

2 BY COMMISSIONER JAMES:

3 BECAUSE APPARENTLY SUGGS AND KELLY [SIC] HAD
4 NOT COMPLIED WITH THE SUBPOENA THAT DID NOT PROVIDE
5 A COMPLETE RESPONSE TO PREVIOUSLY THAT THEY FOUND
6 OUT ON THE STAND, AND NOW, I WANT TO KNOW IF THERE
7 IS A COMPLETE RESPONSE TO THIS SUBPOENA.

8 BY MR. GOODWYN:

9 SURE.

10 BY MR. BEARD:

11 GO AHEAD.

12 BY MS. FARTHING:

13 I'M SORRY. I WAS GOING TO SAY THAT KIND OF
14 GOES BEYOND THAT SUBPOENA THOUGH, BECAUSE WE'RE
15 GETTING DOCUMENTS NOW FROM 2014 AND EMAILS
16 REFERENCED THAT I'VE NEVER SEEN THAT ARE SUPPOSEDLY
17 WITH MY CLIENT THAT I WOULD LIKE TO HAVE AN
18 OPPORTUNITY TO ASK HIM ABOUT THAT ARE -- I THINK ARE
19 RESPONSIVE TO EARLIER SUBPOENAS THAT WERE SENT OUT.

20 BY COMMISSIONER JAMES:

21 WHEN I SAY 30 MINUTES, I GUESS WE MIGHT AS WELL

22 ---

23 BY MR. GOODWYN:

24 BREAK FOR LUNCH.

25 BY COMMISSIONER JAMES:

1 --- BREAK FOR LUNCH, BUT I DON'T -- YOU HAVE AN
2 ACTIVE WITNESS ON THE STAND. SO, IF YOU ---

3 BY MR. GOODWYN:

4 CAN I TALK TO HIM ABOUT THIS ISSUE? I MEAN, I
5 HAVE TO, RIGHT?

6 BY COMMISSIONER JAMES:

7 AND SUBJECT TO BEING ASKED ABOUT ANYTHING.

8 BY MR. GOODWYN:

9 SURE.

10 BY COMMISSIONER JAMES:

11 ALL I WANT -- YOU CANNOT DISCUSS THE ISSUES
12 WITH HIM. ALL I WANT TO KNOW IS WHERE THE DOCUMENTS
13 ARE. SO, I MEAN, HE'S ---

14 BY MR. ALFORD:

15 AND THIS IS MR. SAMUELS' SUBPOENA THAT WE
16 TALKED ABOUT OCTOBER 31ST?

17 BY COMMISSIONER JAMES:

18 YES.

19 BY MR. ALFORD:

20 YES, MA'AM.

21 BY COMMISSIONER JAMES:

22 THAT'S -- AND SO I NEED -- UNLESS ANYBODY ELSE
23 HAS ANYTHING TO SAY, WE WILL ---

24 BY MR. BEARD:

25 I HAVE JUST ONE SENTENCE OR ONE STATEMENT. I

1 WANT TO MAKE SURE THE RECORD IS CLEAR.

2 BY MS. RICHARDSON:

3 RIGHT.

4 BY MR. BEARD:

5 WE WERE PROVIDED TWO STACKS OF DOCUMENTS. ONE
6 YOU JUST ALLOWED INTO EVIDENCE, WHICH THEY SAY IS
7 AGAIN, THE ONLY DOCUMENT THAT THEY HAD, AN EMAIL AND
8 SOME ATTACHMENT. THEN WE JUST WERE TOLD BY JEFF
9 THAT THEY DON'T KEEP ANY EMAILS WHEN THEY SEND THEM
10 OFF ---

11 BY MR. GOODWYN:

12 I DIDN'T...

13 BY MR. BEARD:

14 --- THAT THEY DON'T KEEP EMAILS.

15 BY MR. GOODWYN:

16 I DID NOT SAY THAT.

17 BY COMMISSIONER JAMES:

18 ACTUALLY, HE SAID APPLICATIONS.

19 BY MR. BEARD:

20 OKAY.

21 BY MR. ALFORD:

22 HE DID.

23 BY MR. BEARD:

24 AND THEN WE ARE PROVIDED THIS -- WHATEVER THIS
25 ACCOUNTING DOCUMENT IS, THIS -- THIS PAYROLL AUDIT

1 DOCUMENT. ONE PAYROLL AUDIT DOCUMENT. WE WANT -- I
2 JUST THINK THE RECORD SHOULD BE CLEAR, AND I HOPE
3 YOUR HONOR AGREES WITH THIS STATEMENT THAT THERE
4 MUST BE OTHER DOCUMENTS THAT ARE NOT BEING
5 PRESENTED, AND IT CAN'T BE ANY MORE CLEAR. THEY ---

6 BY COMMISSIONER JAMES:

7 THAT'S WHAT I'M HEARING FROM SEVERAL OTHER
8 OFFICERS OF THE COURT WITH REGARDS TO WHAT'S BEEN
9 PROVIDED IN THE SUGGS AND KELLY [SIC]. I'VE NOT
10 SEEN THEM MYSELF.

11 BY MR. NEWMAN:

12 IT'S KEENAN AND SUGGS.

13 BY MR. BEARD:

14 IT'S KEENAN SUGGS.

15 BY COMMISSIONER JAMES:

16 I'M SORRY. I JUST DID SOMETHING WITH SUGGS AND
17 KELLY.

18 BY MR. ALFORD:

19 YOUR HONOR, I MEAN, I'M HAPPY -- I MEAN, IF YOU
20 LOOK THROUGH, YOU'LL FIND ---

21 BY COMMISSIONER JAMES:

22 WELL, THEY'RE NOT IN -- THEY'RE NOT IN EVIDENCE
23 RIGHT NOW.

24 BY MR. ALFORD:

25 YES, MA'AM. I UNDERSTAND. NO.

1 BY COMMISSIONER JAMES:

2 SO, ALL I CAN DO IS TAKE YOUR REPRESENTATION.

3 BY MR. ALFORD:

4 OKAY, OKAY.

5 BY COMMISSIONER JAMES:

6 ALL RIGHT.

7 BY MR. ALFORD:

8 AND I GUESS I WOULD ALSO SAY THAT IT'S MY
9 UNDERSTANDING THAT THE DOCUMENTS AND THINGS THAT
10 THEY INTEND TO INTRODUCE WERE TO BE INCLUDED IN
11 THEIR APA, AND SO I HAVE NO ABILITY, AND I'M NOT --
12 LISTEN, I'M NOT LOOKING TO DELAY THIS THING. WE'LL
13 KEEP ROLLING. I JUST WANT -- I JUST NEED TO MAKE
14 THE RECORD THAT I'M STRUGGLING TO DO IT IN A
15 MEANINGFUL MANNER WITH IT JUST BEING DROPPED ON MY
16 DESK, WHAT'S LEFT OF MY DESK.

17 BY COMMISSIONER JAMES:

18 ALL RIGHT. I THINK WE'RE ---

19 BY MR. ALFORD:

20 THANK YOU.

21 BY COMMISSIONER JAMES:

22 --- OFF THE RECORD NOW.

23 (OFF THE RECORD)

24 BY COMMISSIONER JAMES:

25 WE ARE BACK ON RECORD. MR. GOODWYN, HAVE Y'ALL

1 CHECKED THE SUBPOENA TO VERIFY THE ---

2 BY MR. GOODWYN:

3 WE DID. WE DISCUSSED EACH OF THESE ITEMS.
4 FIRST, IT'S NOT ENTIRELY CLEAR WHAT IS BEING ASKED
5 FOR AT THE END OF THE REQUEST OF THE SUBPOENA ASKING
6 FOR ALL THESE DOCUMENTS AS TESTIFIED TO BY TOM
7 SEARS. TOM SEARS TESTIFIED FOR LITERALLY 12 TO 15
8 HOURS. I INTERPRETED THAT TO MEAN, AND I THINK THIS
9 WAS IN WAKE OF THE DISCUSSION HE WAS HAVING ABOUT
10 THE CURRENT POLICY THAT THEY HAVE ABOUT THE ASSIGNED
11 RISK POLICY, THE P.E.O. THEY HAVE NOW. I THOUGHT --
12 THAT'S WHAT I INTERPRETED THIS TO MEAN, AND WITH
13 RESPECT TO THAT, AGAIN JUST GOING DOWN THE LIST
14 HERE, PRODUCED THE APPLICATIONS, AGAIN, THEY DIDN'T
15 KEEP COPIES OF THE APPLICATIONS. THE POLICIES,
16 THEY'VE GOT THE BINDER. WE PRODUCED THE BINDER.
17 THE POLICIES HAVEN'T COME IN YET. THE SUPPORTING
18 DOCUMENTS INCLUDING BUT NOT LIMITED TO PAYROLL
19 RECORDS. THEY DON'T HAVE -- THEY HAVE PAYROLL
20 RECORDS, BUT WHAT THEY PRODUCED FOR APPLICATION
21 PURPOSES, THEY MAY OR MAY NOT HAVE, BUT HAVEN'T HAD
22 AN OPPORTUNITY TO -- TO FIND THOSE. AGAIN, THIS IS
23 A DAY-AND-A-HALF AGO AS WE CAME UP FOR TRIAL. THEY
24 MAY BE ABLE TO FIND SOME PAYROLL RECORDS. AGAIN,
25 HOW IS PAYROLL RECORDS AFTER ALL THIS ON THE NEW

1 POLICY RELEVANT TO ANYTHING, I DON'T KNOW ANY OF
2 THIS IS RELEVANT TO ANYTHING IN THIS CASE. I DON'T
3 KNOW -- THIS IS THE NEW CURRENT POLICY. IT HAS
4 NOTHING TO DO WITH ANY DECISION THAT YOU ARE GOING
5 TO BE MAKING IN THIS CASE.

6 **BY COMMISSIONER JAMES:**

7 AS I HAD INDICATED TO Y'ALL, PRODUCTION CAN BE
8 DIFFERENT THAN WHAT'S -- THAN WHAT'S ADMISSIBLE.

9 **BY MR. GOODWYN:**

10 FAIR ENOUGH. ALL RIGHT. DECLARATIONS PAGES, I
11 DON'T KNOW IF THAT WAS PART OF THAT OR NOT. I
12 THOUGHT I SAW SOME -- MAYBE I WAS LOOKING AT
13 SOMETHING ELSE, BUT ANYWAY, THEY'VE GIVEN ME
14 EVERYTHING THEY HAVE AS FAR AS WHAT THEY HAVE AS FAR
15 AS THE POLICY, THE DECLARATIONS PAGES. THEY HAVEN'T
16 -- YOU KNOW, THEY HAVE A BINDER. THAT'S ALL THEY
17 HAVE RIGHT NOW UNLESS IT'S ALREADY PRODUCED.
18 CERTIFICATES OF INSURANCE, WE'VE PRODUCED ALL THOSE.
19 EVERYTHING THEY HAVE, THEY'VE GIVEN. WRITTEN
20 ELECTRONIC COMMUNICATIONS WITH THE INSURANCE CARRIER
21 AND THE AGENTS CONCERNING ALL THE PURPORTED -- ALL
22 INSURANCE PURPORTED TO COVER WORKERS' COMPENSATION
23 COVERAGE. AGAIN, TOM HAS BEEN HERE. THEY HAVEN'T
24 BEEN ABLE -- BEEN ABLE TO FIND OR TO EVEN SEARCH FOR
25 THESE THINGS IN THE DAY-AND-A-HALF THEY'RE HERE.

1 THEIR COMPUTERS -- EMAILS ARE IN GREENVILLE. THERE
2 MAY BE SOME. AGAIN, HOW IS THAT RELEVANT? WHY IS
3 THAT CRITICAL TO THE TRIAL, AND I GUESS THAT'S A
4 PRODUCTION ISSUE. AND THAT'S -- I THINK THAT'S THE
5 END OF THE LIST.

6 BY COMMISSIONER JAMES:

7 SO, IN OTHER WORDS, THE FIRST ONE, UNLESS YOU
8 SAT AND REVIEWED A TRANSCRIPT OR Y'ALL CAN DECIDE
9 WHAT WAS TESTIFIED TO, AND I THINK ONLY ONE PARTY
10 HAS ORDERED THE TRANSCRIPT AT THIS POINT IN TIME,
11 AND ONLY ONE PARTY POSSESSES THE TRANSCRIPT. I
12 DON'T BELIEVE ANYBODY ELSE HAS ORDERED IT. SO, THEN
13 AS FAR AS WHAT DOCUMENTS WE'RE TALKING ABOUT. WHAT
14 -- MR. SAMUELS, DO YOU REMEMBER WHAT YOU WERE
15 REFERENCING IN THIS FIRST -- AS FAR AS ALL THE
16 DOCUMENTS THAT WAS TESTIFIED TO? DID YOU MAKE ANY
17 NOTES OR...?

18 BY MR. SAMUELS:

19 YOUR HONOR, IT WAS SPECIFICALLY IN REFERENCE TO
20 THE 2017 APPLICATION FOR INSURANCE FOR WORKERS' COMP
21 INSURANCE BECAUSE THEY HAVE REPRESENTED, AND THERE'S
22 APPARENTLY BEEN TESTIMONY THAT INDEPENDENT
23 CONTRACTORS CANNOT BE COVERED UNDER WORKERS'
24 COMPENSATION INSURANCE. MR. SEARS REPRESENTED
25 SOMEWHAT AMBIGUOUSLY, BUT REPRESENTED THAT THEY HAD

1 PROCURED A ---

2 BY COMMISSIONER JAMES:

3 MR. SAMUELS, I JUST -- IT'S PRODUCTION. SO, IF
4 YOU -- WHAT I MEAN, DO YOU KNOW WHAT DOCUMENT? SO,
5 IS THAT THE DOCUMENT THAT YOU WOULD HAVE BEEN
6 REFERRING TO, OR ARE THERE ADDITIONAL DOCUMENTS?

7 BY MR. SAMUELS:

8 I WOULD BE REFERRING TO THE APPLICATION AND THE
9 SUPPORTING DOCUMENTS, AND DID THEY -- DID THEY
10 SPECIFICALLY DISCLOSE TO THAT CARRIER THAT THEY HAD
11 SIX MILLION DOLLARS OR SO IN PAYROLL OF NURSES OR
12 WHATEVER THE PAYROLL WAS IN NURSES, BUT DID THEY
13 DISCLOSE THAT? DID THE NURSES SIMILARLY SITUATED TO
14 RACHEL TURNER, WAS THEIR PAYROLL, THEIR JOB, WHERE
15 THEY WORKED, DISCLOSED IN THIS NEW ---

16 BY COMMISSIONER JAMES:

17 OKAY. LET'S ---

18 BY MR. SAMUELS:

19 --- APPLICATION.

20 BY COMMISSIONER JAMES:

21 AS FAR AS THE PURPOSE, AGAIN, DISCOVERY, YOU
22 KNOW, VERSUS ADMISSIBILITY OR THE PURPOSE, LET'S NOT
23 DISCUSS ALL OF THAT RIGHT NOW. SO, THE APPLICATIONS
24 FOR 2017, I THINK I UNDERSTOOD YOU SAID THEY'RE NOT
25 -- THEY DO NOT HAVE COPIES?

1 BY MR. GOODWYN:

2 THE AGENT HAS THEM. YOU KNOW, THE AGENT WOULD.

3 BY MS. RICHARDSON:

4 THE AGENT?

5 BY MR. GOODWYN:

6 WELL, THEIR INSURANCE -- THEIR INSURANCE AGENT.
7 THEY COMPLETE THEM. THEY SIGN THEM. THE AGENT
8 TAKES THEM AND SENDS THEM OFF TO THE CARRIERS.

9 BY COMMISSIONER JAMES:

10 RIGHT.

11 BY MR. GOODWYN:

12 BUT THEY DON'T KEEP COPIES OF THOSE.

13 BY COMMISSIONER JAMES:

14 AND THEN MY UNDERSTANDING IS AT LEAST TO THE
15 END WITH REGARDS TO THE EMAILS, THAT THEY HAVE NOT
16 BEEN CHECKED?

17 BY MR. GOODWYN:

18 THERE MAY BE SOME COMMUNICATION. YEAH, I MEAN,
19 AGAIN, THIS IS A DAY-AND-A-HALF AGO. WE'RE IN
20 TRIAL. I WAS IN TRIAL, BUT I MEAN, AND I
21 COMMUNICATED THAT TO THEM WHAT WE WERE -- I'M LOSING
22 TRACK OF MY DAYS HERE. WHAT'S TODAY? - FRIDAY. SO,
23 I GUESS THIS WAS WEDNESDAY MORNING?

24 BY COMMISSIONER JAMES:

25 WEDNESDAY MORNING.

1 BY MR. GOODWYN:

2 AT 7:30 A.M., YEAH. AND TO BE HONEST, I HAD TO
3 RUSH OUT FOR TRIAL AFTER THAT MEETING AND DIDN'T
4 SEND THE EMAIL TO HIM UNTIL LUNCH TIME SAYING "HEY,
5 WE'VE GOT TO RESPOND TO THIS," AND THEN IT WAS, I
6 THINK, LATER THAT IT WAS CLARIFIED THAT THEY WANTED
7 THESE ADDITIONAL DOCUMENTS. SO, I THINK IT WAS
8 ACTUALLY THE FIRST DAY OF THE TRIAL. I SAID WHAT
9 ELSE ARE YOU LOOKING FOR? AND I ASKED -- SO, I
10 ASKED TOM "SEE IF YOU CAN FIND THESE," AND HE IS
11 HERE IN COLUMBIA.

12 BY MR. SAMUELS:

13 YOUR HONOR, THE SUBPOENA WAS SERVED WEEKS AGO.

14 BY MR. GOODWYN:

15 WE DON'T HAVE AN OBLIGATION TO RESPOND UNTIL
16 THE MOTION TO QUASH IS RULED ON.

17 BY MR. SAMUELS:

18 BUT YOU CAN'T THEN CLAIM THAT "I DIDN'T HAVE
19 TIME TO RESPOND" WHEN YOU HAD THE SUBPOENA FOR WEEKS
20 AGO. YOU PREPARE THE RESPONSE ---

21 BY MR. GOODWYN:

22 YOU COULD HAVE SENT THIS A YEAR AGO. YOU'RE
23 THE ONE THAT'S BEEN ARGUING THAT THE WHOLE TIME.

24 BY COMMISSIONER JAMES:

25 MR. GOODWYN.

1 BY MR. GOODWYN:

2 I'M SORRY. HE'S BEEN ARGUING THAT FOR A YEAR.

3 BY COMMISSIONER JAMES:

4 LET'S -- LET'S ADDRESS THE COMMISSION.

5 BY MR. GOODWYN:

6 YOUR HONOR, OPPOSING COUNSEL HAS BEEN ARGUING
7 FOR A YEAR THAT ALL OF THIS DISCOVERY SHOULD HAVE
8 BEEN COMPLETED A YEAR AGO, AND NOW HE'S SAYING THAT
9 HE SHOULDN'T BE HELD UP TO THAT SAME STANDARD.

10 BY COMMISSIONER JAMES:

11 MR. ALFORD IS STANDING BEHIND YOU, SO LET ME
12 HEAR FROM HIM.

13 BY MR. ALFORD:

14 HONESTLY, I JUST WAS WRITING A NOTE.

15 BY COMMISSIONER JAMES:

16 OKAY.

17 BY MR. SAMUELS:

18 FIRST, YOUR HONOR, AS TO TIMING, THEY HAVE HAD
19 -- THEY'VE HAD IT FOR WEEKS. IT CAME ABOUT BECAUSE
20 OF NEW INFORMATION THAT WASN'T AVAILABLE TO US A
21 YEAR-AND-A-HALF AGO WHEN WE FILED A FORM 50 IN THIS
22 CASE. IT BECAME RELEVANT BECAUSE OF THE TESTIMONY
23 OF TOM SEARS, THE MAIN WITNESS FOR THE DEFENDANTS,
24 AND NOT ONLY DID HE RECEIVE THE SUBPOENA WEEKS AGO,
25 BUT THE GROUNDS RAISED TO QUASH THE SUBPOENA WERE

1 THAT IT WAS PRIVILEGED COMMUNICATION, AND THERE
2 EXISTS NO PRIVILEGE BETWEEN A BUSINESS AND ITS
3 INSURANCE COMPANY, NONE, ZERO, ZIP. IT'S A -- IT
4 WAS A FRIVOLOUS ---

5 BY MR. GOODWYN:

6 THAT WAS ONE OF THE GROUNDS.

7 BY MR. SAMUELS:

8 --- GROUNDS.

9 BY MR. ALFORD:

10 THERE SHOULD HAVE BEEN A LOG.

11 BY MR. SAMUELS:

12 FRIVOLOUS GROUNDS TO EVEN RAISE FOR QUASHING
13 THE SUBPOENA. THEY HAD -- THEY'VE HAD PLENTY OF
14 TIME TO RESPOND AND GET A FULL RESPONSE TOGETHER.
15 THE OTHER POINT ABOUT A SUBPOENA IS THAT IT REQUESTS
16 -- WHEN WE REQUEST DOCUMENTS, YOU CAN'T SIMPLY SAY
17 "I DON'T HAVE IT. MY INSURANCE AGENT HAS IT."
18 BECAUSE IT'S DOCUMENTS THAT ARE WITHIN YOUR CUSTODY
19 OR CONTROL. I FACE THIS ALL THE TIME AS A
20 CLAIMANT'S ATTORNEY. THEY -- DEFENDANTS SUBPOENA MY
21 CLIENT'S TAX RECORDS. THEY DON'T HAVE THEM. IN
22 FACT, IT HAPPENED IN THIS CASE. THEY HAD TO
23 SUBPOENA THE RECORDS. MY CLIENT HAD TO PRODUCE THE
24 RECORDS AND GET THEM FROM HER TAX PREPARER.

25 BY MR. GOODWYN:

1 WE ISSUED SUBPOENAS TO THEM, CORRECT?

2 BY MR. SAMUELS:

3 SO, SHE HAD TO GET -- SHE HAD TO GET THOSE
4 DOCUMENTS FROM HER TAX PREPARER AND PROVIDE TO THE
5 DEFENDANTS, WHICH IS WHAT SHE DID. SO, WE ARE
6 SIMPLY HOLDING THEM TO THE SAME STANDARD. IF IT'S -
7 - IF THE DOCUMENTS WE ARE SEEKING ARE AT THEIR
8 INSURANCE AGENT, FOR WHATEVER REASON THEY -- THE
9 EMPLOYER DIDN'T KEEP COPIES OF THEM, THEY STILL HAVE
10 CONTROL OVER THEM, BECAUSE THEY CAN GET THEM FROM
11 THEIR INSURANCE AGENT AND SHOULD DO SO AND SHOULD BE
12 REQUIRED TO DO SO AND PRODUCE THEM TO US HERE NOW.

13 BY MR. GOODWYN:

14 TWO POINTS. FIRST, TOM SEARS -- TOM SEARS WAS
15 DEPOSED IN THE CASE. IT'S NOT FAIR TO COME IN HERE
16 AND SAY "WELL, I LEARNED NEW INFORMATION DURING HIS
17 TESTIMONY. NOW, I NEED TO DO DISCOVERY ON IT."
18 THAT'S WHAT THE DEPOSITION IS FOR. IF HE DIDN'T ASK
19 THE RIGHT QUESTIONS THEN, THAT DOESN'T MEAN HE CAN
20 COME BACK DURING THE MIDDLE OF TRIAL AND THEN SEEK
21 NEW EVIDENCE. AND THIS GOES BACK TO THE WHOLE
22 UNLEVEL PLAYING FIELD ISSUE IS TOM SEARS WAS
23 DEPOSED. THERE'S A TWO TO THREE WEEK BREAK. NOW,
24 THEY HAVE THE BENEFIT, THE ADVANTAGE OF CONDUCTING
25 ADDITIONAL DISCOVERY THAT WE DON'T HAVE IN THIS

1 CASE. I THINK THAT'S -- IT'S UNFAIR TO ASK US TO BE
2 JUMPING THROUGH THESE HOOPS BECAUSE HE DIDN'T ASK
3 THE RIGHT QUESTIONS AT THE DEPOSITION SIX MONTHS
4 AGO.

5 **BY MR. SAMUELS:**

6 MR. SEARS TESTIFIED -- AT THE TIME MR. SEARS'
7 DEPOSITION WAS TAKEN, IT WAS TAKEN IN THE SPRING OF
8 2017. THIS NEW INSURANCE AND THIS CHANGE WHERE THEY
9 NOW CLAIM THEY ARE INSURING THE NURSES TOOK PLACE
10 AFTER MR. SEARS' DEPOSITION. THAT'S SOMETHING WE
11 ONLY LEARNED OF WHEN HE TESTIFIED TO THAT AT TRIAL.
12 IT WAS NOT SOMETHING THAT COULD HAVE BEEN EXPLORED
13 AT HIS DEPOSITION, BECAUSE IT HADN'T TAKEN -- TAKEN
14 PLACE.

15 **BY COMMISSIONER JAMES:**

16 ALL RIGHT.

17 **BY MR. SAMUELS:**

18 HE CHANGED THE WAY HE IS -- HE IS RUNNING HIS
19 BUSINESS.

20 **BY COMMISSIONER JAMES:**

21 OKAY, MR. GOODWYN, WE HAD THIS DISCUSSION
22 WEDNESDAY, AND THIS -- I MEAN, IT'S A PRODUCTION
23 ISSUE, AND WE ALSO HAD THE DISCUSSION ABOUT THE FACT
24 THAT -- THE CONTINUING NATURE OF DISCOVERY IN
25 WORKERS' COMP MATTERS. SOMETIMES EVEN AT THE FULL

1 COMMISSION LEVEL, THERE ARE MOTIONS FOR AFTER
2 DISCOVERED EVIDENCE, AND WHETHER THEY PREVAIL OR NOT
3 IS ANOTHER STORY. THE SAME THING WITH THIS.
4 WHETHER IT'S ADMITTED OR NOT IS ANOTHER STORY, BUT I
5 -- I HAVE RULED ON THE PRODUCTION. SO, I NEED -- I
6 NEED TO HAVE SOME CLARIFY AS TO WHEN THE REST OF
7 THIS IS GOING TO BE PRODUCED.

8 BY MR. GOODWYN:

9 IF IT ---

10 BY COMMISSIONER JAMES:

11 I UNDERSTAND ---

12 BY MR. GOODWYN:

13 IF IT EXISTS, ---

14 BY COMMISSIONER JAMES:

15 I UNDERSTAND.

16 BY MR. GOODWYN:

17 --- HE HAS TO GO SEARCH FOR IT. I THINK MONDAY
18 AT THE EARLIEST OBVIOUSLY, BECAUSE WE ARE TRYING THE
19 CASE ALL DAY TOMORROW, AND HE WILL GO BACK TO
20 GREENVILLE SUNDAY.

21 BY MR. ALFORD:

22 DOES HE NOT HAVE ANY STAFF?

23 BY MR. SEARS:

24 NO, I DON'T.

25 BY MR. GOODWYN:

1 HE'S A ONE MAN LEGAL DEPARTMENT.

2 BY COMMISSIONER JAMES:

3 OKAY. THEN WHEN WE RECONVENE MONDAY MORNING,
4 THE REST OF THE -- THE REST OF THE DISCOVERY NEEDS
5 TO BE TICKED OFF AS FAR AS THE -- CHECKED OFF,
6 WHATEVER THE PROPER WORD IS AS FAR AS LOOKED AT.

7 MR. SAMUELS HAS A POINT WITH REGARDS TO CONTROL
8 OF DOCUMENTS AS FAR AS ACCESS. I THINK THERE'S SOME
9 CIVIL, I DON'T KNOW IF THEY ARE ACTUAL DECISIONS,
10 BUT IT'S -- YOU KNOW, IN THE CIVIL ARENA, I'VE SEEN
11 IT DONE ALSO, IF THEY'RE WITHIN YOUR POSSESSION OR
12 CONTROL. WE NEED TO GO AHEAD AND GET INTO THE
13 TESTIMONY RIGHT NOW, AND WHEN WE'LL TAKE A BREAK,
14 THEN ANYTHING THAT NEEDS TO BE SECURED OR DISCUSSED,
15 IF IT'S FROM ANOTHER SOURCE, THEN WE WILL DISCUSS IT
16 NOW. IS THERE ANYTHING THAT NEEDS TO BE DISCUSSED
17 WITH KEENAN AND SUGGS, OR HAS KEENAN AND SUGGS
18 PRODUCED -- COMPLIED WITH THE SUBPOENA?

19 BY MR. ALFORD:

20 WE'RE GOOD ON THAT. THANK YOU, MA'AM.

21 BY COMMISSIONER JAMES:

22 OKAY.

23 BY MR. GOODWYN:

24 ONE OTHER ISSUE, YOUR HONOR.

25 BY COMMISSIONER JAMES:

1 YES.

2 BY MR. GOODWYN:

3 I HAVE A SUBPOENA ISSUED SEPTEMBER 21ST, 2017,
4 TO GUARANTEE FOR LOSS RUNS AND OTHER DATA THAT HAS
5 NOT BEEN RESPONDED TO. I WOULD LIKE AN ORDER
6 COMPELLING THEM TO RESPOND.

7 BY COMMISSIONER JAMES:

8 I'M SORRY?

9 BY MR. GOODWYN:

10 THIS IS A SUBPOENA THAT I ISSUED SEPTEMBER
11 21ST, 2017, TO GUARANTEE SERVED ON MR. BEARD. IT'S
12 STILL UNRESPONDED TO. WE SENT LETTERS, WHICH THEY
13 JUST TOTALLY STONEWALLED US ON IT.

14 BY COMMISSIONER JAMES:

15 AND, MR. GOODWYN, IS THERE A MOTION TO COMPEL
16 CONCERNING THAT?

17 BY MR. GOODWYN:

18 THERE WAS NO MOTION TO COMPLY FOR THIS SUBPOENA
19 EITHER.

20 BY COMMISSIONER JAMES:

21 OKAY. I'M JUST ASKING. I'M JUST ASKING.

22 BY MR. GOODWYN:

23 NO, I HAVEN'T MOVED TO COMPEL.

24 BY COMMISSIONER JAMES:

25 I'M JUST SEEING IF MY OFFICE IS AWARE OF IT,

1 BECAUSE IF I WAS AWARE OF IT, I WAS GOING TO
2 APOLOGIZE FOR NOT ADDRESSING IT BEFORE NOW.

3 BY MR. GOODWYN:

4 NO, THERE WAS NO MOTION TO COMPEL.

5 BY COMMISSIONER JAMES:

6 OKAY. YES, MA'AM.

7 BY MS. RICHARDSON:

8 JUST IF YOU WANT ME TO RESPOND TO THAT?

9 BY COMMISSIONER JAMES:

10 YES, MA'AM.

11 BY MS. RICHARDSON:

12 I DON'T NEED TO UNLESS YOU'RE TAKING UP THE
13 MATTER. I MEAN, HE DOESN'T HAVE A PENDING MOTION
14 BEFORE THE COMMISSIONER; SO.

15 BY MR. GOODWYN:

16 NEITHER DID THEY. THERE WAS NO MOTION TO
17 COMPEL THIS SUBPOENA, BUT THEY GOT TO RAISE IT.

18 BY COMMISSIONER JAMES:

19 THERE WAS A PENDING MOTION TO QUASH, BUT ---

20 BY MR. GOODWYN:

21 THERE'S NO PENDING ---

22 BY MS. RICHARDSON:

23 IT WAS DENIED.

24 BY COMMISSIONER JAMES:

25 THERE WAS NO PENDING -- NO, WITH THIS SEPTEMBER

1 SUBPOENA, THERE'S NO PENDING MOTIONS TO COMPEL, NO
2 PENDING MOTIONS TO QUASH, BUT THERE'S AN UNANSWERED
3 SUBPOENA IS WHAT I'M HEARING TODAY.

4 BY MR. GOODWYN:

5 RIGHT. I MOVE TO COMPEL THE SUBPOENA DATED
6 SEPTEMBER 21ST.

7 BY MS. RICHARDSON:

8 AND THAT'S WHY WE -- JUST TO GET THE RECORD
9 STRAIGHT, THE SUBPOENA, AND LET ME GO BACK, BECAUSE
10 I DID PREPARE. OKAY, SO, MR. GOODWYN CONTACTED ME
11 ABOUT MAYBE A MONTH AGO BY EMAIL SAYING THAT HE HAD
12 A SUBPOENA OUTSTANDING TO GUARANTEE REQUESTING LOSS
13 RUNS, AND I RESPONDED BACK THAT "I'M NOT AWARE OF
14 ANY SUBPOENA. WILL YOU PLEASE SHARE THAT WITH ME?"

15 BY COMMISSIONER JAMES:

16 CAN I STOP YOU FOR A MINUTE? THAT WOULD BE TO
17 -- WAS THAT TO MR. HARBISON? DID IT GO TO MR.
18 HARBISON?

19 BY MR. GOODWYN:

20 NO, HE WAS OUT OF THE CASE.

21 BY COMMISSIONER JAMES:

22 THAT WAS ALREADY TAKEN CARE OF IN JULY.

23 BY MR. GOODWYN:

24 THERE WERE SOME EARLIER SUBPOENAS THAT MIGHT
25 HAVE BEEN ISSUED TO HIM LIKE A YEAR AGO.

1 BY COMMISSIONER JAMES:

2 OKAY.

3 BY MR. GOODWYN:

4 AND THEN WE REALIZED THAT'S STILL NOT RESPONDED
5 TO, SO WE REISSUED.

6 BY COMMISSIONER JAMES:

7 I'M SORRY. GO AHEAD.

8 BY MS. RICHARDSON:

9 OKAY.

10 BY COMMISSIONER JAMES:

11 I WAS GETTING MY TIME STRAIGHT.

12 BY MS. RICHARDSON:

13 I THINK HE WAS REFERENCING THE ONE THAT WAS
14 OUTSTANDING WITH MR. HARBISON AT THE TIME, AND THEN
15 I SAID "I'M NOT AWARE OF ANY. PLEASE LET -- SHOW ME
16 WHAT THE SUBPOENA IS." SO, THEN, MR. GOODWYN SHARED
17 THE SUBPOENA WITH ME, AND IT DIDN'T CLARIFY. IT
18 JUST ASKED FOR ALL LOSS RUNS FROM GUARANTEE, AND I
19 RESPONDED BACK TO MR. GOODWYN "I DON'T KNOW WHO YOU
20 ARE REQUESTING LOSS RUNS FOR," AND YOU KNOW, I CAN'T
21 RESPOND TO A SUBPOENA THAT DOESN'T IDENTIFY ANY
22 INSURED. AND SO THEN, MR. GOODWYN ISSUED A NEW
23 SUBPOENA AT THAT TIME, THAT CLARIFIED THAT HE WANTED
24 ANY LOSS RUNS RELATED TO COUNTRYWIDE OR CONDUSTRIAL
25 FOR THE POLICY PERIOD IN EFFECT, AND THEN I WROTE

1 BACK TO MR. GOODWYN BY LETTER STATING THAT WITH THE
2 CONSENT OF OUR INSURED, WE WOULD BE GLAD TO SHARE
3 THOSE LOSS RUNS WITH A CONFIDENTIALITY ORDER IN
4 PLACE, BECAUSE THE LOSS RUNS BETWEEN US AND
5 C.S.S.G., WHO IS OUR ONLY INSURED ARE PROPRIETARY
6 AND CONFIDENTIAL INFORMATION, AND MR. GOODWYN HASN'T
7 WORKED THAT SITUATION OUT YET.

8 BY MR. GOODWYN:

9 I DON'T UNDERSTAND HOW OUR LOSS RUNS ARE
10 PROPRIETARY.

11 BY COMMISSIONER JAMES:

12 WELL, WHETHER THEY ARE OR THEY AREN'T, I CAN
13 REMEDY THIS VERY EASILY WITH AN ORDER IF IT NEEDS TO
14 BE ---

15 BY MR. GOODWYN:

16 A CONFIDENTIALITY ORDER? A CONFIDENTIALITY
17 ORDER, IS THAT WHAT YOU MEAN?

18 BY COMMISSIONER JAMES:

19 YES.

20 BY MR. GOODWYN:

21 THAT WOULD BE APPRECIATED, YOUR HONOR.

22 BY COMMISSIONER JAMES:

23 AND SO I CAN REMEDY THAT. MY SUGGESTION IS
24 SINCE THIS -- I WAS AWARE OF THE OTHER ISSUE THAT
25 CAME UP WITH THE OTHER UN-COMPLIED SUBPOENA, WELL,

1 THE MOTION TO QUASH WEDNESDAY MORNING. THIS IS THE
2 FIRST TIME I'VE HEARD ABOUT THIS SUBPOENA. SO, I
3 THINK WE NEED TO SPEND OUR TIME, BECAUSE I DON'T
4 THINK IT'S APPLICABLE TO THIS PARTICULAR WITNESS.
5 WE NEED TO SPEND OUR TIME GOING FORWARD, AND THEN WE
6 WILL TAKE A BREAK, AND WE WILL TALK ABOUT -- WE WILL
7 TALK ABOUT BOTH SUBPOENAS AGAIN. IN PARTICULAR,
8 THIS IS THE FIRST I'VE BEEN AWARE OF THIS.

9 BY MR. GOODWYN:

10 I UNDERSTAND.

11 BY COMMISSIONER JAMES:

12 ALL RIGHT. MR. GOODWYN, IF YOU WANT TO RESUME.

13 BY MR. GOODWYN:

14 YES, THANK YOU.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. MR. DURHAM, I THINK I WAS ASKING YOU ABOUT THE
17 SPREADSHEET THAT'S IN FRONT OF YOU. WHAT IS -- WHAT
18 IS THAT DOCUMENT?

19 A. SAY AGAIN.

20 Q. WHAT IS THAT DOCUMENT?

21 A. WHAT IS THE DOCUMENT?

22 Q. YES.

23 A. OH, I'M SORRY. I DIDN'T UNDERSTAND. THIS WAS THE
24 PAYROLL THAT WAS UNDER GUARANTEE INCURRED DURING THE
25 PERIOD OF TIME THAT WE HAD GUARANTEE AS OUR DIRECT

1 LEVEL.

2 Q. THAT WAS THE YEAR BEFORE THE COUNTRYWIDE
3 RELATIONSHIP BEGAN?

4 A. CORRECT.

5 Q. OKAY. AND DID YOU SUBMIT THAT SPREADSHEET, THAT
6 PAYROLL TO COUNTRYWIDE AS THIS -- THE RELATIONSHIP
7 WITH COUNTRYWIDE WAS ABOUT TO BEGIN?

8 A. I DID. IT WAS -- THAT'S A NORMAL COURSE OF BUSINESS
9 WITH THE CARRIER.

10 Q. OKAY. I MEAN, THE INSURANCE COMPANY HAS GOT TO KNOW
11 WHAT YOUR PAYROLL IS AND WHAT KIND OF EMPLOYEES YOU
12 HAVE, THAT KIND OF THING?

13 BY MS. RICHARDSON:

14 AGAIN, CAN THE WITNESS SPEAK UP, BECAUSE IT'S
15 HARD TO HEAR HIM.

16 BY COMMISSIONER JAMES:

17 YES.

18 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

19 Q. CAN YOU SPEAK UP A LITTLE BIT, SIR?

20 BY MR. GOODWYN:

21 YOUR HONOR, I MOVE TO ADMIT THIS AS PLAINTIFF'S
22 -- OR CONDUSTRIAL'S TRIAL EXHIBIT SEVEN.

23 BY MR. ALFORD:

24 WITHOUT OBJECTION.

25 (COURT REPORTER MARKS DOCUMENT CONDUSTRIAL'S TRIAL

1 EXHIBIT SEVEN, RETAINED IN THE COMMISSION FILE)

2 BY COMMISSIONER JAMES:

3 SO, ADMITTED.

4 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

5 Q. MR. DURHAM, I DIRECT YOUR ATTENTION TO PAGE TWO, THE
6 SECOND PAGE OF THIS DOCUMENT, TO THE NURSING CODES
7 8829 AND 8833. DO YOU SEE THAT?

8 A. YES, SIR.

9 Q. WHAT IS THE -- WHAT ARE THE PAYROLL AMOUNTS LISTED
10 IN THIS DOCUMENT?

11 A. COLLECTIVELY, THEY'RE ABOUT A MILLION-FOUR, BUT ONE
12 OF THEM IS LIKE 350,000; ANOTHER ONE IS RIGHT AT A
13 MILLION.

14 Q. OKAY. DOES THAT REFLECT YOUR EMPLOYEE NURSE
15 PAYROLL, INDEPENDENT CONTRACTOR NURSES PAYROLL OR
16 BOTH?

17 A. THESE NUMBERS INCLUDED BOTH.

18 Q. OKAY. AND THAT'S SOMETHING THAT WAS SUBMITTED TO
19 COUNTRYWIDE PRIOR TO THE FORMING OF THE AGREEMENT?

20 A. SURE.

21 Q. OKAY. WHY DID YOU INCLUDE THE INDEPENDENT
22 CONTRACTOR PAYROLL IN THERE IF -- IF THEY WERE
23 CONSIDERED TO BE INDEPENDENT CONTRACTORS?

24 A. BECAUSE I WANTED TO SHOW HIM THE EXPOSURE OF ALL OF
25 OUR PEOPLE THAT WORKED THERE, AND THEN WHAT I DID

1 WAS, WHICH IS THE STANDARD PRACTICE, THE SAME THING
2 I'VE DONE EVERY YEAR, YOU KNOW, SINCE I'VE HAD THE
3 MEDICAL PART, I WOULD EXPLAIN THAT THAT WORK WAS --
4 THIS 8829 IS THOSE INDEPENDENT CONTRACTORS, AND THE
5 REASON I DID THAT WAS THAT UNDER A P.E.O.
6 ARRANGEMENT, THEY ALWAYS HAVE A PROBLEM WITH BEING
7 ABLE TO COVER ANY NON-EMPLOYEES, OKAY, SO THAT'S WHY
8 I SHOWED IT AND THEN EXPLAINED THAT'S A MILLION
9 BUCKS THERE IN THE PAYROLL, AND I WOULD LOVE IT IF
10 YOU WOULD COVER THEM AND LET ME COVER THEM AS 1099s
11 UNDER THAT CODE. IF NOT, THOSE ARE I.C.s, AND
12 THEY'LL HAVE NO COVERAGE, AND THAT'S THE WAY IT'S
13 BEEN EVERY TIME. THEY'RE LIKE "NO, THEY'RE
14 INDEPENDENT CONTRACTORS. THEY CAN'T. THEY HAVE TO
15 BE EMPLOYEES BEFORE THE COVERAGE WILL KICK IN." SO,
16 THAT'S WHY.

17 Q. IF YOU KNOW, YOU MAY NOT KNOW, BUT ABOUT WHAT
18 PERCENTAGE OF THAT 1.4 MILLION OR SO WOULD YOU
19 ESTIMATE WAS THE INDEPENDENT CONTRACTOR PAY?

20 A. PROBABLY JUST OFF THE TOP OF MY HEAD, PROBABLY
21 800,000 MAYBE TOTAL.

22 Q. OKAY. SO, ABOUT TWO-THIRDS MAYBE, IF I'M DOING MY
23 MATH RIGHT?

24 A. WELL, IT COMES TO ABOUT -- YEAH, THAT'S GOING TO BE
25 ABOUT THAT, THE INDEPENDENTS.

1 Q. OKAY.

2 A. JUST ONE OTHER NOTE I WOULD LIKE TO ---

3 Q. SURE.

4 A. --- SHOW YOU HERE, AND THIS IS THE SAME THING I
5 ALWAYS DO. AGAIN, IF YOU WILL LOOK UP THERE,
6 THERE'S ALSO A LINE FOR THE 6824-F.

7 Q. WHAT IS THAT?

8 A. IT INCLUDES THE OTHER THING THAT THEY CAN NEVER
9 COVER, WHICH IS THE U.S.L. & H. COVERAGE. I ALWAYS
10 INCLUDE THAT, TOO, SO THAT THEY CAN SEE WHAT THAT
11 IS, BECAUSE IF AN INSURER CAN WRITE THAT COVERAGE,
12 THEN I DON'T HAVE TO GO GET IT IN A CAPTIVE.

13 Q. OKAY.

14 A. AND IN THE PAST, I HAD THAT ONCE COVERED BEFORE
15 UNDER A DIFFERENT P.E.O. THEY WERE ABLE TO WRITE
16 IT.

17 Q. OKAY. THANK YOU. LET ME ASK YOU SOME MORE
18 QUESTIONS ABOUT -- ABOUT THESE INDEPENDENT
19 CONTRACTOR NURSES THAT RACHEL TURNER WAS A PART OF
20 THE GROUP OF. DID CONDUSTRIAL HAVE THE RIGHT TO
21 CONTROL HOW THAT GROUP OF NURSES DID THEIR WORK?

22 A. NO.

23 Q. DID CONDUSTRIAL EVER EVEN GO INTO THE CLIENT
24 COMPANIES OR SPECIFICALLY S.C.D.C.'S FACILITIES TO
25 SEE WHAT THEY DID, HOW THEY PERFORMED THEIR WORK?

1 A. NO.

2 Q. DID CONDUSTRIAL PROVIDE ANY SUPPLIES OR MATERIALS TO
3 HELP THESE NURSES DO THEIR WORK?

4 A. NO.

5 Q. DID CONDUSTRIAL HAVE THE RIGHT TO FIRE THESE -- THIS
6 GROUP OF NURSES?

7 A. NO.

8 Q. I'M GOING TO SHOW YOU WHAT'S MARKED AS CONDUSTRIAL
9 TRIAL EXHIBIT TWO AND THREE, WHICH IS THE
10 COUNTRYWIDE SERVICE AGREEMENT AND ADDENDUM. ARE YOU
11 FAMILIAR WITH THESE?

12 A. YES.

13 Q. ALL RIGHT. YOU'VE BEEN IN THIS INDUSTRY FOR MANY
14 YEARS. FROM YOUR EXPERIENCE, WHAT WAS YOUR
15 UNDERSTANDING OF WHAT IS SUPPOSED TO HAPPEN FROM A
16 COVERAGE POINT OF VIEW, WORKERS' COMPENSATION
17 COVERAGE POINT OF VIEW IN A SITUATION WHERE AN
18 INDEPENDENT CONTRACTOR NURSE LIKE THIS IS OR COULD
19 BE FOUND TO BE AN EMPLOYEE?

20 A. WHAT I HAVE BEEN TOLD BY ALL MY AGENTS ---

21 BY MR. BEARD:

22 OBJECT TO THE ANSWER IS GOING TO BE HEARSAY.

23 BY MR. GOODWYN:

24 I'M NOT ASKING FOR ---

25 BY COMMISSIONER JAMES:

1 SUSTAINED.

2 BY MR. GOODWYN:

3 I'M NOT ASKING FOR THE TRUTH OF THE MATTER
4 ASSERTED. I'M ASKING WHAT HE'S -- TRYING TO TELL
5 YOU WHAT ADVICE HE HAS RECEIVED OVER THE YEARS.

6 BY MR. BEARD:

7 THAT WOULD BE HEARSAY, AND WE WOULD OBJECT TO
8 HEARSAY.

9 BY MR. GOODWYN:

10 IT'S NOT BEING OFFERED FOR THE TRUTH OF THE
11 MATTER ASSERTED.

12 BY MR. BEARD:

13 THEN THERE'S NO OTHER REASON TO OFFER IT.

14 BY COMMISSIONER JAMES:

15 IS IT NOT TO SOME OF THE ULTIMATE ISSUES THAT
16 WE ARE TRYING TODAY?

17 BY MR. BEARD:

18 CORRECT.

19 BY MR. GOODWYN:

20 I THINK, YOU KNOW, HE -- CAN I NOT ASK HIM WHY
21 DID YOU BELIEVE THAT THEY WOULD BE COVERED UNDER
22 THIS POLICY? THAT'S THE ADVICE I'VE BEEN GIVEN OVER
23 THE YEARS. THAT'S A FAIR -- IF HE ANSWERS THAT.
24 THAT'S NOT HEARSAY.

25 BY MR. ALFORD:

1 NOW, YOU'VE GIVEN HIM THE ANSWER.

2 BY MR. BEARD:

3 YEAH, NOW THAT YOU JUST TOLD HIM THE ANSWER.

4 HE NEEDS TO HAVE AN AGENT THAT COMES IN HERE AND
5 PROVIDES THAT INFORMATION, YOUR HONOR.

6 BY COMMISSIONER JAMES:

7 ALL RIGHT. MR. GOODWYN, TESTIFYING TO THE
8 ADVICE OF THE AGENT WITH REGARDS TO SOME OF THE
9 ULTIMATE ISSUES IN THIS CASE IS HEARSAY.

10 BY MR. GOODWYN:

11 ALL RIGHT.

12 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. ALL RIGHT. . WITHOUT SAYING WHAT ANYBODY ELSE TOLD
14 YOU, WHAT IS YOUR UNDERSTANDING OF HOW COVERAGE
15 WOULD BE HANDLED IN A SITUATION WHERE AN INDEPENDENT
16 CONTRACTOR NURSE MAY BE RECLASSIFIED AS AN EMPLOYEE?

17 BY MR. BEARD:

18 COMMISSIONER, I WOULD OFFER THE SAME OBJECTION.
19 THE ONLY WAY HE CAN ANSWER THAT QUESTION IS BASED
20 UPON HEARSAY.

21 BY MR. GOODWYN:

22 AND THAT IS NOT TRUE. HE CAN HAVE SEEN IT
23 HAPPEN. HE JUST KNOWS IT FROM HIS YEARS OF
24 EXPERIENCE. HE CAN TALK TO -- YOU KNOW, YOU GATHER
25 INFORMATION THROUGHOUT YOUR LIFE. YOU HAVE AN

1 UNDERSTANDING OF SOMETHING. THAT'S NOT JUST FROM
2 WHAT SOMEBODY ELSE SAID.

3 BY MR. BEARD:

4 AND, COMMISSIONER, AGAIN, MR. GOODWYN IS NOW
5 TESTIFYING OR TELLING HIS CLIENT THE ANSWER TO THE
6 QUESTION. THAT IS IMPROPER. WE OBJECT.

7 BY MR. GOODWYN:

8 THAT IS NOT -- I'M RESPONDING TO YOUR
9 OBJECTION.

10 BY COMMISSIONER JAMES:

11 WELL, AND I THINK THAT WOULD BE THAT YOU NEED
12 TO ESTABLISH A FOUNDATION FOR THAT, BUT TO -- BUT TO
13 ASK THE QUESTION AS TO WHAT -- OR THE ANSWER WAS
14 WHAT I UNDERSTAND FROM THE AGENT IS DIFFERENT FROM
15 PERSONAL KNOWLEDGE.

16 BY MR. GOODWYN:

17 THAT'S WHAT I'M ASKING, HIS PERSONAL KNOWLEDGE.

18 BY COMMISSIONER JAMES:

19 WELL, I THINK YOU'RE GOING TO NEED TO -- AFTER
20 THE LAST STATEMENT AND QUESTION, YOU NEED TO
21 ESTABLISH THE PERSONAL -- THE FOUNDATION FOR
22 PERSONAL KNOWLEDGE.

23 BY MR. GOODWYN:

24 ALL RIGHT. WELL, HIS 35 YEARS IN THE INDUSTRY?

25 BY COMMISSIONER JAMES:

1 WELL, MR. GOODWYN, YOU NEED TO ASK HIM THE
2 QUESTION.

3 BY MR. GOODWYN:

4 I ALREADY HAVE ASKED HIM THAT. HE'S ANSWERED
5 THAT QUESTION.

6 BY COMMISSIONER JAMES:

7 OKAY.

8 BY MR. GOODWYN:

9 HE SAID "I'VE BEEN IN THE INDUSTRY 35 YEARS, 10
10 YEARS OWNING MY OWN COMPANY." AND, SO, NOW, I'M
11 ASKING HIM FROM ALL THAT EXPERIENCE, WHAT IS YOUR
12 UNDERSTANDING OF HOW THESE SITUATIONS ARE HANDLED?

13 BY COMMISSIONER JAMES:

14 OKAY.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. ALL RIGHT. BASED ON ALL OF YOUR EXPERIENCE IN THIS
17 INDUSTRY DEALING WITH THESE WORKERS' COMPENSATION
18 POLICIES FOR ALL OF THESE YEARS, WHAT IS YOUR
19 UNDERSTANDING OF HOW THIS TYPE OF SITUATION SHOULD
20 BE HANDLED -- WOULD BE HANDLED?

21 A. JUST A TYPICAL AUDIT RETRO PREMIUM ISSUE.

22 Q. CAN YOU SPEAK UP A LITTLE BIT? I THINK PEOPLE ARE
23 HAVING A HARD TIME HEARING YOU.

24 A. JUST A TYPICAL AUDIT RETRO PREMIUM ISSUE.

25 Q. OKAY. EXPLAIN THAT TO THE COMMISSIONER. WHAT DO

1 YOU -- WHAT DO YOU MEAN BY THAT?

2 A. AT ANY TIME WHEN YOU FINISH A POLICY YEAR, THEY DO
3 AN AUDIT TO CONFIRM RECORDS PROVIDED VERSUS THE 941.
4 THE 941s HAVE TO MATCH UP WITH THE PAYROLL THAT WAS
5 SUBMITTED, AND THEN IF THERE'S ANYONE IN THERE THAT
6 IS EXCLUDED THAT WAS FOUND TO BE AN EMPLOYEE, THAT
7 WAS AN EMPLOYEE, THEN THEY BECOME PART OF THE RETRO
8 AUDIT, AND YOU PAY FOR THE PREMIUM. YOU HAVE TO PAY
9 THE RETRO PREMIUM GOING BACK TO HOWEVER LONG THEY
10 WORKED.

11 Q. WHAT ABOUT COVERAGE FOR WORKERS' COMPENSATION
12 PURPOSES?

13 A. THAT'S WHAT I'M TALKING ABOUT, THE RETRO PREMIUM FOR
14 THE COVERAGE FOR THE WORKERS' COMPENSATION BACK TO
15 THE TIME FRAME FROM WHENEVER THAT PERSON STARTED
16 INCURRING -- WHEN THEY ARE FOUND TO BE AN EMPLOYEE,
17 GO BACK TO THE RETRO DATE OF WHEN THEY STARTED,
18 WOULD HAVE INCURRED A PREMIUM HAD THAT BEEN
19 CLASSIFIED AS AN EMPLOYEE.

20 Q. OKAY. AND WOULD THE NEWLY CLASSIFIED -- THE FORMER
21 INDEPENDENT CONTRACTOR, NEWLY CLASSIFIED EMPLOYEE
22 THEN HAVE WORKERS' COMPENSATION COVERAGE?

23 A. IF THEY WERE RECLASSIFIED AS AN EMPLOYEE, ---

24 Q. OKAY.

25 A. --- ABSOLUTELY.

1 Q. ALL RIGHT. PRIOR TO THE RELATIONSHIP WITH
2 COUNTRYWIDE, HAD YOU -- HAD CONDUSTRIAL OBTAINED
3 WORKERS' COMPENSATION COVERAGE THROUGH A P.E.O. IN
4 THE PAST?

5 A. YES.

6 Q. OKAY. WAS THE AGREEMENT THAT WE'RE TALKING ABOUT
7 HERE CONDUSTRIAL TRIAL EXHIBITS TWO AND THREE, IS
8 THAT SUBSTANTIALLY SIMILAR TO THE AGREEMENTS THAT
9 YOU SIGNED WITH OTHER P.E.O.s IN THE PAST?

10 A. YES. WHERE THIS AGREEMENT ACTUALLY COMES FROM IS A
11 -- WE PROVIDED THEM THE OLD DOCUMENT FROM A.M.S.
12 STAFF LEASING, AND THEY MIMICKED THE AGREEMENT.
13 BECAUSE WE WERE COMFORTABLE WITH THE AGREEMENT, THEY
14 READ IT. THEY WERE OBVIOUSLY COMFORTABLE, SO THEY
15 SENT IT TO ME.

16 Q. OKAY.

17 BY MR. ALFORD:

18 I'M SORRY, MR. GOODWYN, WHAT NUMBER WAS THAT
19 EXHIBIT AGAIN?

20 BY MR. GOODWYN:

21 TWO AND THREE. IT'S CONDUSTRIAL TRIAL EXHIBITS
22 TWO AND THREE.

23 BY MR. ALFORD:

24 OKAY, THANK YOU.

25 BY MR. GOODWYN:

1 CAN WE HAVE JUST ONE MINUTE, YOUR HONOR?

2 BY MS. RICHARDSON:

3 WHAT ARE THE PAGE NUMBERS OF CONDUCTORIAL'S
4 TRIAL EXHIBITS TWO AND THREE?

5 (OFF THE RECORD)

6 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

7 Q. ALL RIGHT, MR. DURHAM, LET ME ASK YOU SOME QUESTIONS
8 AS TO ABOUT YOUR PERSONAL KNOWLEDGE AND INTERACTIONS
9 WITH RACHEL TURNER. DID YOU KNOW WHO RACHEL TURNER
10 WAS AS A PERSON, INDIVIDUAL BEFORE THIS DATE OF
11 ACCIDENT, SEPTEMBER 5TH?

12 A. NO, I DID NOT.

13 Q. OKAY. SINCE THE DATE OF ACCIDENT, WAS -- WAS A
14 CLAIM BROUGHT TO YOUR ATTENTION?

15 A. YES, IT WAS.

16 Q. OKAY. AT THAT POINT, DID YOU NOTIFY ANY WORKERS'
17 COMPENSATION CARRIER?

18 A. NO, I DIDN'T.

19 Q. WHY NOT?

20 A. BECAUSE SHE HAD SIGNED THE INDEPENDENT CONTRACTOR
21 AGREEMENT, WHICH SPECIFICALLY EXCLUDED HER.

22 Q. DESPITE BELIEVING THAT SHE WAS NOT COVERED BY ANY
23 WORKERS' COMPENSATION POLICY, DID YOU -- DID YOU
24 OFFER ANY SUPPORT TO HER?

25 A. DID I OFFER ANY SUPPORT TO HER?

1 Q. OR CONDUSTRIAL?

2 A. WELL, I -- I DID CERTAINLY.

3 Q. OKAY. WHY WAS THAT?

4 A. I DID THE SAME THING FOR HER THAT I'VE DONE FOR
5 DOZENS OF OTHER PEOPLE WHEN THEY'VE HAD ISSUES.

6 Q. ALL RIGHT.

7 A. YOU KNOW, PICK UP THE PHONE, CALL THEM. I HAD -- IN
8 THIS CASE, I HAD SET UP -- SET UP A CONFERENCE CALL
9 WITH HER TO ASK HER -- AND ASKED HER WHEN SHE FELT
10 BETTER, WOULD SHE COME BACK.

11 Q. DID YOU TALK TO MS. TURNER ON THE PHONE?

12 A. I TALKED TO HER ON THE PHONE, BY ME AND LISSETTE ON
13 A CONFERENCE CALL WITH HER.

14 Q. ALL RIGHT. ABOUT HOW MANY DAYS AFTER THE DATE OF
15 THE ACCIDENT WAS THIS CALL, OR DAYS OR WEEKS OR
16 WHATEVER?

17 A. I WOULD SAY IT WAS WITHIN ABOUT TEN DAYS.

18 Q. OKAY. TELL ME ABOUT -- OR TELL THE COMMISSIONER
19 ABOUT THE CALL AND WHAT YOU -- WHAT YOU TOLD HER AND
20 OFFERED HER?

21 A. I JUST TOLD HER AGAIN, "HEY, I'M SO SORRY OF WHAT
22 HAPPENED TO YOU. YOU KNOW, I HOPE YOU'RE OKAY. YOU
23 KNOW, I HOPE EVERYTHING'S ALL RIGHT?" SHE SAID,
24 "YEAH, I'M FINE. I'M GOING TO BE FINE." I SAID,
25 "WELL, YOU KNOW" -- ACTUALLY, I SAID TO HER, I SAID,

1 "I DON'T THINK I WOULD WANT TO GO BACK THERE." I
2 SAID, "BUT YOU KNOW, WHEN YOU GET TO FEELING
3 BETTER," I SAID, "YOU DON'T HAVE TO GO BACK THERE NO
4 MORE." I SAID, "YOU ARE MORE THAN WELCOME TO --
5 I'VE GOT AN OPENING HERE IN MY OFFICE JUST DEALING
6 WITH NURSES, AND YOU ARE WELCOME TO COME FILL THAT
7 AS SOON AS YOU -- FILL THAT POSITION AS SOON AS YOU
8 FEEL BETTER, AND YOU JUST COME ON, AND I'LL PUT YOU
9 ON THE PAYROLL FULL TIME." I SAID, "YOU'LL BE AN
10 EMPLOYEE OF MINE THEN BECAUSE YOU'LL BE IN THE
11 OFFICE," AND I SAID "I'LL TAKE CARE OF EVERYTHING
12 THAT YOU NEED TAKEN CARE OF TO MAKE YOU WHOLE."

13 Q. OKAY.

14 A. I SAID, "I'LL DO WHATEVER YOU NEED." I SAID, "SO,
15 YOU JUST BE THERE."

16 Q. DID SHE ACCEPT YOUR OFFER?

17 A. NO. HER ONLY COMMENT TO ME WAS "I DON'T WANT THAT.
18 I JUST WANT COMP." SHE SAID IT TWICE, "I WANT
19 COMP." THAT'S ALL SHE SAID.

20 Q. ALL RIGHT. AGAIN, DID YOU EXPLAIN TO HER THAT SHE
21 WASN'T ELIGIBLE FOR ---

22 A. YES.

23 Q. --- WORKERS' COMPENSATION?

24 A. I DID AS POLITELY AS I COULD DO IT. I SAID, "YOU
25 KNOW, I UNDERSTAND." I SAID, "I KNOW, I KNOW YOU

1 DO, BUT YOU'RE NOT ELIGIBLE FOR COMP." I SAID, "BUT
2 YOU NEED TO REALIZE I'M GIVING YOU SOMETHING WAY
3 BEYOND WHAT WORKERS' COMP, 'CAUSE YOU WASN'T
4 SEVERELY INJURED OR NOTHING." I SAID "I'M GOING TO
5 GIVE YOU WAY BEYOND WHAT YOU CAN GET FROM WORKERS'
6 COMP IF YOU HAD EVEN BEEN AN EMPLOYEE." I SAID,
7 "I'M GOING TO GIVE YOU A FULL-TIME JOB, MAKING WHAT
8 YOU MADE. I'M GOING TO TAKE CARE. YOU JUST BRING
9 ME YOUR BILLS. I'LL TAKE CARE OF YOUR MEDICAL
10 BILLS. I'LL TAKE CARE OF WHATEVER YOU NEED." YOU
11 KNOW, IT'S NO DIFFERENT. I'VE DONE IT FOR DOZENS OF
12 OTHER PEOPLE. SO, I MADE NO ACCOMMODATIONS FOR HER
13 THAT I DIDN'T MAKE FOR OTHER PEOPLE THAT HAVE
14 SUFFERED SIMILAR ISSUES THAT WORK FOR ME. I'VE
15 BOUGHT THEIR HOUSES OUT OF FORECLOSURE. I'VE DONE
16 ALL KIND OF THINGS, AND THE ONLY THING THAT I EVER
17 ASK OUT OF ANY OF THEM WHEN THEY HIT THOSE HARD
18 ROADS IS "HEY, I'LL DO THIS. I JUST NEED YOU TO
19 STAY AT WORK, OKAY? AS LONG AS YOU WORK, WE CAN
20 WORK THROUGH THIS AND TAKE CARE OF ALL WHATEVER IT
21 IS. DON'T WORRY ABOUT IT," YOU KNOW, 'CAUSE I
22 APPRECIATE -- I'M NOT OUT THERE WORKING. I'M NOT
23 THE ONE OUT THERE MAKING THE MONEY FOR THE COMPANY.
24 THESE LADIES, THESE CARPENTERS, THESE METAL WORKERS,
25 THEY'RE THE ONES OUT THERE DOING IT, AND I'M WILLING

1 TO DO WHATEVER IT TAKES TO MAKE THEIR LIFE BETTER TO
2 HELP THEM CONTINUE TO WORK, AND I'VE DONE THAT
3 DOZENS AND DOZENS OF TIMES, AND I OFFERED TO DO IT
4 FOR RACHEL. SHE DIDN'T WANT NO PART OF IT. ALSO,
5 YOU KNOW, LATER WHEN I KEPT TRYING TO REACH BACK OUT
6 TO HER, I TRIED TO REACH BACK OUT TO HER. SHE
7 WOULDN'T TAKE MY CALLS. I COULDN'T GET NO -- I
8 NEVER -- AND I NEVER TALKED TO HER AGAIN, AND SO
9 THEN I CONTACTED THE POLICE. I ASKED THE POLICE TO
10 DO A WELL CHECK ON HER. COP CALLS ME FROM OUT THERE
11 AND IS LIKE "THIS LADY IS GOING BALLISTIC THAT YOU
12 SENT ME OUT HERE TO CHECK ON HER," AND SHE IS
13 SCREAMING AND YELLING "YOU HAVE NO RIGHT." AND THEN
14 SHE CALLS UP AND CALLS US EVERYTHING BUT A NICE
15 PERSON FOR SENDING THE COPS OUT THERE TO CHECK ON
16 HER, AND ALL I WAS DOING WAS TRYING TO DO WHAT I
17 WOULD HAVE WANTED SOMEBODY TO HAVE DONE FOR ME IF I
18 WAS IN THE SAME SITUATION.

19 Q. OKAY. DID YOU HAVE ANY DIRECT CONVERSATIONS WITH
20 MS. TURNER AFTER THAT CALL YOU JUST DESCRIBED?

21 A. NO, AFTER SHE COCKED ME OFF "I WANT COMP. I WANT
22 COMP," I JUST GAVE IT TO TOM AND SAID, "HEY, I CAN'T
23 DO NOTHING FOR HER. SHE WON'T HAVE NO RESPECT FOR
24 NOTHING I'VE ASKED HER. SO, I CAN'T HELP HER."

25 Q. OKAY.

1 BY MR. GOODWYN:

2 THAT'S ALL I HAVE, YOUR HONOR.

3 BY COMMISSIONER JAMES:

4 MR. SAMUELS.

5 BY MR. SAMUELS:

6 YOUR HONOR, I'M HAPPY TO DEFER IF SOMEBODY ELSE
7 WOULD PREFER TO GO FIRST.

8 BY MR. BEARD:

9 I THINK AT LEAST JAMIE AND I NEED TO HEAR
10 STEPHEN BEFORE WE WOULD GO ANYWAY.

11 BY MR. ALFORD:

12 I WOULD ACTUALLY LIKE TO HEAR HIM. I'M SORRY,
13 STEPHEN. YOU'RE JUST A GOOD CALMING INFLUENCE ON US
14 ALL.

15 BY MR. GOODWYN:

16 AND, YOUR HONOR, THIS IS ONE OF THESE WITNESSES
17 THAT MAY HAVE TESTIMONY ON BOTH COVERAGE AND MERITS.
18 ARE ALL -- BOTH ATTORNEYS FROM GUARANTEE AND
19 COUNTRYWIDE GOING TO HAVE A CRACK AT HIM?

20 BY MR. BEARD:

21 I WOULD THINK SO. WE'VE DONE THAT EARLIER.

22 BY COMMISSIONER JAMES:

23 UNLESS I -- UNLESS THEY CALL THEM TWO DIFFERENT
24 TIMES WITH REGARDS TO -- THEY'VE CLEARLY DELINEATED
25 THE DIFFERENCE IN THEIR EXPERTISE IN THE COURTROOM.

1 BY MR. GOODWYN:

2 THAT'S FINE.

3 BY COMMISSIONER JAMES:

4 YEAH, SO.

5 BY MR. GOODWYN:

6 I UNDERSTAND. I GUESS, CAN WE JUST MAKE SURE
7 THAT EACH OF THEIR QUESTIONS ARE LIMITED TO THEIR
8 AREA AND THEY DON'T OVERLAP EACH OTHER.

9 BY COMMISSIONER JAMES:

10 WE WILL CERTAINLY ATTEMPT TO DO THAT. I KNOW
11 IT'S BEEN AN ISSUE THROUGHOUT EVEN DURING DISCOVERY.

12 BY MR. GOODWYN:

13 RIGHT. THANK YOU.

14 BY COMMISSIONER JAMES:

15 ALL RIGHT. MR. SAMUELS.

16 BY MR. SAMUELS:

17 THANK YOU, YOUR HONOR.

18 CROSS EXAMINATION BY MR. SAMUELS:

19 Q. MR. DURHAM, MY NAME IS STEPHEN SAMUELS. I REPRESENT
20 RACHEL TURNER. I WAS QUITE INTRIGUED BY YOUR
21 TESTIMONY, AND I'M GOING TO ASK YOU SOME QUESTIONS
22 ABOUT IT.

23 A. YES, SIR.

24 Q. IF I MISSTATE YOUR TESTIMONY, FEEL FREE TO CORRECT
25 ME. I WANT TO MAKE SURE WE UNDERSTAND EXACTLY WHAT

1 IT IS YOU'RE TRYING TO SAY. AS I UNDERSTOOD YOUR
2 TESTIMONY, YOUR TESTIMONY WAS THAT ONCE THE NURSES
3 SIGN THE INDEPENDENT CONTRACTOR AGREEMENT, THAT
4 TRUMPS ANYTHING; IS THAT RIGHT? FROM THEN ON ONCE
5 THEY'VE SIGNED IT, THEY'RE AN INDEPENDENT
6 CONTRACTOR?

7 A. THAT WOULD BE THE WAY THAT I WOULD -- I WOULD
8 INTERPRET IT, AND THAT WOULD BE MY INSTRUCTION TO
9 THE STAFF. THERE'S CERTAINLY -- THEY FILLED OUT THE
10 PAPERWORK OR WHATEVER. THERE'S NOTHING THAT'S
11 CONTRACTUAL ABOUT FILLING OUT A W9 OR 99 OR
12 WHATEVER, BUT THEY SIGNED OFF ON BEING A CONTRACT
13 EMPLOYEE, CONTRACT WORKER. SO, THAT'S THE WAY I
14 WOULD INTERPRET IT. I MIGHT BE WRONG, BUT THAT'S
15 THE WAY I INTERPRET IT.

16 BY COMMISSIONER JAMES:

17 CAN EVERYONE HEAR MR. DURHAM?

18 BY MS. FARTHING:

19 NO, I'M HAVING A HARD TIME.

20 BY THE WITNESS:

21 SORRY.

22 BY COMMISSIONER JAMES:

23 CAN YOU SPEAK UP JUST A LITTLE BIT? AND I KNOW
24 IT'S A LITTLE DIFFICULT FOR ME BECAUSE I'M BEHIND
25 YOU AND YOU ARE SPEAKING FORWARD. SO, IT WOULD BE

1 EASIER IF IT'S JUST A LITTLE LOUDER.

2 BY THE WITNESS:

3 ALL RIGHT.

4 BY MR. SEARS:

5 DO YOU NEED A BREAK?

6 BY THE WITNESS:

7 NO, I'M ALL RIGHT.

8 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. SO, ONCE YOU'VE SIGNED A CONTRACT, THAT CONTROLS
10 EVERYTHING. NOTHING ELSE MATTERS AFTER THAT, RIGHT?

11 A. NOTHING WOULD MATTER FOR THE TIME PERIOD THEY WORKED
12 UNDER THE INDEPENDENT CONTRACTOR AGREEMENT. IF THEY
13 DECIDED THEY WANTED TO CHANGE THAT, WE WOULD HAVE TO
14 GO THROUGH THE PROCESS OF PROCESSING THEM AS AN
15 EMPLOYEE, ET CETERA, IF THEY WANTED TO BECOME AN
16 EMPLOYEE. AS LONG AS THAT AGREEMENT IS IN PLACE AND
17 NOTHING ELSE HAS BEEN DONE, MY CONSIDERATION IS
18 THEY'RE AN I.C.

19 Q. OKAY. SO, IF A NURSE HAD ACTUALLY COME TO YOU AND
20 SAID "YOU KNOW, I'M FEELING KIND OF INKY ABOUT THIS
21 INDEPENDENT CONTRACTOR AGREEMENT. CAN I START
22 WORKING AS A MEDUSTRIAL NURSE BUT AS AN EMPLOYEE,
23 GET A W-2 AND YOU TAKE OUT MY TAXES?" THAT WAS
24 SOMETHING YOU COULD DO?

25 A. ABSOLUTELY.

1 Q. OKAY. AND ONCE YOU'VE SIGNED A CONTRACT, YOU EXPECT
2 PEOPLE TO STICK WITH IT JUST LIKE YOU EXPECT
3 COUNTRYWIDE TO STICK WITH THEIR CONTRACT TO PROVIDE
4 YOU WORKERS' COMP INSURANCE, RIGHT?

5 A. YES, SIR. OF COURSE, THE INDEPENDENT CONTRACT IS A
6 LITTLE BIT DIFFERENT THAN A SERVICE AGREEMENT WITH
7 COUNTRYWIDE. AN INDEPENDENT CONTRACT AGREEMENT
8 GIVES THEM -- WELL, IT'S A CONTRACT -- IT REALLY IS
9 A CONTRACT OF NO CONNECTION. YOU'RE AN INDEPENDENT
10 CONTRACTOR. YOU KIND OF DO YOUR OWN THING. YOU
11 HAVE NO OBLIGATIONS TO ME OTHER THAN WHAT YOU AGREE
12 TO DO ON A PER SHIFT ORDER; WHEREAS, THE COUNTRYWIDE
13 THING, THAT'S A WHOLE DIFFERENT THING. YOU KNOW,
14 THAT'S A -- THAT'S AN ONGOING AGREEMENT FOR ALL KIND
15 OF DIFFERENT SCENARIOS.

16 Q. WELL, THAT MAY BE, BUT YOU BROUGHT COUNTRYWIDE
17 GUARANTEE INSURANCE COMPANY INTO THIS CASE CLAIMING
18 THAT THEY WERE CONDUSTRUAL'S INSURANCE COMPANY,
19 BECAUSE YOU WANTED THEM TO PROVIDE WORKERS'
20 COMPENSATION COVERAGE FOR THIS CLAIM, AT THE VERY
21 LEAST PROVIDE A DEFENSE, BUT YOU EXPECT THEM TO
22 HONOR THAT CONTRACT, PROVIDE YOU AN ATTORNEY, AND IF
23 THE CLAIM IS FOUND COMPENSABLE, PAY THE BENEFITS,
24 RIGHT? YOU WANT TO ENFORCE THAT CONTRACT?

25 A. THAT WAS WHAT WE WANTED THEM TO DO, CORRECT.

1 Q. AND JUST LIKE THAT CONTRACT THAT
2 CONDUSTRIAL/MEDUSTRIAL HAS WITH THE DEPARTMENT OF
3 CORRECTIONS WHERE CONDUSTRIAL IS BOUND TO PROVIDE
4 R.N.s AND L.P.N.s WHO ARE EMPLOYEES WHO ARE GOING TO
5 BE COVERED BY WORKERS' COMP?

6 BY MR. GOODWYN:

7 OBJECT TO THE FORM.

8 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. YOU AGREE THAT CONTRACT SHOULD BE ENFORCED AS WELL,
10 DON'T YOU?

11 BY MR. GOODWYN:

12 I OBJECT TO THE FORM OF THE QUESTION. IT
13 PRESUMES THAT THAT'S WHAT THE CONTRACT CALLS FOR. I
14 THINK THERE'S SOME CONFLICTING LANGUAGE IN THERE.
15 IT'S NOT CONCLUSIVE. IT'S NOT A FACT IN THE CASE.

16 BY MR. SAMUELS:

17 OBJECT TO SPEAKING OBJECTION, YOUR HONOR.

18 BY MR. GOODWYN:

19 I MEAN, THE QUESTION ASSUMES FACTS NOT IN
20 EVIDENCE. IT'S AN IMPROPER FOUNDATION. HE HAS TO
21 ESTABLISH THAT THAT IS WHAT THE CONTRACT PROVIDES
22 BEFORE PRESUMING THAT IT DOES IN HIS NEXT QUESTION.

23 BY COMMISSIONER JAMES:

24 MR. SAMUELS.

25 BY MR. SAMUELS:

1 I WILL BE MORE THAN HAPPY TO SHOW THE WITNESS
2 THE CONTRACT ONCE AGAIN, YOUR HONOR.

3 **BY COMMISSIONER JAMES:**

4 AND I'M TRYING TO GO BACK THROUGH YOUR
5 QUESTION. IT WAS A LITTLE LENGTHY, SO I'M NOT SURE
6 WHICH... ALL RIGHT. IF YOU CAN JUST MOVE FORWARD
7 WITH THE AGREEMENT.

8 **CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

9 Q. MR. DURHAM, YOU WOULD AGREE THAT MEDUSTRIAL AND THE
10 DEPARTMENT OF CORRECTIONS HAVE A VALID BINDING
11 CONTRACT EXECUTED ON SEPTEMBER 15TH, 2008, BY
12 NATASHA N. RATHBURN, THE DIRECTOR OF OPERATIONS AT
13 THAT TIME; IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND YOU WOULD AGREE THAT THAT CONTRACT WAS ENFORCED
16 ON SEPTEMBER 5TH, 2015, WHEN RACHEL TURNER WAS HELD
17 HOSTAGE, ASSAULTED, THREATENED AND BEATEN; WOULD YOU
18 AGREE WITH THAT?

19 A. I AGREE.

20 Q. AND WOULD YOU AGREE THAT THE CONTRACT STATED --
21 WELL, LET'S BE CLEAR. LET'S START AT THE BEGINNING.
22 YOU'VE SEEN THIS CONTRACT; YOU'VE READ THIS
23 CONTRACT?

