

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison R. Lee, Circuit Court Judge

Appellate Case No. 2016-001031

Alvin L. Menie, ... Appellant,

v.

State Accident Fund, ... Respondent.

RECORD ON APPEAL
VOLUME II OF II

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0307461

ALVIN MENIE,)
)
Appellant,)
)
v.)
)
STATE ACCIDENT FUND,)
)
Employer, and)
)
Self-Insured, Carrier,)
)
Respondents.)
_____)

**APPELLANT'S BRIEF TO THE
FULL COMMISSION**

STATEMENT OF THE CASE

The Perfect Storm. It is undisputed that in the Fall of 2002 there were three (3) auditors in the Auditing Department of the State Accident Fund to do all of the auditing work required of the Department and of the State Fund: Mr. Al Menie, Ms. Carla Johnson and Ms. Shaun Holmon and that as of the last week of December 2002 both Ms. Carla Johnson and Ms. Shaun Holmon were no longer in the Auditing Department of the State Accident Fund leaving Mr. Menie to do all of the auditing work and other responsibilities of the Auditing Department. Ms. Holmon took a job with the State Retirement System as a Customer Service Manager and Ms. Johnson went out on sick leave due to a severe back problem requiring surgery.

It is also undisputed that in December of 2002 the State Accident Fund advised all of its premium accounts that they would incur a huge rate increase which would average 24.7% effective January 1, 2003 and that this was the first rate increase in many years and the largest increase in the history of the State Accident Fund.

It is also undisputed that the State Accident Fund was implementing a new computer system at this time and that the State Accident Fund was not using NCCI classifications codes but was using its own classification codes that had to be entered, checked and correction made and re-entered and re-entered and re-entered many times before they were usable and would work in the new system. This problem added greatly to the workload of the auditors.

Ms. Holmon who testified for Mr. Menie testified that she had been with the State Accident Fund for fifteen (15) years before leaving to take the position with the Retirement System and that at the time she left she was a premium auditor and had been in that position for years. (Hearing Transcript, p. 12, ll. 3-21.)

In reference to her duties as a premium auditor with the State Accident Fund she testified as follows:

"Q: Tell me about how the team concept was supposed to work.

A: Well, it was divided up into 3 or 4 teams. They were assigned accounts, perhaps based on a

geographical location, and this particular team was responsible for those accounts from beginning to end as far as those employers, policy holders of the State Accident Fund. You had a group of adjusters, and they would adjust the claim. Had a safety rep, had the premium auditors responsible for the premium, and, you know, several assistants for the most part for the claims adjusters. The concept was set up based on these people, were solely responsible for these 200-plus accounts, any and everything as it related to their workers' comp premium with us, policy.

Q: In reference to emails, mail, communications, questions that had to do with anything in reference to the auditing function, if it came in from those accounts, who would handle that within the auditing department?

A: Only the premium auditor."

(Hearing Transcript, p. 13, 11. 2-23).

She further testified as to the responsibilities of the auditors and the effect that a change in the premium would have on a State or local agency as follows:

"Q: Tell me what an auditor for the State Accident Fund in 2002 and his team concept did? I understand premium audits, that type of thing. I am going to ask you something about scheduling in a minute. But first off, just tell me what all that entailed other than . . . including the audits, but what all that entailed.

A: Well, we generated their premium. The State Agencies were on an F-Y schedule; cities, counties, municipalities on a calendar. And so they received an estimate at the beginning of the policy, and they received an audit at the end of the policy, or after the policy period had expired. Of course, with those 200-plus accounts, whether you were discussing the base

amount based on those class codes for that type of business, it was our responsibility to assign it, to defend it or justify it, as well as the experience modifier. In the event that the employer questioned their experience modifier, as to why it was so high or whatever, it was our responsibility to explain that. Those usually consisted of meetings.

. . . .

Q: Tell me what would generally cause an auditor to go out and have a meeting with an account?

A: Well, I think the State -- most of the -- for the most part the State Agencies were the worst because you are talking about huge organizations with a lot of payroll -- Department of Corrections, Mental Health, D.S.N. and so they could very well have a million dollar base premium based on those class codes for that industry, that the experience modifier, the e-mod, took into account the frequency and severity of those claims. SO instead of that premium being for one year, 1,000,000, if they had a 2.0 e-mod it would double, or on occasion they would triple, and so, you were called out to that Agency, and they'd kind of blindsided you because you would be under the impression that you were meeting with an H.R. person and when you walked into the room they would have a C.P.A., they would have their Director and their Benefits Administrator, and you're actually just there to break this down to them to help them understand and justify the numbers. And the numbers weren't always justifiable. Now, hopefully we would hone in on that before we went out there. You could make corrections. But any time someone would challenge the validity of your class codes or your e-mod, you know, it was a problem. Sometime several meetings before conclusion.

Q: So, on a year-to-year basis if somebody's e-mod went up you could pretty well expect a call?

A: They more or less had to call just to keep their job in a lot of instances because, you know there are a couple of people -- especially at a huge agency you know. They've got Benefits Administrators, and for some of them that may be their only job. If it is a small organization, they might be doing workers' comp and a number of other things. You know, they have a Safety Rep who is, you know, responsible for decreasing those claims as well. So, chances are if it -- you know, and especially if it dramatically increased from one year to the next, I mean, you would actually have to go out on occasion and show them every claim, and they would want to challenge, well, this should -- shouldn't have this reserve on it because it was closed, so it should only reflect what you paid on it. But if somebody -- you know, and every year was different as far as perhaps, the customers that would have those kinds of complaints or concerns for meetings because the mod would change every year. So, in a given year it was hard to say, you know, how many of those would occur. It just depended on the organization, the people that were in charge and, you know, based on their request.

Q: But would it be safe to say that anytime there was a significant change in the rate of any of the Agencies, that would put an additional stress on those Agency personnel to -- because of the increase in the budget and the problems that it caused for their budgets; is that correct?

A: Oh, definitely. I had Greenville Sanitation tell me once that they were going to have to let somebody go just to pay their workers' compensation premium."

(Hearing Transcript, p. 15, l. 13 - 17, l. 24).

In a letter to their policy holder, senior premium auditor

A.L. Menie wrote,

"Effective January 1, 2003 rates increased an average of 24.7 percent. This is the first base rate increase since 1996. . . ."

Since 1999 our average medical costs have increased 44 percent. The average indemnity costs have increased 52% since then."

(Claimant's APA Submissions, p. 113).

Ms. Holmon agreed that there had been no significant rate increases and that this was the largest rate increase to her knowledge ever in the history of the Agency and that the 24.7% rate increase would generate all types of calls and questions from every Agency to determine whether or not their rate was going to increase and would cause them to argue about whether or not they should be reclassified and she testified generally concerning all the variations and things that would be on the accounts' minds and about which they would be calling as this could cause many people their jobs and cause Agencies to absolutely not be able to meet their budgets. (Hearing Transcript, p. 20, l. 13 - 23, l. 11).

She also testified about the new computer system that was put in place in 2002.

"Q: . . . There was a new computer system that came in, in 2002. Tell me what that did to -- did it just come off the ground smoothly or did you all have problems with it?

A: Unfortunately, from what I recall I think we just got the wrong vendor. The other company didn't reach the bid process in time or something. But, you know, we -- the computer system that we got, at that time it had a lot of glitches, the premium piece. They -- you

know, I think they had the claims piece down, that model. But the premiums, it was a lot of work. It was a lot of -- there were a lot of glitches in the system and the only way to ensure initially that these e-mods were correct -- because everyone else in the State -- they had -- normally they go through NCCI. So NCCI, they are generating those e-mods. Well, we generated our own e-mods, and it was an unstable computer as far as this new program. Like everything else, it had to iron out the kinks. We would actually have to test them because it took awhile before that system was fully functional."

(Hearing Transcript, p. 25, l. 7 - p. 26, l. 4).

She went on to explain that data had to be reentered numerous times and that it generated a lot of additional meetings over the valid e-mods which placed even more work on the auditors because sometimes the e-mods were doubling and tripling during this time period. (Hearing Transcript, p. 26, l. 5 - p. 27, l. 18). Ms. Holmon then testified that Ms. Carla Johnson in the fall of 2002 was out a good bit due to her back injury and that this put additional stress on her and Mr. Menie. (Hearing Transcript, p. 27, l. 19 - p. 29, l. 19). She was then questioned about the evaluation of Mr. Menie that was conducted by Ross Gamble, who is the Deputy Director, which is found at p. 186-189 of the Claimant's APA Submissions. In that evaluation at p. 189 in the "SUMMARY AND IMPROVEMENT PLAN", Mr. Gamble, the Deputy Director for the Agency, noted:

"Al is to be commended for the personal initiative he took during the late 2002 and early 2003 time when he

voluntarily took on extra duties while we were short two premium auditors to make sure that all policy transactions were completed on a timely basis.

During this same time he continued to make every effort to delight all customers needing assistance."

Ms. Holmon testified beginning at l. 31 that Mr. Gamble also reviewed her job performance and that she had worked with Mr. Menie for many years and that she agreed with the comment that Mr. Menie was diligent and highly customer focused and that that was her experience with Mr. Menie based on her observations of him on a day-to-day basis and that she would describe him as diligent, as an excellent employee and that he would definitely try his very best to make people happy and that he is very personable.

(Hearing Transcript, p. 32, l. 1 - p. 33, l. 20). Ms. Holmon then testified as follows in reference to her normal and usual job duties and the job duties to which Mr. Menie was exposed beginning January 2003 when the two auditors were out of the Auditing Department:

"Q: Now, I think -- and I don't want to mischaracterize your testimony, but I think you said that you would describe your job as being as far as your workload, when you were there as an auditor, as being full; that you were able to get the job done, but it was a full workload?

A: Yes.

Q: Now, knowing those, your usual duties, and knowing your ordinary and common duties and ordinary -- your usual and ordinary duties and that you had a full workload to do those, if you had to do all of the duties -- in your opinion as an auditor with the

State Accident Fund, knowing what the job requires, knowing all that, and you all of a sudden had to do all of the duties of all three auditors in the entire Auditing Department, in your opinion would that be unusual and extraordinary to the normal conditions, your usual and ordinary occupation?

* * *

A: Yes.

(Hearing Transcript, p. 33, l. 21 - p. 34, l. 13; p. 34, l. 21).

Commissioner Lyndon then asked the witness:

"BY THE COMMISSIONER:

The reason I ask those questions, what has been objected to, he was asking -- he used exactly the definition of unusual and extraordinary conditions to employment. Was that unusual for -- and I'll note your objection, Mr. Haselden -- for a person to have to handle by himself or by herself?

BY THE WITNESS:

600 accounts? Extremely unusual. That is the kind of thing that, yeah, you might be able to get by with doing it for awhile, but you'd probably be looking for another job, which had something to do with me looking for another job."

(Hearing Transcript, p. 37, ll. 8-20).

Finally she testified that Mr. Ross Gamble, the Deputy Director, had come from Seibel's & Bruce and had experience in auditing and experience modifier and that even if you hired someone to come in and replace the person and even if they had experience in the area of auditing that there would be a learning curve of learning the process at the State Accident Fund before they would be of a tremendous amount of benefit in helping to

allèviante the workload. Also, a new employee would require one of the auditors to take on the additional responsibilities to train the individual who was brought in which fell on Mr. Menie when neither one of the other two auditors were there when the new auditor was ultimately hired, who was Mr. Warren Farray. (Hearing Transcript, p. 41, l. 10 - p. 44, l. 3; p. 48, l. 21 - p. 49, l. 5).

Mr. Menie then testified on his behalf and he confirmed Ms. Holmon's testimony that in the fall of 2002 there were three (3) auditors in the Auditing Department and that the new computer system was giving them a lot of problems in 2002 particularly with the experience modifier,

"The people that were doing it, the computer techs that were doing from the IT Department, they would submit the experience modifiers to us, the three (3) auditors, and we were to verify all the data in there as being accurate and which we would find a problem that they didn't see and we would resubmit it back to them and tell them we can't use these experience modifiers because they are, you know, wrong."

He testified that this was a constant and a repetitive trouble and they had to resubmit items numerous times. (Hearing Transcript, p. 58, l. 6 - p. 62, l. 2).

At p. 68, l. 12 - p. 72, l. 12, Mr. Menie described his work duties beginning on January 2, 2003 when he came back to work without the other two auditors and testified that he now had to answer questions from all of the state, local and county agencies;

that he spent the first 2 ½ days alone trying to answer all of the questions that were on his voicemail which contained 25 voicemails before it was full and that it was constantly full; that he had to answer the telephone for all of the three (3) telephone lines, including all 800 calls and all direct calls; that he had to review/address all the correspondence concerning the rate increase; that instead of having 33 audits to do that month, he was now facing having to do 99 audits; that he spent 58% of his time according to his time records on the other auditors' caseload, 400 audits and agencies for which they were responsible, and that in his opinion, "it was definitely an overload." He testified also that on March 3rd, the date that he had the heart condition (atrial fibrillation) wherein he had to be taken to Lexington Medical Center on an emergency basis that he came in and a new auditor had been hired and reported for that his first day, at which time Mr. Menie is only thought was that in addition to all of the other activities that he had to do that, "I've got this man to train and I've got to keep up with all of these other things as well, and then when I went home about 6:00 o'clock. . . ." He had the heart attack (Hearing Transcript, p. 68, l. 17 - p. 72, l. 15; p. 75, l. 7 - p. 77, l. 8).

He then acknowledged that after filing a Form 12A that the claim had been assigned for internal investigation by Mr. Willie Hysmith and the State Accident Fund had sent him to Dr. Selman

Watson. He had been given a copy of Dr. Selman Watson's report in which Dr. Watson stated that in his opinion he appeared to have suffered a cardiac arrhythmia from the accumulation of stress on the job (Claimant's APA Submission, p. 110) but he did not know that Dr. Selman Watson had written a letter to Mr. Hysmith on July 30, 2003 and he had not been told that Dr. Selman Watson in that letter stated ~~the opinion that anxiety contributed to his heart condition last March which was likely from his work.~~ Mr. Hysmith, ~~as the assigned investigator, did advise Mr. Menie that the State Accident Fund had decided to accept the case and were willing to~~ pay him all of his out-of-pocket expenses. (Hearing Transcript, p. 77, l. 16 - p. 86, l. 8).

Mr. Menie then testified as to whether or not the conditions to which he was exposed in January were unusual and extraordinary as compared to his normal job duties and testified as follows:

"Q: You were doing auditing for the State Accident Fund for a long time and you were aware of your regular and ordinary duties prior to January 1, 2003, were you not?

A: Yes Sir.

Q: Able to do your job up until January 1, 2003?

A: Yes Sir.

Q: Would you describe it as a full workload to do your job, the job that you were required of you to do the auditor's job, one job?

A: Yes, yes.

Q: As compared to your normal and usual daily activities, how would you describe the activities in January and February? Were they ordinary and usual, or were they extraordinary and unusual to your normal job duties?

* * *

A: They -- yeah, they were extremely unusual and out of sequence of the previous months of - 02 or -01 or so forth. Like I say, I was a very conscientious person, and I kept my work up to day in '02 and previous years, but in '03 it was such a stress load on trying to get all this done and trying to accomplish by talking to each of these policy holders. I sympathize with them when their policy premium went up 300%, that they felt they would have to dismiss someone to pay their premiums, I mean, that type of stuff kind gets to a person that has a sympathy feeling towards people under those conditions."

(Hearing Transcript, p. 97, l. 3 - p. 98, l. 11).

Mr. Ross Gamble who was Executive Deputy Director of the Agency, in his evaluation report on Mr. Menie performed on October 10, 2003 stated:

"Al is to be commended for the personal initiative he took during late 2002 and early 2003, a time when he voluntarily took on extra duties while we were short two (2) premium auditors, to make sure that all policy transactions were completed on a timely basis. During this same time he continued to make every effort to delight all customers needing assistance."

In addition, in an interagency memorandum dated April 15, 2003 in noting that Mr. Menie was going to be given a performance raise, which was written six (6) weeks after the Claimant had had his heart condition which sent him to the hospital on an emergency

basis, Ross Gamble, the Executive Deputy Director of the Agency, stated:

"We recognize that during the past year you have played and continue to play a key role in collecting the revenue and conducting premium audits. You helped keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances."

Dr. Charles Hendricks stated in a report found at pages 3-8 of the Claimant's APA Submissions under Question 1 that Mr. Menie had no prior problems with cardiac problems or high blood pressure prior to his hospital admission on March 7, 2003.

In Question 2 he acknowledged that during that hospitalization that he and Mr. Menie had had a discussion wherein Mr. Menie had relayed to him in general terms that he was under a lot of job stress at work.

Under Questions 4 and 5 that he had reviewed the job description of Mr. Menie as an auditor as to his responsibilities and that he had specifically reviewed and discussed the changes in Mr. Menie's workload, hours, and job responsibilities that occurred between 2002 and 2003 under Question 5 and all of the various factors that changed including Ms. Carla Johnson and Ms. Shaun Holmon leaving the Agency; that Mr. Menie had the responsibilities of all the auditing and functions of the Auditing Department by himself as of January 1; that a tremendous rate increase of 24.7% occurred that generated a tremendous amount of

increase in calls and requests for information concerning the various activities under the responsibility of the auditors' job; and that he had considered the statement by the Deputy Director, Mr. Ross Gamble, wherein Mr. Gamble recognized that Mr. Menie had kept these activities going including these essential functions throughout the period of transition caused by staff turnover and other "extraordinary circumstances".

This description of these various changes concurred with what Dr. Hendricks understanding was of the job responsibilities leading up to his first atrial fibrillation that occurred on March 3, 2003 and his opinions expressed were based upon that understanding.

In Question No. 7, it was his opinion to a reasonable degree of medical certainty that Mr. Menie's job responsibilities and workload were the cause of his high blood pressure and atrial fibrillation that occurred on March 3rd and that was his opinion to a reasonable degree to medical certainty. He also stated that among cardiologists specializing in the treatment of cardiovascular problems that two (2) of the known causes of atrial fibrillation are high blood pressure and physical and emotional stress and that it was impossible to tell which came first, the high blood pressure or the atrial fibrillation as to which one caused which one, or if they occurred simultaneously. But that again, it was his opinion to a reasonable degree of medical

certainty that both the high blood pressure and atrial fibrillation which occurred or developed on March 4, 2003 developed as a result of the physical and emotional stress that was caused by, as it was put by Mr. Gamble, from the extraordinary job duties, responsibilities and workload of Mr. Menie's job.

He also stated that in his opinion that all of Mr. Menie's subsequent atrial fibrillations and his chronic condition of atrial fibrillation stemmed from the original physical and emotional stress placed on him by his job and that Mr. Menie would have to have ongoing medical treatment for his heart and high blood pressure and that he would need to be under the care of a board certified cardiologist such as himself for the remainder of his life.

He stated the opinion at p. 10 of the Claimant's APA Submissions that Mr. Menie's condition was permanent and that under the AMA Guidelines for the Rating of Permanent Physical Impairment that Mr. Menie had a 30%-49% permanent impairment and that he should be limited from and was not capable of any stressful, sustained or forceful activity (work) and that he was limited to sedentary work only. (Claimant's APA Submissions, p. 10).

Finally Mr. Menie described the severe limitations that he has upon any type of activity due to his problems with his atrial

fibrillation and the medical care that he is receiving from Dr. Hendricks.

The Defendants called two (2) witnesses to testify, Mr. Gerald Allen Murphy and Mr. Kirk J. Adair. [It should be noted that neither Mr. Ross Gamble nor anyone involved with the auditing functions in 2002 or 2003 were called as witnesses for the Defendants.]

Mr. Gerald Murphy testified that he had been with the State Accident Fund since 1995 in Personnel Administration and in 2004 he assumed the responsibilities and was the manager of Administrative Services which included handling personnel recruitment and placement, leave and a performance management system.

His only testimony relevant to the time period of the alleged period of unusual and extraordinary conditions was that Mr. Menie did not have any extraordinarily long hours during that time period; that Ms. Carla Johnson had actually returned to work in the middle of February and that Mr. Farray who started on March 3rd had experience. (Hearing Transcript, p. 116, l. 20 - p. 120, l. 12). He testified further that after Mr. Menie retired in 2009 (five (5) years later) that they were able to reduce the auditing staff to two (2). He also testified that Mr. Farray, after Mr. Chris Bowles, who was an auditor that had been hired later on by the State Accident Fund and recommended the reduction to two (2)

auditors had left and did the actual auditing function alone for approximately three (3) months but admitted on cross-examination that at the end of which Mr. Farray was found laying in a comatose state outside of the State Accident Fund, was rushed by EMS to the hospital and then died three (3) weeks later. (Hearing Transcript, p. 131, l. 4 - p. 132, l. 8). He acknowledged that Mr. Willie Hysmith had done the investigation internally along with Crawford & Co.

Mr. Kirk Adair was called to testify and testified that he is a premium auditor with the State Accident Fund at the time of the hearing and was asked questions concerning the work as a premium auditor at the time of the hearing. His testimony was objected to as not being relevant or material since he was not a premium auditor during the time period of 2002 to 2003 which objection was denied and he was allowed to testify as to the current position of the auditor with the State Accident Fund (Hearing Transcript, p. 141, ll. 16-20; objection, p. 141, l. 21 - p. 143, l. 4). On cross-examination he admitted that he did not have to enter the experience modifier information at all because it the system was now, "automated". (Hearing Transcript, p. 144, l. 22 - p. 145, l. 4). He also admitted that the State Accident Fund no longer uses it own classification system but now they have gone to the NCCI model which codes are in the computer and the computer simply

automatically generates the experience modifier. (Hearing Transcript, p. 146, l. 15 - p. 147, l. 13).

From the Decision of the Hearing Commissioner finding that the Claimant did not meet his burden of proof in establishing compensable injury based on defense testimony that years after the Claimant's alleged heart condition and after the computer system was in place that an auditor had been able to handle this for brief periods of time; and on Mr. Adair's testimony that currently the job was not as difficult as his previous jobs; and that the Claimant never asked for help; and on the general finding that labor turnover, illnesses of co-employees and computer problems are common in all work environments; and that the Claimant continued to voluntarily work in his job and received a pay raise for his work, this appeal follows.

ARGUMENTS

I. DID THE CLAIMANT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE HAD SUSTAINED INJURY BY ACCIDENT AS DEFINED UNDER S.C. CODE §42-1-160 AND IS THE COMMISSIONER'S DECISION TO THE CONTRARY BASED ON SURMISE, SPECULATION AND INNUENDO?

The Claimant's burden of proof is simply to prove by a preponderance of the evidence that he sustained injury by accident as defined under S.C. Code §42-1-160. The Supreme Court has held since time in memoriam as specifically stated in the case of Groesbeck v. Marshall, 44 S.C. 538, 22 S.E. 743 (1895) that the plaintiff is not required to prove to the jury (the Commissioner

in this case) or to establish his case by a beyond a reasonable doubt but is required simply to prove his by a preponderance of the evidence which means that when the,

"plaintiff satisfies the jury by putting into evidence that it is more likely than not that such and such is the case, - not absolutely proved, not absolutely true, . . . nor . . . beyond a reasonable doubt, but, by the preponderance of the evidence that it is more likely than not that such and such was the case, then you can safely say that . . . the complaint has been established by a preponderance of the evidence."

At the time that this injury occurred the evidence that was required by a claimant to put forward to meet his burden of proof under S.C. Code §42-1-160 was based on case law not by statutory fiat as it is today. Ever since the Supreme Court decision in Kearse v. South Carolina Wildlife Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960), the definition or the standard that the claimant has to meet in a heart attack or a heart condition case is simply this, if the heart condition is, "induced by unexpected strain or over-exertion in the performance of the duties of his employment, or by unusual and extraordinary conditions in employment", the condition is compensable as constituting injury by accident. There are two cases that are instrumental that have been decided in the favor of the Claimant in those cases in reference to the Claimant's heart condition in this case. Since the Hearing Commissioner put great emphasis on the length of time to which the Claimant was exposed to these conditions, the

Claimant would point out the case of Poulos v. Pete's Drive-In No. 3, 284 S.C. 264, 325 S.E.2d 583 (S.C. App. 1985) wherein Mr. Poulos was hired on February 3, 1979 and died of a fatal heart attack on April 9, 1979. He was hired primarily to be responsible for attending the counter and handling the cash register. However, within several weeks of employment he was working longer hours and had to take on additional duties such as preparing food and was undergoing criticism for his dress and appearance. The claimant's family doctor testified that in his opinion unusual stress and strain associated with the employment contributed to the fatal heart attack and Dr. Steven Gold, internal medicine specialist, testified in response to a hypothetical question that his working conditions contributed to the heart attack. The Claimant would also note to the Commission based on that case specifically in reference to this case that the Hearing Commissioner committed an error of law in that he stated that a doctor cannot state an opinion in reference to unusual and extraordinary conditions of employment. While it is for the Commissioner's decision to state whether or not the Claimant has met his burden of proof from a legal standpoint, a doctor is totally qualified to give an expert opinion as to whether or not the work conditions as described were the cause of the development of the heart condition.

In Cline v. Nosredna Corp., 291 S.C. 75, 352 S.E.2d 291 (S.C. App. 1986), Mr. Cline was a food service manager in April of 1982 when his employer decided to open a second restaurant with a totally different menu, 150 yards apart and in less than 4 months having to traverse between the two and overseeing the development of a totally different menu and deal with approximately 10 new food suppliers, Mr. Cline developed a heart condition and was diagnosed as having a heart attack which was awarded mainly due to the extra duties that he undertook during that 3-4 months. In fact Mr. Cline was diagnosed as having sustained a cardiac atrial fibrillation which is exactly the same condition that Mr. Menie developed. In that case, again the Commissioner applied appropriately the heart attack standard developed under Kearse and found that these extra duties and the increase in hours constituted extraordinary conditions in employment and awarded him benefits.

