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

RECORD ON APPEAL

Stephen B. Samuels, Esq.
Samuels Reynolds Law Firm, LLC
1320 Richland St.
Columbia, SC 29201

ATTORNEY FOR APPELLANT

James P. Newman, Jr., Esq.
Howser, Newman & Besley, LLC
PO Box 12009
Columbia, SC 29211

ATTORNEY FOR COUNTRYWIDE

VOLUME IV

Beth B. Richardson
1310 Gadsden Street
PO Box 11449
Columbia, SC 29211

Grady L. Beard
Robinson Gray & Lafitte, LLC
PO Box 11449
Columbia, SC 29201

Jasmine D. Smith
Robinson Gray & Lafitte, LLC
PO Box 11449
Columbia, SC 29211

**ATTORNEYS FOR
GUARANTEE INSURANCE CO.**

Erin F. Farthing, Esq.
State Accident Fund
PO Box 1166
Lexington, SC 29071

**ATTORNEY FOR SC STATE ACCIDENT
FUND AND SC DEPARTMENT OF
CORRECTIONS**

Gregory M. Alford, Esq.
Alford Law Firm, LLC
PO Drawer 8008
Hilton Head Island, SC 29938

ATTORNEY FOR COUNTRYWIDE

Lisa C. Glover, Esq.
SC Uninsured Employers' Fund
PO Box 1815
Lexington, SC 29071

**ATTORNEY FOR SC
UNINSURED EMPLOYERS' FUND**

George D. Gallagher, Esq.
1122 Lady Street Suite 1000
PO Box 11669
Columbia, SC 29201
ATTORNEY FOR CONDUSTRIAL.

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1 OF CORRECTIONS?

2 A. RIGHT. WELL, THIS -- I MEAN, THIS IS S.C.D.C.'S
3 CONTRACT, NOT OURS, BUT IT SEEMED TO BE -- THE
4 MEANING OF PARAGRAPH "B" SEEMED TO BE THAT S.C.D.C.
5 DIDN'T WANT AGENCY PERSONNEL TO TALK ABOUT THEIR
6 MONEY WITH CONTRACTOR'S EMPLOYEES KIND OF LIKE
7 PARAGRAPH "A," THE POINT SEEMED TO BE THAT WE WANT
8 TO MAKE IT CLEAR THAT THESE AREN'T OUR -- THAT THESE
9 AREN'T S.C.D.C.'S EMPLOYEES.

10 Q. OKAY. AND AGAIN, THIS REFERENCES TO THEM AS
11 CONTRACTOR'S EMPLOYEES, THE EXACT ---

12 A. RIGHT.

13 Q. --- SAME WAY THAT IT REFERENCES THEM IN PARAGRAPH
14 SIX WHEN IT TALKS ABOUT WORKERS' COMP INSURANCE?

15 A. WELL, I UNDERSTAND YOU'RE TELLING ME THAT'S YOUR
16 INTERPRETATION. I DON'T -- I JUST -- I THINK THIS
17 -- I THINK THIS PARAGRAPH -- I MEAN, THIS CONTRACT
18 HAS TO BE CONSTRUED IN CONJUNCTION WITH THE COURSE
19 OF DEALINGS ESTABLISHED AND THEY PROVIDED
20 INDEPENDENT CONTRACTORS. THE INDEPENDENT
21 CONTRACTORS AREN'T EMPLOYEES. THEY DON'T GET
22 WORKERS' COMP INSURANCE UNDER EVERYONE'S
23 UNDERSTANDING OF THIS CONTRACT.

24 Q. OKAY. BUT YOU KEEP USING THIS TERM "COURSE OF
25 DEALINGS AND EVERYONE'S UNDERSTANDING," ---

1 A. YES.

2 Q. --- AND SO FAR I THINK IN RESPONSE TO THE OBJECTIONS
3 THAT I'VE RAISED THROUGHOUT, ---

4 A. RIGHT.

5 Q. --- YOU'VE IDENTIFIED TWO PEOPLE THAT YOU DISCUSSED
6 THE FACT THAT THE NURSES WERE INDEPENDENT
7 CONTRACTORS, THE JAN WRECSICS AND A DORIS JACQUES?

8 A. RIGHT.

9 Q. DO YOU KNOW WHAT THEIR POSITIONS WERE AT THE
10 DEPARTMENT OF CORRECTIONS?

11 A. LIKE I SAID, I WANT TO SAY -- I DON'T KNOW IF THEY
12 WERE NURSE MANAGERS. THEY WERE NOT OVER THE -- THEY
13 WERE NOT OVER THE -- THEY WERE -- THEY WERE A HIGHER
14 LEVEL THAN BEING JUST OVER AN INDIVIDUAL PRISON,
15 OKAY.

16 Q. OKAY. ARE YOU AWARE IF THEY WERE ANY -- IN ANY
17 POSITION TO BIND THE DEPARTMENT OF CORRECTIONS IN
18 ANY WAY, TO ANY AGREEMENT WITH MEDUSTRIAL?

19 A. I'M NOT SURE OF THE LIMITS OF THEIR AUTHORITY.

20 Q. OKAY. DID YOU EVER TALK TO ANYBODY IN THE LEGAL
21 DEPARTMENT ABOUT THIS ISSUE, ABOUT THE INDEPENDENT
22 CONTRACTOR VERSUS EMPLOYEE AND THIS WORKERS'
23 COMPENSATION COVERAGE ISSUE?

24 A. I DON'T BELIEVE THAT I DID.

25 Q. OKAY. DID YOU EVER TALK TO ANYBODY IN H.R.?

1 A. I DON'T -- I DON'T KNOW THAT -- I DON'T BELIEVE I
2 WOULD HAVE TALKED TO ANYONE IN H.R.

3 Q. OKAY. DID YOU EVER TALK TO ANYBODY IN TOMMY
4 BURGESS' OFFICE OR ---

5 A. I TALKED TO MR. BURGESS SEVERAL TIMES.

6 Q. OKAY. AND ---

7 A. I MEAN, OVER THE YEARS, OBVIOUSLY HE'S FAMILIAR
8 ENOUGH WITH ME TO CALL ME "TOM."

9 Q. OKAY. AND I BELIEVE THE ONLY TIME YOU'VE INDICATED
10 TO AT LEAST TO MY RECOLLECTION THAT YOU'VE INDICATED
11 THAT YOU TESTIFIED THAT YOU INDICATED TO MR. BURGESS
12 THAT YOU WERE SENDING INDEPENDENT CONTRACTORS AND
13 NOT EMPLOYEES WAS WHEN YOU RE -- WHEN YOU PROPOSED
14 THE CHANGES TO THAT 2015 CONTRACT OR THE 2016
15 CONTRACT?

16 A. I MEAN, I -- LIKE I SAID, UNLESS -- I KNOW THAT I
17 MENTIONED ON THAT OCCASION. I DON'T -- I MEAN, TO
18 BE HONEST, I'M NOT 100 PERCENT SURE RIGHT NOW
19 WHETHER I MENTIONED IT MORE THAN ONCE OR NOT. I
20 KNOW WHEN WE RENEGOTIATED THE CONTRACT AND I
21 SUBMITTED THOSE AMENDMENTS THAT WE WANTED, I
22 CERTAINLY MENTIONED IT THEN AS WELL.

23 Q. OKAY. DO YOU HAVE ANYTHING IN WRITING FROM BEFORE
24 MS. TURNER'S ACCIDENT WHERE CONDUSTRIAL OR
25 MEDUSTRIAL ADVISED THE DEPARTMENT OF CORRECTIONS THE

1 INDIVIDUALS BEING SENT TO THEM PURSUANT TO THIS
2 CONTRACT WERE IN FACT DEEMED BY MEDUSTRIAL TO BE
3 INDEPENDENT CONTRACTORS?

4 A. I DON'T KNOW THAT -- I MEAN, I KNOW THAT I DIDN'T
5 WRITE A SPECIAL LETTER THAT SAYS THAT.

6 Q. OKAY. AND YOU'RE NOT PUT IN POSSESSION OF ANYTHING
7 IN WRITING TO INDICATE THAT?

8 A. WHAT?

9 Q. THAT THAT INFORMATION WAS EVER RELAYED TO THE
10 DEPARTMENT OF CORRECTIONS?

11 A. I THINK THEY KNEW IT FROM DAY ONE, BUT I DON'T HAVE
12 ANYTHING THAT I WROTE, THAT I INITIATED THAT I SENT
13 TO THEM THAT SAID THAT.

14 Q. AND AGAIN, YOU KEEP TELLING ME THAT YOU THINK THAT
15 THEY KNEW IT FROM DAY ONE. WHO DO YOU THINK OVER AT
16 THE DEPARTMENT OF CORRECTIONS KNEW THAT, BECAUSE I'M
17 IN A POSITION WHERE I HAVE TO NOW PRESENT TESTIMONY
18 CONCERNING THAT, AND I WOULD LIKE TO KNOW WHO I NEED
19 TO CONTACT.

20 A. I THINK -- I MEAN, BASED ON MY UNDERSTANDING, EVERY
21 DIRECTOR OF NURSING THAT HAS SCHEDULED SHIFTS. I
22 DON'T KNOW IF MS. WRECSICS OR MS. JACQUES ARE STILL
23 THERE. IT SEEMS LIKE THEY HAD AN INTERMEDIARY
24 PERSON. I DON'T TALK TO HER. I KNOW OUR PERSONNEL
25 DID. MR. BURGESS, I MEAN, THAT'S WHAT I KNOW RIGHT

1 NOW.

2 Q. AND AGAIN, WERE ANY OF THOSE INDIVIDUALS IN A
3 POSITION TO BIND THE SOUTH CAROLINA DEPARTMENT OF
4 CORRECTIONS TO ANY KIND OF AGREEMENT WITH MEDUSTRIAL
5 ON THEIR OWN?

6 A. I'M NOT SURE THE LIMITS OF THEIR AUTHORITY. I KNOW
7 THEY WERE PROBABLY FREE TO BUMP IT UP THE CHAIN IF
8 THEY HAD A CONCERN.

9 Q. OKAY. DID YOU EVER TALK TO ANY ATTORNEYS ABOUT IT?
10 I THINK YOU ALREADY -- YOU INDICATED THAT YOU HADN'T
11 TALKED TO ANYBODY IN GENERAL COUNSEL ABOUT IT WITH
12 THE DEPARTMENT OF CORRECTIONS?

13 A. I DON'T RECOLLECT THAT I DID.

14 Q. OKAY. SO, WHEN YOU WERE HAVING THESE DISCUSSIONS, -
15 --

16 A. RIGHT.

17 Q. --- YOU ARE AN ATTORNEY DISCUSSING THIS WITH NON-
18 ATTORNEYS, DID YOU EVER ADVISE THEM THAT THEY MAY
19 WANT TO GO ASK THEIR ATTORNEYS ABOUT THE DISTINCTION
20 BETWEEN THE INDEPENDENT CONTRACTOR AND AN EMPLOYEE
21 AND WHAT THEY MIGHT MEAN WITH THE TERMS OF THEIR
22 CONTRACT AND FOR INSURANCE COVERAGE?

23 A. IT WASN'T -- IT WASN'T A CONVERSATION IN THAT -- ON
24 THAT WAVELENGTH. IT WAS A CONVERSATION ALONG THE
25 LINES OF WELL, I THINK ONE OF THEM WAS THE SITUATION

1 WITH MS. TURNER WHERE SHE WAS TRYING TO STAY AFTER
2 AND GET EXTRA SHIFTS, ONE OF THE CONVERSATIONS I
3 THINK WITH MS. WRECSICS AND MS. JACQUES WAS, YOU
4 KNOW, THAT CAN'T BE ALLOWED BECAUSE, YOU KNOW, WE
5 HAVE TO KNOW BECAUSE OTHERWISE, THEY SHOULDN'T GET
6 OVERTIME. THEY ARE NOT EMPLOYEES. THEY ARE
7 INDEPENDENT CONTRACTORS. I MEAN, IT WAS A MATTER OF
8 FACT FACTUAL CONVERSATION.

9 Q. OKAY. AND I BELIEVE YOU ALSO TESTIFIED, YOUR
10 PREVIOUS TESTIMONY WAS THAT YOU NEVER ADVISED
11 ANYBODY AT THE DEPARTMENT OF CORRECTIONS THAT ANY OF
12 THE NURSES BEING PROVIDED BY MEDUSTRIAL WERE NOT
13 COVERED BY THE WORKERS COMP -- WERE NOT COVERED BY
14 WORKERS' COMPENSATION POLICY PROVIDED BY
15 CONDUSTRIAL, AND I BELIEVE YOU SAID THAT THE REASON
16 THAT YOU NEVER ADVISED ANYBODY OF THIS IS BECAUSE
17 THE SITUATION HAD NEVER ARISEN FOR YOU TO?

18 A. I WAS NEVER ASKED TO DELIVER THAT OPINION. LIKE I
19 SAID, FROM YOUR -- I MEAN, IN MY HEAD, IT WAS NOT A
20 QUESTION, FROM ALL OF MY EXPERIENCE WITH
21 CONDUSTRIAL, IT WAS NOT A QUESTION ABOUT WHETHER OR
22 NOT THEY KNEW THAT THESE WERE INDEPENDENT
23 CONTRACTORS.

24 Q. I BELIEVE THIS IS ONE OF C.S.S.G.'S.

25 BY MS. FARTHING:

1 WAS IT YOUR TWO?

2 BY MR. ALFORD:

3 YES, TRIAL EXHIBIT TWO.

4 BY MS. FARTHING:

5 THE STUFF FROM KEENAN AND SUGGS, OR IS THAT
6 ONE?

7 BY MR. ALFORD:

8 I THINK IT WAS TWO, THE WHOLE STACK. DO YOU
9 NEED IT?

10 BY MS. FARTHING:

11 NO, I'VE GOT IT. THANK YOU.

12 BY COMMISSIONER JAMES:

13 EXHIBIT THREE, TRIAL EXHIBIT THREE FOR
14 COUNTRYWIDE.

15 BY MS. FARTHING:

16 OKAY.

17 CROSS EXAMINATION RESUMED BY MS. FARTHING:

18 Q. I'M GOING TO LOOK -- I'M LOOKING AT THE -- AT YOUR
19 EMAIL ON PAGE THREE OF THAT -- HANG ON, I'M SORRY.
20 I'M LOOKING AT THE WRONG EMAILS. SORRY. I'M JUST
21 TRYING TO FIGURE IT OUT. OKAY. THE EMAIL FROM PAGE
22 ONE GOING INTO PAGE TWO, WHICH IS AN EMAIL FROM TONY
23 DURHAM.

24 A. I DON'T KNOW WHAT DOCUMENT YOU'RE REFERENCING.

25 Q. THE KEENAN AND SUGGS DOCUMENTS THAT'S C.S.S.G.'S ---

1 A. OKAY.

2 Q. --- EXHIBIT TWO -- EXHIBIT THREE.

3 A. OKAY. WHAT PAGE?

4 Q. PAGE ONE GOING INTO PAGE TWO, THE EMAIL FROM TONY
5 DURHAM WHO IS THE PRESIDENT OF CONDUSTRIAL.

6 A. RIGHT.

7 Q IS THAT RIGHT? DATED OCTOBER 19TH OF 2015, AND YOU
8 WERE COPIED ON THAT EMAIL AS WELL.

9 A. OKAY.

10 Q. AND ABOUT THREE PARAGRAPHS DOWN, THE FIRST PARAGRAPH
11 -- THE FIRST SENTENCE SAYS "MY PROBLEM THOUGH ISN'T
12 THAT SHE DOES NOT COVERAGE THROUGH YOU GUYS, BECAUSE
13 WE AGREE SHE DOESN'T."

14 A. RIGHT.

15 Q. WAS THAT -- WERE YOU IN AGREEMENT WITH THAT
16 STATEMENT AT THAT TIME?

17 A. I DIDN'T -- I DON'T THINK YOU SEE THAT I COMMENTED
18 ON THIS. RIGHT?

19 Q. BUT IF THAT WAS THE POSITION OF CONDUSTRIAL, WERE
20 YOU IN AGREEMENT WITH THAT POSITION AT THAT TIME?

21 A. I WAS IN AGREEMENT WITH HIS POSITION THAT HE DIDN'T
22 THINK SHE WAS COVERED BECAUSE SHE WAS AN INDEPENDENT
23 CONTRACTOR.

24 Q. OKAY. AND YOU WERE OF THAT UNDERSTANDING AS WELL,
25 THAT SHE WAS NOT COVERED BECAUSE SHE WAS AN

1 INDEPENDENT CONTRACTOR?

2 A. YES. I AGREE THAT SHE WAS NOT COVERED UNDER THIS
3 AGREEMENT AS IT -- AT THAT POINT IN TIME BECAUSE SHE
4 WAS AN INDEPENDENT CONTRACTOR.

5 Q. OKAY. I'M GOING TO -- I'M GOING TO ASK YOU, THIS IS
6 AN EMAIL THAT WAS PROVIDED TO ME BY MR. BURGESS, AND
7 IT LOOKS LIKE IT WAS AN EMAIL THAT WAS SENT BY YOU
8 TO MR. BURGESS, AND IT LOOKS LIKE THE DATE ON THAT
9 WAS FRIDAY, JANUARY 27TH, 2017; IS THAT RIGHT?

10 A. YES.

11 Q. OKAY.

12 BY MS. FARTHING:

13 I WOULD LIKE TO MOVE TO HAVE THAT ADMITTED AS
14 DEPARTMENT OF CORRECTIONS EXHIBIT, WHICHEVER ONE WE
15 ARE ON.

16 BY THE WITNESS:

17 YES.

18 BY COMMISSIONER JAMES:

19 TWO.

20 BY MS. FARTHING:

21 OKAY. ANY OBJECTION?

22 BY MR. GOODWYN:

23 NO OBJECTION.

24 BY MR. ALFORD:

25 NO OBJECTION.

1 BY MR. SAMUELS:

2 NO OBJECTION.

3 BY COMMISSIONER JAMES:

4 HEARING NO OBJECTION.

5 CROSS EXAMINATION RESUMED BY MS. FARTHING:

6 Q. IS THIS THE EMAIL THAT YOU SENT MR. BURGESS TO SEND
7 TO HIM A COPY OF THE CERTIFICATE OF INSURANCE THAT
8 WAS IN PLAY AS OF THE DATE OF MS. TURNER'S INJURY,
9 ACCIDENT RATHER?

10 A. I THINK SO. I THINK THIS WAS PROBABLY AFTER THE
11 CLAIMANT'S DEPOSITION. I THINK YOU TALKED TO ME
12 ABOUT IT AFTER THE DEPOSITION. OBVIOUSLY, THIS WAS
13 A PHONE CALL FROM HIM THAT I'M RESPONDING TO.

14 Q. OKAY.

15 A. YEAH, "STILL WAITING ON THE C.O.F. FROM COUNTRYWIDE
16 THAT HAS YOUR COMPANY NAME LISTED AT THE BOTTOM."

17 Q. "MADE THIS REQUEST THREE WEEKS AGO."

18 A. RIGHT.

19 Q. "IT LOOKS LIKE THEY DID NOT COMPLY WITH THE
20 REQUEST."

21 A. RIGHT.

22 Q. "IN THE MEANTIME, PLEASE SEE THE MASTER C.O.I. -

23 A. YES.

24 Q. --- THAT WAS TO COVER..." OKAY.

25 A. YES.

1 Q. YOU HAD ALREADY BEEN ON AN EMAIL CHAIN IN OCTOBER OF
2 2015, WHICH CLEARLY INDICATED THAT THE POSITION OF
3 CONDUSTRIAL WAS THAT THE DEPARTMENT OF CORRECTIONS
4 DIDN'T HAVE ANY COVERAGE FOR THIS INDIVIDUAL BECAUSE
5 SHE WAS AN INDEPENDENT CONTRACTOR?

6 A. YES, ABSOLUTELY.

7 Q. YOU DIDN'T THINK WHEN MR. BURGESS REQUESTED A COPY
8 OF THAT CERTIFICATE OF INSURANCE IT MIGHT HAVE BEEN
9 A GOOD TIME TO ADVISE HIM THAT IN FACT THERE WAS NO
10 INSURANCE COVERAGE ON THAT INDIVIDUAL?

11 A. HE ASKED FOR -- I KNOW WHAT YOU'RE TRYING TO SAY.
12 WE TALKED ABOUT THIS BEFORE. THERE WAS NOTHING
13 FUNNY GOING ON HERE. HE ASKED FOR PROOF OF
14 INSURANCE COVERAGE, IN GENERAL, FOR CONDUSTRIAL, AND
15 THAT'S WHY I TRIED -- WHY DO YOU THINK I SENT THIS
16 MESSAGE? WHY DO YOU THINK I TALKED TO YOU? BECAUSE
17 I SAID "I WILL GET YOU PROOF THAT WE HAVE INSURANCE
18 COVERAGE. WE STILL DON'T THINK SHE'S COVERED
19 BECAUSE SHE'S AN INDEPENDENT CONTRACTOR."

20 Q. AND WHEN DID YOU ---

21 A. NOBODY ---

22 Q. WHEN DID YOU EVER TELL MR. BURGESS THAT OR ANYBODY
23 AT THE DEPARTMENT OF CORRECTIONS THAT?

24 A. I THINK THEY KNEW IT FROM DAY ONE.

25 Q. YOU THINK THEY KNEW IT?

1 A. YES.

2 Q. BUT YOU HAVEN'T BEEN ABLE TO PRODUCE ME ANY KIND OF
3 DOCUMENT THAT SHOWS THAT THERE WAS SOME SORT OF
4 MEETING OF THE MINDS WITH REGARD TO THAT PRIOR TO
5 MS. TURNER'S ACCIDENT ACCEPT FOR A CONTRACT THAT
6 SPECIFICALLY PROVIDES THAT WORKERS' COMPENSATION
7 COVERAGE WAS TO BE PROVIDED?

8 A. IN EIGHT YEARS ---

9 BY MR. GOODWYN:

10 OBJECT TO THE FORM. IT'S ARGUMENTATIVE.

11 BY THE WITNESS:

12 YEAH, I THINK EIGHT YEARS OF PROVIDING
13 INDEPENDENT CONTRACTORS SHOULD SPEAK FOR ITSELF.

14 BY COMMISSIONER JAMES:

15 AND WE HAVE THE DOCUMENTS SO THEY CAN BE
16 MARKED?

17 BY MS. FARTHING:

18 I'M SORRY. I'VE GOT AN EXTRA COPY IF YOU WOULD
19 RATHER ---

20 BY COMMISSIONER JAMES:

21 NO, WE JUST NEED THAT.

22 BY MS. FARTHING:

23 OKAY.

24 (COURT REPORTER MARKS DOCUMENT STATE ACCIDENT FUND
25 EXHIBIT TWO, RETAINED IN THE COMMISSION FILE)

CROSS EXAMINATION RESUMED BY MS. FARTHING:

Q. AND THAT'S ANOTHER THING I WANTED TO GET AT. I ALSO PREVIOUSLY AGAIN IN RESPONSE TO ONE OF MY OBJECTIONS AS FAR AS THIS COURSE OF DEALING, ---

A. RIGHT.

Q. --- THE INDICATION WAS THAT THE ACTION ON THE BEHALF OF THE DEPARTMENT OF CORRECTIONS IN ESTABLISHING THAT COURSE OF DEALING WAS ACCEPTING THESE INDEPENDENT CONTRACTORS INTO THEIR INSTITUTION TO WORK; IS THAT RIGHT?

A. I'M SURE THAT WAS PART OF IT. I DON'T THINK I LIMITED THAT.

Q. THAT WAS THE INFORMATION THAT -- THAT WAS THE ANSWER THAT, I BELIEVE, YOU RESPONDED?

A. RIGHT. I DON'T -- I DON'T KNOW THAT I LIMITED IT, BUT I'M SURE THAT'S SOMETHING I SAID.

Q. OKAY. BUT I THINK YOU ALSO TESTIFIED THAT YOU NEVER PROVIDED TO THE DEPARTMENT OF CORRECTIONS A COPY OF THE INDEPENDENT CONTRACTOR AGREEMENT?

A. IF THEY ASKED FOR IT, WE WOULD HAVE PROVIDED IT. IF THEY DIDN'T, WE PROBABLY WOULD NOT.

Q. OKAY.

A. IT PROBABLY WOULD NOT.

Q. OKAY. SO, THEY'RE ACCEPTING INDEPENDENT CONTRACTORS THAT THEY DIDN'T KNOW HAD BEEN DESIGNATED BY YOU AS

1 INDEPENDENT CONTRACTORS WAS EVIDENCE OF THE FACT
2 THAT THEY WERE IN AGREEMENT WITH THIS COURSE OF
3 DEALING?

4 A. I DON'T AGREE WITH YOUR STATEMENT.

5 Q. WHAT PART OF MY STATEMENT DON'T YOU AGREE WITH?

6 A. YOU SAID THEY DIDN'T KNOW. I DON'T AGREE WITH THAT.

7 Q. BUT YOU HAVE YET TO ESTABLISH ANYTHING OR TO PROVIDE
8 ME ANYTHING THAT ESTABLISHED THAT THEY KNEW. YOU
9 DIDN'T INDICATE THAT YOU'VE EVER GIVEN THEM A COPY
10 OF THEIR -- OF THE INDEPENDENT CONTRACTOR AGREEMENT.
11 YOU'VE SHOWN ME NOTHING IN WRITING TO SHOW THAT
12 ANYBODY PRIOR TO THE DATE OF MS. TURNER'S INJURY HAD
13 ANY KNOWLEDGE THAT THIS PERSON WAS AN INDEPENDENT
14 CONTRACTOR. I DON'T THINK YOU'VE TESTIFIED YET THAT
15 ANYBODY KNEW AT THE DEPARTMENT OF CORRECTIONS WHO
16 HAD ANY KIND OF KNOWLEDGE OR HAD ANY KIND OF LEGAL
17 EXPERTISE TO UNDERSTAND THE DIFFERENCE BETWEEN THE
18 CATEGORIZATION OF AN INDIVIDUAL AS AN EMPLOYEE AND
19 INDEPENDENT CONTRACTOR?

20 A. AND YET THEY ACCEPTED THEM FOR EIGHT YEARS.

21 Q. OKAY. BECAUSE THAT'S WHAT YOU WERE -- THEY WERE
22 PROVIDED PURSUANT TO THIS CONTRACT (INDICATES)?

23 A. IF THAT'S -- IF YOU'RE HOLDING THAT ONE FROM 2008,
24 YES.

25 Q. OKAY. AND I THINK YOU WERE ALSO ASKED ABOUT JUSTIN

1 GUDVANGEN'S -- AND I APOLOGIZE, I AM PROBABLY
2 BUTCHERING HIS NAME, TESTIMONY, AND I BELIEVE YOU
3 INDICATING THAT BECAUSE HE HAD WORKED FOR
4 CONDUSTRIAL, HE KNEW THE DEAL WITH CONDUSTRIAL; HE
5 KNEW THEIR OPERATIONS?

6 A. HE ADMITTED THAT HE WAS AN INDEPENDENT CONTRACTOR.

7 Q. HE ADMITTED HE WAS A 1099.

8 A. RIGHT.

9 Q. HE WAS PAID ON A 1099.

10 A. WHICH IS AN INDEPENDENT CONTRACTOR.

11 Q. AND HE ALSO TESTIFIED THAT HE HAD -- HE WAS NEVER
12 TOLD BY ANYBODY THAT HE HAD -- HE DID NOT HAVE
13 WORKERS' COMPENSATION COVERAGE BY MEDUSTRIAL.

14 A. OKAY.

15 Q. AND HE ALSO TESTIFIED THAT HE WOULD NOT HAVE TAKEN A
16 JOB WITH THE DEPARTMENT OF CORRECTIONS IF HE HAD
17 KNOWN THAT HE WAS NOT COVERED BY WORKERS' COMP
18 INSURANCE.

19 A. IF HE SAID THAT, I'M SURE HE SAID THAT.

20 Q. I HAVE THE TRANSCRIPT RIGHT HERE. I'M HAPPY TO --
21 I'M HAPPY TO READ IT TO YOU.

22 A. I'M NOT -- I'M NOT DISPUTING YOU. I'M SAYING IT
23 SPEAKS FOR ITSELF.

24 Q. OKAY, THAT'S FINE.

25 A. IF IT'S IN THERE, IT'S IN THERE. RAGU.

1 Q. YOU ALSO TESTIFIED EARLIER THAT MR. BURGESS NEVER
2 REQUESTED A CERTIFICATE OF INSURANCE FROM YOU PRIOR
3 TO THE REQUEST THAT THAT EMAIL WAS IN RESPONSE TO
4 AFTER THIS CLAIM BEGAN?

5 A. I DON'T RECOLLECT THAT, RIGHT.

6 Q. TO YOUR KNOWLEDGE ---

7 A. RIGHT.

8 Q. --- THAT THERE'S NOT?

9 A. RIGHT.

10 Q. WAS IT HIS OBLIGATION TO REQUEST A CERTIFICATE OF
11 INSURANCE FROM YOU, OR IS THAT SOMETHING THAT
12 USUALLY THROUGH THE COURSE OF DEALING IF INSURANCE
13 IS REQUIRED PURSUANT TO A CONTRACT, IS THAT NOT
14 SOMETHING THAT IS SUPPOSED TO BE PROVIDED?

15 A. BUT IF YOU ARE NOT PROVIDING -- I FEEL YOU'RE --
16 WE'RE TRYING TO PLAY A PRETZEL HERE. IF WE ARE NOT
17 PROVIDING EMPLOYEES; WE'RE PROVIDING INDEPENDENT
18 CONTRACTORS, WHICH -- WHICH FROM MY ENTIRE TENURE AT
19 CONDUSTRIAL, MY EXPERIENCE IN THIS WHOLE SITUATION,
20 WHAT I WAS TOLD, WHAT I WAS INFORMED, WHAT I
21 OBSERVED, FROM MY POINT OF VIEW, WHICH IS THE
22 ABSOLUTELY GOOD FAITH TRUTH, IS THAT WE PROVIDED
23 1099s, AND EVERYONE INVOLVED KNEW IT.

24 Q. OKAY.

25 A. OKAY, SO IF THEY KNEW IT -- IN MY MIND, IF THEY KNEW

1 IT, WHY ARE YOU REQUESTING INSURANCE FOR SOMETHING
2 THAT YOU -- THAT YOU KNOW IS AN INDEPENDENT
3 CONTRACTOR. WHEN HE ASKED FOR IT, WHAT DID I DO?
4 THE FIRST TIME HE ASKED FOR A CERTIFICATE OF
5 INSURANCE, "MR. BURGESS, I'M GOING TO GO GET THAT
6 FOR YOU," AND I TRIED TO, AND I ---

7 Q. AND I UNDERSTAND THAT, BUT AGAIN, DID YOU EVER
8 QUESTION HIM WHY HE WAS ASKING FOR THE CERTIFICATE
9 OR INSURANCE IF THAT CERTIFICATE OF INSURANCE DIDN'T
10 COVER ANYBODY AT THE DEPARTMENT OF CORRECTIONS?

11 A. I DON'T KNOW THAT I -- I DON'T THINK I DID QUESTION
12 HIM. HE SAID HE WANTED IT. SO, I SAID "I'LL GO GET
13 IT."

14 Q. OKAY. IF -- AND I BELIEVE YOU TESTIFIED THAT ALL OF
15 THE NURSING PERSONNEL PROVIDED TO THE DEPARTMENT OF
16 CORRECTIONS PURSUANT TO THE 2008 CONTRACT WERE
17 INDEPENDENT CONTRACTORS AND NOT EMPLOYEES?

18 A. THAT'S MY UNDERSTANDING, YES.

19 Q. WHAT WAS THE POINT OF PARAGRAPH SIX PROVIDING THAT -
20 - REQUIRING THAT CONDUSTRIAL PROVIDE WORKERS'
21 COMPENSATION FOR THESE INDIVIDUALS IF NOT A SINGLE
22 ONE OF THEM WAS EVER GOING TO GO TO THE DEPARTMENT
23 OF CORRECTIONS PURSUANT TO THIS AGREEMENT?

24 A. BECAUSE THIS CONTRACT WASN'T DRAFTED FOR CONDUSTRIAL
25 SPECIFICALLY IN MIND. THIS WAS DRAFTED FOR EVERY

1 CONTRACTOR YOU USE. THEREFORE, YOU PUT IN THE SAME
2 LANGUAGE FOR EVERYONE.

3 Q. OKAY.

4 A. EVEN THOUGH THE COURSE OF CONDUCT FOR THE DIFFERENT
5 ENTITIES WAS DIFFERENT. THIS WAS YOUR BOILERPLATE
6 LANGUAGE. THAT'S WHY I -- I CAN ASSUME IT WAS IN
7 THERE.

8 Q. NATASHA RATHBURN SIGNED THIS AGREEMENT THOUGH,
9 CORRECT?

10 A. SHE DID.

11 Q. AND SHE HAS -- SHE HAD THE AUTHORITY AT THE TIME
12 THAT SHE SIGNED THIS AGREEMENT TO BIND MEDUSTRIAL
13 AND BIND, BY I BELIEVE YOUR TESTIMONY EARLIER, ---

14 A. YES.

15 Q. --- CONDUSTRIAL TO THE TERMS OF THIS AGREEMENT WITH
16 HER SIGNATURE?

17 A. SHE WAS THE DIRECTOR FOR MEDUSTRIAL. SHE HAD THE
18 AUTHORITY TO SIGN THE CONTRACT.

19 Q. AND I THINK YOU'VE SHOWN BY YOUR MODIFICATIONS TO
20 THE 2016 CONTRACT THAT THERE WAS AN OPPORTUNITY TO
21 MAKE MODIFICATIONS. IT JUST WASN'T -- IT WASN'T
22 UTILIZED IN PARTICULAR -- WITH REGARD TO THAT
23 PARAGRAPH IN THE 2008 AGREEMENT?

24 A. I'M NOT SURE WHAT YOU'RE ASKING.

25 Q. THE 2016 AGREEMENT, ---

1 A. YEAH.

2 Q. --- YOU MODIFIED THAT ONE; YOU SENT -- YOU REQUESTED
3 AND SENT OVER ---

4 A. I DID.

5 Q. --- MODIFIED LANGUAGE, ---

6 A. I DID, RIGHT.

7 Q. --- AND IT WAS ACCEPTED AND INTEGRATED AS PART OF
8 THAT AGREEMENT?

9 A. IT WAS.

10 Q. SO, THAT WAS SOMETHING THAT PRESUMABLY COULD HAVE
11 BEEN DONE BACK IN 2008?

12 A. I DON'T -- YOU'RE ASKING ME TO SPECULATE.

13 Q. OKAY. YOU DO UNDERSTAND THAT THERE WAS A PROVISION
14 WITHIN THE CONTRACT THAT INDICATES THAT IT COULD BE
15 AMENDED WITH SIGNED WRITTEN AGREEMENT BY BOTH
16 PARTIES?

17 A. YES, THAT'S IN THERE.

18 Q. IF IT WAS YOUR UNDERSTANDING THIS ENTIRE TIME THAT
19 THE UNDERSTANDING BETWEEN THESE PARTIES ---

20 A. RIGHT.

21 Q. --- WAS SOMETHING DIFFERENT THAN WAS WRITTEN ---

22 A. RIGHT.

23 Q. --- AND A SIGNED CONTRACT, WHY WOULD YOU NOT ATTEMPT
24 TO AMEND THAT?

25 A. WELL, WHEN IT WAS RIPE FOR ME TO DO IT, I DID DO IT.

1 Q. WHY WASN'T IT RIPE PRIOR TO 2016?

2 A. BECAUSE AS I SAID, FROM MY PERSPECTIVE, WHEN I GOT
3 THERE, AND WE WERE IN THE CHAPTER 11, AND SO, I
4 MEAN, I -- IN OTHER WORDS, I WASN'T INVOLVED IN THIS
5 ON A DAILY BASIS FOR ABOUT THREE OR FOUR YEARS, JUST
6 TRYING TO KEEP US ALIVE. EVERYTHING I HEARD ABOUT
7 MEDUSTRIAL, "IT'S RUNNING; IT'S HUMMING; IT'S DOING
8 WHAT IT'S SUPPOSED TO DO. NATASHA CAME OVER FROM
9 PALMETTO. SHE KNOWS WHAT'S GOING ON. SHE'S GOT
10 IT." IT WASN'T SQUEAKY. NOBODY WAS SAYING "THERE'S
11 SOMETHING WRONG HERE."

12 Q. SO, THIS WASN'T A PRIORITY, BUT THAT'S NOT TO SAY --
13 -

14 A. THAT'S NOT TRUE EITHER.

15 Q. --- IT WASN'T -- WELL, YOU SAID "IT WASN'T RIPE." I
16 MEAN, I DON'T UNDERSTAND HOW THIS WASN'T RIPE,
17 ESPECIALLY CONSIDERING I THINK THE TERMS OF THIS
18 CONTRACT WAS A FIVE-YEAR TERM, AND IT WASN'T -- IT
19 WASN'T AMENDED UNTIL 2016.

20 A. RIGHT, BECAUSE ---

21 Q. IT WASN'T REVISED UNTIL THE DEPOSITION.

22 A. BECAUSE THIS CASE IS WHAT BROUGHT TO MY ATTENTION
23 "THERE'S GOING TO BE A BIG DIFFERENCE OF OPINION
24 HERE."

25 Q. THERE MIGHT HAVE BEEN PROVISIONS IN THIS CONTRACT

1 THAT WEREN'T ADHERED TO?

2 A. NO, I DIDN'T SAY THAT AT ALL.

3 Q. OKAY. WELL, AGAIN, ---

4 A. I SAID -- WHEN I GOT INVOLVED AND LOOKED AT THIS, I
5 SAID, "WELL, I SEE THIS PIECE OF PAPER. THIS
6 DOESN'T FULLY REPRESENT WHAT WE'VE BEEN DOING FOR
7 EIGHT YEARS."

8 Q. OKAY.

9 A. I WOULD RATHER -- I WANT A PIECE OF PAPER THAT MORE
10 FULLY REPRESENTS WHAT WE'VE BEEN DOING FOR EIGHT
11 YEARS.

12 Q. OKAY. AND THE AMENDMENT TO THE -- OR THE REVISION
13 OF THE CONTRACT WAS TO CHANGE "EMPLOYEES" TO
14 "EMPLOYEES AND/OR AGENTS"?

15 A. YES.

16 Q. BUT AGAIN, I BELIEVE IT WAS YOUR TESTIMONY THAT ALL
17 OF THE INDIVIDUALS WHO HAD EVER BEEN PLACED AT THE
18 DEPARTMENT OF CORRECTIONS BY CONDUSTRIAL, AT LEAST
19 TO CONDUSTRIAL'S UNDERSTANDING ---

20 A. RIGHT.

21 Q. --- AND THEIR CATEGORIZATION, WERE INDEPENDENT
22 CONTRACTORS?

23 A. YES, THAT'S MY UNDERSTANDING.

24 Q. AND AGAIN, WHY THE TERM "AGENTS"? WHY NOT THE TERM
25 "INDEPENDENT CONTRACTORS"?

1 A. BECAUSE "AGENTS" IS BROADER.

2 Q. YES, AGAIN, IF YOU WANTED THIS TO MOST CLOSELY
3 REFLECT THE RELATIONSHIP BETWEEN THE DEPARTMENT OF
4 CORRECTIONS ---

5 A. RIGHT.

6 Q. --- MEDUSTRIAL, THE INDIVIDUALS BEING PROVIDED
7 PURSUANT TO THAT CONTRACT, THEY WEREN'T -- BY YOUR
8 TESTIMONY AND BY YOUR ---

9 A. RIGHT.

10 Q. --- UNDERSTANDING ---

11 A. RIGHT.

12 Q. --- EACH AND EVERYONE OF THEM WAS AN INDEPENDENT
13 CONTRACTOR?

14 A. YES.

15 Q. SO, WHY NOT INCLUDE THAT SO THAT IT WAS CLEAR TO THE
16 DEPARTMENT OF CORRECTIONS THAT THEY WERE GETTING
17 INDEPENDENT CONTRACTORS WHO Y'ALL WERE NOT PROVIDING
18 WORKERS' COMP COVERAGE FOR SO THAT THEY COULD MAKE
19 THE DECISION WHETHER TO ENTER INTO THAT CONTRACT OR
20 NOT WITH FULL KNOWLEDGE OF WHAT THE UNDERSTANDING OF
21 BOTH PARTIES WERE?

22 A. BECAUSE THE WORD "AGENTS" IS BROADER AND COVERS MANY
23 MORE POSSIBLE SITUATIONS.

24 Q. OKAY.

25 A. IT'S AS SIMPLE AS THAT. EXACTLY, YOU SAW THE EMAILS

1 I SENT TO MR. HARPER. "THEY'RE INDEPENDENT
2 CONTRACTORS." SO, I WAS AWARE OF THAT. WHY DID I
3 CHOOSE THE WORD "AGENTS," BECAUSE IT WAS BROADER.

4 Q. OKAY.

5 A. AND I WAS -- AND WE LEFT THE WORD "EMPLOYEES" IN
6 THERE BECAUSE IT TOOK -- IT TOOK EIGHT YEARS TO
7 AMEND THIS THING ONE TIME.

8 Q. OKAY.

9 A. SO, IF IT'S GOING TO BE ANOTHER EIGHT YEARS, LET'S -
10 - LET'S LEAVE -- LET'S LEAVE A STRUCTURE IN PLACE
11 THAT ALLOWS THE RELATIONSHIP TO GROW AND EVOLVE AND
12 CHANGE AS NEEDED.

13 Q. OKAY. DID YOU EVER CLARIFY TO THE DEPARTMENT OF
14 CORRECTIONS WHICH CATEGORY YOU FELT THAT THE NURSES
15 THAT YOU ARE PROVIDING PURSUANT TO THAT CONTRACT
16 FELL INTO, AGENTS OR EMPLOYEES?

17 A. I MEAN, I THINK IT'S CLEAR ON ITS FACE. I MEAN, I -
18 --

19 Q. I DON'T KNOW THAT THAT'S CLEAR ON THE FACE IF IT
20 JUST DOESN'T ---

21 A. WELL, IF THEY'RE NOT EMPLOYEES -- IF THEY ARE
22 INDEPENDENT CONTRACTORS, THEY'RE NOT EMPLOYEES.

23 Q. OKAY. THEN WHY EVEN ---

24 A. IF THEY'RE NOT EMPLOYEES, THEY'RE AGENTS.

25 Q. THEN WHY EVEN INCLUDE EMPLOYEES IN THE CONTRACT?

1 A. I JUST -- I JUST ANSWERED THAT QUESTION.

2 Q. OKAY.

3 A. BECAUSE ---

4 Q. IT WAS A COURSE OF DEALING?

5 A. RIGHT. WELL, NOT JUST BECAUSE IT'S A COURSE OF
6 DEALING, BECAUSE -- BECAUSE IT TOOK EIGHT YEARS TO
7 AMEND THIS THE FIRST TIME. SO, FROM MY VIEW IN
8 DRAFTING THIS, WE MAY NOT GET A CHANCE TO AMEND THIS
9 AGAIN FOR ANOTHER EIGHT YEARS. IF THERE'S A REGIME
10 CHANGE OR -- IN OTHER WORDS, YOU DIDN'T CHANGE THE
11 PAY RATES. I'M LIKE "MAYBE ONE DAY DOWN THE ROAD OR
12 MAYBE SOMETHING HAPPENS IN THIS CASE, WE'RE GOING TO
13 HAVE TO REVISIT THIS SITUATION, AND IF WE DO, LET'S
14 LEAVE AS BROAD A STRUCTURE IN PLACE AS POSSIBLE."

15 Q. OKAY. YOU SAID THAT THIS CONTRACT WAS CLEAR ON ITS
16 FACE THE WAY THAT MEDUSTRIAL WAS DESIGNATING OR
17 CATEGORIZING THE NURSES BEING SENT TO THE DEPARTMENT
18 OF CORRECTIONS PURSUANT TO THAT CONTRACT. WHERE ---

19 A. WHICH PARAGRAPH?

20 Q. THIS IS THE 2016 CONTRACT ---

21 A. OKAY.

22 Q. --- WITH THE MODIFICATION THAT IT WAS ---

23 A. RIGHT.

24 Q. --- "EMPLOYEES AND/OR AGENTS."

25 A. RIGHT.

1 Q. WHERE IN THIS CONTRACT DOES IT CLARIFY THAT THE
2 INDIVIDUALS BEING SENT BY MEDUSTRIAL TO THE
3 DEPARTMENT OF CORRECTIONS ARE CATEGORIZED AS AGENTS
4 AND NOT EMPLOYEES AND THERE'S NO WORKERS'
5 COMPENSATION COVERAGE FOR THEM?

6 A. I THINK THE -- I THINK THE AGREEMENT AS A WHOLE
7 SPEAKS TO THAT. IN OTHER WORDS, IN THE FACT THAT
8 THE CHANGE WAS MADE EMPLOYEES AND/OR AGENTS. WHY --
9 I MEAN, WHICH YOUR LEGAL DEPARTMENT AGREED TO. WHY
10 ---

11 Q. OKAY.

12 A. WHY -- YOU KNOW, WHY ARE WE USING EMPLOYEES AND/OR
13 AGENTS? IN FACT, WHEN IT TALKS ABOUT WORKERS' COMP
14 IN THAT SAME PARAGRAPH, "AS APPLICABLE." I MEAN,
15 THAT -- I MEAN, THIS LANGUAGE WAS GIVEN TO YOUR
16 ATTORNEYS, AND THEY AGREED TO IT.

17 Q. OKAY. AFTER MS. TURNER HAD ALREADY FILED HER
18 WORKERS' COMP CLAIM?

19 A. THAT CERTAINLY CHRONOLOGICALLY, THIS WAS IN WHAT,
20 2016?

21 Q. YES.

22 A. AND HER CLAIM WAS SEPTEMBER 5 OF 2015, YES.

23 Q. OKAY. AND PARAGRAPH SIX OF THE CONTRACT STILL
24 PROVIDES THAT "CONTRACTOR SHALL PROVIDE WORKERS'
25 COMPENSATION INSURANCE COVERAGE FOR CONTRACTOR'S

1 EMPLOYEES WHO ARE ASSIGNED TO THE SOUTH CAROLINA
2 DEPARTMENT OF CORRECTIONS." DID YOU FIND IT ODD
3 THAT THEY STILL WANTED THAT PROVISION IN THERE IF IT
4 WAS CLEAR TO THEM THAT THE INDIVIDUALS BEING
5 PROVIDED WERE AGENTS AND NOT EMPLOYEES?

6 A. YOU'RE ASKING ME TO GET IN THEIR HEAD, AND I CAN'T
7 DO THAT.

8 Q. OKAY. WELL ---

9 A. BECAUSE OBVIOUSLY, -- OBVIOUSLY, I LEFT -- IN OTHER
10 WORDS, I DIDN'T REQUEST ANY CHANGES THERE BECAUSE IF
11 WE PROVIDE EMPLOYEES, WE WANT TO PROVIDE WORKERS'
12 COMP INSURANCE.

13 Q. OKAY.

14 A. WE WOULD PROVIDE WORKERS' COMP INSURANCE.

15 Q. YOU HEARD MR. BURGESS -- YOU WERE IN HERE FOR MR.
16 BURGESS' TESTIMONY.

17 A. RIGHT.

18 Q. AND HIS TESTIMONY WAS THAT IT WAS HIS EXPECTATION
19 AND UNDERSTANDING BOTH UNDER THE 2008 CONTRACT AND
20 UNDER THE CURRENT CONTRACT THAT THESE INDIVIDUALS
21 WHO ARE WORKING WITH THE DEPARTMENT OF CORRECTIONS,
22 THAT THERE WOULD BE WORKERS' COMPENSATION COVERAGE
23 FOR THESE INDIVIDUALS? SO, NOW, YOU ARE AWARE THAT
24 IN SOMEBODY'S HEAD OVER THERE THAT'S AT LEAST PART
25 OF THIS PROCESS ---

1 A. RIGHT.

2 Q. --- WHO SAYS THAT IT'S HIS UNDERSTANDING THAT THESE
3 INDIVIDUALS ARE COVERED. SO, I GUESS, I'M STILL
4 CONFUSED AS TO HOW IT'S CLEAR ON ITS FACE AND THAT
5 THE UNDERSTANDING IS VERY CLEAR WITH THE DEPARTMENT
6 OF CORRECTIONS THESE INDIVIDUALS WOULDN'T BE
7 COVERED.

8 A. I'M NOT SURE WHAT YOU'RE ASKING ME.

9 Q. I GUESS I'M STILL -- I'M STILL TRYING TO GATHER TO
10 WRAP MY HEAD AROUND HOW YOU THINK THAT THIS IS CLEAR
11 BASED ON THE LANGUAGE OF THESE TWO CONTRACTS AND
12 BASED ON MR. BURGESS' TESTIMONY EARLIER AS TO HIS
13 UNDERSTANDING ---

14 BY MR. GOODWYN:

15 OBJECTION.

16 CROSS EXAMINATION RESUMED BY MS. FARTHING:

17 Q. --- AND EXPECTATION?

18 BY MR. GOODWYN:

19 RELEVANCY. I MEAN, WHY AND HOW HE THINKS IT'S
20 CLEAR, HOW IS THAT RELEVANT?

21 BY MS. FARTHING:

22 BECAUSE MR. -- MR. SEARS HAS TESTIFIED A NUMBER
23 OF TIMES TODAY THAT IT WAS A CLEAR UNDERSTANDING ON
24 BOTH SIDES WITH BOTH PARTIES TO THIS CONTRACT, AND
25 MR. BURGESS HAS SPECIFICALLY TESTIFIED THAT IT

1 WASN'T.

2 BY COMMISSIONER JAMES:

3 I WILL ALLOW THE QUESTION. YOU CAN -- YOU CAN
4 REPEAT IT.

5 BY THE WITNESS:

6 OKAY. I THINK SHE ASKED YOU TO REPEAT THE
7 QUESTION.

8 CROSS EXAMINATION RESUMED BY MS. FARTHING:

9 Q. OH, I'M SORRY. SO, I GUESS YOU'VE TESTIFIED A
10 NUMBER OF TIMES NOW THAT IT WAS CLEAR TO BOTH THE
11 DEPARTMENT OF CORRECTIONS AND TO MEDUSTRIAL THAT
12 THESE INDIVIDUALS WERE AGENTS AND NOT EMPLOYEES AND
13 THERE WAS NO COVERAGE -- OR WERE INDEPENDENT
14 CONTRACTORS AND NOT EMPLOYEES, AND THERE WAS NO
15 WORKERS' COMPENSATION COVERAGE PROVIDED BY
16 MEDUSTRIAL TO THESE INDIVIDUALS, AND I INDICATED
17 THAT -- I'M TRYING TO FIGURE OUT BASED ON THE TERMS
18 OF THIS CONTRACT AND MR. BURGESS' TESTIMONY EARLIER
19 TODAY AS ONE OF THE PEOPLE INVOLVED IN THE PROCESS
20 OF DRAFTING AND REVIEWING THESE CONTRACTS, HOW IT'S
21 CLEAR THAT THESE INDIVIDUALS WERE INDEPENDENT
22 CONTRACTORS NOT COVERED BY WORKERS' COMP?

23 A. I THINK -- LIKE I SAID, I THINK IT'S -- I'VE
24 ANSWERED THAT. I THINK THE FACT THAT MR. BURGESS
25 PASSED IT ALONG TO YOUR LEGAL DEPARTMENT, AND THEY

1 APPROVED IT SHOWS THAT THEY NOW ACKNOWLEDGE IN
2 WRITING WHAT WAS HAPPENING FOR EIGHT YEARS BEFORE,
3 WHICH IS THAT THEY'RE EMPLOYEES AND/OR AGENTS
4 PROVIDED.

5 Q. OKAY. DID ---

6 A. IN OTHER WORDS, THIS IS I THINK -- I FEEL LIKE THIS
7 IS BEING TORTURED, AND I'M JUST -- I'M TRYING TO
8 ANSWER IN GOOD FAITH AS BEST I CAN.

9 Q. OKAY.

10 A. WE FOLLOWED THE SAME BUSINESS MODEL THAT OUR
11 PREDECESSOR DID WITH YOUR AGENCY. YOU DID THE SAME
12 THING ---

13 Q. TO YOUR -- TO YOUR KNOWLEDGE ---

14 A. TO MY KNOWLEDGE, YES.

15 Q. --- AND TO YOUR UNDERSTANDING?

16 A. YES.

17 Q. YES.

18 A. TO MY UNDERSTANDING, PALMETTO SENT INDEPENDENT
19 CONTRACTORS TO S.C.D.C. MY UNDERSTANDING IS THAT
20 YOUR PERSONNEL KNEW ALL ABOUT THAT. OKAY, WE TOOK
21 OVER. WE TOOK OVER THE -- DO WE NEED TO...?

22 **BY MS. FARTHING:**

23 DO WE NEED TO WAIT UNTIL GREGG GETS BACK?

24 **BY MR. NEWMAN:**

25 NO, NO, GO AHEAD.

CROSS EXAMINATION RESUMED BY MS. FARTHING:

Q. OKAY, SORRY.

A. WHEN WE TOOK OVER THE BROKERAGE MODEL, MS. WALKER TOLD US THAT. MS. RATHBURN THAT HAD DEALT WITH S.C.D.C. PERSONNEL SAID "WE'RE RUNNING CONTRACTORS. IT'S WHAT EVERYBODY KNOWS. IT'S WHAT WE DO. IT'S FINE." SHE SAID "I'VE GOT THIS." THEY SENT YOUR BOILERPLATE CONTRACT. SHE SIGNED IT. EVERYTHING KEPT ON STATUS QUO FOR YEARS AND YEARS AND YEARS. THIS HAS NEVER BEEN RAISED AN ISSUE.

Q. OKAY.

A. SO, WHEN THE TURNER CASE HAPPENED, I SAID "WELL, I READ THIS AND THEY'RE SAYING THAT THERE'S NOT GOING TO BE COVERAGE, AND THAT, YOU KNOW, THIS IS GOING TO BE A PROBLEM, AND THAT MAYBE THERE IS A DIFFERENCE OF OPINION HERE." SO, I ASKED FOR THE REVISIONS TO BE MADE TO THE CONTRACT TO MAKE IT CLEAR. I WANT THIS TO ACCURATELY REFLECT THE COURSE OF CONDUCT BETWEEN THE PARTIES THAT EMPLOYEES AND/OR AGENTS, WHICH INCLUDES INDEPENDENT CONTRACTORS, ARE BEING PROVIDED.

Q. OKAY.

A. AND AT THAT POINT, MR. BURGESS KNOWS I TALKED ABOUT INDEPENDENT CONTRACTORS. MR. HARPER KNOWS.

Q. WHO IS MR. HARPER?

1 A. MATT HARPER, THE EMAIL I SENT DATED SEPTEMBER ---

2 Q. OKAY.

3 A. --- 25TH.

4 Q. WHAT IS HIS POSITION WITH THE DEPARTMENT OF
5 CORRECTIONS?

6 A. I DON'T KNOW.

7 Q. WHAT IS HIS POSITION -- WAS HE IN ANY KIND OF
8 POSITION TO BIND THE DEPARTMENT OF CORRECTIONS IN
9 ANY KIND OF AGREEMENT WITH MEDUSTRIAL?

10 A. I DON'T KNOW.

11 Q. OKAY. MR. BURGESS, YOU'VE MENTIONED A NUMBER OF
12 TIMES TALKING TO MR. BURGESS ABOUT IT, AND THAT IT
13 WAS APPROVED BY THE LAWYER -- HIS LAWYERS. DID YOU
14 EVER TALK TO HIS LAWYERS TO MAKE SURE THAT THEY
15 UNDERSTOOD THE DISTINCTION THAT WAS BEING MADE IN
16 THIS CONTRACT?

17 A. THEY -- I DID WHAT MR. BURGESS ASKED OF ME.

18 Q. OKAY.

19 A. NO ONE ELSE CONTACTED ME AND ASKED ME TO ELABORATE.

20 Q. DID YOU -- DID YOU ADVISE MR. BURGESS TO DISCUSS
21 THIS WITH HIS ATTORNEYS AND TO DISCUSS ---

22 A. I KNEW THAT'S WHAT HE ---

23 Q. --- TO EXPLAIN THAT DESIGNATION?

24 A. I KNEW THAT'S WHERE HE WAS GOING TO SEND IT.

25 Q. OKAY.

1 A. HE SAID "I'M GOING TO SEND IT TO MY LAWYERS."

2 Q. THE CONTRACT -- THE LANGUAGE YOU WERE PROPOSING WAS
3 EMPLOYEES AND/OR AGENTS?

4 A. YES.

5 Q. NO WHERE IN THERE DOES IT DESIGNATE INDEPENDENT
6 CONTRACTORS?

7 A. I THINK THE WORD "AGENTS" DOES.

8 Q. YOU THINK THE WORD "AGENTS" DOES?

9 A. I'M THE ONE THAT ADDED THAT LANGUAGE.

10 Q. OKAY. BUT ---

11 A. I THINK IT STANDS FOR INDEPENDENT CONTRACTORS.

12 Q. OKAY.

13 A. OKAY. I MEAN, IN THE CONTEXT OF ALL MY DEALINGS, I
14 DON'T -- I DON'T SEE HOW THAT COULD BE IN DISPUTE.
15 I MEAN, OTHER PEOPLE OBVIOUSLY DISAGREE WITH THAT,
16 BUT THAT'S MY TESTIMONY.

17 Q. IN YOUR DEPOSITION THAT WAS TAKEN IN -- THE SECOND
18 PART OF IT ON FEBRUARY 13TH ---

19 A. RIGHT.

20 Q. --- 2017, YOU INDICATED, AND I'M LOOKING AT PAGE 25
21 OF YOUR DEPOSITION -- OR THIS IS 24 TO 25 OF YOUR
22 DEPOSITION.

23 BY MR. GOODWYN:

24 YOUR HONOR, I WOULD OBJECT, UNLESS SHE IS
25 IMPEACHING HIM WITH SOMETHING. IS THAT WHAT YOU'RE

DOING?

CROSS EXAMINATION RESUMED BY MS. FARTHING:

Q. WHY DID YOU PROVIDE LIABILITY COVERAGE TO COVER THE INDIVIDUALS IN THE CONTRACT WITH THE DEPARTMENT OF CORRECTIONS?

A. IS THAT THE ONE FOR 2008?

Q. YES, SIR.

A. I THINK I'VE ALREADY ANSWERED PART OF THIS, BUT OKAY. "CONTRACTOR SHALL PROVIDE GENERAL LIABILITY INSURANCE FOR NEGLIGENT ACTS BY CONTRACTOR OR ITS AGENTS," A TERM THAT YOUR -- YOUR PEOPLE ALREADY USED, "AGENTS," WHICH OBVIOUSLY THIS DEMONSTRATES THEY KNEW THAT EMPLOYEES AND AGENTS WERE DISTINCT.

Q. BEFORE YOU START TESTIFYING ABOUT WHAT THEY KNEW, I THINK IT'S THEIR POSITION TO BE ABLE ---

A. OKAY.

Q. --- TO BE ABLE TO TESTIFY AS TO WHAT THEY KNEW.

A. SURE.

Q. SO, THIS CONTRACT PROVIDED -- REQUIRED THAT YOU PROVIDE ---

A. RIGHT.

Q. --- THE NEGLIGENT LIABILITY AND PROFESSIONAL MALPRACTICE INSURANCE PURSUANT TO THE TERMS OF THIS CONTRACT?

A. WELL, IT ---

1 Q. THE 2008 CONTRACT.

2 A. IT WAS PURSUANT TO THE TERMS OF THIS CONTRACT AND AT
3 THE SAME TIME, WHEN WE TOOK OVER THIS BUSINESS, OUR
4 AGENTS AND CARRIERS REQUIRED IT.

5 Q. OKAY.

6 A. I'M NOT SURE -- IN OTHER WORDS, IF WE'RE TALKING
7 ABOUT A CHICKEN OR EGG THING HERE.

8 Q. OKAY.

9 A. OKAY.

10 Q. BUT -- AND THE REASON WHY I WAS REFERRING TO YOUR
11 DEPOSITION TESTIMONY ---

12 A. RIGHT.

13 Q. --- IS THAT AT YOUR DEPOSITION, YOU SPECIFICALLY
14 TESTIFIED THAT YOU PROVIDED THIS INSURANCE BECAUSE
15 IT WAS REQUIRED UNDER THE TERMS OF THIS CONTRACT?

16 A. SURE.

17 Q. OKAY.

18 A. THAT'S -- I'M SURE THAT -- LIKE I SAID, IT'S THE
19 CHICKEN OR THE EGG.

20 Q. OKAY.

21 A. AND THAT WAS ONE OF THE REASONS.

22 Q. YOU ALSO PREVIOUSLY TESTIFIED CONCERNING THE
23 INDEPENDENT CONTRACTOR AGREEMENT THAT THAT AGREEMENT
24 REQUIRED THE INDIVIDUAL NURSES TO PROCURE THAT
25 INSURANCE ON THEIR OWN BEHALF AND TO PROVIDE THE

1 CERTIFICATE OF INSURANCE, BUT INSTEAD MEDUSTRIAL
2 ACTUALLY PROCURED THAT BECAUSE IT WAS REQUIRED BY
3 THIS -- BY THIS CONTRACT?

4 A. I DON'T -- I DON'T KNOW IF IT WAS REQUIRED BY THAT,
5 AND I PREVIOUSLY TESTIFIED ABOUT THIS. AGAIN, SAME
6 ANSWER, WE WENT TO OUR AGENT AND OUR CARRIER. THEY
7 SAID, "WELL, OKAY, IF YOU ARE DOING THIS MODEL, WE
8 DON'T CARE IF THEY'RE EMPLOYEES OR INDEPENDENT
9 CONTRACTORS. THEY HAVE A NURSING CERTIFICATION.
10 THEY HAVE A STANDARD OF CARE. THIS ISN'T WORKERS'
11 COMP THAT GOES TO THE INDIVIDUAL. THIS GOES TO
12 PEOPLE THAT ARE TREATING. THIS MIGHT GO TO YOUR
13 CLIENTS AND THEIR ACTIVITIES. IN OTHER WORDS, THIS
14 IS A -- IT IS SOMETHING THAT AFFECTS OTHERS, NOT
15 JUST THE WORKER. SO, WE ARE GOING TO REQUIRE YOU TO
16 HAVE IT."

17 Q. SO, YOU PROVIDED PROFESSIONAL LIABILITY COVERAGE
18 PURSUANT TO THE TERMS OF THIS CONTRACT EVEN THOUGH
19 THEIR CONTRACT -- THE INDEPENDENT CONTRACTOR
20 AGREEMENT WITH THESE NURSES REQUIRED THEM TO PROVIDE
21 IT, BECAUSE YOU NEEDED IT FOR THE TERMS OF THIS
22 CONTRACT AND OTHER CONTRACTS?

23 A. I THINK I JUST ANSWERED THAT. I DON'T -- I DON'T
24 THINK IT WAS -- I DON'T REALLY THINK THAT THIS
25 CONTRACT SAYS WE NEEDED TO PROVIDE IT, CORRECT.

1 Q. OKAY.

2 A. WHEN THAT HAPPENED, OUR AGENTS AND OUR CARRIER SAID
3 "YOU HAVE TO HAVE IT." SO, THEY SAID -- THEY
4 INDICATED WE HAD TO HAVE IT. ONCE WE HAD TO HAVE
5 IT, IN EFFECT, THAT TOOK CARE OF THE REQUIREMENT OF
6 THE INDEPENDENT CONTRACTOR AGREEMENT.

7 Q. AND ON PAGE ---

8 A. WHETHER THEY WANTED TO OR NOT, WE HAD TO HAVE IT,
9 AND SO WE DID.

10 Q. OKAY. AND ON PAGE -- THIS IS ON PAGE 25 OF YOUR
11 DEPOSITION, ---

12 A. RIGHT.

13 Q. --- SOMEBODY AT THIS POINT, I'M NOT SURE IF IT WAS
14 MR. -- I THINK IT WAS MR. SAMUELS WHO ASKED IT.
15 "AND FOR WHAT REASON DID YOU COVER PROFESSIONAL
16 LIABILITY INSURANCE FOR THE NURSES?" "WELL, BECAUSE
17 IN THIS CASE, MY UNDERSTANDING IS THAT IT WAS
18 REQUIRED BY THE CONTRACT."

19 A. RIGHT.

20 Q. SO, ---

21 A. I SAID THAT, AND THEN I SAID MORE, AND I GUESS I
22 WOULD BACK UP A MINUTE AND SAY THAT THIS WAS
23 PROBABLY AN EXTRA LAYER OF PROTECTION IN CASE THE
24 NURSE DIDN'T PROVIDE IT FOR THEMSELVES, WHICH THEY
25 WERE SUPPOSED TO. OUR UNDERSTANDING IS THAT

1 S.C.D.C. REQUIRED US TO HAVE THAT COVERAGE IN PLACE
2 FOR ANY PROFESSIONAL NEGLIGENCE WOULD BE COVERED
3 JUST IN CASE THE PERSON DID NOT PURCHASE THEIR OWN
4 INSURANCE.

5 Q. SO, THE CONTRACT REQUIRED PROFESSIONAL NEGLIGENCE --
6 -

7 A. RIGHT.

8 Q. --- INSURANCE, AND YOU WERE -- MEDUSTRIAL PROVIDED
9 THAT INSURANCE, BUT THE CONTRACT ALSO REQUIRED
10 PROVISION OF WORKERS' COMP INSURANCE, AND MEDUSTRIAL
11 DIDN'T FEEL A NEED TO PROVIDE THAT?

12 A. NO, CONDUSTRIAL -- CONDUSTRIAL/MEDUSTRIAL WOULD HAVE
13 FELT THE NEED TO PROVIDE WORKERS' COMPENSATION
14 INSURANCE FOR ITS EMPLOYEES.

15 Q. OKAY.

16 A BUT YOUR CONTRACT SAYS "EMPLOYEES OR AGENTS," AND
17 ALSO WHEN THAT OCCURRED, AS I'VE SAID NOW FOUR
18 TIMES, OUR AGENT AND OUR CARRIER SAID "YOU'VE GOT TO
19 HAVE IT."

20 Q. OKAY.

21 A. SO, WE GOT IT. I MEAN, I'VE ANSWERED THAT FIVE
22 TIMES.

23 Q. OKAY. BUT AGAIN, THE PLAIN LANGUAGE OF PARAGRAPH
24 SIX DESIGNATES THAT IT'S TO BE PROVIDED FOR
25 CONTRACTOR'S EMPLOYEES ---

1 A. RIGHT.

2 Q. --- WHICH IS USED SEVERAL, 20-SOME TIMES THROUGHOUT
3 THIS CONTRACT.

4 A. I BELIEVE I'VE ANSWERED THAT QUESTION.

5 Q. OKAY.

6 A. SEVERAL TIMES.

7 Q. THROUGHOUT THE COURSE OF THIS -- OF YOUR TESTIMONY,
8 YOU'VE REFERRED TO NATASHA RATHBURN AS A BLUE COLLAR
9 WORKER.

10 A. RIGHT.

11 Q. IN RESPONSE TO WHY SHE HAD HER SIGN CERTAIN
12 DOCUMENTS AND WHY SHE HAD HER SIGN, YOU KNOW,
13 EMPLOYMENT RECORDS, THINGS LIKE THAT?

14 A. RIGHT.

15 Q. REGARDLESS OF THE FACT THAT SHE WAS A BLUE COLLAR
16 WORKER, SHE WAS AUTHORIZED TO ENTER INTO THESE
17 AGREEMENTS ON BEHALF OF MEDUSTRIAL UNDER
18 CONDUSTRIAL, CORRECT?

19 **BY MR. GOODWYN:**

20 OBJECTION, ASKED AND ANSWERED. WE'VE ALREADY
21 GONE OVER THIS. HE SAID "YES, SHE WAS AUTHORIZED."

22 **BY MS. FARTHING:**

23 HE SAID THAT WITH REGARD TO THIS CONTRACT. I'M
24 ASKING WITH REGARD TO ANY OF THESE. HE KEPT
25 REFERRING TO HER AS A BLUE COLLAR WORKER. I'M JUST

1 -- I'M JUST CLARIFYING THAT THAT DOESN'T -- THAT
2 DOESN'T NEGATE HER ABILITY TO ENTER INTO THESE
3 CONTRACTS ON BEHALF OF MEDUSTRIAL.

4 BY THE WITNESS:

5 I NEVER SAID IT DID. I THINK IT GOES TO HER --
6 -

7 BY COMMISSIONER JAMES:

8 ALL RIGHT. SO, YOUR QUESTION IS TO ALL OF THE
9 CONTRACTS THAT SHE SIGNED?

10 BY MS. FARTHING:

11 WELL, JUST TO HER POSITION WITHIN MEDUSTRIAL,
12 BECAUSE HE KEPT REFERRING TO HER AS A BLUE COLLAR
13 WORKER, AS EXPLANATIONS AS TO WHY THESE CONTRACTS
14 SHOULDN'T BE CONSIDERED, BUT SHE WAS GIVEN THE
15 AUTHORITY TO ENTER INTO ALL OF THESE.

16 BY THE WITNESS:

17 I DON'T -- I DON'T EVER THINK I SAID THEY
18 SHOULDN'T BE CONSIDERED.

19 BY COMMISSIONER JAMES:

20 MR. SEARS, I BELIEVE THIS HAS ALREADY BEEN
21 STATED IN THE RECORD. WHAT IS HER POSITION OR WAS
22 HER POSITION?

23 BY THE WITNESS:

24 HER POSITION -- HER POSITION WAS -- LET ME FIND
25 IT. SHE CAME OVER FROM WHEN WE PURCHASED THE

1 BROKERAGE FROM PALMETTO REFERRAL SERVICES. MS.
2 RATHBURN CAME OVER. MR. DURHAM MADE HER -- SHE IS
3 LISTED HERE AS DIRECTOR. I THINK SHE WAS A MANAGER
4 OF MEDUSTRIAL COLUMBIA. SO, I MEAN, SHE WAS -- YOU
5 KNOW, SHE WAS -- SHE WAS THE PERSON THAT WAS PUT IN
6 CHARGE OF THAT OFFICE TO RUN THAT OFFICE, TO RUN THE
7 BROKERAGE. SHE WASN'T A LAWYER. SHE WASN'T A
8 SOPHISTICATED BUSINESS PERSON.

9 CROSS EXAMINATION RESUMED BY MS. FARTHING:

10 Q. AND NEITHER IS MR. BURGESS?

11 A. HUH?

12 Q. NEITHER IS MR. BURGESS?

13 A. I DON'T THINK I SAID THAT EITHER.

14 Q. OKAY. I BELIEVE EARLIER YOU TESTIFIED TO -- I'M
15 SORRY, YOU DESCRIBED THE CONTRACT WITH THE
16 DEPARTMENT OF CORRECTIONS AS BOILERPLATE; IS THAT
17 RIGHT?

18 A. WHEN I SAID BOILERPLATE --

19 (INTERRUPTION - LIGHTS TURN OFF)

20 BY COMMISSIONER JAMES:

21 I WOULD SAY Y'ALL CONTINUE ON, BUT I'M THE ONLY
22 ONE THAT CAN DO THIS.

23 (OFF THE RECORD)

24 CROSS EXAMINATION RESUMED BY MS. FARTHING:

25 Q. I BELIEVE I ASKED IF -- I BELIEVE YOUR TESTIMONY

1 EARLIER WAS YOU DESCRIBED THE CONTRACT FROM THE
2 DEPARTMENT OF CORRECTIONS AS A "BOILERPLATE
3 CONTRACT"?

4 A. I MEAN, YES, I THINK I SAID THAT. I GUESS PROBABLY
5 WHAT I MEANT IS IT WAS YOUR -- IT WAS YOUR STANDARD
6 FORM CONTRACT.

7 Q. OKAY. AND YOU ALSO DESCRIBED THE CONTRACT WITH
8 COUNTRYWIDE AS BEING THEIR CONTRACT AND A
9 "BOILERPLATE CONTRACT" AT ONE POINT, TOO?

10 A. I DID. WELL, I DON'T KNOW IF I SAID THEIRS WAS
11 BOILERPLATE.

12 Q. OKAY.

13 A. IN OTHER WORDS, YOUR CONTRACT WAS PRESENTED BY YOU,
14 DRAFTED BY YOUR PERSONNEL, AND BACK IN 2008, THERE
15 WAS NO CHANCE TO AMEND IT.

16 Q. TO YOUR KNOWLEDGE?

17 A. TO MY KNOWLEDGE.

18 Q. OKAY.

19 A. TO MY KNOWLEDGE. THE COUNTRYWIDE CONTRACT WAS
20 PRESENTED, WAS DRAFTED BY COUNTRYWIDE, AND THEY DID
21 ASK US, IN OTHER WORDS, FOR AMENDMENTS. "ARE THERE
22 AMENDMENTS YOU WOULD PROPOSE?" AND I DID PROPOSE
23 THOSE.

24 Q. OKAY. BUT YOU ALSO TESTIFIED THAT IT WAS YOUR --
25 THAT YOU FELT CONFIDENT THAT THERE WAS WORKERS'

1 COMPENSATION UNDER THE CONTRACT WITH COUNTRYWIDE?

2 A. FOR WHAT?

3 Q. FOR THE EMPLOYEES OF MEDUSTRIAL -- I'M SORRY,
4 CONDUSTRIAL.

5 A. THAT'S THE PURPOSE OF THE CONTRACT.

6 Q. YES.

7 A. YES.

8 Q. WOULD YOU HAVE THE SAME UNDERSTANDING THAT THE
9 DEPARTMENT OF CORRECTIONS WOULD HAVE THE SAME
10 EXPECTATION FOR THE PROVISION OF THIS KIND OF
11 COVERAGE ---

12 A. NO.

13 Q. --- UNDER THE TERMS OF THE 2008 CONTRACT?

14 A. NO, BECAUSE WE DIDN'T OPERATE THAT SAME WAY. THAT'S
15 -- NO.

16 Q. BUT POINT TO ME SOMETHING WITHIN THE CONTRACT THAT
17 -- THAT VERIFIES THAT FOR ME, BECAUSE I'M HAVING A
18 HARD TIME ---

19 A. VERIFIES WHAT?

20 Q. --- FINDING THAT.

21 A. VERIFIES WHAT?

22 Q. THAT THEIR EXPECTATION THAT THESE INDIVIDUALS WOULD
23 BE COVERED BY WORKERS' COMP COVERAGE -- BY WORKERS'
24 COMP COVERAGE.

25 A. WHO?

1 Q. THE DEPARTMENT OF -- THE SOUTH CAROLINA DEPARTMENT
2 OF CORRECTIONS OR REALLY ANYBODY READING THIS
3 CONTRACT ---

4 A. OKAY.

5 Q. --- WOULD NOT HAVE THE EXPECTATION THAT THESE
6 INDIVIDUALS WOULD BE COVERED BY WORKERS'
7 COMPENSATION -- WORKERS' COMPENSATION POLICY
8 PROVIDED BY CONDUSTRIAL OR MEDUSTRIAL?

9 A. WELL, THIS IS -- WE DIDN'T DRAFT THIS. YOU DID.

10 Q. OKAY.

11 A. RIGHT?

12 Q. IT'S SIGNED BY SOMEBODY ---

13 A. RIGHT.

14 Q. --- WITH YOUR COMPANY WHO HAD AUTHORITY TO BIND YOU
15 TO THIS CONTRACT, CORRECT?

16 A. HAD AUTHORITY TO BIND US BASED ON THE COURSE OF
17 DEALINGS SHE WAS ACTIVELY PARTICIPATING IN BEFORE
18 THE CONTRACT, DURING THE CONTRACT, AFTER THE
19 CONTRACT, AND CONTINUED TO DO FOR EIGHT YEARS.

20 Q. SHOW ME WHERE THIS CONTRACT SAYS IT INTEGRATES THE
21 COURSE OF DEALING BETWEEN THE DEPARTMENT OF
22 CORRECTIONS AND MEDUSTRIAL?

23 A. I THINK IT DOES INTEGRATE IT.

24 Q. WHERE IN THIS CONTRACT DO YOU SEE THAT?

25 A. BECAUSE THAT'S -- WHEN YOU HAVE A COURSE OF

1 DEALINGS, NOBODY WALKS UP AND ASKS ME TO WRITE THIS
2 DOWN OFTEN, "HEY, THERE'S A COURSE OF DEALINGS."

3 Q. BUT THIS ---

4 A. WELL, THE CONTRACT ---

5 Q. --- CONTRACT SPECIFICALLY PROVIDES THAT THIS
6 AGREEMENT CONSTITUTES THE ENTIRE CONTRACT BETWEEN
7 THE PARTIES.

8 A. I UNDERSTAND THAT. I ALSO UNDERSTAND THAT YOU
9 OPERATED UNDER A DIFFERENT COURSE OF DEALINGS FOR
10 EIGHT YEARS.

11 Q. AND YOU HAVE YET TO PROVIDE ME ANYTHING ---

12 A. I DISAGREE. I HAVE PROVIDED.

13 Q. OKAY.

14 A. I THINK I'VE PROVIDED EVIDENCE OF THAT.

15 Q. I DISAGREE.

16 A. I MEAN...

17 Q. AND I KNOW YOU'VE BEEN ASKED ABOUT THE ASSIGNED RISK
18 POLICY, ---

19 A. RIGHT.

20 Q. --- WHICH IS THE CERTIFICATE OF INSURANCE THAT
21 YOU'VE PROVIDED TO MR. -- MR. BURGESS WITHIN THE
22 PAST FEW MONTHS.

23 A. UH-HUH.

24 Q. AND I AGREE YOU'RE INDICATING YOUR TESTIMONY EARLIER
25 WAS THAT YOU HOPE IT WILL COVER THESE INDIVIDUALS

1 SHOULD THIS SITUATION RISE AGAIN.

2 A. YES.

3 Q. BUT THERE IS A LIKELIHOOD THAT IF ONE OF THEIR
4 NURSES WORKING FOR MEDUSTRIAL -- WORKING PURSUANT TO
5 THIS CONTRACT THE DEPARTMENT OF CORRECTIONS PROVIDED
6 BY MEDUSTRIAL GETS HURTS AGAIN, WE MIGHT BE IN THIS
7 EXACT SAME CIRCUMSTANCE AGAIN?

8 A. I DON'T THINK SO.

9 Q. OKAY.

10 A. I DON'T THINK SO. I THINK -- LIKE I SAID, WE HAVE --
11 -- WE HAVE TWO POLICIES NOW, OKAY. THE ONE IS WE'RE
12 WITH OUR P.E.O., BUT DEPENDING ON HOW THIS CASE
13 PLAYS OUT, WE PURCHASED AND ASSIGNED RISK POLICY TO
14 COVER 1099s. SO, AT THIS POINT, WE HAVE DONE OUR
15 BEST NO MATTER THE STATUS TO MAKE SURE THAT THEY'RE
16 COVERED, AND I THINK THEY ARE.

17 Q. AND MY LAST QUESTION IS THROUGHOUT THE COURSE OF
18 YOUR TESTIMONY TODAY, YOU KEEP -- I THINK YOU SAID A
19 NUMBER OF TIMES THAT YOU DIDN'T DO ANYTHING WRONG.
20 MEDUSTRIAL DIDN'T DO ANYTHING WRONG IN THIS, ---

21 A. YES.

22 Q. --- AND THERE'S NO BAD FAITH?

23 A. RIGHT.

24 Q. WHAT DID THE DEPARTMENT OF CORRECTIONS DO WRONG IN
25 THIS SITUATION?

1 A. DO YOU MEAN THE WHOLE SITUATION?

2 Q. YES.

3 A. DIDN'T PROVIDE ADEQUATE PROTECTION FOR THE NURSES.
4 I MEAN, THAT'S SOMETHING -- I MEAN, THAT'S SOMETHING
5 -- I MEAN, I DON'T WANT TO GET INTO ALL THAT. I
6 JUST ---

7 Q. I'M TALKING IN TERMS OF THIS WORKERS' COMP CLAIM AND
8 THE REASON WE'RE HERE TODAY. WHAT DID THE
9 DEPARTMENT OF CORRECTIONS DO WRONG?

10 A. IN WHAT CONTEXT?

11 Q. IN THE SAME CONTEXT THAT YOU'VE BEEN SAYING THAT YOU
12 HAVEN'T DONE ANYTHING WRONG. WHAT DID THE
13 DEPARTMENT OF CORRECTIONS DO WRONG?

14 A. I'M NOT -- IS THERE A POINT IN TIME WHERE I'VE
15 IMPLIED THAT YOU DID?

16 Q. WELL, THE DEPARTMENT OF CORRECTIONS IS IN THIS
17 SITUATION.

18 A. RIGHT.

19 Q. AND I GUESS -- I GUESS ---

20 A. I DON'T THINK I'VE EXPRESSED THAT OPINION.

21 Q. OKAY. ALL RIGHT.

22 **BY MS. FARTHING:**

23 NOTHING FURTHER.

24 **BY COMMISSIONER JAMES:**

25 MS. GLOVER.

CROSS EXAMINATION BY MS. GLOVER:

Q. MR. SEARS, LISA GLOVER WITH THE SOUTH CAROLINA UNINSURED EMPLOYERS' FUND. I JUST HAVE A FEW QUESTIONS FOR YOU. A LOT OF REFERENCE HAS BEEN MADE TO THE CONTRACT BETWEEN CONDUSTRIAL AND THE DEPARTMENT OF CORRECTIONS. IS IT YOUR POSITION THAT WHILE THERE WAS A CONTRACT IN PLACE, THAT YOU ALL WERE OPERATING OUTSIDE OF THE BOUNDS OF THE CONTRACT IN DOING WHAT HAD NORMALLY BEEN DONE? AND WHAT I MEAN BY THAT IS YOU'VE INDICATED THAT EVERYONE KNEW THAT YOU HAD 1099 INDEPENDENT CONTRACTORS, ---

A. RIGHT.

Q. --- BUT YOUR CONTRACT STATES THAT THEY ARE EMPLOYEES AND THAT YOU ALL ARE PROVIDING WORKERS' COMPENSATION COVERAGE.

A. YES, MA'AM.

Q. IS THAT THE WAY ---

A. I DON'T ---

Q. IS THAT WHAT YOU MEAN WHEN YOU SAY THAT'S THE COURSE OF DEALING?

A. I DON'T BELIEVE WE WERE ACTING OUTSIDE THE SCOPE OF THE CONTRACT, WHICH IN MY MIND INCLUDES THE COURSE OF DEALINGS BETWEEN THE PARTIES. THAT'S -- LIKE I SAID, I DON'T -- I'M TRYING TO ANSWER. I KNOW THAT WE'VE TALKED ABOUT THIS ALL DAY.

1 Q. I GUESS, CAN YOU TELL US WHAT YOU MEAN WHEN YOU SAY
2 "COURSE OF DEALING"?

3 A. I THINK THE COURSE OF DEALING ---

4 Q. DEFINE THAT FOR US.

5 A. I THINK THE COURSE OF DEALINGS BETWEEN THE PARTIES
6 WAS MY OPINION THAT PALMETTO BEFORE US AND
7 MEDUSTRIAL -- PALMETTO REFERRAL SERVICE AND THEN
8 PALMETTO AFTERWARDS WERE PROVIDING 1099s ON A
9 REGULAR BASIS WITHOUT OBJECTION. I DON'T -- IN
10 OTHER WORDS, IT NEVER -- IT NEVER OCCURRED TO ME.
11 IT WAS NEVER SENT TO ME THROUGH ANY OF THE PERSONNEL
12 I TALKED TO THAT WE WERE CONCEALING SOMETHING OR
13 HIDING SOMETHING. IT WAS MY UNDERSTANDING THAT
14 1099s WERE BEING PROVIDED, AND THAT EVERYONE
15 INVOLVED KNEW THAT.

16 Q. OKAY. DID YOU EVER REACH A POINT WHERE A RED FLAG
17 WENT UP FOR YOU WHEN READING THE CONTRACT BETWEEN
18 CONDUSTRIAL AND S.C.D.C. THAT IT SAYS "EMPLOYEES," -
19 --

20 A. RIGHT.

21 Q. --- BUT THE APPLICATIONS AND ALL THE PAPERWORK
22 THAT'S BEING DONE SAYS "INDEPENDENT CONTRACTORS"?

23 A. WHEN I -- THE FIRST TIME THIS PROBABLY CAME TO MY
24 ATTENTION WAS -- YOU KNOW, I DON'T KNOW. IT MIGHT
25 HAVE BEEN 2010, 2011. IN OTHER WORDS, I SAID "WELL,

1 WHAT'S THE SITUATION HERE?" AND MR. DURHAM AND MS.
2 RATHBURN EXPLAINED IT TO ME IN GREAT DETAIL. I'M
3 LIKE -- I MEAN, I READ THIS AND SAID, "YOU KNOW,
4 THERE'S SOME DIFFERENT INTERPRETATIONS HERE. WHAT'S
5 ACTUALLY GOING ON?" AND THEY EXPLAINED EVERYTHING
6 I'VE SAID TODAY. THAT MS. RATHBURN EXPLAINED IT.
7 MR. DURHAM EXPLAINED IT. MS. RATHBURN CAME FROM OUR
8 PREDECESSOR. SHE STAYED WITH US. SHE EXPLAINED
9 WHAT WAS GOING ON. I SAW NO REASON TO DISBELIEVE
10 HER OR CONTRADICT THAT.

11 Q. OKAY. ONCE YOU ALL -- ONCE CONDUSTRIAL CONTRACTED
12 WITH COUNTRYWIDE, ---

13 A. RIGHT.

14 Q. --- DID YOU INFORM THEM THAT YOU HAD THE 1099
15 SITUATION AND THAT THE DEPARTMENT OF CORRECTIONS WAS
16 AWARE OF IT AND YOU ALL CONTINUE IN THIS COURSE OF
17 DEALING THAT HAD BEEN IN PLACE FOR SEVERAL YEARS?

18 A. IN OTHER WORDS, WE DIDN'T -- OTHER THAN TELLING THEM
19 WE HAD -- IN OTHER WORDS, IN OUR MINDS SINCE WE ARE
20 CONTRACTING WITH COUNTRYWIDE, AND THE MEDUSTRIAL
21 MODEL INVOLVES INDEPENDENT CONTRACTORS THAT WOULD
22 NOT BE INCLUDED IN THAT AGREEMENT, WE -- IN OTHER
23 WORDS, WE DIDN'T GET INTO ANY GREAT DETAIL ABOUT IT
24 OTHER THAN TO SAY, WHICH IS A CONVERSATION WE'VE HAD
25 WITH MORE THAN ONE P.E.O., MORE THAN ONE CARRIER,

1 "WE'VE GOT THIS MEDUSTRIAL DIVISION. IT'S -- IT'S
2 SOME NURSES AND L.P.N.s THAT WE PROVIDE TO S.C.D.C.
3 AND SIMILAR PLACES AS INDEPENDENT CONTRACTORS, NOT
4 PART OF THIS DEAL."

5 Q. OKAY.

6 BY MS. GLOVER:

7 I DON'T HAVE ANY OTHER QUESTIONS.

8 BY COMMISSIONER JAMES:

9 RE-DIRECT?

10 BY MR. GOODWYN:

11 A COUPLE OF FOLLOW UPS, YES, YOUR HONOR.

12 RE-DIRECT EXAMINATION BY MR. GOODWYN:

13 Q. MR. SEARS, MR. SAMUELS ASKED YOU SOME QUESTIONS
14 ABOUT THE MEDUSTRIAL WEBSITE PRINTOUT THAT HE HAS IN
15 HIS APAs PAGE 305, 306 AND 307.

16 A. OKAY.

17 Q. HE WAS ASKING YOU IF THERE WAS ANYTHING IN THERE
18 THAT INDICATES THAT THE NURSES WOULD BE INDEPENDENT
19 CONTRACTORS. CAN YOU LOOK AT THE SECOND PAGE FOR
20 ME, AND READ THIS WHERE IT SAYS "WELCOME TO
21 MEDUSTRIAL," CAN YOU READ THAT LITTLE THREE SENTENCE
22 PARAGRAPH?

23 A. IT SAYS "MEDUSTRIAL EXTENSIVE SERVICES HELP TAKE THE
24 HASSLE OUT OF MEDICAL STAFFING. PARTNERING WITH
25 MEDUSTRIAL PROVIDES EMPLOYERS WITH CONFIDENCE THEY

1 WILL GET THE BEST TEMPORARY CONTRACT INTENT TO HIRE
2 STAFFING AVAILABLE."

3 Q. ALL RIGHT. SO, IT DOES INDICATE THAT CONTRACT
4 EMPLOYEES WOULD BE PROVIDED?

5 A. YES.

6 Q. CORRECT?

7 A. YES.

8 Q. MS. RICHARDSON ELICITED SOME TESTIMONY FROM YOU
9 REGARDING YOUR CONTACT WITH GUARANTEE. I'M GOING TO
10 SHOW YOU AN EMAIL.

11 BY MR. GOODWYN:

12 I DO NOT HAVE COPIES OF IT, AND IT'S NOT IN MY
13 APAs. IF YOU WANT TO SEE IT FIRST?

14 BY MS. RICHARDSON:

15 YES.

16 BY MR. SAMUELS:

17 YES.

18 BY MS. RICHARDSON:

19 OKAY.

20 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. ALL RIGHT. MR. SEARS, IS THIS AN EMAIL BETWEEN --
22 OR TELL ME WHO THIS EMAIL IS BETWEEN, SINCE YOU
23 FORWARDED ME THE EMAIL, AND I PRINTED IT.

24 A. OKAY. THIS IS FROM DONNA MANFRE TO ME JUNE 8TH,
25 2016. LET'S SEE. DO YOU WANT ME TO GO BACK TO THE

1 BEGINNING?

2 Q. YES. YEAH.

3 A. OKAY. LET'S SEE. DONNA MANFRE EMAILS ME. "HI,
4 TOM, I HAVE THIS NEW CLAIM WE RECEIVED RECENTLY.
5 ACCORDING TO COUNTRYWIDE, MS. TURNER WOULD HAVE BEEN
6 UNDER MEDUSTRIAL, WHICH WAS ASSOCIATED WITH
7 CONDUSTRIAL. CAN YOU TELL ME ANYTHING ABOUT THE
8 RELATIONSHIP BETWEEN CONDUSTRIAL AND MEDUSTRIAL. DO
9 YOU HAVE A CONTACT FOR MEDUSTRIAL; ARE YOU FAMILIAR
10 WITH MS. TURNER'S CLAIM/INJURY. I WILL CALL YOU
11 WHEN I GET BACK FROM LUNCH IF THAT IS OKAY."

12 Q. ALL RIGHT. BEFORE YOU GET TOO FAR. WHO IS DONNA
13 MANFRE?

14 A. DONNA MANFRE IS AN ADJUSTER WITH -- I DON'T KNOW IF
15 SHE IS TECHNICALLY WITH PATRIOT OR GUARANTEE.
16 PATRIOT IS GUARANTEE'S PARENT COMPANY, I BELIEVE.
17 I'M NOT SURE OF THE RELATIONSHIP.

18 BY MR. ALFORD:

19 NO.

20 BY MS. RICHARDSON:

21 NO.

22 THE WITNESS RESUMES ANSWER:

23 A. I DON'T -- I DON'T KNOW.

24 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. OKAY. BUT WAS SHE ADJUSTING THE RACHEL TURNER CLAIM

1 ON BEHALF OF GUARANTEE?

2 A. YES.

3 Q. OKAY.

4 A. I BELIEVE SO.

5 Q. ALL RIGHT. SO, SHE REACHED OUT TO YOU?

6 A. I THINK, YES. SHE REACHED OUT TO ME.

7 Q. OKAY. AND THERE WAS A DISCUSSION ABOUT THE
8 CONDUSTRIAL/MEDUSTRIAL ISSUE?

9 A. RIGHT.

10 Q. AND WHAT ELSE WAS SAID -- COMMUNICATED IN THE EMAIL?

11 A. WELL, I LEFT HER A VOICE MAIL. I THINK THAT MAY
12 EXPLAIN SOME OF IT. I'M SURE WE TALKED FURTHER.
13 THEN WEDNESDAY, JUNE 8TH, "HI, TOM. IT IS WILL
14 HARBISON WITH GALLIVAN, WHITE AND BOYD."

15 Q. WHAT WAS THAT IN RESPONSE TO?

16 A. THAT WAS IN RESPONSE TO DONNA. WHO IS DEFENSE
17 COUNSEL AGAIN? I'VE LOST MY NOTE. THANK YOU.

18 Q. OKAY.

19 A. SHE SAID, "HI, TOM, IT'S WILL HARBISON WITH
20 GALLIVAN, WHITE AND BOYD. TOM, YOU WERE GOING TO
21 SEND ME SOME DOCUMENTS OR DOCUMENTATION ON MS.
22 TURNER. I NEVER RECEIVED ANYTHING. YOU CAN REACH
23 WILL AT 803-724-1709."

24 Q. ALL RIGHT. AND AT THAT POINT, DID YOU BELIEVE THAT
25 GUARANTEE WAS PROVIDING A DEFENSE IN THIS CASE?

1 A. I DID.

2 Q. ALL RIGHT. AND I KNOW -- THE COMMISSIONER, I KNOW
3 IS FAMILIAR WITH THAT WHOLE SITUATION FROM THE
4 MOTION TO RECUSE HEARING. SO, WE DON'T HAVE TO GET
5 INTO THAT IN TOO MUCH DETAIL.

6 BY MR. GOODWYN:

7 I WOULD LIKE TO GO AHEAD AND ADMIT THIS AS
8 CONDUSTRIAL'S TRIAL EXHIBIT FIVE.

9 BY COMMISSIONER JAMES:

10 ARE THERE ANY OBJECTIONS?

11 BY MR. ALFORD:

12 TO THE DOCUMENTS?

13 BY MR. GOODWYN:

14 TO THE EMAIL CHAIN?

15 BY MR. ALFORD:

16 I DON'T HAVE ONE.

17 BY MS. RICHARDSON:

18 NO.

19 BY MR. SAMUELS:

20 NONE FROM THE CLAIMANT.

21 (COURT REPORTER MARKS DOCUMENT CONDUSTRIAL EXHIBIT 5,
22 RETAINED IN THE COMMISSION FILE)

23 BY COMMISSIONER JAMES:

24 SO ADMITTED.

25 RE-DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. JUST A COUPLE MORE QUESTIONS, MR. SEARS.

2 COUNTRYWIDE HAS SUGGESTED THAT THEY WERE OPERATING
3 UNDER AN EMPLOYER OF RECORD MODEL IN THIS CASE. WHO
4 WERE THE -- WHO WERE THE EMPLOYEES OF -- BETWEEN
5 MEDUSTRIAL AND COUNTRYWIDE?

6 A. I MEAN, AS FAR AS OBVIOUSLY THE AGREEMENT SAYS IT
7 WAS A CO-EMPLOYER AGREEMENT. THEY WERE FILED UNDER
8 OUR FEDERAL TAX I.D.

9 Q. ALL RIGHT. W-2'D UNDER YOUR TAX I.D.?

10 A. YES.

11 Q. AND THE PAYCHECKS WERE CUT FROM CONDUSTRIAL'S BANK
12 ACCOUNT?

13 A. RIGHT, YES.

14 Q. ALL RIGHT, SO, BUT THE WORKERS' COMPENSATION
15 COVERAGE WAS IN COUNTRYWIDE'S NAME, CORRECT?

16 A. THEY HAD THE MASTER POLICY.

17 Q. OKAY.

18 A. WHICH IS STANDARD IN A P.E.O. TYPE RELATIONSHIP.

19 Q. ALL RIGHT.

20 BY MR. GOODWYN:

21 ALL RIGHT. I DON'T THINK I HAVE ANYTHING ELSE
22 RIGHT NOW.

23 BY COMMISSIONER JAMES:

24 RE-CROSS ON BEHALF OF THE CLAIMANT?

25 BY MR. SAMUELS:

1 THANK YOU, YOUR HONOR.

2 RE-CROSS EXAMINATION BY MR. SAMUELS:

3 Q. MR. SEARS, NICE TO TALK TO YOU AGAIN AFTER ALL OF
4 THESE HOURS.

5 A. IF YOU SAY SO.

6 Q. YOU GAVE SOME EARLIER TESTIMONY, I BELIEVE, ABOUT
7 THE FIRST SHIFT THAT MS. TURNER WORKED FOR
8 CONDUSTRIAL. ISN'T IT TRUE THAT ON THAT FIRST
9 SHIFT, CONDUSTRIAL TOLD HER WHERE TO GO AND WHEN TO
10 GO?

11 A. I DON'T -- I DON'T THINK SO. I DON'T THINK IT WAS
12 ANY DIFFERENT THAN ANY OTHER SHIFT. I MEAN, I -- I
13 THINK WHEN SHE CAME IN AND ACCEPTED A SHIFT, I
14 THINK, YES, WE SAID "KIRKLAND IS WHERE YOU'LL..." OR
15 WHEREVER IT WAS, "THAT IS WHERE YOU NEED TO GO TO
16 FULFILL YOUR SHIFT."