24 A. SURE.

25 Q. YOU'RE VERY FAMILIAR WITH IT BY NOW?

1 A. I JUST READ IT A MINUTE AGO.

2 Q. OKAY. DO YOU HAVE A COPY IN FRONT OF YOU, OR IS
3 THIS THE ONLY ONE?

4 A. I THINK THIS IS A COPY OF IT RIGHT HERE (INDICATES).

5 Q. NO, THAT'S THE COUNTRYWIDE.

6 A. WELL, I DID HAVE A COPY. IT'S GONE SOMEWHERE, BUT
7 I'M FAMILIAR WITH WHAT YOU'RE TALKING ABOUT.

8 Q. THIS IS PAGE 254 OF THE CLAIMANT'S APA SUBMISSIONS.
9 SO, LET'S START WITH THE BEGINNING. SO, THIS
10 AGREEMENT IS MADE AND ENTERED INTO BY AND BETWEEN
11 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
12 S.C.D.C., AND MEDUSTRIAL HEALTHCARE, 720 GRACERN
13 ROAD, SUITE 115, COLUMBIA, SOUTH CAROLINA 29210,
14 LICENSED UNDER THE STATE OF CAROLINA, HERE AND AFTER
15 REFERRED TO AS CONTRACTOR. SO, CAN WE AGREE THAT
16 WHEN IT SAYS "S.C.D.C." THAT'S A REFERENCE TO THE
17 DEPARTMENT OF CORRECTIONS, AND WHEN IT SAYS
18 "CONTRACTOR," THAT IS A REFERENCE TO MEDUSTRIAL?

19 A. NO, I DON'T AGREE THAT THE CONTRACTOR IS JUST A
20 REFERENCE TO MEDUSTRIAL. I DON'T. I AGREE THAT WE
21 ARE PART AND PARCEL OF THAT WORD, BUT THEN THAT ALSO
22 IS THE LADIES THAT ARE INDEPENDENT CONTRACTORS WHO
23 ARE WORKING THROUGH US. SO, THERE'S TWO PIECES TO
24 THAT THERE, AND THAT WAS ALWAYS -- BECAUSE I HAD A
25 PROBLEM -- OH, I'M SORRY. I HAD A PROBLEM WITH THIS

1 FROM THE GET GO, YOU KNOW, ABOUT THE EMPLOYEE THING,
2 AND THEN WHEN I REACHED BACK AND ASKED FOR THIS
3 (INDICATES), I'M LIKE "BUT THERE -- IT DOESN'T
4 EXCLUDE IT. IT'S TALKING ABOUT THE INDEPENDENT
5 CONTRACTORS. SO, RIGHT OR WRONG, THIS -- I SEE
6 WHAT'S BEING DONE WHEN I TAKE OVER. I PROCEEDED THE
7 SAME PATH, AND I CONFIRMED THAT THEY KNEW THEY WERE
8 ALL INDEPENDENT CONTRACTORS. RIGHT OR WRONG, THAT'S
9 WHAT HAPPENED.

10 BY MR. SAMUELS:

11 YOUR HONOR, MOVE TO STRIKE AS NON-RESPONSIVE.

12 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. SIR, I'M GOING TO GO BACK ---

14 BY COMMISSIONER JAMES:

15 AND, MR. SAMUELS, I HAVE NOT RULED, BUT THE
16 QUESTION WAS THE MEANING OF THE TERM AS FAR AS THE
17 CONTRACTOR, AND SO THERE WAS AN ANSWER BEYOND THE
18 QUESTION IS WHAT YOU'RE SAYING?

19 BY MR. SAMUELS:

20 THE QUESTION RELATED SPECIFICALLY TO THE FIRST
21 PARAGRAPH THAT STATES ---

22 BY COMMISSIONER JAMES:

23 WITH THE IN QUESTION CONTRACTOR?

24 BY MR. SAMUELS:

25 YES, MEDUSTRIAL HERE AND AFTER REFERRED TO AS

1 CONTRACTOR.

2 BY COMMISSIONER JAMES:

3 SO, WHAT PART ARE YOU WANTING TO STRIKE, SIR?

4 BY MR. SAMUELS:

5 I WANT TO STRIKE HIS ARGUMENTATIVE TESTIMONY
6 DEALING NOT WITH THAT PARAGRAPH. HE GAVE A NON-
7 RESPONSIVE ANSWER ARGUING THE SAME THING THAT MR.
8 SEARS ARGUED TO TRY TO INJECT SOME AMBIGUITY INTO A
9 NON-AMBIGUOUS CONTRACT.

10 BY MR. GOODWYN:

11 I OBJECT. THAT'S HIS INTERPRETATION THAT IT'S
12 NOT AMBIGUOUS.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT.

15 BY MR. GOODWYN:

16 HE IS SAYING I THINK IT IS AMBIGUOUS.

17 BY COMMISSIONER JAMES:

18 I'M NOT GOING TO STRIKE IT. IF YOU CAN GO ON
19 WITH YOUR NEXT QUESTION.

20 BY MR. SAMUELS:

21 THANK YOU.

22 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

23 Q. ALL RIGHT, SIR. LET'S GO DOWN TO PARAGRAPH ONE A.
24 THIS IS THE ONE IN YOUR LAST ANSWER, YOU SAID YOU
25 HAD A PROBLEM WITH THIS PARAGRAPH BECAUSE IT SAYS

1 "EMPLOYEES." IS THAT RIGHT?

2 A. YES.

3 Q. LET'S TAKE IT SLOW. SO, "R.N.s, L.P.N.s ASSIGNED TO
4 S.C.D.C. BY CONTRACTOR ARE EMPLOYEES OF THE
5 CONTRACTOR AND NOT S.C.D.C." RIGHT? SO, WOULD YOU
6 AGREE WITH ME THAT R.N.s, L.P.N.s, THOSE REFER TO
7 THE NURSES LIKE MS. TURNER, CORRECT?

8 A. (NODS HEAD UP AND DOWN)

9 Q. IS THAT A YES, SIR?

10 A. YES. I'M SORRY.

11 Q. AND ---

12 BY COMMISSIONER JAMES:

13 AND, MR. DURHAM, LET ME GO AHEAD AND SAY WHEN -
14 - IF YOU NOD YOUR HEAD OR SAY "UH-HUH" OR "UH-UH,"
15 ONE OF THE ATTORNEYS OR MYSELF IS GOING TO ASK YOU -
16 --

17 BY THE WITNESS:

18 I KNOW, I'M SORRY.

19 BY COMMISSIONER JAMES:

20 --- IF IT'S A YES OR NO. SO, NOBODY IS TRYING
21 TO BE ---

22 BY THE WITNESS:

23 I KNOW.

24 BY COMMISSIONER JAMES:

25 --- RUDE TO YOU. WE'RE JUST TRYING TO MAKE

1 SURE WE MAKE THE COURT REPORTER'S JOB EASIER.

2 BY THE WITNESS:

3 YES, MA'AM.

4 BY COMMISSIONER JAMES:

5 OKAY.

6 BY THE WITNESS:

7 I UNDERSTAND. I'M SORRY.

8 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. ALL RIGHT. SO, "WHEN ASSIGNED TO S.C.D.C. BY
10 CONTRACTOR," THE CONTRACTOR IN THAT SENTENCE REFERS
11 TO MEDUSTRIAL, DOES IT NOT?

12 A. BY CONTRACTOR, YES.

13 Q. YES, OKAY. AND THE SENTENCE GOES ON TO SAY THAT
14 THOSE NURSES ARE EMPLOYEES OF MEDUSTRIAL?

15 A. RIGHT.

16 Q. IT DOES SAY THAT. NOW, I WANT TO TAKE YOU TO
17 ANOTHER SENTENCE. I'M GOING TO GO TO PAGE 258,
18 CLAIMANT'S APA SUBMISSIONS; THERE'S A PROVISION
19 ABOUT INSURANCE. SO, LET'S BEGIN WITH THAT. FIRST
20 WORD IS "CONTRACTOR." WOULD YOU AGREE THAT REFERS
21 TO MEDUSTRIAL?

22 A. CORRECT.

23 Q. "MEDUSTRIAL SHALL PROVIDE WORKERS' COMPENSATION
24 INSURANCE FOR MEDUSTRIAL'S EMPLOYEES WHO ARE
25 ASSIGNED TO S.C.D.C.," AND I CHANGED "CONTRACTOR" TO

1 "MEDUSTRIAL," ---

2 A. THAT'S CORRECT.

3 Q. --- BUT WOULD YOU AGREE THAT'S A CORRECT MEANING?

4 A. THAT'S CORRECT.

5 Q. DO YOU THINK YOU AND S.C.D.C. SHOULD BE HELD TO THE
6 TERMS OF THAT CONTRACT?

7 A. YES.

8 Q. DID CONDUSTRIAL PROVIDE WORKERS' COMPENSATION
9 INSURANCE COVERAGE TO THE NURSES SUCH AS RACHEL
10 TURNER ON SEPTEMBER 5TH, 2015, WHEN SHE WAS ASSIGNED
11 TO THE DEPARTMENT OF CORRECTIONS?

12 A. NO.

13 Q. DOES CONDUSTRIAL NOW AS OF NOVEMBER 2017 HAVE IN
14 PLACE A WORKERS' COMP POLICY THAT WILL INSURE ALL
15 THE NURSES ASSIGNED TO THE DEPARTMENT OF CORRECTIONS
16 BY CONDUSTRIAL?

17 A. IT DOES.

18 Q. WHAT IS THE PREMIUM FOR THAT POLICY?

19 A. I DON'T KNOW WHAT THE TOTAL PREMIUM IS. I CAN ONLY
20 TELL YOU WHAT THE PER RATE IS, AND THE PER RATE RUNS
21 AT BEING ABOUT RIGHT AT FIVE PERCENT PLUS ARAP
22 AND THE E.M.R., SO IT PROBABLY WINDS UP BEING A
23 TOTAL OF SEVEN PERCENT PAYROLL OR SOMETHING LIKE
24 THAT.

25 Q. WHAT IS YOUR TOTAL PAYROLL FOR NURSES? I THINK YOU

1 EARLIER TESTIFIED, WHAT, ABOUT \$800,000?

2 A. THE TOTAL PAYROLL FOR THE NON ---

3 Q. FOR THE NURSES YOU CALL THE 1099 NURSES.

4 A. YEAH, I THINK IT WILL WIND UP BEING AROUND SOMEWHERE
5 -- DEPENDING ON THE YEAR, BETWEEN 800 AND A MILLION
6 BUCKS.

7 Q. OKAY.

8 A. I THINK.

9 Q. AND -- BECAUSE MS. TURNER IN THE PREVIOUS 52 WEEKS
10 BEFORE HER WORK ACCIDENT AND INJURY, Y'ALL PAID HER
11 WAGES OF \$58,783.63.

12 A. OKAY.

13 Q. DOES THAT SOUND ABOUT RIGHT?

14 A. SOUNDS ABOUT RIGHT, AND SHE WAS A LADY THAT WORKED
15 MORE OFTEN, TOOK MORE SHIFTS THAN OTHERS DID. SO,
16 IF YOU HAD HER AS A FULL-TIME EMPLOYEE, AND YOU
17 BASICALLY HAVE THE EQUIVALENT OF ABOUT 15 FULL-TIME
18 EMPLOYEES THERE, YOU CAN TAKE HER AMOUNT, THAT WOULD
19 BE YOUR \$800,000.

20 Q. OKAY. AND THAT'S KIND OF WHAT CONFUSES ME, BECAUSE
21 THERE WAS TESTIMONY EARLIER, IT WAS FROM MR. SEARS,
22 I THINK MAYBE IN HIS DEPOSITION, THAT THERE WAS
23 SOMETHING LIKE 100, 130 NURSES ---

24 A. OKAY, THAT'S ---

25 Q. --- UNDER THAT PROGRAM?

- 1 A. WHAT THEY DID IS THAT'S THE GROUP OF NURSES. IF
2 THEY WERE EMPLOYEES, IF THAT SAME GROUP WERE
3 EMPLOYEE NURSES, YOU COULD DO THAT WITH ABOUT 15
4 FULL-TIME PEOPLE, BUT BECAUSE THEY'RE NOT WILLING TO
5 WORK FULL TIME AND WORK AS ASSIGNED, THEN IT TAKES A
6 NUMBER OF PEOPLE TO FILL 15 FULL-TIME JOBS, THE
7 EQUIVALENCY OF 15 FULL-TIME JOBS, BECAUSE THEY DON'T
8 NORMALLY WORK 40 HOURS A WEEK AND DON'T WANT TO WORK
9 EVERY WEEK AND MIGHT NOT WANT TO WORK EVERY MONTH.
10 AT ANY ONE TIME, THE AVERAGE WOULD BE ABOUT 15
11 NURSES WORKING THAT WEEK ON THE JOB.
- 12 Q. GOTCHA. SO, YOU'VE GOT BASICALLY SAY ABOUT 15 FULL-
13 TIME NURSES AND ABOUT 90 OR 100 PART-TIME NURSES?
- 14 A. NO, NO. WHAT I'M SAYING IS OUT OF THAT, IT TAKES
15 THAT 130 TO MAKE THE EQUIVALENCY OF 15 FULL-TIME
16 LADIES. FULL-TIME NURSES. I KEEP SAYING "LADIES,"
17 BECAUSE MOST OF THEM ARE WOMEN, BUT SOME OF THEM ARE
18 MEN. IF THEY WOULD WORK ALL THE ASSIGNMENTS AS
19 GIVEN TO THEM, I COULD TAKE A 15 GROUP PERSON AND
20 FILL 52 WEEKS OF SHIFTS, OKAY? WHEN YOU HAVE A
21 NUMEROUS OF PEOPLE THAT DON'T WANT TO WORK THIS
22 WEEK, DON'T WANT TO WORK FRIDAY, BUT THEY'VE GOT TO
23 HAVE PEOPLE AT THE PRISON, BECAUSE THEY HAVE
24 REQUIREMENTS IN PLACE. YOU'VE GOT TO HAVE "X"
25 AMOUNT OF PEOPLE HERE ON STAFF MEDICAL PEOPLE. I

1 HAVE TO PULL SOMEONE IN TO WORK A SHIFT HERE, AND
2 THAT PERSON MAY NOT WORK AGAIN FOR ANOTHER SIX
3 MONTHS, AND I MIGHT HAVE TO PULL ANOTHER PERSON IN
4 TO FILL A SHIFT. SO, THAT'S HOW THAT NUMBER GOES UP
5 TO 135, AND IT'S JUST TO FILL THAT 15 -- THAT 12 TO
6 18 FULL-TIME EQUIVALENCY POSITIONS. OKAY?

7 Q. SO, RACHEL TURNER TREATED HER JOB LIKE FULL-TIME
8 EMPLOYMENT?

9 A. SHE -- I WOULDN'T SAY SHE TREATED IT FULL-TIME
10 EMPLOYMENT, BUT SHE HAD THE EQUIVALENCY HOURS TO
11 WHERE SHE COULD HAVE CERTAINLY BEEN A FULL-TIME
12 EMPLOYEE, AND I WOULD HAVE BEEN HAPPY FOR HER TO
13 HAVE BEEN.

14 Q. I MEAN, \$58,000 IN PAYROLL, ---

15 A. RIGHT.

16 Q. --- THAT'S A LOT OF WORK?

17 A. YES, YOU AND ME IS ON THE SAME PAGE, BROTHER.

18 Q. NOW, YOU INDICATED THAT IT WOULD BE EASY IF SOMEBODY
19 REQUESTED TO CHANGE THEIR STATUS FROM AN INDEPENDENT
20 CONTRACTOR TO AN EMPLOYEE WITHIN THE MEDUSTRIAL
21 RUBRIC. SOME OF THE NURSES DID ATTEMPT TO GET
22 EMPLOYEE BENEFITS, DID THEY NOT?

23 A. THERE HAS BEEN ONE OR TWO THAT HAVE WANTED BENEFITS,
24 BUT THEY WEREN'T WILLING TO BE EMPLOYEES. WHEN YOU
25 WANT TO BE AN EMPLOYEE, THERE IS CRITERIA YOU HAVE

1 TO MEET TO BE AN EMPLOYEE, AND THERE ARE NURSES THAT
2 ARE EMPLOYEES, BUT I'M TALKING ABOUT PEOPLE THAT
3 WORKED AS I.C.s., AND THEY WANT TO BE EMPLOYEES. I
4 MEAN, THAT'S GREAT, I WANT YOU TO BE AN EMPLOYEE,
5 BUT YOU HAVE TO AGREE, THIS IS YOUR WAGE; THIS IS
6 YOUR ASSIGNMENTS. THESE WILL BE WITHIN THIS RANGE
7 OF YOUR HOME. THIS DOESN'T INCLUDE -- I CAN'T SEND
8 YOU TO TIMBUKTU. IT'S GOING TO BE WITHIN 30 MILES
9 OF YOUR HOUSE, AND IF I HAVE THAT -- AN ASSIGNMENT
10 FOR YOU WITHIN THAT TIME FRAME THAT YOU ARE
11 AVAILABLE, YOU WILL AGREE TO GO TO WORK, AND THEY
12 ARE NOT WILLING TO DO THAT, SO THEY CAN'T BE
13 EMPLOYEES.

14 Q. BUT DIDN'T YOU HAVE AT LEAST FOUR NURSES WHO FILED
15 FOR UNEMPLOYMENT BENEFITS?

16 A. I DID.

17 Q. SO, AT LEAST THERE ARE FOUR NURSES THAT WE KNOW OF
18 THAT EITHER THOUGHT THEY WERE EMPLOYEES ---

19 A. NO, NO, NO.

20 Q. --- OR WERE TRYING TO CHANGE THEIR STATUS BECAUSE
21 THEY WENT -- NOW, YOU WON. I GIVE YOU CREDIT; YOU
22 WON.

23 A. THEY KNEW THEY ---

24 Q. YOU WON.

25 A. --- WEREN'T EMPLOYEES.

1 Q. YOU KNOW.

2 A. THEY KNEW THEY WEREN'T. THE CRAZY THING WAS THAT
3 THOSE LADIES HADN'T EVEN WORKED ENOUGH HAD THEY BEEN
4 EMPLOYEES TO HAVE GOTTEN UNEMPLOYMENT INSURANCE, AND
5 WHEN YOU WALK OFF OF A JOB REGARDLESS IF THEY WERE
6 INDEPENDENTS OR EMPLOYEES, IF THEY HAD BEEN
7 EMPLOYEES, MY FIRST CLAIM WOULD HAVE BEEN "YOU CAN'T
8 WALK OFF THE JOB AND NOT SHOW BACK UP AND GO FILE
9 FOR UNEMPLOYMENT. IF YOU CAN GO TO THE UNEMPLOYMENT
10 OFFICE THAT DAY, YOU SHOULD HAVE CAME TO WORK."

11 Q. I DO WANT TO GO OVER SOMETHING WITH YOU, BECAUSE
12 YOU'VE GOT THIS FORM AT CONDUSTRIAL'S APA
13 SUBMISSIONS PAGE 150. I WANT TO KIND OF ASK YOU
14 SOME QUESTIONS ABOUT IT.

15 A. SURE.

16 Q. DO YOU REMEMBER -- THIS IS KIND OF -- DO YOU
17 REMEMBER YOUR LAWYER ASKING YOU ABOUT THIS?

18 A. YES, THE I.R.S. DETERMINATION.

19 Q. YEAH. SO, MY QUESTION NUMBER ONE, ---

20 A. CAN I LOOK AT IT?

21 Q. SURE. I JUST HAVE TO COME OVER TO YOU ---

22 A. ALL RIGHT.

23 Q. --- SO WE CAN LOOK AT IT TOGETHER.

24 A. THAT'S FINE. I'M NOT GOING TO BITE.

25 Q. OKAY. NOW, THE FIRST QUESTION IS ABOUT

1 INSTRUCTIONS.

2 A. UH-HUH.

3 Q. "AN EMPLOYER RECEIVES INSTRUCTIONS ABOUT WHEN, WHERE
4 AND HOW THE WORK IS TO BE PERFORMED. INDEPENDENT
5 CONTRACTOR'S JOB IS A ROADWAY WITH FEW IF ANY
6 INSTRUCTIONS AS THE DETAILS OR METHODS OF THE WORK."

7 A. CORRECT.

8 Q. IN FACT, AND YOU SAID I GUESS THIS SAYS NO.

9 A. NO.

10 Q. I GUESS THAT MEANS ---

11 A. WE DON'T DO THAT.

12 Q. YOU DON'T DO THAT?

13 A. CORRECT, NOT FOR THESE LADIES. WE DO IT FOR THE
14 CONSTRUCTION, MANUFACTURING AND FOR THE EMPLOYEES
15 THAT WORK IN THE NURSING HOMES AND STUFF LIKE THAT
16 THAT ARE EMPLOYEES, ABSOLUTELY WE DO, BUT NOT UNDER
17 THIS SITUATION. THIS SITUATION IS ABERRANT. IT'S
18 TOTALLY DIFFERENT.

19 Q. WELL, ONCE THE SCHEDULE IS MADE OUT, ---

20 A. I DON'T MAKE OUT THE SCHEDULE.

21 Q. THE DEPARTMENT OF CORRECTIONS WORKS TOGETHER WITH
22 CONDUCTRIAL'S MANAGERS --

23 A. NO.

24 Q. --- AND THE NURSES TO MAKE OUT THE SCHEDULE.

25 A. ARE YOU ASKING A QUESTION?

1 Q. I'M TELLING YOU WHAT THE RECORDS SHOW.

2 BY MS. RICHARDSON:

3 I'M SORRY, I CAN'T HEAR.

4 BY THE WITNESS:

5 I SAID IS HE ASKING ME.

6 BY MR. GOODWYN:

7 IT SOUNDS LIKE HE'S TELLING HIM.

8 BY THE WITNESS:

9 I DON'T THINK HE'S ASKING ME.

10 BY MR. GOODWYN:

11 THE QUESTION WAS A STATEMENT. IT WASN'T A
12 QUESTION. HE DISAGREES WITH THE STATEMENT, I THINK,
13 BUT HE HASN'T ASKED HIM ANYTHING.

14 BY COMMISSIONER JAMES:

15 ALL RIGHT. MR. SAMUELS, CAN YOU POSE A
16 QUESTION?

17 BY MR. SAMUELS:

18 I CAN.

19 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

20 Q. ISN'T IT TRUE THAT THE NURSES KNOW HOW AND WHERE TO
21 GO TO WORK WHEN THE SCHEDULE COMES OUT?

22 A. THE PROCESS IS THEY SEND THE SCHEDULE TO MEDUSTRIAL.
23 THEY ALSO SEND THE SCHEDULE TO OTHER STAFFING
24 AGENCIES, AND THEN MEDUSTRIAL WILL CONTACT THE
25 LADIES THAT WE HAVE ON OUR LIST TO SEE IF THEY WANT

1 TO FILL ANY OF THOSE SHIFTS THAT THEY HAVE MADE
2 AVAILABLE. THAT'S THE PROCESS.

3 Q. AND THEY WILL SOMETIMES IF SOMEBODY WANTS TO CHANGE
4 A SHIFT, PARTICULARLY IF IT TAKES THEM OVER 36
5 HOURS, THEY HAVE TO GET APPROVAL FROM MEDUSTRIAL;
6 ISN'T THAT TRUE?

7 A. THE WAY THAT THAT WOULD COME UP -- IN OTHER WORDS,
8 WHAT YOU JUST SAID IS TRUE, BUT NOT ENTIRELY TRUE,
9 SO CAN I EXPLAIN IT?

10 BY MR. GOODWYN:

11 YES.

12 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. YOU HAVE THAT RIGHT, YES, SIR, YOU MAY.

14 A. OKAY. IN ORDER TO AVOID OVERTIME ISSUES, WHAT WOULD
15 HAPPEN IS WE WOULD NEVER SCHEDULE ANY NURSE FOR
16 OVERTIME. WHAT WOULD HAPPEN IS AS I TOLD YOU
17 EARLIER, WE HAVE NO CONTROL AND NO WAY OF KNOWING
18 WHAT GOES ON IN THE FACILITY, AND ONCE THEY GET INTO
19 THE FACILITY, IF SOMEBODY ELSE, PERHAPS A S.C.D.C.
20 EMPLOYEE OF THEIR OWN OR WHATEVER DOES NOT SHOW OR
21 LEAVES AND GOES HOME, AND THEY NEED THAT PERSON
22 THERE, THAT PERSON -- OUR PEOPLE WOULD OFTEN
23 VOLUNTEER FOR ANOTHER SHIFT, WHICH THROWS THEM INTO
24 THE OVERTIME. BUT THE PROBLEM WITH THAT WAS
25 S.C.D.C. WASN'T WILLING TO PAY FOR OVERTIME. SO,

1 THE WAY WE CONTROLLED IT WAS YOU CAN'T GET PAID TO
2 WORK OVERTIME UNLESS YOU CALL -- THEY CALL US AND
3 YOU CALL US. IF YOU DECIDE TO TAKE IT UPON YOURSELF
4 TO WORK SHIFTS THAT WE DID NOT SEND YOU TO DO, THAT
5 IS YOUR -- THAT'S ON YOU. OKAY, YOU DID THAT,
6 BECAUSE I HAVE NO CONTROL OVER THAT. I ONLY HAVE
7 THE AUTHORIZATION FOR S.C.D.C. TO FILL THIS ORDER
8 FOR THIS SHIFT. WHATEVER WAS DONE AFTER THAT I AM
9 NOT PRIVY TO, I CAN'T BE IN CONTROL, AND THAT'S ALL
10 -- THAT'S ALL I CAN TELL YOU.

11 Q. SO, IT'S IMPORTANT FOR YOU TO HAVE SOME CONTROL OF
12 THE PROCESS?

13 A. I DON'T CALL THAT HAVING ANY CONTROL OVER ANYTHING.
14 SO, I GUESS THAT DEPENDS ON THE DEFINITION OF
15 CONTROL, BECAUSE IF IT WAS CONTROL, WE WOULD BE
16 TELLING YOU "HEY, YOU'RE WORKING THIS HERE. YOU'RE
17 OFF THAT HOUR. YOU'RE COMING BACK AT 40 HOURS.
18 OKAY, Y'ALL GOING TO WORK OVER 40, I'M PAYING YOU
19 OVERTIME AT 40. YOU NEED TO STAY THERE." THAT'S
20 CONTROL. I DON'T HAVE ANY OF THAT, AND THEY --
21 NOBODY THAT'S AN EMPLOYEE OF MINE WOULD EVER DO
22 THAT, BECAUSE THEY WOULD AUTOMATICALLY COORDINATE
23 THAT WITH EITHER ME OR OUR MANAGERS.

24 Q. DO YOU IMAGINE MEDUSTRIAL HAS THE SAME PROBLEMS WITH
25 THAT AS YOU DO?

1 A. I'M SORRY?

2 Q. DO YOU THINK MEDUSTRIAL HAS THE SAME PROBLEMS WITH
3 THAT THAT YOU DO?

4 A. DOES MEDUSTRIAL ---

5 Q. MEDUSTRIAL -- YOUR COMPETITOR THAT'S ONLY ON -- OH,
6 I'M SORRY.

7 BY MR. GOODWYN:

8 MEDFIRST.

9 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

10 Q. MEDFIRST, I MEANT MEDFIRST. FORGIVE ME. BAD
11 QUESTION.

12 A. I WAS GETTING READY TO SAY.

13 Q. DOES MEDFIRST HAVE THE SAME PROBLEMS YOU DO? THEY
14 DO THE SAME SCHEDULING SYSTEM.

15 BY MR. GOODWYN:

16 OBJECTION, CALLS FOR SPECULATION.

17 BY COMMISSIONER JAMES:

18 WELL, ---

19 BY MR. SAMUELS:

20 HE ALREADY TESTIFIED THE SCHEDULE WAS SENT TO
21 THEM AND YOU.

22 BY THE WITNESS:

23 I KNOW THEY TRIED TO GET ME TO BUY HIS COMPANY,
24 SO I CAN'T ANSWER THAT. I DON'T KNOW WHAT HIS
25 PROBLEMS ARE.

1 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

2 Q. WHEN THE NURSES ARE ACTUALLY AT WORK, DO YOU AGREE
3 THAT THEY ARE UNDER THE SUPERVISION AND HAD TO
4 COMPLY WITH INSTRUCTIONS FROM DOCTORS AND CHARGE
5 NURSES AND SUPERVISORS?

6 BY MR. GOODWYN:

7 OBJECTION, CALLS FOR SPECULATION. AGAIN, HE
8 HAS ALREADY SAID HE DOESN'T GO IN THERE AND DOESN'T
9 KNOW WHAT GOES ON.

10 BY COMMISSIONER JAMES:

11 IF THE -- IF THE WITNESS HAS KNOWLEDGE.

12 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

13 Q. DO YOU KNOW THE ANSWER TO THE QUESTION?

14 A. THAT WOULD BE MY EXPECTATION.

15 Q. OKAY. SO, I'LL MOVE ON TO THE NEXT QUESTION, TWO.
16 YOU SAY "PROVIDE TRAINING, NO, NEVER." ISN'T IT
17 TRUE THAT NURSES GOING TO S.C.D.C. HAVE TO GO
18 THROUGH AN ORIENTATION TRAINING PROGRAM?

19 A. NOT FOR ME THEY DON'T.

20 Q. SO ---

21 A. THEY DO AT S.C.D.C.

22 Q. RIGHT.

23 A. BUT NOT FOR MEDUSTRIAL. ONCE THEY WANT TO GO TO
24 S.C.D.C., WE HAND THEM OFF TO S.C.D.C., AND S.C.D.C.
25 PUTS THEM THROUGH THEIR PROCESS.

1 Q. AND YOU PAY THEM FOR THAT TIME?

2 A. I PAY THEM FOR THAT TIME. THEY PAY ME FOR THAT
3 TIME.

4 Q. RIGHT. SO, THEY HAVE TO GO THROUGH AN ORIENTATION
5 AND TRAINING PROGRAM FOR WHICH S.C.D.C. PAID
6 MEDUSTRIAL, AND MEDUSTRIAL PAYS THE NURSES; WOULD
7 YOU AGREE WITH THAT?

8 A. YEAH, I AGREE WITH THAT.

9 Q. INTEGRATION, YOU SAY "NO, CONDUSTRIAL IS NOT A
10 MEDICAL PROVIDER." ISN'T IT TRUE THOUGH THAT YOU
11 BASICALLY HAVE TWO LINES OF BUSINESS. YOU PROVIDE
12 CONSTRUCTION SERVICES, AND YOU PROVIDE MEDICAL
13 SERVICES. IS THAT RIGHT?

14 A. I DON'T PROVIDE CONSTRUCTION SERVICES; I PROVIDE
15 CONSTRUCTION STAFFING.

16 Q. OKAY.

17 A. STAFFING IS PROVIDING PEOPLE. WE ARE NOT A
18 CONTRACTOR. ON THAT SIDE OF IT, WE DO NOT PROVIDE
19 THE TOOLS. WE DO NOT PROVIDE ANY OF THE THINGS THAT
20 WOULD BE PROVIDED THAT WOULD MAKE THEM A PLUMBER OR
21 A PIPEFITTER OR WHATEVER. WE DO NOT PROVIDE
22 ANYTHING LIKE THAT. WE PROVIDE THE EMPLOYMENT. WE
23 PROVIDE THE JOB OPPORTUNITY. WE PROVIDE THEIR
24 BENEFITS, BUT BEYOND THAT, WE DON'T PROVIDE
25 TRANSPORTATION OR ANYTHING ELSE. WE ARE A CONDUIT

1 FOR OUR CLIENTS TO HAVE PEOPLE THAT WANT TO DO THAT
2 JOB ASSIGNMENT.

3 Q. AND OTHER THAN PERHAPS THE BENEFITS, THE EXACT SAME
4 WOULD BE TRUE OF THE NURSES?

5 A. NO, IT'S NOT. IF -- IF A FACILITY THAT I'M THERE,
6 CAN GET INTO, CAN TELL THEM "YOU NEED TO DO THIS.
7 YOU NEED TO DO THAT," THEN, YES, IT WOULD BE THE
8 SAME. LIKE WE DO WITH CONSTRUCTION AND
9 MANUFACTURING, WE WILL GO ONTO THE MANUFACTURING
10 SITE, AND WE WILL REVIEW WHAT THOSE PEOPLE ARE
11 DOING, WHAT KIND OF PRODUCTION THEY'RE DOING. WE
12 WILL REVIEW HOW THEY HAVE -- WHETHER THEY ARE
13 MEETING THE REQUIREMENTS OF THE CLIENT. IS HE DOING
14 ENOUGH FOOTAGE OF WALLS AN HOUR, ET CETERA, AND THEN
15 WE WILL MEET WITH THAT CLIENT AND WITH THAT EMPLOYEE
16 AND SAY "YOU NEED TO DO THIS, THIS, THIS, AND THIS,
17 TO IMPROVE THIS." BUT NONE OF THAT COMES TO PLAY ON
18 THE MEDICAL SIDE. ONE, I'M NOT QUALIFIED TO DO IT,
19 AND NOBODY THAT WORKS FOR ME IS QUALIFIED TO DO IT,
20 AND IT'S NOTHING THAT I WOULD EVER -- IT'S JUST NOT
21 IN OUR BUSINESS SCOPE. IT'S JUST NOT.

22 Q. DOESN'T MEDUSTRIAL MAKE MONEY OFF OF THE LABOR THE
23 NURSES DO IN THE DEPARTMENT OF CORRECTIONS?

24 A. YES, WE DO.

25 Q. AND THOSE NURSES ARE PROVIDING MEDICAL SERVICES TO

1 INMATES OF THE DEPARTMENT OF CORRECTIONS; ARE THEY
2 NOT?

3 A. I WOULD ASSUME ONCE THEY GET IN THERE, THAT'S WHAT
4 THEY'RE DOING.

5 Q. THAT'S AN ESSENTIAL PART OF YOUR BUSINESS. IF YOU
6 DON'T HAVE THEM DOING THAT WORK, MEDUSTRIAL DOESN'T
7 MAKE ANY MONEY, DOES IT?

8 A. YEAH, IF THEY'RE NOT WORKING SOMEWHERE, WE'RE NOT
9 MAKING ANY MONEY OFF OF THEM, AT ALL.

10 Q. QUESTION ABOUT SERVICES RENDERED PERSONALLY. NURSES
11 OFTEN SWITCH OFF?

12 A. YES.

13 Q. HAVE YOU EVER WORKED IN A RESTAURANT?

14 A. OWNED THREE.

15 Q. OWNED THREE?

16 A. UH-HUH.

17 Q. EVER HAVE YOUR WAITRESSES SWITCH OFF?

18 A. OH, YES.

19 Q. ALL THE TIME?

20 A. THAT'S CORRECT.

21 Q. THAT DIDN'T MAKE THEM INDEPENDENT CONTRACTORS, DID
22 IT?

23 A. NO.

24 Q. YOUR WAITRESSES WERE EMPLOYEES?

25 A. BECAUSE I OWNED THE RESTAURANT, BUT I DON'T OWN THE

1 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND I
2 DON'T OWN ANY OF THE OTHER FACILITIES THAT THESE
3 LADIES WENT TO WORK IN, AND I CAN WALK IN THAT
4 RESTAURANT AND I CAN WALK IN THAT KITCHEN, AND I CAN
5 TELL THEM YOU DO THIS AND YOU DO THAT. I CANNOT
6 WALK INTO THE SOUTH CAROLINA DEPARTMENT OF
7 CORRECTIONS, PERIOD, MUCH LESS TELL ANYBODY ANYTHING
8 TO DO. I'M NOT QUALIFIED TO DO THAT IF I COULD HAVE
9 GOT IN THERE.

10 Q. BUT S.C.D.C. HAS PEOPLE WHO ARE QUALIFIED AND HAVE
11 THE AUTHORITY TO TELL THEM WHAT TO DO AND HOW TO DO
12 IT?

13 A. YES, I WOULD CERTAINLY ASSUME SO, YES, SIR.

14 Q. OF COURSE, THERE'S A LOT OF QUESTIONING ABOUT HIRING
15 AND SUPERVISING AND PAYING HELPERS, BUT NURSES NEVER
16 SUPERVISE ANYBODY, AND THEY DON'T -- THEY'RE
17 INDIVIDUALS, RIGHT?

18 A. AS FAR AS I KNOW.

19 Q. CONTINUING RELATIONSHIP. THE EMPLOYEE OFTEN
20 CONTINUES TO WORK FOR THE SAME EMPLOYER MONTH AFTER
21 MONTH OR YEAR AFTER YEAR. HOW LONG DID RACHEL
22 TURNER WORK FOR MEDUSTRIAL?

23 A. SHE WAS THERE -- SHE WAS ONE THAT HAD STUCK IN FOR A
24 BETTER PART OF -- THAN MOST, ABSOLUTELY, AND THAT'S
25 CERTAINLY ONE OF THE REASONS WHY I STEPPED UP TO THE

1 PLATE AND OFFERED TO HELP HER.

2 Q. SHE WORKED FULL TIME FOR YOUR COMPANY FOR TWO-AND-A-
3 HALF, ALMOST THREE YEARS; ISN'T THAT TRUE?

4 A. SHE'S AN INDEPENDENT CONTRACTOR. THERE IS NO STATUS
5 FOR FULL TIME. FULL TIME IS MEETING AN EMPLOYMENT
6 THING, AND THAT GOES TO ALL THE OTHER THINGS
7 ASSOCIATED WITH EMPLOYMENT. WHEN YOU'RE A FULL-TIME
8 CONTRACTOR, YOU'RE JUST WORKING WHATEVER HOURS YOU
9 WANT TO WORK WHENEVER YOU WANT TO WORK THEM. THERE
10 IS NO FULL TIME DEFINITION.

11 Q. YOU'RE NOT REALLY UNDERSTANDING MY QUESTION.

12 A. I UNDERSTOOD IT EXACTLY.

13 Q. SHE WORKED ENOUGH TO MAKE \$58,000 IN ONE 12-MONTH
14 PERIOD, AND THAT WAS TYPICAL FOR HER. THAT WAS
15 EQUIVALENT TO BEING A FULL-TIME EMPLOYEE, WAS IT
16 NOT?

17 A. CERTAINLY -- SHE CERTAINLY COULD HAVE QUALIFIED HAD
18 SHE CHOSEN TO BE A FULL-TIME EMPLOYEE. I AGREE ONE
19 HUNDRED PERCENT. I ENCOURAGED HER AND EVERYBODY
20 ELSE, "PLEASE, DO IT. PLEASE, DO IT. PLEASE, DO
21 IT." YOU CAN'T BEG BUT SO MUCH.

22 Q. I GOTCHA.

23 A. GOOD.

24 Q. AND I GUESS THERE WERE SOME -- SOME OF THE NURSES,
25 THEY STARTED COMPLAINING ABOUT NOT GETTING PAID

1 OVERTIME WHEN THEY WORKED OVER 40 HOURS.

2 A. THEY DID.

3 Q. IN FACT, DID YOU KNOW RACHEL TURNER WAS ACTUALLY ONE
4 OF THOSE?

5 A. SHE WAS.

6 Q. I'M NOT GOING TO GO THROUGH ALL OF THESE ONE BY ONE.

7 A. THANK YOU.

8 Q. I'M GOING TO SAVE YOU SOME TIME, BUT I WILL ASK YOU
9 ABOUT A COUPLE MORE.

10 A. OKAY.

11 Q. THE NURSES THAT WERE WORKING AT S.C.D.C., DO YOU
12 AGREE THEY'VE GOT TO USE MEDICATIONS, SYRINGES,
13 MEDICAL DEVICES AT THEIR BEDS, X-RAY MACHINES, I.V.
14 DRIPS, ALL KINDS OF EQUIPMENT THAT IS NECESSARY TO
15 PROVIDE MEDICAL TREATMENT?

16 A. I WOULD CERTAINLY ASSUME SO, YES, SIR.

17 Q. NONE OF THE NURSES PROVIDED ANY OF THAT; THAT WAS
18 ALL PROVIDED BY THE DEPARTMENT OF CORRECTIONS,
19 WASN'T IT?

20 A. YES, SIR.

21 Q. SO, THE SUBSTANTIAL FINANCIAL INVESTMENT, THAT WAS A
22 SUBSTANTIAL FINANCIAL INVESTMENT MADE BY THE
23 DEPARTMENT OF CORRECTIONS TO PROVIDE THOSE SERVICES?

24 BY MR. GOODWYN:

25 OBJECTION, CALLS FOR SPECULATION. HE DOESN'T

KNOW THE DEPARTMENT OF CORRECTIONS UNLESS THERE IS A
FOUNDATION.

BY COMMISSIONER JAMES:

SUSTAINED.

CROSS EXAMINATION RESUMED BY MR. SAMUELS:

Q. HAVE YOU EVER ACTUALLY BEEN INSIDE THE DEPARTMENT OF
CORRECTIONS?

A. NO.

Q. NEVER ONCE?

A. NEVER ONCE.

Q. YOU'RE SENDING ALL OF THOSE PEOPLE OVER THERE, AND
YOU DON'T EVEN KNOW WHAT IT'S LIKE?

BY MR. GOODWYN:

OBJECTION, ASKED AND ANSWERED.

BY MR. SAMUELS:

IT'S A DIFFERENT QUESTION, YOUR HONOR.

BY COMMISSIONER JAMES:

OVERRULED. YOU CAN ANSWER THE QUESTION,
PLEASE, SIR.

THE WITNESS ANSWERS:

A. I WOULD BE GLAD TO GO. THE ONLY TIME WE'VE EVER
BEEN ALLOWED TO GO WAS WHEN THERE WAS A CLAIM, AND
THEY WON'T LET THE PRISONER OUT TO HAVE SOMEONE
THERE TO REPRESENT THEM, AND I SEND MR. SEARS.

CROSS EXAMINATION RESUMED BY MR. SAMUELS:

1 Q. ARE YOU TALKING ABOUT LIKE WHEN THINGS GO ON LOOK-
2 DOWN?

3 A. NO. NO, I'M TALKING ABOUT WHEN -- THESE GUYS GET
4 FIXATIONS WITH NURSES, AND WHAT THEY'LL DO, THEY'LL
5 FILE A FRIVOLOUS CLAIM IN ORDER TO GET OUT OF THE
6 JAIL CELL, IN ORDER TO THINKING THEY'RE GOING TO GET
7 TO SPEND SOME TIME WITH THAT NURSE ALONE IN A
8 COURTROOM SETTING. THEN THEY GET REALLY UPSET WHEN
9 SHE DON'T SHOW UP, AND I SEND TOM SEARS.

10 Q. IS TOM THE ENFORCER, OR ARE YOU THE ENFORCER?

11 A. HE'S THE BAD OPTION.

12 Q. MR. DURHAM.

13 A. YES, SIR.

14 Q. I WANT TO LET YOU KNOW THAT I'M THE IDIOT WHO IS
15 ARGUING THAT IT COSTS LESS TO USE INDEPENDENT
16 CONTRACTORS FOR LABOR THAN EMPLOYEES. SO, I'M GOING
17 TO ASK YOU SOME QUESTIONS ABOUT THAT.

18 A. I'M READY FOR THIS.

19 Q. IF YOU HAVE AN EMPLOYEE ON A W-2, DOES THE EMPLOYER
20 HAVE TO PAY HIS SHARE OF PAYROLL TAXES?

21 A. ABSOLUTELY.

22 Q. THAT'S, WHAT, SEVEN-AND-A-HALF PERCENT?

23 A. YEAH, I THINK WITH EVERYTHING, IT COMES OUT -- THE
24 STATE AND EVERYTHING ELSE, IT WILL WIND UP BEING
25 ABOUT 11.25 RIGHT NOW, BUT YOU ARE CORRECT.

- 1 Q. SO, THAT'S 11.25 PERCENT ADDITIONAL COSTS ---
- 2 A. CORRECT.
- 3 Q. --- FOR A W-2 EMPLOYEE?
- 4 A. THAT'S CORRECT.
- 5 Q. YOU GOT TO PAY MANDATORY OVERTIME IF THEY WORK OVER
- 6 40 HOURS?
- 7 A. THAT'S CORRECT.
- 8 Q. YOU MAY HAVE TO PROVIDE HEALTH INSURANCE?
- 9 A. THAT'S CORRECT.
- 10 Q. YOU'VE GOT TO PAY UNEMPLOYMENT INSURANCE?
- 11 A. THAT'S CORRECT.
- 12 Q. YOU'VE GOT TO PAY PROFESSIONAL LIABILITY INSURANCE?
- 13 A. THAT'S CORRECT.
- 14 Q. YOU'VE GOT TO PAY WORKERS' COMP INSURANCE?
- 15 A. THAT'S CORRECT.
- 16 Q. YOU DON'T HAVE TO PAY ANY OF THOSE IF YOUR WORKERS
- 17 ARE TRUE 1099 INDEPENDENT CONTRACTORS; ISN'T THAT
- 18 TRUE?
- 19 A. THAT'S CORRECT.
- 20 Q. THAT'S A QUITE CONSIDERABLE COST SAVINGS TO A
- 21 COMPANY IF THEY CAN CALL THEIR NURSES INDEPENDENT
- 22 CONTRACTORS AND AVOID ALL OF THOSE COSTS; ISN'T THAT
- 23 TRUE?
- 24 A. THAT'S INCORRECT.
- 25 Q. IT'S BASIC MATH, SIR. IT'S BASIC MATH.

1 A. YEAH, MATH HAS AN EQUATION AND A SUMMATION. YOU
2 DIDN'T SUM UP THE THINGS THAT IF YOU DO THIS, THIS
3 IS WHAT THE PROCESS IS. THE DELTA BETWEEN THE COST
4 AND THE BILL RATE IS WHERE THE DIFFERENCE IN THE
5 MONEY IS. IF I CHARGE YOU -- LET ME GIVE YOU AN
6 EXAMPLE. IF I CHARGE YOU 25 PERCENT MARGIN MARKUP,
7 LET'S SAY ON YOU, AND YOU'RE AN INDEPENDENT
8 CONTRACTOR, THEN MAYBE THAT'S 25 BUCKS, OKAY? BUT
9 IF YOU HAVE ALL OF THOSE THINGS ASSOCIATED THAT YOU
10 JUST DESCRIBED, THAT GETS ADDED ON TO MY EXPENSE FOR
11 YOU BEING AN EMPLOYEE, AND NOW, I CHARGE YOU 25
12 PERCENT ON THAT ADDITIONAL MONEY. SO, THE MONEY TO
13 ME IS MUCH GREATER IF YOU ARE MY EMPLOYEE. NOW,
14 AGREE 100 PERCENT THAT THE LIABILITY TO ME, AT LEAST
15 I THOUGHT, IS A LOT LESS IF THEY CHOSE TO GO THIS
16 ROUTE. I CAN'T SAY WHETHER IT IS OR NOT TODAY, BUT
17 THAT'S WHAT THEY ALL THOUGHT, AND I WAS WILLING TO
18 TAKE THE DIFFERENCE IN THE LOSS OF REVENUE TO MYSELF
19 IF THAT'S THEY WANTED TO DO.

20 Q. EXCEPT, SIR, THAT THIS IS A CONTRACT THAT LIKE
21 MEDFIRST, YOU NEGOTIATED, OR YOUR COMPANY HAD A
22 BINDING CONTRACT WITH THE DEPARTMENT OF CORRECTIONS
23 TO PROVIDE EMPLOYEES AND TO BE RESPONSIBLE FOR
24 WITHHOLDING TAXES, PROVIDING PROFESSIONAL LIABILITY
25 INSURANCE, PROVIDING SECTION 1983 INSURANCE, AND

1 PROVIDING WORKERS' COMPENSATION INSURANCE?

2 BY MR. GOODWYN:

3 I OBJECT TO THE FORM. IT ASSUMES THAT THEY ARE
4 REQUIRED TO PROVIDE EMPLOYEES TO S.C.D.C., WHEN THE
5 CONTRACT CLEARLY SAYS THE INTENT WAS TO PROVIDE
6 INDEPENDENT CONTRACTORS.

7 BY MS. FARTHING:

8 I DISAGREE.

9 BY COMMISSIONER JAMES:

10 FOR PURPOSES OF THAT QUESTION, CAN YOU USE
11 "NURSE"?

12 BY MR. GOODWYN:

13 I MEAN, YOU CAN'T ASSUME -- THE QUESTION CAN'T
14 PRESUME THAT ---

15 BY COMMISSIONER JAMES:

16 ALL RIGHT.

17 BY MR. GOODWYN:

18 --- YOU'RE REQUIRED TO PROVIDE EMPLOYEES.
19 THAT'S AN IMPROPER QUESTION. THAT'S NOT ---

20 BY COMMISSIONER JAMES:

21 ALL RIGHT. I DON'T WANT TO GET INTO ---

22 BY MR. GOODWYN:

23 --- WHAT THE CONTRACT REQUIRED.

24 BY COMMISSIONER JAMES:

25 --- A DEFINING ISSUE HERE, BUT -- AND OF

1 COURSE, THE WITNESS IS FREE TO ANSWER. YOU ALSO
2 HAVE THE RIGHT OF RE-DIRECT. SO, AND THE WITNESS IS
3 FREE TO ADD TO HIS ANSWER. SO, LET'S -- LET'S MOVE
4 ON.

5 MR. SAMUELS, IF YOU WOULD REPEAT THE QUESTION,
6 PLEASE.

7 BY MR. SAMUELS:

8 MAYBE I'LL ASK IT IN A DIFFERENT WAY, YOUR
9 HONOR.

10 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

11 Q. MR. DURHAM, IN 2017, CONDUSTRIAL SENT A NEW PROPOSAL
12 OVER TO THE DEPARTMENT OF CORRECTIONS TO RENEGOTIATE
13 THE RATES THAT HAVE BEEN STABLE SINCE 2008; ISN'T
14 THAT TRUE?

15 A. THAT'S CORRECT.

16 Q. AND THE RATE FOR AN L.P.N. THAT Y'ALL WANTED WAS
17 \$30.51.

18 A. OKAY.

19 Q. IS THAT RIGHT?

20 A. I THINK -- I DON'T HAVE IT IN FRONT OF ME, BUT THAT
21 SOUNDS PROBABLY CORRECT. I DON'T THINK YOU'RE
22 TRYING TO TRICK ME, SO, YEAH.

23 Q. OKAY. I DO HAVE IT IF YOU WANT TO SEE IT.

24 A. NO.

25 Q. OKAY. NOW, LET'S SAY YOU PAY A NURSE A WAGE OF \$22

1 AN HOUR, OKAY?

2 A. UH-HUH.

3 Q. IF YOUR ONLY EXPENSE WITH A NURSE AT \$22 AN HOUR IS
4 THAT WAGE WITHOUT ANY TAXES, WITHOUT ANY INSURANCE
5 COVERAGE, ANY OF THOSE OTHER THINGS THE CONTRACT
6 OBLIGATED CONDUSTRIAL TO PROVIDE, YOUR MARKUP, YOUR
7 GROSS PROFIT IS \$8.50; WOULD YOU AGREE WITH THAT?

8 A. IF THOSE NUMBERS ARE CORRECT, THEN I WOULD -- I
9 WOULD AGREE TO THAT, BUT THERE'S A LOT MORE TO THAT
10 THAN THAT. YOUR MATH IS CORRECT, BUT THERE'S A LOT
11 MORE TO THAT.

12 Q. I JUST WANT YOU TO WORK WITH ME AND ---

13 A. I'M WORKING WITH YOU, .

14 Q. --- AND KIND OF STAY OUT OF THE ---

15 A. I AM TRYING TO GET OUT OF HERE.

16 Q. NOW, IF YOU ADD IN ALL THOSE OTHER COSTS OF DOING
17 BUSINESS, INSURANCE, BENEFITS AND SO ON, THAT MEANS
18 YOUR MARGIN ISN'T \$8.50 ON EVERY HOUR; IT'S MUCH
19 SMALLER?

20 A. THAT'S CORRECT.

21 Q. ISN'T THAT TRUE?

22 A. ABSOLUTELY. IT WOULD BE MUCH SMALLER.

23 Q. AND THAT'S THE WAY THAT IF YOUR CONTRACT WITH THE
24 DEPARTMENT OF CORRECTIONS SAYS YOU'RE GOING TO GET
25 \$30.50 FOR EVERY HOUR STRAIGHT TIME FOR AN L.P.N.,

1 AND YOU DON'T HAVE TO PAY THOSE COSTS, YOU MAKE A
2 BIGGER GROSS PROFIT?

3 BY MR. GOODWYN:

4 WAIT.

5 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

6 Q. WELL, JUST ANSWER THAT QUESTION. LET YOUR ATTORNEY,
7 YOU KNOW, ATTACK YOU -- ATTACK THE ISSUE IN
8 REDIRECT, BECAUSE IT'S REALLY KIND OF A SIMPLE
9 POINT, AND I WOULD REALLY JUST LIKE A SIMPLE ANSWER
10 SO I CAN MOVE ON TO SOMETHING ELSE.

11 A. THE \$30 WAS PREDICATED -- I AGREE WITH EVERYTHING
12 YOU SAID, MR. SAMUELS, IS CORRECT, BUT THAT \$30 BILL
13 OUT IS PREDICATED ON THEM BEING INDEPENDENT
14 CONTRACTORS, NOT PREDICATED -- HAD THEY BEEN
15 EMPLOYEES, WE WOULD HAVE A MUCH DIFFERENT BILL RATE
16 IF THEY HADN'T BEEN INDEPENDENT CONTRACTORS.

17 Q. TO DO THAT, THOUGH, YOU WOULD HAVE TO HAVE A
18 CONTRACT THAT SAYS YOU WERE GOING TO PROVIDE
19 INDEPENDENT CONTRACTORS AND NO WORKERS' COMPENSATION
20 INSURANCE. YOU DIDN'T HAVE A CONTRACT LIKE THAT,
21 DID YOU?

22 A. I DON'T AGREE WITH THAT, AND WE'RE GETTING BACK TO
23 THAT THING ABOUT EMPLOYEES AND THE CONTRACTORS AND
24 EVERYTHING ELSE, AND WHEN I ASKED THEM TO CHANGE IT,
25 THEY DIDN'T WANT TO CHANGE IT. I ASKED THEM TO

1 SPECIFICALLY CHANGE IT, TO SPECIFICALLY OUTLAW
2 INDEPENDENT CONTRACTORS, BUT THERE WERE SO MANY
3 REASONS THEY COULDN'T DO IT. THEIR OWN NURSES ARE
4 WORKING THROUGH MY COMPANY ON THE WEEKENDS TO AVOID
5 OVERTIME SO THAT THEY DON'T HAVE TO PAY THE OVERTIME
6 TO THEIR OWN NURSES. SO, THERE'S A REASON THEY
7 WANTED THE INDEPENDENT CONTRACTOR.

8 **BY MS. FARTHING:**

9 WE'RE GETTING INTO A SITUATION THAT'S GOING
10 OUTSIDE OF THE SCOPE OF THAT CONTRACT INTO THIS
11 COURSE OF DEALING, WHICH I THINK WE DISCUSSED DURING
12 THE BREAK WE WERE GOING TO -- WE ARE GOING TO AVOID
13 FOR THE INTEREST OF TRYING TO LIMIT TO WHAT GOES TO
14 THE COMMISSIONER ONLY TO WHAT IS PROPERLY BEFORE THE
15 COMMISSIONER, PROPERLY CONSIDERED BY THE
16 COMMISSIONER.

17 **BY COMMISSIONER JAMES:**

18 MR. SAMUELS?

19 **BY MR. SAMUELS:**

20 I WAS ACTUALLY READY TO MOVE ON PAST THAT TOPIC
21 ANYHOW, YOUR HONOR.

22 **BY COMMISSIONER JAMES:**

23 ALL RIGHT.

24 **CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

25 Q. MR. DURHAM, YOU HAD A CHANCE TO REVIEW MS. TURNER'S

1 PERSONNEL FILE?

2 A. I HAVE NOT REVIEWED MS. TURNER'S FILE.

3 Q. DO YOU THINK THERE MIGHT BE ANY DOCUMENTS IN THERE
4 WHICH WOULD LEAD HER TO BELIEVE SHE WAS AN EMPLOYEE
5 AND NOT AN INDEPENDENT CONTRACTOR?

6 BY MR. GOODWYN:

7 OBJECTION. IT CALLS FOR SPECULATION AS TO WHAT
8 MS. TURNER MIGHT HAVE BELIEVED.

9 BY MR. SAMUELS:

10 I ASKED IF THERE WERE DOCUMENTS THAT WOULD LEAD
11 HER TO BELIEVE SHE WAS AN EMPLOYEE RATHER THAN AN
12 INDEPENDENT CONTRACTOR?

13 BY COMMISSIONER JAMES:

14 OKAY. YOU CAN ANSWER THE QUESTION, SIR.

15 THE WITNESS ANSWERS:

16 A. I HAVE NO DOUBT THAT SHE SIGNED A W-4 OR WHATEVER
17 THINGS THAT WOULD HAVE BEEN SIGNED WHEN THEY PROCESS
18 A PERSON. THEY WILL START PROCESSING THEM AS AN
19 EMPLOYEE, BUT THEN IF THEY WANT TO BE AN INDEPENDENT
20 CONTRACTOR, THEN THEY HAVE TO GO FORWARD AND SIGN
21 THE INDEPENDENT CONTRACTOR AGREEMENT, WHICH THAT'S -
22 - THAT'S THE DOCUMENT THAT TRUMPS LETTING US KNOW.

23 Q. THAT'S THE TRUMP CARD, YOU'RE SAYING; THAT'S THE ONE
24 THAT CONTROLS EVERYTHING?

25 A. IF THEY DECIDE TO DO THAT, IT DOES TRUMP EVERYTHING

1 THAT THEY DID RETRO TO THAT. THAT'S THE LAST THING
2 THEY DID. THAT'S WHAT THEY WANTED TO DO. WE WENT
3 FORWARD, JUST AS IF THEY HAD COME BACK AND SAID
4 "HEY, YOU KNOW, I WANT TO BE AN EMPLOYEE. LET'S
5 UPDATE AND DO MY FILE AND SIGN ALL THE EMPLOYEE
6 DOCUMENTS." WE WOULD DO THAT. WE WOULD TRUMP THE
7 PREVIOUS AGREEMENT. IF THERE'S A BETTER WAY TO DO
8 IT, I'M OPEN TO IT. I JUST -- THAT'S THE WAY I DID
9 IT.

10 Q. SO, IF MS. TURNER HAD HAD THE ABILITY TO SEE THE
11 FUTURE AND COME TO YOU ON SEPTEMBER 4TH, 2015, THE
12 DAY BEFORE SHE GOT HURT AND SAID "I'VE RETHOUGHT
13 THIS. I WANT TO BE AN EMPLOYEE," YOU WOULD HAVE HAD
14 HER SIGN PAPERWORK AND ---

15 A. AS LONG AS SHE WANTED TO COMPLY WITH ALL THE THINGS
16 THAT ARE REQUIRED TO BE AN EMPLOYEE.

17 Q. OKAY.

18 A. THEN SHE COULD, BUT YOU GOT TO BE WILLING TO LET ME
19 TAKE TAXES OUT. YOU CAN'T CLAIM 99 DEPENDANTS. YOU
20 HAVE TO -- YOU CAN'T TURN DOWN ASSIGNMENTS, AND
21 WE'RE NOT GOING TO FIGHT FOR 30 MINUTES EVERY TIME I
22 HAVE AN ASSIGNMENT FOR YOU BECAUSE YOU DON'T WANT TO
23 GO TO WORK FOR WHAT YOU WORKED FOR YESTERDAY.
24 THAT'S NOT AN EMPLOYEE.

25 Q. WHO WAS SUPPOSED TO PROVIDE THE PROFESSIONAL

1 LIABILITY INSURANCE UNDER THE INDEPENDENT CONTRACTOR
2 AGREEMENT, WHICH YOU HAD THESE NURSES SIGN?

3 A. CONDUSTRIAL PROVIDES THEM.

4 Q. REALLY? THAT'S WHAT THE CONTRACT SAYS?

5 A. THEY PROVIDE ALL COVERAGES. I ASKED THEM TO PROVIDE
6 THAT THEMSELVES, AND I'VE ASKED THEM IN THEIR
7 CONTRACTS TO DO THAT, AND WHAT HAPPENED WAS EVERY
8 TIME I TRIED TO DO AN AUDIT, THAT -- IT'S A LAYER OF
9 PROTECTION. I WANT THEM TO HAVE THAT BECAUSE I KNOW
10 IT'S BETTER FOR EVERYBODY TO HAVE MULTIPLE
11 COVERAGES. IT'S EXPENSIVE, AND I'VE EVEN BEEN
12 WILLING TO PAY THEM IF THEY WAS TO GET THEIR OWN
13 POLICY AND TURN IN THE PREMIUM, I'LL GIVE THEM THEIR
14 MONEY BACK. I CAN'T ANSWER WHY PEOPLE DO STUPID
15 THINGS, SIR. ALL I CAN TELL YOU I SPENT TENS OF
16 THOUSANDS OF DOLLARS EVERY YEAR TO PUT THOSE
17 POLICIES IN PLACE AS A CATCH ALL FOR ANYBODY THAT
18 DOESN'T DO WHAT THEY SHOULD DO FOR THEMSELVES.
19 THAT'S JUST WHAT I DID.

20 Q. THAT'S MY QUESTIONS, BECAUSE I'M LOOKING AT PAGE
21 241, WHICH IS THE CONTRACT, THE INDEPENDENT
22 CONTRACTOR AGREEMENT, AND IT SAYS "THE INDEPENDENT
23 CONTRACTOR SHALL MAINTAIN THROUGHOUT THE TERM OF
24 THIS AGREEMENT, SHALL PROVIDE THE BROKER A
25 CERTIFICATE OF PROFESSIONAL LIABILITY AND

1 MALPRACTICE INSURANCE IN THE AMOUNT ONE MILLION, TWO
2 THOUSAND DOLLARS, AND CONTAIN AN EXPRESS PROVISION
3 THAT SUCH POLICY CANNOT BE CANCELLED WITHOUT 30 DAYS
4 PRIOR WRITTEN NOTICE OF THE BROKER THE INTENT TO DO
5 SO." YOU'RE FAMILIAR WITH THAT, THAT PHRASE?

6 A. YES.

7 Q. THAT ONE WASN'T IMPORTANT TO YOU?

8 A. IT WAS VERY IMPORTANT. IT'S NOT IMPORTANT TO THEM
9 APPARENTLY. IT'S VERY IMPORTANT TO ME BECAUSE I
10 STEP UP AND PUT IN ABOUT TEN MILLION OVER THE TOP OF
11 THAT.

12 Q. WELL, WHY DIDN'T YOU REQUIRE THE NURSES TO HAVE IT?

13 A. BECAUSE WHAT ARE YOU GOING TO DO, BEAT IT INTO THEM.
14 YOU CAN'T MAKE THEM DO IT. I ASK THEM. I SHOW
15 THEM. I TELL THEM. I GIVE THEM THE EVERYTHING, AND
16 I'M LIKE "YOU NEED TO DO THIS FOR YOURSELF. IT'S
17 NOT EVEN GOING TO COST YOU. I'LL PAY FOR IT. JUST
18 GIVE ME -- I CANT TAKE THAT POLICY OUT FOR YOU AS AN
19 INDIVIDUAL. YOU TAKE IT." I EVEN SENT THE ACTUAL
20 APPLICATIONS AND STUFF FROM OUR INSURANCE COMPANY
21 "JUST FILL THIS OUT. SIT -- GET IT, AND THEN SEND
22 ME A RECEIPT, AND I'LL PUT IT ON THE CHECK, AND THAT
23 WAY WE HAVE A DOUBLE LAYER OF COVERAGE." BUT THEY
24 WON'T DO IT. I CAN'T HELP IT IF THEY WON'T DO IT.

25 Q. WELL, DOGGONE, MR. DURHAM, YOU'VE GOT AN IRON CLAD

1 CONTRACT.

2 A. THAT'S THE REASON. THAT'S WHAT I'M TRYING ---

3 Q. WHY DON'T YOU ENFORCE YOUR CONTRACT?

4 A. WHEN THEY'RE AN INDEPENDENT CONTRACTOR, THEY THINK
5 THEY HAVE AN OBLIGATION -- THEY DON'T THINK THEY
6 HAVE AN OBLIGATION TO NOBODY. SO, THEY DO AS THEY
7 PLEASE, AND THAT'S ANOTHER EXAMPLE OF THEM DOING AS
8 THEY PLEASE, 'CAUSE IF YOU HAD BEEN AN EMPLOYEE AND
9 I PUT THAT ON YOU, AND YOU DIDN'T HAVE THAT POLICY
10 IN PLACE, YOU WOULD BE FIRED. I WOULD SAY "YOU'RE
11 OUT OF HERE. YOU'RE NOT EXPOSING ME TO THAT.
12 YOU'RE OUT OF HERE. YOU'RE GONE." OKAY? BUT THEY
13 DIDN'T DO THAT. SO, THAT'S WHAT HAPPENED. I MEAN,
14 GOD FORBID THAT I WAS TRYING TO TAKE CARE OF THEM
15 WHEN THEY WOULDN'T TAKE CARE OF THEMSELVES.

16 Q. SO, HERE AT PAGE 261 OF THE CLAIMANT'S APA
17 SUBMISSIONS, WHEN MS. TURNER ORIGINALLY FILLED OUT
18 THIS -- WHAT'S THIS DOCUMENT CALLED?

19 A. IT SAYS "EMPLOYMENT APPLICATION."

20 Q. OKAY.

21 A. YEAH.

22 Q. AND SHE PUT "NOT APPLICABLE" UNDER MALPRACTICE AND
23 LIABILITY INSURANCE?

24 A. YEAH, YES.

25 Q. YOU STILL PUT HER TO WORK THOUGH, DIDN'T YOU?

1 A. I HAD -- I HAD HER COVERED.

2 Q. OKAY. MOVING ALONG, YOU MENTIONED THIS. SHE FILLED
3 OUT AN. I-9 ---

4 A. SHE DID.

5 Q. --- AT PAGE ---

6 A. SHE DID.

7 Q. --- 263.

8 A. SHE DID.

9 Q. THAT'S ONLY DONE FOR EMPLOYEES, ISN'T IT?

10 A. NORMALLY, BUT WE DO HAVE TO HAVE HER SOCIAL SECURITY
11 DOCUMENTS AND EVERYTHING BECAUSE THEY ARE GOING TO
12 GET A 1099 AT THE END OF THE YEAR. SO, THEY'RE
13 GOING TO REQUIRE THAT. AND THEN AGAIN, I WANT YOU
14 TO UNDERSTAND THAT THIS IS JUST A TOTALLY -- THERE'S
15 850 CONSTRUCTION EMPLOYEES, AND WE'RE DOING THIS FOR
16 A WEEKLY 15 NURSES. SO, IT'S REALLY OUT OF OUR
17 NORMAL OF WHAT WE WOULD DO, AND HAD I NOT GOT BACKED
18 INTO THE CORNER OF PAYING FOR ALL OF THEIR BOUNCED
19 CHECKS AND EVERYTHING ELSE THAT THEY WAS SCREWED OUT
20 OF WHEN I TOOK THEM OVER, I WOULD HAVE NEVER DONE
21 IT, AND I WISHED THE HELL I HAD NEVER SEEN IT.
22 THOSE ARE THE FACTS TOO.

23 Q. SO, THIS \$800,000 WORTH OF PAYROLL, THAT'S ---

24 A. IT AIN'T WORTH BEING HERE ALL DAY. IT AIN'T.

25 Q. BUT IT'S NOT -- IT'S NOT -- YOU DON'T CONSIDER THAT

1 A SIGNIFICANT PART OF YOUR BUSINESS?

2 A. I DO NOT.

3 Q. NOT -- NOT ENOUGH TO PAY ATTENTION TO TO MAKE SURE
4 THE PAPERWORK IS RIGHT AND NOT CONFUSING?

5 A. WELL, I DON'T AGREE THAT THAT'S TRUE. I WILL SAY --
6 I WILL SAY THIS, AND WE HAVE SEEN SOME OF THOSE
7 THINGS. I HAVE MADE SURE THAT TOM -- I DIRECTED TOM
8 TO CONTACT EVERY SINGLE NURSE WHEN I SEEN THAT KIND
9 OF THING IN FILES TO MAKE SURE THAT EVERY ONE, AND
10 THEN WE'VE GOT TO GET THEM TO RESIGN ANOTHER
11 INDEPENDENT CONTRACTOR AGREEMENT AFTER THAT, BECAUSE
12 I WANTED THERE TO BE NO -- AND IT WASN'T BECAUSE OF
13 HER CLAIM. IT WAS BECAUSE OF THE UNEMPLOYMENT
14 CLAIMS. I WANTED THERE TO BE -- NO CONFUSION THAT
15 THEY ABSOLUTELY -- BECAUSE I WAS LIKE "SHE SHOULD
16 HAVE NEVER GOT THEM TO FILL OUT AN I-9. WHY DID SHE
17 DO THAT? THAT'S STUPID," BUT SHE DID WHAT SHE DID.

18 Q. STUPID WITH A W-4 THAT IS AN OFFICIAL U.S.
19 GOVERNMENT FORM PROVIDED TO THE INTERNAL REVENUE
20 SERVICE?

21 A. YEAH. SHE DID SOMETHING I WOULDN'T HAVE DONE.

22 Q. SHE SIGNED THE FORM?

23 A. THE GIRL DID SOMETHING I WOULDN'T HAVE DONE. I
24 WOULDN'T HAVE ASKED HER TO FILL THAT OUT AT ALL. I
25 AGREE.

1 Q. THE PERSON WHO MADE HER FILL IT OUT WAS AN EMPLOYEE
2 OF YOURS?

3 A. CORRECT.

4 Q. NATASHA RATHBURN?

5 A. CORRECT. AND THE GIRL THAT GOT HER TO ---

6 Q. A MANAGER?

7 A. --- SIGN -- YES. GOT HER TO SIGN THE INDEPENDENT
8 CONTRACT WAS MY MANAGER. THEN THE PERSON THAT GOT
9 HER TO SIGN THE INDEPENDENT CONTRACTOR AGAIN WAS MY
10 GENERAL COUNSEL AND ADDRESS ALL OF THESE ISSUES,
11 BECAUSE I WAS TRYING -- I WANTED TO MAKE SURE -- WE
12 NEVER WANTED TO BE HERE, SIR. I WANTED TO MAKE SURE
13 EVERYTHING WAS -- THE Ts WERE CROSSED AND THE Is
14 WERE DOTTED.

15 Q. I'M WITH YOU, SIR. I DON'T WANT TO BE HERE EITHER.

16 A. LET'S GO HOME.

17 Q. BUT WE GOT TO GET THROUGH THIS. SO, I'M GOING TO
18 ASK YOU, YOU'RE A BUSINESS MAN, AND YOU'VE HAD
19 WORKERS' COMP FOR YEARS AND YEARS, AT LEAST WITH
20 THESE CONSTRUCTION WORKERS. YOU EVER HEARD OF THE
21 SECOND INJURY FUND?

22 A. OH, YEAH. IT'S NOT -- IT'S DONE. IT'S NOT THERE
23 ANYMORE, BUT IT USED TO BE, CORRECT?

24 Q. YEP. DID IT HAVE ANYTHING TO DO WITH THE WORKERS'
25 COMP?

1 A. DOES IT HAVE ANYTHING...

2 Q. THE SECOND INJURY FUND.

3 A. ABSOLUTELY. THAT'S WHAT IT REFERS TO, IS PEOPLE
4 THAT'S HAD AN INJURY BEFORE AND GOTTEN THE
5 SETTLEMENT AND THEY GO BACK TO WORK, AND THEN THEY
6 HAVE A CLAIM. THEN IT CAN GO TO THE SECOND INJURY
7 FUND RATHER THAN DINGING THE PERSON THAT HAD THE --
8 THAT RE-EMPLOYED THEM, AND THE IDEA OF THAT IS TO
9 TRY TO KEEP ME FROM NOT EMPLOYING YOU BECAUSE YOU
10 HAVE ISSUES FROM ANOTHER CLAIM. THAT WAY I CAN
11 PROVIDE YOU EMPLOYMENT AND GO FORWARD. CORRECT?

12 Q. IT WAS A PRETTY GOOD THING, WASN'T IT?

13 A. HMM...

14 Q. GOOD FOR EMPLOYERS, ---

15 A. IT ALL DEPENDS ---

16 Q. --- GOOD FOR WORKERS?

17 A. IT ALL DEPENDS ON WHO YOU ASK.

18 Q. WELL, THAT'S KIND OF WHAT'S THE THING THAT KIND OF
19 CONFUSES ME, BECAUSE I LOOK AT PAGE 268. WHAT'S
20 THIS FORM?

21 A. YEAH, SHE SHOULDN'T HAVE BEEN ASKED TO FILL THAT
22 FORM OUT. I AGREE 100 PERCENT.

23 Q. BUT SHE WAS ASKED TO FILL IT OUT?

24 A. SHE WAS.

25 Q. SHE DID FILL IT OUT, AND SHE SIGNED IT?

1 A. SHE DID.

2 Q. IS THAT RIGHT?

3 A. YES. THAT'S A SCREW UP ON MY PEOPLE'S PART.

4 Q. ALL RIGHT.

5 A. AND THE IDEA OF THAT IS EXACTLY WHAT YOU JUST
6 DESCRIBED, IT WOULD HAVE BEEN AT THE TIME, THE
7 SECOND INJURY FUND WAS APPLICABLE FOR SOMEBODY WHO
8 HAD A CLAIM, WOULD IT HAVE BEEN APPLICABLE TO SEND
9 IT TO THE SECOND INJURY FUND, BUT, YOU KNOW, THE
10 GIRL JUST INCLUDED THE WHOLE BAILIWICK OF THINGS
11 THAT SHE WOULD HAVE NORMALLY PROCESSED AN EMPLOYEE
12 WITH, BUT AN EMPLOYEE THAT CAME IN WOULD NEVER HAVE
13 GOTTEN THE INDEPENDENT CONTRACTOR AGREEMENT. THAT'S
14 NEVER HAPPENED ONE TIME, BECAUSE IT'S ONLY
15 APPLICABLE TO THIS LITTLE CORNER OR NURSES THAT DO
16 THIS AT S.C.D.C.

17 Q. WELL, WOULD YOU AGREE THAT THE NURSES ALSO HAD TO
18 AGREE TO ABIDE BY CERTAIN FACILITY AND CLIENT
19 EXPECTATIONS, ACTUAL REQUIREMENTS?

20 A. BY THE S.C.D.C. REQUIREMENTS?

21 Q. YEAH.

22 A. I MEAN, AND WHEN -- I GUESS MY POINT IS IF YOU GO TO
23 WORK THERE, THEY'RE GOING TO HAVE REQUIREMENTS.
24 YOU'RE GOING TO NEED TO BE WILLING TO COMPLY BY WHAT
25 S.C.D.C. TELLS YOU TO DO. I MEAN, THAT'S JUST A

1 GENERAL THING YOU SHOULD DO IN LIFE, I GUESS.

2 Q. YEAH, BUT ---

3 A. THAT'S NOT MY REQUIREMENTS. THAT'S S.C.D.C.'S
4 REQUIREMENTS.

5 Q. WELL, BUT S.C.D.C. IS HE PLACE THEY'RE WORKING.

6 A. CORRECT.

7 Q. I MEAN, THESE ARE REQUIREMENTS THEY'RE GOING TO HAVE
8 TO COMPLY WITH WHEN THEY ARE WORKING, RIGHT?

9 A. CERTAINLY, RIGHT, YES, SIR.

10 Q. BUT MEDUSTRIAL MADE SURE THAT THOSE NURSES SIGNED AN
11 UNDERSTANDING THAT THEY WOULD COMPLY WITH THE
12 FACILITY REQUIREMENTS, CORRECT?

13 A. HAVE YOU GOT A DOCUMENT THERE TO SHOW ME?

14 Q. I DO. I SURE DO.

15 BY COMMISSIONER JAMES:

16 MR. SAMUELS, I HATE TO INTERRUPT YOU, AND I'M
17 NOT RUSHING YOU. DO YOU KNOW HOW LONG -- BECAUSE I
18 NEED TO ADDRESS AN ISSUE WITH REGARDS TO THE
19 SUBPOENA BEFORE WE GET TO THE VERY END OF THE
20 BUSINESS DAY.

21 BY MR. SAMUELS:

22 I THINK I WILL PROBABLY GO ON ANOTHER 20
23 MINUTES.

24 BY COMMISSIONER JAMES:

25 CAN WE -- BEFORE YOU ASK YOUR NEXT QUESTION,

(OFF THE RECORD)

MR. SAMUELS, WHEN YOU'RE READY, SIR.

THANK YOU, YOUR HONOR.

Q. MR. DURHAM, I'M HOPING I'M STARTING WHERE WE LEFT OFF. WE WERE TALKING ABOUT, I THINK, FACILITY AND CLIENT REQUIREMENTS; DOES THAT SEEM RIGHT TO YOU?

O. I HAVE THIS DOCUMENT, IT'S PAGE 271 OF THE

1 CLAIMANT'S APA SUBMISSIONS. DO YOU RECOGNIZE THIS
2 DOCUMENT? THIS IS A FORM THAT THE NURSES ARE
3 REQUIRED TO SIGN AND ARE STILL REQUIRED TO SIGN.

4 A. AS FAR AS I AM AWARE, YES, SIR.

5 Q. THIS PARTICULAR ONE IS DATED FEBRUARY 7TH, 2013?

6 A. YES.

7 Q. OKAY. FOR EXAMPLE, "CLEAN UNIFORMS, POLISHED
8 CLOSED-TOE SHOES ARE REQUIRED BY ALL CLIENTS."

9 A. YES.

10 Q. OKAY. WHAT HAPPENS IF A NURSE DISCUSSES HER RATE OF
11 PAY WITH A CLIENT'S EMPLOYEES?

12 A. WHERE ARE YOU AT?

13 Q. ACTUALLY RIGHT HERE (INDICATES). DOESN'T IT SAY
14 THAT ---

15 A. YEAH.

16 Q. --- "YOUR PAY SHOULD BE KEPT CONFIDENTIAL. FAILURE
17 TO DO SO COULD RESULT IN IMMEDIATE TERMINATION"?

18 A. IT DOES, THAT'S TRUE.

19 Q. OKAY.

20 A. JUST TRYING TO DISCOURAGE IT.

21 Q. OKAY.

22 BY COMMISSIONER JAMES:

23 I'M SORRY?

24 BY THE WITNESS:

25 JUST TRYING TO DISCOURAGE THEM FROM TALKING

1 ABOUT THEIR PAY -- WAGES BECAUSE ONE MAY MAKE
2 DIFFERENT THAN ANOTHER AT THE SAME FACILITY.

3 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. AND THE PENALTY, ONE OF THEM IS "FAILURE TO COMPLY
5 WITH ANY OF THE ABOVE WILL PREVENT YOU FROM WORKING
6 AS AN EMPLOYEE OF MEDUSTRIAL UNTIL SUCH TIME AS THIS
7 NONCOMPLIANT ISSUES HAS BEEN RESOLVED."