Now, as to the evidence in this case upon which the Commissioner was asked to rely in making his decision and which was presented to him to make his decision as to whether or not it was more probably than not, which is the standard that the claimant must meet to establish that he had sustained injury by accident. It is uncontested that there were three (3) auditors going into the fall of 2002 and that as of January 1, 2003 that had gone from three (3) to one (1) auditor and Mr. Menie was that

auditor. The auditing staff was broken up into a team concept with one (1) auditor being assigned to each team and they had the responsibility of overseeing approximately 200 accounts and doing all the auditing work and work in the Auditing Department for those 200 accounts. As of January 1st, Mr. Menie had the responsibility of handling all 600 accounts. In December of 2002, the State Accident Fund notified all of its premium accounts that there was going to be 24.7% increase in the premiums and that this was the first premium increase since 1996 and that this was a more substantial than any other premium increase that had been made at any other time.

Ms. Shaun Holmon testified that she was an auditor that left on December 31, 2002 and that in her opinion the conditions to which Mr. Menie was exposed being the only auditor to handle all the auditing functions and all the functions of the Auditing Department after January 1, 2003 were unusual and extraordinary to the normal conditions and usual conditions of employment as an auditor with the State Accident Fund.

Mr. Menie testified that in his opinion his duties in the Auditing Department beginning January 1, 2003 were unusual and extraordinary to his usual and ordinary job duties.

Next, Mr. Ross Gamble who was the Deputy Director during this period of time stated in a letter that Mr. Menie was to be commended for his work on behalf of the State Accident Fund during

this time period of transition, "caused by staff turnover and other extraordinary circumstances". He also noted in Mr. Menie's performance evaluation that in late 2002 and early 2003 he, "voluntarily took on extra duties while we were short two (2) premium auditors and made sure that all policy transactions were completed on a timely basis."

Dr. Hendricks, a board certified cardiologist, stated the opinion that Mr. Menie's heart condition was as a result of these, "extraordinary circumstances" as described by Mr. Ross Gamble and that it was his opinion to a reasonable degree of medical certainty that Mr. Menie's job responsibilities during this time and the physical and emotional job stress under which he was placed by those duties were the cause of his heart condition.

In addition even Dr. Selman Watson to whom the Claimant had been sent for an evaluation during the investigation of the claim also stated the opinion that Mr. Menie had sustained a cardiac arrhythmia from, "an accumulation of stress on the job".

Therefore all of the medical evidence is that Mr. Menie's heart condition -- atrial fibrillation -- stemmed from the physical and emotional stress from his job activities. There is simply no contrary medical evidence.

In addition, there is absolutely no contrary testimonial evidence or other documentary evidence contrary to that of Mr. Menie and Ms. Holmon that the job conditions to which he was

exposed beginning in January and up through the time of his heart attack on March 3, 2003, constituted unusual and extraordinary conditions to his usual and ordinary conditions of his employment. In addition to their testimony, the Deputy Director during that time, Mr. Ross Gamble, stated that in his opinion Mr. Menie was exposed to unusual conditions in his job during that time period. Again, there is simply no contrary evidence, material and relevant to that time period that the conditions of his job were not unusual and extraordinary to the usual and ordinary conditions of his employment.

In addition to the fact that the Claimant not only met his burden of proof by proving that it is more probably than not that his injury stemmed from his work activities and that he was exposed to unusual and extraordinary conditions in his employment, the Commissioner's decision either granting or denying and this Commission's decision, either granting or denying benefits to an injured worker cannot be based on surmise, speculation or innuendo. There has to be evidence of substance to support the Award and the award or denial of benefits must not be based on surmise, conjecture or speculation. Walker v. City Motor Car Co., 232 S.C. 392, 102 S.E.2d. 373 (1958). In this case, the Hearing Commissioner's decision is based on simply that; surmise, speculation and innuendo. There simply is no evidence contrary to that of the Claimant and the medical evidence that he produced to

support the factual evidence that he produced. The only testimony or evidence that was presented outside of that presented by the Claimant was of the two (2) witnesses that testified for the Defendants. Mr. Adair was not even with the State Accident Fund at the time that this occurred. Mr. Murphy was not involved with the Auditing Department and only gave testimony as to the hours that Mr. Menie worked, that Ms. Coleman came back a week and half earlier than was thought and as to the credentials of the auditor that was hired in March of 2003. There is simply, again, no testimony or evidence contrary to that of the Claimant or that the Claimant put forward. There is no question that the Claimant established that it is more probable than not, or in other words by a preponderance of the evidence, that from a factual basis he was exposed to unusual and extraordinary conditions in the employment and that the conditions of employment to which he was exposed were the cause of his heart condition.

The Hearing Commissioner in fact does not disagree that the Claimant established from a medical standpoint that the physical and emotional stress of the job caused his problems and having agreed upon that, the only other issue is whether or not those conditions were unusual and extraordinary to the normal and usual conditions of his employment. Here again, there was no contrary evidence to that presented by the Claimant, Ms. Holmon and Mr. Ross Gamble. No one, and the Claimant would like to emphasize no

one, came in and testified that the conditions of his employment during this period of time were his usual and ordinary conditions of employment. There being no such evidence, the Hearing Commissioner erred by not granting this employee benefits.

II. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY NOT EXCLUDING THE TESTIMONY AND RELYING ON THE TESTIMONY OF MR. KIRK ADAIR.

It is admitted that Mr. Adair was not with the State Accident Fund at the time Mr. Menie's injury occurred. His testimony was related to the position of an auditor at the time of the hearing. There is no question that the Hearing Commissioner relied on this testimony and that of Mr. Murphy that there had been, "other times when auditors worked in a like position and that Mr. Adair testified that he, "had handled the job by himself and it was not as difficult as his previous jobs." Claimant's Counsel objected to Mr. Adair's testimony and that of Mr. Murphy as being irrelevant and immaterial to the conditions of employment at the time the injury occurred. Relevancy and materiality are often confused but there are two (2) general propositions that apply to both, and one in particular to materiality. To be relevant and material, it is necessary that the facts shown by the evidence offered legally tends to prove or make more or less probable, some matter and issue and bear directly or indirectly thereon. "If there is no logical or rational connection between the facts sought to be presented and a matter of fact in issue in the case,

the evidence is immaterial and inadmissible." Gauze v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968). In this case, the issue involved is whether or not the conditions of the Claimant's employment between January 1, 2003 and March 3, 2003 were unusual and/or extraordinary to his usual and ordinary conditions of employment up until that time. It is totally immaterial to that decision as to what the conditions of employment of an auditor were at the time of the hearing, some 9 years later or even after March 3, 2003. The evidence should have been excluded and the Commissioner erred as matter of law by relying on it in making his decision.

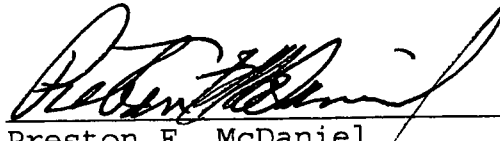
III. THE HEARING COMMISSIONER ERRED AS A MATTER OF LAW BY MAKING A GENERAL FINDING OF FACT THAT, "LABOR TURNOVER, ILLNESS OF CO-WORKERS AND COMPUTER PROBLEMS ARE COMMON TO ALMOST ALL WORK ENVORNMENTS AND ARE NOT UNUSUAL".

The Supreme Court of South Carolina and the South Carolina Court of Appeals have both found that these conditions can constitute unusual and extraordinary conditions of employment. See specifically Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991); 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988), in which the Supreme Court and Court of Appeals both found that all three (3) of these factors specifically constituted or could constitute unusual and extraordinary conditions in employment. This Finding of Fact is totally and absolutely contrary to law and requires reversal as it indicates that the Hearing Commissioner

failed to apply the law of the State of South Carolina to the facts in this case. It also indicates a bias and prejudice against the position of the Claimant and against an award of benefits in this matter and this type situation.

For all the foregoing reasons, the Decision of the Hearing Commissioner should be reversed and Mr. Menie awarded benefits in this matter as requested or that this matter should be remanded at a minimum for a de novo hearing due to the errors of law committed by the Hearing Commissioner in the reception of evidence and in the application of the law in this matter.

Respectfully submitted,



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July 13, 2012

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0307461

Alvin Menie,

Claimant/Appellant,

vs.

State Accident Fund,

*Employer &
Carrier,*

Defendant/Respondent.

**MEMORANDUM IN OPPOSITION
TO APPLICATION FOR REVIEW**

STATEMENT OF THE CASE

Claimant Alvin Menie ("Menie") worked by himself as an auditor for the State Accident Fund ("SAF") for a grand total of 25 days in 2003. Menie claims that because of his increased workload during that period he suffered an acute onset of atrial fibrillation on March 3, 2003, and that the Hearing Commissioner incorrectly determined that his condition is not compensable. In doing so, Menie conveniently ignores the following (among other pertinent facts):

- Menie neither worked longer than normal business hours nor more than 40 hours per week during that period;
- Menie did not work any overtime during that period;
- Several other SAF premium auditors have worked by themselves for substantially longer periods without complaint;
- The majority of the policyholders who were affected by a 24.7% premium increase had paid their premiums by January 10, 2003;

- Menie did not mention to any treating physician that the atrial fibrillation allegedly caused by on the job stress until over a year after it's onset;
- Menie's treating physician stated on September 7, 2010, that the "atrial fibrillation part of [Menie's] problem is clearly related to Agent Orange as far as I could discern";
- Menie applied to the United States Department of Veterans Affairs for disability benefits related to his coronary condition;
- The SAFs' medical expert, Dr. Michael Zile, stated "to a reasonable degree of medical certainty that [Menie's] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes. . . . [He does] not believe that stress, anxiety or physical work load related to his job contributed to the development of atrial fibrillation. Therefore, [he believes] that it is more probable than not that the cause of his atrial fibrillation was preexisting cardiovascular and cardiovascular related diseases and not changes in his work environment which resulted in him developing a clinical syndrome of atrial fibrillation."; and
- Menie continued to work and do his job without restrictions or issues *for over six (6) years* until his voluntary retirement in May of 2009.

A Hearing was held before Commissioner G. Bryan Lyndon ("Hearing Commissioner") of the South Carolina Workers' Compensation Commission ("SCWCC") on January 30, 2012, in Columbia, South Carolina pursuant to Menie's Form 50 and the SAFs' Form 51. All parties and their representatives appeared at the Hearing and presented evidence on the case. As stated above, the claim involves alleged stress-related atrial fibrillation which Menie believes to be the result of work conditions at the SAF. The SAF obviously contested the compensability of this matter.

At the Hearing, Menie took the position that he sustained a work-related onset of atrial fibrillation on or about March 3, 2003, and that the condition was compensable under §42-1-160 of the South Carolina Workers' Compensation Act ("Act") and common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions

resulting from unusual and extraordinary conditions of employment. Menie further maintained, represented and stipulated that he was not making any claim for back due or ongoing temporary total disability benefits, nor was he making any claim that he was permanently and totally disabled in accordance with §42-9-10 of the Act as a result of his cardiac contention. Rather, Menie sought payment of all past causally related medical expenses, as well as all future causally related and compensable medical expenses pursuant to §42-15-60 of the Act and/or Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). With regard to permanency, Menie maintained, represented and stipulated that he was only seeking an award of scheduled permanent partial disability benefits of up to 250 weeks pursuant to R.67-1101 of the South Carolina Code of Regulations. Finally, Menie maintained he had an expert medical opinion to support his contentions as to the causality and compensability of his cardiac injury and/or condition.

The SAF took the position that the events of on or about January 1, 2003 to on or about March 3, 2003 did not in any way constitute unusual and extraordinary circumstances and/or conditions of employment. The SAF further indicated the Menie's personnel records reflected that Menie never worked more than a forty hour work week during the period in question. In addition, the SAF maintained Menie had previously attempted to allege his cardiac condition was related to his military service during the Vietnam War when Menie submitted an application for Veterans Disability Benefits to the United States Department of Veterans Affairs (hereinafter referred to as "the V.A.").

In light of these contentions, the SAF further maintained Menie could not meet his burden of proof under §42-1-160 of the Act and/or common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions resulting from unusual and extraordinary conditions of employment. The SAF's' denial of

compensability was also based upon the testimony of Menie's former co-workers and/or supervisors regarding Menie's work conditions and work responsibilities during the period in question.

After considering the testimony from all of the witnesses, observing the witnesses during their testimony, reviewing the APA Submissions submitted by the parties and consideration of the applicable law, the Hearing Commissioner issued a Decision and Order dated April 11, 2012, in which the Hearing Commissioner found and ruled that Menie had failed to prove that his heart condition was the result of unusual and extraordinary conditions of employment. Therefore, the Hearing Commissioner determined that Menie is not entitled to any benefits of any kind under the Act. From that Order, Menie appeals.

ARGUMENT

I. MENIE FAILED TO PROVE THAT HE SUSTAINED A COMPENSABLE WORK RELATED INJURY AND THE HEARING COMMISSIONER'S DETERMINATION AS SUCH WAS FOUNDED ON THE SUBSTANTIAL EVIDENCE IN THE RECORD.

The case law regarding a claimant's burden of proof pursuant to S.C. Code Ann. §42-1-160 is rather clear and well-settled. The claimant has the burden of proving that he suffered a compensable injury by accident arising out of and in the course of his employment pursuant to S.C. Code Ann. §42-1-160. §42-17-50 empowers the Full Commission to review the Decisions and Orders of the Hearing Commissioner and, when appropriate, to make its own Findings of Fact and Rulings of Law. However, the Appellate Panel cannot make an award of benefits to the Claimant if said award is based on surmise, conjecture or speculation. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998). Like the Hearing Commissioner, the Appellate Panel has the authority, and should use said authority, to consider all of the evidence, both lay and expert, and decide whether

the Claimant has established causation. Potter v. Spartanburg School District 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011).

If the Appellate Panel considers the evidence in the record of this matter in keeping with the appropriate and settled case law standards, the SAF would respectfully submit that the Appellate Panel should find the evidence is more than sufficient to uphold and affirm the April 11, 2012 Decision and Order of the Hearing Commissioner. Menie failed to establish that his work environment at the SAF during the relevant time period rose to the level of unusual and extraordinary conditions of employment. Further, the whole of the evidence presented establishes that Menie was essentially a 'walking timebomb' with respect to atrial fibrillation in light of the fact that he had numerous other risk factors as of March 3, 2003.

A. *SOUTH CAROLINA CASES ON INJURIES OCCURRING DUE TO UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT DO NOT SUPPORT MENIE'S ALLEGATION THAT HIS ATRIAL FIBRILLATION IS COMPENSABLE.*

Kearse v. SC Wildlife Resources Department, 236 S.C. 540, 115 S.E.2d 183 (1960), involved a 63 year old wildlife officer who, for a period of two to three weeks, worked from before sunrise until 8:00 – 10:00 P.M. trying to apprehend people trapping fish illegally along the Salkehatchie River. In addition to the extreme hours, the evidence in record indicated the Kearse was required to endure considerable physical exertion to get his vehicles into position to apprehend/pursue suspects, including push starting an automobile and dragging a boat through a swamp. Kearse had a stroke resulting in partial paralysis and was awarded permanent and total disability.

In McWhorter v. SC Department of Insurance, 252 S.C. 90, 165 S.E.2d 365 (1969), the claimant was an investigator for the SC Department of Insurance. His job typically required him to be there 9 to 5, but with the lunch hour and other guaranteed breaks he was afforded, his typical work week was 36 hours of actual time performing his duties. However, in the ten or so days before he ultimately died of a heart attack, McWhorter worked 121 hours and drove 1,500 miles in anticipation of an upcoming trial in Greenville County. He worked a total of 23 hours on the Saturday and Sunday immediately prior to the trial. On the Monday the trial commenced, McWhorter awoke at 3:00 A.M. and picked up a witness. He then assisted with trial preparation from 7:00 – 9:00 A.M. During the lunch recess on the first day of the trial (that Monday), McWhorter carried several large files over to the Solicitor's Office, walked down three flights of stairs and dropped dead of a heart attack. The claim was deemed compensable.

In Cline v. Nosredna Corporation, Inc., 291 S.C. 75, 352 S.E.2d 291 (Ct. App. 1986), the claimant had preexisting congestive heart failure and was a food service manager for a restaurant in Myrtle Beach, a position he held and worked without incident until 1982. In 1982, his employer opened a second restaurant, and Cline was made food service manager of the second restaurant as well. This essentially doubled his responsibilities overnight and required him to work with many new vendors. In addition, the two restaurants were 150 feet apart, and the Cline had to "continuously traverse the distance between them each day." Within 4 – 6 weeks of the second restaurant opening, the Cline had a heart attack and was also diagnosed with atrial fibrillation. His claim was deemed compensable.

In Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), the claimant was a bank vice-president. Due to an upcoming merger with another bank, Stokes was required to work 15 additional hours a week. That later increased to 16 to 18 hours a day. Not

surprisingly, Stokes suffered a mental breakdown and it was found to be due to unusual and extraordinary conditions of employment.

And in the most recent case on the subject, Smith v. NCCL, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006), the claimant was an auditor. His work duties were found to be unusual and extraordinary because: (1) experts in the auditing industry opined his job responsibilities were extraordinary and unusual; (2) Claimant had production goals to meet notwithstanding the fact he was being asked to implement a pilot program, which the evidence showed was more difficult than what his co-employees were asked to do; (3) he had to perform "test audits" almost exclusively, which are more difficult than standard audits; (4) he had to travel 2 to 3 times more miles a week than what the written job description for auditors indicated would be required; and (5) he was under unusual and unrelenting pressure to be more productive from his superiors.

The facts of this case, when compared to the facts of the cases cited above, simply do not bear out a compensable injury in that Menie failed to meet the "unusual and extraordinary" standard. In reality, the facts establish that the most Menie was asked to do during the 25 days he worked by himself was answer the phone a bit more than normal¹. As such, the SAF contends that Menie presented the Hearing Commissioner with a very weak case, factually. In fact, each of the claimants in Sims v. SC State Commission of Forestry, 235 S.C. 1, 109 S.E.2d 701 (1959)² West v. City of Spartanburg, 236 S.C. 553, 115 S.E.2d 295

¹ If that was even the case, as Menie failed to produce any evidence corroborating his claim of a heavy call load.

² In Sims the claimant was a fire tower watchman who died of a heart attack after climbing a fire tower while on duty. The case states that there must be evidence of ". . . a sudden, unusual exertion, violence or strain" in order for an aggravation of heart trouble to be compensable.

(1960)³ and *Tennant v. Beaufort County School District*, 381 S.C. 617, 674 S.E.2d 488 (2009)⁴ had better factual arguments for compensability than Menie does in this case and in each of those cases the claimant's claim was deemed not compensable. Consequently, the SAF contends that South Carolina's appellate courts' decisions do not support Menie's position that the conditions of his employment rose to the level of unusual and extraordinary such that his atrial fibrillation should be deemed compensable.

B. THE FACTS OF THIS CASE DO NOT SUPPORT A FINDING AND CONCLUSION THAT MENIE FACED UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT.

It is not disputed that from January 3, 2003, until February 10, 2003 (when another auditor, Carla Johnson, returned from medical leave), Menie worked as the lone premium auditor for the SAF. It is also not disputed that another auditor left on December 31, 2002. It is further not disputed that in December of 2002, the SAF informed its insureds that a 24.7% increase in base premiums was going into effect on January 1, 2003. Lastly, it is not disputed that on March 3, 2003, Menie presented to the Lexington Medical Center and was eventually diagnosed with atrial fibrillation. Virtually everything else recited in Menie's brief *is disputed*.

³ In *West* the claimant was the city jailer and on a particularly busy Saturday night during which there was an inordinate number of "boisterous, loud, cursing drunks," the claimant collapsed and ultimately died. The Supreme Court denied the claim (and in so doing specifically distinguished this case from *Kearse*) because there was no evidence of any increased physical exertion on the part of the claimant. *West* also stands for the proposition that there is a distinction at law in between being inordinately busy and being worked so hard that you literally suffer a sudden, unusual exertion, violence or strain.

⁴ In *Tennant* the claimant was employed as a teacher and had an acute psychological episode and resulting issues following an argument with one of her teacher's aides. This argument was the culmination of ongoing issues the claimant and her aide had prior to the claimant's acute episode, which required hospitalization. The case is critical because it stands for the proposition that a job can be stressful without that stress necessarily being "unusual and extraordinary."

Shawn Holman was the auditor who left the SAF on December 31, 2002. She testified at the hearing that the volume and intensity of the premium auditors' workloads would vary and that their work would sometime come in fits and starts. She also testified that it was typical for the premium auditors to assist one another when circumstances warranted. Although Holman stated that one auditor working with all of the approximately 600 insureds' accounts for a period would require that auditor to neglect his normal amount of premium audits, she admitted that it was possible and she was unaware of any auditor ever being punished for not timely completing his/her premium audits. Holman also confirmed that meetings between premium auditors and angry representatives from the individual insureds "went on all of the time," and not just after the base premium increase instituted at the beginning of 2003. Holman further conceded that insureds were almost never happy when they received notification of any premium increase, that there had been previous double-digit premium increases, and that premium auditors have up to 180 days to perform a premium audit following the close of a policy period. Likewise, Holman could not dispute the 'new' computer system she alluded to on her direct examinations had actually come on line by May 25, 1999 (almost 4 years prior to Menie's alleged injury) and she acknowledged that other employees of the SAF could answer phone calls during times of high call volume.

Menie, when asked why he felt the need to devote so much time to the duties of the other auditors, testified that ". . . with [his] ego [he] thought [he] could handle everything that came forth in [January and February of 2003] . . ." *Transcript of Testimony, p. 75 (emphasis added)*. Menie testified that he could not present any tangible/documentary evidence of his allegedly excessive and/or increased work duties from January 1, 2003 to March 3, 2003. Although Menie contended that 1/6 of his audits

were supposed to be done by the end of January each year, he could point to no specific instance where he was punished or demoted for failing to do so. On examination by the Hearing Commissioner, Menie stated as follows:

Q. Did you ever tell anybody you couldn't handle the job? Because you actually did handle it. You got a pay raise and you got good reviews; is that fair to say?

A. Yes, sir. Yes, sir. But my good review was before. That was in October before my—my thing.

Q. So, as I understood it from you, the stress that you say you were suffering was really self-imposed, as I understand it, from ego, I believe, was the quote. Is that right?

A. Well, it was—no, it was—

Q. Well, were there any consequences if you hadn't done those—what you're saying—three jobs?

A. No. It wasn't really a volunteer. It was more trying to help the customer with his problems with the 25 percent approximately across the board increase in rates, which means that if your premium was 10,000 it's gonna go to, you know, 12,500 and that type of thing.

Q. I understand

A. And whatever your experience modifier, if it increased, then that increased it by 200 percent or 300 percent or—

Q. Did you ever get behind?

A. Oh, I was behind from day one, from January 2nd. I was behind that day.

Q. It was announced on January 1st, right? So all of the calls came—well, I don't know when it was announced prior to that, but the letter is not dated, but it says effective January 1st.

A. It was sent out—it was sent out with the estimated premium, tried to be by December the 1st so, like I say, that they would have that month to relocate with their insurance company if they so desired to leave the State Accident Fund.

Q. Were you under the impression that this was a temporary thing and you were going to get a trainee?

A. Oh, I was under the impression that I was going to get two more auditors as quickly as they could provide them.

Q. And the trainee was to become an auditor, is that right? Was the trainee to become an auditor, the one you were training, the individual you were training?

A. Oh, yeah. On March the 3rd? Yes.

Q. So that would have been one of the two other—

A. Right.

Q. And you say you've had four episodes in nine years? Did I hear you say that?

A. Yes, sir.

Q. And of this military pension you are—the disability benefits you're getting, is any of that for hypertension?

A. No, sir.

Q. Is renal failure brought on by hypertension? You have some kidney disease, do you not?

A. Yes. Oh, I'm sorry.

Q. Is that brought on by hypertension, by high blood pressure?

A. No, it's brought on by diabetes through that agent orange.

Q. . . . And how long have you been getting V.A. benefits?

A. I got diabetes within 90 days after I submitted a claim on July the 28th, 2009, and then I—and that was like a 20 percent rating. And then I went to a kidney specialist that my G.P. sent me to, a kidney specialist, and then he found that I had chronic kidney disease in the stage of—third stage. And then the creative organ. That's the three that I was getting—receiving at that time. Since then I have had tinnitus added to that.

Q. How much money are you getting a month?

A. Nine Hundred and Forty-one dollars, I think it is.

Q. And you voluntarily retired for what reason, sir?

A. Well, I volunteered because my—what was that system we had?

Q. Teri.

A. Teri plan, Yes. Teri plan, yes. It's terrible to be 68 and memory—you can't pick up things, you know. Yeah, the Teri plan, right. It ended and, therefore, I chose to retire.

Transcript of Testimony, pp. 110-113.

SAF presented the testimony of two (2) witnesses. The first was Gerald Murphy, who has been employed by the SAF since March of 1995 and is presently the SAF's Manager of Administrative Services. Murphy testified the SAF utilized a program known as "Locator" to track, monitor and compile employee attendance. Murphy testified he used this program to compare and contrast Menie's work hours in January and February of 2002 with Menie's work hours in January and February of 2003. This study of the Locator data established the Menie worked an average of sixteen (16) extra minutes per day in January and February of 2003 than he had during those same two months of the prior year.

Murphy also indicated that the Locator data reflected that Menie worked as the lone premium auditor for a sum total of twenty-five (25) business days during the period in

question and that Johnson returned from medical leave on February 10, 2003. Additionally, Warren Farrray (who had in excess of twenty years of premium auditing and underwriting experience) started on March 3, 2003. Murphy also testified that (a) Menie never complained about needing help or that the stress was too much, and (b) the Deputy Director offered to let a SAF employee named Vicky Looter assist Menie if necessary. Murphy further testified that by January 10, 2003, 318 out of 522 accounts had paid their premium which included the 24.7% increase.