17 Q. ALL RIGHT. SO, YOU TOLD HER WHERE TO GO, WHAT
18 FACILITY TO SHOW UP AT AND WHEN TO BE THERE?

19 A. I DON'T THINK WE TOLD HER -- WE TOLD HER WHAT THE
20 SHIFT WAS FROM S.C.D.C. "THIS IS WHERE THE SHIFT IS
21 LOCATED. HAVE AT IT."

22 Q. AND YOU HAD THAT INFORMATION, AND YOU HAD TO APPROVE
23 THAT SHIFT BEFORE SHE COULD WORK IT, CORRECT?

24 A. WE DIDN'T APPROVE IT. THEY SENT US THE SHIFT, AND
25 WE ASKED HER IF SHE WANTED THE SHIFT. SHE ACCEPTED

1 THE SHIFT, AND SAID SHE WAS GOING TO GO. WE DIDN'T
2 HEAR THAT SHE DIDN'T GO.

3 Q. IS IT YOUR TESTIMONY THAT CONDUSTRIAL DOES NOT HAVE
4 TO APPROVE A SHIFT THAT SHE WORKS?

5 A. I DON'T -- I DON'T KNOW WHAT YOU MEAN BY APPROVE. I
6 MEAN, THEY SEND US THE SHIFTS TO FILL. WE LET THEM
7 KNOW THAT WE FILLED THE SHIFTS.

8 Q. I'M GOING TO SHOW YOU A DOCUMENT.

9 BY MR. SAMUELS:

10 I HAVE COPIES FOR THE OTHER ATTORNEYS. THE
11 SPECIFIC DOCUMENT THAT I'M GOING TO SHOW THE WITNESS
12 IS BATE STAMPED "TURNER V. CONDUSTRIAL DEFENSE
13 000225."

14 BY MR. GOODWYN:

15 IS THIS IN THE APAs?

16 BY MR. SAMUELS:

17 IT'S NOT IN OUR APA.

18 BY MR. GOODWYN:

19 OH, CAN I JUST SEE IT?

20 BY MS. GLOVER:

21 OH, HERE.

22 BY MR. GOODWYN:

23 HAVE YOU GOT EXTRA COPIES?

24 BY MS. GLOVER:

25 YES.

1 BY MR. SAMUELS:

2 THIS DOCUMENT WAS NOT PRODUCED IN THIS
3 LITIGATION, BUT IT WAS PRODUCED IN SOME OTHER
4 LITIGATION.

5 BY MR. GOODWYN:

6 CAN YOU TELL US WHAT THE REDACTED PARTS ARE?

7 BY MR. SAMUELS:

8 I CAN'T, BECAUSE YOUR COMPANY REDACTED THEM.
9 THEY WERE PRODUCED BY YOUR CLIENT, BUT I AM ONLY
10 SPECIFICALLY SHOWING THE PAGE MARKED 225 TO MR.
11 SEARS, AND I WOULD LIKE TO GET THIS MARKED.

12 BY COMMISSIONER JAMES:

13 OKAY. IS THERE ANY OBJECTION?

14 BY MR. ALFORD:

15 NO OBJECTION.

16 BY MS. RICHARDSON:

17 NONE FROM US.

18 BY COMMISSIONER JAMES:

19 WITHOUT OBJECTION, THAT WOULD BE ---

20 BY MR. GOODWYN:

21 I'M GOING TO OBJECT THAT THIS IS BEYOND THE
22 SCOPE. HE HAD HIS CHANCE TO ASK ALL OF THESE
23 QUESTIONS. NOBODY ELSE ASKED ABOUT WHEN SHE WOULD
24 COME IN ON SHIFTS, ABOUT HER FIRST SHIFT.

25 BY MR. SAMUELS:

1 IT'S NOT BEYOND THE SCOPE. THE WITNESS HAS
2 ALREADY TESTIFIED ---

3 BY MR. ALFORD:

4 I ASKED HIM.

5 BY MR. SAMUELS:

6 --- TO TWO OTHER ATTORNEYS ABOUT WHETHER OR NOT
7 CONDUCT HAD TO APPROVE SHIFTS, AND HE SAID "NO,
8 IT WAS UP TO THE EMPLOYEE." SO, IT'S IMPEACHMENT
9 FOR ---

10 BY THE WITNESS:

11 I DON'T THINK I SAID THAT EITHER. I DON'T
12 THINK I SAID THAT EITHER.

13 BY COMMISSIONER JAMES:

14 WAIT, MR. SEARS. I'M GOING TO OVERRULE THE
15 OBJECTION. THIS WILL BE TRIAL CLAIMANT'S ONE.
16 (COURT REPORTER MARKS DOCUMENT CLAIMANT'S EXHIBIT ONE,
17 RETAINED IN THE COMMISSION FILE)

18 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

19 Q. MR. SEARS, I AM SHOWING YOU CLAIMANT'S EXHIBIT ONE.

20 A. OKAY.

21 Q. HAVE YOU SEEN THIS PARTICULAR DOCUMENT BEFORE?

22 A. NOT -- I DON'T HAVE ANY SPECIFIC RECOLLECTION OF
23 THIS.

24 Q. DO YOU BELIEVE THAT THE CHAIN OF THESE TWO EMAILS IS
25 AN EMAIL FROM A LADY NAMED SERAPHINE NIATI?

1 A. RIGHT.

2 Q. WITH AN EMAIL ADDRESS OF DOC.SC.GOV?

3 A. CORRECT.

4 Q. DO YOU UNDERSTAND THAT'S A DEPARTMENT OF CORRECTIONS
5 EMAIL ADDRESS?

6 A. YES.

7 Q. AND WHAT IS THE SUBJECT OF THIS EMAIL?

8 A. IT SAYS "ASKING FOR APPROVAL."

9 Q. AND MS. NIATI, SHE'S AN R.N. SHE IS THE B.R.C.I.
10 HEAD NURSE.

11 A. OKAY, RIGHT.

12 Q. WE CAN ASSUME B.R.C.I. MEANS BROAD RIVER
13 CORRECTIONAL INSTITUTE?

14 A. RIGHT.

15 Q. OKAY. EMAIL SAYS "HELLO, LISSETTE, NURSE R. TURNER
16 HAS VOLUNTEERED TO WORK TOMORROW 9/16/14 SEVEN A.M.
17 TO SEVEN P.M."

18 A. RIGHT.

19 Q. "I AM WRITING THIS NOTE TO ASK FOR YOUR APPROVAL."

20 A. SURE.

21 Q. SO, WOULD YOU AGREE THAT THAT WAS A REQUIRED
22 PROCEDURE THAT BEFORE MS. TURNER OR ANY OF THE OTHER
23 NURSES COULD WORK A SHIFT, THEY HAD -- S.C.D.C. HAD
24 TO OBTAIN THE APPROVAL FROM CONDUSTRIAL?

25 A. NOT IN THE SENSE, I THINK, THAT YOU MEAN IT. I

1 MEAN, THIS IS -- THIS IS PROOF OF THE BROKERAGE
2 OPERATING AS IT SHOULD. NOTICE THAT BROKERAGE
3 D.O.C., AS YOU POINTED OUT, IT SAYS "LISSETTE, MS.
4 TURNER HAS VOLUNTEERED TO WORK TOMORROW," WHICH
5 SUGGESTS TO ME SINCE THIS IS THE DAY BEFORE THAT
6 SOMEBODY DIDN'T SHOW UP, AND SO THEY ARE TRYING TO
7 FILL THIS SHIFT. OKAY. AGAIN, MS. TURNER OBVIOUSLY
8 HAD A CONVERSATION WITH MS. NIATI OUTSIDE OF US
9 WITHOUT CONSULTING US. SHE DIDN'T COME TO US. SHE
10 WENT TO D.O.C. DIRECTLY AND SAID "HEY, I CAN WORK
11 THAT," BECAUSE THEY KNEW THAT SHE WAS AFFILIATED
12 WITH US, THE D.O.C. DID WHAT THEY WERE SUPPOSED TO
13 AND SENT AN EMAIL AND SAID "HERE'S THIS SHIFT. IS
14 SHE APPROVED TO FILL THIS SHIFT?" IN OTHER WORDS,
15 CAN WE SLIDE HER INTO THIS SHIFT. WE HAVE A SHIFT
16 THAT NEEDS TO BE FILLED. MS. TURNER HAS VOLUNTEERED
17 TO DO THAT TO KEEP THINGS THROUGH THE BROKERAGE
18 MODEL. IS THAT OKAY?" AND OUR PERSONNEL REPLIED
19 "YES, THAT'S OKAY."

20 Q. IN OTHER WORDS, YOUR PERSONNEL GAVE THE APPROVAL,
21 GAVE PERMISSION FOR MS. TURNER TO WORK THAT SHIFT,
22 THAT SHE HAD TO HAVE PERMISSION FROM CONDUSTRIAL IF
23 SHE WAS GOING TO WORK THAT SHIFT?

24 A. THEY FOLLOWED THE BROKERAGE MODEL JUST LIKE D.O.C.
25 MS. TURNER WENT TO THIS LADY DIRECTLY ON HER OWN

1 VOLITION WITHOUT CONSULTING US, OBVIOUSLY
2 VOLUNTEERED TO WORK A SHIFT. MS. NIATI SAID "WELL,
3 I'VE GOT TO GO THROUGH THE BROKERAGE MODEL." SHE
4 SENT A SHIFT IN. THIS IS A SIFT REQUEST "WE WOULD
5 LIKE TO HAVE THIS FILLED." JUST LIKE I TOLD YOU,
6 THIS IS SOMEWHAT SIMILAR TO THE MONTHLY SCHEDULE
7 THEY WOULD SEND IN WHERE SOME OF THE NAMES ARE
8 ALREADY DOWN THERE, WHICH MEANS THEY'VE ALREADY HAD
9 A CONVERSATION WITH MS. TURNER OR ANYONE LIKE HER
10 WITHOUT US AND DECIDED WHAT THEY WERE GOING TO DO.
11 HERE'S -- HERE'S THE SCHEDULE, AND IN OTHER WORDS,
12 "HERE'S THE ONES THAT -- THAT WE HAVE DOWN, AND WE
13 WANT YOU TO FILL THESE HOLES." THAT'S NOT AN
14 APPROVAL IN THE SENSE THAT WE HAVE CONTROL OVER
15 THIS. IT'S -- IT'S AN APPROVAL OF GOING THROUGH THE
16 BROKERAGE.

17 Q. SIR, IT SEEMS WE SPEND A LOT OF TIME PARSING WORDS
18 WITH YOUR TESTIMONY.

19 A. I DON'T AGREE WITH THAT EITHER.

20 Q. THIS EMAIL PLAINLY STATES "I AM WRITING THIS NOTE TO
21 ASK FOR YOUR APPROVAL."

22 **BY MR. GOODWYN:**

23 OBJECT TO THE FORM.

24 **RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

25 Q. APPROVAL MEANS AUTHORITY.

1 BY COMMISSIONER JAMES:

2 MR. SAMUELS.

3 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. THAT MEANS I'VE GOT TO GET YOUR AUTHORITY.

5 BY MR. GOODWYN:

6 I'M OBJECTING TO THE FORM. THAT WASN'T EVEN A
7 QUESTION.

8 BY THE WITNESS:

9 HE'S NOW TELLING ME WHAT HE THINKS.

10 BY COMMISSIONER JAMES:

11 ALL RIGHT. MR. SAMUELS, IF YOU COULD ASK A
12 QUESTION.

13 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

14 Q. MR. SEARS, THE EMAIL SENT TO LISSETTE SHOEMAKER,
15 DIRECTOR OF OPERATIONS FOR MEDUSTRIAL MIDLANDS, SAYS
16 "I AM WRITING THIS NOTE TO ASK FOR YOUR APPROVAL."

17 A. I UNDERSTAND.

18 Q. YOU WOULD AGREE THAT THAT WAS A NECESSARY STEP THAT
19 HAD TO BE ACCOMPLISHED BEFORE MS. TURNER WOULD BE
20 ALLOWED TO WORK THAT SHIFT BY CONDUSTRIAL?

21 A. WE ARE NOT THE ONES THAT ALLOW IT. IT'S GOING
22 THROUGH THE BROKERAGE MODEL. I BELIEVE -- I'M
23 ALLOWED TO EXPLAIN MY ANSWER. I BELIEVE YOU ARE
24 ADDING LEVELS OF AUTHORITY THAT DON'T EXIST. THIS
25 WAS AN ADMINISTRATIVE FUNCTION ONLY. D.O.C. IS

1 SAYING "SHE IS VOLUNTEERING FOR THE SHIFT. SHE CAME
2 AND TALKED TO US. THIS IS THROUGH YOUR BROKERAGE
3 MODEL. WILL YOU PUT HER DOWN FOR THIS SHIFT?"
4 "YES, WE WILL."

5 Q. WELL, LET'S TAKE A LOOK AT THAT RESPONSE.

6 A. OKAY.

7 Q. SO, THE RESPONSE IS "YES, MS. NIATT, TURNER IS
8 APPROVED FOR 9/16 AND 9/17 FOURTH AND FIFTH SHIFT
9 WITH THE UNDERSTANDING THAT 9/17 IS AT STRAIGHT
10 TIME."

11 A. OKAY.

12 Q. "THANK YOU." NOW, WOULDN'T YOU AGREE THAT BY
13 INSISTING THAT 9/17 SHIFT IS AT STRAIGHT TIME, MS.
14 SHOEMAKER, THE DIRECTOR OF OPERATIONS FOR MEDUSTRIAL
15 MIDLANDS, IS LIMITING THE RATE OF PAY AND THE
16 ABILITY OF MS. TURNER TO WORK THAT SHIFT. SHE IS
17 CONTROLLING HOW THAT WORKER IS PAID FOR THAT SHIFT?

18 A. I DON'T AGREE WITH THAT, AND OBVIOUSLY YOU'VE HANDED
19 ME TWO EMAILS WITHOUT ANY CONTEXT.

20 Q. OBVIOUSLY THE MEANING IS PLAIN.

21 A. I DISAGREE.

22 BY MR. GOODWYN:

23 OBJECT TO THE FORM.

24 BY COMMISSIONER JAMES:

25 SUSTAINED.

1 **RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

2 Q. AND, IN FACT, SIR, THERE IS NOTHING TO PREVENT A W-2
3 NURSE, FOR EXAMPLE THE NURSES EMPLOYED BY YOUR
4 COMPETITOR MEDFIRST TO DO THE SAME THING, TO ASK
5 S.C.D.C. "CAN I WORK A SHIFT?" AND S.C.D.C. CONTACTS
6 MEDFIRST AND SAYS "CAN WE LET THIS WOMAN WORK THIS
7 SHIFT?" AND THEY APPROVE IT.

8 **BY MR. GOODWYN:**

9 OBJECTION, CALLS FOR SPECULATION.

10 **RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

11 Q. THAT -- THAT CAN WORK THE SAME WAY?

12 A. MR. SAMUELS, DO YOU HAVE A QUESTION?

13 Q. YES, SIR. THAT WOULD WORK THE SAME WAY? THAT WAS
14 MY QUESTION.

15 A. NO.

16 **BY MR. GOODWYN:**

17 OBJECTION, CALLS FOR SPECULATION AS TO WHETHER
18 A COMPETITOR OR HOW A COMPETITOR MAY HANDLE THE SAME
19 SITUATION.

20 **BY COMMISSIONER JAMES:**

21 SUSTAINED.

22 **RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

23 Q. YOU ARE AWARE THOUGH THAT YOU HAVE A COMPETITOR IN
24 MEDFIRST WHO STAFFS NURSES AT S.C.D.C.; ISN'T THAT
25 TRUE?

1 A. I BELIEVE THAT'S THE CASE.

2 Q. AND YOU ALSO ARE AWARE THAT MEDFIRST PAYS THEIR
3 NURSES ON W-2, PROVIDES INSURANCE, EVEN PROVIDES A
4 401-K?

5 A. I'M NOT AWARE OF THAT. I -- I'VE HEARD RUMORS. IN
6 OTHER WORDS -- IN OTHER WORDS, IT'S NOTHING THAT
7 I'VE SEEN IN WRITING.

8 Q. LET ME SHOW YOU PAGE 297, CLAIMANT'S EXHIBITS. THIS
9 IS ALREADY IN THE RECORD WITHOUT OBJECTION. MR.
10 SEARS, DO YOU AGREE THAT THIS IS A WEBSITE
11 WWWMEDFIRSTSTAFFING.COM?

12 A. IT APPEARS TO BE SO.

13 Q. DO YOU AGREE IT STATES "MEDFIRST HIRES A WIDE RANGE
14 OF HEALTHCARE PERSONNEL, BUT WE SPECIALIZE IN R.N.s,
15 L.P.N.s AND C.N.A.s"?

16 A. I DON'T KNOW THAT. I JUST KNOW YOU ARE SHOWING ME A
17 WEBSITE THAT SAYS THAT.

18 Q. WELL, I ASKED YOU IF YOU KNEW THAT IT SAID THAT? I
19 READ IT TO YOU. SO, WOULD YOU AGREE IT SAYS THAT?

20 A. I AGREE THAT THE PRINTED WORDS ON THE PAGE SAY WHAT
21 THEY SAY.

22 Q. OKAY. THIS IS THE PART THAT CONFIRMS IN PART THE
23 RUMOR THAT YOU HAD HEARD ABOUT MEDFIRST; ISN'T THAT
24 TRUE?

25 A. NO. I'VE NEVER SEEN THIS. I MEAN, I'VE NEVER

1 LOOKED AT THIS BEFORE. I DON'T HAVE ANY FIRSTHAND
2 KNOWLEDGE HOW MEDFIRST OPERATES.

3 Q. WELL, LET'S LOOK AT PAGE 298.

4 A. OKAY.

5 Q. THERE'S A QUESTION, "DOES MEDFIRST WITHHOLD TAXES
6 FROM MY PAYCHECK?" WHAT'S THE ANSWER?

7 A. IT SAYS "MEDFIRST CURRENTLY EMPLOYS OUR STAFF AS W-2
8 EMPLOYEES. WE ARE RESPONSIBLE FOR WITHHOLDING ALL
9 APPLICABLE STATE AND FEDERAL TAXES THROUGH YOUR
10 PAYCHECK."

11 Q. AND PAGE 299. "MEDFIRST OFFERS A FULL RANGE OF
12 BENEFITS. OUR COMPANY ALSO OFFERS A 401-K
13 RETIREMENT PLAN WITH IMMEDIATE VESTING." DO YOU
14 AGREE WITH THAT?

15 A. I AGREE THAT THAT IS WHAT THAT PIECE OF PAPER SAYS.

16 Q. AND YOU DO KNOW THAT MEDFIRST IS A COMPETITOR FOR
17 YOU FOR NURSES AT S.C.D.C.?

18 A. I HAVE HEARD THAT, YES.

19 Q. WOULD YOU AGREE THAT W-2 NURSES ARE REQUIRED TO BE
20 PAID OVERTIME IF THEY WORK OVER 40 HOURS?

21 A. I THINK EMPLOYEES, OBVIOUSLY THE DEPARTMENT RULES IF
22 YOU WORK OVER 40 HOURS, YOU ARE SUPPOSED TO RECEIVE

23 ---

24 BY MR. GOODWYN:

25 I'M GOING TO OBJECT. THIS IS BEYOND THE SCOPE

1 OF THE MAIN DIRECT. WHAT DOES OVERTIME PAY HAVE TO
2 DO WITH ANYTHING?

3 BY COMMISSIONER JAMES:

4 MR. SAMUELS.

5 BY MR. SAMUELS:

6 WHAT IT'S LEADING INTO GOES TO THE EMPLOYER
7 RELATION, PARTICULARLY THE QUESTIONS FROM MR. BEARD
8 ABOUT HER WAGES AND HER TAX RETURNS.

9 BY COMMISSIONER JAMES:

10 THERE WERE SOME QUESTIONS SUBSEQUENT TO MR.
11 SAMUELS' CROSS BY BOTH COUNTRYWIDE AND GUARANTEE
12 WITH REGARDS TO PAY. HOWEVER, MR. SAMUELS, HOW MANY
13 -- JUST ASKING, HOW MANY QUESTIONS DO YOU THINK YOU
14 HAVE?

15 BY MR. SAMUELS:

16 I HAVE ABOUT 20 MORE QUESTIONS.

17 BY COMMISSIONER JAMES:

18 ALL RIGHT. OVERRULED. IF YOU CAN ANSWER -- IF
19 YOU CAN GO AHEAD AND ANSWER THE QUESTION. DO YOU
20 NEED IT REPEATED, MR. SEARS?

21 BY THE WITNESS:

22 YES, PLEASE.

23 BY COMMISSIONER JAMES:

24 OKAY, MR. SAMUELS.

25 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

1 Q. MR. SEARS, WERE THERE ALSO OCCASIONS WHEN MS. TURNER
2 WAS PAID OVERTIME?

3 A. YES, BY CONTRACT.

4 Q. I'M GOING TO SHOW YOU PAGES 228 THROUGH 232 OF THE
5 CLAIMANT'S APA SUBMISSIONS. MR. SEARS, IS THIS A
6 TRUE AND ACCURATE RECORD OF EARNINGS YEAR TO DATE
7 PAID TO RACHEL TURNER BY CONDUSTRIAL?

8 A. IT PURPORTS TO BE, YES. IN OTHER WORDS, THIS IS A
9 CONDUSTRIAL REPORT LIKE ONE THAT WE WOULD NORMALLY
10 RUN.

11 Q. AND YOU NOTE THE BATE STAMP AT THE BOTTOM RIGHT,
12 CONDUSTRIAL 0236?

13 A. YES.

14 Q. DOES THAT INDICATE THAT IT WAS ACTUALLY PRODUCED BY
15 CONDUSTRIAL IN DISCOVERY IN THIS CASE?

16 A. I GUESS.

17 Q. AND AT THE VERY TOP ON PAGE 228, IT SAYS "PAYROLL
18 YEAR TO DATE EARNINGS," CORRECT?

19 A. WHICH ONE ARE YOU LOOKING AT? OH, OKAY, YES.

20 Q. PAGE 228.

21 A. YES, IT DOES, YES.

22 Q. ALL RIGHT.

23 A. BUT ONE SAYS "236," BUT, YES.

24 Q. YEAH, I'M LOOKING AT THE NUMBER AT THE BOTTOM, NOT
25 THE BATE STAMP.

1 A. OKAY. OH, YES, 228.

2 Q. AND THIS AMOUNT OF GROSS PAY, THAT IS AN ACCURATE
3 NUMBER SHOWING THE EARNINGS RECEIVED BY MS. TURNER
4 FROM CONDUSTRIAL, CORRECT?

5 A. I THINK THIS PAGE PRESUMABLY IS AN ACCURATE
6 REFLECTION OF THE TIME REPORTS THAT WERE RECEIVED
7 FROM S.C.D.C., AND SO WE WOULD HAVE PAID BASED ON
8 THOSE TIME RECORDS.

9 Q. AND JUST MOVING TO THE LAST PAGE, WHICH IS PAGE 232,
10 WOULD YOU AGREE THAT THERE WERE 3,122.25 REGULAR
11 HOURS, 183.75 OVERTIME HOURS?

12 A. I'M SORRY, WHERE ARE YOU, WHAT PAGE? OKAY, 232,
13 SORRY. OKAY.

14 Q. YES, SIR. DOWN AT THE BOTTOM TOWARDS THE RIGHT
15 WHERE THE TOTALS ARE.

16 A. RIGHT.

17 Q. WHERE IT SAYS "CUSTOMER SOUTH CAROLINA DEPARTMENT OF
18 CORRECTIONS."

19 A. OKAY.

20 Q. AND TOTAL PAY FOR THIS PERIOD \$72,994.13.

21 A. OKAY.

22 Q. REGULAR HOURS 3,122.25 HOURS, OVERTIME HOURS 183.75.

23 A. UH-HUH.

24 Q. AND THEN OTHER HOURS 52.25. WHAT ARE THOSE OTHER
25 HOURS?

1 A. AS I SIT HERE RIGHT NOW AFTER 12 HOURS, I'M NOT
2 SURE. I'D HAVE TO CHECK.

3 Q. YOU WOULD AGREE MS. TURNER WAS PAID BY THE HOUR, NOT
4 PAID BY THE JOB; IS THAT CORRECT?

5 A. THAT'S HOW S.C.D.C. PAYS, SO, THAT'S -- I MEAN.

6 Q. AND IN TERMS OF MS. TURNER HERSELF, AT ALL TIMES
7 THAT SHE WORKED FOR CONDUSTRIAL, SHE WAS PAID --
8 WHEN SHE WAS PAID STRAIGHT TIME, HER BASE RATE WAS
9 \$22 AN HOUR; ISN'T THAT TRUE?

10 A. WELL, SHE DIDN'T WORK FOR CONDUSTRIAL. SHE WORKED
11 FOR HERSELF AS AN INDEPENDENT CONTRACTOR, AND I
12 DON'T -- AS I SIT HERE RIGHT NOW, I DON'T RECOLLECT
13 HER BASE RATE. IF YOU SHOW ME DOCUMENTS, THAT MIGHT
14 BE THE ANSWER, BUT...

15 Q. I'LL BE HAPPY TO.

16 A. OKAY.

17 Q. I'M GOING TO SHOW YOU PAGE 28 OF, I BELIEVE THESE
18 ARE CONDUSTRIAL'S APA SUBMISSIONS. THIS IS A SCREEN
19 SHOT.

20 A. YES.

21 Q. WOULD YOU AGREE THAT SHE WAS PAID \$22 AN HOUR?

22 A. I'M TRYING TO SEE THE DATE HERE. I'M TRYING TO SEE
23 IF THERE WAS A DATE.

24 Q. AND I'LL TELL YOU I DON'T KNOW IF THERE WAS A DATE
25 OR NOT BECAUSE THAT WAS PRODUCED BY CONDUSTRIAL.

1 A. RIGHT. THIS IS PROBABLY. LIKE I SAY, THIS IS
2 PROBABLY THE U.A. TIME KEEPING SYSTEM THAT WAS VERY
3 BASIC. I MEAN, OBVIOUSLY AGAIN YOU SEE AS I'VE
4 EXPLAINED BEFORE WITH THIS U.A. TIME KEEPING SYSTEM,
5 IT SAYS "EMPLOYEE" IN THE UPPER LEFT. IF YOU
6 POPULATE IT WITH A PERSON, THE SOFTWARE DIDN'T GIVE
7 YOU THE ABILITY TO DISTINGUISH. IT SAYS "EMPLOYEE,"
8 BUT WE WOULD HAVE INDICATED "Z1099," WHICH IS --
9 OBVIOUSLY MEANS NOT COMP. YOU HAVE TO PUT SOMETHING
10 IN, SO I'M SURE IN THE BEGINNING, THEY WOULD HAVE
11 LISTED HER REGULAR RATE AS 22.

12 Q. YES, SIR, AND I'M NOT REALLY ASKING YOU ABOUT THAT.
13 YOU'VE ALREADY TESTIFIED TO THAT. WHAT I'M ASKING
14 YOU ABOUT SPECIFICALLY IS HER RATE WAS \$22 AN HOUR,
15 AND IT NEVER CHANGED, DID IT?

16 A. I DON'T THINK THAT'S -- I DON'T THINK THAT IS
17 ACCURATE AT ALL. THAT'S A SNAPSHOT OF WHEN SHE
18 BEGAN?

19 Q. DID YOU EVER GIVE HER A RAISE?

20 A. WE WOULDN'T GIVE HER A RAISE, BECAUSE SHE'S NOT AN
21 EMPLOYEE.

22 Q. SO, SHE WAS ALWAYS PAID \$22 AN HOUR, THE SAME RATE
23 SHE STARTED WITH?

24 A. I DON'T KNOW THAT THAT IS ACCURATE EITHER.

25 Q. AND IN FACT, THAT RATE WAS BASED ON THE DIFFERENCE

1 BETWEEN WHAT YOU WERE BEING PAID BY THE DEPARTMENT
2 OF CORRECTIONS?

3 A. LIKE I SAID, I DON'T KNOW THAT THAT RATE WAS STATIC
4 THE ENTIRE TIME. I WOULD HAVE TO SEE OTHER
5 DOCUMENTATION.

6 Q. IF THERE WERE OTHER DOCUMENTATION SAYING THAT HER
7 RATE WAS DIFFERENT AT ANY OTHER TIME, WOULD THAT
8 HAVE BEEN PRODUCED BY CONDUCTORIAL?

9 A. WELL, IT MAY HAVE BEEN PRODUCED IN THESE TIME
10 RECORDS. IN OTHER WORDS, I DON'T -- WE WOULD HAVE
11 TO DO THE MATH TO SEE WHAT THE RATE WAS.

12 Q. AND IF WE GO THROUGH THE MATH, AND SHE WAS ALWAYS
13 PAID \$22 AN HOUR STRAIGHT TIME, WOULD THAT THEN
14 SATISFY YOU THAT HER RATE OF PAY WAS ALWAYS \$22 AN
15 HOUR?

16 A. IF THAT IS WHAT THE MATH SHOWS AT THE END OF THE
17 DAY, THEN THAT'S WHAT IT SHOWS.

18 Q. AND THAT WAS AT A TIME -- AND IF YOU LOOK AT THAT --
19 AND I TOOK THE DOCUMENT BACK.

20 A. OKAY.

21 Q. YOU HAVE A BILL RATE OF \$27.50.

22 A. I THINK THAT'S WHAT -- AGAIN, THAT WAS A SNAPSHOT AT
23 THE BEGINNING. YES.

24 Q. WELL, THAT'S THE SAME RATE THAT YOU WERE PAID BY THE
25 DEPARTMENT OF CORRECTIONS FROM 2008 UNTIL YOU

1 RENEGOTIATE THE CONTRACT IN 2016, CORRECT?

2 A. I DON'T KNOW IF THAT'S THE SAME RATE. I GUESS I
3 WOULD HAVE TO LOOK AT THE CONTRACT. I HAVE AN
4 L.P.N. AS 27.50, ALL SHIFTS.

5 Q. AND MS. TURNER WAS AN L.P.N.?

6 A. YES.

7 Q. SO THE 27.50 WAS THE RATE FROM S.C.D.C. FOR MS.
8 TURNER'S WORK FOR THE ENTIRE TIME THAT SHE WORKED
9 THERE?

10 A. I DON'T KNOW THAT THAT'S ACCURATE. I WOULD HAVE TO
11 DO THE MATH. I KNOW 27.50 WAS THE MAXIMUM CONTRACT
12 RATE. I DON'T KNOW IF THAT IS WHAT MS. TURNER
13 RECEIVED EVERY SHIFT.

14 Q. CONDUSTRIAL HAS NOT PRODUCED ANY EVIDENCE THAT SHE
15 WAS PAID ANY OTHER RATE NOR THAT SHE EVER NEGOTIATED
16 HER RATE OF PAY, HAS IT?

17 A. I DON'T AGREE WITH THAT. I WOULD HAVE TO WORK THE
18 MATH HERE AND SEE IF ANY OF THOSE ADD UP TO A HIGHER
19 RATE.

20 Q. WHAT WE CAN DO IS IF YOU WANT TO DO THAT AND IT
21 COMES OUT WITH A DIFFERENT ANSWER, WE CAN RECALL YOU
22 AS A WITNESS TO TESTIFY ABOUT THAT; HOW ABOUT THAT?

23 A. OKAY.

24 Q. ALSO, AS PART OF THE CONTROL THAT CONDUSTRIAL
25 EXERCISED OVER MS. TURNER, ---

1 A. THEY DIDN'T EXERCISE ANY CONTROL OVER MS. TURNER.

2 Q. --- MS. TURNER HAD TO WAIT 90 DAYS BEFORE SHE COULD
3 BECOME A DIRECT EMPLOYEE OF, IN THAT PARTICULAR
4 CASE, THE DEPARTMENT OF MENTAL HEALTH; WOULD YOU
5 AGREE WITH THAT?

6 BY MR. GOODWYN:

7 OBJECT.

8 BY THE WITNESS:

9 I DON'T AGREE WITH THAT.

10 BY MR. GOODWYN:

11 IT ASSUMES THAT THEY EXERCISED CONTROL. HE HAS
12 ALREADY TESTIFIED THAT THEY DID NOT EXERCISE
13 CONTROL.

14 BY COMMISSIONER JAMES:

15 MR. SAMUELS, CAN YOU REPHRASE THE QUESTION?

16 BY MR. GOODWYN:

17 AND HE'S GETTING AWFULLY CLOSE TO THE 20
18 QUESTIONS HE SAID.

19 BY MR. SAMUELS:

20 AND THE 20 QUESTIONS PRESUMES RESPONSIVE
21 ANSWERS.

22 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

23 Q. MR. SEARS, LET ME SHOW YOU AGAIN PAGE 264.

24 A. IS THIS THE D.M.H.?

25 Q. THIS IS THE D.M.H.

1 A. RIGHT.

2 BY COMMISSIONER JAMES:

3 AND WE ARE STILL UNDER CLAIMANT'S DOCUMENTS?

4 BY MR. SAMUELS:

5 YES, YOUR HONOR.

6 BY THE WITNESS:

7 YES.

8 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. THIS AGAIN, YOU WILL AGREE THIS DOCUMENT SHE HAS
10 SIGNED STATES, "I AM AN EMPLOYEE OF CONDUSTRIAL,
11 INCORPORATED" DO YOU AGREE WITH THAT?

12 A. IT LOOKS LIKE ON FEBRUARY 14 OF 2013, THAT'S HER
13 HANDWRITTEN NAME. I GUESS THAT'S HER SIGNATURE.

14 Q. ALL RIGHT. AND THIS IS A DOCUMENT PRODUCED FROM HER
15 PERSONNEL FILE BY CONDUSTRIAL?

16 A. OKAY, YES.

17 Q. AND IT ALSO INCLUDES THE PROVISION, "I ALSO
18 UNDERSTAND THAT IF THE DEPARTMENT OF MENTAL HEALTH
19 WANTS TO HIRE ME, I HAVE TO GIVE A 90-DAY NOTICE TO
20 CONDUSTRIAL IN WRITING AND WORK UP UNTIL I AM ON
21 S.C.D.M.H. STAFF." IS THAT CORRECT.

22 A. THAT'S WHAT THAT PIECE OF PAPER SAYS, BUT OBVIOUSLY,
23 SHE DIDN'T WORK ANY 90-DAY NOTICE.

24 Q. THAT'S A CLASSIC EMPLOYEE TEMP TO PERM CONTRACT, IS
25 IT NOT?

1 A. NO, IT'S NOT.

2 Q YOU WOULD AGREE IT IS A DOCUMENT DRAFTED BY YOUR
3 COMPANY, CORRECT?

4 A. I'M NOT GOING TO AGREE WITH -- IN OTHER WORDS, IT'S
5 VERY POSSIBLE THAT LANGUAGE CAME FROM D.M.H., AND
6 OUR PERSONNEL PUT THE MEDUSTRIAL LOGO ON IT.

7 Q. THEREFORE ADOPTING. THIS IS PART OF HER PERSONNEL
8 FILE, CORRECT?.

9 A. IT WAS A PART OF HER PERSONNEL FILE.

10 Q. MR. BEARD HAD ASKED YOU IF YOU COULD FIRE ---

11 A. RIGHT.

12 Q. --- MS. TURNER, AND WHAT WAS YOUR ANSWER?

13 A. WE COULD NOT.

14 Q. YOU COULD NOT?

15 A. WE COULD NOT.

16 Q. COULD NOT. COULD YOU TERMINATE HER?

17 A. NO.

18 Q. WOULD YOU AGREE THE WORD TERMINATE OR TERMINATION IN
19 A POLICY IS EQUIVALENT TO FIRE?

20 A. IT CAN BE. THAT'S ONE OF THE INTERPRETATIONS.

21 Q. DIDN'T YOU ALREADY TESTIFY THAT "WITH MS. RATHBURN,
22 WE HAD TO TERMINATE HER"?

23 A. WE DID TERMINATE MS. RATHBURN, YES.

24 Q. AND BY TERMINATE, YOU MEAN FIRE; YOU DIDN'T LIKE
25 KILL HER? YOU FIRED HER, RIGHT?

1 A. WELL, I DON'T WANT TO GET INTO THAT. NO, I'M
2 KIDDING. SHE WAS AN EMPLOYEE, AND HER EMPLOYMENT
3 WAS TERMINATED.

4 Q. ALL RIGHT. I'M GOING TO ASK YOU TO LOOK AT -- YOU
5 ALREADY HAVE THIS, IT'S PAGE 275. THIS IS THE
6 ATTENDANCE POLICY.

7 A. I DON'T KNOW, WHICH ONE ARE YOU TALKING ABOUT?

8 Q. LET ME SHOW THIS TO YOU. THIS IS PAGE 275,
9 CLAIMANT'S 275, ATTENDANCE POLICY SIGNED BY HOLLY
10 SEEBY, YOUR DIRECTOR OF OPERATIONS ON OCTOBER 9TH,
11 2014.

12 A. OKAY.

13 Q. AND SIGNED BY RACHEL TURNER ALSO OCTOBER 9TH, 2014.

14 A. I'M HAVING DEJA VU. DIDN'T WE GO THROUGH THIS
15 ALREADY?

16 Q. WELL, WE DID TO A CERTAIN EXTENT, BUT THEN YOU
17 TESTIFIED THAT YOU DID NOT HAVE AUTHORITY TO
18 TERMINATE HER EMPLOYMENT.

19 A. WE DON'T. SHE IS NOT AN EMPLOYEE.

20 Q. DOES MEDUSTRIAL HAVE ANY EMPLOYEES?

21 A. LIKE I SAID, THE LIMITED NUMBER IN THE UPSTATE, YES,
22 THAT ARE EITHER I BELIEVE PAYROLL ACCOUNTS OR A
23 SPECIFIC REQUEST BY A NURSING HOME TO TAKE OVER
24 THEIR EMPLOYEES, SOMETHING LIKE THAT.

25 Q. SO, ESSENTIALLY IF THE EMPLOYER WHERE YOU WERE

1 PLACING THE NURSE REQUESTED THE EMPLOYEES BE PAID
2 UNDER W-2, COVERED UNDER WORKERS' COMPENSATION
3 INSURANCE, YOU COULD DO THAT?

4 A. THE ONES IN THE UPSTATE, YES?

5 Q. AND THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ---
6 --

7 A. NO.

8 Q. --- THEY ALSO REQUESTED THAT THE NURSES, IN FACT
9 REQUIRED BY THE CONTRACT, ---

10 A. NO, I DON'T AGREE WITH THAT.

11 Q. --- THAT THE NURSES BE EMPLOYEES?

12 A. NO, I DON'T AGREE WITH THAT. I'VE TESTIFIED TO
13 THAT.

14 Q. YOU HAVE. SO, LET'S MAKE IT CLEAR.

15 A. AND I THINK I ALREADY HAVE MADE IT CLEAR.

16 Q. SO, WE'VE AGREED THAT BOTH OF THESE LADIES HAVE
17 SIGNED THIS ATTENDANCE POLICY THAT SAYS "FURTHER
18 DISCIPLINARY ACTION UP TO TERMINATION OF
19 EMPLOYMENT." AGREED?

20 A. I AGREE THAT'S WHAT IT SAYS.

21 Q. AND THAT DOCUMENT GIVES CONDUSTRIAL, MAKES IT CLEAR
22 TO MS. TURNER BY MAKING HER SIGN IT THAT SHE IS AN
23 EMPLOYEE WHO CAN BE TERMINATED?

24 A. I DISAGREE.

25 BY MR. GOODWYN:

1 I OBJECT TO THE FORM, ---

2 BY THE WITNESS:

3 I DISAGREE WITH THAT.

4 BY MR. GOODWYN:

5 --- ASKING WHAT IS -- WHAT IS CLEAR TO MS.
6 TURNER.

7 BY THE WITNESS:

8 AND I BELIEVE ---

9 BY COMMISSIONER JAMES:

10 SUSTAINED.

11 BY THE WITNESS:

12 --- MS. TURNER ---

13 BY COMMISSIONER JAMES:

14 MR. SEARS.

15 BY THE WITNESS:

16 --- TESTIFIED SHE DIDN'T READ ANY OF THOSE
17 DOCUMENTS.

18 BY COMMISSIONER JAMES:

19 MR. SEARS, I'VE ALREADY RULED.

20 BY THE WITNESS:

21 SORRY.

22 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

23 Q. YOU EARLIER TESTIFIED THAT SOME OF THE DOCUMENTS
24 THAT SAID CONDUSTRIAL BUT NOT MEDUSTRIAL DID NOT
25 APPLY TO MS. TURNER; IS THAT TRUE?

1 A. I DON'T KNOW IF THAT'S AN ACCURATE CHARACTERIZATION.
2 I KNOW AS I THINK I'VE TRIED TO EXPLAIN VERY
3 CLEARLY, WHEN MS. RATHBURN TOOK OVER INITIALLY OUT
4 OF THE CHAOS OF THE SITUATION, CERTAINLY IT EXTENDED
5 SEVERAL YEARS BECAUSE WE DIDN'T HAVE A CHANCE TO
6 LOOK AT THOSE. SHE MERGED SOME PALMETTO DOCUMENTS
7 AND SOME CONDUSTRIAL DOCUMENTS AND DID SOME CUTTING
8 AND PASTING. WAS IT AS NEAT AS IT SHOULD HAVE BEEN,
9 IT WAS NOT.

10 Q. YOU AGREE THERE ARE LOTS AND LOTS OF DOCUMENTS THAT
11 CALL MS. TURNER AN EMPLOYEE AS WELL AS THERE ARE
12 SOME DOCUMENTS THAT CALL HER AN INDEPENDENT
13 CONTRACTOR?

14 A. I THINK THERE ---

15 Q. AT LEAST ONE THAT CALLS HER AN INDEPENDENT
16 CONTRACTOR.

17 A. I THINK THERE ARE A FEW DOCUMENTS THAT LIST -- THE
18 EMPLOYMENT APPLICATION. I THINK THERE ARE MORE
19 DOCUMENTS THAT LIST INDEPENDENT CONTRACTOR AND
20 ESPECIALLY THOSE DOCUMENTS OF 2014 THAT CALL HER AN
21 INDEPENDENT CONTRACTOR.

22 Q. IN 2014 LIKE THE ONE WE JUST WENT OVER, THE
23 ATTENDANCE POLICY?

24 A. RIGHT. WELL, IT COULD HAVE BEEN THAT SAME TIME
25 FRAME.

1 Q. OR THIS OTHER ONE, PAGE 276, WHAT WE WENT OVER, THE
2 FACILITY AND CLIENT REQUIREMENTS, "IT SAYS FAILURE
3 TO COMPLY WITH ANY OF THE ABOVE WILL PREVENT YOU
4 FROM WORKING AS AN EMPLOYEE OF MEDUSTRIAL," THAT
5 ONE?

6 A. POSSIBLY.

7 Q. YOU HAD TESTIFIED THAT NELSON MULLINS HELPED YOU
8 DRAFT THE INDEPENDENT CONTRACTOR AGREEMENT?

9 A. I DIDN'T SAY THEY HELPED US DRAFT IT AT ALL. THEY
10 DRAFTED IT, AND I WASN'T HERE. THEY DRAFTED THE
11 DOCUMENT.

12 Q. BUT THAT WAS DONE TO PROTECT CONDUSTRIAL FROM
13 WORKERS' COMPENSATION CLAIMS, HAVING TO PAY
14 OVERTIME, HAVING TO PROVIDE HEALTH INSURANCE UNDER
15 OBAMACARE, OR ANY OTHER BENEFITS THAT WOULD HAVE
16 INCREASED THE COSTS FOR PEOPLE THAT YOU WANTED TO
17 CLASSIFY AS INDEPENDENT CONTRACTORS?

18 A. I DON'T ---

19 BY MR. GOODWYN:

20 OBJECT. THAT CALLS FOR SPECULATION.

21 BY THE WITNESS:

22 I DON'T THINK OBAMACARE WAS AROUND IN 2007.

23 BY MR. GOODWYN:

24 THE DOCUMENT WAS DRAFTED PRIOR TO HIS ARRIVAL.
25 THAT WOULD BE SPECULATION.

1 BY COMMISSIONER JAMES:

2 SUSTAINED.

3 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

4 Q. WELL, ONCE YOU HAVE THAT CONTRACT AND YOU STILL
5 MAINTAINED THAT CONTRACT IN EFFECT ---

6 A. RIGHT.

7 Q. --- THROUGH 2014 ACCORDING TO YOUR TESTIMONY?

8 A. RIGHT.

9 Q. THE PURPOSE OF IT WAS TO PROTECT CONDUSTRIAL FROM
10 THE EXPENSE OF A W-2 EMPLOYEE VERSUS A 1099
11 EMPLOYEE; ISN'T THAT TRUE?

12 A. THAT'S NOT ACCURATE.

13 Q. ISN'T ---

14 A. THE PURPOSE OF THE DOCUMENT WAS TO ESTABLISH AN
15 INDEPENDENT -- A LICENSED PROFESSIONAL INDEPENDENT
16 CONTRACTOR AGREEMENT FOR THE BROKERAGE MODEL THAT WE
17 TOOK OVER IN 2008, NONE OF YOUR SINISTER
18 SUGGESTIONS. I MEAN, IT WAS -- IT WAS DONE TO
19 MEMORIALIZE THE INDEPENDENT CONTRACTOR AGREEMENT, I
20 MEAN, THE RELATIONSHIP.

21 Q. MR. SEARS, THERE'S NOT NECESSARILY ANYTHING SINISTER
22 ABOUT A BUSINESS TRYING TO SAVE MONEY ---

23 BY MR. GOODWYN:

24 OBJECTION, ARGUMENTATIVE.

25 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

1 Q. --- BY CLASSIFYING ITS EMPLOYEES.

2 A. THAT'S NOT ---

3 BY COMMISSIONER JAMES:

4 IS THERE A QUESTION?

5 BY THE WITNESS:

6 IS THERE A QUESTION?

7 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

8 Q. WASN'T THE PURPOSE OF IT TO SAVE MONEY AND IN FACT -

9 --

10 A. NO.

11 Q. --- DOESN'T YOUR COMPANY -- ISN'T IT CHEAPER FOR
12 YOUR COMPANY TO USE THE MODEL YOU TALK ABOUT TO
13 CLASSIFY THESE NURSES AS INDEPENDENT CONTRACTORS
14 WHERE YOU DON'T HAVE TO PAY THE TAXES AND THE
15 WORKERS COMP THAT S.C.D.C. WANTS YOU TO PAY AND THAT
16 MEDUSTRIAL DOES PAY -- EXCUSE ME, MEDFIRST DOES PAY?

17 A. I THINK THAT'S A COMPOUND QUESTION THAT MAKES A LOT
18 OF ASSUMPTIONS THAT I DON'T AGREE WITH THAT I DON'T
19 THINK S.C.D.C. HAS TESTIFIED THEY MEANT -- THAT
20 MEDUSTRIAL MEANT -- FIRST, WE HAVEN'T ESTABLISHED --
21 I THINK THE AGREEMENT IS WHAT I'VE TESTIFIED. WE
22 TOOK OVER A BROKERAGE MODEL WITH INDEPENDENT
23 CONTRACTOR SYSTEM OF SHIFT REFERRALS IN PLACE, AND
24 THIS AGREEMENT WAS DESIGNED TO MEMORIALIZE THAT
25 RELATIONSHIP BY NELSON MULLINS WHEN WE TOOK OVER THE

1 BUSINESS.

2 Q. WHEN YOU REPORTED -- WHEN CONDUSTRIAL REPORTED MS.
3 TURNER'S CLAIM TO KEENAN SUGGS, DID CONDUSTRIAL SEND
4 OVER THE DOCUMENTS SIGNED BY RACHEL TURNER STATING
5 THAT SHE WAS AN EMPLOYEE OF MEDUSTRIAL AND/OR
6 CONDUSTRIAL?

7 A. I'M SORRY, REPEAT THAT.

8 Q. WHEN CONDUSTRIAL REPORTED THE CLAIM TO KEENAN SUGGS,
9 MS. TURNER'S CLAIM, DID YOU SEND THE DOCUMENTS
10 SIGNED BY RACHEL TURNER STATING THAT SHE WAS AN
11 EMPLOYEE OF MEDUSTRIAL AND/OR CONDUSTRIAL? DID YOU
12 SEND THOSE DOCUMENTS TO THEM?

13 A. AS I SIT HERE RIGHT NOW, UNLESS YOU HAVE SOMETHING
14 TO REFRESH MY RECOLLECTION, I DON'T RECALL.

15 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT TRIAL EXHIBIT
16 THREE. THESE ARE THE SET OF EMAILS PRODUCED BY
17 GUARANTEE.

18 A. OKAY.

19 Q. FROM WHAT I'VE SEE IN THESE DOCUMENTS, YOU SENT OVER
20 THE INDEPENDENT CONTRACTOR AGREEMENT AND THE
21 AGREEMENT I BELIEVE WITH S.C.D.C.; IS THAT CORRECT?

22 A. I MEAN, I DON'T -- IN OTHER WORDS, ---

23 BY COMMISSIONER JAMES:

24 WHOSE DOCUMENT IS THAT?

25 BY THE WITNESS:

1 IS IT -- IT'S COUNTRYWIDE.

2 BY MS. RICHARDSON:

3 C.S.S.G.

4 BY COMMISSIONER JAMES:

5 OKAY. MR. SAMUELS, YOU SAID "GUARANTEE," SO.

6 BY MR. SAMUELS:

7 OH, SORRY.

8 BY COMMISSIONER JAMES:

9 WHAT IS THE NUMBER ON THAT, MR. SEARS?

10 BY THE WITNESS:

11 I BELIEVE IT'S -- IS IT EXHIBIT THREE, YOUR
12 HONOR?

13 BY COMMISSIONER JAMES:

14 YES. ALL RIGHT, THANK YOU.

15 THE WITNESS ANSWERS:

16 A. I DON'T -- IN OTHER WORDS, I WOULD HAVE TO LOOK
17 THROUGH HERE AND SEE WHAT WAS ATTACHED. I MEAN, I
18 ALSO DON'T KNOW IF THAT WAS THE ONLY EMAIL SENDING
19 INFORMATION OVER.

20 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

21 Q. I WILL ADD THERE IS ANOTHER EMAIL AT PAGE 14 OF
22 THOSE.

23 A. RIGHT. I'M SAYING BEYOND THESE EMAILS.

24 Q. OKAY.

25 A. I'M NOT SURE -- THERE'S NO WAY THAT I CAN GUARANTEE

1 THAT THESE WERE THE ONLY EMAILS SENT.

2 Q. I GUESS WHAT I'M GETTING AT IS WHEN YOU WERE DEALING
3 WITH YOUR AGENT, DID YOU SEND HER ANY OF THE
4 DOCUMENTATION THAT WAS UNFAVORABLE TO YOUR POSITION,
5 OR ONLY THE DOCUMENTATION THAT WAS FAVORABLE TO YOUR
6 POSITION?

7 A. NEITHER. I SENT HER WHAT WAS REQUIRED.

8 Q. IN CROSS EXAMINATION FROM MR. BEARD, YOU TESTIFIED
9 REGARDING MS. TURNER'S TAX RETURNS; IS THAT CORRECT?

10 A. I -- SOMEWHERE IN THERE, I PROBABLY DID.

11 Q. AND PART OF THAT WAS BASED ON THE FACT THAT
12 CONDUSTRIAL HAD SENT HER A 1099 FOR HER EARNINGS
13 FROM CONDUSTRIAL EVEN THOUGH SHE HAD SIGNED A W-4,
14 CORRECT?

15 A. NO, THAT'S NOT CORRECT. SHE -- EVERY WEEK FOR THREE
16 YEARS, SHE RECEIVED A PAY DETAIL WITHOUT ANY TAXES
17 TAKEN OFF, WHICH SHE COULD HAVE OBJECTED TO EVERY
18 WEEK. SHE DIDN'T, AND BECAUSE SHE WAS AN
19 INDEPENDENT CONTRACTOR IN OUR SYSTEM, WE FOLLOWED
20 THE TAX LAWS AND SENT HER A 1099 AT THE END OF EACH
21 YEAR. WE DIDN'T DIRECT HER HOW TO FILE HER TAXES.
22 SHE CHOSE HOW TO DO THAT WITH A TAX PREPARER.

23 Q. YOU TESTIFIED TO CERTAIN DEDUCTIONS THAT SHE HAD
24 TAKEN; ISN'T THAT TRUE?

25 A. I DON'T THINK I DID.

1 Q. ON CROSS EXAMINATION, YOU DID ON QUESTIONING BY MR.
2 BEARD.

3 A. YOU'RE WELCOME TO ASK ME ABOUT THOSE.

4 Q. ALL RIGHT. SO, I'M GOING TO SHOW YOU A PUBLICATION
5 FROM THE INTERNAL REVENUE SERVICE, PUBLICATION 529.

6 A. OKAY.

7 BY MR. SAMUELS:

8 I WOULD LIKE TO MARK THIS AND HAVE IT ENTERED
9 INTO EVIDENCE. THIS IS AN OFFICIAL GOVERNMENT
10 DOCUMENT. IT DOES NOT NEED TO BE AUTHENTICATED. IT
11 IS SELF AUTHENTICATING.

12 BY COMMISSIONER JAMES:

13 ARE THERE ANY OBJECTIONS?

14 BY MR. GOODWYN:

15 NO OBJECTION.

16 BY MR. BEARD:

17 NONE FROM US.

18 BY MS. FARTHING:

19 NONE.

20 BY MR. ALFORD:

21 NO.

22 BY COMMISSIONER JAMES:

23 ALL RIGHT. CLAIMANT'S EXHIBIT TWO.
24 (COURT REPORTER MARKS DOCUMENT CLAIMANT'S EXHIBIT TWO,
25 RETAINED IN THE COMMISSION FILE)

RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

Q. MR. SEARS, YOU ARE WELCOME TO STAND, WHATEVER MAKES YOU COMFORTABLE.

A. OBVIOUSLY, I DO NEED TO STAND FOR A MOMENT.

Q. I'M JUST GOING TO SHOW YOU THIS DOCUMENT, AND WE WILL LOOK AT PAGE THREE. ACTUALLY, LET'S LOOK AT PAGE TWO. SEE THE CAPTION "UN-REIMBURSED EMPLOYEE EXPENSES"?

A. I SEE THE CAPTION YOU ARE SHOWING ME, YES.

Q. OKAY. AND NEXT LINE, "GENERALLY THE FOLLOWING EXPENSES ARE DEDUCTED ON SCHEDULE A."

A. UH-HUH.

Q. AND IT SAYS "YOU MAY BE ABLE TO DEDUCT THE FOLLOWING ITEMS UN-REIMBURSED EMPLOYEE EXPENSES."

A. OKAY.

Q. DO YOU AGREE WITH THAT?

A. I AGREE THAT'S WHAT IT SAYS.

Q. YOU AGREE THAT'S WHAT THE I.R.S. SAYS?

A. THAT'S WHAT THIS DOCUMENT SAYS.

Q. AND THAT INCLUDES "LICENSE AND REGULATORY FEES, MEDICAL EXAMINATIONS REQUIRED BY EMPLOYER, TOOLS AND SUPPLIES USED IN YOUR WORK, TRAVEL, TRANSPORTATION, MEALS, ENTERTAINMENT, GIFTS, AND LOCAL LODGING RELATED TO YOUR WORK, WORK CLOTHES AND UNIFORMS AS REQUIRED NOT SUITABLE FOR EVERYDAY USE AND WORK-

1 RELATED EDUCATION."

2 A. I WOULD ASK WHAT THE HEADING FOR THAT IS. WHAT IS
3 THE HEADING FOR THESE CRITERIA?

4 BY MR. GOODWYN:

5 AND, YOUR HONOR, HE'S NOT A TAX EXPERT. I
6 DON'T KNOW WHAT HE'S GETTING AT HERE. JUST BECAUSE
7 HE CAN SAY THIS IS WHAT SHE DEDUCTED ON THE FORM
8 DOESN'T MEAN THAT SHE CAN VERIFY YES OR NO TO THESE
9 QUESTIONS. I MEAN...

10 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

11 Q. WELL, THE PLAIN MEANING OF IT, FIRST, UN-REIMBURSED
12 EMPLOYEE EXPENSES. THAT'S THE HEADING, RIGHT?

13 A. UH-HUH.

14 Q. AND THESE ARE DEDUCTIONS THAT YOU CAN TAKE?

15 BY COMMISSIONER JAMES:

16 MR. SAMUELS, WHAT -- IN WHAT CAPACITY ARE YOU
17 ASKING HIM THE QUESTION? I MEAN, WILL THE DOCUMENT
18 SPEAK FOR ITSELF?

19 BY MR. SAMUELS:

20 ACTUALLY, YOUR HONOR, I WOULD AGREE THAT THE
21 DOCUMENT DOES SPEAK FOR ITSELF. THE ARGUMENT HAS
22 BEEN MADE BY VARIOUS DEFENDANTS AND BROUGHT OUT ON
23 CROSS EXAMINATION WITH MR. SEARS THAT THE AVERAGE
24 WEEKLY WAGE IN THIS CASE SHOULD INCLUDE DEDUCTIONS,
25 AND IT WAS REALLY TO MAKE THE POINT THAT THE I.R.S.

1 PERMITS AN EMPLOYEE PAID UNDER A W-2 TO DEDUCT
2 SIMILAR EXPENSES. THAT'S THE POINT, AND I CAN MOVE
3 ON.

4 BY COMMISSIONER JAMES:

5 OKAY. AND WHAT I'M SAYING IS THIS WITNESS
6 WOULD BASICALLY BE READING WHAT YOU'RE SAYING UNLESS
7 HE HAS SOME EXPERTISE. SO, I THINK THAT'S SOMETHING
8 THAT WE ALL CAN DISCUSS ON ANOTHER DAY, AND IF YOU
9 DISAGREE WITH ME, TELL ME, BUT.

10 BY MR. SAMUELS:

11 I DON'T, YOU HONOR. I WAS JUST HAPPY TO GET IT
12 IN THE RECORD.

13 BY COMMISSIONER JAMES:

14 OKAY. ALL RIGHT, THANK YOU.

15 BY THE WITNESS:

16 I DID NOT ENJOY TAX LAW IN LAW SCHOOL.

17 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

18 Q. MR. SEARS, WHAT IS A GHOST POLICY? I KNOW EVERYBODY
19 IN THIS ROOM KNOWS WHAT IT IS, BUT IF WE HAVE A
20 HIGHER COURT THAT ISN'T FAMILIAR, I THOUGHT MAYBE
21 YOU COULD TELL US WHAT A GHOST POLICY IS.

22 A. I MEAN, MY UNDERSTANDING AND AGAIN KIND OF ON THE
23 ROPES HERE, I THINK IT'S A POLICY YOU HAVE IN PLACE
24 THAT'S LIKE A SAFETY NET OR IF, LIKE, A COMPANY IS
25 STARTING OUT AND YOU DON'T KNOW IF YOU ARE GOING TO

1 HAVE COVERAGE OR THE NUMBER OF EMPLOYEES RIGHT AWAY,
2 BUT YOU ANTICIPATE WORK, SOMETHING LIKE THAT, YOU
3 HAVE A POLICY IN PLACE.

4 Q. ISN'T THE MORE COMMON EXPECTATION OF A GHOST POLICY
5 IS A POLICY THAT LISTS NO PAYROLL AND HAS NO
6 EMPLOYEES LISTED?

7 (INTERRUPTION - LIGHTS TURN OFF IN COURTROOM)

8 BY MR. SAMUELS:

9 AND AS I SAY "GHOST," THE LIGHTS GO OUT.

10 BY COMMISSIONER JAMES:

11 HOLD THAT THOUGHT WHILE I CHECK ON THE LIGHTS.

12 (OFF THE RECORD)

13 BY COMMISSIONER JAMES:

14 OKAY. THERE WAS A QUESTION. ARE WE WAITING ON
15 THE ANSWER? DO YOU NEED IT REPEATED, MR. SEARS?

16 BY THE WITNESS:

17 I THINK I ANSWERED SOMETHING, AND YOU WERE -- I
18 THINK YOU HAD ASKED ME IF A GHOST POLICY WASN'T ONE
19 WITHOUT PAYROLL.

20 RE-CROSS EXAMINATION RESUMED BY MR. SAMUELS:

21 Q. IS THE GHOST POLICY TYPICALLY ONE WITHOUT -- SOLD TO
22 AN EMPLOYER WITHOUT A PAYROLL?

23 A. I THINK IT CAN BE, BUT I THINK THERE ARE PLENTY OF
24 SITUATIONS WHERE YOU DO HAVE PAYROLL, RIGHT.

25 Q. TYPICALLY THE SITUATION FROM WHAT I'VE EXPERIENCED

1 IS WHERE YOU WILL HAVE A GENERAL CONTRACTOR WHO WILL
2 HAVE A ONE MAN SUBCONTRACTOR WHO WOULD NOT BE
3 COVERED BY THE ACT BUT THE GENERAL TO PROTECT ITSELF
4 WILL INSIST ON A CERTIFICATE OF INSURANCE. SO, THEY
5 GO BUY ONE AND IT EFFECTIVELY COVERS NOBODY, MEANING
6 IT'S A GHOST POLICY. DOES THAT COMPORT WITH YOUR
7 UNDERSTANDING?

8 A. THAT'S ONE OF THE INTERPRETATIONS.

9 Q. SO, THE POLICY THAT YOU HAVE INDICATED THAT
10 CONDUSTRIAL HAS OBTAINED ---

11 A. RIGHT.

12 Q. --- TO COVER THE NURSES WORKING AT S.C.D.C.

13 A. YOU MEAN NOW?

14 Q. NOW, RIGHT, THE 2017 CERTIFICATE OF INSURANCE.

15 A. RIGHT.

16 Q. AND I THINK YOU SAID THERE WERE TWO POLICIES?

17 A. RIGHT.

18 Q. OKAY. IN EITHER OR BOTH OF THOSE POLICIES, DID
19 CONDUSTRIAL PROVIDE THE PAYROLL FOR THE 1099 NURSES
20 TO THE AGENT OR CARRIER?

21 A. YES.

22 Q. AND IF ONE OF THOSE NURSES SHOULD BE INJURED, I
23 UNDERSTAND THERE ARE MANY REASONS WHY IT MIGHT BE
24 DENIED, BUT MY QUESTION IS IS THAT CLAIM GOING TO BE
25 DENIED ON THE BASIS OF THAT NURSE BEING AN

1 INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE?

2 A. I MEAN, LIKE I SAID, THERE ARE MANY VARIABLES. I
3 KNOW THAT WE PROVIDED THE 1099 PAYROLL FOR THE
4 SECOND POLICY THAT WE OBTAINED AS A SAFETY NET. SO,
5 IT IS OUR EXPECTATION THAT THAT POLICY WOULD COVER
6 ANY SUCH INJURY.

7 Q. AND THAT IT WOULD NOT BE DENIED SPECIFICALLY ---

8 A. I'VE ANSWERED YOUR QUESTION AS BEST AS I CAN.

9 Q. AND DOES CONDUSTRIAL HAVE A COPY OF THAT POLICY AND
10 THE APPLICATION?

11 A. I DON'T KNOW IF IT'S COME IN YET, BUT EVENTUALLY WE
12 WILL.

13 Q. WHO SOLD YOU THE POLICY?

14 A. IT'S AN ASSIGNED RISK POLICY.

15 Q. WHO DID YOU GET IT FROM?

16 A. YOU MEAN, WHAT CARRIER?

17 Q. WHAT CARRIER AND HOW DID YOU GO ABOUT OBTAINING IT?

18 A. WE WORKED WITH AN AGENT TO OBTAIN IT.

19 Q. WHO IS THE AGENT?

20 A. ARTHUR J. GALLAGHER.

21 Q. IS ARTHUR J. GALLAGHER IN COLUMBIA?

22 A. I DON'T -- I DON'T KNOW IF THEY HAVE AN OFFICE
23 THERE. WE DEALT WITH THE GREENVILLE OFFICE.

24 Q. SO, WE WOULD BE ABLE TO SUBPOENA THE APPLICATION AND
25 SUPPORTING DOCUMENTS FROM ARTHUR J. GALLAGHER IN

1 GREENVILLE?

2 A. YOU CERTAINLY CAN SEND HIM A SUBPOENA.

3 BY MR. SAMUELS:

4 THANK YOU VERY MUCH. THAT'S ALL I HAVE, MR.
5 SEARS.

6 BY THE WITNESS:

7 THANK YOU.

8 BY COMMISSIONER JAMES:

9 RECROSS ON BEHALF OF COUNTRYWIDE? ANYTHING
10 FURTHER?

11 BY MR. ALFORD:

12 NO, MA'AM.

13 BY MR. NEWMAN:

14 NOTHING FURTHER.

15 BY COMMISSIONER JAMES:

16 ON BEHALF OF GUARANTEE?

17 BY MS. RICHARDSON:

18 VERY BRIEFLY. GRADY, DO YOU HAVE ANYTHING?

19 BY MR. BEARD:

20 NO.

21 RE-CROSS EXAMINATION BY MS. RICHARDSON:

22 Q. IS THIS THE ONE THAT JEFF INTRODUCED NEW?

23 A. THAT'S IT.

24 Q. RIGHT. OKAY. MR. SEARS, IF YOU WOULD TAKE A LOOK
25 AT CONDUSTRIAL'S TRIAL EXHIBIT NUMBER FIVE.

1 A. YES, MA'AM.

2 Q. IF YOU CAN -- YOU ARE WELCOME TO LOOK THROUGH IT,
3 BUT I BELIEVE THAT MS. MANFRE'S SIGNATURE LINE IS ON
4 THE LAST PAGE.

5 A. OKAY.

6 Q. AND CAN YOU JUST TELL ME WHAT COMPANY SHE REPRESENTS
7 THAT SHE IS FROM?

8 A. SENIOR CLAIMS ADJUSTER WITH PATRIOT RISK SERVICES,
9 INC.

10 Q. OKAY. AND IN HER EMAIL ADDRESS, WHAT WORD IS THE
11 EMAIL ADDRESS ATTACHED TO?

12 A. DMANFRE@PATNAT.COM.

13 Q. OKAY. IS THERE ANY WORD OF GUARANTEE -- IS
14 GUARANTEE A WORD ON ANY RELATION TO HER NAME?

15 A. NOT IN THE EMAIL CHAIN, NO.

16 **BY MS. RICHARDSON:**

17 OKAY. THANK YOU.

18 **BY THE WITNESS:**

19 OKAY.

20 **BY COMMISSIONER JAMES:**

21 IS THAT IT?

22 **BY MS. RICHARDSON:**

23 OH, YES. I SAID "THANK YOU."

24 **BY COMMISSIONER JAMES:**

25 ALL RIGHT. AND I THOUGHT SO. I JUST WANTED TO

1 MAKE SURE.

2 BY MS. RICHARDSON:

3 THANK YOU.

4 BY COMMISSIONER JAMES:

5 ANYTHING FURTHER FROM THE DEPARTMENT OF
6 CORRECTIONS?

7 BY MS. FARTHING:

8 NO, YOUR HONOR. THANK YOU.

9 BY COMMISSIONER JAMES:

10 ANYTHING FURTHER FROM THE UNINSURED FUND?

11 BY MS. GLOVER:

12 NOTHING FROM THE FUND.

13 BY COMMISSIONER JAMES:

14 ALL RIGHT. I BELIEVE THIS CONCLUDES THIS
15 WITNESS' TESTIMONY.

16 (THIS HEARING WAS ADJOURNED AT THE HOUR OF 10:11 P.M., TO
17 BE RESUMED ON A SUBSEQUENT DATE.)

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

EMPLOYEE/CLAIMANT: RACHEL J. TURNER

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

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

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE
OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS
SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 531 PAGES
REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE
FOREGOING HEARING OF RACHEL TURNER TAKEN ON THE 13TH DAY
OF OCTOBER, 2017.

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 2ND DAY
OF NOVEMBER, 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 2ND DAY OF
NOVEMBER, 2017, COMMENCING AT THE HOUR OF 9:31 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY
L. JAMES, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

STEPHEN B. SAMUELS, ESQUIRE, OF THE
SAMUELS LAW FIRM, LLC
1320 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE CLAIMANT,

ERIN F. FARTHING, ESQUIRE, OF THE
STATE ACCIDENT FUND
POST OFFICE BOX 102100
COLUMBIA, SOUTH CAROLINA 29221

ATTORNEY FOR THE SC DEPARTMENT OF CORRECTIONS
AND STATE ACCIDENT FUND,

GREGORY M. ALFORD, ESQUIRE, OF THE FIRM
ALFORD LAW FIRM, LLC
POST OFFICE BOX 8008
HILTON HEAD, SOUTH CAROLINA 29938

JAMES PAUL NEWMAN, JR., ESQUIRE, OF THE FIRM
HOWSER, NEWMAN & BESLEY, LLC
POST OFFICE BOX 12009
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEYS FOR COUNTRYWIDE STAFFING SOLUTIONS
GROUP, INC.

T. JEFF GOODWYN, JR., ESQUIRE, OF THE
GOODWYN LAW FIRM, LLC
2519 DEVINE STREET, SUITE A
COLUMBIA, SOUTH CAROLINA 29205

ATTORNEY FOR MEDUSTRIAL HEALTHCARE STAFFING
SERVICE AND CONDUSTRIAL, INC.,

GRADY L. BEARD, ESQUIRE,
BETH RICHARDSON, ESQUIRE, OF THE FIRM
SOWELL, GRAY, ROBINSON, STEPP & LAFFITTE, LLC
POST OFFICE BOX 11449
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEYS FOR GUARANTEE INSURANCE COMPANY,

LISA C. GLOVER, ESQUIRE, OF THE
SOUTH CAROLINA UNINSURED EMPLOYERS' FUND
POST OFFICE BOX 210039
COLUMBIA, SOUTH CAROLINA 29211

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 2ND, 2017. WE HAVE RE-
8 ADJOURNED THE HEARING WITH REGARDS TO RACHEL TURNER
9 VERSUS COUNTRYWIDE STAFFING SOLUTIONS GROUP, WCC
10 FILE NUMBER 1514359.

11 ALL ATTORNEYS THAT WERE NOTICED IN THE PREVIOUS
12 TWO DAYS OF HEARING ARE PRESENT AND ACCOUNTED FOR.
13 I BELIEVE WE ARE READY TO GO FORWARD. THERE IS ONE
14 ISSUE THAT NEEDS TO BE ADDRESSED. MR. SAMUELS?

15 **BY MR. SAMUELS:**

16 THANK YOU, YOUR HONOR. YOUR HONOR, ON OCTOBER
17 17TH, 2017, WE SERVED A SUBPOENA ON CONDUSTRIAL
18 THROUGH THEIR ATTORNEY. THE SUBPOENA RELATED TO A
19 CERTIFICATE OF INSURANCE, AN INSURANCE POLICY, AND
20 THE APPLICATION FOR INSURANCE, INCLUDING SUPPORTING
21 DOCUMENTS, IN PARTICULAR PAYROLL RECORDS THAT WOULD
22 HAVE BEEN MADE AS PART OF THE APPLICATION. THIS ALL
23 CAME OUT IN MR. SEARS' TESTIMONY, IN WHICH HE
24 TESTIFIED UNDER OATH THAT THERE WAS A POLICY IN
25 PLACE THAT WOULD COVER THE EMPLOYEES OR THE NURSES

1 THAT CONDUSTRIAL CLASSIFIES AS INDEPENDENT
2 CONTRACTORS. THERE WAS A MOTION FILED BY
3 CONDUSTRIAL TO QUASH THAT SUBPOENA. YOUR HONOR
4 DENIED THAT MOTION ON OCTOBER 31ST, 2017, IN AN OFF-
5 THE-RECORD CONFERENCE CALL.

6 **BY THE COMMISSIONER:**

7 NOVEMBER 1ST.

8 **BY MR. SAMUELS:**

9 NOVEMBER 1ST. THANK YOU. THE SUBPOENA
10 RESPONSES WERE ACTUALLY DUE OCTOBER 31ST. WE ARE
11 NOW HERE NOVEMBER 2ND. NOTHING HAS BEEN PRODUCED TO
12 DATE IN RESPONSE TO THAT SUBPOENA, SO THE SUBPOENA
13 RESPONSE IS OVERDUE, AND THAT PRESENTS A PROBLEM
14 WITH WITNESSES GOING FORWARD WHO WILL TESTIFY AS TO
15 COVERAGE, BOTH NOW AND IN THE PAST, AND AS TO WHO
16 WILL TESTIFY TO THE EMPLOYER/EMPLOYEE RELATIONSHIP.
17 WE WOULD ASK THAT A COMPLETE RESPONSE TO THAT
18 SUBPOENA BE PROVIDED SOMETIME TODAY.

19 **BY THE COMMISSIONER:**

20 MR. SAMUELS, AS FAR AS WHEN IT'S DUE, THE
21 MOTION TO QUASH ACTUALLY PROTECTS THE DUE DATE. SO
22 THE EARLIEST THAT THEY WOULD KNOW THAT THE
23 PRODUCTION IS MANDATORY WOULD HAVE BEEN YESTERDAY
24 MORNING. SO, WHICH IS -- I KNOW IT'S ONLY ONE DAY
25 APART, BUT...

1 **BY MR. SAMUELS:**

2 I AGREE, YOUR HONOR. BUT KNOWING THE SUBPOENA
3 IS OUT THERE AND KNOWING THAT THESE ARE DOCUMENTS
4 WHICH WOULD BE NORMALLY KEPT IN THE NORMAL OPERATION
5 OF BUSINESS OF A LARGE EMPLOYER SUCH AS CONDUSTRIAL,
6 PARTICULARLY WHEN MR. SEARS TESTIFIED AT GREAT
7 LENGTH ABOUT THE CONTENT OF THESE DOCUMENTS AND WHAT
8 COVERAGE THEY PROVIDED. SO, THAT IS SOMETHING THAT
9 SHOULD BE EASILY ACCESSIBLE, AND THEY SHOULD HAVE
10 BEEN ABLE TO PRODUCE THEM THIS MORNING, AND,
11 ACTUALLY, MR. GOODWYN MADE THE REPRESENTATION TO
12 YOUR HONOR THAT HE WOULD ATTEMPT TO HAVE THEM HERE
13 THIS MORNING, AND THEY'RE NOT. SO, I WOULD JUST
14 LIKE CLARIFICATION AS -- THAT THERE WILL BE A FULL
15 RESPONSE PROVIDED, WHEN IT WILL BE PROVIDED, AND
16 WHEN WE WILL BE ABLE TO USE IT AS EVIDENCE IN THIS
17 TRIAL.

18 **BY THE COMMISSIONER:**

19 MY UNDERSTANDING FROM OUR OFF-THE-RECORD
20 CONVERSATION, MR. GOODWYN, IS THAT THESE DOCUMENTS
21 WILL BE PRODUCED TODAY WITH THE ARRIVAL OF, I
22 BELIEVE YOU SAID, MR. DURHAM.

23 **BY MR. GOODWYN:**

24 HE'S GOING TO TRY TO GET IT OFF THE COMPUTER OR
25 EMAIL IT TO US. WE SHOULD BE ABLE TO HAVE IT LATER

1 TODAY. BUT IF HE RUNS INTO PROBLEMS GETTING INTO
2 TOM'S EMAIL, THAT MIGHT CREATE AN ISSUE. BUT RIGHT
3 NOW WE THINK HE SHOULD BE ABLE TO ACCOMPLISH IT.

4 BY THE COMMISSIONER:

5 ALL RIGHT. WELL ---

6 BY MR. GOODWYN:

7 AND THAT'S AS FAR AS THE P.E.O. POLICY GOES.
8 THE ASSIGNED RISK POLICY THEY DON'T HAVE, AND THEN
9 THE CERTIFICATES OF INSURANCE THAT WERE ASKED FOR,
10 HE HAS SEARCHED AND ALL OF THOSE ARE ALREADY IN THE
11 RECORD. THAT SHOULD COMPLETE THE SUBPOENA.

12 BY MR. SAMUELS:

13 YOUR HONOR, I'M, AGAIN, BAFFLED AT HOW THEY
14 COULD HAVE A CERTIFICATE OF INSURANCE PURPORTING TO
15 COVER WHAT THEY CLAIM ARE INDEPENDENT CONTRACTORS
16 AND NOT HAVE THE POLICY. AND, CERTAINLY, THERE HAD
17 TO HAVE BEEN DOCUMENTS THAT THEY HAD TO USE, CREATE
18 TO OBTAIN THAT POLICY.

19 BY THE COMMISSIONER:

20 AND, MR. SAMUELS, USUALLY WE'D HAVE TIME IN A
21 SETTING WHERE THERE COULD BE A REQUEST FOR AN
22 AFFIDAVIT AS TO THE FULL RESPONSE. AS I INDICATED
23 IN PRETRIAL, I BELIEVE THAT IN THIS PARTICULAR CASE
24 THAT THAT MAY HAVE TO BE ACCOMPLISHED THROUGH ACTUAL
25 ORAL TESTIMONY. AT THIS POINT, I HAVE RULED THAT

1 THEY BE PRODUCED. AND LET ME ASK THIS QUESTION. I
2 DID NOT ASK THIS. DOES THAT AFFECT ANY OF THE
3 QUESTIONING OF THE FIRST WITNESS?

4 BY MR. SAMUELS:

5 I DON'T KNOW WHO THE FIRST WITNESS IS.

6 BY MR. GOODWYN:

7 I DON'T THINK SO. THIS IS JO ANN WHITAKER.
8 SHE WAS ONE OF THE -- PART OF THE TEAM AT KEENAN
9 SUGGS THAT BROKERED THE DEAL BETWEEN CONDUSTRIAL AND
10 COUNTRYWIDE. SHE DOESN'T WORK THERE ANYMORE. SHE
11 COULD NOT POSSIBLY KNOW ANYTHING ABOUT THE CURRENT
12 P.E.O., THE CURRENT ASSIGNED RISK PLAN, BECAUSE SHE
13 DOESN'T WORK THERE ANYMORE.

14 BY THE COMMISSIONER:

15 SO WE SHOULD BE ABLE TO ACCOMPLISH THE FIRST
16 WITNESS WITHOUT THE DOCUMENTS, AND THEN, AGAIN, I
17 ORDERED THAT THE SUBPOENA BE COMPLIED WITH. I WILL
18 SAY THIS: THERE WAS SOME CONCERN ABOUT WHETHER
19 THERE WAS ANY PRIVILEGE. I DO NEED TO ISSUE AN
20 ORDER, WHICH I'M ORALLY DOING RIGHT NOW, THAT -- BUT
21 I DON'T KNOW WHAT TO PUT AS FAR AS WHAT IS
22 PRIVILEGED RIGHT THIS MOMENT. BUT WHEN THE
23 DOCUMENTS ARE RECEIVED AND WE GET TO THAT POINT, I
24 WILL MAKE SURE IF THERE'S ANYTHING PRIVILEGED THAT
25 WE DO ISSUE SOME TYPE OF ORDER OF PROTECTION, AND I

1 PROBABLY WILL STOP AND MAKE SURE THAT THAT ACTUALLY
2 IS A SHORT ADMINISTRATIVE ORDER OF SOME COUPLE OF
3 SENTENCES, OR WHATNOT, SO THAT WE HAVE THAT CLEAR
4 BEFORE WE START USING THE DOCUMENTS.

5 **BY MR. SAMUELS:**

6 YOUR HONOR, IF I MAY, I WOULD ASK THAT WE BE
7 ABLE TO ARGUE THE ISSUE OF PRIVILEGE, AS THERE IS NO
8 PRIVILEGE BETWEEN A BUSINESS AND ITS INSURANCE
9 AGENCY.

10 **BY THE COMMISSIONER:**

11 AND, MR. SAMUELS, AND THAT'S WHY I SORT OF
12 CHANGED WHAT I WAS SAYING, IS I DON'T KNOW RIGHT NOW
13 WHAT IS PRIVILEGED AND WHAT ISN'T. IF THERE IS
14 PRIVILEGE, THEN WE WILL ISSUE THE ORDER.

15 **BY MR. GOODWYN:**

16 IF IT'S NOT PRIVILEGED, WE'RE NOT GOING TO
17 ASSERT THAT. THAT WAS JUST KIND OF A GENERAL ---

18 **BY THE COMMISSIONER:**

19 AND I UNDERSTAND WHAT YOU'RE SAYING. THE
20 INSURANCE POLICY ITSELF, I DON'T SEE A PRIVILEGE IN
21 IT. WE'LL JUST NEED TO WAIT ON THAT.

22 **BY MR. SAMUELS:**

23 I'D ALSO ASK, YOUR HONOR, -- AND THIS MAY HAVE
24 TO COME WHEN AND IF THEY PRODUCE THESE DOCUMENTS --
25 THAT WE BE ALLOWED TO ARGUE THAT THERE SHOULD BE A

1 NEGATIVE INFERENCE IF CERTAIN DOCUMENTS ARE NOT
2 PRODUCED AS TO WHAT THOSE DOCUMENTS WOULD SHOW.

3 BY THE COMMISSIONER:

4 AGAIN, I THINK WE NEED TO WAIT UNTIL WE GET TO
5 THAT POINT. RIGHT NOW, AS OF YESTERDAY MORNING,
6 THEY WERE ORDERED TO BE PRODUCED. OF COURSE,
7 THERE'S NOT A WRITTEN ORDER YET BECAUSE OF THE FACT
8 THAT IT WAS YESTERDAY. SO, I'M GOING TO REPEAT THE
9 ORAL RULING AND THEN WE'LL ADDRESS WHEN THEY GET IN.
10 WE CAN GO FORWARD NOW WITH THE FIRST WITNESS,
11 THOUGH, I THINK, WITHOUT THOSE DOCUMENTS. SO, MR.
12 GOODWYN, IF YOU'LL CALL YOUR FIRST WITNESS.

13 BY MR. GOODWYN:

14 WE CALL JO ANN WHITAKER, YOUR HONOR.

15 BY THE COMMISSIONER:

16 MS. WHITAKER, IF YOU CAN TAKE A SEAT UP HERE,
17 PLEASE, MA'AM. IF YOU'LL RAISE YOUR RIGHT HAND FOR
18 ME.

19 * * * * * * * * * * * * * * *

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

23 JO ANN WHITAKER,

24 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
25 FOLLOWS:

1 **BY THE COMMISSIONER:**

2 MR. GOODWYN.

3 **DIRECT EXAMINATION BY MR. GOODWYN:**

4 Q. MS. WHITAKER, THANK YOU FOR COMING TODAY. HOW OLD
5 ARE YOU? I'M SORRY.

6 A. FIFTY-SIX. I HAD TO THINK ABOUT THAT. FIFTY-SIX.

7 Q. AND HOW FAR DID YOU GO IN SCHOOL?

8 A. ASSOCIATE'S DEGREE IN MARKETING.

9 Q. OKAY. AND TELL US A LITTLE BIT ABOUT YOUR
10 EMPLOYMENT BACKGROUND.

11 A. I WENT INTO INSURANCE IN 1981, WORKED FOR LEXSHELL
12 INSURANCE COMPANY FOR A PERIOD OF TIME, SPENT 29 1/2
13 YEARS WITH SULLIVAN AND COMPANY UNDER THEIR VARIOUS
14 NAMES, WHICH ENDED UP BEING HUB AFTER I LEFT, AND
15 I'M WITH ARTHUR J. GALLAGHER NOW FOR A YEAR AND A
16 HALF.

17 Q. OKAY. AND BACK IN 2014/2015, WHAT WAS THE NAME OF
18 SULLIVAN?

19 A. KENNAN SUGGS.

20 Q. OKAY.

21 **BY MS. FARTHING:**

22 EXCUSE ME. CAN I ASK THE WITNESS TO SPEAK UP A
23 LITTLE BIT? I JUST -- I CAN'T HEAR HER VERY WELL.
24 I'M SORRY.

25 **BY THE COMMISSIONER:**

1 CERTAINLY.

2 **BY MS. FARTHING:**

3 THANK YOU. I APOLOGIZE.

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

5 Q. ARE YOU STILL EMPLOYED WITH SULLIVAN, KENNAN SUGGS,
6 HUB?

7 A. NO.

8 Q. OKAY. WHEN DID YOU LEAVE THAT EMPLOYMENT?

9 A. MY LAST DAY WAS JUNE 30TH, 2016.

10 Q. OKAY. WHAT WAS THE REASON FOR YOUR DEPARTURE? DID
11 YOU LEAVE ON GOOD TERMS?

12 A. YEAH, I LEFT ON GOOD TERMS. I WAS JUST KIND OF
13 TIRED OF BEING SOLD A HUNDRED TIMES, AND SO DECIDED
14 TO MAKE MY OWN CHOICE ON CAREER AND WENT TO
15 GALLAGHER.

16 Q. I HEAR YOU. ALL RIGHT. WHAT WAS YOUR POSITION WITH
17 KEENAN SUGGS BACK IN 2014/2015?

18 A. '14/'15 I THINK I WAS STILL ACCOUNT MANAGER, BUT I
19 ALSO WAS WORKING AT OPERATIONS IN GREENVILLE.

20 Q. OKAY. WAS CONDUSTRIAL ONE OF KEENAN SUGGS' CLIENTS
21 BACK THEN?

22 A. YES.

23 Q. DID YOU HELP WORK THAT ACCOUNT?

24 A. YES. IN 2013, THE LADY WHO HAD MANAGED THAT ACCOUNT
25 FOR YEARS RETIRED WHEN KEENAN SUGGS PURCHASED THE

1 AGENCY, AND I TOOK THE SERVICE OVER JANUARY 2013.

2 Q. OKAY. WERE YOU INVOLVED IN PLACING CONDUSTRIAL WITH
3 GUARANTEE INSURANCE COMPANY BACK IN, I GUESS IT
4 WOULD HAVE BEEN, EARLY 2014?

5 A. THAT -- I THINK IT WAS 2015. BUT AT THAT STAGE
6 ALBERT HYNDSHAW, WHO WAS THE BROKER, AND ANDY GOSS,
7 WHO DID MARKETING FROM THE COLUMBIA OFFICE, ACTUALLY
8 SHOPPED THAT THROUGH THE SONGER BROKERAGE AGENCY,
9 WHOEVER THEY WERE. AND I DID GO TO MEETINGS, AND I
10 DID KEEP UP WITH THE REVENUE THAT WE GOT FROM THE
11 ACCOUNT AFTER IT WAS OVER AND CONSULTED SOME ABOUT
12 CERTIFICATES OR COVERAGE.

13 Q. OKAY. AND MY UNDERSTANDING, AND YOU MAY OR MAY NOT
14 HAVE BEEN INVOLVED IN THIS, IS IN 2015 CONDUSTRIAL
15 WAS PLACED WITH COUNTRYWIDE AND COUNTRYWIDE ENDED UP
16 -- THEY HAD SOME INSURANCE. THERE WAS A PERIOD ---

17 **BY MR. ALFORD:**

18 OBJECTION; LEADING.

19 **BY MR. GOODWYN:**

20 I HAVEN'T EVEN FINISHED THE QUESTION.

21 **BY MR. ALFORD:**

22 YOU'RE IN YOUR THIRD PARAGRAPH OF TESTIMONY. I
23 WOULD RESPECTFULLY ASK ---

24 **BY THE COMMISSIONER:**

25 ALL RIGHT. MR. GOODWYN, IF YOU CAN REPHRASE

1 THE QUESTION. I'M NOT SURE -- IT COULD BE A
2 QUESTION WITH SOME FOUNDATIONAL INFORMATION, BUT I
3 DON'T KNOW THAT THAT FOUNDATIONAL INFORMATION IS IN
4 THE RECORD.

5 **BY MR. GOODWYN:**

6 OKAY.

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

8 Q. IN -- I THINK YOU TESTIFIED IN 2015 YOU WERE
9 INVOLVED IN THE BROKERAGE OF THE COVERAGE BETWEEN
10 CONDUSTRIAL AND COUNTRYWIDE?

11 A. I ATTENDED A MEETING IN FEBRUARY OF 2015 WHERE WE
12 TOOK OUT THE PROPOSAL THAT WE HAD GOTTEN FROM SONGER
13 PRESENTING COUNTRYWIDE TO CONDUSTRIAL.

14 Q. OKAY. NOW, WHAT I WANT TO ASK YOU ABOUT IS THE YEAR
15 PRIOR. THE TESTIMONY IN THIS CASE HAS BEEN THAT
16 COUNTRYWIDE -- OR, CONDUSTRIAL WAS WITH GUARANTEE
17 DIRECT. WERE YOU INVOLVED IN BROKERING THAT?

18 A. NO.

19 Q. OKAY. ALL RIGHT. LET'S TALK ABOUT, THEN, THAT
20 NEGOTIATION, THAT BROKERAGE BETWEEN CONDUSTRIAL AND
21 COUNTRYWIDE. WHAT WAS YOUR UNDERSTANDING OF WHAT
22 CONDUSTRIAL WAS LOOKING FOR AT THAT POINT?

23 A. A NEW PROGRAM FOR THEIR WORKERS' COMP COVERAGE.

24 Q. WERE THEY LOOKING FOR A COMPREHENSIVE PROGRAM?

25 A. YEAH. I THINK THEY WERE LOOKING FOR A P.E.O. AT

1 THAT POINT TO PROVIDE THEIR WORKERS' COMP COVERAGE
2 BECAUSE THERE HAD BEEN SOME ISSUES WITH GUARANTEE.

3 Q. OKAY. AND WERE YOU AWARE THAT CONDUSTRIAL HAD A
4 GROUP OF 1099 NURSES?

5 A. YES, BECAUSE WE ALSO WROTE -- WE WROTE THEIR OTHER
6 LINES OF BUSINESS, INCLUDING PROFESSIONAL LIABILITY,
7 AND MEDUSTRIAL WAS ONE OF THE NAMES THAT THEY USED,
8 AND WE HAD THE PROFESSIONAL COVERAGE IN PLACE AND
9 THE GENERAL LIABILITY IN PLACE AND AN UMBRELLA IN
10 PLACE AND ALL THOSE THINGS.

11 Q. OKAY. WHAT WAS YOUR UNDERSTANDING OF THE
12 RELATIONSHIP BETWEEN CONDUSTRIAL AND MEDUSTRIAL?

13 A. WELL, ONE OF THE THINGS THAT CAME UP WHEN WE WERE
14 DISCUSSING IT WAS THAT -- TONY KEPT SAYING, "IT'S A
15 MONIKER; IT'S A MONIKER. IT'S NOT A REGISTERED
16 NAME." AND I'M LIKE, "WELL, DO THEY HAVE A FEIN
17 NUMBER?" HE'S LIKE, "NO, THEY DO NOT HAVE A FEIN
18 NUMBER." I SAID, "OKAY. THEN THE OFFICIAL NAME IS
19 CONDUSTRIAL." HE'S LIKE, "THAT'S RIGHT." I SAID,
20 "YOU ONLY HAVE ONE FEIN NUMBER?" "YES, ONE FEIN
21 NUMBER."

22 Q. OKAY.

23 A. SO, WHEN HE -- AND THE REASON I REMEMBER THAT SO
24 WELL, ABOUT MONIKER, IS -- I'M JUST GOING TO ADMIT
25 THIS -- I DIDN'T KNOW WHAT IT MEANT, SO I HAD TO GO

1 BACK TO THE DICTIONARY AND LOOK IT UP, AND IT WAS
2 LIKE NICKNAME, ALTERNATE NAME, YOU KNOW, BUT IT'S
3 NOT A REGISTERED NAME.

4 Q. OKAY. ALL RIGHT.

5 A. WHICH I HAD TO EXPLAIN TO THE GENERAL LIABILITY AND
6 THE PROFESSIONAL CARRIER AS WELL WHEN WE PLACED THAT
7 COVERAGE.

8 Q. OKAY. DID YOU EXPLAIN THAT TO COUNTRYWIDE DURING
9 YOUR MEETINGS WITH COUNTRYWIDE?

10 A. THE MEETING WE HAD IN FEBRUARY, THAT'S WHEN THE
11 MONIKER WORD KEPT BEING SAID OVER AND OVER AGAIN,
12 AND HE WENT INTO GREAT DETAIL ABOUT HOW IT OPERATED,
13 AND IT WAS AN SCDC CONTRACT, BLAH, BLAH, BLAH.

14 Q. OKAY. SO THIS WAS TONY DURHAM THAT WENT INTO GREAT
15 DETAIL?

16 A. YES.

17 Q. ALL RIGHT. LET'S TALK ABOUT THAT FEBRUARY 2015
18 MEETING. WHO WAS PRESENT AT THAT MEETING?

19 A. ME, ALBERT HYNDSHAW, AND THERE WAS A YOUNG PRODUCER
20 IN TRAINING WHO JUST KIND OF WENT ALONG FOR THE RIDE
21 WITH US, STEVE HARVIN, TONY, AND TOM. AND THE LADY
22 WHO DID ACCOUNTING AT CONDUSTRIAL KIND OF POPPED IN
23 AND OUT TALKING ABOUT HOW IT WOULD ALL WORK AS FAR
24 AS REPORTING PAYROLL.

25 Q. WAS THERE A REPRESENTATIVE FROM COUNTRYWIDE THERE?

1 A. YEAH, SCOTT HANSON.

2 Q. OKAY. WHAT POSITION WAS HE; DO YOU KNOW? WAS HE
3 THE PRESIDENT OR DO YOU KNOW?

4 A. I DON'T KNOW WHAT HIS POSITION WAS. I MEAN, HE WAS
5 -- BROUGHT THE PROPOSAL AND TALKED ABOUT HOW THEY
6 WERE GONNA DO IT.

7 Q. OKAY. AGAIN, EXPLAIN TO THE COMMISSIONER ABOUT THE
8 DISCUSSIONS THAT YOU HAD RELATED TO MEDUSTRIAL, THE
9 FACT THAT IT WAS A MONIKER, AND THE FACT THAT THERE
10 WERE 1099 NURSES. EXPLAIN TO HER EXACTLY HOW THAT
11 CONVERSATION WENT.

12 A. YEAH. WE JUST DISCUSSED THAT, YOU KNOW, IT WAS A
13 MONIKER NAME, WHICH I ALREADY KNEW THAT BECAUSE WE
14 WROTE THE PROFESSIONAL. BUT IN THAT MEETING WE
15 TALKED ABOUT THE FACT THAT THEY WERE 1099. THEY
16 WEREN'T GOING TO BE ON THE REPORTS BECAUSE, YOU
17 KNOW, THEY HAD THE CONTRACT. THE LADIES HAD SIGNED
18 INDEPENDENT CONTRACTOR AGREEMENTS, AND, YOU KNOW,
19 THAT WASN'T GOING TO BE PART OF IT AS FAR AS
20 REPORTING ON THE REPORTS. BUT THEY WANTED TO MAKE
21 SURE THAT THEY KNEW ABOUT IT AND THAT MEDUSTRIAL WAS
22 ONE OF THE NAMES THAT THEY USED.

23 Q. OKAY. THANK YOU. DID SCOTT HANSON INDICATE IN ANY
24 WAY THAT THAT WAS GOING TO BE A PROBLEM ---

25 A. NO.

1 Q. --- FOR COUNTRYWIDE TO BE ABLE TO WRITE THIS
2 COMPREHENSIVE WORKERS' COMPENSATION POLICY?

3 A. NO.

4 Q. WAS COUNTRYWIDE HOLDING THEMSELVES OUT TO BE A
5 P.E.O. AT THAT MEETING?

6 BY MR. ALFORD:

7 OBJECTION; CALLS FOR A LEGAL CONCLUSION.

8 BY MR. GOODWYN:

9 YOUR HONOR, IF HE SAYS, "HEY, WE'RE A P.E.O.
10 I'M OFFERING P.E.O. SERVICES," THAT'S NOT A LEGAL
11 CONCLUSION. P.E.O. IS A DEFINED ORGANIZATION ---

12 BY MR. ALFORD:

13 YOUR HONOR, AND THAT'S ALSO THE PAROL EVIDENCE
14 RULE. IT'S OUTSIDE THE CONTRACT. THIS IS THE
15 CONTRACT. IT IS ---

16 BY MR. GOODWYN:

17 I'M NOT ASKING -- I DIDN'T ASK HER QUESTIONS
18 ABOUT THE CONTRACT.

19 BY THE COMMISSIONER:

20 ALL RIGHT. WELL ---

21 BY MR. ALFORD:

22 YOUR HONOR, IF I MAY CONCLUDE MY OBJECTION.
23 THIS IS OUR AGREEMENT. IT'S IN EVIDENCE. THIS
24 CONTRACT HAS AN ENTIRE AGREEMENT.

25 BY THE COMMISSIONER:

1 MR. ALFORD, THAT'S -- THAT'S IN THE END WITH
2 REGARDS TO RULINGS. AS FAR AS THE ---

3 **BY MR. ALFORD:**

4 IF I MAY, YOUR HONOR, THE PURPOSE OF THE PAROL
5 EVIDENCE RULE AND THE PURPOSE OF THE PROVISIONS OF
6 AN ENTIRE AGREEMENT AND THE PURPOSE OF WHAT I HAD
7 NEVER HEARD OF BEFORE BUT I'M GOING TO START PUTTING
8 IT IN CONTRACTORS, THE SUPREMACY OF AGREEMENT, IS
9 THAT THIS DOCUMENT -- IT DOESN'T MATTER WHAT ANYBODY
10 SAID IN ANY MEETING ANYWHERE. WHAT MATTERS IS THAT
11 THIS IS THE FINAL AGREEMENT BETWEEN THE PARTIES.
12 THE LETTERS P.E.O., NONE OF THAT APPEARS IN THIS
13 DOCUMENT.