8 A. THAT'S WHAT IT SAYS.

9 Q. OKAY. WE'LL MOVE A LITTLE QUICKLY HERE. I'M GOING
10 TO SHOW YOU THIS DOCUMENT. THIS IS CLAIMANT'S 274.
11 DO YOU AGREE THIS IS FEBRUARY 14TH, 2013?

12 A. YES.

13 Q. SIGNED BY RACHEL TURNER?

14 A. YEP.

15 Q. OKAY. AND WHAT IS SHE AGREEING TO WHEN SHE SIGNS
16 THAT STATEMENT?

17 A. IT SAYS "I AM ORIENTATING AT THE DEPARTMENT OF
18 MENTAL HEALTH THROUGH MEDUSTRIAL HEALTHCARE. I AM
19 AN EMPLOYEE OF CONDUSTRIAL, INC. I WILL WORK MY
20 FIRST 40 HOURS THROUGH MEDUSTRIAL, AND IF I WANT
21 MORE HOURS, IT IS MY RESPONSIBILITY TO NOTIFY MY
22 EMPLOYER." YEP, THIS -- THIS IS SOMETHING NATASHA
23 OBVIOUSLY DREW UP IN TRYING TO MAKE SURE THAT THEY
24 CONTROLLED THE OVERTIME, AND SHE JUST USED THE
25 NOMENCLATURE THAT SHE IS ACCUSTOMED TO USING, AND

1 SHE -- YOU KNOW, IT'S A DUMB MISTAKE FOR HER TO HAVE
2 WRITTEN THAT UP AS AN EMPLOYEE. YOU KNOW, WE'VE
3 DONE THE SAME THING IN HERE TODAY, SAID "EMPLOYEE --
4 I MEAN, CONTRACTOR. CONTRACTOR, NO, I MEAN,
5 EMPLOYEE. I MEAN, NURSE," YOU KNOW, SO.

6 Q. NATASHA RATHBURN, SHE WAS THE DIRECTOR OF OPERATIONS
7 OF MEDUSTRIAL AT THE TIME?

8 A. SHE WAS, UH-HUH. SHE WAS THE ONE THAT DEALT WITH
9 S.C.D.C. BEFORE I BOUGHT THE COMPANY AND AFTER I
10 BOUGHT THE COMPANY.

11 Q. WAS THERE A POINT WHERE YOU TRIED TO KIND OF CLEAN
12 THOSE THINGS UP BEFORE MS. TURNER WAS INJURED?

13 A. YES. YEAH, WE DID, AND IT'S LIKE ANYTHING ELSE,
14 WHAT HAPPENS IS YOU PUT PARAMETERS IN PLACE IN A
15 BUSINESS, AND THEN WHEN YOU'VE GOT 15 LOCATIONS ARE
16 DIFFERENT, YOU PROVIDE THE NEW UP-TO-DATE DOCUMENTS.
17 YOU PUT IT ON THE -- YOU KNOW, IT JUST COMES INTO
18 PLAY IN A LOT OF DIFFERENT THINGS OTHER THAN THERE,
19 BUT, YOU KNOW, WHAT HAPPENS IS THEY DON'T PULL THE
20 LATEST AND GREATEST DEFINED VERSION OF THE DOCUMENT
21 FOR APPLICATION OF WORKER OR CONTRACTOR AND USED THE
22 WRONG ONE, AND THAT'S WHAT SHE DID.

23 Q. WELL, THAT PARTICULAR DOCUMENT, IF IT SAYS
24 "MEDUSTRIAL," THERE'S NOT REALLY ANY DOUBT THAT IT
25 ONLY APPLIED TO NURSES; ISN'T THAT TRUE?

1 A. THAT'S CORRECT. THAT WAS ONLY FOR MEDICAL PERSONNEL
2 STAFFING.

3 Q. BUT FROM THE DOCUMENTS THAT WERE PROVIDED, IT LOOKS
4 LIKE MS. TURNER WAS BROUGHT IN TO SIGN A SECOND
5 LICENSED PROFESSIONAL INDEPENDENT CONTRACTOR
6 AGREEMENT ON OCTOBER 9TH, 2014. DOES THAT SOUND
7 RIGHT TO YOU?

8 A. THAT'S WHEN I ASKED TOM, INSTRUCTED HIM TO ---

9 Q. OKAY.

10 A. --- RE-UP THEM ALL ON THEIR AGREEMENTS.

11 Q. ALL RIGHT. WHEN THEY DID THAT, SHE SIGNED SOME
12 OTHER DOCUMENTS AS WELL; ISN'T THAT TRUE, NOT JUST A
13 NEW INDEPENDENT CONTRACTOR AGREEMENT? FOR EXAMPLE,
14 PAGE 276, OCTOBER 9TH, 2014, ---

15 A. YES, SHE USED THAT SAME DOCUMENT THAT YOU AND I JUST
16 WENT OVER ABOUT THE APPEARANCE, WHATEVER, IT'S GOT
17 THE SAME NOMENCLATURE DOWN HERE FROM WORKING AS AN
18 EMPLOYEE OF MEDUSTRIAL, YES.

19 Q. OKAY. AND IT WOULD BE IDENTICAL?

20 A. YES. IT APPEARS TO BE.

21 Q. OKAY.

22 **BY COMMISSIONER JAMES:**

23 I'M SORRY, MR. DURHAM, CAN YOU SPEAK UP JUST A
24 LITTLE BIT, BECAUSE YOU ARE FACING ---

25 **BY THE WITNESS:**

1 OKAY.

2 BY COMMISSIONER JAMES:

3 --- MR. SAMUELS, AND IT'S A LITTLE BIT
4 DIFFICULT FOR THE COURT REPORTER.

5 BY THE WITNESS:

6 YEAH, IT APPEARS TO BE THE IDENTICAL DOCUMENT
7 THAT THEY USED PRIOR THAT HE ADDRESSED WITH ME.

8 BY COMMISSIONER JAMES:

9 THANK YOU, SIR.

10 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

11 Q. AND THEN SHE ALSO WAS REQUIRED, MS. TURNER WAS
12 REQUIRED TO SIGN ON OCTOBER 9TH, 2014, PAGE 277 OF
13 CLAIMANT'S APA SUBMISSIONS, TERMS OF EMPLOYMENT.

14 A. I AGREE.

15 Q. AND SHE WAS MADE TO INITIAL EVERYONE OF THESE TERMS?

16 A. YES, I AGREE.

17 Q. AND SOME OF THESE TERMS, FOR EXAMPLE, "IF YOU DON'T
18 REPORT, YOU WILL BE IMMEDIATELY TERMINATED," RIGHT?

19 A. THAT'S CORRECT.

20 Q. PER THIS DOCUMENT, CONDUSTRIAL, PARENT COMPANY OF
21 MEDUSTRIAL, HAS THE AUTHORITY TO TERMINATE
22 EMPLOYMENT, CORRECT?

23 A. THAT'S WHAT IT SAYS, BUT, NOW, THE WORD
24 "EMPLOYMENT," OBVIOUSLY, YOU CAN BE EMPLOYED TO DO A
25 JOB AS A CONTRACTOR. IN OTHER WORDS, IN A PERFECT

1 WORLD, I WOULD HAVE NEVER GOT HER -- NEVER GOT HER
2 TO SEND ANYTHING IF I WAS DOING IT, BUT THE GIRL --
3 WHEN SOMEBODY SAYS "TERMS OF EMPLOYMENT," I AGREE
4 THAT SHOULDN'T HAVE BEEN USED. THAT'S A DUMB BUNNY
5 THAT DONE IT, BUT THE FACT OF THE MATTER IS WHEN I
6 SAY I EMPLOY YOU TO DO SOMETHING, THAT DOESN'T
7 NECESSARILY MEAN THAT YOU ARE A W-2'ED EMPLOYEE.
8 SHE HAD BEEN EMPLOYED TO DO SOMETHING AS A
9 CONTRACTOR.

10 Q. OKAY.

11 A. AND NONE OF THAT -- ALL OF THESE FEW DOCUMENTS
12 YOU'VE GOT STILL ARE WITH THE INDEPENDENT CONTRACTOR
13 DOCUMENT THAT WAS REDONE AT THAT SAME TIME.

14 Q. SURE, TRUE.

15 A. RIGHT.

16 Q. BUT ALL OF THESE THINGS THAT SHE SIGNED, THOSE ARE
17 STILL THINGS THAT YOU ALL HAVE ---

18 A. I AGREE.

19 Q. --- THE AUTHORITY TO DO?

20 A. THAT'S TRUE, YES, SIR. THAT'S WHAT IT SAYS, YES,
21 SIR.

22 Q. AND, SKIP ALONG. I'M NOT GOING TO SHOW YOU
23 EVERYTHING, BECAUSE I KNOW YOU -- ALL OF OUR TIME IS
24 IMPORTANT.

25 A. YEAH.

1 Q. I DID WANT TO ASK YOU, IF ONE OF THE NURSES WAS
2 CAUGHT USING DRUGS, DOES YOUR COMPANY HAVE A DRUG
3 POLICY?

4 A. ABSOLUTELY.

5 Q. WHAT WAS THE DRUG POLICY?

6 A. WELL, THE DRUG POLICY IS -- ARE YOU TALKING ABOUT
7 PRE EMPLOYMENT OR DURING EMPLOYMENT OR?

8 Q. DURING EMPLOYMENT.

9 A. DURING EMPLOYMENT, WHAT IS DONE, IS WE GO BACK. WE
10 WOULD SEND THEM TO THE FACILITY. IF THEY DON'T WANT
11 TO ADMIT THEY WERE USING DRUGS AND WE SEND THEM TO
12 THE FACILITY, THEY GET TESTED. IF THEY GET POPPED
13 FOR THE DRUG TEST, THEN WE SEND THEM TO AN M.R.O.
14 THE M.R.O., THE MEDICAL REVIEW OFFICER, GOES THROUGH
15 THE PROCESS OF WHAT IS THEIR PROBLEM AND DEALS WITH
16 ALL THAT IN THE MEDICAL ENVIRONMENT AND COMES UP
17 WITH A PLAN FOR US OF WHAT THAT PERSON IS SUPPOSED
18 TO DO, AND IF THEY WILL FOLLOW THOSE THINGS, WE TRY
19 TO REINSERT THEM BACK INTO THE LINEUP TO WORK IF
20 THEY WILL DO THAT, BUT IF THEY DON'T DO THAT, THEN
21 THEY CAN'T WORK FOR US IN ANY FACILITY, PERIOD,
22 EITHER MEDICAL OR AS AN EMPLOYEE OF CONDUSTRIAL.
23 Q. OKAY. I'M GOING TO SHOW YOU PAGE 322 OF THE WILL
24 HARBISON DOCUMENTS. IS THAT THE SUBSTANCE ABUSE
25 POLICY FOR MEDUSTRIAL?

1 A. IT IS.

2 Q. AND IT IS SIGNED BY MS. TURNER ON OCTOBER 9TH, 2014?

3 A. IT WAS.

4 Q. AND WHAT DOES THAT SAY WILL HAPPEN TO ANY CONTRACTOR
5 WHO VIOLATES THE POLICY?

6 A. "THIS MAY INCLUDE TERMINATION, EVEN FOR THE FIRST
7 OFFENSE." SO, THAT'S LIKE GIVING THEM WORST CASE
8 SCENARIO, IF YOU POP ON A DRUG TEST, AND OF COURSE
9 IT DOES SAY "ANY CONTRACTOR." IT DOESN'T SAY
10 "EMPLOYEE." ANY CONTRACTOR WHO VIOLATES THIS WILL
11 BE DISCIPLINED, AND THIS MAY INCLUDE TERMINATION
12 EVEN FOR THE FIRST OFFENSE. MAY -- IT DOESN'T SAY
13 "WILL," BUT "MAY."

14 Q. IT DOESN'T SAY YOU ARE DEFINITELY GOING TO TERMINATE
15 THEM, ---

16 A. RIGHT.

17 Q. --- BUT YOU HAVE THE AUTHORITY TO DO SO?

18 A. IT'S ALL GOING TO DEPEND ON THEIR ATTITUDE AND IF
19 THEY WANT TO GO THROUGH THE PROCESS TO CLEAN UP, YOU
20 KNOW.

21 Q. I'M GOING TO SHOW YOU ANOTHER DOCUMENT, MR. DURHAM.
22 THIS IS AT PAGE 282 OF THE CLAIMANT'S APA
23 SUBMISSIONS. ARE YOU FAMILIAR WITH THIS DOCUMENT?

24 A. THAT LOOKS LIKE THE LAST PAGE OF THE -- A STANDARD
25 EMPLOYMENT APPLICATION IS WHAT THAT LOOKS LIKE TO

1 ME.

2 Q. OKAY.

3 A. THE DOCUMENT DOESN'T STAND OUT TO ME AS SOMETHING
4 THAT I'VE DEALT WITH, BUT THE WORDING APPEARS TO ME
5 TO BE THE SAME AS WHAT WOULD HAVE BEEN THE LAST PAGE
6 OF OUR HUMAN RESOURCE -- OF OUR EMPLOYEE POLICY
7 MANUAL.

8 Q. OKAY.

9 A. THAT'S WHAT IT LOOKS LIKE TO ME.

10 Q. AND THIS WAS SIGNED BY RACHEL TURNER ON OCTOBER 9TH,
11 2014?

12 A. IT WAS.

13 Q. OKAY. AND IT SAYS "IN EXCHANGE FOR THE
14 CONSIDERATION OF MY JOB APPLICATION BY CONDUSTRIAL,
15 INC. ---

16 A. YEAH.

17 Q. --- I AGREE THAT..." SO, I'M GOING TO COME DOWN TO
18 THE MIDDLE. WOULD YOU AGREE THAT THIS SAYS, "THIS
19 DOCUMENT DOES," QUOTE -- "DOES NOT," QUOTE "CHANGE
20 IN ANY RESPECT THE EMPLOYMENT-AT-WILL RELATIONSHIP
21 BETWEEN IT AND THE UNDERSIGNED"?

22 A. IT DOES.

23 Q. AND DOWN AT THE BOTTOM, ---

24 A. YEP.

25 Q. --- WHAT DOES IT SAY AT THE BOTTOM WHERE I'VE

1 HIGHLIGHTED IT?

2 A. "I FURTHER UNDERSTAND MY EMPLOYMENT WITH THE COMPANY
3 SHALL BE PROBATIONARY FOR A PERIOD OF 90 DAYS, AND
4 FURTHER THAT AT ANY TIME DURING THE PROBATIONARY
5 PERIOD OR THEREAFTER, MY EMPLOYMENT RELATIONSHIP
6 WITH THE COMPANY IS TERMINABLE AT WILL FOR ANY
7 REASON BY EITHER PARTY." THAT'S -- THAT'S ONE OF
8 THOSE DOCUMENTS LIKE I'VE SAID NOW A DOZEN TIMES, IT
9 WAS NOT APPLICABLE TO ANY OF THE LADIES THAT WERE
10 GOING TO SIGN THE INDEPENDENT CONTRACTOR AGREEMENT,
11 THAT WANTED TO DO IT THAT WAY. THAT'S SOMETHING
12 THAT IF YOU CAME IN AND APPLIED FOR A STANDARD JOB,
13 YOU WOULD HAVE SIGNED ALL OF THESE 100 PERCENT. IT
14 SHOULDN'T HAVE BEEN PRESENTED TO THEM, BUT IN MY
15 OPINION, I WOULD HAVE SAID, YOU KNOW, THE CONTRACT -
16 - THE INDEPENDENT CONTRACTOR AGREEMENT NULL --
17 NULLIFIES EVERYTHING ELSE BECAUSE IT TRUMPS IT ALL,
18 BUT IT SHOULD HAVE NEVER BEEN DONE, ABSOLUTELY,
19 YOU'RE CORRECT.

20 Q. WELL, AND SEE, THAT'S THE KIND OF THING THAT
21 TROUBLES ME BECAUSE I READ THIS DOCUMENT, THIS
22 APPLICATION FORM WAIVER, AND IT SAYS "DOES NOT
23 CHANGE IN ANY RESPECT THE EMPLOYMENT-AT-WILL
24 RELATIONSHIP."

25 A. YEAH, IT DOESN'T CHANGE IT FOR AN EMPLOYEE. THAT'S

1 CORRECT. THAT'S WHAT IT SAYS. IT DOESN'T CHANGE
2 IT, BUT THAT DOCUMENT IS PART OF THE EMPLOYMENT
3 EMPLOYEE APPLICATION AND EMPLOYEE MANUAL THAT'S
4 GIVEN TO THE -- ALL THE PEOPLE, AND THEY SHOULDN'T
5 HAVE -- SHE SHOULDN'T HAVE BEEN GIVEN IT. THAT'S
6 ALL THERE IS TO IT.

7 Q. NOW, SHE WAS GIVEN IT, AND NOW SHE HAS SIGNED
8 DOCUMENTS THAT SAY SHE'S AN EMPLOYEE, HASN'T SHE?

9 A. SHE HAS SIGNED DOCUMENTS SAYING THAT SHE WOULD -- IF
10 SHE WAS AN EMPLOYEE, THAT SHE WOULD OPERATE AND
11 ABIDE BY THAT, BUT SHE SIGNED THE DOCUMENT SHE
12 DIDN'T WANT TO BE AN EMPLOYEE. SO, SHE WASN'T AN
13 EMPLOYEE.

14 Q. WELL, SHE SIGNED ALL KINDS OF DOCUMENTS SAYING BOTH
15 THINGS, DIDN'T SHE?

16 A. SHE SIGNED SOME DOCUMENTS SHE SHOULDN'T HAVE SIGNED;
17 I AGREE WITH YOU.

18 Q. AND I GUESS ONE WAY YOU WOULD WEIGH IT IF YOU WERE
19 COUNTING UP DOCUMENTS, YOU'VE GOT ONE THAT SAYS
20 SHE'S AN INDEPENDENT CONTRACTOR AND ABOUT 20 THAT
21 SAY SHE'S AN EMPLOYEE, RIGHT?

22 BY MR. GOODWYN:

23 OBJECT TO THE FORM, YOUR HONOR. THAT'S -- IT'S
24 NOT AN ADDITION -- IT'S NOT A MATTER OF WHICH
25 DOCUMENTS THERE ARE MORE OF. IT'S NOT A

1 COMPETITION.

2 BY COMMISSIONER JAMES:

3 ALL RIGHT. THIS IS ---

4 BY MR. SAMUELS:

5 IT'S A SPEAKING OBJECTION, YOUR HONOR.

6 BY COMMISSIONER JAMES:

7 THIS IS CROSS. SIR, IF YOU WANT TO REPEAT THE
8 QUESTION.

9 BY MR. GOODWYN:

10 AND IT'S NOT AS -- AND IT'S NOT AS IT'S
11 PRESENTED EITHER. HE SAID IF IT'S ONE TO 20, AND
12 THAT'S NOT THE EVIDENCE IN THE CASE.

13 BY COMMISSIONER JAMES:

14 WELL, ON THAT GROUNDS, I DON'T KNOW HOW MANY
15 DOCUMENTS IT IS, SO.

16 BY MR. GOODWYN:

17 I DON'T THINK HE DOES EITHER.

18 BY MR. SAMUELS:

19 I'LL WITHDRAW THE QUESTION, YOUR HONOR.

20 BY COMMISSIONER JAMES:

21 OKAY.

22 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

23 Q. LET ME ASK YOU, MR. DURHAM, IF YOU HAD THIS TO DO
24 ALL OVER, YOU WOULDN'T HAVE HAD YOUR DIRECTOR OF
25 OPERATIONS HAVE MS. TURNER SIGN ALL OF THESE

1 DOCUMENTS THAT SAY SHE'S AN EMPLOYEE?

2 A. WELL, I DIDN'T HAVE HER DO IT TO BEGIN WITH. SHE
3 DID THAT MISTAKENLY. SHE SHOULD HAVE NEVER DONE
4 THAT.

5 Q. I GOT IT.

6 A. AND I -- HAD SHE FOLLOWED THE CORRECT PROTOCOL, SHE
7 WOULD HAVE NEVER SIGNED THOSE PIECES, THOSE
8 DOCUMENTS. THERE WAS NO NEED TO.

9 Q. ALL RIGHT. FROM MS. TURNER'S PERSPECTIVE, SHE'S GOT
10 TO DO WHAT THE DIRECTOR OF OPERATIONS TELLS HER TO
11 DO, DOESN'T SHE?

12 A. YES, I WOULD AGREE WITH THAT.

13 BY MR. SAMUELS:

14 I APPRECIATE YOUR TIME. I'VE ENJOYED IT.
15 THANK YOU.

16 BY THE WITNESS:

17 THANK YOU VERY MUCH.

18 BY COMMISSIONER JAMES:

19 COUNTRYWIDE.

20 BY MS. RICHARDSON:

21 ISN'T IT JAMIE'S TURN?

22 BY MR. BEARD:

23 DO YOU WANT US TO DO THE COVERAGE ---

24 BY MS. RICHARDSON:

25 THEN GRADY'S TURN.

1 BY MR. NEWMAN:

2 I DON'T HAVE ANY QUESTIONS.

3 BY MR. ALFORD:

4 OKAY.

5 BY MR. BEARD:

6 I'VE JUST GOT A COUPLE.

7 BY MR. ALFORD:

8 SURE.

9 BY COMMISSIONER JAMES:

10 GUARANTEE.

11 BY MR. BEARD:

12 THANK YOU, MA'AM.

13 CROSS EXAMINATION BY MR. BEARD:

14 Q. GOOD AFTERNOON, MR. DURHAM.

15 A. YES, SIR. ,

16 Q. BASED UPON THE MOST RECENT TESTIMONY THAT YOU
17 PROVIDED, WOULD YOU AGREE IF NOTHING LESS THAT SOME
18 OF THE PAPERWORK IN YOUR APPLICATION PROCESS IS
19 SLOPPY; WOULD YOU AGREE WITH THAT?

20 A. ON -- WHEN YOU SAY "APPLICATION," ARE YOU TALKING
21 ABOUT FOR ---

22 Q. EMPLOYEE, INDEPENDENT CONTRACTOR LANGUAGE ON SOME OF
23 THESE FORMS.

24 A. YES, THERE'S NO DOUBT ABOUT THE FACT THAT WITH THE
25 INDEPENDENT CONTRACTORS, NOT IN OUR NORMAL

1 PAPERWORK, BUT WITH THOSE INDEPENDENT CONTRACTORS,
2 IT SHOULD HAVE BEEN DONE BETTER.

3 Q. OKAY.

4 A. I WOULD AGREE 100 PERCENT.

5 Q. AND THOSE WERE SOME OF THESE STANDARD FORMS THAT WE
6 ALL SEE IN EMPLOYMENT PACKAGES AND PERSONNEL FILES
7 THAT APPARENTLY WHOEVER WAS IN CHARGE GAVE HER SOME
8 OF THE WRONG FORMS ---

9 A. CORRECT.

10 Q. --- ACCORDING TO YOU, CORRECT?

11 A. WELL, SHE BLED TWO DIFFERENT PACKAGES IS WHAT SHE
12 DID. SHE TOOK THE INDEPENDENT CONTRACTOR AND BLED
13 OVER SOME THINGS THAT WERE NOT APPLICABLE.

14 Q. BUT FACTUALLY, THERE'S ONLY ONE CONTRACT BETWEEN YOU
15 AND MS. -- OR THERE'S ONLY ONE LAST CONTRACT BETWEEN
16 YOU AND MS. TURNER, CORRECT, AND THAT ---

17 A. CORRECT.

18 Q. --- WAS OCTOBER THE 9TH OF 2014; IS THAT CORRECT?

19 BY MR. SAMUELS:

20 OBJECT, YOUR HONOR. HE HAS NO WAY OF KNOWING
21 WHAT ORDER THESE FORMS WERE SIGNED IN AND WHETHER OR
22 NOT, EVEN IF HE DID, IT WOULDN'T MAKE ANY
23 DIFFERENCE. HE WASN'T PRESENT AT THE SIGNING. HE
24 HAS NO WAY OF KNOWING WHETHER THE ---

25 BY COMMISSIONER JAMES:

1 WELL, THE ---

2 BY MR. SAMUELS:

3 --- INDEPENDENT CONTRACTOR AGREEMENT WAS THE
4 LAST DOCUMENT SIGNED.

5 BY MR. BEARD:

6 THAT'S NOT WHAT I SAID. I SAID THERE'S ONLY
7 ONE LAST CONTRACT BETWEEN HIS COMPANY AND THE
8 CLAIMANT, "CONTRACT."

9 BY COMMISSIONER JAMES:

10 YOU CAN ANSWER THE QUESTION, SIR.

11 BY MR. BEARD:

12 I DIDN'T ASK ABOUT FORMS.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT. YOU CAN ANSWER THE QUESTION, SIR.

15 BY THE WITNESS:

16 YES.

17 BY MR. BEARD:

18 AND FOR THE RECORD, COMMISSIONER, I'M LOOKING
19 AT PAGE 238 OF THE CLAIMANT'S APAs.

20 THE WITNESS ANSWERS:

21 A. THAT IS CORRECT.

22 CROSS EXAMINATION RESUMED BY MR. BEARD:

23 Q. THAT IS CORRECT?

24 A. YES, SIR, THAT'S CORRECT.

25 Q. AND IN THAT CONTRACT DATED OCTOBER THE 9TH, 2014,

1 LESS THAN ONE YEAR PRIOR TO THIS INCIDENT, CORRECT?
2 THE INCIDENT WAS IN SEPTEMBER OF '15?

3 A. THAT IS CORRECT.

4 Q. THERE IS A CLAUSE THAT SAYS "THIS CONTRACT CANNOT BE
5 BROKEN FOR ANY REASON UNLESS IN WRITING BETWEEN THE
6 PARTIES, SPECIFICALLY BREAKING THIS CONTRACT"; IS
7 THAT CORRECT?

8 A. THAT IS CORRECT, SIR.

9 Q. AND THIS IS THE CONTRACT, I THINK YOU SAID, WAS
10 PREPARED BY NELSON, MULLINS, RILEY AND SCARBOROUGH?

11 A. THAT IS CORRECT.

12 Q. OKAY. AND HOLLY SEEBY, IT REPRESENTS THAT HOLLY
13 SEEBY IS THE MEDUSTRIAL HEALTHCARE REFERRAL SERVICES
14 AGENT THAT SIGNED ON BEHALF OF YOU, THE BROKER, AT
15 THE TIME?

16 A. THAT'S CORRECT, SIR.

17 Q. OKAY. AND THE TERM "BROKER" IS USED IN THIS
18 DOCUMENT, I ASSUME THAT IS BECAUSE NELSON MULLINS
19 TOLD YOU THAT WAS THE -- WHAT TERMINOLOGY NEEDED TO
20 BE IN THE DOCUMENT?

21 A. YES, CORRECT.

22 Q. OKAY. AND SO AS FAR AS YOU ARE CONCERNED, THIS IS
23 THE DOCUMENT, THE ONLY CONTRACT THAT IS IN EXISTENCE
24 AT THE TIME THIS INCIDENT CAME INTO EFFECT; IS THAT
25 CORRECT?

1 A. YES, SIR.

2 Q. THE OTHER FORMS THAT ARE SLOPPY AND MAY HAVE
3 LANGUAGE THAT ARE WRONG WERE JUST FORMS THAT SOMEONE
4 GAVE HER TO FILL OUT?

5 A. THAT'S CORRECT.

6 BY MR. BEARD:

7 THANK YOU, SIR. THAT'S ALL I HAVE.

8 BY THE WITNESS:

9 THANK YOU.

10 BY COMMISSIONER JAMES:

11 MR. NEWMAN.

12 BY MR. NEWMAN:

13 NONE, YOUR HONOR.

14 BY COMMISSIONER JAMES:

15 MR. ALFORD.

16 BY MR. BEARD:

17 COMMISSIONER, A RESTROOM BREAK BEFORE MR.
18 ALFORD STARTS, NOT FOR ME, BUT FOR ONE OF MY
19 COLLEAGUES?

20 BY COMMISSIONER JAMES:

21 CERTAINLY.

22 (OFF THE RECORD)

23 BY COMMISSIONER JAMES:

24 MR. ALFORD.

25 CROSS EXAMINATION BY MR. ALFORD:

1 Q. GOOD AFTERNOON, SIR, MY NAME IS GREGG ALFORD.
2 A. YES, SIR.
3 Q. I REPRESENT COUNTRYWIDE, AND I'M JUST GOING TO ASK
4 YOU SOME QUESTIONS. SIR, JUST KIND OF AN INITIAL
5 MATTER, DO YOU TAKE THE POSITION IN THIS CASE THAT
6 COUNTRYWIDE WAS A P.E.O.?
7 A. YEAH, I DO.
8 Q. YOU DO?
9 A. CERTAINLY.
10 Q. SO, YOU BELIEVE THAT YOU CONTRACTED WITH COUNTRYWIDE
11 AS A P.E.O.?
12 A. YES.
13 Q. OKAY. WHY?
14 A. THAT WAS THE CULMINATION OF EVERY DISCUSSION, AND
15 THAT WAS HOW THEY PRESENTED THEMSELVES TO ME WAS A
16 P.E.O., AND I MEAN, THAT'S THEIR SERVICE. I MEAN,
17 THAT'S LIKE ASKING ME DID I GET GAS AT THE SHELL
18 STATION, WHY? I MEAN, THEY TOLD ME THEY WERE A
19 P.E.O. I MEAN, THAT'S ALL I CAN SAY.
20 Q. IS IT POSSIBLE YOU DIDN'T WANT TO CONTRACT WITH A
21 P.E.O.?
22 A. I DIDN'T WANT TO CONTRACT WITH A P.E.O.?
23 Q. YEAH.
24 A. I MEAN, I WOULD HAVE MUCH RATHER HAVE NOT CONTRACTED
25 WITH A P.E.O. I WOULD HAVE RATHER CONTRACTED WITH A

1 DIRECT POLICY, BUT I DID CONTRACT WITH A P.E.O.,
2 BECAUSE IT WAS THE BETTER OF ALL THE ALTERNATIVES
3 THAT I HAD.

4 Q. IS IT POSSIBLE THAT YOU DIDN'T WANT COUNTRYWIDE TO
5 ACT IN A P.E.O. MANNER?

6 A. I DIDN'T CARE TO ACCESS THEIR FULL P.E.O. PROGRAM,
7 AND A P.E.O. PROGRAM IS PRETTY MUCH THE SAME
8 EVERYWHERE YOU GO, YOU KNOW, AND ---

9 Q. BY STATUTES?

10 A. PRETTY MUCH BY STATUTES, THAT'S CORRECT, BUT WHAT
11 THEY DO IN THE P.E.O. INDUSTRY ---

12 Q. I'M LISTENING TO YOU.

13 A. OKAY. WHAT THEY DO IN THE P.E.O. INDUSTRY, AND
14 THEY'VE ALL DONE IT, AND THEY'VE DONE IT WITH ME,
15 LIKE, FOUR TIMES, THEY WILL -- THEY'LL MAKE CHANGES
16 AND AGREEMENTS TO P.E.O. IN OTHER WORDS, THEY HAVE
17 THE CADILLAC PROJECT, THE PROCESS IS SET UP, AND
18 THIS IS WHERE THEY DO IT ALL, AND THEN THEY HAVE
19 OTHER "IF YOU DON'T WANT US TO DO THAT, WE CAN TAKE
20 THIS OUT. IF YOU DON'T WANT TO DO THAT, WE CAN TAKE
21 THIS OUT, AND YOU CAN DO THIS PART," BUT THERE'S
22 CERTAIN PARTS OF IT THAT THEY CAN'T -- REALLY CAN'T
23 TAKE OUT OF IT, AND SO, WE GAVE THEM AN OPTION, JUST
24 AS WE HAVE GIVEN FIRST STAR H.R. OF WHAT WE WOULD
25 LIKE TO DO, AND I SAID "IF YOU CAN DO THIS -- IF YOU

1 CAN DO THIS, I WILL CERTAINLY CONSIDER DOING IT,"
2 AND SCOTT AGREED TO DO IT, AND SENT THE CONTRACT
3 BACK WITH THE SAME WORDING THAT I HAD UNDER H.R. --
4 FIRST STAR H.R., UNDER A.M.S. STAFF LEASING, WHICH
5 IS WHAT THEY WERE PRIOR.

6 Q. ALL RIGHT.

7 A. AND THAT'S WHAT WE DID.

8 Q. SIR, DID YOU ---

9 BY MR. ALFORD:

10 YOUR HONOR, AT THIS TIME, I'M GOING TO ASK THE
11 WITNESS TO LOOK AT SOME DOCUMENTS, WHICH WERE
12 TENDERED THIS MORNING TO US, AND I WOULD LIKE TO
13 MARK THESE AS A TRIAL EXHIBIT. THESE ARE THE
14 DOCUMENTS TENDERED BY -- IT'S NOT KEENAN AND SUGGS
15 ANYMORE. IT'S ---

16 BY MR. BEARD:

17 YEAH, IT'S KEENAN AND SUGGS.

18 BY MR. ALFORD:

19 WELL, KEENAN SUGGS HUB. THESE WERE TENDERED
20 THIS MORNING. I WOULD JUST LIKE TO MARK THEM ALL AS
21 TRIAL EXHIBITS.

22 BY COMMISSIONER JAMES:

23 OKAY. ANY OBJECTIONS?

24 BY MS. RICHARDSON:

25 JUST THAT THIS IS -- GREGG, I ONLY HANDED YOU

1 THE BIG STACK. THIS WAS A BIG SEPARATE -- THIS
2 LITTLE STACK.

3 BY MR. ALFORD:

4 OH, WE'VE GOT A SEPARATE ONE?

5 BY MS. RICHARDSON:

6 YEAH. THAT LITTLE STACK, I BELIEVE, WAS -- IS
7 MOSTLY DOCUMENTS THAT ---

8 BY MR. BEARD:

9 IT'S GOT A FEW ACORD FORMS AND THINGS LIKE
10 THAT IN IT.

11 BY MR. ALFORD:

12 OH, YEAH, WE HAD THAT, TOO. OKAY. I'M GOING
13 TO GO WITH THE BIG STACK, I THINK.

14 ALL RIGHT, SIR.

15 BY COMMISSIONER JAMES:

16 AND THEY'RE NOT MARKED AT THIS POINT. ARE
17 THERE ANY -- I HAVEN'T SEEN THEM. ARE THERE ANY
18 OBJECTIONS?

19 BY MR. GOODWYN:

20 HAS HE OFFERED THEM AS AN EXHIBIT RIGHT NOW, OR
21 IS HE JUST ASKING HIM TO LOOK AT THEM.

22 BY COMMISSIONER JAMES:

23 I'M NOT -- I'M NOT SURE.

24 BY MR. ALFORD:

25 WELL, I'M GOING TO END UP OFFERING THEM AS AN

1 EXHIBIT.

2 BY COMMISSIONER JAMES:

3 OKAY.

4 BY MR. ALFORD:

5 BECAUSE MANY OF THE DOCUMENTS -- I MEAN, WE --
6 IF WE NEED TO, WE CAN PIECE THEM OUT, BUT THEY WERE
7 THE RESPONSE TO THE SUBPOENA THAT WAS SERVED ON MR.
8 HYNDSHAW'S GROUP, WHICH HE AGREED YESTERDAY AT THE
9 END OF COURT TO GET, AND HE BROUGHT THEM -- HE
10 BROUGHT THEM ALL HERE THIS MORNING, AND THESE ARE
11 DOCUMENTS THAT ARE ESSENTIALLY THE FILE
12 CORRESPONDENCE, DRAFTS, THOSE TYPE OF THINGS BETWEEN
13 EVEN SOME APPLICATIONS BETWEEN MR. HYNDSHAW'S FIRM.
14 AND CONDUSTRIAL.

15 BY MR. GOODWYN:

16 I MEAN, JUST BECAUSE IT'S A SUBPOENA RESPONSE
17 DOESN'T MEAN IT'S ADMISSIBLE OR AUTHENTICATED.

18 BY MR. ALFORD:

19 AND, LOOK, I CAN PLAY THROUGH IT DOCUMENT BY
20 DOCUMENT. THAT'S NO PROBLEM. BECAUSE THEY ARE
21 EMAILS THAT HE WROTE OR HE RECEIVED. IT DOESN'T
22 MATTER TO ME, EITHER WAY.

23 BY MR. GOODWYN:

24 I MEAN, THE EMAILS THAT HE IS EITHER A
25 RECIPIENT OR SENDER OF, NO OBJECTION. I MEAN, I

1 JUST -- IF THERE'S OTHER DOCUMENTS IN THERE THAT HE
2 -- HE'S NOT FAMILIAR WITH, YOU KNOW, THAT HE CAN'T
3 SPEAK TO, YOU KNOW, I DON'T -- I DON'T THINK IT'S
4 FAIR TO ADMIT THEM TO THIS WITNESS.

5 BY COMMISSIONER JAMES:

6 WELL, THEN ---

7 BY MR. ALFORD:

8 YOUR HONOR, I WILL REPRESENT TO THE COURT AND I
9 THINK AS WE GO THROUGH THE DOCUMENTS, IT WILL
10 ESTABLISH THAT THIS IS -- THIS IS THEIR FILE.

11 BY MR. GOODWYN:

12 THIS IS HYNDSHAW'S FILE, NOT HIS FILE.

13 BY MR. ALFORD:

14 WELL, OKAY.

15 BY MR. BEARD:

16 I MEAN, WITH ALL DUE RESPECT, WE LET MR.
17 HYNDSHAW GO WITH THE UNDERSTANDING HE WAS PROVIDING
18 THESE DOCUMENTS. HE HAS NOW DONE THAT. WE WILL BE
19 GLAD TO CALL MR. HYNDSHAW BACK AS A WITNESS IF YOU
20 WANT US TO DO THAT AND PUT ALL OF THESE DOCUMENTS
21 IN. IF THAT'S WHAT WE HAVE TO DO, WE WILL BE GLAD
22 TO DO THAT.

23 BY MR. GOODWYN:

24 AND, AGAIN, MAYBE LET'S JUST GO THROUGH IT. I
25 HAVE NOT LOOKED THROUGH ALL OF THESE.

1 BY COMMISSIONER JAMES:

2 DO YOU WANT A CHANCE TO FLIP THROUGH THAT
3 PARTICULAR STACK? I MEAN, ---

4 BY MR. GOODWYN:

5 WELL, WHY DON'T WE ---

6 BY COMMISSIONER JAMES:

7 --- BECAUSE IF THERE'S A QUESTION -- IF THE
8 QUESTION -- I GUESS THE QUESTION REALLY IS
9 AUTHENTICATION, ---

10 BY MR. ALFORD:

11 YEAH, HERE'S WHAT I CAN DO, YOUR HONOR. I CAN
12 ---

13 BY COMMISSIONER JAMES:

14 --- AND KEENAN AND SUGGS DID NOT COMPLY WITH
15 THE SUBPOENA, OR I DON'T MEAN THAT ---

16 BY MR. BEARD:

17 NO, THEY DIDN'T COMPLY WITH THE SUBPOENA UNTIL
18 THIS GENTLEMAN MADE THEM COMPLY YESTERDAY.

19 BY COMMISSIONER JAMES:

20 RIGHT. AND I DON'T KNOW THE REASON FOR IT, SO
21 I'M NOT SUGGESTING ANY TYPE OF CONTEMPTUOUS
22 BEHAVIOR, BUT THE POINT IS THAT THEY WERE JUST
23 PRODUCED THIS MORNING.

24 BY MR. ALFORD:

25 DO YOU MIND IF I GET THAT BACK? I TELL YOU

1 WHAT I'LL DO. I'M JUST GOING TO -- I HATE TO DO IT,
2 BUT I'M JUST GOING TO TAKE THE LONG ROAD IF THAT'S
3 OKAY.

4 BY MR. GOODWYN:

5 NO, WHAT I WAS GOING TO ---

6 BY MR. ALFORD:

7 IT'S OKAY.

8 BY MR. GOODWYN:

9 --- SUGGEST YOUR HONOR ---

10 BY MR. ALFORD:

11 THAT'S FINE.

12 BY MR. GOODWYN:

13 --- IS JUST WHY DOESN'T HE JUST GO THROUGH HIS
14 QUESTIONING, AND THEN BY THE TIME HE GETS THROUGH
15 IT, I MAY BE IN A POSITION TO NOT OBJECT.

16 BY MR. ALFORD:

17 I'M GOOD. I'LL JUST DO IT THIS WAY.

18 BY MR. GOODWYN:

19 NOBODY WANTS TO GO THE LONG ROAD. I'M
20 SUGGESTING NOT THE LONGER ROAD.

21 BY MR. ALFORD:

22 I DON'T MEAN IT LIKE THAT. I MEAN, IT'S -- BUT
23 IT'S OKAY.

24 BY MR. ALFORD:

25 ALL RIGHT, SIR.

1 BY MR. GOODWYN:

2 WHATEVER YOU WANT TO DO.

3 BY COMMISSIONER JAMES:

4 DOES ANYBODY HAVE ANY OBJECTION AS THESE WERE
5 MARKED. MY ASSISTANT HAS ALREADY MADE COPIES TO
6 THESE AS TO -- NEVERMIND. IT WILL BE TOO
7 CUMBERSOME. WE WILL JUST MAKE ANOTHER COPY FOR US.
8 WE HAD MADE A COPY FOR US, BUT WE WILL MAKE IT PIECE
9 BY PIECE. ALL RIGHT.

10 BY MR. ALFORD:

11 YES, MA'AM.

12 BY COMMISSIONER JAMES:

13 ALL RIGHT. GO AHEAD.

14 CROSS EXAMINATION RESUMED BY MR. ALFORD:

15 Q. SIR, I'M GOING TO SHOW YOU SOME EMAILS, WHICH I
16 BELIEVE ---

17 BY MR. ALFORD:

18 YES, THANK YOU, YOUR HONOR.

19 CROSS EXAMINATION RESUMED BY MR. ALFORD:

20 Q. I'M GOING TO STAPLE THEM FOR YOU.

21 A. OH, THANK YOU.

22 BY MS. RICHARDSON:

23 GREGG, WHAT DATE ARE YOU ON?

24 BY MR. ALFORD:

25 UNFORTUNATELY, THEY ARE NOT NUMBERED, BUT DATE

1 WISE, STARTING WITH AN EMAIL FROM MR. DURHAM DATED 2
2 MARCH, 2015, 12:34 P.M. TO MR. HYNDSHAW AND SEVERAL
3 OTHERS.

4 BY MR. GOODWYN:

5 WHERE IN THE PACK IS IT?

6 BY MR. ALFORD:

7 MIDWAY PROBABLY, YEAH, ABOUT MIDWAY, AND IT'S
8 ONE, TWO, THREE ---

9 BY MS. FARTHING:

10 YOU SAID MARCH 2ND?

11 BY MS. RICHARDSON:

12 YEAH.

13 BY MR. ALFORD:

14 YEP.

15 BY MS. FARTHING:

16 ALL RIGHT.

17 BY MR. ALFORD:

18 FIVE, SIX ---

19 BY MR. GOODWYN:

20 AND WHAT'S THE DATE AGAIN?

21 BY MR. ALFORD:

22 MARCH 2ND, 2015. IT LOOKS LIKE THAT
23 (INDICATES).

24 BY MR. GOODWYN:

25 OKAY.

CROSS EXAMINATION RESUMED BY MR. ALFORD:

Q. ALL RIGHT, SIR. DO YOU RECALL THIS STRING OF
EMAILS?

A. YES, SIR.

Q. ALL RIGHT. IN THIS EMAIL, YOU ARE GOING BACK AND
FORTH WITH MR. HYNDSHAW, SCOTT HANSON, GEORGE KRIS.
YOU COPY TOM SEARS AND JO ANN WHITAKER; IS THAT
CORRECT?

A. THAT'S CORRECT.

Q. AND YOU'RE TALKING ABOUT THE STRUCTURE OF THE, WHAT
I'LL CALL THE CONDUSTRIAL COUNTRYWIDE AGREEMENT THAT
ULTIMATELY CAME TO EXIST; IS THAT RIGHT?

A. THAT'S CORRECT.

Q. OKAY. AND AT THIS TIME, SIR, YOU -- YOU'RE LAYING
OUT FOR THEM KIND OF YOUR PHILOSOPHY, I GUESS, OR
YOUR IDEAS OF HAVING DEALT WITH P.E.O.s; IS THAT
RIGHT?

A. I WAS JUST GIVING MY EXPERIENCE, YOU KNOW, WHATEVER.

Q. OKAY. IN FACT, YOU -- I'M GOING TO COME DOWN ONE,
TWO, THREE, FOUR, FIVE -- FIFTH PARAGRAPH. WOULD
YOU MIND -- IT'S A LITTLE LONG, BUT I'M GOING TO ASK
YOU TO READ THAT FIFTH PARAGRAPH INTO THE RECORD.

A. STARTING WITH -- GIVE ME THE WORD.

Q. "FRANKLY."

A. FRANKLY?

1 Q. YES, SIR.

2 A. I SAID "FRANKLY, WE ARE A LITTLE MORE SOPHISTICATED
3 THAN THE EVERYDAY STAFFING COMPANY, AND WE ALSO
4 COVER MORE STATES THAN MOST OF OUR COMPETITORS,
5 ALBEIT CERTAINLY NOT ALL OF THEM, BUT WE ALSO DEAL
6 WITH MANY HIGH PROFILE CLIENTS SUCH AS BOEING, BMW,
7 CONSOL ENERGY, ET CETERA, AND THOSE AGREEMENTS
8 BETWEEN US AND THEM MAKE ANY P.E.O. ARRANGEMENT THAT
9 WE HAVE MADE SOMETHING THAT HAS TO BE CLEARLY
10 DEFINED AS TO HOW THAT RELATIONSHIP IS HANDLED
11 BECAUSE ANY INTERFERENCE OR FAILURE TO PRODUCE
12 WORKERS' COMP CERTIFICATES IN THE MANNER REQUIRED BY
13 THEM WOULD KILL OUR DEALS WITH THOSE CLIENTS. I
14 DIDN'T HAVE ANY ISSUES WITH HOW WE WORKED WITH
15 A.M.S. AND THEIR CERTS, BUT THOSE OTHER P.E.O.
16 GROUPS BECAME A BIG PROBLEM. WE HAVE HAD OUR OWN
17 FULL-TIME ON-STAFF EMPLOYMENT ATTORNEY AND C.P.A.
18 WE NEVER NEEDED A P.E.O. TO ACTUALLY DO ANYTHING FOR
19 US, AS WE CAN DO ALL THE PAYROLL PRODUCTION AND TAX
20 FILINGS OURSELVES. WE JUST LIKE THE WORKERS' COMP
21 ARRANGEMENT THAT USING A P.E.O. BRINGS TO US. AT
22 LEAST, WE LIKED THE ARRANGEMENT THAT THE A.M.S. DEAL
23 BROUGHT US IN WORKERS' COMP."

24 Q. AND IN FACT, SIR, ULTIMATELY IN THE AGREEMENT THAT
25 YOU REACHED WITH COUNTRYWIDE, YOU GUYS MAINTAINED

1 THOSE ACCOUNTING AND PAYROLL FUNCTIONS?

2 A. WE DID.

3 Q. OKAY. ALL RIGHT, SIR. NOW, IF YOU WOULD FLIP A
4 LITTLE WAYS. THERE WAS AN EMAIL MARCH 12TH FROM MR.
5 SEARS TO SCOTT HANSON, ALBERT HYNDSHAW. YOU WERE
6 COPIED. ANDY SONGER COPIED AND JO ANN WHITAKER
7 COPIED, IMPORTANCE HIGH.

8 A. YES.

9 Q. DO YOU SEE THAT, SIR?

10 A. YEAH.

11 Q. OKAY. WILL YOU TAKE A MOMENT TO READ THAT?

12 A. "SCOTT ---

13 Q. NO, NO, NOT THE WHOLE THING. READ IT. HAVE YOU
14 FAMILIARIZED YOURSELF WITH IT?

15 A. I'VE SEEN IT, BUT I'LL ---

16 Q. YEAH, TAKE A SECOND TO READ IT, BECAUSE I'M GOING TO
17 TALK TO YOU ABOUT IT.

18 A. (WITNESS REVIEWS DOCUMENT) OKAY.

19 Q. ALL RIGHT, SIR. THIS IS FROM MR. SEARS, AND THERE'S
20 APPARENTLY A DRAFT AGREEMENT FLOATING AROUND; IS
21 THAT RIGHT?

22 A. THERE WAS.

23 Q. OKAY. AND BEGINNING ONE, TWO, THREE, THE FOURTH
24 PARAGRAPH, IT BEGINS "PARAGRAPH FIVE." "PARAGRAPH
25 FIVE INDICATES THAT ALL OF OUR CONTRACTS WILL BE

1 ASSIGNED TO C.S.S.G. IF WE SIGN THIS DEAL, AND
2 FUTURE CONTRACTS WILL BE COSIGNED. THAT IS NOT
3 GOING TO HAPPEN." DID I READ THAT CORRECTLY?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. AND ISN'T THAT, SIR, ONE OF THE
6 HALLMARKS OF A P.E.O. RELATIONSHIP IS THAT THE
7 CONTRACTS WITH THE CLIENTS ARE ASSIGNED?

8 A. NO.

9 Q. OKAY. AND THAT'S YOUR TESTIMONY?

10 A. ABSOLUTELY.

11 Q. OKAY. NEXT DOWN, "SECONDLY, PARAGRAPH THREE,
12 INDICATES THAT WE ASSIGN ALL OF OUR EMPLOYEES TO
13 C.S.S.G., AND THAT C.S.S.G. IS THE SOLE EMPLOYER.
14 AGAIN, THIS IS NOT SOMETHING THAT WE CAN OR WILL
15 DO." IS THAT RIGHT?

16 A. THAT'S CORRECT.

17 Q. DID I READ THAT CORRECTLY?

18 A. THAT'S CORRECT.

19 Q. OKAY. ISN'T THE ASSIGNMENT OF THE EMPLOYEES ALSO A
20 HALLMARK OF A P.E.O.?

21 A. THE ASSIGNMENT OF?

22 Q. THE EMPLOYEES.

23 A. IT IS OFTEN. I AGREE THAT IS VERY OFTEN.

24 Q. OKAY. NOW, I'M GOING TO READ -- THIS IS MR. SEARS
25 NOW WRITING TO MR. HANSON. "WHAT WE HAD DISCUSSED A

1 YEAR AGO AND AGAIN SEVERAL MONTHS AGO IS ENTERING
2 INTO A CO-EMPLOYER AGREEMENT THAT WOULD FUNCTION
3 MORE LIKE AN A.S.O. RELATIONSHIP WHERE WE CAN
4 PROCESS PAYROLL, HANDLE H.R., AND REPORT AND SEND
5 ALL PAYROLL TAXES AND WITHHOLDINGS TO YOU FOR
6 RECORDING AND REPORTING AND PRIMARILY ACCESS YOUR
7 WORKERS' COMPENSATION PROGRAM. THIS IS THE EXACT
8 DEAL THAT WE HAD WITH A.M.S., AND THEY MADE GOOD
9 MONEY OFF OF US AND OTHER CLIENTS UNTIL THEY SCREWED
10 THEMSELVES OVER WITH OTHER -- WITH THEIR INSURANCE
11 CARRIERS." DID I READ THAT CORRECTLY?

12 A. THAT'S CORRECT.

13 Q. SO, IT DOESN'T APPEAR MR. SEARS IS LOOKING FOR A
14 P.E.O. RELATIONSHIP, DOES IT? HE WANTS AN A.S.O.
15 RELATIONSHIP.

16 A. WELL, WHAT TOM IS TRYING TO GET THEM TO -- AND THERE
17 AGAIN, I'M NOT FAMILIAR THAT THERE'S ONLY TWO THINGS
18 THAT HAVE LEGAL STANDING, AND THAT IS P.E.O., WHICH
19 USED TO BE CALLED STAFF LEASING IN THE STATE OF
20 SOUTH CAROLINA. NOW, THEY DO USE THE P.E.O. TERM,
21 AND TEMPORARY STAFFING. THERE IS NO SUCH THING AS
22 AN A.S.O. AN A.S.O. IS SOMETHING THAT PEOPLE HAVE
23 USED TO DESCRIBE SOMETHING WHEN THEY'RE PUTTING
24 DIFFERENT THINGS AND YOU'RE PIECING, BUT IT'S
25 BASICALLY ALL -- ALL AN A.S.O. IT'S IN MOST CASES

1 IN MY EXPERIENCE WITH DEALING WITH SEVERAL OF THEM
2 IS THAT THEY'RE A P.E.O. WHO DIDN'T -- YOU DIDN'T
3 BUY THE FULL PACKAGE FROM. THEY GAVE YOU A FULL
4 PACKAGE OF ALL OF THEIR SERVICES ---

5 Q. SIR, CAN I ASK YOU?

6 A. SURE.

7 BY MR. GOODWYN:

8 LET HIM FINISH HIS ANSWER.

9 BY MR. ALFORD:

10 WELL, ---

11 BY MR. GOODWYN:

12 I THINK HE'S ENTITLED TO FINISH HIS ANSWER.

13 BY MR. ALFORD:

14 --- IT'S BECOMING NON-RESPONSIVE.

15 BY COMMISSIONER JAMES:

16 ARE YOU FINISHED WITH YOUR ANSWER?

17 BY MR. ALFORD:

18 I MEAN, IT'S BECOMING NON-RESPONSIVE.

19 BY THE WITNESS:

20 I WAS JUST GOING TO SAY A P.E.O. IS A FULL ONE
21 SERVICE YOU BUY AS A PACKAGE, AND THEN WHEN THEY
22 UNBUNDLE IT, IT BECOMES AN A.S.O. AGREEMENT BECAUSE
23 YOU'RE PICKING PIECES OUT OF IT THAT YOU WANT TO DO.

24 CROSS EXAMINATION RESUMED BY MR. ALFORD:

25 Q. AND YOU UNBUNDLED IT, RIGHT?

- 1 A. WE DID, ABSOLUTELY.
- 2 Q. OKAY. SO, IT'S NOT A P.E.O. ANYMORE, IT BECOMES AN
- 3 A.S.O.? YOU JUST SAID IT.
- 4 A. I DON'T KNOW THAT A.S.O. OR -- I KNOW THE WORDS. I
- 5 DON'T KNOW THAT THERE IS A COMPANY THAT IS CALLED AN
- 6 A.S.O. I JUST DON'T KNOW THAT.
- 7 Q. BUT YOU WEREN'T LOOKING FOR A P.E.O. RELATIONSHIP.
- 8 A. I WAS LOOKING ---
- 9 Q. YOU WERE LOOKING FOR A PIECE OF ONE?
- 10 A. I WAS LOOKING FOR A PIECE OF ONE.
- 11 Q. OKAY, THANK YOU.
- 12 A. I AGREE WITH THAT. I WAS LOOKING FOR AN UNBUNDLED -
- 13 --
- 14 Q. OKAY.
- 15 A. --- ARRANGEMENT FROM ALL OF THEIR OTHER DUTIES. I
- 16 ONLY NEEDED A FEW.
- 17 Q. ALL RIGHT.
- 18 A. I MADE THAT PLAIN. THAT WAS NOTHING THAT WAS
- 19 SECRETIVE.
- 20 Q. BUT YOU DIDN'T SAY "I WANT A P.E.O. RELATIONSHIP."
- 21 IN FACT, YOU SAID YOU DIDN'T NEED ONE BECAUSE IT HAD
- 22 NEVER REALLY DONE ANYTHING FOR YOU IN THE FIRST
- 23 EMAIL, AND NOW, IN THIS EMAIL, MR. SEARS, YOUR
- 24 GENERAL COUNSEL, RIGHT?
- 25 A. YES.

1 Q. OKAY. MR. SEARS IS WRITING SAYING WE DON'T REALLY
2 WANT A P.E.O. SO, TAKE OUT THESE TRADITIONAL P.E.O.
3 PARAGRAPHS AND DOWN HERE, WE WANT TO MAINTAIN THE
4 PAYROLL AND H.R. FUNCTIONS ESSENTIALLY. ISN'T THAT
5 RIGHT?

6 A. ESSENTIALLY. CAN I TELL YOU WHAT LED TO THIS, THIS
7 DISCUSSION?

8 Q. CAN I FINISH A COUPLE OF QUESTIONS, AND THEN WE'LL
9 GO THROUGH IT.

10 A. SURE, GO AHEAD.

11 Q. 'CAUSE THE PARAGRAPH AT THE BOTTOM, "IF WE CAN
12 ADDRESS THE EMPLOYEE AND CLIENT ISSUES, WE ARE VERY
13 INTERESTED. IF NOT, WE WILL PROBABLY JUST RENEW
14 WITH OUR CURRENT CARRIER. WE WOULD CERTAINLY MAKE
15 SURE THAT C.S.S.G. WOULD NOT INCUR ANY ADDITIONAL
16 LIABILITY FROM A CO-EMPLOYER AGREEMENT, AND WOULD
17 INDEMNIFY YOU FOR ANY SUCH CONCERNS OR ISSUES. WE
18 WOULD LIKE TO NEGOTIATE SOME REASONABLE RATES AND
19 ADMIN FEES FOR ACCESSING YOUR WORKERS' COMP PROGRAM
20 AND SOME OF THE BASIC PAYROLL REPORTING ACTIVITIES
21 AS WELL AS SOME OF THE OTHER SERVICES LISTED AS CO-
22 EMPLOYERS. PLEASE REVIEW AND ADVISE." DID I READ
23 THAT CORRECTLY?

24 A. YES.

25 Q. OKAY. SO, YOUR TESTIMONY THOUGH SITTING RIGHT HERE

1 TODAY IS YOU WERE LOOKING FOR A P.E.O. RELATIONSHIP,
2 AND YOU THOUGHT -- YOU THOUGHT COUNTRYWIDE WAS A
3 P.E.O.?

4 A. YES. THERE'S NO DOUBT THEY'RE A -- THEY PRESENTED
5 THEMSELVES AS A P.E.O. THERE'S NO DOUBT.

6 Q. ALL RIGHT. NOW, WHEN YOU WERE TALKING EARLIER IN
7 YOUR TESTIMONY, YOU TALKED ABOUT DUE DILIGENCE,
8 RIGHT?

9 A. YES.

10 Q. AND WHEN YOU ACQUIRED THE MEDUSTRIAL OUTFIT, YOU
11 USED LAWYERS, RIGHT?

12 A. I DID.

13 Q. YOU DID YOUR DUE DILIGENCE?

14 A. I DID.

15 Q. YOU MADE SURE THINGS WERE AS THEY WERE SUPPOSED TO
16 BE, RIGHT?

17 A. I THOUGHT I DID. WE WOULDN'T BE HERE I GUESS IF I
18 DID.

19 Q. WELL, THAT'S FAIR. BUT YOU'RE A SOPHISTICATED
20 BUSINESS PERSON?

21 A. I HOPE SO.

22 Q. IN THIS FIELD?

23 A. I HOPE SO.

24 Q. OKAY. AND YOU WOULD AGREE MR. SEARS IS A QUALIFIED
25 ATTORNEY IN THIS AREA IN SOUTH CAROLINA?

1 A. OH, MY LORD, OKAY.

2 Q. IS THAT A YES?

3 A. YES, I WOULD. I WOULD. I JUST HAD TO TAKE A SHOT
4 THERE.

5 Q. OH, YEAH, THAT'S ALL RIGHT.

6 A. HE'LL BE ASKING FOR A RAISE MONDAY. THAT'S WHY I
7 DIDN'T WANT TO SAY THAT.

8 Q. HE'S ALREADY ASKING. DO YOU KNOW HOW TO FIND OUT IF
9 SOMEONE IS LICENSED AS A P.E.O.?

10 A. I DO.

11 Q. HOW DO YOU DO IT?

12 A. YOU GO TO THE STATE LICENSING AND AFFAIRS DIVISION
13 AND YOU PULL UP THE -- THE P.E.O. LICENSING UNDER
14 THE CONSUMERS AFFAIRS OFFICE, AND YOU PULL IT UP.
15 IT HAS A -- IT HAS A -- IT USED TO BE AN ACTUAL
16 EXCEL SPREADSHEET, BUT THAT'S NOT IT NOW. IT'S
17 ALMOST A P.D.F., AND YOU PULL IT DOWN, AND IT HAS
18 ALL OF THEM LISTED WITH THEIR ADDRESSES, ET CETERA,
19 ET CETERA, ET CETERA.

20 Q. OKAY. SO, A COUPLE CLICKS OF A BUTTON, AND YOU
21 COULD HAVE FIGURED OUT IF YOU WERE DEALING WITH A
22 LICENSED P.E.O. OR NOT?

23 A. WELL, I TOOK SCOTT AND ALBERT AT THE WORD THAT THEY
24 SAID THEY WERE A P.E.O. I MEAN, SCOTT SENT ME AN
25 EMAIL, SAID "I'M LICENSED IN ALL OF YOUR STATES

1 NOW." BECAUSE I WAS THE ONE WHO POINTED OUT TO HIM
2 THE YEAR BEFORE, "DUDE, YOU'RE NOT A P.E.O. WHY ARE
3 YOU QUOTING TO ME HERE?" OKAY.

4 Q. YOU SAID THAT, RIGHT?

5 A. I DID.

6 Q. AND THEN IN NOVEMBER OF '14, HE SENT YOU THAT THING
7 AND SAID "HEY, WE'RE LICENSED. WE'RE A P.E.O.
8 WE'RE GOOD TO GO NOW," RIGHT?

9 A. HE DID.

10 Q. OKAY. LET'S LOOK FOR A MOMENT IF WE COULD. I THINK
11 IT'S UP THERE, THIS COUNTRYWIDE CONTRACT. DO YOU
12 SEE IT UP THERE?

13 A. YES.

14 Q. ALL RIGHT. IF YOU WOULDN'T MIND GRABBING A-HOLD OF
15 THAT. LET ME FIND MINE. THERE WE GO.

16 **BY COMMISSIONER JAMES:**

17 ARE YOU FINISHED WITH THIS DOCUMENT?

18 **BY MR. ALFORD:**

19 YES, MA'AM. I WOULD LIKE TO MARK THAT AND MOVE
20 IT INTO EVIDENCE.

21 **BY MR. GOODWYN:**

22 NO OBJECTION.

23 **BY COMMISSIONER JAMES:**

24 THIS IS COUNTRYWIDE FOUR.

25 (COURT REPORTER MARKS DOCUMENT COUNTRYWIDE EXHIBIT FOUR,

1 RETAINED IN COMMISSION FILE)

2 BY MS. RICHARDSON:

3 IT'S JUST TWO EMAILS, RIGHT?

4 BY MR. ALFORD:

5 YEAH, IT'S JUST THAT FIRST CHAIN.

6 BY COMMISSIONER JAMES:

7 Y'ALL ALL HAVE COPIES OF THOSE. SO, THERE
8 WON'T BE ADDITIONAL COPIES OF THOSE.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. ALL RIGHT, SIR. ARE YOU FAMILIAR WITH THIS
11 DOCUMENT?

12 A. YES, SIR.

13 Q. THIS IS THE SERVICE AGREEMENT.

14 A. OH, YEAH.

15 Q. WHO WERE YOU ENTERING INTO AN AGREEMENT WITH?

16 A. WELL, WE WERE ENTERING INTO AN AGREEMENT WHO I
17 THOUGHT WAS AT THE TOP HERE, IT'S "COUNTRYWIDE
18 STAFFING SOLUTIONS GROUP."

19 Q. RIGHT.

20 A. BUT, THAT, TO ME, WAS COUNTRYWIDE, AND IT WAS
21 BROUGHT TO ME BY SCOTT HANSON WHO WAS THE PRESIDENT
22 OF COUNTRYWIDE.

23 Q. SIR, CAN I ASK YOU ANOTHER QUESTION?

24 A. SURE.

25 Q. WOULD YOU JUST READ FROM THE DOCUMENT, PLEASE, AND

- 1 TELL ME WITH WHAT LEGAL ENTITY YOUR COMPANY ENTERED
2 INTO A CONTRACT?
- 3 A. BETWEEN "COUNTRYWIDE PAYROLL AND H.R. SOLUTIONS,
4 INCORPORATED, DOING BUSINESS AS COUNTRYWIDE STAFFING
5 SOLUTIONS GROUP, A TENNESSEE CORPORATION."
- 6 Q. OKAY.
- 7 A. "HEREIN REFERRED TO AS C.C. -- C.S.S.G. EMPLOYMENT
8 COMPANY."
- 9 Q. RIGHT, ALL RIGHT. AND CONDUSTRIAL, YOU?
- 10 A. YEAH.
- 11 Q. ALL RIGHT. ANYWHERE IN THIS DOCUMENT, DOES
12 COUNTRYWIDE MAKE A REPRESENTATION TO YOU OR DO YOU
13 REQUIRE A WARRANTY THAT THEY ARE A LICENSED P.E.O.?
- 14 A. THE BAIT AND SWITCH IS THE WARRANTY, BECAUSE HE KNEW
15 HE WAS MAKING ME A PROPOSAL ---
- 16 Q. I'M SORRY, SIR. THAT'S NOT THE QUESTION I ASKED
17 YOU.
- 18 A. NO, I DID NOT ASK HIM. THAT IS A BAIT AND SWITCH.
- 19 Q. SIR, THAT'S NOT THE QUESTION I'VE ASKED YOU.
- 20 A. YOU'RE NOT LISTENING.
- 21 Q. SIR, THE QUESTION I'VE ASKED YOU, AND PLEASE TAKE
22 YOUR TIME AND GO THROUGH THE DOCUMENT ---
- 23 A. NO, YOU'RE RIGHT, IT DOESN'T SAY "COUNTRYWIDE H.R."
24 IT DOES NOT SAY THAT.
- 25 Q. BUT THIS CONTRACT GOVERNS YOUR RELATIONSHIP, RIGHT?

- 1 I MEAN, IT DOESN'T MATTER WHAT SOMEBODY SAID.
- 2 A. BUT THEY'RE -- WHEN THIS SAYS "COUNTRYWIDE PAYROLL
- 3 AND H.R.," IF YOU GO BACK TO EVERYTHING ELSE HE'S
- 4 EVER GIVEN ME, IT SAYS ---
- 5 Q. SIR ---
- 6 A. --- "COUNTRYWIDE H.R."
- 7 Q. SIR, IF YOU COULD, PLEASE -- IF YOU WILL JUST STAY
- 8 WITH ME, IT WILL GO FASTER. IF -- WOULD YOU AGREE
- 9 WITH ME THAT THIS IS THE ONLY WRITTEN AGREEMENT. I
- 10 KNOW THERE'S AN ADDENDUM TO THEM. WE'RE GOING TO
- 11 GET TO THAT. WOULD YOU AGREE WITH ME THAT THIS IS
- 12 THE ONLY WRITTEN AGREEMENT BETWEEN YOUR COMPANY,
- 13 CONDUSTRIAL, AND ANY COUNTRYWIDE ENTITY?
- 14 A. YES.
- 15 Q. OKAY. AND THIS GOVERNS YOUR RELATIONSHIP, RIGHT?
- 16 A. IT DOES.
- 17 Q. OKAY. AND, SIR, IS THERE ANYWHERE IN THIS DOCUMENT
- 18 THAT IT SAYS THAT COUNTRYWIDE IS MAKING A WARRANTY,
- 19 A REPRESENTATION OR THAT YOU ARE ASKING FOR ONE THAT
- 20 THEY ARE A LICENSED P.E.O.?
- 21 A. (REVIEWS DOCUMENT)
- 22 Q. DO THE WORDS, LETTERS "P.E.O." OR "PROFESSIONAL
- 23 EMPLOYER ORGANIZATION" APPEAR ANYWHERE IN THIS
- 24 DOCUMENT?
- 25 A. (REVIEWS DOCUMENT) NO, IT DOES NOT.

1 Q. SO, THOSE WORDS DON'T APPEAR THERE?

2 A. IT DOES NOT.

3 Q. AND IF YOU HAD WANTED TO CHECK TO FIND OUT IF WHAT -
4 - IF C.S.S.G. WAS A P.E.O. AS YOU THOUGHT, YOU SAY
5 YOU THOUGHT YOU WERE ENTERING INTO IT, YOU JUST
6 COULD HAVE CLICKED A COUPLE OF BUTTONS, HUH? THAT'S
7 A YES OR NO QUESTION, AND THEN YOU CAN EXPLAIN.

8 A. IF I WAS LOOKING, I WOULDN'T HAVE LOOKED FOR
9 C.S.S.G. I WOULDN'T HAVE LOOKED FOR COUNTRYWIDE. I
10 DID NOT LOOK AT THAT TIME.

11 Q. DID YOU -- YOU DIDN'T LOOK?

12 A. I DID NOT LOOK, BUT I WOULD HAVE LOOKED FOR
13 COUNTRYWIDE.

14 Q. DO YOU THINK IT'S IMPORTANT WHO YOU ENTER INTO
15 AGREEMENTS WITH?

16 A. IT IS, AND NOTHING THAT COUNTRYWIDE HAD EVER SENT ME
17 HAD THE NAME P.E.O. IN IT ON ANYTHING. IT ALWAYS
18 SAID "COUNTRYWIDE H.R." SO, WHEN I SEE "COUNTRYWIDE
19 PAYROLL AND H.R., INC.," I DON'T SEE THE PROBLEM
20 THERE.

21 Q. WELL, I'M ASKING -- BUT SO, YOU'RE TELLING ME THAT
22 YOU DIDN'T WANT -- THAT YOU WANTED TO UNBUNDLE THE
23 SERVICES, WHICH YOU IN YOUR OWN TESTIMONY SAID
24 PRETTY MUCH CONSTITUTES AN A.S.O.? THAT WAS YOUR
25 TESTIMONY A LITTLE WHILE AGO.

1 BY MR. GOODWYN:

2 OBJECT TO THE FORM.

3 BY MR. ALFORD:

4 WHAT'S WRONG WITH THE FORM?

5 BY MR. GOODWYN:

6 I THINK YOU'RE IMPROPERLY SUMMARIZING HIS
7 TESTIMONY.

8 BY MR. ALFORD:

9 I RESPECTFULLY DISAGREE. HE TESTIFIED THEY
10 WERE UNBUNDLING, YOUR HONOR, AND AT THAT POINT IT
11 BASICALLY BECAME AN A.S.O.

12 BY MR. GOODWYN:

13 BUT HE JUST ESTABLISHED THAT, "I THINK THAT'S
14 NOT MY UNDERSTANDING."

15 BY MR. ALFORD:

16 WHY DO I HAVE TO ESTABLISH IT WHEN HE -- I'M
17 SORRY, I WANT TO TALK TO THE COURT.

18 BY COMMISSIONER JAMES:

19 MR. GOODWYN, THERE WAS A -- AND, OF COURSE,
20 AGAIN, I -- AS A MATTER OF FACT, I HAVE -- YOU KNOW,
21 I HEAR ALL OF THE TESTIMONY AND KNOW THE
22 CHARACTERIZATION OF THE TESTIMONY, AND EVEN IF IT'S
23 NOT VERBATIM, THERE WAS A DISCUSSION ABOUT UNBUNDLED
24 BEING REFERRED TO A.S.O. SO, LET'S -- AND, OF
25 COURSE, THE WITNESS CAN ANSWER THE QUESTION, AND YOU

1 ALSO CAN RE-DIRECT.

2 BY MR. GOODWYN:

3 OKAY.

4 BY COMMISSIONER JAMES:

5 ALL RIGHT.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. AND, NOW, I'VE FORGOTTEN WHAT IT WAS. I'LL START
8 OVER. IT HAPPENS TO ME ALL THE TIME. YOU DIDN'T --
9 YOU DIDN'T CHECK AT ALL TO SEE IF C.S.S.G. WAS A
10 P.E.O.?

11 A. NO, I ASSUMED THIS WAS THE SAME COMPANY I HAD --
12 THAT I HAD BEEN DEALING WITH THROUGH SCOTT, AND SO,
13 THAT'S WHO I ASSUMED IT WAS.

14 Q. BUT, SIR, YOU'RE -- BUT, SEE, YOU'RE KIND OF -- AS
15 YOU SAID IN YOUR TESTIMONY EARLIER, FOR I BELIEVE
16 THE CLAIMANT IN THIS CASE, YOU REALLY CAN'T HAVE IT
17 BOTH WAYS. DIDN'T YOU SAY THAT, YOU CAN'T HAVE IT
18 BOTH WAYS?

19 A. IT ALL DEPENDS ON WHAT YOUR QUESTION IS.

20 Q. WELL, MY QUESTION IS IN A CONTRACTUAL ARRANGEMENT
21 THAT HAS VERY SPECIFIC TERMS AND IT HAS PARAGRAPHS
22 THAT SAY "THIS IS OUR ONLY AGREEMENT. THERE ARE NO
23 OTHER AGREEMENTS," AND IT'S WRITTEN BY LAWYERS, AND
24 THAT YOU HAVE AN IN-HOUSE ATTORNEY REVIEW, YOU CAN'T
25 THEN -- AND IT SAYS "NO PRIOR REPRESENTATIONS SHALL

1 HAVE ANY AFFECT." YOU CAN'T THEN TURN AROUND AND
2 SAY "OH, THEY BAIT AND SWITCHED ME" AND ALL THAT,
3 BECAUSE -- BECAUSE THIS CONTRACT SPEAKS FOR ITSELF,
4 AND IT IS YOUR ONLY AGREEMENT.

5 A. THE CONTRACT THOUGH STILL HAS COUNTRYWIDE PAYROLL
6 H.R., AND EVERYTHING I'VE BEEN USING HAS COUNTRYWIDE
7 H.R. ON IT. SO, IF I'M AN IDIOT, JUST CALL ME AN
8 IDIOT, BECAUSE I DON'T SEE THE DIFFERENCE.

9 Q. SIR, DO YOU KNOW THE DIFFERENCE BETWEEN A D.B.A., A
10 SUBSIDIARY, AN INTERNAL DEPARTMENT? DO YOU KNOW THE
11 DIFFERENCE BETWEEN THESE BUSINESS TERMS?

12 A. YES, I DO.

13 Q. OKAY. AND SO, YOU GENERALLY KNOW WHAT ENTITY YOU'RE
14 DEALING WITH, RIGHT?

15 A. THAT'S CORRECT.

16 Q. OKAY. SO, YOU SEND EMAILS SAYING YOU DON'T WANT A
17 TRADITIONAL P.E.O. RELATIONSHIP, YOU WANT IT TO ACT
18 MORE LIKE AN A.S.O.?

19 A. THAT'S CORRECT.

20 Q. AND YOU THEN ENTER INTO A CONTRACT, AND YOUR
21 TESTIMONY IS "OH, I THOUGHT THEY WERE A P.E.O.
22 BECAUSE THAT'S ALL THEY EVER TOLD ME," AND YET THIS
23 AGREEMENT, WHICH IS ALL YOU GOT, SAYS NOTHING ABOUT
24 A P.E.O., DOES IT?

25 A. IT DOESN'T SAY ANYTHING ABOUT A P.E.O.

1 Q. OKAY. AND, IN FACT, SIR -- WELL, Y'ALL REALLY
2 HAVEN'T PRODUCED MANY EMAILS, BUT WE WILL GET TO
3 THAT LATER, BUT ---

4 BY MR. GOODWYN:

5 OBJECT TO THE FORM.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. IN THE LIMITED ---

8 BY COMMISSIONER JAMES:

9 SUSTAINED.

10 BY MR. ALFORD:

11 I'LL WITHDRAW IT. THANK YOU.

12 CROSS EXAMINATION RESUMED BY MR. ALFORD:

13 Q. WHEN YOU LATER HAVE A CONVERSATION WITH -- BY EMAIL,
14 AND WE'LL GET TO THAT IN A LITTLE BIT, ABOUT WHEN
15 THE CLAIM WAS MADE, RIGHT?

16 A. UH-HUH.

17 Q. AND YOU TRADED EMAILS WITH, I BELIEVE ---

18 BY COMMISSIONER JAMES:

19 IS THAT A YES, SIR?

20 BY THE WITNESS:

21 YES.

22 BY COMMISSIONER JAMES:

23 OKAY.

24 CROSS EXAMINATION RESUMED BY MR. ALFORD:

25 Q. YOU TRADED EMAILS WITH, I BELIEVE, TED BRYANT?

1 A. YES.

2 Q. OKAY. AND YOU NEVER SAID ANYTHING ABOUT A P.E.O. IN
3 ANY OF THOSE EMAILS, DID YOU?

4 A. IN REFERENCE TO?

5 Q. THE CLAIM, THE DEFENSE, THE INSURANCE, ANYTHING?
6 YOU DIDN'T SAY ANYTHING ABOUT P.E.O., DID YOU?

7 A. NO, IT'S NOT A -- IT'S NOT A BUZZ WORD FOR OUR
8 AGREEMENT, NOT THAT I WOULD HAVE SEEN.

9 Q. IN FACT, IT'S NOT PART OF THE AGREEMENT?

10 A. WE HAD AN AGREEMENT, AND ---

11 Q. IT'S NOT PART OF YOUR AGREEMENT, IS IT?

12 A. THAT WORD IS -- HAS NO MAGICAL MEANING TO ME, OKAY?
13 IT HAS NO MAGICAL MEANING. I KNOW WHAT P.E.O.s DO.
14 I KNOW HOW THEY ARE LIKE AN AMOEBA AND HOW THEY
15 STRETCH TO MAKE THINGS WORK FOR DIFFERENT CLIENTS
16 BECAUSE NOT ALL THINGS ARE GOOD FOR EVERY CLIENT THE
17 SAME, AND WE WORK WITHIN WHAT THEY COULD DO, AND THE
18 FACT THAT THE CONTRACT CAME TO ME WITH A DIFFERENT
19 NAME, IT DOESN'T HAVE P.E.O., IT WAS STILL
20 COUNTRYWIDE PAYROLL H.R. SOLUTIONS. IT'S STILL
21 SCOTT HANSON SIGNING THE CONTRACT. HE'S THE ONLY
22 PERSON THAT I'VE BEEN DEALING WITH ON THIS THING,
23 AND THAT'S -- THAT'S IT.