With regard to the issue of whether the employer could function with one premium auditor, Murphy testified the SAF did so from November of 2009 until January of 2010 and again from February of 2010 until September of 2010. The SAF has never returned to three premium auditors at any point following the Claimant's retirement in 2009.

Murphy did not dispute the fact the Claimant was a well-liked and gregarious employee during his tenure with SAF. However, he did not agree with Menie's testimony about having to have 1/6 of his audits done by the end of January. In fact, Murphy explained and testified that January is typically a month where the total number of audits performed is very low due to the lack of the requisite information needed from the insureds to do the audit. Murphy indicated his review of various data and documents in the SAF's possession had indicated there were no premium audits done in January of 2002. Although the Claimant's medical opinion(s)/questionnaire(s) from the authorized treating physician are premised on a contention/allegation that the number of audits Menie was asked to do increased "threefold during the time of January through March of 2003," Murphy disputed it would have been possible for such an increase in audits to have incurred since the requisite data would not have been available to do the audits.

Finally, Murphy addressed the basis and rationale for Menie receiving the pay increase memorialized and summarized in a letter issued to the Claimant on April 15, 2003 (Claimant's APA Submissions, p. 112). Murphy explained the SAF was obligated to have objective reasons for the pay increase or it otherwise could not have given it to Menie. When posed with a question from the Hearing Commissioner regarding the efforts to which the SAF went to in order to keep similarly situated employees at similar salaries, Murphy confirmed the SAF does try to do so as State salaries are public.

Kirk Adair, who is presently employed by the SAF as a premium auditor, testified that he came to the SAF after many years working for various private sector insurers as a premium auditor. Adair testified he worked as the lone premium auditor from January 14, 2011 through March 14, 2011 without virtually any tangible difficulty, and he described his current position as being noticeably less stressful than similar positions in the private sector. Adair also confirmed he continues to do premium audits for all of the SAF's insureds with the assistance of only one additional premium auditor. (Tr. p. 144).

Menie, via his APA submissions, submitted the opinion of Dr. Richard Hendricks, Menie's authorized treating physician. Dr. Hendricks' opinion as to causation was based entirely on the hypothetical and fictitious recitation of the facts of the case given to him by Menie. *See Menie's APA submissions at pp. 3-10.* As such, Defendant contends that Hendricks' opinions had no evidentiary value. *See Brown v. La France Industries*, 286 S.C. 319, 333 S.E.2d 348 (Ct. App. 1985) & *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978) (both cases dealing with the requirement that medical opinion testimony based upon answers to hypothetical questions posited by attorneys are not admissible if the hypothetical questions are not ultimately found to be supported by facts in evidence).

By contrast, the Defendants had Menie's medical records and Dr. Hendricks' deposition testimony reviewed by Dr. Michael Zile, a cardiology professor at MUSC. Dr. Zile's professional opinion was that Menie had numerous risk factors for atrial fibrillation, including:

- Morbid obesity (in excess of 300 pounds);
- Sleep apnea;
- Hypertension;
- Sick sinus syndrome; and
- Diabetes.

See Defendant's APA submissions at p. 20. As Defendant's expert's opinions were based on a review of actual medical evidence and not misinformation fed to him by Menie, the Hearing Commissioner properly afforded it the proper evidentiary value it deserved. See Tiller v. National Health Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999) & Potter v. Spartanburg County School District 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011)(both cases deal with the SCWCC's rights and duties to balance conflicting medical testimony with other lay evidence in the record).

Based on the above, the Hearing Commissioner correctly determined that Menie had not met his burden of proving that his atrial fibrillation was proximately caused by his job duties with the SAF. In doing so, the Hearing Commissioner relied on the whole of the evidence in the record rather than just that evidence favorable to Menie. The Hearing Commissioner did not base his decision on surmise, conjecture or innuendo, but rather on the actual facts presented to him. As such, that decision should be upheld by the Appellate Panel.

II. THE HEARING COMMISSIONER'S DID NOT ERR IN ALLOWING AND RELYING ON THE TESTIMONY OF ADAIR.

Menie next argues that the Hearing Commissioner should not have allowed into evidence the testimony of Adair and Murphy with respect to the question of whether one auditor could handle the job without difficulty. His argument is that because Adair wasn't there in 2003, his testimony as to the difficulty (or lack thereof) in being the lone premium auditor is irrelevant and immaterial. Unfortunately, Menie makes no valid legal argument as to why this testimony should have been excluded and cites no authority as to that point. As such, this argument is without merit.

With respect to Murphy, Menie did not object to his testimony regarding the fact that at other times in the past the SAF only had one (1) premium auditor. *See Transcript of Testimony, pp. 120-121.* As such, Menie has waived any argument with respect to the admission of that evidence. *See Pratt v. Morris Roofing, Inc.*, 353 S.C. 339, 577 S.E.2d 475 (Ct. App. 2003). As to Adair's testimony on the issue, Menie ignores the rule that great liberality is exercised in permitting the introduction of evidence in proceedings under the Act. *See Ham v. Mullins*, 193 S.C. 66, 7 S.E.2d 712 (1940); *see also Smith v. South Carolina Dept. of Mental Health*, 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1998) (hearing commissioner has the discretion under the Administrative Procedures Act to limit or exclude irrelevant testimony). Defendant contends that the testimony of both Adair and Murphy should have been admitted in light of the fact that the whole of the evidence establishes clearly that the premium auditor job is not that stressful even if performed by one (1) person.

III. THE HEARING COMMISSIONER'S DID NOT ERR IN MAKING A FINDING THAT LABOR TURNOVER, ILLNESS OF CO-WORKERS AND COMPUTER PROBLEMS ARE COMMON TO ALMOST ALL WORK PLACES AND ARE NOT UNUSUAL.

Menie lastly argues that the Hearing Commissioner erred in finding that labor turnover, illness of co-workers and computer problems are common and are not unusual as our appellate courts have found that these factors "specifically constituted of could constitute unusual and extraordinary conditions in employment." *Appellant's Brief to the Full Commission at p. 28*. In support of this contention, Menie cites Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1990). However, a reading of that case reveals that the only factors the Court considered were longer work hours.⁵ Further, in the case of Lockridge v. Santens of America, Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001), the Court denied benefits in a case where one of the alleged "causes" of Lockridge's heart attack was the fact he was doing the work of two (2) people.

In this case, the Hearing Commissioner correctly found that labor turnover, illness of co-workers and computer problems are common and are not unusual. When such factors rise to an extreme level, which is clearly not the case with respect to Menie, then they can obviously become factors. However, in and of themselves, labor turnover, illness of co-workers and computer problems are common and are not unusual and are commonplace in all employment sectors.

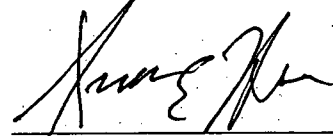
CONCLUSION

For the foregoing reasons, and in light of the accepted and established standard for review by the Appellate Panel, the SAF respectfully requests that the Appellate Panel of the Full Commission affirm each and every Finding of Fact and Ruling of Law set forth in the Hearing Commissioner's April 11, 2012 Decision and Order. Specifically, the SAF would

⁵ Although the Court noted that Stokes' longer work hours were in part attributable to the resignation of one of his managers, "labor turnover" in and of itself was not mentioned as a factor constituting an unusual or extraordinary condition of employment.

request affirmation of the Findings of Fact and Rulings of Law establishing that Menie has failed to satisfy his burden of proof pursuant to S.C. Code Ann. §42-1-160 with respect to the compensability and causality of his alleged injury of March 3, 2003.

Respectfully Submitted,



Andrew E. Haselden, Esquire
Vincent C. Northcutt, Esquire
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215 East Bay Street, Suite 303
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(843) 216-6940
Attorneys for the State Accident Fund

August 7, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT
C/A NO. _____

ALVIN L. MENIE,)
)
Employee,)
)
Petitioner,)
)
v.)
)
STATE ACCIDENT FUND,)
)
Employer,)
)
and,)
)
SELF-INSURED,)
)
Carrier,)
)
Respondents.)
)

PETITION AND NOTICE
OF APPEAL

2012 DEC 14 PM 1:10
FILED
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO: ANDREW E. HASELDEN, ESQUIRE, ATTORNEY FOR THE RESPONDENTS:

YOU WILL PLEASE TAKE NOTICE that the Employee/Appellant hereby petitions and appeals, pursuant to Sections 1-23-380 and 42-17-60 South Carolina Code of Laws (1976, as amended), as applicable to all claims for injury occurring prior to July 1, 2007 as well as other applicable law, from the Decision and Order of the South Carolina Workers' Compensation Commission dated November 29, 2012 and received by the Petitioner by Electronic Mail on November 29, 2012. (Note the Claimant has not been properly notified pursuant to SC Code §42-17-40 and §1-23-350).

The grounds for the appeal are as follows:

1. That since the Panel of the Full Commission incorporated verbatim the Findings of Fact and Conclusions of Law

made by the Hearing Commissioner (with one (1) exception as to a Finding which the Full Commission notes as a scrivener's error in Finding of Fact No. 22), the Petitioner hereby petitions and appeals as to all of the issues submitted to the Full Commission for review from the Hearing Commissioner's Order dated April 11, 2012 as issues on appeal from the Decision of the Commission with said grounds for appeal being attached hereto and incorporated herein by reference as Exhibit "A".

2. That in addition to the above-exceptions, the Commission erred as a matter of law by failing to perform its review responsibility by making detailed Findings of Fact and Conclusions of Law as to each issue of law and fact raised before the Full Commission for review. The Decision of the Commission is in violation of both statutory and case law which requires the Commission to make detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough to determine whether or not the decision on the facts is supported by the evidence and whether or not the law has been properly applied.

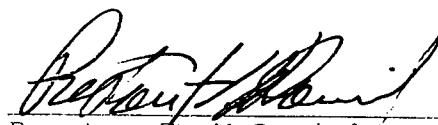
3. That the Commission erred as a matter of law by making only cursory Findings of Fact and Conclusions of Law in violation of law and by requesting that Defense Counsel draft the Order of the Commission wherein the law specifically requires that the Order of the Commission must be issued by the Commission itself as specifically set out under SC Code §42-17-40, 50 and 60 and under the Administrative Procedures Act, §1-23-340, 350 and 380,

and under the Commission's own Regulations under Reg. 67-709, which requires the Commission make detailed Findings of Fact and record those in the Record.

4. That the Commission erred as a matter of law by requiring the injured worker, who was the Claimant and Appellant to the Full Commission in this matter, to purchase and file the original and a copy of the Transcript of Record. The Commission has no statutory authority to require a party to pay for the Transcript of Record, and in fact both the Administrative Procedures Act and the Commission statutory authority require that the Commission file and review the Record as part of its statutory responsibility. To require a party to pay for a Transcript of Record has a chilling effect on the due process rights of the individual parties to review.

5. That the Commission erred as a matter of law in denying benefits to the client where the reliable, probative and substantial evidence in the Record does not support such denial and in fact the uncontradicted evidence supports an Award of benefits as a matter of law.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Petitioner/Appellant

December 12, 2012



Claimant's Name: Alvin L. Menie SSN: _____ Employer's Name: State Accident Fund
Address: _____ Address: Post Office Box 102100
City: _____ State: _____ Zip: _____ City: Columbia State: SC Zip: 29221
Home Phone: () _____ Work Phone: () _____ Insurance Carrier: Self-Insured
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 3-3-2003 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See Attachment.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Andrew E. Haselden, Esquire

HOWSER, NEWMAN & BESLEY, 215 East Bay Street, Suite 303, Charleston, SC 29401

Name

Address

on the 30th day of April, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

Preston F. McDaniel (Signature)

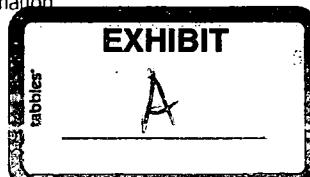
Preparer's Signature

Claimant's Attorney
Title

April 30, 2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 1 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.



ATTACHMENT TO FORM 30

Alvin L. Menie v. State Accident Fund
WCC FILE NO: 0307461

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a matter of law in his application of the law under S.C. Code §42-1-160 and the application of the Claimant's burden of proof which is by a preponderance of the evidence and finding that the Claimant as a matter of law did not establish that he had sustained a compensable heart-related condition as a result of injury by accident stemming from the unusual and extraordinary conditions in his employment occurring just prior to and at the time of his first atrial fibrillation that resulted in his continuing and permanent condition thereafter.

3. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Kirk Adair who was not employed with the State Accident Fund as an auditor or in any capacity during the time that was relevant to whether or not the Claimant's condition arose out of and in the course of his employment and constituted an injury by accident within the meaning of the Act. That testimony was irrelevant and immaterial and prejudicial to the Claimant as it compared totally dissimilar times in the Auditing Department. This would be similar to comparing the stress levels of military personnel stationed in Hawaii on December 7, 1941 to that of military personnel assigned to Hawaii on December 7, 1991.

4. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Murphy in reference to any reasons for the Claimant's pay raise or interpretation of any of the documents in reference to the conditions in the Auditing Department and during the time the Claimant developed his heart-related condition and as to whether or not the conditions in that Department constituted unusual and extraordinary conditions in the employment.

5. That the Hearing Commissioner erred in making specific Findings of Fact in reference to the testimony of Ms. Holloman and that of the Claimant and citing that testimony without noting in the Findings of Fact that both Ms. Holloman who was an Auditor in the Auditing Department at the time that the Claimant's heart

condition came about and the Claimant's was that the conditions that existed between January 1, 2003 and March 3, 2003 (including but not limited to the fact that the Agency just prior to this time had announced the largest increase in premiums for the account holders that had ever occurred and that the Auditing Department as far as handling all of the functions had gone from three (3) Auditors to one (1) Auditor) wherein based on these facts and all the relevant facts at that time, in their opinions those work conditions for an Auditor in the Auditing Department constituted unusual and extraordinary conditions to the usual and ordinary job of the Auditor in the Auditing Department of the State Accident Fund at this time. There is simply no other evidence as to that condition at that time.

6. That the Hearing Commissioner further erred as a matter of law by not finding that the Claimant sustained an injury by accident due to unusual and extraordinary conditions wherein both the Manager of Administrative Services and the Deputy Director, Ross Gamble, in approving a performance pay raise on April 15, 2003 in reference to the time of the premium increase and the Auditing Department going from three (3) to one (1) Auditor to handle all of the functions of the Auditing Department stated, "you helped to keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances." There was also no opinion stated contrary to this and neither Ms. Plateau nor Mr. Ross Gamble were called as witnesses to further explain their opinion and therefore the Commissioner erred by not finding that the Claimant was exposed to unusual and extraordinary conditions where management thought the conditions were extraordinary.

7. That the Hearing Commissioner erred by making Finding of Fact No. 17 which is an error of law under law by finding that, "linking heart disease to work-based on what is unusual and extraordinary is impossible for a doctor to conclude, legally." This is a mis-statement of the law and under the uncontested medical evidence both from the psychologist hired by the Defendants to perform an evaluation who found that Mr. Menie, "appears to have suffered a cardiac arrhythmia from an accumulation of stress on the job"; and the treating cardiologist who found based on a review of the job responsibilities of Mr. Menie that in his, "job responsibilities and work load as set forth above and specifically between December 27, 2002 and March 4, 2003" stated to a reasonable degree of medical certainty was the, "cause of his onset of high blood pressure and the initial atrial fibrillation" and further that it was the, "physical and emotional job stress placed upon him by his job duties and responsibilities that was the cause of this condition." There is no medical evidence to the contrary. Again, it was his, "opinion to a reasonable medical certainty that Mr. Menie's cardiological problems of atrial fibrillation and high blood pressure were caused by the physical and emotional stress arising out of and from his job duties, responsibilities and work load."

8. That it was an error of law as not being based on the evidence and being on the basis of surmise, speculation and innuendo for the Commissioner to make Finding of Fact No. 18 in reference to the pressure that the Claimant was under and that it was not unusual based on the witness testimony. There is absolutely no evidence from any witness that the conditions to which Mr. Menie was exposed was not contrary to the usual and ordinary conditions of employment as an Auditor in the State Accident Fund during the period of time that was alleged to have resulted in his condition and in fact all of the testimony was to the contrary that the conditions were unusual and extraordinary in his employment during that period of time.

9. That it was an error of law for the Hearing Commissioner to making Finding of Fact No. 19 wherein he found that such conditions as labor turnover, illness of co-workers and computer problems are common in almost all work environments and are not unusual. This is a specific error of law and represents a total lack of understanding of the prior case law and our statutory law in reference to unusual and extraordinary conditions. In multiple cases including the case of Shealy v. Aiken Co., Stokes v. First National, Smith v. NCCI, and others wherein the Court has found all three (3) of these factors to be conditions that can constitute unusual and extraordinary conditions in the employment. This blanket Finding of Fact which is not a Finding based on the evidence and on applicable law is arbitrary, capricious and is evidence that the Commissioner's decision was based upon an abuse of discretion.

10. That the Hearing Commissioner erred as a matter of law by finding Finding of Fact No. 20 which is irrelevant to whether or not the conditions are unusual and extraordinary to which the Claimant was exposed.

11. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 21 specifically where there is no evidence that the Claimant, "voluntarily took on the position" and it is further an error of law because the Finding that he was commended or received a pay raise for his work has nothing to do with and is irrelevant and immaterial to the decision of whether or not the Claimant sustained injury by accident arising out of and in the course of his employment due to unusual and extraordinary conditions and also further establishes that the Commissioner's Decision was arbitrary, capricious and characterized by an abuse of discretion.

12. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 22 wherein he states that Dr. Hendricks saw the Claimant six (6) times in 2003 and 2004 and did not mention stress. This Finding is irrelevant but more importantly it is contradicted by Dr. Hendricks' testimony and evidence presented that when he first saw Mr. Menie in the hospital following his initial atrial fibrillation on March 3, 2003 he and Mr. Menie specifically discussed at that time that he was under a lot of job stress at work.

13. That the Hearing Commissioner erred as a matter of law both concerning his statement as to what a medical doctor may testify to concerning whether or not conditions are unusual and extraordinary and as to the doctor's opinion wherein the doctor stated that it was his opinion that Mr. Menie's atrial fibrillation and high blood pressure, "resulted from, as Mr. Gambrel put it 'extraordinary' job duties, responsibilities and workload of his job." Any expert may testify as to the ultimate issue in any case as a matter of law under our existing evidence law and the Commissioner's statement to the contrary is an error of law and must be reversed.

14. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 2 wherein such Conclusion of Law is contrary to the established precedents under S.C. Code §42-1-160 as to the establishment of a heart-related condition as being due to unusual and extraordinary conditions.

15. That the Hearing Commissioner erred as a matter of law by not finding the claim compensable where the employer had agreed to accept the claim in principle following the accident when the claim was filed.

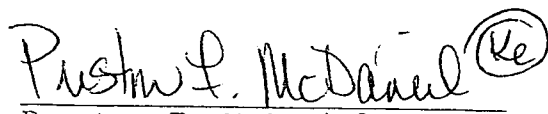
16. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 3, 4 and 5 all of which are based upon Conclusion of Law No. 2 that he did not sustain an injury by accident upon which these Conclusions of Law are based.

17. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law No. 7 which is also based upon the decision that the Claimant did not sustain his burden of proof of proving as a matter of law that he had sustained injury by accident as a matter of law under the Act.

18. That the Hearing Commissioner erred as a matter of law by finding that the Claimant had not established that the conditions of employment were unusual and extraordinary where he does not state why each of the issues and conditions as presented to his treating doctor were not unusual and extraordinary.

The above-referenced exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted:


Preston F. McDaniel
Attorney for Claimant

April 30, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
ALVIN L. MENIE,)
Employee/Appellant,)
vs.)
STATE ACCIDENT FUND,)
Employer,)
and)
SELF-INSURED,)
Carrier,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No.: 2012-CP-40-08296

**APPELLANT'S
MEMORANDUM OF LAW**

STATEMENT OF THE CASE

The Perfect Storm. It is undisputed that in the Fall of 2002 there were three (3) auditors in the Auditing Department of the State Accident Fund to do all of the auditing work required of the Department and of the State Fund: Mr. Al Menie, Ms. Carla Johnson and Ms. Shaun Holmon and that as of the last week of December 2002 both Ms. Carla Johnson and Ms. Shaun Holmon were no longer in the Auditing Department of the State Accident Fund leaving Mr. Menie to do all of the auditing work and other responsibilities of the Auditing Department. (See Transcript quotes hereinafter). Ms. Holmon took a job with the State Retirement System as a Customer

Service Manager and Ms. Johnson went out on sick leave due to a severe back problem requiring surgery. (See Transcript quotes hereinafter).

It is also undisputed that in December of 2002 the State Accident Fund advised all of its premium accounts that they would incur a huge rate increase which would average 24.7% effective January 1, 2003. This was the first rate increase in many years and the largest increase in the history of the State Accident Fund. (Claimant's APA Submissions, p. 113).

It is also undisputed that the State Accident Fund was implementing a new computer system at this time and that the State Accident Fund was not using NCCI classifications codes but was using its own classification codes that had to be entered, checked and corrections made and then re-entered and re-entered and re-entered many times before they were usable and would work in the new system. (See Transcript quotes hereinafter). This problem added greatly to the workload of the auditors. [NCCI stands for the National Council of Compensation Insurers (hereinafter NCCI) which publishes a set of classification codes used to classify all jobs into categories. The jobs in a given category are rated at so much per \$100 of salary to determine the premium owed for each job. For example, carpenter \$10/\$100 of salary, office worker \$1/\$100 of salary. \$30,000.00 annual salary = carpenter - \$3,000.00; office worker, \$300.00.]

Ms. Holmon who testified for Mr. Menie testified that she had been with the State Accident Fund for fifteen (15) years before leaving to take the position with the Retirement System and that at the time she left she was a premium auditor and had been in that position for years. (Tr., p. 12, ll. 3-21.)

In reference to her duties as a premium auditor with the State Accident Fund she testified as follows:

"Q: Tell me about how the team concept was supposed to work.

A: Well, it was divided up into 3 or 4 teams. They were assigned accounts, perhaps based on a geographical location, and this particular team was responsible for those accounts from beginning to end as far as those employers, policy holders of the State Accident Fund. You had a group of adjusters, and they would adjust the claim. Had a safety rep, had the premium auditors responsible for the premium, and, you know, several assistants for the most part for the claims adjusters. The concept was set up based on these people, were solely responsible for these 200-plus accounts, any and everything as it related to their workers' comp premium with us, policy.

Q: In reference to emails, mail, communications, questions that had to do with anything in reference to the auditing function, if it came in from those accounts, who would handle that within the auditing department?

A: Only the premium auditor."

(Tr. p. 13, ll. 2-23).

She further testified as to the responsibilities of the auditors and the effect that a change in the premium would have on a State or local agency as follows:

"Q: Tell me what an auditor for the State Accident Fund in 2002 and his team concept did? I understand premium audits that type of thing. I am going to ask you something about scheduling in a minute. But first off, just tell me what all that entailed other than . . . including the audits, but what all that entailed.

A: Well, we generated their premium. The State Agencies were on an F-Y schedule; cities, counties, municipalities on a calendar. And so they received an estimate at the beginning of the policy, and they received an audit at the end of the policy, or after the policy period had expired. Of course, with those 200-plus accounts, whether you were discussing the base amount based on those class codes for that type of business, it was our responsibility to assign it, to defend it or justify it, as well as the experience modifier. In the event that the employer questioned their experience modifier, as to why it was so high or whatever, it was our responsibility to explain that. Those usually consisted of meetings. (Note: experience modifier sometimes referred to as E-Mods).

. . . .

Q: Tell me what would generally cause an auditor to go out and have a meeting with an account?

A: Well, I think the State -- most of the -- for the most part the State Agencies were the worst because you are talking about huge organizations with a lot of payroll -- Department of Corrections, Mental Health, D.S.N. and so they could very well have a million dollar base premium based on those class codes for that industry, that the

experience modifier, the e-mod, took into account the frequency and severity of those claims. SO instead of that premium being for one year, 1,000,000, if they had a 2.0 e-mod it would double, or on occasion they would triple, and so, you were called out to that Agency, and they'd kind of blindsided you because you would be under the impression that you were meeting with an H.R. person and when you walked into the room they would have a C.P.A., they would have their Director and their Benefits Administrator, and you're actually just there to break this down to them to help them understand and justify the numbers. And the numbers weren't always justifiable. Now, hopefully we would hone in on that before we went out there. You could make corrections. But any time someone would challenge the validity of your class codes or your e-mod, you know, it was a problem. Sometime several meetings before conclusion.

Q: So, on a year-to-year basis if somebody's e-mod went up you could pretty well expect a call?

A: They more or less had to call just to keep their job in a lot of instances because, you know there are a couple of people -- especially at a huge agency you know. They've got Benefits Administrators, and for some of them that may be their only job. If it is a small organization, they might be doing workers' comp and a number of other things. You know, they have a Safety Rep who is, you know, responsible for decreasing those claims as well. So, chances are if it -- you know, and especially if it dramatically increased from one year to the next, I mean, you would actually have to go out on occasion and show them every claim, and they would want to challenge, well, this should -- shouldn't have this reserve on it because it was closed, so it should only reflect what you paid on it. But if somebody -- you know, and every year was different as far as perhaps, the customers that would have those kinds of complaints or concerns for meetings because the mod would change every year. So, in a given

year it was hard to say, you know, how many of those would occur. It just depended on the organization, the people that were in charge and, you know, based on their request.