14 **BY MR. GOODWYN:**

15 IF IT'S OBTAINED BY FRAUD, IT'S RELEVANT.

16 **BY THE COMMISSIONER:**

17 ALL RIGHT.

18 **BY MR. GOODWYN:**

19 IF THEY HELD THEMSELVES OUT TO BE A P.E.O. AND
20 THEN IT'S THE OLD BAIT-AND-SWITCH THING ---

21 **BY MR. ALFORD:**

22 WAIT A MINUTE. WAIT A MINUTE. HOW CAN IT --
23 IN SOUTH CAROLINA DOCUMENTS READ AND PRESUMED TO BE
24 SIGNED ISN'T OBTAINED BY FRAUD.

25 **BY THE COMMISSIONER:**

1 OKAY. WAIT. LET'S -- LET'S NOT -- LET'S NOT
2 GET INTO AN ARGUMENT ABOUT THE ACTUAL LEGAL
3 CONCLUSION WHILE WE HAVE A WITNESS ON THE STAND. I
4 WILL LOOK AT THE DOCUMENT IN THE END, AND WHAT
5 RELEVANCE THAT IT HAS, I WILL MAKE RULINGS IN THIS
6 CASE. BUT AS FAR AS THE TESTIMONY, MR. GOODWYN, ARE
7 YOU ASKING THE WITNESS IF THEY USED THE PARTICULAR
8 WORDS? WHAT ARE YOU ASKING THE WITNESS?

9 BY MR. GOODWYN:

10 YEAH. I'M ASKING HER IF -- WHAT HER
11 UNDERSTANDING WAS AS TO WHETHER COUNTRYWIDE WAS
12 HOLDING THEMSELVES OUT TO BE A P.E.O. WAS THAT WHAT
13 THEY WERE SAYING THAT THEY WERE OFFERING, P.E.O.
14 SERVICES?

15 BY MR. ALFORD:

16 WELL, HE NEEDS TO BE CAREFUL, BECAUSE IF SHE
17 SAYS HE IS, THEN WE'VE GOT A PERJURY QUESTION ON MR.
18 SEARS, BECAUSE HE TESTIFIED UNDER OATH HE DIDN'T
19 THINK THEY WERE A P.E.O.

20 BY THE COMMISSIONER:

21 ALL RIGHT. WELL, LET'S ---

22 BY MR. ALFORD:

23 AND IN HIS DEPOSITION HE SAID THEY WEREN'T.
24 SO, WHERE ARE WE GONNA GO?

25 BY THE COMMISSIONER:

1 RIGHT NOW ---

2 BY MR. GOODWYN:

3 THAT'S NOT ---

4 BY THE COMMISSIONER:

5 HEY, LET'S -- Y'ALL NEED TO STOP. ALL RIGHT.

6 MR. GOODWYN, AS FAR AS, I THINK, WHAT WAS SAID, NOT
7 REALLY WHAT HER UNDERSTANDING WAS AT THIS TIME IS

8 ---

9 BY MS. RICHARDSON:

10 ALSO, YOUR HONOR, I DON'T THINK THAT MR.

11 GOODWYN HAS LAID THE FOUNDATION WHY ANY TESTIMONY
12 ABOUT BEING A P.E.O. WOULD BE EVEN RELEVANT TO THIS
13 CASE AT ALL. AND SO, I DON'T KNOW WHY WE'RE
14 ELICITING TESTIMONY ABOUT P.E.O.s AT ALL. IF MR.
15 GOODWYN IS OBLIGED TO SHOW WHY THAT WOULD EVEN BE
16 RELEVANT TO THE ISSUE OF INSURANCE IN THIS MATTER.
17 WE DO NOT HAVE -- GUARANTEE'S POLICY IS NOT A P.E.O.
18 POLICY. HE HASN'T ELICITED ANY ---

19 BY MR. GOODWYN:

20 IF COUNTRYWIDE IS A P.E.O. ---

21 BY MR. BEARD:

22 LET HER FINISH.

23 BY MS. RICHARDSON:

24 HE HASN'T ELICITED ANY FOUNDATION TO SUGGEST
25 THAT OUR INSURANCE POLICY IS A P.E.O. POLICY. SO,

1 THE P.E.O. -- THE ISSUE OF P.E.O. IS IRRELEVANT.

2 BY MR. GOODWYN:

3 IT'S NOT IRRELEVANT TO GUARANTEE. THEY MAY
4 THINK IT IS.

5 BY MS. RICHARDSON:

6 BUT YOU ---

7 BY MR. GOODWYN:

8 IF THEY'RE A P.E.O., I THINK THE LAWS ARE
9 DIFFERENT THAN AN A.S.O.-TYPE AGREEMENT.

10 BY MR. ALFORD:

11 WELL, YOUR HONOR, THAT'S MY POINT. MR. SEARS
12 TESTIFIED UNDER OATH, FIRST IN HIS DEPOSITION, THAT
13 HE DID NOT THINK THEY WERE A P.E.O.; HE THOUGHT THEY
14 WERE MORE OF AN A.S.O.

15 BY MR. GOODWYN:

16 AND IT DOESN'T ---

17 BY THE COMMISSIONER:

18 I WANT THE ATTORNEYS FOR JUST ONE -- WE'RE
19 GOING TO TAKE A BREAK. I WANT THE ATTORNEYS FOR
20 JUST ONE MOMENT.

21 (OFF THE RECORD)

22 BY THE COMMISSIONER:

23 ALL RIGHT. WE'RE BACK ON RECORD. MR. GOODWYN,
24 WOULD YOU PLEASE -- I'M GOING TO SUSTAIN THE
25 OBJECTION AT THIS POINT BASED ON THE FACT THAT IT'S

1 REALLY ASKING FOR CONCLUSORY CONVERSATION OR
2 CONCLUSORY DECISION IN THIS MATTER, AND SO I WANT TO
3 MAKE SURE THAT THE QUESTIONS ARE ASKED IN A MANNER
4 IN WHICH THEY ARE WHO, WHAT, WHERE, WHY, WHEN
5 CONVERSATION QUESTIONS AS OPPOSED TO ANYTHING THAT
6 REQUIRES FOUNDATION OR PUTTING WORDS INTO A
7 WITNESS'S MOUTH. ALL RIGHT. WE CAN RESUME.

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

9 Q. OKAY. MS. WHITAKER, WE WERE TALKING ABOUT THE
10 FEBRUARY 2015 MEETING. I BELIEVE YOU TESTIFIED IT
11 WAS YOU, SCOTT HANSON, TONY DURHAM, TOM SEARS,
12 ALBERT HYNDSHAW, AND ANOTHER YOUNG KEENAN SUGGS
13 BROKER, I THINK STEVE HARVIN. WAS THAT THE OTHER
14 PERSON?

15 A. CORRECT.

16 Q. DID MR. HARVIN HAVE ANYTHING TO DO WITH THE
17 CONVERSATION?

18 A. NO. JUST OBSERVATION.

19 Q. JUST A BROKER IN TRAINING?

20 A. RIGHT.

21 Q. OKAY. ALL RIGHT. AND, AGAIN, I THINK YOU HAD
22 TESTIFIED THAT CONDUSTRIAL WAS SEEKING A P.E.O.
23 DURING THIS TIME?

24 **BY MS. RICHARDSON:**

25 OBJECTION.

1 BY THE COMMISSIONER:

2 SUSTAINED.

3 BY MS. RICHARDSON:

4 I MEAN, COME ON.

5 BY MR. GOODWYN:

6 SHE'S ALREADY TESTIFIED TO IT.

7 BY MR. ALFORD:

8 LEADING.

9 BY THE COMMISSIONER:

10 WAIT.

11 BY MR. GOODWYN:

12 SHE'S ALREADY TESTIFIED TO IT.

13 BY THE COMMISSIONER:

14 HOLD ON, EVERYBODY. I BELIEVE SHE HAS ALREADY
15 TESTIFIED THAT THEY WERE SEEKING SOMETHING SIMILAR
16 TO -- I DON'T KNOW HER EXACT WORDS. BUT WHATEVER
17 THE TESTIMONY IS IN THERE, IT'S ALREADY IN THERE,
18 BUT LET'S NOT LEAD.

19 BY MR. GOODWYN:

20 OKAY.

21 BY THE COMMISSIONER:

22 LET'S JUST ASK THE QUESTION.

23 BY MR. GOODWYN:

24 ALL RIGHT.

25 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. AGAIN, WHAT WAS CONDUSTRIAL SEEKING AT THAT TIME
2 FROM AN INSURANCE COMPANY ---

3 A. IN NOVEMBER OR ---

4 Q. --- OR SOMEBODY LIKE COUNTRYWIDE?

5 A. --- ARE WE TALKING ABOUT THE MEETING IN FEBRUARY?

6 Q. RIGHT.

7 A. MEETING IN FEBRUARY? WHAT WAS DISCUSSED WAS P.E.O.,
8 'CAUSE ONE OF THE THINGS WE DISCUSSED WAS THAT THEY
9 WERE LICENSED IN EVERY STATE.

10 Q. WHO WAS LICENSED IN EVERY STATE?

11 A. COUNTRYWIDE.

12 Q. OKAY. DO YOU MEAN THEY WERE TRYING TO -- THEY WERE
13 SAYING THEY WERE LICENSED AS A P.E.O. IN EVERY
14 STATE?

15 **BY MR. ALFORD:**

16 OBJECTION; LEADING.

17 **BY MR. GOODWYN:**

18 THAT'S NOT LEADING. I'M JUST TRYING TO CLARIFY
19 HER PRIOR STATEMENT. SHE SAID THEY WERE LICENSED IN
20 EVERY STATE. I'M TRYING TO FIGURE OUT WHAT SHE
21 MEANT BY THAT.

22 **BY THE COMMISSIONER:**

23 LET'S NOT PUT WORDS IN IT. LET'S ASK HER WHAT
24 SHE SAYS. FOR INSURANCE, SHE SAID, "THEY." I'M NOT
25 SURE WHO THEY ARE AT THIS POINT IN TIME. SO LET'S

1 JUST USE CLARIFICATION AND NOT PUTTING WORDS INTO
2 THE WITNESS'S MOUTH.

3 BY MR. GOODWYN:

4 ALL RIGHT.

5 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

6 Q. WHO IS THEY?

7 A. FOR ME, THEY WAS COUNTRYWIDE BECAUSE THAT'S WHO WE
8 WERE MEETING WITH.

9 Q. OKAY. AND WHAT DID COUNTRYWIDE TELL YOU ABOUT THE
10 LICENSING IN EVERY STATE? WHAT ---

11 A. JUST -- I MEAN, IT WAS JUST IN THE GENERAL
12 CONVERSATION THAT THEY WERE LICENSED TO BE A P.E.O.
13 IN EVERY STATE.

14 Q. OKAY. WAS THAT A SIGNIFICANT FACTOR FOR YOUR
15 CLIENT, CONDUSTRIAL?

16 BY MR. ALFORD:

17 OBJECTION; CALLS FOR ---

18 WITNESS ANSWERS:

19 A. I HONESTLY DON'T KNOW.

20 BY MR. ALFORD:

21 YES. THANK YOU.

22 BY THE COMMISSIONER:

23 SUSTAINED.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. AND THEN AFTER THAT MEETING, WHAT WAS

1 YOUR INVOLVEMENT IN THE BROKERAGE OF THE DEAL WITH
2 CONDUSTRIAL TO COUNTRYWIDE?

3 A. ALBERT -- I MAY HAVE WRITTEN AN EMAIL -- ONE OF THE
4 THINGS -- I JUST NEED TO SAY THIS, TOO. I'M NO
5 LONGER AT KEENAN SUGGS, SO I DON'T HAVE ACCESS TO
6 ALL MY NOTES TO REVIEW THEM. SO THIS IS OFF MY
7 MEMORY.

8 Q. SURE.

9 A. NOT LOOKING BACK AT MY NOTES.

10 Q. FAIR ENOUGH. YES. JUST ---

11 A. BUT ALBERT OR I ONE WOULD HAVE SENT A NOTE TO SONGER
12 TO BIND THE COVERAGE, AND THEN THERE WAS AN
13 AGREEMENT THAT WE WOULD GET A PERCENTAGE OF THE -- I
14 THINK IT WAS SOMETHING BASED OFF THE PAYROLL AS A
15 FEE.

16 Q. JUST A ---

17 A. YEAH, WE GOT A CUT, SOMETHING SONGER WOULD SEND US.

18 Q. THE COMMISSIONS?

19 A. YEAH.

20 Q. IS THAT WHAT YOU'RE SAYING?

21 A. YEAH. AND SONGER WOULD SEND US A CHECK AT THE END
22 OF EVERY -- 45 DAYS AFTER IT WAS REPORTED, WE WOULD
23 GET OUR COMMISSION. I ENTERED THAT.

24 Q. OKAY. TELL ME THIS. WHO -- YOU SAID -- DID YOU SAY
25 ANDY SONGER?

1 A. YES.

2 Q. OKAY. WHO IS ANDY SONGER?

3 A. HE WAS LIKE A BROKER THAT ALBERT BROKERED THE DEAL
4 THROUGH TO GET TO COUNTRYWIDE. WE DIDN'T HAVE A
5 DIRECT RELATIONSHIP WITH COUNTRYWIDE.

6 Q. WHY DID YOU HAVE TO GO THROUGH ANDY SONGER?

7 A. 'CAUSE HE HAD A -- HE HAD A RELATIONSHIP WITH
8 COUNTRYWIDE; WE DID NOT.

9 Q. OKAY. WERE -- WAS KEENAN SUGGS LICENSED OR
10 OTHERWISE ALLOWED TO BROKER DIRECTLY TO P.E.O.s?

11 A. NOT DIRECTLY TO COUNTRYWIDE.

12 Q. OKAY. WHY NOT? WHY COULDN'T Y'ALL GO DIRECTLY TO
13 COUNTRYWIDE?

14 A. WELL, I GUESS WE JUST DIDN'T HAVE THAT RELATIONSHIP.

15 Q. OKAY.

16 A. WE -- LIKE WE HAD ONE WITH ANOTHER -- OTHER P.E.O.s,
17 BUT WE DIDN'T HAVE THAT ONE. AND THAT ONE WAS MORE
18 LEANED TOWARD INDUSTRIAL CONSTRUCTION TYPE OF
19 P.E.O.s.

20 Q. OKAY. ALL RIGHT. DID YOU HAVE ANYTHING TO DO WITH
21 THE NEGOTIATION OF THE CONTRACT BETWEEN CONDUSTRIAL
22 AND COUNTRYWIDE?

23 A. I DID NOT.

24 Q. OKAY. NOW, WAS THERE -- DID YOU HAVE A MEETING
25 LATER IN 2015, AROUND JUNE, WITH ZACH COLLIER WITH

1 COUNTRYWIDE?

2 A. YES.

3 Q. OKAY. AND WHAT WAS THE PURPOSE OF THAT MEETING?

4 A. THERE WERE LOTS OF ISSUES, AND IT HAD COME TO THE
5 ATTENTION THAT THERE WAS A LAPSE IN COVERAGE FOR THE
6 COVERAGE AND ---

7 **BY MR. ALFORD:**

8 YOUR HONOR, I'M GOING TO OBJECT TO THE
9 RELEVANCY OF THIS TESTIMONY AS IT RELATES TO MS.
10 TURNER'S CLAIM.

11 **BY THE COMMISSIONER:**

12 MR. GOODWYN?

13 **BY MR. GOODWYN:**

14 I CAN EXPLAIN. DURING THIS MEETING -- I'M
15 LEADING UP TO QUESTIONS RELATED TO WHETHER OR NOT
16 THE EXISTENCE OF THESE 1099 NURSES AND MEDUSTRIAL
17 WAS, AGAIN, RELAYED TO COUNTRYWIDE. THEY'VE DENIED
18 TIME AND AGAIN THAT THEY KNEW ANYTHING ABOUT THESE
19 1099 NURSES. THIS WILL BE THE SECOND MEETING NOW
20 WHERE THEY'VE TOLD COUNTRYWIDE ABOUT THESE NURSES.

21 **BY THE COMMISSIONER:**

22 SO WE'RE NOT GOING INTO DISCUSSION ABOUT THE
23 LAPSE? YOU'RE JUST ---

24 **BY MR. GOODWYN:**

25 I DIDN'T ASK HER ABOUT THE LAPSE. SHE JUST

1 SAID THAT THE MEETING WAS PROMPTED IN PART BY THE
2 LAPSE.

3 BY THE WITNESS:

4 THAT'S WHY WE HAD IT, YEAH.

5 BY THE COMMISSIONER:

6 ALL RIGHT. OKAY. PROCEED.

7 BY MR. GOODWYN:

8 OKAY.

9 BY MS. RICHARDSON:

10 YOUR HONOR, I JUST WANT TO MAKE AN OBJECTION
11 AND LAY THE RECORD THAT, AGAIN, TO THE EXTENT THAT
12 MR. GOODWYN IS TRYING TO PROCEED TO MAKE SOME
13 EQUITABLE ARGUMENT THAT CONVERSATIONS WOULD ALTER
14 THE TERMS OF THE CONTRACT BETWEEN ITS CLIENT AND
15 C.C.S.G. (SIC), THAT IS AN ISSUE THAT IS BEYOND THE
16 SCOPE OF, I THINK, THIS COURT'S JURISDICTION.

17 BY MR. GOODWYN:

18 AND IT GOES TO DIRECTLY REFUTE SOME OF THE
19 TESTIMONY OF COUNTRYWIDE. IT GOES TO CREDIBILITY,
20 IF NOTHING ELSE.

21 BY MR. ALFORD:

22 YOUR HONOR, IF I MAY, THERE'S BEEN NO TESTIMONY
23 FROM COUNTRYWIDE.

24 BY MR. GOODWYN:

25 ABSOLUTELY THERE IS. THERE'S A -- TWO

1 TRANSCRIPTS RIGHT UP THERE THAT SHE HAS IN EVIDENCE
2 RIGHT NOW. I KNOW YOU WEREN'T PART OF THE CASE AT
3 THAT TIME, BUT I WAS, AND IT'S IN EVIDENCE.

4 **BY THE COMMISSIONER:**

5 ALL RIGHT. SHE INDICATED THAT SHE DIDN'T
6 NEGOTIATE THE CONTRACT BETWEEN COUNTRYWIDE AND
7 CONDUSTRIAL. SO, SHE WASN'T INVOLVED IN THAT. SO,
8 UNLESS -- I MEAN, TELL ME HOW THE STATEMENTS
9 AFTERWARDS ARE GOING TO BE RELEVANT TO THE CONTRACT.

10 **BY MR. GOODWYN:**

11 THIS IS LEADING UP TO THE PLACEMENT OF
12 CONDUSTRIAL WITH GUARANTEE. AND THERE'S BEEN
13 SUGGESTIONS, TESTIMONY THAT -- THIS IS IN JUNE OF
14 2015, OR AROUND THAT TIME, AROUND THE TIME WHERE
15 GUARANTEE GOT ON BOARD, BECAUSE GUARANTEE WASN'T ON
16 THE POLICY AT FIRST. THEY DIDN'T COME IN UNTIL A
17 FEW MONTHS LATER.

18 **BY MS. RICHARDSON:**

19 AND WHY DOES THAT MATTER?

20 **BY MR. GOODWYN:**

21 GUARANTEE IS -- GUARANTEE AND COUNTRYWIDE BOTH
22 DENY THAT THEY KNEW ANYTHING ABOUT THESE 1099
23 NURSES. I'M TRYING TO ESTABLISH ---

24 **BY MR. ALFORD:**

25 WITHIN THE SCOPE OF OUR AGREEMENT THAT THERE

1 WAS ANY OBLIGATION TO COVER THEM.

2 **BY MR. GOODWYN:**

3 THAT'S NOT BEEN THE TESTIMONY.

4 **BY THE COMMISSIONER:**

5 SHE'S -- SHE'S NOT INVOLVED IN THE NEGOTIATION
6 OF THE CONTRACT BETWEEN THE TWO PARTIES. SO I'M NOT
7 SURE HOW THIS IS GOING TO BE RELEVANT.

8 **BY MS. RICHARDSON:**

9 AND SHE'S ALSO TESTIFIED THAT, AT LEAST IN THE
10 PRIOR INSTANCE, SHE WAS NOT INVOLVED. ONLY ALBERT
11 HYNDSHAW WAS INVOLVED THROUGH ANOTHER INTERMEDIARY
12 NAMED SOMETHING SONGER TO ACTUALLY BROKER THE DEAL
13 BETWEEN COUNTRYWIDE AND CONDUSTRIAL. AND SO, WE
14 ALSO HAVEN'T ESTABLISHED IF THE WITNESS, MS.
15 WHITAKER, HAS ANY KNOWLEDGE OF GUARANTEE WHATSOEVER,
16 OR RELATIONSHIP TO THEM, YOU KNOW. SO I JUST THINK
17 WE'RE GETTING A LITTLE AHEAD OF OURSELVES.

18 **BY MR. GOODWYN:**

19 I'M JUST TRYING TO TAKE IT CHRONOLOGICALLY.
20 THIS IS BEFORE GUARANTEE GOT IN THE PICTURE. THIS
21 WAS A MEETING BEFORE THAT, OR AS THEY WERE TALKING
22 ABOUT GETTING GUARANTEE IN THE PICTURE.

23 **BY MS. RICHARDSON:**

24 THE CONTRACT HAS ALREADY BEEN EXECUTED. SO
25 WE'RE DONE. WHATEVER HAPPENED IN THIS MEETING HAS

1 ABSOLUTELY NO EFFECT ON CONDUSTRIAL'S RELATIONSHIP
2 WITH C.S.S.G. AT THIS POINT.

3 BY MR. GOODWYN:

4 IT TENDS TO SHOW THAT GUARANTEE KNEW ABOUT
5 THESE INDEPENDENT CONTRACTORS.

6 BY MS. RICHARDSON:

7 WHAT? UNLESS MS. WHITAKER HAS BEEN IN A
8 MEETING WITH A GUARANTEE REP, I ABSOLUTELY OBJECT TO
9 ANY LINE OF QUESTIONING IN THAT REGARD.

10 BY MR. GOODWYN:

11 IT SHOWS COUNTRYWIDE KNEW, AND THAT'S PROBATIVE
12 ON THE ISSUE OF WHETHER OR NOT GUARANTEE KNEW.

13 BY MS. RICHARDSON:

14 OH, MY GOSH. THAT'S ---

15 BY THE COMMISSIONER:

16 MR. GOODWYN, FIRST OF ALL, WHEN IS THE DATE OF
17 THE CONTRACT?

18 BY MR. ALFORD:

19 IT'S 3/26/15, YOUR HONOR.

20 BY THE COMMISSIONER:

21 SO, IT'S ---

22 BY MR. GOODWYN:

23 I'M NOT DISPUTING THIS WAS AFTER THE CONTRACT
24 WAS ENTERED INTO. YEAH. MARCH WAS WHEN THE
25 CONTRACT WAS ENTERED INTO. THIS WAS DURING THAT

1 LAPSE PERIOD. WE'RE TRYING TO GET GUARANTEE ON
2 BOARD. THIS WAS ANOTHER MEETING THAT THEY HAD WHERE
3 THEY TALKED ABOUT THE 1099 NURSES AGAIN.

4 **BY MR. BEARD:**

5 IT CAN HAVE NO RELEVANCE, YOUR HONOR, ON THE
6 ISSUE OF THE CONTRACT ---

7 **BY MR. GOODWYN:**

8 IF IT'S NOT RELEVANT ---

9 **BY THE COMMISSIONER:**

10 WAIT, WAIT. STOP. DON'T -- LET'S NOT TALK
11 OVER EACH OTHER, OKAY? BECAUSE THE COURT -- THAT
12 MAKES THE COURT REPORTER'S JOB VERY -- AND I REALIZE
13 I JUST DID IT IN ORDER TO KIND OF STOP EVERYBODY.
14 ALL RIGHT. MR. BEARD WAS TALKING FIRST. MR. BEARD,
15 WHAT DID YOU SAY?

16 **BY MR. BEARD:**

17 I SAID IT CAN HAVE ABSOLUTELY NO RELEVANCE OR
18 BASIS ON THE CONTRACT THAT HAS ALREADY BEEN ENTERED
19 INTO BETWEEN THOSE TWO PARTIES. IT DOESN'T MATTER.
20 IT IS IRRELEVANT. THE CONTRACT SPEAKS FOR ITSELF.
21 YOU CAN'T -- YOU CAN'T TRY TO PROVE SOME FRAUD AFTER
22 THE FACT.

23 **BY THE COMMISSIONER:**

24 MR. GOODWYN, THE CONTRACT HAS ALREADY BEEN
25 EXECUTED. SHE'S INDICATED SHE DOESN'T HAVE ANYTHING

1 TO DO WITH THE NEGOTIATION OF THIS CONTRACT. SO, I
2 MEAN, I'M NOT GOING TO ALLOW THE QUESTION.

3 BY MR. GOODWYN:

4 OKAY.

5 BY THE COMMISSIONER:

6 I'M GOING TO SUSTAIN THE OBJECTION.

7 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

8 Q. DOES IT SURPRISE YOU NOW THAT COUNTRYWIDE IS ARGUING
9 THAT THEY'RE NOT A P.E.O.?

10 BY MR. ALFORD:

11 COMMISSIONER ---

12 BY THE COMMISSIONER:

13 SUSTAINED.

14 BY MR. ALFORD:

15 I'M JUST -- THANK YOU.

16 BY MR. GOODWYN:

17 I THINK THAT'S ALL I HAVE, YOUR HONOR.

18 BY THE COMMISSIONER:

19 CROSS? WE'LL START WITH MR. SAMUELS.

20 BY MR. SAMUELS:

21 THANK YOU, YOUR HONOR.

22 CROSS EXAMINATION BY MR. SAMUELS:

23 Q. MS. WHITAKER, WHAT TIME PERIOD WAS CONDUSTRIAL A
24 CLIENT OF KEENAN SUGGS?

25 A. WE'D HAVE TO LOOK AT THE OWNERSHIP PRIOR TO KEENAN

1 SUGGS, WHICH IS ARTHUR SULLIVAN COMPANY. TONY
2 DURHAM -- WE HAD A PREVIOUS CONSTRUCTION COMPANY AS
3 A CLIENT FROM 1987, WHEN I GOT -- PROBABLY EVEN
4 BEFORE THAT. THAT'S WHEN I FIRST WENT TO WORK
5 THERE. SO HE WAS A CLIENT FROM 1987 UNTIL I LEFT IN
6 2016.

7 Q. AND HOW LONG DID YOU DEAL WITH -- OR WHAT PERIOD OF
8 TIME DID YOU PERSONALLY DEAL WITH TONY DURHAM AND
9 CONDUSTRIAL?

10 A. MAYBE FOR A YEAR IN '87 AND THEN FROM JANUARY 2013
11 UNTIL I LEFT IN JUNE OF '16. OF COURSE, I WAS AWARE
12 OF HIM DURING THAT TIME, BUT HE WASN'T MY CLIENT TO
13 SERVICE.

14 Q. WHAT WAS YOUR ROLE IN THIS ORIGINAL MEETING THAT YOU
15 DISCUSSED ABOUT WHERE COUNTRYWIDE WAS INTRODUCED TO
16 CONDUSTRIAL?

17 A. I WAS THE COMMERCIAL ACCOUNT MANAGER FOR THE OTHER
18 LINES OF BUSINESS THAT WE WROTE FOR CONDUSTRIAL.

19 Q. WERE YOU EVER ASKED TO PROVIDE A CERTIFICATE OF
20 WORKERS' COMPENSATION INSURANCE TO THE DEPARTMENT OF
21 CORRECTIONS COVERING CONDUSTRIAL'S NURSES?

22 A. NO, BECAUSE WE DIDN'T PROVIDE THEIR WORKERS' COMP
23 COVERAGE. EVEN THOUGH WE BROKERED IT, WE DIDN'T
24 HAVE THE CONTRACT TO PROVIDE THE CERTIFICATES. THAT
25 WAS COUNTRYWIDE'S JOB.

1 BY MR. ALFORD:

2 OBJECTION. I MEAN, I KNOW WHAT DOCUMENT --
3 NEVER -- I'M SORRY, MA'AM. I'LL DEAL WITH IT.

4 BY THE WITNESS:

5 IT WASN'T OUR JOB TO DO THE CERTIFICATES.

6 BY MR. ALFORD:

7 YES, MA'AM. I'M SORRY.

8 BY THE WITNESS:

9 THAT'S -- IT JUST WASN'T OUR JOB TO DO THE WORK
10 COMP CERTIFICATES.

11 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

12 Q. YOU MENTIONED IN THAT MEETING THAT MR. DURHAM AND
13 MR. SEARS BROUGHT UP THE ISSUE OF 1099 NURSES?

14 A. YES.

15 Q. DID MR. DURHAM OR MR. SEARS SHARE WITH YOU OR
16 ANYBODY ELSE AT THAT MEETING THE CONTENTS OF THEIR
17 CONTRACT WITH THE DEPARTMENT OF CORRECTIONS?

18 A. NO. KEY WORD, NOT AT THAT MEETING.

19 Q. DID THEY SHARE IT AT ANY OTHER TIME?

20 A. WAY LATER I DID SEE THE CONTRACT. WHEN THE SOUTH
21 CAROLINA DEPARTMENT OF CORRECTIONS ASKED THEM TO RE-
22 SIGN, WE SAW THE CONTRACT AT THAT POINT.

23 Q. I'M GOING TO ASK YOU -- IF I SHOW YOU THE -- I'M
24 GOING TO APPROACH AND I'M GOING TO SHOW YOU
25 CLAIMANT'S APA PAGES 254 THROUGH 260. I'M GOING TO

1 SHOW YOU THIS DOCUMENT.

2 A. OKAY.

3 Q. DO YOU RECOGNIZE THIS DOCUMENT?

4 A. NOT WITHOUT LOOKING AT IT FOR A SECOND. YES.

5 Q. WHEN DID YOU FIRST SEE THIS PARTICULAR CONTRACT
6 BETWEEN THE DEPARTMENT OF CORRECTIONS AND
7 CONDUSTRIAL?

8 A. IT WOULD HAVE BEEN IN JUNE, JUST PRIOR TO ME
9 LEAVING, THE MONTH OF JUNE 2016.

10 Q. AND HOW DID IT COME UP THAT YOU HAPPENED TO SEE THE
11 CONTRACT AT THAT POINT?

12 A. IT WAS AFTER ALL THIS STUFF HAD HAPPENED WITH THE
13 INJURY WITH THE NURSE AND AFTER THERE WERE ISSUES
14 WITH COUNTRYWIDE AND GUARANTEE. THEN THIS CONTRACT
15 CAME UP, AND THERE WAS A REQUIREMENT FOR WORKERS'
16 COMP INSURANCE, SO WE DISCUSSED THE VARIOUS WAYS
17 THAT THAT MIGHT BE ADDRESSED.

18 Q. ADDRESSED AS TO THE SEPTEMBER 5TH, 2015, INCIDENT OR
19 AS TO ---

20 A. FORWARD.

21 Q. --- IN THE FUTURE?

22 A. FORWARD, YEAH. FORWARD FOR THE CLIENT.

23 Q. AND AFTER HAVING REVIEWED THIS CONTRACT, WOULD YOU
24 AGREE THAT THE CONTRACT REQUIRED -- IN FACT, IT SAYS
25 HERE, LOOKING AT PAGE SIX -- OR CLAUSE SIX,

1 PARAGRAPH SIX, UNDER INSURANCE. WHAT DOES THAT
2 FIRST SENTENCE SAY, IF YOU DON'T MIND READING IT?

3 A. "CONTRACTOR SHALL PROVIDE WORKERS' COMPENSATION
4 INSURANCE COVERAGE FOR CONTRACTOR'S EMPLOYEES WHO
5 ARE ASSIGNED TO SCDC."

6 Q. WOULD YOU AGREE THAT MEANS THAT THOSE NURSES, PER
7 THIS CONTRACT, SHOULD HAVE BEEN COVERED BY WORKERS'
8 COMPENSATION INSURANCE PURCHASED BY CONDUSTRIAL?

9 A. I DON'T KNOW WHAT HAPPENED PRIOR 'CAUSE I NEVER SAW
10 THAT CONTRACT. BUT I WOULD SAY FORWARD, THAT'S WHAT
11 IT SAYS.

12 Q. AND IF THIS CONTRACT HAD BEEN IN PLACE -- I'LL SHOW
13 YOU ON PAGE 259, THIS CONTRACT WAS IN PLACE STARTING
14 SEPTEMBER 11TH, 2008.

15 A. I DON'T KNOW IF THAT'S THE EXACT SAME CONTRACT I
16 SAW. I DON'T KNOW IF HE SENT ME THE NEW ONE. I
17 DON'T HAVE THE FILE, SO I CAN'T TELL YOU EXACTLY
18 WHICH CONTRACT I READ. BUT I DO KNOW THAT THEY WERE
19 EXPECTING TO SETTLE THE INSURANCE ISSUE FORWARD
20 BECAUSE OF THE ISSUE THAT HAPPENED IN THE PAST, AND
21 A NEW CONTRACT.

22 Q. SO, TO BE CLEAR, WHEN MR. DURHAM AND MR. SEARS WERE
23 AT THAT MEETING AND, IN FACT, AT ANY OTHER TIME,
24 THEY NEVER, UNTIL 2016, EVER DISCLOSED TO YOU THAT
25 THEY HAD A CONTRACT WITH THE DEPARTMENT OF

1 CORRECTIONS REQUIRING THEM TO PROVIDE WORKERS'
2 COMPENSATION INSURANCE FOR THE NURSES THEY PLACED AT
3 THE DEPARTMENT OF CORRECTIONS; IS THAT TRUE?

4 A. I DON'T KNOW THAT I WOULD SAY NEVER, 'CAUSE THE
5 CONVERSATION COULD HAVE BEEN HAD SOMEWHERE ALONG THE
6 WAY, BUT NOT THAT I RECALL.

7 Q. AND, CERTAINLY, NOT AT THAT MEETING WITH
8 COUNTRYWIDE? THEY JUST SAID THESE ARE 1099 NURSES;
9 YOU DON'T HAVE TO WORRY ABOUT THEM?

10 A. NO. WE DID DISCUSS THAT THEY WERE SCDC NURSES.
11 THAT WAS DISCUSSED. I DON'T THINK THE CONTRACT
12 NECESSARILY WAS DISCUSSED, BUT WE DID DISCUSS THEY
13 WERE IN PRISONS AT THE SCDC.

14 Q. MR. SEARS AND MR. DURHAM NEVER DISCLOSED THAT THEY
15 WERE REQUIRED TO BE EMPLOYEES PER THE CONTRACT AND
16 COVERED UNDER WORKERS' COMPENSATION INSURANCE AT
17 THAT MEETING, DID THEY?

18 A. THEY NEVER SAID ANYTHING ABOUT THEM BEING EMPLOYEES,
19 NO.

20 Q. DID THEY SHARE WITH YOU ANY OF THE DOCUMENTS THAT
21 WOULD HAVE BEEN SIGNED BY THE NURSES?

22 A. NOT THAT I RECALL.

23 Q. THEY DIDN'T SHARE WITH YOU DOCUMENTS THAT WOULD HAVE
24 SAID -- THAT A NURSE WOULD HAVE SIGNED THAT SAID I
25 UNDERSTAND I'M AN AT-WILL EMPLOYEE? THAT WAS NEVER

1 SHARED WITH YOU?

2 A. NO.

3 Q. IF THEY HAD SHARED THE CONTRACT THAT YOU JUST LOOKED
4 AT WITH YOU, WOULD YOU HAVE MADE DIFFERENT
5 RECOMMENDATIONS AS TO THE COVERAGE THEY SHOULD HAVE
6 HAD?

7 A. I WOULD MAKE THE SAME RECOMMENDATIONS THAT I MADE
8 WHEN I -- I KNOW THERE'S AN EMAIL OUT THERE OF WHAT
9 I SAID, AND THERE WERE LIKE FIVE CHOICES OF HOW YOU
10 COULD HANDLE IT. THAT'S PROBABLY EXACTLY WHAT I
11 WOULD HAVE SAID BECAUSE I'M A RESEARCHER AND I DUG
12 TO FIND OUT WHAT THE ANSWER COULD BE. AND IT'S
13 THEIR DECISION ON HOW THEY RUN THEIR BUSINESS. I
14 JUST OFFER HOW YOU CAN HANDLE THE INSURANCE.

15 **BY MR. SAMUELS:**

16 THANK YOU, MS. WHITAKER. PLEASE ANSWER ANY
17 QUESTIONS THE OTHER ATTORNEYS MAY HAVE.

18 **BY THE WITNESS:**

19 OKAY.

20 **BY THE COMMISSIONER:**

21 ON BEHALF OF COUNTRYWIDE?

22 **CROSS EXAMINATION BY MR. ALFORD:**

23 Q. GOOD MORNING, MA'AM. I'M SORRY FOR ALL THE
24 LAWYERLINESS. YOU GET TOO MANY LAWYERS IN A ROOM,
25 THAT'S USUALLY WHAT HAPPENS, UNLESS THEY'RE

1 DRINKING. I JUST NEED TO UNDERSTAND SOME STUFF.

2 A. OKAY.

3 Q. I UNDERSTAND YOU WENT TO THIS MEETING.

4 A. YES.

5 Q. I'M TALKING FEBRUARY, WHICH IS PRIOR TO THE CONTRACT
6 BETWEEN COUNTRYWIDE AND CONDUSTRIAL.

7 A. CORRECT.

8 Q. OKAY. AND IN THIS MEETING YOU'RE TALKING ABOUT,
9 YOU'RE THERE BECAUSE THEY'RE TRYING TO FIGURE OUT
10 HOW TO GET COVERAGE?

11 A. WELL, WE'RE PRESENTING THE OPTION THAT WE HAVE ON
12 THE TABLE AND DISCUSSING HOW IT MIGHT ALL FIT
13 TOGETHER.

14 Q. WORK TOGETHER.

15 A. YEAH.

16 Q. OKAY. SO ---

17 A. IT'S A PROPOSAL STAGE.

18 Q. YES, MA'AM. AND SO, TELL US, IF YOU WOULD, WHAT YOU
19 ALL WERE PROPOSING TO PROVIDE.

20 A. WE HAD THE PROPOSAL FROM COUNTRYWIDE, THE QUOTE,
21 PROPOSAL, AND ---

22 Q. WHICH WAS TO PROVIDE WHAT?

23 A. WORKERS' COMPENSATION COVERAGE.

24 Q. FOR EMPLOYEES?

25 A. WHATEVER WAS SUBMITTED BY ALBERT AND ANDY.

1 Q. OKAY.

2 A. THAT WAS -- I -- BECAUSE I'M NOT THERE, I CAN'T GO

3 BACK AND LOOK AT THE APPLICATIONS ---

4 Q. YES, MA'AM.

5 A. --- AND SEE EVERYTHING THAT WAS INCLUDED.

6 Q. OKAY.

7 A. BUT NORMALLY WE WOULD SEND A SUBMISSION WITH

8 APPLICATIONS, A NARRATIVE ABOUT WHAT THE CLIENT

9 DOES, AND IT WOULD HAVE BEEN SHOPPED TO WHOEVER,

10 SONGER OR OTHER PEOPLE THAT WE -- I KNOW THEY DID

11 QUOTE OTHER PEOPLE, OR TRIED TO.

12 Q. YES, MA'AM. AND IN THAT PROCESS, YOU WOULD

13 BASICALLY DEFINE, OKAY, WE HAVE THESE PEOPLE THAT

14 ARE WELDERS, WE HAVE THESE PEOPLE THAT ARE NURSES,

15 WE HAVE THESE PEOPLE THAT ARE DOGCATCHERS, WHATEVER

16 IT IS?

17 A. RIGHT.

18 Q. AND THEN THERE'S A CODE ASSIGNED TO EVERYBODY?

19 A. CORRECT.

20 Q. SO EVERYBODY UNDERSTANDS ---

21 A. CORRECT.

22 Q. --- WHAT RISK THEY'RE UNDERTAKING?

23 A. YES.

24 Q. OKAY. BECAUSE THAT'S -- YOUR JOB IS TO BASICALLY

25 ACCURATELY PREPARE THE PROPOSAL AND PUT IT OUT THERE

1 AND GET THE PRICE?

2 A. YES. THAT WAS ACTUALLY ALBERT AND ANDY'S JOB ON
3 THAT ONE.

4 Q. OKAY. AS IT RELATED TO COMP?

5 A. I WOULD BE SERVICE. SO I WAS ALONG FOR THE RIDE
6 WITH SERVICE.

7 Q. AND YOU MENTIONED THAT AT THIS MEETING THE 1099 --
8 THAT THE NURSES AT THE SCDC WERE DISCLOSED?

9 A. YES.

10 Q. OKAY. WERE THEY DESCRIBED AS INDEPENDENT
11 CONTRACTORS OR WERE THEY DESCRIBED AS EMPLOYEES?

12 A. INDEPENDENT CONTRACTORS.

13 Q. AND THERE'S NO DOUBT IN YOUR MIND THAT THEY WERE
14 INDEPENDENT CONTRACTORS?

15 A. NO, BECAUSE THEY HAD SEPARATE CONTRACTS AND THERE
16 WAS AN SCDC CONTRACT INVOLVED.

17 Q. OKAY. DO YOU -- DID YOU HAVE ANY IMPRESSION AS TO
18 WHETHER OR NOT THERE WAS AN INTENTION TO INCLUDE
19 THEM IN THE AGREEMENT WITH COUNTRYWIDE AND
20 CONDUSTRIAL OR NOT?

21 A. I THINK -- WELL, LET ME JUST ---

22 Q. SURE.

23 A. GENERALLY, FROM AN INSURANCE PERSPECTIVE, OUTSIDE
24 P.E.O. OR A.S.O. OR WHATEVER Y'ALL WANT TO CALL
25 THEM, OKAY?

1 Q. SURE. OKAY. YEAH. THAT'S FAIR.

2 A. BUT GENERALLY SPEAKING, FROM AN INSURANCE
3 PERSPECTIVE, IF SOMEBODY HAS A 1099 EMPLOYEE OR AN
4 INDEPENDENT CONTRACTOR WHO IS NOT COVERED AND
5 SOMEONE IS INJURED, TYPICALLY THEY WOULD BE PICKED
6 UP AND YOU WOULD CHARGE ON AUDIT FOR THE PAYROLL
7 THAT WASN'T REPORTED, AND IT WOULD BE COVERED. I
8 DON'T KNOW HOW THAT APPLIES FROM YOUR PERSPECTIVE,
9 FROM AN A.S.O., P.E.O., YOUR CONTRACT. I DON'T KNOW
10 HOW THAT APPLIES FROM THAT STANDPOINT, BUT TYPICALLY
11 THAT'S WHAT HAPPENS. THAT'S HISTORICALLY -- IN
12 FACT, I ASKED SEVERAL PEOPLE I KNOW IN THE INSURANCE
13 INDUSTRY THAT HAVE BEEN IN AS LONG AS I HAVE, "WHAT
14 DO YOU THINK ABOUT THAT?" EVERYBODY SAID THE EXACT
15 SAME THING. THAT'S WHAT WE ALL ---

16 **BY MR. BEARD:**

17 COMMISSIONER, OBJECT TO HEARSAY.

18 **BY THE COMMISSIONER:**

19 SUSTAINED.

20 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

21 Q. THAT'S OKAY.

22 A. ALL RIGHT.

23 Q. BUT YOU DON'T KNOW IN THE END WHAT CONDUSTRUAL AND
24 COUNTRYWIDE ULTIMATELY AGREED TO BETWEEN THEMSELVES?

25 A. NO.

1 Q. OKAY. HAVE YOU EVER SEEN THAT AGREEMENT?

2 A. NO.

3 Q. AS I UNDERSTAND THE WAY THESE THINGS WORK, THEY
4 MIGHT ADD EMPLOYEES AND LOCATIONS AND DELETE
5 EMPLOYEES AND LOCATIONS AS THEY GO ALONG; IS THAT
6 RIGHT?

7 A. THEY COULD.

8 Q. AND IS THE POLICY ---

9 A. THEY COULD ALSO TAKE A CLASS CODE OFF, YEAH.

10 Q. IS THE POLICY STRUCTURED THAT WAY?

11 A. A TYPICAL WORKERS' COMP POLICY IS. SOMETIMES THEY
12 DON'T REPORT ANYTHING 'TIL THE END OF THE YEAR.
13 THEY PICK IT UP AT AUDIT.

14 Q. AND THERE'S A DIFFERENCE BETWEEN AN A.S.O. AND A
15 P.E.O.?

16 A. YES.

17 Q. MA'AM, YOU WROTE -- AND I THINK THESE DOCUMENTS ARE
18 IN. IF NOT, I'M GOING TO NEED A CLEAN COPY. BUT
19 WHEN YOU ULTIMATELY WROTE -- YOU STUDIED THIS ISSUE
20 LATER?

21 A. RIGHT.

22 Q. RIGHT? I MEAN, YOU ---

23 A. IN JUNE, RIGHT.

24 Q. AND MR. SEARS, I GUESS, CAME TO YOU -- CAME BACK TO
25 YOU BY EMAIL AND ASKED -- OR SOMEONE CAME AND ASKED

1 YOU THROUGH -- TO STUDY IT?

2 A. YES.

3 Q. AND THEY WERE LOOKING FOR A WAY TO PROVIDE WORKERS'
4 COMP COVERAGE TO THESE 1099 NURSES?

5 A. YES.

6 Q. AND I KNOW -- I MEAN, I'M NOT GONNA -- I'M NOT
7 LOOKING TO PUT YOUR CONCLUSION IN. I'LL PASS IT TO
8 YOU, MA'AM, BUT I'M GOING TO APOLOGIZE TO YOU. IT
9 MIGHT HAVE SOME OF MY HANDWRITING ---

10 **BY THE COMMISSIONER:**

11 LET'S USE THE MARKED EXHIBIT.

12 **BY MR. ALFORD:**

13 I DON'T KNOW IF I -- I DON'T KNOW IF IT'S IN
14 YET, YOUR HONOR.

15 **BY THE COMMISSIONER:**

16 THERE IS EMAILS WITH KEENAN SUGGS AT COUNTRY --
17 I BELIEVE IT'S COUNTRYWIDE EXHIBIT THREE. THEY'LL
18 BE UP HERE. ALL THE ORIGINAL ---

19 **BY MR. ALFORD:**

20 WE HAVE THE WHOLE THING IN, DON'T WE?

21 **BY THE COMMISSIONER:**

22 THE ORIGINAL EXHIBITS ARE RIGHT UP HERE.

23 **BY MR. ALFORD:**

24 THANK YOU. I'M SORRY, MA'AM.

25 **BY MR. GOODWYN:**

1 WHAT EXHIBIT NUMBER IS IT?

2 BY MR. ALFORD:

3 DEFENDANT'S THREE.

4 BY THE COMMISSIONER:

5 WHICH DEFENDANT?

6 BY MR. ALFORD:

7 C.S.S.G.

8 BY MS. RICHARDSON:

9 ARE YOU LOOKING FOR THE KEENAN SUGGS DOCUMENTS?

10 BY MR. ALFORD:

11 YES, MA'AM. IT'S HERE. IF YOU'LL JUST BEAR
12 WITH ME, MA'AM. THESE THINGS GO BACKWARDS. THAT'S
13 THE PROBLEM. THEY GO BACKWARDS, SO I'M TRYING TO...

14 CROSS EXAMINATION RESUMED BY MR. ALFORD:

15 Q. I'M JUST GOING TO SHOW IT TO YOU, MA'AM, AND YOU CAN
16 KIND OF FIND YOUR WAY THROUGH HERE. I'M GOING TO
17 LET YOU HANG ON TO THAT, AND I'LL GO BACK TO MY
18 LITTLE ---

19 A. ALL RIGHT.

20 Q. --- SPOT OVER HERE. SO, IF I UNDERSTAND RIGHT,
21 GENERALLY THEY WERE HAVING A PROBLEM FIGURING OUT
22 HOW TO WRITE COMP FOR THESE 1099 FOLKS?

23 A. YEAH, BASED ON THE FACT THERE WAS ISSUES THAT HAD
24 HAPPENED AND THE FACT THAT THERE WAS A NEW CONTRACT
25 TO BE SIGNED.

1 Q. OKAY. AND SO, YOU DID YOUR RESEARCH AND THERE WAS
2 SOME BACK AND FORTH. TELL US JUST ABOUT THAT
3 PROCESS, AND USE THOSE DOCUMENTS TO REFRESH YOUR
4 MEMORY.

5 A. OKAY.

6 Q. IF YOU WANT TO TAKE A SECOND JUST TO -- I'LL GIVE
7 YOU A MINUTE.

8 A. OKAY. I THINK IT'S PAGE NINE, IS THE GIST OF IT.

9 Q. OKAY.

10 A. LET'S SEE; NINE AND...

11 **BY THE COMMISSIONER:**

12 AND JUST TO BE CLEAR, WHAT WE'RE LOOKING AT IS
13 -- THE DOCUMENTS ARE UNNUMBERED EXCEPT FOR THE FACT
14 AT THE BOTTOM THERE'S A KENNAN SUGGS ---

15 **BY THE WITNESS:**

16 OH, I SEE.

17 **BY THE COMMISSIONER:**

18 --- DESIGNATION OF NINE.

19 **BY MR. ALFORD:**

20 YES, MA'AM. WITHIN C.S.S.G. DEFENDANT'S
21 EXHIBIT THREE.

22 **BY THE COMMISSIONER:**

23 YES.

24 **BY THE WITNESS:**

25 ACTUALLY, THERE'S ONE THAT SAYS KEENAN SUGGS 19

1 AND 20. I THINK IT'S MAYBE RIGHT THERE. LET'S SEE.
2 20. SEE WHERE IT SAYS KEENAN SUGGS 20 THERE AT THE
3 BOTTOM?

4 BY MR. ALFORD:

5 OKAY. 20. YES, MA'AM. THANK YOU.

6 WITNESS ANSWERS:

7 A. YEAH. I TALKED TO THEM ABOUT, YOU KNOW, THERE WERE
8 BASICALLY FIVE WAYS TO HANDLE IT. ATTEMPT TO AMEND
9 CONTRACTS TO ADDRESS THE 1099 ISSUE. DISCUSS WITH
10 YOUR P.E.O. AND SEE IF THEY WILL WORK SOMETHING OUT
11 WITH YOU. HAVE NURSES PURCHASE AND PROVIDE WORK
12 COMP COVERAGE. YOU'LL NEED TO DECIDE IF GHOST OR
13 REAL MEETS YOUR CONTRACTUAL AGREE WITH THE STATE AND
14 INDEPENDENT CONTRACTORS. OBTAIN ASSIGNED RISK
15 POLICY BASED ON ACTUAL PAYROLL OF YOUR 1099s, OR
16 WALK AWAY FROM CONTRACT.

17 CROSS EXAMINATION RESUMED BY MR. ALFORD:

18 Q. BECAUSE IT'S A TOUGH BUSINESS SITUATION, RIGHT? IN
19 OTHER WORDS, EITHER YOU'VE GOT TO BRING THEM IN,
20 MEANING CONDUSTRIAL HAS TO BRING THEM IN, TREAT THEM
21 LIKE EMPLOYEES, AND DEAL WITH THOSE COSTS?

22 A. OR BE A 1099.

23 Q. OR BE A 1099 AND MAKE THEM GO GET THEIR OWN
24 COVERAGE?

25 A. YEAH.

1 Q. WHICH IS EXPENSIVE?

2 A. CAN BE, YEAH.

3 Q. FOR A PRISON NURSE?

4 A. SAME AS THEIR OTHER NURSES.

5 Q. IS IT -- DO YOU THINK IT'S ---

6 A. SAME CLASS CODE, YEAH.

7 Q. IS THAT TRUE FOR A PRISON NURSE?

8 A. YES. THE SAME CLASS CODE APPLIES FOR PROFESSIONAL

9 EMPLOYEES AND PRISON NURSE, ASYLUM.

10 Q. ASYLUM?

11 A. YEAH. WELL, IT SAYS -- I CAN'T -- OFF THE TOP OF MY

12 HEAD, I CAN'T TELL YOU THE EXACT DESCRIPTION, BUT

13 IT'S LIKE ASYLUM NURSES. SO, THE NURSES UNDER

14 PROFESSIONAL -- IT'S THE SAME CODE FOR BOTH.

15 Q. HOW ABOUT A HOSPITAL NURSE?

16 A. I THINK THE RETIREMENT HOMES IS A DIFFERENT CODE,

17 BUT HOSPITAL NURSE IS THE SAME CODE.

18 Q. SO, IF THEY WERE -- IF THEY WERE TO DISCLOSE TO THE

19 CARRIERS AND SUCH THAT THERE WERE NURSES AT

20 CONVALESCENCE HOMES?

21 A. THEY HAD SOME OF THOSE.

22 Q. OKAY. THEY DID?

23 A. YEAH.

24 Q. ALL RIGHT. AND THEY WERE TREATED AS EMPLOYEES?

25 A. YES.

1 Q. NOT INDEPENDENT CONTRACTORS?

2 A. YES.

3 Q. SO, YOU WENT THROUGH THIS ANALYSIS, OBVIOUSLY, TO
4 TRY TO FIND A WAY TO GET COMP POLICIES, AND YOUR
5 NUMBER FIVE OPTION WAS WALK AWAY. WHAT WERE YOU
6 TRYING TO SAY BY THAT?

7 A. IT WAS JUST THEIR BUSINESS DECISION, WHETHER THEY
8 WANTED TO SIGN THE CONTRACT, HOW THEY WANTED TO
9 FIGURE IT OUT.

10 Q. AND ISN'T THAT THE ESSENCE OF IT? THEY GET TO MAKE
11 A BUSINESS DECISION? THEY GET TO DECIDE HOW TO DEAL
12 WITH THIS RISK, AND YOU WERE LAYING OUT OPTIONS FOR
13 THEM?

14 A. FOR HOW TO HANDLE THE WORKERS' COMP, YES.

15 Q. YES, MA'AM. AND THEN -- AND HOW THEY DECIDE TO DEAL
16 WITH IS IT UP TO THEM?

17 A. TRUE.

18 Q. IF YOU'D BEAR WITH ME, MA'AM, I'M PROBABLY FINISHED.

19 A. YEAH, THERE WAS -- ACTUALLY ABOVE THERE, THERE WAS
20 AN OPTION -- I'M LOOKING NOW THAT I HAD A SECOND.

21 Q. YES, MA'AM. SURE.

22 A. UNDER NUMBER FOUR ABOVE THERE IT SAYS, YOU KNOW, ALL
23 EMPLOYEES, EVEN INDEPENDENT CONTRACTORS, PURCHASE
24 THEIR OWN, WHICH THEY COULD HAVE ASKED THE NURSES TO
25 PROVIDE THEIR OWN. BUT IN SOUTH CAROLINA YOU CAN

1 REJECT COMP, TOO, AS AN INDIVIDUAL IF YOU WANT TO.
2 YOU CAN BUY A GHOST POLICY.

3 Q. OKAY. BUT IF THEY HAD -- OKAY. I'D LIKE FOR YOU TO
4 LOOK AT PAGE 17, IF YOU WOULD, MA'AM.

5 A. OKAY.

6 Q. I'LL GIVE YOU A SECOND TO LOOK THAT OVER.

7 A. OH, THAT'S THE ONE ABOUT THE TRUCKER?

8 Q. NO IDEA.

9 A. YEAH, I'M VERY FAMILIAR WITH THAT.

10 Q. OH, YES, MA'AM.

11 A. I'M VERY FAMILIAR WITH THAT.

12 (OFF THE RECORD)

13 CROSS EXAMINATION RESUMED BY MR. ALFORD:

14 Q. MA'AM, THE LAST -- WOULD YOU MIND READING THE LAST
15 PARAGRAPH OF THAT INTO THE RECORD?

16 A. OKAY. "I THINK IT WOULD BE IN YOUR BEST INTEREST TO
17 ADDRESS THE ITEMS THEY MENTION AS A TEST OF
18 INDEPENDENCE AND MAKE SURE YOU'RE LEGALLY DOING ALL
19 YOU NEED TO DO IN ORDER TO HAVE THE NURSES
20 CLASSIFIED AS INDEPENDENT CONTRACTORS THAT RESULTS
21 IN YOU NOT BEING RESPONSIBLE FOR WORK COMP OR BEING
22 CLASSIFIED AS THEIR EMPLOYER. OTHERWISE, IT COULD
23 DOMINO INTO N.C.C.I., LABOR BOARD, OR EVEN IRS
24 DETERMINING YOU HAVE EMPLOYER RESPONSIBILITIES. I
25 HAVE NO CLUE HOW YOU ACTUALLY ACCOMPLISH THAT OTHER

1 THAN TO SUGGEST YOU MAY WANT TO CONSULT ONE OF YOUR
2 LAWYER FRIENDS WHO SPECIALIZES IN WORKERS' COMP
3 MATTERS OR IF YOU KNOW SOMEONE AT THE LABOR BOARD.
4 I KNOW YOU'RE ALREADY VERY FAMILIAR ON HOW RULINGS
5 ON 1099 VERSUS EMPLOYEE WORK. IT CAN BE SO GRAY."

6 Q. YES, MA'AM. AND IT SPILLS OVER ---

7 BY THE COMMISSIONER:

8 I'M SORRY, MR. ALFORD. WHEN I WAS TRYING TO
9 UNPLUG THIS CONFERENCE CALL PHONE, I MISSED WHAT
10 PAGE YOU WERE LOOKING AT.

11 BY MR. ALFORD:

12 I'M SORRY. I'M ON PAGE 17.

13 BY THE COMMISSIONER:

14 ALL RIGHT. THANK YOU, SIR.

15 BY MR. ALFORD:

16 AT THE BOTTOM. YES, MA'AM.

17 CROSS EXAMINATION RESUMED BY MR. ALFORD:

18 Q. AND THEN, MS. WHITAKER, YOUR ANSWER ACTUALLY SPILLS
19 OVER ONTO PAGE 18. I'M SORRY.

20 A. OKAY. "I'M NOT AWARE OF ANY INSURANCE PRODUCT THAT
21 COULD PROTECT YOU AS BROKERING 1099'ERS TO THE SOUTH
22 CAROLINA DEPARTMENT OF CORRECTIONS."

23 BY MR. ALFORD:

24 THANK YOU, MA'AM.

25 BY THE COMMISSIONER:

1 CROSS ON BEHALF OF GUARANTEE?

2 BY THE WITNESS:

3 DO YOU WANT ME TO JUST LAY THIS BACK UP HERE?

4 BY THE COMMISSIONER:

5 YES, MA'AM.

6 BY MS. RICHARDSON:

7 YOU CAN HANG ON TO THAT DOCUMENT.

8 BY THE WITNESS:

9 OKAY. ALL RIGHT.

10 CROSS EXAMINATION BY MS. RICHARDSON:

11 Q. GOOD MORNING, MS. WHITAKER. MY NAME IS BETH
12 RICHARDSON, AND I'M COUNSEL FOR GUARANTEE INSURANCE
13 COMPANY HERE TODAY.

14 A. OKAY.

15 Q. NICE TO MEET YOU. IF YOU COULD TAKE DEFENDANT'S
16 EXHIBIT THREE, PLEASE. KEENAN SUGGS DOCUMENTS NINE
17 THROUGH EIGHTEEN, THAT'S A SERIES OF STRINGS BETWEEN
18 YOU AND VARIOUS PERSONS. WHEN YOU'VE LOCATED THAT
19 DOCUMENT, WILL YOU LET ME KNOW?

20 A. YOU SAID EIGHT?

21 Q. NINE THROUGH EIGHTEEN ---

22 A. OKAY.

23 Q. --- IS A CONTINUOUS STRING OF EMAILS THAT WERE
24 PRODUCED TO US. IT BEGINS ON PAGE 18.

25 A. OKAY. YOU'RE GOING BY THE KEENAN SUGGS NUMBERS?

1 Q. YES, THE KEENAN SUGGS NUMBERS.

2 A. OKAY.

3 Q. AND I'LL BE DOING THAT AS I TALK TO YOU. OKAY. ON
4 KEENAN SUGGS BATES NUMBER NINE, IT STARTS OFF WITH
5 YOU -- AN EMAIL ON WEDNESDAY, JUNE 22ND OF 2016, AT
6 10:06 A.M. IT'S TO SHIRLEY WATSON. THE SUBJECT IS
7 CONDUSTRIAL WORKERS' COMPENSATION QUESTIONS ON 1099
8 EMPLOYEES. AND YOU WRITE E.M. TRAIL FOR ATTACHING
9 IN W.S.; IS THAT CORRECT?

10 A. YES.

11 Q. CAN YOU EXPLAIN TO ME WHAT THAT MEANS?

12 A. IT WAS AN EMAIL TRAIL. I WAS LEAVING ON JUNE 30TH,
13 AND I HAD ALREADY GIVEN MY NOTICE. THEY LET ME WORK
14 MY NOTICE. SO, I WAS MAKING SURE THAT THE PERSON
15 BEHIND ME WHO WAS GOING TO SERVICE THE ACCOUNT HAD
16 ALL THE DOCUMENTATION THEY NEEDED FOR THEIR FILE.
17 SO THAT'S WHO SHIRLEY WATSON WAS. AND W.S. IS WORK
18 SMART, WHICH IS THE FILING SYSTEM FOR KEENAN SUGGS.

19 Q. OKAY. VERY GOOD. AND SO, IF WE TURN BACK, ALL THE
20 WAY BACK TO KEENAN SUGGS 18, AND YOU CAN FLIP
21 THROUGH THE PAGES AND I'D ASK YOU TO LOOK AT THE
22 DATES, WOULD YOU AGREE THAT THIS EMAIL STRING OR
23 EXCHANGE STARTS FROM WEDNESDAY, JUNE 22ND, 2016, AT
24 10:06 A.M. -- IT ENDS THERE, AND THEN IT STARTS, IF
25 YOU LOOK AT -- FROM YOUR EMAIL, ON FRIDAY, JUNE

1 10TH, 2016, AT 2:48 P.M., WHICH IS KEENAN SUGGS 17.
2 THAT EMAIL STARTS ON THAT PAGE AND ENDS ON KEENAN
3 SUGGS 18. WOULD YOU AGREE?

4 A. CORRECT. YEAH.

5 Q. OKAY. SO, IN YOUR -- IN THE ORIGINAL EMAIL THAT'S
6 ON KEENAN SUGGS 17 TO 18, YOU WRITE MR. SEARS WITH A
7 COPY TO MR. DURHAM REGARDING A W.C. QUESTION ON 1099
8 EMPLOYEES, AND YOU SAY, "YOU KNOW I LOVE A
9 CHALLENGE, AND YOU HAVE GIVEN ME A GOOD ONE." IS
10 THAT CORRECT?

11 A. YES.

12 Q. AND THEY CHALLENGED YOU TO DECIDE OR TO DETERMINE
13 WHAT INSURANCE PRODUCTS WOULD POSSIBLY APPLY IN
14 THESE CIRCUMSTANCES; IS THAT CORRECT?

15 A. CORRECT.

16 Q. AND YOU RESPONDED TO THEM AT THE VERY END OF THIS
17 EMAIL, "I AM NOT AWARE OF ANY INSURANCE PRODUCT THAT
18 COULD PROTECT YOU AS BROKERING 1099'ERS TO THE SOUTH
19 CAROLINA DEPARTMENT OF CORRECTIONS. THANKS." IS
20 THAT CORRECT?

21 A. YES. BUT THIS WASN'T ONLY ABOUT WORKERS' COMP. I
22 DIDN'T KNOW OF ANYTHING FROM A LIABILITY PERSPECTIVE
23 THAT WOULD HELP THEM WITH THAT EITHER.

24 Q. FROM A LIABILITY PERSPECTIVE. WHAT DO YOU MEAN BY
25 THAT?

1 A. TO HELP THEM WITH THE BROKERING, YOU KNOW, THAT THEY
2 WERE BROKERING TO SCDC. IT'S ---

3 Q. IS THIS STATEMENT, "I AM NOT AWARE OF ANY INSURANCE
4 PRODUCT THAT COULD PROTECT YOU AS BROKERING 1099'ERS
5 TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS," IS
6 THAT A TRUE STATEMENT AT THAT TIME?

7 A. WELL, I DID SAY THAT THEY COULD DO THE ASSIGNED RISK
8 POLICY SOMEWHERE.

9 Q. BUT IN THIS EMAIL, "I AM NOT AWARE OF ANY..." ---

10 A. I'VE GOT TO READ ALL THIS. I DON'T KNOW.

11 Q. YEAH.

12 A. SORRY. I HAVEN'T SEEN THESE SINCE 2016.

13 Q. WOULD YOU AGREE THAT UPON BEING PRESENTED WITH THE
14 INITIAL CIRCUMSTANCE YOUR ORIGINAL RESPONSE TO THEM
15 WAS, "I AM NOT AWARE OF ANY INSURANCE PRODUCT THAT
16 COULD PROTECT YOU AS BROKERING 1099'ERS TO THE SOUTH
17 CAROLINA DEPARTMENT OF CORRECTIONS"?

18 A. I WOULD SAY OTHER THAN WE HAD DISCUSSED THE ASSIGNED
19 RISK WORK COMP. I MEAN, THAT POSSIBLY ---

20 Q. BUT YOU DIDN'T MAKE ANY -- YOU DIDN'T MENTION THAT
21 IN THIS EMAIL? THERE'S NO EXCEPTION OR CAVEAT THAT
22 YOU -- FOR SOME ASSIGNED RISK POLICY IN THIS
23 PARTICULAR EMAIL ---

24 A. NO.

25 Q. --- AT THIS TIME? OKAY. AND YOU SPECIFICALLY NOTED

1 THAT THESE 1099'ERS WERE BEING DELIVERED TO THE
2 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; ISN'T THAT
3 RIGHT?

4 A. YES.

5 Q. THAT WAS A FACT WHICH YOU WERE INCLUDING IN YOUR
6 EXAMINATION OF THE ISSUE; IS THAT CORRECT?

7 A. YES.

8 Q. OKAY. AND CAN YOU TELL ME IN YOUR SIGNATURE LINE ON
9 THE BACK OF THAT EMAIL, IT HAS THE -- YOU SIGNED JO
10 ANN WHITAKER, CIC. CAN YOU EXPLAIN TO ME WHAT THAT
11 TITLE IS?

12 A. CERTIFIED INSURANCE COUNSELOR.

13 Q. OKAY. WHAT DOES THAT MEAN EXACTLY?

14 A. IT'S AN EDUCATIONAL PROGRAM THAT IS AVAILABLE TO
15 INSURANCE AGENTS ACROSS THE NATION. YOU TAKE A
16 CLASS A YEAR AND YOU JUST UPDATE ON DIFFERENT THINGS
17 THAT GO ON WITHIN THE INDUSTRY AND YOU CAN EARN A
18 DESIGNATION.

19 Q. OKAY. BUT WHEN YOU SAY INSURANCE AGENT, WHAT DO YOU
20 MEAN BY THAT?

21 A. INSURANCE COUNSELOR?

22 Q. YOU JUST CALLED YOURSELF AN INSURANCE AGENT.

23 A. NO, I SAID COUNSELOR. CERTIFIED INSURANCE
24 COUNSELOR.

25 Q. OKAY. SO, CERTIFIED INSURANCE COUNSELOR?

- 1 A. YEAH.
- 2 Q. AND TELL ME AGAIN. IT'S A DESIGNATION FOR THOSE
- 3 TYPES OF PEOPLE WHO HAVE TAKEN CLASSES TO WHAT?
- 4 A. IT'S AVAILABLE FOR ANYONE WHO'S BEEN AN INSURANCE
- 5 AGENT FOR TWO YEARS.
- 6 Q. ANYONE WHO'S BEEN AN INSURANCE AGENT FOR TWO YEARS.
- 7 A. CAN TAKE THESE CLASSES.
- 8 Q. SO YOU'RE AN INSURANCE AGENT?
- 9 A. YES. EVERYONE IN SOUTH CAROLINA WHO DEALS WITH
- 10 CLIENTS AND DEALS WITH INSURANCE CARRIERS HAS TO BE
- 11 A LICENSED AGENT.
- 12 Q. OKAY. BUT WITH KEENAN SUGGS YOUR TITLE WAS
- 13 GREENVILLE OPERATIONS MANAGER?
- 14 A. CORRECT.
- 15 Q. SO YOU'RE A MANAGER OF THE OPERATIONS SECTION?
- 16 A. IN 2013 THEY PURCHASED US. I WAS A COMMERCIAL
- 17 ACCOUNT MANAGER. I CONTINUED TO BE A COMMERCIAL
- 18 ACCOUNT MANAGER. IN THE LAST YEAR AND A HALF I WAS
- 19 THERE, I WAS ALSO RESPONSIBLE FOR MANAGING OTHER
- 20 COMMERCIAL ACCOUNT MANAGERS. SO THEY GAVE ME THAT
- 21 NEW TITLE.
- 22 Q. OKAY. SO, ARE YOU A BROKER?
- 23 A. NO, I'M NOT A BROKER. I'M AN AGENT. I HAD A
- 24 BROKER'S LICENSE, BUT I'M A ---
- 25 Q. BUT YOU WERE NOT A BROKER FOR KEENAN SUGGS?

1 A. NO.

2 Q. OKAY. AND WHAT IS -- YOU'RE A COMMERCIAL -- YOU
3 SAID A COMMERCIAL INSURANCE AGENT. DOES THAT ---

4 A. COMMERCIAL ACCOUNT MANAGER.

5 Q. COMMERCIAL ACCOUNT MANAGER. DOES THAT INCLUDE
6 WORKERS' COMPENSATION?

7 A. YES.

8 Q. OKAY. AND WHAT DOES AN ACCOUNT MANAGER DO THAT A
9 BROKER DOESN'T DO?

10 A. BROKER TYPICALLY PUTS TOGETHER A PROGRAM FOR THE
11 CLIENT AND SALES, THE OLD-FASHIONED SALES. MANAGER
12 -- COMMERCIAL ACCOUNT MANAGER IS SOMEONE WHO
13 SERVICES WHAT THE BROKER SOLD.

14 Q. OKAY. SO, THE MANAGER ACTUALLY SEES THAT THE CLIENT
15 IS BEING SERVICED BY WHATEVER WAS -- WHATEVER DEAL
16 WAS BROKERED AFTER THE FACT?

17 A. CORRECT.

18 Q. OKAY. AND SO, THE MANAGER DOES NOT HAVE THE
19 RESPONSIBILITY PER THE BUSINESS FOR BROKERING THE
20 ACTUAL INSURANCE POLICY?

21 A. IT'S NOT QUITE THAT SIMPLE. I MEAN, AS AN ACCOUNT
22 MANAGER, I WAS ALSO RESPONSIBLE TO MARKET ANYTHING
23 THAT WAS A RENEWAL. OR IF I HAD A CLIENT ALREADY IN
24 EFFECT, IF THEY WERE BUYING SOMETHING NEW, I COULD
25 BE -- OR THE BROKER -- IT WAS REALLY KIND OF UP TO

1 THE BROKER IF THEY WANTED TO BE OR NOT -- I WOULD
2 MARKET THAT OR HELP THEM PLACE COVERAGE.

3 Q. FOR RENEWALS?

4 A. YES. AND SOMETIMES NEW.

5 Q. BUT AS TO THE PROCUREMENT OF THIS PARTICULAR
6 INSURANCE POLICY, IS IT CORRECT THAT KEENAN SUGGS
7 DID NOT GIVE YOU THE RESPONSIBILITY TO ENSURE THAT
8 CONDUSTRIAL RECEIVED THE POLICY THAT IT WANTED? IS
9 THAT CORRECT? YOU WERE NOT IN CHARGE OF THAT?

10 A. WELL, HAVING BEEN THERE FOR 29 1/2 YEARS AND WORKING
11 FOR JOE AND ALBERT HYNDSHAW, I WAS A LOT OF TIMES
12 RESPONSIBLE TO HELP THEM PLACE NEW BUSINESS AS WELL
13 AS RENEWAL BUSINESS.

14 Q. DO YOU HAVE E&O COVERAGE FOR BROKERING POLICIES?

15 A. I DID.

16 Q. AND HOW -- DO YOU KNOW IF YOU PUT YOUR E&O CARRIER
17 ON NOTICE?

18 A. I WORKED AT HUB AT THE TIME, AND I DON'T KNOW WHAT
19 THEY DID. AND THEY ARE AWARE AND WE HAVE BEEN
20 FRIENDLY, BUT THERE'S BEEN NO COMMUNICATION BETWEEN
21 US ON THIS ACCOUNT. NONE.

22 Q. WOULD YOU AGREE, THOUGH, YOUR ACTUAL JOB TITLE AND
23 WHAT YOU'VE DESCRIBED TO ME AS YOUR RESPONSIBILITIES
24 DID NOT OFFICIALLY INCLUDE ENSURING THAT ANY KEENAN
25 SUGGS CLIENT PROCURED THE TYPE OF WORKERS'

1 COMPENSATION POLICY THAT THEY WERE APPLYING FOR,
2 THAT THERE WAS, AT LEAST IN THIS CIRCUMSTANCE,
3 SOMEBODY ELSE WAS IN PLACE TO ENSURE THAT IT GOT
4 DONE?

5 A. I WOULD SAY IT WAS A JOINT RESPONSIBILITY OF MINE
6 AND ALBERT'S BECAUSE WE BOTH WORKED ON THE ACCOUNT,
7 AND THAT'S THE WAY THAT WE OPERATED.

8 Q. OKAY. CAN YOU TURN TO PAGE -- KEENAN SUGGS PAGE 13,
9 PLEASE.

10 A. OKAY.

11 Q. IF YOU WOULD GO DOWN TO THE EMAIL STARTING FROM MR.
12 DURHAM TO YOU AND MR. SEARS, WITH A COPY TO MR.
13 HYNDSHAW, REGARDING THIS QUESTION ON 1099 EMPLOYEES.
14 MR. DURHAM ASKS YOU -- HE STATES -- WILL YOU READ
15 WHAT MR. DURHAM ASKS IN THIS EMAIL, PLEASE?

16 A. YES. "I WANT TO MAKE SURE THAT THESE I.C.s WOULDN'T
17 BE PICKED UP AS SUBS, BECAUSE IF THEY DID, THEN THE
18 CARRIER WOULD WANT TO PICK UP ANYONE THAT DIDN'T
19 HAVE THEIR OWN WORK COMP."

20 Q. OKAY. AND THEN YOU RESPOND TO THAT DIRECTLY ABOVE;
21 IS THAT CORRECT?

22 A. BELOW OR ABOVE? I DON'T KNOW HOW THIS IS RUNNING.
23 I HAVEN'T LOOKED AT IT.

24 Q. WELL, THIS ONE -- THAT EMAIL TOOK PLACE ON MONDAY,
25 JUNE 20TH, 2016, AT 3:21 P.M., CORRECT? THAT EMAIL

1 FROM MR. DURHAM TO YOU.

2 A. SO MINE ROLLS BACK OVER TO 12. OKAY.

3 Q. SO THEN IF YOU LOOK ON, YEAH, KEENAN SUGGS NUMBER 12
4 THERE'S AN EMAIL FROM YOU ---

5 A. OKAY.

6 Q. ---- ABOUT TWO MINUTES LATER BACK TO MR. DURHAM AND
7 MR. SEARS WITH A COPY TO MR. HYNDSHAW AGAIN WITH THE
8 SAME RE: LINE. AND WOULD YOU READ WHAT YOUR
9 RESPONSE IS?

10 A. "YOU ARE CORRECT IN THAT IT WOULD PICK UP ALL IF
11 RULED AGAINST YOU ON 1099 STATUS. I CAN'T GUARANTEE
12 YOU THAT. ALBERT, ANY LIGHT TO SHED ON THE
13 SUBJECT?"

14 Q. SO YOU ADMIT THAT YOUR OPINION THERE, YOU CAN'T
15 GUARANTEE -- YOU COULDN'T GUARANTEE CONDUCTUAL
16 THAT?

17 A. COULDN'T GUARANTEE THEM -- LET ME READ WHAT HE SAID
18 ONE MORE TIME. YEAH. I DIDN'T KNOW HOW IT WOULD
19 WORK OUT IF THEY WERE RULED ---

20 Q. SO, WHAT YOU SAID ABOVE THAT WAS OPINION OR
21 SPECULATION, AND, INDEED, YOU DON'T -- YOU HAD NO
22 AUTHORITY TO COMMIT ONE WAY OR THE OTHER AT THAT
23 POINT?

24 A. NO AUTHORITY?

25 Q. WELL, YOU'RE SUGGESTING THAT THESE INDIVIDUALS WOULD

1 BE PICKED UP IF THEY WERE RULED AGAINST YOU ON 1099
2 STATUS, BUT THEN YOU QUALIFY THAT STATEMENT AND SAY,
3 "I CAN'T GUARANTEE YOU THAT." IS THAT CORRECT?

4 A. I THINK WHAT I WAS SAYING IS I DON'T GUARANTEE THAT
5 THEY WOULDN'T BE PICKED UP.

6 Q. IS THAT WHAT YOU WROTE AFTER THE STATEMENT, "YOU ARE
7 CORRECT IN THAT THEY WOULD PICK UP ALL IF RULED
8 AGAINST YOU ON 1099 STATUS" ---

9 A. GIVE ME ONE MINUTE TO ACTUALLY READ THIS 'CAUSE I --
10 THIS IS THE FIRST TIME I'VE SEEN IT SINCE 2016.

11 Q. SURE. TAKE A MINUTE.

12 A. ACTUALLY, THE EMAIL BELOW THERE IS STILL PART OF THE
13 CONVERSATION, THE ONE AT 3:15. OKAY. SO, HE SAID
14 AT 2:42 ON THAT SAME DAY, "TO ADD SOME CONTEXT,
15 HERE'S THE DECISION FROM SCDEW SEVERAL WEEKS AGO
16 FINDING THAT OUR PEOPLE ARE INDEPENDENT CONTRACTORS.
17 SO THIS WOULD TRULY BE A BREAK GLASS IN CASE OF FIRE
18 POLICY ONLY, AS THESE FOLKS ARE JUST NOT OUR
19 EMPLOYEES." AND I SAID BACK, "ALSO DISCUSSED WITH
20 ALBERT, IT IS NORMAL TO DO A GHOST POLICY IF YOU ARE
21 CONFIDENT THAT YOUR 1099s WOULDN'T BE RULED SUBS.
22 SINCE YOU'RE COMFORTABLE WITH THE NURSES BEING PURE
23 1099, WE CAN WRITE A WORK COMP POLICY IN CONDUSTRIAL
24 NAME ONLY. NOTE THAT IT WILL BE AUDITED, SO YOU
25 WILL NEED TO OBTAIN AND KEEP CERTIFICATES ON RECORD

1 FROM ANY CONTRACTORS YOU USE SO THAT THEY DON'T PICK
2 UP ANY PAYROLL FOR VENDORS OR CONTRACTORS THAT MAY
3 DO WORK FOR YOU. EXAMPLE, YOU ROOF YOUR BUILDING OR
4 HAVE YOUR OFFICE PAINTED AND USE A SUBCONTRACTOR.
5 GET A CERTIFICATE. I'VE COPIED ALBERT SO THAT HE
6 CAN DO AN APPLICATION FOR OUR MARKETING DEPARTMENT
7 TO PRICE IT. SEND OVER YOUR FEIN NUMBER AND THE
8 PAYROLL YOU WOULD LIKE FOR US TO USE." AND THEN HE
9 SAYS, "I WANT TO MAKE SURE" ---

10 Q. MR. DURHAM, YOU MEAN?

11 A. YES. MR. DURHAM SAYS, "I WANT TO MAKE SURE THAT
12 THESE I.C.s," INDEPENDENT CONTRACTORS, "WOULDN'T BE
13 PICKED UP AS SUBS, BECAUSE IF THEY DID, THEN THE
14 CARRIER WOULD WANT TO PICK ANYONE UP THAT DIDN'T
15 HAVE THEIR OWN WORK COMP." THAT'S TRUE. THEY WOULD
16 PICK UP THE PAYROLL FOR ANYBODY THAT DIDN'T HAVE
17 WORK COMP IF THEY WERE 1099 STATUS VERSUS
18 INDEPENDENT CONTRACTORS, AND "I CAN'T GUARANTEE YOU
19 THAT." I GUESS, ONE WAY OR THE OTHER, I WOULDN'T BE
20 ABLE TO GUARANTEE HIM THAT UNTIL WE KNEW WHAT -- HOW
21 THEY WERE GONNA BE RULED ON. AND THEN I ASKED
22 ALBERT FOR HIS OPINION BECAUSE HE JUST WROTE IT TO
23 ME.

24 Q. OKAY. SO, THE "I CAN'T GUARANTEE YOU THAT" DOES NOT
25 QUALIFY YOUR STATEMENT THAT "YOU ARE CORRECT IN THAT

1 THEY WOULD PICK UP ALL IF RULED AGAINST YOU ON 1099
2 STATUS"? YOU'RE NOT QUALIFYING THAT STATEMENT? YOU
3 WOULD RATHER NOT (UNINTELLIGIBLE). IS THAT YOUR
4 TESTIMONY TODAY?

5 A. I REALLY DON'T KNOW WHY I SAID I CAN'T GUARANTEE YOU
6 THAT.

7 Q. WHAT IS YOUR BASIS FOR BELIEF THAT THE STATEMENT
8 "YOU ARE CORRECT IN THAT IT WOULD PICK UP ALL IF
9 RULED AGAINST YOU ON 1099 STATUS" -- WHAT IS THE
10 BASIS FOR YOUR BELIEF IN THAT NOW ON THIS DAY?

11 A. WHAT I WAS SAYING IS IF THEY -- ANYBODY WHO WAS A
12 1099, THEY WOULD PICK UP PAYROLL FOR THEM. IF HE
13 HAD ---

14 Q. WHAT IS THE BASIS ---

15 A. IF HE HAD AN ASSIGNED RISK POLICY, THEY WOULD PICK
16 UP THAT PAYROLL FOR A 1099 EMPLOYEE.

17 Q. THE ASSIGNED RISK POLICY ---

18 A. YEAH.

19 Q. --- WOULD PICK UP ---

20 A. 'CAUSE WE HAD TALKED ABOUT THE N.C.C.I., WHICH WAS
21 AN ASSIGNED RISK POLICY, IN THE PRIOR NOTE.

22 Q. OKAY. SO YOU'RE STATING THAT IN THE EVENT THAT
23 CONDUSTRIAL'S 1099s WERE DETERMINED TO BE EMPLOYEES,
24 THAT THEY COULD BE -- THEY WOULD THEN BE COVERED
25 UNDER THEIR FUTURE OR NOW PROCURED ASSIGNED RISK

1 POLICY? THAT'S WHAT YOU'RE TALKING ABOUT?

2 A. FUTURE OR IF THEY HAD COVERAGE IN PLACE -- OUTSIDE
3 YOUR CONTRACT STUFF, TYPICALLY WE HAD COVERAGE IN
4 PLACE AND WE HAD A 1099, IT WOULD BE PICKED UP ON
5 AUDIT AND THEY WOULD BE CHARGED FOR THAT PAYROLL. I
6 THINK THEY ALWAYS KNEW THEY WOULD BE CHARGED FOR THE
7 PAYROLL IF THEY WERE RULED TRUE 1099s -- I MEAN,
8 EMPLOYEES VERSUS 1099s.

9 Q. BUT YOU'RE STATING THAT WITHOUT KNOWING WHAT KIND OF
10 INSURANCE POLICY IS IN PLACE; IS THAT CORRECT?

11 A. NO. THEY WERE ASKING HOW TO SOLVE IT FOR THE NEW
12 SCDC CONTRACT.

13 Q. OKAY. YES. BUT I HEARD YOU THEN GOING OFF ABOUT
14 SOME OTHER -- YOU WERE TALKING ABOUT THIS STATEMENT
15 THAT HE MADE IS IN THE CONTEXT OF THE APPLICATION OF
16 THE ASSIGNED RISK POLICY THAT WAS PROCURED?

17 A. THERE IS NO APPLICATION AT THIS POINT. I'M TELLING
18 ALBERT HE NEEDS TO DO ONE.

19 Q. RIGHT.

20 A. THERE IS NO APPLICATION.

21 Q. YES. BUT YOU'RE JUST -- BUT YOU'RE NOT -- YOU ARE
22 NOT SUGGESTING OR SPECULATING THAT ANY OTHER
23 INSURANCE CARRIER BESIDES THE ASSIGNED RISK POOL
24 WOULD END UP PICKING UP THESE INDIVIDUALS IF THEY
25 WERE RULED AGAINST THEM ON THE 1099 STATUS?

1 A. ONE OF THE THINGS WE TALKED ABOUT WAS HAVING
2 DISCUSSION WITH YOUR P.E.O. IN THIS TRAIL.

3 Q. WHERE?

4 A. WE JUST READ IT WITH HIS INFORMATION. TOO MANY
5 PAGES.

6 Q. WE'RE JUST LOOKING AT KEENAN SUGGS NINE THROUGH
7 EIGHTEEN. THAT IS THE ENTIRETY OF THE EMAIL STRING
8 AS IT WAS PRODUCED TO US.

9 A. ACTUALLY, ON PAGE 20, WHAT WE WERE DISCUSSING WITH
10 HIM, THAT'S WHAT I HAD SAID ---

11 Q. THAT'S NOT IN THIS EMAIL STRING.

12 A. OKAY.

13 Q. THE EMAIL STRING IS PAGES NINE THROUGH EIGHTEEN, AND
14 THEN THE STRING CLEARLY ENDS.

15 A. OKAY. RESTATE YOUR QUESTION.

16 Q. YOU WERE JUST TRYING TO MENTION THAT YOU WERE ALSO
17 SUGGESTING THAT THIS MAY BE TRUE IN SOME P.E.O.
18 CONTEXT AND THAT THAT WAS IN -- YOU WERE IN RESPONSE
19 TO SOME PART OF THIS EMAIL.

20 A. OKAY. WELL, I'M LOST ON WHERE WE'RE AT.

21 Q. SO IS IT FAIR ---

22 A. ASK ME YOUR QUESTION.

23 Q. DO YOU SEE P.E.O. MENTIONED ANYWHERE IN THIS EMAIL
24 STRING? THAT'S WHAT I WAS ASKING YOU.

25 A. WITHOUT READING EVERY BIT OF IT AGAIN, I DON'T KNOW.

1 Q. WHY DON'T YOU TAKE THE TIME TO READ IT.

2 A. OKAY.

3 Q. I'D LIKE TO QUALIFY, YOU KNOW, WHAT EXACTLY YOU WERE
4 TALKING ABOUT, WHAT THE CONTEXT OF THE EMAILS WERE
5 AT THE TIME YOU MADE THAT STATEMENT.

6 A. WELL, I WAS -- BASICALLY, THEY WERE ASKING ME ABOUT
7 ASSIGNED RISK WORK COMP POLICY.

8 Q. YES.

9 A. AND I'M TELLING THEM THAT IF YOU DO GET AN ASSIGNED
10 RISK POLICY AND THEY'RE EMPLOYEES, YOU'RE GONNA PAY
11 THE PAYROLL. THAT'S THE -- THAT'S THE GIST OF THIS
12 ENTIRE CONVERSATION.

13 Q. THANK YOU. OKAY. AND JUST ON THE KEENAN SUGGS
14 NINE, IF YOU LOOK DOWN BELOW ALBERT HYNDSHAW'S
15 SIGNATURE THAT APPEARS ON THIS PAGE, AFTER HIS NAME
16 IS CPCU, ARM, AND MWCA. ARE YOU FAMILIAR WITH ANY
17 OF THOSE DEGREES OR ---

18 A. CPCU IS CERTIFIED -- LET'S SEE -- CHARTER -- I CAN'T
19 REMEMBER WHAT IT STANDS FOR, BUT IT'S A -- IT'S A
20 MUCH MORE DETAILED DESIGNATION, AND HE'S HAD IT FOR
21 YEARS. ARM IS A -- IT'S SOMETHING RISK MANAGER.
22 AND MCWA IS LIKE A LITTLE THING ABOUT THE INSURANCE
23 COMPANY. WE ALL HAD IT. I QUIT USING IT BECAUSE
24 IT'S NO LONGER IN EXISTENCE.

25 Q. SO, THAT ENTITLED HIM TO BE A COMMERCIAL BROKER?

1 A. THAT DOESN'T ENTITLE HIM TO BE A COMMERCIAL BROKER.
2 THAT'S JUST CHOICES HE MADE FOR HIS EDUCATION.

3 Q. OKAY. AND WHEN YOU SAY MUCH MORE DETAILED, DO YOU
4 KNOW ANYTHING ABOUT IT?

5 A. CPCU IS EQUIVALENT TO LIKE -- THE CLASSES ARE
6 EQUIVALENT TO A COLLEGE-GRADE CLASS.

7 Q. OKAY. IF YOU WOULD NEXT LOOK AT KEENAN SUGGS 19
8 THROUGH 21.

9 A. OKAY.

10 Q. AND JUST TAKE A MINUTE TO FAMILIARIZE YOURSELF WITH
11 IT. I THINK YOU'VE ALREADY SEEN THIS SORT OF
12 SECTION. THERE'S REALLY ONLY TWO EMAILS ON HERE,
13 AND THE FIRST -- IT ORIGINATES WITH AN EMAIL FROM
14 YOU ON FRIDAY, JUNE 24TH, 2016, AT 12:02 P.M., TO
15 MR. SEARS WITH A COPY TO MR. DURHAM, MR. ALBERT
16 HYNDSHAW, AND SHIRLEY WATSON REGARDING CONDUSTRIAL
17 1099s. AND IN THAT YOU WRITE, "TOM, I THOUGHT I'D
18 SHARE THIS ARTICLE WITH YOU THAT I FOUND IN MY
19 RESEARCH. REALLY GOOD RESEARCH. ONLY PAGES ONE
20 THROUGH FORTY-SIX APPLY AND VERY IMPORTANT." AND TO
21 THAT EMAIL YOU INSERT THE LINK; IS THAT CORRECT?

22 A. YES.

23 Q. MS. WHITAKER, I'D LIKE TO SHOW YOU A DOCUMENT
24 ENTITLED, "NEW EMPLOYMENT RELATIONSHIPS. WHO ARE
25 THOSE PEOPLE WORKING FOR YOU? AND IF THEY ARE NOT

1 YOUR EMPLOYEES, WHO ARE THEY?"

2 A. OKAY.

3 Q. ARE YOU FAMILIAR WITH THIS DOCUMENT?

4 A. I WAS AT THE TIME.

5 Q. SO IS THIS THE DOCUMENT THAT YOU LINKED TO MR. SEARS
6 IN THE EMAIL THAT WE JUST DISCUSSED?

7 A. YES.

8 Q. OKAY. WOULD YOU MIND TURNING TO PAGE 24.

9 **BY MS. RICHARDSON:**

10 YOUR HONOR, AT THIS TIME I'D LIKE TO ENTER INTO
11 EXHIBIT DEFENDANT'S GUARANTEE -- I THINK THIS IS ---

12 **BY THE COMMISSIONER:**

13 THIS WOULD BE THREE.

14 **BY MS. RICHARDSON:**

15 --- THREE. EXHIBIT NUMBER THREE.

16 **BY THE COMMISSIONER:**

17 ANY OBJECTIONS?

18 **BY MR. GOODWYN:**

19 I MEAN, I WOULD OBJECT TO THE EXTENT THAT IT'S
20 -- THIS IS -- THAT SHE'S TRYING TO SAY THIS IS
21 AUTHORITATIVE. BUT, I MEAN, TO THE EXTENT IT WAS
22 THE ATTACHMENT TO THE EMAIL, NO OBJECTION.

23 **BY THE COMMISSIONER:**

24 ALL RIGHT. SO ADMITTED. IF YOU CAN HAND THIS
25 TO THE COURT REPORTER, MA'AM, JUST FOR A MOMENT.

1 (COURT REPORTER MARKS DOCUMENT DEFENDANT GUARANTEE
2 EXHIBIT THREE, RETAINED IN COMMISSION FILE.)

3 BY THE WITNESS:

4 OKAY. PAGE 24?

5 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

6 Q. YES, PLEASE. AND WOULD YOU PLEASE READ FOOTNOTE 83
7 FOR ME?

8 A. "IN 2009 ALONE, SEVERAL STATES PASSED LEGISLATION
9 AIMED AT PUNISHING EMPLOYERS WHO MISCLASSIFY WORKERS
10 EITHER IMPROPERLY OR KNOWINGLY AS INDEPENDENT
11 CONTRACTORS TO AVOID PAYING WORK COMP PREMIUMS AND
12 UNEMPLOYMENT INSURANCE."

13 Q. THANK YOU. THAT'S ALL I NEED FROM YOU FROM THAT
14 DOCUMENT. YOU CAN SET THAT ASIDE NOW.

15 BY THE COMMISSIONER:

16 MA'AM, MAY I HAVE THAT?

17 BY THE WITNESS:

18 YEAH.

19 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

20 Q. OKAY. AND THEN GOING FURTHER DOWN INTO THIS EMAIL,
21 ON THE SECOND PAGE, KEENAN SUGGS BATES NUMBER 20,
22 YOU'RE RELAYING TO MR. SEARS AND THE OTHERS THAT WE
23 MENTIONED ARE ON THIS EMAIL STRING YOUR CONVERSATION
24 WITH THE N.C.C.I. HERE; IS THAT CORRECT?

25 A. YES.

1 Q. OKAY. AND WOULD YOU READ THE FIRST TWO SENTENCES
2 THAT FOLLOW AFTER YOU SAY, "FROM CONVERSATION WITH
3 N.C.C.I."

4 A. ARE YOU RIGHT HERE AT THE TOP?

5 Q. NO, MA'AM. RIGHT HERE IN THE -- ABOUT IN THE
6 MIDDLE.

7 A. OH, FROM CONVERSATION WITH N.C.C.I. OK.

8 Q. IT SAYS, "FROM CONVERSATION WITH N.C.C.I.:" PLEASE
9 READ THE FIRST TWO ---

10 A. OKAY. "IF THE EMPLOYEES ARE UNINSURED, THEY WOULD
11 BE CONSIDERED EMPLOYEES FOR WORK COMP. YOU CAN
12 OBTAIN AN ASSIGNED RISK POLICY OUTSIDE YOUR P.E.O.
13 ARRANGEMENT BY APPLYING FOR COVERAGE WITH A COPY OF
14 THE LEASING CONTRACT WITH THE NURSES AND THE LEASING
15 APPLICATION AND WILL BE BASED ON THEIR PAYROLL. YOU
16 CAN ALSO REQUIRE THE NURSES TO PROVIDE THEIR OWN
17 WORK COMP, AND THEY CAN PURCHASE INDIVIDUAL GHOST
18 POLICIES AND PROVIDE YOU WITH CERTIFICATES. YOU
19 WOULD NEED TO DETERMINE IF THAT WOULD SATISFY YOUR
20 CONTRACT WORDING WITH THE STATE."

21 Q. OKAY. WILL YOU GO ON AND READ -- FINISH OFF READING
22 WHAT YOU WROTE.

23 A. OKAY.

24 **BY MR. SAMUELS:**

25 IF I MAY, YOUR HONOR, THE WITNESS ACTUALLY

1 MISREAD THE FIRST SENTENCE.

2 BY MS. RICHARDSON:

3 OKAY.

4 BY MR. SAMUELS:

5 WHERE IT STARTS IF THE NURSES ARE UNINSURED,

6 SHE READ IT AS IF THE EMPLOYEES ARE UNINSURED.

7 BY THE WITNESS:

8 OKAY. LET ME READ IT AGAIN, THEN.

9 BY MS. RICHARDSON:

10 THANK YOU, STEPHEN.

11 WITNESS RESUMES:

12 A. "FROM THE CONVERSATION WITH N.C.C.I.: IF THE NURSES
13 ARE UNINSURED, THEY WOULD BE CONSIDERED
14 EMPLOYEES..." -- I REALLY NEED MY READING GLASSES,
15 IS MY PROBLEM.