24 Q. BUT, AGAIN, SIR ---

25 A. SO, I ASSUME YOU'RE TELLING ME I SIGNED UP COMPANY

1 -- SIGNED THE CONTRACT WITH A COMPANY I DIDN'T KNOW;
2 IS THAT WHAT YOU'RE ASSUMING? YOU'RE ASKING OR
3 YOU'RE TELLING ME NOW. AM I FINDING OUT THREE YEARS
4 LATER I SIGNED UP AN AGREEMENT WITH A COMPANY I
5 NEVER MET; IS THAT WHAT YOU'RE TELLING ME? BECAUSE
6 I ASSUME THAT'S WHAT YOU'RE TELLING ME.

7 Q. WELL, YOU KNOW WHAT A D.B.A. IS, RIGHT?

8 A. I DO, ABSOLUTELY.

9 Q. AND WITH A CLICK OF A BUTTON, YOU COULD HAVE FOUND
10 OUT IF YOU WERE DEALING WITH A LICENSED P.E.O.,
11 RIGHT?

12 A. ABSOLUTELY.

13 Q. ALL RIGHT. AND YOU TOLD HIM IN EMAILS, YOUR GENERAL
14 COUNSEL TOLD THEM, "WE DON'T WANT A TRADITIONAL
15 P.E.O. WE WANT SOMETHING THAT FUNCTIONS MORE LIKE
16 AN A.S.O.," RIGHT?

17 A. THAT'S CORRECT, BUT THAT DOESN'T MEAN THAT EVEN
18 UNDER THE A.S.O. KIND OF ARRANGEMENT, THEY'VE STILL
19 GOT TO BE LICENSED FOR WHAT THEY DO, BUT THAT'S
20 BESIDE THE POINT. I DON'T SEE WHY ANY OF THAT EVEN
21 MATTERS.

22 Q. WELL, BECAUSE IT MATTERS BECAUSE YOU'VE TAKEN THE
23 POSITION IN THIS PROCEEDING, YOUR COMPANY HAS -- I'M
24 SORRY, NOT YOU PERSONALLY.

25 A. RIGHT.

1 Q. YOUR COMPANY HAS THAT OUR CLIENT IS AN UNLICENSED
2 P.E.O., AND THAT THEY HAD A DUTY TO BE LICENSED
3 UNDER THIS AGREEMENT TO BE A P.E.O. IS THAT YOUR
4 POSITION?

5 A. I AGREE THAT'S MY POSITION.

6 Q. OKAY. WELL, THEN THAT'S WHY IT MATTERS. WOULDN'T
7 YOU THINK IT MATTERS WHETHER OR NOT AT THE BEGINNING
8 BEFORE YOU ALL SIGNED THIS CONTRACT, YOU MADE THAT
9 INTENT CLEAR?

10 A. I -- I'M SURE THAT IT WAS MORE THAN CLEAR BETWEEN
11 SCOTT AND I; HOWEVER, I WOULD BE CURIOUS AS TO WHY,
12 WHETHER THEY HAD A LICENSE OR DID NOT HAVE A
13 LICENSE, WHEN THEY PRESENTED THEMSELVES AS HAVING A
14 LICENSE, IT DOESN'T REALLY MATTER TO ME. IT'S THE
15 PERFORMANCE ON WHAT WE AGREED TO DO THAT MATTERS,
16 AND THE PERFORMANCE I'M NOT HERE TO RUB
17 COUNTRYWIDE'S NOSE IN NOT HAVING A LICENSE OR
18 WHATEVER. I'M INTERESTED IN THE PERFORMANCE OF WHAT
19 OUR AGREEMENT WAS REGARDLESS WHOEVER IT IS I
20 OBVIOUSLY CONTRACTED WITH THAT I MUST HAVE NEVER
21 MET.

22 Q. PEOPLE OWN MORE THAN ONE ---

23 A. THIS IS ALL NEWS TO ME WHAT YOU'RE TELLING ME HERE
24 TODAY.

25 Q. YOU DIDN'T KNOW WHO YOU SIGNED A CONTRACT WITH?

1 A. I KNEW WHO I SIGNED A CONTRACT WITH, AND IF YOU
2 ASKED ME, I WOULD HAVE STILL SAID I SIGNED IT WITH
3 COUNTRYWIDE. RIGHT THERE THEY ARE, COUNTRYWIDE H.R.
4 I DON'T SEE HOW THAT DOESN'T -- AND THERE'S SCOTT
5 HANSON. THAT'S WHO I MET WITH, CAME TO MY OFFICE,
6 DONE EVERYTHING WITH, ET CETERA, AND THIS IS THE
7 AGREEMENT HE GAVE ME, AND WE SIGNED IT.

8 Q. BUT IT'S NOT JUST THE AGREEMENT HE GAVE YOU. YOUR
9 LAWYER WENT BACK AND FORTH WITH HIM.

10 A. WE GAVE HIM WHAT WE WANTED, AND SAID "IF YOU CAN
11 MAKE THAT WORK, THAT WILL BE GREAT. IF YOU CAN'T,
12 WE UNDERSTAND, AND WE'LL GO TAKE ANOTHER ROUTE."

13 Q. THAT'S RIGHT. AND WHAT YOU WANTED WASN'T A P.E.O.
14 YOU TOOK OUT THE ASSIGNMENT PROVISION ---

15 A. WE DIDN'T WANT THE FULL SERVICE OF A P.E.O.

16 Q. THAT'S RIGHT, AND YOUR LAWYER IN THE EMAIL THERE,
17 YOU TOOK OUT CRITICAL PROVISIONS SUCH AS PARAGRAPH
18 FIVE. LOOK AT THE AGREEMENT, SIR, AND TELL ME WHAT
19 ---

20 A. I AGREE WE DID. I KNOW WE DID.

21 Q. TELL ME WHAT PARAGRAPH FIVE SAYS.

22 A. I AGREE THAT WE DID.

23 Q. TELL ME WHAT IT SAYS.

24 A. "CUSTOMER CONTACTS, DELETED."

25 Q. LOOK AT MR. SEARS' EMAIL AGAIN. SEE WHAT HE SAYS

1 ABOUT PARAGRAPH FIVE. IT'S TOUGH WHEN THERE'S ALL
2 OF THAT PAPER UP THERE, I KNOW.

3 A. I'M NOT SURE THAT -- I MUST NOT HAVE THE RIGHT
4 THING.

5 Q. I'M LOOKING AT MARCH -- OH, I'M SORRY.

6 A. YEAH, OKAY.

7 Q. LOOKING AT MR. SEARS' MARCH 12TH EMAIL.

8 A. OKAY.

9 Q. ONE, TWO, THREE, FOURTH FULL PARAGRAPH.

10 A. OKAY.

11 Q. WHAT DOES IT SAY, THE FIRST TWO SENTENCES?

12 A. YOU'RE TALKING ABOUT THE ONE THAT STARTS "FRANKLY"?

13 Q. NO, IT STARTS WITH "PARAGRAPH FIVE." THIS IS --
14 THIS IS MR. SEARS' EMAIL, SIR, NOT YOURS. I'M
15 SORRY. FLIP BACK A COUPLE OF PAGES. MAYBE ONE
16 MORE.

17 A. OKAY.

18 Q. THE FIRST TWO SENTENCES OUT OF THE FOURTH FULL
19 PARAGRAPH.

20 A. "SECONDLY, PARAGRAPH THREE ---

21 Q. NO, SIR, I'M AT PARAGRAPH FIVE. I'M SORRY.

22 A. OH, IT SAYS "PARAGRAPH FIVE," OKAY. "PARAGRAPH FIVE
23 INDICATES THAT ALL OF OUR CONTRACTS WILL BE ASSIGNED
24 TO C.S.S.G. IF WE SIGN THIS DEAL, AND FUTURE
25 CONTRACTS WILL BE CO-SIGNED. THAT IS NOT GOING TO

1 HAPPEN."

2 Q. OKAY. AND IT GOT DELETED, RIGHT?

3 A. IT DID.

4 Q. OKAY.

5 A. BUT THAT'S NOT A PIECE OF A P.E.O. ANYWAY.

6 Q. AN ASSIGNMENT ---

7 A. THAT HAS NOTHING TO DO WITH A P.E.O.

8 Q. --- OF A CONTRACT?

9 A. THAT HAS NOTHING TO DO WITH A P.E.O.

10 Q. DOES AN ASSIGNMENT OF EMPLOYEES HAVE ANYTHING TO DO

11 WITH A P.E.O.?

12 A. IT HAS THEM BEING THE EMPLOYER OF RECORD IN MOST

13 CASES.

14 Q. WHERE YOU ASSIGN THEM, RIGHT?

15 A. WHERE YOU WOULD MAKE THEM THE EMPLOYER OF RECORD,

16 PERIOD.

17 Q. OKAY. AND Y'ALL WEREN'T GOING TO DO THAT?

18 A. WE WEREN'T GOING TO DO THAT. WE WOULD ---

19 Q. AND YOU DIDN'T DO THAT?

20 A. --- DO IT UNDER A CO-EMPLOYER ARRANGEMENT, AND

21 THAT'S BECAUSE THEY WEREN'T GOING TO TAKE ON ALL OF

22 THE THINGS LIKE THE HEALTH INSURANCE, ET CETERA, BUT

23 THEY WERE GOING TO MAINTAIN THOSE, SO THAT'S WHY IT

24 REQUIRED A CO-EMPLOYER ARRANGEMENT.

25 Q. BUT, YES OR NO, DID YOU ASSIGN THE EMPLOYEES?

1 A. FOR PURPOSES OF THE TWO THINGS THAT HE IS
2 RESPONSIBLE FOR, WE DID.

3 Q. BUT NOT FOR EVERYTHING?

4 A. NOT FOR EVERYTHING.

5 Q. OKAY. AND ISN'T A P.E.O. FOR EVERYTHING?

6 A. THE FULL BUFFET IS FOR EVERYTHING.

7 Q. OKAY.

8 A. IF YOU ORDER A LA CARTE, IT'S NOT FOR EVERYTHING.

9 Q. AND IT'S NOT A P.E.O. EITHER, IS IT?

10 A. THAT'S NOT TRUE.

11 BY MS. RICHARDSON:

12 EXCUSE ME, COMMISSIONER. MR. SEARS IS LOOKING
13 AT MR. DURHAM AND NODDING HIS HEAD IN AGREEMENT WITH
14 THE WITNESS. I THINK THAT'S INAPPROPRIATE.

15 BY MR. SEARS:

16 HE ANSWERED, AND I JUST WENT YES, RIGHT. I
17 DON'T -- I MEAN, IF YOU WANT TO TALK ABOUT COURTROOM
18 BEHAVIOR, LET'S HAVE A LONGER DISCUSSION.

19 BY MS. RICHARDSON:

20 ARE YOU SUGGESTING ANYTHING, MR. SEARS?

21 BY MR. SEARS:

22 I'M -- I'M NOT SUGGESTING THAT ---

23 BY COMMISSIONER JAMES:

24 NO, MR. SEARS ---

25 BY MR. BEARD:

1 COMMISSIONER, MR. SEARS NEEDS TO STOP TALKING
2 TO THE LAWYERS.

3 BY MR. SEARS:

4 ALL RIGHT.

5 BY MR. BEARD:

6 PERIOD.

7 BY MR. SEARS:

8 YOU'RE RIGHT. YOU'RE RIGHT.

9 BY COMMISSIONER JAMES:

10 AND I KNOW SOMETIMES PEOPLE UNCONSCIOUSLY DO
11 IT. I'M NOT SAYING -- SO, EVERYBODY JUST BE
12 COGNIZANT IF THERE IS ANY HEAD MOVEMENT. SOMETIMES
13 I WILL LOOK UP IN THE MIDDLE OF A TRIAL, AND
14 ATTORNEYS ARE DOING IT JUST BECAUSE THEY'RE JUST
15 LISTENING ALONG OR WHATEVER. SO, LET'S JUST BE
16 COGNIZANT.

17 BY MR. GOODWYN:

18 THERE'S A LOT MORE THAN HEAD MOVEMENT, TOO.
19 MR. ALFORD IS BACK THERE MAKING COMMENTS AFTER HALF
20 THE TIME I'M UP HERE.

21 BY COMMISSIONER JAMES:

22 LET'S ---

23 BY MR. GOODWYN:

24 IT'S VERY DISTRACTING. I HAVEN'T SAID
25 ANYTHING, BUT IF WE'RE TALKING ABOUT IT.

1 BY MR. ALFORD:

2 SORRY.

3 BY COMMISSIONER JAMES:

4 ALL RIGHT. WELL, I'M JUST ---

5 BY MR. SEARS:

6 I MEAN, I THINK I NEED SOME THERAPY.

7 BY COMMISSIONER JAMES:

8 OKAY.

9 BY MR. SEARS:

10 IF YOU LISTEN TO MR. ALFORD, I NEED TO GO TALK
11 TO A THERAPIST.

12 BY COMMISSIONER JAMES:

13 ALL RIGHT. WELL, LET'S ---

14 BY THE WITNESS:

15 WELL, I'M ON THEIR SIDE ABOUT THAT.

16 BY COMMISSIONER JAMES:

17 WAIT. Y'ALL -- LET'S -- I KNOW IT'S GETTING
18 LATE, BUT LET'S STAY WITH THE DECORUM OF THE
19 COURTROOM, AND I JUST ASK THAT EVERYBODY BE
20 COGNIZANT OF THEIR -- IT MAY NOT BE INTENTIONAL BUT
21 BE COGNIZANT OF THE NODDING HEADS OR ANY OTHER
22 BEHAVIOR. OKAY. WHERE ARE WE?

23 CROSS EXAMINATION RESUMED BY MR. ALFORD:

24 Q. ALL RIGHT, SIR. WE HAVE UP THERE, AND I FORGET. I
25 THINK IT WAS -- AND I WANT TO GO -- ACTUALLY, LET'S

1 GO THROUGH THIS CONTRACT SOME, OKAY, SO WE
2 UNDERSTAND. DO YOU KNOW WHAT YOU AGREED TO?

3 A. I KNOW WHAT I AGREED TO.

4 Q. OKAY.

5 A. OBVIOUSLY, I JUST DON'T KNOW WHO I AGREED TO IT
6 WITH.

7 Q. ALL RIGHT. WELL, LET'S TALK ABOUT WHAT YOU AGREED
8 TO. YOU DIDN'T AGREE TO A P.E.O., DID YOU?

9 A. NOT A FULL FLEDGED P.E.O., I DID NOT.

10 Q. NO, YOU DIDN'T, AND IT DOESN'T SAY P.E.O. IN HERE.
11 SO, WE KNOW YOU DIDN'T AGREE TO A P.E.O., RIGHT?

12 BY MR. GOODWYN:

13 OBJECT TO THE FORM.

14 THE WITNESS ANSWERS:

15 A. I DON'T AGREE TO THAT.

16 CROSS EXAMINATION RESUMED BY MR. ALFORD:

17 Q. THAT'S A ---

18 A. I JUST AGREE THAT THERE'S NOTHING P.E.O. IN HERE. I
19 DO AGREE I DID NOT AGREE TO THE FULL SERVICE OF A
20 P.E.O. I AGREED TO WHAT I THOUGHT AND WAS DESCRIBED
21 TO ME BY SCOTT AD NAUSEAM, THIS IS A BROKEN OUT
22 SERVICES OF THEIR P.E.O. I MEAN, THAT'S WHAT IT IS.
23 SCOTT TOLD ME ---

24 BY MR. ALFORD:

25 NOW, YOUR HONOR, ---

1 BY THE WITNESS:

2 I KNOW, I CAN'T SAY THAT, SO I'M STOPPING.

3 OKAY.

4 CROSS EXAMINATION RESUMED BY MR. ALFORD:

5 Q. ALL RIGHT. I MEAN, I TELL YOU WHAT, LET'S GO
6 THROUGH THE CONTRACT. THAT WAY WE CAN MAKE SURE,
7 BECAUSE NOW THAT YOU'RE TELLING ME YOU HAD NO IDEA
8 WHO YOU WERE -- WHAT COMPANY YOU AGREED WITH, NOW,
9 I'VE GOT TO FIND OUT IF YOU REALLY KNEW WHAT YOU
10 AGREED TO. IS THAT FAIR?

11 A. NO, THAT'S NOT FAIR, BUT I'LL LISTEN TO YOU.

12 Q. ALL RIGHT. LIFE AIN'T FAIR.

13 BY MR. GOODWYN:

14 COURTROOMS ARE SUPPOSED TO BE.

15 CROSS EXAMINATION RESUMED BY MR. ALFORD:

16 Q. LET'S GO DOWN TO PARAGRAPH TWO IN THE AGREEMENT AT
17 THE BOTTOM OF PAGE ONE. "CLIENT SHALL", RIGHT?
18 "CLIENT SHALL MAKE ANY AND ALL STRATEGIC OPERATIONAL
19 AND OTHER BUSINESS-RELATED DECISIONS REGARDING TO
20 ITS BUSINESS. SUCH DECISIONS AND RELATED OUTCOMES
21 SHALL EXCLUSIVELY BE THE RESPONSIBILITY OF THE
22 CLIENT, AND C.S.S.G. SHALL BEAR NO RESPONSIBILITY OR
23 LIABILITY FOR ANY ACTIONS OR INACTIONS BY CLIENT OR
24 BY ANY LEASED EMPLOYEES." DOES THAT SAY THAT?

25 A. YES.

1 BY COMMISSIONER JAMES:

2 I'M SORRY, MR. ALFORD, WHERE ARE YOU READING
3 FROM?

4 BY MR. ALFORD:

5 I'M AT THE BOTTOM -- OH, RATS. I'M AT THE
6 BOTTOM OF PAGE ONE AND THEN HEADING INTO PAGE TWO.

7 BY COMMISSIONER JAMES:

8 THANK YOU, SIR.

9 BY MR. ALFORD:

10 YES, MA'AM.

11 CROSS EXAMINATION RESUMED BY MR. ALFORD:

12 Q. IS THAT WHAT THAT SAYS?

13 A. YES, SIR.

14 Q. ALL RIGHT. SO, NOW, LET'S TALK ABOUT BUSINESS AND
15 RISK. HAVE YOU HEARD -- HOW DO YOU REFER TO YOUR,
16 WHAT I'LL CALL YOUR MEDUSTRIAL, DO YOU CALL IT A
17 1099 BROKERAGE, THE BROKER MODEL?

18 A. YEAH. ACTUALLY, THAT'S A -- THAT'S A TERM TOM USED.

19 Q. OKAY. BUT YOU'RE FAMILIAR WITH THAT TERM, CALLING
20 IT THAT?

21 A. I'M VERY FAMILIAR WITH IT.

22 Q. SO, THERE'S THIS SECTION OF YOUR BUSINESS -- OH, LET
23 ME ASK YOU THIS QUESTION: THOSE 1099 FOLKS, WAS IT
24 EVER YOUR INTENTION THAT THEY WOULD BE INCLUDED IN
25 THIS AGREEMENT?

1 A. NO.

2 Q. NO, OKAY. AND THE WAY IN WHICH YOU HANDLED THAT
3 PART OF THE BUSINESS WAS SEPARATE FROM THE WAY IN
4 WHICH YOU WERE HANDLING THE BUSINESS WITHIN THE
5 COUNTRYWIDE AGREEMENT?

6 A. IT WAS -- IT WAS SEPARATE, BUT IT WAS A DISCUSSION
7 AND AN ACKNOWLEDGMENT OF WHAT -- THE WAY WE WANTED
8 TO DO IT.

9 Q. AND WHEN ---

10 A. THE WAY THEY AGREED TO DO IT.

11 Q. OKAY. HOLD ON. I'M GETTING CONFUSED.

12 A. OKAY.

13 Q. DID YOU -- DID YOU -- BECAUSE I'M NOT VERY SMART; IT
14 TAKES ME A WHILE. DID YOU -- DID COUNTRYWIDE EVER
15 DO PAYROLL SERVICES ---

16 A. NO.

17 Q. --- FOR ANY OF YOUR 1099 EMPLOYEES?

18 A. ABSOLUTELY NOT.

19 Q. OKAY. DID THEY EVER ACQUIRE ANY INSURANCE FOR THEM?

20 A. ABSOLUTELY NOT.

21 Q. DID THEY EVER GET A LIST OF THEIR NAMES?

22 A. NO.

23 Q. DID THEY EVER GET A LIST OF LOCATIONS THEY WERE
24 WORKING AT AS A PART OF THIS AGREEMENT?

25 A. NO.

1 Q. OKAY. AND IN FACT, I MEAN -- I MEAN, YOU'VE SAID, I
2 MEAN, BECAUSE I THINK WE AGREE, I DON'T THINK
3 COUNTRYWIDE EVER INTENDED TO TAKE ON THE RISK OF
4 THOSE 1099 INDEPENDENT CONTRACTORS?

5 A. OH, I AGREE.

6 Q. OKAY. WE ALL AGREE THEY DIDN'T?

7 A. RIGHT.

8 Q. AND YOU DIDN'T INTEND FOR THEM TO?

9 A. I DIDN'T INTEND FOR THEM TO.

10 Q. OKAY. SO, WHATEVER HAPPENS WITH THOSE FOLKS, IS ON
11 YOU IN ACCORDANCE TO PARAGRAPH TWO IN THIS
12 AGREEMENT, RIGHT?

13 A. AS LONG AS THEY REMAIN AN INDEPENDENT CONTRACTOR,
14 THAT'S CORRECT.

15 Q. BUT HOW YOU LABEL THEM OR HOW ANYBODY ELSE LABELS
16 THEM IS YOUR PROBLEM BECAUSE THEY'RE NOT IN OUR
17 AGREEMENT, RIGHT?

18 A. THEY'RE NOT IN THE AGREEMENT.

19 Q. OKAY.

20 A. BUT IF THEY BECOME AN EMPLOYEE, IT'S A DIFFERENT
21 SITUATION.

22 Q. YOU SAY?

23 A. THAT'S WHAT I'VE BEEN -- THAT'S THE ADVICE I'VE BEEN
24 GIVEN WHEN THESE POLICES HAVE ALL BEEN PUT IN PLACE.
25 THAT'S ALL I CAN SAY.

1 Q. DID ANYONE FROM COUNTRYWIDE TELL YOU "HEY, IF ANY OF
2 YOUR 1099 PEOPLE THAT WE DON'T KNOW EXIST," I GUESS
3 THEY WOULD HAVE HAD TO HAVE A CRYSTAL BALL, "BUT IF
4 ANY OF YOUR 1099 EMPLOYEES GET DEEMED EMPLOYEES" --
5 I MEAN, I'M SORRY. "IF ANY OF YOUR 1099 INDEPENDENT
6 CONTRACTORS ---

7 A. IF THEY DID NOT KNOW THEY EXIST. I DIVULGED
8 EVERYTHING. IT WAS OPEN KIMONO, OKAY.

9 Q. OKAY. SO, I GUESS WHAT I'M SAYING IS DID IT -- DID
10 THAT -- NOWHERE IN THIS AGREEMENT DID THEY AGREE TO
11 TAKE ANY OF THAT ON?

12 A. NO, THEY DIDN'T. I AGREE A HUNDRED PERCENT.

13 Q. ALL RIGHT. AND IF THE WAY YOU CAN STRUCTURE YOUR
14 BUSINESS CREATED A RISK FOR THEM, UNDER THIS
15 PARAGRAPH, PARAGRAPH TWO, YOU GOT TO HOLD THEM
16 HARMLESS, RIGHT, IT'S YOUR RESPONSIBILITY?

17 A. IF THEY'RE NOT FOUND TO BE AN EMPLOYEE, IT'S MY
18 RESPONSIBILITY. IF THEY'RE AN EMPLOYEE, THEN IT
19 FALLS BACK FAR ON THESE OTHER -- ON THIS OTHER
20 SCENARIO.

21 Q. BUT, SIR, TO GET THEM IN -- WELL, THAT'S YOUR
22 OPINION.

23 A. AND THAT'S NOT MY DECISION. THAT'S SOMEBODY ELSE
24 THAT'S WAY ABOVE ME, OKAY?

25 Q. OKAY. BUT THAT'S NOT -- WHERE DOES IT SAY THAT IN

1 THIS AGREEMENT?

2 A. IT DOESN'T SAY THAT IN THIS AGREEMENT.

3 Q. OKAY. SO, COUNTRYWIDE IS NOT BOUND BY THAT?

4 A. I AIN'T GOING TO SAY THEY'RE NOT BOUND BY THAT.

5 THEY ---

6 Q. WHERE IN HERE DOES IT SAY THEY'RE BOUND BY THAT?

7 A. ALL INSURANCE POLICES ARE BOUND BY AUDIT PROCEDURES.

8 Q. SIR, I'M SORRY. SIR, WHERE IN THIS AGREEMENT ---

9 A. IT'S NOT IN THE AGREEMENT.

10 Q. IS THERE AN AUDIT PROVISION IN THIS AGREEMENT?

11 A. I DON'T THINK THERE IS.

12 Q. THERE'S NOT, IS THERE?

13 A. NOT SPECIFICALLY.

14 Q. IN FACT, THE WAY THIS AGREEMENT WAS SUPPOSED TO WORK

15 ---

16 A. THERE'S NEVER -- I'VE NEVER KNOWN AN AGREEMENT IN

17 ANY ---

18 Q. OKAY. WELL, LET ME ASK YOU THIS.

19 A. --- THAT I'VE EVER HAD, BUT YOU KNOW THAT THAT'S A

20 PART OF IT.

21 Q. WELL, LET ME ASK YOU THIS: THIS AGREEMENT THE WAY I

22 UNDERSTAND IT WORKED, AND CORRECT ME IF I'M WRONG, -

23 --

24 A. UH-HUH.

25 Q. --- YOU GUYS GENERATE A LIST OF YOUR EMPLOYEES AND

1 THE PEOPLE YOU WANT PAID, WHERE THEY WERE WORKING
2 AND WHAT THEIR WORKERS' COMP CODE WAS, RIGHT?

3 A. THAT'S CORRECT.

4 Q. AND YOU WOULD SEND IT TO COUNTRYWIDE?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT. AND THEN COUNTRYWIDE WOULD TAKE IT AND
7 THEY WOULD SEND IT TO GUARANTEE AND SAY "CAN WE
8 COVER THIS, AND HOW MUCH WILL IT COST," RIGHT?

9 A. PRETTY MUCH, YES.

10 Q. I MEAN, OKAY.

11 A. A VERY GENERIC DESCRIPTION, BUT CORRECT.

12 Q. BUT CORRECT, OKAY. AND THEN IT WOULD COME BACK FROM
13 G.I.C. "HEY, YEAH, WE'LL COVER IT. THESE ARE THE
14 COVERAGES. THESE ARE THE COSTS, AND BASED ON THE
15 PAYROLL, HERE'S THE PREMIUMS THAT ARE DUE. HERE'S
16 WHAT YOU'VE GOT TO WITHHOLD"?

17 A. THAT'S CORRECT.

18 Q. RIGHT, OKAY. SO, NO ONE COULD EVER GET INTO THIS
19 AGREEMENT AS AN EMPLOYEE UNTIL YOU PUT THEM IN?

20 A. ON A WEEKLY BASIS, THAT'S CORRECT.

21 Q. OKAY.

22 A. THEY WERE DISCLOSED THE AMOUNT OF THOSE UP FRONT
23 WHEN THE ORIGINAL PROPOSAL WAS MADE, AND THAT WAS A
24 PART OF THE PROPOSAL SENT TO ME BY SCOTT. IT
25 INCLUDED ALL OF THEM, BUT ---

1 Q. ALL YOUR -- ALL 120?

2 A. I DON'T HAVE 120. I HAVE LIKE A 15 NURSE STAFF THAT
3 IT TAKES 15 - TEN TIMES THAT TO STAFF A 15 PERSON.

4 Q. SO, YOU HAVE 120 INDEPENDENT CONTRACTORS?

5 A. THEY'LL BE 120 YOU MIGHT GET W -- W-9'ED, I MEAN I-
6 9'D -- 1099s AT THE END OF THE YEAR.

7 Q. THAT'S WHAT I'M SAYING. SO, YOU HAVE 120 POTENTIAL
8 1099 INDEPENDENT CONTRACTORS?

9 A. (NO VERBAL RESPONSE)

10 Q. I MEAN, IT'S KIND OF EASY, YES OR NO?

11 A. NO, IT'S NOT. ALL I HAVE THERE AT THE END OF THE
12 LAST WEEK IS THE PERSONS THAT ARE APPLICABLE TO WORK
13 AT THAT TIME. IF I HAVE A POOL OF 20 PEOPLE THAT
14 ARE APPLICABLE TO WORK, THAT'S WHAT I HAVE. I HAVE
15 20. OKAY? THESE OTHERS ARE NOT NOW AVAILABLE FOR
16 WORK. SO, THEY ARE NOT ON THE TEAM.

17 Q. IN ANY -- OKAY, I UNDERSTAND. YOU'RE TRYING TO GO
18 WEEK BY WEEK?

19 A. I'M JUST TRYING TO SAY WHO IS AVAILABLE TO WORK AT
20 ANY POINT THAT YOU WANT TO SAY. YOU PICK ANY PERIOD
21 OF TIME, OUT OF THOSE PEOPLE READY TO WORK, THEN
22 THAT'S THE TEAM THAT'S AVAILABLE TO WORK. AT THE
23 END OF THE DECEMBER WHEN THE YEAR IS DONE, HOW MANY
24 NURSES DO WE HAVE? WELL, WE'VE GOT 20 WORKING IN
25 DECEMBER. YOU HAVE 20 NURSES. NOW, THEY MIGHT HAVE

1 BEEN 20 DIFFERENT NURSES IN ---
2 Q. WELL, LET ME ---
3 A. --- NOVEMBER, 20 IN -- THAT WOULD BE 240 NURSES, BUT
4 I DON'T HAVE BUT 20 NURSES.
5 Q. CAN I ASK THIS QUESTION? HOW MANY 1099s DO YOU
6 ISSUE AT THE END OF THE YEAR?
7 A. OH, IT COULD EASILY BE 100, 150.
8 Q. TO NURSES?
9 A. BECAUSE SOME OF THEM ONLY WORK EIGHT HOURS IN A
10 YEAR.
11 Q. RIGHT.
12 A. BUT THAT DON'T -- OH, MY...
13 Q. YOU'VE GOT -- I UNDERSTAND WHAT YOU'RE SAYING. I
14 DO. YOU KNOW, YOU'VE GOT 120 IN YOUR PROGRAM,
15 RIGHT?
16 A. THEY'RE NOT EVEN IN THE PROGRAM. AT THAT POINT,
17 THEY HAVE FALLEN OFF THE WAYSIDE AND WON'T TAKE --
18 DON'T SHOW UP FOR MORE SHIFTS AND DON'T WANT THEM.
19 YOU'VE JUST -- THEY'RE JUST SOMEBODY THAT'S GOT TO
20 BE SENT A 1099 FOR SOMETHING THEY DID. MAYBE WE
21 HADN'T SEEN THEM IN TEN MONTHS, BUT THERE'S STILL
22 SOMEBODY AT THE END OF THE YEAR THAT'S GOT TO BE
23 1099'D, BUT THAT DON'T MAKE THAT A 130 MAN STAFF IS
24 MY POINT. QUIT TRYING TO MAKE IT LOOK LIKE IT'S 130
25 MAN STAFF. IT'S A 20 MAN STAFF, 20 LADY STAFF.

1 IT'S NOT 130 MAN STAFF. IF YOU GO OUT HERE AND YOU
2 BUY 1000 APPLES, YOU GO IN THERE TO GET THEM, THEY
3 ASK HOW MANY APPLES YOU'VE GOT, AND EVERYBODY HAS
4 BOUGHT ALL THE REST OF THEM, AND YOU'VE GOT 20 LEFT,
5 YOU'VE GOT 20 APPLES. YOU AIN'T GOT THREE DOZEN
6 APPLES, THREE BOXES OF APPLES LEFT.

7 Q. OKAY.

8 A. THAT'S WHAT IT IS. THERE'S 20 NURSES. THE REST OF
9 THEM HIT THE HIGH ROAD. THEY'RE NOT HERE.

10 Q. BUT THEY KIND OF COME AND GO.

11 A. YES.

12 Q. SOME COME, SOME GO?

13 A. YOU'RE ABSOLUTELY RIGHT. THEY MAY SHOW BACK UP THE
14 NEXT WEEK. SOME OF THEM, THEY HAVEN'T BEEN HERE FOR
15 MONTHS.

16 Q. BUT THE BOTTOM LINE AT THE END OF THE YEAR, YOU'RE
17 GOING TO ---

18 A. IT'S JUST A POOL OF PEOPLE.

19 Q. I UNDERSTAND. THAT'S WHAT I'M TRYING ---

20 BY MR. GOODWYN:

21 YOUR HONOR, WE'RE BEATING A DEAD HORSE HERE. I

22 MEAN, ---

23 BY THE WITNESS:

24 MY GOODNESS.

25 BY MR. GOODWYN:

1 I MEAN, IT -- IT'S BEEN CLEAR. THERE'S A
2
3 GROUP. THERE'S ONLY 15 OR 20 FULL-TIME ACTUAL -- IF
4 IT WERE FULL TIME, I MEAN, HOW ---

5 BY THE WITNESS:

6 I WISH THEY WERE ALL FULL TIME.

7 BY MR. GOODWYN:

8 --- MANY MORE WAYS CAN WE DESCRIBE THIS?

9 BY COMMISSIONER JAMES:

10 WAIT. FIRST OF ALL, ---

11 BY MR. ALFORD:

12 I CAN MOVE ON.

13 BY COMMISSIONER JAMES:

14 WE'RE TALKING OVER EACH OTHER SOME, AND WE'VE
15 GOT TO BE COGNIZANT OF THE COURT REPORTER. SO, I'M
16 GOING TO ASK EVERYBODY TO THINK ABOUT THAT.

17 BY MR. ALFORD:

18 YES, MA'AM, I'LL TRY.

19 BY COMMISSIONER JAMES:

20 OKAY.

21 CROSS EXAMINATION RESUMED BY MR. ALFORD:

22 Q. SIR, I'M GOING TO ASK YOU, AND YOU'VE QUALIFIED IT
23 VERY WELL, AND I THINK I UNDERSTAND, BUT AT THE END
24 OF THE YEAR, YOU MIGHT ISSUE 120 1099s.

25 A. SURE.

1 Q. SOME OF THEM FOR PEOPLE THAT YOU HAVEN'T SEEN IN
2 MONTHS, SOME OF THEM PEOPLE WHO ARE SOLID STEADY
3 ROCKERS?

4 A. THAT'S CORRECT.

5 Q. OKAY.

6 A. ABSOLUTELY, THAT'S CORRECT.

7 Q. OKAY. LET'S GO BACK INTO THIS AGREEMENT IF WE
8 COULD, SIR. SIR, I WANT TO TAKE YOU TO PARAGRAPH
9 SIX, BOTTOM OF PAGE THREE. NOW, DID YOU EVER TELL
10 COUNTRYWIDE IN WRITING THAT YOU HAD NURSES WORKING
11 AT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

12 A. I DON'T KNOW THAT I TOLD THEM IN WRITING. I KNOW
13 THAT SCOTT AND I DISCUSSED IT A THOUSAND TIMES ALONG
14 WITH ALL THE OTHER ISSUES, BUT I DON'T KNOW THAT I
15 DISCUSSED -- PUT IT IN WRITING, BUT I DID IT WITH
16 HIM FACE TO FACE, AND I DID IT WITH HIM FACE TO FACE
17 WITH ---

18 Q. WOULD YOU ---

19 A. --- FIVE WITNESSES TO THAT.

20 Q. WOULD YOU AGREE WITH ME THAT WORKING IN A PRISON IS
21 RISKIER THAN WORKING AT A CONVALESCENT HOME FOR A
22 NURSE?

23 A. BELIEVE IT OR NOT, I WOULD HAVE SAID THE SAME THING
24 IN 2007, BUT THEY ALL SAY THAT'S NOT TRUE, AND
25 THAT'S JUST GOING WITH MY EXPERIENCE OF THE CLAIMS

1 THAT WE'VE HAD VERSUS CLAIMS IN OTHER ENVIRONMENTS.
2 THIS IS THE ONLY CLAIM WE'VE EVER HAD, PERIOD, YOU
3 KNOW, AND ---

4 Q. WHICH IS KIND OF INTERESTING, ISN'T IT?

5 A. NO, WHAT I FOUND OUT JUST FROM TALKING WITH THESE
6 LADIES IS THAT IT'S A DIFFERENT ENVIRONMENT THAT
7 WHAT I WOULD HAVE ANTICIPATED.

8 Q. I GUESS WHAT I'M SAYING IS YOU'VE BEEN RUNNING THIS
9 1099 MODEL OUTSIDE OF HAVING WORKERS' COMP
10 INSURANCE, AND THIS IS THE FIRST TIME IT'S EVER
11 BLOWN UP ON YOU, ISN'T IT?

12 A. IT'S THE FIRST TIME WE'VE HAD AN ISSUE OTHER THAN
13 THE UNEMPLOYMENT CLAIMS.

14 Q. OKAY. THIS SECTION RIGHT HERE, THE -- IT'S A WORK
15 ENVIRONMENT.

16 A. CORRECT.

17 Q. IT ALLOWS C.S.S.G. IF YOU SAY "HEY, I WANT TO SEND
18 PEOPLE TO WORK IN A PRISON. I WANT TO -- I WANT TO
19 RETAIN DEMOLITION EXPERTS AND SEND THEM OUT,"
20 WHATEVER, IT ALLOWS THEM TO SAY "NO, WE'RE NOT DOING
21 THAT. WE'RE NOT GOING -- THAT'S NOT -- WE'RE NOT
22 GOING TO LET THAT BE A PART OF OUR AGREEMENT."
23 ISN'T THAT WHAT THAT SAYS? I MEAN, I'M
24 PARAPHRASING, BUT I WANT YOU TO BE COMFORTABLE WITH
25 THE PARAPHRASING.

- 1 A. I WOULD SAY THAT IF WE SENT THEM SOMETHING THAT WAS
2 NOT COVERED WITHIN A CODE THAT WE HAD ON OUR POLICY,
3 THAT THEY WOULD CERTAINLY HAVE THE REASONABLE
4 EXPECTATION TO SAY "HEY, THAT'S NOT COOL. DON'T DO
5 THAT."
- 6 Q. OR ANY WORK? IT SAYS "WORK ENVIRONMENT." IT
7 DOESN'T SAY "CODE."
- 8 A. NO, BUT WHEN I -- A CERTAIN CODE REFERS TO A CERTAIN
9 WORK ENVIRONMENT.
- 10 Q. WELL, I'M SIMPLY ASKING THOUGH, THIS CONTRACT
11 DOESN'T SAY "CODE." IT SAYS "WORK ENVIRONMENT."
- 12 A. THAT'S WHAT THE CODE DOES. IT DESCRIBES THE WORK
13 ENVIRONMENT.
- 14 Q. SIR, I UNDERSTAND YOUR REFERENCE TO CODES. I'M
15 SIMPLY ASKING WHAT THIS DOCUMENT SAYS.
- 16 A. IT DON'T SAY THE WORD "CODE," NO.
- 17 Q. OKAY. ALL RIGHT. BUT IF COUNTRYWIDE WOULD HAVE HAD
18 THE OPPORTUNITY TO SAY -- AND ONE OF THE THINGS
19 YOU'RE SUPPOSED TO TELL THEM IS WHAT THE LOCATION OF
20 WHERE THEY'RE WORKING IS, ISN'T IT? NOT JUST THE
21 CODE BUT THE LOCATION?
- 22 A. IF I HAVE THEM TO SEND A CERTIFICATE OF INSURANCE
23 FOR ANYWHERE THAT SOMEONE IS WORKING THAT IS COVERED
24 UNDER THE WORKERS' COMPENSATION, THEN THEY WOULD
25 AUTOMATICALLY KNOW THAT LOCATION, BECAUSE FOR EVERY

1 LOCATION THAT I HAVE EMPLOYEES, I HAVE A CERTIFICATE
2 OF INSURANCE MADE OUT FOR THAT LOCATION.

3 Q. RIGHT. BECAUSE YOU'RE TELLING -- BUT THEY GET THAT
4 INFORMATION FROM YOU, SO THEY CAN PUT IT ON THE
5 CERTIFICATE, RIGHT?

6 A. THAT'S RIGHT.

7 Q. OKAY. SO, YOU HAVE TO TELL THEM. THEY DON'T MAKE
8 IT UP. YOU'VE GOT TO TELL THEM WHERE IT IS, RIGHT?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND NEVER WERE THE PRISONS PUT IN AS THE
11 LOCATION AND ---

12 A. THEY WERE NEVER COVERED WITH WORKERS' COMP.

13 Q. I AGREE.

14 A. AND PARAGRAPH SIX SAYS IF YOU WOULD SEND THEM A
15 LOCATION THAT THEY WEREN'T COMFORTABLE WITH OR THEY
16 DIDN'T WANT TO DEAL WITH, THEY COULD SAY "NO."

17 A. YEAH.

18 Q. OKAY. WHAT DOES THE LAST SENTENCE OF THAT PARAGRAPH
19 SAY?

20 A. LET ME SEE. "ALTERNATIVELY, THE CLIENT MAY CONTINUE
21 A RELATIONSHIP WITH SUCH THIRD PARTY IN ITS
22 REASONABLE BUSINESS DISCRETION IF IT OBTAINS OTHER
23 INSURANCE COVERAGES FOR THE PROVISION OF A SELECTED
24 STAFF -- STAFFING/EMPLOYEES APART FROM THOSE
25 PROVIDED UNDER THIS AGREEMENT AND HOLDS C.S.S.G.

1 HARMLESS FOR THE PROVISION OF ANY SUCH PERSONNEL."

2 Q. OKAY.

3 A. OKAY. AND THAT'S THE REASON FOR THAT WAS THE
4 U.S.L. & H. COVERAGE.

5 Q. DOES IT SAY THAT?

6 A. NO, BUT THAT'S THE REASON FOR THE CAVEAT IN THERE.

7 Q. OR -- OR IF YOU SENT THEM TO A LOCATION, AND
8 C.S.S.G. SAID "WE'RE NOT COVERING THEM," AND THEN
9 YOU ELECTED TO GO AHEAD AND PUT THEM SOMEWHERE WITH
10 THEIR OWN INSURANCE?

11 A. NO.

12 Q. OKAY. WHAT IS -- WHAT IS -- NOW, YOU ULTIMATELY DID
13 TELL BEFORE THIS AGREEMENT GOT ENTERED INTO, YOU
14 TOLD THEM YOU HAD SOME 1099 AGREEMENTS; I MEAN, YOU
15 SAID "I HAVE A FEW 1099 NURSES," RIGHT?

16 A. YEAH.

17 Q. AND YOU TOLD THEM THAT?

18 A. YES.

19 Q. AND THEY ASKED YOU, AND I THINK IT WAS SCOTT CAME
20 BACK AND SAID "THESE PEOPLE ARE OUTSIDE OF OUR
21 AGREEMENT," RIGHT?

22 A. THIS WAS AFTER THE FACT.

23 Q. NO, BEFORE. BEFORE YOU SIGNED YOUR CONTRACT, I
24 THINK THERE WAS MENTION. I'M LOOKING AT AN EMAIL
25 JANUARY 16, 2014, "SPOKE TO TONY LAST EVENING. I

1 SENT HER THE AGREEMENTS. THE 1099s WOULD NOT BE
2 INCLUDED IN THE E.P.L.I." WHAT'S E.P.L.I.?

3 A. EMPLOYERS ---

4 Q. LOCATION?

5 A. CAN I SEE THE EMAIL?

6 Q. SURE. ACTUALLY, IT'S UP IN THAT -- DO YOU STILL
7 HAVE THE WHOLE STACK?

8 A. NO, SIR.

9 Q. ALL RIGHT. I'LL BRING IT BACK. THE BIG STACK.

10 BY MS. RICHARDSON:

11 I THINK YOU BROUGHT IT BACK, GREGG.

12 BY MR. ALFORD:

13 I BROUGHT IT BACK. HOLD ON.

14 CROSS EXAMINATION RESUMED BY MR. ALFORD:

15 Q. LET ME BRING IT TO YOU. I'M SORRY, SIR.

16 BY MR. GOODWYN:

17 COMMISSIONER, JUST F.Y.I., I'VE HAD A CHANCE TO
18 GO THROUGH THE PACKAGE. I DON'T HAVE ANY OBJECTION
19 TO ANY OF THE PACKAGE THAT WAS RESPONSIVE TO THE
20 SUBPOENA.

21 BY MR. ALFORD:

22 SO, PUT IT BACK TOGETHER?

23 BY MR. GOODWYN:

24 OR YOU CAN USE SOMEBODY ELSE'S PACKAGE IF YOU
25 WANT TO ADMIT THE WHOLE PACKAGE.

1 BY COMMISSIONER JAMES:

2 WELL, Y'ALL ---

3 BY MR. ALFORD:

4 WE'LL WORK IT OUT.

5 BY COMMISSIONER JAMES:

6 --- HAVE REFERRED TO THAT, AND SO MAYBE YOU
7 COULD DO THE REST OF THE PACKAGE AS ANOTHER EXHIBIT.

8 BY MR. ALFORD:

9 YEAH, THAT'S FINE WITH ME.

10 BY THE WITNESS:

11 I DON'T KNOW IF I HAVE THAT.

12 BY MR. ALFORD:

13 YEAH, I KNOW, YOU DON'T. YOU DON'T, SIR. I'LL
14 BE RIGHT WITH YOU. MY PILE, HALF OF IT FELL OFF OF
15 THE PODIUM OR WHATEVER YOU CALL THAT THING.

16 BY COMMISSIONER JAMES:

17 OFF THE RECORD.

18 (OFF THE RECORD)

19 (COURT REPORTER MARKS DOCUMENTS COUNTRYWIDE EXHIBIT
20 NUMBER FIVE, RETAINED IN THE COMMISSION FILE)

21 BY COMMISSIONER JAMES:

22 AND THIS IS FOR THE RECORD, BECAUSE OFF THE
23 RECORD, AT SOME POINT, AND I BELIEVE IT WAS OFF THE
24 RECORD, MR. GOODWYN SAID HE HAD NO OBJECTIONS TO THE
25 ENTIRE PACKET ---

1 BY MR. GOODWYN:

2 RIGHT.

3 BY COMMISSIONER JAMES:

4 --- WHICH WE HAVE NOW MARKED AS COUNTRYWIDE
5 FIVE, AND WHICH CONSISTS OF 144 PAGES. ALL RIGHT.
6 YOUR WITNESS.

7 BY MR. ALFORD:

8 GREAT, YES, MA'AM.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. ALL RIGHT, SIR, WE ARE OPERATING NOW OFF OF THE
11 PACKAGE OF DOCUMENTS THAT ARE MARKED AS -- WHAT'S
12 THE NUMBER IN YOUR HAND THERE, SIR?

13 A. C.S.S.G. FIVE.

14 Q. FIVE, OKAY. SO, WHEN WE'RE DONE WITH THE LEAD UP,
15 IF YOU WILL, TO THE CONTRACT BEING SIGNED, AND WE'VE
16 BEEN THROUGH SOME OF THE CONTRACT. I'VE GOT TWO
17 MORE PROVISIONS -- I HATE TOO, BUT I'M GOING TO
18 DOUBLE BACK TO THE CONTRACT ONE MORE TIME SO I CAN
19 FINISH WITH IT. SO, I'M SORRY. YOU CAN QUIT ON
20 FIVE AND GO BACK TO YOUR AGREEMENT WITH C.S.S.G.,
21 WHICH IS ALSO PART OF FIVE, BUT...

22 BY COMMISSIONER JAMES:

23 AND IT IS SEPARATELY MARKED AS CONDUSTRIAL TWO?

24 BY MR. ALFORD:

25 YES, MA'AM, IT'S SEPARATELY MARKED AS WELL.

1 BY COMMISSIONER JAMES:

2 ALL RIGHT. TRIAL EXHIBIT.

3 BY MR. ALFORD:

4 YES, MA'AM.

5 CROSS EXAMINATION RESUMED BY MR. ALFORD:

6 Q. ALL RIGHT. SO, I'M GOING TO TRY TO DO IT A LITTLE
7 QUICKER. IT'S A -- AND I'M ON PAGE FOUR, PARAGRAPH
8 SEVEN, ONE YEAR AGREEMENT. YES, THAT ONE, SORRY.
9 TERM ONE YEAR.

10 A. YES.

11 Q. ALL RIGHT. AND INDEMNIFICATION, EACH PARTY IS GOING
12 TO INDEMNIFY EACH OTHER?

13 A. YES.

14 Q. OKAY. AND THESE ARE FAIRLY STANDARD PROVISIONS,
15 RIGHT? YOU KNOW WHAT THEY MEAN?

16 A. YES.

17 Q. OKAY. I'M NOW ON PAGE SIX, SIR.

18 A. YES.

19 Q. PARAGRAPH 20, IF YOU DON'T MIND READING THAT INTO
20 THE RECORD.

21 A. "THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING
22 AND AGREEMENT BETWEEN THE PARTIES HERETO. THE
23 AGREEMENT MAY BE MODIFIED OR AMENDED ONLY BY A
24 WRITTEN MODIFICATION OR AMENDMENT SIGNED BY BOTH
25 PARTIES."

1 Q. ALL RIGHT, SIR. AND IF YOU WOULD BE KIND ENOUGH TO
2 READ PARAGRAPH 22 INTO THE RECORD.

3 A. "SUPREMACY OF THE AGREEMENT. THIS AGREEMENT
4 SUPERCEDES ALL PREVIOUS AGREEMENTS OR UNDERSTANDINGS
5 BETWEEN THE PARTIES HERETO, AND ALL OTHER AGREEMENTS
6 OR UNDERSTANDINGS WHETHER ORAL OR WRITTEN SHALL
7 BECOME NULL AND VOID AS OF THE DATE OF THE EXECUTION
8 HEREOF."

9 Q. AND FLIPPING TO PAGE SEVEN, ONE MORE PAGE, SIR, THAT
10 IS YOUR SIGNATURE?

11 A. IT IS.

12 Q. ALL RIGHT. AND YOU -- SO, YOU WOULD AGREE WITH ME
13 THAT WHATEVER ANYBODY MIGHT HAVE TOLD YOU BEFORE,
14 THIS IS THE WHOLE AGREEMENT BETWEEN YOU AND
15 COUNTRYWIDE?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND THEN -- BUT YOU DID ADD AN AMENDMENT, A
18 WRITTEN AMENDMENT, RIGHT?

19 A. YES.

20 Q. OKAY. AND IT'S SIGNED BY YOU AND BY -- AND
21 EVERYBODY AGREES THIS AMENDMENT WAS PART OF THE
22 DEAL; IS THAT RIGHT?

23 A. CORRECT.

24 Q. OKAY. AND IN LOOKING AT THE AMENDMENT, SIR, ISN'T
25 IT TRUE THAT THE PURPOSE OF THE AMENDMENT WAS TO

1 REPLACE WHAT I WOULD CALL STANDARD P.E.O. PROVISIONS
2 LIKE NO ASSIGNMENT OF CONTRACTS, PARAGRAPH FIVE AND
3 NO ASSIGNMENT OF EMPLOYEES, AND TO BASICALLY MODIFY
4 WHAT COULD BE CONSTRUED AS A P.E.O. RELATIONSHIP BUT
5 TO MODIFY IT AND TAILOR IT TO YOUR NEEDS?

6 BY COMMISSIONER JAMES:

7 WHERE IS THAT ADDENDUM TO THAT?

8 BY MR. ALFORD:

9 IT'S JUST ON THE END OF IT. IT'S JUST -- IT'S
10 PART OF THE ---

11 BY MR. GOODWYN:

12 NO, IT'S A SEPARATE ---

13 BY THE WITNESS:

14 I CAN'T FIND IT.

15 BY MR. ALFORD:

16 OH, IS IT SEPARATE?

17 BY MR. GOODWYN:

18 IT'S EXHIBIT THREE.

19 BY THE WITNESS:

20 I WAS LOOKING FOR IT, AND I WAS LIKE ---

21 BY MR. ALFORD:

22 OH, I'M SORRY, EXHIBIT THREE. MY BAD. IT'S
23 ALSO, YOUR HONOR, DOCUMENT NUMBER -- NUMBERS -- IT
24 STARTS AT 103, YOUR HONOR, IN THE BIG STACK.

25 BY COMMISSIONER JAMES:

1 THANK YOU, SIR.

2 BY THE WITNESS:

3 OH, IT'S PART OF THIS, TOO?

4 BY MR. ALFORD:

5 YEAH, IT'S AS WELL -- IT'S IN THERE AS WELL.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. SIR, MY QUESTION IS, AND IF YOU WANT TO READ IT,
8 THAT'S FINE.

9 A. NO, GO AHEAD.

10 Q. WELL, MY QUESTION IS THAT YOU RECALL MR. SEARS'
11 EMAIL WHERE HE WANTED TO MODIFY PROVISIONS OF THE
12 COUNTRYWIDE AGREEMENT BEFORE Y'ALL SIGNED IT?

13 A. YES.

14 Q. HE SAID "WE ARE NOT GOING ASSIGN OUR EMPLOYEES,"
15 RIGHT?

16 A. RIGHT.

17 Q. "WE'RE NOT GOING TO SIGN OUR CONTRACTS," RIGHT?

18 A. CORRECT.

19 Q. "WE WANT TO MAINTAIN THE PAYROLL FUNCTION"?

20 A. CORRECT.

21 Q. OKAY. AND, SO, IS IT FAIR TO SAY, AND I WANT YOU --
22 IF YOU NEED TO LOOK AT IT TO REFRESH YOUR MEMORY, IS
23 IT FAIR TO SAY THAT THIS ADDENDUM WAS DESIGNED TO
24 TAILOR AND MODIFY THE AGREEMENT SUCH THAT TO REPLACE
25 AND TAILOR AND MODIFY THE AGREEMENT TO YOUR NEEDS,

1 YOUR REQUIREMENTS, BECAUSE IT'S FROM Y'ALL, RIGHT?

2 IT'S BASICALLY A LETTER ---

3 A. RIGHT.

4 Q. --- FROM YOU TO THOSE GUYS? RIGHT, OKAY. SO, THIS
5 IS YOUR TAILORING MODIFYING THIS DOCUMENT TO, AS
6 AGREED UPON ---

7 A. CORRECT.

8 Q. --- TO WHAT YOU NEEDED IT TO BE?

9 A. CORRECT.

10 Q. OKAY. SIR, IF YOU HAD WANTED TO, YOU COULD HAVE PUT
11 -- AND YOU'RE A P.E.O. IN THIS, COULDN'T YOU?

12 A. YEAH, I GUESS I COULD HAVE.

13 Q. ALL RIGHT. DOES "P.E.O." APPEAR ANYWHERE IN THERE?

14 A. NO.

15 Q. OKAY. IS THERE ANY REFERENCE TO -- I'M NOT GOING TO
16 CALL THEM OFF THE BOOKS. THAT'S NOT -- THAT HAS A
17 BAD CONNOTATION. IS THERE ANY REFERENCE TO THE 1099
18 BROKERAGE EMPLOYEES?

19 A. NO.

20 Q. SIR, DO YOU NEED A BREAK? DO YOU WANT SOMETHING TO
21 EAT OR ANYTHING?

22 A. NO.

23 Q. YOU'RE ALL RIGHT?

24 A. NO, I'M GOOD.

25 Q. OKAY. THERE'S A LOT OF CRINKLING. I CAN HEAR A LOT

1 OF FOOD MOVING BACK THERE, SO.

2 BY MR. BEARD:

3 IT'S YOUR CLIENT.

4 BY MR. ALFORD:

5 IT FIGURES.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. SIR, WOULD YOU LOOK AT PARAGRAPH 14?

8 A. I'M LOOKING AT IT.

9 Q. OKAY. WOULD YOU MIND READING THAT INTO THE RECORD.

10 A. "ALL EMPLOYEES THAT WORK ON ANY OWNER CONTROLLED
11 INSURANCE PROJECT(O-CIP) OR CLIENT CONTROLLED
12 INSURANCE PROGRAM (C-CIP) WILL BE PROCESSED THE SAME
13 AS THOSE REFERENCED IN LINE ITEM 13 ABOVE AND INCUR
14 NO WORKERS' COMPENSATION PREMIUM. THESE EMPLOYEES
15 WILL BE PROCESSED AS NORMAL CONCERNING ALL TAXES -
16 PAYROLL TAXES EXCLUSIVE OF WORKERS' COMP COVERAGE."

17 Q. OKAY. SO, THERE WERE SOME EMPLOYEES THAT YOU WOULD
18 SEND SOMETIMES SOMEWHERE, AND SO, LIKE, YOU MIGHT
19 HIT WHERE A GENERAL CONTRACTOR OR A DEVELOPER IS
20 LIKE "LOOK, WE'RE NOT GOING TO TAKE THE RISK THAT
21 SOME SUBS AREN'T GOING TO HAVE COVERAGE. WE WANT TO
22 COVER EVERYBODY"?

23 A. YES.

24 Q. AND THAT WOULD BE THE O-CIP OR THE ---

25 A. THE C-CIP.

1 Q. C-CIP, I'M SORRY, CLIENT CONTROLLED, AND THEN OWNER
2 CONTROLLED WOULD BE LIKE THE PRISON OR SOMETHING,
3 COULD BE?

4 A. IT COULD BE. I'VE NEVER SEEN IT LIKE THAT BEFORE,
5 BUT IT COULD BE.

6 Q. BUT THERE ARE -- THERE ARE O-CIP -- DID YOU HAVE --
7 I GUESS MY QUESTION IS KIND OF TRYING TO DRILL DOWN
8 A LITTLE ON THE DIFFERENT GROUPS OF -- WELL,
9 DIFFERENT LINES OF BUSINESS THAT YOU HAVE.

10 A. YES.

11 Q. SO, YOU HAVE LINES OF BUSINESS WHERE THEY'RE JUST
12 STRAIGHT UP EMPLOYEES, AND YOU PROVIDE COMP AND
13 EVERYTHING ELSE, RIGHT?

14 A. YES.

15 Q. OKAY. AND THEN YOU HAVE EMPLOYEES WHERE THEY ARE
16 EITHER IN THE C-CIP OR THE O-CIP?

17 A. CORRECT.

18 Q. AND HOW DO YOU DEAL WITH IT; DO YOU PAY THEM
19 DIFFERENTLY?

20 A. NO, IT'S JUST THEY'RE EMPLOYEES, SO THEY HAVE ALL
21 THE OTHER THINGS THAT GO ALONG WITH BEING AN
22 EMPLOYEE: VACATION, HOLIDAYS, HEALTH INSURANCE, ALL
23 THAT STUFF, ALL THE BENEFITS. THE ONLY THING THAT'S
24 DIFFERENT IS THAT WE ON OUR BILL RATE TO THE CLIENT,
25 THE BILL RATE, LET'S JUST SAY IS 30 BUCKS FOR LACK

1 OF A BETTER ---

2 Q. YEAH, THAT'S FINE, PULL IT OUT OF THE AIR, I DON'T
3 CARE.

4 A. AND THEN IF THE -- IF THE BILL RATE -- IF THE GUY
5 WAS MAKING 20 BUCKS AN HOUR, AND WE'RE BILLING 30
6 BUCKS AN HOUR, AND HIS RATE WAS FIVE PERCENT, THAT
7 WOULD HAVE BEEN A DOLLAR AN HOUR. WE WOULD TAKE THE
8 DOLLAR AN HOUR OFF OF THE BILL RATE. THE BILL RATE
9 TO THE CLIENT NOW WOULD BE \$29.

10 Q. SO, YOU BASICALLY JUST GET -- 'CAUSE I'M REAL DUMB.
11 YOU JUST BASICALLY GIVE THEM A LITTLE BIT OF CREDIT
12 FOR THE FACT THAT THEY'RE PAYING FOR THE INSURANCE?

13 A. I GIVE THEM ALL CREDIT PLUS.

14 Q. WHATEVER IT WAS, OKAY. PLUS YOUR PERCENTAGE OF
15 MARKUP ON IT?

16 A. ABSOLUTELY.

17 Q. OKAY. SO, BASICALLY, NET ZERO FOR EVERYBODY IN THE
18 DEAL?

19 A. YEAH, THEY'RE TAKING ON THE RISKS, SO THEY GET ---

20 Q. GOTCHA.

21 A. --- THE REDUCTION AMOUNT.

22 Q. OKAY. AND WHEN YOU DO THAT, DID YOU RUN EMPLOYEES
23 LIKE THAT IN THIS O-CIP, C-CIP CATEGORY THROUGH THE
24 -- THIS GAVE YOU ESSENTIALLY THE ABILITY TO RUN
25 THOSE FOLKS THROUGH THE COUNTRYWIDE AGREEMENT?

1 A. YES.

2 Q. OKAY. AND DID YOU IN FACT DO THAT AT SOME POINT?

3 A. SURE.

4 Q. YOU WOULD HAVE? I MEAN, THERE'S NOTHING WRONG --
5 I'M JUST ASKING IF THAT WAS A FUNCTION?

6 A. NO, THAT'S A NORMAL PROCEDURE.

7 Q. OKAY. AND THEN WE HAVE THE 1099 BROKERAGE FOLKS WHO
8 ARE NOWHERE IN THIS DEAL?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND SO THIS ESSENTIALLY, THE ADDENDUM, HAS
11 Y'ALL MAINTAINING PAYROLL FUNCTIONS AND THINGS LIKE
12 THAT, CERTAIN ASPECTS OF IT?

13 A. YES.

14 Q. OKAY. NOT -- WELL, IN A P.E.O. RELATIONSHIP, A
15 P.E.O. DOES ALL THAT, RIGHT?

16 A. A STANDARD P.E.O., THAT'S WHAT THEY DO.

17 Q. THANK YOU. ALL RIGHT. I'LL TRY TO GO A LITTLE
18 FASTER, BUT IT'S HARD. ALL RIGHT. TO THE BIG
19 STACK. IN YOUR NEGOTIATIONS LEADING UP TO THE
20 CONTRACT, YOU WERE ASKED, AND SIR, I'M GOING TO ASK
21 YOU TO LOOK AT -- I'M SORRY, IF YOU WILL JUST BEAR
22 WITH ME. I'M TRYING TO FIND THE ONE, SIR, THAT
23 TALKS ABOUT WHEN Y'ALL HAD A LITTLE CONVERSATION
24 ABOUT 1099s.

25 BY MR. GOODWYN:

1 I THINK I'VE GOT IT.

2 BY MR. ALFORD:

3 THERE WERE LIKE THREE OR FOUR IN A LITTLE
4 STRING. ARE YOU GOING TO HELP ME OUT?

5 BY MR. GOODWYN:

6 LOOK AT AROUND PAGE 51.

7 BY MR. ALFORD:

8 RIGHT, YEP, THANK YOU. YEP, HERE WE GO. THANK
9 YOU.

10 CROSS EXAMINATION RESUMED BY MR. ALFORD:

11 Q. ALL RIGHT, SIR. AND THESE GO BACKWARDS. SO, IF YOU
12 WOULD LOOK AT PAGE 53, PLEASE. I'M UP AT THE TOP.
13 I MIGHT HAVE TO MOVE OVER. YOU TOOK THE CLIP OFF,
14 GOOD. UP AT THE TOP, AND IT'S -- THEY'RE ASKING YOU
15 ESSENTIALLY, "YOU HAVE SEVERAL PEOPLE ON THE MEDICAL
16 SIDE THAT THEY 1099. WOULD THESE PEOPLE FIT IN THE
17 DEFINITION OF EMPLOYEE UNDER YOUR E.L.P.I. OR UNDER
18 YOUR E.L.P.I. COVERAGE?" AND -- ACTUALLY, THAT WAS
19 TO SCOTT, I'M SORRY. THAT WAS AN EMAIL TO SCOTT
20 FROM ALBERT, AND HE ASKED -- SCOTT ASKED ALBERT,
21 "THEY ARE -- ARE THEY A TRUE 1099, OR ARE THEY BEING
22 PAID A COMMISSION?" ANSWER COMES BACK, "I SPOKE TO
23 TONY LAST EVENING. I SENT OVER THE AGREEMENTS. THE
24 1099s WOULD NOT BE INCLUDED IN THE E.P.L.I." IT'S
25 ON PAGE 51, I'M SORRY, SIR. DID I READ THAT

1 ACCURATELY?

2 A. YES. I'M SORRY. I DIDN'T KNOW YOU WAS WAITING ON
3 ME.

4 Q. NO, I'M SORRY. DID YOU -- IS THAT ACCURATE? I
5 MEAN, DO YOU RECALL SPEAKING TO MR. HANSON ABOUT
6 SEVERAL 1099 MEDICAL PEOPLE THAT WOULD NOT BE
7 INCLUDED IN THE E.P.L.I.?

8 A. I DO NOT EVER REMEMBER ACTUALLY DISCUSSING THE TERM
9 E.P.L.I. WITH SCOTT.

10 Q. WHAT IS THAT AGAIN?

11 A. IT'S A THING THAT GOES ON THE TOP FOR EMPLOYEE
12 PRACTICES LIABILITY INSURANCE, AND ---

13 Q. SO, IT'S NOT COMP?

14 A. NO, IT'S NOT COMP.

15 Q. OKAY.

16 A. IT'S ANOTHER PIECE THAT GOES ON TOP, AND WHAT THEY
17 USUALLY HAVE, EVEN THOUGH I CARRY MY OWN E.P.L.I.,
18 IS THE P.E.O.s ACTUALLY CARRY E.P.L.I. THEMSELVES,
19 WHOEVER PROVIDES THE WORKERS' COMP ALSO CARRIES THE
20 E.P.L.I., BUT I DOUBLED UP; SO.

21 Q. BUT YOU AND I ARE -- YOU WOULD AGREE WITH ME THAT AT
22 LEAST SO FAR AS THE DOCUMENTS EXPRESS COUNTRYWIDE
23 WAS NOT A P.E.O.?

24 A. WELL, I DIDN'T AGREE TO THAT AT ALL.

25 Q. WELL, THE DOCUMENTS DON'T SAY THEY ARE?

1 A. THE DOCUMENTS DON'T SAY THAT THEY'RE A P.E.O., BUT
2 NONE OF THE DOCUMENTS HE EVER SENT ME WAS ANYTHING
3 FROM THEM EXCEPT THIS ONE THING SAYING "WE ARE NOW
4 LICENSED AS P.E.O.s." NOTHING EVER ADDRESSED P.E.O.
5 AFTER THAT DAY.

6 Q. BUT MR. SEARS AND YOURSELF, YOU TALKED ABOUT P.E.O.s
7 IN YOUR EMAILS LEADING UP TO THE CONTRACT AND SAID
8 "WE DON'T WANT IT."

9 A. WE DIDN'T WANT THE FULL PACKAGE P.E.O. WE DIDN'T
10 WANT THE FULL.

11 Q. IN FACT, YOU DIDN'T WANT -- YOU WANTED TO MAINTAIN
12 CERTAIN CONTROLS AND CERTAIN CONTROLS ---

13 A. ABSOLUTELY.

14 Q. --- OVER CONTRACTS AND EMPLOYEES, WHICH TAKES IT OUT
15 OF THE REALM OF A P.E.O.?

16 A. ABSOLUTELY.

17 Q. OKAY.

18 A. NOT TAKES IT OUT OF THE REALM OF A P.E.O. IT TAKES
19 IT OUT OF THE REALM OF THE FULL SERVICE OF A P.E.O.
20 WE WANTED TO BE ABLE TO PICK SERVICES IF HE COULD DO
21 THAT.

22 Q. BUT YOU CAN'T HAVE IT BOTH WAYS, CAN YOU?

23 A. I DON'T KNOW. I'VE HAD IT BOTH WAYS WITH THREE
24 OTHER PROVIDERS, SO I CAN'T SAY THAT. NOW, IT'S
25 LIKE I SAY, I'VE HAD IT WITH THE OTHERS, TOO.

1 Q. AND YOU KNOW A LOT. DID YOU EVER LOOK AT THE ---

2 A. I HAD THAT SAME AGREEMENT PRIOR TO I WENT TO SCOTT -

3 --

4 Q. I'M JUST CURIOUS ---

5 A. --- AND I SENT MY OLD AGREEMENT TO SCOTT AND SAID
6 "MIMIC THIS IF YOU CAN."

7 Q. BUT HE SENT BACK AN AGREEMENT THAT MR. SEARS
8 MODIFIED?

9 A. YEAH, BUT IT WINDS UP BEING THE SAME LANGUAGE IS A
10 LITTLE BIT DIFFERENT, BUT THE SERVICE IS THE SAME,
11 AND I HAVE THAT SAME ARRANGEMENT NOW WITH FIRST STAR
12 P.E.O.

13 Q. OKAY.

14 A. I KNOW WHAT YOU'RE TRYING TO GET ME TO SAY, BUT
15 YOU'RE JUST NOT GOING TO GET ME TO SAY IT. OKAY?

16 Q. I DON'T NEED YOU TO SAY IT; THE DOCUMENTS SAY IT,
17 RIGHT?

18 A. NO. YOU'RE NOT GOING TO GET ME TO SAY IT.

19 Q. ALL RIGHT, THAT'S FAIR. I THOUGHT I WAS BEING
20 ROUGHED UP. ALL RIGHT. ALL RIGHT, SIR. SO, THEN
21 YOU SIGN THIS AGREEMENT, AND LET ME JUST SEE.
22 THERE'S AN EMAIL HERE THAT I THOUGHT WAS
23 INTERESTING. YOU HAD SOME PROBLEMS WITH GETTING THE
24 CERTIFICATES, DIDN'T YOU?

25 A. YEAH, WE HAD A LOT OF PROBLEMS.

1 Q. AND THAT WAS A PROBLEM WITH COUNTRYWIDE, THAT YOU
2 WERE HAVING TROUBLE GETTING CERTIFICATES FROM THEM?

3 A. YES, THAT'S WHAT I'M REFERRING TO, WE HAD A LOT OF
4 PROBLEMS GETTING CERTIFICATES.

5 Q. OKAY. I DON'T DISAGREE. NOW, WERE YOU - DOES
6 BERKELEY RIVERPORT RING A BELL AS A CARRIER?

7 A. BERKLEY HATH -- BERKSHIRE HATHAWAY AND THEN
8 RIVERPORT, ALL OF THOSE ARE ---

9 Q. A FAMILY, IF YOU WILL?

10 A. ALL OF THOSE ARE ---

11 Q. A HOLDING COMPANY, KIND OF?

12 A. --- A STEP DOWN OF GUARD.

13 Q. AND ARE YOU AWARE THAT COUNTRYWIDE PURCHASED
14 COVERAGE THROUGH BERKLEY RIVERPORT FOR YOUR COMPANY?

15 A. NO, I AM NOT.

16 BY MR. GOODWYN:

17 I OBJECT TO THE FORM. THERE'S NO FOUNDATION.

18 BY MR. ALFORD:

19 I JUST ASKED HIM IF HE WAS AWARE.

20 BY MR. GOODWYN:

21 HE'S ASKING IF HE IS AWARE OF WHAT HE SAYS IS A
22 FACT THAT HASN'T BEEN ESTABLISHED.

23 BY MR. ALFORD:

24 HOW ELSE DO I ESTABLISH THAN TO ASK HIM IF HE'S
25 AWARE OF IT?

1 BY MR. GOODWYN:

2 YOU GET A WITNESS UP THERE TO TESTIFY THAT
3 THERE WAS COVERAGE.

4 BY COMMISSIONER JAMES:

5 OKAY. WELL, ---

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. DO YOU KNOW WHETHER OR NOT ---

8 BY COMMISSIONER JAMES:

9 I DON'T ---

10 BY MR. ALFORD:

11 I CAN FIX IT, YOUR HONOR. I'LL PULL IT BACK.
12 I'LL CHANGE IT. NO PROBLEM.

13 CROSS EXAMINATION RESUMED BY MR. ALFORD:

14 Q. SIR, DO YOU KNOW WHETHER OR NOT COUNTRYWIDE
15 PURCHASED COVERAGE FROM BERKLEY RIVERPORT FAMILY OF
16 CARRIERS?

17 A. I DO KNOW THAT THEY HAD COVERAGE FROM RIVERPORT IN
18 NEW JERSEY, A POLICY WRITTEN IN NEW JERSEY. THAT IS
19 CORRECT.

20 Q. OKAY. AND BUT FROM YOUR PERSPECTIVE, THEY WERE
21 UNABLE TO BASED ON ISSUES THAT THEY HAD WITH BERKLEY
22 RIVERPORT OR WHATEVER, THEY WERE UNABLE TO SATISFY
23 YOUR NEEDS IN TERMS OF GETTING YOU CERTIFICATES OF
24 INSURANCE?

25 A. THAT IS CORRECT.

1 Q. OKAY. AND YOU WROTE AN EMAIL, NUMBER 107, YOU'RE
2 MAD AT SCOTT NOW, AREN'T YOU?
3 A. I SURE AM.
4 Q. BECAUSE HE'S NOT GIVING YOU YOUR CERTIFICATES,
5 RIGHT?
6 A. RIGHT. YEAH, YOU KNOW, THAT REVERTS ---
7 Q. THAT'S A BIG DEAL?
8 A. --- TO ABOUT 800 PEOPLE NOT GOING TO WORK.
9 Q. I GOT IT, IT'S A BIG DEAL.
10 A. IT RUINS FAMILIES.
11 Q. IT'S A BIG DEAL, ISN'T IT?
12 A. YEAH.
13 Q. OKAY. DID ANYBODY MISS WORK?
14 A. DID ANYBODY MISS WORK?
15 Q. YEAH, DID ANYBODY NOT -- YOU SAID PEOPLE DON'T GO TO
16 WORK, BUT DID ANYBODY NOT GO TO WORK?
17 A. NO, THEY DIDN'T.
18 Q. SO, THEY WENT TO WORK?
19 A. YEAH, JUST BECAUSE ---
20 Q. ALL RIGHT.
21 A. --- I PICKED UP THE PHONE AND HAD CALLS TO PEOPLE,
22 YEAH.
23 Q. SO, YOU HAD TO SCRAMBLE A LITTLE BIT, BUT EVERYBODY
24 GOT TO WORK?
25 A. YEAH.

1 Q. ALL RIGHT. SO, THIS IS YOU LETTING MR. HYNDSHAW AND
2 MR. SEARS KNOW THAT YOU ARE NOT HAPPY?

3 A. THAT'S CORRECT.

4 Q. AND THAT GEORGE HAS NOT BEEN -- YOU DON'T THINK
5 SCOTT HAS BEEN STRAIGHT UP WITH YOU; IS THAT FAIR?

6 A. THAT'S CORRECT.

7 Q. ALL RIGHT. SO, THEN IT LOOKS LIKE -- I'M LOOKING AT
8 -- WELL, I'LL KEEP MOVING. I'M SEEING SOME EMAILS,
9 TOO, WHEN YOU'RE GOING THROUGH YOUR UNDERWRITING
10 PROCESSES -- I'M AT 110 INVOLVING A -- YOU'RE HAVING
11 TROUBLE GETTING COVERAGE BECAUSE OF A BANKRUPTCY OR
12 SOMETHING; IS THAT RIGHT? I'M LOOKING AT DOCUMENT
13 110.

14 A. ONE-TEN.

15 Q. YES, SIR, I'M SORRY.

16 A. YEAH, WHAT THAT IS, THAT DON'T HAVE ANYTHING TO DO
17 WITH COUNTRYWIDE. WHAT THAT WAS WAS ONE OF THE
18 OTHERS -- THAT'S AN ACTUAL DIRECT POLICY.

19 Q. OKAY.

20 A. AND WHEN EVERYBODY DECIDED TO FILE BANKRUPTCY ON ME
21 AND WALK OFF WITH TWO MILLION DOLLARS OF UNPAID
22 PAYROLLS IN 2009, I HAD TO FILE CHAPTER 11.

23 Q. OKAY, REORGANIZATION?

24 A. I DID, AND I CAME OUT OF IT AND EVERYTHING, BUT
25 EASTERN SAID THAT I WOULD HAVE TO GO A LITTLE

1 FURTHER OUT IN ORDER BEFORE THEY WOULD CONSIDER
2 WRITING IT AS A DIRECT POLICY.

3 Q. OKAY.

4 A. AND THAT WAS THE ISSUE.

5 Q. AND IT SOUNDS LIKE IF I FLIP TO THE NEXT -- OR FLIP
6 BACK TO 109, IT SOUNDS LIKE YOU GOT ON THE PHONE AND
7 LIT SOMEBODY UP.

8 A. WHICH?

9 Q. ON 109.

10 A. THE TOP PART OR THE BOTTOM?

11 Q. YEAH, TELL -- WELL, THE TOP PART, YOU KNOW, TONY
12 SENDS -- I MEAN, ALBERT SENDS AN EMAIL TO YOU, AND
13 THEN ACTUALLY -- AND THEN YOU SAY, "HEY, BLAME ME.
14 I HAD TO CALL HIM," RIGHT?

15 A. YEAH, WHAT WAS THAT ABOUT? WHAT DID YOU TELL HIM, I
16 MEAN, THAT MADE -- I MEAN, WHAT WAS HAPPENING THERE?

17 A. WELL, WHAT IT IS IS WHEN YOU GO THROUGH SOMETHING
18 LIKE THAT, WHAT YOU DO IS YOU REALIZE THAT THOSE ARE
19 GOING TO CAUSE YOU ISSUES THAT YOU MAY HAVE TO
20 OTHERWISE DEAL WITH, AND INSURERS, YOU KNOW, THEY --
21 THEY WANT TO SEE THAT. SO, WHAT I DO IS I ALWAYS
22 MAKE SURE THAT WE WENT TO A CARRIER OR PERSON, I
23 SAID, "HEY, LOOK, LET ME TELL YOU WHAT WE'VE GOT
24 HERE, SO IF THIS IS AN ISSUE, WE WON'T GO THROUGH
25 THIS 25 DAY PROCESS OF DUE DILIGENCE AND ALL THIS

1 STUFF. HERE'S -- LET ME TELL YOU WHAT WE'VE DONE,
2 AND IF THIS IS A PROBLEM," BECAUSE I KNOW THIS CAN
3 BE A DEAL KILLER REGARDLESS IF EVERYTHING ELSE IS
4 GREAT, THIS CAN BE A DEAL KILLER, 'CAUSE I'VE BEEN
5 DOWN THAT ROAD A TIME OR TWO ALREADY, AND WE HAD
6 BEEN DOWN THIS ROAD WITH THEM A LONG WAYS, AND THEY
7 -- IT WASN'T AN ISSUE. IT WASN'T AN ISSUE. IT
8 WASN'T AN ISSUE. OH, IT'S AN ISSUE, AND I WAS NOT
9 HAPPY, OKAY, SO.