Q: But would it be safe to say that anytime there was a significant change in the rate of any of the Agencies that would put an additional stress on those Agency personnel to -- because of the increase in the budget and the problems that it caused for their budgets; is that correct?

A: Oh, definitely. I had Greenville Sanitation tell me once that they were going to have to let somebody go just to pay their workers' compensation premium."

(Tr., p. 15, l. 13 - 17, l. 24).

In a letter to their policy holders, senior premium auditor

A.L. Menie wrote,

"Effective January 1, 2003 rates increased an average of 24.7 percent. This is the first base rate increase since 1996. . . ."

Since 1999 our average medical costs have increased 44 percent. The average indemnity costs have increased 52% since then."

(Claimant's APA Submissions, p. 113).

Ms. Holmon agreed that there had been no significant rate increases and that this was the largest rate increase to her knowledge ever in the history of the Agency and that the 24.7% rate increase would generate all types of calls and questions from every Agency to determine whether or not their rate was going to increase and would cause them to argue about whether or not they should be reclassified. She testified generally concerning all the

variations and things that would be on the accounts' minds and about which they would be calling as this could cause many people their jobs and cause Agencies to absolutely not be able to meet their budgets. (Tr., p. 20, l. 13 - 23, l. 11).

She also testified about the new computer system that was put in place in 2002:

"Q: . . . There was a new computer system that came in, in 2002. Tell me what that did to -- did it just come off the ground smoothly or did you all have problems with it?

A: Unfortunately, from what I recall I think we just got the wrong vendor. The other company didn't reach the bid process in time or something. But, you know, we -- the computer system that we got, at that time it had a lot of glitches, the premium piece. They -- you know, I think they had the claims piece down, that model. But the premiums, it was a lot of work. It was a lot of -- there were a lot of glitches in the system and the only way to ensure initially that these E-Mods were correct -- because everyone else in the State -- they had -- normally they go through NCCI. So NCCI, they are generating those E-Mods. Well, we generated our own E-Mods, and it was an unstable computer as far as this new program. Like everything else, it had to iron out the kinks. We would actually have to test them because it took awhile before that system was fully functional."

(Tr., p. 25, l. 7 - p. 26, l. 4).

She went on to explain that data had to be reentered numerous times and that it generated a lot of additional meetings over the validity of E-Mods which placed even more work on the auditors because sometimes the E-Mods were doubling and tripling during

this time period (i.e. doubling or tripling the premiums). (Tr., p. 26, l. 5 - p. 27, l. 18). Ms. Holmon then testified that Ms. Carla Johnson in the fall of 2002 was out a good bit due to her back injury and that this put additional stress on her and Mr. Menie. (Tr., p. 27, l. 19 - p. 29, l. 19). She was then questioned about the evaluation of Mr. Menie that was conducted by Ross Gamble, who is the Deputy Director, which is found at p. 186-189 of the Claimant's APA Submissions. In that evaluation at p. 189 in the "SUMMARY AND IMPROVEMENT PLAN", Mr. Gamble, the Deputy Director for the Agency, noted:

"Al is to be commended for the personal initiative he took during the late 2002 and early 2003 time when he voluntarily took on extra duties while we were short two premium auditors to make sure that all policy transactions were completed on a timely basis. During this same time he continued to make every effort to delight all customers needing assistance."

Ms. Holmon testified beginning at l. 31 that Mr. Gamble also reviewed her job performance and that she had worked with Mr. Menie for many years and that she agreed with the comment that Mr. Menie was diligent and highly customer focused. Further, based on her experience with Mr. Menie and based on her observations of him on a day-to-day basis, she would describe him as diligent, as an excellent employee and that he would definitely try his very best to make people happy and that he was very personable. (Tr., p. 32, l. 1 - p. 33, l. 20). Ms. Holmon then testified as follows in reference to her normal and usual job duties as an auditor and the

job duties to which Mr. Menie was exposed beginning January 2003 when the two auditors were out of the Auditing Department:

"Q: Now, I think -- and I don't want to mischaracterize your testimony, but I think you said that you would describe your job as being as far as your workload, when you were there as an auditor, as being full; that you were able to get the job done, but it was a full workload?

A: Yes.

Q: Now, knowing those, your usual duties, and knowing your ordinary and common duties and ordinary -- your usual and ordinary duties and that you had a full workload to do those, if you had to do all of the duties -- in your opinion as an auditor with the State Accident Fund, knowing what the job requires, knowing all that, and you all of a sudden had to do all of the duties of all three auditors in the entire Auditing Department, in your opinion would that be unusual and extraordinary to the normal conditions, your usual and ordinary occupation?

* * *

A: Yes.

(Tr., p. 33, l. 21 - p. 34, l. 13; p. 34, l. 21).

Commissioner Lyndon then asked the witness:

"BY THE COMMISSIONER:

The reason I ask those questions, what has been objected to, he was asking -- he used exactly the definition of unusual and extraordinary conditions to employment. Was that unusual for -- and I'll note your objection, Mr. Haselden -- for a person to have to handle by himself or by herself?

BY THE WITNESS:

600 accounts? Extremely unusual. That is the kind of thing that, yeah, you might be able to get by with doing it for awhile, but you'd probably be looking

for another job, which had something to do with me looking for another job."

(Tr., p. 37, ll. 8-20).

Finally she testified that Mr. Ross Gamble, the Deputy Director, had come from Seibel's & Bruce and had experience in auditing and the experience modifiers and that even if you hired someone to come in and replace the person and even if they had experience in the area of auditing that there would be a learning curve of having to learn the process at the State Accident Fund (remember the State Accident Fund did not use the insurance industry standard NCCI Codes) before they would be of a tremendous amount of benefit in helping to alleviate the workload. Also, a new employee would require one of the auditors to take on the additional responsibilities to train the individual who was brought in which fell on Mr. Menie when neither one of the other two auditors were there when the new auditor was ultimately hired, who was Mr. Warren Farray. (Tr., p. 41, l. 10 - p. 44, l. 3; p. 48, l. 21 - p. 49, l. 5).

Mr. Menie then testified on his behalf and he confirmed Ms. Holmon's testimony that in the fall of 2002 there were three (3) auditors in the Auditing Department and that the new computer system was giving them a lot of problems in 2002 particularly with the experience modifiers,

"The people that were doing it, the computer techs that were doing from the IT Department, they would

submit the experience modifiers to us, the three (3) auditors, and we were to verify all the data in there as being accurate and which we would find a problem that they didn't see and we would resubmit it back to them and tell them we can't use these experience modifiers because they are, you know, wrong."

He testified that this was a constant and a repetitive trouble and they had to resubmit items numerous times. (Tr., p. 58, l. 6 - p. 62, l. 2).

At p. 68, l. 12 - p. 72, l. 12, Mr. Menie described his work duties beginning on January 2, 2003, when he came back to work without the other two auditors and testified that he now had to answer questions from all of the state, local and county agencies; that he spent the first 2 1/2 days alone trying to answer all of the questions that were on his voicemail which contained 25 voicemails before it was full and that it was constantly full; that he had to answer the telephone for all of the three (3) telephone lines, including all 800 calls and all direct calls; that he had to review/address all the correspondence concerning the rate increase; that instead of having 33 audits to do that month, he was now facing having to do 99 audits; that he spent 58% of his time according to his time records on the other auditors' caseload, 400 audits and agencies for which they were responsible, and that in his opinion, "it was definitely an overload." He testified also that on March 3rd, the date that he had the heart condition (atrial fibrillation), wherein he had to be taken to

Lexington Medical Center on an emergency basis, that he came in and a new auditor had been hired and reported that day for what his first day, at which time Mr. Menie's only thought was that in addition to all of the other activities that he had to do that, "I've got this man to train and I've got to keep up with all of these other things as well, and then when I went home about 6:00 o'clock. . . ." He had the heart attack. (Tr., p. 68, l. 17 - p. 72, l. 15; p. 75, l. 7 - p. 77, l. 8).

He then acknowledged that after filing a Form 12A that the claim had been assigned for internal investigation by Mr. Willie Hysmith and the State Accident Fund had sent him to Dr. Selman Watson. He had been given a copy of Dr. Selman Watson's report in which Dr. Watson stated that in his opinion he appeared to have suffered a cardiac arrhythmia from, "the accumulation of stress on the job", (Claimant's APA Submission, p. 110) but he did not know that Dr. Selman Watson had also written a letter to Mr. Hysmith on July 30, 2003 and he had not been told that Dr. Selman Watson in that letter stated the opinion that anxiety contributed to his heart condition last March which was likely from his work. Mr. Hysmith, as the assigned investigator, did advise Mr. Menie that the State Accident Fund had decided to accept the case and were willing to pay him all of his out-of-pocket expenses. (Tr., p. 77, l. 16 - p. 86, l. 8).

Mr. Menie then testified as to whether or not the conditions to which he was exposed in January were unusual and extraordinary as compared to his normal job duties and testified as follows:

"Q: You were doing auditing for the State Accident Fund for a long time and you were aware of your regular and ordinary duties prior to January 1, 2003, were you not?

A: Yes Sir.

Q: Able to do your job up until January 1, 2003?

A: Yes Sir.

Q: Would you describe it as a full workload to do your job, the job that you were required of you to do the auditor's job, one job?

A: Yes, yes.

Q: As compared to your normal and usual daily activities, how would you describe the activities in January and February? Were they ordinary and usual, or were they extraordinary and unusual to your normal job duties?

* * *

A: They -- yeah, they were extremely unusual and out of sequence of the previous months of -- '02 or -- '01 or so forth. Like I say, I was a very conscientious person, and I kept my work up to day in '02 and previous years, but in '03 it was such a stress load on trying to get all this done and trying to accomplish by talking to each of these policy holders. I sympathize with them when their policy premium went up 300% that they felt they would have to dismiss someone to pay their premiums, I mean, that type of stuff kind gets to a person that has a sympathy feeling towards people under those conditions."

(Tr., p. 97, l. 3 - p. 98, l. 11).

Mr. Ross Gamble who was Executive Deputy Director of the Agency, in his evaluation report on Mr. Menie performed on October 10, 2003 stated:

"Al is to be commended for the personal initiative he took during late 2002 and early 2003, a time when he voluntarily took on extra duties while we were short two (2) premium auditors, to make sure that all policy transactions were completed on a timely basis. During this same time he continued to make every effort to delight all customers needing assistance."

In addition, in an interagency memorandum dated April 15, 2003 in noting that Mr. Menie was going to be given a performance raise, which was written six (6) weeks after the Claimant had had his heart condition which sent him to the hospital on an emergency basis, Ross Gamble, the Executive Deputy Director of the Agency, stated:

"We recognize that during the past year you have played and continue to play a key role in collecting the revenue and conducting premium audits. You helped keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances."

Dr. Charles Hendricks stated in a report found at pages 3-8 of the Claimant's APA Submissions under Question 1 that Mr. Menie had no prior problems with cardiac problems or high blood pressure prior to his hospital admission on March 7, 2003.

In Question 2 he acknowledged that during that hospitalization that he and Mr. Menie had had a discussion wherein

Mr. Menie had relayed to him in general terms that he was under a lot of job stress at work.

Under Questions 4 and 5 that he had reviewed the job description of Mr. Menie as an auditor as to his responsibilities and that he had specifically reviewed and discussed the changes in Mr. Menie's workload, hours, and job responsibilities that occurred between 2002 and 2003 under Question 5 and all of the various factors that changed including Ms. Carla Johnson and Ms. Shaun Holmon leaving the Agency; that Mr. Menie had the responsibilities of all the auditing and functions of the Auditing Department by himself as of January 1; that a tremendous rate increase of 24.7% occurred that generated a tremendous amount of increase in calls and requests for information concerning the various activities under the responsibility of the auditors' job; and that he had considered the statement by the Deputy Director, Mr. Ross Gamble, wherein Mr. Gamble recognized that Mr. Menie had kept these activities going including these essential functions throughout the period of transition caused by staff turnover and other "extraordinary circumstances".

This description of these various changes concurred with what Dr. Hendricks understanding was of the job responsibilities leading up to his first atrial fibrillation that occurred on March 3, 2003 and his opinions expressed were based upon that understanding.

In Question No. 7, it was his opinion to a reasonable degree of medical certainty that Mr. Menie's job responsibilities and workload were the cause of his high blood pressure and atrial fibrillation that occurred on March 3rd and that that was his opinion to a reasonable degree to medical certainty. He also stated that among cardiologists specializing in the treatment of cardiovascular problems that two (2) of the known causes of atrial fibrillation are high blood pressure and physical and emotional stress and that it was impossible to tell which came first, the high blood pressure or the atrial fibrillation as to which one caused which one, or if they occurred simultaneously. But that again, it was his opinion to a reasonable degree of medical certainty that both the high blood pressure and atrial fibrillation which occurred or developed on March 4, 2003 developed as a result of the physical and emotional stress that was caused by, as it was put by Mr. Gamble, from the extraordinary job duties, responsibilities and workload of Mr. Menie's job.

He also stated that in his opinion that all of Mr. Menie's subsequent atrial fibrillations and his chronic condition of atrial fibrillation stemmed from the original physical and emotional stress placed on him by his job and that Mr. Menie would have to have ongoing medical treatment for his heart and high blood pressure and that he would need to be under the care of a

board certified cardiologist such as himself for the remainder of his life.

He stated the opinion at p. 10 of the Claimant's APA Submissions that Mr. Menie's condition was permanent and that under the AMA Guidelines for the Rating of Permanent Physical Impairment that Mr. Menie had a 30%-49% permanent impairment and that he should be limited from and was not capable of any stressful, sustained or forceful activity (work) and that he was limited to sedentary work only. (Claimant's APA Submissions, p. 10).

Finally Mr. Menie described the severe limitations that he has upon any type of activity due to his problems with his atrial fibrillation and the medical care that he is receiving from Dr. Hendricks.

The Defendants called two (2) witnesses to testify, Mr. Gerald Allen Murphy and Mr. Kirk J. Adair. [It should be noted that neither Mr. Ross Gamble nor anyone involved with the auditing functions in 2002 or 2003 were called as witnesses for the Defendants.]

Mr. Gerald Murphy testified that he had been with the State Accident Fund since 1995 in Personnel Administration and in 2004 he assumed the responsibilities and was the manager of Administrative Services which included handling personnel

recruitment and placement, leave and a performance management system.

His only testimony relevant to the time period of the alleged period of unusual and extraordinary conditions was that Mr. Menie did not have any extraordinarily long hours during that time period; that Ms. Carla Johnson had actually returned to work in the middle of February and that Mr. Farray who started on March 3rd had experience. (Tr., p. 116, l. 20 - p. 120, l. 12). He testified further that after Mr. Menie retired in 2009 (five (5) years later) that they were able to reduce the auditing staff to two (2). He also testified that Mr. Chris Bowles, who was an auditor that had been hired later on by the State Accident Fund had recommended after the retirement of Mr. Menie in 2009 a reduction to two (2) auditors and that after he had left the Agency, Mr. Farray, ~~the remaining auditor, did the actual auditing function alone for approximately three (3) months.~~ However he admitted on cross-examination that at the end of that period again after 2009, Mr. Farray was found laying in a comatose state outside of the State Accident Fund, was rushed by EMS to the hospital and then died three (3) weeks later. (Tr., p. 131, l. 4 - p. 132, l. 8). He also acknowledged that Mr. Willie Highsmith had conducted the investigation internally along with Crawford & Co.

Mr. Kirk Adair was called to testify and testified that he is a premium auditor with the State Accident Fund at the time of the hearing and was asked questions concerning the work as a premium auditor at the time of the hearing. His testimony was objected to as not being relevant or material since he was not a premium auditor during the time period of 2002 to 2003 which objection was overruled and he was allowed to testify as to the current position of the auditor with the State Accident Fund (Tr., p. 141, ll. 16-20; objection, p. 141, l. 21 - p. 143, l. 4). On cross-examination he admitted that he did not have to enter the experience modifier information at all because: the system was now, "automated". (Tr., p. 144, l. 22 - p. 145, l. 4). He also admitted that the State Accident Fund no longer uses its own classification system but now they have gone to the NCCI model which codes are in the computer and the computer simply automatically generates the experience modifier. (Tr., p. 146, l. 15 - p. 147, l. 13).

From the Decision of the Hearing Commissioner as sustained by the Full Commission finding that the Claimant did not meet his burden of proof in establishing compensable injury based on defense testimony that years after the Claimant's alleged heart condition and after the computer system was in place that an auditor had been able to handle this for brief periods of time; and on Mr. Adair's testimony that currently the job was not as

difficult as his previous jobs; and that the Claimant never asked for help; and on the general finding that labor turnover, illnesses of co-employees and computer problems are common in all work environments; and that the Claimant continued to voluntarily work in his job and received a pay raise for his work, this appeal follows.

STANDARD OF REVIEW

This is a workers' compensation case and as part of the Standard of Review under the APA basic fundamental principles apply to all claims under the Workers' Compensation Act and the application of the legal precedents to the claim of an injured worker:

"Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial and a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away and such law should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results." Cokely v. Robert Lee Co., 197 SC. 157, 14 S.E.2d 889 (1941).

In addition, the Standard of Review applies that has been established by the SC Administrative Procedures Act (APA) as to awards and decisions by the SC Worker' Compensation Commission.

Under the scope of review established in the APA, the Court(s) on appeal may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Commission's decision if the appellant's substantial rights have been prejudiced because the decision is affected by error of law or is clearly erroneous in view of the reliable, probative and substantial evidence on the whole Record. S.C. Code Ann. §1-23-380(5)(e) (Supp. 2013). In reference to the definition of substantial evidence, our Appellate Courts have held that substantial evidence is evidence that in viewing the Record as a whole would allow reasonable (Webster - being in accordance with reason) minds to reach the same conclusion that the Commission reached and the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence. Lark v. BiLo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The reviewing Court may reverse or modify the decision of the Agency if the substantial rights of the appellant have been prejudiced because of administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedures; (d) affected by other error of law; (e) clearly erroneous in review of the reliable, probative and substantial evidence on the whole record,

or (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. §1-23-380(A) (5) (Supp. 2006).

ARGUMENTS

- I. THE CLAIMANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT HE HAD SUSTAINED INJURY BY ACCIDENT AS DEFINED UNDER S.C. CODE §42-1-160 AND SINCE THERE IS ABSOLUTELY NO SUBSTANTIAL EVIDENCE TO THE CONTRARY AND THE COMMISSION'S DECISION TO THE CONTRARY IS THUS BASED ON SURMISE, SPECULATION AND INNUENDO, THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO AWARD THE CLAIMANT BENEFITS.

The uncontroverted evidence put into the Record by the Claimant as detailed in the Statement of the Case is as follows:

1) The Claimant testified that the conditions of his employment to which he was exposed between January and March of 2003 were unusual and extraordinary to the usual and ordinary conditions of his employment. *OP13*

2) His fellow co-worker and auditor who was one of the two other auditors in the Department up until the end of December 2002 testified identically the same, that is that the conditions to which Mr. Menie was exposed between January and March 2003 based on her knowledge of the usual and ordinary conditions of employment of an auditor in the Auditing Department of the State Accident Fund (SAF) were unusual and extraordinary to those usual and ordinary conditions. In fact she testified they were extremely extraordinary and unusual.

3) The Claimant put into the Record documentary evidence from the Deputy Director that Mr. Menie was to be applauded for his work during this time during this period of transition caused by staff turnover and, "other extraordinary circumstances". #3

4) His treating cardiologist, Dr. Charles Hendricks, M.D., testified to a reasonable degree of medical certainty based on his knowledge of the facts and circumstances of the Claimant's employment that in his opinion the Claimant's heart condition was caused by the Claimant's working conditions. #4

5) The psychologist to whom the Defendants had sent Mr. Menie during investigation, Dr. Selman Watson, Ph.D., stated the opinion that in his opinion the problems that he was having with his heart were caused by an accumulation of the stress from his job. #5

~~There is simply no evidence in the Record to the contrary. Where there is no substantial evidence in the Record to support the Commission's decision, the Court should and must as a matter of law reverse the decision. This has been the holding of the Supreme Court and Court of Appeals repeatedly and specifically in such decisions for example as Grayson v. Carter Rhoad Furniture Co., 317 S.C. 306, 454 S.E.2d 320 (1995); Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (SC App. 2012) (cert. den. 2014).~~

The Claimant's burden of proof is simply to prove by a preponderance of the evidence that he sustained injury by accident as defined under S.C. Code §42-1-160. The Supreme Court has held since time in memoriam as specifically stated in the case of Groesbeck v. Marshall, 44 S.C. 538, 22 S.E. 743 (1895) that the plaintiff is not required to prove to the jury (the Commissioner in this case) or to establish his case by a beyond a reasonable doubt but is required simply to prove his case by a preponderance of the evidence which means that when the,

"plaintiff satisfies the jury by putting into evidence that it is more likely than not that such and such is the case, - not absolutely proved, not absolutely true, . . . nor . . . beyond a reasonable doubt, but, by the preponderance of the evidence that it is more likely than not that such and such was the case, then you can safely say that . . . the complaint has been established by a preponderance of the evidence."

At the time that this injury occurred the evidence that was required to be put forward by a claimant to meet his burden of proof under S.C. Code §42-1-160 was based on case law not by statutory fiat as it is today. Ever since the Supreme Court decision in Kearse v. South Carolina Wildlife Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960), the definition or the standard that the claimant has to meet in a heart attack or a heart condition case is simply this, if the heart condition is, "induced by unexpected strain or over-exertion in the performance of the duties of his employment, or by unusual and extraordinary

conditions in employment", the condition is compensable as constituting injury by accident. There are two cases that are instrumental that have been decided in the favor of the Claimant in those cases in reference to the Claimant's heart condition in this case. Since the Hearing Commissioner put great emphasis on the length of time to which the Claimant was exposed to these conditions, the Claimant would point out the case of Poulos v. Pete's Drive-In No. 3, 284 S.C. 264, 325 S.E.2d 583 (S.C. App. 1985) wherein Mr. Poulus was hired on February 3, 1979 and died of a fatal heart attack on April 9, 1979. He was hired primarily to be responsible for attending the counter and handling the cash register. However, within several weeks of employment he was working longer hours and had to take on additional duties such as preparing food and was undergoing criticism for his dress and appearance. The claimant's family doctor testified that in his opinion unusual stress and strain associated with the employment contributed to the fatal heart attack and Dr. Steven Gold, internal medicine specialist, testified in response to a hypothetical question that his working conditions contributed to the heart attack. ~~The Claimant would also note to the Commission~~ based on that case specifically in reference to this case that the Hearing Commissioner committed an error of law in that he stated that a doctor cannot state an opinion in reference to unusual and extraordinary conditions of employment. While it is for the

Commissioner's decision to state whether or not the Claimant has met his burden of proof from a legal standpoint, a doctor is totally qualified to give an expert opinion as to whether or not the work conditions as described were the cause of the development of the heart condition.

In Cline v. Nosredna Corp., 291 S.C. 75, 352 S.E.2d 291 (S.C. App. 1986), Mr. Cline was a food service manager in April of 1982 when his employer decided to open a second restaurant with a totally different menu, 150 yards apart and in less than 4 months having to traverse between the two and overseeing the development of a totally different menu and deal with approximately 10 new food suppliers, Mr. Cline developed a heart condition and was diagnosed as having a heart attack which was awarded mainly due to the extra duties that he undertook during that 3-4 months. In fact Mr. Cline was diagnosed as having sustained a cardiac atrial fibrillation which is exactly the same condition that Mr. Menie developed. In that case, again the Commissioner applied appropriately the heart attack standard developed under Kearse and found that these extra duties and the increase in hours constituted extraordinary conditions in employment and awarded him benefits.

Now, as to the evidence in this case upon which the Commissioner was asked to rely in making his decision and which was presented to him to make his decision as to whether or not it

was more probably than not, which is the standard that the claimant must meet to establish that he had sustained injury by accident. It is uncontested that there were three (3) auditors going into the fall of 2002 and that as of January 1, 2003 that went from three (3) to one (1) auditor and Mr. Menie was that auditor. The auditing staff was broken up into a team concept with one (1) auditor being assigned to each team and each auditor had the responsibility of overseeing approximately 200 accounts and doing all the auditing work and work in the Auditing Department for those 200 accounts. As of January 1st, Mr. Menie had the responsibility of handling all 600 accounts. In December of 2002, the State Accident Fund notified all of its premium accounts that there was going to be 24.7% increase in the premiums and that this was the first premium increase since 1996 and that this was a more substantial increase than any other premium increase that had been made at any other time. (Again, none is over seven (7) years). See Statement of the Case.

Ms. Shaun Holmon testified that she was an auditor that left on December 31, 2002 and that in her opinion the conditions to which Mr. Menie was exposed being the only auditor to handle all the auditing functions and all the functions of the Auditing Department after January 1, 2003 were unusual and extraordinary to the normal conditions and usual conditions of employment as an auditor with the State Accident Fund. (See State of the Case).

Mr. Menie testified that in his opinion his duties in the Auditing Department beginning January 1, 2003 were unusual and extraordinary to his usual and ordinary job duties.

Next, Mr. Ross Gamble who was the Deputy Director during this period of time stated in a letter that Mr. Menie was to be commended for his work on behalf of the State Accident Fund during this time period of transition, "caused by staff turnover and other extraordinary circumstances". He also noted in Mr. Menie's performance evaluation that in late 2002 and early 2003 Mr. Menie, "voluntarily took on extra duties while we were short two (2) premium auditors and made sure that all policy transactions were completed on a timely basis."

Dr. Hendricks, a board certified cardiologist, stated the opinion that Mr. Menie's heart condition was as a result of these, "extraordinary circumstances" as described by Mr. Ross Gamble and that it was his opinion to a reasonable degree of medical certainty that Mr. Menie's job responsibilities during this time and the physical and emotional job stress under which he was placed by those duties were the cause of his heart condition. (See Statement of the Case).