16 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

17 Q. DO YOU HAVE THEM?

18 A. YES, I DO.

19 Q. YEAH. LET'S -- LET'S PUT THEM ON.

20 A. I DIDN'T KNOW I WAS GOING TO BE READING ALL THIS.

21 Q. IT'S NOT 12 POINT, DEFINITELY NOT. I THINK IT'S
22 MORE LIKE EIGHT, TEN.

23 A. ALL RIGHT. YES, MUCH BETTER. "FROM CONVERSATION
24 WITH N.C.C.I.: IF THE NURSES ARE UNINSURED, THEY
25 WOULD BE CONSIDERED EMPLOYEES FOR WORKERS' COMP" --

1 OR W.C. "WE CAN OBTAIN AN ASSIGNED RISK POLICY
2 OUTSIDE YOUR P.E.O. ARRANGEMENT BY APPLYING FOR
3 COVERAGE WITH A COPY OF THE LEASING AGREEMENT WITH
4 THE NURSES AND LEASING APPLICATION AND WILL BE BASED
5 ON THEIR PAYROLL. YOU CAN BE REQUIRED" -- "YOU CAN
6 ALSO REQUIRE THE NURSES TO PROVIDE THEIR OWN W.C.
7 AND THEY CAN PURCHASE INDIVIDUAL GHOST POLICIES AND
8 PROVIDE YOU WITH CERTIFICATES. YOU WOULD NEED TO
9 DETERMINE IF THAT WILL SATISFY YOUR CONTRACT WORDING
10 WITH THE STATE. THIS IS NOT AN INEXPENSIVE, SIMPLE
11 ANSWER TO YOUR SITUATION. UNFORTUNATELY, BOTTOM
12 LINE LOOKS LIKE FIVE OPTIONS. ATTEMPT TO AMEND
13 CONTRACTS TO ADDRESS 1099 STATUS; DISCUSS WITH
14 P.E.O. AND SEE IF THEY WILL WORK SOMETHING OUT WITH
15 YOU; HAVE NURSES PURCHASE AND PROVIDE PROOF OF WORK
16 COMP COVERAGE. YOU'LL NEED TO DECIDE IF GHOST OR
17 REAL MEETS YOUR CONTRACTUAL ARRANGEMENT WITH STATE
18 AND INDEPENDENT CONTRACTS; OBTAIN ASSIGNED RISK
19 POLICY BASED ON YOUR ACTUAL PAYROLL OF YOUR 1099s;
20 OR WALK AWAY.

21 Q. OPTION NUMBER TWO YOU STATED, "DISCUSS WITH P.E.O.
22 AND SEE IF THEY'LL WORK SOMETHING OUT WITH YOU." SO
23 ISN'T IT TRUE THAT -- THAT THE P.E.O. DOES NOT HAVE
24 THE OBLIGATION TO COVER THESE 1099 EMPLOYEES UNDER
25 THAT STATEMENT?

1 A. I HONESTLY DO NOT KNOW THE ANSWER TO THAT QUESTION
2 BECAUSE MY -- THAT CAME FROM MY DISCUSSION WITH
3 PEOPLE AT PROPEL AND TRIGEN THAT I KNEW THAT WERE
4 WORKING WITH P.E.O.

5 Q. FROM YOUR CONVERSATION -- IT SAYS FROM YOUR
6 CONVERSATION WITH N.C.C.I.

7 A. BUT AT THE TOP IT SAYS I SPOKE WITH MY FRIEND WHO
8 WORKED AT BOTH PROPEL AND NOW AT TRIGEN, AND THE
9 WORK COMP SPECIALIST AT WORLDWIDE, AND TO THE
10 ANALYST AT N.C.C.I. SO THIS IS NOT JUST AN N.C.C.I.
11 CONVERSATION.

12 Q. CORRECT. SO IF YOU MOVE UP TO ABOVE THE PHONE
13 CONVERSATION WITH THE N.C.C.I., LOOK AT WHAT YOU --
14 YOU TALKED ABOUT THAT, "I ALSO TALKED WITH PEOPLE
15 FROM PROPEL AND TRIGEN, AND THE WORKERS'
16 COMPENSATION SPECIALIST AT WORLDWIDE, AND TO
17 ANALYSTS AT N.C.C.I. HERE ARE THE FINDINGS AND
18 ISSUES/THINGS TO CONSIDER:" WILL YOU READ NUMBER
19 ONE?

20 A. "IF YOU ADD TO P.E.O., YOU WILL NEED TO ADD PAYROLL
21 AND PAY FOR IT. P.E.O. WILL PROBABLY RESIST SINCE
22 THE INDEPENDENT CONTRACTORS ALSO WORK FOR OTHERS AND
23 COULD CLOUD WHEN OR WHERE THEY ARE HURT."

24 Q. OKAY. SO YOU'RE SUGGESTING THAT THE P.E.O. MAY
25 REJECT THAT ATTEMPT BY CONDUSTRIAL; IS THAT CORRECT?

1 A. THEY COULD.

2 Q. THEY COULD. THEY HAVE THE OPTION TO DETERMINE
3 WHETHER TO -- WELL, IT DEPENDS ON WHAT THE P.E.O.
4 ARRANGEMENT IS. IF CONDUSTRIAL IS THE PROFESSIONAL
5 EMPLOYER ORGANIZATION, THEY ARE THE ONES WHO ARE
6 INSURED UNDER THE -- ANY INSURANCE POLICY; ISN'T
7 THAT CORRECT?

8 **BY MR. GOODWYN:**

9 OBJECTION, YOUR HONOR. CALLS FOR SPECULATION.
10 SHE'S NOT ---

11 **BY MS. RICHARDSON:**

12 I THINK THE WITNESS HAS TESTIFIED THAT SHE IS
13 FAMILIAR WITH WHAT -- WITH WORKERS' COMPENSATION
14 INSURANCE IN GENERAL, AND SHE'S BEEN TRAINED TO
15 FIGURE OUT P.E.O. AND VARIOUS DIFFERENT ARRANGEMENTS
16 FOR CONDUSTRIAL GOING FORWARD. SO IN LOOKING AT THE
17 P.E.O. ARRANGEMENT ---

18 **BY THE COMMISSIONER:**

19 MA'AM, YOU CAN ANSWER THE QUESTION.

20 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

21 Q. IN YOUR RESEARCH YOU DETERMINED THAT THE P.E.O. HAD
22 THE AUTHORITY OR OPPORTUNITY TO REJECT COVERING
23 THESE TYPES OF EMPLOYEES, ---

24 **BY MR. GOODWYN:**

25 AGAIN ---

1 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

2 Q. --- AS IN ANY INSURANCE ARRANGEMENT?

3 **BY MR. GOODWYN:**

4 IMPROPER FOUNDATION. SHE HASN'T SAID WHICH
5 P.E.O. WE'RE TALKING ABOUT.

6 **BY MS. RICHARDSON:**

7 I'M NOT TALKING ABOUT ANY P.E.O.

8 **WITNESS ANSWERS:**

9 A. WELL, WHERE -- TO BE HONEST WITH YOU, WHERE THIS WAS
10 COMING FROM ---

11 **BY THE COMMISSIONER:**

12 I BELIEVE SHE'S TALKING ABOUT THE RESEARCH.

13 **WITNESS RESUMES:**

14 A. WHERE THIS WAS COMING FROM IN MY RESEARCH WAS I KNEW
15 THAT THEIR CONTRACT DIDN'T ALLOW FOR DUAL
16 EMPLOYMENT, AND A LOT OF INDEPENDENT NURSES ARE
17 EMPLOYED SOMEWHERE ELSE AND THEY'RE DOING THIS AS A
18 SIDE JOB. SO, IT WAS TRYING TO FIGURE OUT HOW ALL
19 THAT FIT TOGETHER.

20 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

21 Q. RIGHT. AND ---

22 A. AND THAT'S WHY I MADE THAT STATEMENT IT COULD CLOUD
23 WHEN THEY'RE HURT, BLAH, BLAH, BLAH.

24 Q. UNDER THOSE CIRCUMSTANCES, YOU WERE CONCERNED THAT A
25 P.E.O. WOULD REJECT COVERAGE FOR ---

1 A. BECAUSE MY FRIEND AT PROPEL, WHO NOW WORKS AT
2 TRIGEN, TOLD ME THAT.

3 Q. THANK YOU.

4 BY THE COMMISSIONER:

5 ON BEHALF OF THE DEPARTMENT OF CORRECTIONS?

6 BY MS. RICHARDSON:

7 OH, WAIT.

8 BY THE COMMISSIONER:

9 OH, I'M SORRY. I THOUGHT YOU WERE THROUGH.

10 BY MS. RICHARDSON:

11 SORRY. NO, I'VE GOT...

12 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

13 Q. OKAY. WOULD YOU NOW TURN TO KEENAN SUGGS 22,
14 PLEASE.

15 A. OKAY.

16 Q. OKAY. THIS IS, AGAIN, ANOTHER SET OF EMAIL STRINGS
17 THAT STARTS ON KEENAN SUGGS 22 AND ENDS UP ON KEENAN
18 SUGGS 25. WOULD YOU WANT TO TAKE A FEW MINUTES JUST
19 TO FAMILIARIZE ---

20 A. YEAH.

21 Q. --- YOURSELF WITH THIS SET? LET ME KNOW WHEN YOU
22 HAVE ENOUGH TIME.

23 A. IT'S ACTUALLY GOING BACKWARDS, ISN'T IT? YEAH.
24 OKAY.

25 Q. OKAY. OKAY. STARTING ON KEENAN SUGGS 22, AT THE

1 BOTTOM, AT THE VERY BOTTOM YOU CAN TELL THERE'S AN
2 EMAIL SENT FROM YOU TO MR. SEARS WITH A COPY TO MR.
3 DURHAM, MR. HYNDSHAW, MS. WATSON AGAIN. IT'S DATED
4 FRIDAY, JUNE 24TH, 2016, AT 3:23 P.M., ALSO ENTITLED
5 CONDUSTRIAL 1099. AND, AGAIN, YOU'RE SORT OF
6 SUMMARIZING FURTHER INFORMATION THAT YOU'RE
7 GATHERING ABOUT THIS ISSUE THAT CONDUSTRIAL IS
8 TRYING TO FIGURE OUT FOR ITSELF, IS THAT RIGHT, THIS
9 WORKERS' COMPENSATION COVERAGE ISSUE? AND ONE --
10 FROM -- IF YOU LOOK FROM THE BOTTOM OF THAT EMAIL
11 AND YOU GO UP TWO PARAGRAPHS, STARTING WITH W.C.
12 MARKETS, OR WORKERS' COMPENSATION MARKETS, CAN YOU
13 READ THAT SMALL PARAGRAPH THERE?

14 A. "W.C. MARKETS, THE ASSIGNED RISK, NOR THE P.E.O.
15 WANT TO STICK THEIR NECK OUT FOR A LARGE POTENTIAL
16 EXPOSURE FOR WHICH THEY RECEIVE \$1,250. I HAVEN'T
17 EVEN GOTTEN INTO THE CLASS CODE AND THE LOCATION OF
18 THEIR WORK."

19 Q. SO, WOULD YOU AGREE THAT COVERING NURSES DELIVERED
20 TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS OR A
21 PRISON FACILITY IS A DIFFICULT EXPOSURE TO COVER
22 UNDER -- OR IN ANY MARKET, EVEN THE ASSIGNED RISK
23 MARKET?

24 A. THAT WAS MORE FROM A GHOST PERSPECTIVE, 'CAUSE A
25 GHOST POLICY ONLY COSTS \$1,250 IN THE STATE OF SOUTH

1 CAROLINA. IT HAD NOTHING TO DO WITH WHAT THE CLASS
2 CODE WAS.

3 Q. OKAY. BUT THAT THEY CAN CARRY LARGE POTENTIAL
4 EXPOSURES; IS THAT CORRECT?

5 A. ANY -- ANY CLASS CODE CAN CARRY A LARGE POTENTIAL
6 EXPOSURE.

7 Q. ANY CLASS CODE?

8 A. YEAH. ROOFERS, CONTRACTORS.

9 Q. WHAT ABOUT CLERICAL?

10 A. NOT CLERICAL.

11 Q. OKAY. SO NOT ANY ---

12 A. GENERALLY SPEAKING. I'VE SEEN SOME BAD CLERICAL
13 CLAIMS.

14 Q. NOT -- AND NOT ANY CLASS CODE? WOULDN'T YOU AGREE
15 THAT THAT WOULD BE AN EXAGGERATION OF CIRCUMSTANCES?

16 A. I'VE SEEN -- I'VE SEEN ALL KINDS OF CLAIMS OVER 40
17 YEARS. SO I WON'T SAY THAT.

18 Q. AND AT THIS TIME YOU HADN'T EVEN GOTTEN INTO THE
19 CLASS CODE AND LOCATION OF THEIR WORK. YOU
20 MENTIONED THAT, DIDN'T YOU?

21 A. YES.

22 Q. SO IT IS IMPORTANT WHAT SOMEBODY'S CLASS CODE IS;
23 ISN'T THAT CORRECT?

24 A. IT CAN BE, ESPECIALLY IF YOU'RE GOING TO A STANDARD
25 MARKET.

- 1 Q. AND IT IS IMPORTANT WHERE THE PERSON IS SENT TO
2 WORK, ISN'T IT? ISN'T THAT CORRECT?
- 3 A. CAN BE. DEPENDS ON -- SOME CARRIERS HAVE AN
4 APPETITE FOR DIFFICULT RISK AND SOME DON'T. IT'S
5 ALL OVER THE PAGE IN THE MARKETPLACE.
- 6 Q. IN THIS EMAIL, THOUGH, YOU SPECIFICALLY NOTED THAT
7 BOTH THE CLASS CODE AND THE LOCATION OF THESE
8 EMPLOYEES' WORK WAS IMPORTANT TO YOU IN DETERMINING
9 ---
- 10 A. FOR \$1,250, YES.
- 11 Q. --- IN DETERMINING THE RISK INVOLVED WITH A WORKER?
- 12 A. FOR \$1,250, YES, IT WAS DIFFICULT.
- 13 Q. WHAT EXPERIENCE DO YOU HAVE WITH THE N.C.C.I. CODE
14 CLASSIFICATION MANUAL?
- 15 A. WE ALL HAVE A COPY OF IT. I CAN LOOK UP ANY CLASS
16 CODE I WANT IN THE SCOPES MANUAL.
- 17 Q. WHAT KIND OF TRAINING HAVE YOU HAD ON IT?
- 18 A. I DON'T KNOW THAT ANYBODY'S HAD FORMAL TRAINING ON
19 IT, BUT WE ALL HAVE ACCESS TO THE MANUAL AND READ IT
20 AND USE IT ON A REGULAR BASIS.
- 21 Q. WHAT RESPONSIBILITIES DOES YOUR EMPLOYER PUT ON YOU
22 IN THE DUTIES OF YOUR JOB WITH RESPECT TO CODING
23 WORKERS?
- 24 A. MOST OF THE TIME IT'S PRETTY CLEAR CUT. IF IT'S
25 DIFFICULT, WE READ THE SCOPES MANUAL; WE DISCUSS IT;

1 WE DISCUSS IT IN-HOUSE. WE MAY CALL AND PAY EXTRA
2 FOR N.C.C.I. TO GIVE US A RULING ON HOW IT SHOULD BE
3 RATED.

4 Q. HAVE YOU CALLED AND ASKED N.C.C.I. WHAT CODE
5 CLASSIFICATION THEY WOULD ASSIGN TO WORKERS
6 DELIVERED TO PRISON FACILITIES?

7 A. I HAVE NOT PERSONALLY. BUT I KNOW ON THIS ACCOUNT
8 IN PARTICULAR, IT'S BEEN TEN YEARS THAT THEY HAD IT,
9 AND THEY WERE AUDITED EVERY YEAR. AND CARRIERS, IF
10 THEY DON'T THINK IT'S CLASSED RIGHT, THEY WILL, YOU
11 KNOW, TALK TO YOU ABOUT THE CLASS CODE AND CHANGE
12 IT.

13 Q. RIGHT. BUT IF WORKERS WERE NEVER PART OF --
14 REPORTED ON PAYROLL COVERED BY AN INSURANCE POLICY,
15 THEY WOULD NEVER BE CAUGHT BY AN AUDIT; ISN'T THAT
16 CORRECT?

17 A. THAT COULD BE TRUE, YEAH. IF THEY -- BUT TYPICALLY
18 AUDITORS DO A PRETTY GOOD JOB OF SEEING WHAT YOU'VE
19 GOT.

20 Q. YES, IF THEY ARE, INDEED, EMPLOYEES COVERED BY AN
21 INSURANCE POLICY. BUT IF SOMEBODY IS REPORTING
22 INDEPENDENT CONTRACT -- HAS INDEPENDENT CONTRACTORS,
23 AN AUDIT WOULD NEVER PICK UP ANY INDEPENDENT
24 CONTRACTORS; THEY'RE NOT PART OF THE ---

25 A. THEY LOOK AT 941s; THEY LOOK AT THE GENERAL LEDGER;

1 THEY LOOK AT CHECKBOOKS. THEY LOOK AT ALL KIND OF
2 RECORDS TO LOOK FOR THOSE KIND OF THINGS.

3 Q. ARE YOU ---

4 A. SO, THEY COULD CATCH IT.

5 Q. --- SUGGESTING THAT A WORKERS' COMPENSATION POLICY
6 FOR CONDUSTRIAL'S EMPLOYEES WOULD ALSO COVER THE
7 1099'ERS?

8 A. IT COULD. I HANDLED IT FROM -- WE DIDN'T WRITE THE
9 COMP. I HANDLED IT FROM 2000 FORWARD. I KNOW IN A
10 PAST PERIOD OF TIME, AT ONE POINT, I THINK A.I.G.
11 HAD THE COVERAGE AND IT WAS STANDARD WITH KEENAN
12 SUGGS. I WOULDN'T HAVE BEEN THE PERSON INVOLVED IN
13 THAT DISCUSSION BECAUSE I WASN'T SERVICING IT AT
14 THAT TIME. BUT, GENERALLY SPEAKING, YES, WE'LL
15 RESEARCH THE HECK OUT OF IT. AND WE WARN PEOPLE. I
16 MEAN, WE PUT, YOU KNOW, IN OUR DOCUMENTS YOU NEED TO
17 MAKE SURE THAT YOU TELL US ABOUT THIS. I HAD A
18 TRAVELERS LITTLE THING THAT TELLS YOU WHAT TO LOOK
19 FOR IN AN AUDIT. THIS IS WHAT THEY'RE GONNA LOOK
20 AT. YOU NEED TO MAKE SURE YOU'RE TELLING IT RIGHT,
21 YOU KNOW. I MEAN, THAT'S KIND OF STANDARD
22 OPERATIONS FOR MOST AGENTS.

23 Q. IN THIS CASE, YOU HAD NOTHING TO DO WITH THE
24 NEGOTIATIONS OF THE CONTRACT BETWEEN ---

25 A. RIGHT.

1 Q. --- C.S.S.G. AND CONDUSTRIAL?
2 A. RIGHT.
3 Q. HAVE YOU EVER SEEN ANY INSURANCE POLICY THAT COVERED
4 C.S.S.G.'S EMPLOYEES?
5 A. WHO IS C.S.S.G.?
6 Q. COUNTRYWIDE.
7 A. HAVE I EVER SEEN A POLICY?
8 Q. SEEN A WORKERS' COMPENSATION POLICY THAT COVERED ---
9 A. NO, I DID NOT SEE THE POLICY.
10 Q. --- COUNTRYWIDE'S EMPLOYEES? SO, REALLY, FOR ALL
11 INTENTS AND PURPOSES, YOU DON'T KNOW ANYTHING ABOUT
12 THE INSURANCE THAT MAY BE APPLICABLE TO THIS CASE?
13 A. AS FAR AS SEEING THE POLICY?
14 Q. YOU'VE NEVER SEEN THE CONTRACT BETWEEN ---
15 A. I SAW THE QUOTE; I SAW THE PROPOSAL; I SAW THE
16 CERTIFICATES. THAT'S IT.
17 Q. AND DID THE QUOTE OR THE PROPOSAL EVER HAVE CLASS
18 CODE 7720 ON IT FOR WORKERS DELIVERED TO PRISON
19 FACILITIES?
20 A. NO, BUT I DON'T THINK THAT'S THE CLASS CODE FOR
21 NURSES AT A PRISON FACILITY.
22 Q. BUT YOU NEVER CALLED N.C.C.I. TO DETERMINE WHETHER
23 OR NOT YOUR OPINION IS IN ANY WAY, SHAPE, OR FORM
24 CORRECT?
25 A. I ALMOST DID THIS WEEK, BUT I ---

1 Q. BUT YOU HAVE NOT DONE THAT, HAVE YOU?

2 A. NO.

3 Q. YES, YOU HAVE NOT DONE THAT.

4 A. BUT I DID LOOK BACK AND READ THE SCOPES MANUAL ---

5 Q. AND ISN'T IT ULTIMATELY THE INSURED ---

6 **BY MR. GOODWYN:**

7 CAN SHE FINISH HER ANSWER? SHE KEEPS
8 INTERRUPTING HER ANSWER.

9 **WITNESS RESUMES:**

10 A. I DID LOOK AT THE SCOPES MANUAL, AND IT DOES SAY
11 ASYLUM UNDER THE PROFESSIONAL EMPLOYEES CODE,
12 NURSES, BLAH, BLAH, BLAH. AND THERE WAS AN OLD
13 EMAIL AT SOME POINT -- I CAN'T TELL YOU WHO, WHAT,
14 WHEN, WHERE, OR WHY. BUT IT WAS WITH CHUCK LEE, AND
15 THEY DISCUSSED WITH A.I.G., AND A.I.G. HAD DISCUSSED
16 WITH N.C.C.I. AND CAME UP WITH THAT WAS THE PROPER
17 CLASS CODE, AND IT'S BEEN THAT WAY FOR YEARS.

18 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

19 Q. ARE ANY OF THE PARTIES THAT YOU JUST MENTIONED
20 PARTIES TO THIS CASE?

21 A. I KNOW THAT CHUCK LEE HAS BEEN SUBPOENAED, BUT I
22 DON'T KNOW THE DETAILS. AND I KNOW HE WORKED FOR
23 SULLIVAN, KEENAN SUGGS, BLAH, BLAH, BLAH; SO...

24 Q. OKAY.

25 A. HE WAS THE ORIGINAL AGENT ON THE ACCOUNT FOR YEARS.

1 Q. IT'S THE INSURER'S RESPONSIBILITY TO DETERMINE
2 ULTIMATELY WHAT IS THE PROPER CLASS CODE FOR THE
3 EMPLOYEE REPORTED TO THEM?

4 A. NOT NECESSARILY.

5 Q. THEY CAN REJECT ANY EMPLOYEE UNDER A CERTAIN -- IF
6 THEY DON'T WANT TO INSURE A CERTAIN CLASS CODE OF
7 EMPLOYEE, THE INSURER HAS THE ABILITY TO DO THAT;
8 ISN'T THAT CORRECT?

9 A. NOT IF I'M GONNA WRITE THEIR COVERAGE AND I KNOW
10 ABOUT IT.

11 Q. RIGHT. BUT YOU DIDN'T WRITE ANY COVERAGE ---

12 A. RIGHT.

13 Q. --- IN THIS CASE, DID YOU?

14 A. NO.

15 Q. YOU KNOW NOTHING ABOUT THE COVERAGE IN THIS CASE, DO
16 YOU?

17 A. I KNOW PLENTY ABOUT THE COVERAGE IN THIS CASE.

18 Q. YOU'VE JUST TESTIFIED THAT YOU HAD NOTHING TO DO
19 WITH THE CONTRACT.

20 A. I DON'T HAVE ANYTHING TO DO WITH THE CONTRACT, BUT I
21 AM VERY FAMILIAR WITH THEIR COVERAGE.

22 Q. WELL, IF YOU HAD NOTHING TO DO WITH THE ACTUAL
23 CONTRACT THAT WAS EXECUTED BETWEEN THE PARTIES AND
24 YOU'VE NEVER SEEN ANY INSURANCE POLICY THAT MIGHT BE
25 APPLICABLE TO THIS CASE, THEN YOU REALLY DON'T KNOW

1 WHAT THE TERMS WERE ---

2 A. IT'S WRONG TO SAY ---

3 Q. --- THAT WERE ULTIMATELY AGREED TO?

4 A. --- I DON'T UNDERSTAND THEIR COVERAGE, ---

5 Q. BUT YOU ALSO ---

6 A. --- THAT I KNOW NOTHING ABOUT THEIR COVERAGE.

7 THAT'S A DISAGREEMENT BETWEEN US. BUT THAT'S NOT

8 TRUE. THAT'S BASICALLY CALLING ME IGNORANT ON

9 INSURANCE, AND I DO KNOW INSURANCE.

10 Q. OKAY. IF YOU WOULD TURN TO PAGE KEENAN SUGGS 26 TO

11 27, PLEASE.

12 A. OKAY.

13 Q. IT'S A TWO-PAGE DOCUMENT. WHEN YOU HAVE A CHANCE TO

14 FAMILIARIZE YOURSELF WITH IT, WOULD YOU LET ME KNOW?

15 A. OKAY.

16 Q. OKAY. IF YOU LOOK AT THE -- ON THE BOTTOM OF KEENAN

17 SUGGS 26, THERE IS AN EMAIL FROM TOM SEARS TO MR.

18 HYNDSHAW AND MR. DURHAM DATED WEDNESDAY, OCTOBER

19 9TH, 2016, AT 9:45 A.M. DO YOU SEE THAT?

20 A. YES.

21 Q. AND JUST ABOVE THAT YOU WERE BASICALLY FORWARDED

22 THIS EMAIL, ISN'T THAT CORRECT, BY ALBERT HYNDSHAW

23 TO YOU?

24 A. CORRECT.

25 Q. SO YOU WERE AWARE OF THE CONTENTS OF THE EMAIL FROM

1 MR. SEARS TO MR. HYNDSHAW, IS THAT RIGHT?

2 A. CORRECT.

3 Q. OKAY. AND WILL YOU PLEASE READ THE FIRST THREE
4 SENTENCES OF THIS EMAIL?

5 A. "HOPE YOU ARE DOING WELL. SEEMS CONDUSTRIAL'S
6 INJURED INDEPENDENT" ---

7 Q. OH, I'M SORRY. FROM MR. SEARS TO MR. HYNDSHAW.

8 A. OKAY. "ALBERT, PLEASE GO AHEAD AND ALERT JO ANN
9 THAT OUR ATTORNEY, JEFF GOODWYN, MAY BE CONTACTING
10 HER. WE WILL CERTAINLY TRY TO EXTEND A COURTESY TO
11 HUB IN DEALING WITH THIS ISSUE, BUT I WILL NOT ALLOW
12 ANY SUCH CONCERNS TO INTERFERE WITH OUR DEFENSE OF
13 THIS CASE. IF OUR ATTORNEY OR I NEED TO REACH OUT
14 TO HER DIRECTLY ABOUT THE FACTS OF THIS CASE, THEN
15 WE WILL DO SO."

16 Q. WHAT KIND OF COURTESIES DO YOU THINK TOM SEARS WAS
17 REFERRING TO IN THAT EMAIL?

18 **BY MR. GOODWYN:**

19 OBJECTION; CALLS FOR SPECULATION.

20 **BY THE COMMISSIONER:**

21 SUSTAINED.

22 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

23 Q. ARE YOU AWARE OF ANY COURTESY THAT MR. SEARS WAS
24 EXTENDING TO HUB THUS FAR IN THE CASE?

25 A. BECAUSE I HAD LEFT THEIR EMPLOYMENT, I WAS UNDER A

1 NON-COMPETE, SO I WAS NOT ALLOWED TO WORK ON
2 ANYTHING RELATED TO THEIR INSURANCE.

3 Q. OKAY.

4 A. WITHOUT PERMISSION.

5 Q. RIGHT. AND SO IN THE EMAIL ABOVE, MR. HYNDSHAW IS
6 GIVING YOU THE AUTHORITY TO WORK WITH CONDUSTRIAL ON
7 THIS SPECIFIC ITEM? DO YOU UNDERSTAND ---

8 A. THAT'S CORRECT.

9 Q. --- WHAT HE MEANT BY THAT?

10 A. THAT'S CORRECT. HOWEVER, I CONSULTED THE ATTORNEY
11 FOR ARTHUR J. GALLAGHER AND SENT THIS INFORMATION TO
12 THEM, AND THEY TOLD ME UNTIL I HAD PERMISSION FROM
13 SOMEBODY AT KEENAN SUGGS, I DID NOT HAVE PERMISSION,
14 SOMETHING IN WRITING FROM KEENAN SUGGS/HUB BECAUSE
15 OF MY NON-COMPETE. I HAD TO HAVE SOMETHING IN
16 WRITING, NOT FROM ALBERT, A BROKER, BUT FROM
17 SOMEBODY IN MANAGEMENT AT HUB THAT I COULD NOT TOUCH
18 THIS, WHICH I CLEARLY STATED TO TOM AND TONY, AND
19 THEY KNOW THAT I WOULD NOT. I KEPT SAYING, "I HAVE
20 A NON-COMPETE. I CANNOT TALK TO YOU. I WILL NOT
21 TALK TO YOU." AND THEN, FINALLY, WHEN I WAS
22 SUBPOENAED, KEENAN SUGGS SAID, "YES, YOU CAN TALK TO
23 THEM." AND I DID.

24 Q. WHEN YOU WERE SUBPOENAED. WHEN WAS THAT?

25 A. JULY.

1 Q. IN JULY. OKAY. AND WILL YOU JUST GO DOWN IN THAT
2 ORIGINAL PARAGRAPH FROM MR. HYNDSHAW TO YOU
3 REGARDING CONDUSTRIAL. IF YOU READ ON DOWN SOME,
4 LET'S SEE, IT'S TOWARDS -- SECOND LINE TOWARDS THE
5 END, BEFORE HE SAYS THANK YOU, AND HE SAYS, "I
6 PROVIDED A WRITTEN MEMO TO CONDUSTRIAL ON THE
7 'CLASSIFICATION ISSUE' WITH GUARANTEE, WHICH IS A
8 SEPARATE ISSUE."

9 A. I HAVE NO IDEA WHAT HE'S TALKING ABOUT. AND I DID
10 RESPOND TO HIM. THERE WAS AN EMAIL WHERE I
11 RESPONDED TO HIM THAT'S NOT INCLUDED IN THIS TRAIL.
12 AND I SAID, "I DON'T KNOW WHAT YOU'RE TALKING
13 ABOUT," AND I ALSO OFFERED MY SERVICES, OFFERED TO
14 SIT DOWN AND TALK TO THEM, OFFERED TO BE A FRIENDLY
15 PART OF THE DISCUSSION, AND THEY JUST CHOSE -- WE
16 HAVEN'T HAD ANY DISCUSSION. THERE'S BEEN NO
17 DISCUSSION.

18 Q. YOU AND KEENAN SUGGS, YOU MEAN?

19 A. CORRECT.

20 Q. OKAY. JUST ONE MORE THING. YOU MENTIONED THAT YOU
21 HAD THIS MEETING WITH VARIOUS PEOPLE IN FEBRUARY OF
22 2015; IS THAT CORRECT?

23 A. YEAH. IT WAS FEBRUARY, TOWARD THE BEGINNING OF
24 MARCH. IT WAS RIGHT BEFORE THE COVERAGE WENT INTO
25 EFFECT.

1 Q. ALL IN PERSON?

2 A. YES.

3 Q. OKAY. AND AT THAT MEETING ON BEHALF OF C.S.S.G.,
4 WHO WAS THERE?

5 A. SCOTT HANSON.

6 Q. OKAY. AND DID YOU EVER MEET WITH SCOTT HANSON IN
7 PERSON AGAIN AFTER THAT TIME?

8 A. NO.

9 Q. OKAY. ARE YOU SURE ABOUT THE DATES OF THAT?

10 A. NO, BECAUSE I DO NOT HAVE MY RECORDS. IF I HAD
11 ACCESS TO THE KEENAN SUGGS, IT WOULD BE ON MY
12 CALENDAR. MY PROPOSAL WITH NOTES ON IT WOULD BE IN
13 THEIR SYSTEM. BUT I DID NOT HAVE ACCESS TO THAT.

14 Q. SO ---

15 A. I KNOW IT WAS PRIOR TO THE IMPLEMENTATION OF THE
16 POLICY. SO, FEBRUARY, MARCH.

17 Q. ARE YOU SURE ABOUT THAT?

18 A. IT COULD HAVE BEEN JANUARY. BUT, I MEAN, IN THAT
19 GENERAL VICINITY RIGHT BEFORE THE COVERAGE WENT INTO
20 EFFECT.

21 Q. WELL, IF THERE WAS DOCUMENTATION FROM KEENAN SUGGS
22 THAT SUGGESTED THAT THAT MEETING OCCURRED IN JULY,
23 WOULD THAT SURPRISE YOU?

24 A. NO. THAT'S THE MEETING WITH ZACH, NOT SCOTT HANSON.

25 Q. WELL ---

1 A. ZACH COLLIER.

2 Q. WELL, I'M GOING TO SHOW YOU THIS DOCUMENT FROM
3 KEENAN SUGGS.

4 A. I JUST KNOW THE SCOTT HANSON MEETING WAS PRIOR TO
5 THE ZACH MEETING, AND, YOU KNOW, LIKE I SAID, I DO
6 NOT HAVE THE RECORDS. I CAN'T GO BACK AND LOOK.
7 SO, IF THAT'S WHAT HE SAYS AND THE CALENDAR SAYS IT,
8 THEN I'LL AGREE WITH IT. BUT I CAN'T SWEAR TO IT,
9 BUT I WAS AT THE MEETING WITH SCOTT HANSON.

10 Q. RIGHT. BUT THE TIME ---

11 A. AND ZACH.

12 Q. THE TIME IN WHICH YOUR RECOLLECTION OF WHEN THAT
13 OCCURRED DIFFERS WITH THIS DOCUMENT FROM KEENAN
14 SUGGS?

15 A. OKAY. HE SAYS SCOTT WAS IN JULY. THAT WOULD BE
16 AFTER THE COVERAGE WAS PLACED. SO, THERE MAY HAVE
17 BEEN -- HE MAY HAVE MET WITH SCOTT ON THAT MEETING,
18 BUT -- WAS THERE A SECOND MEETING WITH SCOTT?

19 **BY THE WITNESS:**

20 DO YOU KNOW?

21 **BY MR. SEARS:**

22 I CAN'T TELL YOU.

23 **WITNESS RESUMES:**

24 A. I CAN'T SAY.

25 **BY THE COMMISSIONER:**

1 WHO JUST SPOKE?

2 BY MR. GOODWYN:

3 TOM. SHE WAS LOOKING TO HIM FOR AN ANSWER TO
4 THAT QUESTION.

5 BY THE COMMISSIONER:

6 OH, OKAY.

7 BY MR. GOODWYN:

8 AND HE WAS JUST SAYING I CAN'T ---

9 BY THE COMMISSIONER:

10 ALL RIGHT.

11 WITNESS RESUMES:

12 A. YEAH. WITHOUT MY NOTES, I CAN'T TELL YOU FOR SURE.
13 BUT I KNOW I'M AT A MEETING -- I WAS AT THE MEETING
14 WITH SCOTT HANSON.

15 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

16 Q. SURE. AT A MEETING.

17 A. YES.

18 Q. BUT WITHOUT YOUR NOTES, YOU CAN'T VERIFY ---

19 A. IT WAS PRIOR TO -- I THOUGHT IT WAS PRIOR TO
20 COVERAGE BEING PLACED.

21 Q. YOU THOUGHT. BUT THAT WOULD CONTRADICT WHAT'S
22 PROVIDED IN THIS DOCUMENT FROM KEENAN SUGGS?

23 A. YES, UNLESS HE HAD A SECOND MEETING WITH SCOTT THAT
24 I WASN'T INVOLVED IN.

25 Q. OKAY.

1 **BY MS. RICHARDSON:**

2 AT THIS TIME, YOUR HONOR, I'D LIKE TO ENTER
3 THIS KEENAN SUGGS DOCUMENT INTO EVIDENCE AS
4 DEFENDANT'S GUARANTEE'S EXHIBIT FOUR.

5 **BY MR. GOODWYN:**

6 NO OBJECTION.

7 **BY MS. FARTHING:**

8 NONE FROM US.

9 **BY MR. ALFORD:**

10 NO OBJECTION.

11 **BY THE COMMISSIONER:**

12 ALL RIGHT. ADMITTED AS -- YOU SAID -- YOU MEAN
13 GUARANTEE NUMBER FOUR?

14 **BY MS. RICHARDSON:**

15 DEFENDANT'S GUARANTEE'S EXHIBIT FOUR, YES. AND
16 IT'S BATES STAMPED KEENAN SUGGS 482 TO 483.

17 **BY THE COMMISSIONER:**

18 THANK YOU, MA'AM. SO ADMITTED.

19 (COURT REPORTER MARKS LETTER DEFENDANT GUARANTEE EXHIBIT
20 FOUR, RETAINED IN COMMISSION FILE.)

21 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

22 Q. HAS THAT DOCUMENT BEEN MARKED?

23 A. YES.

24 Q. MS. WHITAKER, WOULD YOU PLEASE LOOK AT THE SECOND
25 PAGE OF THIS DOCUMENT, KEENAN SUGGS 483, PLEASE.

1 A. OKAY.

2 Q. OKAY. AND IN THIS SUMMARY OF THE CONVERSATIONS THAT
3 OCCURRED BETWEEN KEENAN SUGGS AND THE VARIOUS
4 PARTIES REGARDING THE INSURANCE, UNDER NUMBER TWO
5 WOULD YOU PLEASE READ THE SUMMARY THERE ---

6 A. YES.

7 Q. --- ABOUT MEDUSTRIAL?

8 A. "MEDUSTRIAL - WE EXPLAINED DURING BOTH MEETINGS THAT
9 MEDUSTRIAL IS NAMED CONDUSTRIAL USES TO
10 DIFFERENTIATE STAFFING MEDICAL-RELATED EMPLOYEES.
11 THAT MEDUSTRIAL IS NOT A SEPARATE ENTITY, DOES NOT
12 HAVE A SEPARATE FEDERAL I.D. NUMBER, AND DOES NOT
13 CONTRACT IN THE NAME OF MEDUSTRIAL. ALL STAFFING
14 EMPLOYEES ARE EMPLOYEES OF CONDUSTRIAL, NOT
15 MEDUSTRIAL. AGAIN, ALL APPLICATIONS AND QUOTES
16 DISCLOSED CODE NUMBERS 8833 AND 8829. BOTH SCOTT
17 AND ZACH UNDERSTOOD AND SAW NO PROBLEMS."

18 Q. SO, DURING YOUR DISCUSSIONS IT WAS YOUR
19 UNDERSTANDING THAT MEDUSTRIAL DID NOT CONTRACT IN
20 ITS OWN NAME; IS THAT CORRECT?

21 A. I DIDN'T SAY THAT. I MEAN, THAT'S WHAT HE SAYS. I
22 DON'T EVEN HAVE AN OPINION ON THAT.

23 Q. OKAY. AND THERE'S NO MENTION IN THIS SUMMARY OF ANY
24 PRISON FACILITY, IS THERE?

25 A. IN THIS SUMMARY FROM ALBERT? NO.

1 BY MS. RICHARDSON:

2 ONE MINUTE. THANK YOU VERY MUCH, MS. WHITAKER.

3 I APPRECIATE YOUR TIME.

4 BY THE WITNESS:

5 OKAY.

6 CROSS EXAMINATION BY MS. FARTHING:

7 Q. GOOD MORNING, MS. WHITAKER.

8 A. GOOD MORNING.

9 Q. MY NAME IS ERIN FARTHING, AND I'M ATTORNEY OVER AT
10 THE SOUTH CAROLINA STATE ACCIDENT FUND, AND I'M HERE
11 TODAY ON BEHALF OF BOTH THE STATE ACCIDENT FUND AND
12 THE DEPARTMENT OF CORRECTIONS. KIND OF THE NICE
13 THING ABOUT BEING THE LAWYER TO GO AFTER ALL THESE
14 LAWYERS IS MOST OF THE QUESTIONS HAVE BEEN ASKED, SO
15 I ONLY HAVE A FEW FOR YOU.

16 A. OKAY.

17 Q. I'M GOING TO ASK YOU TO, AGAIN, LOOK AT THAT
18 DOCUMENT, THE STRING OF EMAILS THAT'S MARKED AS
19 C.S.S.G. THREE.

20 A. OKAY.

21 Q. AND ON PAGE SIX, KEENAN SUGGS PAGE SIX, THERE'S AN
22 EMAIL TO YOU FROM TOM SEARS ON MONDAY, MAY 16TH,
23 2016, WHERE YOU REQUESTED A COPY OF THE CONTRACT
24 WITH HER AND THE STATE. DO YOU SEE THAT?

25 A. YES.

1 Q. AND THAT'S WHEN THEY SENT YOU THAT CONTRACT THAT MR.
2 SAMUELS SHOWED YOU EARLIER?

3 A. OKAY.

4 Q. IS THAT RIGHT?

5 A. YES.

6 Q. OKAY. SO THEN IF YOU FLIP AHEAD -- AND I APOLOGIZE.
7 I'M GOING TO BE DOING A LITTLE BIT OF FLIPPING -- TO
8 KEENAN SUGGS NUMBER 19. IN THAT EMAIL TO CONNIE
9 CALLAHAM AND LEE PALMS DATED JUNE 24TH, 2016, THAT
10 SECOND PARAGRAPH, THE FIRST LINE READS, "CONTRACT
11 REQUIRES W.C. BE PROVIDED."

12 A. YES.

13 Q. IS THAT REFERENCING BACK TO THAT CONTRACT THAT THEY
14 SENT YOU THAT MR. SAMUELS SHOWED YOU EARLIER?

15 A. I WOULD THINK SO, YES.

16 Q. OKAY. WHEN WAS THE LAST DATE -- YOU SAID THAT YOUR
17 EMPLOYMENT ENDED WITH KEENAN SUGGS WHEN?

18 A. JUNE 30TH. I THINK I ACTUALLY LEFT A COUPLE DAYS
19 BEFORE THAT, BUT RIGHT AT JUNE 30TH.

20 Q. WELL, I'M GOING TO SHOW YOU -- HOPEFULLY YOU HAVE IT
21 UP THERE. IF NOT, I CAN GRAB IT. IT'S CONDUSTRIAL
22 EXHIBIT ONE. I'M GOING TO SHOW YOU WHAT'S MARKED AS
23 CONDUSTRIAL EXHIBIT ONE.

24 A. OKAY.

25 Q. CAN YOU TURN TO THE SIGNATURE PAGE AND TELL ME WHAT

1 DATE THAT WAS SIGNED?

2 A. 8/24/16 OR 8/17/16, DEPENDING ON WHOSE SIGNATURE
3 YOU'RE LOOKING AT.

4 Q. SO IT'S AUGUST OF 2016?

5 A. CORRECT.

6 Q. SO THAT WAS AFTER YOU LEFT YOUR EMPLOYMENT WITH
7 KEENAN SUGGS?

8 A. YES.

9 Q. SO IS IT SAFE TO SAY THAT ANY EMAILS -- OR ANY OF
10 THE CONTRACTS REFERENCED IN ANY EMAILS THAT ARE PART
11 OF C.S.S.G. EXHIBIT THREE REFERENCE BACK TO THAT
12 CONTRACT, THE 2008 CONTRACT?

13 A. YES.

14 Q. YOU ALSO, I KNOW, REFERENCED EARLIER THE OPTIONS
15 THAT YOU KIND OF DISCUSSED WITH CONDUSTRIAL ABOUT
16 GETTING WORKERS' COMPENSATION COVERAGE OR DEALING
17 KIND OF WITH THIS ISSUE OF THE 1099, AND YOU
18 REFERENCED, IN ADDITION TO THESE FIVE -- I'M LOOKING
19 AT PAGE 20, KEENAN SUGGS PAGE 20. IN ADDITION TO
20 THESE FIVE OPTIONS THAT YOU'VE TALKED ABOUT, YOU
21 REFERENCED ALSO THAT NUMBER FOUR ABOVE WAS ANOTHER
22 OPTION, WHERE IT SAYS, "IF CONTRACT SAYS YOU WILL
23 PROVIDE WORKERS' COMP FOR ALL 'EMPLOYEES' EVEN IF"
24 -- YOU REFERENCE THE FACT THAT THE INDEPENDENT
25 CONTRACTORS COULD POTENTIALLY PURCHASE THEIR OWN?

1 A. YES.

2 Q. IN THAT PARAGRAPH, OR IN THAT OPTION, YOU ALSO
3 ADDRESS THE FACT -- I GUESS, A CONCERN THAT THAT
4 MIGHT NOT SATISFY THE CONTRACTUAL REQUIREMENT?

5 A. YES.

6 Q. IS THAT THE CONTRACTUAL REQUIREMENT OF THE
7 DEPARTMENT OF CORRECTIONS?

8 A. LET ME JUST READ IT GOOD.

9 Q. THAT'S FINE.

10 A. YEAH, I GUESS -- I WOULD THINK I WAS TALKING ABOUT
11 THE GHOST POLICY, WOULD THAT SATISFY CONTRACTUAL
12 REQUIREMENTS.

13 Q. THIS ---

14 A. WITH YOUR CONTRACT, YES.

15 Q. WITH THE CONTRACT OF THE DEPARTMENT OF CORRECTIONS?

16 A. YES.

17 **BY MS. FARTHING:**

18 THAT'S ALL THAT I HAVE. THANK YOU.

19 **BY THE WITNESS:**

20 OKAY.

21 **BY THE COMMISSIONER:**

22 MS. GLOVER?

23 **BY MS. GLOVER:**

24 I HAVE NO QUESTIONS.

25 **BY THE COMMISSIONER:**

1 ANY REDIRECT?

2 **BY MR. GOODWYN:**

3 YES, YOUR HONOR.

4 **REDIRECT EXAMINATION BY MR. GOODWYN:**

5 Q. MS. WHITAKER, YOU WERE ASKED A LOT OF QUESTIONS
6 ABOUT THE -- ABOUT THE SOLUTIONS THAT YOU WERE
7 TRYING TO HELP CONDUSTRIAL WITH IN 2016 RELATED TO
8 THIS GROUP OF INDEPENDENT CONTRACTOR NURSES.

9 A. YES.

10 Q. AND YOU HAVE SOME OPTIONS THERE. LET ME ASK YOU,
11 THOUGH, BACK IN -- BACK BEFORE THIS CASE EVER
12 HAPPENED, BACK BEFORE THESE CONVERSATIONS, BACK IN
13 2015, WHEN YOU WERE HELPING CONDUSTRIAL TRY TO FIND
14 SOME COVERAGE, WHAT WAS YOUR UNDERSTANDING OF HOW
15 THESE 1099s WOULD BE COVERED?

16 A. WELL, TO BE COMPLETELY HONEST, THAT WOULD PROBABLY
17 BE A BETTER QUESTION FOR ALBERT BECAUSE HE SHOPPED
18 IT. I DON'T -- I DON'T KNOW.

19 Q. OKAY. DID YOU HAVE -- DID -- LET ME ASK YOU THIS:
20 DID CONDUSTRIAL HAVE SOME CONCERNS BACK THEN ABOUT
21 THESE 1099s BEING COVERED?

22 A. IT WAS ALWAYS A TOPIC OF DISCUSSION.

23 Q. OKAY. DID YOU EVER HEAR ANYTHING FROM CONDUSTRIAL
24 THAT WOULD LEAD YOU TO BELIEVE THAT THEY WERE TRYING
25 TO -- THEY WERE CATEGORIZING THIS GROUP OF NURSES AS

1 INDEPENDENT CONTRACTORS IN AN EFFORT TO AVOID PAYING
2 WORKERS' COMPENSATION PREMIUMS?

3 BY MR. ALFORD:

4 OBJECT TO THE FORM. LEADING.

5 BY THE COMMISSIONER:

6 SUSTAINED.

7 BY MR. GOODWYN:

8 I DON'T KNOW HOW ELSE TO PHRASE IT. I MEAN, IT
9 DIDN'T SUGGEST AN ANSWER. I WAS ASKING DID YOU HEAR
10 ANYTHING TO -- THAT WOULD HAVE LED YOU TO BELIEVE
11 THAT THAT WAS THEIR GOAL.

12 BY MR. ALFORD:

13 YOUR HONOR ---

14 BY MR. GOODWYN:

15 IT'S YES OR NO. I MEAN, I'M NOT SUGGESTING
16 THAT IT'S YES OR NO.

17 BY MR. BEARD:

18 YOUR HONOR, YOU'VE ALREADY RULED.

19 BY MR. GOODWYN:

20 I DIDN'T HAVE A CHANCE TO EVEN RESPOND.

21 BY MR. BEARD:

22 SHE'S RULED.

23 BY THE COMMISSIONER:

24 ALL RIGHT. IF YOU CAN MOVE ON, MR. GOODWYN.

25 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

1 Q. WHY DO YOU BELIEVE THAT THESE INDEPENDENT CONTRACTOR
2 NURSES WERE CLASSIFIED AS INDEPENDENT CONTRACTORS?

3 A. WELL, FROM -- TONY WAS ALWAYS CONCERNED ABOUT THE
4 FACT THAT THE NURSES, YOU KNOW, HAD THE DUAL
5 EMPLOYMENT AGREEMENT. YOU COULDN'T DO THAT. AND
6 THEY WANTED -- YOU KNOW, FROM KNOWING NURSES MYSELF,
7 A LOT OF NURSES WANT TO WORK INDEPENDENTLY AND WANT
8 TO DO THE SIDE JOBS. AND SO HE WAS TRYING TO WORK
9 WITH THEM ON THAT. AND I DON'T THINK HE WAS TRYING
10 TO CIRCUMVENT ANYTHING. I MEAN, I'VE ALWAYS FOUND
11 HIM, SINCE I'VE KNOWN HIM, TO BE HONEST.

12 Q. OKAY. YOU TESTIFIED THAT ONE OF THE POSSIBLE
13 SOLUTIONS TO THE INDEPENDENT CONTRACTOR PROBLEM WAS
14 THAT THE INSURANCE CARRIER OR THE P.E.O., OR
15 WHOEVER, COULD COME BACK AND JUST ASSESS AN AUDIT
16 PREMIUM AND THAT THEY WOULD BE COVERED UNDER THE
17 POLICY; THEY WOULD JUST ASSESS AN AUDIT PREMIUM. IS
18 THAT RIGHT?

19 A. YEAH, THEY COULD.

20 Q. IS THAT HOW YOU THOUGHT THESE INDEPENDENT
21 CONTRACTORS WOULD BE COVERED IN THE ARRANGEMENT WITH
22 COUNTRYWIDE?

23 A. WELL, WHAT WE'VE TYPICALLY SEEN IN THE PAST IS IF
24 SOMEONE'S INJURED THAT'S AN INDEPENDENT CONTRACTOR,
25 THE INSURANCE CARRIER, A.S.O., CONTRACT, P.E.O., ALL

1 THAT CRAP ASIDE, THAT THEY WOULD PAY FOR THE CLAIM
2 AND THEN POP THEM FOR THE PREMIUM FOR WHOEVER THEY
3 WERE MISSING.

4 Q. OKAY. AND DO YOU --- DID YOU TYPICALLY ADVISE YOUR
5 CLIENTS OF THAT?

6 A. WE -- YEAH. I MEAN, WE ALWAYS TOLD THEM IF YOU'VE
7 GOT 1099s YOU'RE GONNA GET IT -- YOU'RE GONNA GET IT
8 ON AUDIT. YOU'RE GONNA PAY FOR IT ON AUDIT, SO YOU
9 NEED TO REPORT THEM NOW. BUT, I MEAN, SOMETIMES
10 PEOPLE, TOO, YOU KNOW, ESPECIALLY WHEN WE DEAL WITH
11 CONSTRUCTION AND THERE'S A CONTRACTOR WHO LETS
12 COVERAGE LAPSE AND THEN THEY DON'T HAVE A
13 CERTIFICATE, YOU KNOW, THEY DON'T KNOW THAT THAT'S
14 GONNA HAPPEN TO THEM 'TIL IT'S TOO LATE. SO, WE
15 ALWAYS -- THERE'S ALWAYS A SITUATION WHERE YOU MIGHT
16 GET HIT WITH SOMEONE THAT YOU DON'T KNOW ABOUT.

17 Q. OKAY. BUT IN THE SITUATION WHERE THERE'S AN AUDIT
18 PREMIUM THAT HAS TO BE PAID, ARE YOU SAYING YOU WERE
19 LETTING YOUR CLIENTS KNOW THAT YOU'RE GONNA HAVE TO
20 PAY AN AUDIT PREMIUM BUT YOU'RE STILL GONNA BE
21 COVERED?

22 A. I DON'T KNOW THAT WE HAD THAT -- THE CONVERSATION
23 THAT SPECIFIC, BUT THAT'S GENERALLY SPEAKING, YES.

24 Q. OKAY. IS THAT WHAT YOU EXPECTED WAS GOING TO HAPPEN
25 IN THIS CASE?

1 A. I DIDN'T -- I DON'T THINK I THOUGHT THEY WERE GONNA
2 CHARGE THEM AUDIT PREMIUM FOR THE NURSES' PAYROLL.
3 I JUST THINK IF THERE WAS A SITUATION WHERE THEY
4 WERE RULED AS EMPLOYEES, THEN, YES, THEY WOULD DO
5 THAT. BUT AS LONG AS THEY WERE INDEPENDENT
6 CONTRACTORS, IT WAS OKAY.

7 Q. OKAY. WOULD YOU EXPECT THAT THERE WOULD BE COVERAGE
8 IN THIS TYPE OF SITUATION?

9 A. WITHOUT HAVING ---

10 BY MR. ALFORD:

11 OBJECT TO THAT.

12 WITNESS RESUMES:

13 A. --- ACCESS TO THEIR CONTRACT, YES.

14 BY MR. ALFORD:

15 CALLS FOR SPECULATION. YOUR HONOR, IF I CAN

16 ---

17 BY THE COMMISSIONER:

18 SUSTAINED. MR. GOODWYN, I THINK SHE'S
19 TESTIFIED THAT SHE'S NOT FAMILIAR WITH ALL OF THE
20 DETAILS.

21 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

22 Q. IF YOU'LL LOOK AT EXHIBIT -- WHAT'S MARKED AS
23 EXHIBIT FOUR, THE KEENAN SUGGS LETTER FROM ALBERT
24 HYNDSHAW ---

25 A. OH, THE LETTER?

1 Q. YEAH, 8/28/16. THIS ---

2 BY THE COMMISSIONER:

3 THIS IS GUARANTEE'S NUMBER FOUR.

4 BY THE WITNESS:

5 OKAY.

6 BY THE COMMISSIONER:

7 TRIAL EXHIBIT.

8 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. LOOKING AT THE FIRST PARAGRAPH AND THEN THE NURSING
10 CODES UNDER THAT, THE INDEPENDENT CONTRACTOR NURSES
11 THAT WERE AT SCDC, DO YOU BELIEVE THAT THESE TWO
12 NURSING CODES ARE THE PROPER CODES FOR THOSE TYPES
13 OF NURSES?

14 A. THAT HAD BEEN OUR HISTORICAL -- YES.

15 Q. OKAY. AND HOW MANY YEARS HAVE YOU BEEN USING THESE
16 CODES FOR THOSE TYPES OF NURSES?

17 A. WHENEVER HE STARTED UP CONDUSTRIAL AGAIN. PROBABLY
18 TEN YEARS AGO. I'M NOT SURE OF THE EXACT DATE WHEN
19 HE STARTED BACK UP.

20 Q. AND HAS ANYBODY EVER CHALLENGED THESE NURSING CODES
21 AS BEING INCORRECT?

22 A. NOT -- NOT THAT I'M AWARE OF, NO.

23 BY MR. GOODWYN:

24 I THINK THAT'S ALL I HAVE, YOUR HONOR.

25 BY THE COMMISSIONER:

1 MR. SAMUELS?

2 BY MR. SAMUELS:

3 THANK YOU, YOUR HONOR.

4 RECROSS EXAMINATION BY MR. SAMUELS:

5 Q. MS. WHITAKER, I APOLOGIZE. I DIDN'T INTRODUCE
6 MYSELF ON THE FIRST GO-ROUND. BUT MY NAME IS
7 STEPHEN SAMUELS. I REPRESENT THE NURSE WHO WAS
8 ASSAULTED AND HELD HOSTAGE AT THE DEPARTMENT OF
9 CORRECTIONS IN THIS CASE. JUST BECAUSE I DON'T KNOW
10 THAT MUCH ABOUT INSURANCE, COULD YOU EXPLAIN WHAT A
11 GHOST POLICY IS?

12 A. A LOT OF TIMES AN INDEPENDENT CONTRACTOR, SAY A ONE-
13 MAN-BAND PLUMBER, WILL BE REQUIRED TO CARRY WORKERS'
14 COMPENSATION TO DO A JOB. BUT IN SOUTH CAROLINA HE
15 HAS THE RIGHT TO REFUSE THE COVERAGE. THE POLICY
16 WILL STILL GET HIM ON THE JOB, SAY WITH MICHELIN,
17 AND HE PAYS LIKE A \$1,250 MINIMUM PREMIUM FOR IT.
18 HE HAS NO COVERAGE, BUT HE SATISFIES THE REQUIREMENT
19 TO HAVE WORKERS' COMPENSATION IN THE STATE OF SOUTH
20 CAROLINA.

21 Q. AND IF HE HIRES A HELPER AND THAT HELPER IS DEEMED
22 TO BE AN EMPLOYEE, IF THAT HELPER GETS INJURED, IS
23 THERE THEN COVERAGE?

24 A. COULD BE.

25 Q. SO, IS IT CALLED A GHOST POLICY BECAUSE IT COVERS

1 NOBODY?

2 A. YEAH. I THINK THAT'S JUST KIND OF AN INTERNAL
3 INSURANCE WORD THAT WE CALL IT. BUT YES.

4 Q. YOU HAD GIVEN CONDUSTRIAL TWO OPTIONS TO COMPLY WITH
5 THEIR CONTRACT TO PROVIDE WORKERS' COMPENSATION
6 INSURANCE FOR THE NURSES; IS THAT CORRECT?

7 A. I THINK THERE WERE FIVE, ACTUALLY, FIVE OPTIONS ON
8 SATISFYING. THERE MAY BE ONLY TWO OF THEM APPLIED
9 TO THE NURSES. I DON'T KNOW WITHOUT LOOKING BACK.
10 I SHOULD HAVE THIS PAGE MEMORIZED BY NOW. TWENTY.
11 IS THAT THE ONE YOU'RE TALKING ABOUT, PAGE 20, THE
12 ONE, TWO, THREE, FOUR, FIVE?

13 Q. I ACTUALLY THINK THERE WAS A LATER ONE, BUT I DON'T
14 WANT TO HOLD YOU UP. BUT I WILL ASK YOU THIS. IN
15 THE LETTER FROM -- LETTER TO TONY DURHAM FROM ALBERT
16 HYNDSHAW, WHICH IS EXHIBIT GUARANTEE FOUR ---

17 **BY MR. GOODWYN:**

18 OBJECT TO THE FORM. IT'S FROM ALBERT TO TONY,
19 NOT THE OTHER WAY AROUND.

20 **BY MR. SAMUELS:**

21 I APOLOGIZE. I STAND CORRECTED.

22 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

23 Q. THIS IS A LETTER FROM ALBERT HYNDSHAW TO TONY
24 DURHAM. AND, SPECIFICALLY, THE LETTER STATES, "THE
25 APPLICATIONS INCLUDED THE FOLLOWING CLASSIFICATIONS

1 WITH PAYROLL ESTIMATES FOR THESE CLASSIFICATIONS."
2 AND THERE'S 8833, PROFESSIONAL HEALTHCARE, RNS AND
3 LPNs. MY QUESTION FOR YOU IS, DO YOU KNOW IF THE
4 \$812,000 PAYROLL APPLIED TO THE ROUGHLY 130 NURSES
5 THAT CONDUSTRIAL HAD PLACED WORKING AT THE
6 DEPARTMENT OF CORRECTIONS AND OTHER SOUTH CAROLINA
7 STATE GOVERNMENT ENTITIES?

8 A. TO BE HONEST, I DIDN'T DO THE APPLICATIONS. ALBERT
9 AND TONY DID. SO I'M NOT SURE ABOUT THAT. BUT, YOU
10 KNOW, I COULD ASSUME, BUT I WON'T.

11 Q. WELL, THAT'S KIND OF THE QUESTION. LET ME ASK YOU
12 TO LOOK AT KEENAN AND SUGGS PAGE ONE. THAT WAS IN
13 THE CONDUSTRIAL THREE. IT'S THAT EMAIL CHAIN..

14 A. OKAY.

15 Q. WHAT ARE YOU SAYING ---

16 **BY THE COMMISSIONER:**

17 THAT'S COUNTRYWIDE EXHIBIT THREE.

18 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

19 Q. AND IT APPEARS YOU SENT AN EMAIL OCTOBER 19TH, 2015.
20 WHAT DID YOU SAY IN THE FIRST PARAGRAPH OF THAT
21 EMAIL?

22 A. ARE YOU TALKING ABOUT PAGE ONE, KEENAN SUGGS ONE,
23 FIRST PARAGRAPH?

24 Q. YES, MA'AM.

25 A. OKAY. "I JUST WANTED TO DROP A QUICK EMAIL TO LET

1 EVERYONE KNOW THAT THE WORKERS' COMP -- THE WORKERS
2 IN QUESTION HAVE ALWAYS BEEN A PART OF THE COVERAGE
3 FOR CONDUSTRIAL. THE PAYROLL IS INCLUDED, ALONG
4 WITH THE CLASS CODES. DO YOU NEED ANYTHING FROM OUR
5 FILE FOR THIS?"

6 Q. AND WHEN YOU REFER TO THE WORKERS IN QUESTION, WHAT
7 WORKERS ARE YOU REFERRING TO?

8 A. LET ME READ THIS ONE, TOO. HOLD ON. MEDUSTRIAL.

9 Q. SO ---

10 A. IT WOULD HAVE BEEN THE 1099s.

11 Q. THE NURSES THAT THEY HAD CALLED 1099s?

12 A. YEAH.

13 Q. WOULD YOU AGREE WITH ME THAT IF YOU CAN GET AWAY
14 WITH IT AS AN EMPLOYER IT'S MUCH CHEAPER TO CLASSIFY
15 YOUR WORKERS AS INDEPENDENT CONTRACTORS THAN
16 EMPLOYEES?

17 A. I MEAN, I DON'T -- I DON'T KNOW WHAT ALL IS INVOLVED
18 FROM AN EMPLOYING PEOPLE STANDPOINT, BUT I GUESS
19 THEY WOULDN'T BE REQUIRED TO PAY FOR THE WORKERS'
20 COMP IF THEY'RE INDEPENDENT.

21 Q. BUT YOU WOULD ALSO AGREE THAT THEIR CONTRACT WITH
22 SCDC REQUIRED THEM TO PROVIDE NURSES WHO WERE
23 EMPLOYEES COVERED UNDER WORKERS' COMP?

24 BY MR. GOODWYN:

25 YOUR HONOR, I WOULD OBJECT TO HER INTERPRETING

1 A CONTRACT BETWEEN TWO OTHER PARTIES. SHE'S NOT
2 HERE FOR THAT PURPOSE.

3 BY THE COMMISSIONER:

4 MR. SAMUELS?

5 BY MR. SAMUELS:

6 I THINK SHE'S ALREADY TESTIFIED TO THAT, YOUR
7 HONOR, AND ---

8 BY THE COMMISSIONER:

9 SHE READ -- SHE JUST READ PART OF THE DOCUMENT
10 ITSELF.

11 BY MR. GOODWYN:

12 ASKED AND ANSWERED.

13 BY MR. SAMUELS:

14 THE LANGUAGE OF THE CONTRACT IS PLAIN ON ITS
15 FACE. SHE'S ALSO TESTIFIED THAT LATER ON, IN 2016,
16 SHE WAS CALLED UPON TO FIND A WAY TO HELP
17 CONDUSTRIAL COMPLY WITH THAT CONTRACT WHEN THEY HAD
18 NOT IN THE PAST.

19 BY MR. GOODWYN:

20 I DON'T THINK THAT'S ---

21 BY MR. SAMUELS:

22 AND THAT'S WHAT GENERATED THIS ENTIRE EMAIL
23 CHAIN THAT WE'RE REFERRING TO.

24 BY MR. GOODWYN:

25 I DON'T THINK THAT WAS THE CHARACTERIZATION --

1 I THINK IT'S A MISCHARACTERIZATION OF THE TESTIMONY.
2 THIS HAS ALREADY BEEN GONE INTO.

3 **BY THE WITNESS:**

4 I CAN -- CAN I SAY ANYTHING ELSE?

5 **BY THE COMMISSIONER:**

6 YOU CAN ANSWER THE QUESTION, MA'AM. GO AHEAD.

7 **WITNESS ANSWERS:**

8 A. OKAY. WHEN WE WENT FORWARD, IT WAS AFTER EVERYTHING
9 HAD BLOWN UP. I THINK THEY TRULY THOUGHT THAT IT
10 WAS 1099 AND, IF ANYTHING HAD COME UP, THEN THEY
11 WOULD HAVE TO PAY UNDER THEIR WORK COMP COVERAGE.
12 BUT I DON'T THINK THEY WERE TRYING CIRCUMVENT IT.

13 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

14 Q. WELL, IF THE NURSES WERE MADE TO GET THEIR OWN GHOST
15 POLICIES AND ONE OF THE NURSES GOT HURT, WOULD THEY
16 AUTOMATICALLY GET COVERAGE IF THAT INJURY OCCURRED
17 AT SCDC? LET'S SAY THEY WERE STABBED BY AN INMATE.
18 A. WELL, ONE OF THE THINGS THAT WE HAD DISCUSSED IS A
19 LOT OF PEOPLE -- A NURSE -- WHEN WE DISCUSSED THE
20 ASSIGNED RISK POLICY, THE NURSE COULD BUY A POLICY
21 THAT ACTUALLY COVERED HER, OR IN SOUTH CAROLINA SHE
22 HAS THE OPTION TO BUY A GHOST POLICY, NOT THAT YOU
23 RECOMMEND THAT, BUT THAT'S UP TO THE PERSON WHO'S
24 BUYING THE COVERAGE. IF SHE HAD A GHOST POLICY, NO,
25 SHE'S NOT COVERED IF SOMETHING HAPPENS. IF SHE

1 BOUGHT REAL WORK COMP COVERAGE, YES, IT WOULD -- IT
2 WOULD COVER HER.

3 Q. ALL RIGHT. DID CONDUSTRIAL PAY A PREMIUM FOR
4 COVERAGE FOR THE NURSES PLACED AT THE SOUTH CAROLINA
5 DEPARTMENT OF CORRECTIONS ---

6 **BY MR. GOODWYN:**

7 OBJECTION. CALLS FOR SPECULATION.

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

9 Q. --- IN 2015?

10 **BY MR. GOODWYN:**

11 THERE'S NO FOUNDATION THAT SHE HAS ANY
12 KNOWLEDGE OF THAT.

13 **WITNESS ANSWERS:**

14 A. I DON'T KNOW.

15 **BY THE COMMISSIONER:**

16 SUSTAINED.

17 **WITNESS RESUMES:**

18 A. I DIDN'T SEE THE REPORTS THAT WENT -- THE PAYROLL
19 REPORTS THAT WENT TO SONGER OR WHOEVER --
20 COUNTRYWIDE.

21 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

22 Q. WOULD ALBERT HYNDSHAW HAVE KNOWLEDGE OF THAT?

23 A. HE MIGHT. BUT I THINK -- I MEAN, I THINK THAT WAS A
24 TRANSACTION BETWEEN CONDUSTRIAL AND COUNTRYWIDE IN
25 THEIR ACCOUNTING. IF WE DID, I NEVER SAW ANY OF

1 THAT PAPERWORK.

2 Q. IN THAT SAME EMAIL -- THIS IS COUNTRYWIDE'S EXHIBIT
3 THREE, KEENAN SUGGS, PARAGRAPH ONE, YOU WROTE -- THE
4 SECOND PARAGRAPH. THE SECOND PARAGRAPH.

5 A. "MEDUSTRIAL IS NOT A SEPARATE INSURED, JUST A NAME
6 THAT THEY USE TO DIFFERENTIATE FROM THE INDUSTRIAL
7 WORKERS. WE HAVE ALSO ALWAYS INSURED THE LIABILITY
8 COVERAGE FOR THIS EXPOSURE AS WELL."

9 Q. WHERE DID YOU GET THAT INFORMATION?

10 A. WE HAD A MED MAL POLICY FOR THEM FOR THE EXPOSURE
11 FOR MEDUSTRIAL FOR THE NURSES.

12 Q. UNDER THE NAME MEDUSTRIAL?

13 A. IN THE NAME -- IT WAS IN THE NAME OF CONDUSTRIAL,
14 WHICH IS ODD, I KNOW. I'LL JUST TELL YOU THIS. I
15 WROTE APARTMENTS FOR YEARS AND YEARS AND YEARS.
16 THAT WAS MY MAINSTAY. AND WE WERE STICKLERS ABOUT
17 NAMED INSUREDS. SO I BUGGED THE FIRE OUT OF THEM
18 ABOUT THAT. I WAS LIKE IS THERE A FEIN NUMBER,
19 BECAUSE A FEIN NUMBER MEANS THERE'S A NAMED INSURED,
20 AND THERE WASN'T ONE FOR MEDUSTRIAL.

21 Q. DID TONY DURHAM OR TOM SEARS PROVIDE INFORMATION TO
22 YOU THAT MEDUSTRIAL WAS NOT A -- IT WAS JUST A NAME
23 THAT THEY USED TO DIFFERENTIATE THE NURSES FROM THE
24 INDUSTRIAL WORKERS?

25 A. YES. THEY CALL IT A MONIKER.

1 Q. AND DID HE TELL YOU THAT THEY NEVER CONTRACTED UNDER
2 THEIR OWN NAME, UNDER MEDUSTRIAL'S NAME?

3 A. I HAVE NO KNOWLEDGE OF THAT.

4 Q. I'M GOING TO SHOW YOU PAGE 254 OF CLAIMANT'S APA
5 SUBMISSIONS. THIS IS THE CONTRACT THAT YOU'VE
6 PREVIOUSLY REVIEWED. I'M GOING TO SHOW YOU PAGE
7 254. WHO WERE THE PARTIES TO THIS PARTICULAR
8 CONTRACT?

9 A. SCDC AND MEDUSTRIAL HEALTHCARE.

10 Q. GOING BACK TO THE LAST PAGE, PAGE 259, OF THAT
11 EXHIBIT, WHO DOES IT LIST AS THE CONTRACTOR?

12 A. MEDUSTRIAL HEALTHCARE.

13 Q. AND WHO IS IT SIGNED BY?

14 A. JOHN OZMINT AND WHOEVER THAT IS.

15 Q. NOT THAT ONE, THIS ONE.

16 A. OH, THIS ONE. NATASHA RATHBURN.

17 Q. DO YOU KNOW NATASHA RATHBURN?

18 A. NO.

19 Q. WOULD YOU AGREE THAT, UNLIKE THE REPRESENTATIONS
20 MADE PREVIOUSLY TO YOU WHEN CONDUSTRIAL ENTERED INTO
21 THIS CONTRACT WITH THE DEPARTMENT OF CORRECTIONS,
22 THEY ACTUALLY DID SO UNDER THE MEDUSTRIAL NAME?

23 **BY MR. GOODWYN:**

24 YOUR HONOR, I'M GOING TO OBJECT TO THIS WHOLE
25 LINE OF QUESTIONING. THIS IS WELL BEYOND THE SCOPE

1 OF ANY REDIRECT. I MEAN ---

2 **BY THE COMMISSIONER:**

3 MR. SAMUELS?

4 **BY MR. SAMUELS:**

5 SHE TESTIFIED, YOUR HONOR, TO THE HONESTY OF
6 TONY DURHAM. SHE TESTIFIED THAT THERE WAS NO EFFORT
7 BY CONDUSTRIAL TO DECEIVE ANYBODY, AND THE EMAIL
8 CHAIN CAME INTO EVIDENCE AFTER MY ORIGINAL CROSS.
9 SO, I'M ASKING HER ABOUT THE EMAIL CHAIN AND ABOUT
10 REPRESENTATIONS BY CONDUSTRIAL THAT GO TO THE
11 CREDIBILITY OF THAT ORGANIZATION IN THAT THEY ARE
12 SIGNING A CONTRACT WITH SCDC UNDER THE NAME
13 MEDUSTRIAL RATHER THAN CONDUSTRIAL, AND THEY ARE NOT
14 -- AND THEY DID NOT PROCURE WORKERS' COMPENSATION
15 INSURANCE FOR THESE NURSES.

16 **BY THE COMMISSIONER:**

17 OVERRULED. YOU CAN ANSWER THE QUESTION, MA'AM.

18 **WITNESS ANSWERS:**

19 A. IT'S STILL GONNA HAVE A FEIN NUMBER. I MEAN, I
20 DON'T KNOW -- I DON'T KNOW ABOUT HOW THE LAW WORKS
21 AS FAR AS USING A NAME. BUT MEDUSTRIAL BELONGS TO
22 CONDUSTRIAL. SO, I DON'T KNOW THAT THAT'S WRONG OR
23 RIGHT. IT'S NOT A -- AS FAR AS I KNOW, IT'S NOT A
24 REGISTERED NAME IN THE STATE OF SOUTH CAROLINA FOR
25 DOING BUSINESS.

1 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

2 Q. AND I'M NOT REALLY ASKING THAT. I'M JUST ASKING,
3 YOU HAVE BEEN -- IT HAD BEEN REPRESENTED TO YOU BY
4 CONDUSTRIAL THAT THEY ONLY CONTRACTED IN THE NAME OF
5 CONDUSTRIAL. BUT WOULDN'T YOU AGREE THAT THIS
6 DOCUMENT SHOWS THAT, AT LEAST WITH THE DEPARTMENT OF
7 CORRECTIONS, THEY WERE REPRESENTING THAT THEY WERE A
8 COMPANY CALLED MEDUSTRIAL?

9 A. OKAY. WHERE WERE THEY SAYING THAT TO ME ABOUT THEY
10 WERE CONTRACTED USING CONDUSTRIAL?

11 Q. THAT WAS IN THE EMAIL WHERE YOU STATED MEDUSTRIAL IS
12 NOT A SEPARATE INSURED, JUST A NAME THEY USE TO
13 DIFFERENTIATE FROM THE INDUSTRIAL WORKERS.

14 A. THAT DOESN'T SAY THAT THAT'S A CONTRACT PROBLEM. IT
15 JUST SAYS IT'S A DIFFERENT NAME THEY USE.

16 **BY MR. SAMUELS:**

17 THAT'S ALL THE QUESTIONS I HAVE, MA'AM. THANK
18 YOU.

19 **BY THE COMMISSIONER:**

20 MR. ALFORD?

21 **RECROSS EXAMINATION BY MR. ALFORD:**

22 Q. ARE YOU HAVING FUN YET?

23 A. IS THIS NOT OVER YET?

24 Q. I'M SORRY.

25 A. JUST KIDDING.

1 Q. I'M CONFUSED ABOUT SOMETHING, AND IT'S EASY TO DO.

2 A. OKAY.

3 Q. YOU'VE TESTIFIED, I THINK, THAT -- IN A GENERAL
4 SENSE, THAT WHEN A BUSINESS HAS A LOT OF EMPLOYEES
5 THAT ARE ON A COMP POLICY AND THEY ALSO HAVE
6 INDEPENDENT -- PEOPLE THAT THEY'RE TRYING TO
7 CLASSIFY AS INDEPENDENT CONTRACTORS, THAT ON AN
8 AUDIT BY THE COMP CARRIER THEY'LL COME BACK AND SAY,
9 WAIT, YOU'VE GOT TO COVER THESE INDEPENDENT
10 CONTRACTORS. IS THAT WHAT YOUR TESTIMONY WAS?

11 A. GENERALLY.

12 Q. GENERALLY. IS IT POSSIBLE -- BECAUSE THIS IS WHAT
13 CONFUSES ME: THESE -- WHAT HAS BEEN REFERRED TO AS
14 THE 1099 BROKERAGE MODEL AND I THINK WHAT YOU'VE
15 REFERRED TO IS YOU'RE BROKERING THESE NURSES TO THE
16 SCDC, THEY THEORETICALLY ALWAYS -- WHEN I SAY THEY
17 -- I'M SORRY. I HATE WHEN MY WIFE USES PRONOUNS.
18 CONDUSTRIAL HAS ALWAYS HAD COMP INSURANCE FOR A LOT
19 OF EMPLOYEES, RIGHT?

20 A. YES, FAR AS I KNOW.

21 Q. YES, MA'AM. RIGHT. I MEAN GENERALLY. OKAY. AND
22 THEN -- BUT THEY'VE ALSO HAD THIS OUTSIDE 1099 MODEL
23 WITH THE NURSES, CORRECT?

24 A. YES. I'M NOT SURE HOW LONG, BUT YES.

25 Q. OKAY.

1 A. AT LEAST FROM 2013 WHEN I WAS AWARE, YES.

2 Q. YES, MA'AM. THAT'S FINE. SO, FOR A PERIOD OF TIME
3 THAT PRECEDES YOUR KNOWLEDGE, AT LEAST, OF AN
4 AGREEMENT WITH COUNTRYWIDE, THAT THEY HAD THE TWO
5 MODELS GOING? THEY HAD THE ---

6 A. YES.

7 Q. --- EMPLOYEES' COMP COVERAGE AND THE 1099 BROKERAGE
8 MODEL WITH SCDC?

9 A. YES.

10 Q. OKAY. SO, WHY DIDN'T THE 1099 PEOPLE GET PICKED UP
11 BY THESE PREVIOUS AUDITS AND PUT OVER INTO THE ---

12 A. WE DIDN'T PROVIDE THE WORKERS' COMP COVERAGE FOR
13 THEM, SO I DON'T KNOW. I HAVEN'T SEEN THEIR AUDITS.

14 Q. SO WHEN YOU'RE TALKING ABOUT ---

15 A. I'M NOT PRIVY TO THAT.

16 Q. --- AN AUDIT PICKING IT UP, ARE YOU TALKING ABOUT A
17 PAYROLL AUDIT?

18 A. YES.

19 Q. OKAY. SO YOU'RE NOT TALKING ABOUT A WORK COMP
20 AUDIT?

21 A. WELL, A WORK COMP AUDIT IS A PAYROLL AUDIT. AND,
22 ALSO, THEY LOOK FOR OTHER THINGS.

23 Q. OKAY.

24 A. BUT WHAT THEY'RE ULTIMATELY LOOKING FOR IS PAYROLL
25 TO CHARGE YOU FOR.

1 Q. GOTCHA. ALL RIGHT. BUT SOMEHOW OR ANOTHER ALONG
2 THE WAY HERE, THESE 1099 FOLKS NEVER GOT PICKED UP
3 AND PUT INTO ALL THESE COMP POLICIES?

4 A. WHICH IF THEY WERE TRUE INDEPENDENT CONTRACTORS,
5 MAYBE THEY WOULDN'T BE.

6 Q. OKAY. AND I GUESS THAT'S WHAT I WAS TRYING TO ASK
7 YOU. SO THERE ARE SCENARIOS WHERE A COMPANY CAN
8 PICK ITS BUSINESS MODEL, RIGHT?

9 A. YEAH.

10 Q. AND THEY CAN SAY, OKAY, UNDER MY BUSINESS MODEL I'M
11 GONNA HAVE A BUNCH OF EMPLOYEES, AND THE LAW SAYS
12 I'VE GOT TO GIVE THEM SOME COVERAGE 'CAUSE THEY'RE
13 EMPLOYEES, AND I KNOW THAT, AND MY COMP CARRIER, MY
14 PAYROLL PEOPLE ARE GONNA AUDIT ME AND THEY'RE GONNA
15 SAY, "HEY, YOU'VE GOT TO TREAT THESE PEOPLE LIKE
16 EMPLOYEES," RIGHT?

17 A. UH-HUH.

18 Q. OKAY.

19 **BY THE COMMISSIONER:**

20 IS THAT A YES, MA'AM?

21 **BY THE WITNESS:**

22 SAY IT ONE MORE TIME.

23 **RECROSS EXAMINATION RESUMED BY MR. ALFORD:**

24 Q. YEAH. ALL RIGHT. IT WAS A LONG, BAD QUESTION.
25 I'LL TRY IT AGAIN.

1 A. OKAY.

2 Q. I GUESS WHAT I'M TRYING TO GET TO IS, THERE'S GOT TO
3 BE BUSINESS MODELS AND PEOPLE CAN MAKE A BUSINESS
4 DECISION TO SAY, ALL RIGHT, I'M GONNA HAVE MY
5 EMPLOYEES OVER HERE, AND I'M GONNA HAVE MY
6 INDEPENDENT CONTRACTOR PEOPLE OVER HERE, AND
7 WHATEVER OBLIGATIONS I HAVE FOR WORKERS'
8 COMPENSATION, FOR PAYROLL, ANYTHING OVER HERE IN MY
9 EMPLOYEE MODEL, I'M GONNA HAVE TO DEAL WITH IT.
10 RIGHT? IT'S GONNA COST ME WHATEVER IT COSTS ME.

11 A. RIGHT.

12 Q. AND I GET -- I CAN BUY INSURANCE FOR THEM; I CAN
13 HANDLE MY RISK; I CAN UNDERSTAND IT; MY CARRIER IS
14 UNDERSTANDING MY RISK; THE PEOPLE I'M IN CONTRACT
15 WITH UNDERSTAND THE RISK AND WHO THE RISK IS
16 ASSIGNED TO. RIGHT?

17 A. YES.

18 Q. OKAY. AND THEN THEY CAN COME OVER HERE AND DO THE
19 SAME THING FOR THEIR INDEPENDENT CONTRACTOR MODEL,
20 RIGHT?

21 A. YES.

22 Q. OKAY. AND THEY CAN SAY -- SO IF THE -- IF I'M -- IF
23 I OWN THE BUSINESS AND SOMEBODY COMES AND SAYS,
24 "HEY, THESE PEOPLE ARE -- YOU KNOW, PROVE THEY'RE
25 INDEPENDENT CONTRACTORS," AND I TAKE MY INDEPENDENT

1 CONTRACTOR AGREEMENT OUT AND I SAY, "HERE, THEY'RE
2 INDEPENDENT CONTRACTORS. IT SAYS SO, AND THEY
3 SIGNED THIS PIECE OF PAPER," I'VE BASICALLY DECIDED
4 THAT THEY'RE MY INDEPENDENT CONTRACTOR AND I'VE GOT
5 TO DEAL WITH WHATEVER COMES FROM IT. RIGHT?

6 A. YES.

7 Q. OKAY. AND I'M FREE TO TAKE THAT RISK?

8 A. FREE TO TAKE THAT RISK.

9 Q. OKAY.

10 A. BUT, ALSO, BOTH MEETINGS I SAT IN, THEY DISCLOSED
11 THAT INFORMATION TO SCOTT AND ZACH, WHICH I
12 UNDERSTAND IS NOT YOU.

13 Q. NO, NO. THAT'S FINE. AND I WANT TO TALK ABOUT
14 THAT, TOO. THAT'S GOOD. I'M GLAD YOU -- I'M GLAD
15 WE'RE TALKING ABOUT THAT. AND THEY DISCLOSED TO
16 THEM THAT THEY WERE INDEPENDENT CONTRACTORS?

17 A. YES.

18 Q. AND THEY WERE 1099'ERS?

19 A. YES.

20 Q. OKAY. SO EVERYBODY IS AGREEING THAT IN THAT MODEL
21 -- AND DID YOU -- WERE YOU UNDERSTANDING THAT THEY
22 WERE SAYING TO THESE GUYS, "HEY, THEY'RE INDEPENDENT
23 CONTRACTORS," WINK, WINK, NOD, NOD? OR WAS IT,
24 "THEY'RE INDEPENDENT CONTRACTORS, SO YOU DON'T HAVE
25 TO WORRY ABOUT THEM IN THE CONTEXT OF OUR WORK COMP

1 AGREEMENTS"?

2 A. SAY IT ONE MORE TIME.

3 Q. YEAH. I KNOW. I'M SORRY.

4 A. TOO MANY CHOICES.

5 Q. I'VE GOT TO GET BETTER THAN THAT.

6 **BY MS. RICHARDSON:**

7 ASK IT THE SAME WAY. ASK IT THE SAME WAY.

8 **BY THE WITNESS:**

9 YEAH.

10 **BY MS. RICHARDSON:**

11 ASK THE SAME EXACT QUESTION.

12 **BY THE WITNESS:**

13 SORRY. IT'S HITTING ME -- 'CAUSE THERE'S A LOT
14 OF PEOPLE OVER HERE ---

15 **BY MR. ALFORD:**

16 NO, NO. I GET IT. I GET IT. YOU'RE DOING --
17 YOU'RE VERY KIND, AND YOU'RE DOING FINE. I'M SO
18 SORRY. COULD YOU -- 'CAUSE THEY THINK IT WAS A GOOD
19 QUESTION. I CAN'T EVEN REMEMBER IT.

20 **(OFF THE RECORD - COURT REPORTER READS BACK QUESTION)**

21 **WITNESS ANSWERS:**

22 A. OKAY. IT WASN'T WINK, WINK, NOD, NOD. IT WAS A
23 BIG, LONG, DRAWN-OUT ---

24 **RECROSS EXAMINATION RESUMED BY MR. ALFORD:**

25 Q. STRAIGHT UP?

1 A. --- DISCUSSION.

2 Q. STRAIGHT UP?

3 A. STRAIGHT UP ABOUT THAT.

4 Q. THIS IS OUR MODEL.

5 A. THIS IS WHAT WE'RE DOING.

6 Q. WE DO BUSINESS OVER HERE. OUR BUSINESS OVER HERE IS
7 EMPLOYEES, ---

8 A. YEAH.

9 Q. --- WORK COMP, PAYROLL, AND WE'VE GOT OUR OTHER
10 BUSINESS OVER HERE, WHICH IS INDEPENDENT CONTRACTORS
11 AND YOU AIN'T GOTTA WORRY ABOUT IT. IS THAT FAIR?

12 A. WELL, THEY WANTED THEM TO BE AWARE OF IT IN CASE
13 ANYTHING EVER HAPPENED WHERE THE 1099'ERS WERE
14 DECLARED AS EMPLOYEES, WHICH NOBODY EXPECTED TO
15 HAPPEN, I DON'T THINK.

16 Q. OKAY. THAT'S FAIR. BUT THAT WAS YOUR IMPRESSION?

17 A. YES, THAT WAS MY IMPRESSION.

18 Q. SO THEY WERE DISCLOSING TO OUR GUYS, WHO THEN,
19 ARGUABLY, WOULD GO AND DISCLOSE TO THE PEOPLE THAT
20 WE'RE BUYING INSURANCE FROM, HEY -- OR NOT DISCLOSED
21 BECAUSE ---

22 A. TRUE.

23 Q. --- WE'RE ONLY BUYING COMP INSURANCE; WE'RE NOT
24 BUYING INDEPENDENT CONTRACTOR INSURANCE. AND IF YOU
25 ELECT TO HAVE A MODEL THAT YOU KNOW IS OUTSIDE OF

1 OUR INDEPENDENT CONTRACTOR INSURANCE, THAT'S YOUR
2 LIABILITY, RIGHT?

3 A. COULD BE.

4 Q. OKAY.

5 A. THAT'S WHY WE'RE IN A COURT OF LAW.

6 Q. YES, MA'AM. NOTHING'S CLEAR. NEVER IS. YOU'RE
7 RIGHT. YOU'RE RIGHT. I'VE PROBABLY ALREADY ASKED
8 THIS, BUT I'M -- BUT THE WHOLE THING ABOUT THESE
9 AUDITS AND STUFF, IF THEY GOT AUDITED AND THEN --
10 AND I SAY CONDUCTORIAL AND THEN THEY SAY, "NO, WAIT;
11 HERE'S OUR INDEPENDENT CONTRACTOR AGREEMENT,"
12 NOBODY'S -- THAT'S HOW THEY'VE BEEN ABLE TO MAINTAIN
13 THAT MODEL, I GUESS, RIGHT?

14 A. YEAH, I GUESS.

15 Q. OKAY.

16 A. 'CAUSE WE DIDN'T -- WE DIDN'T HAVE THEIR WORK COMP
17 AND THEIR AUDIT. SO, I'M NOT PRIVY TO ALL THAT
18 INFORMATION.

19 Q. YES, MA'AM. BUT THAT WAS HOW ---

20 A. GENERALLY SPEAKING.

21 Q. BUT THAT WAS -- APPEARED TO BE THE COURSE OF
22 BUSINESS THAT HAD BEEN GOING ON?

23 A. YEAH.

24 BY MR. ALFORD:

25 OKAY. THANK YOU SO MUCH.

1 BY THE COMMISSIONER:

2 GUARANTEE?

3 RECROSS EXAMINATION BY MS. RICHARDSON:

4 Q. MS. WHITAKER, A LOT OF YOUR TESTIMONY HAS BEEN IN
5 GENERALITIES; IS THAT CORRECT?

6 A. YES.

7 Q. AND I JUST WANT TO CONFIRM THAT IT'S YOUR TESTIMONY
8 TODAY THAT ULTIMATELY YOU'RE NOT AWARE OF THE TERMS
9 OF THE CONTRACT BETWEEN CONDUSTRIAL AND C.S.S.G.
10 THAT WAS ACTUALLY EXECUTED?

11 A. THAT'S CORRECT.

12 Q. YOU WERE ONLY MAYBE AT A MEETING BEFORE THE CONTRACT
13 WAS EXECUTED, OR MAYBE IT WAS AFTER, WHERE THEY WERE
14 DISCUSSING WHAT THE TERMS MAY OR MAY NOT BE; IS THAT
15 CORRECT?

16 A. CORRECT, TWICE.

17 Q. AND YOU ALSO HAVE NEVER SEEN ANY ACTUAL INSURANCE
18 POLICY THAT MAY BE APPLICABLE TO THE CIRCUMSTANCES
19 IN THIS CASE; IS THAT CORRECT?

20 A. CORRECT.

21 Q. AND I THINK IT'S BEEN YOUR TESTIMONY THAT THE
22 N.C.C.I. IS THE AUTHORITY ON CLASS CODE
23 CLASSIFICATIONS; IS THAT CORRECT?

24 A. CORRECT.

25 Q. OKAY. AND YOU HAVE NOT YET CALLED THE N.C.C.I. TO

1 DETERMINE WHETHER ANY CLASS CODE CLASSIFICATION IS
2 ACCURATE IN THIS CASE, AS APPLICABLE TO THIS CASE,
3 HAVE YOU?

4 A. NO, BUT I NO LONGER WORK THERE, SO I WOULDN'T.

5 Q. THE N.C.C.I.?

6 A. NO. I NO LONGER WORK AT KEENAN SUGGS, AND I DO NOT
7 WORK ON THAT ACCOUNT, SO I WOULDN'T -- I WOULDN'T
8 CALL NOW.

9 Q. RIGHT. BUT YOU HAVE NEVER CONFIRMED WITH THE
10 N.C.C.I. ONE WAY OR ANOTHER YOUR OPINION OR ANYONE
11 ELSE'S OPINION ABOUT ACCURACY OF ANY CLASS CODES?

12 A. ME PERSONALLY, NO.

13 Q. YES. OKAY.

14 A. OTHER PEOPLE, YES. ME, NO.

15 Q. RIGHT. BUT FOR YOU, NO. AND ---

16 A. OTHER THAN READING THE SCOPES MANUAL MYSELF.

17 Q. CORRECT. BUT THE N.C.C.I. IS THE ---

18 A. CORRECT.

19 Q. --- AUTHORITY; IS THAT CORRECT?

20 A. WHO PUBLISHES THE SCOPES MANUAL.

21 **BY MS. RICHARDSON:**

22 CORRECT. THANK YOU FOR THAT CLARIFICATION. I
23 APPRECIATE THAT.

24 **BY MS. FARTHING:**

25 NOTHING FURTHER FROM DEPARTMENT OF CORRECTIONS.

1 BY THE COMMISSIONER:

2 MS. GLOVER?

3 BY MS. GLOVER:

4 NOTHING FROM THE UNINSURED EMPLOYERS' FUND.

5 BY THE COMMISSIONER:

6 ALL RIGHT.

7 BY MR. GOODWYN:

8 JUST -- I'VE GOT A COUPLE FOLLOW-UPS TO THAT,
9 JUST ABOUT A QUESTION SHE ASKED.

10 REDIRECT EXAMINATION BY MR. GOODWYN:

11 Q. REAL QUICK, THE MEETING WITH SCOTT HANSON THAT YOU
12 REFERENCED EARLIER, ARE YOU CERTAIN THAT WAS BEFORE
13 CONDUSTRIAL AND COUNTRYWIDE EVER ACTUALLY BEGAN OR
14 FORMALIZED ANY KIND OF AGREEMENT?

15 A. I THOUGHT IT WAS. BUT, LIKE I SAID, I DO NOT HAVE
16 ACCESS TO MY CALENDAR NOTES OR ANYTHING THAT ARE ON
17 FILE AT KEENAN SUGGS.

18 Q. DOES YOUR RECOLLECTION OF THE MEETING AND THE NATURE
19 OF THE CONVERSATIONS INDICATE TO YOU THAT IT MUST
20 HAVE BEEN BEFORE THE CONTRACT WAS ENTERED INTO?

21 A. I THOUGHT IT WAS.

22 Q. OKAY. AGAIN, JUST TO BE CLEAR, YOU WERE ANSWERING
23 SOME QUESTIONS FROM MR. ALFORD ABOUT THE REASONS WHY
24 THESE 1099 NURSES WERE SUCH A BIG PART OF THE
25 CONVERSATION WITH CONDUSTRIAL AND COUNTRYWIDE. DID

1 I UNDERSTAND YOU CORRECTLY TO SAY THAT CONDUSTRIAL
2 WAS MAKING SUCH A BIG POINT TO LET COUNTRYWIDE KNOW
3 ABOUT THEM, IF IN THE EVENT THEY WERE DETERMINED TO
4 BE AN EMPLOYEE, THAT COUNTRYWIDE WOULD BE OKAY WITH
5 THE COVERAGE?

6 **BY MR. ALFORD:**

7 OBJECT TO THE FORM.

8 **BY MR. BEARD:**

9 OBJECT TO LEADING.

10 **BY MR. ALFORD:**

11 AND OBJECT THAT IT CALLS FOR -- I WOULD OBJECT
12 THAT IT WOULD CALL FOR SPECULATION AS TO WHAT
13 COUNTRYWIDE WOULD PERCEIVE FROM IT.

14 **BY THE COMMISSIONER:**

15 SUSTAINED.

16 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

17 Q. WHY DO YOU -- WHY WAS THE 1099 NURSE ISSUE SUCH A
18 BIG PART OF THE CONVERSATION?

19 A. WELL, I THINK, YOU KNOW, I GUESS THE MAIN REASON, HE
20 KEPT TALKING ABOUT THE DUAL THING AND HE WANTED THEM
21 TO BE ABLE -- NURSES TO BE ABLE TO WORK, AND THAT'S
22 THE WAY A LOT OF NURSES WORK, AND HE WAS JUST
23 CONCERNED, YOU KNOW, IF SOMETHING DID HAPPEN OR IF
24 THEY WERE EVER CLASSIFIED AS EMPLOYEES, THEN HE
25 WOULD HAVE A PROBLEM.

1 Q. OKAY. AND DID COUNTRYWIDE HAVE ANY -- TAKE ANY
2 ISSUE WITH THE MODEL AS PROPOSED BY MR. DURHAM IN
3 THE MEETING?

4 A. NOT THAT I RECALL.

5 BY MR. GOODWYN:

6 THAT'S ALL I HAVE.

7 BY MR. SAMUELS:

8 MAY I BE ALLOWED TO RESPOND TO THAT A LITTLE
9 BIT TO COUNTRYWIDE?

10 BY THE COMMISSIONER:

11 AND SOME OF THAT HAS ALREADY BEEN TESTIFIED TO
12 EARLIER. BUT BRIEFLY, MR. SAMUELS; YES, SIR.

13 BY MR. SAMUELS:

14 I'LL DO MY BEST, YOUR HONOR. I REALLY WILL. I
15 SWEAR.

16 RECROSS EXAMINATION BY MR. SAMUELS:

17 Q. YOU INDICATED THAT THIS DISCUSSION ABOUT THE
18 INDEPENDENT EMPLOYER -- INDEPENDENT CONTRACTOR, 1099
19 ARRANGEMENT WAS DONE AT LENGTH; IS THAT CORRECT?

20 A. UH-HUH.

21 BY THE COMMISSIONER:

22 IS THAT A YES?

23 BY THE WITNESS:

24 YES.

25 BY THE COMMISSIONER:

1 OKAY.

2 **RE CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

3 Q. BUT PART OF THAT DISCUSSION YOU WERE -- NOBODY IN
4 THAT MEETING, EITHER COUNTRYWIDE OR YOURSELF, WAS
5 INFORMED THAT THERE WAS A CONTRACT WITH SCDC
6 REQUIRING WORKERS' COMP INSURANCE FOR THE NURSES,
7 CORRECT?

8 A. THERE WAS CONVERSATION ABOUT THERE WAS AN SCDC
9 CONTRACT AND THEY WERE BEING SUPPLIED TO PRISONS.
10 BUT AS FAR AS A CONTRACT, I DON'T -- IF THAT WAS
11 BROUGHT UP, I DON'T RECALL IT, AND I HAD NOT SEEN IT
12 AT THAT POINT.