10 Q. OKAY.

11 A. YOU KNOW, I DON'T MIND GETTING TURNED DOWN; I JUST
12 DON'T WANT TO GET LED DOWN THE PRIMROSE PATH, YOU
13 KNOW.

14 Q. I GOTCHA. ALL RIGHT. SO, THEN THIS CLAIM COMES UP.
15 SO, BUT IT ENDS UP THAT YOU'RE STILL WITH -- LET ME
16 SEE THESE TIME FRAMES. YOU'RE STILL WITH -- ARE YOU
17 STILL WITH -- YOU'RE NOT WITH COUNTRYWIDE ANYMORE IN
18 AUGUST OF 2015, ARE YOU?

19 A. YES, WE ARE WITH THEM UNTIL ---

20 Q. I THOUGHT IT WAS MARCH.

21 A. --- DECEMBER THE ---

22 Q. SOMEWHERE -- YOU'RE GETTING READY -- BUT YOU'RE
23 HAVING PROBLEMS AND YOU'RE NOT HAPPY. SO, YOU'RE
24 LOOKING AROUND. IS THAT WHAT'S HAPPENING WITH THESE
25 -- WITH THIS?

1 A. WELL, WHAT WAS HAPPENING WAS WE WERE HAVING A
2 TERRIBLE TIME GETTING CERTIFICATES.

3 Q. RIGHT.

4 A. AND THAT WAS THE MAIN -- MAIN ISSUE, AND THEN WE
5 STARTED HAVING MORE PROBLEMS WITH THEM ---

6 Q. WOULD YOU ---

7 A. --- CHANGING THE TAX STATEMENTS THAT WE WOULD SEND
8 THEM BEFORE THEY WOULD FILE THEM.

9 Q. OKAY.

10 A. AND WE HAD ALL KIND OF PROBLEMS WITH THE MONEY
11 GETTING CHANGED. WE WOULD SEND THEM \$25,000, SAY
12 FOR EXAMPLE, AND IT WOULD HAVE THE NORTH CAROLINA
13 FILINGS ON IT, THIS \$25,240, AND THEN WE WOULD LOOK
14 ON THERE, AND THEY WOULD BE FILED -- ON \$20,200, AND
15 YOU'RE LIKE "NO, THAT'S NOT RIGHT." AND WE FOUND
16 NUMEROUS CASES OF THAT HAPPENING WHERE WE WOULD SEND
17 THEM THE MONEY, SEND THEM A FILE, AND THEN THEY
18 WOULD LOWER IT BY 20 PERCENT OR WHATEVER AND FILE
19 IT, WHICH WAS CAUSING US -- BECAUSE THEY WERE ALL
20 BEING FILED UNDER OUR TAX -- STATE TAX I.D.s, IT WAS
21 CAUSING US TO DEVELOP A POTENTIAL TAX LIABILITY, AND
22 SO WE WERE REACHING BACK TO THEM GOING "YOU'VE GOT
23 TO FIX THAT. THERE'S GOING TO BE PENALTIES,
24 EVERYTHING ELSE INVOLVED. THAT'S -- WHY WOULD YOU
25 DO THAT?" AND THAT WAS WHAT HAPPENED.

1 Q. OKAY.

2 A. I WAS NOT HAPPY, YEAH, YOU'RE RIGHT.

3 Q. THERE'S ANOTHER STACK UP THERE OF KEENAN AND SUGGS
4 DOCUMENTS, AND I CAN'T REMEMBER WHAT EXHIBIT WE MADE
5 IT. SO, IT'S A STACK ABOUT THAT BIG.

6 A. I HAVEN'T SEEN THAT ONE, UNLESS IT'S IN THIS ONE?

7 Q. NO, SIR, I DON'T BELIEVE IT IS.

8 BY COMMISSIONER JAMES:

9 COUNTRYWIDE EXHIBIT THREE.

10 BY MR. ALFORD:

11 EXHIBIT THREE?

12 BY COMMISSIONER JAMES:

13 YES.

14 BY THE COURT REPORTER:

15 YES, MARKED C.S.S.G. THREE.

16 BY MR. ALFORD:

17 C.S.S.G. THREE.

18 BY THE WITNESS:

19 IS THIS IT OVER HERE? IS THAT IT?

20 BY MR. ALFORD:

21 IT'S ABOUT THAT (INDICATES) THICK.

22 BY THE WITNESS:

23 I HADN'T SEEN THOSE, NO. THIS IS ALL I'VE GOT
24 RIGHT HERE.

25 BY MR. ALFORD:

1 OH, BOY. I HAVEN'T BEEN UP HERE MUCH, NOW.

2 BY THE WITNESS:

3 THIS IS THE STUFF Y'ALL HAVE GIVEN ME.

4 BY MR. ALFORD:

5 YES, SIR. NO, IT'S NOT YOU. IT'S ME. OH,
6 DEAR. YOU DIDN'T PULL THAT OFF OF THERE BY ANY
7 CHANCE?

8 BY MR. GOODWYN:

9 WHICH ONE ARE YOU LOOKING FOR?

10 BY MR. ALFORD:

11 C.S.S.G. THREE. THE KEENAN SUGGS DOCUMENTS.

12 BY THE WITNESS:

13 HERE.

14 BY MR. ALFORD:

15 DID I JUST MISS IT? I'M GLAD IT'S NOT A SNAKE.
16 ALL RIGHT.

17 CROSS EXAMINATION RESUMED BY MR. ALFORD:

18 Q. ALL RIGHT. SIR, THERE'S AN EMAIL ON TOP OF THAT.
19 WHICH -- LET ME SEE. DO YOU MIND IF I COME LOOK
20 OVER YOUR SHOULDER A SECOND?

21 A. NO.

22 Q. SO I CAN GET ON THE SAME PAGE WITH YOU. I'M TRYING
23 TO GET SOME COMMUNICATIONS BETWEEN YOU AND TED.
24 YES, SIR. ALL RIGHT, SIR, IT'S A PART OF THIS
25 EXHIBIT, AND AT THE BOTTOM, IT DOES HAVE A KEENAN

1 AND SUGGS 00002. JUST TAKE A SECOND AND LOOK AT
2 THAT FOR ME.

3 A. (REVIEWS DOCUMENT) OKAY. I UNDERSTAND. I KNOW THE
4 PURPOSE OF THIS.

5 Q. OKAY. AND THEN BEHIND, SIR, IS KIND OF A STACK --
6 OR NOT A STACK BUT SORT OF SOME EMAILS BACK AND
7 FORTH.

8 A. RIGHT.

9 Q. SO, IS THIS ABOUT THE TIME WHEN MS. TURNER'S CLAIM
10 COMES IN?

11 A. THAT'S CORRECT, YES, SIR.

12 Q. OKAY. AND BY THIS TIME, YOU HAD BEEN GETTING
13 CERTIFICATES FROM G.I.C.; IS THAT RIGHT?

14 A. YEAH.

15 Q. THAT ISSUE HAS GONE AWAY?

16 A. YES.

17 Q. OKAY. AND YOU'RE -- YOU'RE NOT HAPPY, BUT ---

18 A. IT'S BETTER.

19 Q. IT'S BETTER, THANK YOU. AND SO, MS. TURNER'S CLAIM
20 COMES IN. WHAT -- WHAT ARE YOU THINKING; WHAT
21 HAPPENS?

22 A. WELL, I MEAN, SHE FILES A CLAIM, AND WE'RE, LIKE, WE
23 NOTIFY HER OF WHAT SHOULD HAVE BEEN OBVIOUS TO HER,
24 YOU'RE NOT AN INDEPENDENT CONTRACTOR -- I MEAN, "YOU
25 ARE AN INDEPENDENT CONTRACTOR, AND YOU DON'T HAVE

1 COVERAGE. IT WAS EXCLUDED IN YOUR AGREEMENT. YOU
2 SIGNED ONE TWICE. YOU DON'T HAVE ANY COVERAGE," AND
3 THAT WAS WHEN I TALKED TO HER. I EXPLAINED TO HER
4 AND CALLED HER AND TRIED TO MAKE A SCENARIO FOR HER
5 THAT WOULD WORK EVEN THOUGH SHE DIDN'T HAVE ANY
6 WORKERS' COMP COVERAGE.

7 Q. OKAY. AND IN THAT CONTEXT, WERE YOU ALSO -- WERE
8 YOU AND MR. SEARS ALSO TRYING TO GET -- SO, THEY
9 FILE IT WITH THE COMP COMMISSION. SHE FILES IT
10 AGAINST MEDUSTRIAL, WHICH TAKES SOME EXPLAINING,
11 RIGHT, TO KIND OF SAY THAT'S REALLY CONDUSTRIAL.

12 A. SURE.

13 Q. AND THEN WAS THERE A CONCERN ON YOUR PART THAT IT
14 WOULD BE PERCEIVED BY THE COMP COMMISSION OR OTHERS
15 THAT YOU JUST DIDN'T HAVE ANY INSURANCE AT ALL?

16 A. ABSOLUTELY.

17 Q. OKAY. AND WERE YOU ASKING AT THAT POINT THEN TO GO
18 AHEAD AND FILE THE CLAIM UNDER ---

19 A. WELL, WE HAD NO -- WE HAD NO CHOICE IN THE FILING OF
20 THE CLAIM.

21 Q. LET ME REPHRASE THAT.

22 A. OKAY.

23 Q. WERE YOU ASKING THAT -- OR WERE YOU AND/OR MR. SEARS
24 ON YOUR BEHALF ASKING THAT THE CLAIM BE SUBMITTED TO
25 G.I.C.?

1 A. WE ASKED THAT THE CLAIM BE SUBMITTED TO G.I.C. I
2 WANTED THEM TO DENY THE CLAIM, BUT THAT I DIDN'T
3 NEED THEM TO REPORT THAT I WAS AN UNINSURED
4 EMPLOYER, BECAUSE I WASN'T. THAT'S ALL I WAS TRYING
5 TO DO. IN ALL OF MY EMAILS, YOU CAN LOOK THERE, AND
6 YOU CAN SEE IN THIS ONE, I'M GOING "SHE HAS NO
7 COVERAGE." I AGREE 100 PERCENT. IT'S NOT -- YOU
8 KNOW, WE'RE NOT DISAGREEING. MY POSITION IS SHE HAS
9 NO COVERAGE, WHATEVER, BUT IF YOU -- IF YOU REPORT
10 TO THEM LIKE THIS THAT I'M AN UNINSURED EMPLOYER,
11 THAT'S A TOTALLY DIFFERENT ISSUE, YOU KNOW, AND THAT
12 WAS WHEN IT REALLY WENT DOWNHILL THEREAFTER.

13 Q. OKAY.

14 A. I MEAN, I PAID THEM AT THIS POINT, A MILLION AND A
15 HALF DOLLARS OR SO IN WORKERS' COMP PREMIUMS, AND
16 I'M LIKE "DON'T SAY I'M AN UNINSURED EMPLOYER. YOU
17 CAN SAY THIS LADY DON'T HAVE COVERAGE OR WHATEVER
18 YOU WANT TO SAY, BUT THAT'S A WHOLE DIFFERENT
19 STATEMENT THAN TELLING THEM I'M AN UNINSURED
20 EMPLOYER."

21 Q. AND IF YOU WOULD -- I UNDERSTAND, BUT IF YOU WOULD
22 FLIP THE PAGE, SIR, AND GO TO 003, AND THIS IS -- I
23 GUESS WE SHOULD PROBABLY TURN -- LET ME GO -- LET'S
24 GO TO -- LET'S GO ALL THE WAY TO 00008, AND THEN THE
25 WAY THESE EMAIL THINGS WORK, WE'RE GOING TO END UP

1 COMING -- WORKING BACKWARDS TO GET TO THREE.
2 ACTUALLY, YOU GO TO SEVEN, BUT EIGHT IS THE
3 BEGINNING OF IT.

4 A. OKAY.

5 Q. AND UP IN THE MIDDLE OF SEVEN, THERE'S A WHOLE LOT
6 OF STUFF, BUT ABOUT IN THE MIDDLE IS A NOTE FROM MR.
7 SEARS TO JO ANN WHITAKER. NOW, WERE YOU AWARE THAT
8 HE'S OUT THERE OPERATING ON YOUR COMPANY'S BEHALF
9 TRYING TO GET THIS THING SORTED OUT?

10 A. SURE.

11 Q. OKAY. AND HE SAYS TO MS. WHITAKER, "I AM SENDING
12 YOU THIS JUST IN CASE. I AM WAITING TO SEE HOW OUR
13 P.E.O. COUNTRYWIDE AND OUR CARRIER GUARANTEE RESPOND
14 TO THIS SITUATION. WOULD WE POTENTIALLY REPORT THIS
15 TO OUR G.L. CARRIER? PLEASE, DO NOT DO THAT, BUT
16 LET'S DO SOME RESEARCH AND BE PREPARED, AS WE HAVE
17 TO FILE A FORM 51 DENIAL WITHIN THE NEXT 30 DAYS."
18 IS THAT ACCURATE?

19 A. THAT'S WHAT IT SAYS.

20 Q. OKAY. AND THEN HE REACHES OUT, AND HE IS TELLING --
21 WELL, JO ANN ASKS "CAN YOU SEND ME A COPY OF THE
22 CONTRACT WITH HER AND WITH THE STATE?" AND THEN HE
23 SAYS TO HER "THE CONTRACT WAS SIGNED IN 2008. THERE
24 ARE SEVERAL PROVISIONS THAT ARE VERY AMBIGUOUS IN
25 LIGHT OF HOW WE HAVE MUTUALLY OPERATED IN THE LAST

1 SEVERAL YEARS. I CAN EXPLAIN THIS BETTER ON THE
2 PHONE. I WILL GET YOU THE I.C. AGREEMENT THIS LADY
3 SIGNED AND CAN SHOOT THIS TO YOU WHEN WE TALK
4 TOMORROW," RIGHT?

5 A. CORRECT.

6 Q. ALL RIGHT. AND THEN YOU GOT TO GO TO FOUR AND THEN
7 READ BACK TO FIVE UNFORTUNATELY. WELL, ACTUALLY,
8 TOM WRITES ON 00005 TO DANIEL RIVERO, WHO IS SOMEONE
9 AT COUNTRYWIDE, RIGHT?

10 A. YES.

11 Q. DANIEL, I THINK IT IS ACTUALLY, AND SAYS "MY PORTION
12 IS COMPLETE; HOW ARE YOU LOOKING? WE DO NEED TO
13 EMAIL THIS BACK IN TO THEM TODAY." AND THEN, YOU'VE
14 GOT TO FLIP OVER TO FOUR AND READ THE EMAIL FROM TOM
15 -- I MEAN, FROM TED, THEODORE BRYANT, TO TOM, AND HE
16 IS NOW ASKING YOU ABOUT MEDUSTRIAL, RIGHT?

17 A. YEP.

18 Q. AND HE IS SAYING "I AM WRITING TO YOU IN REGARDS TO
19 AN ISSUE THAT HAS ARISEN CONCERNING A COMPANY CALLED
20 MEDUSTRIAL AND A CLAIM ARISING ABOUT AN INDEPENDENT
21 CONTRACTOR MEDUSTRIAL RETAINED." YOU KNOW, THIS
22 CAME TO OUR ATTENTION, AND HE GOES THROUGH "I SEE
23 FROM YOUR EMAIL THAT MEDUSTRIAL IS AFFILIATED WITH
24 OR A SUBSIDIARY OF CONDUSTRIAL. WE DO NOT HAVE ANY
25 RECORDS OR INFORMATION ABOUT MEDUSTRIAL, ITS

1 PAYROLL, PREFERRED CLASS CODES, BUSINESS OPERATIONS
2 OR ANY INFORMATION WHATSOEVER. I REVIEWED
3 PERSONALLY ALL CONDUSTRUAL MATERIALS IN OUR
4 POSSESSION AND FIND NO MENTION OF MEDUSTRIAL. OF
5 COURSE, THIS MEANS THAT OUR INSURANCE COMPANY
6 PARTNER, GUARANTEE INSURANCE COMPANY, HAS NO
7 INFORMATION ABOUT MEDUSTRIAL. IN ORDER FOR US TO
8 HANDLE A MEDUSTRIAL MATTER ON YOUR BEHALF, THERE IS
9 SIGNIFICANT INFORMATION WE NEED ABOUT THAT ENTITY.
10 THERE WILL ALSO BE RELATED FEES AND CHARGES
11 ASSOCIATED WITH ADDING MEDUSTRIAL TO THE PROGRAM.
12 IN DIRECT RESPONSE TO YOUR OCTOBER 16TH EMAIL, THE
13 CLAIM IS NOT COVERED UNDER OUR WORKERS' COMPENSATION
14 INSURANCE PROGRAM WITH GUARANTEE. YOU WRITE IN THE
15 THIRD SENTENCE OF YOUR OCTOBER 16TH EMAIL, 'THIS
16 CLAIM INVOLVES AN INDEPENDENT CONTRACTOR THAT IS NOT
17 AN EMPLOYEE.' AS YOU KNOW, INDEPENDENT CONTRACTORS
18 ARE NOT COVERED UNDER THE RELEVANT WORKERS'
19 COMPENSATION INSURANCE PROGRAM. ONLY EMPLOYEES ARE
20 COVERED BY WORKERS' COMPENSATION INSURANCE. THIS
21 MATTER WILL NOT BE SUBMITTED TO GUARANTEE. ALSO, WE
22 ARE WRITING TO MAKE SURE THAT YOU DO NOT SUBMIT THIS
23 CLAIM OR OTHERWISE SUBMIT INFORMATION ABOUT OUR
24 GUARANTEE INSURANCE POLICY ON THE SOUTH CAROLINA
25 NOTICE OF CLAIM. PLEASE NOTE OUR INSURANCE PROGRAM

1 THROUGH GUARANTEE DOES NOT PROVIDE COVERAGE FOR THIS
2 CLAIM AND REPORTING TO SOUTH CAROLINA THAT THE
3 GUARANTEE -- THAT GUARANTEE DOES PROVIDE SUCH
4 COVERAGE WOULD BE INAPPROPRIATE, WHICH YOU AS A
5 SEASONED EXPERIENCED COMPENSATION ATTORNEY WOULD
6 APPRECIATE AND UNDERSTAND. IF YOU WOULD LIKE TO
7 INCLUDE MEDUSTRIAL'S OPERATIONS UNDER OUR PROGRAM,
8 THEN WE WOULD BE HAPPY TO LOOK AT IT." ALL RIGHT.
9 IS THAT PRETTY MUCH WHAT IT SAYS?

10 A. YES.

11 Q. OKAY.

12 BY MS. RICHARDSON:

13 MR. SEARS IS, YOU KNOW, -- I DON'T EVEN WANT TO
14 SAY WHAT THE GESTURE IS, BECAUSE IT SUGGESTS THINGS,
15 BUT I WOULD -- I WOULD JUST ASK THAT HE STOP NODDING
16 OR ---

17 BY MR. SEARS:

18 I WAS LOOKING AT TAMARA SHAKING MY HEAD. I WAS
19 JUST GOING (DEMONSTRATES). I WAS LOOKING AT TAMARA.

20 BY COMMISSIONER JAMES:

21 WELL, AS I SAID BEFORE, LET'S ---

22 BY MR. SEARS:

23 I WASN'T SUGGESTING AN ANSWER OR -- I WAS
24 JUST...

25 BY COMMISSIONER JAMES:

1 OKAY.

2 BY MR. SEARS:

3 SHOULD I SIT HERE WITH MY HEAD LIKE A ROBOT?

4 BY MR. GOODWYN:

5 HE JUST DID THIS (DEMONSTRATES), YOUR HONOR.

6 BY MR. SEARS:

7 AND THAT'S ALL I DID.

8 BY MR. GOODWYN:

9 THAT'S ALL HE DID.

10 BY MR. SEARS:

11 A NORMAL HUMAN GESTURE.

12 BY MR. GOODWYN:

13 THAT IN NO WAY SUGGESTS AN ANSWER.

14 BY MR. ALFORD:

15 HE WAS SHAKING HIS HEAD PROBABLY BECAUSE I WAS
16 READING SO MUCH, BUT ANYWAY.

17 BY MR. SEARS:

18 YES.

19 BY MR. ALFORD:

20 I JUST -- I THINK IT'S -- YOU KNOW, I CAN STAND
21 BETWEEN YOU GUYS.

22 BY THE WITNESS:

23 I'M NOT LOOKING AT HIM. I DON'T LOOK AT HIM AT
24 ALL ---

25 BY MR. ALFORD:

1 KEEP YOUR EYE ON ME.

2 BY THE WITNESS:

3 --- EVER.

4 CROSS EXAMINATION RESUMED BY MR. ALFORD:

5 Q. WE'LL BE GOOD. ALL RIGHT. IN ALL OF THAT STUFF
6 THAT WENT BACK AND FORTH, UNTIL NOW, BETWEEN YOU OR
7 YOUR COMPANY, MR. SEARS, AND COUNTRYWIDE, I NEVER
8 SAW THE WORD "MEDUSTRIAL."

9 A. I AGREE. IT PROBABLY ISN'T. I CAN TELL YOU
10 MEDUSTRIAL DOESN'T MEAN ANYTHING. IT IS NOTHING.
11 IT'S JUST LIKE -- AND I'VE SAID THIS 100 TIMES.

12 Q. BUT HOW COULD WE HAVE KNOWN THAT. HOW WOULD WE
13 KNOW?

14 A. WELL, I GUESS YOU COULD CONFIRM IT THROUGH ---

15 Q. NO, I DON'T MEAN THAT, SIR.

16 A. OH.

17 Q. I MEAN BEFORE THAT. HOW COULD -- HOW COULD YOU ASK
18 MY CLIENT TO UNDERTAKE RISKS AND TO THEN GO TO
19 GUARANTEE AND UNDERTAKE RISKS WHEN WE DON'T KNOW
20 WHAT IT IS.

21 A. WELL, THAT -- FOR THEM ---

22 Q. 'CAUSE YOU'RE ASKING THAT NOW, AREN'T YOU?

23 A. WAIT A MINUTE. LET ME EXPLAIN.

24 Q. ALL RIGHT.

25 A. I'M THE FIRST ONE TO AGREE THAT THEY DON'T KNOW

1 ANYTHING ABOUT RACHEL TURNER. TO SAY THAT THEY
2 DIDN'T KNOW ABOUT MEDUSTRIAL AND THE INDEPENDENT
3 CONTRACTOR ARRANGEMENT AND EVERYTHING, THAT'S A BOLD
4 FACE LIE.

5 Q. SHOW ME HOW THEY KNOW. SHOW ME.

6 A. WELL, I CAN ONLY TELL YOU THAT BECAUSE I SAT THERE
7 AND DISCUSSED IT WITH SCOTT. I DID -- I'VE GOT
8 NUMEROUS INSURANCE AGENTS THAT WERE MY AGENTS ---

9 Q. EXCUSE ME.

10 A. --- THAT BROUGHT THEM TO ME AND THEY DID, AND THEY
11 TESTIFIED THEY DID.

12 Q. IS THERE ANY PAPER ANYWHERE THAT SHOWS THAT?

13 A. I DON'T KNOW THAT THERE'S ANY PAPERWORK ANYWHERE,
14 BECAUSE IT DOESN'T MEAN ANYTHING THAT I WOULD EVER
15 BRING UP TO MEDUSTRIAL -- I MEAN, MEDUSTRIAL DOESN'T
16 HAVE A LEGAL ENTITY. IT'S NOT AN ENTITY.

17 Q. ALL RIGHT.

18 A. SO, I AGREE I DIDN'T DISCUSS IT. I DON'T KNOW WHY I
19 WOULD.

20 Q. OKAY. BUT YOU WOULD AGREE WITH ME THOUGH THAT AS
21 YOU SIT HERE TODAY, AS YOUR COMPANY SITS HERE TODAY,
22 YOU'RE NOW ASKING COUNTRYWIDE AND G.I.C. THROUGH
23 THIS RELATIONSHIP TO NOW BE RESPONSIBLE FOR
24 SOMETHING THAT YOU NEVER TOLD US WE NEEDED TO BE
25 RESPONSIBLE FOR. YOU NEVER INTENDED US TO BE

1 RESPONSIBLE FOR, RIGHT?

2 A. I DON'T SEE THAT I'M DOING THAT, NO.

3 Q. SO, ---

4 A. I MEAN, IF SHE DECIDES THE LADY IS AN EMPLOYEE, THEN

5 YOU FOLLOW WHATEVER THE PARAMETERS ARE FOR SOMEBODY

6 BECOMING AN EMPLOYEE THAT WAS COVERED BY A P.E.O.

7 Q. BUT SHE'S NOT AN EMPLOYEE THAT YOU PUT -- SHE'S NOT

8 A SELECT ---

9 A. I AGREE SHE'S NOT, AND THEY DON'T OWE HER NO

10 DEFENSE.

11 Q. LET ME SAY THIS.

12 A. THEY DON'T OWE HER NOTHING.

13 Q. LET ME -- I'M SORRY.

14 A. Y'ALL DON'T OWE HER NOTHING.

15 Q. OKAY.

16 A. I DON'T OWE HER NOTHING.

17 Q. CAN I ---

18 A. UNLESS SHE (GESTURES TOWARD COMMISSIONER JAMES) SAYS

19 SHE'S AN EMPLOYEE.

20 Q. ALL RIGHT, LET'S TALK ABOUT THAT FOR A SECOND.

21 A. OKAY.

22 Q. LET'S FOLLOW THAT LINE OF THINKING. SHE SAYS SHE'S

23 AN EMPLOYEE, RIGHT?

24 A. WHO SAYS?

25 Q. LET'S ASSUME FOR A MOMENT, AND I'M NOT ---

1 BY MR. ALFORD:

2 DON'T GET YOUR HOPES UP, MR. SAMUELS. THIS IS
3 HYPOTHETICAL.

4 BY MR. SAMUELS:

5 IF I MAY, THE REFERENCE TO "SHE SAYS," THE
6 WITNESS GESTURED TOWARDS THE COMMISSIONER.

7 BY MR. ALFORD:

8 CORRECT.

9 CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. AND I'M SIMPLY SAYING THE POWERS THAT BE, HOW ABOUT
11 THAT?

12 A. YES.

13 Q. THE POWERS THAT BE, AND THIS IS HYPOTHETICAL, I'M
14 NOT CONCEDING ANY.

15 A. SURE.

16 Q. BUT THE POWERS THAT BE DETERMINE THAT SHE IS AN
17 EMPLOYEE, IS IT YOUR POSITION THEN THAT SHE IS
18 AUTOMATICALLY INCLUDED IN OUR AGREEMENT, AND THUS
19 THAT GUARANTEE HAS TO GET INVOLVED?

20 A. MY POSITION.

21 Q. YOUR COMPANY'S POSITION, YES OR NO, IS THAT YOUR
22 POSITION?

23 A. MY POSITION ---

24 BY MR. GOODWYN:

25 AND, I'M SORRY. JUST FOR THE RECORD, CAN YOU

1 CLARIFY IF SHE'S FOUND TO BE AN EMPLOYEE OF S.C.D.C.
2 OR CONDUSTRIAL OR?

3 BY MR. ALFORD:

4 I DON'T KNOW. THAT'S WAY -- I'M NOT A COMP
5 LAWYER. THAT'S OVER MY HEAD.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. IF THE POWERS THAT BE FIND HER TO BE YOUR EMPLOYEE,

8 ---

9 BY MR. GOODWYN:

10 WELL, I THINK THE QUESTION -- OKAY. FAIR
11 ENOUGH. YEAH, YEAH.

12 CROSS EXAMINATION RESUMED BY MR. ALFORD:

13 Q. IF THE POWERS THAT BE FIND HER TO BE HYPOTHETICALLY
14 CONDUSTRIAL'S EMPLOYEE, ALL RIGHT, OKAY.

15 A. CONDUSTRIAL, IF MS. ---

16 Q. TURNER.

17 A. --- TURNER IS FOUND TO BE AN EMPLOYEE OF
18 CONDUSTRIAL, THAT DOES NOT AFFECT ONLY MS. TURNER.
19 THAT AFFECTS EVERY WOMAN THAT WORKED AS AN
20 INDEPENDENT CONTRACTOR AT MEDUSTRIAL, AND THEN ALL
21 OF THOSE INDEPENDENT CONTRACTORS FOR ALL THEY WORKED
22 FOR ME NEED TO BE RETROACTIVELY PREMIUM'ED BACK FROM
23 THE DAY THAT THEY STARTED WORK FOR ME.

24 Q. OH, OKAY.

25 A. AND THOSE PREMIUMS ARE DUE TO YOU AND TO GUARANTEE

1 AND EVERYBODY, AND THEN HER CLAIM IS TO BE PAID AS
2 THOUGH SHE WAS AN EMPLOYEE, BUT WE'VE GOT TO MAKE
3 THAT WHOLE CLASS OF EMPLOYEES -- THE WHOLE CLASS OF
4 INDEPENDENT CONTRACTORS, WE'VE GOT TO REACH BACK AND
5 DO IT, BECAUSE IT DON'T -- IT'S NOT JUST RACHEL
6 TURNER. SHE OPERATED THE SAME AS THESE 135 YOU KEEP
7 REFERRING TO. I MEAN, THAT -- IT'S EVERYBODY. IF
8 THOSE LADIES WERE NOT WHAT YOU CALL IT, WERE NOT
9 INDEPENDENT CONTRACTORS PER THEIR SIGNED AGREEMENT,
10 THEN IT AFFECTS ALL OF THEM, AND THEY ALL GO BACK TO
11 DAY ONE, AND I OWE THE PREMIUM FOR ALL OF THOSE, AND
12 I'VE GOT TO PAY Y'ALL ALL OF THOSE PREMIUMS, AND
13 JUST LIKE ANY OTHER AUDIT ISSUE. THAT'S ---

14 Q. ALL RIGHT, SIR. I ---

15 A. THAT'S THE WAY I UNDERSTAND IT, ---

16 Q. AND THAT ---

17 A. --- AND THAT'S THE WAY I'VE OPERATED.

18 Q. AND RESPECTFULLY, THAT IS YOUR UNDERSTANDING, RIGHT?

19 A. THAT'S THE WAY I'VE ALWAYS BEEN TOLD ---

20 Q. ALL RIGHT.

21 A. --- BY THE PROFESSIONALS ---

22 Q. ALL RIGHT, SIR.

23 A. --- THAT SOLD ME THE POLICIES.

24 Q. I'M SORRY, SIR. JUST LET'S JUST -- WORK WITH ME AND
25 YOU A LITTLE BIT, AND I'LL LET YOU EXPLAIN. IS THAT

1 COOL?

2 A. OKAY.

3 Q. THAT'S JUST YOUR UNDERSTANDING? THAT'S THE WAY YOU
4 THINK IT WORKS?

5 A. THAT'S THE WAY I THINK IT SHOULD WORK IF SHE IS
6 FOUND TO BE AN EMPLOYEE.

7 Q. ALL RIGHT. WOULD YOU BE KIND ENOUGH TO GO THROUGH
8 YOUR AGREEMENT WITH COUNTRYWIDE AND ---

9 A. THERE'S NOTHING THERE THAT ADDRESSES THAT. I KNOW
10 THAT.

11 Q. THERE'S NOTHING IN THERE THAT TALKS ABOUT A
12 RETROACTIVE AUDIT OR ANYTHING LIKE THAT?

13 A. NO, THERE'S NOT.

14 Q. IN FACT, YOU DON'T HAVE A POLICY OF INSURANCE FROM
15 COUNTRYWIDE, DO YOU? COUNTRYWIDE DOESN'T HAVE THE
16 ABILITY TO RETRO AUDIT YOU, DO THEY?

17 A. I DON'T KNOW THAT THAT'S TRUE, NO.

18 Q. WELL, WHERE DOES IT SAY IT IN THE CONTRACT?

19 A. IT DOESN'T SAY THAT, BUT IT'S NEVER SAID IT IN ANY
20 OF THE INSURANCE PREMIUMS -- CONTRACTS I DID, BUT
21 WHEN YOU BUY A POLICY OR A SERVICE FOR 'X' AMOUNT OF
22 TIME, YOU'RE BUYING FOR THE EXPOSURE THAT IS
23 INCURRED DURING THAT PERIOD OF TIME, AND IF YOU'VE
24 REPORTED 'X' AMOUNT OF DOLLARS OF EXPOSURE, AND THE
25 ACTUAL EXPOSURE WAS GREATER, THEY'RE OWED PREMIUM

1 FOR THAT. I MEAN, IT'S ---

2 Q. RIGHT, BUT THAT'S HOW IT WORKS IF YOU HAVE A DIRECT
3 RELATIONSHIP WITH THE CARRIER, RIGHT?

4 A. THAT IS HOW IT WORKS WITH A DIRECT RELATIONSHIP WITH
5 A CARRIER. IT'S NOT PUT IN WRITING THAT I'VE EVER
6 SEEN. IT MAY BE SOMEWHERE. I'VE NEVER SEEN IT.

7 Q. BUT IT'S NOT IN ANY OF YOUR AGREEMENTS WITH
8 COUNTRYWIDE?

9 A. IT'S NOT IN THE AGREEMENT WITH COUNTRYWIDE, NO, SIR.

10 Q. AND YOU WOULD AGREE THAT AGREEMENT SAYS THAT'S ALL
11 THERE IS BETWEEN Y'ALL?

12 A. THAT'S THE AGREEMENT WITH US, RIGHT.

13 Q. OKAY. ALL RIGHT. SO, NOT LONG AFTER THAT -- LET ME
14 MAKE SURE I'VE GOT WHAT I NEED OUT OF HERE. WERE
15 YOU KEEPING UP WITH THE CONVERSATION THAT TOM WAS
16 HAVING WITH -- GOSH, SHE WAS HERE THE OTHER DAY, MS.
17 JO ANN ---

18 BY MR. BEARD:

19 WHITAKER.

20 CROSS EXAMINATION RESUMED BY MR. ALFORD:

21 Q. --- WHITAKER?

22 A. (NO VERBAL RESPONSE)

23 Q. BECAUSE AT THAT POINT, TOM IS HAVING A -- MR. SEARS,
24 I'M SORRY. MR. SEARS IS HAVING A CONVERSATION BY
25 EMAIL WITH MS. WHITAKER SAYING "SEE WHAT YOU CAN DO

1 TO FIND ME SOME COVERAGE FOR THESE INDEPENDENT
2 CONTRACTORS." DO YOU RECALL THAT PROCESS?

3 A. YES, I'VE WENT THAT ROUTE SEVERAL TIMES, LIKE I'VE
4 TESTIFIED.

5 Q. HOW DID IT WORK OUT?

6 A. THIS IS -- THIS IS JUST THE LAST ONE.

7 Q. AND WHAT I'M SAYING IS BUT YOU NEVER COULD GET
8 COVERAGE FOR THEM?

9 A. NO, WE TRIED AND TRIED AND TRIED.

10 Q. YOU COULDN'T, ALL RIGHT. AND SHE ---

11 A. AND THERE WERE REASONS ---

12 Q. AND SHE TRIED ---

13 A. --- SHE COULDN'T, YOU KNOW.

14 Q. RIGHT. AND SHE TRIED TO FIND IT AGAIN FOR YOU,
15 DIDN'T SHE?

16 A. YES.

17 Q. BUT SHE COULDN'T DO IT?

18 A. SHE COULDN'T DO IT.

19 Q. IN FACT, SHE SAID "WALK AWAY" WAS ONE OF HER
20 SUGGESTIONS, WASN'T IT?

21 A. YEAH, YEAH.

22 Q. SO, YOU ARE KIND OF FAMILIAR WITH THAT CHAIN OF
23 EMAILS?

24 A. YES, YES.

25 Q. ALL RIGHT. IN FACT, IN ONE OF HER EMAILS, SHE SAYS

1 "I AM NOT AWARE OF ANY INSURANCE PRODUCT THAT COULD
2 PROTECT YOU AS BROKERING 1099'ERS TO THE SOUTH
3 CAROLINA DEPARTMENT OF CORRECTIONS."

4 A. THAT'S WHAT SHE SAID AFTER SHE WENT THROUGH THE
5 PROCESS OF TRYING TO GET IT, AND THAT'S -- THAT WAS
6 HER -- IN OTHER WORDS, SHE HAD DONE WENT THROUGH
7 THAT PROCESS, AND THEN SHE IS LIKE "I AIN'T AWARE OF
8 NOTHING WE CAN DO," YOU KNOW.

9 Q. DO YOU HAVE THAT COVERAGE NOW?

10 A. WE DO.

11 Q. AND THAT'S THROUGH AN ASSIGNED RISK MARKET?

12 A. IT IS.

13 Q. A LOT MORE EXPENSIVE, ISN'T IT?

14 A. IT IS.

15 Q. IT'S BRUTAL. THE POLICIES OF LAST RESORT?

16 A. IT IS, EXACTLY.

17 Q. THE REFUGE OF THE DAMNED?

18 A. IT IS.

19 Q. ALL RIGHT, SIR. LET'S GO BACK TO THE BIG PACKAGE.

20 I'M ---

21 BY COMMISSIONER JAMES:

22 I KNOW IT SHOULD BE CLEAR, BUT FOR THE RECORD,
23 THAT'S COUNTRYWIDE FIVE.

24 BY MR. ALFORD:

25 OH, SORRY. SORRY.

1 Q. OKAY.

2 A. I DIDN'T. IF TOM DID, I'M NOT AWARE OF IT.

3 Q. JUST BEAR WITH ME, SIR. I'M ACTUALLY TRYING TO
4 SHORTEN MY, BELIEVE IT OR NOT, OUR CONVERSATION.
5 ALL RIGHT. THEN LATER ON, Y'ALL GET IN A LITTLE BIT
6 OF A -- YOU TERMINATE COUNTRYWIDE, RIGHT?

7 A. YES.

8 Q. OKAY. AND AS A RESULT OF THAT TERMINATION, THEY
9 WRITE -- Y'ALL GET IN A SCUFFLE?

10 A. YEAH.

11 Q. RIGHT?

12 A. YEAH.

13 Q. ABOUT TERMINATION FEES AND WHO OWES WHAT WHAT,
14 RIGHT?

15 A. YES.

16 Q. OKAY. AND DURING THAT TIME, I WOULD LIKE FOR YOU TO
17 LOOK, SIR -- WELL, TELL ME WHAT HAPPENED.

18 A. IT WAS JUST A BAD SITUATION ALL THE WAY AROUND. I
19 WAS MAD AT THEM, AND THEY WERE MAD AT US. WE HAD A
20 LOT OF PROBLEMS, LIKE I TOLD YOU, WITH THE FILINGS
21 AND STUFF THAT HAD CAUSED US ISSUES. IT WAS JUST AN
22 ONGOING THING, SO WE JUST DECIDED JUST TO PART WAYS
23 TO SAY THE LEAST, AND THERE WAS CLAIMS AT THAT POINT
24 THAT WE KNEW ABOUT, AND STUFF THAT ZACH WAS
25 COMPLAINING ABOUT, AND I'M LIKE "OH, MY GOD, YOU GOT

1 TO BE KIDDING ME." SO, ANYWAY, AT THE END OF THE
2 DAY, IT WAS JUST LIKE, "YOU KNOW, WE JUST NEED TO
3 QUIT DOING THIS."

4 Q. OKAY. DID YOU ENLIST ANYBODY'S HELP TO HELP YOU
5 RESOLVE IT?

6 A. UMM...

7 Q. DID YOU GET ANY OUTSIDE FOLKS OR BROKER ANYBODY TO
8 HELP YOU RESOLVE THE SITUATION?

9 A. NOT OTHER THAN ALBERT. ALBERT WOULD HAVE BEEN THE
10 ONE TRYING TO RESOLVE IT. HE'S THE BROKER OF
11 RECORD, SO. WE TRIED TO REACH OUT TO SONGER.
12 SONGER SAID HE WAS NO LONGER BEING COMMUNICATED
13 WITH. SO, WE COULDN'T GET NOTHING THERE.

14 Q. WHAT ABOUT MR. HYNDSHAW, DID HE HELP YOU OUT?

15 A. ALBERT, I WOULDN'T SAY HE HELPED US OUT. HE KIND OF
16 PLAYED A LITTLE BIT OF MEDIATOR. I MEAN, ALBERT WAS
17 MAD BECAUSE HE WAS OWED A BUNCH OF MONEY, TOO, THAT
18 HADN'T BEEN PAID, HIS COMMISSIONS, HE SAID, YOU
19 KNOW, ALL THAT, SO.

20 Q. SO, LOOK AT DOCUMENT NUMBER 137 FOR ME. WHY DON'T
21 YOU READ THAT IN THE RECORD FOR ME. TELL ME -- TELL
22 ME WHAT -- WHO -- IT IS FROM YOU TO WHOM AND WHAT IT
23 SAYS, PLEASE.

24 A. "ALBERT/JO, JUST F.Y.I., WE SIGNED A SETTLEMENT WITH
25 C.W. YESTERDAY, AND THEY SENT US OUR MONEY THIS

1 MORNING. THANKS FOR YOUR HELP. THE FACT THAT WE
2 WERE ABLE TO USE THE NAMES OF THE INSURANCE
3 COMMISSIONER AND HIS 40-YEAR FRIENDSHIP WITH ALBERT
4 ALONG WITH THE KEENAN SUGGS GUY WHO IS A STATE
5 SENATOR HELPED INFLUENCE THEM TO STEP UP AND NOT
6 ALLOW THIS TO GO ANY FURTHER. I HATE HAVING TO DO
7 BUSINESS THAT WAY, BUT SOME PEOPLE ARE DETERMINED TO
8 DO THINGS THE HARD WAY. IT'S A LOT EASIER TO MAKE
9 LOVE, NOT WAR, BUT SOME PEOPLE DON'T GET IT THAT
10 WAY. UNFORTUNATELY, I HAVE DONE THE FORMER AND
11 LEARNED FROM IT A LONG TIME AGO, BUT A LOT OF PEOPLE
12 SEEM TO LIKE IT THAT WAY. I DOUBT THESE GUYS WILL
13 EVER LEARN UNTIL THEY TAKE DOWN A BUNCH OF OTHERS
14 WITH THEM." AND CAN I EXPLAIN WHY -- THE
15 PREDICATION BEHIND THAT EMAIL?

16 Q. LORD, PLEASE DO.

17 A. WHAT IT WAS IS WE WERE READY TO DO IT, AND THEY HELD
18 -- THEY HAD A TON OF OUR TAX MONEY THAT WERE TO BE
19 PAID FOR TAXES, AND I'M TALKING SIX FIGURES OF TAX
20 MONEY, \$150,000, AND THEY WERE REFUSING TO FORWARD
21 IT TO THE TAX ENTITIES, AND THAT WAS LEVERAGE TO TRY
22 TO FORCE ME INTO A SETTLEMENT, AND I'M LIKE, "DUDE,
23 YOU'VE GOT TO SEND THE TAX MONEY. THAT'S TRUST
24 TAXES. YOU CAN'T HOLD THAT. WE CAN ARGUE ABOUT
25 ANYTHING YOU WANT TO ARGUE ABOUT. WE CAN FIGHT ALL

1 DAY. THOSE ARE TRUST TAXES. YOU CAN'T HOLD THE
2 TRUST TAXES," AND THAT IS WHAT LED TO THIS, AND THAT
3 PART OF IT LED TO ---

4 Q. YOU HOME BOY'ED IT, DIDN'T YOU?

5 A. HUH?

6 Q. YOU HOME SCHOOLED 'EM, DIDN'T YOU? YOU WENT AND
7 MUSCLED THEM UP?

8 A. NO, BUT I ---

9 Q. COME ON. YOU THINK THAT'S THE RIGHT THING TO DO?

10 A. IN THAT CASE, IT WAS THE ONLY THING THEY LISTENED
11 TO. IT'S NOT THE RIGHT THING TO DO, NO. IT'S THE
12 ONLY THING TO DO WHEN PEOPLE WON'T LISTEN, WHEN THEY
13 WON'T TALK AND THEY WON'T CALL YOU BACK. YOU ASK
14 THEM TO CALL YOU BACK A THOUSAND TIMES. YOU CALLING
15 EVERYBODY ASKING, YOU ASK THEM TO CALL ME BACK,
16 "PLEASE, CALL ME BACK. SEND ME A WIRE. CALL ME
17 BACK. COME ON, DUDE, CALL ME BACK. PLEASE, CALL ME
18 BACK." GOD.

19 Q. ALL RIGHT. AT THE END OF THE DAY, AND I'VE PROBABLY
20 ASKED THIS WAY TOO MANY TIMES, AND YOUR LAWYER CAN
21 OBJECT, BUT I'M GOING TO TRY ANYWAY ---

22 BY MR. GOODWYN:

23 OBJECTION, YOUR HONOR.

24 BY MR. SEARS:

25 OBJECT.

1 BY MR. GOODWYN:

2 ASKED AND ANSWERED.

3 CROSS EXAMINATION RESUMED BY MR. ALFORD:

4 Q. NOW THAT THAT'S OUT OF THE WAY, YOU NEVER EXPECTED
5 COUNTRYWIDE TO COVER ANY CLAIMS BY MRS. TURNER, DID
6 YOU, OR G.I.C.?

7 A. I DIDN'T EXPECT THERE TO BE A CLAIM THAT WOULD BE
8 DEEMED COVERABLE. I DON'T THINK SHE HAS A CLAIM
9 THAT'S COVERABLE.

10 Q. BUT IF SHE DOES -- IF SHE DOES, IT'S YOUR BUSINESS
11 PRACTICES THAT ALLOWED THAT CLAIM TO COME FORWARD.
12 IT'S YOUR FORMS; IT'S YOUR DOCUMENTS, RIGHT?

13 BY MR. GOODWYN:

14 OBJECT TO THE FORM.

15 BY MR. ALFORD:

16 WHAT'S WRONG WITH THAT?

17 BY MR. GOODWYN:

18 "IT'S YOUR BUSINESS PRACTICES THAT ALLOW THE
19 CLAIM TO GO FORWARD"?

20 BY MR. ALFORD:

21 YEAH.

22 BY MR. GOODWYN:

23 I THINK SHE HAS THE RIGHT TO FILE A CLAIM
24 REGARDLESS OF ANY BUSINESS PRACTICES.

25 CROSS EXAMINATION RESUMED BY MR. ALFORD:

- 1 Q. WELL, WHAT I'M TALKING ABOUT IS THERE'S SOME --
2 THERE'S SOME CONFUSION IN YOUR FORMS, RIGHT, WITH
3 HER? YOUR AGREEMENT WITH HER, THERE'S SOME
4 CONFUSION?
- 5 A. THERE'S NO CONFUSION AS TO THE THINGS THAT'S IN THE
6 CONTRACT.
- 7 Q. OKAY.
- 8 A. THE THINGS THAT ARE -- THAT SHE SIGNED OUTSIDE ---
- 9 Q. THERE'S SOME ANCILLARY DOCUMENTS THAT SHE SIGNED?
- 10 A. RIGHT, ANCILLARY DOCUMENTS, YOU'RE CORRECT, THERE
11 WAS SOME CONFUSION. IT SHOULD HAVE NEVER BEEN
12 THERE. I AGREE 100 PERCENT.
- 13 Q. OKAY, THAT'S RIGHT. AND THAT'S -- BUT THAT'S YOUR
14 BUSINESS STUFF; THAT'S YOUR EMPLOYEES THAT DID THAT,
15 RIGHT?
- 16 A. THAT'S TRUE.
- 17 Q. NOTHING TO DO WITH COUNTRYWIDE, NOTHING TO DO WITH
18 G.I.C.?
- 19 A. NO, NO, NO.
- 20 Q. I MEAN, I APPRECIATE YOU STEPPING UP ON IT, BECAUSE
21 THAT'S WHAT IT'S ABOUT. IT'S ABOUT FIGURING OUT
22 WHAT YOUR RISK IS AS A BUSINESS PERSON, RIGHT?
- 23 A. (WITNESS NODS HEAD)
- 24 Q. AND WHEN YOU'VE GOT A PROBLEM, YOU STEP UP AND YOU
25 HANDLE IT IF IT'S YOUR PROBLEM. SO, IF THAT PROBLEM

1 COMES ---

2 BY COMMISSIONER JAMES:

3 WAS THERE A QUESTION?

4 BY MR. ALFORD:

5 I WAS SAYING, YES -- I WAS ASKING RIGHT.

6 BY MS. RICHARDSON:

7 THE WITNESS IS NODDING. HE NEEDS TO ORALLY
8 RESPOND.

9 BY MR. ALFORD:

10 I'M SORRY. I'LL STOP.

11 BY COMMISSIONER JAMES:

12 I JUST DIDN'T HEAR AN ANSWER; SO.

13 BY MR. ALFORD:

14 YES, MA'AM.

15 CROSS EXAMINATION RESUMED BY MR. ALFORD:

16 Q. I MEAN, I THINK, YOU UNDERSTAND WHAT I'M ASKING YOU
17 THAT ---

18 A. YES.

19 Q. --- WE HAD NO CONTROL OR NO LOOK AT YOUR
20 RELATIONSHIP WITH MS. TURNER?

21 A. I AGREE WITH THAT.

22 Q. OKAY. WE HAD NO LOOK OR NO CONTROL OF YOUR
23 RELATIONSHIP WITH S.C.D.C.?

24 A. I AGREE WITH THAT.

25 Q. OKAY. SO, IF THERE ARE PROBLEMS IN THOSE BUSINESS

1 RELATIONSHIPS THAT YOU HAVE THAT WE DON'T HAVE
2 ANYTHING TO DO WITH, AND AS A RESULT OF THOSE
3 PROBLEMS, A LIABILITY ARISES TO MS. TURNER OR ANYONE
4 ELSE, IT SHOULDN'T BE OURS, SHOULD IT?

5 A. I CAN'T ANSWER THAT. I CAN ONLY ANSWER THAT I PAID
6 FOR A PROGRAM. IF SOMETHING IS OUTSIDE OF THAT
7 PROGRAM, IF IT NEEDS TO BE RETRO AND THAT'S THE
8 CORRECT PROCEDURE, THEN THAT'S WHAT NEEDS TO BE
9 DONE. IF IT IS NOT THE CORRECT PROCEDURE, THEN IT
10 FALLS WHERE IT MAY.

11 Q. BUT YOU'RE HOPING IT IS, BECAUSE IT COULD TURN OUT
12 THAT IT FALLS ALL ON YOU?

13 A. I'M NOT HOPING IT IS, NO.

14 Q. WELL, I'M JUST SAYING ---

15 A. I'M HOPING SHE IS FOUND TO BE AN INDEPENDENT
16 CONTRACTOR, BECAUSE THAT'S WHAT SHE IS, AND THEN
17 NONE OF US SHOULD BE HERE.

18 Q. WELL, I'M WITH YOU ON THAT, BUT IN THE WORLD OF
19 CONTINGENT LIABILITIES, IF YOU WILL, AS FAR AS
20 COUNTRYWIDE IS CONCERNED AND THEREBY G.I.C., WE HAD
21 NO IDEA OF THIS POTENTIAL CONTINGENT LIABILITY; IS
22 THAT FAIR TO SAY? WE DIDN'T HAVE ANY SAY OVER HOW
23 IT GREW UP, HOW IT CAME TO BE?

24 BY MR. GOODWYN:

25 YOUR HONOR, WE'VE PLOWED THIS GROUND. I MEAN,

1 WE'VE BEEN THROUGH THIS.

2 BY MR. ALFORD:

3 IS THAT AN OBJECTION, OR IS THAT JUST...?

4 BY MR. GOODWYN:

5 OBJECTION, ASKED AND ANSWERED. WE HAVE PLOWED
6 THIS GROUND.

7 BY MR. ALFORD:

8 WELL, I'M GOING BACK TO HIS DOCUMENTS AND HIS
9 PRACTICES. THAT'S WHAT I'M TRYING TO GET TO, AND I
10 GUESS I'VE BEEN INARTICULATE IN TRYING TO GET THE
11 QUESTION RIGHT, BECAUSE ----

12 BY COMMISSIONER JAMES:

13 MR. GOODWYN, IT MAY HAVE BEEN ASKED EARLIER.
14 AT THIS STAGE, I'M NOT SURE. THERE WAS A SIMILAR
15 QUESTION. I'M JUST NOT -- I'M JUST NOT SURE IT'S
16 THE EXACT QUESTION.

17 BY MR. ALFORD:

18 IT'S -- I'M TRYING TO BE ---

19 BY MR. GOODWYN:

20 IT'S THE LINE OF QUESTIONING.

21 BY MR. ALFORD:

22 I'M TRYING TO BE A LITTLE MORE ARTICULATE,
23 BECAUSE I ---

24 CROSS EXAMINATION RESUMED BY MR. ALFORD:

25 Q. IF YOU JUST BEAR WITH ME A LITTLE BIT LONGER, I'M

1 GOING TO BE DONE IN FIVE MINUTES, SIR, AND I
2 APPRECIATE YOUR PATIENCE WITH ME. I GUESS WHERE I
3 AM IS YOU SET UP THE 1099 BROKERAGE STRUCTURE, OR
4 YOU -- YOU OPERATED IT, CORRECT?

5 A. THAT'S CORRECT.

6 Q. OKAY. AND YOU KNEW YOU COULDN'T GET COMP FOR IT?

7 A. THAT'S CORRECT.

8 Q. OKAY. AND YOU SET UP AND OPERATED THE RELATIONSHIP
9 WITH THE S.C.D.C., CORRECT?

10 A. NOT REALLY.

11 Q. WELL, YOU OPERATED IT; YOU RAN IT? YOU INHERITED
12 IT?

13 A. I TOOK IT OVER AND PROCEEDED DOWN THE PATH THE SAME
14 AS WHAT IT WAS WHEN I TOOK IT OVER.

15 Q. DO YOU AGREE WITH ME THAT IT'S YOUR RESPONSIBILITY?

16 A. YES.

17 Q. OKAY.

18 **BY MR. ALFORD:**

19 THANK YOU, SIR.

20 **BY THE WITNESS:**

21 THANK YOU.

22 **BY COMMISSIONER JAMES:**

23 BEFORE THE NEXT LINE OF QUESTIONING, I NEED TO
24 TAKE A BREAK.

25 (OFF THE RECORD)

1 BY COMMISSIONER JAMES:

2 ON BEHALF OF GUARANTEE.

3 CROSS EXAMINATION BY MS. RICHARDSON:

4 Q. GOOD EVENING, MR. DURHAM. IT'S IMPRESSIVE HOW
5 YOU'RE HANGING IN THERE. THANK YOU VERY MUCH.

6 A. THANK YOU. THANK YOU. YOU WORK WITH TOM EVERY DAY,
7 YOU LEARN HOW TO GET PUNISHED.

8 Q. IS HE GOOD AT THAT; HE'S GOOD AT THAT?

9 A. YEAH, HE'S GOOD AT PUNISHING.

10 Q. MY NAME IS BETH RICHARDSON, AND I REPRESENT
11 GUARANTEE INSURANCE COMPANY IN THIS MATTER. MR.
12 GOODWYN SHOWED YOU A DOCUMENT EARLIER DURING YOUR
13 DIRECT TESTIMONY THAT'S ENTITLED "COUNTRYWIDE RATE
14 ANALYSIS." I BELIEVE THAT'S BEEN ENTERED AS
15 COUNTRYWIDE'S EXHIBIT NUMBER SEVEN. YES, THAT'S
16 CORRECT. OKAY. WHO WAS THE AUTHOR OF THIS
17 DOCUMENT?

18 A. IT WAS ME.

19 Q. IT WAS YOU?

20 A. YES.

21 Q. OKAY. AND WHEN WAS THIS DOCUMENT CREATED?

22 A. THIS DOCUMENT WAS CREATED AT THE END OF 2014, AND IT
23 SHOWED THE PRECEDING 12 MONTHS PAYROLLS, ET CETERA.

24 Q. OKAY. AND WHERE DID YOU GET YOUR INFORMATION TO
25 PRODUCE THIS DOCUMENT?

1 A. JUST FROM OUR ACCOUNTANT, C.P.A. ACCOUNTANT THERE AT
2 THE OFFICE. YOU KNOW, SHE SENDS ME THIS EVERY WEEK
3 WITH UPDATES OF JUST KIND OF LIKE OFF THE G.P.
4 REPORT, ET CETERA.

5 Q. AND WHAT WAS THE PURPOSE OF IT?

6 A. THIS WAS TO GIVE -- THIS ONE HERE SPECIFICALLY WAS
7 TO GIVE TO SCOTT HANSON SO THAT HE COULD SEE THE --
8 ALL THE CODES AND THE STATES AND THE -- THE EXPOSURE
9 THAT WE HAD IN THE PRECEDING YEAR.

10 Q. OKAY. AND YOU MEAN, SO YOU CREATED THIS IN 2014?

11 A. YES.

12 Q. DO YOU REMEMBER ABOUT WHAT MONTH?

13 A. I MEAN, IT'S -- IT'S CREATED OFF OF THE 2014
14 INFORMATION, BUT IT'S PROBABLY SENT RIGHT AFTER.
15 IT'S ACTUALLY ATTACHED TO AN EMAIL SOMEWHERE THAT I
16 SENT TO (GESTURES TOWARDS MR. GOODWYN), THAT YOU
17 PRINTED THIS OFF, AND THAT EMAIL HAS -- WOULD HAVE
18 THE EXACT DATE, BUT IT WOULD HAVE BEEN SOMETIME IN
19 THAT FIRST QUARTER, I SUSPECT, FOR 2015, THE FIRST
20 QUARTER.

21 Q. OKAY.

22 A. BEFORE WE WENT WITH COUNTRYWIDE.

23 Q. OKAY. SO, YOU BELIEVE THAT THIS DOCUMENT WAS
24 ACTUALLY PROBABLY PRODUCED IN 2015, EARLY 2015?

25 A. YEAH, AND WHAT THIS IS IS SCOTT HAS DONE GIVEN ME

1 HIS INITIAL RATES, AND THIS IS AN ANALYSIS OF THOSE
2 RATES AND WHAT IT WOULD COST ME IF I GO WITH HIM OR
3 DON'T GO WITH HIM OR IF HE IS HIGH OR HE'S LOW BASED
4 ON OTHER RATES THAT WE HAVE.

5 Q. OKAY. AND IF YOU LOOK AT THE TOP OF THE DOCUMENT,
6 YOU HAVE A PATRIOT/GUARANTEE 2014 HIGH DEDUCTIBLE
7 COLUMN; IS THAT CORRECT?

8 A. YES, MA'AM.

9 Q. OKAY. AND THEN IT GIVES YOU THE WORKERS'
10 COMPENSATION RATE.

11 A. YES, MA'AM.

12 Q. IS THAT CORRECT?

13 A. YES, MA'AM.

14 Q. OKAY. AND THEN IT LISTS WHAT THOSE RATES ARE
15 UNDERNEATH?

16 A. YES, MA'AM.

17 Q. AND THEN THE NEXT COLUMN IS THE PATRIOT/GUARANTEE
18 2014 HIGH DEDUCTIBLE TOTAL/CODE/S.T.?

19 A. THAT'S CORRECT.

20 Q. AND IT LISTS THE TOTALS PER CODE, RIGHT?

21 A. YES, MA'AM.

22 Q. AND THEN THE NEXT TWO CODES SHOW WHAT THE
23 COUNTRYWIDE PROPOSED RATES IN THOSE TWO COLUMNS
24 WOULD BE, RIGHT?

25 A. THAT'S CORRECT.

1 Q. AND THEN YOU HAVE THE DIFFERENCE?

2 A. YES, MA'AM.

3 Q. CORRECT?

4 A. YES, MA'AM.

5 Q. AND SO, THEN IT GIVES YOU -- AND THEN THE -- YOU
6 GUYS ARE TALKING ABOUT WHAT MIGHT BE THE CONDUCTRIAL
7 WORKERS' COMPENSATION RATE UNDER THIS SCHEME; IS
8 THAT CORRECT?

9 A. THAT'S CORRECT. WE ARE TRYING TO GET TO A FINAL
10 NUMBER TO AGREE TO.

11 Q. OKAY. WHY DO YOU UNDERTAKE THIS EXERCISE OR THIS
12 ANALYSIS? WHY IS IT IMPORTANT TO YOU?

13 A. SO THAT HE CAN SEE THAT I CAN SEE WHAT UNDER THE
14 SAME SCENARIOS FOR NEXT YEAR IF I TOOK ON THIS PLAN
15 WHAT MY COST WOULD HAVE BEEN VERSUS WHAT THAT COST
16 WAS, AND THEN WHERE I CAN TRY TO GET HIM TO GET -- I
17 WANT TO SHOW HIM ALL OF WHERE I WAS, WHERE HE'S AT,
18 AND THEN IF THERE'S AN ISSUE, I'M GOING TO ASK HIM
19 "CAN YOU DO THIS?" AND IF YOU LOOK AT THE FIRST --
20 THE FIRST LINE, YOU KNOW, IT'S 561 FOR COUNTRYWIDE -
21 - I MEAN, FOR GUARANTEE THERE ON CONCRETE, FOR
22 EXAMPLE. I'LL USE THAT FIRST LINE AS AN EXAMPLE.
23 IF YOU LOOK OVER TWO MORE COLUMNS, YOU SEE THAT IT'S
24 11.49 FROM COUNTRYWIDE, AND THE DIFFERENCE THERE WAS
25 BECAUSE WITH THE PATRIOT/GUARANTEE PLAN I HAD, I HAD

1 A \$250,000 SPECIFIC DEDUCTIBLE, SO OBVIOUSLY, THEIR
2 RATES IS GOING TO BE LOWER, AND THEN SCOTT DIDN'T
3 HAVE ANY DEDUCTIBLE. SO, HIS RATE WAS GOING TO BE
4 SUBSTANTIALLY HIGHER, BUT WHEN I TAKE THAT AND THEN
5 I TO BACK TO THE ASSIGNED RISK POOL RATES, ET
6 CETERA, AND I LOOK AT THOSE, THEN I TRY TO SEE IF I
7 THINK THERE'S SOMETHING MAYBE HE'S A LITTLE TOO HIGH
8 SOMEWHERE, AND SO THEN I SEND IT BACK, AND THESE ARE
9 THE RATES THAT I PROPOSE. CAN YOU MAKE -- AND I
10 THINK I HAD LIKE EIGHT CHANGES OUT OF THAT FIRST
11 PAGE OUT OF LIKE 40 CODES. THAT'S LIKE "CAN YOU
12 MAKE THESE LITTLE ADJUSTMENTS TO KEEP ME MORE IN
13 LINE?" BECAUSE OBVIOUSLY, IF A RATE GOES UP TOO
14 MUCH, THEN I'VE GOT TO MAKE MY OFFICE CHARGE MORE,
15 AND THEN THEY DON'T WANT TO GET OUT OF COMPETITION
16 WITH ANY OF OUR COMPETITORS THAT MAY BE IN THE
17 ASSIGNED RISK POOL, AND WE KNOW WHAT THEIR RATE IS.

18 Q. OKAY.

19 A. WE'RE TRYING TO MAKE SURE WE'RE COPACETIC WITH
20 ANYBODY WE'RE BIDDING AGAINST, YOU KNOW.

21 Q. SO, AT THIS POINT IN TIME YOU UNDERSTOOD THAT YOU
22 WEREN'T GOING TO BE ABLE TO GET A DIRECT POLICY ON
23 THE VOLUNTARY MARKET; IS THAT CORRECT?

24 A. I MEAN, I COULD ALWAYS GET AN ASSIGNED RISK POLICY.

25 Q. RIGHT, BUT THAT'S AN INVOLUNTARY MARKET. YOU TURNED

1 TO THE ASSIGNED RISK POOL.

2 A. NO, I DIDN'T HAVE A -- WELL, I DID HAVE. GUARANTEE
3 HAD GIVEN ME A RE-QUOTE, BUT THE SCENARIO THAT CAME
4 UP UNDER THE RE-QUOTE WAS CERTAINLY NOT ACCEPTABLE,
5 SO WE WEREN'T GOING TO ACCESS THAT.

6 Q. IT WAS TOO EXPENSIVE, OR IT WAS MORE EXPENSIVE THAN
7 YOU WERE WILLING TO TAKE ON; IS THAT CORRECT?

8 A. THAT'S -- IN THE END, I GUESS THAT'S THE BEST WAY TO
9 SAY IT. THEY HAD CHANGED THE PARAMETERS OF THE DEAL
10 THAT I HAD SIGNED UP FOR A PROGRAM THE YEAR BEFORE,
11 WHICH WAS SUPPOSED TO HAVE BEEN A PROGRAM, NOT A ONE
12 YEAR POLICY, AND I DID THAT WITH ONE OF Y'ALL'S GUYS
13 AND MY AGENT, AND WE ALL AGREED TO IT; IT'S ALL IN
14 WRITING, BUT AT THE END OF THE DAY WHEN IT CAME TIME
15 TO RENEW IT, THEY CHANGED IT, AND I'M LIKE "THAT
16 AIN'T WHAT WE AGREED TO. I WOULDN'T HAVE DONE IT
17 LAST YEAR IF YOU WAS GOING TO DO THIS." AND THEY
18 DIDN'T BACK OFF, SO WE WERE LIKE "IT'S NOT AN
19 OPTION."

20 Q. SO, YOU ---

21 A. AT THE END OF THE DAY, IT ALL BECOMES ECONOMICS, YOU
22 KNOW.

23 Q. WHO WAS YOUR AGENT AT THAT TIME?

24 A. AT THAT TIME, IT WAS WILL ROBINSON, WHO WAS OUR
25 ORIGINAL AGENT WITH GUARANTEE.

1 Q. OKAY. YOUR ORIGINAL AGENT WITH GUARANTEE?

2 A. YEAH, WE ---

3 Q. OH, WHO -- YOU'RE SAYING WHO BROKERED YOUR DEAL ---

4 A. YES.

5 Q. --- WITH GUARANTEE?

6 A. YES, MA'AM.

7 Q. ON THE POLICY?

8 A. YES, MA'AM.

9 Q. OKAY. AND SO, YOU TURNED DOWN THE RENEWAL OFFER?

10 A. I DID.

11 Q. YES, OKAY. AND SO, THEN YOU SHOPPED -- YOU ENGAGED
12 MR. HYNDSHAW ---

13 A. YES, MA'AM.

14 Q. --- TO SHOP AROUND YOUR POLICY; IS THAT CORRECT?

15 A. CORRECT.

16 Q. OKAY. IF YOU LOOK AT -- I THINK THIS IS DEFENDANT
17 G.I.C.'S EXHIBIT NUMBER FIVE.

18 BY MS. RICHARDSON:

19 ALL OF THE EXHIBITS ARE HERE, RIGHT?

20 BY COMMISSIONER JAMES:

21 YES, MA'AM.

22 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

23 Q. LET'S SEE, ALBERT HYNDSHAW. HERE IT IS. THERE YOU
24 GO.

25 BY MS. FARTHING:

1 WHAT'S THE NUMBER?

2 BY MS. RICHARDSON:

3 GUARANTEE EXHIBIT NUMBER FOUR.

4 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

5 Q. DO YOU WANT TO TAKE A MINUTE TO TAKE A LOOK AT IT?

6 A. YES (REVIEWS DOCUMENT) OKAY.

7 Q. DO YOU DISAGREE WITH ANYTHING THAT YOUR AGENT
8 REPRESENTS IN THE LETTER?

9 A. NO, MA'AM.

10 Q. SO, IN THIS LETTER, DO YOU SEE WHERE HE DESCRIBES
11 THE EXPOSURE UNDER 8833 AND 8829?

12 A. YES, MA'AM.

13 Q. OKAY. AND HE REPRESENTS THE 8833 EXPOSURE AS BEING
14 \$812,000 AND THE 8829 EXPOSURE AS BEING \$77,016; IS
15 THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND THIS IS THE EXPOSURE THAT HE SHOPPED
18 AROUND TO VARIOUS PARTIES AND TRY AND OBTAIN SOME
19 FORM OF WORKERS' COMPENSATION INSURANCE FOR YOUR
20 EMPLOYEES; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. OKAY. AND THAT EXPOSURE IS DIFFERENT FROM THE
23 EXPOSURE IN WHICH YOU GUYS WERE PLAYING AROUND IN
24 YOUR LITTLE EXERCISE HERE ON THE COUNTRYWIDE RATE
25 ANALYSIS EXHIBIT, CORRECT?

1 A. UH-HUH. THERE IS SOME DIFFERENCE THERE, YES. I
2 DON'T KNOW WHERE -- I DON'T HAVE ANY IDEA WHERE
3 ALBERT, THOSE NUMBERS THERE COME FROM. I MEAN, I'M
4 SURE THERE'S A TRAIL SOMEWHERE, BUT I DON'T KNOW
5 WHAT IT IS.

6 Q. OKAY. AND ARE YOU FAMILIAR WITH THE KINDS OF
7 PRELIMINARY FORMS THAT YOUR AGENT FILLS OUT TO SHOP
8 AROUND YOUR -- WHAT KIND OF POLICY HE WANTS TO
9 OBTAIN FOR YOU?

10 A. YOU MEAN LIKE THE ACORD FORM?

11 Q. WHAT KIND OF INSURANCE COVERAGE HE MIGHT WANT TO --
12 YEAH, ACORD FORM EXACTLY. THANK YOU.

13 BY MS. RICHARDSON:

14 SO, I -- IT IS NOT YET IN EXHIBITS, BUT IT WAS
15 PART OF THE KEENAN SUGGS' DOCUMENTS SET. THERE IS
16 AN ACORD FORM, WORKERS' COMPENSATION APPLICATION
17 THAT MR. HYNDSHAW FILLED OUT. DOES ANYBODY KNOW
18 WHAT THE NUMBERS OF THAT IS?

19 BY MS. FARTHING:

20 THE BIG PACKET?

21 BY MS. RICHARDSON:

22 BECAUSE I DIDN'T NUMBER MY COPY, BECAUSE I
23 DIDN'T HAVE IT OUT OF ORDER.

24 BY MR. ALFORD:

25 DO YOU WANT MINE? DO YOU WANT MINE? IT'S

1 NUMBERED.

2 BY MS. RICHARDSON:

3 IS YOURS NUMBERED?

4 BY MR. ALFORD:

5 YEAH.

6 BY MS. RICHARDSON:

7 OKAY, GREAT.

8 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

9 Q. OKAY, SO, MR. DURHAM, I'M LOOKING AT FROM THIS LARGE
10 PACKET -- IS YOUR PACKET NUMBERED AS WELL?

11 A. IT IS.

12 Q. OKAY. WHAT'S PAGES 5 THROUGH 23.

13 A. OKAY.

14 Q. OKAY. AND PAGES 5 THROUGH 8 ARE THE -- IS THE
15 COMMERCIAL INSURANCE APPLICATIONS APPLICANT
16 INFORMATION SECTION; IS THAT CORRECT?

17 A. YEAH, THAT'S WHAT IT WOULD APPEAR TO BE, YES.

18 Q. OKAY. AND IN THE APPLICATION HERE WHERE IT SAYS
19 "APPLICANT INFORMATION," IT SAYS THAT YOU'RE SEEKING
20 -- THE APPLICANT IS CONDUSTRIAL, INC.; IS THAT
21 CORRECT?

22 A. YES, MA'AM.

23 Q. OKAY. AND THEN IT SAYS ON THAT FIRST PAGE, TOO,
24 THAT YOU ARE LOOKING FOR WORKERS' COMPENSATION
25 COVERAGE, CORRECT?

- 1 A. CORRECT.
- 2 Q. AND THAT THE NATURE OF YOUR BUSINESS IS STAFFING?
- 3 THAT'S ON PAGE SIX.
- 4 A. YES.
- 5 Q. AND THEN ON PAGE EIGHT, AT THE BOTTOM, IT ALLOWS FOR
- 6 SIGNATURES, AND MR. HYNDSHAW HAS SIGNED, BUT NOBODY
- 7 ON BEHALF OF CONDUSTRIAL HAS SIGNED; IS THAT
- 8 CORRECT?
- 9 A. CORRECT.
- 10 Q. WERE YOU ASKED TO SIGN THE DOCUMENT?
- 11 A. NO, MA'AM.
- 12 Q. NO?
- 13 A. I WOULD HAVE SIGNED IT IF HE WOULD HAVE ASKED ME.
- 14 Q. WHAT IS THAT, SIR?
- 15 A. I'M SURE I WOULD HAVE SIGNED IT IF HE WOULD HAVE
- 16 ASKED ME.
- 17 Q. OKAY. BECAUSE THERE'S NOTHING ON THERE THAT BOTHERS
- 18 YOU? IT'S AN ACCURATE REFLECTION OF WHO ---
- 19 A. THERE'S HARDLY ANYTHING ON THERE.
- 20 Q. --- WHO THE APPLICANT IS?
- 21 A. YEAH.
- 22 Q. YES.
- 23 A. THERE'S VERY LITTLE INFORMATION. I GUESS HE JUST
- 24 USED THAT ---
- 25 Q. RIGHT.

- 1 A. --- FOR JUST GENERAL INFORMATION. THERE'S VERY
2 LITTLE ON IT.
- 3 Q. AND THEN STARTING ON PAGE NINE, THIS IS THE ACTUAL
4 WORKERS' COMPENSATION APPLICATION; IS THAT RIGHT?
- 5 A. YES.
- 6 Q. AND WOULD THAT INCLUDE AS WELL BECAUSE I'M NOT SURE,
7 PAGES 18 THROUGH 23 AS WELL; YOUR WORKERS'
8 APPLICATION WOULD HAVE INCLUDED THAT INFORMATION?
- 9 A. WHICH?
- 10 Q. IT'S YOUR WORKERS' COMPENSATION CLAIMS LISTED BY
11 YEAR.
- 12 A. OH, YEAH.
- 13 Q. IT WOULD INCLUDE THAT KIND OF INFORMATION ON THE
14 APPLICATION?
- 15 A. UMM...
- 16 Q. AND IF YOU DON'T KNOW, THAT'S FINE.
- 17 A. ARE YOU ASKING ME?
- 18 Q. YES.
- 19 A. OH, ---
- 20 Q. DO YOU KNOW IF YOUR WORKERS' COMPENSATION
21 APPLICATION INCLUDED THIS INFORMATION?
- 22 A. IT WOULDN'T NORMALLY ON AN ACORD FORM. THIS IS
23 SOMETHING THAT ALBERT PRODUCED ON HIS OWN. IT'S
24 JUST SOMETHING HE DID, YOU KNOW, HE JUST ADDED IT TO
25 THE APPLICATION FOR THE POLICY.

- 1 Q. OH, OKAY. ALL RIGHT. AND IF YOU JUST LOOK AT THE
2 WORKERS' COMPENSATION APPLICATION ON PAGES NINE
3 THROUGH SEVENTEEN, DID YOU REVIEW THIS BEFORE MR.
4 HYNDSHAW CIRCULATED IT TO SHOP ON THE MARKET?
- 5 A. FRANKLY, I DON'T REMEMBER SEEING ANY OF THIS. I
6 MEAN, THERE'S NOTHING THAT BOTHERS ME, BUT I'VE
7 NEVER SEEN IT, YOU KNOW.
- 8 Q. OKAY. AND IF YOU LOOK AT PAGE 11, AT THE VERY
9 BOTTOM, IT LISTS SOUTH CAROLINA 8829 NURSING HOME,
10 \$66,227.76 EXPOSURE; IS THAT CORRECT?
- 11 A. YES, MA'AM.
- 12 Q. AND ON THE NEXT PAGE, PAGE 12, WHERE IT SAYS "SOUTH
13 CAROLINA 8822 PROFESSIONAL HEALTHCARE," IT LISTS A
14 \$784,360.73 EXPOSURE; IS THAT CORRECT?
- 15 A. THAT'S CORRECT.
- 16 Q. OKAY. AND THEN IF YOU TURN TO PAGE 13, QUESTION SIX
17 SAYS, "OUR SUBCONTERS [SIC], SUBCONTRACTORS USED,"
18 EXCUSE ME, UNDER THE GENERAL INFORMATION SECTION.
- 19 A. UH-HUH.
- 20 Q. "N" FOR NO, I ASSUME, HAS BEEN ENTERED; IS THAT
21 CORRECT?
- 22 A. YES.
- 23 Q. DO YOU AGREE WITH THAT STATEMENT?
- 24 A. NO, I WOULD HAVE -- I WOULD HAVE PUT THERE IF I
25 LISTED THEIR PAYROLL, I WOULD HAVE LISTED THE

1 INDEPENDENT CONTRACTOR NURSES.

2 Q. OKAY. AND HOW ABOUT ON QUESTION SEVEN. IT SAYS
3 "ANY WORK SUBLET WITHOUT CERTIFICATES OF INSURANCE?
4 IF YES, PAYROLL FOR THIS WORK MUST BE INCLUDED IN
5 THE STATE RATE AND WORKSHEET ON PAGE TWO." THAT'S
6 LEFT BLANK. WHAT WOULD YOU HAVE INDICATED ON THAT
7 LINE?

8 A. WHICH LINE AGAIN? SAY AGAIN. I'M SORRY.

9 Q. LINE SEVEN, "ANY WORK SUBLET WITHOUT CERTIFICATES OF
10 INSURANCE," AND THEN IN PARENTHESIS, IT SAYS "IF,
11 QUOTE, YES, YOU NEED -- IF YOU HAVE ANY WORK SUBLET
12 WITHOUT CERTIFICATES OF INSURANCE, PAYROLL FOR THIS
13 WORK MUST BE INCLUDED IN THE STATE RATE AND
14 WORKSHEET ON PAGE TWO."