In addition even Dr. Selman Watson, Ph.D. to whom the Claimant had been sent for an evaluation during the investigation of the claim stated the opinion that Mr. Menie had sustained a cardiac arrhythmia from, "an accumulation of stress on the job".

Therefore all of the medical evidence is that Mr. Menie's heart condition -- atrial fibrillation -- stemmed from the physical and emotional stress from his job activities. There is simply no contrary medical evidence.

In addition, there is absolutely no contrary testimonial evidence or other documentary evidence contrary to that of Mr. Menie and Ms. Holmon that the job conditions to which he was exposed beginning in January 2003 and up through the time of his heart attack on March 3, 2003, constituted unusual and extraordinary conditions to his usual and ordinary conditions of his employment. In addition to their testimony, the Deputy Director during that time, Mr. Ross Gamble, stated that in his opinion Mr. Menie was exposed to unusual conditions in his job during that time period. Again, there is simply no contrary evidence, material and relevant to that time period that the conditions of his job were not unusual and extraordinary to the usual and ordinary conditions of his employment.

In addition to the fact that not only did the Claimant meet his burden of proof by proving that it is more probably than not that his injury stemmed from his work activities and that he was exposed to unusual and extraordinary conditions in his employment, there is simply no evidence to the contrary and thus there is no contrary substantial evidence in the Record. The Commission's decision, either granting or denying benefits to an injured worker

must be based on evidence of substance to support the Award or denial of benefits and must not be based on surmise, conjecture or speculation. Walker v. City Motor Car Co., 232 S.C. 392, 102 S.E.2d. 373 (1958). In this case, the Commission's decision is based on simply that; surmise, speculation and innuendo. There simply is no evidence contrary to that of the Claimant and the medical evidence that he produced to support the factual evidence that he produced. The only testimony or evidence that was presented outside of that presented by the Claimant was that of the two (2) witnesses that testified for the Defendants. Mr. Adair was not even with the State Accident Fund at the time that this occurred. Mr. Murphy was not involved with the Auditing Department and only gave testimony as to the hours that Mr. Menie worked, that Ms. Coleman came back a week and half earlier than was thought and as to the credentials of the auditor that was hired and started on March 3rd of 2003. There is simply, again, no testimony or evidence contrary to that of the Claimant and the evidence the Claimant put forward as to the issue for decision by the Commission under law which were the conditions of the employment unusual and extraordinary. There is no question that the Claimant established that it is more probable than not, or in other words by a preponderance of the evidence, that from a factual basis he was exposed to unusual and extraordinary

conditions in the employment and that the conditions of employment to which he was exposed were the cause of his heart condition.

The Commission in fact did not disagree that the Claimant established from a medical standpoint that the physical and emotional stress of the job caused his problems and having agreed upon that, the only other issue is again whether or not those conditions were unusual and extraordinary to the normal and usual conditions of his employment. Here again, there was no contrary evidence to that presented by the Claimant, Ms. Holmon and Mr. Ross Gamble as to the conditions of between January and March 3, 2003. No one, and the Claimant would like to emphasize no one, came in and testified that the conditions of his employment during this period of time were his usual and ordinary conditions of employment. There being no such evidence, the Commission erred by not granting this employee benefits.

II. THE COMMISSION ERRED AS A MATTER OF LAW BY NOT EXCLUDING THE TESTIMONY AND RELYING ON THE TESTIMONY OF MR. KIRK ADAIR.

It is admitted that Mr. Adair was not with the State Accident Fund at the time Mr. Menie's injury occurred in 2003. His testimony was related to the position of an auditor at the time of the hearing in 2010. There is no question that the Hearing Commissioner relied on his testimony and that of Mr. Murphy that there had been, "other times when auditors worked in a like position. Mr. Adair testified that he, "had handled the job by

himself and it was not as difficult as his previous jobs."

Claimant's Counsel objected to Mr. Adair's testimony and that of Mr. Murphy as being irrelevant and immaterial to the conditions of employment at the time the injury occurred.

Relevancy and materiality are often confused but there are two (2) general propositions that apply to both, and one in particular to materiality. To be relevant and material, it is necessary that the facts shown by the evidence offered legally tends to prove or make more or less probable, some matter at issue and bear directly or indirectly thereon.

"If there is no logical or rational connection between the facts sought to be presented and a matter of fact in issue in the case, the evidence is immaterial and inadmissible." Gauze v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968).

In this case, the issue involved was whether or not the conditions of the Claimant's employment between January 1, 2003 and March 3, 2003 were unusual and/or extraordinary as compared to his usual and ordinary conditions of employment up until that time. It is totally immaterial to a decision on that issue as to what the conditions of employment of an auditor were at the time of the hearing, some 9 years later or in fact even after March 3, 2003 or at any other time.

"Evidence to be admissible, must be material. Evidence which does not fulfil this requirement may be rejected. Thus it may be rejected where the Court deems that a fact is not of probative value commensurate with the time required for its use as

evidence either because it is too remote or because the fact is too uncertain or speculative in its nature"

31A Corpus Juris Secundum, Evidence, §295, "Materiality", pp. 395-396.

In North Carolina State Bar v. Sheffield, 73 N.C. App. 349, 326 S.E.2d 320 (1985), the Court of Appeals of North Carolina found that testimony of an attorney's partner who had left the city several years before the incident was properly excluded as being too remote in time to bear upon the incident in question. More importantly, in two of our Court of Appeals decisions, one being Henderson v. St. Francis Community Hosp., 295 S.C. 441, 369 S.E.2d 652 (SC App. 1988), the Court ~~held that the testimony regarding the condition of the hospital's parking lot more than one year after the slip and fall accident was too remote and was thus~~ inadmissible in a visitor's negligence action against the hospital. In Rutledge v. St. Paul Fire & Marine Ins. Co., 286 S.C. 360, 334 S.E.2d 131 (SC App. 1985), the valuation reflected in an appraisal prepared three years earlier was too remote in point of time to be considered in valuing a property destroyed by fire. In this case, again the testimony of Mr. Murphy was in reference to acts of auditors in 2009, some six years after the date of the accident of the Claimant and Mr. Adair's testimony was to his ability to handle auditing activities and the auditing activities at the time of the hearing in 2010. All of this testimony is

simply too remote and is totally immaterial and irrelevant to the working conditions of the Claimant at the time of his accident, at least six years before any of that testimony.

The evidence should have been excluded and the Commission erred as matter of law by relying on it in making its decision.

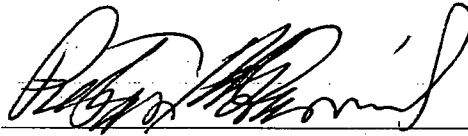
III. THE COMMISSION ERRED AS A MATTER OF LAW BY MAKING A GENERAL FINDING OF FACT THAT, "LABOR TURNOVER, ILLNESS OF CO-WORKERS AND COMPUTER PROBLEMS ARE COMMON TO ALMOST ALL WORK ENVIRONMENTS AND ARE NOT UNUSUAL".

The Supreme Court of South Carolina and the South Carolina Court of Appeals have both found that these conditions can constitute unusual and extraordinary conditions of employment. See specifically Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991); 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988), in which the Supreme Court and Court of Appeals both found that all three (3) of these factors specifically could constitute and did constitute unusual and extraordinary conditions in employment in that case. This Finding of Fact is totally and absolutely contrary to law and requires reversal as it indicates that the Commission failed to apply the law of the State of South Carolina to the facts in this case. It also indicates a bias and prejudice against the position of the Claimant and against an award of benefits in this matter in this type situation.

CONCLUSION

For all the foregoing reasons, the Decision of the Commission should be reversed and Mr. Menie awarded benefits in this matter as requested or that this matter should be remanded at a minimum for a de novo hearing due to the errors of law committed by the Commission in the reception of evidence and in the application of the law in this matter.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Preston F. McDaniel', is written over a horizontal line.

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Attorney for the Appellant

June 11, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Alvin Menie,)
)
) *Claimant/Appellant,*)
)
vs.)
)
State Accident Fund,)
)
)
) *Employer &*)
) *Carrier,*)
)
) *Defendant/Respondent.*)
_____)

C/A No.: 12-CP-40-8296

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

This is a denied claim of a cardiac injury and/or condition, which the Claimant Al Menie ("Menie") alleges to have resulted from unusual and extraordinary conditions of employment. More specifically, Menie alleges he was required to do the work of three premium auditors by the State Accident Fund ("SAF") for a period of time. The SAF denies that Menie's work conditions during that period were unusual and/or extraordinary and, consequently, the SAF denies that Menie is entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act ("Act").

This matter came to be heard before Commissioner G. Bryan Lyndon ("hearing Commissioner") in Columbia, South Carolina, on January 30, 2012, pursuant to the Plaintiff's Form 50 and the Defendant's Form 51. After considering the testimony from all of the witnesses, observing the witnesses during their testimony, reviewing the APA Submissions submitted by the parties and consideration of the applicable law, the Hearing Commissioner issued a Decision and Order dated April 11, 2012, in which the Hearing

Commissioner found and ruled that Menie had failed to prove that his heart condition was the result of unusual and extraordinary conditions of employment. Therefore, the Hearing Commissioner determined that Menie is not entitled to any benefits of any kind under the Act.

Menie thereafter appealed that Order to the Full Commission which heard oral arguments on August 28, 2012, and subsequently issued an Order dated November 29, 2012, which unanimously affirmed the determination of the Hearing Commissioner that the claim is not compensable. Menie thereafter timely appealed that Order to the Circuit Court.

STATEMENT OF FACTS:
HARDLY THE "PERFECT STORM"

Menie worked by himself as an auditor for the State Accident Fund ("SAF") for a grand total of 25 days in 2003. Menie claims that because of his increased workload during that period he suffered an acute onset of atrial fibrillation on March 3, 2003, and that the Hearing Commissioner incorrectly determined that his condition is not compensable. In doing so, Menie conveniently ignores the following (among other pertinent facts):

- Menie neither worked longer than normal business hours nor more than 40 hours per week during that period;
- Menie did not work any overtime during that period;
- Several other SAF premium auditors have worked by themselves for substantially longer periods without complaint;
- The majority of the policyholders who were affected by a 24.7% premium increase had paid their premiums by January 10, 2003;

- Menie did not mention to any treating physician that the atrial fibrillation was allegedly caused by on the job stress until over a year after it's onset;
- Menie's treating physician stated on September 7, 2010, that the "atrial fibrillation part of [Menie's] problem is clearly related to Agent Orange as far as I could discern . . .";
- Menie applied to the United States Department of Veterans Affairs for disability benefits related to his coronary condition;
- The SAFs' medical expert, Dr. Michael Zile, stated "to a reasonable degree of medical certainty that [Menie's] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes. . . . [He does] not believe that stress, anxiety or physical work load related to his job contributed to the development of atrial fibrillation. Therefore, [he believes] that it is more probable than not that the cause of his atrial fibrillation was preexisting cardiovascular and cardiovascular related diseases and not changes in his work environment which resulted in him developing a clinical syndrome of atrial fibrillation."; and
- Menie continued to work and do his job without restrictions or issues *for over six (6) years* until his voluntary retirement in May of 2009.

A Hearing was held before Commissioner G. Bryan Lyndon ("Hearing Commissioner") of the South Carolina Workers' Compensation Commission ("SCWCC") on January 30, 2012, in Columbia, South Carolina pursuant to Menie's Form 50 and the SAFs' Form 51. At the Hearing, Menie took the position that he sustained a work-related onset of atrial fibrillation on or about March 3, 2003, and that the condition was compensable under §42-1-160 of the South Carolina Workers' Compensation Act ("Act") and common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions resulting from unusual and extraordinary conditions of employment. Menie further maintained, represented and stipulated that he was not making any claim for back due or ongoing temporary total disability benefits, nor was he making any claim that he was permanently and totally disabled in accordance with §42-9-10 of the Act as a result of his

cardiac contention. Rather, Menie sought payment of all past causally related medical expenses, as well as all future causally related and compensable medical expenses pursuant to §42-15-60 of the Act and/or Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). With regard to permanency, Menie maintained, represented and stipulated that he was only seeking an award of scheduled permanent partial disability benefits of up to 250 weeks pursuant to R.67-1101 of the South Carolina Code of Regulations. Finally, Menie maintained he had an expert medical opinion to support his contentions as to the causality and compensability of his cardiac injury and/or condition.

The SAF took the position that the events of on or about January 1, 2003, to on or about March 3, 2003, did not in any way constitute unusual and extraordinary circumstances and/or conditions of employment. The SAF further indicated the Menie's personnel records reflected that Menie never worked more than a forty hour work week during the period in question. In addition, the SAF maintained Menie had previously attempted to allege his cardiac condition was related to his military service during the Vietnam War when Menie submitted an application for Veterans Disability Benefits to the United States Department of Veterans Affairs (hereinafter referred to as "the V.A.").

In light of these contentions, the SAF further maintained Menie could not meet his burden of proof under §42-1-160 of the Act and/or common law jurisprudence interpreting the compensability of heart attacks and other cardiac conditions resulting from unusual and extraordinary conditions of employment. The SAF's' denial of compensability was also based upon the testimony of Menie's former co-workers and/or supervisors regarding Menie's work conditions and work responsibilities during the period in question.

ARGUMENT

I. STANDARD OF REVIEW.

"The Appellate Panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact." Shatto v. Mcleod Regional Medical Ctr., Op. No. 5239, slip op. at 3 (Ct. App. June 11, 2014); Etheredge v. Monsanto Co., 349 S.C. 451, 454, 562 S.E.2d 679, 681 (Ct. App. 2002). "The findings of the Appellate Panel are presumed correct and will only be set aside if unsupported by substantial evidence." Shatto at 3; Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Shatto at 3; Taylor v. S.C. Dep't of Motor Vehicles, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (internal citation omitted). Upon a review of a decision of the SCWCC, the circuit court is neither permitted to substitute its own findings of fact for those of the SCWCC, nor substitute its judgment for that of the SCWCC as to the weight of the evidence. Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987); Tobey v. L&P Constr. Co., 296 S.C. 122, 370 S.E.2d 897 (Ct. App. 1988).

II. MENIE FAILED TO PROVE THAT HE SUSTAINED A COMPENSABLE WORK RELATED INJURY AND THE SCWCC'S DETERMINATION AS SUCH WAS FOUNDED ON THE SUBSTANTIAL EVIDENCE IN THE RECORD.

The case law regarding a claimant's burden of proof pursuant to S.C. Code Ann. §42-1-160 is rather clear and well-settled. A claimant has the burden of proving that he suffered a compensable injury by accident arising out of and in the course of his

employment pursuant to S.C. Code Ann. §42-1-160. The SAF respectfully submits that the SCWCC's determination that Menie failed to establish that his work environment at the SAF during the relevant time period rose to the level of unusual and extraordinary conditions of employment is *more* than substantially supported by the evidence in the record. In fact, the whole of the evidence presented establishes that Menie was essentially a 'walking time bomb' with respect to atrial fibrillation in light of the fact that he had numerous other risk factors as of March 3, 2003.

A. SOUTH CAROLINA CASES ON INJURIES OCCURRING DUE TO UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT DO NOT SUPPORT MENIE'S ALLEGATION THAT HIS ATRIAL FIBRILLATION IS COMPENSABLE.

Kearse v. SC Wildlife Resources Department, 236 S.C. 540, 115 S.E.2d 183 (1960), involved a 63 year old wildlife officer who, for a period of two to three weeks, worked from before sunrise until 8:00 – 10:00 P.M. trying to apprehend people trapping fish illegally along the Salkehatchie River. In addition to the extreme hours, the evidence in the record indicated that Kearse was required to endure considerable physical exertion to get his vehicles into position to apprehend/pursue suspects, including push starting an automobile and dragging a boat through a swamp. Kearse had a stroke resulting in partial paralysis and was awarded permanent and total disability.

In McWhorter v. SC Department of Insurance, 252 S.C. 90, 165 S.E.2d 365 (1969), the claimant was an investigator for the SC Department of Insurance. His job typically required him to be there 9 to 5, but with the lunch hour and other guaranteed breaks he was afforded, his typical work week was 36 hours of actual time performing his duties. However, in the ten or so days before he ultimately died of a heart attack, McWhorter worked 121 hours and drove 1,500 miles in anticipation of an upcoming trial in Greenville County. He worked a total of 23 hours on the Saturday and Sunday immediately prior to

the trial. On the Monday the trial commenced, McWhorter awoke at 3:00 A.M. and picked up a witness. He then assisted with trial preparation from 7:00 – 9:00 A.M. During the lunch recess on the first day of the trial (that Monday), McWhorter carried several large files over to the Solicitor's Office, walked down three flights of stairs and dropped dead of a heart attack. The claim was deemed compensable.

In Cline v. Nosredna Corporation, Inc., 291 S.C. 75, 352 S.E.2d 291 (Ct. App. 1986), the claimant had preexisting congestive heart failure and was a food service manager for a restaurant in Myrtle Beach, a position he held and worked without incident until 1982. In 1982, his employer opened a second restaurant, and the claimant was made food service manager of the second restaurant as well. This essentially doubled his responsibilities overnight and required him to work with many new vendors. In addition, the two restaurants were 150 feet apart, and the claimant had to continuously traverse the distance between them each day. Within 4 – 6 weeks of the second restaurant opening, the claimant had a heart attack and was also diagnosed with atrial fibrillation. His claim was deemed compensable.

In Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), the claimant was a bank vice-president. Due to an upcoming merger with another bank, Stokes was required to work 15 additional hours a week. That later increased to 16 to 18 hours a day. Not surprisingly, Stokes suffered a mental breakdown and it was found to be due to unusual and extraordinary conditions of employment.

And in the most recent case on the subject, Smith v. NCCI, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006), the claimant was an auditor. His work duties were found to be unusual and extraordinary because: (1) experts in the auditing industry opined his job responsibilities were extraordinary and unusual; (2) Claimant had production goals to

meet notwithstanding the fact he was being asked to implement a pilot program, which the evidence showed was more difficult than what his co-employees were asked to do; (3) he had to perform "test audits" almost exclusively, which are more difficult than standard audits; (4) he had to travel 2 to 3 times more miles a week than what the written job description for auditors indicated would be required; and (5) he was under unusual and unrelenting pressure to be more productive from his superiors.

The facts of this case, when compared to the facts of the cases cited above, simply do not bear out a compensable injury in that Menie failed to meet the "unusual and extraordinary" standard. In reality, the facts establish that the most Menie was asked to do during the 25 days he worked by himself was answer the phone a bit more than normal¹. As such, the SAF contends that Menie presented the SCWCC with a very weak case, factually. In fact, each of the claimants in Sims v. SC State Commission of Forestry, 235 S.C. 1, 109 S.E.2d 701 (1959)²; West v. City of Spartanburg, 236 S.C. 553, 115 S.E.2d 295 (1960)³; and Tennant v. Beaufort County School District, 381 S.C. 617, 674 S.E.2d 488 (2009)⁴ had

¹ If that was even the case, as Menie failed to produce any evidence corroborating his claim of a heavy call load.

² In Sims the claimant was a fire tower watchman who died of a heart attack after climbing a fire tower while on duty. The case states that there must be evidence of ". . . a sudden, unusual exertion, violence or strain" in order for an aggravation of heart trouble to be compensable.

³ In West the claimant was the city jailer and on a particularly busy Saturday night during which there was an inordinate number of "boisterous, loud, cursing drunks," the claimant collapsed and ultimately died. The Supreme Court denied the claim (and in so doing specifically distinguished this case from Kearse) because there was no evidence of any increased physical exertion on the part of the claimant. West also stands for the proposition that there is a distinction at law in between being inordinately busy and being worked so hard that you literally suffer a sudden, unusual exertion, violence or strain.

⁴ In Tennant the claimant was employed as a teacher and had an acute psychological episode and resulting issues following an argument with one of her teacher's aides. This argument was the culmination of ongoing issues the claimant and her aide had prior to the claimant's acute episode,

better factual arguments for compensability than Menie does in this case and in each of those cases the claimant's claim was deemed not compensable. Consequently, the SAF contends that South Carolina's appellate courts' decisions do not support Menie's position that the conditions of his employment rose to the level of unusual and extraordinary such that his atrial fibrillation should be deemed compensable.

B. THE FACTS OF THIS CASE DO NOT SUPPORT A FINDING AND CONCLUSION THAT MENIE FACED UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT.

It is undisputed that from January 3, 2003, until February 10, 2003 (when another auditor, Carla Johnson, returned from medical leave), Menie worked as the lone premium auditor for the SAF. It is also undisputed that another auditor left on December 31, 2002. It is further undisputed that in December 2002, the SAF informed its insureds that a 24.7% increase in base premiums was going into effect on January 1, 2003. Lastly, it is undisputed that on March 3, 2003, Menie presented to the Lexington Medical Center and was eventually diagnosed with atrial fibrillation. *Virtually everything else recited in Menie's Memorandum is disputed.*

Shawn Holman was the auditor who left the SAF on December 31, 2002. She testified at the hearing that the volume and intensity of the premium auditors' workloads would vary and that their work would sometime come in fits and starts. She also testified that it was typical for the premium auditors to assist one another when circumstances warranted. Although Holman stated that one auditor working with all of the approximately 600 insureds' accounts for a period would require that auditor to neglect his normal amount of premium audits, she admitted that it was possible and she was unaware of any

which required hospitalization. The case is critical because it stands for the proposition that a job can be stressful without that stress necessarily being "unusual and extraordinary."

auditor ever being punished for not timely completing his/her premium audits. Holman also confirmed that meetings between premium auditors and angry representatives from the individual insureds "went on all of the time," and not just after the base premium increase instituted at the beginning of 2003. Holman further conceded that insureds were almost never happy when they received notification of any premium increase, that there had been previous double-digit premium increases, and that premium auditors have up to 180 days to perform a premium audit following the close of a policy period. Likewise, Holman could not dispute the 'new' computer system she alluded to on her direct examinations had actually come online by May 25, 1999 (almost 4 years prior to Menie's alleged injury), and she acknowledged that other employees of the SAF could answer phone calls during times of high call volume.

Menie, when asked why he felt the need to devote so much time to the duties of the other auditors, testified that ". . . with [his] ego [he] thought [he] could handle everything that came forth in [January and February of 2003] . . ." *Transcript of Testimony, p. 75 (emphasis added)*. Menie testified that he could not present any tangible/documentary evidence of his allegedly excessive and/or increased work duties from January 1, 2003, to March 3, 2003. Although Menie contended that 1/6 of his audits were supposed to be done by the end of January each year, he could point to no specific instance where he was punished or demoted for failing to do so. On examination by the SCWCC, Menie stated as follows:

Q. Did you ever tell anybody you couldn't handle the job? Because you actually did handle it. You got a pay raise and you got good reviews; is that fair to say?

A. Yes, sir. Yes, sir. But my good review was before. That was in October before my—my thing.

Q. So, as I understood it from you, the stress that you say you were suffering was really self-imposed, as I understand it, from ego, I believe, was the quote. Is that right?

A. Well, it was—no, it was—

Q. Well, were there any consequences if you hadn't done those—what you're saying—three jobs?

A. No. It wasn't really a volunteer. It was more trying to help the customer with his problems with the 25 percent approximately across the board increase in rates, which means that if your premium was 10,000 it's gonna go to, you know, 12,500 and that type of thing.

Q. I understand

A. And whatever your experience modifier, if it increased, then that increased it by 200 percent or 300 percent or—

Q. Did you ever get behind?

A. Oh, I was behind from day one, from January 2nd. I was behind that day.

Q. It was announced on January 1st, right? So all of the calls came—well, I don't know when it was announced prior to that, but the letter is not dated, but it says effective January 1st.

A. It was sent out—it was sent out with the estimated premium, tried to be by December the 1st so, like I say, that they would have that month to relocate with their insurance company if they so desired to leave the State Accident Fund.

Q. Were you under the impression that this was a temporary thing and you were going to get a trainee?

A. Oh, I was under the impression that I was going to get two more auditors as quickly as they could provide them.

Q. And the trainee was to become an auditor, is that right? Was the trainee to become an auditor, the one you were training, the individual you were training?

A. Oh, yeah. On March the 3rd? Yes.

Q. So that would have been one of the two other—

A. Right.

Q. And you say you've had four episodes in nine years? Did I hear you say that?

A. Yes, sir.

Q. And of this military pension you are—the disability benefits you're getting, is any of that for hypertension?

A. No, sir.

Q. Is renal failure brought on by hypertension? You have some kidney disease, do you not?

A. Yes. Oh, I'm sorry.

Q. Is that brought on by hypertension, by high blood pressure?

A. No, it's brought on by diabetes through that agent orange.

Q. . . . And how long have you been getting V.A. benefits?

A. I got diabetes within 90 days after I submitted a claim on July the 28th, 2009, and then I—and that was like a 20 percent rating. And then I went to a kidney specialist that my G.P. sent me to, a kidney specialist, and then he found that I had chronic kidney disease in the stage of—third stage. And then the creative organ. That's the three that I was getting—receiving at that time. Since then I have had tinnitus added to that.

Q. How much money are you getting a month?

A. Nine Hundred and Forty-one dollars, I think it is.

Q. And you voluntarily retired for what reason, sir?

A. Well, I volunteered because my—what was that system we had?

Q. Teri.

A. Teri plan, Yes. Teri plan, yes. It's terrible to be 68 and memory—you can't pick up things, you know. Yeah, the Teri plan, right. It ended and, therefore, I chose to retire.

Transcript of Testimony, pp. 110-113.