13 Q. THEY NEVER DISCLOSED TO YOU THAT THE CONTRACT
14 REQUIRED WORKERS' COMPENSATION COVERAGE FOR THE
15 NURSES?

16 A. NOT THAT I RECALL.

17 Q. OKAY. I'M GOING TO SHOW YOU A FEW MORE DOCUMENTS,
18 BUT I'M GOING TO WHIZ THROUGH THEM.

19 A. ALL RIGHT.

20 Q. LOOKING AT PAGE 261 OF CLAIMANT'S APA SUBMISSIONS,
21 DID THEY SHOW YOU, FOR EXAMPLE, THAT IN THIS CASE
22 THE NURSE FILLED OUT AN EMPLOYMENT APPLICATION?

23 **BY MR. GOODWYN:**

24 YOUR HONOR, THIS HAS BEEN GONE THROUGH.

25 **BY THE COMMISSIONER:**

1 MR. SAMUELS, YOU DID ASK THAT. SHE DID ANSWER
2 THAT SHE HASN'T SEEN ANY OF THE DOCUMENTS FOR THE
3 NURSES.

4 **BY THE WITNESS:**

5 YEAH, I HAVEN'T SEEN -- I HAVEN'T -- I HAVEN'T
6 SEEN THEIR CONTRACT; I HAVEN'T SEEN THEIR --
7 NOTHING.

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

9 Q. SO WHEN THEY HAD THAT DISCUSSION, ESSENTIALLY MR.
10 SEARS AND MR. DURHAM WERE ADVOCATING FOR THEIR
11 POSITION THAT THEY FELT THEIR INDEPENDENT CONTRACTOR
12 MODEL WAS STRONG AND THEY WOULDN'T NEED TO HAVE TO
13 PAY A PREMIUM ON THAT COVERAGE, ON THE PAYROLL FOR
14 THAT; ISN'T THAT CORRECT?

15 **BY MR. GOODWYN:**

16 I OBJECT TO THE FORM. I THINK THAT'S A
17 MISCHARACTERIZATION OF THE TESTIMONY. I DON'T --
18 THERE WAS NEVER ANY TESTIMONY THEY WERE TRYING TO
19 AVOID PAYING PREMIUMS ON WORKERS' COMP FOR NURSES.
20 THAT WASN'T THE MOTIVATION FOR CLASSIFYING THAT WAY.

21 **WITNESS ANSWERS:**

22 A. I THINK THEY JUST WANTED THEM TO BE AWARE ---

23 **BY THE COMMISSIONER:**

24 HOLD ON. MR. SAMUELS, CAN -- ALL RIGHT. YOU
25 CAN ANSWER THE QUESTION, MA'AM.

1 **WITNESS RESUMES:**

2 A. I WAS GONNA SAY I JUST THINK THEY WANTED THEM TO BE
3 AWARE OF THE SITUATION. IT WAS DISCLOSURE; HERE'S
4 WHAT WE GOT, YOU KNOW.

5 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

6 Q. AND YOU WOULD AGREE THE DISCLOSURE DID NOT INCLUDE
7 ALL THE DOCUMENTS THAT THE NURSES SIGNED THAT
8 ACTUALLY STATED THEY WERE EMPLOYEES RATHER THAN
9 INDEPENDENT CONTRACTORS?

10 **BY MR. GOODWYN:**

11 OBJECTION. AGAIN, HE ASKED THAT IN HIS PRIOR
12 QUESTIONS, AND JUST A MINUTE AGO HE ASKED IT. HE'S
13 BEEN INTO THIS MULTIPLE TIMES NOW.

14 **BY THE COMMISSIONER:**

15 I THINK THAT'S BEEN ASKED BY VARIOUS PARTIES.

16 **BY MR. SAMUELS:**

17 FAIR ENOUGH. I'M FINISHED YOUR HONOR. THANK
18 YOU.

19 **BY THE COMMISSIONER:**

20 ALL RIGHT. THANK YOU, MA'AM. THAT CONCLUDES
21 THIS WITNESS.

22 **BY THE WITNESS:**

23 CAN I GO BACK TO GREENVILLE?

24 **BY THE COMMISSIONER:**

25 YES, MA'AM.

1 BY THE WITNESS:

2 THANK YOU.

3 BY MR. GOODWYN:

4 HE JUST LET ME KNOW THAT THE DOCUMENT IN
5 RESPONSE TO THE SUBPOENA, THAT THEY RECEIVED BY
6 EMAIL. I'M GOING TO GO BACK TO MY OFFICE TO PRINT
7 IT OUT. THEY SAY THEY MIGHT WANT IT FOR THE NEXT
8 WITNESS.

9 BY THE COMMISSIONER:

10 WE ARE GOING TO TAKE A BREAK FOR LUNCH.

11 (OFF THE RECORD)

12 BY THE COMMISSIONER:

13 SIR, IF YOU'D RAISE YOUR RIGHT HAND FOR ME,
14 PLEASE.

15 BY THE WITNESS:

16 YES, MA'AM.

17 * * * * *

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

21 ALBERT HYNDSHAW,

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

24 BY THE COMMISSIONER:

25 YOUR WITNESS, SIR.

DIRECT EXAMINATION BY MR. GOODWYN:

Q. MR. HYNDSHAW, CAN YOU TELL THE COURT HOW OLD YOU ARE.

A. SEVENTY-ONE.

Q. ALL RIGHT. AND WHAT -- WHAT DO YOU DO FOR A LIVING?

A. I'M AN INSURANCE AGENT.

Q. OKAY. FOR WHO?

A. FOR KEENAN SUGGS HUB.

Q. OKAY. AND HOW LONG HAVE YOU BEEN WORKING AS AN INSURANCE AGENT FOR KEENAN SUGGS HUB?

A. FOR KEENAN SUGGS HUB, FOUR YEARS.

Q. ALL RIGHT. AND BEFORE THAT?

A. BEFORE THAT WE WERE SULLIVAN AND COMPANY, AND THAT WAS 35 YEARS.

Q. THREE TO FIVE OR THIRTY-FIVE?

A. THIRTY-FIVE.

Q. THIRTY-FIVE YEARS. OKAY. SO, DID YOU WORK IN INSURANCE BEFORE THAT?

A. YES.

Q. OKAY. HOW MANY TOTAL YEARS WOULD YOU SAY YOU'VE BEEN IN INSURANCE?

A. TOTAL YEARS, 37.

Q. OKAY. DO YOU HAVE ANY LICENSES OR CERTIFICATES?

A. YES. I HAVE A SOUTH CAROLINA INSURANCE AGENT'S LICENSE, BROKER'S LICENSE, CERTIFICATES IN CPCU,

1 ARM. CPCU IS CERTIFIED PROPERTY CASUALTY
2 UNDERWRITER. ARM IS ASSOCIATE RISK MANAGER.

3 Q. ALL RIGHT. AND HOW LONG HAVE YOU HAVE BEEN SELLING
4 AND BROKERING WORKERS' COMPENSATION INSURANCE?

5 A. SINCE 1981.

6 Q. OKAY. ALL RIGHT. IN 2015 AND 2014, WERE YOU
7 WORKING WITH CONDUSTRIAL ---

8 A. YES.

9 Q. --- TO HELP FIND THEM WORKERS' COMPENSATION
10 INSURANCE?

11 A. YES.

12 Q. WHEN DID YOU FIRST START WORKING WITH CONDUSTRIAL TO
13 HELP FIND THEM SOME WORKERS' COMPENSATION INSURANCE?

14 A. THIS TIME IT WAS PROBABLY -- PROBABLY IN EARLY
15 JANUARY, FEBRUARY OF '14.

16 Q. OKAY. WAS SOMEBODY ELSE WITH KEENAN SUGGS WORKING
17 WITH THEM BEFORE THAT?

18 A. NO. WE WERE -- SULLIVAN AND COMPANY SOLD OUT TO
19 KEENAN SUGGS IN 2013. WE HAD A BROKER IN OUR OFFICE
20 AT SULLIVAN AND COMPANY THAT FIRST WROTE THE
21 WORKERS' COMPENSATION FOR CONDUSTRIAL BACK IN
22 PROBABLY 2002.

23 Q. OKAY. AND DID THAT PERSON LEAVE AND YOU KIND OF ---

24 A. YES.

25 Q. --- INHERITED THE ACCOUNT?

1 A. NO. SOMEBODY ELSE INHERITED THE ACCOUNT.

2 Q. OKAY. SO, HOW DID YOU GET INVOLVED, THEN?

3 A. WHEN THE PERSON THAT WAS HANDLING IT LEFT KEENAN
4 SUGGS IN 2013, I GOT INVOLVED ON THE PROPERTY AND
5 CASUALTY SIDE, THE OTHER LINES OTHER THAN WORKERS'
6 COMPENSATION. AND THEN WHEN THE WORKERS'
7 COMPENSATION ISSUE CAME UP IN 2014/2015, I GOT
8 INVOLVED IN THE WORK COMP FOR CONDUSTRIAL.

9 Q. OKAY. WHEN CONDUSTRIAL -- WHEN YOU FIRST GOT
10 INVOLVED WITH CONDUSTRIAL, WHAT DID CONDUSTRIAL TELL
11 YOU THAT THEY WANTED OR NEEDED?

12 A. THEY NEEDED WORKERS' COMPENSATION COVERAGE.

13 Q. DID THEY NEED -- WERE THEY LOOKING FOR JUST A
14 PIECEMEAL PLAN TO COVER SOME EMPLOYEES, OR DID THEY
15 NEED A COMPREHENSIVE PLAN?

16 A. WORKERS' COMPENSATION COVERS ALL EMPLOYEES, SO THEY
17 WERE LOOKING FOR A WORKERS' COMPENSATION PLAN TO
18 COVER ALL EMPLOYEES.

19 Q. ALL RIGHT. WHAT DO YOU MEAN WHEN YOU SAY WORKERS'
20 COMPENSATION COVERS ALL EMPLOYEES?

21 A. IF THEY'RE AN EMPLOYEE OF CONDUSTRIAL, THEN THEY ARE
22 TO HAVE COVERAGE.

23 Q. OKAY. ALL RIGHT. WHEN YOU FIRST STARTED WORKING
24 WITH CONDUSTRIAL, WERE YOU MADE AWARE OF THE GROUP
25 OF INDEPENDENT CONTRACTOR NURSES THAT CONDUSTRIAL

1 HAD?

2 A. YES.

3 Q. DID YOU EVER HEAR THE NAME MEDUSTRIAL?

4 A. NOT INITIALLY.

5 Q. OKAY. WHEN DID YOU FIRST HEAR THE NAME MEDUSTRIAL?

6 A. SOMETIME LATER IN NEGOTIATIONS.

7 Q. OKAY. AND WHAT WAS YOUR UNDERSTANDING OF THE
8 RELATIONSHIP BETWEEN MEDUSTRIAL AND CONDUSTRIAL?

9 A. CONDUSTRIAL IS THE EMPLOYER, THE FIRST-NAMED
10 INSURED, IF YOU WILL, ON THE WORKERS' COMPENSATION
11 POLICY. MEDUSTRIAL WAS SIMPLY A NAME THAT THEY USED
12 TO IDENTIFY A GROUP OF EMPLOYEES WITHIN CONDUSTRIAL.
13 BUT MEDUSTRIAL HAD NO -- WAS NOT A LEGAL ENTITY, DID
14 NOT HAVE A FEDERAL I.D. NUMBER ON ITS OWN. IT WAS
15 JUST A NAME THEY USED TO IDENTIFY PEOPLE IN-HOUSE.

16 Q. OKAY. DID CONDUSTRIAL EXPRESS ANY CONCERNS TO YOU
17 ABOUT COVERAGE FOR THESE 1099 NURSES SHOULD ONE DAY
18 SOMEBODY FIND THEM TO BE AN EMPLOYEE?

19 A. YES.

20 Q. OKAY. AND WHAT WAS -- WHAT DID YOU TELL THEM?

21 A. WELL, BASICALLY, WE GAVE THEM THE DEFINITION OF
22 EMPLOYEE, AND WE GAVE THEM THE DEFINITION OF
23 INDEPENDENT CONTRACTOR AND THEN EXPLAINED THAT AT
24 THE END OF A POLICY YEAR A COMPANY WILL COME IN AND
25 DO A WORKERS' COMPENSATION PAYROLL AUDIT, AND IF THE

1 AUDITOR DETERMINES THAT THAT INDEPENDENT CONTRACTOR
2 THAT THEY HAVE CLASSIFIED IS ACTUALLY AN EMPLOYEE,
3 THEN THEY WILL CHARGE A RATE FOR THAT INDEPENDENT
4 CONTRACTOR CONSIDERING THAT PERSON TO BE AN
5 EMPLOYEE.

6 Q. OKAY. WHAT HAPPENS IF THERE'S A CLAIM FOR ONE OF
7 THESE INDEPENDENT CONTRACTORS AND THEY TRY TO SAY
8 THAT THEY'RE AN EMPLOYEE?

9 A. STILL GONNA HAVE TO STAND THE SAME TEST, WHETHER
10 IT'S DONE ON AUDIT OR WHEN A CLAIM ARISES, APPLY THE
11 SAME QUALIFICATIONS AS TO ARE THEY A TRUE
12 INDEPENDENT CONTRACTOR OR ARE THEY AN EMPLOYEE. IF
13 THEY'RE DEEMED TO BE AN EMPLOYEE, THEN THEY WOULD BE
14 COVERED.

15 Q. OKAY. AND IS THAT THE TYPE OF POLICY YOU WERE
16 LOOKING TO PLACE CONDUSTRIAL WITH, THE TYPE OF
17 POLICY THAT WOULD BEHAVE THE WAY YOU JUST DESCRIBED?

18 A. DEFINITELY.

19 Q. OKAY. AND WAS THAT YOUR CUSTOM AT THE TIME?

20 A. YES.

21 Q. AT THAT TIME, WHEN CONDUSTRIAL -- WHEN YOU FIRST
22 STARTED WORKING WITH CONDUSTRIAL IN EARLY 2014, WAS
23 CONDUSTRIAL LOOKING TO GO DIRECT TO AN INSURANCE
24 CARRIER OR GO SOME OTHER KIND OF INTERMEDIARY, LIKE
25 AN A.S.O./P.E.O.?

1 A. WE WERE CHARGED WITH FINDING THEM A WORKERS'
2 COMPENSATION MARKET. SO, WE LOOKED FOR STANDARD
3 COMPANIES, GOING DIRECT TO COMPANIES. WE LOOKED FOR
4 ALTERNATIVE HIGH-DEDUCTIBLE PROGRAMS THAT ARE OUT
5 THERE AVAILABLE FROM DIFFERENT COMPANIES. WE LOOKED
6 AT SUBSTANDARD MARKETS. WE LOOKED AT OTHER STAFFING
7 COMPANIES. WE LOOKED AT P.E.O.s. WE LOOKED AT
8 A.S.O.s.

9 Q. OKAY. AND I UNDERSTAND YOU ULTIMATELY ENTERED INTO
10 NEGOTIATIONS OR HELPED FACILITATE THE NEGOTIATIONS
11 BETWEEN CONDUSTRIAL AND COUNTRYWIDE?

12 A. CORRECT.

13 Q. ALL RIGHT. WHY COUNTRYWIDE? WHAT WAS -- WHICH ONE
14 OF THOSE OPTIONS WAS COUNTRYWIDE?

15 A. WE WERE BASICALLY OUT OF OPTIONS. THE STANDARD
16 COMPANIES DID NOT WANT TO INSURE CONDUSTRIAL, AND WE
17 WERE FACED WITH EITHER GOING TO THE ASSIGNED RISK,
18 GETTING SEPARATE POLICIES IN EACH STATE, OR LOOKING
19 AT THE P.E.O. OFFERED BY COUNTRYWIDE.

20 Q. OKAY. ALL RIGHT. EXPLAIN -- EXPLAIN WHAT YOU MEAN
21 BY THE P.E.O. OFFERED BY COUNTRYWIDE.

22 A. COUNTRYWIDE HAD A P.E.O. PROGRAM WHICH OFFERED
23 MULTIPLE SERVICES, TO INCLUDE H.R. SERVICES, PAYROLL
24 SERVICES, PAYING TAXES ON THE EMPLOYEES' PAYROLLS,
25 AND WORKERS' COMPENSATION. THEY ALSO HAD AVAILABLE

1 GROUP MEDICAL BENEFIT PACKAGES, JUST ALL TYPES OF
2 SERVICES TO SUPPORT A CO-EMPLOYER-TYPE ORGANIZATION.

3 Q. OKAY. AND IN A P.E.O. ARRANGEMENT, IS IT ALWAYS A
4 CO-EMPLOYER-TYPE SITUATION, OR CAN YOU HAVE A P.E.O.
5 WITHOUT A CO-EMPLOYER ARRANGEMENT?

6 A. FAR AS I KNOW, P.E.O. IS A CO-EMPLOYER ORGANIZATION.
7 IF YOU WANT TO BE A -- DON'T WANT TO BE A CO-
8 EMPLOYER, THEN YOU GO THE A.S.O. ROUTE.

9 Q. OKAY. AND IF YOU GO A P.E.O. ROUTE, WHOSE NAME --
10 WHO IS THE NAMED INSURED IN THE P.E.O. SITUATION?

11 A. THE P.E.O.

12 Q. AND IN THE A.S.O. SITUATION, WHO IS THE NAMED
13 INSURED?

14 A. THE CLIENT.

15 Q. OKAY. IN THIS PARTICULAR SITUATION WITH CONDUSTRIAL
16 AND COUNTRYWIDE, WHO WAS THE -- ENDED UP BEING THE
17 NAMED INSURED?

18 A. THE FIRST NAMED INSURED WAS COUNTRYWIDE.

19 Q. OKAY. IS THAT -- THAT'S CONSISTENT WITH THE P.E.O.
20 MODEL?

21 A. YES.

22 Q. OKAY. DID YOU HAVE A -- OR DID YOU PARTICIPATE IN A
23 MEETING IN 2015 WITH COUNTRYWIDE REPRESENTATIVES AND
24 CONDUSTRIAL REPRESENTATIVES?

25 A. YES, I DID.

1 Q. ALL RIGHT. DO YOU RECALL WHO WAS THERE FROM
2 COUNTRYWIDE?

3 A. THE FIRST MEETING WAS WITH SCOTT HANSON AND THE
4 SECOND MEETING -- WELL, OKAY. SCOTT HANSON FROM
5 COUNTRYWIDE, TOM SEARS, TONY DURHAM FROM
6 CONDUSTRIAL, AND JO ANN WHITAKER AND MYSELF FROM
7 KEENAN SUGGS.

8 Q. OKAY. AND WAS THAT -- WAS THAT -- DID THAT MEETING
9 TAKE PLACE BEFORE THE CONTRACT WAS EXECUTED BETWEEN
10 COUNTRYWIDE AND CONDUSTRIAL?

11 A. MY RECOLLECTION IS IT TOOK PLACE AFTER THE CONTRACT
12 WAS EXECUTED.

13 Q. OKAY. HOW -- HOW DID THE -- HOW WERE THE TERMS OF
14 THE CONTRACT NEGOTIATED BEFORE EVER MEETING WITH
15 ANYBODY?

16 A. THEY WERE -- THEY WERE DONE BY EMAILS, PHONE CALLS,
17 CONFERENCE CALLS.

18 Q. PRIOR TO THE CONTRACT BEING EXECUTED, WAS THERE ANY
19 DISCUSSION THAT YOU WERE PART OF WHERE CONDUSTRIAL
20 LET COUNTRYWIDE KNOW ABOUT THE 1099 NURSES?

21 A. IN THE INITIAL DISCUSSIONS, THERE WAS NO DISCUSSION
22 ON 1099 NURSES BECAUSE THE APPLICATION WAS MADE FOR
23 EMPLOYEES OF CONDUSTRIAL.

24 Q. OKAY. WAS -- WHEN WAS THE DISCUSSION ABOUT THE 1099
25 NURSES MADE?

1 A. PROBABLY A MONTH OR TWO AFTERWARDS.

2 Q. ALL RIGHT. IS -- WELL, LET ME ASK YOU THIS. DID
3 YOU SEE THE CONTRACT VERSIONS GOING BACK AND FORTH
4 BETWEEN CONDUSTRIAL AND COUNTRYWIDE? WERE YOU PRIVY
5 TO THAT NEGOTIATION?

6 A. YES, I DID SEE THEM.

7 Q. OKAY. AND IS THIS -- THIS IS -- I'LL REPRESENT TO
8 YOU IT'S BEEN TESTIFIED TO AS THE FINAL AGREEMENT.
9 DOES THAT LOOK LIKE THE AGREEMENT THAT YOU SAW GOING
10 BACK AND FORTH?

11 A. IT'S -- IT'S SIGNED. THE CONTRACT I REMEMBER AS
12 BEING FINAL HAD BEEN MODIFIED AND HAD AN ADDENDUM.

13 Q. OKAY. I THINK THERE IS AN ADDENDUM TO THIS ONE.

14 **BY MR. ALFORD:**

15 THERE IS.

16 **BY MR. GOODWYN:**

17 I DON'T KNOW IF IT'S IN HERE OR NOT.

18 **BY MS. RICHARDSON:**

19 I THINK IT WAS ENTERED AS A SEPARATE EXHIBIT.

20 **BY MR. ALFORD:**

21 YES. IT MIGHT BE JUST THE NEXT ONE
22 SEQUENTIALLY PROBABLY.

23 **BY MR. SAMUELS:**

24 IT'S EXHIBIT "A" TO THE CONTRACT. I HAVE IT AT
25 TAB "F," PAGES 243 THROUGH 252 OF CLAIMANT'S APAs.

1 BY THE COMMISSIONER:

2 CONDUSTRIAL TWO. MR. GOODWYN HERE'S A COPY, IF
3 YOU'LL RETURN IT TO ME.

4 BY MR. GOODWYN:

5 OKAY. YEAH. CAN YOU GRAB THAT? I JUST ---

6 BY THE COMMISSIONER:

7 I BELIEVE THAT'S WHAT...

8 BY MR. GOODWYN:

9 OKAY.

10 BY MS. RICHARDSON:

11 DEFENDANTS' EXHIBIT THREE, CONDUSTRIAL.

12 BY MR. GOODWYN:

13 OKAY. MAYBE THIS IS IT. YEAH, THIS IS IT
14 RIGHT HERE. OKAY. I PASSED RIGHT OVER IT.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. DOES THAT APPEAR TO BE THE ADDENDUM YOU -- THAT YOU
17 RECALL?

18 A. YES.

19 BY THE COMMISSIONER:

20 ALL RIGHT. LET'S -- IS THAT, INDEED,
21 CONDUSTRIAL'S TRIAL EXHIBIT THREE THAT HE'S LOOKING
22 AT?

23 BY MR. GOODWYN:

24 YES, THAT'S IT.

25 BY THE COMMISSIONER:

1 ALL RIGHT.

2 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

3 Q. OKAY. WAS IT YOUR UNDERSTANDING THAT THIS AGREEMENT
4 WAS A P.E.O. AGREEMENT BETWEEN THE TWO?

5 A. RIGHT.

6 BY MR. BEARD:

7 OBJECTION.

8 BY MR. ALFORD:

9 WELL, IT'S LEADING.

10 BY MR. GOODWYN:

11 IT WASN'T.

12 BY MR. ALFORD:

13 IT'S LEADING BECAUSE IT SUGGESTS THE ANSWER.
14 HAVING SAID THAT, I ALMOST THINK THAT'S SORT OF A
15 QUASI LEGAL ---

16 BY MR. GOODWYN:

17 I MEAN, HE IS THE INSURANCE PROFESSIONAL. HE
18 SAID HE WAS TRYING TO GET THEM A P.E.O.

19 BY THE COMMISSIONER:

20 I THINK THE ULTIMATE DETERMINATION IS GOING TO
21 BE A LEGAL DETERMINATION. BUT IF YOU WILL ASK IT IN
22 A NON-LEADING MANNER, OF COURSE, YOU CAN GO FORWARD
23 WITH THE QUESTION.

24 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. WHAT TYPE OF AN AGREEMENT DID YOU

1 DETERMINE THIS TO BE?

2 A. IT WAS REPRESENTED AS A P.E.O. AGREEMENT.

3 Q. BY WHO?

4 A. BY COUNTRYWIDE.

5 Q. OKAY. ALL RIGHT. AND HAD ONE OF THESE INDEPENDENT
6 CONTRACTOR NURSES BECOME INJURED AND WAS FOUND TO BE
7 AN EMPLOYEE LATER, WAS IT YOUR UNDERSTANDING THAT
8 THEY WOULD BE COVERED BY -- UNDER THIS AGREEMENT?

9 **BY MR. BEARD:**

10 OBJECTION; LEADING.

11 **BY MR. ALFORD:**

12 OBJECTION; LEADING.

13 **BY THE COMMISSIONER:**

14 SUSTAINED.

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

16 Q. LET ME ASK YOU, IF AN INDEPENDENT CONTRACTOR NURSE
17 WAS HURT AND MADE A CLAIM, CLAIMING TO BE AN
18 EMPLOYEE AND WAS FOUND TO BE AN EMPLOYEE, HOW WOULD
19 -- WOULD THIS AGREEMENT HAVE BEEN APPLICABLE?

20 A. YES.

21 Q. OKAY. IS THIS -- WERE THE P.E.O. AGREEMENTS THAT
22 YOU REGULARLY NEGOTIATED AND BROKERED SUBSTANTIALLY
23 SIMILAR TO THIS AGREEMENT?

24 A. THIS IS ACTUALLY THE ONLY P.E.O. AGREEMENT I'VE BEEN
25 INVOLVED IN.

1 Q. DID YOU HAVE -- I THINK YOU TESTIFIED A MINUTE AGO
2 YOU HAD MEETINGS WITH SCOTT HANSON. AND DID YOU
3 TESTIFY THAT YOU HAD A MEETING WITH ZACH COLLIER? I
4 CAN'T REMEMBER.

5 A. I DID NOT TESTIFY, BUT I DID HAVE A MEETING WITH
6 ZACH COLLIER.

7 Q. OKAY. WHEN YOU HAD YOUR MEETING WITH SCOTT HANSON,
8 WAS IT MADE CLEAR THAT THERE WERE 1099 NURSES?

9 A. YES.

10 Q. AND THE SAME QUESTION FOR ZACH COLLIER. DID HE --
11 WAS HE FULLY AWARE THAT THERE WERE 1099 NURSES WITH
12 CONDUCTUAL?

13 A. CORRECT.

14 Q. AT EITHER OF THOSE MEETINGS, WAS THERE ANY OBJECTION
15 RAISED TO THE EXISTENCE OF THESE 1099 NURSES?

16 A. NO.

17 Q. WAS THERE EVER ANY SUGGESTION THAT THEY WOULD NOT BE
18 COVERED UNDER THE AGREEMENT ENTERED INTO BETWEEN THE
19 TWO PARTIES?

20 A. NO.

21 Q. AFTER -- AFTER THE BUSINESS WAS WRITTEN, DID YOU
22 RECEIVE A COMMISSION CHECK ON THIS JOB, THE SALE?

23 A. I RECEIVED A COMMISSION CHECK FROM THE INTERMEDIARY,
24 SONGER AND ASSOCIATES.

25 Q. OKAY. WAS IT WHAT YOU EXPECTED IT TO BE?

1 A. NO.

2 BY MR. ALFORD:

3 YOUR HONOR, I'M GOING TO INTERPOSE AN OBJECTION
4 AS TO THE RELEVANCE OF THIS.

5 BY THE COMMISSIONER:

6 MR. GOODWYN?

7 BY MR. GOODWYN:

8 IT GOES TO CREDIBILITY, YOUR HONOR.

9 BY MR. BEARD:

10 OF SONGER AND ASSOCIATES?

11 BY THE COMMISSIONER:

12 HIS FEE? I'M NOT SURE I UNDERSTAND HOW HIS FEE
13 WOULD GO TO CREDIBILITY.

14 BY MR. GOODWYN:

15 COUNTRYWIDE SHORTED THE FEE. THEY REPORTED THE
16 WRONG PAYROLL.

17 BY MR. BEARD:

18 HE JUST SAID HE GOT THE FEE FROM SONGER AND
19 ASSOCIATES.

20 BY MR. ALFORD:

21 IT CAME FROM SONGER.

22 BY THE COMMISSIONER:

23 OKAY. I'M ---

24 BY MR. BEARD:

25 I HAVEN'T SEEN A SONGER PERSON HERE OR EVEN

1 IDENTIFIED.

2 **BY THE COMMISSIONER:**

3 I'M GOING TO SUSTAIN THE OBJECTION AT THIS
4 POINT.

5 **BY MR. ALFORD:**

6 FURTHER, YOUR HONOR ---

7 **BY THE COMMISSIONER:**

8 I'VE SUSTAINED -- I SUSTAINED THE OBJECTION.
9 ALL RIGHT. YOU CAN GO FORWARD.

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

11 Q. DURING THE NEGOTIATION PROCESS, DID YOU HAVE ANY
12 CONVERSATIONS WITH COUNTRYWIDE ABOUT WHO THE INSURED
13 AND CARRIERS WOULD BE?

14 A. NO, I DID NOT.

15 Q. DID YOU EVER LEARN ANY INFORMATION ABOUT WHO THESE
16 -- WHO COUNTRYWIDE WOULD ULTIMATELY BEING PLACING
17 THE INSURANCE WITH?

18 A. ONCE THE COVERAGE WAS MADE EFFECTIVE, SUPPOSEDLY
19 COVERAGE WAS TO BE ISSUED THROUGH A BERKLEY COMPANY
20 NAMED ROCKPORT.

21 Q. OKAY. DID THAT TURN OUT TO BE THE CASE?

22 A. NO.

23 Q. OKAY. WHAT HAPPENED?

24 A. THERE WAS NO COVERAGE FROM THE PERIOD OF MARCH 25TH,
25 2015, UNTIL GUARANTEE STEPPED IN IN JULY.

1 Q. ALL RIGHT. AND, TO YOUR KNOWLEDGE, WERE ANY
2 PREMIUMS REFUNDED TO CONDUSTRIAL?

3 A. NOT THAT I'M AWARE OF.

4 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
5 ---

6 BY MR. GOODWYN:

7 THIS IS EXHIBIT FOUR OF THE KEENAN SUGGS
8 LETTER. I CAN'T REMEMBER WHOSE -- WHO INTRODUCED
9 THIS.

10 BY MS. RICHARDSON:

11 GUARANTEE.

12 BY MR. GOODWYN:

13 THIS IS GUARANTEE'S TRIAL EXHIBIT FOUR. IS
14 THAT HOW IT SHOULD BE REFERRED TO?

15 BY THE COMMISSIONER:

16 YES.

17 BY MR. GOODWYN:

18 IT MAY BE UP HERE.

19 BY THE COMMISSIONER:

20 MR. GOODWYN, THERE'S A QUICK COPY RIGHT THERE.

21 BY MR. GOODWYN:

22 I'VE GOT A COPY RIGHT HERE.

23 BY THE COMMISSIONER:

24 NO, BUT YOU CAN SHOW THAT TO HIM. IT'S
25 IDENTICAL TO THE ---

1 BY MR. GOODWYN:

2 OH, OKAY. THANK YOU.

3 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

4 Q. ALL RIGHT. IS THIS IS A LETTER THAT'S FROM YOU?

5 A. CORRECT.

6 Q. AND WHO IS IT TO?

7 A. TO TONY DURHAM.

8 Q. OKAY. WHY DID YOU WRITE THIS LETTER?

9 A. TONY HAD ASKED ME TO CLARIFY TWO ISSUES: ONE,
10 CLASSIFICATIONS USED ON THE POLICY AND, TWO, THE
11 STATUS OF THE TERM MEDUSTRIAL.

12 Q. OKAY. AND LET'S GO THROUGH THE CLASSIFICATION CODES
13 AT THE END OF THAT FIRST PARAGRAPH, THAT 8833 AND
14 8829. ARE YOU FAMILIAR GENERALLY WITH THESE CLASS
15 CODES?

16 A. YES.

17 Q. IS THAT SOMETHING YOU HAVE TO DEAL WITH ON A REGULAR
18 BASIS?

19 A. NOT ON A REGULAR BASIS, BUT WE DO DEAL WITH IT, YES.

20 Q. OKAY. THESE NURSES IN -- AT SCDC, WOULD THESE --
21 ONE OR BOTH OF THESE CODES BE THE PROPER CLASS CODE
22 FOR THOSE TYPES OF NURSES?

23 A. THE 8833 CLASS WOULD BE APPROPRIATE.

24 Q. OKAY. ALL RIGHT. CAN YOU READ NUMBER ONE UNDER THE
25 UNDERWRITING ISSUES PARAGRAPH AT THE BOTTOM?

1 A. THE BERKLEY UNDERWRITING ISSUE?

2 Q. YES.

3 A. OKAY. "WE WERE INFORMED THAT BERKLEY WAS THE
4 INSURING COMPANY FOR THE WORKERS' COMPENSATION.
5 DURING NUMEROUS FAILED ATTEMPTS TO GET CERTIFICATES
6 OF INSURANCE ISSUED, WE SOUGHT CONFIRMATION OF
7 BERKLEY BEING THE CARRIER. A CLAIM WAS PRESENTED TO
8 BERKLEY BUT DENIED, AS THEY INDICATED THEY WERE NOT
9 THE WORKERS' COMPENSATION CARRIER FOR CONDUSTRIAL."

10 Q. KEEP GOING ON THE NEXT PAGE.

11 A. "DURING OUR DISCUSSIONS, BOTH SCOTT AND ZACH DID NOT
12 CONFIRM NOR DENY THAT BERKLEY WAS THE CARRIER IN
13 EFFECT. BOTH SCOTT AND ZACH CONFIRMED THAT
14 CONDUSTRIAL H.R. WOULD INDEMNIFY BERKLEY AND GET THE
15 CLAIM PAID."

16 Q. I'M SORRY. CONFIRM THAT WHO WOULD INDEMNIFY? I
17 THINK YOU SAID CONDUSTRIAL. THAT WOULD BE
18 COUNTRYWIDE THERE.

19 A. I'M SORRY; COUNTRYWIDE H.R.

20 Q. OKAY.

21 A. OKAY? "CONDUSTRIAL (SIC) H.R. WOULD INDEMNIFY
22 BERKELEY TO GET THE CLAIM PAID. COUNTRYWIDE H.R.
23 DID PLACE THE COVERAGE WITH GUARANTEE IN JULY."

24 Q. OKAY. SO DOES THAT KIND OF SUMMARIZE WHAT YOU WERE
25 YOU WERE TELLING ME ABOUT THE COVERAGE DURING THE

1 EARLY MONTHS OF THE AGREEMENT BETWEEN CONDUSTRIAL
2 AND COUNTRYWIDE?

3 A. YES.

4 Q. ALL RIGHT. SO, TO YOUR UNDERSTANDING, WAS THERE
5 EVER ANY COVERAGE BEFORE GUARANTEE WAS PUT ON THE --
6 AS CARRIER?

7 A. NOT FROM THE PERIOD OF MARCH 25 UNTIL JULY.

8 Q. OKAY. DID COUNTRYWIDE EVER PROVIDE ANY EXPLANATION
9 TO YOU AS TO WHY THAT WAS THE CASE?

10 A. NO.

11 Q. IS THAT PROPER?

12 A. NO.

13 **BY MR. ALFORD:**

14 OBJECTION. WHAT -- IS IT PROPER? IS THERE A
15 FOUNDATION FOR THAT? IS THERE A -- IS IT ---

16 **BY MR. GOODWYN:**

17 I'LL WITHDRAW THE QUESTION.

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

19 Q. HAVE YOU EVER WORKED WITH COUNTRYWIDE OUTSIDE OF
20 THIS BROKERAGE?

21 A. NO.

22 Q. I'M GOING TO SHOW YOU -- THIS IS C.S.S.G. TRIAL
23 EXHIBIT THREE. IT'S A GROUP OF EMAILS. THERE'S A
24 FEW EMAIL CHAINS THAT WERE PRODUCED BY KEENAN SUGGS
25 IN RESPONSE TO A SUBPOENA, BETWEEN JO ANN WHITAKER,

1 YOU, AND SOME OTHER FOLKS RELATED TO THIS ISSUE. I
2 THINK ALL OF THESE ARE AFTER THE INJURY IN SEPTEMBER
3 2015. A LOT OF THEM RELATE TO YOU ALL'S EFFORTS TO
4 TRY TO FIND SOME COVERAGE FOR THESE 1099 NURSES. DO
5 YOU RECALL HAVING THESE EXCHANGES ---

6 A. YES.

7 Q. --- ABOUT THAT TIME FRAME?

8 A. YES.

9 Q. ALL RIGHT. AND WHAT PROMPTED THE EFFORTS TO TRY TO
10 FIND COVERAGE FOR THESE 1099 WORKERS?

11 A. WELL, I THINK THERE WAS CONCERN ON THE PART OF
12 CONDUSTRIAL THAT IF THERE WAS A QUESTION AS TO
13 COVERAGE THEY WANTED TO MAKE SURE THAT THEY WERE
14 HAVING THE PROPER COVERAGE IN PLACE.

15 Q. OKAY. PRIOR TO THAT, DURING THE PERIOD OF THE
16 ARRANGEMENT BETWEEN CONDUSTRIAL AND COUNTRYWIDE, DID
17 YOU THINK THAT YOU HAD PUT THEM IN A PLACE WHERE
18 THEY HAD A PROPER COVERAGE?

19 A. YES.

20 Q. OKAY. AND DID THIS CASE AND THE FACT THAT
21 COUNTRYWIDE HAD DENIED THE CLAIM, DID THAT -- IS
22 THAT WHAT KIND OF PROMPTED THIS EFFORT?

23 A. YES.

24 Q. OKAY. AND SO, IS IT FAIR TO SAY THAT YOU ALL WERE
25 JUST TRYING TO FIND ALTERNATIVE WAYS TO TRY TO FIND

1 COVERAGE FOR THESE NURSES?

2 A. CORRECT.

3 BY MR. ALFORD:

4 YOUR HONOR, I'M GOING TO OBJECT TO LEADING
5 AGAIN. I'M GOING TO LET THE QUESTION GO, BUT JUST
6 TRY.

7 BY THE COMMISSIONER:

8 ALL RIGHT. MR. GOODWYN, IF YOU CAN -- YOU MAY
9 ANSWER THE QUESTION -- THAT QUESTION, SIR.

10 BY MR. ALFORD:

11 HE ALREADY DID SO FAST. I MEAN, IT WAS...

12 BY THE COMMISSIONER:

13 I ACTUALLY DID NOT HEAR THE ANSWER TO THAT.

14 BY MR. ALFORD:

15 IT WAS YES.

16 BY THE COMMISSIONER:

17 ALL RIGHT. CAN WE STAY WITH THE ---

18 BY MR. GOODWYN:

19 I THINK THAT'S ALL I HAVE.

20 BY THE COMMISSIONER:

21 ALL RIGHT. MR. SAMUELS?

22 BY MR. SAMUELS:

23 WOULD IT BE POSSIBLE TO TAKE A LITTLE, QUICK
24 BREAK FOR THE OLD BALD MAN?

25 BY THE COMMISSIONER:

1 CERTAINLY.

2 (OFF THE RECORD)

3 BY THE COMMISSIONER:

4 MR. SAMUELS?

5 BY MR. SAMUELS:

6 THANK YOU, YOUR HONOR.

7 CROSS EXAMINATION BY MR. SAMUELS:

8 Q. MR. HYNDSHAW, MY NAME IS STEPHEN SAMUELS, AND I
9 REPRESENT RACHEL TURNER. I APPRECIATE YOUR BEING
10 HERE WITH US. I'M GOING TO ASK YOU ABOUT THE
11 DISCUSSION YOU HAD WITH THE 1099 NURSES BETWEEN THE
12 REPRESENTATIVES OF CONDUSTRIAL AND THE
13 REPRESENTATIVES OF COUNTRYWIDE. YOU WERE PRESENT AT
14 THOSE DISCUSSIONS; IS THAT CORRECT?

15 A. CORRECT.

16 Q. THAT DISCUSSION -- DID THAT DISCUSSION TAKE PLACE
17 AFTER THE SERVICE AGREEMENT BETWEEN COUNTRYWIDE HAD
18 BEEN EXECUTED?

19 A. THAT'S MY RECOLLECTION, YES.

20 BY THE COMMISSIONER:

21 I'M SORRY; I COULDN'T HEAR YOU, SIR.

22 BY THE WITNESS:

23 I SAID THAT WAS MY RECOLLECTION, YES.

24 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

25 Q. OKAY. SO, WOULD THAT MEAN, THEN, THAT BEFORE THIS

1 DOCUMENT WAS SIGNED CONDUSTRIAL HAD NEVER DISCLOSED
2 TO COUNTRYWIDE THAT THEY HAD A HUNDRED OR SO NURSES
3 THAT THEY WERE CLASSIFYING AS 1099s?

4 A. CONDUSTRIAL MAY HAVE DISCLOSED. I WAS NOT PART OF
5 THAT DISCUSSION.

6 Q. THAT DISCUSSION WAS THE FIRST YOU HEARD OF THE 1099
7 NURSES?

8 A. NO. WE -- WE HAD KNOWN ALL ALONG THAT CONDUSTRIAL
9 HAD 1099 NURSES.

10 Q. WERE THOSE 1099 NURSES, BEFORE THIS NEGOTIATION WITH
11 COUNTRYWIDE TOOK PLACE, COVERED UNDER ANY OF
12 CONDUSTRIAL'S WORKERS' COMPENSATION POLICIES?

13 A. NO, BECAUSE WE WERE -- THEY WERE CONSIDERED TO BE
14 TRUE INDEPENDENT CONTRACTORS. WHEN THEIR SERVICES
15 WERE CONTRACTED FOR, THEY SIGNED AN INDEPENDENT
16 CONTRACTOR AGREEMENT.

17 Q. AND I DON'T KNOW WHETHER YOU KNOW THIS OR NOT. YOU
18 DO UNDERSTAND THAT IN THE LAW AN INDEPENDENT
19 CONTRACTOR AGREEMENT IS NOT BINDING IN TERMS OF
20 WHETHER A PERSON IS CONSIDERED AN EMPLOYEE OR AN
21 INDEPENDENT CONTRACTOR? YOU ARE AWARE OF THAT?

22 A. NO.

23 Q. OKAY. SO, YOU DIDN'T KNOW THAT JUST BECAUSE A
24 COMPANY TRIES TO CLASSIFY SOMEBODY AS AN INDEPENDENT
25 CONTRACTOR, MAKES THEM SIGN AN AGREEMENT, THEY STILL

1 MAY BE FOUND TO BE AN EMPLOYEE BY THE WORKERS'
2 COMPENSATION COMMISSION OR THE IRS OR SOME OTHER
3 GOVERNMENTAL AGENCY?

4 A. WELL, THAT WAS -- THAT WAS PART OF THE REASONING FOR
5 MAKING THE INDEPENDENT CONTRACTOR DETERMINATION.
6 THEY STILL HAD TO MEET THE REQUIREMENTS OF WHO
7 CONTROLS THE WORK THAT THE INDEPENDENT CONTRACTOR IS
8 STILL DOING, WHICH I THINK REFERS TO THE LAW WHICH
9 YOU'RE ADDRESSING.

10 Q. GOTCHA. IF COUNTRYWIDE -- EXCUSE ME -- CONDUSTRIAL,
11 DID THEY DISCLOSE TO YOU SOME OF THE OTHER DOCUMENTS
12 THAT THEY WOULD HAVE HAD THEIR NURSES SIGN?

13 A. NO.

14 Q. I'D LIKE TO SHOW YOU SOME DOCUMENTS, IF I MAY.

15 **BY MR. SAMUELS:**

16 IF I MAY APPROACH, YOUR HONOR.

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

18 Q. I'M GOING TO SHOW YOU PAGE 140 OF CONDUSTRIAL'S APA
19 SUBMISSIONS. THIS IS JUST FOR IDENTIFICATION
20 PURPOSES SO THE COURT WILL UNDERSTAND WHAT WE'RE
21 REFERRING TO. SEE THIS FORM? HAVE YOU EVER SEEN
22 THIS FORM BEFORE?

23 A. NO, I HAVE NOT.

24 Q. WOULD YOU AGREE THAT THIS IS UNDER THE NAME
25 MEDUSTRIAL?

1 A. YES.

2 Q. DOES IT SAY CONDUSTRIAL ANYWHERE?

3 **BY MR. GOODWYN:**

4 YOUR HONOR, I'M GOING TO OBJECT TO HIM GOING
5 OVER DOCUMENTS THAT WE'VE GONE OVER BEFORE. HE SAYS
6 HE'S NEVER SEEN THE DOCUMENT. WE CAN ALL READ IT.
7 WE DON'T NEED THE WITNESS TO READ THE NAMES ON THE
8 DOCUMENT.

9 **BY THE COMMISSIONER:**

10 MR. SAMUELS, I THINK HE INDICATED HE DIDN'T --
11 THERE WERE NO DOCUMENTS DISCLOSED TO HIM THAT THE
12 NURSES HAD TO SIGN OR -- I FORGET THE EXACT WORDING,
13 BUT HE SAID THERE WAS NOTHING DISCLOSED TO HIM;
14 SO...

15 **BY MR. SAMUELS:**

16 WELL, I THINK, YOUR HONOR, HE'S INDICATED THAT
17 IN HIS VIEW THEY WOULDN'T BE COVERED UNDER WORKERS'
18 COMPENSATION INSURANCE BECAUSE, AS HE STATED, THEY
19 WERE, QUOTE, "TRUE INDEPENDENT CONTRACTORS," END
20 QUOTE. AND THE PURPOSE OF SHOWING HIM THE DOCUMENTS
21 BOTH GOES TO THE CREDIBILITY OF CONDUSTRIAL AND THE
22 REPRESENTATIONS THAT THEY HAVE MADE TO THEIR OWN
23 INSURANCE AGENT. SO THAT GOES TO CREDIBILITY. IT
24 GOES TO POTENTIAL FRAUD ISSUES. BUT IT ALSO GOES TO
25 THE EVIDENCE WILL SHOW THAT MS. TURNER WAS, IN FACT,

1 NOT A TRUE INDEPENDENT CONTRACTOR, BUT WAS, IN FACT,
2 A W-2.

3 **BY THE COMMISSIONER:**

4 ALL RIGHT. WELL, THAT'S ANOTHER DETERMINATION
5 OUTSIDE OF THIS WITNESS.

6 **BY MR. GOODWYN:**

7 THAT'S ARGUMENT FOR THE -- THAT'S ARGUMENT TO
8 THE COMMISSION AT THE END.

9 **BY THE COMMISSIONER:**

10 THAT'S WHAT I JUST SAID, MR. GOODWYN.

11 **BY MR. SAMUELS:**

12 THE REPRESENTATIONS MADE TO HIM BASED ON WHAT
13 HE'S ALREADY SAID ABOUT COVERAGE.

14 **BY THE COMMISSIONER:**

15 ALL RIGHT. BRIEFLY, MR. SAMUELS, BECAUSE HE
16 INDICATES HE'S NOT AWARE OF ANY OF THOSE. BUT I
17 UNDERSTAND YOUR POINT.

18 **BY MR. SAMUELS:**

19 I WILL DO IT QUICKLY, YOUR HONOR.

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

21 Q. I'LL SHOW YOU THIS DOCUMENT SPECIFICALLY. THIS IS
22 PAGE 272 OF THE CLAIMANT'S APA SUBMISSIONS. AND,
23 FIRST OFF, WOULD YOU AGREE THAT THIS IS DATED
24 FEBRUARY 8TH, 2013, AT THE BOTTOM?

25 A. YES.

1 Q. AND THIS IS TERMS OF EMPLOYMENT, CORRECT? AND
2 YOU'LL NOT BE ABLE TO READ THE SIGNATURES, BUT THE
3 FIRST ONE HAS BEEN ALREADY IDENTIFIED AS RACHEL
4 TURNER'S SIGNATURE. THE SECOND IS NATASHA RATHBURN,
5 WHO'S A MANAGER OF CONDUSTRIAL.

6 A. OKAY.

7 Q. WOULD YOU AGREE THAT ESSENTIAL TO THE DETERMINATION
8 OF WHETHER SOMEBODY IS AN EMPLOYEE VERSUS AN
9 INDEPENDENT CONTRACTOR IS WHETHER THE EMPLOYER HAS
10 THE RIGHT TO TERMINATE THE EMPLOYMENT?

11 **BY MR. GOODWYN:**

12 OBJECT. NO FOUNDATION THAT HE -- HE'S ALREADY
13 TESTIFIED HE DOESN'T EVEN KNOW WHAT THE LAW
14 REQUIRES, AND HE'S ASKING HIM TO MAKE A LEGAL
15 CONCLUSION OF SOMETHING HE'S ALREADY TESTIFIED HE
16 HAS NO BASIS FOR.

17 **BY THE COMMISSIONER:**

18 MR. SAMUELS?

19 **BY MR. SAMUELS:**

20 I THINK HE'S TESTIFIED THAT HE HAS A LOT OF
21 KNOWLEDGE. IN FACT, MR. GOODWYN ALMOST LAID A
22 FOUNDATION TO QUALIFY HIM AS AN EXPERT WITNESS IN
23 THIS FIELD.

24 **BY MR. GOODWYN:**

25 NOT ON EMPLOYEE/INDEPENDENT CONTRACTOR

1 RELATIONSHIPS. HE JUST -- HE'S ALREADY -- HE JUST
2 TOLD YOU I DON'T KNOW. I DON'T KNOW WHAT THE LEGAL
3 BASIS IS.

4 **BY THE COMMISSIONER:**

5 I THINK HE JUST TESTIFIED EARLIER THAT HE WAS
6 NOT AWARE OF THE LAW WITH REGARDS TO INDEPENDENT
7 CONTRACT DOCUMENTS AND THE ULTIMATE DETERMINATION BY
8 THE COMMISSION OR MAYBE EVEN OTHER ORGANIZATIONS.
9 IF YOU CAN -- IF YOU CAN MOVE TO THE NEXT QUESTION.
10 I JUST DON'T WANT HIM ISSUING -- I DON'T WANT THE
11 WITNESS TO END UP ISSUING LEGAL OPINIONS.

12 **BY MR. SAMUELS:**

13 OKAY. GOOD ENOUGH. I'LL DO IT A LITTLE BIT
14 DIFFERENT WAY, THEN, YOUR HONOR.

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

16 Q. MR. HYNDSHAW, IF WE ASSUME THAT THERE ARE NUMEROUS
17 DOCUMENTS THAT MS. TURNER SIGNED STATING THAT SHE
18 WAS AN EMPLOYEE -- SHE WAS AN AT-WILL EMPLOYEE, DID
19 ANYBODY FROM CONDUSTRIAL EVER DISCLOSE TO YOU THAT
20 MS. TURNER HAD SIGNED ANY SUCH DOCUMENTS?

21 A. I NEVER HAD ANY DISCUSSIONS ABOUT MS. TURNER.

22 Q. DID THEY DISCLOSE TO YOU THAT ANY OF THEIR NURSES
23 MAY HAVE SIGNED SUCH DOCUMENTS?

24 A. I WAS INFORMED THAT ALL INDEPENDENT CONTRACTORS
25 SIGNED INDEPENDENT CONTRACTOR DOCUMENTS.

1 Q. OKAY. THEY DIDN'T TELL YOU THEY SIGNED EMPLOYEE
2 DOCUMENTS, LIKE AN I-9, A W-4, THOSE KINDS OF
3 DOCUMENTS?

4 A. I WOULD ASSUME THAT THEY SIGNED THEM. BUT, NO,
5 CONDUSTRIAL DIDN'T TELL ME THAT SPECIFICALLY.

6 Q. WELL, AN I-9 IS ONLY SIGNED BY AN EMPLOYEE, NOT AN
7 INDEPENDENT CONTRACTOR; ISN'T THAT TRUE?

8 A. RIGHT.

9 Q. A W-4, THAT'S HOW YOU GET YOUR W-2?

10 A. RIGHT.

11 Q. THAT'S NOT SIGNED BY AN INDEPENDENT CONTRACTOR, IS
12 IT?

13 A. RIGHT.

14 Q. IN -- DID -- DID YOU KNOW WHERE THESE NURSES WERE
15 PLACED?

16 A. YES.

17 Q. WHERE WERE THEY PLACED?

18 A. AT A SOUTH CAROLINA CORRECTIONAL FACILITY.

19 Q. DID CONDUSTRIAL EVER SHARE WITH YOU THEIR CONTRACT
20 WITH THE DEPARTMENT OF CORRECTIONS?

21 A. I'M PRETTY SURE THAT THEY DID SUBMIT IT, AND IT WAS
22 REVIEWED BY JO ANN WHITAKER.

23 Q. DO YOU HAVE ANY IDEA OF WHEN THAT WOULD HAVE BEEN?

24 A. NO.

25 Q. IF MS. WHITAKER HAD TESTIFIED THAT SHE WAS NEVER

1 PROVIDED A COPY OF THAT CONTRACT BETWEEN DEPARTMENT
2 OF CORRECTIONS AND THE -- AND CONDUSTRIAL, DO YOU
3 HAVE ANY -- UNTIL 2016 ---

4 BY MR. GOODWYN:

5 YOUR HONOR, I OBJECT. HE'S PITTING WITNESSES.

6 BY MR. SAMUELS:

7 I'M ---

8 BY THE COMMISSIONER:

9 WHAT'S THE END OF THE QUESTION?

10 BY MR. SAMUELS:

11 THE END OF THE QUESTION IS -- MAYBE IT IS
12 PITTING, BUT IT'S WOULD HE DISAGREE WITH THAT.

13 BY MR. GOODWYN:

14 HE'S PITTING WITNESSES.

15 BY THE COMMISSIONER:

16 ALL RIGHT. SUSTAINED.

17 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

18 Q. HAVE YOU PERSONALLY EVER SEEN THE CONTRACT?

19 A. NO.

20 Q. LET ME SHOW IT TO YOU. THIS IS PAGE 254 OF THE
21 CLAIMANT'S APA SUBMISSIONS. NOW, FIRST OFF, WOULD
22 YOU TELL US WHO THIS CONTRACT IS BETWEEN, WHAT TWO
23 PARTIES?

24 BY MR. GOODWYN:

25 AGAIN, OBJECTION, YOUR HONOR. WE'VE BEEN

1 THROUGH THIS CONTRACT A DOZEN TIMES IN THIS CASE.
2 WE DON'T NEED TO READ -- THIS WITNESS TO READ A
3 CONTRACT THAT HE SAID HE'S NEVER SEEN. WE ALL KNOW
4 WHAT IT SAYS.

5 BY THE COMMISSIONER:

6 ALL RIGHT. LET'S FIRST LET HIM INDICATE
7 WHETHER HE'S SEEN IT OR NOT.

8 BY MR. GOODWYN:

9 HE ALREADY HAS. HE SAID HE HASN'T.

10 BY THE WITNESS:

11 I HAVE NOT SEEN IT.

12 BY THE COMMISSIONER:

13 ALL RIGHT. THANK YOU, SIR.

14 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

15 Q. WOULD YOU AGREE THIS IS A CONTRACT BETWEEN
16 MEDUSTRIAL AND THE DEPARTMENT OF CORRECTIONS?

17 BY MR. GOODWYN:

18 OBJECTION, YOUR HONOR. AGAIN, HE SAYS HE HAS
19 NOT SEEN THE CONTRACT. WE'VE ALL -- WE ALL KNOW
20 WHAT IT SAYS. WHY DO WE NEED HIM TO SIT HERE AND
21 READ THE CONTRACT TO EVERYBODY AGAIN?

22 BY THE COMMISSIONER:

23 MR. SAMUELS?

24 BY MR. SAMUELS:

25 I'M LAYING A FOUNDATION TO ASK THE WITNESS THE

1 QUESTION THAT IF HE HAD KNOWN THAT THE CONTRACT
2 BETWEEN CONDUSTRIAL AND THE DEPARTMENT OF
3 CORRECTIONS REQUIRED CONDUSTRIAL TO PROVIDE WORKERS'
4 COMPENSATION FOR THE NURSES WHO WERE PLACED THERE,
5 INCLUDING MS. TURNER, WOULD HE HAVE THEN RECOMMENDED
6 THAT THEY OBTAIN INSURANCE COVERAGE EARLIER THAN
7 2016.

8 **BY THE COMMISSIONER:**

9 ALL RIGHT. CONTINUE WITH YOUR QUESTION.

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

11 Q. MR. HYNDSHAW, I'LL READ IT OUT LOUD FOR YOU. RNS,
12 LPNs ASSIGNED TO SCDC BY CONTRACTOR ARE EMPLOYEES OF
13 CONTRACTOR, NOT SCDC. AND I'M GOING TO MOVE ON TO
14 ANOTHER SECTION, WHICH IS 6.1, OF THIS CONTRACT. IT
15 SAYS, "CONTRACTOR SHALL PROVIDE WORKERS'
16 COMPENSATION COVERAGE FOR CONTRACTOR'S EMPLOYEES WHO
17 ARE ASSIGNED TO SCDC." IF YOU HAD KNOWN -- WELL,
18 WOULD YOU AGREE, FIRST OFF, THAT THAT LANGUAGE
19 REQUIRES CONDUSTRIAL TO PROVIDE WORKERS' COMP
20 INSURANCE COVERAGE FOR THE PEOPLE THEY SEND TO THE
21 DEPARTMENT OF CORRECTIONS?

22 A. IT DOES.

23 **BY MR. GOODWYN:**

24 OBJECTION. CALLS FOR A CONTRACTUAL
25 INTERPRETATION AND LEGAL CONCLUSION.

1 **BY MR. SAMUELS:**

2 IT'S WITHIN THE SCOPE OF THE WITNESS'
3 KNOWLEDGE, YOUR HONOR, AND HE'S ANSWERED THE
4 QUESTION THAT IT DOES.

5 **BY THE COMMISSIONER:**

6 ALL RIGHT, SIR. YOU CAN ANSWER THE QUESTION.
7 DO YOU NEED IT REPEATED?

8 **BY MR. SAMUELS:**

9 I THINK HE ANSWERED IT.

10 **BY THE COMMISSIONER:**

11 OKAY. HE'S -- SIR, IF YOU COULD SPEAK UP JUST
12 A LITTLE BIT FOR ME, BECAUSE THERE'S A COUPLE OF
13 TIMES, OBVIOUSLY, THAT I'VE ACTUALLY MISSED THE
14 ANSWER, EITHER MAYBE BECAUSE SOMEBODY WAS TALKING OR
15 -- BUT, OKAY. WHAT WAS THE ANSWER? OR MAKING THEIR
16 OBJECTION.

17 **BY THE WITNESS:**

18 I ANSWERED THAT IF WE HAD READ THAT INITIALLY,
19 THEN WE WOULD HAVE RECOMMENDED THAT CONDUSTRIAL HAVE
20 WORKERS' COMPENSATION INSURANCE FOR THAT INDIVIDUAL.

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

22 Q. BUT CONDUSTRIAL NEVER SHARED THAT CONTRACT WITH YOU
23 PERSONALLY AT ALL, DID THEY?

24 A. NO.

25 Q. WHEN -- WELL, AS AN INSURANCE AGENT, WOULDN'T THAT

1 BE PART OF YOUR PROFESSIONAL RESPONSIBILITY, IF
2 YOU'VE GOT A CLIENT COMING TO YOU THAT SAYS WE WANT
3 A COMPREHENSIVE WORKERS' COMPENSATION INSURANCE
4 PACKAGE, TO MAKE SURE THAT WHEN THEY HAVE A CONTRACT
5 LIKE THAT, THEY HAVE INSURANCE?

6 A. CORRECT.

7 Q. AND IN DOING SO, YOU'RE RELYING ON GETTING TRUTHFUL
8 AND ACCURATE INFORMATION FROM CONDUSTRIAL, CORRECT?

9 A. CORRECT.

10 Q. AND, IN FACT, NOW THAT YOU'VE SEEN THE CONTRACT AND
11 YOU KNOW ABOUT THIS CASE AND YOU RECALL YOUR
12 CONVERSATIONS WITH THEM, IN FACT, THEY WERE NOT
13 TRUTHFUL AND FORTHCOMING ABOUT THEIR OBLIGATION TO
14 PROVIDE WORKERS' COMPENSATION INSURANCE FOR THEIR
15 NURSES AT SCDC, WERE THEY?

16 A. THEY WERE NOT. THE CONTRACT WAS NOT SHARED.

17 **BY MR. SAMUELS:**

18 THANK YOU, SIR. THAT'S ALL THE QUESTIONS I
19 HAVE.

20 **BY THE COMMISSIONER:**

21 MR. ALFORD?

22 **CROSS EXAMINATION BY MR. ALFORD:**

23 Q. GOOD AFTERNOON, SIR. MY NAME IS GREGG ALFORD. I
24 REPRESENT COUNTRYWIDE. SIR, YOU OFFERED SOME
25 TESTIMONY ABOUT YOUR UNDERSTANDING OF P.E.O.s AND

1 HOW THOSE THINGS FUNCTION, IS THAT RIGHT?

2 A. CORRECT.

3 Q. DO YOU KNOW WHAT A NON-ASSIGNED EMPLOYEE IS?

4 A. NO.

5 Q. HAVE YOU HAD A LOT OF EXPERIENCE WITH P.E.O.s AND
6 A.S.O.s AND THOSE TYPE OF THINGS?

7 A. IN GENERAL TERMS, NO.

8 Q. OKAY. AND THIS -- I THOUGHT I HEARD YOU TESTIFY
9 THIS WAS THE FIRST P.E.O. ---

10 A. IT'S THE ONLY ONE.

11 Q. OKAY. AND SO, RESPECTFULLY, YOUR -- SOME OF THE
12 QUESTIONS YOU ANSWERED FOR MR. GOODWYN ABOUT WHAT
13 WOULD HAPPEN IN A P.E.O. SCENARIO OR NOT, WHAT WAS
14 YOUR BASIS FOR THAT KNOWLEDGE?

15 A. FROM READING, TALKING TO UNDERWRITERS, TALKING WITH
16 P.E.O. ORGANIZATIONS, READING THEIR FLIERS,
17 PAMPHLETS, WEBSITES.

18 Q. OKAY. DID YOU DO THAT PRIOR TO GETTING INTO THIS
19 ARRANGEMENT OR AFTER?

20 A. PRIOR.

21 Q. OKAY. BUT YOU DON'T KNOW WHAT A NON-ASSIGNED
22 EMPLOYEE IS?

23 A. NO.

24 Q. DO YOU KNOW WHAT AN ASSIGNED EMPLOYEE IS?

25 A. I'M ASSUMING WHAT AN ASSIGNED EMPLOYEE IS, IS

1 SOMEBODY THAT, SAY, LIKE A STAFFING FIRM WOULD
2 ASSIGN TO A CLIENT TO DO WORK.

3 Q. BUT WITHIN THE CONTEXT OF THE P.E.O. STATUTE, YOU'RE
4 NOT SURE IF THAT'S THE RIGHT DEFINITION?

5 A. NO.

6 Q. ALL RIGHT. I GUESS IT TAKES ME A WHILE TO FIGURE
7 THINGS OUT. BUT, APPARENTLY, THE COUNTRYWIDE
8 AGREEMENT, WHICH IS AN EXHIBIT IN FRONT OF YOU, WAS
9 ENTERED INTO BEFORE ANY OF THE MEETINGS WITH MR.
10 HANSON OR MR. COLLIER? THE CONDUSTRIAL/COUNTRYWIDE
11 AGREEMENT WAS SIGNED IN MARCH, RIGHT?

12 BY MR. GOODWYN:

13 I'M GOING TO OBJECT TO THE FORM TO THE EXTENT
14 THAT HE NEEDS TO CLARIFY IN-PERSON MEETINGS OR PHONE
15 MEETINGS.

16 BY MR. ALFORD:

17 I'LL CLARIFY IT. THANK YOU.

18 CROSS EXAMINATION RESUMED BY MR. ALFORD:

19 Q. SIR, DID YOU ENGAGE IN ANY CONFERENCE CALLS WITH
20 CONDUSTRIAL AND COUNTRYWIDE PRIOR TO THE EXECUTION
21 OF THEIR CONTRACT?

22 A. YES.

23 Q. OKAY. HOW MANY? A BUNCH?

24 A. A LOT, YES.

25 Q. OKAY. DURING THAT PERIOD OF TIME, WERE THE

1 MEDUSTRIAL SCDC 1099 NURSES DISCUSSED? BEFORE THE
2 CONTRACT WAS SIGNED, IN THESE PHONE CALLS AND ALL
3 THAT, WERE THEY DISCLOSED; WERE THEY DISCUSSED?

4 A. NO.

5 Q. SO, THIS CONTRACT GOT ENTERED INTO. BUT YOU KNEW
6 THEY WERE OUT THERE BECAUSE YOU'D BEEN WORKING WITH
7 CONDUSTRIAL, IS THAT RIGHT?

8 A. CORRECT.

9 Q. OKAY. SO YOU KNEW THEY HAD THIS, I GUESS, OTHER
10 DIVISION OF THEIR BUSINESS THAT WERE PERCEIVED TO BE
11 INDEPENDENT CONTRACTORS, CORRECT?

12 A. CORRECT.

13 Q. AND YOU DIDN'T -- NOBODY DECIDED TO DISCLOSE THAT TO
14 COUNTRYWIDE BEFORE WE SIGNED AN AGREEMENT?

15 A. I DID NOT.

16 Q. DID YOU FEEL, AS AN AGENT THAT WAS PREPARING A
17 PACKAGE TO SUBMIT TO OBTAIN INSURANCE COVERAGE, THAT
18 IT MIGHT BE APPROPRIATE TO ASCERTAIN THOSE TYPE OF
19 THINGS?

20 A. I THINK THE FEELING WAS COMFORTABLE THAT CONDUSTRIAL
21 HAD THE PROCESS IN PLACE TO VALIDATE THAT THESE
22 PEOPLE WERE ACTUALLY INDEPENDENT CONTRACTORS.

23 Q. WAS THAT YOUR LEVEL OF COMFORT, OR WAS IT THEIR
24 LEVEL OF COMFORT, OR DID YOU -- WAS THERE SOMETHING
25 THAT YOU FELT LIKE -- I MEAN, BECAUSE COUNTRYWIDE

1 COULDN'T HAVE HAD ANY COMFORT ABOUT THAT, RIGHT,
2 BECAUSE THEY DIDN'T KNOW ABOUT IT, RIGHT?

3 A. IT WAS BOTH OUR LEVEL OF COMFORT.

4 Q. OKAY. NOW, WHEN YOU SAY BOTH, YOU'RE SPEAKING OF
5 YOURSELF ---

6 A. CONDUSTRIAL AND ---

7 Q. --- AND CONDUSTRIAL?

8 A. YES.

9 Q. OKAY. SIR, I WANT TO ASK YOU TO LOOK AT, IF YOU
10 COULD, WHAT -- THIS MEMO THAT YOU WROTE. I BELIEVE
11 IT'S UP THERE SOMEWHERE.

12 A. YES.

13 Q. ALL RIGHT. WHEN WERE YOU ASKED TO PREPARE THAT? DO
14 YOU RECALL?

15 BY MR. ALFORD:

16 I'M SORRY, YOUR HONOR. I AM LOOKING AT --
17 COULD YOU READ US THE EXHIBIT NUMBER, SIR? I'M
18 SORRY.

19 BY THE WITNESS:

20 IT'S FOUR.

21 BY THE COMMISSIONER:

22 GUARANTEE TRIAL FOUR.

23 CROSS EXAMINATION RESUMED BY MR. ALFORD:

24 Q. GO AHEAD, SIR. I'M SORRY. WHEN WERE YOU ASKED TO
25 PREPARE THIS?

1 A. PROBABLY A COUPLE DAYS BEFORE THIS.

2 Q. BEFORE 8/28/16?

3 A. YES.

4 Q. OKAY. AND TELL ME HOW, WHEN, WHAT, WHO CALLED, WHAT
5 -- I MEAN...

6 A. I THINK IT WAS TONY THAT CALLED ME AND ASKED ME TO
7 PUT TOGETHER A LETTER DOCUMENTING WHAT
8 CLASSIFICATIONS WE USED ON THE POLICY OR WHAT
9 CLASSIFICATIONS WERE USED AND, TOO, OUR
10 UNDERSTANDING OF MEDUSTRIAL.

11 Q. OKAY. AND DID HE ASK YOU TO BE COMPREHENSIVE IN IT,
12 YOU KNOW, DOCUMENT WELL WHAT HAD BEEN DISCUSSED AND
13 WHAT HAD GONE ON?

14 A. HE BASICALLY SAID HE WANTED DOCUMENTATION OF THE
15 CLASSIFICATIONS AND OUR UNDERSTANDING OF MEDUSTRIAL.

16 Q. OKAY. HOW MANY -- YOUR UNDERSTANDING -- BECAUSE YOU
17 KNEW ABOUT THE 1099 BROKERAGE DEAL, RIGHT?

18 A. YES.

19 Q. BEFORE COUNTRYWIDE EVER SHOWED UP? THAT'S A YES?

20 A. YES.

21 Q. OKAY. AND YOU -- DID YOU KNOW HOW MANY NURSES THEY
22 HAD, THE NUMBER OF NURSES THAT WERE OUT THERE IN
23 THIS 1099 BROKERAGE?

24 A. NOT AT THAT TIME.

25 Q. DO YOU KNOW NOW?

1 A. I HEARD A FIGURE EARLIER, ABOUT 130.

2 Q. HUNDRED AND THIRTY. WOULD THAT HAVE BEEN DURING THE
3 -- WOULD THAT HAVE BEEN DURING THE TIME OF THE
4 COUNTRYWIDE AGREEMENT?

5 A. I DON'T KNOW. I JUST HEARD THAT TERM TODAY.

6 Q. TODAY.

7 A. I HEARD THAT TODAY.

8 Q. WHERE DID YOU HEAR IT?

9 A. I WAS SITTING IN THE BACK ROOM WHEN MS. WHITAKER WAS
10 UP HERE.

11 Q. OH, OKAY. SO YOU HEARD IN THE TESTIMONY THEY HAD
12 AROUND ---

13 A. RIGHT.

14 Q. SO, DOES THAT SURPRISE YOU?

15 A. YES.

16 Q. IN WHAT SENSE?

17 A. IT WAS A LITTLE HIGHER THAN I THOUGHT IT WOULD BE.

18 Q. DURING THIS PROCESS YOU TESTIFIED THAT YOU'D NEVER
19 SEEN THE SCDC CONTRACT BEFORE, THE ONE WITH THE
20 PRISONS, RIGHT?

21 A. THE ONE I JUST LOOKED AT UP HERE?

22 Q. YES, SIR. YES, SIR. NOW, I UNDERSTAND AFTER THIS
23 -- AFTER THE INCIDENT WITH MS. TURNER OCCURRED THAT
24 YOU MIGHT HAVE SEEN IT, RIGHT?

25 A. I SAW IT ALONG THE WAY JUST KIND OF TO READ IT FROM

1 THE OUTSIDE, BUT I WASN'T INVOLVED IN THE ACTUAL
2 NEGOTIATION OF IT.

3 Q. OKAY. WHEN WOULD THAT HAVE BEEN?

4 A. FROM THE PERIOD OF PROBABLY JANUARY OF '15 TO MARCH
5 OF '15, WHEN THE COVERAGE WAS EFFECTIVE.

6 Q. ARE YOU TALKING ABOUT THE CONTRACT BETWEEN THE SOUTH
7 CAROLINA DEPARTMENT OF CORRECTIONS ---

8 A. NO, NO, NO. I'M TALKING ABOUT THE CONTRACT BETWEEN
9 ---

10 Q. OH, I WANTED TO MAKE SURE ---

11 A. --- COUNTRYWIDE ---

12 Q. YES, SIR.

13 A. --- AND CONDUSTRIAL.

14 Q. OKAY. I WANT TO CHANGE GEARS AND TALK TO YOU ABOUT
15 THE CONTRACT BETWEEN CONDUSTRIAL AND THE SOUTH
16 CAROLINA DEPARTMENT OF CORRECTIONS.

17 A. OKAY.

18 Q. THE ONE THAT MR. SAMUELS TRIED TO SHOW YOU PARTS OF
19 BUT GOT OBJECTED TO. ALL RIGHT. HAD YOU -- YOU'D
20 NEVER SEEN THAT BEFORE TODAY?

21 A. NO.

22 Q. OKAY. WERE THE CONTENTS OF THAT AGREEMENT -- WELL,
23 THEN, BY DEFINITION YOU NEVER DISCLOSED THE CONTENTS
24 OF THAT AGREEMENT TO COUNTRYWIDE?

25 A. CORRECT.

1 Q. AND YOU NEVER DISCLOSED THE CONTENTS OF THAT
2 AGREEMENT TO ANY OF THE CARRIERS TO WHOM YOU WERE
3 TRYING TO PLACE COVERAGE WITH?

4 A. CORRECT.

5 Q. BECAUSE YOU DIDN'T KNOW?

6 A. I HADN'T SEEN IT.

7 Q. RIGHT. BUT IF YOU HAD KNOWN, WHAT WOULD YOU HAVE
8 DONE?

9 A. THEN IT WOULD HAVE BEEN AN ISSUE WITH CONDUSTRIAL
10 PRIOR TO GOING BACK TO THOSE CARRIERS BECAUSE THE
11 CONTRACT, AS I READ IT BRIEFLY HERE, STATES THAT
12 CONDUSTRIAL WAS REQUIRED TO PROVIDE EMPLOYEES,
13 PERIOD.

14 Q. AND GIVE THEM WORKERS' COMP?

15 A. AND GIVE THEM WORK COMP, PERIOD.

16 Q. OKAY. AND YOU KNEW THAT WASN'T WHAT THEY WERE DOING
17 WITH THOSE 1099'ERS, IS THAT RIGHT?

18 A. CORRECT.

19 Q. ALL RIGHT. ALL RIGHT, SIR. GOING BACK TO YOUR
20 MEMO, I DON'T SEE THE TERM -- MAYBE I MISSED IT. I
21 DON'T SEE THE TERM INDEPENDENT CONTRACTOR IN YOUR
22 MEMO, NOR DO I SEE 1099 IN YOUR MEMO. DID I MISS
23 THAT?

24 A. IT'S NOT IN HERE.

25 Q. IF I RECALL YOUR TESTIMONY ABOUT THE MEETINGS IN --

1 IN FACT, MS. WHITAKER'S TESTIMONY ABOUT THE MEETINGS
2 IN JULY AND NOVEMBER, WAS THAT THE WHOLE MEDUSTRIAL
3 1099 PRISON NURSE CONTRACT THING WAS FULLY DISCLOSED
4 AND TALKED ABOUT. IS THAT RIGHT?

5 A. CORRECT.

6 Q. WHY ISN'T IT IN THIS MEMO?

7 A. BECAUSE I UNDER -- I MISUNDERSTOOD THE QUESTION IN
8 WRITING THE MEMO.

9 Q. BUT WASN'T THAT AN IMPORTANT THING TO PUT IN HERE?
10 I MEAN, YOU COULD -- I MEAN, WE'RE TALKING ABOUT
11 WORKERS' COMPENSATION AND THAT THEY'RE INDEPENDENT
12 CONTRACTORS. THAT WASN'T AN IMPORTANT DISCLOSURE?

13 A. LET ME EXPLAIN WHAT ---

14 Q. SURE. PLEASE DO.

15 A. --- HE ASKED ME TO DO IN THE MEMO FIRST.

16 Q. YEAH. PLEASE DO.

17 A. TONY CALLED ME AND HE ASKED ME TO WRITE A MEMO AND
18 CLARIFY THE CLASSIFICATIONS AND THE USE OF THE TERM
19 MEDUSTRIAL. SO, I'M AN INSURANCE PERSON. WHEN HE
20 ASKED ME TO CLARIFY THE CLASSIFICATIONS, THE
21 CLASSIFICATIONS, TO ME, WAS 8833, 8829. SO, THAT'S
22 WHAT I ADDRESSED.

23 Q. OKAY.

24 A. IN REALITY, WHAT HE WAS ASKING ME WAS TO CLARIFY THE
25 CLASSIFICATION ---

1 Q. GO AHEAD. I'M SORRY.

2 A. --- OF INDEPENDENT CONTRACTOR VERSUS EMPLOYEE.

3 Q. WOULD YOU HAVE WRITTEN A DIFFERENT MEMO IF YOU
4 THOUGHT YOU UNDERSTOOD DIFFERENTLY?

5 A. YES.

6 Q. OKAY. WHAT WOULD YOU HAVE WRITTEN?

7 A. I WOULD HAVE -- WELL, BASICALLY WHAT I TOLD HIM ON
8 THE PHONE. WE WENT OVER THEM NUMEROUS TIMES. WE
9 PROVIDED THE DEFINITION OF INDEPENDENT CONTRACTOR
10 AND THE DEFINITION OF EMPLOYEE, AND YOU NEED TO MAKE
11 A DETERMINATION.

12 Q. WHY MAKE A DETERMINATION?

13 A. IF YOU DON'T MAKE THAT DETERMINATION OR IF YOU MAKE
14 THE INCORRECT DETERMINATION, THEN YOU'RE IN JEOPARDY
15 OF HAVING WORKERS' COMPENSATION FOR THOSE PEOPLE OR
16 NOT.

17 Q. AND THEY -- AND THAT ABILITY TO MAKE THAT DECISION
18 YOU PUT TO THEM, AND WHATEVER THEY DECIDED WAS THEIR
19 BUSINESS DECISION, RIGHT?

20 A. YES.

21 Q. OKAY. SIR, IN THE MEMO YOU HAVE 8833 AND THEN YOU
22 HAVE PAYROLL OF 812,000, RIGHT?

23 A. YES.

24 Q. AND THEN YOU HAVE 8829 AND PAYROLL OF 77,000? I WAS
25 -- I WAS A REC MAJOR IN COLLEGE. I'M NOT REAL GOOD

1 AT MATH, BUT WE'LL ROUND UP AND CALL IT 900,000.

2 A. OKAY.

3 Q. SO, THEY DISCLOSED TO YOU \$900,000 WORTH OF ANNUAL
4 PAYROLL FOR THEIR NURSING OPERATION?

5 A. CORRECT.

6 Q. CORRECT? AND THAT'S WHAT YOU PASSED ON TO
7 COUNTRYWIDE, AND THAT'S WHAT WAS PUT IN THESE COMP
8 APPLICATIONS, RIGHT?

9 A. CORRECT.

10 Q. NOW, IT TOOK ME A WHILE. BUT IF YOU WERE TO DO THE
11 MATH -- AND WE'LL ROUND DOWN. LET'S JUST SAY THERE
12 WERE A HUNDRED NURSES, AND THEY WERE MAKING \$40,000
13 A YEAR, HOW MUCH IS THAT?

14 A. FOUR MILLION DOLLARS.

15 Q. OKAY. THAT'S 900,000 INSTEAD OF FOUR MILLION. SO
16 THERE'S THREE HUNDRED -- THREE MILLION, A HUNDRED
17 THOUSAND BUCKS OUT THERE SOMEWHERE THAT'S NOT -- I
18 GUESS, FROM YOUR EARLIER TESTIMONY, IT ALWAYS FLOWS
19 TO THE P.E.O. AND THEN FLOWS TO THEIR CARRIER, WHICH
20 I DON'T AGREE WITH, BY THE WAY, BUT THAT WAS YOUR
21 TESTIMONY. SO, DID YOU KNOW THAT THERE WAS A
22 POTENTIAL THREE-POINT-SOMETHING MILLION BUCKS IN
23 RISK OUT THERE ---

24 A. NO.

25 Q. --- THAT COULD -- OKAY -- THAT COULD FLOW TO

1 COUNTRYWIDE OR COULD FLOW TO THEIR CARRIER?

2 A. NO.

3 Q. WOULD THAT KNOWLEDGE HAVE AFFECTED THE WAY THAT YOU
4 APPROACHED THESE TRANSACTIONS?

5 A. THE PAYROLL THAT I DISPLAY HERE, THE \$812,000, TO ME
6 REPRESENTED NURSES THAT WERE EMPLOYEES.

7 Q. OKAY. AND I AGREE WITH THAT. LET'S SAY THAT'S --
8 I'M NOT ARGUING THAT. I'M MOVING OVER NOW IN THIS
9 NEXT LITTLE SECTION OF CONVERSATION WHERE YOU, AT
10 MR. GOODWYN'S EXCELLENT LEADING QUESTIONS, WERE ABLE
11 TO ---

12 **BY MR. GOODWYN:**

13 OBJECT TO THE FORM.

14 **BY MR. ALFORD:**

15 I'LL RE-ASK IT.

16 **BY THE COMMISSIONER:**

17 SUSTAINED.

18 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

19 Q. EARLIER IN YOUR TESTIMONY, WHEN MR. GOODWYN WAS
20 EXAMINING YOU, YOU TESTIFIED THAT IN THE P.E.O.
21 MODEL, WELL, IT JUST FLOWS OVER, IN AN AUDIT IT
22 FLOWS OVER, THE P.E.O. PICKS IT UP AND THE CARRIER
23 PICKS IT UP AND THEY'RE DEEMED AN EMPLOYEE AND
24 THEY'RE MAGICALLY COVERED, RIGHT? I MEAN, PRETTY
25 MUCH ISN'T THAT WHAT YOU SAID?

1 A. IN SUMMARY, YES.

2 Q. OKAY. NOW, DO YOU THINK THAT'S IT'S FAIR OR
3 APPROPRIATE OR LEGITIMATE TO PUT UP AN OFF-THE-BOOKS
4 LIABILITY OR POTENTIAL LIABILITY THAT IS 3.1 MILLION
5 BUCKS VERSUS 900,000 IN DISCLOSED LIABILITY, AND YOU
6 MIGHT GET STUCK WITH IT, BUT WE DIDN'T TELL YOU
7 ABOUT IT? IS THAT -- IS THAT THE KIND OF BUSINESS
8 THAT -- I MEAN, THAT'S NOT RIGHT, IS IT?

9 A. I DIDN'T LOOK AT IT THAT WAY. I LOOKED AT IT AS
10 CONDUSTRIAL WAS VALIDATING THESE PEOPLE TO BE
11 INDEPENDENT CONTRACTORS. THEREFORE, THEY WOULDN'T
12 BE SHOWING A PAYROLL ON THE WORKERS' COMPENSATION
13 FOR THOSE NON-EMPLOYEES.

14 Q. YES, SIR. BUT YOU ALSO TESTIFIED THAT THEY COULD
15 GET HOOKED INTO BEING AN EMPLOYEE BY THE LEGAL
16 SYSTEM OR BY SOME -- AND THEN BOOM, BOOM, BOOM; ALL
17 OF A SUDDEN THEY'RE EMPLOYEES AND COUNTRYWIDE'S
18 LIABLE FOR THEM AND COUNTRYWIDE'S CARRIER IS LIABLE
19 FOR THEM? I MEAN, THAT WAS YOUR TESTIMONY?

20 A. RIGHT. BUT THAT'S WHY YOU HAVE AUDITS.

21 Q. SIR?

22 A. THAT'S WHY YOU HAVE AUDITS, PAYROLL AUDITS.

23 Q. BUT IF I AUDIT IT AND I USE THE NUMBERS THAT YOU
24 USED, I WOULDN'T KNOW ABOUT THAT 3.1 MILLION BUCKS
25 SITTING OUT THERE IN POTENTIAL LIABILITY, AND I'D

1 RATE MY DEAL DIFFERENTLY, WOULDN'T I?

2 A. IF YOU WERE A PAYROLL AUDITOR FOR GUARANTEE, YOU
3 WOULD GO IN AND YOU WOULD LOOK AT ALL THE PAYROLL
4 RECORDS; YOU WOULD LOOK AT THE TAX RETURNS, AND
5 YOU'D LOOK AT THE GENERAL LEDGERS AND 1099s.

6 Q. OKAY. I'M ASKING YOU, SIR, FROM YOUR TESTIMONY, IF
7 YOU KNEW THAT POTENTIAL LIABILITY WAS OUT THERE AND
8 YOU'VE TESTIFIED THAT IT COULD BE A POTENTIAL
9 LIABILITY, THAT'S NOT RIGHT, IS IT?

10 **BY MR. GOODWYN:**

11 OBJECT TO THE FORM. IT'S VAGUE. WHAT DOES HE
12 MEAN?

13 **BY MR. ALFORD:**

14 IT'S NOT FAIR.

15 **BY MR. GOODWYN:**

16 OBJECT. RELEVANCE. WHAT DOES WHETHER HE
17 THINKS IT'S FAIR OR NOT HAVE TO DO WITH THE LEGAL
18 OUTCOME OF THIS CASE?

19 **BY MR. ALFORD:**

20 I'M JUST INTERESTED.

21 **BY THE COMMISSIONER:**

22 I'M GOING TO -- YOU CAN ANSWER THE QUESTION,
23 SIR.

24 **WITNESS ANSWERS:**

25 A. I THINK IT'S FAIR BECAUSE WE DEAL WITH CONTRACTORS

1 ALL DAY LONG EVERY DAY, AND SOME OF THE SUBS THEY
2 USE ARE INDEPENDENT CONTRACTORS, AND THEY'RE NOT
3 RESPONSIBLE FOR THEIR WORKERS' COMPENSATION.

4 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

5 Q. AND THAT'S TEMPORARY, RIGHT?

6 A. YES.

7 Q. SO YOU USE A SUB FOR A WHILE; HE'S AN I.C.; YOU PAY
8 HIM; BOOM, HE'S GONE?

9 A. RIGHT. THEN YOU HAVE OTHER CONTRACTORS THAT PROVIDE
10 YOU A CERTIFICATE OF INSURANCE. HOWEVER, THEIR
11 COVERAGE LAPSES, AND THEN YOU BECOME RESPONSIBLE FOR
12 THEM. BUT YOU CAN'T DISCLOSE THAT UP FRONT.

13 Q. AND YOU'RE KIND OF TALKING ABOUT LIKE CONSTRUCTION
14 GUYS, RIGHT?

15 A. UH-HUH.

16 Q. OKAY. BUT YOU KNEW THAT THE ONGOING MEDUSTRIAL
17 DIVISION WAS AN ACTIVE, ONGOING, LONG-TERM 1099
18 BROKERAGE PROGRAM, RIGHT?

19 A. YES.

20 Q. OKAY. THAT'S A LITTLE DIFFERENT THAN YOUR
21 CONTRACTOR THAT YOU USE FOR A WHILE AND THEN HE
22 MOVES ON THEORY?

23 A. I ALSO KNEW -- WELL, FIRMLY BELIEVED THAT
24 CONDUSTRIAL WAS GETTING THE VERIFICATION THAT THESE
25 PEOPLE WERE ACTUALLY INDEPENDENT CONTRACTORS.

- 1 Q. AND THAT THEY HAD COMP OR THAT ---
- 2 A. NO. NO, I DIDN'T SAY THAT THEY HAD COMP.
- 3 Q. OKAY. ALL RIGHT. OKAY.
- 4 A. JUST THAT THEY WERE INDEPENDENT CONTRACTORS.
- 5 Q. AND THAT WHATEVER OBLIGATIONS THEY, AS INDEPENDENT
- 6 -- THAT CONDUSTRIAL GAVE THEM AS INDEPENDENT
- 7 CONTRACTORS, YOU MUST HAVE HAD A LEVEL OF CONFIDENCE
- 8 THAT CONDUSTRIAL WAS MAKING SURE THOSE SAFEGUARDS
- 9 WERE IN PLACE?
- 10 A. YES.
- 11 Q. SUCH AS ANY PROMISES THEY WOULD MAKE TO THE SCDC,
- 12 THEY WOULD MAKE SURE THAT THEIR PEOPLE THEY SENT MET
- 13 THOSE REQUIREMENTS?
- 14 A. YES.
- 15 Q. NOT TOOK A CHANCE ON THE SITUATION THAT YOU
- 16 DESCRIBED EARLIER WHERE IT MIGHT JUST -- THEY MIGHT
- 17 GET HIT AND IT MIGHT PASS THROUGH ON AN AUDIT?
- 18 A. RIGHT.
- 19 Q. OKAY. SIR, YOU TESTIFIED THAT YOU WERE AWARE --
- 20 THAT YOU HAD KNOWLEDGE THAT THERE WAS NO COVERAGE
- 21 FROM BERKLEY OR RIVERPORT, IS THAT RIGHT?
- 22 A. YES.
- 23 Q. AND YOU TESTIFIED THAT NOBODY EVER GOT ANY PREMIUMS
- 24 BACK THAT YOU KNEW OF?
- 25 A. NOT THAT I KNEW OF.

1 Q. ARE YOU AWARE THEY'RE IN LITIGATION?

2 A. BERKLEY OR ---

3 Q. BERKLEY AND COUNTRYWIDE.

4 A. NO.

5 Q. ARE YOU AWARE THERE'S BEEN A LAWSUIT GOING ON IN
6 FIVE, SIX DIFFERENT STATES?

7 A. NO.

8 Q. ARE YOU AWARE THAT RIVERPORT AND BERKLEY TOOK THE
9 PREMIUMS?

10 A. NO, I'M NOT.

11 **BY MR. GOODWYN:**

12 OBJECT TO FORM. ASSUMES FACTS NOT IN EVIDENCE.

13 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

14 Q. ARE YOU AWARE OF WHETHER OR NOT THEY TOOK THE
15 PREMIUMS?

16 A. NO. ALL I KNOW IS CONDUSTRIAL PAID COUNTRYWIDE.

17 Q. BUT YOU NEVER TOLD COUNTRYWIDE THAT THERE WERE THESE
18 NURSES AT THE PRISONS? YOU DIDN'T?

19 A. NOT INITIALLY.

20 Q. OKAY. YOU NEVER TOLD THEM ---

21 A. THAT WAS PART OF THE DISCUSSION WE HAD WITH SCOTT
22 HANSON AND ---

23 Q. ZACH COLLIER?

24 A. YEAH, ZACH. ZACH COLLIER.

25 Q. AND THAT WAS AFTER -- THAT WAS AFTER THIS CONTRACT

1 HAD BEEN ENTERED INTO, RIGHT?

2 A. CORRECT.

3 Q. OKAY. AND SO, BASICALLY, YOU GET IN A DEAL WITH
4 THEM. BUT YOU'VE READ THE COUNTRYWIDE CONTRACT,
5 RIGHT?

6 A. YES.

7 Q. OKAY. AND ISN'T IT TRUE, SIR -- AND YOU ACTUALLY
8 WERE INVOLVED IN TALKING ABOUT IT, RIGHT?

9 A. YES.

10 Q. WOULD YOU MIND GRABBING THAT EXHIBIT, SIR? AND
11 THAT'S WHAT WE IN DO IN BUSINESS, RIGHT? WE
12 ALLOCATE RISK; FAIR ENOUGH?

13 A. CORRECT.

14 Q. OKAY. SIR, I'D LIKE FOR YOU TO LOOK AT -- LET ME
15 GET TO THE RIGHT PAGE. I'M SORRY.

16 **BY THE COMMISSIONER:**

17 MR. ALFORD, WOULD YOU -- I KNOW IT'S BEEN DONE
18 MULTIPLE TIMES, BUT EVERY TIME WE REFER, IT WOULD BE
19 A CLEANER RECORD IF YOU REFER TO THE NUMBER.

20 **BY MR. ALFORD:**

21 I THINK IT'S C.S.S.G. THREE, YOUR HONOR.

22 **BY MS. FARTHING:**

23 IT'S CONDUSTRIAL TWO.

24 **BY MR. ALFORD:**

25 AND I HAVE LOST THE FIRST PAGE.

1 BY MS. FARTHING:

2 GREGG, IT'S CONDUSTRIAL TWO.

3 BY MR. ALFORD:

4 I'M SORRY; IT'S CONDUSTRIAL TWO. YOUR HONOR,
5 THEY'RE LAUGHING AT ME AGAIN. MR. SAMUELS IS, TOO.

6 CROSS EXAMINATION RESUMED BY MR. ALFORD:

7 Q. SIR, IS THE WORD P.E.O. OR THE LETTERS P.E.O. OR THE
8 TERM PROFESSIONAL EMPLOYER ORGANIZATION IN THIS
9 DOCUMENT ANYWHERE?

10 A. I HAVEN'T READ THROUGH THIS RIGHT HERE TODAY, BUT I
11 DON'T THINK SO.

12 Q. OKAY. IF THAT WAS THE KIND OF ARRANGEMENT THEY WERE
13 TALKING ABOUT, WOULD YOU THINK IT WOULD BE IMPORTANT
14 TO PUT THAT IN THERE?

15 A. IT WOULD BE IMPORTANT, YES.

16 Q. OKAY. AND APPROPRIATE?

17 A. YES.

18 Q. OKAY. SIR, IF YOU WOULD LOOK AT PAGE TWO OF THE
19 AGREEMENT AND -- WELL, ACTUALLY, LOOK AT THE BOTTOM
20 OF PAGE ONE. THE BOTTOM OF PAGE ONE, SIR, CLIENT
21 OBLIGATIONS, RIGHT?

22 A. OKAY.

23 Q. WHERE DOES IT SAY -- WOULD YOU MIND -- I HATE TO
24 MAKE YOU READ INTO THE RECORD. I MEAN, DO YOU WANT
25 TO READ THAT REAL QUICK? YOU DON'T HAVE TO READ IT

1 IN THE RECORD. WE'LL TALK ABOUT IT AFTER YOU READ
2 IT.

3 A. OKAY.

4 Q. ALL RIGHT, SIR. GENERALLY, THIS SAYS THAT THE
5 CLIENT GETS TO MAKE THE DECISIONS, ANY AND ALL
6 STRATEGIC OPERATION AND BUSINESS-RELATED DECISIONS
7 REGARDING ITS BUSINESS, RIGHT?

8 A. CORRECT.

9 Q. SO WE DIDN'T HAVE THE POWER TO TELL THEM TO CHANGE
10 THEIR MODEL WITH THEIR 1099s? I MEAN, WE DIDN'T
11 KNOW ABOUT IT. BUT IF WE HAD, WE COULDN'T TELL THEM
12 TO CHANGE IT, RIGHT?

13 BY MR. GOODWYN:

14 OBJECT TO FORM, YOUR HONOR. IT ASSUMES THAT
15 THEY DIDN'T KNOW ABOUT IT.

16 BY MR. ALFORD:

17 HE'S TESTIFIED WE DIDN'T KNOW ABOUT IT WHEN WE
18 SIGNED THE AGREEMENT.

19 BY MR. GOODWYN:

20 AND TOM AND JO ANN TESTIFIED THEY CERTAINLY
21 DID. I THINK THAT'S A QUESTION OF FACT. TO GO ASK
22 A QUESTION ASSUMING THAT IS ASSUMING FACTS NOT IN
23 EVIDENCE.

24 BY MR. ALFORD:

25 NO. IT'S ---

1 BY MR. GOODWYN:

2 IT'S AN IMPROPER QUESTION.

3 BY MR. ALFORD:

4 THERE'S DIFFERENT -- THERE'S TWO SETS OF FACTS
5 IN EVIDENCE, AND I GET TO ---

6 BY MR. GOODWYN:

7 YOU CAN'T PICK THE ONES THAT ARE FAVORABLE TO
8 YOU.

9 BY THE COMMISSIONER:

10 ALL RIGHT. WELL ---

11 BY MR. ALFORD:

12 IT'S HIS TESTIMONY.

13 BY THE COMMISSIONER:

14 THAT'S GOING TO BE AN ULTIMATE DECISION WITH
15 REGARDS TO FACT. BUT THERE ARE TWO DIFFERENT --
16 THERE ARE TWO DIFFERENT -- I MEAN, THIS WITNESS CAN
17 BE ASKED WITH REGARDS TO HIS TESTIMONY. YOU CAN
18 PROCEED WITH THE QUESTION, SIR.

19 BY MR. ALFORD:

20 THANK YOU.

21 CROSS EXAMINATION RESUMED BY MR. ALFORD:

22 Q. I JUST WANT TO BE CLEAR. CONDUSTRIAL DID NOT TELL
23 COUNTRYWIDE ABOUT THE 1099 NURSES THAT WORKED AT THE
24 PRISON SYSTEM BEFORE THE MEETING IN JULY?

25 A. NOT THAT I'M AWARE OF.

1 Q. NOT THAT YOU'RE AWARE OF. OKAY. SO, BASED ON THE
2 KNOWLEDGE THAT YOU HAVE, SIR, AND READING THE
3 AGREEMENT, WHICH YOU'VE OBVIOUSLY LOOKED AT SOME,
4 YOU TESTIFIED EARLIER, THE CLIENT CAN MAKE THESE
5 BUSINESS-RELATED DECISIONS ABOUT HOW IT RUNS ITS OWN
6 BUSINESS, RIGHT?

7 A. CORRECT.

8 Q. OKAY. SO IT CAN HAVE A DECISION TO HAVE ITS OWN
9 1099 MODEL OUT THERE, RIGHT? SIR, I'D LIKE YOU TO
10 LOOK AT PARAGRAPH "C," WHICH IS ON PAGE TWO.