15 A. WHAT PAGE ARE YOU ON NOW?

16 Q. THE SAME PAGE, THE NEXT QUESTION UNDER ---

17 A. OH, I'M SORRY.

18 Q. --- QUESTION SIX. NO, NO, NO PROBLEM. I'M SORRY I
19 DIDN'T LEAD YOU IN THE RIGHT DIRECTION.

20 A. SO, YOU SAID SEVEN, I THOUGHT I HAD TO GO BACK -- I
21 WAS GOING BACK TO PAGE SEVEN.

22 Q. OH, PAGE SEVEN, NO, SIR.

23 A. YOU'RE BACK ON PAGE?

24 Q. FOUND ON PAGE -- STAYING ON PAGE 13.

25 A. YEAH.

1 Q. YEAH, QUESTION SEVEN. RIGHT UNDER QUESTION SIX, IT
2 SAYS "ANY WORK SUBLET WITHOUT CERTIFICATES OF
3 INSURANCE?" AND THEN IN PARENTHESIS, "IF YES,"
4 MEANING YES YOU HAVE A WORK SUBLET WITHOUT
5 CERTIFICATES OF INSURANCE, "PAYROLL FOR THIS WORK
6 MUST BE INCLUDED IN THE STATE RATE AND WORKSHEET ON
7 PAGE TWO."

8 A. YEAH.

9 Q. THAT'S BEEN LEFT BLANK, BUT ---

10 A. YEAH.

11 Q. --- IF YOU HAD ACTUALLY ANSWERED THAT QUESTION, HOW
12 WOULD YOU HAVE ANSWERED IT?

13 A. I WOULD HAVE SAID "YES."

14 Q. AND WHY IS THAT?

15 A. 'CAUSE THAT -- THE INDEPENDENT CONTRACTORS DON'T
16 PROVIDE A CERTIFICATE OF INSURANCE.

17 Q. OKAY. AND ON PAGE 14 HERE, THE NEXT PAGE, MR.
18 HYNDSHAW HAS SIGNED, BUT THERE IS NO SIGNATURE OF
19 CONDUSTRIAL; IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND ON PAGE 15 TO 16, THOSE ARE THE NEXT TWO PAGES,
22 WHERE IT SAYS "SPECIALTY WORKERS' COMPENSATION,
23 TEMPORARY STAFFING SUPPLEMENTAL APPLICATION." DO YOU
24 SEE THAT?

25 A. YES.

- 1 Q. THAT STARTS ON PAGE 15.
- 2 A. YES.
- 3 Q. OKAY. SO, THEN IT LISTS CONDUSTRIAL IN THE
- 4 APPLICANT INFORMATION, AND THE CONTACT IS YOU AND
- 5 MR. SEARS?
- 6 A. YES.
- 7 Q. CORRECT? AND THE BROKER IS MR. HYNDSHAW; WE TALKED
- 8 ABOUT THAT ALREADY.
- 9 A. YES.
- 10 Q. AND THEN ON QUESTION SIX, IT SAYS UNDERNEATH THE
- 11 GENERAL APPLICANT INFORMATION, IT SAYS HERE "DO YOU
- 12 PROVIDE ANY P.E.O. SERVICES," PARENTHESIS, "IF YES,
- 13 PROVIDE DETAILS," END PAREN, AND YOU'VE CHECKED
- 14 "NO"; IS THAT CORRECT?
- 15 A. I HAVEN'T CHECKED ANYTHING. HE CHECKED "NO."
- 16 Q. OKAY. SO, MR. HYNDSHAW CHECKED "NO." IS THAT A
- 17 CORRECT ---
- 18 A. RIGHT, THESE ARE NOT MY DOCUMENTS. THIS IS
- 19 SOMETHING ALBERT DID.
- 20 Q. WELL, THIS IS YOUR INSURANCE AGENT, AND THESE ---
- 21 A. NO, I UNDERSTAND.
- 22 Q. --- ARE THE DOCUMENTS THAT WERE USED ---
- 23 A. I DIDN'T PRODUCE THESE DOCUMENTS IS MY POINT.
- 24 Q. RIGHT, BUT THESE WERE THE DOCUMENTS THAT WERE USED
- 25 TO SOLICIT -- PLEASE, LET'S LOOK AT EACH OTHER.

1 THESE WERE THE DOCUMENTS ---

2 BY MR. GOODWYN:

3 HE CAN LOOK AT TOM SEARS. I MEAN, HE GLANCED
4 OVER AT TOM, AND TOM IS STONE STILL, AND SHE'S YOU
5 CAN'T LOOK AT HIM. HE CAN LOOK AT HIM.

6 BY COMMISSIONER JAMES:

7 ALL RIGHT. LET'S JUST PROCEED WITH THE
8 QUESTIONS.

9 BY THE WITNESS:

10 I PROMISE YOU, HE DON'T INFLUENCE MY ANSWERS
11 EVER, OKAY? I PROMISE.

12 BY MS. RICHARDSON:

13 AND I'M SURE SOMETIMES HE'S PROBABLY SORRY OR
14 YOU'RE SORRY FOR THAT, HUH?

15 BY THE WITNESS:

16 OH, HE IS SORRY.

17 BY MR. SEARS:

18 RIGHT.

19 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

20 Q. ALL RIGHT. BUT THIS WAS THE APPLICATION THAT WAS
21 USED?

22 A. THIS WAS DONE ON MY BEHALF.

23 Q. YES, AND ---

24 A. I'M JUST SAYING I DIDN'T SEE THESE. THIS IS
25 SOMETHING ALBERT DID AND SENT IT OUT.

- 1 Q. OKAY.
- 2 A. BUT WHAT ARE YOU ASKING ME ABOUT THE P.E.O.
- 3 SERVICES?
- 4 Q. OH, DO YOU AGREE WITH THAT ANSWER?
- 5 A. DO I AGREE THAT I DO NOT PROVIDE ANY P.E.O.
- 6 SERVICES?
- 7 Q. CORRECT.
- 8 A. ABSOLUTELY.
- 9 Q. YOU DO NOT PROVIDE ANY P.E.O. SERVICES?
- 10 A. NO, WE ARE A TEMPORARY STAFFING COMPANY.
- 11 Q. OKAY.
- 12 A. YEAH.
- 13 Q. ALL RIGHT. ON PAGE 17 THEN, THERE IS A LINE AT THE
- 14 BOTTOM FOR APPLICANT SIGNATURE, AND TYPED IN IS TONY
- 15 DURHAM, PRESIDENT, DATE 12/3/2013; IS THAT CORRECT?
- 16 A. IT IS.
- 17 Q. OKAY. AND DO YOU -- DID YOU GIVE YOUR AUTHORITY FOR
- 18 YOUR NAME TO BE FILLED OUT HERE TO ATTEST TO THE
- 19 INFORMATION IN THE APPLICATION?
- 20 A. I DID NOT GIVE IT. I WOULD NOT HAVE WITHHELD IT
- 21 BECAUSE I HAD KNOWN ALBERT SO LONG. SO, THAT'S MY,
- 22 YOU KNOW, MY ANSWER. I DIDN'T -- I WASN'T ASKED FOR
- 23 IT. I DIDN'T GIVE IT, AND HAD I BEEN, I WOULDN'T
- 24 HAVE WITHHELD IT.
- 25 Q. OKAY. SO, BASED ON THAT APPLICATION AND THE

1 INFORMATION IN THAT APPLICATION, MR. HYNDSHAW
2 UNDERTOOK AN EFFORT TO TRY AND FIND YOU FIRST AN
3 INSURANCE POLICY THAT IN WHICH CONDUSTRIAL WAS THE
4 DIRECT INSURED; IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. OKAY. AND WAS MR. HYNDSHAW SUCCESSFUL IN THAT
7 EFFORT?

8 A. NO, HE WASN'T.

9 Q. AND HE SHOPPED THE POLICY, AND DID HE -- WHAT DID HE
10 TELL YOU?

11 A. HE JUST SAID THAT, YOU KNOW, HE HAD TWO OR THREE
12 OFFERS OPPORTUNITIES, AND THERE WAS A COUPLE OF
13 DIFFERENT ISSUES THAT CAME UP. ONE WAS LIKE IN THE
14 EASTERN THING. THE EASTERN THING CAME UP, AND IT
15 WAS TURNED DOWN BECAUSE OF THE CHAPTER 11 IN 2009,
16 AND THEN THE OTHER THING IS WHAT IS ALWAYS THE
17 ISSUE, WHICH IS THE CODES. I MEAN, I'VE GOT -- I
18 HAVE THE MOST DIFFICULT CODES THERE ARE, SO -- IN MY
19 CONSTRUCTION DIVISION, AND THAT'S WHERE THEY RUN
20 INTO THE MOST ANGST AGAINST WRITING THOSE CODES.

21 Q. SO, DIRECT INSURERS HAD A PROBLEM BOTH THAT
22 CONDUSTRIAL HAD BEEN IN BANKRUPTCY AND THAT MAKES
23 YOU A SLIGHTLY RISKIER ENTITY TO ---

24 A. YES.

25 Q. --- INSURE, AS WELL AS YOU HAD ISSUES WITH THE CODES

1 THAT WERE REVEALED THROUGH THE APPLICATION?

2 A. YES, THAT, AND SOME OF THE PEOPLE WOULD WRITE SOME
3 OF THE CODES BUT THEN THEY WOULD WANT TO EXCLUDE
4 OTHER CODES THAT WERE A MAJOR PART OF OUR BUSINESS,
5 AND SO, IF IT WAS BASICALLY IF WE COULDN'T GET A
6 COMPREHENSIVE PROGRAM, THE ANSWER IS NO. YOU KNOW,
7 SO, WE NEED SOMEBODY THAT COVERS 99.9 PERCENT OF OUR
8 CODES, YOU KNOW.

9 Q. SO, AN INSURER HAS THE RIGHT TO SAY I WILL OR WILL
10 NOT COVER A CODE?

11 A. CERTAINLY.

12 Q. THE INSURER HAS THE RIGHT TO ALSO DETERMINE THAT I
13 WILL OR WILL NOT COVER A CODE AT THAT LOCATION; IS
14 THAT YOUR UNDERSTANDING OF AN INSURER'S ---

15 A. I AGREE. I'VE NEVER HAD THAT HAPPEN, BUT I AGREE.
16 IT ALWAYS JUST COMES BACK ON THE CODE. I'VE NEVER
17 HAD IT COME BACK ON A -- IN THE 15 YEARS, I'VE NEVER
18 HAD A LOCATION ISSUE COME BACK. IT COULD HAPPEN,
19 I'M SURE.

20 Q. SO, WHEN YOU COULD NOT FIND AN INSURANCE POLICY, A
21 DIRECT INSURANCE POLICY FOR CONDUCTRIAL, IS MR.
22 HYNDSHAW'S -- YOUR ALTERNATIVE, ONE OF YOUR
23 ALTERNATIVES WAS THE ASSIGNED RISK POOL, RIGHT?

24 A. IF THAT'S AN ALTERNATIVE, YES.

25 Q. YEAH. AND THAT'S A REAL -- THAT WOULD BE A

1 DISASTROUS ALTERNATIVE IF YOU HAD TO HAVE ALL OF
2 YOUR EMPLOYEES COVERED UNDER THE ASSIGNED RISK POOL?

3 A. AND THINGS COME INTO PLAY, BECAUSE OUR PAYROLL IS
4 TOO LARGE TO BE IN CERTAIN SECTIONS OF THE ASSIGNED
5 RISK POOL, AND THEN YOU HAVE THE E.M.R., AND IF
6 YOU'VE BEEN IN A P.E.O. BEFORE, YOU HAVE A HARD TIME
7 GETTING YOUR OWN E.M.R. UPDATED, BECAUSE THEY'RE NOT
8 REPORTING YOUR LOSSES OR WHATEVER. SO, THEN YOU
9 HAVE A HARD TIME COMING BACK IN. YOU GET HANDLED IN
10 THE WORST KIND OF WAY, AND THEN YOU HAVE ARAP AND
11 ALL THE OTHER ISSUES THAT COME INTO PLAY. SO,
12 THAT'S WORST CASE SCENARIO IF WE HAVE TO GO TO THE
13 ASSIGNED RISK POOL.

14 Q. HAVE YOU EVER RESORTED TO INSURING WORKERS' COMP,
15 ALL OF YOUR EMPLOYEES, IN THE ASSIGNED RISK POOL
16 YET?

17 A. FOR THE FIRST COUPLE OF YEARS WHEN WE OPENED, WE
18 WERE IN THE ASSIGNED RISK POOL. WE HAD NO OTHER
19 OPTIONS. WHEN YOU OPEN UP, EVERYBODY GOES THROUGH
20 THAT.

21 Q. SO, YOU COULD HAVE ACTUALLY ELECTED THAT, BECAUSE
22 YOU'VE -- THAT IS A BUSINESS OPTION FOR YOU?

23 A. IT WAS -- THAT'S QUESTIONABLE, BECAUSE IN THOSE DAYS
24 WHEN I WAS FIRST IN THE POOL, THEN OBVIOUSLY MY
25 BUSINESS WAS REAL LOW WHEN WE STARTED, BUT TODAY

1 WITH THE VOLUME OF PAYROLL, THERE ARE LIMITS THAT
2 YOU CAN DO AND STILL STAY IN THE ASSIGNED RISK POOL.

3 Q. OH, I SEE.

4 A. SO, WHEN YOU HIT THOSE LIMITS, THEY BASICALLY TELL
5 YOU, "YOU'VE GOT TO GET OUT OF THE POOL. YOU KNOW,
6 YOU CAN'T BE HERE ANYMORE." AND SO, WE WERE -- WE
7 HAD SOME OF THOSE THINGS WE WERE GOING TO HAVE TO
8 OVERCOME IF WE WERE GOING TO HAVE TO GO TO THE POOL.

9 Q. OH, I SEE. SO, THAT WAS GOING TO HAVE TO ACTUALLY
10 CHANGE THE NUMBER OF EMPLOYEES THAT YOU COULD HAVE
11 ON YOUR PAYROLL AT THAT POINT?

12 A. IT WAS GOING TO HAVE TO CHANGE SOMETHING. WE DIDN'T
13 KNOW WHAT IT WOULD CHANGE, IF WE HAD TO CHANGE OUR
14 REASSIGNMENT OR DEPENDING ON LOCATION. IT --
15 THERE'S, YOU KNOW, A NUMBER OF THINGS THAT COULD BE
16 DONE, BUT NONE OF THEM WERE GOOD.

17 Q. OKAY. AND SO THE BEST ALTERNATIVE THAT YOU COULD
18 FIND IN MARCH OF 2015 FOR YOURSELF WAS YOUR
19 SOLUTION, YOUR CONTRACTUAL SOLUTION THROUGH
20 COUNTRYWIDE STAFFING SOLUTIONS GROUP; IS THAT
21 CORRECT?

22 A. THAT WAS THE BEST ALTERNATIVE I HAD, RIGHT.

23 Q. AND THIS IS A CONTRACT, ISN'T THAT RIGHT?

24 A. IT IS.

25 Q. IT'S NOT AN INSURANCE POLICY?

1 A. NO, IT'S NOT.

2 Q. IN VIEWING THE MARKET SPECTRUM THERE BETWEEN THE
3 FACT THAT YOU COULDN'T GET A POLICY WITH A DIRECT
4 INSURED, THE ASSIGNED RISK POOL WAS PROBABLY GOING
5 TO BE EXTREMELY DIFFICULT FOR CONDUSTRUAL, AND THEN
6 THIS IS SOME KIND OF ALTERNATIVE ROUTE TO COVER YOUR
7 EMPLOYEES THROUGH A CONTRACTUAL RELATIONSHIP,
8 DOESN'T THE COUNTRYWIDE -- C.S.S.G. HAVE THE ABILITY
9 TO CONTRACT OR CONTROL FOR ITS RISK UNDER THIS
10 CONTRACT?

11 A. I THINK YOU HAVE TO DEFINE THE KIND OF CONTROL
12 YOU'RE TALKING ABOUT.

13 BY MR. GOODWYN:

14 OBJECT. IT CALLS FOR A LEGAL CONCLUSION.

15 SHE'S ASKING WHAT ---

16 BY MS. RICHARDSON:

17 I'LL REPHRASE IT IN A DIFFERENT WAY, NO
18 PROBLEM.

19 BY THE WITNESS:

20 YOU KNOW, MY AGREEMENT WITH ANY P.E.O. I HAD, I
21 WOULDN'T PUT MY PEOPLE WORKING IN AN UNSAFE
22 ENVIRONMENT. I HAVE SAFETY MANAGERS, SAFETY
23 DIRECTORS, ALL THOSE THINGS THAT ARE EMPLOYEES, AND
24 I'M GOING TO DO MY DUE DILIGENCE TO TRY TO MAKE THEM
25 IN AS SAFE A CONDITION AS POSSIBLE, BUT I'VE NEVER

1 HAD THAT SITUATION COME UP WHERE THEY COULD -- WHERE
2 THEY COULD HAVE AND WOULD HAVE OBJECTED. IT JUST
3 NEVER HAD HAPPENED. ANYTHING COULD HAPPEN IN LIFE,
4 BUT IT'S NEVER HAPPENED.

5 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

6 Q. BUT THE -- AND I DON'T BELIEVE THAT C.S.S.G. IS A
7 P.E.O., BUT THE PARTY IN WHICH THAT YOU CONTRACT
8 HERE TO PROVIDE FOR INSURANCE FOR THE EMPLOYEES THAT
9 YOU WANTED TO HAVE COVERED, THEY CAN CONTROL FOR
10 WHAT THEY ACTUALLY COVER UNDER THE CONTRACT, BUT
11 THROUGH THE TERMS OF THIS CONTRACT ITSELF, IN THE
12 FOUR CORNERS?

13 A. YEAH, I MEAN, THEY CONTROL IT THROUGH THE APPROVAL
14 OF THE CODES. ONCE YOU GET A CODE, THEY NEVER GET
15 ANYMORE INFORMATION ON THE NEXT CLIENT. WHAT'S THE
16 STANDARD PRACTICE IS THAT IF I -- LET'S SAY I NEED A
17 NEW CODE, OKAY, THAT'S NOT ON MY POLICY, YOU SEND
18 THAT CODE IN, AND YOU SEND IN THE LOCATION, THE
19 PEOPLE, HOW MANY YOU EXPECT TO BE WORKING AND HOW
20 MANY DOLLARS YOU WOULD THINK THAT WOULD BE, OKAY?
21 YOU SEND THAT IN, AND THEN THEY WILL SEND YOU BACK
22 THE CODE ON THAT. THEN ALL FOLLOWING CLIENTS, YOU
23 DON'T -- OF THE JOB ASSIGNMENTS, YOU DON'T SEND THEM
24 NOTHING. THEY DON'T -- NONE OF THEM ASK FOR
25 ANYTHING. IT'S JUST THE FIRST.

1 Q. DID COUNTRYWIDE ASK FOR WHERE YOUR WORK -- WHAT
2 LOCATIONS YOUR WORKERS WORKED AT?

3 A. WHEN THE FIRST -- YEAH, FROM THE FIRST ASSIGNMENTS,
4 EACH TIME, AND THEN THEY WOULD HAVE THE ASSIGNMENT
5 INFORMATION THROUGH THE LISTING OF THE CERT LISTING,
6 BECAUSE THE CERT LISTING WOULD HAVE THE CLIENTS AND
7 THE LOCATION THAT'S ON EVERY TIME, BUT THEY WOULD --
8 YOU WOULDN'T -- YOU WOULDN'T SUBMIT FOR AN APPROVAL
9 EXCEPT FOR THE FIRST THING THAT INITIATED THE
10 ORIGINAL CODE OF BEING OFFERED.

11 Q. OKAY. BUT IN YOUR INSURANCE APPLICATION, YOU DIDN'T
12 DIVULGE ANY 1099 WORKERS AT ALL OR 1099 WORKERS MUCH
13 LESS GOING TO THE SOUTH CAROLINA DEPARTMENT OF
14 CORRECTIONS; ISN'T THAT CORRECT?

15 A. I -- I DID NOT DIVULGE ANYTHING ON THIS DOCUMENT,
16 NO, AS FAR AS THEM BEING ---

17 Q. I'M JUST ---

18 A. --- 1099'ED, YOU'RE CORRECT. I DID GO OVER THAT AS
19 IS CLARIFIED IN THIS LETTER YOU HAD ME READ FROM
20 KEENAN SUGGS. IT'S ADDRESSED IN THERE, BUT I DIDN'T
21 PUT IT IN A DOCUMENT OR NOTHING. I JUST PUT THE
22 EXPOSURE THERE, AND THEN WE DISCUSSED THE FACT THAT
23 THOSE NURSES THAT WORK AT THAT ONE -- THOSE
24 FACILITIES FOR S.C.D.C. ARE INDEPENDENT CONTRACTORS,
25 AND THAT'S WHAT I DID.

- 1 Q. AND THERE'S NOTHING -- THERE'S ACTUALLY NO DOCUMENT
2 IN YOUR -- ATTACHED TO YOUR CONTRACT THAT ---
- 3 A. NO, THERE'S NOT.
- 4 Q. --- IDENTIFIES ANY WORKER SENT TO THE SOUTH CAROLINA
5 DEPARTMENT OF CORRECTIONS; IS THAT CORRECT?
- 6 A. NO, THERE'S NOTHING IN THERE.
- 7 Q. THIS CONTRACT HAS A PROCEDURAL AMENDMENT ATTACHED TO
8 IT, AND THAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT
9 CONDUSTRIAL NUMBER THREE. DO YOU HAVE THAT UP
10 THERE?
- 11 A. YEAH.
- 12 Q. THE PROCEDURAL AMENDMENT. I THINK YOU TALKED ABOUT
13 THAT. HERE IT IS. AND DO YOU WANT TO TAKE ANOTHER
14 MINUTE TO REVIEW IT. I KNOW YOU LOOKED IT OVER WITH
15 MR. ALFORD, BUT I DON'T WANT TO RUSH YOU EITHER.
- 16 A. NO, THIS WAS JUST AN AMENDMENT FOR THE OPERATIONAL
17 PROCEDURES, YEAH, THAT'S ALL.
- 18 Q. OKAY. AND ON THE LAST PAGE OF THE AMENDMENT IS YOUR
19 SIGNATURE; IS THAT CORRECT?
- 20 A. YES, MA'AM.
- 21 Q. OKAY. AND IF YOU TURN TO THE SECOND PAGE, ITEM
22 NUMBER 14, CAN YOU DO THAT FOR ME?
- 23 A. YES.
- 24 Q. LET ME KNOW WHEN YOU'VE HAD A CHANCE TO READ IT.
- 25 A. I HAVE. I'M GOOD.

1 Q. OH, YOU'RE GOOD?

2 A. YEAH.

3 Q. OKAY, GREAT. SO, I THINK MR. ALFORD ASKED YOU SOME
4 THINGS ABOUT THIS, BUT HERE, IT SAYS IN THE
5 BEGINNING, IT SAYS "ALL EMPLOYEES THAT WORK ON ANY
6 OWNER CONTROLLED INSURANCE PROJECT," AND IN
7 PARENTHESIS, IT ABBREVIATES THAT AS "O.C.I.P." AND
8 I'M JUST GOING TO SKIP THE NEXT THING, CLIENT
9 CONTROLLED INSURANCE PROGRAM. IT SAYS, "WILL BE
10 PROCESSED THE SAME AS THOSE REFERENCED IN LINE 13
11 ABOVE AND INCUR NO WORKERS' COMPENSATION PREMIUM."
12 IS THAT CORRECT?

13 A. YES, MA'AM.

14 Q. OKAY. AND UP IN NUMBER 13, IT DESCRIBES THOSE
15 WORKERS THAT YOU HAVE THAT HAVE TO BE UNDER THE
16 U.S.L. & H. PROJECT WORK; IS THAT CORRECT?

17 A. YES, MA'AM.

18 Q. WHICH I THINK YOUR TESTIMONY HAS BEEN THAT IT'S
19 ALWAYS BEEN YOUR PRACTICE THAT YOU HAVE EXCLUDED
20 THAT THOSE WORKERS NEED TO HAVE THEIR SEPARATE
21 WORKERS' COMPENSATION INSURANCE, AND THAT'S ALWAYS
22 BEEN AN ISSUE FOR -- YOU KNOW, A SPECIAL ISSUE FOR
23 Y'ALL, RIGHT? AND THEY'VE NEVER BEEN ON YOUR -- ANY
24 DIRECT INSURANCE POLICY THAT YOU'VE HAD WITH ANY
25 INSURER NOR INCLUDED IN ANY P.E.O. POLICY AS WELL

1 THAT YOU'VE HAD?

2 A. NO, THAT'S NOT TRUE. YOU MAY HAVE UNDERSTOOD IT
3 THAT WAY. THAT WASN'T WHAT I SAID.

4 Q. OKAY.

5 A. BUT THEY WERE ON MY ORIGINAL A.I.G. POLICY IN 2006
6 AND '7, AND THEN THEY WERE ALWAYS ON MY A.M.S. STAFF
7 LEASING POLICY, BECAUSE THEY COULD WRITE THE U.S.L. &
8 H. EXPOSURE. THEN AFTER A.M.S. WENT OUT OF
9 BUSINESS, THE -- SINCE THAT TIME, THEY HAVE NOT BEEN
10 ON ANY OF THE OTHER POLICIES. GUARANTEE, THEY
11 COULDN'T WRITE U.S.L. & H. COUNTRYWIDE COULDN'T
12 WRITE U.S.L. & H. SO, THAT WAS WHEN I WENT THROUGH
13 A.U. AND GOT THE STANDARD LONG CAPTIVE COVERAGE FOR
14 THE U.S.L. & H. COVERAGE.

15 Q. OKAY.

16 A. I HAD BEEN ON TWO OTHERS PRIOR.

17 Q. OKAY. BUT IN THIS CIRCUMSTANCE, YOU UNDERSTOOD THAT
18 THEY COULD NOT BE INCLUDED?

19 A. YES.

20 Q. OKAY. AND IN NUMBER 14, YOU ALSO INDICATE THAT ALL
21 EMPLOYEES THAT WORK ON ANY OWNER-CONTROLLED
22 INSURANCE PROJECT ARE ALSO NOT GOING TO BE INCLUDED?

23 A. THAT'S TRUE.

24 Q. DO YOU CONSIDER THE WORKERS THAT YOU SEND TO THE
25 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ON THE

1 O.C.I.P. PAYROLL ---

2 A. NO.

3 Q. --- OR PART OF THE O.C.I.P. PROGRAM?

4 A. NO, MA'AM.

5 Q. ARE YOU AWARE OF ANY TIME IN WHICH YOUR COMPANY HAS
6 REPRESENTED THAT THOSE WORKERS ARE PART OF THE
7 O.C.I.P. PROGRAM?

8 A. THAT WHICH WORKERS?

9 Q. THE WORKERS SENT TO THE SOUTH CAROLINA DEPARTMENT OF
10 CORRECTIONS?

11 A. NO.

12 Q. JUST GIVE ME ONE MINUTE.

13 BY MS. RICHARDSON:

14 THAT'S ALL THE QUESTIONS THAT I HAVE FOR YOU.

15 THANK YOU VERY MUCH, MR. DURHAM.

16 BY THE WITNESS:

17 THANK YOU VERY MUCH.

18 BY COMMISSIONER JAMES:

19 MS. FARTHING.

20 BY MS. FARTHING:

21 THANK YOU.

22 CROSS EXAMINATION BY MS. FARTHING:

23 Q. HI, MR. DURHAM.

24 A. GOOD MORNING. I MEAN, GOOD EVENING.

25 Q. GOOD EVENING. I KNOW IT PROBABLY FEELS LIKE

1 MORNING, BUT I PROMISE I WON'T KEEP YOU HERE UNTIL
2 MORNING, BUT I DON'T KNOW THAT WE'VE FORMALLY MET.
3 MY NAME IS ERIN FARTHING, AND I'M AN ATTORNEY OVER
4 AT THE SOUTH CAROLINA STATE ACCIDENT FUND, AND I'M
5 HERE TODAY ON BEHALF OF BOTH THE STATE ACCIDENT FUND
6 AND THE DEPARTMENT OF CORRECTIONS, AND I KNOW
7 THROUGHOUT YOUR TESTIMONY, WE'VE BEEN TALKING A LOT
8 ABOUT THE NURSES THAT WERE SENT TO THE DEPARTMENT OF
9 CORRECTIONS BY MEDUSTRIAL THROUGH THIS CONTRACT WITH
10 THE DEPARTMENT OF CORRECTIONS, AND IT'S CERTAINLY
11 UNDERSTANDABLE, BECAUSE THAT IS WHY WE ARE HERE
12 TODAY, BUT DID MEDUSTRIAL HAVE CONTRACTS WRITTEN
13 WITH OTHER COMPANIES, AGENCIES, CORPORATIONS, OTHER
14 THAN THE DEPARTMENT OF CORRECTIONS WHERE THEY SENT
15 THESE NURSES?

16 A. YES, MA'AM.

17 Q. WHERE ELSE?

18 A. WE HAVE A NUMBER OF -- THE DEPARTMENT OF MENTAL
19 HEALTH. WE HAVE A NUMBER OF WHAT WE CALL NURSING
20 HOME FACILITIES. I CAN'T -- I CAN'T THINK OF
21 SPECIFICALLY THE NAMES OF THEM, BUT THERE'S A NUMBER
22 OF OTHER FACILITIES.

23 Q. OKAY. SO, THERE'S OTHERS OTHER THAN THE DEPARTMENT
24 OF CORRECTIONS?

25 A. OH, YES.

1 Q. SO, WAS MS. TURNER OR ANY OF THESE OTHER NURSES THAT
2 WORKED AT LEAST WITHIN -- THAT WERE PROVIDED
3 PURSUANT TO THESE CONTRACTS BY MEDUSTRIAL, WERE THEY
4 ABLE TO WORK AT ANY OF THESE OTHER PLACES WITH WHICH
5 MEDUSTRIAL HAD CONTRACTED?

6 A. THEY PROBABLY COULD HAVE, YES. I THINK ACTUALLY --
7 I THINK RACHEL ACTUALLY WORKED AT THE DEPARTMENT OF
8 MENTAL HEALTH. SO, YES, THEY COULD HAVE CERTAINLY.

9 Q. AND IN FACT, YOU OFFERED HER, MS. TURNER, PLACEMENT
10 AT OTHER LOCATIONS AFTER THE INCIDENT THAT WE ARE
11 HERE FOR TODAY?

12 A. SURE.

13 Q. I APOLOGIZE. I JUST WANT TO CHECK. DO YOU NEED A
14 BREAK?

15 A. NO, I'M GOOD.

16 Q. OKAY. I JUST WANT TO MAKE SURE.

17 A. NO, I'M GOOD. I'M JUST THINKING.

18 Q. I KNOW IT'S BEEN A WHILE. NO, I UNDERSTAND.

19 A. I'M PLAYING QUIET. I'M JUST THINKING. I'M TRYING
20 TO REMEMBER.

21 Q. IF AT ANY TIME MS. TURNER OR ANY OF THESE OTHER
22 NURSES THAT ARE SENT TO FILL SHIFTS AT THE
23 DEPARTMENT OF CORRECTIONS DECIDED THEY DIDN'T WANT
24 TO WORK AT THE DEPARTMENT OF CORRECTIONS ANYMORE OR
25 THEY DIDN'T WANT TO DO PRISON WORK ANYMORE, WOULD

1 MEDUSTRIAL BE ABLE TO FIND THAT NURSE OTHER WORK OR
2 PLACE HER SOMEWHERE ELSE WITH ANOTHER COMPANY WITH
3 WHOM YOU HAD A CONTRACT?

4 A. IT JUST DEPENDS ON IF SHE WANTED TO CONTINUE THE
5 WORK AS AN INDEPENDENT CONTRACTOR OR IF SHE WANTED
6 TO WORK AS A -- AS AN EMPLOYEE, BECAUSE THERE'S --
7 YOU KNOW, THERE'S DIFFERENT CRITERIA FOR DIFFERENT
8 LOCATIONS DEPENDING ON WHAT THEIR REQUIREMENT IS.
9 AT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
10 IT'S AN AS-NEEDED BASIS.

11 Q. OKAY.

12 A. IT'S A FILL IN. IT'S A FILL IN. "SOMEBODY DIDN'T
13 SHOW UP. I'VE GOT TO HAVE SOMEBODY," YOU KNOW, IT'S
14 THAT KIND OF DEAL, BUT AT LIKE A NURSING HOME OR A
15 HOSPITAL OR WHATEVER, THAT'S A STANDING STANDARD
16 WORK TIME. SO, THOSE WOULD HAVE TO BE EMPLOYEES.

17 Q. OKAY.

18 A. BECAUSE THEY'RE GOING TO BE WORKING ALL THE TIME,
19 ONLY WORK FOR US. WE'RE NOT GOING TO GO THROUGH
20 THIS NEGOTIATION THING, YOU KNOW, WAGES, ET CETERA,
21 LIKE WE DO EVERY TIME. SO, YOU KNOW, THAT WOULD BE
22 DIFFERENT. SO, THERE IS ONLY -- IF THEY WANT TO
23 OPERATE IT AS INDEPENDENT CONTRACTORS, IT -- IT
24 LIMITED THE OPPORTUNITIES FOR THEM TO WORK. YOU
25 KNOW, THEY WILL GET LOCKED INTO THAT KIND OF PLACE

1 THAT THEY CAN DO THAT THING AT, DO THEIR THING, YOU
2 KNOW, NOT DO -- BECAUSE THAT WASN'T AN EMPLOYEE
3 ENVIRONMENT, THEY WON'T ALLOW IT TO BE.

4 Q. WERE THERE ANY OTHERS OTHER THAN THE DEPARTMENT OF
5 CORRECTIONS?

6 A. THE DEPARTMENT OF MENTAL HEALTH IS THE ONLY ONE THAT
7 I CAN SPECIFICALLY SPEAK TO.

8 Q. OKAY. SO, IF SHE DECIDED SHE DIDN'T WANT TO WORK AT
9 THE DEPARTMENT OF CORRECTIONS ANYMORE, YOU COULD
10 HAVE SENT HER TO THE DEPARTMENT OF MENTAL HEALTH?

11 A. WE PROBABLY COULD HAVE SENT HER TO THE DEPARTMENT OF
12 MENTAL HEALTH, YEAH.

13 Q. AND I BELIEVE IN MY UNDERSTANDING OF HOW IT WOULD
14 WORK WHERE THESE NURSES WOULD COME TO WORK WITH
15 MEDUSTRIAL AND FILL THESE POSITIONS WITHIN THESE --
16 OR SUBJECT TO THESE CONTRACTS, IS THAT THE NURSE
17 WOULD COME TO MEDUSTRIAL, SIGN ALL THE CONTRACTS,
18 SIGN ALL THE FORMS OF MEDUSTRIAL, AND THEN THEY
19 WOULD BE ADVISED OF SHIFTS THAT WOULD BE AVAILABLE
20 WITH THE DEPARTMENT OF CORRECTIONS OR D.M.H. OR ANY
21 OF THESE OTHERS?

22 A. WELL, THEY WOULD DO A PRELIMINARY -- IT'S A TWO-TIER
23 STEP PROCESS. THEY DO A PRELIMINARY THING WITH US,
24 WHICH IS REAL LIGHT, JUST TO KIND OF MAKE SURE THEY
25 ARE WHO THEY SAY THEY ARE, ET CETERA. WE WOULD WANT

1 TO MAKE COPIES OF THEIR LICENSE, ET CETERA, ET
2 CETERA, AND THEN WE SENT ALL OF THAT TO THE
3 DEPARTMENT OF CORRECTIONS. THE DEPARTMENT OF
4 CORRECTIONS THEN DOES BACKGROUND CHECKS, LICENSING
5 CHECKS. IT TAKES LIKE TWO OR THREE DAYS TO GET BACK
6 THE APPROVAL FOR WHETHER OR NOT THEY CAN MEET THE
7 CRITERIA TO WORK AT THE SOUTH CAROLINA DEPARTMENT OF
8 CORRECTIONS.

9 Q. DID THE DEPARTMENT OF CORRECTIONS HAVE ANY CONTROL
10 OVER WHAT NURSES CAME INTO MEDUSTRIAL TO ENTER INTO
11 THESE CONTRACTS WITH MEDUSTRIAL AND TO FORM THIS
12 RELATIONSHIP WITH MEDUSTRIAL?

13 A. DID THEY HAVE ANY...?

14 Q. ANY CONTROL OVER WHAT NURSES CAME INTO WORK THROUGH
15 MEDUSTRIAL?

16 A. WELL, THERE'S TWO PIECES TO THIS, AND I'M JUST GOING
17 TO EXTEND MY TIME HERE BY SAYING THIS, BUT THERE ARE
18 TWO PIECES TO THIS. OKAY, THE LADIES THAT COME OFF
19 THE STREET OBVIOUSLY SEE OUR ADS OR WHATEVER, AND
20 THEN THE DEPARTMENT OF CORRECTIONS HAS NOTHING TO DO
21 WITH THAT, BUT THE PEOPLE THAT WORK FOR US THAT ARE
22 EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS WERE SENT
23 OVER THERE BY THE DEPARTMENT OF CORRECTIONS. I
24 MEAN, YES.

25 Q. THAT ARE EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS?

1 A. YES.

2 Q. SO, YOU HAVE PEOPLE WITH MEDUSTRIAL WHO ARE
3 EMPLOYEES OF THE SOUTH CAROLINA DEPARTMENT OF
4 CORRECTIONS?

5 A. ABSOLUTELY.

6 Q. YOU HAVE NURSES WORKING AT MEDUSTRIAL RIGHT NOW WHO
7 ---

8 A. NOT NOW.

9 Q. --- ARE EMPLOYEES OF ---

10 A. NOT NOW.

11 Q. --- THE DEPARTMENT OF CORRECTIONS?

12 A. NOT NOW. IT HAPPENED TWO YEARS -- THEY STOPPED IT
13 WITHIN THE LAST TWO YEARS. NOT THERE BUT AT ALL THE
14 SOUTH CAROLINA AGENCIES THAT WE DID BUSINESS
15 INCLUDING THE DEPARTMENT OF MENTAL HEALTH.

16 Q. TO YOUR KNOWLEDGE, DID MS. TURNER EVER APPLY TO BE A
17 DIRECT EMPLOYEE OF THE DEPARTMENT OF CORRECTIONS?

18 A. I CAN'T ANSWER THAT.

19 Q. DO YOU HAVE ANY KNOWLEDGE OF HER EVER APPLYING TO BE
20 AN EMPLOYEE OF THE DEPARTMENT OF CORRECTIONS?

21 A. I HAVE NO KNOWLEDGE OF IT.

22 Q. OKAY. COULD THE DEPARTMENT OF CORRECTIONS REQUIRE A
23 -- AND I'M TALKING ABOUT NURSES THAT CAME TO WORK
24 THROUGH THE CONTRACT BETWEEN THE DEPARTMENT OF
25 CORRECTIONS OR MEDUSTRIAL. COULD THE DEPARTMENT OF

1 CORRECTIONS EVER REQUIRE THAT A PARTICULAR NURSE
2 COME TO WORK AT S.C.D.C. ON ANY GIVEN DAY ON ANY
3 GIVEN SHIFT?

4 A. YES.

5 Q. THEY COULD REQUIRE, SAY IN THIS SITUATION, MS.
6 TURNER, THEY COULD HAVE CALLED AND SAID "YOU MUST
7 WORK THIS SHIFT, THIS TIME"?

8 A. IT HAPPENS ALL THE TIME.

9 Q. WHAT WOULD BE THE RECOURSE?

10 A. WHAT WOULD BE THE RECOURSE TO WHO?

11 Q. TO THAT NURSE.

12 A. I DON'T -- FROM WHO?

13 Q. YOU'RE TELLING ME THAT THE DEPARTMENT OF
14 CORRECTIONS, SAY THE SHIFT THAT WE ARE TALKING ABOUT
15 TODAY, NOW, THE SHIFT MS. TURNER WAS WORKING ON
16 SEPTEMBER 5TH, 2015, ---

17 A. RIGHT.

18 Q. --- THAT WAS PURSUANT TO THE CONTRACT BETWEEN THE
19 DEPARTMENT OF CORRECTIONS AND MEDUSTRIAL.

20 A. (SHAKES HEAD)

21 Q. COULD THEY HAVE CALLED AND TOLD MEDUSTRIAL "WE HAVE
22 A SHIFT ON SEPTEMBER 5TH, 2015. MS. TURNER MUST
23 COME AND WORK IT"?

24 A. I WOULD MUCH RATHER THEN DIDN'T, BUT IT HAPPENS ALL
25 THE TIME.

1 Q. SO, AND SHE WAS ---

2 A. IF THEY SAY ---

3 Q. AND SHE WAS REQUIRED TO COME IN?

4 A. IF YOU'RE ASKING ME IF THAT HAPPENED WITH RACHEL,
5 NOW, I CAN'T ANSWER THAT. I DON'T KNOW THAT, BUT
6 THAT SCENARIO YOU JUST DESCRIBED, YES, IT HAPPENS
7 ALL THE TIME.

8 Q. SO, THEN WHAT WAS THE RECOURSE? HOW DID MEDUSTRIAL
9 FORCE THAT PERSON TO GO WORK THAT SHIFT WITH THE
10 DEPARTMENT OF CORRECTIONS?

11 A. WE DIDN'T FORCE THEM TO DO ANYTHING.

12 Q. THEN HOW DID THE DEPARTMENT OF CORRECTIONS FORCE
13 THAT NURSE TO GO WORK THAT SHIFT?

14 A. WELL ---

15 Q. IF MY UNDERSTANDING IS THESE INDIVIDUALS ARE
16 INDEPENDENT CONTRACTORS WHO COULD ACCEPT OR ---

17 A. I AGREE.

18 Q. --- REJECT ANY SHIFT?

19 A. I AGREE. I WOULD SAY THAT -- I CAN ONLY SURMISE
20 THAT THEY -- ONCE THEY WERE TOLD TO BE THERE, THAT --
21 -- OKAY, LET ME STEP BACK A SECOND. I CAN TELL YOU
22 THAT -- BECAUSE I DON'T WANT TO OVERSTATE WHAT WAS
23 DONE. I CAN TELL YOU THAT FOR AN ABSOLUTE FACT, THE
24 DEPARTMENT OF CORRECTIONS AND PEOPLE AT THE
25 DEPARTMENT OF CORRECTIONS CONTACTED NURSES THAT

1 WORKED THROUGH US AT THE DEPARTMENT OF CORRECTIONS
2 TO COME TO WORK, TO GO TO SHIFT TO DO SOMETHING. I
3 CAN'T TELL YOU THAT THEY TOLD THEM, "IF YOU DON'T
4 COME HERE, THERE'S -- IF YOU DON'T SHOW UP, THERE'S
5 A BIG DEAL OR THERE'S A PROBLEM." I CAN'T TELL YOU
6 THAT. I CAN TELL YOU THAT THEY WOULD BYPASS ON
7 OCCASION AND CONTACT THE NURSE DIRECTLY AND ASSIGN
8 THEM. I CAN TELL YOU ---

9 Q. THAT'S NOT WHAT I ASKED YOU.

10 A. OKAY.

11 Q. WHAT I ASKED YOU WAS WERE THEY REQUIRED TO THEN GO
12 WORK THAT SHIFT. WAS THAT NURSE REQUIRED TO GO WORK
13 THAT SHIFT?

14 A. I DON'T KNOW THAT THE WORD "REQUIRED" COMES INTO
15 PLAY. THEY WERE REQUESTED TO COME WORK THAT SHIFT.

16 Q. OKAY. AND EVERY SHIFT THAT THEY WORKED THROUGH THE
17 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS BETWEEN
18 THE DEPARTMENT OF CORRECTIONS AND MEDUSTRIAL HAD TO
19 BE APPROVED BY MEDUSTRIAL, CORRECT?

20 A. WE ASKED THAT. IT DIDN'T HAPPEN, BUT WE ASKED THAT
21 ALL THE TIME. THAT WAS AN ONGOING "YOU CAN'T DO
22 THAT. YOU CAN'T DO THAT. PLEASE, DON'T DO THAT."
23 AND YOU KNOW, WE'RE LIKE "WELL, YOU GOT THE HOURS,
24 LIKE, YEAH, BUT IT NEEDS TO COME THROUGH US,"
25 BECAUSE WE NEED TO BE IN CONTROL. WE NEED TO BE IN

1 CONTROL AT LEAST FOR THE POINT WHERE WE ASSIGN THEM
2 AND WE KNOW WHEN THEY'RE WORKING, BECAUSE WHAT'S
3 HAPPENING IS WE DON'T KNOW THEY'RE WORKING, AND THEN
4 ALL OF A SUDDEN WE GET THESE HOURS, AND THEN THAT
5 REALLY COMES TO BE THE PROBLEM WHEN YOU RUN UP THE
6 OVERTIME THING AFTER MONTHS OF NEGOTIATION WITH
7 EVERYBODY AT S.C.D.C. TO MAKE SURE THAT THE OVERTIME
8 THING GETS CONTROLLED. SO, I'M ON MY MANAGERS, JUST
9 GOING, "YOU CANNOT LET THEM GET SCHEDULED OVER 40
10 HOURS. I DON'T CARE -- IF YOU GET IT OVER 40 HOURS,
11 I'M TAKING IT OUT OF YOUR OFFICE'S PAY." NOT
12 PERSONALLY, OUT OF THEIR -- THEIR PROFIT, YOU KNOW.
13 SO, SHE'S LIKE THEY'LL BE OKAY, OKAY. THEN, WHEN
14 THE SCENARIO WE JUST DESCRIBED HAPPENS AND THEY
15 ASSIGN THEM BEYOND SOMETHING WE KNOW, THE NEXT THING
16 WE KNOW RACHEL OR SOMEBODY HAS GOT 56 HOURS, AND
17 THEY'VE NOT BEEN APPROVED FOR OVERTIME, AND S.C.D.C.
18 WON'T PAY ME FOR THE OVERTIME, AND I'M ACTUALLY
19 WINDING UP PAYING AS MUCH AS 15 TO 20 DOLLARS AN
20 HOUR MORE TO THE NURSE THAN THE SOUTH CAROLINA
21 DEPARTMENT OF CORRECTIONS IS PAYING ME BACK, AND
22 THAT IS NOT RIGHT EITHER, BUT THAT'S ANOTHER ISSUE.

23 Q. BECAUSE THE CONTRACT BETWEEN THE DEPARTMENT OF
24 CORRECTIONS AND MEDUSTRIAL REQUIRED THEM TO PAY
25 OVERTIME IN THAT SCENARIO?

1 A. WHAT?

2 Q. THE CONTRACT BETWEEN MEDUSTRIAL AND THE DEPARTMENT
3 OF CORRECTIONS REQUIRED THEM TO PAY ---

4 A. THEY ONLY PAY -- THEY ONLY PAY -- WHO WILL PAY?
5 THEY REQUIRED ME TO PAY IT, BUT THEY'RE NOT
6 REIMBURSING ME. SO, YEAH, THEY GOT A FREE LUNCH OFF
7 OF ME EVERY TIME THEY DID IT.

8 Q. DID YOU -- I'M GOING TO APPROACH.

9 A. YES, MA'AM.

10 Q. IT'S ATTACHMENT "A," WHICH IS THE ATTACHMENT TO THAT
11 2008 CONTRACT.

12 A. YES, MA'AM.

13 Q. IT PROVIDES THAT "OVERTIME WILL BE BILLED, PAID AT
14 ONE-AND-A-HALF TIMES THE REGULARLY HOURLY RATE OF
15 PAY OVER 40 HOURS IN ONE WEEK IF AUTHORIZED BY
16 S.C.D.C."

17 A. I MEAN, THERE'S -- YEAH, THERE'S THE SENTENCE, "IF
18 AUTHORIZED BY S.C.D.C."

19 Q. BUT YOU'RE TELLING ME THEY WERE ASKING THESE NURSES
20 TO -- TO WORK THESE SHIFTS?

21 A. THEY WEREN'T PREAUTHORIZING IT. THEY TOLD US THAT
22 THEY WEREN'T DOING IT. THEY DIDN'T AUTHORIZE THE
23 OVERTIME. THAT MEANS I HAD TO PAY THE OVERTIME, AND
24 I DIDN'T GET REIMBURSED IT, AND I WOUND UP -- I'M
25 UPSIDE DOWN. THERE WERE SEVERAL WEEKS, SEVERAL

1 WEEKS, WHEN I WOULD GET THE PROFIT -- THE PROFIT
2 REPORT, AND I WOULD JUST GO BALLISTIC, BECAUSE I'M
3 LIKE "NATASHA, WE JUST -- YOU JUST SPENT \$2000 MORE
4 THAN YOU BROUGHT IN LAST WEEK ON NOTHING BUT
5 PAYROLL." YOU KNOW, AND "WELL, THEY WORK, AND I HAD
6 TO PAY THEM THE OVERTIME, BUT THEY DIDN'T AUTHORIZE
7 IT, SO I CAN'T BILL IT." THAT HAPPENS ALL THE TIME.

8 Q. DID YOU EVER TRY TO REIGN THAT IN OR GAIN CONTROL OF
9 THAT?

10 A. OH, YES -- YEAH, I DID REIGN IT IN AT A POINT WHERE,
11 AND THAT GOES INTO THE DISCUSSION ABOUT US REACHING
12 OUT TO THEIR GENERAL COUNSEL, BECAUSE WE FELT LIKE
13 INITIALLY THAT THE LADIES WERE INDEPENDENT
14 CONTRACTORS, NOT ALLOWED FOR OVERTIME. THAT'S WHEN
15 I GO TO DAVID TATARSKY. WE ADDRESS THIS, GET HIM TO
16 GO BACK TO S.C.D.C. OTHER COUNSEL, COME BACK TO US.
17 HE SAYS "ALL RIGHT, HERE'S THE PROBLEM. I'VE GOT TO
18 -- YOU'VE GOT TO PAY OVERTIME TO THESE WOMEN IF THEY
19 WORK OVER 40 HOURS." YOU KNOW, I'M LIKE, "I DON'T
20 HAVE A PROBLEM WITH THAT. I'M GOOD. IF THAT'S WHAT
21 YOU WANT ME TO DO," BUT I'M LIKE, "THERE'S TWO
22 PIECES TO THIS PUZZLE." HE'S LIKE, "I KNOW. I
23 CAN'T ADDRESS THAT SECOND PIECE." I'M LIKE, "WHAT
24 DO YOU MEAN, YOU CAN'T -- YOU'RE TELLING ME TO PAY
25 FIVE, TEN DOLLARS MORE AN HOUR THAN YOU'RE PAYING ME

1 FOR SOMEBODY TO GO TO WORK FOR THE S.C.D.C.?" HE
2 SAID, "I CAN'T -- I CAN'T ADDRESS THAT." I'M LIKE,
3 "WELL, THEN YOU NEED TO MAKE THEM EMPLOYEES."
4 THEY'RE LIKE, "WE DON'T WANT TO MAKE THEM EMPLOYEES,
5 'CAUSE WE HAVE BUDGET ISSUES. WE CAN'T MAKE THEM
6 BUDGET -- WE CAN'T DO THAT. THAT'S WHY WE ARE
7 SENDING OUR PEOPLE THROUGH Y'ALL THAT WORK OVERTIME,
8 BECAUSE WE DON'T HAVE THE MONEY TO PAY THEM OVERTIME
9 IF THEY WORK HERE AS A FULL-TIME EMPLOYEE." SO,
10 YOU'VE GOT S.C.D.C. NURSES THAT WORK THERE 40 HOURS,
11 THAT WHEN THEY HIT 41 HOURS, S.C.D.C. SENDS THEM
12 OVER TO MY OFFICE AND ASKS THEM TO GO BACK TO THAT
13 FACILITY AND WORK THERE UNDER OUR INDEPENDENT
14 CONTRACTOR SO THEY DON'T HAVE TO PAY THEM OVERTIME,
15 AND THAT'S HOW I KNOW FOR A FACT THAT THEY KNOW THEY
16 WERE INDEPENDENT CONTRACTORS.

17 Q. OKAY. YOU ARE PAID FOR EVERY SINGLE SHIFT THAT ONE
18 OF THESE NURSES WORKED THROUGH THAT CONTRACT WITH
19 MEDUSTRIAL AND THE ---

20 A. WE'RE PAID, YES, MA'AM.

21 Q. --- DEPARTMENT OF CORRECTIONS, CORRECT?

22 A. YES, MA'AM.

23 Q. OKAY. AND IN FACT, WHO DID THE DEPARTMENT OF
24 CORRECTIONS PAY?

25 A. THEY PAID ME.

1 Q. THEY PAID MEDUSTRIAL?

2 A. PAID CONDUSTRIAL.

3 Q. I BELIEVE YOU TALKED EARLIER THAT YOU HAVE SOME
4 NURSES WHO ONLY WORK ONE SHIFT PER YEAR?

5 A. I USED THAT AS A SCENARIO. I DIDN'T MEAN THAT I
6 KNOW A NURSE WHO ONLY WORKED ONE SHIFT, BUT I
7 PROMISE I COULD FIND ---

8 Q. SO, IT'S POSSIBLE THAT THAT COULD HAVE HAPPENED
9 UNDER YOUR MODEL?

10 A. OH, ABSOLUTELY.

11 Q. SO, SOMEBODY COULD HAVE COME AND WORKED ONE SHIFT AT
12 THE DEPARTMENT OF CORRECTIONS AND NEVER GONE BACK?

13 A. YEAH, THEY COULD HAVE WENT THERE AND DIDN'T LIKE IT
14 AND NEVER WENT BACK.

15 Q. MS. TURNER COULD HAVE DONE THE SAME?

16 A. CERTAINLY.

17 Q. SHE COULD HAVE DONE THAT AND THEN COME BACK THE NEXT
18 YEAR AND WORKED A FEW SHIFTS?

19 A. YES. AS LONG AS THE DEPARTMENT OF CORRECTIONS
20 WANTED HER BACK, YOU KNOW.

21 Q. DID YOU ACTUALLY HAVE SOME NURSES WHO EVENTUALLY
22 WENT TO WORK DIRECTLY FOR THE DEPARTMENT OF
23 CORRECTIONS?

24 A. I THINK WE HAVE. I'M ---

25 Q. I THINK JUSTIN GUDVANGEN ---

1 A. YEAH.

2 Q. --- HE ACTUALLY WORKED FOR Y'ALL AND THEN WENT AND -
3 --

4 A. THAT'S RIGHT. JUSTIN DID, YEAH.

5 Q. AND I KNOW THAT THERE'S A CONTRACT IN 2016, BUT
6 PRIOR TO 2016, IS THIS THE ONLY WRITTEN SIGNED
7 AGREEMENT BETWEEN THE DEPARTMENT OF CORRECTIONS AND
8 MEDUSTRIAL CONCERNING THE PROVISION OF NURSES BY
9 MEDUSTRIAL TO THE DEPARTMENT OF CORRECTIONS?

10 A. NO, THERE'S ANOTHER ONE IN 2008.

11 Q. THAT'S WHAT I'M SHOWING YOU RIGHT NOW, AND I
12 APOLOGIZE. THIS IS THE CONTRACT MR. -- MR. SAMUELS
13 BROUGHT TO YOU. THIS IS THE 2008 CONTRACT.

14 A. YEAH, THERE'S ONLY TWO CONTRACTS.

15 Q. AND THIS IS THE ONLY CONTRACT THAT WAS IN PLACE
16 PRIOR TO 2016?

17 A. YEAH. THE ONLY OTHER THING THAT I SPOKE TO WAS WHEN
18 I BOUGHT HER COMPANY, AND I BOUGHT THE ASSETS TO IT,
19 WE OPERATED THERE FOR SEVERAL WEEKS UNDER HER WHILE
20 WE WERE IN THE PROCESS OF TRYING TO GET THINGS
21 TURNED OVER. THAT'S THE ONLY OTHER -- SO, OPERATING
22 UNDER THAT LADY'S CONTRACT THAT I BOUGHT HER
23 COMPANY, BUT THAT'S THE ONLY TWO THAT HAS MY NAME ON
24 IT.

25 Q. OKAY. DO YOU HAVE ANYTHING IN WRITING SIGNED BY

1 BOTH PARTIES CHANGING OR AMENDING THAT CONTRACT IN
2 ANY WAY?

3 A. NOT THAT I'M AWARE OF.

4 Q. AND TO YOUR KNOWLEDGE EVERY SHIFT THAT MS. TURNER
5 WORKED WITH THE DEPARTMENT OF CORRECTIONS WAS
6 PURSUANT TO THIS CONTRACT?

7 A. YES, MA'AM.

8 Q. AND I THINK WE ALREADY TOUCHED ON THIS EARLIER. THE
9 SHIFT THAT SHE WAS WORKING ON SEPTEMBER 5TH OF 2015
10 WHEN SHE WAS INJURED WAS THROUGH THAT -- PURSUANT TO
11 THAT CONTRACT?

12 A. ABSOLUTELY, YES, MA'AM.

13 Q. AND I BELIEVE YOU TESTIFIED EARLIER THAT YOU WANTED
14 THE NURSES THAT YOU HAD WORKING FOR YOU UNDER -- OR
15 WORKING WITH YOU THROUGH MEDUSTRIAL TO BE EMPLOYEES,
16 CORRECT?

17 A. SAY AGAIN, I'M SORRY.

18 Q. THAT YOUR PREFERENCE WOULD HAVE BEEN THAT THE NURSES
19 WORKING WITH YOU THROUGH MEDUSTRIAL WOULD HAVE BEEN
20 EMPLOYEES?

21 A. YEAH, MY LIFE IS A LOT SIMPLER.

22 Q. COULD YOU HAVE REQUIRED THAT?

23 A. COULD I REQUIRE THAT?

24 Q. YES, SIR.

25 A. I COULD REQUIRE THAT, EXCEPT THAT THE PROBLEM WAS

1 THEN THE NURSES WEREN'T WILLING TO GO TO WORK.

2 Q. AND YOU NEEDED THE NURSES TO MAKE THIS COMPANY RUN?

3 A. WELL, NOT ONLY THAT, NO. I -- THEY WAS TWO PIECES
4 TO IT. ONE, THE NURSES WEREN'T WILLING TO BE
5 INDEPENDENT CONTRACTORS -- THERE'S ACTUALLY THREE
6 PIECES. THE NURSES AREN'T WILLING -- THESE NURSES
7 AREN'T WILLING TO WORK AS INDEPENDENT CONTRACTORS --
8 AREN'T WILLING TO WORK AS EMPLOYEES, I MEAN. I'M
9 SORRY. DEMANDING TO BE THESE I.C.s, AND THEN --
10 THEN WE'VE GOT THE PROBLEM OF THE SOUTH CAROLINA
11 DEPARTMENT OF CORRECTIONS WON'T CHANGE THE RATE TO
12 WHERE THEY CAN BE INDEPENDENT CONTRACTORS, BECAUSE
13 WHEN THIS THING CAME UP WITH TATARSKY, I'M LIKE
14 "LET'S CHANGE THE AGREEMENT, SPECIFICALLY CHANGE
15 THAT, AND ---

16 Q. MR. -- AND YOU'RE GOING KIND OF OUTSIDE OF WHERE ---

17 A. OKAY, I'M SORRY.

18 Q. --- I'VE ASKED THE QUESTION.

19 A. I'M SORRY.

20 Q. AND I GUESS YOU TALKED ABOUT THE RATES THAT WOULD BE
21 EXPECTED. ARE YOU AWARE THAT IN THIS CLAIM, THERE
22 ARE A NUMBER OF PARTIES WHO ARE ATTEMPTING TO MAKE
23 THE ARGUMENT THAT IT'S ACTUALLY THE DEPARTMENT OF
24 CORRECTIONS WHO SHOULD BE PROVIDING WORKERS' COMP
25 INSURANCE FOR THIS INDIVIDUAL?

1 A. I'M NOT -- I'VE HEARD THINGS SAID THAT THEY'RE
2 TRYING TO REACH BEYOND TO MAKE THEM THE OTHER -- I
3 DON'T RECALL THE TERM, BUT I'VE HEARD SOME
4 DISCUSSIONS ABOUT WHAT -- I'M NOT AWARE OF MUCH OF
5 IT. I'M MOSTLY AWARE OF THIS, BUT I'M NOT MUCH OF
6 AWARE OF IT. I HAVE HEARD IT SAID THAT THERE WAS
7 SOMEHOW THEY WERE TRYING TO REACH BEYOND US TO SAY
8 THEY WERE THEIR EMPLOYER OR WHATEVER.

9 Q. AND DO YOU THINK IF THE DEPARTMENT OF CORRECTIONS
10 HAD TO COVER THE PREMIUM TO COVER ALL OF THESE
11 NURSES THAT ARE SENT TO THE DEPARTMENT OF
12 CORRECTIONS BY MEDUSTRIAL, THAT MAY AFFECT THE RATES
13 THEY ARE ABLE TO PAY MEDUSTRIAL FOR THESE NURSES?

14 BY MR. GOODWYN:

15 OBJECTION, CALLS FOR SPECULATION.

16 BY MS. FARTHING:

17 WELL, HE'S TALKING ABOUT HOW IT WOULD AFFECT
18 HIS RATES IF HE WAS TO MAKE THESE INDIVIDUALS
19 EMPLOYEES. I THINK THAT THAT'S CERTAINLY WITHIN THE
20 SAME SCOPE OF WHAT HE'S TESTIFYING.

21 BY MR. GOODWYN:

22 HE DOESN'T WORK AT THE DEPARTMENT OF
23 CORRECTIONS. I MEAN, SHE'S ASKING HIM ---

24 BY MS. FARTHING:

25 BUT HE'S ---

1 BY MR. GOODWYN:

2 --- TO SPECULATE AS TO WHAT THEY WOULD HAVE TO
3 DO WITH RATES.

4 BY MS. FARTHING:

5 BUT HE IS SPECIFICALLY TESTIFYING TO THE RATES
6 PAID FOR THESE NURSES AND THE EXPECTATION FOR THESE
7 RATES AND HOW THAT WOULD CHANGE SHOULD CERTAIN
8 THINGS CHANGE.

9 BY COMMISSIONER JAMES:

10 ARE YOU ASKING HOW THAT WOULD CHANGE THE RATES

11 ---

12 BY MS. FARTHING:

13 I'M ASKING IF HE THINKS THAT --

14 BY COMMISSIONER JAMES:

15 --- FOR THE DEPARTMENT OF CORRECTIONS?

16 BY MS. FARTHING:

17 THAT THAT WOULD AFFECT -- THAT IT WOULD BE
18 REASONABLE THAT THAT WOULD AFFECT WHAT THE
19 DEPARTMENT OF CORRECTIONS IS ABLE TO PAY AS AN
20 HOURLY RATE FOR THESE NURSES IF THEY ARE ALSO
21 EXPECTED TO COVER THEM FOR THESE BENEFITS?

22 BY COMMISSIONER JAMES:

23 YOU CAN ANSWER THE QUESTION, SIR.

24 THE WITNESS ANSWERS:

25 A. WELL, IN MY OPINION, THAT WOULD BE AN ASININE WAY OF

1 FIXING IT. THE WAY TO FIX IT WOULD BE TO CHANGE THE
2 RATES WHERE THEY -- NONE OF THEM COULD BE
3 INDEPENDENT CONTRACTORS. THEY HAD TO BE ABSOLUTE
4 EMPLOYEES AND PAY FOR THEM TO BE EMPLOYEES. THAT'S
5 -- THAT'S THE FIX.

6 CROSS EXAMINATION RESUMED BY MS. FARTHING:

7 Q. IF THESE NURSES DIDN'T WANT TO BE EMPLOYEES OF
8 MEDUSTRIAL, WHAT MAKES YOU THINK THEY WOULD WANT TO
9 BE DIRECT EMPLOYEES OF THE DEPARTMENT OF
10 CORRECTIONS?

11 BY MR. GOODWYN:

12 OBJECTION, CALLS FOR SPECULATION.

13 BY MS. FARTHING:

14 WELL, HE'S TESTIFIED A NUMBER OF TIMES OVER
15 THAT THESE NURSES SPECIFICALLY TOLD HIM THEY DIDN'T
16 WANT TO BE EMPLOYEES OF MEDUSTRIAL. I'M CURIOUS AS
17 TO WHY HE THINKS THEY WOULD WANT TO BE EMPLOYEES OF
18 THE DEPARTMENT OF CORRECTIONS. I THINK THAT'S
19 REASONABLE.

20 BY COMMISSIONER JAMES:

21 WELL, ---

22 BY MR. ALFORD:

23 YOU CAN'T HAVE IT BOTH WAYS.

24 BY COMMISSIONER JAMES:

25 WHO WAS THAT? WHO IS TALKING.

1 BY MR. ALFORD:

2 THAT WAS ME. I'M SORRY. I'M GETTING A LITTLE
3 DELIRIOUS.

4 BY MR. GOODWYN:

5 I'M USED TO IT.

6 BY MR. SEARS:

7 YOU'RE PAYING MY THERAPY BILL.

8 BY COMMISSIONER JAMES:

9 I DON'T ---

10 BY MR. ALFORD:

11 THIS IS THERAPY, BUDDY.

12 BY COMMISSIONER JAMES:

13 MS. FARTHING, I THINK HE TESTIFIED ON THIS
14 BASIS OF WORKING WITH THE NURSES AS TO WHAT HE
15 THOUGHT THEY WANTED WITH REGARDS TO WHETHER THEY
16 WANTED TO BE A CERTAIN WAY OR NOT. I MEAN, HE'S
17 TESTIFIED TO THAT, AND WITH HIS ORGANIZATION. I
18 DON'T KNOW IF HE CAN TESTIFY TO ANYTHING OUTSIDE OF
19 THAT WITH REGARD TO S.C.D.C. SPECIFICALLY. I MEAN,
20 THAT SEEMS BEYOND WHAT HE HAS TESTIFIED TO WOULD BE
21 SPECULATION. I MEAN ---

22 BY MS. FARTHING:

23 BUT I DON'T THINK IT WAS NECESSARILY JUST WITH
24 MEDUSTRIAL. HE INDICATED THAT THESE INDIVIDUALS
25 DIDN'T WANT TO BE EMPLOYEES, PERIOD.

1 BY COMMISSIONER JAMES:

2 WELL, OTHER THAN WHAT HE'S ALREADY TESTIFIED
3 TO, I MEAN, IF YOU'RE ASKING FOR -- FOR ANYTHING
4 ELSE, I MEAN, ANY OTHER THING OTHER THAN HE'S
5 TESTIFIED TO, HOW DOES HE KNOW WHY THEY WOULD WANT A
6 RELATIONSHIP WITH S.C.D.C. OR NOT.

7 BY MS. FARTHING:

8 THAT'S FINE.

9 BY COMMISSIONER JAMES:

10 I MEAN, THAT'S ---

11 BY MS. FARTHING:

12 I'LL WITHDRAW.

13 BY COMMISSIONER JAMES:

14 OKAY.

15 CROSS EXAMINATION RESUMED BY MS. FARTHING:

16 Q. I'M GOING TO APPROACH WITH THE DECISION OF THE
17 DEPARTMENT OF EDUCATION -- OR EMPLOYMENT AND
18 WORKFORCE DATED JUNE 1ST, 2016. I BELIEVE YOU'VE
19 DISCUSSED THIS ALREADY.

20 A. YES.

21 Q. AND IT ACTUALLY ---

22 BY MR. SAMUELS:

23 YOUR HONOR, OBJECT TO RELEVANCE, AS IT HAS NO
24 PROBATIVE VALUE. IT'S A MATTER OF LAW.

25 BY MS. FARTHING:

1 AND I'M NOT TRYING TO GET IT IN FOR PROBATIVE
2 EFFECT. IF YOU GIVE ME A LITTLE LEEWAY, I'LL
3 EXPLAIN WHY.

4 BY COMMISSIONER JAMES:

5 IT'S ALREADY IN THE APAs, SO I'M GOING TO ALLOW
6 THE QUESTION.

7 CROSS EXAMINATION RESUMED BY MS. FARTHING:

8 Q. THIS SECOND LINE RIGHT HERE WHERE I'M READING, IT
9 SAYS "THE DEW FIELD AUDITOR FOUND THAT THE WORKERS
10 IN YOUR EMPLOY ARE EMPLOYEES." SO, AT LEAST,
11 INITIALLY THEY FOUND THAT THESE INDIVIDUALS WERE
12 EMPLOYEES; IS THAT CORRECT? THE DEW FIELD AUDITOR?

13 A. OH, YEAH, WHEN THE INITIAL LADY CAME UP, YEAH. YOU
14 KNOW, THE INITIAL -- SHE MADE AN OFF-THE-CUFF
15 DECISION, AND THEN ONCE SHE GOT ALL THE OTHER
16 INFORMATION, IT GOT CHANGED.

17 Q. OKAY. BUT YOU WANTED THESE NURSES TO BE -- YOU
18 TESTIFIED EARLIER YOU WANTED THESE NURSES TO BE
19 EMPLOYEES?

20 A. I WOULD MUCH RATHER THEM BE EMPLOYEES, BUT ---

21 Q. YOU HAD THE DECISION ---

22 A. BUT ---

23 Q. --- YOU WANTED TO FORCE THAT, CORRECT?

24 A. NO, I DIDN'T HAVE THE DECISION I WANTED. THAT GETS
25 REVERSED.

1 Q. BECAUSE YOU APPEALED IT, CORRECT?

2 A. YEAH. YOU CAN'T -- IF THEY'RE GOING TO BE
3 EMPLOYEES, THEY'VE GOT TO BE EMPLOYEES PRIOR TO
4 BEING UNEMPLOYED OR HAVING AN ACCIDENT. YOU CAN'T
5 DECIDE TO DO IT AFTER THE FACT.

6 Q. BUT COULDN'T YOU HAVE TAKEN THIS DECISION WHERE THE
7 DEW AUDITOR FOUND THESE INDIVIDUALS TO BE EMPLOYEES
8 AND GONE BACK TO YOUR NURSES AND SAID "SORRY, I HAVE
9 NO CHOICE. Y'ALL HAVE TO BE EMPLOYEES"? YOU HAD
10 WHAT YOU WANTED. THESE INDIVIDUALS WERE GOING TO BE
11 EMPLOYEES.

12 A. YEAH, BUT YOU DON'T HAVE PEOPLE THAT ARE GOING --
13 THAT ARE WILLING TO WORK AS EMPLOYEES. SO, THAT'S
14 THE PROBLEM. IT'S -- I'M NOT THE PROBLEM. NOBODY
15 IS THE PROBLEM. THEY'RE THE PROBLEM. THEY DON'T
16 WANT TO ADHERE TO THE NORMAL THINGS OF BUSINESS.

17 Q. SO, THEY DON'T WANT TO BE EMPLOYEES?

18 A. THEY DON'T WANT TO BE EMPLOYEES. THEY WANT TO COME
19 AND GO AS THEY PLEASE. THAT'S WHY AGAIN, I'VE
20 EXPLAINED 20 TIMES, IF THEY WERE EMPLOYEES, I'D
21 AVERAGE 15 NURSES A WEEK WORKING AT S.C.D.C., I
22 MIGHT HAVE 20 NURSES TO FILL THOSE 15 JOBS, MAYBE,
23 INSTEAD OF 130 BECAUSE THEY WANT TO COME AND GO AS
24 THEY PLEASE. I'M SORRY.

25 Q. THE EMPLOYEE NURSES THAT YOU DO HAVE, WHERE DO THEY

1 WORK?

2 A. MA'AM?

3 Q. THE EMPLOYEE NURSES -- THE NURSES THAT YOU HAVE
4 DESIGNATED WITHIN MEDUSTRIAL AS EMPLOYEES, WHERE DO
5 THEY WORK?

6 A. THEY WORK AT -- YOU KNOW, WE HAVE A LOT OF CLIENTS,
7 A LOT OF NURSING HOMES, DOCTOR'S OFFICES, REHAB
8 FACILITIES. YOU NAME IT, ANYBODY THAT HAS A NEED OF
9 A MEDICAL PROVIDER THAT NEEDS A NURSE, THEY COULD
10 WORK THERE. WE HAVE PROBABLY 50 CLIENTS.

11 Q. SO, THEY GO TO WORK AT FACILITIES THAT ARE NOT RUN
12 OR OPERATED OR IN ANY WAY CONTROLLED BY MEDUSTRIAL;
13 IS THAT CORRECT?

14 A. ABSOLUTELY.

15 Q. SO, WHO CONTROLS THOSE NURSES DAY-TO-DAY WORK?

16 A. MANAGERS AS FAR AS ---

17 Q. MANAGERS WHERE?

18 A. IN MY OFFICES.

19 Q. I MEAN, AS FAR AS GO SEE THIS PATIENT, GO DO THIS
20 FOR THAT PATIENT?

21 A. OH, NO, THAT'S STILL DONE AT THE FACILITY, YOU KNOW.

22 Q. AT THE FACILITY.

23 A. I MEAN, AT THE HOSPITAL, NURSING HOMES, BUT WE
24 CONTROL THEIR -- THEIR HOURS WHERE THEY WORK, WHEN
25 THEY WORK. THEY ARE NOT CARTE BLANCHE JUMPING HERE

1 AND THERE AND WORKING THIS SHIFT AND GOING BACK TO
2 ANOTHER SHIFT AND THEN YOU FIND OUT AFTER THE FACT.
3 WE KNOW WHERE THEY WORK, WHEN THEY'RE SUPPOSED TO BE
4 WORKING, AND THE HOURS THEY ARE SUPPOSED TO BE
5 WORKED AND WHEN THEY TURN THEIR TIME IN WHERE THEY
6 WERE AT AND WHERE IT WAS ASSIGNED TO.

7 Q. WHO PROVIDES -- I KNOW WE TALKED ABOUT MEDICAL
8 EQUIPMENT, BANDAGES, NEEDLES, THOSE SORTS OF THINGS,
9 WHO PROVIDES THOSE IN THOSE SITUATIONS?

10 A. WE DO NOT SUPPLY ANY OF THE MEDICAL EQUIPMENT. WE
11 HAVE SUPPLIED THEM -- SOME OF THEM WITH SOME WHAT I
12 WOULD CALL MEDICAL SAFETY STUFF FOR THE EMPLOYEES
13 AND THINGS, YOU KNOW, BUT WE DON'T SUPPLY ANY
14 MEDICAL EQUIPMENT.

15 Q. SO, THE MEDICAL EQUIPMENT THEY ACTUALLY NEED ---

16 A. BECAUSE THEY'RE ON MY WORKERS' COMP ---

17 Q. --- TO DO THEIR DAY-TO-DAY --

18 A. --- I'VE GOT TO MAKE SURE I HAVE ALL THE SAFETY
19 EQUIPMENT THERE FOR THEM.

20 Q. BUT AS FAR AS THE MEDICAL EQUIPMENT THAT THEY
21 REQUIRE TO DO THEIR DAY-TO-DAY BUSINESS?

22 A. NO.

23 Q. THAT IS SUPPLIED BY THOSE ---

24 A. IT'S BY THEM.

25 Q. --- THE INDIVIDUAL DOCTOR'S OFFICES?

1 A. BY THEM. MOST OF IT IS BY THEM. THEY HAVE THEIR
2 OWN EQUIPMENT, PERIOD, 'CAUSE ---

3 Q. THEY SUPPLY THEIR OWN BANDAGES AND ---

4 A. NO, NOT THEIR OWN BANDAGES.

5 Q. --- SYRINGES AND ---

6 A. BUT THERE'S A LOT OF STUFF THAT GOES ALONG IN THE
7 DOCTOR'S BAG, YOU KNOW WHAT I MEAN, BUT THE REFILL
8 OF THOSE THINGS THAT THEY USE AT A PARTICULAR
9 FACILITY WILL BE PROVIDED BY THE FACILITY ONCE THEY
10 GET THERE.

11 Q. ANY OF THESE EMPLOYEES ---

12 A. AND THEY MIGHT HAVE THEIR OWN BLOOD PRESSURE THINGS,
13 STUFF LIKE THAT, DO YOU SEE WHAT I'M SAYING?

14 Q. YES, SIR. DO ANY OF THESE EMPLOYEES WORK WITHIN A
15 SECURED FACILITY LIKE AT THE DEPARTMENT OF
16 CORRECTIONS WHERE THEY HAVE TO GO THROUGH SECURITY
17 EVERY DAY, THERE'S ISSUES WITH CONTRABAND AND
18 THINGS?

19 A. NONE OF THE EMPLOYEES DO, NO, MA'AM. ONLY -- ONLY
20 THE I.C.s WORK AT THE DEPARTMENT OF CORRECTIONS.

21 Q. OH, I'M GOING TO BRING YOU UP WHAT IS MARKED AS --
22 IT'S THE FIRST PAGE OF DEFENDANT DEPARTMENT OF
23 CORRECTIONS EXHIBIT "D." THIS IS A CERTIFICATE OF
24 LIABILITY INSURANCE, AND WHO IS THE NAMED INSURED?

25 A. CONDUSTRIAL.

1 Q. AND WHO IS THE CERTIFICATE HOLDER?

2 A. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

3 Q. AND THIS WAS PROVIDED -- THIS IS DATED 4/30/2010; IS
4 THAT RIGHT?

5 A. SOUNDS RIGHT, YEAH.

6 Q. AND I'M GOING TO READ HERE. IT INDICATES "THIS
7 CERTIFICATE REMAINS IN EFFECT PROVIDED THE CLIENT'S
8 ACCOUNT IS IN GOOD STANDING WITH A.M.S. STAFF
9 LEASING." DOES THAT -- IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. WHY WAS THIS CERTIFICATE OF INSURANCE -- WHY
12 DID Y'ALL GET THIS CERTIFICATE OF INSURANCE?

13 A. WELL, THE REASON THAT ONE WENT TO YOU, AND AS I CAN
14 TELL THAT'S THE ONLY ONE THAT'S EVER WENT TO THE
15 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. THAT WAS
16 DONE ---

17 Q. I'M LISTENING.

18 A. I'M TALKING ABOUT FOR WORKERS' COMP. NOW, THERE'S A
19 LOT OF G.L.s AND STUFF. I DON'T THINK I'VE BEEN
20 ABLE -- I HAVEN'T BEEN ABLE TO LOCATE WHERE THERE'S
21 ANY OTHER WORKERS' COMP CERTIFICATE, BUT WHAT
22 HAPPENED WAS THEY WERE SENT A FILE FROM THE GENERAL
23 -- GENERAL LIABILITY BROKER, AND WHEN THEY SENT THAT
24 TO THEM, THEY JUST MIRRORED THE LISTING OF EVERYBODY
25 THAT WAS SENT BY -- BY KEENAN SUGGS TO THEM. THEY

1 JUST MIRRORED THAT LISTING.

2 Q. BUT THE CERTIFICATE HOLDER ON THIS IS THE DEPARTMENT
3 OF CORRECTIONS?

4 A. THAT ONE WAS, CORRECT.

5 Q. DID THIS ACTUALLY COVER ANY OF THE NURSES THAT WERE
6 EVER SENT TO THE DEPARTMENT OF CORRECTIONS?

7 A. LET ME SEE. NO. IT DOESN'T, BECAUSE IT
8 SPECIFICALLY REFERS TO THEM AS THE EMPLOYEE, AND
9 THEY'RE NOT EMPLOYEES THERE, SO IT WASN'T. IT'S THE
10 SAME SITUATION THAT -- THAT WE HAVE THERE WITH
11 COUNTRYWIDE. I MEAN, WE HAVE THE SAME SCENARIO OVER
12 THERE. THEY WERE COVERING THE EMPLOYEES THAT WERE
13 LEASED. THEY WERE LEASED.