At the hearing, the SAF presented the testimony of two (2) witnesses, Gerald Murphy and Kirk Adair. Murphy has been employed by the SAF since March 1995 and is presently the SAF's Manager of Administrative Services. Murphy testified the SAF utilized a program known as "Locator" to track, monitor and compile employee attendance. Murphy testified he used this program to compare and contrast Menie's work hours in January and February of 2002 with Menie's work hours in January and February 2003. This study of the Locator data established the Menie worked an average of sixteen (16) extra minutes per day in January and February 2003 than he had during those same two months of the prior year.

Murphy also indicated that the Locator data reflected that Menie worked as the lone premium auditor for a sum total of twenty-five (25) business days during the period in question and that the other premium auditor returned from medical leave on February 10, 2003. Additionally, Warren Farray (who had in excess of twenty years of premium auditing and underwriting experience) started on March 3, 2003. Murphy also testified that (a) Menie never complained about needing help or that the stress was too much, and (b) the Deputy Director offered to let a SAF employee named Vicky Looter assist Menie if

necessary. Murphy further testified that by January 10, 2003, 318 out of 522 accounts had paid their premium which included the 24.7% increase.

With regard to the issue of whether the SAF could function with one premium auditor, Murphy testified the SAF did so from November 2009 until January 2010 and again from February 2010 until September 2010, *without issue or complaints*. The SAF has never returned to three premium auditors at any point following Menie's retirement in 2009.

Murphy did not dispute the fact that Menie was a well-liked and gregarious employee during his tenure with SAF. However, he did not agree with Menie's testimony about having to have 1/6 of his audits done by the end of January. In fact, Murphy explained and testified that January is typically a month where the total number of audits performed is very low due to the lack of the requisite information needed from the insureds to do the audit. Murphy indicated his review of various data and documents in the SAF's possession indicated there were no premium audits done in January 2002. Although Menie's medical opinion(s)/questionnaire(s) from the authorized treating physician are premised on a contention/allegation that the number of audits Menie was asked to do increased "threefold during the time of January through March of 2003," Murphy disputed it would have been possible for such an increase in audits to have incurred since the requisite data would not have been available to do the audits.

Finally, Murphy addressed the basis and rationale for Menie receiving the pay increase memorialized and summarized in a letter issued to Menie on April 15, 2003. (Claimant's APA Submissions, p. 112). Murphy explained the SAF was obligated to have objective reasons for the pay increase or it otherwise could not have given it to Menie. When posed with a question from the Hearing Commissioner regarding the efforts to which

the SAF went to in order to keep similarly situated employees at similar salaries, Murphy confirmed the SAF does try to do so as State salaries are public.

Kirk Adair, who is presently employed by the SAF as a premium auditor, testified that he came to the SAF after many years working for various private sector insurers as a premium auditor. Adair testified he worked as the lone premium auditor from January 14, 2011, through March 14, 2011, without virtually any tangible difficulty, and he described his current position as being noticeably less stressful than similar positions in the private sector. Adair also confirmed he continues to perform premium audits for all of the SAF's insureds with the assistance of only one additional premium auditor. (Tr. p. 144).

Menie, via his APA submissions, submitted the opinion of Dr. Richard Hendricks, Menie's authorized treating physician. Dr. Hendricks' opinion as to causation was based entirely on the hypothetical and fictitious recitation of the facts of the case given to him by Menie. *See Menie's APA submissions at pp. 3-10.* As such, the SAF contends that Hendricks' opinions had no evidentiary value. *See Brown v. La France Industries*, 286 S.C. 319, 333 S.E.2d 348 (Ct. App. 1985) & *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978) (both cases dealing with the requirement that medical opinion testimony based upon answers to hypothetical questions posited by attorneys are not admissible if the hypothetical questions are not ultimately found to be supported by facts in evidence).

By contrast, the Defendants had Menie's medical records and Dr. Hendricks' deposition testimony reviewed by Dr. Michael Zile, a cardiology professor at MUSC. Dr. Zile's professional opinion was that Menie had numerous risk factors for atrial fibrillation, including:

- Morbid obesity (in excess of 300 pounds);

- Sleep apnea;
- Hypertension;
- Sick sinus syndrome; and
- Diabetes.

See Defendant's APA submissions at p. 20. As the SAF's expert's opinions were based on a review of actual medical evidence and not misinformation fed to it by Menie, the SCWCC properly afforded it the proper evidentiary value it deserved. *See Tiller v. National Health Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999) & *Potter v. Spartanburg County School District 7*, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011)(both cases deal with the SCWCC's rights and duties to balance conflicting medical testimony with other lay evidence in the record).

Based on the above, the SCWCC correctly determined that Menie failed to meet his burden of proving that his atrial fibrillation was proximately caused by his job duties with the SAF. In doing so, the SCWCC relied on the whole of the evidence in the record rather than just that evidence favorable to Menie. The SCWCC did not base its decision on surmise, conjecture or innuendo, but rather on the actual facts presented to it. As such, the SAF contends that this Court should uphold the determination of the SCWCC that Menie's claim is not compensable.

II. THE SCWCC DID NOT ERR IN ALLOWING AND RELYING ON THE TESTIMONY REGARDING OTHER AUDITORS' ABILITY TO DO THE JOB BY THEMSELVES.

Menie next argues that the SCWCC should not have allowed into evidence the testimony of Adair and Murphy with respect to the question of whether one auditor could handle the job without difficulty. Menie contends that because Adair wasn't there in 2003,

his testimony as to the difficulty (or lack thereof) in being the lone premium auditor is irrelevant and immaterial. While Menie cites several cases which he contends support his position that Adair's testimony and Murphy's testimony on this issue should have been excluded (none of which is entirely on point or involve facts similar to this claim), this argument is without merit.

First, with respect to Murphy, Menie did not object to his testimony regarding the fact that at other times in the past the SAF only had one (1) premium auditor. See Transcript of Testimony, pp. 120-121. As such, Menie has waived any argument with respect to the admission of that evidence. See Pratt v. Morris Roofing, Inc., 353 S.C. 339, 577 S.E.2d 475 (Ct. App. 2003).

Second, as to Adair's testimony on the issue, Menie ignores the rule that great liberality is exercised in permitting the introduction of evidence in proceedings under the Act. See Ham v. Mullins, 193 S.C. 66, 7 S.E.2d 712 (1940); see also Smith v. South Carolina Dept. of Mental Health, 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1998)(hearing commissioner has the discretion under the Administrative Procedures Act to limit or exclude irrelevant testimony). The SAF contends that the testimony of both Adair and Murphy were properly admitted in light of the fact that the whole of the evidence establishes clearly that the premium auditor job is not overly stressful even if performed by one (1) person.

Third, even if the SCWCC did err by admitting such evidence from Adair, there is only one Finding of Fact in its Order (out of 24 total Findings) that even mentions Adair or his hearing testimony. As such, there was a veritable plethora of other evidence which supports the SCWCC's determination in this matter.

III. THE SCWCC DID NOT ERR IN MAKING A FINDING THAT LABOR TURNOVER, ILLNESS OF CO-WORKERS AND COMPUTER PROBLEMS ARE COMMON TO ALMOST ALL WORK PLACES AND ARE NOT UNUSUAL.

Menie lastly argues that the SCWCC erred in finding that labor turnover, illness of co-workers and computer problems are common and are not unusual as our appellate courts have found that these factors "can constitute unusual and extraordinary conditions in employment." *Menie's Memorandum at p. 34*. In support of this contention, Menie cites *Stokes v. First National Bank*, 306 S.C. 46, 410 S.E.2d 248 (1990). However, a reading of that case reveals that the only factors the Court considered were longer work hours.⁵ Further, in the case of *Lockridge v. Santens of America, Inc.*, 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001), the Court denied benefits in a case where one of the alleged "causes" of Lockridge's heart attack was the fact he was doing the work of two (2) people.

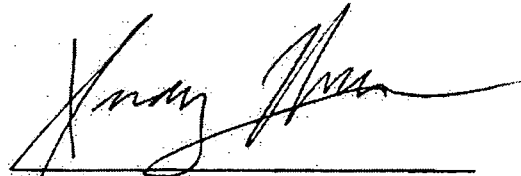
In this case, the SCWCC correctly found that labor turnover, illness of co-workers and computer problems are common and are not unusual. When such factors rise to an extreme level, which is clearly not the case with respect to Menie, then they can obviously become factors. However, in and of themselves, labor turnover, illness of co-workers and computer problems are common and are not unusual and are commonplace in all employment sectors.

CONCLUSION

For the foregoing reasons, and in light of the accepted and established standard for review, the SAF respectfully requests that this court affirm the SCWCC's November 28, 2012 Decision and Order establishing that Menie failed to satisfy his burden of proof

⁵ Although the Court noted that Stokes' longer work hours were in part attributable to the resignation of one of his managers, "labor turnover" in and of itself was not mentioned as a factor constituting an unusual or extraordinary condition of employment.

pursuant to S.C. Code Ann. §42-1-160 with respect to the compensability and causality of his alleged injury of March 3, 2003.

A handwritten signature in black ink, appearing to read "Andrew E. Haselden", is written over a horizontal line.

Andrew E. Haselden, Esquire
HOWSER, NEWMAN & BESLEY, L.L.C.
215 East Bay Street, Suite 303
Charleston, SC 29401
(843) 216-6940
Attorneys for the State Accident Fund

June 13, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ALVIN MENIE

Plaintiff,

vs.

STATE ACCIDENT FUND, et al.

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-08296

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Preston F. McDaniel, Bar No. _____ Address: McDaniel Law Firm 1315 Elmwood Avenue Columbia, SC 29201 Phone: 803-771-7211 Fax 803-252-0709 E-mail: preston@pfmcdlaw.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
RICHLAND COUNTY FILED 2015 DEC -7 PM 12:13 JEANNETTE W. MCBRIDE C.C.P. & G.S.			
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Reconsideration Estimated Time Needed: 1.0 hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☒ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT
C/A No.: 2012-CP-40-08296

ALVIN MENIE,)
Employee/Plaintiff,)
v.)
STATE ACCIDENT FUND,)
Employer,)
and)
Carrier,)
Defendants.)

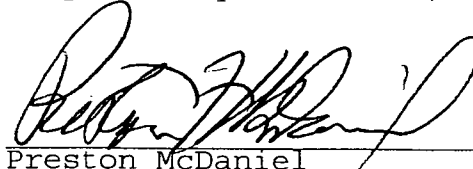
MOTION FOR NEW TRIAL,
RECONSIDERATION AND/OR
ALTER OR AMEND AND/OR
TO VACATE AND REMAND PURSUANT
TO SCRCP RULE 59(a)(e);
RULE 60(b)

RICHLAND COUNTY
FILED
2015 DEC -7 PM 12:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: HONORABLE ALISON R. LEE, FIFTH JUDICIAL CIRCUIT; AND
ANDREW E. HASELDEN, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Counsel for the Petitioner hereby moves, pursuant to South Carolina Rules of Civil Procedure, 59 (a) (e), for a new trial, (reconsideration) and/or to alter or amend or to vacate and remand for a de novo hearing and/or vacate under Rule 60 the Order of the Honorable Alison R. Lee, Circuit Court Judge, issued at Chambers on November 3, 2015, a copy of which was received (first notice) by the Petitioner by way of regular mail on November 23, 2015. Said Motion is based on the Memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,



Preston McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

December 3, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT
C/A No.: 2012-CP-40-08296

ALVIN MENIE,)
Employee/Plaintiff,)

v.)

STATE ACCIDENT FUND,)

Employer,)

and)

Carrier,)

Defendants.)

MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL,
RECONSIDERATION AND/OR
ALTER OR AMEND AND/OR
TO VACATE AND REMAND PURSUANT
TO SCRCP RULE 59(a)(e);
RULE 60(b)

RICHLAND COUNTY
FILED
2015 DEC -7 PM 12:13
ANNETTE W. MCBRIDE
C.C.P. & G.S.

That the Movant would respectfully show unto the Court as follows:

1. That as is set forth in the previous request for the direction of the Court and/or for relief and/or Order to be reserved, Judge Lee issued an Order on November 3rd, which according to the Form 4 which was received along with the Order that by Plaintiff's Counsel, that Order was actually filed with the Clerk on November 4th. According to the Affidavit on the Form 4, the Order was supposedly served on Counsel on November 4th. As is set forth in the request for direction and/or for an Order of the Court for re-service. Although an Affidavit of Service by mail was for the 4th, the post-mark on the envelope was not post-marked until November 16th and the Order was not

received in Counsel's office pursuant to the Affidavits of his staff, until November 23, 2015.

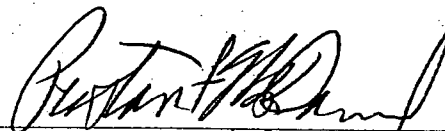
2. That pursuant to the direction of Judge Lee, this Motion is being filed to be supplemented by Memorandum of Law as to the bases for the Motion to be filed with the Court within ten (10) days of the date of this filing, making the Memorandum of Law in Support of the Motion due on the next business day after Saturday, the 14th of December. The Memorandum will set forth specifically the reasons for which re-hearing and reconsideration is requested as to the Order that was issued.

3. That due to the mistakes made in the Service of the Order upon Counsel for the employee/plaintiff, the plaintiff would respectfully move for an Order of the Court vacating the Order and due to the length of time between the original hearing and the issuance of this Order, the Movant would respectfully move for an a de novo hearing before the Circuit Court as to the issues raised in the appeal.

Wherefore at the direction of Judge Lee, the Memorandum and Brief to be submitted to the Court will be more specific as to the basis for the Rule 59 reasons for reconsideration and rehearing in the above-referenced matter. Either at hearing or based on this Motion, the Claimant further moves to vacate the Order and order that this matter be remanded to Judge Lee or to

the Circuit Court for a de novo hearing on the issues raised by
the appeal in the best interest of justice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston McDaniel", written over a horizontal line.

Preston McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

December 3, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the following in the matter of Alvin L. Menie v. State Accident Fund with a copy of the MOTION FOR NEW TRIAL, RECONSIDERATION AND/OR ALTER OR AMEND AND/OR TO VACATE AND REMAND PURSUANT TO SCRPC RULE 59(a)(e); RULE 60(b) by electronic mail, as well as depositing the same in the United States Mail, with adequate postage thereon, as follows:

Honorable Jeanette McBride
Clerk of Court
Richland County Courthouse
Post Office Box 2766
Columbia, South Carolina 29202-2766

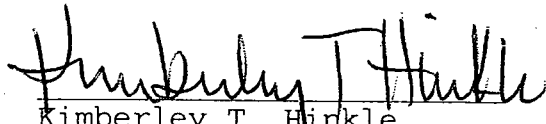
VIA EMAIL - aleelc@sccourts.org
AND US MAIL

Honorable Alison R. Lee
Fifth Judicial Circuit
Post Office Box 2766
Columbia, SC 29202-2766

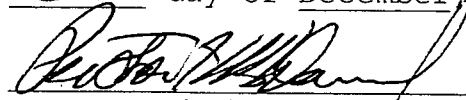
VIA EMAIL - ahaselden@hnblaw.com
AND US MAIL

Andrew E. Haselden, Esquire
Howser, Newman & Besley
215 East Bay Street, Suite 303
Charleston, South Carolina 29401

I also hereby certify that a regular communication by mail exists.


Kimberley T. Hinkle

SWORN TO BEFORE ME this
3rd day of December, 2015.


Notary Public for South Carolina (L.S.)

My Commission Expires: 10/28/18

RICHLAND COUNTY
FILED
2015 DEC -7 PM 12:13
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ALVIN MENIE,)
)
Employee/Plaintiff,)
)
v.)
)
STATE ACCIDENT FUND,)
)
Employer,)
)
and)
)
Carrier,)
)
Defendants.)
_____)

BEFORE THE SOUTH CAROLINA
FIFTH JUDICIAL CIRCUIT
C/A No.: 2012-CP-40-08296

MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL,
RECONSIDERATION AND/OR
ALTER OR AMEND AND/OR
TO VACATE AND REMAND PURSUANT
TO SCRCP RULE 59(a)(e);
RULE 60(b).

That the Appellant would respectfully submit as to the issues misapprehended or overlooked, and/or upon which the Appellant would request Reconsideration and Rehearing the following:

1. First and foremost, the Court should grant rehearing on this Motion for Rehearing and Reconsideration because this matter was heard on June 20, 2014, and the Court did not issue its decision until November 3, 2015, seventeen (17) months after the original hearing before the Court. The Order was issued some three (3) months after the last time the Appellant checked with the Court concerning the status of the Court's decision. The Appellant has never received any request for a proposed Order either from Respondent's Counsel or from Appellant and

therefore, has to assume that this Order was written by the Court itself. There is no indication as to when the Court made a review of the Record and because of this, the Appellant would respectfully request that the Court in this situation and under this set of facts, grant the Appellant rehearing on the Motion. A decision without further hearing would be unfair to the Court and all parties concerned. To quote an old legal maxim, "Justice delayed is justice denied." As an alternative, the Appellant would ask the Court to consider vacating the Order and grant a de novo hearing on the appeal in the interest of justice and in accordance with due process.

2. That the Court, appropriately recites in the Order the Standard of Review concerning 1) substantial evidence, and 2) concerning a heart-related claim as to the Claimant's burden of proof by a preponderance of the evidence that his heart related problems were induced by unexpected strain or overexertion in the performance of the duties of the Claimant, or by unusual or extraordinary conditions in the employment. However, one of the legal elements necessary to establish compensable injury in this case and the point that the Court overlooked is that the evidence on the element as to whether the Claimant was exposed to unusual and extraordinary conditions in the employment is uncontradicted and undisputed. There is simply no testimony and no evidence to the contrary in the Record. Whether a particular

event constitutes a compensable injury under the law is a question of law for the Court and where the evidence is all one way, the question of whether or not the facts establish injury by accident become one of law for decision by the Court. Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977); Kinsey v. Champion Am. Service Center, 268 S.C. 177, 132 S.E.2d 720 (1977). . . The claimant's burden was to prove by a preponderance of the evidence that he was exposed to unusual and extraordinary conditions in the employment. The claimant testified that the conditions to which he was exposed as are detailed meticulously in the Record between January and March of 2003, were unusual and extraordinary to his usual normal working conditions as an auditor for the State Accident Fund. In addition to his testimony, one of the two other auditors that had been one of the three auditors, along with Mr. Menie, prior to January of 2003, Ms. Holman specifically testified that the conditions to which he was exposed after she the other auditors left in December, in January through March in her opinion were unusual and extraordinary to the normal working conditions as an auditor of the State Accident Fund, More importantly, she testified that not only were those unusual and extraordinary but that in her opinion they were, "extremely unusual". In addition, Mr. Gamble who was the Deputy Director for the Agency at that time stated the uncontradicted opinion at that time not only in an

evaluation stated that Mr. Menie had taken on extra duties while they were short two premium auditors, but in a memo from Ruby G. Plato, as signed and approved specifically by Ross Gamble, Deputy Director, stated in that email on April 15, 2003 the following:

"You helped keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances."

There is simply and absolutely no contradictory evidence to this evidence on the specific legal element as to whether or not the Claimant was exposed to unusual and extraordinary circumstances in the workplace which is and was his burden to meet. There simply again is no contradictory evidence on this essential evidentiary element. There must be substantial evidence in the Record specifically that this was not an unusual and extraordinary condition of his employment and if there is not such evidence in the Record, then the Court should and must reverse. The Court failed to specifically apply the decisions of the SC Supreme Court that where the evidence is undisputed and there is no substantial evidence in the Record to support the decisions in this case, that the Claimant was not exposed to extraordinary conditions in his employment, this Court is required by those decisions to reverse the Decision. There is again, simply no evidence that the Claimant was not exposed to

unusual or extraordinary conditions in employment. See for example and specifically, Grayson v. Carter Rhoad Furniture Co., 317 S.C. 306, 454 S.E.2d 320 (1995); Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (SC App. 2012) (cert. den. 2014).

Finally the actual caption of the Court's decision is wrong in that it lists the Argument on this point as being surmise, speculation and innuendo. -In reality the Petitioner was arguing that there was no substantial evidence in the Record concerning the essential issue upon which the Commission had to make a decision, that being whether or not the Claimant was exposed to unusual and extraordinary conditions in employment. Again, there was simply no evidence that he was not, and the Claimant would reiterate not, exposed to unusual and extraordinary conditions in employment.

3. That as to Mr. Adair's testimony, the Court misapprehended or overlooked the argument that was being made. Counsel objected to the relevancy and materiality of the testimony of Mr. Adair and Mr. Murphy as to the conditions of employment at the time of injury. As cited in the Brief, the objection should have been granted because Mr. Adair's testimony was irrelevant and immaterial to the issue before the Commission since he did not work there until 9 years later. There is no

question that in his Order the Commissioner relied on the testimony of Mr. Adair and that his testimony about his employment as an auditor 9 years after the facts involved in this case was not only immaterial and irrelevant, but under Black Letter law it was way too remote and uncertain or speculative in reference to the issues; i.e., the conditions of employment at the time of alleged injury. The decision by the Court is directly and diametrically opposed to our Supreme Court and Court of Appeals decisions as to materiality, relevancy and also remoteness.

4. While the Petitioner does not disagree with the Court's recitation to general standards applicable to the discretion of a Judge to admit evidence and while a Commissioner is given discretion, however in the cases cited by both the Petitioner in his Brief and by the Court wherein that this discretion is recognized, both our Court of Appeals and Supreme Court have specifically reversed finding where the Court has chosen to allow in irrelevant, immaterial and/or remote testimony and evidence. The Court will find upon review that in both the Henderson case and the Rutledge v. St. Paul Fire and Marine Ins. case, that that was a specific ruling of the Court. Petitioner does not therefore understand the Court's reading of these Court of Appeals and Supreme Court decisions in that

regard. In addition, we are dealing with a lay Commissioner who relied on this testimony in making his decision and under the Administrative Procedures Act, §1-23-330 in reference to contested cases, that section specifically states at the very beginning of the consideration of evidentiary matters in contested cases that, "irrelevant, immaterial or unduly repetitious evidence shall be excluded." There is no question that procedurally the Commission is legally bound to apply a liberal interpretation of the Act, in any proceedings under the Act in favor of the injured worker and there is no way that this application of the law can in any way be interpreted as a liberal interpretation in favor of benefits under the Act. This irrelevant, immaterial evidence is highly prejudicial to the Claimant and violated his rights to due process of law since this evidence was specifically relied upon in reaching the decision denying this worker benefits.

5. That in reference to whether the generalized Finding by the Commissioner that labor turnover, co-worker illness and computer problems was a proper Finding, the Court's analysis quite frankly is simply wrong. The Court throughout its Order and under #3 of the Order refers to long hours as being practically the only criteria or facts that will establish unusual and extraordinary conditions in employment. That is

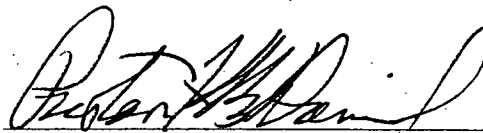
simply not correct and the Petitioner would welcome the opportunity to submit the plethora of cases where the Supreme Court and the Court of Appeals have specifically found without long hours other conditions of employment that constitute unusual and extraordinary conditions. In one case the Court found that being involved a scuffle and in another case that being yelled at as a Deputy Sheriff by the Sheriff constituted unusual, extraordinary conditions. In another case, the Court found that one time per month being exposed to extreme heat constituted an unusual condition in employment. In another case, the Court found that being exposed to death threats and loss of the protection of the status as a police officer constituted unusual and extraordinary conditions. The Appellant can go on and on and again just as the Respondents have sought to get the Commission to follow rabbits and to misstate the law over the years, they have done the same thing here and the Court has fallen into the trap of simply looking at unusually long hours as being the factors that the Supreme Court and Court of Appeals have determined to be unusual and extraordinary conditions. That is just simply flat wrong. For example, the Stokes case was cited in Appellant's Brief simply for the fact and to establish the fact that three other factors that were prevalent there were prevalent here which were also factors that the Court of Appeals and Supreme Court both found could

constitute unusual and extraordinary conditions without unusually long hours.

Just citing several of the cases cited by the Court itself in its Opinion establishes this point for reconsideration. In Kline v. Nosredna Corp., Inc., 291 S.C. 75, 352 S.E.2d 291 (SC App. 1986), there was no assertion of long hours; there was simply evidence, as there was here, of extreme work overload. In the case of Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000), the Court made no Finding about long hours and that was not even an issue involved. What the Court found in Shealy was that death threats and also the loss of a job as a deputy sheriff and the protection as a deputy sheriff constituted unusual and extraordinary conditions along with other factors. The Court's reliance and the Defendants' reliance in this case, and the Commission's reliance repeatedly upon long hours is totally misplaced and again is an attempt by the Defendants to simply have this Court and the Commission chase rabbits. [Chasing rabbits is a term that comes from fox hunting wherein the hunters want their hounds to keep their eye (nose) on the prize and that is the scent of the fox, instead of following the scent of a rabbit which is not the prize.] The Commission was totally wrong in making this generalized finding as the Court will find upon review and based upon the cases that will be

presented to the Court ad nauseum at the reconsideration of this
issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston McDaniel", written over a horizontal line.

Preston McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Petitioner/Movant

December 14, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison R. Lee, Circuit Court Judge

Trial Court Case No. 2012-CP-40-08296

RECEIVED
MAY 16 2016
SC Court of Appeals

Alvin L. Menie, Employee, ... Appellant,

v.

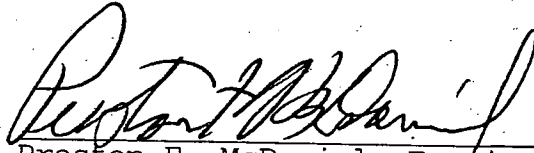
State Accident Fund, Employer,
and State Accident Fund, Carrier, ... Respondents.