11 A. OKAY.

12 Q. WOULD YOU AGREE, SIR, THAT THE TERM ASSIGNED
13 EMPLOYEE APPEARS IN THERE?

14 A. CORRECT.

15 Q. OKAY. AND IF YOU LOOK AT PARAGRAPH THREE IT SAYS,
16 "SELECTED STAFFING EMPLOYEES," RIGHT?

17 A. CORRECT.

18 Q. SO, AS YOU UNDERSTAND THIS AGREEMENT, COUNTRYWIDE
19 COULD HAVE HAD A DIFFERENT GROUP OF EMPLOYEES OUT
20 THERE UNDER A DIFFERENT COMP POLICY, RIGHT?

21 A. POSSIBLE.

22 Q. I MEAN, THIS WASN'T -- THIS DOESN'T SAY EVERY SINGLE
23 EMPLOYEE YOU HAVE GOES -- GOES INTO THIS AGREEMENT?

24 A. CORRECT.

25 Q. SO THEY COULD HAVE -- THEY COULD HAVE HAD A WHOLE

1 OTHER 500, 600 OTHER EMPLOYEES THAT THEY PLACED WITH
2 ANOTHER CARRIER OR DID SOMETHING DIFFERENT WITH,
3 RIGHT?

4 A. THEY DID.

5 Q. THEY DID. DID THEY, IN FACT, HAVE THAT?

6 A. THEY HAD A SEPARATE POLICY FOR U.S. LONGSHOREMAN AND
7 HARBOR WORKERS' COVERAGE, WHICH WAS NOT ELIGIBLE FOR
8 THIS PROGRAM.

9 Q. OKAY. BUT BY THE SAME TOKEN, THIS IS NOT AN
10 EXCLUSIVITY AGREEMENT, RIGHT?

11 A. CORRECT.

12 Q. OKAY. SO, JUST LIKE COUNTRYWIDE IS FREE TO GO AND
13 SIGN UP OTHER AGREEMENTS, THESE GUYS ARE FREE TO GO
14 OUT AND PLACE OTHER EMPLOYEES AT OTHER COMPANIES OR
15 HAVE 1099 SUBCONTRACTORS OR INDEPENDENT CONTRACTORS,
16 RIGHT?

17 A. UH-HUH.

18 **BY MR. BEARD:**

19 WAS THAT A YES, SIR? DID YOU SAY YES?

20 **BY THE WITNESS:**

21 YES.

22 **BY MR. ALFORD:**

23 I'M SORRY. THAT'S ONE OF THESE LEGAL THINGS
24 BECAUSE SHE'S GOT TO TAKE IT ALL DOWN.

25 **BY THE WITNESS:**

1 YES.

2 BY MR. BEARD:

3 THAT WAS AN IMPORTANT ANSWER. THAT'S THE ONLY
4 REASON I SAID THAT.

5 CROSS EXAMINATION RESUMED BY MR. ALFORD:

6 Q. ALL RIGHT, SIR. I'D LIKE FOR YOU TO LOOK AT PAGE
7 THREE OF THE AGREEMENT. AT THE BOTTOM IS PARAGRAPH
8 SIX, WORK ENVIRONMENT. I GUESS I WANT TO GO BACK TO
9 ONE THING. IN THESE MEETINGS THAT YOU DOCUMENTED IN
10 YOUR MEMO, IT WASN'T -- NO ONE ASKED COUNTRYWIDE OR
11 SAID TO COUNTRYWIDE, "HEY, BY THE WAY, IF ANYTHING
12 GOES SOUTH WE'RE EXPECTING YOU GUYS TO COVER THESE
13 1099 NURSES," DID YOU?

14 A. NO. THE MEETING WAS BASICALLY TO CLARIFY THAT THERE
15 WERE 1099 CONTRACT PEOPLE OUT THERE.

16 Q. OKAY. BUT -- BUT IT WASN'T THEY'RE OUT THERE AND IF
17 ANYTHING GOES WRONG WE'RE GOING TO LOOK TO YOU TO
18 HANDLE IT; IT WAS THEY'RE OUT THERE AND -- I'M
19 SPEAKING FROM CONDUSTRIAL -- THEY'RE OUT THERE AND
20 CONDUSTRIAL HAS IT UNDER CONTROL BECAUSE THEY'RE
21 TRUE INDEPENDENT CONTRACTORS?

22 A. CORRECT.

23 Q. AND, SIR, IF YOU'LL READ PARAGRAPH FIVE, IT SAYS
24 THAT -- AND WOULD YOU AGREE WITH ME THAT IF
25 COUNTRYWIDE THOUGHT THAT THERE WAS A RISK THAT A

1 CONDUSTRIAL WORKER WAS HEADED INTO, THAT THEY COULD
2 SAY, "HEY, WE DON'T -- WE DON'T WANT TO -- WE DON'T
3 WANT LION TAMERS. WE'RE NOT GONNA -- WE'RE NOT
4 GONNA ISSUE COMP FOR THOSE GUYS. WE DON'T WANT THEM
5 IN OUR AGREEMENT," THAT COUNTRYWIDE COULD SAY NO,
6 RIGHT?

7 A. I WOULD ASSUME SO BY THIS AGREEMENT. BUT THEY
8 ALREADY HAVE THE CLASSIFICATION ON A POLICY FOR THE
9 WORKERS THAT WERE OUT THERE AS EMPLOYEES.

10 Q. OKAY. SO THAT -- AND THAT'S AN INTERESTING POINT
11 THAT YOU MAKE BECAUSE WE TALKED ABOUT
12 CLASSIFICATIONS. ISN'T IT ULTIMATELY THE CARRIER OR
13 THE N.C.C.I. THAT GETS TO DECIDE THE CLASSIFICATION?

14 A. YES.

15 Q. I MEAN, YOU GET TO MAKE, RESPECTFULLY, AN EDUCATED
16 GUESS?

17 A. CORRECT.

18 Q. OKAY. BUT THE PERSON THAT YOU'RE ASKING TO ASSUME
19 THE RISK ACTUALLY GETS TO DECIDE?

20 A. CORRECT.

21 Q. OKAY. AND THE -- DO YOU THINK THERE'S A -- I MEAN,
22 JUST COMMON SENSE, JUST GENERAL LIFE, DO YOU THINK
23 IT'S A SAFER ENVIRONMENT TO WORK AT A CONVALESCENT
24 HOME OR IN A MAXIMUM SECURITY PRISON? WHICH IS
25 SAFER?

- 1 A. CONVALESCENT HOME.
- 2 Q. OKAY. DO YOU THINK IT'S SAFER TO WORK IN A -- AS A
- 3 PROFESSIONAL HEALTHCARE RN, LPN, OR TO BE A NURSE IN
- 4 A MAXIMUM SECURITY PRISON?
- 5 A. RPN (SIC), LPN.
- 6 Q. OKAY. BECAUSE THERE'S DIFFERENT ELEMENT TO WORKING
- 7 IN A DANGEROUS ENVIRONMENT, RIGHT?
- 8 A. SURE.
- 9 Q. OKAY. AND IT MAY BE THAT THERE MIGHT BE A DIFFERENT
- 10 CODE OUT THERE FOR PRISON EMPLOYEES OR PEOPLE THAT
- 11 DEAL WITH REALLY DANGEROUS PEOPLE?
- 12 A. BUT GUARANTEE WAS THE CARRIER FOR CONDUSTRIAL FOR A
- 13 YEAR PRIOR TO THE BERKLEY ISSUE, SO GUARANTEE HAD AN
- 14 EXPERIENCE WITH THESE CLASSIFICATIONS.
- 15 Q. WITH THESE CLASSIFICATIONS?
- 16 A. YES.
- 17 Q. AND PROBABLY THAT LEVEL OF PAYROLL?
- 18 A. I'VE NO IDEA WHAT THE LEVEL OF PAYROLL WAS.
- 19 Q. SEE, NOW YOU'RE KIND OF GETTING INTO THE RELEVANT
- 20 THING. ARE YOU -- IS IT YOUR TESTIMONY THAT YOU
- 21 THINK OR THAT YOU HAVE SOME EVIDENCE THAT GUARANTEE
- 22 KNEW ABOUT THE 1099 NURSES IN THE PRISONS?
- 23 A. NO, I'M NOT SAYING THAT. I'M SAYING ---
- 24 Q. OKAY. BECAUSE ---
- 25 A. I'M SAYING THAT GUARANTEE KNEW ABOUT THE 8832 AND

1 THE 8829 CLASSIFICATIONS AND WHERE THOSE PEOPLE
2 WERE.

3 Q. OKAY. AND DID ANYBODY EVER TELL GUARANTEE WAY BACK
4 WHEN -- BECAUSE YOU WERE DEALING WITH THEM, RIGHT?

5 A. NO.

6 Q. OKAY. DO YOU -- ARE YOU AWARE OF ANYONE EVER
7 TELLING GUARANTEE -- PRIOR, NOW, BECAUSE YOU'VE
8 TAKEN US BACK IN TIME AND SAID, YEAH, THEY KNEW
9 ABOUT THESE CLASSIFICATIONS. OKAY. THEY KNEW ABOUT
10 THE CLASSIFICATIONS. DID THEY KNOW THAT THEY WERE
11 SENDING FEMALE NURSES INTO A MALE MAXIMUM SECURITY
12 PRISON?

13 A. I HAVE NO IDEA.

14 Q. DO YOU HAVE ANY EVIDENCE IN YOUR FILE, IN YOUR
15 CONVERSATIONS, IN ANYTHING THAT CONDUSTRIAL TOLD
16 GUARANTEE SUCH THAT THEY WOULD HAVE AN INSTITUTIONAL
17 LEVEL OF KNOWLEDGE THAT THEY WERE PLACING FEMALE
18 NURSES IN A MALE MAXIMUM SECURITY PRISON ON 120 OF
19 THEM, 130 OF THEM YEAR AFTER YEAR AFTER YEAR?

20 A. I HAVE NO KNOWLEDGE OF THAT MYSELF.

21 Q. OKAY. SO, THE ONLY THING THAT G.I.C. MIGHT HAVE HAD
22 KNOWLEDGE OF WOULD BE THE SAME THING THAT
23 COUNTRYWIDE HAD KNOWLEDGE OF WHEN THEY SIGNED THIS
24 CONTRACT, IS WE'VE GOT \$900,000 WORTH OF PAYROLL FOR
25 A CONVALESCENCE HOME AND PROFESSIONAL HEALTHCARE RNS

1 AND LPNs, RIGHT?

2 A. RIGHT.

3 Q. AND SO THEY WOULDN'T HAVE KNOWN ABOUT WHAT YOU AND I
4 AND MOST SENSIBLE PEOPLE WOULD AGREE IS A HIGHER
5 LEVEL OF RISK FOR THESE POOR LADIES?

6 A. POSSIBLY.

7 Q. OKAY. BUT YOU DON'T HAVE ANY EVIDENCE THAT THEY
8 KNEW?

9 A. NO.

10 Q. THANK YOU. YOU KNOW WHAT INDEMNIFICATION -- I MEAN,
11 I DON'T NEED TO GO THROUGH THAT.

12 BY MR. ALFORD:

13 YOUR HONOR, IF I COULD HAVE ONE SECOND, JUST
14 ONE SECOND.

15 BY THE COMMISSIONER:

16 CERTAINLY.

17 CROSS EXAMINATION RESUMED BY MR. ALFORD:

18 Q. SIR, I'M GOING TO ASK YOU TO LOOK AT -- MR. GOODWYN
19 GAVE YOU THAT DOCUMENT EARLIER. ARE YOU FAMILIAR
20 WITH THAT DOCUMENT?

21 A. NO.

22 Q. DOES IT LOOK TO BE A FAIRLY STANDARD CERTIFICATE OF
23 INSURANCE?

24 BY THE COMMISSIONER:

25 CAN YOU IDENTIFY THE NUMBER?

1 **BY MR. ALFORD:**

2 IT'S NOT IN EVIDENCE.

3 **BY THE COMMISSIONER:**

4 OKAY. THANK YOU, SIR.

5 **BY MR. ALFORD:**

6 ACTUALLY, I CAN PULL THAT BACK, IF YOU'D LIKE,
7 MAKE IT EASIER. I CAN ASK HIM SOME JUST GENERAL
8 QUESTIONS. THAT'S FINE. THANK YOU.

9 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

10 Q. SIR, IS THERE A DIFFERENCE BETWEEN A VOLUNTARY
11 MARKET AND THE ASSIGNED RISK MARKET?

12 A. YES, THERE IS.

13 Q. IT'S MORE EXPENSIVE AND UGLIER IN THE ASSIGNED RISK
14 MARKET, ISN'T IT?

15 A. IN SOUTH CAROLINA, PROBABLY ABOUT 30 PERCENT.

16 Q. SO IF YOU CAN MAKE IT IN TO THE VOLUNTARY MARKET
17 WITH LOWER LEVELS OF -- I MEAN, YOU GET INTO THE
18 VOLUNTARY MARKET WITH LOWER LEVELS OF RISK, RIGHT?

19 A. CORRECT.

20 Q. IF YOU'RE HIGH RISK, HIGH CLAIM, YOU'RE PROBABLY
21 HEADED FOR ASSIGNED RISK?

22 A. YES.

23 Q. AND IT COSTS YOU A LOT MORE MONEY?

24 A. YES.

25 Q. OKAY. AND IN AN ASSIGNED RISK POLICY, IT'S KIND OF

1 A LAST RESORT?

2 A. CORRECT.

3 Q. AND AT THE TIME THAT YOU GOT INVOLVED WITH
4 CONDUSTRIAL AND COUNTRYWIDE IN THIS CONVERSATION
5 WE'VE BEEN HAVING, I REMEMBER YOU TESTIFIED THEY
6 WERE KIND OF THE LAST RESORT BEFORE HAVING TO GO
7 ASSIGNED RISK?

8 A. YES. MY TESTIMONY WAS ---

9 Q. YEAH. YOU TELL ME WHAT YOU ---

10 A. ME -- ME, AS A BROKER, KEENAN SUGGS, WE ONLY HAD TWO
11 ALTERNATIVES, EITHER THE ASSIGNED RISK FOR COVERAGE
12 OR DIRECT THEM TO COUNTRYWIDE.

13 Q. OKAY. AND -- BUT AT THE TIME COUNTRYWIDE ENTERED
14 INTO THE CONTRACT AND IT WASN'T ASSIGNED RISK,
15 COUNTRYWIDE REALLY DIDN'T GET FULL DISCLOSURE ABOUT
16 ALL ASPECTS OF THEIR BUSINESS, DID THEY, BECAUSE OF
17 THE 130 1099'ERS OUT THERE?

18 A. FROM YOUR PERSPECTIVE, NO. FROM MY PERSPECTIVE,
19 AGAIN, AS I SAID, IS CONDUSTRIAL WAS COMFORTABLE
20 WITH THAT DETERMINATION OF INDEPENDENT CONTRACTOR
21 STATUS AND ---

22 Q. BUT THEY DIDN'T KNOW ABOUT IT UNTIL AFTER THE
23 AGREEMENT WAS SIGNED, BY YOUR TESTIMONY? SO,
24 THERE'S NOTHING TO BE COMFORTABLE WITH BECAUSE THEY
25 DIDN'T KNOW IT EXISTED?

1 A. NO. I SAID THE COMFORT LEVEL WAS BETWEEN
2 CONDUSTRIAL AND US.

3 Q. OH, OKAY. SIR, THERE IS AN INTERESTING NOTICE --
4 HAVE YOU EVER DEALT WITH ASSIGNED RISK POLICY STUFF?

5 A. ON OCCASION, VERY RARELY.

6 Q. WELL, THERE'S A NOTICE ATTACHED TO THIS POLICY -- OR
7 TO THIS CERTIFICATE. IT SAYS, "NOTICE. COVERAGE
8 FOR THIS EMPLOYER HAS BEEN PLACED WITH THE ASSIGNED
9 RISK PLAN. AS THE PLAN IS THE MARKET OF LAST
10 RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT
11 THROUGH THE STANDARD VOLUNTARY MARKET. PLEASE NOTE
12 ASSIGNED RISK PREMIUMS IN THE ASSIGNED RISK PLAN MAY
13 BE HIGHER THAN THE STANDARD VOLUNTARY MARKET." THEN
14 IT COMES DOWN AND IT SAYS PRODUCER/EMPLOYER, AND
15 THAT WOULD BE YOU AND CONDUSTRIAL, RIGHT?

16 A. RIGHT.

17 Q. OKAY. "PLEASE PROVIDE A COPY OF CERTIFICATE OF
18 INSURANCE FOR ANY SUBCONTRACTORS USED TO THE
19 ASSIGNED CARRIER." NOW, IS IT STANDARD IN THE --
20 BECAUSE THAT -- NOW I WANT TO ASK YOU THIS. WHEN
21 YOU WERE DOING THE APPLICATION FOR THE G.I.C.
22 POLICY, THE ONE THAT WE'RE HERE ABOUT, DID THAT
23 APPLICATION REQUEST THAT YOU PROVIDE CERTIFICATES OF
24 INSURANCE FOR ANY SUBCONTRACTORS USED?

25 A. NO.

1 Q. THERE'S NOTHING IN THOSE APPLICATIONS THAT ASKED YOU
2 TO DEFINE THAT POTENTIAL CONTINGENT RISK OUT THERE?

3 A. THE APPLICATION ASKS THE QUESTION IF YOU SUB ANY
4 WORK AND, IF YOU DO, DO YOU OBTAIN CERTIFICATES.

5 Q. OKAY. AND WHAT WAS THE ANSWER?

6 A. YES.

7 Q. HAVE YOU EVER ---

8 A. WELL ---

9 Q. WELL, THE ANSWER WAS YES. NOW EXPLAIN IT.

10 A. WELL, OKAY. LET ME BACK UP.

11 Q. OKAY.

12 A. 'CAUSE THERE'S A DIFFERENCE BETWEEN SUBBING WORK --
13 WELL, MAYBE NOT. YOU COULD CONSIDER AN INDEPENDENT
14 CONTRACTOR TO BE SUBBING YOUR WORK, YES.

15 Q. OKAY. I MEAN, WOULDN'T THE INTENT BE -- JUST AS WE
16 TALKED ABOUT BUSINESS DECISIONS AND RISK
17 ALLOCATIONS, RIGHT?

18 A. UH-HUH.

19 Q. WOULDN'T THE INTENT BE THAT IF YOU HAVE THIS 3.1
20 MILLION BUCKS -- AND I'M LOWBALLING THAT, BY THE WAY
21 -- THIS 3.1 MILLION BUCKS A YEAR OF PAYROLL
22 LIABILITY, WHICH WITH A COUPLE OF LOSSES COULD EQUAL
23 A LOT MORE IN INSURANCE LOSS IF SOMEBODY GOT KILLED
24 OR PARALYZED OR SOMETHING LIKE THAT, RIGHT?

25 A. CORRECT.

1 Q. OKAY. SO WE'RE TALKING MEGA MORE RISK. IF YOU HAVE
2 THAT SITTING OUT THERE, ISN'T THAT QUESTION AND
3 ISN'T THIS REQUEST FOR DISCLOSURE, ISN'T THAT
4 DESIGNED SO THAT THE CARRIERS AND THE PEOPLE THAT DO
5 BUSINESS WITH YOU UNDERSTAND THE REAL RISK THAT
6 THEY'RE UNDERTAKING?

7 A. YES.

8 Q. HAVE YOU EVER SEEN A CERTIFICATE OF INSURANCE FOR AN
9 INDEPENDENT CONTRACTOR -- HOW LONG HAVE YOU BEEN
10 WORKING WITH THESE CONDUSTRIAL GUYS?

11 A. FIFTEEN YEARS.

12 Q. ALL RIGHT. IN THE 15 YEARS -- AND THE MEDUSTRIAL
13 THING HAS NOT BEEN AROUND THAT LONG, HAS IT? IT'S
14 ---

15 A. I DON'T THINK SO.

16 Q. IT'S LIKE '09, '10, IS THAT ---

17 A. I'M NOT SURE.

18 Q. BUT NOT THE WHOLE TIME THAT YOU ---

19 A. I'VE BEEN WORKING DIRECTLY WITH THEM FOR THREE
20 YEARS.

21 Q. OKAY. ALL RIGHT. BUT IN THE WHOLE TIME YOU'VE BEEN
22 WORKING WITH THEM, HAVE YOU EVER SEEN A CERTIFICATE
23 OF INSURANCE FOR THEIR MEDUSTRIAL INDEPENDENT
24 CONTRACTORS THAT GO TO WORK FOR THE SCDC IN THESE
25 PRISONS?

1 A. NO.

2 Q. DO YOU BELIEVE THAT IT WOULD HAVE BEEN INCUMBENT
3 UPON YOU TO ASK TO SEE ONE?

4 A. HERE AGAIN, THEY WERE PORTRAYED TO US AS TRUE
5 INDEPENDENT CONTRACTORS, SO THEY WOULDN'T HAVE
6 CERTIFICATES OF INSURANCE.

7 Q. BUT THEN WHY IS -- WHY ARE WE ASKING FOR THESE
8 THINGS? I MEAN, YOU SAID IF YOU USE SUBS CHECKS
9 YES. SO THEY'RE SUBBING THE WORK OUT. THEIR
10 AGREEMENT WITH SCDC DAYS WE'RE GONNA HAVE THESE --
11 THIS COMP. BUT I GUESS WHAT I'M ASKING IS, HAVE YOU
12 EVER -- YOU DIDN'T THINK YOU SHOULD HAVE ASKED FOR
13 ONE OR YOU DIDN'T THINK THEY SHOULD ASK FOR ONE?

14 **BY MR. GOODWYN:**

15 I'M GOING TO OBJECT TO THE FORM. I THINK HE'S
16 SAYING -- SUGGESTING THAT THE WORK AT SCDC IS
17 SUBCONTRACTED OUT. THERE'S NEVER A SUBCONTRACTOR
18 RELATIONSHIP. THEY'RE NOT A SUBCONTRACTOR; THEY'RE
19 JUST A STAFFING COMPANY. IT'S NOT THEIR CONTRACT TO
20 SUB OUT. THEY JUST ALLOCATE SHIFTS. IT'S
21 MISCHARACTERIZING THE RELATIONSHIP BETWEEN HIM,
22 CONDUSTRIAL, AND SCDC.

23 **BY MR. ALFORD:**

24 I'LL WITHDRAW IT AND ASK A DIFFERENT QUESTION.

25 **BY THE COMMISSIONER:**

1 THANK YOU, SIR.

2 **CROSS EXAMINATION RESUMED BY MR. ALFORD:**

3 Q. HAVE YOU EVER SEEN AN INSURANCE CERTIFICATE FOR
4 WORKERS' COMP INSURANCE FOR ANY OF THE MEDUSTRIAL
5 1099 NURSES THAT ARE ASSIGNED TO THE SCDC?

6 A. NO.

7 Q. OKAY. AND, SIR, I'M GOING TO ASK YOU WHAT I HOPE IS
8 MY LAST QUESTION. AFTER THIS SUCH ENJOYABLE
9 EXPERIENCE WE'VE HAD TODAY, DO YOU THINK THAT YOU
10 MIGHT -- IT MIGHT BE PRUDENT TO ASK FOR OR ASCERTAIN
11 THE NATURE OF THAT COVERAGE GOING FORWARD?

12 A. SURE.

13 **BY MR. ALFORD:**

14 HAVE A NICE DAY. THANK YOU.

15 **BY THE COMMISSIONER:**

16 GUARANTEE?

17 **BY MS. RICHARDSON:**

18 I HAVE JUST SENT NOTICE TO MY OFFICE TO MAKE
19 COPIES OF TWO DOCUMENTS AND HAVE THEM RUN OVER HERE.
20 THEY'RE NOT VERY LONG. I DON'T KNOW IF I COULD HAVE
21 THEM PRINTED OUT HERE SOMEWHERE. ONE IS FOUR PAGES.
22 THE OTHER ONE, IF I -- EVEN IF I EVEN NEED IT IS ---

23 **BY THE COMMISSIONER:**

24 CAN YOU IDENTIFY THEM BEFORE IT ACTUALLY COMES
25 THROUGH OUR OFFICE SO EVERYBODY KNOWS WHAT THEY ARE?

1 BY MS. RICHARDSON:

2 YES.

3 BY THE COMMISSIONER:

4 I MEAN, WE DON'T MIND PRINTING THEM OUT, BUT I
5 DON'T WANT -- AND I CERTAINLY -- TAMARA CAN PRINT
6 THEM AND ERASE THEM AND THEN JUST BRING THEM TO US
7 IN THE LOGISTICS FORMAT. I JUST DON'T WANT THEM --
8 I JUST WANT ANYBODY TO BE AWARE OF WHAT MAY BE
9 COMING THROUGH OUR EMAIL.

10 BY MS. RICHARDSON:

11 YEAH. THE FIRST IS THE ACORD 130 WORKERS'
12 COMPENSATION APPLICATION. IT'S LIKE A ---

13 BY MR. GOODWYN:

14 A BLANK ONE?

15 BY MS. RICHARDSON:

16 A BLANK ONE. STANDARD FORM USED IN THE
17 INSURANCE PRACTICE.

18 BY THE COMMISSIONER:

19 CERTAINLY.

20 BY MS. RICHARDSON:

21 AND THE OTHER ONE IS OUR SUBPOENA TO KEENAN
22 SUGGS.

23 BY THE COMMISSIONER:

24 ALL RIGHT. YES. IF YOU WILL FORWARD THOSE.
25 AND WE'LL TAKE A BREAK.

(OFF THE RECORD)

CROSS EXAMINATION BY MS. RICHARDSON:

Q. HELLO, MR. HYNDSHAW. MY NAME IS BETH RICHARDSON. I REPRESENT GUARANTEE INSURANCE COMPANY. THANKS FOR BEING HERE TODAY. HAVE YOU EVER GIVEN ANY TESTIMONY UNDER OATH BEFORE?

A. YES.

Q. WHEN WAS THAT?

A. 1982, '83.

Q. WHAT KIND OF MATTER WAS THAT IN?

A. THAT WAS IN A FIRE CLAIM.

Q. FIRE CLAIM. WAS IT TRIAL OR DEPOSITION?

A. DEPOSITION.

Q. DEPOSITION? DID IT GO TO TRIAL?

A. YES.

Q. DID YOU TESTIFY AT THE TRIAL AS WELL?

A. YES, I DID.

Q. OKAY. AND ANY OTHER MATTERS SINCE THEN?

A. NO.

Q. WHAT KIND OF ISSUE WAS INVOLVED WITH THE FIRE INSURANCE?

A. ARSON.

Q. ARSON. AND WERE YOU THE BROKER FOR THAT POLICY?

A. NO.

Q. WHAT ROLE DID YOU PLAY?

1 A. I WAS PART OF MANAGEMENT OF THE AGENCY.

2 Q. PART OF THE MANAGEMENT OF THE AGENCY. OH, THAT HAD
3 A BROKER ---

4 A. YES.

5 Q. --- FOR YOUR POLICY?

6 A. YES.

7 Q. OKAY. AND HOW ABOUT TODAY; DID YOU DO ANYTHING TO
8 MAKE ANY PREPARATIONS FOR YOUR TESTIMONY TODAY?

9 A. I READ BACK THROUGH SOME OF THE EMAILS THAT WERE
10 PROVIDED.

11 Q. BY KEENAN SUGGS?

12 A. BY KEENAN SUGGS, YES.

13 Q. OKAY. ANYTHING ELSE?

14 A. NO.

15 Q. DID YOU TALK TO ANYBODY? MS. WHITAKER?

16 A. NO, I HAVE NOT TALKED TO MS. WHITAKER REALLY SINCE
17 SHE -- I HAD AN EMAIL EXCHANGE WITH HER ASKING HER
18 TO TALK WITH CONDUSTRIAL ABOUT THIS PENDING CASE.
19 THAT'S THE ONLY CONVERSATION I HAD WITH HER OVER THE
20 PAST YEAR.

21 Q. ANYBODY ELSE?

22 A. UNTIL THIS MORNING.

23 Q. RIGHT. OKAY.

24 A. THEN I HAD CONVERSATION WITH JEFF AND TOM PRIOR TO
25 MEETING HERE TODAY.

1 Q. OKAY. WHEN DID THOSE OCCUR?

2 A. FOR PROBABLY ABOUT 30 MINUTES LAST EVENING AND THEN
3 AT LUNCH TODAY.

4 Q. AND WHAT DID YOU ALL TALK ABOUT?

5 A. JUST THE CASE IN GENERAL.

6 Q. AND WHAT DID THEY -- WHAT DID THEY -- WHAT KIND OF
7 QUESTIONS OR -- QUESTIONS DID THEY ASK YOU?

8 A. THE SAME ONES HE ASKED ME WHEN WE STARTED.

9 Q. OKAY. AND DID YOU ALL TALK ABOUT ANYTHING DURING
10 THOSE DISCUSSIONS THAT HE DID NOT ASK YOU TODAY?

11 A. NO.

12 Q. AND DID YOU ANSWER ANY QUESTIONS TO THEM ORIGINALLY
13 DIFFERENTLY THEN THAN YOU DID TODAY?

14 A. NO.

15 Q. WHY DID YOU AGREE TO MEET WITH MR. GOODWYN AND MR.
16 SEARS BEFORE YOU TESTIFIED TODAY?

17 A. BECAUSE THEY WANTED TO GIVE ME A FEEL FOR THE
18 QUESTIONS THEY WERE GOING TO ASK ME SO I'D BE
19 PREPARED.

20 Q. UH-HUH. SO, WHO REACHED OUT TO YOU TO ASK FOR THE
21 MEETING?

22 A. PROBABLY TONY.

23 Q. TONY? AND WHAT DID HE SAY?

24 A. WE'D LIKE TO HAVE A CONVERSATION BEFORE WE GO TO THE
25 HEARING.

1 Q. AND DID HE INDICATE WHY HE WANTED YOU TO TESTIFY?

2 A. JUST TO TELL WHAT I KNEW ABOUT THE SITUATION AS IT
3 PROGRESSED FROM THE BEGINNING OF THE RELATIONSHIP
4 WITH COUNTRYWIDE THROUGH TODAY.

5 Q. OKAY. DID HE GO -- DID HE SUGGEST TO YOU HOW HE'D
6 LIKE FOR YOU TO TESTIFY IN ANY WAY?

7 A. NO. HE JUST TOLD ME TO TELL THE TRUTH.

8 Q. YOU MENTIONED EARLIER IN YOUR TESTIMONY THAT THERE'S
9 AN APPLICATION THAT GETS FILLED OUT IN ORDER TO SHOP
10 AROUND THE INSURANCE PRODUCT THAT YOU'RE LOOKING FOR
11 FOR YOUR CLIENT; IS THAT CORRECT?

12 A. CORRECT.

13 Q. OKAY. AND I'M GOING TO HAND YOU THIS DOCUMENT. DO
14 YOU RECOGNIZE IT?

15 A. YES.

16 Q. COULD YOU TELL ME WHAT IT IS?

17 A. IT'S AN ACORD APPLICATION, WHICH IS INDUSTRY
18 STANDARD FOR WORKERS' COMPENSATION COVERAGE.

19 Q. IS THIS THE KIND OF DOCUMENT THAT YOU FILLED OUT
20 WHEN YOU FIRST DISCUSSED WITH GUARANTEE THEIR DESIRE
21 TO FIND WORKERS' COMPENSATION INSURANCE IN MARCH OF
22 2015?

23 A. I BELIEVE SO. IT SAYS HERE THIS IS A 2009 DOCUMENT.
24 I'M NOT SURE IF THERE WAS A LATER VERSION AT THAT
25 TIME OR NOT.

1 Q. OKAY. WELL, COULD YOU TAKE A LOOK AT THIS DOCUMENT.
2 IT'S ABOUT FOUR PAGES. WOULD YOU MIND JUST TAKING A
3 LOOK AT IT AND FAMILIARIZING YOURSELF WITH IT FOR A
4 MOMENT? AND ONCE YOU HAVE AN OPPORTUNITY TO DO
5 THAT, WOULD YOU LET ME KNOW?

6 A. OKAY.

7 Q. IS THERE ANYTHING THAT STRIKES YOU ABOUT THIS
8 DOCUMENT AS BEING DIFFERENT FROM THE ONE THAT YOU
9 FILLED OUT FOR CONDUSTRIAL?

10 A. NO.

11 Q. WOULD YOU MIND TURNING TO PAGE THREE, PLEASE.

12 A. OKAY.

13 Q. UNDER THE SECTION ABOUT IN THE MIDDLE OF THE PAGE IT
14 SAYS GENERAL INFORMATION, AND THEN THERE IS A LIST
15 OF NUMBERED QUESTIONS THAT FALLS UNDERNEATH THE BOX
16 THEREUNDER. DO YOU SEE THAT SECTION?

17 A. YES.

18 Q. OKAY. AND COULD YOU READ OUT LOUD QUESTION NUMBER
19 SEVEN?

20 A. "ANY WORK SUBLET WITHOUT CERTIFICATES OF INSURANCE?"

21 Q. AND THEN THERE'S A PARENTHESES, CORRECT?

22 A. PARENTHESES, "IF YES, PAYROLL FOR THIS WORK MUST BE
23 INCLUDED IN THE STATE RATING WORKSHEET, PAGE TWO."

24 Q. OKAY. DO YOU RECALL WHETHER OR NOT YOU INCLUDED
25 CONDUSTRIAL'S 1099 WORKERS IN RESPONSE TO QUESTION

1 SEVEN?

2 A. IT DID NOT.

3 Q. AND WHERE IT SAYS IF YOU HAD INCLUDED THEM ON THERE,
4 IT THEN REFERS TO PAGE TWO. THIS WORK MUST BE --
5 PAYROLL FOR THIS WORK MUST BE INCLUDED IN THE STATE
6 RATING WORKSHEET ON PAGE TWO.

7 **BY MR. GOODWYN:**

8 YOUR HONOR, I WOULD OBJECT. THERE'S NO
9 FOUNDATION THAT THE INDEPENDENT CONTRACTOR THAT
10 THEY'RE TALKING ABOUT SHOULD HAVE EVEN BEEN INCLUDED
11 ON THIS BLOCK. HE SAID THEY WEREN'T, BUT SHE NEVER
12 ASKED IF THEY SHOULD HAVE BEEN.

13 **BY MS. RICHARDSON:**

14 ACTUALLY, I THINK HE ALREADY DID TESTIFY TO
15 THAT, THAT THE INDEPENDENT CONTRACTORS COULD HAVE --
16 QUITE POSSIBLY SHOULD HAVE BEEN CONSIDERED A SUBSET
17 -- SUBLET.

18 **BY THE WITNESS:**

19 CAN I CLARIFY THAT, PLEASE?

20 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

21 Q. YES.

22 A. OKAY. QUESTION SEVEN IS A RESPONSE TO QUESTION SIX.
23 "ARE SUBCONTRACTORS USED?" AND TYPICALLY WE
24 CONSIDER SUBCONTRACTORS TO BE FIRMS WITH EMPLOYEES.
25 SO, IN THAT CASE, THEN, THERE WERE NO SUBCONTRACTORS

1 WITHOUT CERTIFICATES. THE STATE OF SOUTH CAROLINA,
2 AN INDIVIDUAL, A PARTNERSHIP, AN LLC, THE MEMBERS OF
3 THE LLC, THE MEMBERS OF THE PARTNERSHIP, THE
4 INDIVIDUAL ARE NOT INCLUDED FOR WORKERS'
5 COMPENSATION. THEY'RE EXCLUDED UNLESS THEY
6 SPECIFICALLY REQUEST COVERAGE. SO IF YOU HAVE AN
7 INDEPENDENT CONTRACTOR, THEY ARE NOT REQUIRED BY THE
8 STATE OF SOUTH CAROLINA TO HAVE WORKERS'
9 COMPENSATION INSURANCE.

10 Q. EXCEPT IF THE CLIENT AGREES BY CONTRACT THAT THESE
11 INDEPENDENT CONTRACTORS WOULD HAVE WORKERS'
12 COMPENSATION INSURANCE, CORRECT?

13 A. CORRECT.

14 Q. OKAY. IF YOU ANSWERED YES TO QUESTION SEVEN ON PAGE
15 TWO, COULD YOU SHOW ME WHERE ON PAGE TWO IS THE
16 STATE RATING WORKSHEET?

17 A. STATE RATING WORKSHEET WOULD BE THAT -- THE LARGE
18 BOX AREA AT THE TOP.

19 Q. AND IN THAT BOX YOU WOULD END UP FILLING OUT THINGS
20 LIKE LOCATION NUMBER -- I'M JUST READING THE COLUMNS
21 AT THE TOP -- CLASS CODE, DESCRIPTION CODE,
22 CATEGORIES, DUTIES, CLASSIFICATIONS, NUMBER OF
23 EMPLOYEES, FULL TIME/PART TIME, SIC, NAICS,
24 ESTIMATED ANNUAL REMUNERATION, PAYROLL RATE, AND THE
25 ESTIMATE ANNUAL MANUAL PREMIUM; IS THAT CORRECT?

1 **BY MR. GOODWYN:**

2 YOUR HONOR, I'M GOING TO OBJECT TO RELEVANCY
3 HERE. HE'S ALREADY TESTIFIED THESE PEOPLE AREN'T
4 SUPPOSED TO BE THERE. WE CAN ALL READ WHAT THE FORM
5 SAYS. IF THESE INDEPENDENT CONTRACTORS AREN'T
6 SUPPOSED TO BE THERE, WHAT'S THE -- WHAT'S THE
7 RELEVANCE OF THIS?

8 **BY MS. RICHARDSON:**

9 I DON'T THINK HE SAID THAT.

10 **BY MR. GOODWYN:**

11 I THINK HE SAID SEVEN WAS A RESPONSE TO
12 QUESTION SIX. THERE ARE NO SUB -- WE'VE ALL AGREED
13 THIS WASN'T A SUBCONTRACTOR SITUATION.

14 **BY MS. RICHARDSON:**

15 I JUST ---

16 **BY MR. GOODWYN:**

17 IT'S AN INDEPENDENT CONTRACTOR SITUATION.

18 **BY MS. RICHARDSON:**

19 I JUST ASKED HIM IF THE CLIENT WAS REQUIRED BY
20 CONTRACT TO PROVIDE WORKERS' COMPENSATION FOR ITS
21 INDEPENDENT CONTRACTORS, WOULD THEY NEED TO BE
22 INCLUDED UNDER SECTION SEVEN.

23 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

24 Q. AND I BELIEVE YOUR TESTIMONY, MR. HYNDSHAW, WAS
25 THAT, YES, OR THAT THEY MAY NEED TO BE INCLUDED

1 UNDER THOSE CIRCUMSTANCES?

2 A. CORRECT.

3 Q. THANK YOU.

4 **BY THE COMMISSIONER:**

5 YOU CAN PROCEED.

6 **CROSS EXAMINATION RESUMED BY MS. RICHARDSON:**

7 Q. SO, THE 1099 NURSES, IF THEY WERE REQUIRED TO HAVE
8 WORKERS' COMPENSATION INSURANCE, THEIR CLASS CODES
9 AND PREMIUMS WOULD NEED TO BE DISCLOSED ON THIS
10 APPLICATION PER SECTION -- PER QUESTION SEVEN?

11 A. IF THEY WERE NOT INDEPENDENT CONTRACTORS.

12 Q. AND ONCE YOU FILL OUT THAT INFORMATION, THEN THAT
13 AFFECTS THE WAY IN WHICH YOU WOULD COMPUTE PREMIUM
14 AND ASSESS RISK AND SO FORTH?

15 A. CORRECT.

16 Q. AN INSURER WOULD HAVE THE OPPORTUNITY TO DO THAT?

17 A. CORRECT.

18 Q. MR. HYNDSHAW, I'M GOING TO HAND YOU ---

19 **BY MS. RICHARDSON:**

20 WELL, FIRST, I'D LIKE TO ENTER INTO EXHIBIT
21 THIS ACORD WORKERS' COMPENSATION APPLICATION, AND I
22 BELIEVE THAT WOULD BE DEFENDANT GUARANTEE'S EXHIBIT
23 NUMBER FIVE.

24 **BY MR. GOODWYN:**

25 NO OBJECTION.

1 BY THE COMMISSIONER:

2 ALL RIGHT. SO ADMITTED AS GUARANTEE FIVE.
3 (COURT REPORTER MARKS ACORD WORKERS' COMPENSATION
4 APPLICATION DEFENDANT GUARANTEE EXHIBIT FIVE, RETAINED IN
5 COMMISSION FILE.)

6 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

7 Q. MR. HYNDSHAW, I'M GOING TO HAND YOU ONE MORE
8 DOCUMENT. COULD YOU TAKE A MINUTE TO LOOK THAT OVER
9 AND LET ME KNOW WHEN YOU'VE HAD AN OPPORTUNITY.

10 BY MR. GOODWYN:

11 WHAT DID YOU HAND HIM?

12 BY MS. RICHARDSON:

13 IT'S ON THE DESK. A SUBPOENA.

14 BY MR. GOODWYN:

15 OH, THIS?

16 BY MS. RICHARDSON:

17 YES.

18 BY THE WITNESS:

19 OKAY.

20 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

21 Q. HAVE YOU EVER SEEN THIS DOCUMENT, OR ARE YOU AWARE
22 OF THE SUBPOENA CONTAINED BEHIND THE COVER LETTER
23 HERE?

24 A. I'M AWARE OF THE DOCUMENT AND THE SUBPOENA, YES.

25 Q. HAD YOU EVER ---

- 1 A. WELL, LET ME CORRECT THAT.
- 2 Q. YES.
- 3 A. WHEN -- WHEN I SAW THE SUBPOENA, I DIDN'T SEE THIS
- 4 -- I DON'T THINK I SAW THIS DOCUMENT. THE SUBPOENA
- 5 I SAW FOR KEENAN SUGGS, TOMMY SUGGS AS REGISTERED
- 6 AGENT, WAS THE ONE THAT WAS RECEIVED THE SAME DAY I
- 7 RECEIVED IT, WHICH WAS MONDAY OF THIS WEEK FOR
- 8 TOMORROW.
- 9 Q. OH, TO COME TO TRIAL?
- 10 A. YES.
- 11 Q. ARE YOU ---
- 12 A. SO, I DIDN'T SEE THIS ONE.
- 13 Q. ARE YOU AWARE THAT GUARANTEE SUBPOENAED KEENAN SUGGS
- 14 FOR PRODUCTION OF DOCUMENTS ---
- 15 A. YES.
- 16 Q. --- RELATED TO THIS CASE BEFORE YOUR ARRIVAL TODAY?
- 17 A. YES.
- 18 Q. OKAY. AND HOW DID YOU BECOME AWARE OF THAT?
- 19 A. THE PERSON WHO WAS GATHERING THE DOCUMENTS ASKED ME
- 20 FOR -- WHAT SOURCES TO CHECK TO MAKE SURE SHE HAD
- 21 EVERYTHING.
- 22 Q. OKAY. AND HOW DID YOU KNOW WHAT SOURCES OF
- 23 DOCUMENTS TO CHECK?
- 24 A. BASICALLY CHECKING JO ANN WHITAKER'S EMAILS.
- 25 Q. JO ANN WHITAKER'S -- DID THEY SHOW YOU THIS SUBPOENA

1 THAT SPECIFICALLY ASKED FOR PARTICULAR KINDS OF
2 DOCUMENTS?

3 A. NO.

4 Q. OKAY. AND WHO -- WHO WAS THAT? WHO CONTACTED YOU
5 ABOUT RESPONDING TO THE SUBPOENA?

6 A. CONNIE CALLAHAM.

7 Q. AND WHO IS CONNIE CALLAHAM?

8 A. CONNIE CALLAHAM IS OUR OPERATIONS MANAGER.

9 Q. AND WHEN SHE CAME TO YOU TO SAY -- WHAT DID SHE SAY
10 TO YOU WHEN SHE -- WHEN SHE CAME TO YOU ORIGINALLY?

11 A. BASICALLY SHE HAD A REQUEST FOR DOCUMENTS AND WHERE
12 WAS THE BEST PLACE TO START PUTTING EVERYTHING
13 TOGETHER.

14 Q. DOCUMENTS FOR WHAT? DID SHE SPECIFY?

15 A. NO. SHE JUST -- TO RESPOND TO YOUR REQUEST FOR
16 RECORDS.

17 Q. AND WHAT KINDS OF RECORDS DID SHE SAY I WAS LOOKING
18 FOR?

19 A. DOCUMENTATION OF THE NEGOTIATIONS BETWEEN
20 COUNTRYWIDE AND CONDUSTRIAL FROM JANUARY UNTIL
21 PRESENT, JANUARY '15 TO PRESENT.

22 Q. FROM JANUARY '15 TO PRESENT?

23 A. RIGHT.

24 Q. SHE -- DID MS. CALLAHAM RESTRICT YOU TO THAT TIME
25 FRAME?

1 A. NO. I THINK THAT WAS JUST THE QUESTION.

2 Q. WHICH QUESTION?

3 A. THE QUESTION SHE ASKED ME, WHERE WOULD SHE -- WHERE
4 WOULD BE THE BEST SOURCE FOR DOCUMENTS FOR WHAT
5 TRANSPIRED BETWEEN JANUARY OF '15 ---

6 Q. OF 2015 TO PRESENT?

7 A. --- UNTIL PRESENT, YEAH, 'CAUSE WE HAVE -- WE HAVE
8 EMAILS. WE HAVE A PUBLIC DRIVE WHERE WE STORE BASIC
9 INFORMATION. WE HAVE OTHER DRIVES WHERE WE STORE
10 INFORMATION. SO IT WAS A COMBINATION OF WHERE TO GO
11 TO GET THIS INFORMATION.

12 Q. ARE YOU AWARE OF WHAT DOCUMENTS WERE COLLECTED AND
13 PRODUCED TO US?

14 A. I WAS FORWARDED THOSE YESTERDAY.

15 Q. OKAY.

16 A. I DON'T KNOW THAT I HAVE THE COMPLETE FILE THAT YOU
17 GOT, BUT I DID GET DOCUMENTS FROM HER YESTERDAY.

18 Q. OKAY. AND WHAT SOURCES OR WHERE DID YOU TELL MS.
19 CALLAHAM TO GO LOOK FOR THE RESPONSIVE DOCUMENTS?

20 A. JO ANN'S EMAILS, YOU KNOW, OUR MANAGEMENT SERVER,
21 WHICH IS -- IT'S CALLED A.M.S. AND WE HAVE A
22 DOCUMENT STORAGE FACILITY, WHICH IS CALLED WORK
23 SMART.

24 Q. IS THERE ANY REASON WHY YOU DIDN'T SEARCH YOUR OWN
25 EMAIL ACCOUNT FOR DOCUMENTS RESPONSIVE TO THE

1 MATTER?

2 A. I DID SEARCH MY EMAILS AND GIVE HER MY EMAILS.

3 Q. OH, YOU DID?

4 A. YES.

5 Q. OKAY. WELL, WOULD IT SURPRISE YOU TO KNOW THAT THE
6 ONLY DOCUMENTS THAT WE RECEIVED WERE TWO INSURANCE
7 POLICIES WHEREIN CONDUSTRIAL IS THE DIRECT INSURED,
8 ONE ISSUED BY ZURICH AND I BELIEVE THE OTHER ONE
9 ISSUED BY LLOYD'S, AND COPIES OF THOSE POLICIES IN
10 FULL, AS WELL AS A SERIES OF EMAILS BETWEEN JO ANN
11 WHITAKER, TOM SEARS, TONY DURHAM, YOU KNOW, YOU WERE
12 COPIED ON SOME OF THESE, ALL OCCURRING AFTER THE
13 DATE OF THIS ACCIDENT? WOULD THAT SURPRISE YOU,
14 THAT THAT WAS ALL WE RECEIVED?

15 A. YES.

16 Q. OKAY. ARE YOU AWARE OF DOCUMENTS THAT EXIST WITHIN
17 KEENAN SUGGS' POSSESSION OR THAT MAY EXIST WITHIN
18 KEENAN SUGGS' POSSESSION THAT WOULD BE SUMMARIES OF
19 CONTEMPORANEOUS CONVERSATIONS, OR WOULD THE ACORD
20 APPLICATION BE PART OF THE FILE?

21 A. THE ACORD APPLICATIONS WOULD CERTAINLY BE PART OF
22 THAT FILE, YES.

23 Q. AND SO, THAT SHOULD HAVE BEEN PRODUCED?

24 A. YES.

25 Q. AND DO YOU BELIEVE THAT THERE ARE EMAILS OUT THERE

1 BEFORE -- RACHEL TURNER WAS INJURED ON SEPTEMBER
2 15TH, 2015?

3 BY MS. RICHARDSON:

4 IS THAT CORRECT, STEPHEN?

5 BY THE COMMISSIONER:

6 SEPTEMBER 5TH.

7 BY MR. SAMUELS:

8 SEPTEMBER 5TH.

9 CROSS EXAMINATION RESUMED BY MS. RICHARDSON:

10 Q. SEPTEMBER 5TH, 2015. DO YOU BELIEVE THAT THERE'S
11 EMAILS OUT THERE WITH REGARD TO CONDUSTRIAL'S ISSUES
12 WITH WORKERS' COMPENSATION INSURANCE ON OR BEFORE
13 THAT DATE?

14 A. OH, YES, YES.

15 Q. OKAY. AND, CERTAINLY, THERE'S THE ACORD -- THE
16 APPLICATION THAT YOU CREATED FOR THEM TO SHOP THE
17 MARKET?

18 A. CORRECT.

19 Q. WOULD YOU ALSO HAVE, SAY, LETTERS FROM OTHER
20 INSURERS INDICATING WHY THEY WERE NOT INTERESTED IN
21 INSURING CONDUSTRIAL?

22 A. YES, LETTERS AND EMAILS PREDOMINANTLY.

23 Q. AND EMAILS PREDOMINANTLY. WHAT ALL COMPANIES DENIED
24 INSURING CONDUSTRIAL AT THE TIME YOU APPLIED, TO THE
25 BEST OF YOUR RECOLLECTION?

1 A. BEST OF MY RECOLLECTION, IT WOULD BE LIKE A.I.G.,
2 EASTERN, SUMMIT. IT'S LIKE THERE ARE ALL THESE
3 STANDARD INSURANCE COMPANIES OUT THERE, BUT VERY FEW
4 OF THEM ARE A MARKET FOR STAFFING COMPANIES. SO
5 IT'S A RESTRICTED MARKET.

6 Q. AND THEY WERE LOOKING FOR THAT KIND OF POLICY?

7 A. YES.

8 Q. STAFFING POLICY?

9 A. YES.

10 Q. WHERE THEY WOULD BE THE CLIENT AND NOT THE INSURED;
11 IS THAT CORRECT?

12 A. NO. WHERE THEY WOULD BE THE INSURED. THE STAFFING
13 COMPANY WOULD BE THE INSURED.

14 Q. THE STAFFING COMPANY WOULD BE INSURED?

15 A. RIGHT.

16 Q. AND CONDUSTRIAL WANTED TO BE THE STAFFING COMPANY?

17 A. CONDUSTRIAL IS THE STAFFING COMPANY.

18 Q. CONDUSTRIAL IS THE STAFFING COMPANY.

19 A. RIGHT.

20 Q. OKAY. DO YOU BELIEVE THAT CONDUSTRIAL PROCURED
21 INSURANCE WHERE IT'S THE INSURED UNDER A WORKERS'
22 COMPENSATION POLICY THROUGH THEIR CONTRACT WITH
23 C.S.S.G.?

24 A. NO. THEY PROCURED A POLICY WITH C.S.S.G. WHERE THEY
25 WERE THE CO-EMPLOYER.

1 Q. WELL, THE -- AND JUST TO CLARIFY, BECAUSE I BELIEVE
2 THIS WOULD BE YOUR TESTIMONY, THEY DIDN'T GET A
3 POLICY FROM C.S.S.G.; THEY GOT IT -- THEY ENTERED
4 INTO A CONTRACT WITH C.S.S.G.?

5 A. CORRECT.

6 Q. AND IN THAT CONTRACT C.S.S.G. AGREES TO BASICALLY BE
7 THE BACK ROOM; I'M GONNA TAKE OVER YOUR EMPLOYEES
8 AND EMPLOY THEM FOR WORKERS' COMPENSATION PURPOSES,
9 AND I WILL HAVE AN POLICY WITH AN INSURER FOR THAT?

10 A. CORRECT.

11 Q. OKAY. WOULD IT BE FAIRLY EASY FOR YOU TO PUT YOUR
12 HANDS ON THOSE DOCUMENTS THAT WE TALKED ABOUT, THE
13 APPLICATION FOR INSURANCE, THE DENIALS OF ANY
14 COVERAGE, AND SO FORTH?

15 A. YES.

16 Q. IS -- DOES KEENAN SUGGS HAVE A DOCUMENT RETENTION
17 POLICY, TO YOUR KNOWLEDGE?

18 A. TO MY KNOWLEDGE, IT'S SEVEN YEARS.

19 Q. SEVEN YEARS. SO ALL THESE EMAILS AND THINGS WOULD
20 STILL BE IN EXISTENCE IF THEY WEREN'T DELETED?

21 A. WELL, OKAY. WHEN WE STARTED OUR CONVERSATION, I WAS
22 TELLING YOU A LITTLE BIT OF MY HISTORY AND MY
23 BACKGROUND WITH INSURANCE. WE WERE SULLIVAN AND
24 COMPANY FOR 35 YEARS, AND WE SOLD OUT TO KEENAN
25 SUGGS IN 2013. OKAY? THEN IN 2016, AUGUST 2016,

1 KEENAN SUGGS SOLD OUT TO HUB INTERNATIONAL. SO, A
2 LOT OF THE DOCUMENTS THAT I HAD ARCHIVED PRIOR TO
3 AUGUST 1ST, 2016, DID NOT CARRY OVER IN OUR NEW
4 MANAGEMENT SYSTEM, OR WHATEVER, EMAIL SYSTEM. SO, A
5 LOT OF THE DOCUMENTS ARE THERE, BUT NOT ALL OF THEM
6 ARE THERE. BUT, CERTAINLY, LIKE THE ACORD FORMS,
7 THEY'RE IN A.M.S. THAT'S THERE.

8 Q. OKAY. JUST ONE MORE QUESTION. WHEN YOU -- TWO MORE
9 QUESTIONS. WHEN YOU STARTED SHOPPING -- WHEN DID
10 YOU FILL OUT -- DO YOU KNOW WHAT THE DATE OR
11 APPROXIMATE EVEN MONTH THAT YOU FILLED OUT THE ACORD
12 APPLICATION ON CONDUSTRIAL'S BEHALF AND YOU STARTED
13 SHOPPING THE MARKET?

14 A. I THINK -- I THINK WE ORIGINALLY STARTED IN -- IN
15 LIKE NOVEMBER OR DECEMBER OF 2014, AND CONDUSTRIAL
16 CHOSE TO DO SOMETHING ELSE AT THAT TIME. SO, WE
17 RESTARTED OUR EFFORTS IN, SAY, JANUARY OF 2015.

18 Q. DO YOU REMEMBER WHAT THEY -- WHAT DIFFERENT THEY
19 CHOSE TO DO THAT HALTED THEIR ---

20 A. NO.

21 Q. NO. OKAY. SO YOU REINITIATED YOUR EFFORTS, DID YOU
22 SAY?

23 A. YES.

24 Q. WHAT MONTH DID YOU SAY?

25 A. PROBABLY JANUARY OF 2015.

1 Q. AND WHEN WAS THE FIRST TIME THAT YOU REALIZED THAT
2 THERE WERE NO STANDARD WORKERS' COMP POLICIES
3 AVAILABLE AND THE ASSIGNED RISK POOL WAS THE
4 REMAINING OPTIONS FOR CONDUSTRIAL? WHAT MONTH WAS
5 THAT?

6 A. PROBABLY THE TIME THAT WE WERE -- WE RAN OUT OF
7 MARKET, SO TO SPEAK, WAS PROBABLY THE FIRST WEEK OF
8 MARCH ---

9 Q. FIRST WEEK OF MARCH?

10 A. --- 2015.

11 Q. AND THEY EXECUTED THEIR CONTRACT WITH C.S.S.G. ON
12 WHAT DATE? DO YOU RECALL?

13 A. THIS WAS ON MARCH 26TH.

14 Q. SO JUST A FEW WEEKS LATER?

15 A. RIGHT.

16 Q. DO YOU KNOW -- OKAY. SO, HAVE YOU OR HUB PUT YOUR
17 -- HUB'S E&O CARRIER ON NOTICE ABOUT THIS MATTER?

18 A. YES.

19 **BY MS. RICHARDSON:**

20 OKAY. I HAVE NO FURTHER QUESTIONS. THANK YOU
21 VERY MUCH.

22 **BY THE COMMISSIONER:**

23 MS. FARTHING?

24 **BY MS. FARTHING:**

25 JUST VERY BRIEFLY.

CROSS EXAMINATION BY MS. FARTHING:

Q. IS IT HYNDSHAW OR HYNDSHAW?

A. HYNDSHAW.

Q. MR. HYNDSHAW, I ONLY REALLY HAVE ONE KIND OF POINT OF CLARIFICATION BECAUSE I BELIEVE YOU'VE ALREADY KIND OF TESTIFIED CONCERNING THE -- YOUR KNOWLEDGE AND YOUR UNDERSTANDING OF THE DEPARTMENT -- OF CONDUSTRIAL'S CONTRACT WITH THE DEPARTMENT OF CORRECTIONS. AND I BELIEVE IT WAS YOUR TESTIMONY THAT YOU WERE NEVER PERSONALLY PROVIDED A COPY OF THIS CONTRACT, RIGHT?

A. YES.

Q. CORRECT?

A. CORRECT.

Q. BUT YOU INDICATED THAT YOU BELIEVE THAT THE CONTRACT MAY HAVE BEEN PROVIDED TO MS. WHITAKER BY CONDUSTRIAL?

A. POSSIBLY.

Q. OKAY. AND WOULD YOU DEFER TO MS. WHITAKER AS TO WHEN THAT CONTRACT WAS PROVIDED TO HER?

A. I HAVE NO IDEA.

Q. IF SHE HAD TESTIFIED CONCERNING WHEN THAT WAS PROVIDED TO HER, WOULD YOU DEFER TO HER TESTIMONY

A. YES.

1 Q. ---- AS TO WHEN THAT WAS?

2 A. YES.

3 **BY MS. FARTHING:**

4 NOTHING FURTHER.

5 **BY THE WITNESS:**

6 OKAY.

7 **BY MS. FARTHING:**

8 THANK YOU.

9 **BY THE COMMISSIONER:**

10 MS. GLOVER?

11 **BY MS. GLOVER:**

12 I DON'T HAVE ANY QUESTIONS.

13 **BY THE COMMISSIONER:**

14 ANY REDIRECT?

15 **BY MR. GOODWYN:**

16 JUST A FEW, YOUR HONOR.

17 **REDIRECT EXAMINATION BY MR. GOODWYN:**

18 Q. MR. HYNDSHAW, GOING BACK TO THE MEETINGS THAT YOU
19 HAD WITH COUNTRYWIDE, THE IN-PERSON MEETINGS, I
20 BELIEVE YOU TESTIFIED THERE WERE TWO MEETINGS THAT
21 YOU HAD, IN-PERSON MEETINGS AT LEAST?

22 A. CORRECT.

23 Q. THE FIRST ONE WAS WITH SCOTT HANSON?

24 A. CORRECT.

25 Q. THE SECOND ONE WITH ZACH COLLIER?

1 A. YES.

2 Q. OKAY. THERE'S BEEN SOME CONFLICTING TESTIMONY ABOUT
3 WHEN THAT FIRST MEETING WAS. IS IT POSSIBLE THAT

4 ---

5 BY MS. RICHARDSON:

6 YOUR HONOR ---

7 BY MR. BEARD:

8 OBJECTION. HE'S ALREADY TESTIFIED AS TO WHEN
9 HE THOUGHT IT WAS. HE CAN'T -- HE CAN'T GO AND PIT
10 ANOTHER WITNESS' TESTIMONY NOW.

11 BY THE COMMISSIONER:

12 MR. GOODWYN?

13 BY MR. GOODWYN:

14 IS IT -- I CAN ASK HIM IS IT POSSIBLE HE WAS
15 MISTAKEN ABOUT THE TIME OF THE MEETING.

16 BY THE COMMISSIONER:

17 BUT LET'S NOT PIT WITNESSES.

18 BY MS. RICHARDSON:

19 YES.

20 BY MR. GOODWYN:

21 OKAY.

22 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

23 Q. IS IT POSSIBLE THAT YOU WERE MISTAKEN ABOUT THE TIME
24 OF THAT MEETING, THAT IT WAS POSSIBLY BEFORE THIS
25 CONTRACT WAS ENTERED INTO?

1 A. I CAN GO BACK AND CHECK. BUT, I MEAN, ANYTHING IS
2 POSSIBLE.

3 Q. WHAT WOULD YOU CHECK?

4 A. WELL, AS I INDICATED TO BETH HERE A LITTLE BIT
5 EARLIER, PART OF THE INFORMATION THAT I LOST WHEN WE
6 DID OUR CONVERSION FROM KEENAN SUGGS TO HUB WAS MY
7 CALENDAR. SO, I COULDN'T GO BACK AND CHECK THOSE
8 DATES. BUT I'LL FIND ANOTHER WAY TO DO IT.

9 Q. OKAY. ALL RIGHT. SEE IF YOU CAN DO THAT FOR US.
10 YOU WERE ASKED SOME QUESTIONS ABOUT THE CONTRACT
11 BETWEEN SCDC AND CONDUSTRIAL. OF COURSE IT'S THE
12 LAST ONE IN THE STACK. ALL RIGHT. THIS IS -- LOOKS
13 LIKE TRIAL EXHIBIT THREE. EXCUSE ME. I'M SORRY.
14 THAT'S THE DEPOSITION EXHIBIT NUMBER. THIS IS
15 CONDUSTRIAL ONE. ALL RIGHT. WHAT DOES IT SAY HERE
16 IN THESE TWO WHEREAS PARAGRAPHS?

17 A. "WHEREAS, SCDC DESIRES TO ENGAGE THE SERVICES OF
18 CONTRACTOR TO PROVIDE MEDICAL STAFFING PERSONNEL AS
19 AN INDEPENDENT CONTRACTOR. WHEREAS, CONTRACTOR
20 DESIRES TO PROVIDE MEDICAL STAFFING PERSONNEL AS AN
21 INDEPENDENT CONTRACTOR ON THE TERMS AND CONDITIONS
22 SET OUT IN THIS AGREEMENT."

23 Q. OKAY. DOES THAT INDICATE TO YOU THAT THE INTENT OF
24 THE PARTIES WAS TO PROVIDE INDEPENDENT CONTRACTORS?

25 **BY MS. FARTHING:**

1 OBJECTION, YOUR HONOR. JEFF PREVIOUSLY
2 OBJECTED TO STEPHEN ASKING HIM QUESTIONS ABOUT THE
3 CONTRACT BASED ON THE FACT THAT THIS WAS THE FIRST
4 TIME HE'D SEEN THIS CONTRACT. SO I DON'T KNOW HOW
5 HE'S SUPPOSED TO INTERPRET A CONTRACT THAT HE'S SEEN
6 FOR THE FIRST TIME TODAY AND WAS NOT A PARTY AT ALL

7 ---

8 BY MR. GOODWYN:

9 HE WAS ALLOWED TO GO THROUGH IT.

10 BY MS. FARTHING:

11 --- TO THE NEGOTIATIONS OF IT.

12 BY MR. GOODWYN:

13 STEPHEN WAS ALLOWED TO GO THROUGH IT.

14 BY THE COMMISSIONER:

15 OKAY. I'M GOING TO ALLOW THE QUESTION. BUT
16 THE LEGAL DETERMINATION OF WHAT THIS CONTRACT MEANS
17 IS FOR THE COMMISSION TO MAKE A DETERMINATION. SO,
18 I MEAN, YOU CAN -- YOU CAN ASK THE QUESTIONS.

19 BY MR. GOODWYN:

20 RIGHT.

21 BY THE COMMISSIONER:

22 BUT IT'S NOT -- IT'S -- YOU'RE GONNA ---

23 BY MR. GOODWYN:

24 I'M GETTING AT SOMETHING A LITTLE DIFFERENT.

25 BY THE COMMISSIONER:

1 IT'S GONNA HAVE TO BE ---

2 BY MR. GOODWYN:

3 RIGHT.

4 BY THE COMMISSIONER:

5 --- AS FOUNDATION FOR SOMETHING ELSE.

6 BY MR. GOODWYN:

7 IT IS. AND THAT'S -- THAT'S WHERE I'M GETTING
8 HERE. THAT'S WHERE I'M GOING.

9 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

10 Q. ALL RIGHT. IN LIGHT OF THAT, WAS THAT THE FIRST
11 TIME YOU HAD READ THOSE PARAGRAPHS?

12 A. YES.

13 Q. OKAY. DO YOU -- DID YOU KNOW ANYTHING ABOUT THE
14 COURSE OF CONDUCT BETWEEN SCDC AND CONDUSTRIAL FOR
15 THE TIME PERIOD FOR THE YEARS LEADING UP TO 2015?

16 BY MR. SAMUELS:

17 OBJECTION, YOUR HONOR. IT WOULD BE OUTSIDE HIS
18 PERSONAL KNOWLEDGE.

19 BY MR. GOODWYN:

20 I JUST ASKED ---

21 BY MR. SAMUELS:

22 AND IT'S IRRELEVANT, AS IT GOES OUTSIDE THE
23 FOUR CORNERS OF THE CONTRACT.

24 BY THE COMMISSIONER:

25 OKAY. I THINK HE'S JUST ASKED THE QUESTION IF

1 HE HAS ANY KNOWLEDGE, SO THERE HASN'T BEEN A
2 RESPONSE YET. SIR, DO YOU HAVE ANY KNOWLEDGE OF
3 THAT TIME PERIOD?

4 **BY THE WITNESS:**

5 OF THE CONTRACT?

6 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

7 Q. OR OF THE -- MY QUESTION WAS OF THE COURSE OF
8 CONDUCT BETWEEN CONDUSTRIAL AND SCDC DURING THAT
9 PERIOD.

10 A. I HAD KNOWLEDGE THAT CONDUSTRIAL WAS SUPPLYING
11 NURSES TO SCDC.

12 Q. OKAY. AS EMPLOYEES OR INDEPENDENT CONTRACTORS?

13 A. AS INDEPENDENT -- WELL, I DON'T KNOW, BECAUSE I KNOW
14 THAT CONDUSTRIAL WAS -- CONDUSTRIAL HAD NURSES AS
15 EMPLOYEES. SO I DON'T KNOW IF ANY OF THOSE NURSES
16 WERE GOING TO SCDC. I CAN'T SAY ---

17 Q. WELL, AT LEAST ---

18 A. --- I KNOW THAT ONLY INDEPENDENT CONTRACTORS WENT
19 THERE.

20 Q. OKAY. BUT WAS IT YOUR UNDERSTANDING THAT SOME OF
21 THE NURSES, AT LEAST, WERE GOING TO SCDC AS
22 INDEPENDENT CONTRACTORS?

23 A. YES.

24 Q. OKAY. DID YOU EVER FEEL THAT TONY DURHAM OR ANYONE
25 WITH CONDUSTRIAL WAS HIDING OR CONCEALING ANY

1 INFORMATION FROM YOU ABOUT THAT RELATIONSHIP?

2 A. NO.

3 Q. DID THEY PROVIDE YOU ALL THE DOCUMENTATION THAT YOU
4 EVER ASKED FOR ABOUT THAT RELATIONSHIP?

5 A. YES.

6 Q. ALL RIGHT. AND YOU MADE YOUR RECOMMENDATIONS BASED
7 ON THAT INFORMATION?

8 A. YES.

9 Q. WHEN YOU WERE NEGOTIATING OR WHEN YOU BEGAN
10 NEGOTIATING THE BROKERAGE ARRANGEMENT BETWEEN
11 CONDUSTRIAL AND COUNTRYWIDE, WAS THERE A SENSE OF
12 URGENCY FROM YOUR RELATIVELY SHORT TIME CONSTRAINT?

13 A. YES.

14 **BY MR. ALFORD:**

15 IS IT -- I'M JUST -- THAT WAS NOT -- THAT WAS A
16 NON-HARMFUL LEADING, BUT JUST PLEASE, PLEASE TRY NOT
17 TO LEAD. THAT'S NOT AN OBJECTION; THAT'S JUST A
18 PLEA AND A REQUEST.

19 **BY THE COMMISSIONER:**

20 ALL RIGHT.

21 **BY MR. GOODWYN:**

22 IT'S REDIRECT, TOO.

23 **BY THE COMMISSIONER:**

24 WELL, REDIRECT IS STILL SUBJECT TO THE NOT
25 LEADING.

1 BY MR. BEARD:

2 YOU CAN'T LEAD.

3 BY MR. ALFORD:

4 THAT'S ALL. I'M NOT -- THAT WASN'T A HARMFUL
5 ONE, BUT JUST PLEASE.

6 BY THE COMMISSIONER:

7 ALL RIGHT.

8 BY MR. GOODWYN:

9 WE CAN BE HERE FOR THREE DAYS. IT'S EASY JUST
10 TO GET TO THE POINT.

11 BY MR. BEARD:

12 LET'S JUST DO IT THE LEGAL WAY.

13 BY MR. GOODWYN:

14 ALL RIGHT. WE'LL STAY HERE AS LONG AS Y'ALL
15 WANT.

16 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

17 Q. YOU TESTIFIED ABOUT THE STATUS OF THE 1099 NURSES
18 AND THAT THERE WAS A LEVEL OF COMFORT THAT THESE
19 NURSES WERE, IN FACT, TRUE INDEPENDENT CONTRACTORS.
20 WAS THAT -- DO YOU RECALL TESTIFYING ABOUT THAT?

21 A. CORRECT. YES.

22 Q. DID YOU -- DID YOU HAVE A FIRM LEVEL OF COMFORT THAT
23 THESE 1099 NURSES WERE, IN FACT, INDEPENDENT
24 CONTRACTORS?

25 A. YES, BECAUSE I WAS BEING TOLD THAT THE CONTROL WAS

1 WITH THE -- THE INDEPENDENT CONTRACTOR HAD THE RIGHT
2 TO EITHER TAKE THE JOB OR REFUSE THE JOB AND WAS
3 SIGNING THIS LEGAL INDEPENDENT CONTRACTOR AGREEMENT.

4 Q. OKAY. IS THERE ANYTHING THAT WE'VE DISCUSSED TODAY
5 THAT CHANGES YOUR EARLIER TESTIMONY THAT THE
6 COUNTRYWIDE SERVICE AGREEMENT WITH CONDUSTRIAL
7 SHOULD HAVE COVERED AN INDEPENDENT CONTRACTOR NURSE
8 THAT MAY LATER BE FOUND TO BE AN EMPLOYEE?

9 BY MR. ALFORD:

10 I ABSOLUTELY OBJECT. THAT'S NOT WHAT -- IT
11 WASN'T -- THAT WAS YOUR LEADING QUESTION, AND WE
12 OBJECTED. I'M OBJECTING AGAIN.

13 BY MR. GOODWYN:

14 HE'S ALREADY TESTIFIED ---

15 BY MR. ALFORD:

16 WELL, YOUR HONOR ---

17 BY MR. GOODWYN:

18 I MEAN, I ASK A QUESTION. HE SAYS, YEAH, I
19 THINK THE AGREEMENT SHOULD COVER IT, AND THEN THEY
20 ASK OTHER QUESTIONS. I'M ASKING DID ANYTHING THAT
21 THEY ASKED CHANGE THAT OPINION.

22 BY MR. ALFORD:

23 ASK IT THAT WAY.

24 BY MR. GOODWYN:

25 ALL RIGHT. THAT WAY.

1 BY THE COMMISSIONER:

2 WHY DON'T YOU REPEAT IT, MR. GOODWYN, FOR THE
3 WITNESS.

4 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

5 Q. DOES ANYTHING THAT ANYBODY ELSE HAS POINTED OUT,
6 SHOWN YOU TODAY, OR ANY QUESTIONS THAT YOU'VE BEEN
7 ASKED CHANGE YOUR EARLIER STATEMENT THAT THE
8 COUNTRYWIDE SERVICE AGREEMENT SHOULD COVER AN
9 INDEPENDENT CONTRACTOR NURSE LATER FOUND TO BE AN
10 EMPLOYEE?

11 A. NO.

12 Q. YOU WERE ASKED SOME QUESTIONS ABOUT YOUR MEETINGS
13 WITH MR. DURHAM, MYSELF, AND TOM SEARS EARLIER. DO
14 YOU -- DO YOU HAVE A LAWYER REPRESENTING YOU IN
15 RELATION TO THIS MATTER?

16 A. YES. WE HAVE A LAWYER WE'RE CONSULTING WITH. HE'S
17 NOT REALLY REPRESENTING US.

18 Q. OKAY. ARE ALL THOSE BEING SET UP THROUGH YOUR
19 LAWYER?

20 A. YES. WELL, LUNCH TODAY WASN'T.

21 Q. OKAY. YEAH, YEAH, OTHER THAN LEAVING AND GOING TO
22 LUNCH. HANG ON ONE SECOND. YOU MAY HAVE MADE THIS
23 CLEAR EARLIER, BUT I BELIEVE YOU TESTIFIED IN
24 ADDITION TO WORKERS' COMPENSATION COVERAGE THAT YOU
25 HANDLE SOME OTHER LINES OF COVERAGE FOR CONDUCTRIAL,

1 IS THAT RIGHT?

2 A. CORRECT.

3 Q. OKAY. AS PART OF HANDLING THOSE OTHER LINES, WERE
4 YOU MADE AWARE OF THE 1099 NURSES?

5 A. 1099 NURSES REALLY NEVER CAME INTO PLAY ON THE OTHER
6 LINES, PROPERTY OR AUTOMOBILE.

7 Q. WHAT ABOUT THE PROFESSIONAL LIABILITY FOR THE
8 NURSES?

9 A. YEAH. THE PROFESSIONAL LIABILITY, THERE WAS
10 COVERAGE FOR THE INDEPENDENT CONTRACTORS.

11 Q. OKAY. SO YOU WOULD HAVE KNOWN ABOUT THEM AND ALL
12 THE PAYROLL ---

13 A. YES.

14 Q. --- ASSOCIATED WITH THEM?

15 A. WELL, YES. I WOULDN'T CALL IT PAYROLL, BUT YES.

16 Q. OR, YOU KNOW, YEAH, THE 1099 PAYMENT AMOUNTS.

17 A. RIGHT.

18 Q. YOU WOULD HAVE KNOWN ALL THAT. OKAY. AND YOU HAD
19 ALL THAT INFORMATION AS YOU WERE NEGOTIATING THE --
20 OR BROKERING THE DEAL BETWEEN CONDUSTRIAL AND
21 COUNTRYWIDE?

22 A. YES.

23 BY MR. GOODWYN:

24 I THINK THAT'S ALL I HAVE.

25 BY THE COMMISSIONER:

1 MR. SAMUELS?

2 BY MR. SAMUELS:

3 THANK YOU, YOUR HONOR.

4 RECROSS EXAMINATION BY MR. SAMUELS:

5 Q. MR. HYNDSHAW, LET'S TALK ABOUT PROFESSIONAL
6 LIABILITY INSURANCE. IF A HEALTHCARE PROFESSIONAL
7 IS AN INDEPENDENT CONTRACTOR OR HAS THEIR OWN
8 BUSINESS, DON'T THEY HAVE TO OBTAIN THEIR OWN
9 PROFESSIONAL LIABILITY INSURANCE?

10 A. TYPICALLY, IF THEY ARE WORKING FOR THEMSELVES AND
11 PROVIDING THOSE SERVICES BY THEMSELVES. BUT IF THEY
12 CONTRACT WITH SOMEBODY ELSE, THEN THEY HAVE THE
13 OPPORTUNITY TO AVAIL THEMSELVES TO THAT FIRM'S
14 COVERAGE.

15 Q. SO, WHAT WE HAVE IS WE HAVE CONDUSTRIAL THAT IS A
16 STAFFING COMPANY; IS THAT CORRECT?

17 A. CORRECT.

18 Q. AND AS A STAFFING COMPANY, THE STAFF THEY PROVIDE
19 ARE CONSTRUCTION WORKERS THROUGH CONDUSTRIAL AND
20 THEY PROVIDE HEALTHCARE SERVICES THROUGH MEDUSTRIAL;
21 IS THAT FAIR TO SAY?

22 A. YES.

23 Q. ACTUALLY, THE WAY THEY MAKE THEIR MONEY IS, LET'S
24 SAY, WITH THE DEPARTMENT OF CORRECTIONS THEY MAY BE
25 PAID -- I'M JUST PICKING NUMBERS OUT OF THE AIR.

1 MAYBE THEY'RE PAID \$30 AN HOUR. THEY PAY THE NURSES
2 \$25 AN HOUR, AND THEY MAKE THEIR MONEY ON THE
3 SPREAD; IS THAT ---

4 A. CORRECT.

5 Q. OF COURSE, IF THEY COULD CUT THE EXPENSES, THAT
6 WIDENS THE SPREAD AND THEY MAKE MORE MONEY, RIGHT?

7 A. YES.

8 Q. SO, THE 1099 WHERE YOU DON'T HAVE TO PAY PAYROLL
9 TAXES AND OVERTIME AND PROVIDE INSURANCE AND
10 BENEFITS AND SO ON, THAT WIDENS THE SPREAD AND MEANS
11 MORE MONEY FOR THE STAFFING COMPANY, CORRECT?

12 **BY MR. GOODWYN:**

13 OBJECTION, YOUR HONOR. CALLS FOR SPECULATION
14 AND IGNORES THE FACTS ABOUT HOW YOU ADJUST PAY RATES
15 FOR A 1099. HE'S SAYING -- HE'S PRESUMING THAT IT
16 AUTOMATICALLY MEANS THEY MAKE MORE MONEY, AND THAT'S
17 NOT THE CASE. YOU HAVE TO PAY THE NURSES LESS.

18 **BY MR. SAMUELS:**

19 THAT'S AN ARGUMENT OF FACTS THAT ARE NOT IN
20 EVIDENCE, YOUR HONOR. IT'S A FAIRLY STRAIGHTFORWARD
21 QUESTION. THE WITNESS SHOULD BE ABLE TO ANSWER IT.

22 **BY MR. GOODWYN:**

23 HIS QUESTION IS ASSUMING FACTS NOT IN EVIDENCE
24 ALSO.

25 **BY THE COMMISSIONER:**

1 WELL, MR. SAMUELS, CAN YOU ESTABLISH THAT THIS
2 WITNESS WOULD BE AWARE OF THAT PARTICULAR BUSINESS
3 POINT BEFORE ASKING THE QUESTION?

4 **BY MR. SAMUELS:**

5 I CAN, YOUR HONOR.

6 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

7 Q. MR. HYNDSHAW, ARE YOU AWARE OF THE DIFFERENT -- ARE
8 YOU AWARE OF ANY FINANCIAL ADVANTAGES TO AN EMPLOYER
9 IF IT CAN CLASSIFY ITS EMPLOYEES AS 1099s RATHER
10 THAN W-2s?

11 A. I'M AWARE OF A DIFFERENCE, BUT FROM MY PERSPECTIVE
12 THAT'S NOT A CONSIDERATION. THE CONSIDERATION IS DO
13 THEY MEET THE REQUIREMENTS OF INDEPENDENT CONTRACTOR
14 OR DO THEY NOT?

15 Q. GOTCHA. THAT'S NOT REALLY WHERE I'M GOING. I MEAN,
16 DO YOU KNOW ABOUT DIFFERENT, FOR EXAMPLE, TAX
17 RESPONSIBILITIES FOR INDEPENDENT CONTRACTORS VERSUS
18 EMPLOYEES AS FAR AS THE EMPLOYER IS CONCERNED?

19 **BY MR. GOODWYN:**

20 I'M GOING TO OBJECT AGAIN. THIS IS BEYOND THE
21 SCOPE OF ANYBODY'S QUESTIONING. THIS IS -- HE'S NOT
22 HERE TO TESTIFY ABOUT BUSINESS DECISIONS ON
23 INDEPENDENT CONTRACTORS VERSUS EMPLOYEES. HE'S AN
24 INSURANCE GUY TALKING ABOUT THE INSURANCE
25 RELATIONSHIP.

1 BY THE COMMISSIONER:

2 MR. SAMUELS, HOW IS IT WITHIN THE SCOPE?

3 BY MR. SAMUELS:

4 WE GOT INTO THE QUESTION OF PROFESSIONAL
5 LIABILITY, WHICH HE SOLD TO THEM PROFESSIONALLY. AN
6 EMPLOYER PROVIDING PROFESSIONAL LIABILITY IS AN
7 INDICATION OF EMPLOYMENT.

8 BY MR. GOODWYN:

9 NOT NECESSARILY.

10 BY THE COMMISSIONER:

11 WELL, Y'ALL DON'T TALK OVER EACH OTHER.

12 BY MR. GOODWYN:

13 SORRY.

14 BY MR. SAMUELS:

15 SO THAT'S PART OF IT. AND THEN THE OTHER
16 DISTINCTION IS GOING TO BE -- THE OTHER THING THAT I
17 WAS GOING TO GO INTO, WHICH WILL DEPEND ON WHETHER
18 OR NOT MR. HYNDSHAW WAS ACTUALLY PROVIDED THE
19 INDEPENDENT CONTRACTOR AGREEMENT BY CONDUSTRIAL FOR
20 HIS REVIEW. I GUESS ---

21 BY THE COMMISSIONER:

22 AND I KNOW THAT YOU'RE AT THE BEGINNING OF EACH
23 CROSS, SO I'M TRYING TO THINK IF THAT -- OKAY. GO
24 AHEAD. I KNOW YOU START THE CROSS, SO THERE'S A LOT
25 THAT GOES ON BEFORE IT GETS BACK TO YOU. I

1 UNDERSTAND THAT. GO AHEAD.

2 **WITNESS ANSWERS:**

3 A. SO, TO YOUR FIRST QUESTION, PROFESSIONAL LIABILITY
4 TYPICALLY COVERS EMPLOYEES OF THE NAMED INSURED.
5 BUT PROFESSIONAL LIABILITIES CAN BE ENDORSED OR
6 AMENDED TO EXTEND COVERAGE TO INDEPENDENT
7 CONTRACTORS.

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

9 Q. DID THE CERTIFICATES OF INSURANCE THAT -- WELL, LET
10 ME ASK, IN YOUR ROLE, DID YOU PROVIDE CERTIFICATES
11 OF INSURANCE TO THE DEPARTMENT OF CORRECTIONS FROM
12 CONDUSTRIAL?

13 A. IN MY ROLE, NO. AS AN AGENCY, WE DID.

14 Q. DID YOUR AGENCY PROVIDE CERTIFICATES OF INSURANCE?

15 A. YES.

16 Q. HAVE YOU -- YOU'VE TESTIFIED A LOT ABOUT YOUR
17 COMFORT LEVEL WITH CONDUSTRIAL AND THEIR
18 REPRESENTATIONS TO YOU THAT THESE NURSES WERE TRUE
19 INDEPENDENT CONTRACTORS. AS PART OF THAT, DID THEY
20 PROVIDE YOU WITH THE INDEPENDENT CONTRACTOR
21 AGREEMENT FOR YOUR REVIEW?

22 A. NO.

23 Q. YOU'VE NEVER SEEN IT?

24 A. NO.

25 Q. SO, YOU KNOW IT WAS DRAFTED ---

1 A. I THINK THAT'S PART OF WHAT YOU WERE SHOWING ME
2 EARLIER. SO ---

3 Q. ACTUALLY, WHAT I SHOWED YOU EARLIER WAS THE CONTRACT
4 BETWEEN THE DEPARTMENT OF CORRECTIONS AND
5 CONDUSTRIAL TO PROVIDE NURSES WHO ARE EMPLOYEES
6 COVERED BY WORKERS' COMP INSURANCE. YOU HAVE
7 TESTIFIED THAT -- AND YOU CAN CORRECT ME IF I
8 MISSTATE THIS -- BUT THAT INDEPENDENT CONTRACTORS
9 WOULD BE SUBCONTRACTORS. SO, ESSENTIALLY, IF
10 CONDUSTRIAL, THROUGH ITS MEDUSTRIAL DIVISION, WAS
11 PROVIDING NURSING SERVICES TO INMATES AT SCDC, IF
12 THOSE NURSES ARE INDEPENDENT CONTRACTORS, THEY ARE
13 SUBCONTRACTORS OF CONDUSTRIAL; IS THAT CORRECT?

14 A. THAT'S NOT WHAT I SAID. WHEN I WAS ANSWERING YOUR
15 QUESTION ON THE ACORD FORM, I'M SAYING THAT
16 SUBCONTRACTORS TYPICALLY HAVE EMPLOYEES. SO,
17 THEREFORE, THEY ARE ABLE TO PROVIDE CERTIFICATES OF
18 INSURANCE. INDEPENDENT CONTRACTORS ARE INDIVIDUALS.

19 Q. BUT WHAT ABOUT THE GENERAL CONTRACTORS THAT REQUIRE
20 A CERTIFICATE OF INSURANCE FROM THE SUBCONTRACTOR
21 BEFORE THEY LET THEM WORK ON A JOB, EVEN IF THAT
22 SUBCONTRACTOR DOESN'T HAVE ANY EMPLOYEES?

23 A. THEN THAT GENERAL CONTRACTOR TREATS THEM AS AN
24 INDEPENDENT CONTRACTOR.

25 Q. OKAY. AND WHAT HAPPENS IF ONE OF THOSE

1 SUBCONTRACTORS HIRES SOMEBODY, A LABORER, AND THAT
2 PERSON IS HURT? IS THAT PERSON COVERED FOR WORKERS'
3 COMP INSURANCE?

4 A. CAN BE. THE STATE OF SOUTH CAROLINA REQUIRES THAT
5 THAT INDEPENDENT CONTRACTOR HAVE FOUR OR MORE
6 EMPLOYEES BEFORE HE'S REQUIRED TO HAVE WORKERS'
7 COMPENSATION INSURANCE. SO IF HE HAS THREE
8 EMPLOYEES AND HE ELECTS NOT TO PURCHASE COVERAGE,
9 THEN HE DOESN'T.

10 Q. OKAY. NOW, THIS IS A SUBCONTRACTOR WORKING FOR A
11 GENERAL CONTRACTOR?

12 A. RIGHT.

13 Q. OKAY. HAVE YOU EVER HEARD OF THE CONCEPT OF
14 STATUTORY EMPLOYER?

15 A. NO.

16 Q. SO, TO BE CLEAR, YOU'VE BEEN SELLING WORKERS' COMP
17 INSURANCE FOR HOW MANY YEARS?

18 A. MANY.

19 Q. AND YOU'VE -- YOU'VE NEVER SOLD TO A GENERAL
20 CONTRACTOR AND TOLD THEM THAT IF ONE OF THEIR
21 SUBCONTRACTORS IS UNINSURED AND HAS AN EMPLOYEE OR
22 IS DEEMED AN EMPLOYEE, THAT THEIR LIABILITY -- THAT
23 THEIR WORKERS' COMP COVERAGE WOULD BE LIABLE FOR
24 THAT INJURY?

25 A. WE HAVE ALWAYS TOLD OUR GENERAL CONTRACTORS THAT

1 THEY'RE REQUIRED TO HAVE CERTIFICATES FROM ALL THEIR
2 SUBS, AND IF THEY HAVE A SITUATION WHERE THEY HAVE
3 AN INDEPENDENT CONTRACTOR OR THEY HAVE AN UNINSURED
4 SUB, THEN THEY REALLY NEED TO INSURE THEM. WE TREAT
5 SOUTH CAROLINA BASICALLY THE SAME WAY AS NORTH
6 CAROLINA DOES, IN THAT IF YOU HIRE SOMEBODY AS AN
7 INDEPENDENT CONTRACTOR, OR WHATEVER, AND THEY DON'T
8 HAVE WORKERS' COMPENSATION, THEN YOU WILL BE
9 RESPONSIBLE.

10 Q. OKAY. LET'S ASSUME THAT CONDUSTRIAL IS CORRECT, AND
11 LET'S ASSUME THAT THE 130-ODD NURSES WORKING AT THE
12 DEPARTMENT OF CORRECTIONS UNDER THE MEDUSTRIAL
13 BANNER WERE ACTUALLY INDEPENDENT CONTRACTORS. IF
14 ONE OF THOSE INDEPENDENT CONTRACTORS HIRED AN
15 EMPLOYEE TO DO A SHIFT FOR THAT PERSON, WOULD THAT
16 INDIVIDUAL BE COVERED UNDER CONDUSTRIAL'S INSURANCE
17 IF THERE WAS A WORK ACCIDENT?

18 A. VERY POSSIBLY.

19 Q. BECAUSE THAT PERSON WOULD BE AN EMPLOYEE?

20 A. VERY POSSIBLY, YES.

21 Q. SO IF MR. DURHAM AND MR. SEARS, WHEN THEY DEALT WITH
22 YOU FOR ALL THESE YEARS WITH WORKERS' COMP INSURANCE
23 AND THESE 1099 NURSES AT THE DEPARTMENT OF
24 CORRECTIONS, THEY NEVER SHARED WITH YOU THE ACTUAL
25 INDEPENDENT CONTRACTOR AGREEMENT; IS THAT CORRECT?

1 A. CORRECT.

2 Q. NEVER SHARED WITH YOU ANY OTHER DOCUMENTS, I-9s, W-
3 4s, EMPLOYMENT APPLICATIONS, TERMS OF EMPLOYMENT,
4 AT-WILL EMPLOYMENT AGREEMENTS, ANYTHING ELSE THAT
5 WOULD BE IN THE PERSONNEL FILE? THEY NEVER SHARED
6 ANY OF THAT WITH YOU; IS THAT TRUE?

7 **BY MR. GOODWYN:**

8 YOUR HONOR, I WOULD OBJECT TO THE FORM. HE
9 PRESUMES THAT HE WAS WORKING WITH CONDUSTRIAL FOR
10 YEARS OBTAINING WORKERS' COMP, AND THE TESTIMONY WAS
11 THIS WAS HIS FIRST TIME HELPING WITH WORKERS' COMP,
12 THIS CASE.

13 **BY THE COMMISSIONER:**

14 AND I'VE HEARD THE TESTIMONY, SO I KNOW THE
15 PERIOD OF TIME THAT HE'S FAMILIAR WITH. ALL RIGHT.

16 **RE CROSS EXAMINATION RESUMED BY MR. SAMUELS:**

17 Q. THEY NEVER SHARED THAT WITH YOU?

18 A. CORRECT.

19 Q. YOU WERE BASICALLY JUST RELYING ON VERBAL ASSURANCES
20 FROM MR. SEARS AND MR. DURHAM ---

21 A. CORRECT.

22 Q. --- THAT THEY HAD AN IRONCLAD INDEPENDENT CONTRACTOR
23 AGREEMENT?

24 A. CORRECT.

25 Q. NOW THAT YOU'VE BEEN HERE, NOW THAT YOU'VE TESTIFIED

1 TODAY AND YOU'VE LEARNED THAT THEY WITHHELD A
2 CONTRACT THEY HAD WITH THE DEPARTMENT OF CORRECTIONS
3 REQUIRING THEM TO PROVIDE NURSES WHO WERE EMPLOYEES
4 COVERED BY WORKERS' COMP INSURANCE, COMFORT LEVEL
5 LESSEN A LITTLE BIT?

6 BY MR. GOODWYN:

7 OBJECT TO FORM. THERE'S BEEN NO TESTIMONY THAT
8 ANYTHING WAS WITHHELD. THAT IMPLIES SOMETHING WAS
9 REQUESTED AND NOT GIVEN. HE'S TESTIFIED HE NEVER
10 REQUESTED ANY SUCH DOCUMENT.

11 BY THE COMMISSIONER:

12 MR. SAMUELS, CAN YOU REPHRASE THE QUESTION? I
13 THINK THE TESTIMONY IS CLEAR THAT HE DIDN'T HAVE THE
14 DOCUMENT.

15 BY MR. GOODWYN:

16 RIGHT. BUT THE WAY HE PHRASED IT WAS IMPLIED,
17 OH, THEY WITHHELD IT FROM YOU. IT WAS NEVER ASKED
18 FOR.

19 BY THE COMMISSIONER:

20 AND, AGAIN, I'M HEARING THE TESTIMONY, AND SO I
21 CERTAINLY AM COGNIZANT OF EVERYBODY'S DIRECT AND
22 CROSS OF THIS PARTICULAR WITNESS. ALL RIGHT. MR.
23 SAMUELS, IF YOU CAN REWORD THE QUESTION.

24 BY MR. SAMUELS:

25 CERTAINLY, YOUR HONOR.

RECROSS EXAMINATION RESUMED BY MR. SAMUELS:

Q. MR. HYNDSHAW, WHEN YOU ADVISE YOUR CLIENTS ON WHAT WORKERS' COMPENSATION INSURANCE POLICIES THEY SHOULD PROCURE, DO YOU REQUIRE -- DO YOU PRESUME THAT THEY ARE GOING TO GIVE YOU TRUE AND COMPLETE AND ACCURATE INFORMATION?

A. YES.

Q. AND WHEN YOU FILL OUT THE ACORD -- I BELIEVE IT'S A FORM 130 ---

A. CORRECT.

Q. --- FORM, YOU ALSO ARE REQUIRING -- OR PRESUMING THAT THEY HAVE GIVEN YOU TRUE, COMPLETE, AND ACCURATE INFORMATION; ISN'T THAT TRUE?

A. YES, BECAUSE THE CLIENT HAS TO SIGN THAT FORM.

Q. AND YOU WOULD AGREE THEY NEVER TOLD YOU THEY HAD A HUNDRED-PLUS OF THESE 1099 NURSES, DID THEY?

A. I DIDN'T KNOW THAT, NO.

Q. YOU SOMEHOW GOT THE IDEA IT WAS A MUCH SMALLER NUMBER, PRETTY INSIGNIFICANT, NO BIG DEAL?

A. YES.

Q. I THINK THERE WAS A MENTION OF 130 NURSES, MAYBE A FOUR MILLION PLUS PAYROLL OF NURSES. THAT'S A VERY SIGNIFICANT RISK, ESPECIALLY WORKING IN A PRISON; IS IT NOT?

A. YES.

1 Q. AND YOU, AS AN INSURANCE BROKER, WOULD WANT TO MAKE
2 SURE THAT YOUR CLIENT HAS PROTECTED ITSELF AGAINST
3 THAT RISK?

4 A. CORRECT.

5 Q. IN FACT, THAT'S ONE OF THE REASONS WHY YOU,
6 YOURSELF, CARRY E&O INSURANCE AND, IN FACT, HAVE
7 REPORTED THIS INCIDENT TO YOUR E&O CARRIER?

8 A. RIGHT.

9 Q. AND ISN'T IT TRUE THAT EXPECTING THEM TO PROVIDE
10 TRUE AND ACCURATE INFORMATION, HAD YOU KNOWN THAT
11 THERE WAS A CONTRACT REQUIRING THEM TO PROVIDE
12 WORKERS' COMP INSURANCE FOR THE NURSES WHO WERE
13 WORKING AT THE DEPARTMENT OF CORRECTIONS, THAT WOULD
14 HAVE BEEN IMPORTANT INFORMATION TO YOU, WOULD IT
15 NOT?

16 A. YES.

17 Q. IF YOU HAD BEEN GIVEN THAT INFORMATION, THAT WOULD
18 HAVE CHANGED YOUR RECOMMENDATION FOR THE INSURANCE
19 COVERAGE THEY HAD, CORRECT?

20 A. YES.

21 Q. AND IT WOULD HAVE ALSO CHANGED HOW YOU FILLED OUT
22 THE ACORD FORM 130 FORM, WOULD IT NOT?

23 A. YES.

24 Q. AND YOU WOULD HAVE INCLUDED THE HOWEVER MANY MILLION
25 DOLLARS OF PAYROLL THERE WAS ON THAT FORM, WOULD YOU

1 NOT?

2 A. HOWEVER MUCH WAS ALLOCATED TO SCDC.

3 Q. AND THE REASON YOU DIDN'T DO IT IS BECAUSE THEY
4 NEVER PROVIDED YOU WITH THE CONTRACT OR THAT PAYROLL
5 INFORMATION; ISN'T THAT TRUE?

6 A. CORRECT.

7 **BY MR. SAMUELS:**

8 THANK YOU, SIR.

9 **BY THE COMMISSIONER:**

10 MR. ALFORD?

11 **RECROSS EXAMINATION BY MR. ALFORD:**

12 Q. I JUST WANT TO GO THROUGH A COUPLE THINGS. MR.
13 GOODWYN ASKED YOU IF YOU MIGHT BE MISTAKEN ON THE
14 DATES OF THE MEETINGS, AND THEN YOU SAID YOU HAD HAD
15 SOME LOSS OF DATA?

16 A. WE HAD SOME LOSS OF DATA IN THE TRANSFER OF SYSTEMS,
17 YES.

18 Q. OKAY. BUT YOU ALSO SAID, IF I HEARD YOU RIGHT, THAT
19 YOU WERE ABLE TO ASCERTAIN THE DATES FROM OTHER
20 SOURCES, IS THAT RIGHT?