14 Q. SO, AGAIN, I ASK WHY WAS THIS SENT TO THE DEPARTMENT
15 OF CORRECTIONS? WHY WOULD THEY HAVE NEEDED THIS?

16 A. I -- THEY DIDN'T NEED IT.

17 Q. OKAY.

18 A. THEY GOT SENT IT ERRONEOUSLY BY THE FACT THAT THEY
19 RECEIVED THE FILE FROM THE RENEWAL OF THE GENERAL
20 LIABILITY, AND WHEN THEY DID IT, THEY MIRRORED IT
21 AND SAID SEND IT TO ALL CLIENTS THAT WAS ON THAT
22 ORIGINAL LIST. THAT'S ALL.

23 Q. I'M GOING TO HAND THIS UP AS WELL, AND I THINK THIS
24 IS ALSO PART OF DEFENDANT'S EXHIBIT "D." THIS IS
25 DATED 9/13/2016; IS THAT RIGHT?

1 A. YES.

2 Q. WHO IS THE INSURED ON THIS ONE?

3 A. IT'S ESSENTIAL H.R. IT'S THE SAME COMPANY THAT SENT
4 THAT ONE THERE (INDICATES).

5 Q. OKAY. AND ---

6 BY COMMISSIONER JAMES:

7 I'M SORRY, MS. FARTHING, WHAT ARE YOU LOOKING
8 AT?

9 BY MS. FARTHING:

10 THIS IS, I THINK, EITHER THE SECOND OR THIRD
11 PAGE. IT'S PART OF -- ALSO PART OF DEFENDANT'S
12 DEPARTMENT OF CORRECTIONS EXHIBIT "D."

13 CROSS EXAMINATION RESUMED BY MS. FARTHING:

14 Q. WHAT IS THE DESCRIPTION OF OPERATIONS? WHO DOES
15 THAT INDICATE?

16 A. IT'S CONDUSTRIAL.

17 Q. OKAY. AND ---

18 A. FOR THE EMPLOYEES OF CONDUSTRIAL, BUT NOT
19 CONTRACTORS OF CONDUSTRIAL, AND IT'S THE SOUTH
20 CAROLINA DEPARTMENT OF CORRECTIONS. ONCE AGAIN,
21 THAT'S THE SAME COMPANY AS A.M.S. IT'S THE SAME
22 GROUP, SAME COMPANY. THEY JUST MIRRORED THE G.L.
23 LISTING.

24 Q. OKAY. SO, YOUR RELATIONSHIP WITH A.M.S. WAS IN GOOD
25 STANDING THAT WHOLE TIME?

1 A. A.M.S. WAS MY PROVIDER UNTIL THEY WENT OUT OF --
2 CLOSED DUE TO DALLAS NATIONAL, AND THEN WHEN --
3 THAT'S WHEN I WENT TO THE GUARANTEE, AND THEN
4 COUNTRYWIDE, AND THEN ONCE THEY OPENED BACK UP UNDER
5 FIRST STAR, THAT WAS WHEN WE LEFT COUNTRYWIDE AND
6 WENT TO FIRST STAR.

7 Q. OKAY. WHEN DID A.M.S. -- YOU SAID A.M.S. CLOSED
8 DOWN AND WAS BOUGHT BY DALLAS NATIONAL?

9 A. NO, NO.

10 Q. I'M SORRY.

11 A. NO, A.M.S. CLOSED DUE TO DALLAS NATIONAL GOING OUT
12 OF BUSINESS. DALLAS NATIONAL WAS THEIR INSURANCE
13 COMPANY.

14 Q. SO, WHEN DID A.M.S. CLOSE?

15 A. RIGHT BEFORE -- OH, THEY CLOSED AT THE END OF 2013,
16 I GUESS IT WAS, AND THAT'S WHEN I WENT THROUGH THAT
17 30 DAY -- 60 DAY, 60, 90 DAY THING, INTERIM IN
18 BETWEEN WITH THE EMPLOYER -- THE COVERAGE OUT OF
19 GEORGIA, AND THEN ON MARCH 26TH IS WHEN WE WENT
20 DIRECT WITH GUARANTEE PATRIOT POLICY, THAT FIRST
21 ORIGINAL GUARANTEE POLICY.

22 Q. DID YOU EVER ADVISE THE DEPARTMENT OF CORRECTIONS
23 THAT YOUR RELATIONSHIP WITH A.M.S. HAD ENDED?

24 A. NO.

25 Q. DO YOU HAVE ANYTHING IN WRITING WHERE YOU EVER

1 ADVISED ANYBODY AT THE DEPARTMENT OF CORRECTIONS
2 THAT THE NURSES SENT BY MEDUSTRIAL TO THE DEPARTMENT
3 OF CORRECTIONS WERE NOT COVERED BY A WORKERS' COMP
4 POLICY?

5 A. NO.

6 Q. AND I KNOW THROUGHOUT THE DAY, AND I THINK MOST OF
7 THE PEOPLE IN THIS ROOM PROBABLY ECHO YOUR
8 SENTIMENTS, YOU KEEP SAYING YOU DON'T WANT TO BE
9 HERE INVOLVED IN THIS CLAIM; IS THAT RIGHT?

10 A. YEAH, THAT'S RIGHT.

11 Q. DO YOU THINK DEPARTMENT OF CORRECTIONS WANTED TO BE
12 HERE INVOLVED IN THIS CLAIM?

13 BY MR. GOODWYN:

14 OBJECTION, YOUR HONOR, RELEVANCE. WHAT THE
15 PARTIES WANT IN COURT, WHAT DOES THAT HAVE TO DO
16 WITH ANYTHING, ANY OF THE LEGAL ISSUES IN THIS CASE,
17 WHETHER THEY WANT TO BE A PART OF IT OR NOT?

18 BY MS. FARTHING:

19 WELL, AND I'LL APPROACH WITH THIS CONTRACT.

20 CROSS EXAMINATION RESUMED BY MS. FARTHING:

21 Q. AND I THINK YOU WERE SHOWN THIS PORTION OF THIS
22 CONTRACT LABELED PARAGRAPH SIX WHERE IT INDICATES
23 "CONTRACTOR SHALL PROVIDE WORKERS' COMPENSATION
24 INSURANCE COVERAGE FOR CONTRACTOR'S EMPLOYEES WHO
25 ARE ASSIGNED TO THE DEPARTMENT OF CORRECTIONS"?

1 A. THAT'S CORRECT.

2 Q. DO YOU THINK THE DEPARTMENT OF CORRECTIONS INCLUDED
3 THAT PARAGRAPH TO AVOID THIS SITUATION?

4 A. NO, THEY SHOULDN'T HAVE INCLUDED THE PARAGRAPH THAT
5 ADDRESSED THE WORKING AS CONTRACTORS, AND THEY
6 SHOULDN'T HAVE BEEN SENDING THEIR OWN PEOPLE TO WORK
7 FOR ME AS INDEPENDENT CONTRACTORS.

8 Q. AND I'M -- THAT'S NOT WHAT I'M ASKING YOU.

9 A. WELL ---

10 Q. I'M ASKING YOU DO YOU THINK ---

11 A. I ANSWERED THAT PART YOU ASKED ME.

12 Q. JUST, YOU SIGNED THIS CONTRACT, CORRECT?

13 A. I DID.

14 Q. AND YOU INDICATED BEFORE THAT THERE IS NOTHING IN
15 WRITING SIGNED BY EITHER PARTY OR BY BOTH PARTIES
16 AMENDING THIS CONTRACT, CORRECT?

17 A. I DON'T HAVE ANYTHING THAT AMENDS IT.

18 Q. AND TURNING TO THE CURRENT -- THE CURRENT SITUATION
19 WITH THE DEPARTMENT OF CORRECTIONS, I BELIEVE YOUR
20 TESTIMONY WAS THAT YOU NOW DO HAVE A POLICY IN PLACE
21 COVERING THESE NURSES THAT GO TO THE DEPARTMENT OF
22 CORRECTIONS?

23 A. WE DO.

24 Q. WHY IS THAT?

25 A. WHY IS THAT?

1 Q. YES, SIR.

2 A. IT'S LIKE I TOLD YOU, IT'S THE SEVENTH, EIGHTH, IT
3 MAY EVEN BE THE NINTH APPLICATION THAT I'VE MADE TO
4 HAVE THOSE INDEPENDENT NURSES COVERED, AND NOBODY
5 WOULD EVER COVER THEM, AND THEN FINALLY I GOT
6 ANOTHER AGENT. I'VE USED TEN DIFFERENT AGENTS TO DO
7 THIS, AND I CAN BRING THEM ALL HERE TO TESTIFY THAT
8 THEY DID IT AND I GOT TURNED DOWN IF YOU WANT TO.
9 BUT I DID -- AND I TOOK IT TO A DIFFERENT AGENT THAT
10 I'VE NEVER USED BEFORE, AND SAID, "HEY, HERE'S WHERE
11 I'M AT. HERE'S THE PROBLEM," AND HE'S LIKE "LET ME
12 WORK ON IT," AND WE GOT A POLICY, AND THAT'S ALL I
13 CAN TELL YOU.

14 Q. WHEN DID YOU FIRST START TRYING TO GET THIS POLICY?
15 YOU SAID YOU PUT SEVEN, EIGHT, NINE APPLICATIONS,
16 AND WHEN DID YOU FIRST TRY?

17 A. I'VE BEEN TRYING TO GET A POLICY FOR THEM SINCE THE
18 TIME THAT THEY WENT INDEPENDENT CONTRACTOR WHEN I
19 FIRST STARTED, WHICH WE STARTED BACK IN 2007.

20 Q. SO, APPARENTLY SINCE 2007, YOU'VE KNOWN YOU NEEDED
21 COVERAGE FOR THESE NURSES?

22 A. I HAVEN'T KNOWN THAT I NEEDED COVERAGE. I KNOW THAT
23 ---

24 Q. BUT YOU APPLIED FOR COVERAGE?

25 BY MR. GOODWYN:

1 HEY, CAN YOU PLEASE LET HIM -- HE HAS A RIGHT
2 TO FINISH HIS ANSWER.

3 BY COMMISSIONER JAMES:

4 YES, LET'S -- GO AHEAD AND ANSWER, SIR.

5 THE WITNESS ANSWERS:

6 A. I FELT BETTER WITH THEM COVERED, BUT THEY WERE
7 PUTTING CAVEATS ON ME THAT I COULDN'T GET BEYOND
8 WITH THE INSURANCE COMPANIES AND THE NURSES AND THE
9 S.C.D.C. I'M STUCK BETWEEN THREE OF THEM AND TRYING
10 TO SATISFY ALL OF THEM.

11 CROSS EXAMINATION RESUMED BY MS. FARTHING:

12 Q. OKAY. SO, A NURSE SENT TODAY OR TOMORROW TO THE
13 DEPARTMENT OF CORRECTIONS, ---

14 A. YES, SHE HAS COVERAGE IF SHE'S IN THERE TODAY.

15 Q. SHE WOULD HAVE COVERAGE?

16 A. I'VE ANSWERED THAT 25 TIMES ALREADY.

17 Q. I'M JUST ASKING FOR CLARIFICATION.

18 A. OKAY.

19 Q. I'VE GOT PEOPLE BEYOND ME WHO WANT TO KNOW THIS
20 INFORMATION.

21 BY MS. FARTHING:

22 THANK YOU.

23 BY COMMISSIONER JAMES:

24 MS. GLOVER?

25 BY MS. GLOVER:

1 I DON'T HAVE ANY QUESTIONS.

2 BY MR. GOODWYN:

3 I DO HAVE SOME REDIRECT, YOUR HONOR, BUT CAN WE
4 TAKE A BATHROOM BREAK HERE?

5 BY COMMISSIONER JAMES:

6 YES.

7 (OFF THE RECORD)

8 BY COMMISSIONER JAMES:

9 RE-DIRECT.

10 BY MR. GOODWYN:

11 THANK YOU, YOUR HONOR.

12 RE-DIRECT EXAMINATION BY MR. GOODWYN:

13 Q. MR. DURHAM, MS. TURNER, IS SHE -- DID SHE EVER ASK
14 FOR ANY HEALTH INSURANCE OR DENTAL INSURANCE TO BE
15 PROVIDED FOR HER?

16 A. DID WHAT?

17 Q. DID MS. TURNER EVER ASK THAT HEALTH OR DENTAL
18 INSURANCE BE PROVIDED FOR HER?

19 A. NO.

20 BY MR. SAMUELS:

21 OBJECTION, YOUR HONOR, BEYOND THE SCOPE OF
22 CROSS.

23 BY MR. GOODWYN:

24 THIS GOES TO THE ISSUE -- HE WAS ASKED ALL
25 KINDS OF QUESTIONS ON CROSS ABOUT THE INDEPENDENT

1 CONTRACTOR/EMPLOYER RELATIONSHIP, AND THIS GOES TO
2 THAT ISSUE.

3 BY MR. SAMUELS:

4 AND IT HAS BEEN ASKED AND ANSWERED ON DIRECT AS
5 WELL.

6 BY COMMISSIONER JAMES:

7 MR. SAMUELS, AT THIS POINT, IF IT'S BEEN
8 ALREADY ASKED OR IT'S A LITTLE BIT -- I KNOW THERE
9 WERE QUESTIONS WITH THIS -- WITH MR. BEARD THAT WERE
10 LIKE THOSE QUESTIONS, BUT IT'S WITHIN THE REALM. GO
11 AHEAD. DID YOU ANSWER, SIR?

12 BY THE WITNESS:

13 NO, I HAVEN'T SAID ANYTHING.

14 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

15 Q. GO AHEAD.

16 A. I'M NOT SURE I REMEMBER THE QUESTION.

17 Q. I WAS ASKING YOU IF MS. TURNER HAD EVER REQUESTED
18 ANY HEALTH OR DENTAL INSURANCE BENEFITS FROM YOU?

19 A. NOT THAT I'M AWARE OF.

20 Q. DID SHE ASK FOR ANY OTHER BENEFITS THAT THE
21 CONDUSTRIAL EMPLOYEES WERE TYPICALLY -- THAT WERE
22 AVAILABLE TO CONDUSTRIAL EMPLOYEES?

23 A. NOT THAT I'M AWARE OF.

24 Q. DID SHE ENJOY ALL THE BENEFITS OF BEING AN
25 INDEPENDENT CONTRACTOR WITH NO TAXES TAKEN OUT, NOT

1 BEING ABLE TO -- OR BEING ABLE TO TURN DOWN SHIFTS
2 AND TAKE VACATION WHEN SHE WANTED?

3 A. SURE.

4 Q. IS ---

5 BY COMMISSIONER JAMES:

6 MR. GOODWYN, I CAN BARELY HEAR YOU.

7 BY MR. GOODWYN:

8 I KNOW.

9 BY COMMISSIONER JAMES:

10 THAT WAS A COMPOUND QUESTION, TOO.

11 BY MR. GOODWYN:

12 RIGHT.

13 BY COMMISSIONER JAMES:

14 I MEAN, I'M NOT OBJECTING. I'M JUST MAKING
15 SURE I'M UNDERSTANDING WHAT YOU'RE ASKING.

16 BY MR. GOODWYN:

17 YEAH. I'M FADING A LITTLE BIT, YOUR HONOR.
18 I'LL TRY TO SPEAK UP.

19 BY COMMISSIONER JAMES:

20 OKAY. COULD YOU RE-ASK THE QUESTION OR
21 QUESTIONS. I JUST -- YOU KEEP ---

22 BY MR. GOODWYN:

23 YES.

24 BY COMMISSIONER JAMES:

25 --- FADING A LITTLE BIT.

1 BY MR. GOODWYN:

2 YEAH, I AM. I AM.

3 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

4 Q. DID MS. TURNER ENJOY ALL THE BENEFITS OF BEING AN
5 INDEPENDENT CONTRACTOR, THE NOT HAVING TAXES TAKEN
6 OUT, BEING ABLE TO TURN DOWN SHIFTS, BEING ABLE TO
7 NEGOTIATE HER RATE AND WORK OTHER PLACES, THAT KIND
8 OF THING?

9 A. YES.

10 Q. IS THIS THE FIRST TIME THAT -- WHEN SHE IS ASKING
11 FOR WORKERS' COMP IN THIS CASE, THIS IS THE FIRST
12 TIME SHE'S ASKED FOR ANY EMPLOYEE BENEFITS THAT YOU
13 KNOW OF?

14 A. THAT I'M AWARE OF, YES.

15 Q. OKAY. ALL RIGHT. MR. BEARD WAS ASKING YOU
16 QUESTIONS ABOUT THE INDEPENDENT CONTRACTOR AGREEMENT
17 DATED 10/9/14. TO YOUR KNOWLEDGE, IS THAT THE MOST
18 RECENT DOCUMENT THAT SHE SIGNED? THAT'S THE MOST --

19 -

20 A. YES.

21 Q. AND I SAY "RECENT," ---

22 BY MR. SAMUELS:

23 I WOULD OBJECT, YOUR HONOR. THE WITNESS HAS NO
24 WAY OF KNOWING WHAT ORDER SHE SIGNED ANY DOCUMENTS.

25 BY MR. GOODWYN:

1 I ASKED AS TO HIS KNOWLEDGE, AND THE QUESTIONS
2 THROUGHOUT THE DAY, HE'S BEEN SHOWN DOCUMENTS ALL
3 DAY LONG.

4 BY COMMISSIONER JAMES:

5 ACTUALLY, THAT QUESTION, I DO REMEMBER THAT
6 ONE. THAT QUESTION HAS ALREADY BEEN ASKED AND
7 ANSWERED ---

8 BY MR. ALFORD:

9 AND THE QUESTION IS LEADING.

10 BY COMMISSIONER JAMES:

11 --- BY A QUESTION MR. BEARD ASKED ---

12 BY MR. GOODWYN:

13 YES.

14 BY COMMISSIONER JAMES:

15 --- WITH REGARDS TO THE LAST CONTRACT.

16 BY MR. GOODWYN:

17 EXACTLY.

18 BY COMMISSIONER JAMES:

19 IT'S ALREADY BEEN ASKED AND ANSWERED.

20 BY MR. GOODWYN:

21 I KNOW, AND THAT'S -- AND I'M TRYING TO ASK A
22 FOLLOW UP TO THAT.

23 BY COMMISSIONER JAMES:

24 OKAY.

25 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. FROM THE DATE THAT MOST RECENT INDEPENDENT
2 CONTRACTOR AGREEMENT WAS SIGNED OCTOBER 9TH, 2014,
3 UNTIL THE DATE SHE WAS INJURED, DID SHE ACT AS IF
4 SHE WERE AN INDEPENDENT CONTRACTOR THROUGH -- AS FAR
5 AS CONDUSTRIAL IS CONCERNED?

6 A. SURE.

7 Q. ALL RIGHT. I'M GOING TO SHOW YOU A FEW EMAILS THAT
8 WERE DISCUSSED EARLIER AND SOME OTHERS. LET'S SEE,
9 THERE'S ONE. IT IS AN EMAIL FROM SCOTT HANSON TO
10 YOU. OH, THIS IS IT. I'M GOING TO SHOW YOU THIS
11 EMAIL.

12 BY MR. ALFORD:

13 WHICH ONE IS IT, BO?

14 BY MR. GOODWYN:

15 PAGE 51 OF THE BIG PACKET, WHICH IS COUNTRYWIDE
16 TRIAL EXHIBIT FIVE. OH, YOU'VE GOT IT. PAGE 51.

17 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

18 Q. OKAY. DO YOU HAVE THAT ONE?

19 A. YES.

20 Q. ALL RIGHT. LOOK AT THE SIGNATURE BLOCK FOR SCOTT
21 HANSON. DO YOU SEE IT AT -- ON THAT TOP EMAIL?

22 A. YES.

23 Q. WHAT DOES IT SAY IS THE COMPANY NAME?

24 BY MS. RICHARDSON:

25 CAN YOU TELL -- I'M SORRY. I HAVE AN

1 UNNUMBERED SET. CAN YOU JUST TELL ME THE DATE?

2 BY MR. GOODWYN:

3 JANUARY 16TH, 2016.

4 BY MR. ALFORD:

5 AND WHAT IS IT IN THE ---

6 BY MR. GOODWYN:

7 PAGE 51.

8 BY THE WITNESS:

9 2014, JEFF.

10 BY MR. GOODWYN:

11 2014, THANK YOU.

12 BY MS. RICHARDSON:

13 YEAH, 2014 -- JANUARY 16, 2014?

14 BY MR. GOODWYN:

15 RIGHT.

16 BY MS. RICHARDSON:

17 OKAY.

18 BY MR. ALFORD:

19 IS THAT AN EMAIL?

20 BY MR. GOODWYN:

21 YES.

22 BY MR. ALFORD:

23 OKAY.

24 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. WHAT'S THE COMPANY NAME IN THE SIGNATURE BLOCK?

1 A. "COUNTRYWIDE H.R."

2 Q. ALL RIGHT. AND IS THAT -- IF YOU TURN TO THE NEXT
3 PAGE, THE PAGE AFTER THAT, IS THE SIGNATURE ABOUT
4 THE SAME FOR SCOTT HANSON EVERY TIME?

5 A. YES, IT IS.

6 Q. ALL RIGHT. AND I'LL SHOW YOU NOW WHAT IS MARKED AS
7 CONDUSTRIAL'S EXHIBIT SIX. IT'S THE EMAIL FROM
8 SCOTT HANSON TO YOU, NOVEMBER 12TH, 2014. IT'S THIS
9 ONE RIGHT HERE (INDICATES).

10 BY COMMISSIONER JAMES:

11 I'M SORRY, HOW IS IT MARKED?

12 BY MR. GOODWYN:

13 CONDUSTRIAL TRIAL EXHIBIT SIX.

14 BY MR. ALFORD:

15 YOUR HONOR, JUST FOR THE SAKE OF THE RECORD,
16 I'M GOING TO INTERPOSE AN OBJECTION. I THINK THE
17 WITNESS TESTIMONY WAS CLEAR ABOUT THE INTEGRATION
18 SUPREMACY CLAUSE, WHICH NEGATES ANY CONVERSATIONS OR
19 PRIOR REPRESENTATIONS OR PRIOR CONVERSATIONS AND ALL
20 OF THESE EMAILS PRIOR. HE'S TRYING TO USE THE
21 SIGNATURE BLOCK TO SAY COUNTRYWIDE THAT -- TO
22 BOOTSTRAP HIS WAY INTO SAYING THAT WE REPRESENT A
23 P.E.O. AGREEMENT, WHICH THE AGREEMENT IS RIGHT
24 THERE. IT SAYS WHAT IS SAYS. IT IS WHAT IT IS.

25 BY COMMISSIONER JAMES:

1 AND WE DISCUSSED THE ---

2 BY MR. ALFORD:

3 WELL...

4 BY COMMISSIONER JAMES:

5 I UNDERSTAND. I WOULD HAVE TO DENY YOUR
6 OBJECTION ON THOSE GROUNDS.

7 BY MR. ALFORD:

8 THANK YOU.

9 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

10 Q. ALL RIGHT. CAN YOU READ THE SECOND SENTENCE OF THE
11 EMAIL STARTING WITH "THE."

12 A. "THE REASON I AM REACHING OUT TO YOU IS BECAUSE
13 COUNTRYWIDE H.R. IS NOW SET UP AS A P.E.O. IN THE
14 STATES YOU OPERATE IN."

15 Q. OKAY. FOR THE SIGNATURE BLOCK, IT SAYS "COUNTRYWIDE
16 H.R." HE SAYS COUNTRYWIDE H.R., THAT'S WHO HE
17 REPRESENTS IN THEIR P.E.O. WHAT IS -- WHO IS THE
18 PARTY TO THE CONTRACT?

19 A. COUNTRYWIDE PAYROLL AND H.R.

20 Q. OKAY. DID SCOTT HANSON EVER TELL YOU THAT THERE
21 WERE ANY OTHER COUNTRYWIDE ENTITIES THAT WERE NOT
22 P.E.O.s?

23 A. NO.

24 Q. DID YOU HAVE ANY REASON TO BELIEVE THERE WERE ANY --
25 THAT THERE WERE MULTIPLE COUNTRYWIDE ENTITIES THAT

1 SOME WERE AND SOME WEREN'T P.E.O.s?

2 A. NO.

3 Q. DO YOU FEEL LIKE YOU'VE BEEN BAMBOOZLED HERE?

4 BY MR. ALFORD:

5 OH, OBJECTION, BUT GO AHEAD.

6 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

7 Q. DO YOU FEEL LIKE YOU'VE BEEN MISLED HERE?

8 BY MR. ALFORD:

9 I WOULD RATHER GO WITH BAMBOOZLED.

10 THE WITNESS ANSWERS:

11 A. IF THIS IS THE CASE, I FEEL LIKE I'VE BEEN MISLED IF
12 THAT'S THE CASE.

13 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

14 Q. ALL RIGHT. I'M GOING TO TURN TO -- WELL, FIRST, LET
15 ME ASK YOU. YOU WERE ASKED SOME QUESTIONS BY MR.
16 ALFORD ABOUT THE COUNTRYWIDE SERVICE AGREEMENT.
17 THIS IS IT HERE (INDICATES). SO, AGAIN, CONDUSTRIAL
18 TRIAL EXHIBIT NUMBER TWO, AND THE ADDENDUM IS NUMBER
19 THREE. YOU KNOW, YOU WERE ASKED IF THERE WAS
20 ANYTHING IN THAT AGREEMENT THAT ALLOWED FOR AN AUDIT
21 PREMIUM TO BE CHARGED, CORRECT?

22 A. YES.

23 Q. AND I THINK YOUR RESPONSE WAS I DIDN'T SEE ANYTHING
24 OR THERE WAS NOTHING THAT YOU KNEW OF?

25 A. THAT'S CORRECT.

1 Q. ALL RIGHT. I WOULD LIKE TO TURN YOUR ATTENTION TO
2 CONDUSTRIAL'S APAs 58, 59 AND 60.

3 A. WHICH IS ON THE BIG SECTION?

4 Q. NO, I'M GOING TO HAVE TO SHOW YOU THIS. I DON'T
5 THINK YOU HAVE ---

6 A. OH, I DON'T HAVE IT.

7 BY MR. ALFORD:

8 WHAT IS THAT?

9 BY MR. GOODWYN:

10 IT'S -- THAT'S -- THE FIRST DOCUMENT, 58, IS AN
11 EMAIL FROM TED BRYANT TO IT LOOKS LIKE TOM SEARS AND
12 A NUMBER OF OTHER CONDUSTRIAL RECIPIENTS.

13 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

14 Q. CAN YOU LOOK AT NUMBER TWO HERE. WHAT IS -- WHAT IS
15 COUNTRYWIDE TELLING CONDUSTRIAL IN NUMBER TWO?

16 BY MR. ALFORD:

17 CAN WE GET LIKE DATE AND -- DO YOU MIND?

18 BY MR. GOODWYN:

19 IT'S PAGE 58 OF MY APAs.

20 BY MR. ALFORD:

21 ALL RIGHT.

22 BY MR. GOODWYN:

23 FROM ---

24 BY COMMISSIONER JAMES:

25 UM, OKAY.

1 BY MR. GOODWYN:

2 --- AN EMAIL DATED JANUARY 5TH, 2016.

3 BY MR. ALFORD:

4 OKAY.

5 BY COMMISSIONER JAMES:

6 ALL RIGHT. DID YOU SAY YOUR APAs, BECAUSE I'M
7 LOOKING IN THE TRIAL EXHIBITS? SO, IS IT YOUR APAs

8 ---

9 BY MR. GOODWYN:

10 YEAH, CONDUSTRIAL'S APAs.

11 BY COMMISSIONER JAMES:

12 --- YOU'RE LOOKING AT NOW?

13 BY MR. GOODWYN:

14 RIGHT.

15 BY COMMISSIONER JAMES:

16 ALL RIGHT.

17 BY MR. GOODWYN:

18 LET ME KNOW WHEN YOU HAVE IT. HAVE YOU GOT IT?

19 IS EVERYBODY READY?

20 BY COMMISSIONER JAMES:

21 YES.

22 BY THE WITNESS:

23 DID YOU SAY "58"?

24 BY MR. GOODWYN:

25 YES, 58.

RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

Q. ALL RIGHT. WHAT DOES NUMBER TWO SAY?

A. IT SAYS "ADDITIONAL AMOUNTS OWING."

Q. ALL RIGHT. AND GO AHEAD AND READ THE -- READ THE FIRST TWO LINES THERE.

A. "THE ATTACHED INVOICE CONTAINS TWO PAST PAYMENTS OWED BY CONDUSTRIAL TO COUNTRYWIDE. WORKERS' COMPENSATION INSURANCE PREMIUMS, \$148,875 IS OWED FOR PREMIUM AS SET FORTH IN THE ATTACHED PREMIUM FOR THOSE STATES AS INDICATED."

Q. NOW, DOES THAT SOUND LIKE AN AUDIT PREMIUM TO YOU?

A. YEAH, IT DOES.

Q. OKAY. ALL RIGHT. EVEN THOUGH IT IS NOT IN THE AGREEMENT, THEY ARE DOING IT ANYWAY, RIGHT?

A. THAT'S CORRECT.

Q. ALL RIGHT. TELL ME THIS: I THINK YOU TESTIFIED THAT THE -- WHAT IS THE U.S.L. & H. PORTION, THAT SMALL GROUP OF EMPLOYEES WAS NOT COVERED UNDER THE COUNTRYWIDE AGREEMENT?

A. THAT'S CORRECT.

Q. THEY COULDN'T WRITE IT, IS THAT WHY?

A. THAT'S CORRECT.

Q. ALL RIGHT. AND LOOKING AT THE INVOICE THAT'S AT PAGE 60, WHAT IS BEING INVOICED? DO YOU KNOW WHAT THESE CODES REPRESENT?

1 A. I DO KNOW.

2 Q. THERE'S -- AND I'M GOING TO SKIP THE FIRST TWO,
3 GEORGIA AND MARYLAND, AND THEN THE FIRST ONE IS SC
4 -- WHAT IS THAT, 5479X?

5 A. YES.

6 Q. WHAT IS THAT; WHAT CODE IS THAT?

7 A. 5479X WAS FOR SOME CARPENTRY WORK THAT WAS DONE IN
8 SOUTH CAROLINA THAT FOR SOME REASON, THEY SAID DID
9 NOT FALL UNDER A CODE THAT WAS ORIGINALLY ON OUR
10 POLICY. WE DIDN'T UNDERSTAND THAT ONE.

11 Q. ALL RIGHT. WHAT ABOUT THE NEXT TWO CODES, SC ---

12 A. THE NEXT ONE IS SC-6824F, WHICH IS AN "F" CODE,
13 WHICH IS THE U.S.L. & H. EXPOSURE, AND THEY INVOICED
14 ME \$146,237.

15 Q. ALL RIGHT. AND THAT'S THE COVERAGE THAT THEY SAID
16 THEY WOULDN'T EVEN WRITE?

17 A. THAT'S CORRECT.

18 Q. ALL RIGHT. DID YOU ---

19 A. AND THAT GUARANTEE COULD NOT WRITE AS WELL, BECAUSE
20 IT WAS AN EXCLUDED CODE UNDER THEIR COMPANY.

21 Q. ALL RIGHT. SO, CODES AND WORKERS THAT ARE NOT IN
22 THE POLICY, YOU ARE BEING ASSESSED AN AUDIT PREMIUM
23 FOR UNDER THE COUNTRYWIDE AGREEMENT, CORRECT?

24 A. IF IT'S NOT ONE, I DON'T KNOW WHAT IT COULD BE. I
25 MEAN, THAT'S WHAT IT WAS TO ME.

1 Q. DOES IT STATE TO REASON THEN THAT THEY COULD AUDIT
2 PREMIUM YOU FOR THESE 1099 WORKERS IF THEY ARE FOUND
3 TO BE EMPLOYEES?

4 A. ABSOLUTELY.

5 Q. OKAY. ALL RIGHT. I'M GOING TO GO THROUGH A FEW
6 EMAILS AND OTHER DOCUMENTS IN THE LARGE STACK FROM
7 KEENAN SUGGS COUNTRYWIDE EXHIBIT FIVE.

8 A. YES, SIR.

9 Q. ALL RIGHT. YOU WERE ASKED ABOUT THIS DOCUMENT, PAGE
10 12 IS WHAT I'M LOOKING AT. I BELIEVE THIS IS PART
11 OF THE APPLICATION THAT MR. HYNDSHAW SUBMITTED ---

12 A. YES.

13 Q. --- ON YOUR BEHALF?

14 A. YES, SIR.

15 Q. YOU WERE ASKED ABOUT THE NURSING CODES AT THE VERY
16 BOTTOM OF PAGE 11. IT'S 8829 AND THE VERY TOP OF
17 PAGE 12, 8833. DO YOU SEE THAT?

18 A. YES.

19 Q. THESE AMOUNTS, THE \$66,000 NUMBER FOR 8829 AND THE
20 \$784,000 NUMBER ON 8833, DO THOSE REPRESENT JUST THE
21 EMPLOYEE NURSES, OR DO THOSE INCLUDE THE INDEPENDENT
22 CONTRACTOR NURSES AS WELL?

23 A. THOSE INCLUDED EVERYTHING.

24 Q. OKAY. SO, THE APPLICATION SUBMITTED INCLUDED THE
25 INDEPENDENT CONTRACTOR NURSES?

1 A. IT DID, YES.

2 Q. OKAY. AND TURN THE PAGE ---

3 BY MS. RICHARDSON:

4 I'M SORRY, WHAT WAS THE RESPONSE? I COULDN'T
5 HEAR HIM.

6 BY MR. GOODWYN:

7 I THINK HE SAID "YES, IT DID."

8 BY THE WITNESS:

9 YES, YES.

10 BY MS. RICHARDSON:

11 OKAY.

12 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

13 Q. TURN THE PAGE TO PAGE 13, IF YOU WOULD. NUMBER
14 EIGHT. YOU WERE ASKED QUESTIONS ABOUT NUMBER EIGHT.
15 THE QUESTION IS "ARE SUBCONTRACTORS USED?"

16 A. WHAT PAGE ARE YOU ON?

17 Q. THIRTEEN. JUST...

18 A. THAT'S NOT...

19 Q. WELL, MAYBE WE HAVE TWO DIFFERENT 13s. OH, WAIT A
20 MINUTE. YEAH, I'M SORRY. IT'S TIME TO PUT ON MY
21 GLASSES. NUMBER SIX. YEAH, SORRY. ALL RIGHT,
22 NUMBER SIX "ARE SUBCONTRACTORS USED?" LET ME FIRST
23 ASK YOU THIS: DID YOU CONSIDER CONDUSTRIAL TO BE A
24 GENERAL CONTRACTOR OR UPSTREAM CONTRACTOR FOR THE
25 SHIFTS AT S.C.D.C.?

1 A. NO. I MEAN, NO, WE'RE NOT A -- WE'RE NOT A
2 CONTRACTOR, PERIOD.

3 Q. OKAY. SO, WOULD IT BE FAIR TO SAY THEN THAT THE
4 NURSES THAT WERE TAKING THESE SHIFTS WOULD BE
5 SUBCONTRACTORS OF CONDUSTRIAL?

6 BY MR. BEARD:

7 COMMISSIONER, OBJECT TO THE FORM. HE HAS
8 ALREADY ASKED AND ANSWERED THAT QUESTION THAT THEY -
9 - THAT HE WOULD PUT 1099s AS SUBCONTRACTORS ON THE
10 DOCKET. HE'S ASKING HIM TO CHANGE HIS TESTIMONY.

11 BY MR. GOODWYN:

12 I'M NOT ASKING HIM WHAT HE WOULD PUT ON THE
13 DOCKET. I ASKED HIM A DIFFERENT QUESTION.

14 BY MR. BEARD:

15 YOU'RE ASKING HIM TO CHANGE HIS TESTIMONY.
16 OBJECTION.

17 BY MR. GOODWYN:

18 I'M ASKING TO EVALUATE IT IN THOSE TERMS. I'M
19 ASKING HIM IS IT ---

20 BY MS. RICHARDSON:

21 I BELIEVE THAT'S LEADING.

22 BY MR. GOODWYN:

23 --- FAIR THEN TO SAY ---

24 BY MR. BEARD:

25 IT'S EXTREME LEADING.

1 BY COMMISSIONER JAMES:

2 ALL RIGHT. SUSTAINED AS TO LEADING.

3 BY MR. GOODWYN:

4 ALL RIGHT.

5 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. IF YOU ARE NOT A GENERAL CONTRACTOR OR UPSTREAM
7 CONTRACTOR OF THE SHIFTS AT S.C.D.C., ARE THE
8 INDEPENDENT CONTRACTORS PERFORMING THOSE SHIFTS
9 SUBCONTRACTORS?

10 BY MR. BEARD:

11 SAME OBJECTION.

12 BY MS. RICHARDSON:

13 OBJECTION, LEADING.

14 BY MR. GOODWYN:

15 NOW, THAT'S NOT LEADING. I JUST -- THAT'S NOT

16 ---

17 BY MS. RICHARDSON:

18 YOU ASKED HIM A YES OR NO QUESTION, AND YOU
19 SUGGESTED WHAT THE ANSWER IS.

20 BY MR. BEARD:

21 YOU TOLD HIM THE ANSWER.

22 BY MS. RICHARDSON:

23 JUST ASK WHO, WHAT, WHEN, WHERE AND WHY.

24 BY MS. FARTHING:

25 AND CAN YOU SPEAK UP? I STILL CAN'T HEAR.

1 BY COMMISSIONER JAMES:

2 ALL RIGHT.

3 BY MS. RICHARDSON:

4 I DID IT -- I DID IT EVEN ON CROSS EXAMINATION.

5 BY COMMISSIONER JAMES:

6 WAIT. WAIT. SUSTAINED. IF YOU CAN REPHRASE
7 IT.

8 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. DID YOU CONSIDER THE INDEPENDENT CONTRACTOR NURSES
10 SUBCONTRACTORS OF CONDUSTRIAL?

11 BY MR. BEARD:

12 COMMISSIONER, THE QUESTION -- THAT EXACT
13 QUESTION HAS ALREADY BEEN ASKED AND ANSWERED.

14 BY MR. GOODWYN:

15 THAT WAS NOT THE QUESTION. THAT WAS THE ---

16 BY MS. RICHARDSON:

17 YES, IT WAS.

18 BY MR. BEARD:

19 IT'S RIGHT ON THE FORM. THAT'S EXACTLY WHAT HE
20 HAS ALREADY ANSWERED.

21 BY MR. GOODWYN:

22 THAT'S NOT -- I'M NOT ASKING THAT. NOT -- JUST
23 FORGET ABOUT THE FORM.

24 BY MR. BEARD:

25 WELL, THAT'S THE QUESTION ON THE FORM.

1 BY MR. GOODWYN:

2 I'M NOT ASKING HIM ABOUT THE FORM. I'M NOT
3 ASKING HIM HOW HE WOULD RESPOND TO THE QUESTION ON
4 THE FORM. IT SAYS "ARE SUBCONTRACTORS USED?" THAT
5 IS A GENERAL QUESTION. I AM ASKING HIM A SPECIFIC
6 QUESTION, DID HE CONSIDER THE INDEPENDENT CONTRACTOR
7 SUBCONTRACTORS OF CONDUSTRIAL. THAT'S A DIFFERENT
8 QUESTION.

9 BY COMMISSIONER JAMES:

10 THERE HAS BEEN A SERIES OF QUESTIONS ASKED BY
11 MS. RICHARDSON WITH REGARDS TO THIS SAME ---

12 BY MR. GOODWYN:

13 THAT'S WHY THIS IS REDIRECT. THAT'S WHY I'M
14 TRYING TO ---

15 BY COMMISSIONER JAMES:

16 OKAY. I UNDERSTAND THAT. SO, BUT WHATEVER THE
17 QUESTION IS, AND WHEN YOU JUST REPHRASE, ---

18 BY MR. GOODWYN:

19 YES.

20 BY COMMISSIONER JAMES:

21 --- LET'S JUST MAKE SURE IT'S NOT LEADING.

22 BY MR. GOODWYN:

23 OKAY.

24 BY COMMISSIONER JAMES:

25 ALL RIGHT.

1 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

2 Q. DO YOU -- YES OR NO, DO YOU CONSIDER YOUR
3 INDEPENDENT CONTRACTOR NURSES SUBCONTRACTORS OF
4 CONDUCTRIAL?

5 BY MR. BEARD:

6 AGAIN, THE SAME OBJECTION. THAT IS A LEADING
7 QUESTION ---

8 BY MR. GOODWYN:

9 I ASKED A SIMPLE ---

10 BY MR. BEARD:

11 --- AND IT'S ASKED AND ANSWERED ---

12 BY MR. GOODWYN:

13 IT'S A SIMPLE YES OR NO QUESTION.

14 BY MR. BEARD:

15 --- BOTH QUESTIONS.

16 BY MS. RICHARDSON:

17 WHO ARE THE SUBCONTRACTORS? WHO ARE THE
18 SUBCONTRACTORS?

19 BY MR. GOODWYN:

20 IT'S NOT A LEADING QUESTION. I'M JUST -- DO
21 YOU CONSIDER THEM SUBCONTRACTORS OR NOT?

22 BY COMMISSIONER JAMES:

23 ALL RIGHT. IF YOU WILL ANSWER THE QUESTION,
24 PLEASE, SIR.

25 THE WITNESS ANSWERS:

1 A. NOT SUBCONTRACTORS. THEY'RE INDEPENDENT
2 CONTRACTORS.

3 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

4 Q. OKAY. CAN YOU EXPLAIN THEN WHAT YOU MEANT WHEN YOU
5 ANSWERED MS. RICHARDSON'S QUESTION ABOUT THAT YOU
6 WOULD PUT THE SUBCONTRACTORS IN THIS -- OR THE
7 INDEPENDENT CONTRACTORS RATHER IN THIS SECTION
8 ASKING ABOUT SUBCONTRACTORS?

9 A. I -- IF I HAD FILLED THIS OUT, I WOULD HAVE
10 SCRATCHED THROUGH SUBCONTRACTORS, AND I WOULD HAVE
11 PUT "INDEPENDENT CONTRACTORS," BUT YES.

12 Q. OKAY.

13 A. THAT'S WHAT I WOULD HAVE DONE.

14 Q. DO YOU THINK -- IS THAT BECAUSE YOU WANTED TO JUST
15 HAVE FULL DISCLOSURE OR ---

16 A. ABSOLUTELY.

17 Q. ALL RIGHT.

18 BY MS. FARTHING:

19 THAT'S A LEADING QUESTION.

20 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. ALL RIGHT. YOU WERE ASKED QUESTIONS EARLIER ABOUT
22 ANYTHING -- OR ABOUT WHETHER THE 1099 NURSES WERE
23 DISCLOSED TO COUNTRYWIDE PRIOR TO ENTERING INTO THE
24 AGREEMENT.

25 A. RIGHT.

1 Q. I THINK YOU WERE ASKED A QUESTION IF THERE WAS
2 ANYTHING IN WRITING TO THAT EFFECT. DO YOU REMEMBER
3 THOSE QUESTIONS?

4 A. CORRECT.

5 Q. ALL RIGHT. I'M GOING TO ASK YOU TO TURN TO PAGE 51
6 AGAIN. ALL RIGHT. AND LET'S GO -- I'M SORRY, LET'S
7 GO BACK IN THE EMAIL CHAIN TO PAGE 53. IT MIGHT BE
8 A LITTLE CLEARER. ALL RIGHT. AND THIS IS AN EMAIL
9 CHAIN BETWEEN, WHAT, YOUR AGENT, ALBERT HYNDSHAW AND
10 SCOTT HANSON; IS THAT CORRECT?

11 A. IT APPEARS TO BE TO ME.

12 Q. ALL RIGHT. I WOULD ASK YOU TO LOOK AT THE TOP OF
13 PAGE 53 AND READ -- READ THAT -- READ THAT EMAIL
14 FROM ALBERT TO SCOTT.

15 A. "CONDUCTORIAL HAS SEVERAL PEOPLE ON THE MEDICAL SIDE
16 THAT ARE 1099. WOULD THESE PEOPLE FIT THE
17 DEFINITION OF EMPLOYEE UNDER YOUR E.P.L.I.
18 COVERAGE?"

19 Q. ALL RIGHT. AND WHAT IS THE RESPONSE FROM SCOTT ON
20 PAGE 52, IT LOOKS LIKE?

21 A. SCOTT SAYS "ARE THEY A TRUE 1099, OR ARE THEY BEING
22 PAID COMMISSION?"

23 Q. AND WHAT IS ALBERT'S RESPONSE ON PAGE 51?

24 A. "TRUE 1099. DID YOU TALK TO TONY LAST EVENING?
25 THANK YOU."

1 Q. ALL RIGHT. AND THE LAST ONE, SCOTT'S RESPONSE TO
2 THAT AT THE TOP OF PAGE 51?

3 A. "SPOKE TO TONY LAST EVENING. I SENT OVER THE
4 AGREEMENTS. THE 1099s WOULD NOT BE INCLUDED IN THE
5 E.P.L.I."

6 Q. ALL RIGHT. DO YOU THINK IT IS FAIR THEN TO SAY THAT
7 THERE IS WRITTEN EVIDENCE THAT COUNTRYWIDE KNEW
8 ABOUT THE 1099 NURSES PRIOR TO THE AGREEMENT?

9 BY MR. ALFORD:

10 OBJECTION, LEADING.

11 BY COMMISSIONER JAMES:

12 SUSTAINED.

13 BY MR. GOODWYN:

14 OKAY.

15 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. DO YOU KNOW OF ANY WRITTEN EVIDENCE THAT COUNTRYWIDE
17 KNEW OF THE 1099 NURSES PRIOR TO THE ENTERING OF THE
18 SERVICE AGREEMENT?

19 A. WHAT I JUST READ APPEARS TO BE THAT TO ME.

20 Q. OKAY. COULD YOU TURN TO PAGE 55?

21 BY MS. RICHARDSON:

22 COULD YOU JUST IDENTIFY THE DATES.

23 BY MR. GOODWYN:

24 THE DATES, YEAH.

25 BY MS. RICHARDSON:

1 JUST SO YOU HELP ME FIND IT.

2 BY MR. GOODWYN:

3 JANUARY 17TH, 2014.

4 BY MS. RICHARDSON:

5 THANK YOU.

6 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

7 Q. THIS IS, IT LOOKS LIKE AN EMAIL FROM YOU TO, I THINK
8 THAT'S SCOTT HANSON, TOM SEARS, AND THEN THERE'S
9 SOME OTHERS CC'D ---

10 A. UH-HUH.

11 Q. --- PEOPLE. ALL RIGHT. THIS IS JANUARY 2014. IS
12 THIS -- THIS IS IT LOOKS LIKE THE YEAR BEFORE YOU
13 WERE ABOUT TO ENTER INTO THE AGREEMENT WITH
14 COUNTRYWIDE, CORRECT?

15 A. NO, THIS WOULD HAVE BEEN -- THE AGREEMENT WITH
16 COUNTRYWIDE -- I KEEP GETTING CONFUSED ON THE DATES.

17 Q. I KNOW, I'M GETTING CONFUSED ON THE DATES, TOO.

18 A. WE GO WITH COUNTRYWIDE ON MARCH 26TH, 2014. SO,
19 THIS IS ABOUT 70 DAYS PRIOR TO US GOING WITH
20 COUNTRYWIDE. THIS IS THEIR SECOND BITE AT THE
21 APPLE.

22 Q. OKAY. LET ME ---

23 A. NOT THE FIRST BITE.

24 Q. NOW, WHAT'S THE DATE ON THE SERVICE AGREEMENT?

25 A. I'M SORRY. MARCH THE 11TH, 2015.

1 Q. OKAY. SO, IN JANUARY 2014, THIS WAS ---

2 A. THIS IS THE FIRST BITE, I'M SORRY. YOU'RE CORRECT.

3 Q. OKAY. I WANT TO MAKE SURE WE'RE TALKING ABOUT THE
4 SAME THING.

5 A. YEAH, I KNOW.

6 Q. ALL RIGHT. SO, AND I NOTICE I'M LOOKING AT THE --
7 THE FIRST SENTENCE IS A LONG SENTENCE, BUT IT --
8 READING THE THIRD LINE HERE, IT SAYS "WHAT WE'VE
9 AGREED TO WITH THE OTHER P.E.O." AND THEN READ THAT,
10 THE SENTENCE THAT'S STANDING BY ITSELF BELOW THAT
11 FIRST PARAGRAPH.

12 A. THE "SO"?

13 Q. THE SINCE, IT STARTS WITH "SINCE."

14 A. "SINCE WE WERE GOING TO BE TILLING NEW GROUND,
15 REGARDLESS OF WHICH P.E.O. WE CHOSE, IT IS POSSIBLE
16 THAT WE MAY COME BACK TO YOU IN THE FUTURE, AND I
17 HOPE THAT YOU WILL CONSIDER US THEN."

18 Q. ALL RIGHT. SO, AT THAT POINT, WERE YOU THINKING OF
19 COUNTRYWIDE AS A P.E.O.? IS THAT WHAT YOU MEANT BY
20 THAT?

21 A. YES. YEAH, I WAS CONSIDERING IT AS A P.E.O., YEAH.

22 Q. ALL RIGHT.

23 A. I ALWAYS CONSIDERED THEM AS A P.E.O.

24 Q. ALL RIGHT. AND AGAIN, YOU WERE NEVER TOLD THAT THEY
25 HAD OTHER ENTITIES THAT WEREN'T P.E.O.s?

1 A. NO, I'VE NEVER BEEN TOLD THAT.

2 Q. ALL RIGHT. CAN YOU TURN TO PAGE 87, IF YOU WOULD.

3 IT'S AN EMAIL DATED MARCH 25TH, 2015.

4 A. OKAY.

5 Q. YOU GOT IT?

6 A. YES.

7 Q. OKAY, SORRY.

8 A. I'M SORRY.

9 Q. ALL RIGHT. IF YOU LOOK AT THE BOTTOM EMAIL THERE.

10 THIS IS FROM, IT LOOKS LIKE, ALBERT TO TOM AND YOU,

11 CORRECT?

12 A. CORRECT.

13 Q. IT SAYS "STILL WAITING TO HEAR BACK FROM COUNTRYWIDE

14 ON THE C.O.I. ISSUE AND DON SHERWOOD AT N.C.C.I. ON

15 THE EXP. MOD." WHAT DOES EXP. MOD. MEAN?

16 A. EXPERIAN MOD. THAT'S THE ACCIDENT RATE RATIO.

17 Q. OKAY. AND WHAT IS YOUR RESPONSE IN THE EMAIL RIGHT

18 ABOVE THAT?

19 A. I SAID, "ALBERT, WE ARE GOING TO DO THIS, BUT IT IS

20 GOING TO BE AN ABSOLUTE DISASTER."

21 Q. ALL RIGHT. NO TRUER WORDS HAVE NEVER BEEN SPOKEN,

22 HUH?

23 A. I GUARANTEE YOU THAT.

24 Q. WHAT DID YOU MEAN BY THAT?

25 A. WE JUST HAD NO -- NO PROCEDURES IN PLACE AT ANY TIME

1 WE NEEDED TO ACCESS ANYTHING. WE WOULD CALL ONE.
2 SOMEBODY ELSE CALLS YOU BACK. YOU CAN'T HAVE THE
3 SAME CONVERSATION TWO TIMES IN A ROW. YOU FINALLY
4 GET TO A GUY THAT SAYS "I'LL CALL YOU." HE CALLS
5 YOU AT THREE A.M. IN THE MORNING. IT WAS JUST
6 CONSTANT. ANYTIME THEY SENT ANYTHING, IT WAS WRONG,
7 AND IT WAS JUST -- YOU KNOW, JUST A DISASTER.

8 Q. ALL RIGHT.

9 A. BUT, YOU KNOW, IT WAS -- ALBERT WAS ADAMANT IT WAS
10 GREAT, AND I'VE KNOWN HIM FOREVER. WE WERE GOING
11 THAT WAY.

12 Q. ALL RIGHT. TAKE A LOOK AT PAGE 107 IF YOU WOULD.
13 IT'S AN EMAIL DATED MARCH 30TH, 2015.

14 A. YES, SIR.

15 Q. CAN YOU READ THAT FIRST SENTENCE FOR US?

16 A. IT SAYS "JUST ---

17 Q. HANG ON FOR ONE SECOND. I'M SORRY. THIS IS AN
18 EMAIL THAT YOU WROTE, CORRECT?

19 A. I WROTE IT TO ALBERT AND JO ANN.

20 Q. OKAY.

21 BY COMMISSIONER JAMES:

22 WHAT PAGE?

23 BY MR. GOODWYN:

24 PAGE 107.

25 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. ALL RIGHT. GO AHEAD AND READ THAT FIRST SENTENCE,
2 IF YOU WILL.

3 A. "JUST FOR THE RECORD, I WANT IT NOTED THAT SCOTT
4 BASICALLY LIED TO ME FOR TWO DAYS ABOUT THAT WE
5 BEING DONE." WHAT ABOUT THAT? I CAN'T TYPE
6 OBVIOUSLY. "JUST FOR THE RECORD, I WANT IT NOTED
7 THAT SCOTT BASICALLY LIED TO ME ABOUT THAT WE BEING
8 DONE. I HAVE ATTACHED COPIES OF TEXT SCREEN SHOTS
9 HE SENT TO ME ONLY ABOUT HIS TEAM WAS SETTING UP THE
10 FILES, ET CETERA, ET CETERA, AND AS YOU KNOW, THAT
11 WAS ALSO WHAT ALL HIS EMAILS SAID AS WELL ON FRIDAY
12 AND SATURDAY."

13 Q. ALL RIGHT. WHAT WAS THIS EMAIL IN REFERENCE TO?

14 A. WELL, WE WERE TRYING TO GET -- 'CAUSE WHAT I TOLD
15 HIM, I SAID "LOOK, YOU KNOW, WE'VE GOT 150, 200
16 CLIENTS, WHATEVER THAT'S GOT TO HAVE INFORMATION OUT
17 TO. IT'S GOT TO BE DONE, ET CETERA, ET CETERA."
18 YOU KNOW, ONCE WE CHANGE COVERAGE, THEY HAVE TO HAVE
19 CERTIFICATES OF COVERAGE. IF WE CAN'T HAVE THAT,
20 THE EMPLOYEES WON'T BE ABLE TO GO ON THOSE JOBS, ET
21 CETERA, ET CETERA, AND THEY HADN'T. HE HAD BEEN
22 TELLING ME ALL ALONG THAT THEY WERE WORKING ON IT,
23 THEY WERE WORKING ON IT, AND THEN WHEN IT CAME TIME
24 TO DO IT, AIN'T NOBODY BEEN WORKING ON IT.

25 Q. OKAY. WHAT'S -- CAN YOU READ THAT LAST LINE OF THE

1 EMAIL?

2 A. THE LAST LINE ABOVE MY NAME?

3 Q. YES.

4 A. "SCOTT LITERALLY LIED ABOUT EVERY SINGLE THING."

5 BY MR. ALFORD:

6 WHAT WAS THE DATE OF THAT EMAIL, PLEASE?

7 BY MR. GOODWYN:

8 MARCH 30TH, I BELIEVE.

9 BY MR. ALFORD:

10 THANK YOU.

11 BY MS. RICHARDSON:

12 '14 OR '15?

13 BY THE WITNESS:

14 '15.

15 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. I'M GOING TO SHOW YOU -- I'LL BRING YOUR ATTENTION
17 TO CONDUSTRIAL TRIAL EXHIBIT THREE. IT'S THE
18 ADDENDUM TO THE COUNTRYWIDE AGREEMENT, THE
19 COUNTRYWIDE SERVICE AGREEMENT.

20 BY MS. RICHARDSON:

21 CONTRACT SERVICE AGREEMENT?

22 BY MR. ALFORD:

23 THE ADDENDUM.

24 BY MS. RICHARDSON:

25 OH, THE ADDENDUM.

1 BY MR. GOODWYN:

2 THE ADDENDUM.

3 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

4 Q. IF YOU WILL LOOK AT PARAGRAPH 13. CAN YOU READ THAT
5 FOR US?

6 A. "FOR U.S.L. & H. PROJECTS THAT ARE COVERED BY THE
7 WORKERS' COMPENSATION OF CONDUSTRIAL AND NOT COVERED
8 UNDER ANY OF THE POLICIES OF COUNTRYWIDE,
9 CONDUSTRIAL WILL PROCESS THAT PAYROLL WITH AN AGREED
10 NO WORKERS COMP DUE. THESE EMPLOYEES WILL BE
11 PROCESSED AS NORMAL CONCERNING ALL PAYROLL TAXES
12 EXCLUSIVE OF U.S.L. & H. COVERAGE."

13 Q. ALL RIGHT. IS THAT THE PROVISION IN THE AGREEMENT
14 THAT EXCLUDES THE U.S.L. & H. COVERAGE?

15 A. YES.

16 Q. ALL RIGHT. AND AGAIN, WERE YOU BEING BILLED FOR
17 U.S.L. & H. COVERAGE IN THE INVOICE?

18 A. YES, RETRO.

19 BY MS. RICHARDSON:

20 WHAT?

21 BY MR. ALFORD:

22 WHAT'S THE BILL WITH THE U.S.L. & H.?

23 BY MR. GOODWYN:

24 PAGE 60.

25 BY MR. ALFORD:

1 OKAY.

2 BY MR. GOODWYN:

3 OF CONDUSTRIAL'S APAs.

4 BY MR. ALFORD:

5 WHICH IS U.S.L. & H., THE S.C.?

6 BY MR. GOODWYN:

7 THE "F" CODES.

8 BY MR. ALFORD:

9 OH, THE "F" CODES, OKAY.

10 BY MR. GOODWYN:

11 THAT'S WHAT IT IS.

12 BY MR. ALFORD:

13 ALL RIGHT.

14 BY MR. GOODWYN:

15 ALL RIGHT. I THINK THAT'S ALL I HAVE, YOUR
16 HONOR.

17 BY COMMISSIONER JAMES:

18 MR. SAMUELS.

19 BY MR. SAMUELS:

20 THANK YOU, YOUR HONOR.

21 RE-CROSS EXAMINATION BY MR. SAMUELS:

22 Q. MR. DURHAM, WHO IS THE OWNER OF CONDUSTRIAL?

23 A. MYSELF.

24 Q. YOU'RE THE 100 PERCENT OWNER?

25 A. YES, SIR.

1 Q. NOBODY ELSE OWNS ANY -- THERE'S NO OTHER MANAGING
2 MEMBER OTHER THAN YOU?

3 A. NO -- NO, SIR.

4 Q. OKAY. AND WHO IS HOLLY SEEBY?

5 A. SHE'S MY MANAGER IN COLUMBIA.

6 Q. OKAY. SHE HAS NO OWNERSHIP INTEREST IN ---

7 A. NO, SIR.

8 Q. --- CONDUSTRIAL? MR. DURHAM, I'M GOING TO SHOW YOU
9 ONCE AGAIN. THIS IS THE LICENSED PROFESSIONAL
10 INDEPENDENT CONTRACTOR AGREEMENT DATED OCTOBER 9TH,
11 2014, BEGINNING AT PAGE 238, CLAIMANT'S APA
12 SUBMISSIONS, AND WHO SIGNED ON BEHALF OF
13 CONDUSTRIAL?

14 A. HOLLY SEEBY.

15 Q. AND THAT'S THE LADY WHO IS YOUR LOCAL MANAGER?

16 A. SURE, YES, SIR.

17 Q. NOW, I'M GOING TO SHOW YOU ANOTHER DOCUMENT YOU
18 REVIEWED BEFORE, AND WE'RE GOING TO LOOK AT IT IN A
19 LITTLE MORE DETAIL. THIS IS PAGE 282 OF THE
20 CLAIMANT'S APA SUBMISSIONS. DO YOU REMEMBER LOOKING
21 AT THIS DOCUMENT BEFORE?

22 A. YES, THAT'S THE LAST PAGE OF THE EMPLOYEE POLICY
23 MANUAL, YES.

24 Q. OKAY. AND THAT'S BEEN SIGNED BY RACHEL TURNER ON
25 OCTOBER 9TH, 2014, THE SAME DATE AS THE PREVIOUS

1 DOCUMENT?

2 A. CORRECT.

3 Q. OKAY. AND THIS FIRST SENTENCE THAT I'M POINTING AT
4 BEGINNING "IN EXCHANGE FOR," WHAT DOES THAT SAY?

5 A. "FOR THE CONSIDERATION OF MY JOB APPLICATION BY
6 CONDUSTRIAL, INC., HEREINAFTER CALLED THE COMPANY,
7 AGREE THAT."

8 Q. SO, THERE'S AN AGREEMENT, AND THERE'S CONSIDERATION,
9 WOULD YOU AGREE WITH THAT?

10 A. YES, FOR ANYBODY THAT WAS AN EMPLOYEE, CORRECT.

11 Q. OKAY. WELL, AND I'M GOING TO ASK YOU TO READ THIS
12 FIRST PARAGRAPH ALL THE WAY THROUGH WHERE IT'S BEEN
13 HIGHLIGHTED OUT LOUD, PLEASE.

14 A. "NEITHER THE ACCEPTANCE OF THIS APPLICATION NOR THE
15 SUBSEQUENT ENTRY INTO ANY TYPE OF EMPLOYMENT
16 RELATIONSHIP, EITHER IN THE POSITION APPLIED FOR OR
17 ANY OTHER POSITION, AND REGARDLESS OF THE CONTENTS
18 OF THE EMPLOYEE HANDBOOKS, PERSONNEL MANUALS,
19 BENEFIT PLANS, POLICY STATEMENTS AND THE LIKE AS
20 THEY MAY EXIST FROM TIME TO TIME, OR OTHER COMPANY
21 PRACTICES SHALL SERVE TO CREATE AN ACTUAL OR IMPLIED
22 CONTRACT OF EMPLOYMENT OR TO CONFER ANY RIGHT TO
23 REMAIN AN EMPLOYEE FOR COMPANY X OR OTHERWISE TO
24 CHANGE IN ANY RESPECT THE EMPLOYMENT-AT-WILL
25 RELATIONSHIP BETWEEN IT AND THE UNDERSIGNED, AND

1 THAT RELATIONSHIP CANNOT BE ALTERED EXCEPT BY A
2 WRITTEN INSTRUMENT SIGNED BY THE OWNER/MANAGING
3 MEMBER OF THE COMPANY."

4 Q. OWNER MEMBER -- OWNER/MANAGING MEMBER OF THE
5 COMPANY, THAT WOULD BE YOU, MR. DURHAM, WOULDN'T IT?

6 A. THAT'S CORRECT.

7 Q. SO, ONLY A DOCUMENT SIGNED BY YOU CAN ALTER THE AT
8 WILL EMPLOYMENT RELATIONSHIP DESCRIBED IN THIS
9 EXHIBIT; ISN'T THAT TRUE?

10 A. THAT'S TRUE.

11 BY MR. SAMUELS:

12 OKAY, THANK YOU. NO FURTHER QUESTIONS.

13 BY COMMISSIONER JAMES:

14 MR. -- I'M GOING IN ORDER OF HOW WE WERE UNLESS
15 YOU ARE GOING TO ASK THE COMPENSATION QUESTIONS. I
16 THINK WE -- I THINK MR. BEARD IS NEXT.

17 BY MR. ALFORD:

18 OH, YES, MA'AM, I'M SORRY. I'M SORRY.

19 BY MR. BEARD:

20 NO QUESTIONS.

21 BY COMMISSIONER JAMES:

22 NO QUESTIONS. ALL RIGHT.

23 RE-CROSS EXAMINATION BY MR. ALFORD:

24 Q. ALL RIGHT, BIG DOG, HERE WE GO. YOU BUY THE
25 TICKETS, YOU TAKE THE RIDE, RIGHT? ALL RIGHT.

1 WELL, THE INVOICE THAT YOU WERE SHOWED FROM
2 COUNTRYWIDE, NUMBER 60; HAVE YOU GOT THAT OVER
3 THERE?

4 A. I DON'T HAVE THAT INVOICE OVER HERE. HE HAD IT WITH
5 HIM.

6 BY MS. RICHARDSON:

7 WAS THAT...?

8 BY MR. ALFORD:

9 IT'S NUMBER 60 ---

10 BY MS. RICHARDSON:

11 IT'S ALREADY IN THE APA?

12 BY MR. ALFORD:

13 YES, MA'AM.

14 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

15 Q. SO, THIS IS AFTER THE BREAKUP?

16 A. YEAH.

17 Q. ALL RIGHT. EVERYBODY IS A LITTLE GROUCHY, HUH?

18 A. YES, TO SAY THE LEAST.

19 Q. ALL RIGHT. SO, THEY TRIED TO CHARGE YOU FOR "F"
20 CODES, WHICH IS THE U.S.L. & H.?

21 A. THAT'S CORRECT.

22 Q. BUT THIS ISN'T AN AUDIT, IS IT?

23 A. IT'S A RETRO AGREEMENT.

24 Q. IT'S RETRO, BUT IT'S NOT AN AUDIT. DON'T YOU GET --
25 WHEN YOU GET AN AUDIT, THEY SEND YOU A 941, AN AUDIT

1 FORM, THE CARRIER SENDS YOU A 941 AND WANTS TO SEE
2 PAYROLL?

3 A. IN MY MIND, IF YOU'RE ASKING ME TO EXPLAIN WHAT I
4 THINK AN AUDIT PREMIUM IS, ---

5 Q. OKAY.

6 A. --- IT'S A REACH BACK FOR WORKERS' COMP EXPOSURE
7 THAT WAS NOT COVERED DURING THE TIME OF THE POLICY.

8 Q. OKAY.

9 A. YOU CAN CALL THAT A REACH BACK, A RETRO PREMIUM, AN
10 AUDIT, WHATEVER. TO ME, THOSE ARE ALL
11 INTERCHANGEABLE.

12 Q. ALL RIGHT. LET ME ASK YOU THIS: DID YOU EVER PAY
13 IT?

14 A. NO.

15 Q. ALL RIGHT. THEN YOU DIDN'T PAY IT, SO IT DOESN'T
16 WORK LIKE THAT, DOES IT?

17 A. WELL, IT MAY ---

18 Q. IT HAD NO CHANCE TO ---

19 BY MR. GOODWYN:

20 PLEASE LET HIM ANSWER THE QUESTION. HE'S
21 INTERRUPTING THE WITNESS RIGHT IN THE MIDDLE OF HIS
22 ANSWER.

23 THE WITNESS ANSWERS:

24 A. IF I OWED IT, I WOULD HAVE PAID IT. I DIDN'T OWE
25 IT.

RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

Q. THEY DIDN'T REACH BACK VERY GOOD ON YOU, DID THEY?

A. SIR?

Q. IT DIDN'T WORK, DID IT? IT DIDN'T WORK LIKE A REACH BACK, DID IT?

A. IT'S A FICTITIOUS INVOICE. IT'S A FICTITIOUS INVOICE.

(INDISTINCT CHATTER)

BY MR. ALFORD:

WOW, I'M SORRY. IT'S THE PEANUT GALLERY. ALL RIGHT. THAT WAS PRETTY GOOD, TOM.

RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

Q. BUT YOU DIDN'T PAY IT?

A. NO, I DIDN'T PAY IT.

Q. ALL RIGHT. AND IN FACT, THEY ENDED UP PAYING YOU MONEY, DIDN'T THEY?

A. SIR?

Q. THEY ENDED UP PAYING YOU MONEY IN THE BREAKUP?

A. THEY DIDN'T PAY ME ANYTHING. THEY GAVE ME BACK THE MONEY THEY WERE OWED IN AN ESCROW FOR TRUST TAXES.

Q. BUT IN TERMS -- OKAY, THAT'S FAIR. BUT IN TERMS OF MONEY CHANGING HANDS, YOU DIDN'T SEND THEM ANY?

A. NO, I DIDN'T SEND THEM NOTHING.

Q. ALL RIGHT. ALL RIGHT. SO, YOUR IDEA THOUGH THAT IT'S JUST AS SIMPLE AS ASKING YOU FOR SOME MONEY,

1 AND I MEAN, THE WORD "AUDIT" IS NOT ON THERE
2 ANYWHERE, IS IT? IS THE WORD "AUDIT" ON THAT
3 DOCUMENT ANYWHERE?

4 A. LET ME SEE. IT SAYS "CALCULATED BASED UPON AVERAGE
5 WEEKLY ADMIN FOR THE PERIOD BETWEEN 10/29/15 AND
6 12/17/15."

7 Q. OKAY, BUT IT DOESN'T SAY "AUDIT"?

8 A. THE WORD "AUDIT" DOES NOT APPEAR ON THERE.

9 Q. ALL RIGHT. ALL RIGHT, SIR, AND OH, GOODNESS. SO,
10 YOUR LAWYER USED THE WORD DID YOU FEEL LIKE YOU'VE
11 BEEN BAMBOOZLED, 'CAUSE YOU GOT THE WRONG COMPANY OR
12 SOMETHING, RIGHT, BECAUSE THE SIGNATURE BLOCK THAT
13 MR. HANSON USED SAID ONE THING, AND THE CONTRACT
14 SAID SOMETHING ELSE. IS THAT WHAT -- DID I CATCH
15 THAT RIGHT?

16 A. HE SAID "BAMBOOZLED." I SAID THEY DID A QUICK
17 SWITCH, A BAIT AND SWITCH. YOU KNOW, THEY DID THE -
18 --

19 Q. I MEAN ---

20 A. --- EVERYTHING THEY DONE ---

21 Q. KIND OF MEDUSTRIAL'LY, ISN'T IT?

22 A. HUH?

23 Q. A LITTLE MEDUSTRIAL'LY?

24 A. NO, IT'S NOT.

25 Q. YEAH.

- 1 A. NO, IT'S NOT.
- 2 Q. ALL RIGHT.
- 3 A. NO. IT'S JUST LIKE THE SAME WAY I EXPLAINED TO ZACH
- 4 COLLIER THAT HE -- ALL HE DID WITH HIS COMPANY WAS
- 5 RUN A SHELL GAME. I SAID "YOU'RE HIDING PAYROLLS.
- 6 YOU'RE HIDING PREMIUMS. YOU ARE HIDING ALL OF THESE
- 7 THINGS WITHIN ALL OF THESE DIFFERENT LITTLE THINGS
- 8 YOU HAVE SET UP SO NOBODY REALLY KNOWS WHERE THE
- 9 PREMIUMS ARE GOING OR WHO IS OWED WHAT, AND THAT'S
- 10 WHAT HE DID.
- 11 Q. WELL, LET ME ASK YOU THIS: OTHER THAN THIS CLAIM,
- 12 WHICH AGAIN AROSE FROM YOUR RELATIONSHIPS THAT WE
- 13 DIDN'T HAVE ANYTHING TO DO WITH, RIGHT?
- 14 A. CORRECT.
- 15 Q. OKAY. ANY OTHER CLAIMS OUT THERE THAT HAVEN'T BEEN
- 16 TAKEN CARE OF THAT WERE DUE TO COUNTRYWIDE?
- 17 A. I CAN'T ANSWER THAT. THERE'S BEEN CLAIMS THAT THEY
- 18 HAD NO COVERAGE FOR THAT WE'VE GOTTEN CLAIMS AGAINST
- 19 US ON THAT THEY AGREED THAT THEY WOULD PAY DIRECT
- 20 'CAUSE THEY ADMITTED THEY HAD NO INSURANCE.
- 21 Q. HAVE THEY TAKEN CARE OF THAT?
- 22 A. I CAN'T ANSWER THAT.
- 23 Q. IS ANYBODY BUGGING YOU ABOUT IT?
- 24 A. I HAVE NOT BEEN BUGGED SINCE I GOT BUGGED THE LAST
- 25 TIME.

1 Q. WHEN IS THE LAST TIME YOU GOT BUGGED?

2 A. PROBABLY SIX MONTHS AFTER THAT CLAIM, BUT THAT WAS
3 WITHIN THE LAST YEAR.

4 Q. I UNDERSTAND. ONCE THEY ---

5 A. BUT I ASSUME IT'S PAID IF THAT'S WHAT YOU'RE TRYING
6 TO ASK.

7 Q. RIGHT, THAT'S WHAT I'M TRYING TO GET AT.

8 A. YES, I ASSUME IT'S PAID.

9 Q. ALL RIGHT. SO, THEY STEPPED UP?

10 A. I DON'T KNOW IF YOU CALL PAYING A \$6,000 CLAIM AND
11 YOU TOOK ALMOST A QUARTER OF A MILLION DOLLARS IN
12 INSURANCE PREMIUMS AND DIDN'T HAVE INSURANCE. I
13 DON'T KNOW IF YOU CALL THAT STEPPING UP. I WOULD
14 CALL THAT A HELL OF A GOOD DEAL.

15 Q. PROVIDED THAT THEY DIDN'T PAY THE PREMIUM TO
16 RIVERPORT?

17 A. IF THEY DID, RIVERPORT LIED.

18 Q. MAYBE THEY'RE IN LITIGATION.

19 A. THEY SAID THEY DIDN'T.

20 Q. DO YOU KNOW WHETHER THEY'RE IN LITIGATION WITH
21 RIVERPORT?

22 A. I HAVE NO -- NOTHING TO DO WITH THAT. ALL I ---

23 Q. BUT DO YOU KNOW?

24 A. I DO NOT KNOW.

25 Q. OKAY. ALL RIGHT. YOUR ATTORNEY, LIKE I SAID, HE

1 SHOWED YOU SIGNATURE BLOCKS AND THINGS LIKE THAT
2 BEFORE THE CONTRACT, RIGHT, BUT THE CONTRACT SAYS
3 WHAT IT SAYS, RIGHT?

4 A. THERE AGAIN, THE CONTRACT SAYS WHAT IT SAYS, BUT I
5 DON'T UNDERSTAND, AND I GUESS YOU CAN EXPLAIN TO ME
6 HOW WHEN IT SAYS "COUNTRYWIDE PAYROLL H.R.,
7 INCORPORATED," UNLESS THEY HAVE ANOTHER COUNTRYWIDE
8 H.R., INCORPORATED, HOW THAT'S NOT THE SAME COMPANY
9 TO BEGIN WITH? NOW, I AGREE THAT HE GOES ON WITH
10 ANOTHER NOMENCLATURE LATER THAT HE WINDS UP USING
11 THE C.S.S.G., BUT I'M LOOKING AT THE COUNTRYWIDE
12 H.R. THING. I MEAN, I DON'T UNDERSTAND.

13 Q. WHY DIDN'T YOU LOOK AT THE CONTRACT?

14 A. IT IS ON THE CONTRACT. IT'S THE FIRST SENTENCE OF
15 THE CONTRACT.

16 Q. OKAY. BUT IT SAYS WHAT CORPORATION IT IS.

17 A. IT SAYS "COUNTRYWIDE PAYROLL H.R." EVERYTHING HERE
18 SAYS "COUNTRYWIDE H.R." JUST BECAUSE THE WORD
19 "PAYROLL" IS IN IT, THAT DOESN'T TELL ME ANYTHING
20 DIFFERENT.

21 Q. DO YOU THINK YOU MIGHT HAVE TOLD YOUR LAWYER
22 SOMETHING DIFFERENT?

23 A. I DON'T KNOW.

24 Q. BUT YOU KNOW WHAT -- LET ME SHOW YOU SOMETHING, SIR,
25 AND I THINK THIS IS IN THE PACKAGE. I'VE JUST GOT

1 TO FIGURE OUT WHICH ONE IS NUMBERED IN THIS BIG...

2 BY MR. GOODWYN:

3 HAS IT GOT A DATE ON IT? I'LL TRY TO FIND IT.

4 BY MR. ALFORD:

5 YEAH, IT'S 20 OCTOBER 2015, AT 11:27 A.M. FROM
6 MR. DURHAM.

7 I'M SORRY, SIR. I'M TRYING TO FIND IT. DO YOU
8 GUYS HAVE THAT BIGGER EXHIBIT? IS THAT...

9 BY THE WITNESS:

10 HELL, WE'VE GOT EVERYTHING OVER HERE ---

11 BY MR. ALFORD:

12 OH, RIGHT THERE IN FRONT OF YOU, BIG DOG.
13 RIGHT HERE. RIGHT HERE.

14 BY THE WITNESS:

15 --- IN COLUMBIA.

16 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

17 Q. SEE IF YOU CAN FIND -- LET'S GET THE OCTOBER 20TH.

18 BY MR. GOODWYN:

19 I'VE GOT PAGE 129 IS WHAT I'VE GOT IN MY
20 DOCUMENTS.

21 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

22 Q. ONE-TWENTY-NINE.

23 A. PAGE 129?

24 Q. YES, SIR.

25 A. OKAY.

1 Q. YES, SIR.

2 BY COMMISSIONER JAMES:

3 I THINK WE'RE CLEAR CALLING IT THE BIG PACKAGE,
4 BUT THE BIG PACKAGE EVERYBODY IS REFERRING TO IF
5 THIS IS ON THIS RECORD AS THE BIG PACKAGE, IT'S
6 COUNTRYWIDE FIVE.

7 BY MR. ALFORD:

8 COUNTRYWIDE FIVE, THE BIG PACKAGE FOR THE BIG
9 DOG. ALL RIGHT.

10 BY COMMISSIONER JAMES:

11 THAT'S WHAT Y'ALL HAVE BEEN CALLING IT.

12 BY MR. ALFORD:

13 YES, MA'AM. I'M SORRY ABOUT THAT.

14 BY COMMISSIONER JAMES:

15 OFF THE RECORD.

16 (OFF THE RECORD)

17 BY COMMISSIONER JAMES:

18 ALL RIGHT. WE ARE BACK ON RECORD.

19 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

20 Q. YOU GOT AN EMAIL FROM SCOTT WHERE IT SAYS "HI, JO
21 ANN," RIGHT, AND THEN WHAT DOES THAT SAY ON THE
22 BOTTOM OF THAT PAGE?