NOTICE OF APPEAL

Appellant, Alvin L. Menie, appeals the Order of the Honorable Alison R. Lee filed November 4, 2015, and the Order of the Honorable Alison R. Lee denying the Motion for Rehearing filed April 12, 2016 and affirming the decision of the South Carolina Workers' Compensation Commission.

Pursuant to SC Code §42-17-60, the grounds of the appeal and/or the errors of law presented to the Court from the Decision of the South Carolina Workers' Compensation Commission are set out in the Petition and Notice of Appeal filed with the Court on December 12, 2012, which is attached hereto and incorporated herein by reference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
Attorney for Appellant

May 11, 2016

Other Counsel of Record:

Andrew E. Haselden, Esquire
HOWSER, NEWMAN & BESLEY, LLC
215 East Bay Street, Suite 303
Charleston, SC 29401
(843) 216-6940

Attorney for Respondents

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4008296

Alvin L Menie

State Accident Fund

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC Vol. Nonsuit;
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 November 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Andrew Elliott Haselden

ATTORNEY(S) FOR THE PLAINTIFF(S)

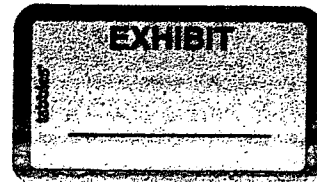
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

SCANNED



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Alvin L. Menie,

Appellant,

vs.

State Accident Fund,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-08296

ORDER

This matter came before the Court on June 20, 2014, for a hearing on Appellant Alvin L. Menie's ("Menie") appeal from an Order by the South Carolina Workers' Compensation Commission ("Commission") dated November 29, 2012. Present at the hearing were Preston F. McDaniel, Esquire, counsel for Appellant, and Andrew E. Haselden, Esquire, counsel for Respondent. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, the decision of the Commission is **AFFIRMED**.

FACTUAL BACKGROUND

Menie worked in the Auditing Department of the State Accident Fund ("SAF") from 1984 to 2009. SAF is responsible for providing insurance for local, county, state and other governmental agencies within South Carolina that provide Workers' Compensation coverage. In the Fall of 2002, SAF had 3 auditors in the auditing department: Menie, Ms. Carla Johnson ("Johnson"), and Ms. Shaun Holmon ("Holmon"). In December of 2002, SAF advised all of its premium accounts that they would incur a rate increase of an average 24.7% effective January 1, 2003. The rate increase generated many calls from different agencies seeking to determine whether and why their respective rates would be increasing.

SAF, moreover, was in the process of implementing a new computer system using its own unique classification codes instead of utilizing the National Council of Compensation Insurers (NCCI) classification codes to classify jobs into categories. The system had a lot of issues, and it took some time for the system to become fully functional. Specifically, the system failures caused the auditors to have to resubmit items numerous times.

By the last week in December 2002, Johnson was absent on medical leave and Holmon no longer was employed with SAF. Menie, thus, was left by himself to complete all of the

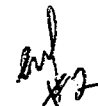
auditing work for SAF from January 1, 2003, to February 10, 2003. During this 25 business day period, Menie worked by himself and answered questions from all agencies and reviewed/addressed all the correspondence concerning the rate increase. Moreover, instead of having to perform 33 audits in January, Menie had to perform 99 audits. On March 3, 2003, while at work, Menie suffered a cardiac event, atrial fibrillation, and was transported to Lexington Medical Center.

PROCEDURAL BACKGROUND

A hearing was conducted before Commissioner G. Bryan Lyndon on January 30, 2012. During the hearing, Menie contended that he sustained a work-induced onset of atrial fibrillation on March 3, 2003, and that the condition was compensable under S.C. Code Ann. § 42-1-160 of the South Carolina Workers' Compensation Act and the common law concerning cardiac conditions induced by unusual and extraordinary work conditions. Menie sought payment of all past and future causally-related medical expenses.

SAF argued that Menie did not experience unusual and extraordinary work conditions from January 1, 2003, to March 3, 2003. Thus, SAF argued that Menie's claim was not compensable. SAF explained that Menie's personnel records reflected that Menie never worked more than 40 hours in a workweek during the subject period. SAF, moreover, argued that Menie previously claimed his cardiac condition was related to his military service during the Vietnam War in his application seeking Veterans Disability Benefits from the United States Department of Veteran Affairs ("VA").

After considering the testimony of all the witnesses, observing the witnesses during their testimony, reviewing the APA Submissions, and considering the applicable law, Commissioner Lyndon issued a Decision and Order, dated April 11, 2012, ruling that Menie failed to prove that his heart condition was the result of unusual and extraordinary conditions of employment. Accordingly, Commissioner Lyndon determined that Menie was not entitled to any Workers' Compensation benefits.

Menie appealed Commissioner Lyndon's Order to the Full Commission, and the Commission heard oral arguments on August 28, 2012. On November 29, 2012, the Commission issued its Order unanimously affirming Commissioner Lyndon's determination that Menie's claim was not compensable. Menie appealed the Commission's Order to the Court. 

LEGAL STANDARD

The South Carolina Administrative Procedures Act “establishes the standard for judicial review of decisions of the Commission.” *Bone v. U.S. Food Service*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). “A reviewing court may reverse or modify a decision of [the Commission] if the findings, inferences, conclusions or decisions of [the Commission] are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” *Id.* The Court “may not substitute its judgment for that of the [Commission] as to the weight of the evidence on questions of fact,” and may only reverse the Commission if its decision is controlled by an error of law. *Frame v. Resort Services, Inc.*, 357 S.C. 520, 527, 593 S.E.2d 491, 495 (Ct. App. 2004). Thus, the Court’s review is limited to determining whether the Commission’s decision “is unsupported by substantial evidence or is controlled by some error of law.” *Gibson v. Spartanburg Sch. Dist. No. 3*, 338 S.C. 510, 517, 526 S.E.2d 725, 728–729 (Ct. App. 2000). “Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.” *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). “The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence.” *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Determinations concerning “witness credibility and the weight to be accorded evidence [are] reserved to the [Commission].” *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

DISCUSSION

On appeal, Menie contends that because of his increased workload during the subject period, he suffered an acute onset of atrial fibrillation and should receive workers’ compensation benefits. Menie contends that: (a) the Commission’s decision was based on surmise, speculation and innuendo; (b) the Commission erred in allowing and relying on Kirk Adair’s testimony; and (c) the Commission erred by making a general finding that “labor turnover, illness of co-workers and computer problems are common to almost all work environments and are not unusual.” The Court will address each of these arguments in turn.

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I. Surmise, Speculation and Innuendo

Menie argues that there is no substantial evidence in the record to support the Commission's decision, and thus, its decision is based on surmise, speculation and innuendo. "A claimant may recover workers' compensation benefits if he sustains an 'injury by accident arising out of and in the course of [his] employment.'" *Jordan v. Kelly Co., Inc.*, 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009) (quoting S.C. Code Ann. § 42-1-160 (2006)). "A heart attack suffered by an employee constitutes a compensable accident within the meaning of the Workers' Compensation Act if it is induced by unexpected strain or overexertion in the performance of the duties of [a claimant's] employment or by unusual and extraordinary conditions in employment." *Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 464, 405 S.E.2d 407, 409 (1991); *Brown v. La France Industries, a Div. of Riegel Textile Corp.*, 286 S.C. 319, 330, 333 S.E.2d 348, 355 (Cl. App. 1985). The Commission found that Menie failed to prove his working conditions were unusual and extraordinary. South Carolina courts have, for many years, grappled with what constitutes unusual and extraordinary working conditions.

In *Kearse v. S.C. Wildlife Res. Dep't*, 236 S.C. 540, 542, 115 S.E.2d 183, 184 (1960), the claimant, Kearse, suffered a cerebral thrombosis arising out of his employment. Kearse was employed as a game warden with the South Carolina Wildlife Resources Department. *Id.* For a period of two or three weeks prior to his stroke, Kearse, along with other game wardens, met each other each morning before daylight and did not leave until dark. *Id.* at 542, 115 S.E.2d at 184-85. Kearse worked between sixteen and eighteen hours a day within this period. *Id.* at 542, 115 S.E.2d at 185. Several days before his stroke, Kearse along with other game wardens, "dragged [a] boat over cypress knees, logs, mud and water to the main stream, a distance of about 50 yards." *Id.* Kearse paddled the boat up the stream about 300 yards while another game warden held a flashlight. *Id.* at 542-43, 115 S.E.2d at 185. Both game wardens then dragged the boat for about 25 or 30 feet. *Id.* at 543, 115 S.E.2d at 185. A few days after dragging the boat, Kearse had to push an automobile a "considerable distance over rough terrain to get it started." *Id.* The Workers' Commission awarded Kearse permanent and total disability. The Supreme Court affirmed the Commission finding that:

[W]hile the evidence shows that the type of activity in which [Kearse] was engaged was common to his position as game warden, it further abundantly shows that the hours in which he was so employed were unusually long, the work environment was unusually difficult, and that there were several

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incidents in which [Kearse], because of unusual circumstances, greatly over-exerted himself in the performance of his duties.

Id. at 546-47, 115 S.E.2d at 187.

In *McWhorter v. S.C. Dep't of Ins.*, 252 S.C. 90, 92, 165 S.E.2d 365, 365 (1969), the claimant, McWhorter, suffered a heart attack and died while working with the South Carolina Department of Insurance. McWhorter's job duties typically required him to be at work from 9 am to 5 pm, with an hour lunch break and a morning and afternoon coffee break. *Id.* at 92, 165 S.E.2d at 365-66. In the ten days preceding his heart attack, however, McWhorter worked more than 121 hours and drove over 1500 miles in preparation for an upcoming trial. *Id.* at 92, 165 S.E.2d at 366. McWhorter, moreover, worked 23 hours in the weekend (time he usually had off) immediately before the trial. *Id.* at 93, 165 S.E.2d at 366. On the Monday trial commenced, McWhorter awoke about 3:30 that morning and picked up a witness. *Id.* After arriving in Greenville, McWhorter participated in a conference with other people involved in the case from about 7 a.m. to 9 a.m. *Id.* McWhorter then assisted during the trial until about 12:35 p.m. *Id.* He then "carr[ied] voluminous files and records to the [prosecutor's office] in the [c]ourt [h]ouse, then walked down three flight of stairs in the [c]ourt [h]ouse, and shortly after emerging from the building he suffered a heart attack and died." *Id.* The Workers' Commission deemed McWhorter's claim compensable. *Id.* at 98, 165 S.E.2d at 368. The Supreme Court affirmed finding that:

[McWhorter] was engaged in an unusual investigation, under extraordinary conditions of employment, with unusually long hours, great mental stress and strain, emotional involvement, lack of sleep, time pressure, physical exertion, and other extraordinary conditions of employment at the time of his attack.

Id. at 97, 165 S.E.2d at 368.

In *Cline v. Nosredna Corp., Inc.*, 291 S.C. 75, 78, 352 S.E.2d 291, 293 (Ct. App. 1986), the claimant, Mr. Cline, suffered a heart attack arising out of his employment and was diagnosed with atrial fibrillation. In 1977, Cline worked as a food service manager for a restaurant. *Id.* at 77, 352 S.E.2d at 292. In 1982, Cline was made food service manager of an additional store. *Id.* at 77, 352 S.E.2d at 293. Cline had to manage the day-time operations of both stores and "supervised the cooks, ordered, inspected and inventoried food, and shopped competitively for food and utensils." *Id.* at 77, 352 S.E.2d at 292. Additionally, "[t]he restaurants were one hundred fifty feet apart, requiring Cline to continuously traverse the distance between them each

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day.” *Id.* at 77–78, 352 S.E.2d at 293. Three months after opening the second store, Cline suffered a heart attack. *Id.* at 78, 352 S.E.2d at 293. The Supreme Court affirmed the Commission’s finding that Cline’s preexisting condition of congestive heart failure was “aggravated and accelerated by [Cline’s] unusual and extraordinary employment conditions.” *Id.* at 78, 352 S.E.2d at 293.

In *Watt v. Piedmont Automotive*, 384 S.C. 203, 206, 681 S.E.2d 615, 617 (Cl. App. 2009), the claimant, Roger Watt (“Watt”), suffered congestive heart failure and unstable angina pectoris allegedly because of unusual and extraordinary work conditions. In 1991, Watt began working for a car dealership as a technician and team leader. *Id.* at 205, 681 S.E.2d at 616. In 1995, Watt was promoted to service director of both the car dealership and an additional dealership. *Id.* Thereafter, he was removed as service director of the additional dealership but retained his position as service manager of the original dealership. *Id.* Watt contended that the dealership’s “implementation of a ‘Net Profit’ program [the year before he was terminated] produced an extraordinary working condition causing him stress that aggravated his cardiovascular disease and caused the blockage of his coronary arteries.” *Id.* at 206, 681 S.E.2d at 617. The new system, according to Watt, angered customers and generated a lot of complaints. *Id.* at 210, 681 S.E.2d at 619. One of Watt’s co-employees explained that the implementation of the new system doubled Watt’s work, and that Watt “always appeared tired and worked late every night.” *Id.* The Commission denied Watt’s workers’ compensation claim finding that Watt “failed to establish the stressful employment conditions causing the injury were extraordinary and unusual in comparison to the normal conditions of employment.” *Id.* at 206, 681 S.E.2d at 616. The circuit court reversed the Commission. *Id.* at 207, 681 S.E.2d at 617.

On appeal, the Court of Appeals reversed the circuit court’s determination that Watt’s claim was not compensable. *Id.* at 212, 681 S.E.2d at 620. The Court of Appeals acknowledged that there was conflicting evidence concerning whether Watt was working under unusual and extraordinary working conditions; however, “it [was] not the task of an appellate court to weigh the evidence as found by [the Commission].” *Id.* at 211, 681 S.E.2d at 619 (quoting *Jordan v. Kelly Co.*, 381 S.C. 483, 487, 674 S.E.2d 166, 169 (2009)). The Court of Appeals found substantial evidence existed in the record to show that Watt “was accustomed to working 55 and 60 hour weeks . . . [and] that the implementation of [the new system] did not result in unusual or

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extraordinary conditions of employment.” *Id.* at 211, 681 S.E.2d at 619. Therefore, “the circuit court erred in reversing the order of the [Commission].” *Id.*

Of all the cases discussed above, the facts of *Watt* most closely parallel the facts in the instant matter. Just as in *Watt*, where Watt alleged that his employer’s implementation of a new program, in part, produced an extraordinary working condition, here, Menie claims that SAF’s use of its own identification codes, in part, produced an unusual and extraordinary condition. Moreover, just as in *Watt*, where Watt alleged that he had to work longer hours in response to the new system, here, Menie contends that he had to work longer hours. Furthermore, Watt claimed that his employer’s new system generated a lot of complaints that he had to respond to; Menie has claimed the same. Lastly, Watt argued that his work was doubled; Menie argues his work tripled.

Accordingly, just as in *Watt*, the Commission was in a better position to weigh the evidence presented in the instant matter. The Commission acknowledged that Menie worked as the lone premium auditor for SAF from January 3, 2003, to February 10, 2003. The Commission, moreover, acknowledged that SAF informed its insureds of the average 24.7% increase in premiums immediately before that time period. Lastly, it was undisputed that Menie suffered atrial fibrillation on March 3, 2003. The Commission, however, after reviewing all of the evidence, found that Menie failed to prove that he suffered atrial fibrillation because of unusual and extraordinary work conditions.

Menie did not work excessive overtime and never worked more than 40 hours a week. SAF presented testimony from two witnesses: Gerald Murphy (“Murphy”) and Kirk Adair (“Adair”). Murphy has been employed by SAF since March 1995 and was, at the time of the hearing, SAF’s Manager of Administrative Services. Murphy testified that SAF utilized a program known as “Locator” to track, monitor and compile employee attendance. Murphy testified he used the program to compare and contrast Menie’s work hours in January and February of 2002 with Menie’s work hours in January and February of 2003. The program’s data indicated that Menie worked an average of 16 extra minutes per day in January and February of 2003 than he had during those same months in 2002. Murphy also testified that there had been other instances when auditors worked in a similar position as Menie for as long as eight months.

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Adair, who was employed by SAF as a premium auditor at the time of the hearing, testified that he came to SAF after working in the private sector as a premium auditor. Adair testified that he worked along with one additional premium auditor, and they were able to perform all of SAF's premium audits. Menie worked as the sole auditor from on, or about, January 1, 2003, to February 10, 2003. On February 10, 2003, Johnson returned from medical leave. Moreover, on March 3, 2003, SAF hired another premium auditor, Warren Farray. Menie took about two weeks off from work because of his cardiac event. Thus, within a few weeks of Menie's event, SAF was again operating with three premium auditors. Menie continued to perform his job without issues for over six years until his retirement in 2009. SAF never returned to three premium auditors following Menie's retirement in 2009.

Furthermore, Menie, via his APA submissions, submitted an opinion from Dr. Hendricks, his treating physician, explaining that the conditions Menie experienced at work caused his atrial fibrillation. Dr. Hendricks' opinion was based upon a presentation of what Menie allegedly was experiencing during the subject time. Menie provided Dr. Hendricks the conditions he was facing at work during the subject time, and based upon Menie's recitation of his working conditions, Dr. Hendricks' determined that Menie's working conditions caused him to suffer from atrial fibrillation. Specifically, Menie asked Dr. Hendricks to respond to about 10 pages of questions. Dr. Hendricks was asked to "provide answers and opinions to the . . . questions concerning Mr. Menie and his heart condition." Menie's APA Submissions at 3. There were several questions including whether Menie had a history of cardiac problems, the effect on Menie's health by him having to answer all correspondence concerning specific issues, the effect on Menie by him having to work longer hours, working through breaks and lunch, and ultimately, whether Menie's atrial fibrillation was caused by the physical and emotional stress arising out of his work duties. Following the event, however, Menie saw Dr. Hendricks six times in 2003 and 2004 for heart problems and never mentioned stress. Nonetheless, Dr. Hendricks concluded that "Menie's cardiological problems of atrial fibrillation and high blood pressure were caused by the physical and emotional stress arising out of and from [Menie's] job duties, responsibilities and work load." Menie's APA Submissions 6.

Menie's medical records and Dr. Hendricks' deposition testimony were reviewed by Dr. Michael Zile, a cardiology professor at MUSC. Dr. Zile's professional opinion was that Menie's working conditions did not contribute to Menie's development of atrial fibrillation. Dr. Zile

noted, specifically, that “to a reasonable degree of medical certainty . . . [Menie’s] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes.” SAF’s APA Submissions 20. Menie, thus, had numerous health problems some of which were being treated by the VA due to exposure to Agent Orange while serving in Vietnam. The Court recognizes that there was conflicting medical evidence; “[w]hen conflicting medical evidence is presented, [the Court] must not substitute its judgment for that of the fact finder, which in this case is the [Commission].” *Brunson v. American Koyo Bearings*, 395 S.C. 450, 458, 718 S.E.2d 755, 759–690 (Ct. App. 2011).

In light of the substantial evidence in the record, the Commission’s decision was not based upon surmise, speculation, and innuendo. Accordingly, the Commission properly determined that Menie’s atrial fibrillation was not compensable by Workers’ Compensation.

II. Adair Testimony

Menie argues that the Commission erred as a matter of law by admitting and relying on Adair’s testimony. Adair started working with SAF in 2010. Adair provided testimony concerning his prior experience as a premium auditor, working conditions of his prior places of employment compared to SAF working conditions, and his working conditions at SAF during a two-month time period when he worked by himself. Menie claims that there was a stark temporal distinction between when Adair worked at SAF and when Menie worked at SAF. Menie suffered from his atrial fibrillation when he was working at SAF in 2003; Adair, however, provided testimony regarding the position of an auditor between 2010 and 2012. According to Menie, “there is no question that [Commissioner Lyndon] relied on [Adair’s] testimony . . . that he[:] ‘had handled the job by himself and it was not as difficult as his previous jobs.’” Appellant’s Mem. Law 32.

Menie contends such evidence was irrelevant and immaterial. According to Menie, the conditions of employment between 2010 and 2012 were not relevant or material to the conditions of employment Menie experienced between January 1, 2003 and March 3, 2003. Thus, Menie claims the Commission erred as a matter of law by relying on it to make its decision.

Determinations regarding the relevancy and materiality of evidence are left within the sound discretion of the trial court, here the Commission. *See Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 416–17, 323 S.E.2d 523, 529 (Ct. App. 1984) (“The determination of the relevancy of

evidence is largely within the discretion of the trial judge.”). Such determination will not be disturbed absent an abuse of discretion. *Kennedy v. Griffin*, 358 S.C. 122, 127–28, 595 S.E.2d 248, 250 (Ct. App. 2004); see also *Gadson v. Mikasa Corp.*, 368 S.C. 214, 228, 628 S.E.2d 262, 269–70 (Ct. App. 2006) (where the Court of Appeals applied the abuse of discretion standard to the Commission’s admission of expert testimony). Moreover, “[t]he admission or exclusion of evidence of prior or subsequent existence as inferring existence at a particular time is within the trial court’s discretion.” *Henderson v. St. Francis Community Hosp.*, 295 S.C. 441, 447, 369 S.E.2d 652, 656 (Ct. App. 1988), *rev’d on other grounds*, *Henderson v. St. Francis Community Hosp.*, 303 S.C. 177, 399 S.E.2d 767 (1990). The Commission possessed the discretion to determine whether Adair’s testimony concerning SAF working conditions between 2010 and 2012 were relevant to SAF working conditions in 2003. Even if Adair’s testimony was not relevant and it was excluded, there is substantial evidence in the record to support the decision of the Commission. Accordingly, the Commission did not commit an error of law in admitting Adair’s testimony.

III. Labor Turnover, Co-worker Illness, and Computer Problems

Menie argues that the Commission erred in finding that labor turnover, illness of co-workers, and computer problems are common and not unusual. More specifically, Menie alleges that “[t]his Finding of Fact is totally and absolutely contrary to law and requires reversal as it indicates that the Commission failed” to apply South Carolina law to the case. Appellant’s Mem. Law 34. Menie cites *Stokes v. First Nat’l Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991), in support of his assertion that labor turnover, co-worker illness, and computer problems constitutes unusual and extraordinary conditions.

In *Stokes*, “[a]s a result of merger activity and the resignation on one of [Stokes’] managers . . . Stokes’ work hours increased from approximately 45 hours per week to 60 hours per week” and then ultimately workdays of 16 to 18 hours. *Id.* at 47, 410 S.E.2d at 249. Since Stokes’ work hours were increased due to the resignation of one of his managers, *Stokes* arguably involved labor turnover. The *Stokes* case, however, did not involve co-worker illness and computer problems. The Court may reverse the Commission’s decision when it is affected by an error of law. *Corbin v. Kohler Co.*, 351 S.C. 613, 617, 571 S.E.2d 92, 95 (Ct. App. 2002). Labor turnover, co-worker illness, and computer problems, however, are common in almost all sectors of employer, and thus, do not in and of themselves, constitute unusual or extraordinary

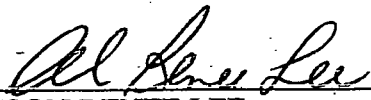
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working conditions. *See, e.g., Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 464, 405 S.E.2d 407, 409 (1991) (where the Supreme Court affirmed the Commission's denial of a claimant's workers' compensation claim after he suffered cardiac arrhythmia that was, in part, allegedly caused by stress related to computer problems). Accordingly, the Commission did not commit an error of law.

ORDER

For the reasons stated above, it is therefore **ORDERED** that the decision of the South Carolina Workers' Commission is **AFFIRMED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 3, 2015

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012CP4008296

Alvin L Menle

State Accident Fund

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code 2118

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

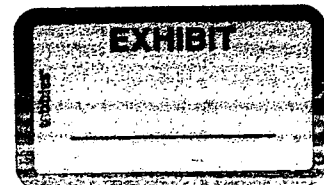
Preston F. McDaniel

Andrew Elliott Haselden

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Janette W. McDaniel

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Alvin L. Menie,

Appellant,

vs.

State Accident Fund,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-08296

ORDER

This matter is before the Court on Appellant Alvin L. Menie's ("Menie") Motion for New Trial pursuant to Rule 59(a), SCRCF, to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF, and to Vacate and Remand this matter pursuant to Rule 60(b), SCRCF. This matter came before the Court on June 20, 2014, for a hearing on an appeal from an Order by the South Carolina Workers' Compensation Commission ("Commission") dated November 29, 2012. On November 4, 2015, the Court affirmed the Commission's Order. Appellant filed this Motion on December 7, 2015.¹ After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Appellant's Motion is **DENIED**.

In Menie's Memorandum in Support of his Rule 59(a)&(e), and Rule 60(b) motion, Menie contends that the evidence in the record "on the element as to whether [Menie] was exposed to unusual and extraordinary conditions in the employment is uncontradicted and undisputed." Appellant's Memo. at 2. Appellant, thus, argues that the Court, in its Order affirming the Commission, "failed to specifically apply the decisions of the SC Supreme Court that where the evidence is undisputed and there is no substantial evidence in the Record to support the decisions in this case . . . this Court is required by those decisions to reverse the [Commission]." Appellant's Memo. at 4. Menie, however, fails to acknowledge that SAF did provide contradictory evidence concerning whether Applicant faced unusual and extraordinary working conditions.

Menie argues that he, one of Menie's co-workers, and Menie's supervisor all provided information in the record that Menie was facing unusual and extraordinary circumstances at the

¹ In an Order dated December 28, 2015, the Court originally denied this Motion. On January 29, 2016, the Court, however, vacated that Order.