21 A. I SHOULD BE ABLE TO ASCERTAIN THE DATES FROM OTHER
22 SOURCES.

23 Q. AND YOU DID, RIGHT? I MEAN, WELL ENOUGH TO WRITE
24 THE MEMO?

25 A. YEAH, I THINK SO.

- 1 Q. I MEAN, THE MEMO IS -- DID YOU ALSO HAVE TO
2 ASCERTAIN THE CODES AND THE PAYROLL AMOUNTS FROM
3 OTHER SOURCES?
- 4 A. NO. THEY WERE ON THE APPLICATION.
- 5 Q. GOT IT. OKAY. BUT THE DATES, I MEAN, YOU'RE PRETTY
6 SPECIFIC ABOUT THE DATES?
- 7 A. RIGHT.
- 8 Q. OKAY. YOU WOULDN'T HAVE -- I MEAN, I'VE GOT TO BE
9 CAREFUL. I ALMOST SAID A BAD WORD. YOU KNEW THAT
10 IT WAS GAME ON AT THIS POINT IN TIME, RIGHT?
- 11 A. YES.
- 12 Q. I MEAN, IT HIT THE FAN, RIGHT? IT WAS ON?
- 13 A. YES.
- 14 Q. OKAY. SO, YOU WOULD HAVE BEEN CAREFUL ABOUT WHAT
15 YOU WRITE -- PUT IN WRITING, RIGHT?
- 16 A. YES.
- 17 Q. SO, IS IT FAIR TO SAY THAT TO THE BEST OF YOUR
18 KNOWLEDGE, WITHOUT A CAVEAT, THAT THESE ARE THE
19 CORRECT DATES IN THE MEMO?
- 20 A. YES.
- 21 Q. OKAY. BECAUSE THAT'S KIND OF IMPORTANT, ISN'T IT?
- 22 A. YES, VERY IMPORTANT.
- 23 Q. ABOUT WHO KNEW WHAT WHEN?
- 24 A. RIGHT.
- 25 Q. BECAUSE AS WE GO INTO AGREEMENTS, WE WANT TO KNOW

1 WHAT WE'RE AGREEING TO, RIGHT?

2 A. CORRECT.

3 Q. NOW, DO YOU HAVE THAT ACORD FORM UP THERE, SIR? I
4 DON'T REMEMBER THE NUMBER.

5 BY THE COMMISSIONER:

6 IT'S GUARANTEE FIVE.

7 BY MR. ALFORD:

8 I'M SORRY.

9 RE CROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. SIR, THEY TALKED ABOUT -- YOU MENTIONED THAT -- I'M
11 ON THE SIGNATURE PAGE. WELL, TELL YOU WHAT, LET'S
12 BACK UP A LITTLE FIRST. LET'S GO THAT -- THE
13 QUESTIONS SIX AND SEVEN.

14 A. YES.

15 Q. OKAY. BECAUSE I NEVER -- I WAS NEVER CLEAR ON THE
16 ANSWER, AND THAT'S PROBABLY MY FAULT. ARE
17 SUBCONTRACTORS USED IF -- I'M SORRY. "ARE
18 SUBCONTRACTORS USED? IF YES, GIVE PERCENTAGE OF
19 WORK SUBCONTRACTED." IS IT YOUR TESTIMONY THAT THE
20 INDEPENDENT CONTRACTORS, THE MEDUSTRIAL LADIES, OR
21 THE MEDUSTRIAL NURSES, WERE NOT SUBCONTRACTORS?

22 A. CORRECT. THEY WERE INDEPENDENT CONTRACTORS.

23 Q. OKAY. ALL RIGHT. SO, WHERE ON THIS FORM -- AND I'M
24 NOT SAYING I AGREE WITH THAT WHEN I SAY OKAY. I'M
25 JUST SAYING THAT'S YOUR INTERPRETATION. WHERE ON

1 THIS FORM DO YOU DISCLOSE YOUR WORK FORCE THAT YOU
2 HAVE OUT THERE THAT COULD MAGICALLY BE CONVERTED TO
3 LIABILITY FOR THE CARRIER? SHOULDN'T IT BE
4 SOMEWHERE ON THIS FORM? I MEAN ---

5 A. THERE IS NO PLACE OTHER THAN ---

6 Q. UNLESS YOUR INTERPRETATION IS INCORRECT AND A
7 SUBCONTRACTOR AND INDEPENDENT CONTRACTOR ARE
8 SYNONYMOUS IN TERMS OF HOW YOU DISCLOSE YOUR RISK TO
9 THOSE TO WHOM YOU SEEK TO PASS IT OFF TO?

10 BY MR. GOODWYN:

11 OBJECTION. ARGUMENTATIVE.

12 BY MR. ALFORD:

13 WHAT'S ARGUMENTATIVE ABOUT IT? I'M ASKING A
14 QUESTION.

15 BY MR. GOODWYN:

16 YOU'RE ARGUING WITH HIM. YOU'RE SAYING UNLESS
17 -- I MEAN, THAT'S NOT EVEN A QUESTION.

18 BY MR. ALFORD:

19 I DON'T -- I'LL REDO IT. I KNOW THAT'S A PAIN
20 FOR YOU.

21 BY THE COMMISSIONER:

22 ALL RIGHT.

23 BY MR. ALFORD:

24 I'VE JUST TO REMEMBER WHAT IT WAS.

25 RECROSS EXAMINATION RESUMED BY MR. ALFORD:

1 Q. I GUESS, SIR, WHAT I'M TRYING TO FIGURE OUT IS,
2 YOU'VE GOT THIS SIGNIFICANT BODY OF RISK OUT THERE,
3 WHICH IN THE COMP WORLD, AS I UNDERSTAND IT, BECAUSE
4 I DON'T KNOW MUCH ABOUT IT, YOU CALCULATE BY PAYROLL
5 AND BY CODE BASED ON RISK; IS THAT FAIR?

6 A. RIGHT.

7 Q. OKAY. SO WE HAVE A LARGE BODY -- SOMEWHERE BETWEEN
8 THREE AND FIVE MILLION BUCKS, DEPENDING ON -- OF
9 PAYROLL OUT THERE -- 6.5 -- I MEAN, I'M TRYING TO BE
10 CONSERVATIVE HERE. BUT YOU'VE GOT -- I MEAN, THE
11 LADY -- I'M SORRY. I'M SORRY. MS. TURNER, I
12 BELIEVE, MADE SOMEWHERE AROUND \$50,000 A YEAR, 44,
13 SOMETHING LIKE THAT. LET'S USE 40. FORTY TIMES A
14 HUNDRED, FOUR MILLION. IF IT'S 50, YOU KNOW, I
15 MEAN, WE CAN -- DEPENDING ON WHAT IT ACTUALLY IS,
16 IT'S EMPIRICAL AT SOME POINT, YES?

17 A. CORRECT.

18 Q. OKAY. SO, AND UNDER SOME OF YOUR TESTIMONY, WHICH I
19 RESPECTFULLY -- WELL, UNDER SOME OF YOUR TESTIMONY,
20 SOMEHOW OR ANOTHER THROUGH THIS ARRANGEMENT THE --
21 MY CLIENT AND THEN MY CLIENT'S CARRIER CAN HAVE
22 LIABILITY FOISTED UPON THEM FOR A BODY OF PAYROLL
23 AND LIABILITY THAT THEY DON'T KNOW ANYTHING ABOUT,
24 RIGHT?

25 A. IN ESSENCE, YES.

1 Q. IS THERE A CHANCE, SIR, IS THERE A CHANCE THAT THIS
2 FORM, IN SIX AND THEN IN SEVEN, THAT IT'S INTENDED
3 TO HAVE DISCLOSED THAT OFF-THE-EMPLOYEE-BOOK PAYROLL
4 SO THAT THE CARRIERS AND THE UNDERWRITERS CAN HAVE A
5 BETTER UNDERSTANDING FOR THE RISK TO WHICH YOU ARE
6 EXPOSING THEM WITH THE APPLICATION?

7 A. WELL, IN THAT REFERENCE, THEN, YOU WOULD HAVE TO
8 DISCLOSE UNDER NUMBER SEVEN ---

9 Q. THAT'S RIGHT.

10 A. --- ANY WORK SUBLET WITHOUT CERTIFICATES OF
11 INSURANCE.

12 Q. CORRECT.

13 A. HOWEVER, IF YOU'VE MADE A DECISION UP FRONT TO
14 INSURE A CERTAIN RISK, WHICH IS YOUR EMPLOYEES AND
15 YOUR PAYROLLS OR -- AND THEN TO TRANSFER RISK TO
16 INDEPENDENT CONTRACTORS, THEN YOU TRANSFER THAT
17 WORKERS' COMPENSATION RESPONSIBILITY TO THE
18 INDEPENDENT CONTRACTOR.

19 Q. YEAH. BUT, SEE, YOU'RE KIND OF WAFFLING ON ME
20 BECAUSE I THINK -- I THINK THE IDEA HERE IS -- AND
21 I'M JUST SAYING IS IT POSSIBLE?

22 BY MR. GOODWYN:

23 I OBJECT TO THE FORM, YOUR HONOR.

24 BY MR. ALFORD:

25 I'LL REPHRASE IT.

1 BY MR. GOODWYN:

2 TO TELL HIM HE'S WAFFLING, HE DOESN'T THINK
3 HE'S WAFFLING. I DON'T THINK HE'S WAFFLING. I
4 THINK IT'S ARGUMENTATIVE.

5 BY THE COMMISSIONER:

6 CAN YOU REPHRASE, PLEASE?

7 BY MR. ALFORD:

8 YES, MA'AM.

9 RECROSS EXAMINATION RESUMED BY MR. ALFORD:

10 Q. SO YOU'RE TELLING ME THAT THIS ACORD FORM, WHICH IS
11 OBVIOUSLY A STANDARD FORM IN YOUR BUSINESS, RIGHT?
12 I MEAN, THEY DO ALL THE FORMS, RIGHT?

13 A. YES.

14 Q. THAT NOWHERE ON THIS FORM IS THERE A REQUIREMENT OR
15 A REQUEST TO ACCOUNT FOR WHAT YOU TELL ME IS
16 ESSENTIALLY AN UNLIMITED LIABILITY THAT COULD BE
17 FOISTED UPON ME IF I'M AN UNDERWRITER OR A STAFFING
18 SERVICES COMPANY; IS THAT WHAT YOU'RE TELLING ME?

19 A. YES.

20 Q. COULD YOU BE WRONG? COULD YOU BE WRONG?

21 A. POSSIBLY.

22 Q. BECAUSE ISN'T IT TRUE THAT WHAT OUGHT TO HAPPEN AND
23 ISN'T IT WHY IT'S SET UP THAT WAY THAT YOU -- EITHER
24 YOU DISCLOSE THE RISK TO ME -- EITHER YOU DISCLOSE
25 THE RISK TO THE CARRIER AND THE UNDERWRITER OR TO

1 THE PEOPLE WHO ARE GOING TO SUBMIT TO THE CARRIER
2 AND UNDERWRITER, DISCLOSE THE RISK TO ME OR SHOW ME
3 THE CERTIFICATES WHERE YOU'VE INSURED OR YOU'VE MADE
4 SURE THAT THE RISK IS TAKEN CARE OF?

5 **BY MR. GOODWYN:**

6 OBJECTION. CALLS FOR SPECULATION AS TO WHAT
7 THE INTENT OF THE DRAFT OF THIS DOCUMENT IS.

8 **BY MR. ALFORD:**

9 YOUR HONOR, HE'S THE DUDE WHO'S IS LICENSED,
10 CERTIFIED, SEALED FOR THE DEAL TO FILL IT OUT. I
11 WANT TO KNOW.

12 **BY MR. GOODWYN:**

13 HE DIDN'T DRAFT THE DOCUMENT. HE DOESN'T KNOW
14 -- THERE'S NO FOUNDATION THAT HE'S ---

15 **BY MR. ALFORD:**

16 THE MAN -- YOU BROUGHT HIM HERE TO -- I'M
17 SORRY; I DON'T WANT TO ARGUE.

18 **BY THE COMMISSIONER:**

19 WELL, LET'S NOT TALK ON TOP OF EACH NO MATTER
20 WHAT. ALL RIGHT.

21 **BY MR. GOODWYN:**

22 HE'S ASKING WHAT THE INTENT OF THE DRAFT IS,
23 WHAT THE INTENT OF THE SYSTEM IS. I MEAN, HE'S
24 TESTIFIED TO WHAT THE FORM ASKS FOR. NOW HE'S
25 ASKING, WELL, ISN'T IT SUPPOSED TO ASK FOR THIS,

1 THIS, AND THIS.

2 BY THE COMMISSIONER:

3 I'M NOT SURE THAT'S THE ---

4 BY MR. GOODWYN:

5 I MEAN, IT CALLS FOR SPECULATION.

6 BY THE COMMISSIONER:

7 I'M NOT SURE THAT'S THE EXACT QUESTION.

8 BY MR. GOODWYN:

9 PARAPHRASE.

10 BY THE COMMISSIONER:

11 CAN YOU REPEAT THE QUESTION?

12 BY MR. ALFORD:

13 I DON'T REALLY REMEMBER IT, BUT I'LL ASK HIM

14 ANOTHER ONE. IT WAS A GOOD ONE, THOUGH.

15 RECROSS EXAMINATION RESUMED BY MR. ALFORD:

16 Q. I GUESS WHAT I'M ASKING IS, I MEAN, THIS IS JUST
17 BUSINESS. I MEAN, IN ANY FORM OF BUSINESS, IN ANY
18 FORM OF DIVIDING UP RISK AND MAKING MONEY, IF YOU
19 DON'T TELL THE UNDERWRITERS OR THE PEOPLE THAT ARE
20 GOING TO SUBMIT TO THE UNDERWRITERS WHAT THOSE RISKS
21 ARE -- YOU'VE GOT THIS BODY WHERE WE THINK IT'S
22 BETWEEN THREE AND SIX MILLION BUCKS WORTH OF PAYROLL
23 OUT THERE THAT'S OFF YOUR -- OFF YOUR COMP BOOKS,
24 RIGHT?

25 A. UH-HUH.

1 Q. WHICH YOU'RE PROBABLY SAVING MONEY BECAUSE YOU'RE
2 NOT PAYING COMP, RIGHT? THEY'RE INDEPENDENT;
3 THEY'VE GOT TO TAKE CARE OF IT, RIGHT?

4 A. RIGHT.

5 Q. BUT, ARGUABLY, YOU PAY THEM MORE BECAUSE BUILT INTO
6 WHAT THEY CHARGE YOU IS THE COST THAT THEY NEED TO
7 BUY THEIR COMP?

8 A. CORRECT.

9 Q. OKAY. BUT WITH THAT IN MIND, SHOULDN'T -- DON'T YOU
10 THINK THAT SOMEWHERE IN THIS THAT IT'S YOUR
11 OBLIGATION TO TELL US WHAT THAT UNDISCLOSED PAYROLL
12 RISK IS, HOW MANY THERE ARE, WHAT THEY'RE DOING, HOW
13 DANGEROUS IT IS? AND IF YOU DON'T TELL US, THAT YOU
14 ACTUALLY MAKE SURE THAT THEY -- THAT YOU HAVE
15 ADEQUATELY ADDRESSED THAT RISK BY EITHER HAVING MADE
16 SURE YOU HAD INSURANCE CERTIFICATES?

17 A. OR IN THIS CASE, WHERE WE HAVE CONFIRMATION FROM
18 CONDUSTRIAL THAT THEY HAD DOCUMENTATION SHOWING
19 THESE PEOPLE WERE ACTUALLY INDEPENDENT CONTRACTORS.

20 Q. DID YOU EVER SEE THAT CONFIRMATION?

21 A. NO.

22 Q. WHAT FORM DID THAT CONFIRMATION COME IN?

23 A. VERBAL.

24 Q. FROM CONDUSTRIAL?

25 A. YES.

1 Q. WHO?

2 A. TONY AND TOM.

3 Q. SO, YOU BELIEVED THEM?

4 A. YES.

5 Q. AND THAT'S WHY WE'RE HERE?

6 A. YES.

7 Q. BECAUSE IT'S NOT TRUE, IS IT?

8 **BY MR. GOODWYN:**

9 OBJECT TO THE FORM, YOUR HONOR.

10 **BY MR. ALFORD:**

11 I'LL WITHDRAW IT.

12 **RE CROSS EXAMINATION RESUMED BY MR. ALFORD:**

13 Q. AND YOU'VE HEARD THIS, BUT I'M GOING TO ASK. WHO
14 SIGNED -- DO YOU REMEMBER WHO SIGNED THE -- THERE'S
15 THIS AFFIRMATION AT THE BOTTOM OF THE ACORD
16 APPLICATION. AND YOU'VE READ -- I MEAN, I GUESS I
17 NEED TO KNOW BECAUSE THERE'S BEEN SOME QUESTION
18 ABOUT YOUR -- I MEAN, WHEN YOU -- YOU'VE GOT SOME
19 CERTIFICATIONS, RIGHT, AND YOU'VE GOT A LICENSE?

20 A. YES.

21 Q. YOU'VE BEEN DOING THIS A LONG, LONG TIME, INSURANCE
22 STUFF?

23 A. YES.

24 Q. OKAY. AND YOU'RE FAMILIAR WITH THE FORMS, RIGHT?

25 A. YES.

1 Q. I MEAN, THAT'S LIKE YOUR -- THAT'S LIKE LEGAL FORMS
2 FOR LAWYERS, RIGHT? I MEAN, IN OTHER WORDS, YOUR
3 FAMILIARITY WITH IT IS LIKE WHAT OURS IS SUPPOSED TO
4 BE WITH THE FORMS YOU'RE SUPPOSED TO FILL OUT IN THE
5 LEGAL SYSTEM?

6 A. YES.

7 Q. ALL RIGHT. SO YOU GO TO -- DO YOU HAVE CONTINUING
8 EDUCATION?

9 A. YES.

10 Q. YOU GO TO SEMINARS?

11 A. YES.

12 Q. THEY TALK ABOUT THE FORM IF IT CHANGES?

13 A. YES.

14 Q. EVERYBODY MAKES SURE THEY KNOW THEY'RE ON THE SAME
15 PAGE, IF YOU'LL PARDON THE PUN, ABOUT WHAT THE FORM
16 SAYS?

17 A. CORRECT.

18 Q. SO, DO YOU FEEL COMFORTABLE TESTIFYING TO US WHAT
19 YOU THINK IS REQUIRED IN THE FORM?

20 A. IN THE INSURANCE POLICY FORM OR ---

21 Q. IN THIS APPLICATION.

22 A. --- IN THE APPLICATION?

23 Q. IN THE APPLICATION, YEAH.

24 A. IN THE APPLICATION? AFTER THIS DISCUSSION, NO.

25 Q. YOU KNOW, I UNDERSTAND. BUT -- OKAY. THAT

1 AFFIRMATION AT THE END, I MEAN, ISN'T IT DESIGNED
2 FOR THE PRODUCER AND THE APPLICANT TO VERIFY TO:
3 EITHER THE PEOPLE THAT ARE GOING TO GO CO-APPLY WITH
4 THEM OR TO VERIFY WITH THE UNDERWRITERS, WE'VE TOLD
5 YOU EVERYTHING?

6 A. YES.

7 Q. BUT IN THIS CASE THAT DIDN'T HAPPEN, RIGHT?

8 A. FROM OUR STANDPOINT, WE DID TELL THEM EVERYTHING
9 THERE WAS ABOUT EMPLOYEES, AND WE FELT WE HAD --
10 CONDUSTRIAL HAD FELT THAT THEY HAD SUBSTANTIALLY
11 TRANSFERRED THAT RISK OF WORKERS' COMPENSATION FOR
12 THE INDEPENDENT CONTRACTORS.

13 Q. BUT THAT -- RESPECTFULLY, SIR, THAT'S INCONSISTENT
14 WITH YOUR TESTIMONY THAT THAT RISK AND THE P.E.O.
15 TYPE -- OR THE TYPE OF RELATIONSHIP THAT WE'RE IN,
16 WHICH ISN'T A P.E.O., BUT THE TYPE OF RELATIONSHIP
17 THEY'RE IN WITH MY CLIENT, COUNTRYWIDE, THAT'S VERY
18 INCONSISTENT WITH YOUR TESTIMONY THAT, BUT THAT BIG
19 RISK COULD PASS THROUGH, THE ONE WE DIDN'T DISCLOSE
20 TO YOU, THE ONE WE FELT LIKE WE HANDLED ACCURATELY
21 BUT WE DIDN'T COULD PASS THROUGH TO YOU. I MEAN, DO
22 YOU FEEL THAT INCONSISTENCY?

23 A. A LITTLE BIT, BUT YEAH.

24 Q. 'CAUSE WE'RE FEELING IT.

25 A. THERE'S ALWAYS THE POTENTIAL THAT YOU HAVE AN

1 INDEPENDENT CONTRACTOR THAT DOESN'T MEET THE
2 DEFINITION OF INDEPENDENT CONTRACTOR.

3 Q. BUT ISN'T THAT WHY YOU WOULD GO AND GET THE
4 CERTIFICATES AND MAKE SURE THAT THEY WERE COVERED,
5 THAT YOU WEREN'T -- AND I'M NOT TRYING TO BE -- I
6 JUST NEED TO GET TO THE BOTTOM OF THIS. ISN'T THAT
7 WHY YOU GO AND GET THE CERTIFICATES? ISN'T THAT WHY
8 THIS ASKS FOR IT, SO THAT THAT UNDISCLOSED RISK IS
9 DISCLOSED, AND WE KNOW WHAT IT IS, AND WE CAN WRITE
10 FOR IT OR WE CAN SAY TO YOU, "HEY, MAN, YOU DIDN'T
11 SEND US THE CERTIFICATES. WE WANT TO SEE MS.
12 TURNER'S CERTIFICATE, BECAUSE WE KNOW IT'S A LITTLE
13 RISKY GOING INTO PRISON." DON'T YOU THINK THAT'S
14 WHY THAT'S THERE?

15 A. IT'S WHY THAT'S THERE. BUT IT'S LIKE WE TALKED
16 BEFORE. THE INDEPENDENT CONTRACTOR, IF THEY BUY
17 THAT POLICY, THEY'RE NOT GONNA COVER THEMSELVES.

18 Q. RIGHT. BUT THAT SATISFIES THE REQUIREMENT SO THAT
19 THE PASS-THROUGH THAT YOU'RE TALKING ABOUT DOESN'T
20 HAPPEN?

21 A. SO, IF MS. TURNER HAD PURCHASED A POLICY THAT DIDN'T
22 COVER HERSELF, WE'D STILL BE IN THE SAME SITUATION.

23 Q. NO, WE WOULDN'T, BECAUSE THAT WOULD HAVE SATISFIED
24 THE REQUIREMENT AND IT WOULDN'T HAVE PASSED -- THERE
25 WOULD BE NO CHANCE FOR IT TO PASS THROUGH, BECAUSE

1 SHE'S BEING HELD TO BE -- I MEAN, LET ME WITHDRAW
2 THAT. ALL RIGHT. DID WE SEND THIS TO -- DID THE
3 SUBPOENA GO TO THE WRONG PEOPLE? BECAUSE THIS --
4 THE APPLICATION -- THERE SHOULD BE A FILE WHERE THIS
5 APPLICATION GOT WORKED UP. WHERE IS IT?

6 A. I DON'T KNOW. FROM HERE, THIS WENT TO -- THIS WENT
7 TO TOMMY SUGGS, 1330 LADY STREET, THREE BLOCKS UP
8 THE STREET HERE.

9 Q. BUT YOU'RE NOT WITH THEM ANYMORE, IS THAT RIGHT? OR
10 IT'S NOT ---

11 A. I'M IN GREENVILLE, SOUTH CAROLINA. MY SUBPOENA
12 MONDAY WENT TO 1330 LADY STREET.

13 Q. COULD IT BE BECAUSE THAT'S WHERE THE REGISTERED
14 AGENT IS?

15 A. YES. TOMMY SUGGS IS THE REGISTERED AGENT.

16 Q. SO, I GUESS WHAT I'M ASKING IS, IT WENT TO THE
17 REGISTERED AGENT?

18 A. YES.

19 Q. ARE YOU NOT WITH THEM ANYMORE?

20 A. YES.

21 Q. OR JUST THE NAME CHANGED?

22 A. NAME CHANGED.

23 Q. OKAY. SO, IF I WAS GONNA LEAVE HERE -- WELL, IT'S
24 TOO LATE. BUT IF I GO OVER THERE TOMORROW MORNING,
25 ASSUMING THAT WE DIDN'T START AT 8:30, ASSUMING WE

1 STARTED AT 10, AND I KNOCKED ON THE DOOR AND I
2 WANTED TO KNOW WHERE IS THIS STUFF, HAVE THEY GOT IT
3 OVER THERE?

4 A. THEY HAVE ACCESS TO IT OVER THERE BECAUSE IT'S ALL
5 BASICALLY IN THE COMPUTER.

6 Q. IT'S REAL EASY TO GET TO, ISN'T IT?

7 A. YES.

8 Q. PUNCH A BUTTON, PRINT IT OUT?

9 A. YES.

10 Q. WHY DON'T WE HAVE IT?

11 A. I CAN'T ANSWER THAT.

12 Q. DO YOU KNOW WHO SIGNED THIS APPLICATION ON BEHALF OF
13 CONDUSTRIAL?

14 A. I DON'T REMEMBER SPECIFICALLY. I WOULD ASSUME TONY.
15 BUT THAT'S ONE OF THE DOCUMENTS WE CAN GET.

16 Q. APPARENTLY NOT.

17 A. WELL, WE CAN GET IT.

18 Q. CAN YOU GET IT FOR ME?

19 A. YEAH. CAN I GET A COPY OF THIS?

20 Q. ABSOLUTELY. HERE; YOU CAN HAVE MINE IF I CAN FIND
21 IT.

22 BY MS. RICHARDSON:

23 HERE'S ONE.

24 BY MR. ALFORD:

25 THANK YOU. THANK YOU.

RECROSS EXAMINATION RESUMED BY MR. ALFORD:

Q. THAT'S FOR YOU.

A. I'M NOT SURE I'LL HAVE IT FOR YOU AT 10:00 TOMORROW MORNING, BUT...

Q. SOMETHING TELLS ME WE'RE GONNA GO LONGER THAN THAT. BUT THANK YOU, SIR. I APPRECIATE IT. THERE WAS THIS -- AND IT'S BEEN TALKED ABOUT THAT YOU HAD A LEVEL OF COMFORT, BUT, OBVIOUSLY, THAT WAS -- THE MISTAKE YOU MADE WAS TRUSTING WHAT THEY WERE TELLING YOU, THAT THEY HAD IT COVERED?

A. YES.

Q. AND THERE'S BEEN REFERENCE -- AND I DON'T WANT TO BEAT ON THIS, BUT THERE'S BEEN REFERENCE THAT YOU PUT YOUR E&O CARRIER ON NOTICE?

A. YES.

Q. WHY?

A. TONY THREATENED ME.

Q. ARE YOU KIDDING ME?

A. HE WASN'T HAPPY WITH THE WAY THINGS WERE GOING; SO... AND ANYTIME THAT I'M THREATENED TO GET SUED, I HAVE TO PUT MY CARRIER ON NOTICE.

Q. I ABSOLUTELY UNDERSTAND THAT WITH CLARITY. BUT AM I CORRECT THAT THE ONLY THING YOU DID WRONG WAS TRUST THEM?

BY MR. GOODWYN:

1 OBJECT TO FORM, YOUR HONOR.

2 **BY THE COMMISSIONER:**

3 IN WHAT WAY?

4 **BY MR. GOODWYN:**

5 HE'S SAYING THE ONLY THING THAT YOU DID WRONG
6 WAS TO TRUST THEM. THAT IMPLIES THAT RELYING ON
7 WHAT THEY SAID WAS WRONG, WHICH I DON'T THINK THAT'S
8 THE -- THAT HASN'T BEEN THE TESTIMONY.

9 **BY MR. ALFORD:**

10 DID THEY -- I GOTCHA. I'LL HANDLE THAT.

11 **RE CROSS EXAMINATION RESUMED BY MR. ALFORD:**

12 Q. YOU HAD A LEVEL OF COMFORT BECAUSE THEY TOLD YOU
13 THAT THEY HAD THESE INDEPENDENT CONTRACTOR
14 RELATIONSHIPS WELL ESTABLISHED AND TAKEN CARE OF?

15 A. YES.

16 Q. OKAY. THEY NEVER SHOWED YOU THE AGREEMENTS?

17 A. NO.

18 Q. DID YOU EVER ASK FOR THEM?

19 A. I DON'T BELIEVE SO.

20 Q. WELL, I GUESS THAT'S ONE OF THE THINGS THAT'S
21 IMPORTANT TO ME ABOUT THIS, WHAT I THINK IS PROBABLY
22 GOING TO BE A SIGNIFICANT AMOUNT OF PAPERWORK, ABOUT
23 THIS APPLICATION PROCESS, IS, NO OFFENSE, BUT
24 INSURANCE COMPANIES AND BANKS AND SOME LAWYERS ARE
25 SO PAPER CRAZY THAT THEY MAKE YOU ANSWER EVERYTHING.

1 I MEAN, THERE'S NO STONE UNTURNED. RIGHT?

2 A. RIGHT.

3 Q. SO, SOMEWHERE IN THERE DON'T YOU THINK THAT THOSE
4 QUESTIONS MIGHT HAVE BEEN PUT TO THE APPLICANT IN
5 THIS CONTEXT? QUESTIONS LIKE DO YOU HAVE
6 SUBCONTRACTORS; DO YOU HAVE INDEPENDENT CONTRACTORS?

7 A. YES. THEY WERE ALL ASKED.

8 Q. THEY WERE ALL ASKED?

9 A. YES.

10 Q. BUT THE ANSWER DIDN'T COME BACK, YEAH, I'VE GOT 130
11 NURSES THAT I'M SENDING TO PRISONS AND A PAYROLL OF
12 ABOUT SIX MILLION BUCKS?

13 A. NO.

14 Q. OKAY. AND THEN THEY NEVER TOLD YOU THAT THE
15 OBLIGATIONS THAT THEY HAD WITH SCDC REQUIRED THEM TO
16 GET WORKERS' COMPENSATION INSURANCE?

17 A. NO.

18 Q. IN RETROSPECT, DO YOU FEEL THEY MIGHT HAVE WITHHELD
19 THAT FROM YOU?

20 A. POSSIBLY.

21 Q. PROBABLY? YOU'RE UNDER OATH. WE'RE ALL HERE. TELL
22 ME WHAT YOU THINK.

23 A. IT APPEARS THAT WAY.

24 **BY MR. ALFORD:**

25 THANK YOU. BEST OF LUCK, SIR.

1 BY THE COMMISSIONER:

2 GUARANTEE?

3 BY MS. RICHARDSON:

4 WE DON'T HAVE ANY QUESTIONS, YOUR HONOR.

5 BY MR. GOODWYN:

6 WE'VE GOT A COUPLE MORE. WE'VE JUST GOT A

7 COUPLE MORE IF NOBODY ELSE HAS ANY.

8 BY THE COMMISSIONER:

9 OKAY. THIS WOULD BE THE SECOND REDIRECT; SO...

10 BY MR. BEARD:

11 WHICH MAY LEAD TO MORE.

12 BY MR. GOODWYN:

13 I'LL BE QUICK.

14 BY THE COMMISSIONER:

15 OKAY.

16 BY MR. GOODWYN:

17 I JUST HAVE TWO LITTLE POINTS TO MAKE. FIRST,

18 I NEED TO SEE THE COMMISSION'S -- OR IF SOMEONE ELSE

19 HAS GOT IT -- IT'S PAGE 233 OF STEPHEN'S APAs.

20 BY MR. ALFORD:

21 WHAT DOCUMENT IS IT?

22 BY MR. GOODWYN:

23 230. IT'S THE INDEPENDENT CONTRACTOR

24 AGREEMENT.

25 BY MR. ALFORD:

1 OH, I DO NOT HAVE IT.

2 BY MS. RICHARDSON:

3 IT'S RIGHT HERE, JEFF.

4 BY MR. GOODWYN:

5 THANK YOU. WELL, THERE'S TWO DIFFERENT ONES.

6 BY MS. RICHARDSON:

7 THIS IS WHAT STARTS AT 233.

8 REDIRECT EXAMINATION BY MR. GOODWYN:

9 Q. I'LL SHOW YOU WHAT'S CLAIMANT'S APAs ---

10 BY MR. GOODWYN:

11 WHAT EXHIBIT WAS THAT? "D" AND "I"?

12 BY MR. SAMUELS:

13 "D" AND "E."

14 BY MR. GOODWYN:

15 "D" AND "E."

16 BY THE COMMISSIONER:

17 HOLD ON A SECOND. LET ME MAKE SURE I KNOW WHAT
18 Y'ALL ARE LOOKING AT.

19 BY MR. GOODWYN:

20 CLAIMANT'S APAs, EXHIBITS "D" AND "E," WHICH
21 ARE THE TWO INDEPENDENT CONTRACTOR AGREEMENTS OF MS.
22 TURNER.

23 BY THE COMMISSIONER:

24 "D" AND "E." LET'S USE THE NUMBERS BECAUSE
25 THAT'S HOW WE'VE DONE THE WHOLE RECORD.

1 BY MR. GOODWYN:

2 SURE.

3 BY THE COMMISSIONER:

4 SO ---

5 BY MR. GOODWYN:

6 IT'S PAGES -- STARTING AT 233, GOING TO 242.

7 THE BATES LABEL ON THERE -- THERE'S A DIFFERENT
8 BATES LABEL ON IT.

9 BY THE COMMISSIONER:

10 LET'S USE THE PAGES AT THE BOTTOM OF THE
11 CLAIMANT'S APAs AS OPPOSED TO THE CONDUSTRAL BATES
12 STAMP.

13 BY MR. GOODWYN:

14 RIGHT. IT'S 233 THROUGH 242.

15 BY THE COMMISSIONER:

16 OKAY.

17 BY MR. SAMUELS:

18 AND FOR THE RECORD, I MAY BE WRONG, BUT I
19 BELIEVE THE OBJECTION WAS SUSTAINED WHEN I ATTEMPTED
20 TO SHOW THE DOCUMENTS TO THE WITNESS. I MAY BE
21 WRONG. SO, I WOULD CONTEND THIS ---

22 BY THE COMMISSIONER:

23 I DO -- I DO REMEMBER AT SOME POINT -- OF
24 COURSE, WE'VE BEEN A LONG WAY BACK AROUND. BUT I DO
25 REMEMBER THAT THERE WAS AS FAR AS THE FACT THAT HE'S

1 NEVER SEEN THEM, AND THEN I BELIEVE, IN ONE OF THE
2 DOCUMENTS ANYWAY, THAT YOU INDICATED THAT YOU HAD A
3 DIFFERENT POINT TO MAKE WITH IT, SO THEN WE WENT
4 ALONG THAT LINE OF QUESTIONING. I CANNOT REMEMBER
5 IF IT WAS THAT PARTICULAR DOCUMENT RIGHT NOW.

6 **BY MR. GOODWYN:**

7 I DON'T THINK IT WAS THE INDEPENDENT CONTRACTOR
8 AGREEMENT.

9 **BY THE COMMISSIONER:**

10 IT WAS SOMETHING ELSE. BUT IF YOU'LL BE BRIEF.
11 AND I'M NOT -- OTHER THAN HAVING ---

12 **BY MR. GOODWYN:**

13 HE WAS JUST ASKED ABOUT THIS. THAT'S WHY I'M
14 SHOWING HIM.

15 **BY THE COMMISSIONER:**

16 AND HE'S INDICATED HE HASN'T SEEN THEM; SO...

17 **BY MR. GOODWYN:**

18 RIGHT.

19 **BY THE COMMISSIONER:**

20 A NUMBER OF TIMES.

21 **BY MR. GOODWYN:**

22 I THINK THE POINT THAT WAS MADE OVER HERE WAS
23 THAT, OH, HE HASN'T SEEN IT, CASTING INTO DOUBT
24 THEIR EXISTENCE, AND THAT HE'S DOUBTING WHETHER OR
25 NOT THEY ACTUALLY HAD THESE INDEPENDENT CONTRACTOR

1 AGREEMENTS OR NOT. I'M HERE TO SHOW HIM ---

2 **BY THE COMMISSIONER:**

3 WELL ---

4 **BY MR. ALFORD:**

5 THEY'RE IN THERE.

6 **BY MR. GOODWYN:**

7 THAT WAS THE TESTIMONY, OR THAT WAS THE LINE OF
8 QUESTIONING. THAT'S WHAT I'M FOLLOWING UP ON, IS
9 HIS LINE OF QUESTIONING ABOUT THE INDEPENDENT
10 CONTRACTOR AGREEMENTS.

11 **BY THE COMMISSIONER:**

12 BUT THIS IS -- IF -- THERE ARE SO MANY VARIOUS
13 DOCUMENTS AT VARIOUS POINTS IN TIME. ARE YOU -- ARE
14 Y'ALL GONNA SHOW HIM ALL OF THE DOCUMENTS? I MEAN,
15 IT'S ---

16 **BY MR. GOODWYN:**

17 I'M SHOWING HIM THESE.

18 **BY THE COMMISSIONER:**

19 OKAY. BUT THEN -- MS. FARTHING?

20 **BY MS. FARTHING:**

21 AND I GUESS, IF I'M UNDERSTANDING CORRECTLY,
22 THIS IS JUST TO CONFIRM THEIR EXISTENCE? I MEAN,
23 THEY'RE IN THE RECORD.

24 **BY MR. GOODWYN:**

25 AS FAR AS HE DOESN'T -- HE SAYS HE'S NEVER SEEN

1 THEM BEFORE, AND SO NOW I THINK THE SUGGESTION WAS,
2 WELL, YOU'VE NEVER SEEN THEM; MAYBE THEY WERE LYING
3 TO YOU ABOUT THEM. THAT'S THE IMPLICATION THAT I'M
4 TRYING TO GET ---

5 BY THE COMMISSIONER:

6 I'M NOT SURE I UNDERSTAND ANYBODY SAYING THAT
7 THEY DIDN'T EXIST. I THINK THAT IT WAS THIS WITNESS
8 HAS NOT SEEN THOSE DOCUMENTS.

9 BY MR. BEARD:

10 THEY WEREN'T SHOWN DURING THE TIME THAT THIS
11 WAS GOING ON, IS THE POINT.

12 BY THE COMMISSIONER:

13 SO, IT'S NOT THE EXISTENCE. HE HASN'T -- IT'S
14 MY UNDERSTANDING THE TESTIMONY IS HE HASN'T SEEN
15 THEM THEN, NOR ANY TIME UP TO TODAY.

16 BY MR. GOODWYN:

17 RIGHT. I THINK THAT'S WHAT HE TESTIFIED TO.

18 BY THE COMMISSIONER:

19 BUT WHAT -- WHAT WOULD BE ELICITED FROM THIS
20 WITNESS WITH THOSE DOCUMENTS? I MEAN ---

21 BY MR. GOODWYN:

22 WELL, I WAS GOING TO ASK HIM DO YOU BELIEVE
23 THEY ACTUALLY EXISTED? YOU GOT WORD FROM YOUR
24 CLIENT. YOU BELIEVED IT THEN. IT SOUNDS LIKE HE
25 WAS TRYING TO MAKE HIM CAST SOME KIND OF ---

1 BY MR. ALFORD:

2 DISPERSION.

3 BY MR. GOODWYN:

4 --- DOUBT ABOUT WHETHER OR NOT THEY ACTUALLY
5 EXISTED. I'M GOING TO SHOW IT TO HIM HERE. HERE
6 THEY ARE. NOW YOU'VE SEEN THEM.

7 BY THE COMMISSIONER:

8 THAT'S -- OKAY. THAT'S NOT THE WAY THAT I
9 HEARD THE QUESTIONS, BUT...

10 BY MR. GOODWYN:

11 MAYBE I HEARD THEM DIFFERENTLY.

12 BY THE COMMISSIONER:

13 OKAY.

14 BY MR. GOODWYN:

15 I THOUGHT THAT WAS THE POINT HE WAS TRYING TO
16 MAKE, IS DO YOU REALLY BELIEVE THAT THEY EXISTED
17 BECAUSE THEY ARE ---

18 BY MR. ALFORD:

19 WE KNOW THEY EXIST, PAINFULLY.

20 BY MR. GOODWYN:

21 WELL, YOU DIDN'T TELL HIM THAT IN YOUR
22 QUESTIONING. THAT'S WHY I'M COMING BACK HERE.

23 BY MS. RICHARDSON:

24 JEFF, YOU'RE THE ONLY ONE WHO ---

25 BY THE COMMISSIONER:

1 WAIT, WAIT, WAIT. FIRST OF ALL, DON'T TALK
2 OVER EACH OTHER. SECOND OF ALL, ADDRESS THE
3 COMMISSION. YOU CAN SHOW THEM TO HIM THAT IT
4 EXISTS, BUT, I MEAN, WE HAVE NUMEROUS DOCUMENTS
5 CONCERNING THIS ONE PARTICULAR -- I MEAN, THERE ARE
6 I DON'T EVEN KNOW HOW MANY. SO, I DON'T -- ONE
7 THING I DON'T WANT TO GET INTO, A WITNESS
8 INTERPRETATION, AS I SAID BEFORE, ABOUT THE LEGAL
9 SIGNIFICANCE OF ANY OF THESE DOCUMENTS.

10 BY MR. GOODWYN:

11 OKAY. I'M NOT GONNA ASK HIM ABOUT THAT.

12 BY THE COMMISSIONER:

13 THE INDEPENDENT CONTRACTOR/STATUTORY EMPLOYEE
14 ISSUE IS FOR THE COMMISSION TO DECIDE.

15 BY MR. GOODWYN:

16 RIGHT. AND THAT'S NOT WHAT I WAS TRYING TO GET
17 INTO.

18 BY THE COMMISSIONER:

19 OKAY. ALL RIGHT.

20 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

21 Q. I WAS JUST SAYING, THIS IS THE FIRST TIME YOU'VE
22 SEEN THESE INDEPENDENT CONTRACTOR AGREEMENTS THAT
23 WERE REPRESENTED TO YOU EXISTED BY TONY DURHAM AND
24 TOM SEARS, CORRECT?

25 A. YES.

1 Q. OKAY. DO YOU BELIEVE THAT THEY ACTUALLY EXISTED AT
2 THE TIME THAT THEY TOLD YOU THEY EXISTED?

3 A. YES.

4 Q. OKAY. ALL RIGHT. LET ME ASK YOU THIS, THEN. GOING
5 BACK TO THIS CONDUSTRIAL TRIAL EXHIBIT ONE, IT'S THE
6 AGREEMENT BETWEEN CONDUSTRIAL AND SCDC. I BELIEVE
7 YOU TESTIFIED ABOUT WHAT YOUR RECOMMENDATIONS MIGHT
8 HAVE BEEN DIFFERENT BASED ON THE REQUIREMENT IN THE
9 CONTRACT TO PROVIDE INSURANCE, CORRECT?

10 A. CORRECT.

11 Q. ALL RIGHT. READ THAT SENTENCE ONE MORE TIME.

12 **BY MS. FARTHING:**

13 COMMISSIONER, I BELIEVE THAT THE QUESTIONS
14 EARLIER CONCERNING THIS CONTRACT HAD TO DO WITH THE
15 2008 CONTRACT, NOT THE 2016 CONTRACT, WHICH IS THE
16 CONTRACT HE'S ASKING HIM ABOUT NOW.

17 **BY MR. GOODWYN:**

18 OH, IS THIS THE WRONG ---

19 **BY MS. FARTHING:**

20 YES. THAT'S THE 2016.

21 **BY MR. GOODWYN:**

22 IS THIS THE 2016 VERSION? ALL RIGHT. WHICH
23 ONE IS THE 2008 VERSION?

24 **BY MS. FARTHING:**

25 IT WAS NEVER -- IT'S NOT A TRIAL EXHIBIT. IT'S

1 PART OF CLAIMANT'S APAS.

2 BY MR. GOODWYN:

3 ALL RIGHT.

4 BY MS. FARTHING:

5 COMMISSIONER, ADDITIONALLY, THESE QUESTIONS
6 WERE ASKED THE FIRST TIME MR. SAMUELS CROSS EXAMINED
7 HIM, AND I DON'T THINK THEY WERE ASKED AGAIN DURING
8 RECROSS.

9 BY MR. GOODWYN:

10 HE DID. HE WAS ASKING ABOUT THAT.

11 BY MR. ALFORD:

12 I DIDN'T -- YOUR HONOR, IF I CAN JUST SAY, I
13 DIDN'T ASK WHETHER OR NOT THEY EXISTED. I ASKED
14 WHETHER OR NOT THEY WERE GIVEN TO HIM.

15 BY MR. GOODWYN:

16 WELL, THAT'S -- I THINK THIS MIGHT BE IT.

17 BY THE COMMISSIONER:

18 MR. GOODWYN, THAT'S ---

19 BY MR. ALFORD:

20 NOT WHETHER OR NOT THEY EXISTED. WHETHER OR
21 NOT ---

22 BY MS. FARTHING:

23 NO. HE'S TALKING ABOUT THE DEPARTMENT OF
24 CORRECTIONS CONTRACT NOW.

25 BY MR. GOODWYN:

1 YEAH, THE SCDC ---

2 BY MS. FARTHING:

3 YEAH.

4 BY THE COMMISSIONER:

5 MR. GOODWYN, THAT'S THE WAY I UNDERSTOOD THE
6 QUESTIONS, AS TO WHETHER HE SAW THE DOCUMENTS, NOT
7 WHETHER THEY EXISTED OR NOT.

8 BY MR. GOODWYN:

9 I'M ASKING HIM A SEPARATE QUESTION.

10 BY THE COMMISSIONER:

11 OKAY.

12 BY MR. GOODWYN:

13 HE WAS QUESTIONED ABOUT WOULD HIS
14 RECOMMENDATIONS HAVE BEEN DIFFERENT HAD HE KNOWN
15 ABOUT THESE PROVISIONS IN THE AGREEMENT, AND I WANT
16 TO FOLLOW UP ON THAT.

17 BY MS. FARTHING:

18 AND MY OBJECTION WAS THAT THAT WAS ACTUALLY
19 ASKED BY MR. SAMUELS DURING HIS INITIAL CROSS
20 EXAMINATION, NOT HIS RECROSS, AND WE'RE NOW ON RE-
21 REDIRECT.

22 BY THE COMMISSIONER:

23 ACTUALLY, MR. SAMUELS DID ASK IT ON HIS FIRST
24 CROSS.

25 BY MR. GOODWYN:

1 AND I THINK MR. ALFORD WENT INTO THAT SAME
2 ISSUE, TOO. THIS IS A -- IT'S A REAL IMPORTANT
3 POINT, TOO.

4 BY THE COMMISSIONER:

5 WELL, I HAD ---

6 BY MR. GOODWYN:

7 I'LL MAKE IT VERY QUICKLY.

8 BY MS. FARTHING:

9 IT HAS TO BE WITHIN THE SCOPE OF RECROSS.

10 BY THE COMMISSIONER:

11 I MEAN, MR. GOODWYN, I THINK WE'VE BEEN
12 THOROUGHLY THROUGH THIS.

13 BY MR. GOODWYN:

14 NOT THIS POINT. THIS IS A REAL IMPORTANT POINT
15 I'M TRYING TO MAKE, AND I CAN MAKE IT VERY QUICKLY.

16 BY THE COMMISSIONER:

17 ALL RIGHT. OKAY.

18 BY MR. GOODWYN:

19 I'VE GOT TO FIND THE 2008 VERSION. SOMEBODY
20 SAID IT WAS IN THE CLAIMANT'S APAs. LET ME LOOK
21 THROUGH THESE OTHER ONES.

22 BY MR. SAMUELS:

23 IT'S PAGE 254 OF THE CLAIMANT'S APAs.

24 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

25 Q. ALL RIGHT. IF YOU COULD READ CAREFULLY THE FIRST

1 SENTENCE OUT LOUD FOR US.

2 BY THE COMMISSIONER:

3 HAVE WE -- HAS THIS BEEN READ EARLIER?

4 BY MR. GOODWYN:

5 I DON'T KNOW IF IT WAS THE NEW VERSION OR THE
6 OLD VERSION. BUT, ANYWAY, I THINK THE POINT IS
7 THERE WAS -- I THINK THERE WAS A MISREADING OF IT,
8 AND THAT'S WHY I'M TRYING TO MAKE SURE IT'S READ
9 CORRECTLY.

10 BY MS. FARTHING:

11 BUT, AGAIN, THAT WAS DURING MR. SAMUELS'
12 INITIAL CROSS.

13 BY MR. GOODWYN:

14 AND, AGAIN, I THINK GREGG GOT BACK INTO IT.
15 THIS IS A KEY POINT.

16 BY MR. BEARD:

17 GREGG DIDN'T EVEN TALK ABOUT THIS DOCUMENT.

18 BY MS. FARTHING:

19 YEAH. GREGG NEVER DISCUSSED ---

20 BY MR. ALFORD:

21 MY ONLY THING WAS, WAS IT DISCLOSED. THAT'S
22 ALL.

23 BY MR. BEARD:

24 THAT'S ALL HE SAID.

25 BY MR. ALFORD:

1 BUT YOU KNOW WHAT? WE'RE -- WE COULD ACTUALLY
2 JUST -- HOW LONG IS IT GONNA TAKE, JEFF?

3 **BY MR. GOODWYN:**

4 ABOUT 30 SECONDS. WE WOULD HAVE BEEN DONE WITH
5 THIS TEN MINUTES AGO.

6 **BY MR. ALFORD:**

7 DO IT. DO IT.

8 **BY THE COMMISSIONER:**

9 ALL RIGHT. GO AHEAD.

10 **BY MR. ALFORD:**

11 I DON'T MEAN TO SPEAK FOR Y'ALL.

12 **WITNESS ANSWERS:**

13 A. OKAY. "INSURANCE. CONTRACTORS ARE TO PROVIDE
14 WORKERS' COMPENSATION INSURANCE COVERAGE FOR
15 CONTRACTOR'S EMPLOYEES WHO ARE ASSIGNED TO SCDC."

16 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

17 Q. OKAY. WAS IT YOUR UNDERSTANDING THAT CONDUSTRIAL
18 WAS PROVIDING ---

19 **BY MR. SAMUELS:**

20 OBJECT TO LEADING, YOUR HONOR.

21 **BY THE COMMISSIONER:**

22 SUSTAINED.

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

24 Q. LET ME ASK YOU THIS WAY. IF CONDUSTRIAL WAS
25 PROVIDING INDEPENDENT CONTRACTORS TO SCDC, NOT

1 EMPLOYEES, THEN THIS INSURANCE REQUIREMENT WOULDN'T
2 APPLY; ISN'T THAT TRUE?

3 **BY MS. FARTHING:**

4 COMMISSIONER, I WOULD OBJECT TO THIS QUESTION
5 ASKED IN THE VACUUM THAT IT'S USED AND NOT IN THE
6 CONTEXT OF HOW THAT TERM WAS USED THROUGHOUT THE
7 COURSE OF THE ENTIRE CONTRACT.

8 **BY THE COMMISSIONER:**

9 AGAIN, THE DETERMINATION OF THIS PARTICULAR
10 CONTRACT AND ITS MEANING IS GOING TO BE A LEGAL
11 DETERMINATION.

12 **BY MR. GOODWYN:**

13 I'M ASKING HIM WOULD HIS RECOMMENDATIONS CHANGE
14 OF HE'S CONSIDERING INDEPENDENT CONTRACTORS BEING
15 SUPPLIED AS OPPOSED TO EMPLOYEES SINCE THE
16 REQUIREMENT SAYS WORKERS' COMP FOR EMPLOYEES, NOT
17 INDEPENDENT CONTRACTORS.

18 **BY MR. SAMUELS:**

19 IT'S BEEN ASKED AND ANSWERED.

20 **BY MR. GOODWYN:**

21 BY WHO?

22 **BY MR. SAMUELS:**

23 BY THIS WITNESS.

24 **BY MR. GOODWYN:**

25 NO. WHO ASKED?

1 BY MR. SAMUELS:

2 I DID IN MY FIRST CROSS.

3 BY MS. FARTHING:

4 AND I BELIEVE THE CONTEXT WAS THAT MR. SAMUELS
5 ACTUALLY PROVIDED -- DIRECTED HIM TO THE BEGINNING
6 OF THAT CONTRACT WHERE IT DEFINED THESE INDIVIDUALS
7 AS CONTRACTORS' EMPLOYEES AND THEN ASKED HIM ABOUT
8 THIS PROVISION, WHICH JEFF IS TRYING TO VIEW THIS IN
9 A -- HAVE HIM VIEW THIS RIGHT NOW IN A VACUUM.

10 BY MR. GOODWYN:

11 IT'S NOT A VACUUM. I'M JUST SAYING IT SAYS
12 EMPLOYEES. I THINK HE ANSWERED THE QUESTION.

13 BY THE COMMISSIONER:

14 ALL RIGHT. IF YOU'LL LET HIM READ THE ENTIRE
15 -- LET HIM READ THE ENTIRE DOCUMENT, AND LET'S NOT
16 READ BACK INTO THE RECORD. LET HIM READ THE
17 DOCUMENT.

18 BY MS. RICHARDSON:

19 OH, MY GOSH. IT'S LIKE ---

20 BY THE COMMISSIONER:

21 HOW MANY -- WELL ---

22 BY MR. GOODWYN:

23 WELL, THE PERTINENT SECTIONS OF THE DOCUMENT.

24 BY MS. FARTHING:

25 BUT, AGAIN, I DON'T THINK YOU CAN VIEW THIS IN

1 A VACUUM AND HAVE HIM OPINE AS TO THAT PARTICULAR
2 PARAGRAPH.

3 **BY THE COMMISSIONER:**

4 OKAY.

5 **BY MR. GOODWYN:**

6 WELL, THAT'S WHAT HE WAS ASKED BEFORE. THAT'S
7 WHAT I'M TRYING TO FOLLOW UP ON. HE WAS ASKED WOULD
8 IT HAVE CHANGED HIS RECOMMENDATIONS, AND I'M TRYING
9 TO MAKE THE POINT, WELL, IT SAYS ONLY EMPLOYEES HAVE
10 TO HAVE WORKERS' COMP, NOT INDEPENDENT CONTRACTORS.

11 **BY MS. FARTHING:**

12 AND AS MR. SAMUELS INDICATED TO HIM EARLIER,
13 THE EARLIER PORTION OF THE DOCUMENT DEFINED THEM AS
14 EMPLOYEES.

15 **BY THE COMMISSIONER:**

16 LET'S MOVE ON. OKAY, MR. GOODWYN, GO AHEAD AND
17 FINISH THE QUESTION.

18 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

19 Q. WOULD YOUR OPINION CHANGE IF IT'S BELIEVED THAT ONLY
20 EMPLOYEES ARE REQUIRED TO HAVE INDEPENDENT --
21 REQUIRED TO HAVE WORKERS' COMPENSATION COVERAGE
22 PROVIDED?

23 **BY MS. FARTHING:**

24 SAME OBJECTION, BUT I UNDERSTAND HE'S ALLOWED
25 TO TESTIFY.

1 **WITNESS ANSWERS:**

2 A. IF I WERE LOOKING AT THIS SECTION OF THE CONTRACT
3 ONLY AND IT SAID PROVIDE WORKERS' COMPENSATION
4 INSURANCE COVERAGE FOR THE EMPLOYEES, YES.

5 **BY MR. GOODWYN:**

6 OKAY. THAT'S ALL I HAVE.

7 **BY THE COMMISSIONER:**

8 ANYTHING FURTHER FROM THIS WITNESS?

9 **BY MR. SAMUELS:**

10 JUST ONE FOLLOW-UP, YOUR HONOR.

11 **RECROSS EXAMINATION BY MR. SAMUELS:**

12 Q. SIR, IF YOU WERE SHOWN THE CONTRACT IN ITS ENTIRETY,
13 INCLUDING THE PROVISION AT PAGE 254, PARAGRAPH ONE,
14 LETTER "A," UNDER AGREED SERVICES, THIS SAYS, "RNs,
15 LPNs ASSIGNED TO SCDC BY CONTRACTOR ARE EMPLOYEES OF
16 CONTRACTOR AND NOT SCDC." READING THAT IN CONTEXT,
17 WITH THE UNDERSTANDING THAT THAT IS THE ONLY PART OF
18 THE CONTRACT THAT DEFINES WHO THE EMPLOYEES ARE,
19 SPECIFICALLY AS RNs AND LPNs, WOULD YOUR TESTIMONY
20 THEN REMAIN AS IT WAS EARLIER, THAT THERE SHOULD
21 HAVE BEEN WORKERS' COMP COVERAGE FOR THESE NURSES?

22 A. WELL, AS I STATED WHEN I RESPONDED TO A PREVIOUS
23 QUESTION HERE, IF I WERE LOOKING AT THE INSURANCE
24 SECTION IN A VACUUM, IF YOU WILL, THEN IT REFERS TO
25 EMPLOYEES. BUT THIS PORTION HERE CLEARLY STATES

1 THAT CONDUSTRIAL WAS TO SUPPLY EMPLOYEES, PERIOD.

2 Q. WHO WOULD THEN BE COVERED BY WORKERS' COMP?

3 A. YES.

4 **BY MR. SAMUELS:**

5 THANK YOU.

6 **BY THE COMMISSIONER:**

7 I BELIEVE THIS CONCLUDES THIS WITNESS.

8 **BY MR. GOODWYN:**

9 HE WAS ASKING -- I THINK HE HAD A SUBPOENA FOR
10 TOMORROW. HE WAS ASKING ME BEFORE WE STARTED IF HE
11 STILL HAS TO COME TOMORROW.

12 **BY THE COMMISSIONER:**

13 I THINK WE CAN DISCUSS THAT OFF RECORD REAL
14 QUICK.

15 (OFF THE RECORD)

16 **BY MR. GOODWYN:**

17 WE CALL LISSETTE COLLACHI. C-O-L-L-A-C-H-I, I
18 BELIEVE, IS THE SPELLING OF THE LAST NAME.

19 **BY THE COMMISSIONER:**

20 AND JUST TO MAKE SURE, WE'LL LET HER DO THE
21 SPELLINGS, TOO.

22 **BY MR. GOODWYN:**

23 GOOD IDEA.

24 **BY THE WITNESS:**

25 DO I SIT DOWN OR STAND?

1 **BY THE COMMISSIONER:**

2 YES, MA'AM. YOU CAN SIT DOWN. CAN YOU GO
3 AHEAD AND GIVE US THE SPELLING OF BOTH FIRST AND
4 LAST NAME.

5 **BY THE WITNESS:**

6 WELL, IT'S DOLORES LISSETTE COLLACHI. DOLORES,
7 D-O-L-O-R-E-S, LISSETTE, WHICH IS WHAT I GO BY, L-I-
8 S-S-E-T-T-E, COLLACHI, C-O-L-L-A-C-H-I.

9 **BY THE COMMISSIONER:**

10 ALL RIGHT. THANK YOU, MA'AM. WOULD YOU RAISE
11 YOUR RIGHT HAND.

12 * * * * *

13 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
14 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
15 MATTER HEREIN:

16 **DOLORES LISSETTE COLLACHI,**

17 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
18 FOLLOWS:

19 **BY THE COMMISSIONER:**

20 YOUR WITNESS, MR. GOODWYN.

21 **DIRECT EXAMINATION BY MR. GOODWYN:**

22 Q. LISSETTE, WHO DO YOU WORK FOR?

23 A. I DON'T WORK FOR ANYBODY BUT MY HUSBAND RIGHT NOW,
24 AND MY MOM.

25 Q. WHO DID YOU WORK FOR BACK IN 2014 AND '15?

1 A. I WORKED FOR CONDUSTRIAL.

2 Q. AND WHEN DID YOU START WORKING WITH CONDUSTRIAL?

3 A. 2010.

4 Q. OKAY. WHEN DID YOU LEAVE CONDUSTRIAL?

5 A. DECEMBER 2015.

6 Q. ALL RIGHT. AND WHAT WAS YOUR POSITION WITH
7 CONDUSTRIAL?

8 A. I STARTED OFF AS A PROJECT COORDINATOR ON THE
9 CONSTRUCTION SIDE AND MOVED INTO DIRECTOR OF
10 OPERATIONS FOR THE MEDUSTRIAL SIDE.

11 Q. OKAY. AND WHEN DID YOU MOVE TO THAT POSITION WITH
12 MEDUSTRIAL, JUST APPROXIMATELY?

13 A. I'M GONNA SAY IT WAS ABOUT TWO AND A HALF YEARS, I
14 GUESS ABOUT JULY 2012, JULY/AUGUST 2012.

15 Q. OKAY. DID YOU STAY IN THAT POSITION UNTIL YOU LEFT?

16 A. CORRECT.

17 Q. OKAY. AND WHAT ARE YOUR DUTIES AS -- I FORGOT WHAT
18 YOU CALLED IT.

19 A. WHAT WASN'T MY JOB DUTY. EVERYTHING FROM SCHEDULING
20 NURSES TO TAKING CARE OF PAYROLLS, SALES, ANSWERING
21 THE PHONE.

22 Q. DID YOU HAVE DIRECT CONTACT WITH EMPLOYEES AT SCDC?

23 A. YES.

24 Q. WHAT WAS THE NATURE OF THAT DIRECT CONTACT?

25 A. MOSTLY IT WAS SCHEDULING.

1 Q. OKAY. AND DO YOU REMEMBER WHO GENERALLY SPOKE WITH?

2 A. FOR SCHEDULING?

3 Q. YES. WAS IT THE SAME PERSON, OR WAS IT DIFFERENT
4 PEOPLE?

5 A. THERE WAS DIFFERENT -- THERE WAS DIFFERENT
6 SUPERVISORS IN EACH PRISON.

7 Q. OKAY. HOW MANY -- ABOUT HOW MANY DIFFERENT PRISONS
8 ARE WE TALKING ABOUT?

9 A. THROWING IT OUT THERE, THAT WAS TWO YEARS AGO, MAYBE
10 SIX.

11 Q. OKAY. LESS THAN TEN, MORE THAN FIVE; IS THAT FAIR?

12 A. THAT'S FAIR.

13 Q. OKAY. AND WHAT WAS THE -- WHAT TYPE OF PERSONNEL
14 WERE YOU PROVIDING, OR WHAT TYPE OF NURSE PERSONNEL
15 WAS CONDUSTRIAL PROVIDING SCDC?

16 A. STAFFED INDEPENDENT NURSES.

17 Q. OKAY. IN YOUR COMMUNICATIONS AND DEALINGS WITH THE
18 SCDC STAFF, WAS IT -- WAS IT CLEAR THAT THEY
19 UNDERSTOOD THAT THESE WERE INDEPENDENT CONTRACTORS?

20 **BY MR. SAMUELS:**

21 OBJECTION, YOUR HONOR. THERE'S NO WAY SHE CAN
22 KNOW WHAT THEY WOULD HAVE UNDERSTOOD.

23 **BY MR. GOODWYN:**

24 I THINK IN HER CONVERSATIONS SHE COULD ---

25 **BY THE COMMISSIONER:**

1 JUST ONE SECOND. THERE'S ANOTHER STANDING
2 PARTY.

3 BY MR. GOODWYN:

4 I'M SORRY.

5 BY MS. FARTHING:

6 I THINK, AGAIN, WE'RE GETTING INTO THESE ISSUES
7 THAT ARE TANGENTIAL TO WHAT WE'RE HERE FOR TODAY.
8 AGAIN, THE CONTRACT SPEAKS FOR ITSELF. I KNOW THAT
9 WE DON'T HAVE THE PAROL EVIDENCE RULE, BUT I KNOW
10 WE'VE KIND OF TRIED TO LIMIT AND TO STREAMLINE THIS
11 PROCESS A LITTLE BIT. AND, AGAIN, WE'RE KIND OF
12 GETTING INTO ISSUES THAT ARE A LITTLE BIT OUTSIDE OF
13 THAT.

14 BY THE COMMISSIONER:

15 MR. GOODWYN, HOW WOULD THAT BE RELEVANT TO THE
16 COMP ACTION?

17 BY MR. GOODWYN:

18 WELL, MR. BURGESS TESTIFIED THAT THEY DIDN'T DO
19 ANYTHING ABOUT THESE INDEPENDENT CONTRACTORS, AND
20 THERE WAS SIGNIFICANT DISPUTE IN THE AGREEMENT AS TO
21 WHETHER OR NOT IT WAS EMPLOYEES OR INDEPENDENT
22 CONTRACTORS BEING PROVIDED. IT SAYS, YOU KNOW,
23 WHEREAS WE WANT INDEPENDENT CONTRACTORS, BUT THEN IT
24 SAYS EMPLOYEES IN THERE. SO I THINK THE COURSE OF
25 CONDUCT IS IMPORTANT.

1 **BY THE COMMISSIONER:**

2 WELL, WE'VE HEARD A LOT, AND WE'VE DISCUSSED
3 THIS IN SOME OF THE BREAKS, AND WHATNOT, WITH
4 REGARDS TO THEIR OTHER -- THERE MAY BE ISSUES WITH
5 REGARDS TO CONTRACTS AND WHAT WAS PROVIDED OR NOT
6 PROVIDED OR WHAT ONE PARTY DID OR DIDN'T DO, AND
7 THAT -- I DO NOT SEE, UNLESS SOMEBODY CONVINCES ME
8 OTHERWISE, HOW I'M DETERMINING WHETHER THERE'S ANY
9 BREACH OF CONTRACT. I CAN'T DETERMINE THAT THERE IS
10 ANY BREACH OR -- SO I'M WONDERING HOW IS IT
11 IMPORTANT AS TO WHAT THEY THOUGHT.

12 **BY MR. GOODWYN:**

13 I THINK THE COURSE OF CONDUCT CAN ALTER THE
14 TERMS OF A CONTRACT. I THINK THERE'S AUTHORITY FOR
15 THAT.

16 **BY MR. SAMUELS:**

17 UNLESS THE CONTRACT PROHIBITS IT, SUCH AS THIS
18 CONTRACT.

19 **BY MR. GOODWYN:**

20 NOT NECESSARILY.

21 **BY MS. FARTHING:**

22 COMMISSIONER, JEFF POINTED OUT THAT MR. BURGESS
23 TESTIFIED CONCERNING UNDERSTANDING. THUS FAR, ALL
24 THEY'VE INDICATED IS THESE NURSE SUPERVISORS MAY OR
25 MAY NOT HAVE BEEN TOLD THAT THESE INDIVIDUALS WERE

1 INDEPENDENT CONTRACTORS. THAT'S IMPUTING A LOT OF
2 KNOWLEDGE TO THE DEPARTMENT OF CORRECTIONS BUT NOT
3 ANY CONNECTION TO HOW THESE NURSE SUPERVISORS
4 ADVISED ANYBODY WITH ANY KIND OF POWER OR CONTROL
5 OVER THIS CONTRACT OR THAT THEY UNDERSTOOD THAT
6 THESE NURSES BEING PROVIDED AS INDEPENDENT
7 CONTRACTORS, AS CATEGORIZED BY CONDUCTUAL, CHANGED
8 THE TERMS OF THIS CONTRACT OR ESTABLISHED ANY COURSE
9 OF DEALING WITHIN THE COURSE -- WITHIN THE SCOPE OF
10 THAT CONTRACT.

11 **BY MR. GOODWYN:**

12 I MEAN...

13 **BY THE COMMISSIONER:**

14 BUT THE CONTRACT ITSELF -- AND WE'VE TALKED
15 ABOUT THIS. THE CONTRACT ITSELF IS NOT NECESSARILY
16 DETERMINATIVE OF WHAT OCCURS, ESPECIALLY IF IT'S IN
17 THE NATURE OF A STATUTORY EMPLOYEE. I JUST -- I'M
18 GOING TO FINISH -- WE'VE DONE SOME OF THESE
19 PERIPHERAL THINGS. I'M GOING TO FINISH WITH THE
20 QUESTION WITH THESE WITNESSES, BUT BASED ON OUR
21 DISCUSSION IN ANOTHER BREAK AND SOME PROVIDING OF
22 SOME OTHER STATUTES, I WOULD LIKE FOR EVERYBODY TO
23 LOOK AT THAT THIS EVENING BECAUSE IF IT IS NOT AN
24 ISSUE THAT IS RELEVANT TO THE COMP CASE, THEN MAYBE
25 FOR THE -- MAYBE -- I JUST DON'T KNOW HOW IT CAN BE

1 DISPOSITIVE OF ANYTHING, MR. GOODWYN.

2 **BY MR. SAMUELS:**

3 YOUR HONOR, I DON'T THINK -- I DON'T THINK THAT
4 THE ABILITY TO ALTER THE CONTRACT -- THE CONTRACT IS
5 RELEVANT AS THEM HAVING HELD OUT THAT THEY'RE
6 SUPPLYING EMPLOYEES, AND THAT'S RELEVANT TO THE
7 INDEPENDENT CONTRACTOR/EMPLOYEE ANALYSIS UNDER THE
8 RECENT CASE THAT WE TALKED ABOUT A COUPLE OF TRIALS
9 AGO.

10 **BY THE COMMISSIONER:**

11 AND WE DO NOT HAVE THE PAROL EVIDENCE RULE.
12 WE'RE NOT UNDER THE RULES OF EVIDENCE, BUT I STILL
13 -- IT STILL HAS TO BE RELEVANT TO WHAT MY DECISION
14 HAS TO BE. ALL RIGHT. I'M GOING TO -- IT'S LATE IN
15 -- IT'S LATE. I AM GOING TO FULLY FLESH THAT ISSUE
16 OUT THIS EVENING, AND WHEN WE START TRIAL IN THE
17 MORNING, WE'LL DISCUSS IT. SO I AM GOING TO ALLOW
18 SOME OF THE DISCUSSION RIGHT NOW WITH EVERYBODY'S
19 UNDERSTANDING THAT IT MAY BE JUST -- AND, MR.
20 GOODWYN, I'M GOING TO WANT TO KNOW SPECIFICALLY IN
21 THE MORNING, AND I'D LIKE FOR EVERYBODY TO LOOK AT
22 IT, IS TO WHAT -- WHETHER THE TESTIMONY IS RELEVANT
23 TO ANY DECISION THAT I CAN MAKE AT ALL, AND THAT
24 INCLUDES SOME OF THE OTHER ISSUES THAT WE'VE
25 DISCUSSED DURING BREAKS.

1 BY MR. GOODWYN:

2 OKAY.

3 BY THE COMMISSIONER:

4 ALL RIGHT. SO I'M -- FOR PURPOSES OF THIS
5 EVENING, I'M GOING TO GO AHEAD AND ALLOW IT.

6 BY MR. GOODWYN:

7 ALL RIGHT. I'LL KEEP IT SHORT.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. GO AHEAD.

10 A. I'M SORRY; COULD YOU REPEAT YOU WHAT YOU SAID?

11 Q. DID YOU GET AN UNDERSTANDING FROM THE PEOPLE THAT
12 YOU WERE SPEAKING WITH AND INTERACTING WITH ON A
13 DAILY BASIS WITH SCDC AS TO WHETHER OR NOT THEY
14 UNDERSTOOD THESE NURSES TO BE INDEPENDENT
15 CONTRACTORS?

16 BY MR. SAMUELS:

17 OBJECT TO HEARSAY AND OBJECT TO UNDERSTANDING
18 WHAT IS IN THE MIND OF ANOTHER PERSON.

19 BY MS. FARTHING:

20 COMMISSIONER, I'M GOING TO RENEW MY OBJECTION,
21 ALSO, FOR THE RECORD.

22 BY THE COMMISSIONER:

23 ALL RIGHT. SUSTAINED WITH REGARDS TO MR.
24 SAMUELS' OBJECTION AT THIS POINT.

25 BY MR. GOODWYN:

1 TO WHAT, HEARSAY?

2 **BY THE COMMISSIONER:**

3 WELL, AND AS TO WHAT SOMEONE ELSE UNDERSTOOD.

4 I DON'T KNOW -- THERE'S NO FOUND ---

5 **BY MR. GOODWYN:**

6 ALL RIGHT. LET ME PHRASE IT A DIFFERENT WAY,
7 THEN. I'LL WITHDRAW THE QUESTION AND JUST ASK A
8 DIFFERENT QUESTION.

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

10 Q. DID YOU EVER HAVE A CONVERSATION WITH ANYBODY AT
11 SCDC RELATED TO THE INDEPENDENT CONTRACTOR OR
12 EMPLOYEE NATURE OF THE NURSES THAT CONDUSTRIAL WAS
13 PROVIDING?

14 A. WELL, WE HAD -- WE HAD A LOT OF NURSES FROM
15 MEDUSTRIAL FEED INTO THE SCDC SYSTEM. SO BASED ON
16 THEIR EXPERIENCE, THEN I'M GOING TO SAY, YEAH, THEY
17 KNEW THEY WORKED FOR US. THEY KNEW THAT WHAT WE
18 WERE SENDING THEM WAS INDEPENDENT CONTRACTORS.

19 Q. ALL RIGHT. THEIR -- TELL ME THIS: WERE YOU IN THAT
20 POSITION WORKING WITH THE MEDUSTRIAL DIVISION OF
21 CONDUSTRIAL WHEN RACHEL TURNER AND OTHER INDEPENDENT
22 CONTRACTOR NURSES WERE ASKED TO SIGN THE INDEPENDENT
23 CONTRACTOR AGREEMENT?

24 A. I WAS -- WELL, I HAD SOMEONE PRECEDE ME, AND THEN I
25 HAD SOMEONE COME AFTER ME. SO, FOLLOWING THE

1 PROTOCOLS AND PROCEDURES THAT WERE IN PLACE, YES.

2 Q. OKAY. WERE YOU AWARE THAT SOME DOCUMENTS, I-9s,
3 W-4s, DOCUMENTS THAT WOULD BE TYPICAL EMPLOYEE
4 DOCUMENTS, HAD BEEN SIGNED BY SOME OF THESE
5 INDEPENDENT CONTRACTOR NURSES IN THE PAST?

6 A. NO. THERE WAS -- WE -- TO MY RECOLLECTION, I NEVER
7 RAN AN I-9 ON A NURSE.

8 Q. OKAY. AND THIS IS SINCE, WHAT, 2012?

9 A. ABOUT MID 2012 'TIL I -- 'TIL 2015.

10 Q. OKAY. SO, IF THERE HAD BEEN I-9s OR W-4s COMPLETED
11 BEFORE THAT, YOU WOULDN'T HAVE KNOWN ABOUT IT?

12 A. NO.

13 Q. OKAY. AND WHAT WAS YOUR PROTOCOL WHEN A NURSE CAME
14 IN ON AN ANNUAL BASIS WHEN YOU HAD TO KIND OF UPDATE
15 YOUR FILES AS FAR AS THESE NURSES GO?

16 **BY MR. SAMUELS:**

17 I'M GOING TO OBJECT RELEVANCE, AS THIS IS
18 SPECIFIC AS TO RACHEL TURNER THAT IS SIGNIFICANT
19 HERE, AND HE'S ASKED A GENERAL QUESTION OF WHAT HER
20 PROCEDURE WAS AT THE TIME. AND WE KNOW RACHEL
21 TURNER SIGNED I-9s AND ALL KINDS OF OTHER DOCUMENTS.

22 **BY THE COMMISSIONER:**

23 I UNDERSTAND, MR. SAMUELS. I UNDERSTAND IT'S
24 JUST A GENERAL, AND IT DOES NOT HAVE ANY SPECIFICITY
25 TO THIS PARTICULAR CLAIMANT. ALL RIGHT. SO, IF YOU

1 CAN GO AHEAD -- IF YOU CAN ANSWER THE QUESTION
2 GENERALLY, AND, THEN, MR. GOODWYN, YOU CAN FOLLOW
3 UP.

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

5 Q. GENERALLY WHAT WAS YOUR PROCEDURE OR PROTOCOL WITH
6 THESE NURSE CONTRACTORS THAT WERE GOING TO SCDC?

7 A. WELL, THEY HAD TO COME IN AND DO A -- A SHORT PACKET
8 IS WHAT I ALWAYS REQUESTED, AND THAT WAS WITH THEIR
9 CREDENTIALS. WE SENT IN AN SCDC CHECKLIST TO SCDC
10 FOR CLEARANCE. ONCE THEY WERE CLEARED, THEN WE GAVE
11 THEM A COMPLETE INDEPENDENT CONTRACTOR PACKET, WHICH
12 HAD ALL OF THE RULES AND REGULATIONS, WHAT I CALL
13 RULES AND REGULATIONS, THAT THEY HAD TO BE
14 ACCUSTOMED TO.

15 Q. OKAY. DID RACHEL TURNER COMPLETE THIS PACKET, WHICH
16 INCLUDED THE INDEPENDENT CONTRACTOR AGREEMENT?

17 A. I DID NOT BRING RACHEL TURNER ON, SO -- BUT THERE
18 WAS AUDITS RUN. I'M GOING TO SAY ALL OF THAT
19 PAPERWORK WOULD HAVE BEEN -- HAD TO HAVE BEEN DONE.

20 Q. OKAY. DID YOU KNOW RACHEL TURNER PRIOR TO THIS
21 CLAIM?

22 A. PRIOR TO?

23 Q. PRIOR TO HER INJURY OF SEPTEMBER 5TH, 2015.

24 A. JUST AS A NURSE. WE STAFFED HER JUST LIKE THE
25 OTHERS. WE DID SCHEDULING. SHE WAS -- YEAH.

1 Q. OKAY. DID SHE EVER OBJECT TO HER STATUS AS AN
2 INDEPENDENT CONTRACTOR?

3 BY MR. SAMUELS:

4 OBJECTION; LEADING. I'LL WITHDRAW IT.

5 BY THE COMMISSIONER:

6 SUSTAINED. OKAY. GO AHEAD.

7 BY MR. SAMUELS:

8 I WON'T WITHDRAW IT IF IT'S SUSTAINED.

9 BY THE COMMISSIONER:

10 WHAT?

11 BY MR. SAMUELS:

12 I SAID I WON'T WITHDRAW IT IF IT'S SUSTAINED.

13 BY THE COMMISSIONER:

14 ALL RIGHT. REPEAT THE QUESTION, MR. GOODWYN.

15 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

16 Q. DID MS. TURNER EVER OBJECT TO HER BEING CATEGORIZED
17 AS AN INDEPENDENT CONTRACTOR?

18 BY THE COMMISSIONER:

19 YOU CAN ANSWER THE QUESTION, MA'AM.

20 WITNESS ANSWERS:

21 A. NOT TO MY KNOWLEDGE.

22 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

23 Q. DID MS. TURNER EVER INDICATE TO YOU THAT SHE -- THAT
24 SHE...

25 BY MR. SAMUELS:

1 OBJECT TO LEADING.

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

3 Q. HANG ON; LET ME RETHINK THAT. LET ME ASK YOU THIS:
4 WAS THERE EVER ANY DISCUSSION OR QUESTIONING AMONG
5 THIS GROUP OF INDEPENDENT CONTRACTOR NURSES AS TO
6 WHETHER OR NOT THEY SHOULD BE CLASSIFIED AS
7 EMPLOYEES?

8 **BY MR. SAMUELS:**

9 OBJECT TO HEARSAY.

10 **BY MR. GOODWYN:**

11 I'M NOT ASKING HER TO -- I'M NOT ASSERTING IT
12 FOR THE TRUTH -- I'M NOT ASKING FOR THE TRUTH OF THE
13 MATTER ASSERTED. I'M SAYING DID SHE EVER HEAR ANY
14 GRUMBLING ABOUT PEOPLE WANTING TO BE CLASSIFIED AS
15 AN EMPLOYEE? I'M NOT ASKING HER SPECIFICALLY WHAT
16 DID SOME BODY SAY ABOUT THIS FOR THE TRUTH OF THE
17 MATTER ASSERTED.

18 **BY THE COMMISSIONER:**

19 MR. GOODWYN, YOU CAN ASK HER WHETHER THERE WERE
20 ANY -- WITHOUT CHARACTERIZING IT, WHETHER THERE WERE
21 ANY CONVERSATIONS WITH REGARDS TO A SUBJECT WITHOUT
22 CHARACTERIZING IT AS GRUMBLING OR OTHERWISE. BUT
23 YOU WILL HAVE TO IDENTIFY WHO THOSE INDIVIDUALS ARE
24 BEFORE YOU GO INTO THE TESTIMONY, BECAUSE IF IT IS
25 JUST -- IF IT'S ONE OF THE NURSES OTHER THAN MS.

1 TURNER THAT'S NOT IN ANY SUPERVISORY CAPACITY, THEN
2 IT'S GOING TO BE HEARSAY. I MEAN, JUST ASKING IF
3 THERE WERE DISCUSSIONS WITHOUT CHARACTERIZING IT IS
4 NOT HEARSAY, BUT YOU CANNOT GO INTO THE DISCUSSION
5 ITSELF.

6 BY MR. GOODWYN:

7 OKAY. THAT'S FINE.

8 DIRECT EXAMINATION RESUMED BY MR. GOODWYN:

9 Q. DID YOU EVER HEAR ANY DISCUSSIONS AMONG THESE NURSES
10 IN THE SAME CLASS AS RACHEL TURNER ABOUT THEIR
11 CLASSIFICATION AS BEING AN EMPLOYEE OR AN
12 INDEPENDENT CONTRACTOR?

13 A. NO. I MEAN, THEY ALL KNEW COMING THROUGH THE DOOR
14 BASICALLY THAT THEY WERE INDEPENDENT CONTRACTORS.
15 THAT WAS -- THAT WAS ONE OF THE THINGS THAT THEY
16 WERE INTERESTED SO THEY DIDN'T HAVE TAXES REMOVED.

17 BY MR. SAMUELS:

18 I WOULD OBJECT AND MOVE TO STRIKE. SHE CAN'T
19 SPEAK TO WHAT THOSE INDIVIDUALS MAY HAVE KNOWN.

20 BY THE COMMISSIONER:

21 SUSTAINED.

22 BY MR. GOODWYN:

23 THAT'S ALL I HAVE, COMMISSIONER.

24 BY THE COMMISSIONER:

25 MR. SAMUELS?

1 BY MR. SAMUELS:

2 THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. SAMUELS:

4 Q. MS. COLLACHI, MY NAME IS STEPHEN SAMUELS. I
5 REPRESENT RACHEL TURNER. WHEN DID YOU BECOME THE
6 DIRECTOR OF OPERATIONS, AGAIN?

7 A. IT WAS JULY/AUGUST OF 2012, I BELIEVE. NOW, IT
8 ACTUALLY WAS A SPLIT. MS. RATHBURN WAS STILL IN THE
9 SALES POSITION THERE. WE SPLIT DUTIES.

10 Q. DID MS. RATHBURN COMPLETE SOME OF THE NEW HIRE
11 PACKAGES WITH THE ---

12 A. SHE WAS ---

13 Q. --- NEW PEOPLE?

14 A. SHE WAS THE ONE -- WELL, SHE WAS MY PREDECESSOR.
15 SHE DID COMPLETE EVERYTHING.

16 Q. AND SHE HAD AUTHORITY AS A MANAGER AND AS DIRECTOR
17 OF OPERATIONS WHEN SHE SIGNED SOMETHING FOR IT TO BE
18 BINDING; IS THAT CORRECT?

19 A. I WOULD ASSUME SO, I MEAN.

20 Q. NOW, YOUR DUTIES AS FAR AS THE NURSES WERE
21 CONCERNED, ONE OF THOSE WAS SCHEDULING, CORRECT? SO
22 YOU WOULD WORK WITH THE SCDC PEOPLE TO SET UP THE
23 SCHEDULE AND LET THE NURSES KNOW WHAT THEIR
24 SCHEDULES ARE, CORRECT?

25 A. TO AN EXTENT, YES.

1 Q. THEY HAD SOME FREEDOM AS, YOU KNOW, KIND OF LIKE
2 WAITRESSES IN RESTAURANTS OF, YOU KNOW, ASKING FOR
3 CERTAIN DAYS AND THAT KIND OF THING, AND THEY COULD
4 DECLINE CERTAIN DAYS, BUT ONCE THE SCHEDULE WAS SET,
5 THAT WAS SOMETHING YOU DID WITH SCDC, CORRECT?

6 A. I'M GOING TO SAY, AGAIN, YES AND NO. IT WAS A
7 COMBINATION. ONCE THE NURSES WERE WORKING IN THE
8 SYSTEM, PRETTY MUCH THEY GAVE THEIR AVAILABILITY TO
9 THE NURSING SUPERVISOR. SO THEY WERE SCHEDULED
10 THROUGH THE NURSING SUPERVISOR. WHAT WAS SENT TO US
11 AFTER THE FACT WAS THE SCHEDULE WITH ANY OPEN SHIFTS
12 AND THOSE THAT HAD BEEN FILLED THROUGH THE
13 SUPERVISOR. SORRY TO TALK WITH MY HANDS.

14 Q. OKAY. THAT'S FINE. SO IF THERE WERE OPEN SHIFTS,
15 THEN YOU WOULD CONTACT THE NURSES AND TRY TO GET
16 THEM TO FILL THOSE SHIFTS?

17 A. WE WOULD TRY TO MAKE SURE THAT WE WEREN'T
18 OVERBURDENING THE ONES THAT WERE ALREADY SET IN
19 PLACE AND THEN FINDING SOMEONE FOR THOSE OPEN
20 SHIFTS.

21 Q. YOU TOOK A VERY ACTIVE ROLE IN FILLING THE SCHEDULE?

22 A. I HAD TO.

23 Q. THAT WAS A HUGE PART OF YOUR JOB?

24 A. I HAD TO.

25 Q. AND A NURSE, IF THEY WANTED TO TAKE OVER ANOTHER

1 SCHEDULE, ANOTHER DAY, ANOTHER SHIFT AFTER THE
2 SCHEDULE HAD ALREADY BEEN MADE OUT, THEY HAD TO GET
3 YOUR PERMISSION; ISN'T THAT TRUE?

4 A. WELL, THEY WOULD -- I'M ALSO GOING TO DISAGREE WITH
5 THAT HALF AND HALF. MANY A TIMES THEY WERE CALLED
6 DIRECTLY FROM SCDC SUPERVISORS TO COME IN AND FILL A
7 SHIFT. WE WERE NOTIFIED AFTER THE FACT, OR IT WAS
8 -- AFTER THE FACT.

9 Q. YOU WEREN'T SUPPOSED TO BE NOTIFIED AFTER THE FACT,
10 THOUGH?

11 A. NO, SIR.

12 Q. YOU WERE SUPPOSED TO BE NOTIFIED ---

13 A. WE WERE SUPPOSED TO BE ABLE TO CONTROL THE NUMBER OF
14 SHIFTS, BUT WE HAD ABSOLUTELY NO CONTROL WHATSOEVER,
15 AND FOR THE PURPOSES OF MAINTAINING THE 36 HOURS.

16 Q. SO, FOR EXAMPLE, I'M GOING TO SHOW YOU AN EXHIBIT
17 MARKED AS CLAIMANT'S EXHIBIT ONE. WERE YOU FORMERLY
18 KNOWN AS LISSETTE SHOEMAKER?

19 A. I WAS.

20 Q. OKAY. I'M GOING TO SHOW YOU THIS DOCUMENT. I'M
21 JUST GOING TO ASK YOU -- YOU MAY NOT REMEMBER THIS
22 PARTICULAR EMAIL, BUT IF YOU CAN IDENTIFY, IS THAT
23 AN EMAIL THAT YOU RECEIVED AND RESPONDED TO ON
24 SEPTEMBER 16TH, 2014?

25 A. I'M SORRY? I HEARD WHAT YOU SAID. I'M JUST TRYING

1 TO PROCESS -- LISTEN AND PROCESS.

2 Q. GOT YOU. SO, I'M SHOWING YOU AN EMAIL.

3 A. UH-HUH.

4 Q. THIS WAS PROVIDED BY CONDUSTRIAL.

5 A. UH-HUH.

6 Q. AND IS THIS YOU, LISSETTE SHOEMAKER?

7 A. THAT IS.

8 Q. OKAY. AND IT APPEARS THAT YOU WERE SENT AN EMAIL BY
9 SOMEONE NAMED SERAPHINE NIATI, WHO APPEARS TO BE AT
10 THE DEPARTMENT OF CORRECTIONS; IS THAT CORRECT?

11 A. YES. WELL, SHE WAS THERE. I DON'T KNOW IF SHE'S
12 STILL THERE.

13 Q. OKAY. SO SHE SENT YOU AN EMAIL ON SEPTEMBER 15TH,
14 2014, 4:24 P.M., AND WHAT DID SHE ASK YOU?

15 A. SHE ASKED -- WELL, SHE STATED THAT "MS. TURNER HAS
16 VOLUNTEERED TO WORK TOMORROW, 9/16 -- 9/16/14, SEVEN
17 'A' TO SEVEN 'P.' I AM WRITING THIS NOTE TO ASK FOR
18 YOUR APPROVAL."

19 Q. AND THAT WAS THE PROTOCOL?

20 A. THAT WAS ---

21 **BY MR. GOODWYN:**

22 YOUR HONOR, I'M GOING TO OBJECT TO THIS LINE OF
23 QUESTIONING. IT'S BEYOND THE SCOPE OF DIRECT. I
24 DIDN'T ASK ANYTHING ABOUT THIS TYPE OF ---

25 **BY MR. SAMUELS:**

1 WE'RE NOT IN FEDERAL COURT, YOUR HONOR. I CAN
2 GO INTO WHATEVER I WANT TO IN CROSS.

3 BY MR. GOODWYN:

4 I DON'T THINK SO. I THINK HE'S GOT TO STAY
5 WITHIN THE SCOPE OF DIRECT.

6 BY MS. RICHARDSON:

7 ALSO, I THOUGHT WE WEREN'T RECALLING WITNESSES
8 IF WE COULD TAKE CARE OF THEM ALL AT ONCE.

9 BY THE COMMISSIONER:

10 WELL, AND THAT'S ---

11 BY MR. GOODWYN:

12 SHE'S NOT ON HIS WITNESS LIST.

13 BY MR. SAMUELS:

14 YOUR HONOR, RESPECTFULLY, THAT'S A PREPOSTEROUS
15 OBJECTION. THIS IS NOT FEDERAL COURT, WHICH IS THE
16 ONLY PLACE THAT RULE EXISTS. IN STATE COURT AND
17 WORKERS' COMP WE ARE ALLOWED TO CROSS IN FULL.

18 BY THE COMMISSIONER:

19 AND WE DO CROSS IN FULL WITH REGARDS TO ALL OF
20 THE ISSUES AS OPPOSED TO PEOPLE RECALLING THE
21 WITNESS AT A DIFFERENT POINT IN TIME. IT'S A MATTER
22 OF EFFICIENCY. YOU CAN CONTINUE.

23 BY MR. SAMUELS:

24 THANK YOU, YOUR HONOR.

25 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

1 Q. I THINK, MS. COLLACHI, YOU HAD JUST READ WHAT MS.
2 NIATI HAD -- SHE HAD ASKED FOR YOUR APPROVAL FOR MS.
3 TURNER TO WORK THE SHIFT ON SEPTEMBER 16TH, 2014?

4 A. UH-HUH.

5 Q. AND WHAT WAS YOUR RESPONSE?

6 A. "YES, MS. NIATI, TURNER IS APPROVED FOR 9/16 AND
7 9/17, FOUR, FIVE" -- I'M SORRY -- "FOURTH AND FIFTH
8 SHIFT WITH THE UNDERSTANDING THAT 9/17 IS AT
9 STRAIGHT TIME.

10 Q. OKAY.

11 A. AND MAY I ELABORATE ON THAT?

12 Q. WELL, I MAY ASK YOU TO ELABORATE ON THAT. BUT WOULD
13 YOU AGREE THAT THAT IS THE PROTOCOL OF HOW IT'S
14 SUPPOSED TO HAPPEN BETWEEN SCDC AND MEDUSTRIAL?

15 A. WELL, THERE WAS A PHONE CALL THAT CAME BEFORE THAT.
16 SO THAT WAS WHERE MS. NIATI HAD ASKED -- SHE SAID
17 THAT SHE HAD NEEDED SHIFTS AND THAT TURNER HAD
18 VOLUNTEERED. AND THE REASON FOR TURNER VOLUNTEERING
19 IS BECAUSE THERE WERE NO OTHER NURSES AVAILABLE.
20 BUT IT'S GOING INTO AN OVER 40-HOUR STATUS.

21 Q. SO FOR HER TO BE ALLOWED TO WORK THAT SHIFT, SHE HAS
22 TO HAVE YOUR APPROVAL, CORRECT?

23 A. WE -- WE GAVE AN APPROVAL FOR MS. NIATI BASED ON HER
24 APPROVAL AS AN SCDC SUPERVISOR.

25 Q. OKAY. SO, IF MS. TURNER WANTED TO WORK THAT SHIFT,

1 SHE HAD TO GET APPROVAL BOTH FROM SCDC AND FROM
2 MEDUSTRIAL, CORRECT?

3 A. CORRECT.

4 Q. AND ONCE THE SCHEDULE WAS MADE OUT AND POSTED, THE
5 NURSES WERE REQUIRED TO SHOW UP FOR THEIR SCHEDULES;
6 WERE THEY NOT?

7 A. WE DIDN'T POST SCHEDULES. THEY POSTED SCHEDULES AT
8 SCDC.

9 Q. ONCE SCDC POSTED THE SHIFT SCHEDULE, THE NURSES WERE
10 REQUIRED TO SHOW UP FOR THEIR SHIFT, CORRECT?

11 A. WELL, IF THE NURSE COMMITTED TO THE SCHEDULE, THEN
12 ALL OF OUR EXPECTATIONS WOULD BE THAT THEY WOULD GO
13 TO WORK, CONSIDERING THEY WERE THE ONES WHO GAVE
14 THAT TIME TO WORK.

15 Q. PART OF THE -- WELL, LET ME ASK A COUPLE THINGS.
16 DID YOU EVER GO TO SCDC YOURSELF, OBSERVE THE
17 OPERATIONS THERE?

18 A. WE WENT TO SCDC, YES, NOT NECESSARILY TO OBSERVE
19 OPERATIONS, BUT WE DID A LOT OF NURSE APPRECIATION
20 THINGS. WHENEVER THERE WAS A HOLIDAY, WE WOULD TRY
21 AND GO AND TAKE SOMETHING IN JUST AS A THANK YOU
22 THAT YOU ARE, YOU KNOW, COMMITTING TO GOING TO WORK.

23 Q. THAT WAS DONE FOR MEDUSTRIAL NURSES?

24 A. THAT WAS -- WELL, WE WENT IN TO SCDC. WE REALLY
25 PROVIDED FOR ALL THE NURSES THAT WERE ON A SHIFT.

1 Q. THE MEDUSTRIAL NURSES, THE MEDFIRST NURSES, AND THE

2 ---

3 A. WHOEVER WAS -- WHOEVER WAS WORKING. THEY WOULD TELL
4 US HOW MANY NURSES WERE WORKING ON THAT PARTICULAR
5 DAY, AND WE TRIED TO TAKE SOMETHING IN FOR ALL OF
6 THEM.

7 Q. GOTCHA.

8 A. SOMETIMES IT WAS A COOKIE TRAY, SOMETIMES A SANDWICH
9 TRAY.

10 Q. WOULD YOU AGREE THAT DEPARTMENT OF CORRECTIONS
11 PROVIDED ALL THE EQUIPMENT, BEDS, NURSING -- NURSING
12 SUPPLIES, RATHER, BANDAGES, NEEDLES, MEDICATIONS,
13 AND SO FORTH THAT THE NURSES WOULD USE IN THEIR JOB
14 WHEN THEY WERE AT SCDC?

15 A. I HONESTLY HAVE NO KNOWLEDGE OF WHAT THEY WERE ASKED
16 TO TAKE IN OR ANYTHING. I'M GOING TO SAY LOGICALLY
17 SPEAKING THAT WOULD MAKE SENSE CONSIDERING THEY HAD
18 TO GO THROUGH SECURITY AND STUFF. SO, TO BE
19 PROVIDED THOSE THINGS, YOU'D -- I MEAN, IT'S A
20 DIFFERENT STORY WHEN YOU'RE GOING THROUGH SECURITY.

21 Q. SURE. WHEN THE NURSES ARE ACTUALLY ON THE JOB, THE
22 MEDUSTRIAL NURSES HAD TO FOLLOW THE INSTRUCTIONS OF
23 THE CHARGE NURSE OR THE NURSING SUPERVISOR OR THE
24 DOCTOR, JUST THE SAME AS THE SCDC NURSES?

25 A. I WOULD SAY SO.

1 Q. AND YOU ALSO HAD A NUMBER -- MEDUSTRIAL HAD A NUMBER
2 OF RULES AND REGULATIONS THAT THE NURSES WERE
3 REQUIRED TO COMPLY WITH; ISN'T THAT TRUE?

4 A. I'M GOING TO SAY YES, BUT I -- I DON'T KNOW WHICH
5 RULES AND REGULATIONS YOU'RE REFERRING TO. I WOULD
6 SAY JUST YOUR BASICS OF CLEANLINESS AND THAT KIND OF
7 THING. I DON'T KNOW...