23 A. IT SAYS "HAPPY TUESDAY." ARE YOU TALKING ABOUT THAT
24 PART?

25 Q. YES, SIR.

- 1 A. "HAPPY TUESDAY. IF YOU GET A CHANCE, CAN YOU PLEASE
2 SEND OVER ANY D/B/As THAT ARE USED SO WE HAVE ON
3 FILE. I KNOW WE HAD TO MOVE QUICKLY AT THE
4 BEGINNING, AND I'M SURE" -- EXCUSE ME -- "THERE WERE
5 A FEW OVERSIGHTS. WE WILL GET THROUGH IT TOGETHER
6 AS PARTNERS. I APPRECIATE YOUR ASSISTANCE.
7 COUNTRYWIDE IS HERE TO ASSIST AND WORK THROUGH
8 THINGS LIKE THIS THAT OCCUR FROM TIME TO TIME.
9 PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS OR
10 CONCERNS."
- 11 Q. ALL RIGHT, SIR. AND THEN SHE FORWARDED THAT TO YOU,
12 RIGHT?
- 13 A. NO, I THINK -- NO, TODD -- NO, SCOTT JUST COPIED ME
14 ON IT.
- 15 Q. BUT THEN WHAT DID YOU SAY IN RESPONSE? WHAT DOES
16 YOUR EMAIL SAY?
- 17 A. I SAID "WHAT IS IT THAT THEY DON'T GET? THERE IS NO
18 D.B.A. SCOTT OBVIOUSLY CAN'T READ TOO WELL, BECAUSE
19 I ALWAYS ANSWER HIS QUESTIONS IN THE PREVIOUS EMAIL
20 TO HIS QUESTION. IN MY EMAIL, I WROTE MEDUSTRIAL IS
21 AN INTERNAL DEPARTMENT NAME, NOT A SUBSIDIARY, NOT A
22 D.B.A., NOT A DIVISION. IT IS A MONIKER, OR IN
23 OTHER WORDS, A NICKNAME. I HAVE GOT TO FIND A
24 BETTER SOLUTION. THESE FOLKS ARE NUTS."
- 25 Q. OKAY. SO, WHEN YOU TALK ABOUT SIGNATURE -- WHEN YOU

1 TALK ABOUT YOU FELT BAMBOOZLED AND THAT THE
2 SIGNATURE BLOCK COUNTRYWIDE H.R. WAS ONE THING AND
3 THEN PAYROLL ANOTHER THING, YOU COULD HAVE JUST READ
4 IT. I MEAN, THAT'S WHAT YOU THINK THEY OUGHT TO DO.

5 BY MR. GOODWYN:

6 OBJECT TO THE FORM. I DON'T THINK THAT'S A
7 QUESTION.

8 BY MR. ALFORD:

9 THAT'S A QUESTION.

10 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

11 Q. YOU COULD HAVE JUST READ IT, COULDN'T YOU, SIR?

12 A. I DID READ IT. IF YOU CAN -- IF YOU THINK THOSE TWO
13 THINGS HAVE ANYTHING TO DO WITH EACH OTHER, YOU'RE
14 WRONG.

15 Q. WELL, ALL I'M ASKING -- ALL I'M ASKING ABOUT, SIR,
16 IS YOUR POSITION. YOU SEEM TO -- I THINK I HEARD IT
17 SAID BY SOMEONE IN THE COURTROOM TODAY "YOU CAN'T
18 HAVE IT BOTH WAYS."

19 A. THIS AIN'T THE SAME THING. YOU'RE -- YOU'RE
20 SPLITTING HAIRS. YOU'RE...

21 Q. I'M A LAWYER. THAT'S WHAT WE DO.

22 A. I KNOW. I KNOW.

23 BY MR. SEARS:

24 DON'T SAY THAT.

25 BY MR. ALFORD:

1 TOM HADN'T GOT NONE LEFT TO SPLIT.

2 BY THE WITNESS:

3 YEAH, TOM AIN'T GOT NO HAIR TO SPLIT NO MORE.

4 HE'S GOING TO HAVE LESS AFTER THIS ENDS.

5 BY COMMISSIONER JAMES:

6 Y'ALL, IT'S GETTING LATE.

7 BY THE WITNESS:

8 YEAH, IT'S LATE.

9 BY COMMISSIONER JAMES:

10 SO, WE NEED TO GET ---

11 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

12 Q. SIR, IS THERE ANY REASON WHY YOU DIDN'T ASK WHY WE
13 HAD MULTIPLE COMPANIES?

14 A. WHY?

15 Q. WHY COUNTRYWIDE HAD MULTIPLE COMPANIES.

16 A. IS THERE ANY REASON...?

17 Q. YEAH, I MEAN, IT'S NORMAL FOR A BUSINESS -- BELIEVE
18 IT OR NOT, A LOT OF TIMES COMPANIES WILL HAVE A
19 HOLDING COMPANY, ---

20 A. I KNOW.

21 Q. --- AND THEY'LL HAVE OTHER ---

22 A. I KNOW THAT.

23 Q. --- COMPANIES; IS THAT RIGHT?

24 A. I KNOW.

25 Q. I MEAN, YOU DON'T SEEM TO DO THAT.

1 A. NO.

2 Q. OKAY. BUT YOU UNDERSTAND THAT'S NOT AN UNCOMMON ---

3 A. OH, I KNOW.

4 Q. --- BUSINESS PRACTICE?

5 A. I KNOW THAT.

6 Q. IN FACT, IT'S A PRUDENT ONE, SOME PEOPLE WOULD SAY.

7 A. WELL, IT'S JUST LIKE INSURANCE.

8 Q. OKAY.

9 A. RIVERPORT, BERKLEY, A.M.R., I KNOW.

10 Q. THAT'S RIGHT.

11 A. BUT I DID NOT HAVE A REASON -- I KNOW IF I GO TO

12 PRESENT MYSELF TO A COMPANY PRESENTING UNDER THIS

13 THING, IF I CHANGE MY NOMENCLATURE TO MY BUSINESS, I

14 WOULD CERTAINLY MAKE THEM AWARE OF WHAT THE

15 DIFFERENCE IN WHAT THEY ARE GETTING. SO, IF I

16 MISSED IT, I MISSED IT. I'M SORRY.

17 Q. YOU DID.

18 A. BUT I DON'T SEE WHAT DIFFERENCE IT MAKES.

19 Q. ALL RIGHT. NOW, THE ONE EMAIL THAT I THOUGHT WAS

20 INTERESTING WAS BEFORE YOU DID THIS CONTRACT, AND I

21 THINK IT WAS PAGE 107. WELL, ACTUALLY YOU SAID

22 SOMETHING IN YOUR TESTIMONY THAT THEY WERE -- THEY

23 WERE CRAZY, LIKE THEY WOULDN'T ANSWER AND WOULDN'T

24 ANSWER, AND SOME GUY WOULD CALL YOU BACK AT THREE IN

25 THE MORNING, BUT HE CALLED YOU BACK?

1 A. YEAH, WHEN I COULDN'T TALK TO HIM TO HAVE A
2 CONVERSATION.

3 Q. OKAY.

4 A. THAT'S ERRONEOUS. THAT'S -- DON'T TRY TO PULL THAT.

5 Q. WELL, YOU SAID HE CALLED. I MEAN, ALL RIGHT. AND
6 THEN ALBERT, MR. HYNDSHAW, YOU'VE KNOWN HIM A LONG
7 TIME?

8 A. YES, I HAVE.

9 Q. YOU LIKE HIM?

10 A. I DO LIKE HIM.

11 Q. ALL RIGHT. NOW, BEFORE YOU ENTERED THIS AGREEMENT,
12 YOU SENT HIM AN EMAIL THAT SAID "WE'RE GOING TO DO
13 THIS, BUT IT'S GOING TO BE A DISASTER"?

14 A. I DID. ALBERT WAS ADAMANT, BECAUSE HE THOUGHT WE
15 WERE DOING THE RIGHT THING.

16 Q. THAT'S PRETTY MUCH ALL THERE WAS, THOUGH, WASN'T IT?
17 I MEAN, YOU WERE IN THE HOLE. YOU HAD JUST LOST
18 SOME COVERAGE. YOU HAD A SHORT WINDOW. IS THAT
19 FAIR?

20 A. NO, WE HAD OTHER OPTIONS. THE OTHER OPTIONS THOUGH,
21 THE DECISION -- THE DECISION -- WE HAD OTHER
22 OPTIONS. THE OTHER OPTIONS THOUGH WERE ALL WITH
23 GUARANTEE INSURANCE COMPANY. WE DIDN'T WANT TO BE
24 WITH GUARANTEE INSURANCE COMPANY.

25 Q. OKAY.

1 A. WE WANTED TO GO WITH SOMEONE THAT HAD A-RATED
2 PAYMENT. THEY HAD AMTRUST. THAT WAS THE END OF THE
3 DAY. THE WHOLE THING WAS TO GET WITH THEM, TO GET
4 THE A.M. GUARD, ONCE, IF NOTHING ELSE, WE WOULD GET
5 SOME EXPERIENCE WITH A.M. GUARD, DO A GOOD JOB, JUST
6 LIKE IT'S HAPPENED WITH OTHER CARRIERS IN THE PAST
7 WITH OTHER P.E.O.s, AND THEN YOU'RE ABLE TO GO
8 DIRECT A LOT OF TIMES WITH THOSE INSURANCE
9 COMPANIES.

10 Q. BUT YOU HAVEN'T BEEN ABLE TO DO THAT FOR A WHILE?

11 A. DO WHAT?

12 Q. YOU HAVEN'T BEEN ABLE TO DO THAT FOR A WHILE?

13 A. THAT'S NOT TRUE EITHER.

14 Q. WHEN -- BUT YOU'RE HERE WITH US ---

15 A. I'VE HAD OFFERS FROM THE COMPANY THAT I'M WITH NOW,
16 THEIR CARRIER, TO TAKE ME OUT OF THE P.E.O. AND GO
17 DIRECT TO THEIR COMPANY. SO, THAT'S NOT TRUE. SO,
18 THERE'S A REASON YOU GO TO THE P.E.O., TO GET THE
19 EXPOSURE TO THE -- TO THE CARRIER. A LOT OF TIMES
20 THE CARRIER DON'T WANT TO TAKE ON THAT HIGH 5000
21 CODE EXPOSURE.

22 Q. ALL RIGHT.

23 A. SO, THEY DO IT THROUGH A P.E.O.

24 Q. WELL, LET ME ASK YOU THIS: DO YOU FEEL LIKE -- ARE
25 YOU UNHAPPY WITH ALBERT ABOUT THIS ARRANGEMENT?

- 1 A. AM I UNHAPPY WITH ALBERT ABOUT THIS ARRANGEMENT?
- 2 Q. ABOUT WHAT HAPPENED WITH COUNTRYWIDE.
- 3 A. NO, I'M NOT REALLY UNHAPPY WITH HIM ABOUT
- 4 COUNTRYWIDE.
- 5 Q. ARE YOU UNHAPPY WITH HIM ABOUT THE RACHEL TURNER
- 6 MATTER?
- 7 A. I'M NOT UNHAPPY WITH HIM ABOUT -- I'M UNHAPPY WITH
- 8 HIM, BUT YOU HAVEN'T GOTTEN TO THE REASONS I'M
- 9 UNHAPPY WITH HIM.
- 10 Q. HAVE YOU THREATENED TO SUE HIM?
- 11 A. I HAVE NOT THREATENED HIM. I WOULD CALL IT A
- 12 NOTICE. HE'S GOING TO GET SUED, OKAY?
- 13 Q. ABOUT THIS STUFF?
- 14 A. NOT HIM, BUT HUB.
- 15 Q. ABOUT THIS STUFF, THIS CASE?
- 16 A. THIS WOULD PROBABLY COME INTO THAT, BUT IT DON'T
- 17 REALLY ALL APPLY ABOUT THIS CASE. THE CASE -- IT
- 18 HAS NOTHING TO DO REALLY -- MY PROBLEMS HAS NOTHING
- 19 TO DO REALLY SPECIFICALLY WITH THIS CASE, AS MUCH AS
- 20 IT HAS TO DO WITH HIM NOT HAVING THE OTHER COVERAGES
- 21 IN PLACE THAT SHOULD HAVE BEEN IN PLACE, AND THE
- 22 FACT THAT THEY REFUSED WHILE I WAS STILL PAYING
- 23 THEM, AND THEY WERE STILL MY AGENT, THEY WOULD NOT
- 24 RESPOND, AND I SENT 25 TO 100 EMAILS FROM ME AND
- 25 EVERYBODY WITH ME ASKING THEM TO RESPOND, "LET'S GET

1 TOGETHER. LET'S TALK ABOUT THIS," AND BASICALLY
2 HE'S TELLING ME HIS BOSS SHUT HIM DOWN, HE COULDN'T
3 SPEAK TO ME, AND I'M LIKE "WHAT THE HELL YOU MEAN,
4 YOU CAN'T SPEAK TO ME, BUT YOU'RE TAKING MY
5 PREMIUMS. YOU'VE GOT TO SPEAK TO ME, DUDE." HE'S
6 LIKE, "THIS HAS CHANGED SINCE HUB'S TAKEN OVER."
7 SO, THERE'S MY PROBLEM WITH ALBERT. THIS IS -- IF
8 IT WAS JUST THIS, NO, I WOULDN'T SUE ALBERT OVER
9 THIS.

10 Q. SIR, WHAT OTHER COVERAGES WERE YOU TALKING ABOUT
11 WITH ALBERT, WHAT OTHER COVERAGES?

12 BY MR. GOODWYN:

13 OBJECTION, RELEVANCY. WE ARE GETTING WAY
14 ASTRAY OF ANYTHING THAT'S RELATED.

15 BY MR. ALFORD:

16 I'M JUST CURIOUS.

17 BY MR. GOODWYN:

18 IT'S 9:10, AND WE NEED TO BE GETTING INTO NEW
19 AREAS THAT AREN'T RELATED TO ANYTHING?

20 BY MR. ALFORD:

21 WELL, HE JUST SAID "OTHER COVERAGE," AND I'M
22 JUST CURIOUS WHAT OTHER COVERAGE.

23 BY MR. GOODWYN:

24 THAT DOESN'T MEAN IT'S RELEVANT.

25 BY COMMISSIONER JAMES:

1 ALL RIGHT. YOU CAN ASK THE QUESTIONS IN
2 REGARDS TO WORKERS' COMP, BUT I DON'T -- I DON'T
3 WANT TO GET INTO A PERIPHERAL ISSUE WITH REGARDS TO
4 ---

5 BY MR. ALFORD:

6 I'LL WITHDRAW IT. I'LL WITHDRAW IT.

7 BY COMMISSIONER JAMES:

8 OKAY.

9 RE-CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. SIR, HOW DID YOU KNOW ABOUT RIVERPORT? DID ANYBODY
11 TALK TO YOU ABOUT RIVERPORT?

12 A. THE ONLY THING THAT I HAVE WITH RIVERPORT WAS WHEN
13 WE HAD MET -- WE HAD A CLAIM, AND WE HAD -- ONE OF
14 THE EARLY CLAIMS, AND ONCE WE HAD -- IT WASN'T A BIG
15 DEAL, BUT IT WAS A CLAIM, AND THEY HAD AGREED TO
16 ALLOW TOM TO BE OUR -- TO DEAL FOR SMALL CLAIMS
17 UNTIL WE HAD TO BRING IN OUTSIDE COUNSEL, OKAY? SO,
18 TOM REACHED OUT, AND WE TRIED TO DO IT THROUGH
19 COUNTRYWIDE, BUT WE COULDN'T GET ANY RESPONSES, AND
20 AT THIS POINT, WE'RE GOING -- WE'VE GOT TO HAVE A
21 RESPONSE FROM A CARRIER, BECAUSE THIS -- THEY'VE GOT
22 TO BE PUT ON NOTICE, ET CETERA, ET CETERA, YOU KNOW,
23 BECAUSE THE CLAIMANT'S GOT A LAWYER, AND HE'S
24 RAISING CANE, BUT SO ANYWAY, WE CONTACT RIVERPORT,
25 BECAUSE THAT WAS WHERE WE HAD OUR CERTIFICATE, AND

1 RIVERPORT SAYS "WE DON'T OWE YOU ANY COVERAGE." AND
2 WE'RE LIKE "YEAH, ON THIS," AND THEY'RE NOT "NO,
3 YOU'RE NOT." WE'RE LIKE "YEAH, WE HAVE IT."
4 THEY'RE LIKE "YOU'RE NOT ON THIS MASTER POLICY.
5 YOU'VE NEVER BEEN ADDED TO THIS POLICY, AND YOU
6 CAN'T BE ADDED TO THIS POLICY."

7 Q. WHO SAID THAT AT RIVERPORT?

8 A. WHO SAID THAT?

9 Q. UH-HUH.

10 A. I WAS ON THE CALL WITH ME AND TOM AND RIVERPORT. I
11 DON'T KNOW WHO THE PERSON OTHER THAN THE CLAIMS
12 ADJUSTER. I DON'T KNOW WHO SHE WAS, BUT THAT WAS
13 WHAT WE WERE TOLD, AND THAT WAS WHAT BROUGHT UP THE
14 INITIAL DISCUSSION ABOUT "WHAT HAVE Y'ALL GOT FOR
15 COVERAGE?" YOU KNOW.

16 Q. ALL RIGHT. BUT AGAIN, YOU DON'T HAVE ANY CLAIMS
17 AGAINST RIGHT NOW AS A RESULT OF ANY OF
18 COUNTRYWIDE'S ACTIVITIES, DO YOU?

19 A. NO.

20 BY MR. ALFORD:

21 ALL RIGHT, THANK YOU.

22 BY COMMISSIONER JAMES:

23 GUARANTEE?

24 BY MS. RICHARDSON:

25 YES.

1 BY COMMISSIONER JAMES:

2 COVERAGE?

3 RE-CROSS EXAMINATION BY MS. RICHARDSON:

4 Q. OKAY, MR. DURHAM, WILL YOU TAKE A LOOK AT THE BIG
5 PACKET THAT YOU'VE GOT.

6 A. YES, MA'AM.

7 Q. THANK YOU.

8 BY MR. BEARD:

9 SHE SAID BIG PACKET. SHE SAID A BETTER WORD.

10 BY MR. ALFORD:

11 SHE'S BEEN HANGING AROUND YOU.

12 BY COMMISSIONER JAMES:

13 WE ARE ON RECORD.

14 RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

15 Q. ALL RIGHT. LET ME GRAB ONE THAT'S NUMBERED.

16 BY MR. GOODWYN:

17 OH, I'VE GOT IT.

18 BY MS. FARTHING:

19 WE'VE GOT ONE OVER HERE IF YOU NEED IT.

20 BY MR. GOODWYN:

21 I THINK THAT'S IT. MY NUMBERED ONES ARE UP
22 THERE. YOU CAN USE THAT.

23 BY MS. RICHARDSON:

24 OH, OKAY. EXCUSE ME.

25 BY MS. RICHARDSON:

1 IT HAS SOME THINGS ON TOP. IS THAT IT?

2 BY MR. GOODWYN:

3 NO, THIS IS MY APAs. I'M SORRY.

4 BY MS. RICHARDSON:

5 OH, OKAY.

6 BY MR. GOODWYN:

7 YEAH, THAT'S NOT MY BIG PACKAGE.

8 BY MS. RICHARDSON:

9 OKAY.

10 BY MR. ALFORD:

11 OH, I'M SORRY.

12 BY MS. RICHARDSON:

13 NO WORRIES.

14 RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

15 Q. IF YOU CAN TURN TO THE JANUARY 16TH, 2014, EMAIL
16 WITH SCOTT HANSON, PLEASE.

17 A. WHAT NUMBER AGAIN?

18 Q. I'LL TELL YOU IN A SECOND.

19 BY MR. GOODWYN:

20 DID YOU GET ONE THAT'S NUMBERED?

21 BY MS. RICHARDSON:

22 YES. I'VE GOT ONE THAT'S NUMBERED.

23 BY COMMISSIONER JAMES:

24 IS THAT EXHIBIT FIVE?

25 BY MS. RICHARDSON:

1 IT'S THE ONE THAT, YOU KNOW, IS ABOUT THE
2 "SPOKE TO TONY LAST EVENING" ONE. OH, I'VE GOT IT.
3 IT'S NUMBER 51, PLEASE. I MEAN, YEAH, PAGE 51.

4 **RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

5 Q. OKAY. SO, THIS EMAIL IS ON JANUARY 16TH OF 2014,
6 CORRECT?

7 A. YES, MA'AM.

8 Q. AND AT THE TIME OF THIS EMAIL, YOU HAVE WORKERS'
9 COMPENSATION INSURANCE WITH WHO?

10 A. THIS WOULD HAVE BEEN ---

11 Q. WITH -- WHO DO YOU HAVE WORKERS' COMPENSATION
12 INSURANCE WITH AT THIS TIME FOR YOUR EMPLOYEES?

13 A. THIS WOULD HAVE BEEN -- I'M TRYING -- I GET THAT --
14 FOR SOME REASON, I GET THE '14 AND '15 THING MIXED
15 UP.

16 Q. UH-HUH.

17 A. WE WENT WITH -- THAT WOULD HAVE STILL BEEN -- HOLD
18 ON A MINUTE. LET ME LOOK TO REFRESH AND TRY TO ---

19 Q. MAYBE I CAN HELP YOU ALONG.

20 A. YEAH, DO, HELP ME.

21 Q. YEAH, BECAUSE, SO, I THINK YOU'VE TESTIFIED THAT
22 ABOUT MARCH 28TH OF 2014 TO MARCH 28TH OF 2015, WAS
23 A GUARANTEE POLICY; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND SO THIS IS THREE MONTHS BEFORE THAT TIME.

1 A. YEAH.

2 Q. I'M NOT REALLY SURE, BUT MAYBE THIS IS A ---

3 A. YEAH, YEAH, THIS IS A -- I'M SORRY, YOU'RE RIGHT.
4 THIS IS THAT 90 -- 75, 90-DAY INTERLUDE BETWEEN
5 A.M.S. DALLAS NATIONAL CLOSING AND WHEN WE USED THE
6 COMPANY OUT OF DALTON, GEORGIA, CORRECT.

7 Q. OKAY. SO, YOU ARE JUST SHOPPING AROUND FOR SOME
8 WORKERS' COMPENSATION INSURANCE WHEN THE 90 DAY STOP
9 GAP ENDS; IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND SO YOUR CONVERSATIONS WITH SCOTT HANSON
12 IN JANUARY 16, 2014, ARE -- YOU'RE COMMUNICATING
13 WITH HIM ABOUT -- I MEAN, IT'S AN ENTIRELY DIFFERENT
14 TIME AND PERSPECTIVE FOR CONDUSTRIAL THAN IT IS IN
15 MARCH 28TH OF 2015; ISN'T THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND THEN I THINK THEN YOU HAVE ONE DAY LATER,
18 YOU RESPOND TO HIM BASICALLY ON FRIDAY, JANUARY 27TH
19 OF 2014. LET ME SEE IF THAT COMES RIGHT AFTER IN
20 THESE. OH, IT DOES. THANK THE LORD. OKAY, THAT'S
21 PAGE 55, AND YOU JUST -- AND YOU LET HIM KNOW. THIS
22 IS THE EMAIL YOU'VE BEEN OVER BEFORE, SO.

23 A. YES.

24 Q. AT THIS TIME, YOU JUST SAY, YOU KNOW, "RIGHT NOW,
25 WE'RE BETTER OFF WITH LARGE DEDUCTIBLE PLAN. SO,

1 THANKS A LOT, AND MAYBE WE'LL LOOK AT YOU AGAIN ONE
2 DAY SOON"?

3 A. YEAH.

4 Q. OKAY. SO, NOW, YOU ARE DONE WITH WHAT -- YOUR
5 COMMUNICATIONS WITH SCOTT AT THAT TIME, WHICH WHEN
6 HIS SIGNATURE -- HIS SIGNATURE LINE WAS FROM H.R.,
7 RIGHT, COUNTRYWIDE H.R.?

8 A. OKAY.

9 Q. AND IT WAS AT THIS TIME THAT HE EMAILED OR ALLEGEDLY
10 HIS EMAIL HAD ATTACHED THE BROCHURE FROM COUNTRYWIDE
11 H.R. P.E.O.; IS THAT CORRECT? THAT'S ---

12 A. NO, THAT'S -- THAT'S LATER. THAT'S LATER ON
13 UP IN THE FALL OF '14. YES, IT WAS THE FALL OF '14.

14 Q. OKAY. YES, YOU'RE -- YOU'RE CORRECT. SO,
15 DEFENDANT'S EXHIBIT CONDUSTRIAL NUMBER SIX, AGAIN,
16 HE IS CIRCLING BACK WITH YOU, RIGHT? AND HE'S
17 SAYING "COUNTRYWIDE H.R. IS NOW SET UP AS A P.E.O.
18 IN THE STATES YOU OPERATE IN," IS THAT RIGHT?

19 A. THAT'S RIGHT.

20 Q. AND THEN HE OFFERS YOU THE P.E.O. BROCHURE?

21 A. YES.

22 Q. AND THEN AT THIS TIME, YOU DIDN'T ARRANGE FOR ANY
23 INSURANCE WITH HIM, DID YOU?

24 A. NO, THAT'S -- THAT'S WHEN I KIND OF DINGED UP ALBERT
25 AND SAY "HEY, SCOTT SAYS THAT THEY'RE GOOD TO GO

1 NOW. WHY DON'T YOU CHECK IT OUT, AND LET'S START
2 LOOKING AND SEE WHAT THEY GOT."

3 Q. OKAY. AND YOU WERE LOOKING AT A BUNCH OF OTHER
4 PEOPLE WITH ALBERT, RIGHT?

5 A. YEAH, I WAS, YES, MA'AM.

6 Q. OKAY. AND LET'S -- COULD YOU TAKE A LOOK AT
7 DEFENDANT'S EXHIBIT CONDUSTRIAL NUMBER SIX. THAT'S
8 THIS DOCUMENT.

9 A. YEAH.

10 Q. DO YOU SEE THAT?

11 A. YES, MA'AM.

12 Q. AND THIS IS THE BROCHURE.

13 A. IT IS.

14 Q. AND I BELIEVE IN THE BROCHURE, IT DESCRIBES WHO WE
15 ARE, RIGHT?

16 A. CORRECT.

17 Q. AND CAN YOU JUST READ THE FIRST SENTENCE?

18 A. "COUNTRYWIDE H.R. IS A FULL SERVICE PROFESSIONAL
19 EMPLOYER ORGANIZATION. WE BRING YOU WIDE
20 POSSIBILITIES FOR RUNNING YOUR BUSINESS MORE
21 EFFECTIVELY, MORE EFFICIENTLY AND WITH MORE FOCUS."

22 Q. OKAY. AND HE HAD REPRESENTED THAT THEY'RE NOW A
23 LICENSED P.E.O.; IS THAT CORRECT?

24 A. YES, MA'AM.

25 Q. OKAY. UNDER COUNTRYWIDE H.R., RIGHT?

1 A. YES, MA'AM.

2 Q. OKAY. OKAY, SO, THEN WE ARE GOING TO STAY WITH THE
3 PACKET AND MOVE TO MARCH 2ND, 2015. THAT IS ---

4 BY MR. GOODWYN:

5 FIFTY-SEVEN?

6 BY MS. RICHARDSON:

7 FIFTY-SEVEN, YOU SAID?

8 BY MR. GOODWYN:

9 SIXTY-SEVEN.

10 BY MS. RICHARDSON:

11 SIXTY-SEVEN.

12 RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

13 Q. OKAY, PAGE 67. THAT'S MISSING FROM THIS PACKET.
14 ARE YOU WITH ME?

15 A. YES, MA'AM.

16 Q. PAGE 67. AND IS THAT AN EMAIL -- IT STARTS OFF ON
17 PAGE 67 AN EMAIL FROM YOU TO MR. HYNDSHAW, RIGHT?

18 A. NO, THAT'S FROM ME TO SCOTT HANSON.

19 Q. OKAY. I'M ON MONDAY, MARCH 2ND, 2015.

20 A. IS THAT THE ONE YOU'RE LOOKING AT?

21 Q. OH, YEAH, OH, "HEY, SCOTT." OH, BUT THE FIRST
22 PERSON IN THE "TO" LINE IS ACTUALLY ALBERT HYNDSHAW,
23 CORRECT?

24 A. YEAH.

25 Q. AND MR. SONGER IS IN THE "TO" LINE, SCOTT HANSON?

1 A. YEAH.

2 Q. AND GEORGE KRIS, AND THERE WAS A COPY TO TOM -- TOM
3 SEARS AND JO ANN WHITAKER?

4 A. CORRECT.

5 Q. YES. OKAY. AND I THINK YOUR TESTIMONY HAS BEEN IN
6 THIS EMAIL IS THIS IS WHERE YOU START UNBUNDLING THE
7 -- LETTING SCOTT HANSON KNOW THAT YOU WANT TO START
8 UNBUNDLING THE P.E.O. YOU DON'T WANT THE FULL
9 SERVICE P.E.O. SITUATION.

10 A. THAT'S TRUE.

11 Q. YOU WANT SOMETHING LESS THAN THAT?

12 A. ABSOLUTELY.

13 Q. AND THEN THERE'S AN EMAIL FOLLOWING ON MARCH 12TH,
14 2015, AT 12:13 P.M.; IT MUST BE JUST A FEW PAGES
15 BEFORE OR MAYBE IT'S PAGE 67. I MEAN...

16 BY MR. GOODWYN:

17 WHAT DATE AGAIN?

18 BY MS. RICHARDSON:

19 MARCH 12TH, 2015, AT 12:13 P.M.

20 RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

21 Q. THIS ONE IS FROM MR. SEARS.

22 A. PAGE 71.

23 Q. PAGE 71. AND THIS EMAIL FROM MR. SEARS, YOU'VE GOT
24 A COPY ON IT. DO YOU REMEMBER RECEIVING IT?

25 A. SURE.

1 Q. OKAY. AND AT THIS POINT, YOU GUYS ARE NEGOTIATING
2 THE TERMS OF THE CONTRACT?

3 A. YES, MA'AM.

4 Q. OKAY. AND IN THE TERMS OF THE CONTRACT, MR. SEARS
5 IS SAYING THAT FIRST YOU CAN'T ASSIGN YOUR CONTRACT
6 TO C.S.S.G., CORRECT?

7 A. CORRECT.

8 Q. MR. SEARS IS USING THE ACRONYM C.S.S.G. IN THIS
9 EMAIL; ISN'T THAT CORRECT?

10 A. HE IS.

11 Q. AND HE IS TELLING SCOTT HANSON THAT WE CAN'T -- WE
12 CAN'T DO THINGS LIKE P.E.O.s NORMALLY REQUIRE, ISN'T
13 THAT CORRECT? WE NEED TO UNBUNDLE THE P.E.O.?

14 A. YES, UNBUNDLE.

15 Q. YEAH. AND THEN IN THE THIRD -- OR THE NEXT
16 PARAGRAPH DOWN WHERE IT SAYS "SECONDLY, PARAGRAPH
17 THREE INDICATES THAT WE ASSIGN ALL OF OUR EMPLOYEES
18 TO C.S.S.G. AND THAT C.S.S.G. IS THE SOLE EMPLOYER."
19 THAT'S CORRECT?

20 A. YES.

21 Q. AND THEN IT SAYS -- HE SAYS, "AGAIN, THIS IS NOT
22 SOMETHING THAT WE CAN DO OR WILL DO."

23 A. CORRECT.

24 Q. OKAY. IT APPEARS THEREFORE IN THIS EMAIL AT LEAST,
25 TOM SEARS UNDERSTANDS THAT THERE'S A COMPANY WITH

- 1 THE ACRONYM C.S.S.G., CORRECT?
- 2 A. I AGREE.
- 3 Q. YOU'RE NEGOTIATING THE TERMS OF YOUR CONTRACT WITH
- 4 C.S.S.G. ON MARCH 12TH. THE CONTRACT IS ULTIMATELY
- 5 EXECUTED ABOUT 16 DAYS LATER ON MARCH 28TH; IS THAT
- 6 CORRECT?
- 7 A. I THINK IT'S MARCH THE 11TH. ACTUALLY, THAT'S
- 8 FUNNY. THEY OBVIOUSLY DIDN'T CHANGE THE DATE OF
- 9 THAT CONTRACT WHEN THEY ACTUALLY -- WHEN YOU SEE
- 10 THIS EMAIL IS ON MARCH THE 12TH, BUT THE DATE OF THE
- 11 CONTRACT IS MARCH THE 11TH, AND THIS IS ADDRESSING
- 12 THINGS THAT ARE IN THAT CONTRACT.
- 13 Q. CORRECT. SO, IF YOU LOOK AT THE SIGNATURE PAGE ---
- 14 A. YEAH.
- 15 Q. --- ON DEFENDANT'S EXHIBIT, I BELIEVE - JUST TRUST
- 16 ME ON THIS.
- 17 A. YEAH.
- 18 Q. THE TERMS OF THE CONTRACT, THE DATE OF THE EXECUTION
- 19 IS ACTUALLY THE DATE OF ---
- 20 A. SURE.
- 21 Q. --- THE EFFECTIVE CONTRACT.
- 22 A. I THINK YOU'RE CORRECT.
- 23 Q. SO, WHAT'S THE DATE ON THE SIGNATURE PAGE?
- 24 A. MARCH THE 26TH.
- 25 Q. MARCH 26TH?

1 A. YES, MA'AM.

2 Q. AND THEN THE PROCEDURAL AMENDMENT IS RIGHT HERE TO
3 YOUR LEFT, AND THE DATE ON THAT IS?

4 A. MARCH THE 24TH. THAT'S WHEN IT WAS ADOPTED -- THAT
5 WAS WHEN IT WAS WRITTEN, AND IT WAS SIGNED ON THE
6 26TH.

7 Q. YES, OKAY. AND OF COURSE, IT IS VERY CLEAR AT THE
8 TOP OF DEFENDANT'S EXHIBIT CONDUSTRIAL NUMBER TWO
9 THAT THE HEADER SAYS "COUNTRYWIDE STAFFING SOLUTIONS
10 GROUP, C.S.S.G.," CORRECT?

11 A. (NO VERBAL RESPONSE)

12 Q. THE HEADER SAYS "COUNTRYWIDE STAFFING SOLUTIONS
13 GROUP"?

14 A. YES, YES.

15 Q. WHICH ABBREVIATED WOULD BE C.S.S.G.; IS THAT
16 CORRECT?

17 A. I WOULD ASSUME SO.

18 Q. OKAY. AND THE D/B/A, THAT INDICATES THAT IF YOU
19 READ INTO THE NEXT LINE, IT SAYS COUNTRYWIDE PAYROLL
20 AND H.R. SOLUTIONS, INC. D/B/A COUNTRYWIDE STAFFING
21 SOLUTIONS GROUP, CORRECT?

22 A. OKAY.

23 Q. AND DO YOU UNDERSTAND THAT D/B/A MEANS THAT ---

24 A. DOING BUSINESS AS.

25 Q. --- COUNTRYWIDE STAFFING SOLUTIONS GROUP IS ITS OWN

1 ENTITY?

2 A. WOULD YOU ASK ME AGAIN? WHO I ---

3 Q. DO YOU UNDERSTAND ---

4 A. DO I RECOGNIZE IT'S ITS OWN ENTITY?

5 Q. YEAH.

6 A. AS ME THAT AGAIN.

7 Q. THAT COUNTRYWIDE STAFFING SOLUTIONS GROUP IS ITS OWN
8 ENTITY?

9 A. YOU KNOW, IT'S A -- IT'S - A D/B/A BASICALLY IS A
10 DOWN -- IT'S A PIECE OF PARTIAL -- YOU'RE DOING
11 BUSINESS, COUNTRYWIDE PAYROLL H.R. WAS DOING
12 BUSINESS AS COUNTRYWIDE STAFFING SOLUTIONS GROUP.

13 Q. YES. SO, IT'S ITS OWN ENTITY? COUNTRYWIDE STAFFING
14 SOLUTIONS GROUP IS AN ENTITY ONTO ITSELF?

15 A. WELL, IT'S NOT SHOWN AS AN L.L.C. OR AN INC., SO I
16 DON'T KNOW IF THEY'RE DOING THAT AS A NICKNAME, AS A
17 MONIKER, AS A DEPARTMENT OR WHAT. IF THEY HAD PUT
18 THAT AS AN L.L.C. OR AN INCORPORATION, SOMETHING
19 THAT HAD A LEGAL STANDING OTHER THAN JUST GROUP,
20 THAT MIGHT HAVE MEANT SOMETHING TO ME, BUT IT
21 DOESN'T MEAN ANYTHING TO ME WITH NOT HAVING A LEGAL
22 ENTITY STANDING ON THE END OF IT.

23 Q. OKAY. WOULD YOU -- SO, IS IT YOUR TESTIMONY THAT A
24 D/B/A COULD BE A MONIKER OR A NICKNAME?

25 A. YES, IT CAN BE.

1 Q. OKAY. WOULD YOU TURN TO AN EMAIL FROM YOURSELF AND
2 MS. WHITAKER AND MR. HYNDSHAW DATED OCTOBER 20TH,
3 2015. I'M LOOKING FOR IT. I'M SORRY THAT I
4 DON'T... OKAY, IT'S ON PAGE 129.

5 A. YES, MA'AM.

6 Q. OKAY. AND ---

7 BY COMMISSIONER JAMES:

8 PAGE 129 OF?

9 BY MS. RICHARDSON:

10 OF THE PACKET.

11 BY MR. ALFORD:

12 OF THE LARGE PACKET.

13 BY COMMISSIONER JAMES:

14 JUST FOR THE RECORD, SO WE KNOW, COUNTRYWIDE
15 TRIAL EXHIBIT FIVE.

16 BY MS. RICHARDSON:

17 OKAY, THANK YOU.

18 RE-CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

19 Q. AND IN THIS EMAIL, YOU ARE GETTING REALLY ANNOYED.
20 YOU ASK JO ANN TO PLEASE SEND OVER OR SCOTT HANSON
21 SAYS "PLEASE SEND OVER ANY D/B/As THAT ARE USED SO
22 WE HAVE THEM ON FILE. I KNOW WE HAD TO MOVE QUICKLY
23 AT THE BEGINNING, AND I'M SURE THERE ARE A FEW
24 OVERSIGHTS. WE WILL GET THROUGH IT AS PARTNERS,"
25 MEANING THAT HE IS REQUESTING FROM YOU ANY D/B/As,

1 PLACES THAT YOU DO BUSINESS SEPARATELY FROM
2 CONDUSTRIAL, CORRECT?

3 A. THAT'S WHAT HE'S ASKING.

4 Q. YEAH.

5 A. BUT A D/B/A, AND I CAN GIVE YOU A THOUSAND INSTANCES
6 IF YOU WANT TO HAND ME A PHONE BOOK, BUT I CAN -- A
7 D/B/A CAN HAVE A DEPARTMENT THAT HAS A LEGAL
8 STANDING. THEY'RE SERVICE COMPANIES, BUT THEY HAVE
9 THEIR OWN COMPANY. THEY'LL HAVE THEIR MAIN COMPANY,
10 AND THEN THEY'LL HAVE LIKE JOHNSON SERVICE DOING
11 BUSINESS AS SO-AND-SO MECHANICAL. YOU KNOW WHAT I
12 MEAN? L.L.C. SO, THEY COULD BE A LEGAL STANDING,
13 BUT IT ALSO COULD JUST BE A DEPARTMENT. IN MY CASE,
14 IT HAS NO LEGAL STANDING. SO, SINCE IT HAS NO LEGAL
15 STANDING, I'M NOT CONSIDERED A D/B/A.

16 Q. OKAY. BUT IN THE EMAIL JUST ABOVE THAT WHEN YOU
17 WERE RESPOND TO JO ANN ---

18 A. RIGHT.

19 Q. --- AND MR. -- MS. WHITAKER AND MR. HYNDSHAW ABOUT
20 SCOTT'S REQUEST, YOU STATE IN THE SECOND -- THIRD
21 SENTENCE, YOU SAID "IN MY EMAIL, I WROTE MEDUSTRIAL
22 IS AN INTERNAL DEPARTMENT NAME, NOT A SUBSIDIARY ---

23 A. IT'S NOT.

24 Q. --- NOT A D/B/A, NOT A DIVISION," AND THEN YOU GO ON
25 AND SAY "IT IS A MONIKER OR IN OTHER WORDS, A

1 NICKNAME." IS THAT NOT CORRECT?

2 A. THAT -- THAT'S WHAT IT SAYS.

3 Q. AND IN THAT EMAIL, THEREFORE, YOU DISTINGUISH A
4 MONIKER FROM A D/B/A?

5 A. IT IS A MONIKER.

6 Q. YES OR NO?

7 A. A D/B/A ---

8 Q. DID YOU DISTINGUISH THE MONIKER FROM A D/B/A?

9 A. I DID, BUT YOU'RE TWISTING WHAT I SAID.

10 Q. OKAY. EXPLAIN.

11 A. THERE'S A DUAL MEANING THERE DEPENDING ON THE
12 STRUCTURE OF THE BUSINESS, OKAY? AND YOU CAN'T SAY
13 THAT ONE IS THE OTHER. IF IT'S A SEPARATE ENTITY, A
14 SEPARATE GROUP AS HE IS SAYING HERE THAT C.S.S.G.
15 IS, BUT I DIDN'T RECOGNIZE IT AS THAT, OKAY?
16 REGARDLESS IF I SHOULD HAVE OR NOT, BUT IN MY CASE,
17 THAT IS NOT A -- HE IS TRYING TO REFER TO THAT AS A
18 D/B/A AS WHEN I DO BUSINESS AS IS INSURED UNDER THAT
19 NAME. IT HAS ITS OWN FEDERAL I.D. STANDING. IT HAS
20 IT'S OWN RISK I.D., EVERYTHING, AND MINE HAS NONE OF
21 THAT.

22 Q. SO, A ---

23 A. IT'S NOT QUALIFIED AS A D/B/A.

24 Q. RIGHT. A MONIKER DOES NOT QUALIFY AS A D/B/A.

25 A. IT IS -- WHAT YOU CALL IT, IF C.S.S.G. HAS ITS OWN

1 STANDING, ITS OWN FEDERAL I.D. NUMBER, IT'S OWN FUDA
2 NUMBERS, HAS ITS OWN RISK I.D., HAS ALL THAT STUFF,
3 THEN IT PROBABLY IS A LEGITIMATE D/B/A, BUT HE
4 SHOULD HAVE AS MOST EVERY OTHER COMPANY I'VE EVER
5 DEALT WITH HAD SOME SORT OF CORPORATE NOMENCLATURE
6 ON THE END OF IT THAT WOULD HAVE QUALIFIED AS THAT
7 AS EITHER A P.A. OR A L.L.C. OR AN I.N.C. OR A
8 CORPORATION -- OR DOT.CORP. I MEAN...

9 Q. D/B/A IS A RED ALERT THOUGH OR A RED FLAG THAT YOU
10 COULD HAVE A SEPARATE LEGAL ENTITY ON YOUR HANDS;
11 ISN'T THAT CORRECT?

12 A. IT COULD BE EXCEPT THE FACT THAT HE DONE BEEN TOLD
13 THIS 25 TIMES IN A ROW. SO, I DON'T KNOW -- THAT'S
14 WHAT'S IRRITATING ME ABOUT THE QUESTION, 'CAUSE I
15 KNOW FOR A FACT HE KNEW THERE WAS NO D/B/A, AND THIS
16 IS AN EMAIL SENT IN ORDER TO DEFLECT AND BRING UP
17 QUESTION, BECAUSE HE KNEW THE ANSWER.

18 Q. ARE YOU AWARE THAT COUNTRYWIDE STAFFING SOLUTIONS
19 GROUP HAS ITS OWN WEBSITE?

20 A. I'M NOT AWARE.

21 Q. OKAY. CLEARLY, MR. SEARS WAS REFERRING TO THE
22 ENTITY WHICH IS NAMED IN THIS CONTRACT AS C.C.S.G.
23 [SIC]; IS THAT RIGHT?

24 A. I AGREE, YEAH.

25 Q. YEAH. NOT COUNTRYWIDE H.R.; ISN'T THAT CORRECT?

1 A. HE DID NOT.

2 Q. SO, IT DOESN'T SEEM LIKE ANYONE WAS HIDING ANY NAME
3 FROM YOU WHEN THEY WERE ENTERING INTO THE CONTRACT,
4 WERE THEY?

5 A. I DON'T AGREE WITH THAT. YOU CAN ASK ME THAT
6 QUESTION UNTIL THE SUN COMES UP, I WILL NOT AGREE
7 WITH THAT, OKAY?

8 Q. I BELIEVE ---

9 A. I'M JUST LETTING YOU KNOW.

10 Q. CAN I -- DID YOU NOT TESTIFY THAT ONCE YOU SIGN A
11 CONTRACT, YOU LOCK YOURSELF INTO IT NO MATTER WHAT
12 YOU DO?

13 A. YES.

14 Q. OKAY.

15 BY MS. RICHARDSON:

16 THAT'S IT.

17 BY COMMISSIONER JAMES:

18 MS. FARTHING?

19 BY MS. FARTHING:

20 NOTHING FURTHER.

21 BY COMMISSIONER JAMES:

22 MS. GLOVER?

23 BY MS. GLOVER:

24 NOTHING.

25 BY MR. GOODWYN:

1 ONE POINT, ONE VERY QUICK POINT.

2 RE-DIRECT EXAMINATION BY MR. GOODWYN:

3 Q. ONE LAST TIME, TAKE A LOOK AT EXHIBIT THREE,
4 CONDUSTRIAL'S TRIAL EXHIBIT THREE. IT'S THE
5 AMENDMENT TO THE SERVICE AGREEMENT WITH COUNTRYWIDE.

6 A. OKAY.

7 Q. I GUESS YOU CAN LOOK AT MINE.

8 A. I'M SORRY.

9 Q. YOU SHOULD -- YOU HAVE IT UP HERE. ALL RIGHT. CAN
10 YOU LOOK AT THE TOP WHERE IT SAYS SCOTT HANSON AND
11 THEODORE G. BRYANT?

12 A. YES.

13 Q. WHAT DOES IT SAY UNDER THAT?

14 A. "COUNTRYWIDE H.R."

15 Q. ALL RIGHT. AND THE FIRST LINE, HOW IS THAT ENTITY
16 REFERRED TO? IT SAYS COUNTRYWIDE?

17 A. "COUNTRYWIDE PAYROLL AND H.R. SOLUTIONS, INC."

18 Q. AND IN THE NUMBER ONE HERE, HOW DOES COUNTRYWIDE
19 REFER TO?

20 BY MR. ALFORD:

21 I'M SORRY, NUMBER ONE, WHICH?

22 BY MR. GOODWYN:

23 JUST PARAGRAPH NUMBER ONE.

24 BY MR. ALFORD:

25 IN WHICH DOCUMENT -- WHICH DOCUMENT?

1 BY MR. GOODWYN:

2 THE SAME DOCUMENT.

3 BY MR. ALFORD:

4 THE ADDENDUM?

5 BY MR. GOODWYN:

6 YEAH, RIGHT, I'M JUST GOING THROUGH THE
7 ADDENDUM.

8 BY MR. ALFORD:

9 ALL RIGHT.

10 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. HOW IS COUNTRYWIDE REFERRED TO?

12 A. "COUNTRYWIDE."

13 Q. AND LATER IN THAT SAME SENTENCE, IT SAYS "C.W."?

14 A. "C.W."

15 Q. ALL RIGHT. AND THEN ON THE VERY BACK PAGE, ON THE
16 SIGNATURE PAGE, HOW IS IT REFERRED TO?

17 A. IT SAYS "COUNTRYWIDE PAYROLL AND H.R. SOLUTIONS,
18 INC. D/B/A COUNTRYWIDE STAFFING SOLUTIONS GROUP,
19 C.S.S.G."

20 Q. ALL RIGHT. SO, THAT'S FIVE DIFFERENT WAYS THAT SAME
21 ENTITY IS REFERRED TO IN THIS ONE DOCUMENT?

22 A. YEAH.

23 Q. OKAY.

24 BY MR. GOODWYN:

25 THAT'S ALL I HAVE.

1 BY COMMISSIONER JAMES:

2 MR. SAMUELS?

3 BY MR. SAMUELS:

4 NOTHING FURTHER. I HAVE A -- I WANT TO DISCUSS
5 THE UPCOMING WITNESSES, BUT AS FAR AS FURTHER
6 EXAMINATION, NO.

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. I DON'T BELIEVE -- SIR?

9 BY MR. ALFORD:

10 I JUST WANT TO LOOK AT ONE THING.

11 BY MR. GOODWYN:

12 I THINK HE'S GOT IT, BUT THAT'S MY COPY.

13 BY MR. ALFORD:

14 I DON'T HAVE ANYTHING ELSE.

15 BY COMMISSIONER JAMES:

16 NOTHING FURTHER FROM THIS WITNESS?

17 BY MR. ALFORD:

18 NO, MA'AM.

19 BY COMMISSIONER JAMES:

20 ALL RIGHT, SIR.

21 BY THE WITNESS:

22 THANK YOU.

23 (THIS HEARING WAS ADJOURNED AT THE HOUR OF 9:32 P.M., TO
24 BE RESUMED ON A SUBSEQUENT DATE.)
25

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1502533

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 457 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF RACHEL TURNER TAKEN ON THE 3RD DAY OF NOVEMBER, 2017.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS 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 20TH DAY OF DECEMBER, 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 4TH DAY OF
NOVEMBER, 2017, COMMENCING AT THE HOUR OF 10:47 A.M.,
IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE
MELODY L. JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

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ATTORNEY FOR THE SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND.

ALSO ATTENDING: MR. THOMAS M. SEARS, JR., ESQUIRE

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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 NOVEMBER THE 4TH, 2017. WE ARE BACK
8 ON THE RECORD WITH REGARDS TO THE MATTER OF RACHEL
9 TURNER VERSUS CONDUSTRIAL, INCORPORATED, ET AL.
10 THIS IS WCC FILE NUMBER 1514359.

11 PRIOR TO GOING ON THE RECORD THE PARTIES HAVE
12 STIPULATED TO SUBMISSIONS OF AN ADDITIONAL EXHIBIT.
13 THAT HAS BEEN MARKED AS C.S.S.G., OR SOMETIMES AS
14 WE'VE REFERRED TO COUNTRYWIDE, BUT THE MARKING IS
15 C.S.S.G. SIX. I BELIEVE WE'RE READY FOR TESTIMONY.

16 ARE THERE ANY WITNESSES ON BEHALF OF
17 COUNTRYWIDE? MR. ALFORD, ARE THERE ANY WITNESSES ON
18 BEHALF OF COUNTRYWIDE?

19 **BY MR. ALFORD:**

20 NO, MA'AM. NO, MA'AM.

21 **BY THE COMMISSIONER:**

22 WITNESSES ON BEHALF OF GUARANTEE?

23 **BY MS. RICHARDSON:**

24 YES. GUARANTEE WOULD LIKE TO CALL BECKY
25 BARNETTE.

1 **BY THE COMMISSIONER:**

2 CAN YOU RAISE YOUR RIGHT HAND FOR ME, PLEASE,
3 MA'AM?

4 **BY THE WITNESS:**

5 YES.

6 * * * * * * * * * * * * * * *

7 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
8 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
9 MATTER HEREIN:

10 **AVERY REBECCA BARNETTE,**

11 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
12 FOLLOWS:

13 **BY THE COMMISSIONER:**

14 YOUR WITNESS, MA'AM.

15 **BY MS. RICHARDSON:**

16 THANK YOU.

17 **DIRECT EXAMINATION BY MS. RICHARDSON:**

18 Q. GOOD MORNING, MS. BARNETTE.

19 A. GOOD MORNING.

20 Q. WOULD YOU JUST PLEASE SPELL YOUR NAME IN FULL FOR
21 THE COURT REPORTER?

22 A. MY NAME IS AVERY REBECCA BARNETTE. BARNETTE IS
23 SPELLED B-A-R-N-E-T-T-E. AVERY, A-V-E-R-Y.

24 Q. THANK YOU, MS. BARNETTE. WHEN AND WHERE WERE YOU
25 BORN, MS. BARNETTE?

1 A. I WAS BORN IN COVINGTON, OHIO, IN 1963.

2 Q. AND HOW LONG ---

3 A. I'M SORRY; COVINGTON, KENTUCKY. SORRY. I LIVED IN
4 OHIO, BUT I WAS BORN ACROSS THE BRIDGE. I KNOW
5 WHERE I WAS BORN REALLY.

6 Q. SO YOU STARTED IN THE SOUTH?

7 A. I DID.

8 Q. AND THEN YOU WENT TO THE MIDWEST?

9 A. YES, YES. BUT YOU JUST CROSS THE BRIDGE THERE TO DO
10 THAT.

11 Q. AND FOR HOW LONG DID YOU ATTEND SCHOOL?

12 A. I GRADUATED FROM HIGH SCHOOL, AND I'VE DONE SOME
13 COLLEGE WORK, BUT I DID NOT COMPLETE MY COLLEGE
14 DEGREE.

15 Q. AND WHERE DID YOU DO THAT WORK?

16 A. I WENT TO UNIVERSITY OF CINCINNATI, AND THEN I DID
17 SOME ONLINE STUDYING WITH UNIVERSITY OF PHOENIX.

18 Q. AND AFTER YOU WERE AT THE SCHOOL UNIVERSITY OF
19 PHOENIX, WHAT DID YOU DO AFTER THAT TIME?

20 A. WELL, THAT WAS ACTUALLY SCATTERED THROUGHOUT MY
21 ADULT LIFE. SO, I WAS AT THE UNIVERSITY OF
22 CINCINNATI. I MOVED TO ATLANTA, GEORGIA, TO TAKE
23 SOME WORK, AND I WENT INTO THE WORKING INDUSTRY, AND
24 THEN I JUST TOOK COLLEGE COURSES WHENEVER I COULD
25 FIND TIME.

1 Q. AND WHAT KIND OF WORK DID YOU DO AFTER ---

2 A. I WENT TO WORK FOR THE HOME INSURANCE COMPANY IN
3 ATLANTA IN ABOUT 1985.

4 Q. AND WHAT DOES THE HOME -- WHAT KIND OF INSURANCE DID
5 THE HOME INSURANCE COMPANY PROVIDE?

6 A. ALL PROPERTY AND CASUALTY LINES OF INSURANCE.

7 Q. AND THAT WAS IN 1985; IS THAT CORRECT?

8 A. YES.

9 Q. AND FOR HOW LONG DID YOU WORK THERE?

10 A. ABOUT A YEAR AND A HALF, AND THEN I WENT TO ANOTHER
11 INSURANCE CARRIER, AMERICAN INTERNATIONAL GROUP.

12 Q. AND WHAT KIND OF INSURANCE GROUP IS THAT?

13 A. SAME THING, ALL PROPERTY AND CASUALTY.

14 Q. OKAY. AND HOW LONG DID YOU WORK THERE?

15 A. ABOUT SIX OR SEVEN YEARS.

16 Q. AND WHAT WAS YOUR POSITION AT THAT TIME?

17 A. I STARTED IN AN UNDERWRITING ASSISTANT POSITION, AND
18 I WORKED MY WAY UP THROUGH THE ORGANIZATION, BECAME
19 AN UNDERWRITER AND THEN ULTIMATELY A SENIOR ACCOUNT
20 EXECUTIVE.

21 Q. AND AT WHAT TIME -- APPROXIMATELY WHAT YEAR WOULD
22 THAT HAVE BEEN THAT YOU WOULD HAVE LEFT AMERICAN
23 INTERNATIONAL?

24 A. PROBABLY IN 1990, '91, '90 OR '91.

25 Q. AND WHAT WAS YOUR -- WHAT WAS THE NEXT THING YOU

1 DID?

2 A. I WENT TO WORK FOR AN INSURANCE BROKERAGE FIRM, AND
3 I WORKED ON THAT SIDE FOR MAYBE ANOTHER FIVE YEARS
4 OR SO BEFORE I RETURNED BACK TO THE INSURANCE
5 COMPANY SIDE.

6 Q. DO YOU RECALL THE NAME OF THAT FIRM?

7 A. YES. IT WAS -- AT THE TIME IT WAS CALLED CORROON
8 AND BLACK, BUT IT'S NOW MORPHED INTO MANY NAMES, AND
9 I THINK IT'S WILLIS FABER NOW.

10 Q. OKAY. AND AS A BROKER, WHAT KIND OF INSURANCE WERE
11 YOU BROKERING?

12 A. COMMERCIAL LINES. I WAS A COMMERCIAL LINES BROKER.

13 Q. AND AS A BROKER, WHAT WERE SOME OF YOUR JOB
14 RESPONSIBILITIES?

15 A. I WOULD -- I WAS AN ACCOUNT MANAGEMENT PERSON. SO,
16 WHEN I WORKED FOR CORROON AND BLACK I MANAGED WHAT
17 WE HAD IN PLACE, WHICH WAS A CAPTIVE AND RISK
18 RETENTION GROUPS, AND I WAS THE UNDERWRITER THAT HAD
19 THE UNDERWRITING AUTHORITY FOR THE CARRIER. I HAD
20 PREVIOUSLY WORKED FOR A.I.G., AND THEN I GOT -- WHEN
21 I WENT TO WORK FOR CORROON AND BLACK, I WAS GIVEN
22 UNDERWRITING AUTHORITY BY A.I.G. TO UNDERWRITE THOSE
23 GROUP PROGRAMS.

24 Q. SO, AS AN -- YOU MENTIONED THAT YOU WERE AN
25 UNDERWRITER. SO, WHAT IS -- WELL, LET'S GO ON. SO

1 YOU HAD A -- YOU WERE AT THE INSURANCE BROKERAGE
2 FIRM FOR ABOUT HOW MANY YEARS?

3 A. I WAS PROBABLY THERE TWO OR THREE YEARS. IT'S BEEN
4 A LONG TIME AGO; SO...

5 Q. UH-HUH.

6 A. AND THEN I CAME BACK TO ATLANTA. I GOT MARRIED, AND
7 THE PERSON I WAS SEEING BEFORE I LEFT ATLANTA TO
8 TAKE THAT JOB IN NASHVILLE WITH CORROON AND BLACK
9 DECIDED THAT, YOU KNOW, I GUESS HE HAD -- YOU KNOW,
10 COULDN'T STOP COMING TO VISIT ME, SO WE FINALLY GOT
11 MARRIED. SO I MOVED BACK TO ATLANTA.

12 Q. AND DID YOU TAKE ANOTHER JOB THERE?

13 A. I DID. I WAS WORKING FOR A PERIOD OF TIME FOR AON,
14 WHICH WAS ANOTHER INSURANCE BROKERAGE FIRM. AND AT
15 THAT PLACE I WAS ACCOUNT EXECUTIVE, MANAGING
16 SERVICES FOR LARGER ACCOUNTS THAT THEY HAD IN THEIR
17 OFFICE.

18 Q. AND WHAT KIND OF INSURANCE DID THEY ---

19 A. COMMERCIAL LINES AGAIN.

20 Q. ABOUT HOW LONG WERE YOU WITH THAT INSURANCE COMPANY?

21 A. BOY, THAT'S -- I'M NOT SURE I KNOW. A COUPLE YEARS
22 OR SO. AND THEN I WAS -- I WANTED TO GET BACK INTO
23 THE INSURANCE COMPANY SIDE, SO I RETURNED TO AN
24 INSURANCE COMPANY AFTER THAT.

25 Q. OKAY. AND WHO DID YOU RETURN TO?

1 A. AT THE TIME, RELIANCE INSURANCE COMPANY. THEY DON'T
2 -- THEY'RE NOT IN BUSINESS ANYMORE, BUT THAT'S WHO
3 THEY WERE.

4 Q. AND WHAT KIND OF INSURANCE DID THEY SELL?

5 A. COMMERCIAL LINES. I WAS AN UNDERWRITER, SENIOR
6 UNDERWRITER FOR MULTIPLE LINES. SO, WORK COMP,
7 G.L., AUTO, THAT KIND OF THING.

8 Q. AND HOW LONG -- WHEN -- SO, HOW LONG DID YOU WORK
9 FOR RELIANCE? YOU SAID THEY WENT OUT OF BUSINESS.

10 A. THEY DIDN'T AT THAT TIME, BUT THEY HAVE SINCE. A
11 COUPLE YEARS. BUT I WAS APPROACHED BY A.I.G. TO
12 COME BACK TO THEM TO RUN A -- WHAT THEY CALL PROFIT
13 CENTER, A PROFIT CENTER THAT WAS ESPECIALLY WORKERS'
14 COMPENSATION PROFIT CENTER. AND AT THAT TIME I CAME
15 IN, ACTED AS THE MANAGER FOR A TEAM OF PEOPLE WHOSE
16 RESPONSIBILITY IT WAS TO WRITE WORKERS' COMPENSATION
17 COVERAGE ON A GUARANTEED COST BASIS UP TO LIKE -- I
18 THINK AT THE TIME IT WAS LIKE A MILLION PREMIUM.

19 Q. AND SO, AT THAT TIME, DURING YOUR WORK WITH A.I.G.,
20 DID YOU DO ANY OTHER TYPE OF LINE BESIDES WORKERS'
21 COMPENSATION?

22 A. NO. I SPECIALIZED AT THAT POINT IN WORK COMP, AND
23 UNTIL LIKE SEVERAL YEARS LATER WORK COMP IS ALL I
24 DID. SO I WORKED FOR A.I.G. IN THAT CAPACITY. I
25 WAS ULTIMATELY PROMOTED TO DIRECTOR OF UNDERWRITING

1 FOR THAT PROFIT CENTER TO NEW YORK, AND I TOOK THAT
2 JOB. I WENT TO NEW YORK AND WORKED WITH THAT GROUP,
3 AND THEN WE GOT AN OPPORTUNITY -- A COUPLE OF US
4 WERE APPROACHED TO START AN ONLINE WORKERS'
5 COMPENSATION DIVISION FOR -- AT THAT TIME IT WAS
6 CALLED RELIANCE NATIONAL, AND IT WAS CALLED
7 CYBERCOMP, AND WE CREATED AN ONLINE UNDERWRITING
8 APPLICATION THAT WAS PROVIDED TO AGENTS AND BROKERS
9 THAT WE APPOINTED FOR THE PURPOSES OF ENTERING
10 INFORMATION AND GETTING AN AUTOMATIC QUOTE FOR SOME
11 CLASSES AND SOME BUSINESS.

12 SO THAT WAS VERY INTERESTING, AND THAT STARTED
13 A WHOLE OTHER SEGMENT OF MY CAREER, WHICH I WAS THEN
14 HIRED BY ZENITH INSURANCE COMPANY TO HELP THEM DO
15 THE SAME THING, MEADOWBROOK INSURANCE COMPANY, TO
16 HELP THEM. I WAS -- IT WAS PRETTY EXCITING TIMES.
17 AND, YOU KNOW, SO ULTIMATELY I DID SPECIALTY WORK
18 COMP IN THAT FRAMEWORK. I WAS HIRED BY Q.B.E. IN
19 NEW YORK CITY IN MY MOST -- IN MY LAST POSITION TO
20 HELP THEM WITH THEIR PROGRAM BUSINESS. THEY HAD A
21 LOT OF LINES OF COVERAGE, WORK COMP BEING ONE, SO
22 THAT'S THE MOST RECENT. BUT THEY DID DIFFERENT
23 LINES OF COVERAGE. BUT ALL OF THAT DATA RESIDED IN
24 THEIR AGENCY RELATIONSHIP SYSTEMS, AND THEY WERE
25 LOOKING FOR SOMEONE TO HELP THEM FROM A BUSINESS

1 PERSPECTIVE PUT TOGETHER A PROJECT THAT WOULD BRING
2 THAT INFORMATION IN AND HELP MANAGE THE COMPANY
3 BETTER. Q.B.E. HAD SOME ISSUES IN NORTH AMERICA.
4 THEY'RE AN AUSTRALIAN COMPANY. SO THEY HAD SOME
5 ISSUES IN NORTH AMERICA, AND THEY DECIDED TO MAKE
6 SOME CHANGES IN THEIR MANAGEMENT. I HAD ONLY BEEN
7 THERE A COUPLE YEARS, AND THEY HAD LAID OFF -- THEY
8 CAME IN AND LAID ALL OF US AT THAT LAYER OFF AND
9 REPLACED EVERYBODY WITH NEW PEOPLE. SO, THAT WAS
10 KIND OF INTERESTING, AND I HADN'T HAD THAT HAPPEN TO
11 ME IN MY LIFE. SO, I STARTED LOOKING FOR A
12 POSITION, AND THAT'S HOW I ENDED UP WITH PATRIOT
13 NATIONAL AND THEN, ULTIMATELY, GUARANTEE INSURANCE
14 COMPANY.

15 Q. WHEN YOU CAME ONTO PATRIOT NATIONAL, WHAT -- FOR
16 WHAT PURPOSE WAS THAT?

17 A. THE FIRST ROLE THAT I -- WHEN I WENT TO WORK FOR
18 PATRIOT WAS TO HELP THEM, AGAIN, WITH SOME OF THEIR
19 PROJECTS FROM A TECHNOLOGY PERSPECTIVE. THEY NEED
20 -- THEY WORKED IN SOME AUTOMATION, SOME SYSTEM
21 PROJECTS. BEING A BUSINESS PERSON, I WAS THERE TO
22 HELP THEM TO FIND THEIR BUSINESS ROLES, CREATE
23 WORKFLOW PROCESSES AND THINGS THAT WOULD SUPPORT
24 THOSE -- THOSE AUTOMATION PROJECTS.

25 Q. AND IN WHAT AREA WAS THE AUTOMATION PROJECTS?

1 A. THEY JUST DO WORKERS' COMPENSATION, SO IT WAS ALL
2 FOR THAT LINE OF COVERAGE. BUT A LOT OF THEIR
3 AUTOMATION -- BECAUSE THEY OPERATE AS MANAGING
4 GENERAL AGENT FOR MULTIPLE COMPANIES. A LOT OF
5 THEIR AUTOMATION WAS AROUND HOW TO MANAGE MULTIPLE
6 COMPANIES AND THEIR UNDERWRITING AND THEIR ROLES AND
7 THEIR PROCESSES.

8 Q. SO, IN THIS POSITION, WHAT WERE THEY LOOKING FOR YOU
9 TO DO WITH REGARD TO ANALYZING WHETHER THE
10 AUTOMATION WAS WORKING?

11 A. VALIDATE BUSINESS ROLES, WOULD THEY MAKE SENSE. A
12 LOT OF TIMES WITH BUSINESS FOLKS, WHEN THEY'RE
13 DEALING WITH THE TECHNOLOGY PROCESS, IN THEIR MIND
14 THEY THINK THEY'VE TOLD YOU EVERYTHING. BUT THEY
15 USUALLY DON'T, BECAUSE A LOT OF THE WORK PEOPLE DO,
16 IT'S IN THEIR HEAD AND THEY JUST DO IT. SO YOU NEED
17 SOMEBODY WHO CAN -- FROM A BUSINESS PERSPECTIVE WHO
18 UNDERSTANDS WHAT THEY SHOULD BE DOING SO YOU CAN
19 DRAW OUT OF THEM, OKAY, EXACTLY WHAT IS THE NEXT
20 STEP, YOU KNOW. YOU MUST DO THIS OR SOMETHING,
21 RIGHT? AND YOU HELP THEM FILL IN THOSE GAPS, AND
22 YOU DEFINE THOSE BUSINESS ROLES SO THEY CAN TAKE
23 THAT INFORMATION INTO THE I.T. GROUP AND THEN TURN
24 THAT INTO CODE AND PROCESSES IN THE SYSTEM.

25 Q. AND SO YOU CAME ONTO PATRIOT NATIONAL. ABOUT WHAT

1 YEAR WAS THAT?

2 A. OKAY. SO, LET'S SEE. THIS IS 2017. 2014.

3 Q. WE'RE GOING THROUGH THE JOURNEY OF YOUR LIFE.

4 A. IT'S BEEN FOUR YEARS. THIS IS 2017. IT WILL BE
5 FOUR YEARS IN APRIL. SO, 2013. IS THAT -- SORRY;
6 2013.

7 Q. AND ARE YOU STILL IN THE SAME POSITION ---

8 A. NO.

9 Q. --- AS WHEN YOU WERE ORIGINALLY HIRED?

10 A. AFTER A YEAR IN THE PATRIOT WORLD, YOU KNOW, THEY
11 HAD -- THEY WERE NOT AS FOCUSED ON BEING ABLE TO
12 PULL THOSE PROJECTS OFF AS SOMEONE WOULD WANT THEM
13 TO BE IF YOU'RE PART OF THAT. SO ANOTHER
14 OPPORTUNITY CAME UP WITHIN THE ORGANIZATION WITHIN
15 GUARANTEE INSURANCE COMPANY, WHICH WAS, AT THAT
16 TIME, WAS AN AFFILIATED COMPANY BECAUSE IT WAS ALL
17 PRIVATELY HELD COMPANIES. AND THAT POSITION WAS
18 VICE PRESIDENT OF UNDERWRITING AND MANAGER OF THE
19 P.E.O. UNIT. AND I LOOKED AT THAT. I TALKED TO THE
20 PRESIDENT OF THE GUARANTEE INSURANCE COMPANY AT THAT
21 TIME AND GAVE HIM SOME UNDERSTANDING OF MY
22 BACKGROUND, AND HE SAID WE'D LOVE TO HAVE YOU, AND I
23 TOOK THAT ROLE.

24 Q. SO, IS GUARANTEE INSURANCE COMPANY -- WHAT KIND OF
25 INSURANCE COMPANY IS THAT? IS THAT DIFFERENT FROM

1 PATRIOT RISK?

2 A. GUARANTEE INSURANCE COMPANY IS AN INSURANCE COMPANY.
3 IT SELLS WORKERS' COMPENSATION. THAT'S THE LINE OF
4 COVERAGE THAT IT OFFERS AT THIS TIME AND NO
5 INTENTION TO DO ANYTHING ELSE. IT'S A SPECIALITY
6 WORK COMP CARRIER, AND IT IS AN INDEPENDENT COMPANY
7 FROM THE PATRIOT FAMILY OF COMPANIES. IN THE LAST
8 COUPLE YEARS PATRIOT AND ALL THOSE COMPANIES HAVE
9 GONE PUBLIC. GUARANTEE IS STILL PRIVATELY HELD.

10 Q. WHAT'S THE ADVANTAGE OR DISADVANTAGE OR WHY IS
11 SOMEBODY MORE OF A MONOLOGUE INSURANCE-TYPE COMPANY?

12 A. WELL, IN THE CASE OF THIS PARTICULAR COMPANY, THEY
13 -- THAT'S THEIR AREA OF EXPERTISE FROM A SERVICING
14 PERSPECTIVE. SO, THEY HAVE CLAIMS FOLKS THAT
15 THEY'VE BUILT AROUND THAT. THEY HAVE LOSS CONTROL
16 SERVICES THEY'VE BUILT AROUND THAT, YOU KNOW. THE
17 M.G.A. ITSELF, THE UNDERWRITERS THEY'VE BROUGHT ON,
18 THEY'VE BUILT AROUND THAT. AND GUARANTEE, ALL OF
19 ITS WRITINGS, WITH THE EXCEPTION OF SOME OF THE
20 P.E.O. BUSINESS, THOSE WRITINGS ARE ALL GENERATED BY
21 THE PATRIOT M.G.A. OR UNDERWRITING STAFF.

22 Q. I THINK -- DID YOU REFER TO IT AS A SPECIALITY ---

23 A. IT'S A SPECIALTY COVERAGE, WORKERS' COMPENSATION IS,
24 AND IT'S NOT UNDERWRITTEN THE SAME WAY THAT YOU
25 WOULD UNDERWRITE OTHER LINES OF COVERAGE. AND A LOT

1 OF TIMES WHEN CARRIERS TRY TO DO WHAT THEY CALL
2 PACKAGE APPROACH, OR UNDERWRITING ALL LINES AT ONCE,
3 THE IDEA IS, OH, WELL, WE WANT TO MAKE AN ACCOUNT
4 PROFIT. BUT WORKERS' COMPENSATION OFTEN REPRESENTS
5 OVER 50 PERCENT OF THE EXPOSURE ON AN ACCOUNT. IT'S
6 A VERY LARGE PREMIUM PORTION OF A COMMERCIAL
7 ACCOUNT, AND IF YOU'RE NOT CAREFUL YOU COULD
8 CERTAINLY LOSE MONEY IF YOU DIDN'T PUT A SPECIALTY
9 APPROACH TO THAT UNDERWRITING FOR WORKERS'
10 COMPENSATION. SO, IT DOES REQUIRE SOMEBODY WHO HAS
11 A DEEP KNOWLEDGE OF CLASSIFICATION SYSTEM,
12 UNDERSTANDS HOW TO PROPERLY ANALYZE OPERATIONS AND
13 IF YOU'RE GETTING AN ADEQUATE RATE OR NOT FOR THE
14 EXPOSURE THAT YOU'RE INSURING AND THOSE KINDS OF
15 THINGS. SO IT'S PREFERABLE TO SPECIALIZE, AND MANY
16 CARRIERS DO THAT. ZENITH INSURANCE COMPANY IS A
17 GOOD EXAMPLE OF THAT. THAT'S ALL THEY'VE DONE, AND
18 THEY'RE VERY GOOD AT IT.

19 Q. WOULD YOU CONSIDER YOURSELF ONE OF THOSE PEOPLE WITH
20 A DEEP UNDERSTANDING OF CLASSIFICATION SYSTEMS AND
21 THE UNDERWRITING PROCESS?

22 A. YES, I WOULD.

23 Q. AND IS THAT -- WHAT IS THAT BASED ON?

24 A. ABOUT 30 YEARS' EXPERIENCE IN THE INDUSTRY, A LOT OF
25 TIME.

1 Q. OKAY. CAN YOU EXPLAIN TO ME, THEN, WHAT THE
2 UNDERWRITING PROCESS IS?

3 A. WELL, AN UNDERWRITER EVALUATES AN ACCOUNT THAT'S
4 BEEN PRESENTED TO THEM BY THEIR DISTRIBUTION, BE IT
5 A DIRECT -- A DIRECT DISTRIBUTION OR THROUGH AN
6 AGENT. MY EXPERIENCE HAS ALWAYS BEEN THROUGH
7 AGENTS. SO, AN ACCOUNT IS PRESENTED TO THE COMPANY
8 TO SAY, HEY, WOULD YOU LIKE TO PROVIDE INSURANCE FOR
9 THIS LINE OF COVERAGE. AND WE'LL JUST MAKE IT
10 SPECIFIC TO WORKERS' COMPENSATION. THEY PROVIDE US
11 INFORMATION SO WE CAN EVALUATE WHAT DOES THIS
12 BUSINESS DO, WHAT CLASSIFICATIONS WOULD APPLY, ARE
13 THOSE CLASSIFICATIONS THE APPROPRIATE
14 CLASSIFICATIONS. THAT'S THE FIRST THING YOU CHECK,
15 YOU KNOW, ARE THOSE THE KIND OF THINGS YOU -- THAT
16 SHOULD BE CLASSIFIED AS. AND IF YOU CAN WRAP YOUR
17 HEAD AROUND THAT AND SAY, OKAY, I KNOW WHAT THE
18 RIGHT CLASS CODES ARE, THEN YOU FURTHER ANALYZE --
19 BECAUSE CLASSIFICATIONS ARE AVERAGES, YOU KNOW.
20 SOMETHING WITHIN A CLASS HAS A LOT OF DIFFERENT
21 THINGS GOING ON IN IT. SO YOU ANALYZE MY PARTICULAR
22 RISK WITH MY PARTICULAR EXPOSURE. AM I GETTING AN
23 ADEQUATE RATE COMPARED TO WHAT EVERYTHING ELSE IN
24 THAT CLASS CODE IS DOING?

25 AND THERE'S SOME EXAMPLES THAT I COULD THROW

1 OUT THERE. BUT IN THE STATE OF CALIFORNIA THEY HAD
2 A COMBINED CODE FOR DOCTORS AND DENTISTS, AND IF YOU
3 BREAK THAT OUT -- OTHER BUREAUS BREAK IT OUT. YOU
4 CAN SEE THERE'S A MAJOR DIFFERENCE IN RATE. SO IF
5 YOU COMBINE THEM ALL TOGETHER, THEN YOU'RE GETTING
6 AN INADEQUATE RATE FOR THE PART THAT WOULD HAVE HAD
7 A HIGHER RATE AND AN ADEQUATE RATE FOR -- MORE THAN
8 ADEQUATE RATE FOR THE PART THAT WAS GETTING MORE
9 RATE THAN IT NEEDED. SO, YOU REALLY -- YOU HAVE TO
10 ANALYZE WHAT'S HAPPENING WITHIN THAT CLASSIFICATION
11 TO DECIDE IF YOUR PARTICULAR RISK, EVEN IF THAT IS
12 THE RIGHT CLASS CODE, IS GETTING ENOUGH RATE UNDER
13 THAT CLASSIFICATION SYSTEM.

14 Q. SO WOULD THE WAY CALIFORNIA HANDLES IT BE THE SAME
15 WAY THAT ANOTHER STATE HANDLES IT?

16 A. NO. THEY HAVE DIFFERENT CLASSIFICATION SYSTEMS.
17 ALL THE STATES ARE REGULATED BY ONE BUREAU, BUT SOME
18 OF THEM HAVE DIFFERENT BUREAUS. SO THE STATE OF
19 SOUTH CAROLINA IS MANAGED BY THE NATIONAL
20 COMPENSATION BUREAU, THE N.C.C.I. THE STATE OF
21 CALIFORNIA HAS ITS OWN INDEPENDENT BUREAU. THE
22 STATE OF NEW YORK HAS ITS OWN INDEPENDENT BUREAU.
23 THERE ARE SEVERAL INDEPENDENT BUREAU STATES.

24 Q. ABOUT HOW MANY STATES ARE INDEPENDENT BUREAU VERSUS
25 ---