8 Q. WELL, YOU MENTIONED RULES AND REGULATIONS ---

9 A. RIGHT.

10 Q. --- THAT THEY HAD TO BE ACCUSTOMED TO. ONCE THEY
11 WERE CLEARED WITH SCDC, THEY WERE BROUGHT IN, SIGNED
12 SOME PAPERWORK, SOME MORE PAPERWORK, AND THEN WERE
13 TOLD WHAT THE RULES AND REGULATIONS WERE?

14 A. RIGHT. THEY WAS -- THERE WAS THE PACKET OF -- AFTER
15 -- ONCE THEY WERE CLEARED THROUGH SCDC.

16 Q. ALL RIGHT. AND WHAT WAS THE REQUIREMENT AS FAR AS
17 AN ATTENDANCE POLICY, IF YOU RECALL, FOR THE NURSES?

18 A. I'M SORRY; I HAVE NO IDEA.

19 Q. THAT'S OKAY, BECAUSE I CAN SHOW YOU. I'M GOING TO
20 SHOW YOU A DOCUMENT WHICH IS CLAIMANT'S APA PAGE
21 275, IF YOU DON'T MIND IF I COME NEXT TO YOU. NOW,
22 THIS IS SIGNED BY -- IS THAT HOLLY SEEBY'S SIGNATURE
23 DOWN HERE AT THE BOTTOM?

24 A. MM-HMM.

25 Q. IS THAT A YES?

1 A. YES.

2 Q. AND THIS IS OCTOBER 10TH -- OCTOBER 9TH, 2014, THIS
3 WAS SIGNED, IS THAT RIGHT?

4 A. MM-HMM.

5 Q. OKAY. SO, WAS THIS THE ATTENDANCE POLICY TO SET
6 GUIDELINES REGARDING NO CALL, NO SHOW, TARDINESS,
7 AND ABSENCES FOR ALL EMPLOYEES OF MEDUSTRIAL
8 HEALTHCARE?

9 A. I'M SORRY?

10 Q. I'M SORRY. YEAH, I JUST READ THIS AT THE TOP. IF
11 YOU'LL LOOK AT IT AGAIN, IF YOU'LL DISAGREE OR
12 DISAGREE WHAT THE PURPOSE OF THIS ATTENDANCE POLICY
13 IS.

14 A. RIGHT, TO MAKE SURE THAT THEY ARE ON TIME.

15 Q. AND WOULD YOU AGREE THEY ARE REQUIRED TO REPORT TO
16 WORK IN UNIFORM AND BE PREPARED FOR DUTY AT THE
17 BEGINNING OF THEIR WORK SHIFT?

18 A. YES.

19 Q. OKAY. WHAT WOULD HAPPEN IF THEY'RE ABSENT?

20 A. IF THEY'RE ABSENT, SOMEBODY, EITHER MEDUSTRIAL WOULD
21 HAVE GOTTEN A CALL OR ANOTHER AGENCY WOULD HAVE
22 GOTTEN A CALL THAT THEY HAVE AN OPEN SHIFT, AND WE
23 WOULD HAVE BEEN ASKED TO FIND SOMEBODY TO FILL THE
24 SHIFT BECAUSE THEY HAVE A CALL OUT.

25 Q. AND WHAT HAPPENS TO THE EMPLOYEE WHO CALLS OUT,

1 ACCORDING TO THE POLICY?

2 **BY MR. GOODWYN:**

3 OBJECT TO THE FORM, YOUR HONOR. HE'S REFERRING
4 TO THEM AS EMPLOYEES. THE TESTIMONY IS THAT THEY
5 WERE INDEPENDENT CONTRACTORS.

6 **BY MR. SAMUELS:**

7 WELL, THE DOCUMENT REFERS TO THEM AS EMPLOYEES,
8 YOUR HONOR.

9 **BY THE COMMISSIONER:**

10 ALL RIGHT. WE ALL KNOW WHAT THE ULTIMATE
11 DETERMINATION IS. YOU CAN GO AHEAD -- GO AHEAD.
12 YOU CAN ANSWER THE QUESTION, MA'AM. IF YOU NEED HIM
13 TO REPEAT IT, YOU CAN.

14 **BY THE WITNESS:**

15 WHAT WAS YOUR QUESTION?

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

17 Q. WHAT HAPPENED TO THE NURSE IF THERE WAS A NO CALL,
18 NO SHOW?

19 A. WE WOULD CALL THEM, TRY TO GET A HOLD OF THE NURSE,
20 FIND OUT WHAT THE SITUATION WAS AS TO WHY THEY HAD
21 NOT REPORTED TO WORK AS THEY SAID THEY WOULD, AND
22 REALLY NOTHING ELSE.

23 Q. OKAY. WELL, I'M GOING TO ASK YOU HERE -- LET ME ASK
24 YOU TO JUST READ THIS PARAGRAPH BELOW THE WORD
25 ABSENCE.

- 1 A. "EMPLOYEES ARE REQUIRED TO CALL IN FOUR HOURS BEFORE
2 THE SCHEDULED SHIFT. NO TEXT MESSAGE WILL BE
3 ACCEPTED FOR CANCELLATION OF YOUR SHIFT. EMPLOYEES
4 MUST SPEAK TO A MEDUSTRIAL HEALTHCARE STAFFING
5 SUPERVISOR. IF AN EMPLOYEE LEAVES A TEXT MESSAGE,
6 IT WILL BE CONSIDERED A NO CALL, NO SHOW, AND THE NO
7 CALL, NO SHOW POLICY WILL BE ENFORCED. THIS COULD
8 OR MAY RESULT IN FURTHER DISCIPLINARY ACTIONS UP TO
9 TERMINATION OF EMPLOYMENT."
- 10 Q. I'LL STOP YOU THERE. SO YOU WOULD AGREE THAT UNDER
11 THIS ATTENDANCE POLICY, AS SIGNED BY HOLLY SEEBY --
12 AND THIS MORE SCRIBBLY SIGNATURE HERE IS RACHEL
13 TURNER'S. YOU WOULD AGREE THAT UNDER THIS
14 ATTENDANCE POLICY VIOLATION OF THE NO CALL, NO SHOW
15 WOULD RESULT IN FURTHER DISCIPLINARY ACTIONS UP TO
16 TERMINATION OF EMPLOYMENT?
- 17 A. THAT IS WHAT IS WRITTEN, YES.
- 18 Q. THAT IS WHAT IS WRITTEN. AND THAT'S PART OF THE NEW
19 PACKAGE THAT YOU WOULD HAVE PROVIDED TO EMPLOYEES;
20 IS IT NOT? OR TO NURSES, WHETHER YOU CALL THEM
21 EMPLOYEES OR NOT?
- 22 A. TO NURSES, YES.
- 23 Q. OKAY. NOW, YOU'D ALSO MENTIONED SOMETHING ABOUT THE
24 RULES AND REGULATIONS. I'M GOING TO SHOW YOU
25 ANOTHER DOCUMENT, WHICH IS PAGE 276, CLAIMANT'S APA

1 SUBMISSIONS. HAVE YOU SEEN THIS DOCUMENT BEFORE?

2 A. I'M SURE I HAVE, YES.

3 Q. IS THIS PART OF THE RULES AND REGULATIONS THAT YOU
4 WERE TALKING ABOUT?

5 A. I AM GOING TO SAY PROBABLY.

6 Q. PROBABLY. OKAY. IT WAS PROVIDED TO US AS PART OF
7 MS. TURNER'S ---

8 A. BECAUSE I CAN'T RECALL WHAT'S ALL IN THESE PACKETS.
9 THAT WAS TWO YEARS AGO PLUS.

10 Q. ALL RIGHT. WELL, IF IT WAS PROVIDED BY
11 MEDUSTRIAL/CONDUSTRIAL AS PART OF RACHEL TURNER'S
12 PERSONNEL FILE, IS THIS LIKELY THE FORM THAT YOU
13 WERE REFERRING TO?

14 A. I WILL AGREE.

15 Q. OKAY. AND DO YOU AGREE IT STATES, "CLEAN UNIFORMS
16 AND POLISHED CLOSED-TOE SHOES ARE REQUIRED BY ALL
17 CLIENTS AND FACILITIES UNLESS OTHERWISE INDICATED"?

18 A. WELL, YES. I MEAN, YOU'RE A NURSE. YOU CAN'T HAVE
19 OPEN-TOED SHOES. THERE'S PROTOCOLS. AND SOME OF
20 THESE WERE BROUGHT IN OR CREATED BASED ON WHAT THOSE
21 CLIENTS' REQUIREMENTS WERE.

22 Q. SO IF THE NURSE WAS GOING TO WORK FOR THAT CLIENT,
23 SAY THE DEPARTMENT OF CORRECTIONS, THEY HAD TO
24 COMPLY WITH THE DEPARTMENT OF CORRECTION'S
25 REQUIREMENTS?

1 A. WELL, IF THE NURSE WAS GOING TO WORK, PERIOD, SHE
2 NEEDED TO COMPLY WITH THEIR REQUIREMENTS, AND THIS
3 IS WHERE WE GET THIS INFORMATION FROM.

4 Q. OKAY. SO THIS WOULD HAVE BEEN INFORMATION YOU GOT
5 FROM YOUR CLIENTS?

6 A. CORRECT. IT WAS THE DOCUMENT -- A LOT OF THE
7 DOCUMENTS WERE CREATED BASED ON WHAT THE CLIENT'S
8 REQUIREMENTS WERE, AND THEY WERE INTEGRATED INTO THE
9 PACKET THAT WE HAD.

10 Q. OKAY. AND WHAT'S THE PENALTY IF YOU FAIL TO COMPLY
11 WITH THE FACILITY AND CLIENT REQUIREMENTS?

12 A. WELL ---

13 Q. WHAT DOES THE DOCUMENT SAY?

14 A. WHAT DOES THE DOCUMENT SAY?

15 Q. YES.

16 A. THE DOCUMENT SAYS, "FAILING TO COMPLY WITH ANY OF
17 THE ABOVE WILL PREVENT YOU FROM WORKING AS AN
18 EMPLOYEE OF MEDUSTRIAL UNTIL SUCH TIME AS THE
19 NONCOMPLIANT ISSUE HAS BEEN RESOLVED."

20 Q. OKAY. SO, AS WE READ THIS DOCUMENT, THE NURSE THAT
21 SIGNS THIS IS AGREEING THAT SHE CANNOT WORK AS AN
22 EMPLOYEE OF MEDUSTRIAL UNTIL SHE COMPLIES WITH THESE
23 REQUIREMENTS, CORRECT?

24 A. WELL, YOU'RE ASKING ME TO SAY THAT SOMEBODY IS NOT
25 GOING TO SHOW UP FOR WORK DRESSED APPROPRIATELY.

1 THEY KNOW TO BE DRESSED APPROPRIATELY. NOW, IF THEY
2 WEREN'T, I WOULDN'T BE THE ONE TURNING THEM AROUND.
3 THE FACILITY WOULD BE.

4 Q. OKAY. SO THE FACILITY, DEPARTMENT OF CORRECTIONS,
5 COULD SAY, "YOU'RE VIOLATING OUR FACILITY
6 REQUIREMENTS; YOU ARE NOT GOING TO WORK TODAY"?
7 THEY HAVE THAT LEVEL OF CONTROL OVER THEM; WOULD YOU
8 AGREE WITH THAT?

9 A. CORRECT. WE MAY -- SOMETIMES WE MAY NOT EVEN HAVE
10 KNOWN THAT.

11 Q. AND THAT'S BECAUSE WHEN THEY'RE ACTUALLY WORKING
12 THEY'RE NOT SUPERVISED BY MEDUSTRIAL, THEY ARE
13 SUPERVISED BY THE DEPARTMENT OF CORRECTIONS?

14 A. THAT IS CORRECT.

15 Q. I'M GOING TO SHOW YOU ANOTHER DOCUMENT. THIS IS
16 PAGE 277 OF THE CLAIMANT'S APA SUBMISSIONS. ARE YOU
17 FAMILIAR WITH THIS DOCUMENT ENTITLED "NEW HIRE
18 CHECKLIST, TERMS OF EMPLOYMENT"?

19 A. YES.

20 Q. OKAY. AND THIS WAS ALSO PROVIDED TO US BY
21 MEDUSTRIAL PURSUANT TO SUBPOENA AS PART OF MS.
22 TURNER'S PERSONNEL FILE. OKAY? AND WOULD THE NURSE
23 BE REQUIRED TO INITIAL THESE TERMS HERE WHERE THIS
24 ONE IS INITIALED ON THE LEFT COLUMN?

25 A. THEY WERE REQUIRED TO INITIAL THOSE. HOWEVER, THERE

1 WERE MANY OF THOSE THAT DID NOT APPLY TO THEM AS
2 1099s, AND WE VERBALLY LET THEM KNOW THAT, BECAUSE
3 THEY WERE INDEPENDENT CONTRACTORS, NOT EMPLOYEES.
4 THIS IS -- THIS WAS A GENERAL FORMAT THAT
5 CONDUSTRIAL HAD CREATED FOR THE CONSTRUCTION
6 DIVISION.

7 Q. WHETHER IT'S CREATED FOR THE CONSTRUCTION OR NOT,
8 WOULD YOU AGREE THAT IF THIS DID NOT APPLY TO A
9 NURSE YOU HAD THE ABILITY TO CROSS OUT CERTAIN TERMS
10 THAT DIDN'T APPLY?

11 A. YES. AND THOSE ACTUALLY SHOULD HAVE BEEN CROSSED
12 OUT.

13 Q. WELL, THEY WEREN'T CROSSED OUT FOR MS. TURNER, WERE
14 THEY?

15 A. I SEE THAT.

16 Q. IN FACT, SHE WAS REQUIRED TO INITIAL EVERY ONE OF
17 THOSE TERMS, WASN'T SHE?

18 A. THAT IS CORRECT.

19 Q. OKAY. AND JUST FOR EXAMPLE, ONE OF THESE SAYS, "IF
20 WE SEND YOU TO A JOB AND YOU DO NOT REPORT AS
21 INSTRUCTED TO THE JOB SITE WITHOUT NOTIFICATION, NO
22 CALL, NO SHOW, YOU WILL BE IMMEDIATELY TERMINATED
23 AND WILL NOT BE ELIGIBLE FOR REHIRE." THAT'S
24 SOMETHING SHE AGREED TO IN THIS FORM; IS IT NOT?

25 A. SHE SIGNED IT.

1 Q. AND WAS REQUIRED TO SIGN IT?

2 A. WELL, I'M GOING TO DISPUTE THAT. IF SOMEBODY DID
3 NOT WANT TO SIGN A FORM, THEY DID NOT HAVE TO SIGN
4 IT.

5 Q. BUT IF THEY WANTED TO WORK, THEY HAD TO SIGN IT?

6 A. THERE YOU GO.

7 Q. YEAH. YOU COULD SAY, "NO, I'M NOT SIGNING THIS
8 FORM. I'M NOT GOING TO AGREE TO THIS."

9 A. OR THEY COULD HAVE PUT SOMETHING ON THERE THAT WOULD
10 SAY, "I AM NOT AGREEING WITH THIS."

11 Q. ALL RIGHT. YOU MENTIONED SOMETHING ABOUT FORM I-9s.
12 WHAT'S A FORM I-9?

13 A. AN I-9 IS AN AUTHORIZATION FROM THE I.N.S. IN ORDER
14 TO BE ABLE TO WORK.

15 Q. TO WORK AS AN EMPLOYEE OR AS AN INDEPENDENT
16 CONTRACTOR?

17 A. IT IS FOR EMPLOYEES ONLY.

18 Q. EMPLOYEES ONLY. I'M GOING TO SHOW YOU THIS FORM.
19 THIS IS CLAIMANT'S PAGE 278, DATED OCTOBER 9TH,
20 2014. WHAT IS THIS FORM?

21 A. THAT IS AN I-9.

22 Q. AN I-9 FOR EMPLOYEES ONLY?

23 A. IT IS.

24 Q. SIGNED BY RACHEL TURNER'S SIGNATURE, EMPLOYEE; IS
25 THAT CORRECT?

1 A. IT IS. AND I DO NOT KNOW SHE WOULD HAVE GOTTEN ONE
2 OF THOSE.

3 Q. EXCEPT FROM -- SHE MUST HAVE BEEN PROVIDED TO IT AS
4 PART OF HER EMPLOYMENT PACKAGE BY CONDUSTRIAL,
5 CORRECT?

6 A. WELL, SHE WOULD HAVE BEEN -- IT WOULD HAVE BEEN
7 PROVIDED BY CONDUSTRIAL, BUT, AGAIN, I DON'T KNOW
8 HOW THAT WOULD HAVE BEEN IN HER PACKET, AND WE MADE
9 LOTS OF COPIES DAILY. SO I DON'T -- I'M NOT SAYING
10 EVERYBODY IS PERFECT AS FAR AS COPYING AND THOSE
11 THINGS THAT SHOULD AND SHOULDN'T BE IN THE PACKET.

12 Q. UNDERSTOOD. I WOULD ASK YOU, THOUGH, WERE THE
13 NURSES REQUIRED TO COME IN AND DO NEW PAPERWORK
14 PERIODICALLY?

15 A. NO.

16 Q. NO?

17 A. THE ONLY TIME THAT THE NURSE WAS REQUIRED TO COME IN
18 WAS WHEN WE WERE GOING TO BE DOING JOINT COMMISSION.

19 Q. JCAHO CERTIFICATION?

20 A. YES. THEN THERE HAD TO BE -- ALL THE PAPERWORK FROM
21 JCAHOS HAD TO BE PUT INTO THE PACKET. SO IT ALL HAD
22 TO BE A UNIFORM PACKET FOR EVERYBODY, AND THAT WAS
23 THE ONLY TIME THAT THEY WERE REQUIRED TO COME BACK
24 IN AND REDO THEIR MISSING APP OR NEW APPLICATION.

25 Q. I'M GOING TO ASK YOU ABOUT -- YOU SAID IT MUST HAVE

1 BEEN A MISTAKE MAYBE, THE I-9, BUT I'M GOING TO SHOW
2 YOU ANOTHER I-9 FROM FEBRUARY 7TH, 2013, SIGNED BY
3 MS. TURNER THAT AT CLAIMANT'S APA PAGE 263. SO,
4 WOULD YOU AGREE SHE SIGNED ONE IN 2013 AND ANOTHER
5 ONE IN 2014?

6 A. YES. CAN I SAY SOMETHING IN REGARDS -- THE ONLY
7 OTHER THING THAT I CAN THINK OF IS THAT SHE WAS
8 ASKING US TO FIND HER WORK SOMEWHERE ELSE, AND
9 THAT'S WHERE THAT WOULD COME FROM. BUT SHE SHOULD
10 NOT HAVE HAD AN I-9.

11 Q. OKAY. BUT SHE HAD TWO?

12 A. I SEE THAT, BUT SHE SHOULD NOT HAVE HAD ONE. NOBODY
13 SHOULD HAVE AN I-9.

14 Q. DID -- AS PART OF THE HIRING PROCESS FOR NURSES, DID
15 MEDUSTRIAL RUN CREDIT CHECKS?

16 A. NO.

17 Q. NO?

18 A. NEVER.

19 Q. NEVER?

20 A. UH-UH.

21 Q. OKAY. I'M GOING TO ASK YOU TO TAKE A LOOK AT THIS
22 FORM. THIS IS PAGE 282. THIS WAS ALSO PROVIDED AS
23 PART OF MS. TURNER'S PERSONNEL FILE. HAVE YOU EVER
24 SEEN THIS FORM?

25 A. YES.

1 Q. WHAT IS THE PURPOSE OF THIS FORM?

2 A. I DON'T KNOW. CAN I ---

3 Q. YES, MA'AM; FEEL FREE TO LOOK AT IT.

4 A. LIKE I SAID, IT'S BEEN -- IT'S BEEN A LONG TIME. I
5 HONESTLY DON'T EVEN REMEMBER WHAT WE WOULD USE THIS
6 FORM FOR.

7 Q. WELL, IF I MAY, THE PURPOSE OF THIS FORM ---

8 **BY MR. GOODWYN:**

9 OBJECT TO THE FORM ALREADY. HE'S TELLING HER
10 WHAT THE PURPOSE OF THE FORM IS WHEN SHE SAYS I
11 DON'T KNOW WHAT THE FORM IS FOR.

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

13 Q. WELL, LET ME JUST SORT OF MOVE ON. THERE'S A
14 PARAGRAPH AT THE BOTTOM RIGHT BEFORE HER SIGNATURE,
15 BEFORE MS. TURNER'S SIGNATURE. WHAT DOES THAT
16 PERIOD SAY?

17 A. "PROBATIONARY FOR A PERIOD OF 90 DAYS."

18 Q. AND DOES THAT SAY, "MY EMPLOYMENT RELATIONSHIP WITH
19 THE COMPANY IS TERMINABLE AT WILL FOR ANY REASON BY
20 EITHER PARTY"?

21 A. YES, THAT'S WHAT IT SAYS.

22 Q. DID MS. TURNER'S EMPLOYMENT RELATIONSHIP WITH
23 MEDUSTRIAL AND CONDUSTRIAL EVER CHANGE DURING THE
24 TIME SHE WAS THERE?

25 A. I DON'T THINK SO. CHANGED? CHANGED IN ---

1 Q. CHANGED, SWITCHED FROM AN EMPLOYEE TO AN INDEPENDENT
2 CONTRACTOR OR FROM AN INDEPENDENT CONTRACTOR TO ---

3 A. SHE WAS ALWAYS AN INDEPENDENT CONTRACTOR, TO MY
4 KNOWLEDGE.

5 Q. TO YOUR KNOWLEDGE. OKAY. DID THE STATE AGENCIES
6 YOU PLACED NURSES AT, DID THAT INCLUDE THE
7 DEPARTMENT OF MENTAL HEALTH?

8 A. YES.

9 Q. OKAY. I'M GOING TO SHOW YOU THIS FORM. THIS IS
10 PAGE 274 OF THE CLAIMANT'S APA SUBMISSIONS. WHAT
11 DOES IT SAY ON THE LETTERHEAD ON THIS FORM?

12 A. IT SAYS, "MEDUSTRIAL HEALTHCARE STAFFING SERVICE, A
13 DIVISION OF CONDUSTRIAL."

14 **BY THE COMMISSIONER:**

15 I'M SORRY, MR. SAMUELS; CAN YOU REPEAT THE
16 NUMBER?

17 **BY MR. SAMUELS:**

18 TWO SEVENTY-FOUR OF CLAIMANT'S APA SUBMISSIONS,
19 YOUR HONOR.

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

21 Q. AND WHAT DO THE FIRST TWO SENTENCES ON THIS FORM
22 THAT MS. TURNER SIGNED STATE?

23 A. "I AM" -- THE FIRST TWO?

24 Q. YES.

25 A. "I AM ORIENTING AT D.M.H. THROUGH MEDUSTRIAL

1 HEALTHCARE. I AM AN EMPLOYEE OF CONDUSTRIAL, INC."

2 Q. OKAY. SO WOULD YOU AGREE THAT MS. TURNER SIGNED
3 THIS FORM AND A NUMBER OF OTHER FORMS STATING THAT
4 SHE IS ACTUALLY AN EMPLOYEE OR MEDUSTRIAL, A
5 DIVISION OF CONDUSTRIAL?

6 A. YES.

7 Q. MS. COLLACHI, DO YOU KNOW, BY CHANCE -- OR HAVE YOU
8 EVER SEEN THE CONTRACT BETWEEN THE DEPARTMENT OF
9 CORRECTIONS AND MEDUSTRIAL?

10 A. I HAVE SEEN THAT CONTRACT. I HAD BEEN THERE FOR A
11 GOOD BIT WITH -- WORKING THE MEDUSTRIAL SIDE WHEN I
12 HAD FOUND THE CONTRACT.

13 Q. WERE YOU FAMILIAR WITH THAT CONTRACT?

14 A. I CAN'T SAY I WAS FAMILIAR WITH IT, NO.

15 Q. I'M GOING TO SHOW THIS TO YOU. THIS IS CLAIMANT'S
16 APA PAGES 254 THROUGH 260. I'LL ASK YOU IF THIS
17 REFRESHES YOUR MEMORY AS TO WHETHER THAT IS THE
18 CONTRACT THAT YOU REMEMBER SEEING WHEN YOU WERE THE
19 DIRECTOR OF OPERATIONS?

20 A. WELL, CONSIDERING IT SAYS SOUTH CAROLINA DEPARTMENT
21 OF CORRECTIONS AT THE TOP, I'M GOING TO SAY THIS IS
22 PROBABLY THE CONTRACT. WHETHER -- TO RECALL, THIS
23 IS A LOT OF INFORMATION FROM A LONG TIME AGO.

24 Q. I UNDERSTAND. I SHOWED IT TO REFRESH YOUR MEMORY.
25 BUT I WILL ASK YOU, WERE YOU AWARE THAT UNDER THE

1 AGREED SERVICES THERE WAS THIS FIRST SENTENCE AT
2 PARAGRAPH 1-A ON PAGE 254? THAT'S THE ONE WHERE IT
3 SAYS, "RNs, LPNs ASSIGNED TO SCDC BY CONTRACTOR ARE
4 EMPLOYEES OF CONTRACTOR, NOT SCDC"?

5 A. NOW, I KNEW THAT THEY WERE NOT EMPLOYEES OF SCDC,
6 BUT THEY WERE INDEPENDENT CONTRACTORS FOR US.

7 Q. OKAY.

8 A. SO, AS FAR AS THAT PHRASING...

9 Q. ARE YOU SURPRISED TO SEE THAT THIS CONTRACT PROMISES
10 TO PROVIDE EMPLOYEES, THE RNs?

11 BY MR. GOODWYN:

12 I OBJECT ---

13 BY MR. SAMUELS:

14 RNs ---

15 BY MR. GOODWYN:

16 --- AS TO RELEVANCY, YOUR HONOR. WHETHER OR
17 NOT SHE'S SURPRISED AT A CONTRACT SHE'S NEVER SEEN
18 ---

19 BY MR. SAMUELS:

20 SHE'S ALREADY TESTIFIED SHE SAW IT. SHE WAS
21 THE DIRECTOR OF OPERATIONS. SHE CAN BIND THE
22 COMPANY IN THAT ROLE.

23 BY MR. GOODWYN:

24 AND HOW IS WHETHER OR NOT SHE'S SURPRISED
25 RELEVANT?

1 BY THE COMMISSIONER:

2 MR. SAMUELS?

3 BY MR. SAMUELS:

4 LET ME REPHRASE.

5 CROSS EXAMINATION RESUMED BY MR. SAMUELS:

6 Q. DID YOU KNOW THAT THIS CONTRACT SAID -- FIRST OFF,
7 LET'S SORT OF BREAK IT DOWN. SO, MEDUSTRIAL AND
8 CONDUSTRIAL, IT'S THE SAME COMPANY, RIGHT?

9 A. ALL CONDUSTRIAL, YES.

10 Q. IT'S ALL CONDUSTRIAL; MEDUSTRIAL IS JUST A BRAND
11 NAME?

12 A. IT'S A DIVISION.

13 Q. DIVISION.

14 A. CORRECT. YES.

15 Q. AND WHAT MEDUSTRIAL IS, WITH SCDC THEY SUPPLY NURSES
16 TO COVER SHIFTS, RIGHT?

17 A. CORRECT.

18 Q. THEY WOULD COVER SHIFTS WHEN EITHER THE SCDC NURSES
19 COULDN'T COVER THEM OR MEDFIRST OR YOUR OTHER
20 COMPETITORS COULDN'T COVER THEM; IS THAT CORRECT?

21 A. YES.

22 Q. SO, THE PEOPLE THAT MEDUSTRIAL ASSIGNED TO SCDC WERE
23 REGISTERED NURSES AND LICENSED PRACTICAL NURSES,
24 CORRECT?

25 A. CORRECT.

1 Q. OKAY. SO, YOU ALSO -- I WANT YOU TO TAKE A LOOK AT
2 THE TOP UP HERE. SO, THE WAY THIS AGREEMENT IS
3 WRITTEN IT STATES, "ENTERED INTO BY AND BETWEEN THE
4 DEPARTMENT OF CORRECTIONS." IT SAYS "SCDC" IN
5 QUOTES. SO, AFTER THAT SCDC IS REFERRED TO AS --
6 THE DEPARTMENT OF CORRECTIONS IS REFERRED TO AS
7 SCDC, RIGHT?

8 A. MM-HMM.

9 Q. OKAY. AND MEDUSTRIAL HEALTHCARE IS REFERRED TO AS
10 CONTRACTOR. MAKE SENSE?

11 A. YES.

12 Q. SO, THE RNS AND THE LPNs ASSIGNED TO SCDC BY
13 CONTRACTOR, MEDUSTRIAL, ARE EMPLOYEES OF MEDUSTRIAL,
14 NOT SCDC, RIGHT?

15 A. THAT'S WHAT IT SAYS.

16 Q. OKAY. DID YOU KNOW IT SAID THAT?

17 A. HONESTLY, NO. I MEAN, TO ME THE TERM EMPLOYEE IS
18 VERY LOOSE AND INTERCHANGEABLE. SO, TO SEE THAT
19 THERE AND HAVING -- FROM EVERYTHING I KNEW, THEY
20 WERE 1099s. EVERYTHING THAT WAS PASSED FROM -- FROM
21 THE PERSON BEFORE ME TO ME WAS THAT THOSE NURSES
22 WERE ALWAYS 1099s.

23 Q. SO YOU DON'T --- YOU'RE NOT REALLY AN EXPERT IN
24 MEANING WHAT EMPLOYEE OR INDEPENDENT CONTRACTOR IS,
25 RIGHT?

1 A. WELL, THIS CONTRACT, ESPECIALLY A STATE CONTRACT, TO
2 ME, IS NOT MY FIELD OF EXPERTISE. SO, I KNOW IT
3 EXISTS. I KNOW THAT I'M SUPPOSED TO BE OPERATING,
4 PROVIDING NURSES, AND THAT'S THE EXTENT TO WHAT MY
5 CONTRACT RELATIONSHIP IS.

6 Q. DID YOU KNOW ABOUT THIS PART OF THE CONTRACT? THIS
7 IS AT PAGE 258, PARAGRAPH SIX. WHAT DOES THAT FIRST
8 SENTENCE SAY?

9 A. IT SAYS, "CONTRACTOR SHALL PROVIDE WORKERS'
10 COMPENSATION INSURANCE COVERAGE FOR CONTRACTOR'S
11 EMPLOYEES WHO ARE ASSIGNED TO SCDC."

12 Q. OKAY. SO WE ALREADY AGREED CONTRACTOR REFERS TO
13 MEDUSTRIAL, RIGHT?

14 A. MM-HMM.

15 Q. OKAY. AND WE ALREADY LOOKED BACK HERE WHERE IT SAYS
16 THE EMPLOYEES ARE THE NURSES, RIGHT?

17 A. ACCORDING TO THE CONTRACT.

18 Q. OKAY. AND ACCORDING TO THE CONTRACT, MEDUSTRIAL WAS
19 SUPPOSED TO PROVIDE WORKERS' COMPENSATION FOR THOSE
20 NURSES AT SCDC, WASN'T IT?

21 A. THAT'S WHAT THAT CLAUSE SAYS.

22 BY MR. SAMUELS:

23 MS. COLLACHI, THAT'S ALL THE QUESTIONS I HAVE.

24 THANK YOU FOR ANSWERING THEM. I APPRECIATE IT.

25 BY THE COMMISSIONER:

1 COUNTRYWIDE?

2 BY MR. ALFORD:

3 YOUR HONOR, WE HAVE NO QUESTIONS.

4 BY THE COMMISSIONER:

5 GUARANTEE?

6 CROSS EXAMINATION BY MR. BEARD:

7 Q. MS. COLLACHI?

8 A. YES.

9 Q. I'M SORRY; I DIDN'T WANT TO BUTCHER YOUR NAME.

10 A. THAT'S OKAY.

11 Q. I'M GOING TO ASK YOU A FEW QUESTIONS. YOU MENTIONED
12 EARLIER YOU STARTED AT CONDUSTRIAL IN 2010?

13 A. UH-HUH.

14 Q. AND IN 2012, I THINK YOU SAID IN THE SUMMER OF 2012
15 YOU BECAME THE DIRECTOR OF OPERATIONS FOR
16 MEDUSTRIAL?

17 A. CORRECT.

18 Q. SO IS THAT THE SOLE RELATIONSHIP YOU HAD WITH THE
19 COMPANY FROM 2012 UNTIL YOU LEFT?

20 A. YES.

21 Q. OKAY. SO YOU ONLY WORKED IN THE MEDUSTRIAL SIDE?

22 A. NO, NO, NO. I WORKED AS A PROJECT COORDINATOR
23 STARTING IN 2010 ON THE CONSTRUCTION SIDE.

24 Q. MY QUESTION, I MEANT FROM 2012, ONCE YOU BECAME THE
25 DIRECTOR OF OPERATIONS ---

- 1 A. OH, OKAY.
- 2 Q. --- AT MEDUSTRIAL, ALL YOU DID WAS MEDUSTRIAL?
- 3 A. THAT IS CORRECT.
- 4 Q. OKAY. AND YOU WERE IN CHARGE OF THAT NURSING
- 5 PROGRAM OUT AT SCDC?
- 6 A. I WAS IN CHARGE OF THE NURSING PROGRAM.
- 7 Q. THROUGHOUT THE ENTIRE COMPANY?
- 8 A. WELL, THROUGHOUT THE COLUMBIA BRANCH.
- 9 Q. OKAY. AND THAT INCLUDED ALL OF THE DIFFERENT
- 10 FACILITIES THAT THE NURSES WENT TO AT SCDC?
- 11 A. YES.
- 12 Q. WERE YOU IN CHARGE OF THE NURSES WHO WERE ACTUAL
- 13 EMPLOYEES UP IN GREENVILLE?
- 14 A. NO.
- 15 Q. OKAY. NOW, DID YOU EVER HAVE CONVERSATIONS WITH ANY
- 16 OF THESE INDIVIDUALS, THESE NURSES WHO CAME TO WORK
- 17 FOR -- OR THROUGH THE COMPANY -- DID YOU HAVE
- 18 CONVERSATIONS DIRECTLY WITH THEM ABOUT WHETHER THEY
- 19 WERE INDEPENDENT CONTRACTORS OR WHETHER THEY WERE
- 20 EMPLOYEES? DID YOU HAVE THOSE KINDS OF
- 21 CONVERSATIONS?
- 22 A. YES.
- 23 Q. OKAY. AND WHEN YOU HAD THOSE CONVERSATIONS WHEN YOU
- 24 WERE INTERVIEWING THEM OR WHEN YOU WERE DOING THEM,
- 25 HOW DID THE CONVERSATION GO?

1 A. WE MADE IT VERY CLEAR THAT ---

2 BY MR. SAMUELS:

3 YOUR HONOR, I WOULD OBJECT TO ANY CONVERSATION
4 OTHER THAN A CONVERSATION WITH RACHEL TURNER.

5 BY MR. BEARD:

6 WELL, I THINK, MR. SAMUELS, WENT INTO A LOT OF
7 GENERALITIES ABOUT WHAT SHE DID. I THINK WE ARE
8 ALLOWED TO AT LEAST GO INTO CROSS EXAMINATION OF HOW
9 IT GOES.

10 BY THE COMMISSIONER:

11 IF IT'S GENERAL WITHOUT REGARD TO RESPONSES.

12 IF IT'S GENERAL WITH REGARDS TO PROTOCOL, THEN ---

13 BY MR. BEARD:

14 CORRECT. I'M NOT ASKING HER WHAT ANYBODY SAID
15 BACK TO HER; I'M JUST ASKING HER HOW THE PROCESS
16 WENT FROM YOUR SIDE.

17 CROSS EXAMINATION RESUMED BY MR. BEARD:

18 Q. WHAT WAS THE CONVERSATION LIKE?

19 A. BASICALLY THEY WOULD COME IN OR CALL INQUIRING WHAT
20 THEY HAD TO DO TO COME AND WORK FOR US. WE LET THEM
21 KNOW THAT WE NEEDED THEIR LICENSING AND THOSE KINDS
22 OF THINGS, I.D.s, SOMETHING ELSE. WE'D COME IN,
23 HAVE A CONVERSATION, TRY TO FIGURE OUT WHERE THE
24 BEST PLACEMENT WAS FOR THEM, WHETHER IT WOULD BE
25 SCDC OR DEPARTMENT OF MENTAL HEALTH OR A NURSING

1 HOME, WHAT THEIR INTERESTS WERE, LONG TERM, SHORT
2 TERM, THOSE KINDS OF THINGS. SO WE SCREENED THEM A
3 LITTLE BIT. THEN WE WOULD GO AHEAD AND GIVE THEM
4 THE PACKET TO START FILLING OUT.

5 Q. ALL RIGHT. NOW, LET'S TALK ABOUT THE PACKET. YOU
6 CALLED IT -- AND I WROTE IT DOWN HERE -- INDEPENDENT
7 CONTRACTOR PACKET?

8 A. YES.

9 Q. OKAY. NOW, I'M GOING TO SHOW YOU SOME DOCUMENTS
10 THAT ARE IN EVIDENCE IN THIS CASE.

11 BY MR. BEARD:

12 COMMISSIONER, WE'RE GOING TO START AT WHAT I
13 THINK IS EXHIBIT NINE. IT'S PAGE 313 OF WHAT I CALL
14 THE HARBISON DOCUMENTS. I THINK IT WAS EXHIBIT
15 NINE, BUT IT'S -- I KNOW IT'S PAGE 313.

16 BY MS. RICHARDSON:

17 I THINK THOSE MIGHT BE THE SAME AS STEPHEN'S.

18 BY MR. BEARD:

19 THEY'RE DIFFERENT PAGE NUMBERS.

20 BY MS. RICHARDSON:

21 OH, THEY ARE?

22 BY MR. BEARD:

23 YEAH. I'M NOT SURE STEPHEN PUT THESE IN.

24 THESE ARE A LITTLE DIFFERENT THAN HIS.

25 BY MS. RICHARDSON:

1 OH.

2 BY MR. SAMUELS:

3 THAT WOULD BE CORRECT.

4 BY THE COMMISSIONER:

5 ORIGINAL GUARANTEE/COUNTRYWIDE JOINT ---

6 BY MS. RICHARDSON:

7 YEAH.

8 BY THE COMMISSIONER:

9 --- SUBMISSIONS, PAGE 313?

10 BY MR. BEARD:

11 THANK YOU.

12 BY THE COMMISSIONER:

13 OKAY.

14 BY MR. BEARD:

15 EVERYBODY READY?

16 CROSS EXAMINATION RESUMED BY MR. BEARD:

17 Q. I'M GOING TO SHOW YOU THIS DOCUMENT AND ASK YOU, --
18 IT'S CALLED FACILITIES EXPECTATION DOCUMENT -- ARE
19 YOU FAMILIAR WITH THAT DOCUMENT? DO YOU RECALL THAT
20 DOCUMENT AS BEING PART OF THE INDEPENDENT CONTRACTOR
21 PACKET?

22 A. I DON'T -- I DON'T RECALL.

23 Q. OKAY. WELL, LET ME ASK YOU SOME QUESTIONS ABOUT IT.
24 MR. SAMUELS READ YOU A DOCUMENT THAT TALKED ABOUT
25 CANCELLATIONS, NO CALL, NO SHOW.

1 A. RIGHT. I MEAN, IT LOOKS LIKE THAT.

2 Q. OKAY. WELL, THIS ONE'S A LITTLE DIFFERENT. LET'S
3 LOOK AT THIS ONE. THIS PARAGRAPH, HOW DOES THE
4 PARAGRAPH -- JUST READ THE HIGHLIGHTED SENTENCE THAT
5 STARTS OFF. HOW DOES IT READ?

6 A. "ALL INDEPENDENT CONTRACTORS ARE REQUIRED TO GIVE
7 FOUR-HOUR OF CANCELLATION PRIOR TO THE SHIFT START
8 TIME TO AVOID PAYING A PENALTY."

9 Q. OKAY. AND THEN IN THE BOTTOM IT SAYS, "NOTE." WHAT
10 DOES IT SAY?

11 A. "IF A CONTRACTOR NO CALL, NO SHOWS ON HIS/HER FIRST
12 SHIFT WITH MEDUSTRIAL, THE CONTRACTOR WILL BE
13 AUTOMATICALLY REMOVED FROM MEDUSTRIAL'S REGISTRY."

14 Q. OKAY. SO, THIS DOCUMENT REFERENCES TO INDEPENDENT
15 CONTRACTORS THAT ARE GOING TO BE WORKING AT SCDC,
16 CORRECT? AND IT'S SIGNED BY -- I WILL REPRESENT TO
17 YOU IT'S SIGNED BY THE INJURED WORKER IN THIS CASE,
18 AND IT'S DATED FEBRUARY 7TH, 2013; IS THAT CORRECT?

19 A. YES.

20 Q. OKAY. SO, DO YOU THINK THAT'S PART OF THE
21 INDEPENDENT CONTRACTOR PACKET?

22 A. I'M GOING TO SAY THAT WAS PROBABLY FROM WHEN NATASHA
23 WAS THERE, YES.

24 Q. OKAY. ALL RIGHT.

25 **BY MR. BEARD:**

1 AND THEN, COMMISSIONER, AT PAGE 314 OF THE SAME
2 HARBISON DOCUMENTS.

3 CROSS EXAMINATION RESUMED BY MR. BEARD:

4 Q. I WANT TO SHOW YOU A DOCUMENT. AND DOES THAT
5 INDICATE THAT RACHEL TURNER -- YOU CAN READ IT.
6 JUST READ IT FOR THE RECORD.

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

10 Q. HOW DID MS. TURNER REFER TO HERSELF AS? DID SHE SAY
11 AN EMPLOYEE OR A CONTRACTOR?

12 A. CONTRACTOR.

13 Q. IS THAT PART OF THE CONTRACTOR DOCUMENTS, HER
14 PACKET?

15 A. I WOULD SAY YES.

16 BY MR. BEARD:

17 AND THEN WE HAVE PAGES 318 -- OR PAGE 318,
18 COMMISSIONER, OF THE SAME SET OF DOCUMENTS.

19 CROSS EXAMINATION RESUMED BY MR. BEARD:

20 Q. THAT'S CALLED AN INDEPENDENT CONTRACTOR APPLICATION;
21 IS THAT CORRECT?

22 A. YES.

23 Q. OKAY. IS THAT DOCUMENT ALSO SIGNED BY MS. TURNER?
24 I WILL REPRESENT TO YOU IT CAME FROM THE SAME ---

25 A. YES.

1 Q. --- PERSONNEL FILE DATED -- I CAN'T TELL IF THAT'S
2 OCTOBER OR NOVEMBER THE SOMETHING OF 2014; DO YOU
3 AGREE?

4 A. YES.

5 Q. OKAY. AND SHE CLEARLY REPRESENTED HERSELF AS BEING
6 AN INDEPENDENT CONTRACTOR IN THE APPLICATION; IS
7 THAT CORRECT?

8 A. YES.

9 Q. SUBSTANCE ABUSE POLICY, PAGE 322, SAME DOCUMENTS.
10 ARE YOU FAMILIAR WITH THAT DOCUMENT?

11 A. IT LOOKS LIKE SOMETHING IN HER PACKET.

12 Q. OKAY. WAS THAT PART OF THAT INDEPENDENT CONTRACTOR
13 PACKET?

14 A. YES.

15 Q. OKAY. DOES IT SPECIFICALLY INDICATE IN THIS
16 DOCUMENT THAT THE PERSON IS REPRESENTING TO BE A
17 CONTRACTOR?

18 A. YES.

19 Q. DOES IT SAY ANYWHERE ON THE DOCUMENT ABOUT AN
20 EMPLOYEE, ANYWHERE ON THE DOCUMENT?

21 A. NO, SIR.

22 Q. AND, AGAIN, THAT'S ALSO SIGNED BY MS. TURNER,
23 CORRECT?

24 A. YES.

25 BY MR. BEARD:

1 COMMISSIONER, I'M LOOKING AT PAGES 323 THROUGH
2 325, AND REALLY I'M ONLY GOING TO PAGE 325. THE
3 DOCUMENT IS TITLED "EXPERIENCE CHECKLIST."

4 **CROSS EXAMINATION RESUMED BY MR. BEARD:**

5 Q. ARE YOU FAMILIAR WITH THAT DOCUMENT?

6 A. YES.

7 Q. UNDER SECTION FOUR OF THAT DOCUMENT, MS. COLLACHI,
8 DOES THAT ONLY REPRESENT -- OR DOES MS. TURNER ONLY
9 REPRESENT HERSELF TO BE AN INDEPENDENT CONTRACTOR OR
10 A CONTRACTOR AND NOT AN EMPLOYEE IN THE DOCUMENT?

11 A. WELL, A CONTRACTOR. THERE'S NOTHING REFERENCING
12 EMPLOYEE.

13 Q. IT ALL REFERENCES CONTRACTOR, CORRECT?

14 A. CORRECT.

15 Q. SIGNED BY MS. TURNER?

16 A. YES.

17 Q. ALSO, ON, LOOKS LIKE THAT SAME, DATE, NOW IT LOOKS
18 LIKE A LITTLE CLEARER AS OCTOBER, I THINK, 7TH OF
19 2014. IT MAY BE THE 4TH; I CAN'T TELL.

20 A. I THINK IT'S A FOUR.

21 Q. OKAY. BUT IT'S OCTOBER OF 2014?

22 A. YES.

23 Q. NOW, DID YOU EVER COMMUNICATE WITH MS. TURNER AT
24 ALL? DID YOU KNOW HER OR COMMUNICATE WITH HER ABOUT
25 HER STATUS WITH THE COMPANY? DID YOU EVER HAVE ANY

1 CONVERSATIONS WITH HER?

2 A. WELL, I WOULD SAY I HAD CONVERSATIONS WITH
3 EVERYBODY. SO I'M GOING TO SAY, YES, I WOULD HAVE
4 HAD A CONVERSATION WITH HER AT SOME POINT.

5 **BY MR. SAMUELS:**

6 OBJECTION, YOUR HONOR, UNLESS THERE IS SPECIFIC
7 RECOLLECTION OF AN ACTUAL CONVERSATION. SHE CANNOT
8 TESTIFY THAT SHE ASSUMED SHE HAD A CONVERSATION WITH
9 MS. TURNER.

10 **BY THE COMMISSIONER:**

11 ALL RIGHT. SUSTAINED. AND I DON'T THINK
12 ANYTHING -- PARTICULAR THING HAS BEEN ELICITED OF
13 ANY CHARACTERIZATION OR A PARTICULAR CONVERSATION.

14 **CROSS EXAMINATION RESUMED BY MR. BEARD:**

15 Q. WERE YOU FAMILIAR WITH HOW THESE CONTRACTORS FILLED
16 OUT THEIR TAXES?

17 A. NO, ABSOLUTELY NOT.

18 Q. YOU DIDN'T HAVE ANYTHING TO DO WITH THAT?

19 A. I HAD ABSOLUTELY NO FINANCIAL GUIDANCE, DEALING,
20 PRESENTATION. THAT WAS -- THEY KNEW THEY WERE
21 INDEPENDENT CONTRACTORS. THEY WERE RESPONSIBLE FOR
22 FILING THEIR OWN TAXES, AND THAT WAS IT.

23 Q. OKAY. WHO DID YOU COMMUNICATE WITH AT THE
24 DEPARTMENT OF CORRECTIONS AS FAR AS ASSIGNING WHERE
25 THESE FOLKS WENT TO, THESE NURSES, WHEREVER THEY

1 WENT TO? WHO WERE THE PEOPLE THAT YOU COMMUNICATED
2 WITH OUT AT THE DEPARTMENT OF CORRECTIONS? WERE
3 THERE SPECIFIC PEOPLE?

4 A. THERE WAS, YEAH, THE NURSING SUPERVISORS.

5 Q. OKAY. IT WAS MANAGEMENT PEOPLE, SUPERVISORS?

6 A. YES.

7 Q. OKAY. DO YOU REMEMBER NAMES?

8 A. MS. NIATI, VALICIL (PHONETIC).

9 Q. IS THAT A LAST NAME?

10 A. IT IS. THERE WERE TWO VALICILS. THERE WAS A HE AND
11 A SHE. THEY WERE MARRIED.

12 Q. OKAY. BOTH OF THEM WERE SUPERVISORS?

13 A. THEY WERE.

14 Q. OKAY.

15 A. I'M GONNA SAY SMITH, MS. SMITH.

16 Q. AND HOW DID THE CONVERSATIONS GO? I MEAN, DID YOU
17 SERVE MORE AS LIKE A DISPATCH? IN OTHER WORDS, THEY
18 WOULD CONTACT YOU AND SAY WE NEED NURSE -- OR DID
19 THEY ASK FOR A SPECIFIC NURSE? DID THEY ASK FOR A
20 NURSE? HOW DID IT WORK?

21 A. WELL, IN THE -- I MEAN, AT FIRST, INITIALLY WE WOULD
22 LET THEM KNOW WE HAVE A NURSE WHO WOULD LIKE TO COME
23 WORK SCDC. AFTER THEIR SCREENING, WE WOULD KIND OF
24 SAY, YOU KNOW, THEY'D DO REALLY GOOD AT BROAD RIVER
25 BECAUSE OF PERSONALITIES AND THOSE KINDS OF THINGS.

1 WE ALWAYS TRIED TO MATCH THAT. SO I WOULD -- WE'D
2 CONTACT THE NURSING SUPERVISOR, LET THEM KNOW. THEN
3 THEY WOULD GO AHEAD AND SAY, YEAH, GO AHEAD AND SEND
4 THE PAPERWORK THROUGH. WE'D SEND PAPERWORK THROUGH
5 FOR CLEARANCE. ONCE WE GOT THE CLEARANCES,
6 NOTIFIED THE SUPERVISOR AGAIN AND SEE WHEN THEY
7 WANTED TO ORIENT THE NURSE.

8 Q. AND THEY HAD TO GO THROUGH SOME SPECIAL CLEARANCE TO
9 GO INTO THAT TYPE OF FACILITY?

10 A. YES.

11 Q. OKAY. ALL RIGHT. NOW, ONCE THE NURSES WERE ONSITE
12 AT THE DEPARTMENT OF CORRECTIONS, DID YOU, AS
13 MEDUSTRIAL, OR ANYONE WORKING FOR YOU AT MEDUSTRIAL
14 HAVE ANY CONTROL OVER WHAT THEY WERE DOING AT THE
15 FACILITY?

16 A. ABSOLUTELY NOT.

17 Q. WHO CONTROLLED WHAT THEY DID AT THE FACILITY?

18 A. THE NURSING ---

19 **BY MS. FARTHING:**

20 OBJECT TO THE FORM -- OR OBJECTION. I DON'T
21 KNOW THAT SHE CAN TESTIFY AS TO WHAT HAPPENED AT
22 DEPARTMENT OF CORRECTIONS. I BELIEVE WE'VE ALREADY
23 HAD TESTIMONY TO THAT EFFECT FROM JUSTIN GUDVANGEN.

24 **BY THE COMMISSIONER:**

25 I THINK SHE'S ALREADY TESTIFIED SHE WASN'T

1 ONSITE.

2 CROSS EXAMINATION RESUMED BY MR. BEARD:

3 Q. BUT YOU KNOW MEDUSTRIAL HAD NOTHING TO DO WITH THE
4 CONTROL OF THE FOLKS AT THE DEPARTMENT OF
5 CORRECTIONS, CORRECT?

6 A. WE HAD NOTHING TO DO WITH THE DUTIES THEY HAD TO
7 PERFORM, WHEN, WHAT, HOW.

8 Q. AND YOU KNOW THAT BECAUSE YOU'RE THE DIRECTOR OF
9 MEDUSTRIAL, CORRECT?

10 A. I HAVE NO CONTROL OVER A FACILITY THAT I DON'T
11 OPERATE.

12 Q. DID YOU AT MEDUSTRIAL OR ANYONE AT MEDUSTRIAL, TO
13 YOUR KNOWLEDGE, PROVIDE ANY EQUIPMENT TO ANY OF
14 THESE NURSES TO PERFORM THE JOB THAT THEY DID AT THE
15 DEPARTMENT OF CORRECTIONS?

16 A. NO.

17 Q. NONE AT ALL.

18 A. NO.

19 Q. DO YOU KNOW HOW THEY GOT PAID? DO YOU HAVE ANY IDEA
20 HOW THESE NURSES GOT PAID?

21 A. HOW THEY GOT PAID?

22 Q. YEAH.

23 A. CAN YOU...

24 Q. WELL, WERE YOU IN CHARGE OF PAYING THEM? HOW WAS
25 THE PAY TAKEN CARE OF?

1 A. THERE WAS A CLOCK REGISTER THAT WAS SUBMITTED TO US
2 MONDAY MORNING THROUGH -- FROM SCDC. IT WAS EMAILED
3 TO US, AND IT WAS THEIR CLOCK-IN, THEIR LITERAL
4 CLOCK-INS. AND SO WE TOOK ALL THE HOURS AND PUT
5 THEM INTO A DATA -- A SPREADSHEET TO CALCULATE
6 HOURS.

7 Q. DO YOU KNOW WHETHER YOU WITHHELD TAXES FROM THESE
8 FOLKS?

9 A. WE DID NOT WITHHOLD TAXES.

10 Q. NO TAXES AT ALL WERE WITHHELD?

11 A. NO, SIR.

12 Q. OKAY. AND ---

13 A. NOT ON MY LEVEL.

14 Q. I UNDERSTAND. IF THESE INDIVIDUALS THAT WERE
15 WORKING OUT AT THE DEPARTMENT OF CORRECTIONS DID
16 SOMETHING THAT THE DEPARTMENT OF CORRECTIONS DID NOT
17 LIKE, COULD YOU TERMINATE THEM OR DID THE DEPARTMENT
18 OF CORRECTIONS TERMINATE THEM?

19 BY MS. FARTHING:

20 OBJECTION, AGAIN, TO WHAT THE DEPARTMENT OF
21 CORRECTIONS HAD THE AUTHORITY TO DO WITHIN THE
22 DEPARTMENT OF CORRECTIONS AND THE USE OF THE TERM
23 TERMINATE IN CONNECTION WITH THE DEPARTMENT OF
24 CORRECTIONS.

25 BY THE COMMISSIONER:

1 ALL RIGHT. UNLESS YOU CAN ESTABLISH WHAT
2 OCCURS AT THE DEPARTMENT OF CORRECTIONS THROUGH HER
3 KNOWLEDGE, THEN YOU CAN ASK HER WHAT OCCURS WITH
4 MEDUSTRIAL.

5 **CROSS EXAMINATION RESUMED BY MR. BEARD:**

6 Q. DID YOU TERMINATE THESE INDIVIDUALS?

7 A. NO, SIR.

8 Q. COULD YOU TERMINATE THESE INDIVIDUALS?

9 A. WE COULD UNASSIGN THEM.

10 Q. AND THAT WAS PURSUANT TO THE CONTRACT THEY HAD WITH
11 YOU, CORRECT?

12 A. TO BE HONEST WITH YOU, I NEVER FIRED A NURSE. THEY
13 WOULD -- IT WOULD BE "WE DO NOT WANT SO AND SO
14 BACK," AND IF I DIDN'T HAVE SOMEWHERE ELSE TO PLACE
15 THEM, THEN THEY WOULD, OBVIOUSLY, HAVE TO GO
16 SOMEWHERE ELSE TO GET WORK.

17 Q. WHO WAS A.M.S. STAFFING? ONE OF THE I-9s THAT MR.
18 SAMUELS SHOWED YOU ---

19 **BY MR. BEARD:**

20 I THINK IT WAS THE EARLIER ONE, STEPHEN. 263,
21 I THINK, WAS THE NUMBER. I WROTE IT DOWN. YEAH,
22 263.

23 **BY MR. SAMUELS:**

24 CAN I LOOK AT THAT ONE SECOND?

25 **BY MR. BEARD:**

1 SURE. I'M LOOKING AT PAGE 263 OF CLAIMANT'S
2 APAs, COMMISSIONER.

3 **CROSS EXAMINATION RESUMED BY MR. BEARD:**

4 Q. THIS WAS SHOWN TO YOU EARLIER AS AN I-9, AND YOU HAD
5 INDICATED SOMETHING ABOUT IT COULD HAVE BEEN SHE WAS
6 GOING TO WORK FOR ANOTHER FACILITY OR SOMETHING. ON
7 THIS IT SAYS THE BUSINESS OR ORGANIZATION NAME THAT
8 REQUIRED HER TO DO THIS WAS A.M.S. STAFF LEASING.
9 DO YOU KNOW WHO THAT IS? IS THAT MEDUSTRIAL?

10 A. NO, THAT'S NOT MEDUSTRIAL. I KNOW I HAD TO DO THOSE
11 ON THE CONSTRUCTION DIVISION. I'M TRYING TO MAKE
12 SURE. I DON'T KNOW IF IT WAS A MONITORING SERVICE.
13 I HONESTLY DON'T KNOW. I DO RECALL SEEING THAT, BUT
14 I DON'T -- I DON'T KNOW WHO A.M.S. STAFFING IS.

15 **BY MR. BEARD:**

16 THANK YOU, MA'AM. COMMISSIONER, THAT'S ALL I
17 HAVE.

18 **BY THE COMMISSIONER:**

19 OKAY. MS. FARTHING.

20 **BY MS. FARTHING:**

21 THANK YOU. JUST A FEW QUESTIONS. I KNOW IT'S
22 KIND OF GETTING LATE.

23 **CROSS EXAMINATION BY MS. FARTHING:**

24 Q. I KNOW THAT YOU'VE TESTIFIED CONCERNING SOME OF YOUR
25 COMMUNICATIONS WITH THE DEPARTMENT OF CORRECTIONS,

1 AND I BELIEVE YOUR TESTIMONY WAS THAT YOUR
2 COMMUNICATIONS WERE ENTIRELY WITH THE NURSING
3 SUPERVISORS OVER THERE?

4 A. MOSTLY NURSING SUPERVISORS AND -- I DON'T KNOW IF
5 THEY WERE CALLED NURSING DIRECTORS.

6 Q. DID YOU EVER TALK WITH TOMMY BURGESS AT ALL AT THE
7 DEPARTMENT OF CORRECTIONS?

8 A. I SPOKE WITH TOMMY BURGESS ONE TIME.

9 Q. WHAT DID YOU TALK TO HIM ABOUT?

10 A. I WANTED A NEW CONTRACT.

11 Q. OKAY. AND WAS THAT RECENT?

12 A. I WORKED THERE FOR TWO YEARS, SO I DON'T KNOW WHAT
13 YOU MEAN ABOUT RECENT.

14 Q. OKAY.

15 A. I WAS -- THAT WAS A WHILE BACK.

16 Q. WHAT WERE -- WHAT WAS THE -- WHAT KIND OF NEW
17 CONTRACT DID YOU WANT?

18 A. JUST WANTED SOMETHING THAT WAS MORE SPECIFIC TO THE
19 NURSES AND THE SERVICE THAT WAS BEING PROVIDED.

20 Q. WHAT DO YOU MEAN?

21 A. THERE WAS A LOT OF AMBIGUITY ABOUT THE OVERTIME AND
22 ALL THOSE THINGS, AND IT'S JUST LIKE -- I WANT TO
23 KNOW THAT MY NURSES ARE BEING TAKEN CARE OF AND THAT
24 WE ARE DOING AND FOLLOWING THE RIGHT PROTOCOLS.

25 Q. AS FAR AS PAY WAS CONCERNED?

1 A. THAT WAS A LOT OF IT. THAT WAS A LOT OF IT. IT WAS
2 THE AUTHORIZATION FOR THE APPROVAL TO, YOU KNOW, DO
3 A STAFFING BECAUSE THEY WERE SHORT-STAFFED. IT WAS
4 JUST A COMBINATION OF STUFF, MOSTLY WITH THE
5 STAFFING.

6 Q. DID YOU HAVE ANY CONVERSATIONS WITH HIM ABOUT THE
7 -- WHETHER THE NURSES WERE EMPLOYEES OR INDEPENDENT
8 CONTRACTORS?

9 A. I WOULDN'T -- HONESTLY, I CAN'T RECALL IF THAT WAS A
10 SPECIFIC. IT WASN'T A VERY LONG CONVERSATION, AND
11 IT WAS JUST LIKE ONE TIME.

12 Q. DO YOU RECALL DISCUSSING WITH MR. BURGESS WHETHER OR
13 NOT -- OR MR. BRAGGS -- NO, IT'S MR. BURGESS --
14 WHETHER OR NOT THESE INDIVIDUALS WERE COVERED BY
15 WORKERS' COMP INSURANCE?

16 A. I DON'T BELIEVE THAT WOULD HAVE BEEN...

17 Q. DID YOU EVER TALK TO ANYBODY AT THE SOUTH CAROLINA
18 DEPARTMENT OF CORRECTIONS' LEGAL DEPARTMENT?

19 A. THEY WOULDN'T LET US GO PAST JAKES (PHONETIC).

20 Q. OKAY. SO I'M GUESSING THE NEXT QUESTION IS PROBABLY
21 GOING TO BE A NO, TOO. DID YOU EVER TALK TO THE
22 DIRECTOR OF THE DEPARTMENT OF CORRECTIONS?

23 A. NO.

24 Q. ARE YOU AWARE IF ANY OF THE PEOPLE THAT YOU SPOKE TO
25 WITH THE DEPARTMENT OF CORRECTIONS, WITH THE

1 EXCEPTION OF MR. BURGESS, WERE IN ANY KIND OF
2 POSITION TO EITHER BIND THE DEPARTMENT OF
3 CORRECTIONS AND MEDUSTRIAL/CONDUSTRIAL IN ANY KIND
4 OF AGREEMENT OR WERE IN ANY KIND OF POSITION TO
5 CHANGE ANY KIND OF CONTRACT BETWEEN MEDUSTRIAL AND
6 DEPARTMENT OF CORRECTIONS?

7 A. WAS I AWARE THAT THEY WOULD BE ABLE TO DO THAT?

8 Q. YES, MA'AM.

9 A. I DON'T KNOW IF -- I DON'T KNOW IF I SEE -- COULD
10 YOU REPHRASE THAT QUESTION? IT'S A LITTLE AMBIGUOUS
11 FOR ME.

12 Q. OKAY. YOU'VE DISCUSSED THE FACT THAT YOU TALKED TO
13 NURSING MANAGERS, NURSING SUPERVISORS, AND AT ONE
14 POINT MR. BURGESS. WERE YOU AWARE IF ANY OF THEM
15 WERE ABLE TO EITHER ALTER ANY KIND OF CONTRACT
16 BETWEEN MEDUSTRIAL OR CONDUSTRIAL AND DEPARTMENT OF
17 CORRECTIONS OR WERE IN ANY KIND OF POSITION WHERE
18 THEY COULD BIND THE DEPARTMENT OF CORRECTIONS WITH
19 REGARD TO ANY AGREEMENTS WITH MEDUSTRIAL OR
20 CONDUSTRIAL?

21 A. I WOULD SAY PROBABLY NOT BECAUSE THERE WAS --
22 THERE'S NO ADDENDUMS OR ANYTHING.

23 Q. I KNOW YOU ALREADY DISCUSSED CONCERNING YOUR
24 TESTIMONY -- YOUR CONVERSATION WITH MR. BURGESS.
25 WITH ANY OF THE PEOPLE THAT YOU DISCUSSED AT

1 DEPARTMENT OF CORRECTIONS, DID YOU EVER ADVISE ANY
2 OF THEM, ANY OF THE NURSING SUPERVISORS OR NURSING
3 MANAGERS, THAT THE INDEPENDENT -- THAT THE NURSES
4 PROVIDED WERE NOT COVERED BY WORKERS' COMP BY
5 MEDUSTRIAL OR CONDUSTRIAL?

6 A. I CAN'T RECALL IF THAT WOULD HAVE BEEN A
7 CONVERSATION.

8 Q. MS. TURNER, THE DATE OF HER INJURY WAS SEPTEMBER
9 5TH, 2015. SHE WAS AT THE DEPARTMENT OF
10 CORRECTIONS, AND SHE WAS THERE PURSUANT TO THAT
11 AGREEMENT BETWEEN THE DEPARTMENT OF CORRECTIONS AND
12 MEDUSTRIAL OR CONDUSTRIAL, CORRECT?

13 A. YES.

14 Q. I'M GOING TO APPROACH WITH WHAT WAS MARKED AS
15 CLAIMANT'S EXHIBIT PAGE 286. YOU MENTIONED THAT YOU
16 RECEIVED A CLOCK REGISTER FROM THE SOUTH CAROLINA
17 DEPARTMENT OF CORRECTIONS FOR EACH OF THE NURSES?

18 A. THAT'S IT.

19 Q. IS THIS IT?

20 A. THAT'S IT.

21 Q. OKAY. AND THIS PROVIDES THE DAYS THEY WORKED, WHAT
22 HOURS A WORKED, AND AT THE BOTTOM OF IT INDICATES
23 "TOTAL FOR EMPLOYEE," CORRECT?

24 A. IT DOES SAY THAT.

25 Q. OKAY. AND I BELIEVE YOUR TESTIMONY WAS EARLIER THAT

1 YOU WERE -- YOU KNEW AND YOU WERE AWARE THAT THEY
2 WEREN'T -- THESE NURSES WERE NOT EMPLOYEES OF THE
3 DEPARTMENT OF CORRECTIONS?

4 A. WELL, YEAH, THEY'RE -- NO, THEY WEREN'T EMPLOYEES.
5 THEY WERE CONTRACTORS FOR US, AND WE PROVIDED THEM.
6 I GUESS I'M TRYING TO -- THEY -- WE WERE THE MEDIUM
7 THROUGH WHICH THOSE NURSES WORKED AND GOT PAID.

8 Q. TO YOUR KNOWLEDGE, MS. TURNER WAS NEVER AN EMPLOYEE
9 OF DEPARTMENT OF CORRECTIONS?

10 A. NO, SHE WASN'T. I MEAN, I WOULD THINK THAT SHE
11 WOULDN'T HAVE BEEN ABLE TO WORK FOR US. I DON'T
12 KNOW. SHE -- NOT TO MY KNOWLEDGE. I'M SORRY.

13 Q. THAT'S FINE.

14 BY MS. FARTHING:

15 THANK YOU. THAT'S ALL I HAVE.

16 BY THE COMMISSIONER:

17 MS. GLOVER?

18 BY MS. GLOVER:

19 NO.

20 BY THE COMMISSIONER:

21 MR. GOODWYN?

22 BY MR. GOODWYN:

23 YEAH, I HAVE A FEW MORE.

24 REDIRECT EXAMINATION BY MR. GOODWYN:

25 Q. LISSETTE, ---

1 A. YES.

2 Q. --- I LOOKED AT -- YOU WERE ASKED SOME QUESTIONS
3 ABOUT PAGE 277 OF THE CLAIMANT'S APAs. IT'S A NEW
4 HIRE CHECKLIST. I BELIEVE YOUR TESTIMONY WAS THAT A
5 LOT OF THIS STUFF WOULDN'T APPLY TO AN INDEPENDENT
6 CONTRACTOR, BUT IT WAS NOT CROSSED OUT. THERE'S ONE
7 ITEM HERE IN THE MIDDLE: "YOU ARE ELIGIBLE TO
8 ENROLL IN THE CONDUSTRIAL, INC., LIMITED MEDICAL
9 BENEFIT PROGRAM AND DENTAL PLAN." ARE THE
10 INDEPENDENT CONTRACTORS ACTUALLY ELIGIBLE FOR THAT
11 PLAN?

12 A. NO.

13 Q. DID ANY OF THEM ACTUALLY ENROLL IN THAT PLAN?

14 A. NO.

15 Q. HAVE THEY ATTEMPTED TO ENROLL IN THAT PLAN ---

16 A. NO.

17 Q. --- AND YOU LET THEM KNOW THEY'RE NOT ELIGIBLE? ALL
18 RIGHT. AND PAGE 276 OF CLAIMANT'S APAs, THE
19 FACILITY AND CLIENT REQUIREMENTS YOU WERE ASKED
20 ABOUT, THESE ARE THE FACILITY AND CLIENT
21 REQUIREMENTS, CORRECT, NOT MEDUSTRIAL'S
22 REQUIREMENTS, RIGHT?

23 A. CORRECT.

24 Q. OKAY. AND IS THAT WHY IT SAYS FACILITY AND CLIENT
25 REQUIREMENTS?

1 A. YEAH. THOSE WERE -- THOSE WERE COMPRISED FROM THE
2 NEEDS OF THE CLIENTS AND THE FACILITIES OF THE
3 CLIENTS.

4 Q. OKAY. ALL RIGHT. I THINK IT'S FAIR TO SAY THAT
5 THERE ARE A NUMBER OF CONFLICTING DOCUMENTS IN THE
6 PACKAGE THAT MS. TURNER SIGNED, AND I'M GOING TO ASK
7 YOU SOME QUESTIONS ABOUT THE COURSE OF CONDUCT. IN
8 LIGHT OF THE FACT MS. TURNER HAS TESTIFIED SHE NEVER
9 READ ANY OF THESE DOCUMENTS ANYWAY, I'M GOING TO ASK
10 YOU SOME QUESTIONS ABOUT ---

11 BY MR. SAMUELS:

12 OBJECT TO COUNSEL TESTIFYING.

13 BY MR. ALFORD:

14 SWEAR HIM IN.

15 BY MR. GOODWYN:

16 RECANTING WHAT ANOTHER WITNESS HAD TESTIFIED
17 TO.

18 BY THE COMMISSIONER:

19 I'M SORRY?

20 BY MR. GOODWYN:

21 PARDON?

22 BY THE COMMISSIONER:

23 YOU'RE RECANTING WHAT ANOTHER WITNESS ---

24 BY MR. GOODWYN:

25 I WAS JUST RECITING WHAT MS. TURNER HAS

1 TESTIFIED TO.

2 BY THE COMMISSIONER:

3 OKAY. WELL, IF YOU CAN ASK THIS WITNESS THE
4 QUESTION. I'M NOT SURE WHAT -- WHY ---

5 BY MR. GOODWYN:

6 I'M EXPLAINING TO HER WHY I'M GETTING INTO THIS
7 AREA.

8 BY THE COMMISSIONER:

9 OKAY. YOU CAN ASK THE QUESTION.

10 REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:

11 Q. ALL RIGHT. I'M GOING TO ASK YOU THIS QUESTION ABOUT
12 THE COURSE OF CONDUCT. WAS MS. TURNER FREE TO
13 ACCEPT ANY SHIFT SHE WANTED TO?

14 A. YES, SIR.

15 Q. WAS SHE FREE TO TURN DOWN ANY SHIFT THAT SHE WANTED
16 TO?

17 A. YES.

18 Q. SHE WAS NOT REQUIRED TO TAKE ANY SHIFT, WAS SHE?

19 A. NO.

20 Q. WAS SHE FREE TO WORK FOR OTHER STAFFING COMPANIES?

21 BY MR. ALFORD:

22 OBJECTION; LEADING.

23 BY MR. GOODWYN:

24 I WAS ASKING WAS SHE FREE TO WORK FOR OTHER
25 STAFFING COMPANIES. IT'S A YES OR NO ANSWER. THAT

1 DOESN'T SUGGEST THE ANSWER.

2 **BY MR. ALFORD:**

3 I'LL WITHDRAW IT.

4 **BY THE COMMISSIONER:**

5 GO AHEAD.

6 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

7 Q. WAS SHE FREE TO WORK FOR OTHER STAFFING COMPANIES?

8 A. YES.

9 Q. DID MS. TURNER EVER COME TO YOU OR ANYONE ELSE THAT
10 YOU KNOW OF AT CONDUSTRIAL AND SAY, "HEY, WAIT A
11 MINUTE; MY PAYCHECK DIDN'T HAVE TAXES TAKEN OUT. I
12 THOUGHT I WAS AN EMPLOYEE"?

13 A. NO, SIR.

14 Q. AT THE END OF THE YEAR DID SHE EVER COME TO YOU OR
15 ANYBODY ELSE THAT YOU KNOW OF AT CONDUSTRIAL AND
16 SAY, "HEY, WAIT A MINUTE, A 1099? WAIT A MINUTE; I
17 THOUGHT I WAS AN EMPLOYEE. WHERE'S MY W-2?"

18 A. NO, SIR.

19 Q. DID MS. TURNER EVER ASK FOR ANY OTHER BENEFITS THAT
20 YOU GIVE TO THE EMPLOYEE NURSES BUT NOT THE
21 INDEPENDENT CONTRACTOR NURSES?

22 **BY MR. SAMUELS:**

23 OBJECTION, YOUR HONOR. SHE HAS NO KNOWLEDGE OF
24 THE EMPLOYEE NURSES. SHE TESTIFIED SHE DIDN'T
25 SUPERVISE THEM OR HAVE ANYTHING TO DO WITH THEM OR

1 WORK IN THAT DIVISION.

2 **BY THE COMMISSIONER:**

3 ALL RIGHT. MR. GOODWYN, UNLESS YOU CAN
4 ESTABLISH HER KNOWLEDGE FOR THAT.

5 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

6 Q. ARE YOU FAMILIAR WITH WHAT ---

7 **BY MR. SAMUELS:**

8 HE SHOULD SPECIFY THEM THE W-2 NURSES.

9 **REDIRECT EXAMINATION RESUMED BY MR. GOODWYN:**

10 Q. ARE YOU FAMILIAR WITH WHAT PEOPLE WHO ARE CLASSIFIED
11 AS EMPLOYEES AT CONDUSTRIAL, WHAT BENEFITS THEY
12 RECEIVE, JUST FROM YOUR EXPERIENCE WORKING IN THAT
13 DIVISION?

14 A. DO I KNOW WHAT BENEFITS THEY RECEIVE?

15 Q. OR THAT THEY'RE ELIGIBLE FOR.

16 A. I WOULD THINK IT'S LIKE ON THE CONSTRUCTION SIDE. I
17 GUESS I'M MISUNDERSTANDING YOUR QUESTION.

18 Q. YEAH. ARE THESE PEOPLE CLASSIFIED AS EMPLOYEES WITH
19 CONDUSTRIAL ELIGIBLE FOR BENEFITS THAT THE PEOPLE
20 CLASSIFIED AS INDEPENDENT CONTRACTORS ARE NOT?

21 A. YOU MEAN THE OTHER WAY AROUND?

22 Q. DID I SAY THAT BACKWARDS?

23 A. I THINK YOU DID.

24 Q. MAYBE I DID.

25 A. SO, INDEPENDENT CONTRACTORS ARE NOT ENTITLED TO

1 BENEFITS THAT EMPLOYEES ARE ENTITLED TO.

2 Q. OKAY. DID RACHEL TURNER, OR RACHEL TURNER, EVER
3 COME TO YOU SEEKING THESE BENEFITS THAT EMPLOYEES
4 ARE ENTITLED TO?

5 A. NOT TO MY RECOLLECTION, NO.

6 **BY MR. GOODWYN:**

7 ALL RIGHT. THAT'S ALL I HAVE.

8 **BY THE COMMISSIONER:**

9 MR. SAMUELS?

10 **BY MR. SAMUELS:**

11 THANK YOU, YOUR HONOR.

12 **RE CROSS EXAMINATION BY MR. SAMUELS:**

13 Q. I UNDERSTOOD YOU TESTIFIED THAT BEFORE THE SCHEDULE
14 WAS MADE OUT -- WELL, YOU TESTIFIED THAT MS. TURNER
15 AND OTHER NURSES COULD TURN DOWN A SHIFT OR SELECT A
16 SHIFT, CHOOSE NOT TO WORK, BUT THAT WAS BEFORE THE
17 SCHEDULE WAS MADE OUT, RIGHT?

18 A. WELL, THEY GAVE THEIR AVAILABILITY TO THE NURSING
19 SUPERVISOR PRIOR TO SCHEDULING. SO THEY COLLECTED
20 THE DATA FROM THE NURSES, AND THEN THEY CREATED THE
21 SCHEDULE.

22 Q. ONCE THE SCHEDULE WAS MADE OUT, THEY WERE REQUIRED
23 TO SHOW UP FOR WORK, WEREN'T THEY?

24 A. WELL, IF YOU MADE A COMMITMENT, I EXPECT YOU TO BE
25 THERE. ABSOLUTELY.

1 Q. RIGHT. AND PER POLICY THAT WE LOOKED AT ON THE NO
2 CALL, NO SHOW, IF YOU DON'T SHOW UP AND YOU DON'T
3 CALL MEDUSTRIAL AND TELL US AND HAD A GOOD REASON,
4 YOU CAN BE TERMINATED, RIGHT?

5 A. IF THAT'S WHAT IT SAYS IN THE PAPERWORK. I NEVER
6 DID THAT.

7 Q. I UNDERSTAND YOU PERSONALLY NEVER TERMINATED
8 ANYBODY. YOU HAD SOMETHING CALLED A D.N.R., DIDN'T
9 YOU? EVER HEARD THAT EXPRESSION, D.N.R.?

10 A. LET'S SEE, D.N.R., I CAN'T ---

11 Q. NOT "DO NOT RESUSCITATE," WHICH IS ---

12 A. OKAY. THAT'S WHAT I WAS ---

13 Q. --- PROBABLY WHAT YOU'RE THINKING OF.

14 A. I'M SORRY. D.N.R.?

15 Q. "NO NOT RECALL," WHICH ---

16 A. OH, I SEE.

17 Q. --- IN MEDUSTRIAL NURSING PARLANCE MEANS, "YOU'VE
18 BEEN FIRED AND YOU AIN'T GOING BACK TO SCDC."

19 **BY MR. GOODWYN:**

20 OBJECT TO FORM.

21 **RECROSS EXAMINATION RESUMED BY MR. SAMUELS:**

22 Q. HAVE YOU EVER HEARD THAT?

23 **BY MR. GOODWYN:**

24 THAT'S NOT THE PARLANCE.

25 **BY THE COMMISSIONER:**

1 WELL, LET'S ---

2 BY MR. GOODWYN:

3 (UNINTELLIGIBLE STATEMENT) CHARACTERIZE IT LIKE
4 THAT.

5 BY THE COMMISSIONER:

6 ALL RIGHT. MR. SAMUELS, LET'S NOT TESTIFY. IF
7 YOU'LL REPHRASE THE QUESTION, PLEASE.

8 RE CROSS EXAMINATION RESUMED BY MR. SAMUELS:

9 Q. SO WHAT'S THE TERM -- OR ISN'T D.N.R. THE TERM USED
10 WHEN SCDC SAYS, "WE WANT THIS NURSE NOT COMING BACK
11 TO THE DEPARTMENT OF CORRECTIONS"?

12 A. I HONESTLY CAN'T RECALL IF THAT'S THE TERM USED. I
13 KNOW THAT I DID HAVE THAT HAPPEN A COUPLE OF TIMES,
14 AND WHAT WE TRIED TO DO WAS REASSIGN THE NURSE, BUT
15 SHE WAS NOT TO RETURN TO WHATEVER -- WHATEVER
16 FACILITY AND TO THE CLIENT.

17 Q. SO SCDC COULD TERMINATE THAT ASSIGNMENT FOR THAT
18 NURSE?

19 A. YES.

20 Q. ON THESE TIME SHEETS -- I'M GOING TO SHOW YOU ONE OF
21 THEM, WHICH IS CLAIMANT'S PAGE 284. I'M SHOWING YOU
22 THIS DOCUMENT. NOW, THE BOTTOM HALF, IS THAT THAT
23 TIME CLOCK THING THAT YOU DESCRIBED THAT YOU WOULD
24 GET ELECTRONICALLY FROM THE DEPARTMENT OF
25 CORRECTIONS?

1 A. MM-HMM.

2 Q. IS THAT A YES?

3 A. YES.

4 Q. JUST TRYING TO HELP THE COURT REPORTER.

5 A. I'M SORRY. I FORGOT SHE'S BEHIND ME.

6 Q. AND WHAT'S THIS TOP PART?

7 A. THE TOP PART IS A TIME SHEET. IF THE CLOCK WAS DOWN
8 OR THERE WAS A CLOCK "ERROR," QUOTE, UNQUOTE, THEY
9 NEEDED TO SUBMIT A TIME SHEET SIGNED BY THE
10 SUPERVISOR VERIFYING THE TIME THAT THEY WERE AT THE
11 FACILITY.

12 Q. OKAY. SO THEY WERE REQUIRED TO FILL OUT THEIR TIME;
13 THEY WERE REQUIRED TO HAVE THEIR TIME VERIFIED BY
14 THEIR SUPERVISOR AT THE DEPARTMENT OF CORRECTIONS?

15 A. RIGHT. OTHERWISE THEY WOULDN'T GET PAID. IF YOU
16 DON'T HAVE AN ACCURATE CLOCK, THEY CAN'T GET PAID.

17 Q. AND I UNDERSTAND IT SAYS CONTRACTOR RIGHT HERE, BUT
18 WHAT DOES IT SAY UNDER WEEKLY TIME SHEET? WHAT DOES
19 THAT SAY?

20 A. IT SAYS, "THIS TIME SHEET MUST BE PERSONALLY FILLED
21 OUT AND SIGNED BY EMPLOYEE AND SUPERVISOR."

22 Q. SO THAT WAS A REQUIREMENT, CORRECT?

23 A. WELL, IF YOU DON'T HAVE -- WELL, IT'S ONLY -- IT WAS
24 ONLY A REQUIREMENT IF THERE WAS A CLOCK ERROR OR IF
25 THERE WAS -- THEY STAYED LATER AND THE CLOCK WAS

1 DOWN FOR WHATEVER REASON. IF WE DIDN'T HAVE AN
2 ACCURATE CLOCK, THEIR TIME WOULD BE SHORT, AND I
3 WOULD KNOW IF THEIR TIME WAS SHORT WHEN THEY GOT
4 PAID.

5 Q. WELL, THIS ONE SEEMS TO MATCH UP IN TERMS OF THE
6 DATES WITH THE CLOCK. SO, DOESN'T SHE ACTUALLY
7 HAVE TO TURN IN A WEEKLY TIME SHEET HANDWRITTEN AND
8 THEN YOU VERIFY IT WITH THE ELECTRONIC VERSION?

9 A. NO, SIR.

10 Q. NO? SO ---

11 A. NO. THE TIME SHEET WAS, AGAIN, ONLY IF THERE WAS A
12 CLOCK ERROR, BECAUSE SCDC'S CLOCK OVERRODE A TIME
13 SHEET.

14 Q. GOT IT. SO WHEN THERE WAS A CLOCK ERROR, SHE WOULD
15 DO THE HANDWRITTEN PART?

16 A. YOU'D HAVE TO -- CORRECT. THERE WOULD HAVE TO BE
17 THE VERIFICATION FROM THE NURSING SUPERVISOR WITH
18 THE CORRECT TIMES FILLED OUT.

19 Q. AND THIS IN PARTICULAR IS A MEDUSTRIAL FORM; THIS
20 DOES NOT APPLY TO CONSTRUCTION WORKERS EVER, DOES
21 IT?

22 A. NO. THIS IS MEDUSTRIAL.

23 Q. I KNOW WE WENT THROUGH A NUMBER OF FORMS, BUT YOU
24 WOULD AGREE A NUMBER OF THE FORMS THAT MS. TURNER
25 SIGNED FOR MEDUSTRIAL STATED THAT SHE WAS AN

1 EMPLOYEE WHO COULD BE TERMINATED FOR VARIOUS
2 REASONS? WOULD YOU AGREE WITH THAT?

3 A. YES.

4 BY THE COMMISSIONER:

5 I'M SORRY, MA'AM, WE ---

6 BY THE WITNESS:

7 I SAID YES. I'M SORRY.

8 BY THE COMMISSIONER:

9 WE JUST CAN'T HEAR YOU BACK HERE.

10 RECROSS EXAMINATION RESUMED BY MR. SAMUELS:

11 Q. I'M GOING TO SHOW YOU THE DOCUMENT MR. BEARD SHOWED
12 YOU, WHICH IS PAGE 322 OF THE WILL HARBISON
13 CONDUSTRIAL SUBMISSION. AND YOU LOOKED AT THIS
14 BEFORE. REMEMBER THE SUBSTANCE ABUSE POLICY
15 CONSENT?

16 A. YES, SIR.

17 Q. OKAY. AND THAT WAS SIGNED BY RACHEL TURNER OCTOBER
18 9TH, 2014?

19 A. YES.

20 Q. AND THIS ONE DOESN'T SAY "EMPLOYEE"; THIS ONE SAYS
21 "CONTRACTOR," RIGHT?

22 A. YES.

23 Q. OKAY. SO, WHAT HAPPENS TO A CONTRACTOR WHO VIOLATES
24 THE SUBSTANCE ABUSE POLICY?

25 A. "ANY CONTRACTOR WHO VIOLATES THIS POLICY WILL BE

1 DISCIPLINED. THIS MAY INCLUDE TERMINATION, EVEN FOR
2 THE FIRST OFFENSE."

3 Q. SO, EVEN A CONTRACTOR, WHETHER YOU CALL THEM A
4 CONTRACTOR OR AN EMPLOYEE, THEY VIOLATE THE
5 SUBSTANCE ABUSE POLICY, MEDUSTRIAL HAS GOT THE
6 AUTHORITY TO TERMINATE THEM; THEY'RE GONE, RIGHT?

7 A. DRUG ABUSE IS ZERO TOLERANCE; YES, SIR.

8 Q. THEY'RE GONE; YOU CAN FIRE THEM FOR THAT, TERMINATE
9 THEM?

10 A. ACCORDING TO THE PAPERWORK, YES.

11 Q. YOU MADE EVERY NURSE SIGN THAT DOCUMENT SAYING IF
12 YOU VIOLATE THE SUBSTANCE ABUSE POLICY YOU'RE
13 TERMINATED, CORRECT?

14 A. IT WAS IN THE PACKET.

15 **BY MR. SAMUELS:**

16 THANK YOU. THAT'S ALL I HAVE, MS. COLLACHI.

17 **BY MR. ALFORD:**

18 NO, MA'AM. NOTHING.

19 **BY THE COMMISSIONER:**

20 GUARANTEE?

21 **BY MR. BEARD:**

22 NOTHING FURTHER.

23 **BY MS. FARTHING:**

24 I JUST HAVE ONE QUESTION.

25 **BY MR. ALFORD:**

1 OH, BOY.

2 **BY MS. FARTHING:**

3 JUST ONE. I PROMISE. THAT'S ALL THAT'S
4 STANDING BETWEEN YOU AND GOING HOME.

5 **RE CROSS EXAMINATION BY MS. FARTHING:**

6 Q. I KNOW MR. SAMUELS ASKED YOU ABOUT THE NURSES, AND I
7 BELIEVE HE REFERRED TO THEM AS A D.N.R. LIST,
8 BASICALLY DEPARTMENT OF CORRECTIONS SAYS YOU CAN'T
9 SEND THIS NURSE BACK TO US FOR ANY OF THESE
10 ASSIGNMENTS. I BELIEVE IT WAS YOUR TESTIMONY,
11 THOUGH, THAT THEY COULD STILL -- THAT YOU WOULD
12 STILL BE ABLE TO POTENTIALLY FIND THEM OTHER
13 ASSIGNMENTS THROUGH MEDUSTRIAL?

14 A. WE'D TRY TO REASSIGN THEM.

15 Q. TO ANOTHER LOCATION OR ANOTHER AGENCY?

16 A. YES, OTHER -- OTHER -- ANYTHING ELSE OTHER THAN
17 WHEREVER THEY WERE CUT OFF FROM.

18 Q. OKAY. THESE ARE OTHER AGENCIES OR LOCATIONS THAT
19 CONTRACTED WITH MEDUSTRIAL OR OTHER ---

20 A. I WOULD SAY OTHER -- OTHER LOCATIONS.

21 **BY MS. FARTHING:**

22 OKAY. THANK YOU.

23 **BY THE WITNESS:**

24 YOU'RE WELCOME.

25 **BY THE COMMISSIONER:**

1 ANYTHING ON BEHALF OF THE UNINSURED FUND?

2 BY MS. GLOVER:

3 NO, MA'AM.

4 BY THE COMMISSIONER:

5 ANYTHING FURTHER FROM THIS WITNESS?

6 BY MR. GOODWYN:

7 NO, YOUR HONOR.

8 BY THE COMMISSIONER:

9 ALL RIGHT. THANK YOU, MA'AM. YOU ARE FREE TO
10 GO.

11 (OFF THE RECORD)

12 BY MR. SAMUELS:

13 IF WE CAN STAY ON THE RECORD, I NEED TO TAKE UP
14 AN ISSUE WITH A SUBPOENA RESPONSE FROM CONDUSTRIAL.

15 BY THE COMMISSIONER:

16 ALL RIGHT. WE HAVE ALL THE ATTORNEYS STILL.

17 ALL RIGHT. GO AHEAD, MR. SAMUELS.

18 BY MR. SAMUELS:

19 YOUR HONOR, I'M LOOKING FOR IT IN THE ENDLESS
20 PILE OF PAPER THAT I HAVE ON MY TABLE HERE, BUT THE
21 SUBPOENA RESPONSE THAT WAS PROVIDED THIS MORNING
22 FROM CONDUSTRIAL IS WOEFULLY INCOMPLETE. PERHAPS
23 SOMEONE ELSE HAS A COPY, THEY CAN HELP ME WITH THIS.

24 BY MS. RICHARDSON:

25 DO YOU MEAN THE ASSIGNED RISK POLICY?

1 **BY MS. FARTHING:**

2 HERE ARE THE CERTIFICATES. I DON'T HAVE -- I'M
3 TRYING TO FIND THE ---

4 **BY MS. RICHARDSON:**

5 REPORT?

6 **BY MS. FARTHING:**

7 NO, THERE WAS THE AGREEMENT WITH THE STAFFING
8 AGENCY.

9 **BY THE COMMISSIONER:**

10 SHE'S ON RECORD. SO LET ME EITHER STAY OFF
11 UNTIL YOU ALL GET ALL THE DOCUMENTS YOU NEED TO LOOK
12 AT BEFORE WE GO BACK ON.

13 (OFF THE RECORD)

14 **BY MR. SAMUELS:**

15 YOUR HONOR, THE SUBPOENA SPECIFICALLY REQUESTED
16 DOCUMENTATION OF THE APPLICATION ITSELF AND WHAT
17 SUPPORTING DOCUMENTS, INCLUDING PAYROLL RECORDS, AND
18 SO FORTH, THAT WERE PROVIDED IN THAT APPLICATION FOR
19 INSURANCE. WHAT WE HAVE BEEN PROVIDED IS A
20 CERTIFICATE OF INSURANCE AND ASSIGNED RISK POLICY
21 ISSUED BY THE ARTHUR J. GALLAGHER RISK MANAGEMENT
22 SERVICES, AUGUST 3RD, 2017. THERE IS A BINDER
23 ATTACHED TO IT AND A COUPLE OF ADDITIONAL NOTICES,
24 BUT NONE OF THE DOCUMENTS THAT CONDUSTRIAL WOULD
25 HAVE COMPLETED TO OBTAIN THIS COVERAGE HAVE BEEN

1 PROVIDED. SO IT IS AN ABSOLUTELY INCOMPLETE
2 RESPONSE TO THE SUBPOENA. I WOULD ASK THAT THEY BE
3 COMMANDED TO PROVIDE A FULL RESPONSE TO THE SUBPOENA
4 BY THE TIME WE RESUME TOMORROW.

5 BY MR. GOODWYN:

6 I ASKED THIS MORNING WHAT DOCUMENTS THEY
7 WANTED, AND I GOT IT TO THEM. I MEAN, I CAN GO BACK
8 AND LOOK AT MY NOTES. I SPECIFICALLY -- YEAH, THEY
9 WANTED THE P.E.O. POLICY AND THE CURRENT ASSIGNED
10 RISK POLICY, IS THE TWO THINGS THAT WERE MENTIONED
11 WHEN I ASKED THIS MORNING. THAT'S THE P.E.O.
12 POLICY. I PROVIDED THAT. THEY CONTEND THAT THEY
13 DON'T HAVE THE ASSIGNED RISK POLICY, BUT I GOT A
14 BINDER. IF THEY WANT ADDITIONAL DOCUMENTS NOW, I
15 CAN GO ASK, BUT, AGAIN, THAT WASN'T ASKED THIS
16 MORNING.

17 BY MR. SAMUELS:

18 IT WAS ASKED FOR, YOUR HONOR. AND, OF COURSE,
19 IT'S SPECIFIED IN THE SUBPOENA ITSELF.

20 BY MR. GOODWYN:

21 I WROTE DOWN -- I SPECIFICALLY ASKED, WROTE
22 DOWN, I READ IT BACK, AND NOBODY SAID ANYTHING
23 DIFFERENT; SO...

24 BY THE COMMISSIONER:

25 ALL RIGHT. WELL, MR. GOODWYN, CAN YOU GET WITH

1 YOUR CLIENT TO MAKE SURE THAT THOSE DOCUMENTS ARE
2 PRODUCED IN THE MORNING?

3 BY MR. GOODWYN:

4 IF THEY HAVE THEM. I MEAN, THESE ARE
5 APPLICATION DOCUMENTS. THEY VERY WELL MAY NOT HAVE
6 KEPT A COPY OF THEM, OF THE DOCUMENTS. THEY FILL
7 OUT APPLICATIONS, SEND IT IN. OR IT MIGHT BE
8 SOMETHING THE AGENT FILLS OUT AND SENDS IN, AND THEY
9 JUST SIGN IT, AND HE SENDS IT OFF. THEY MAY NOT
10 HAPPEN. I DON'T KNOW. I'LL FIND OUT.

11 BY THE COMMISSIONER:

12 WELL, AND -- MR. BEARD?

13 BY MR. BEARD:

14 THE ONLY THING I WAS GOING TO POINT OUT, TOO,
15 THAT BECAUSE MS. WHITAKER, OF COURSE, LEFT BEFORE WE
16 HAD THESE DOCUMENTS, JUST ONE INTERESTING FACT WE
17 WANTED TO POINT OUT IS, STEPHEN READ IT, THIS WAS
18 PROVIDED BY THE ARTHUR J. GALLAGHER RISK MANAGEMENT
19 SERVICES, WHICH JUST HAPPENS TO BE WHERE SHE
20 TESTIFIED SHE NOW WORKS, AND I THINK THERE WOULD BE
21 SOME QUESTIONS ABOUT THAT AND ABOUT HER TESTIMONY
22 EARLIER AND HOW CANDID SHE WAS, BECAUSE THAT
23 DOCUMENT KIND OF QUESTIONS SOME OF THAT, WHAT I
24 HEARD EARLIER FROM HER TESTIMONY, ABOUT THE
25 RELATIONSHIP NO LONGER EXISTING. THAT OBVIOUSLY IS

1 NOT TRUE IF HER COMPANY IS THE ONE WRITING THAT
2 CERTIFICATE OF INSURANCE.

3 BY MR. GOODWYN:

4 NOT NECESSARILY.

5 BY THE COMMISSIONER:

6 ALL RIGHT. WELL, LET'S GET THE LIST -- THE
7 SUBPOENA TO DOCUMENTS ---

8 BY MR. GOODWYN:

9 WHAT ARE YOU LOOKING FOR, DOCUMENTS ---

10 BY MS. RICHARDSON:

11 READ THE SUBPOENA.

12 BY MR. GOODWYN:

13 --- RELATING TO THE APPLICATION?

14 BY THE COMMISSIONER:

15 TAKE THE SUBPOENA AND GO -- AND IF -- SO IF
16 SOMEBODY HAS AN EXTRA COPY OF THE SUBPOENA. I ---

17 BY MR. GOODWYN:

18 WILL YOU EMAIL IT TO ME? BECAUSE I DON'T KNOW
19 WHERE IT IS RIGHT NOW.

20 BY MS. RICHARDSON:

21 IT'S RIGHT HERE. FIRST OF ALL, I HANDED OUT --
22 NO -- YEAH, THE MOST RECENT SUBPOENA. I HANDED OUT
23 COPIES ---

24 BY THE COMMISSIONER:

25 LET ME JUST FINISH FOR THE RECORD.

1 BY MR. NEWMAN:

2 HERE IT IS RIGHT HERE.

3 BY MR. GOODWYN:

4 OH, I GAVE MINE TO SOMEBODY ELSE.

5 BY MR. NEWMAN:

6 MAYBE I'VE GOT YOURS.

7 BY THE COMMISSIONER:

8 ALL OF THIS -- YOU'VE GOT YOURS -- ALL OF THIS
9 IS GOING ON RECORD. LET ME JUST GO AHEAD AND RULE
10 THAT THE INFORMATION IN THE SUBPOENA IS TO BE
11 PROVIDED. SO, IF YOU WILL GET WITH YOUR CLIENT.

12 I BELIEVE THAT CONCLUDES TODAY'S PROCEEDINGS.

13 ALL RIGHT. THANK YOU.

14 (THIS HEARING WAS ADJOURNED AT THE HOUR OF 7:35 P.M., TO
15 BE RESUMED ON A SUBSEQUENT DATE.)

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

EMPLOYEE/CLAIMANT: RACHEL J. TURNER

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

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

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **367** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **RACHEL J. TURNER**, TAKEN ON THE 2ND 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 AND OFFICIAL SEAL THIS 11TH DAY OF FEBRUARY, 2018.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

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

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