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time he suffered from atrial fibrillation. SAF, however, according to Appellant, provided no evidence that Menie did not face unusual and extraordinary circumstances. The Court disagrees. Gerald Murphy ("Murphy") who was, at the time of the hearing, SAF's Manager of Administrative Services, testified that Menie only worked an average of 16 extra minutes per day in January and February 2003 than he did during those same months in 2002. According to Murphy, Menie worked alone for 25 days only and did not work any overtime during that period. Murphy also testified that there had been other instances when auditors worked in a similar position as Menie for as long as eight months, without issue. Murphy, moreover, testified that Menie was not required to complete all of the 600 audits within the subject period.² Murphy explained that, in fact, January typically is a month where the total number of audits performed is very low due to the lack of requisite information needed from the insureds to perform the respective audits. Menie, moreover, testified that he had already received some of the necessary information from the policyholders or was able to conduct some of the respective audits.³ Furthermore, Murphy testified that by January 10, 2003, 318 out of 522 accounts had paid their premium, which included the 24.7% increase. Moreover, Carla Johnson ("Johnson"), an employee with SAF, returned from medical leave on February 10, 2003, and began working on her workload of approximately 200 audits. Additionally, Shaun Holmon ("Holmon"), a SAF auditor who left in 2002, testified there had been previous double-digit premium increases, that other SAF employees could answer phone calls, and that auditors had up to 180 days to perform a premium audit following the close of a policy period.

In light of the evidence provided by Murphy, Johnson, and Holmon, SAF presented evidence that Menie did not face unusual and extraordinary conditions. Thus, there is substantial evidence in the record to support the Commission's finding. Even if the Commission incorrectly found that Menie did not face unusual and extraordinary working conditions, Menie failed to prove, to the Commission, that Menie's alleged unusual and extraordinary conditions caused his atrial fibrillation.

"In order for [a workers' compensation claimant] to recover workers' compensation benefits, he must prove *both*: (1) that he was exposed to unusual and extraordinary conditions in

² In fact, Menie testified that he was required only to complete 100 audits by the end of January.

³ See, e.g., Commission Hearing Transcript of Record at 105:3-8, wherein Menie stated that "some people don't have to wait until they get their W-3s. . . . Others have theirs ready and available that you could do audits on prior to February the 1st."

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his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his [heart condition]." *Shealy v. Aiken Cnty.*, 341 S.C. 448, 459, 535 S.E.2d 438, 444 (2000) (emphasis added). "Undoubtedly, the record must evince a causal connection between any extreme exertion or extraordinary or unusual conditions of employment and a claimant's heart-related injury or death." *South Carolina Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 126, 576 S.E.2d 199, 204 (Ct. App. 2003). "Whether there is any causal connection between employment and an injury is a question of fact for the Commission." *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999).

The Commission found that the Appellant "failed to prove his heart condition was a result of unusual and extraordinary conditions of employment." Appellate Panel Decision and Order at 3. Menie, via his APA submissions, submitted an opinion from Dr. Richard Hendricks ("Hendricks") his treating physician, explaining that the conditions Menie experienced at work caused his atrial fibrillation. Hendricks' opinion, however, was based on hypotheticals presented by Menie—hypotheticals that were not wholly supported by the facts in evidence. Menie, moreover, did not even mention stress related to his job to Hendricks until approximately a year after developing his condition as reflected in the medical records. Dr. Michael Zile ("Zile"), SAF's medical expert, reviewed Menie's medical records and Hendrick's deposition testimony and noted that "to a reasonable degree of medical certainty . . . [Menie's] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes." SAF's APA Submissions 20. At the time of onset of the atrial fibrillation, the medical records reveal that Menie had several health problems. Additionally Menie later sought treatment for several health issues by the VA due to exposure to Agent Orange while serving in Vietnam. Accordingly, even if the Commission improperly found that Menie did not face unusual and extraordinary working conditions, Menie still failed to prove that his working conditions caused his heart condition.

Appellant also argues that the Commission committed an error of law by admitting and relying on Kirk Adair's ("Adair") testimony. Adair, another auditor with SAF, testified that he started working with SAF in 2010 after working in the private sector. Adair provided testimony concerning his prior experience as an auditor, working conditions of his prior places of employment compared to SAF working conditions, and his working conditions at SAF during a

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two-month period when he worked by himself. Adair further testified that he worked along with one additional premium auditor and they were able to perform all of SAF's premium audits.

Menie argues that there was a stark temporal distinction between when Adair worked at SAF and when Menie worked at SAF. Menie suffered his atrial fibrillation when he was working at SAF in 2003; Adair, however, provided testimony regarding the position of an auditor with SAF between 2010 and 2012. Menie contends that the conditions of employment between 2010 and 2012 were too remote to be relevant or material to the conditions of employment Menie experienced between January 1, 2003 and March 3, 2003. Menie, thus, claims the Commission erred as a matter of law by relying on Adair's testimony to make its decision.

The Court may reverse the Commission if it finds that the Commission's findings, inferences, conclusions, or decisions are affected by an error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Pursuant to the Administrative Procedures Act which governs hearings before the Commission, "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded." S.C. Code Ann. § 1-23-330(1) (1976). Upon further review of the record, the Court agrees with Menie that the Commission committed an error by admitting and relying upon Adair's testimony. The Court acknowledges that determinations regarding the relevancy and materiality of evidence generally are left within the sound discretion of the trial court, here the Commission. *See Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 416-17, 323 S.E.2d 523, 529 (Ct. App. 1984). Here, however, the Commission admitted and relied upon testimony from Adair concerning SAF working conditions nearly nine years after Menie suffered his heart condition. Menie suffered from his heart condition during a time when he had to manually enter "experience modifier" information into SAF's computer system; Adair did not have to manually enter experience modifier information because SAF's system was, by that time, automated. Moreover, Menie worked with SAF when it was using its own unique classification system; Adair worked for SAF after it transitioned to a national model coding system wherein the computer automatically generated necessary information. Adair's testimony was too remote to be relevant or material. *See, e.g., Rutledge v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 360, 368, 334 S.E.2d 131, 136 (Ct. App. 1985) (where the Court of Appeals upheld the trial court's determination that an appraisal of certain real property prepared three years before it was destroyed by fire was too remote to be admissible as evidence); and *Henderson v. St. Francis*

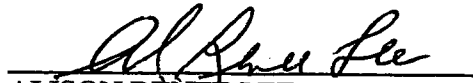
Community Hosp., 295 S.C. 441, 447–48 369 S.E.2d 652, 656 (Ct. App. 1988), *rev'd on other grounds*, 303 S.C. 177, 399 S.E.2d 767 (1990) (where the Court of Appeals upheld the trial court's determination that testimony concerning the condition of a parking lot approximately a year and a half after the plaintiff was injured in the parking lot was too remote to be admissible as evidence). The Commission expressly relied on Adair's testimony. *See Appellate Panel Decision and Order* at 3 ("A second witness for the Defendant (Mr. Adair) testified he had handled the job by himself and it was not as difficult as his previous jobs."). Accordingly, the Court finds that the Commission committed an error of law by admitting and relying upon Adair's testimony.

Although, however, the Court finds that the Commission committed an error of law by relying on Adair's testimony, this error was harmless. The Court may only reverse the Commission if Menie "has suffered the appropriate degree of prejudice *and* the [C]ommission's decision is affected by an error of law[.]" *Therrell v. Jerry's, Inc.*, 370 S.C. 22, 25, 633 S.E.2d 893, 894–95 (2006) (emphasis added). Accordingly, "an error is not reversible unless prejudice to the complaining party has resulted therefrom." *Sanders v. Wal-Mart Stores, Inc.*, 379 S.C. 554, 562, 666 S.E.2d 297, 301 (Ct. App. 2008). As discussed above, since substantial evidence exists in the record to support the Commission's decision, even when excluding Adair's testimony, Menie has not been prejudiced by the admission of Adair's testimony. In other words, this Court is not relying on Adair's testimony in finding that substantial evidence exists in the record to support the Commission's decision. The Court, thus, finds that the Commission's admission of, and reliance upon, Adair's testimony was harmless. *See, e.g., Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996) (where the Court of Appeals found that although the Commission committed an error of law by improperly taking judicial notice of an industry standard, it was harmless and, thus, did not warrant reversal).

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For the reasons stated above, the Court hereby **DENIES** Appellant's Motion for a New Trial, to Alter or Amend Judgment, and to Vacate and Remand this matter. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 7, 2016

CIVIL ACTION COVERSHEET

ALVIN L. MENIE,

Appellants,

-CP-

vs.

STATE ACCIDENT FUND,

Respondents.

2012CP4008296

(Please Print)

Submitted By: Preston F. McDaniel

Address: McDaniel Law Firm

1315 Elmwood Avenue

Columbia, SC 29201

SC Bar #: 3770

Telephone #: 803-771-7211

Fax #: 803-252-0709

Other:

E-mail: medlaw@hotmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

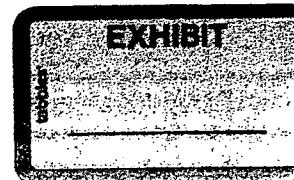
☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	☐ Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☒ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Preston F. McDaniel

Date: December 12, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ALVIN L. MENIE,

Appellant,

vs.

STATE ACCIDENT FUND,

Employer and Carrier,

Respondents.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO. _____

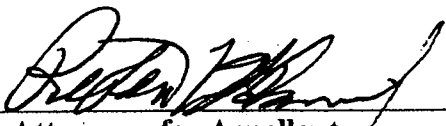
2012 DEC 14 PM 1:10
FILED
CLERK OF COURT
S.C.P. & G.S.

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☒ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☐ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Preston F. McDaniel, Esquire
McDaniel Law Firm
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Columbia, South Carolina 29201
803-771-7211

Andrew E. Haselden, Esquire
Howser, Newman & Besley
215 East Bay Street, Suite 303
Charleston, South Carolina 29401
843-216-6940


Attorneys for Appellant

Attorney for Respondents

Date: December 12, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT
C/A NO. _____

ALVIN L. MENIE,)
Employee,)
Petitioner,)
v.)
STATE ACCIDENT FUND,)
Employer,)
and,)
SELF-INSURED,)
Carrier,)
Respondents.)

PETITION AND NOTICE
OF APPEAL

JEANETTE W. THORNTON
C.C.P. & G.S.

2012 DEC 14 PM 1:10

FILED

TO: ANDREW E. HASELDEN, ESQUIRE, ATTORNEY FOR THE RESPONDENTS:

YOU WILL PLEASE TAKE NOTICE that the Employee/Appellant hereby petitions and appeals, pursuant to Sections 1-23-380 and 42-17-60 South Carolina Code of Laws (1976, as amended), as applicable to all claims for injury occurring prior to July 1, 2007 as well as other applicable law, from the Decision and Order of the South Carolina Workers' Compensation Commission dated November 29, 2012 and received by the Petitioner by Electronic Mail on November 29, 2012. (Note the Claimant has not been properly notified pursuant to SC Code §42-17-40 and §1-23-350).

The grounds for the appeal are as follows:

1. That since the Panel of the Full Commission incorporated verbatim the Findings of Fact and Conclusions of Law

made by the Hearing Commissioner (with one (1) exception as to a Finding which the Full Commission notes as a scrivener's error in Finding of Fact No. 22), the Petitioner hereby petitions and appeals as to all of the issues submitted to the Full Commission for review from the Hearing Commissioner's Order dated April 11, 2012 as issues on appeal from the Decision of the Commission with said grounds for appeal being attached hereto and incorporated herein by reference as Exhibit "A".

2. That in addition to the above-exceptions, the Commission erred as a matter of law by failing to perform its review responsibility by making detailed Findings of Fact and Conclusions of Law as to each issue of law and fact raised before the Full Commission for review. The Decision of the Commission is in violation of both statutory and case law which requires the Commission to make detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough to determine whether or not the decision on the facts is supported by the evidence and whether or not the law has been properly applied.

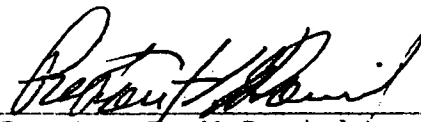
3. That the Commission erred as a matter of law by making only cursory Findings of Fact and Conclusions of Law in violation of law and by requesting that Defense Counsel draft the Order of the Commission wherein the law specifically requires that the Order of the Commission must be issued by the Commission itself as specifically set out under SC Code §42-17-40, 50 and 60 and under the Administrative Procedures Act, §1-23-340, 350 and 380,

and under the Commission's own Regulations under Reg. 67-709 which requires the Commission make detailed Findings of Fact and record those in the Record.

4. That the Commission erred as a matter of law by requiring the injured worker, who was the Claimant and Appellant to the Full Commission in this matter, to purchase and file the original and a copy of the Transcript of Record. The Commission has no statutory authority to require a party to pay for the Transcript of Record, and in fact both the Administrative Procedures Act and the Commission statutory authority require that the Commission file and review the Record as part of its statutory responsibility. To require a party to pay for a Transcript of Record has a chilling effect on the due process rights of the individual parties to review.

5. That the Commission erred as a matter of law in denying benefits to the client where the reliable, probative and substantial evidence in the Record does not support such denial and in fact the uncontradicted evidence supports an Award of benefits as a matter of law.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Petitioner/Appellant

December 12, 2012



Claimant's Name: Alvin L. Menie SSN: _____ Employer's Name: State Accident Fund
Address: _____ Address: Post Office Box 102100
City: _____ State: _____ Zip: _____ City: Columbia State: SC Zip: 29221
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: Self-Insured
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 3-3-2003 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See Attachment.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Andrew E. Haselden, Esquire

HOWSER, NEWMAN & BESLEY, 215 East Bay Street, Suite 303, Charleston, SC 29401

Name

Address

on the 30th day of April, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

Preston F. McDaniel (Signature)

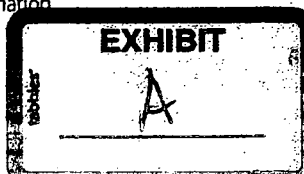
Preparer's Signature

Claimant's Attorney
Title

April 30, 2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 30 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.



ATTACHMENT TO FORM 30

Alvin L. Menie v. State Accident Fund
WCC FILE NO: 0307461

1. That pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner erred as a matter of law in his application of the law under S.C. Code §42-1-160 and the application of the Claimant's burden of proof which is by a preponderance of the evidence and finding that the Claimant as a matter of law did not establish that he had sustained a compensable heart-related condition as a result of injury by accident stemming from the unusual and extraordinary conditions in his employment occurring just prior to and at the time of his first atrial fibrillation that resulted in his continuing and permanent condition thereafter.

3. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Kirk Adair who was not employed with the State Accident Fund as an auditor or in any capacity during the time that was relevant to whether or not the Claimant's condition arose out of and in the course of his employment and constituted an injury by accident within the meaning of the Act. That testimony was irrelevant and immaterial and prejudicial to the Claimant as it compared totally dissimilar times in the Auditing Department. This would be similar to comparing the stress levels of military personnel stationed in Hawaii on December 7, 1941 to that of military personnel assigned to Hawaii on December 7, 1991.

4. That the Hearing Commissioner erred as a matter of law by allowing the testimony of Mr. Murphy in reference to any reasons for the Claimant's pay raise or interpretation of any of the documents in reference to the conditions in the Auditing Department and during the time the Claimant developed his heart-related condition and as to whether or not the conditions in that Department constituted unusual and extraordinary conditions in the employment.

5. That the Hearing Commissioner erred in making specific Findings of Fact in reference to the testimony of Ms. Holloman and that of the Claimant and citing that testimony without noting in the Findings of Fact that both Ms. Holloman who was an Auditor in the Auditing Department at the time that the Claimant's heart

condition came about and the Claimant's was that the conditions that existed between January 1, 2003 and March 3, 2003 (including but not limited to the fact that the Agency just prior to this time had announced the largest increase in premiums for the account holders that had ever occurred and that the Auditing Department as far as handling all of the functions had gone from three (3) Auditors to one (1) Auditor) wherein based on these facts and all the relevant facts at that time, in their opinions those work conditions for an Auditor in the Auditing Department constituted unusual and extraordinary conditions to the usual and ordinary job of the Auditor in the Auditing Department of the State Accident Fund at this time. There is simply no other evidence as to that condition at that time.

6. That the Hearing Commissioner further erred as a matter of law by not finding that the Claimant sustained an injury by accident due to unusual and extraordinary conditions wherein both the Manager of Administrative Services and the Deputy Director, Ross Gamble, in approving a performance pay raise on April 15, 2003 in reference to the time of the premium increase and the Auditing Department going from three (3) to one (1) Auditor to handle all of the functions of the Auditing Department stated, "you helped to keep these essential functions going throughout a period of transition caused by staff turnover and other extraordinary circumstances." There was also no opinion stated contrary to this and neither Ms. Flateau nor Mr. Ross Gamble were called as witnesses to further explain their opinion and therefore the Commissioner erred by not finding that the Claimant was exposed to unusual and extraordinary conditions where management thought the conditions were extraordinary.

7. That the Hearing Commissioner erred by making Finding of Fact No. 17 which is an error of law under law by finding that, "linking heart disease to work-based on what is unusual and extraordinary is impossible for a doctor to conclude, legally." This is a mis-statement of the law and under the uncontested medical evidence both from the psychologist hired by the Defendants to perform an evaluation who found that Mr. Menie, "appears to have suffered a cardiac arrhythmia from an accumulation of stress on the job"; and the treating cardiologist who found based on a review of the job responsibilities of Mr. Menie that in his, "job responsibilities and work load as set forth above and specifically between December 27, 2002 and March 4, 2003" stated to a reasonable degree of medical certainty was the, "cause of his onset of high blood pressure and the initial atrial fibrillation" and further that it was the, "physical and emotional job stress placed upon him by his job duties and responsibilities that was the cause of this condition." There is no medical evidence to the contrary. Again, it was his, "opinion to a reasonable medical certainty that Mr. Menie's cardiological problems of atrial fibrillation and high blood pressure were caused by the physical and emotional stress arising out of and from his job duties, responsibilities and work load."

8. That it was an error of law as not being based on the evidence and being on the basis of surmise, speculation and innuendo for the Commissioner to make Finding of Fact No. 18 in reference to the pressure that the Claimant was under and that it was not unusual based on the witness testimony. There is absolutely no evidence from any witness that the conditions to which Mr. Menie was exposed was not contrary to the usual and ordinary conditions of employment as an Auditor in the State Accident Fund during the period of time that was alleged to have resulted in his condition and in fact all of the testimony was to the contrary that the conditions were unusual and extraordinary in his employment during that period of time.

9. That it was an error of law for the Hearing Commissioner to making Finding of Fact No. 19 wherein he found that such conditions as labor turnover, illness of co-workers and computer problems are common in almost all work environments and are not unusual. This is a specific error of law and represents a total lack of understanding of the prior case law and our statutory law in reference to unusual and extraordinary conditions. In multiple cases including the case of Shealy v. Aiken Co., Stokes v. First National, Smith v. NCCI, and others wherein the Court has found all three (3) of these factors to be conditions that can constitute unusual and extraordinary conditions in the employment. This blanket Finding of Fact which is not a Finding based on the evidence and on applicable law is arbitrary, capricious and is evidence that the Commissioner's decision was based upon an abuse of discretion.

10. That the Hearing Commissioner erred as a matter of law by finding Finding of Fact No. 20 which is irrelevant to whether or not the conditions are unusual and extraordinary to which the Claimant was exposed.

11. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 21 specifically where there is no evidence that the Claimant, "voluntarily took on the position" and it is further an error of law because the Finding that he was commended or received a pay raise for his work has nothing to do with and is irrelevant and immaterial to the decision of whether or not the Claimant sustained injury by accident arising out of and in the course of his employment due to unusual and extraordinary conditions and also further establishes that the Commissioner's Decision was arbitrary, capricious and characterized by an abuse of discretion.

12. That the Hearing Commissioner erred as a matter of law by making Finding of Fact No. 22 wherein he states that Dr. Hendricks saw the Claimant six (6) times in 2003 and 2004 and did not mention stress. This Finding is irrelevant but more importantly it is contradicted by Dr. Hendricks' testimony and evidence presented that when he first saw Mr. Menie in the hospital following his initial atrial fibrillation on March 3, 2003 he and Mr. Menie specifically discussed at that time that he was under a lot of job stress at work.

13. That the Hearing Commissioner erred as a matter of law both concerning his statement as to what a medical doctor may testify to concerning whether or not conditions are unusual and extraordinary and as to the doctor's opinion wherein the doctor stated that it was his opinion that Mr. Menie's atrial fibrillation and high blood pressure, "resulted from, as Mr. Gambrel put it 'extraordinary' job duties, responsibilities and workload of his job." Any expert may testify as to the ultimate issue in any case as a matter of law under our existing evidence law and the Commissioner's statement to the contrary is an error of law and must be reversed.

14. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 2 wherein such Conclusion of Law is contrary to the established precedents under S.C. Code §42-1-160 as to the establishment of a heart-related condition as being due to unusual and extraordinary conditions.

15. That the Hearing Commissioner erred as a matter of law by not finding the claim compensable where the employer had agreed to accept the claim in principle following the accident when the claim was filed.

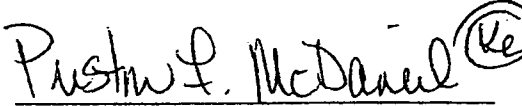
16. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law No. 3, 4 and 5 all of which are based upon Conclusion of Law No. 2 that he did not sustain an injury by accident upon which these Conclusions of Law are based.

17. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law No. 7 which is also based upon the decision that the Claimant did not sustain his burden of proof of proving as a matter of law that he had sustained injury by accident as a matter of law under the Act.

18. That the Hearing Commissioner erred as a matter of law by finding that the Claimant had not established that the conditions of employment were unusual and extraordinary where he does not state why each of the issues and conditions as presented to his treating doctor were not unusual and extraordinary.

The above-referenced exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted:


Preston F. McDaniel
Attorney for Claimant

April 30, 2012

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0307461

EMPLOYEE/CLAIMANT: ALVIN MENIE

EMPLOYER: STATE ACCIDENT FUND

CARRIER: STATE ACCIDENT FUND

 **COPY**

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 30TH DAY
OF JANUARY, 2012, COMMENCING AT THE HOUR OF 11:58 A.M.,
IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE G.
BRYAN LYNDON, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

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

APPEARANCES

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ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MR. GERALD MURPHY

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

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

6 **BY COMMISSIONER LYNDON:**

7 TODAY'S DATE IS JANUARY 30, 2012. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
9 NUMBER 0307461. ALVIN MENIE IS THE CLAIMANT,
10 REPRESENTED BY ATTORNEY PRESTON McDANIEL, VERSUS
11 EMPLOYER, THE SOUTH CAROLINA STATE ACCIDENT FUND.
12 THEY ARE SELF-INSURED, AND ANDY HASELDEN IS THE
13 ATTORNEY FOR THE DEFENDANT. THE PURPOSE OF THIS
14 HEARING IS TO DETERMINE ISSUES RAISED ON FORMS 50
15 AND 51. THE CLAIMANT'S AVERAGE WEEKLY WAGE IS
16 775.11, COMP RATE 516.77, AND THE DATE OF ACCIDENT
17 WAS 3/3/2003. ARE THERE ANY OBJECTIONS TO APAs,
18 JURISDICTION, VENUE, OR ANY OTHER ITEMS?

19 **BY MR. McDANIEL:**

20 NONE, COMMISSIONER.

21 **BY MR. HASELDEN:**

22 NONE.

23 **BY THE COMMISSIONER:**

24 WITHOUT OBJECTION ---

25 **BY MR. McDANIEL:**

1 COMMISSIONER, I WOULD JUST NOTE FOR THE RECORD
2 -- BECAUSE I'VE HAD THIS HAPPEN ONE TIME BEFORE --
3 ANDY REFERRED TO PAGE 20, A DOCTOR THAT HAD SEEN --
4 MY PAGE 20 IS -- SAYS EXHIBIT "A."

5 **BY THE COMMISSIONER:**

6 LET'S GO OFF THE RECORD.

7 (OFF-THE-RECORD DISCUSSION)

8 **BY THE COMMISSIONER:**

9 WE'RE BACK ON THE RECORD. ARE THERE ANY
10 OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY
11 OTHER ITEMS?

12 **BY MR. HASELDEN:**

13 NO, SIR; YOUR HONOR.

14 **BY THE COMMISSIONER:**

15 WITHOUT OBJECTION THE COMMISSION FILE BECOMES
16 PART OF THE RECORD WITH THE EXCEPTION OF SELF-
17 SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
18 REPORTS. PRIOR TO GOING ON THE RECORD WE HAD A
19 LENGTHY PREHEARING CONFERENCE REVIEWING THE FACTS OF
20 THE CASE IN GENERAL, SOME CASE LAW, AS WELL AS THE
21 MEDICALS, THE APAs THAT HAVE BEEN SUBMITTED, AND I'M
22 JUST GOING TO HIT SOME OF THE HIGHLIGHTS BECAUSE ALL
23 OF THIS IS GOING TO COME OUT IN TESTIMONY.

24 AS FAR AS THE POSITIONS, THOUGH, IT'S THE
25 POSITION OF THE CLAIMANT THAT AS A RESULT OF UNUSUAL

1 AND EXTRAORDINARY STRESS THAT WAS BROUGHT ON BY HIS
2 WORK THAT HE SUFFERED A HEART ATTACK. HE SEEKS
3 COMPENSABILITY UNDER THE ACT. HE DOESN'T SEEK
4 TEMPORARY TOTAL DISABILITY BENEFITS, BUT HE DOES
5 SEEK TO HAVE ALL OF HIS MEDICAL BILLS PAID. HE
6 SEEKS MEDICALS BEYOND TODAY'S DATE IF FOUND
7 COMPENSABLE, AND HE SEEKS A RATING FOR THE HEART --
8 THE HEART IS UP TO 250 WEEKS -- PURSUANT TO
9 REGULATION 67-1101. IN THE PREHEARING CONFERENCE
10 COUNSEL STATES THAT NOT ONLY THE CLAIMANT, BUT
11 WITNESSES, WILL TESTIFY ABOUT THE EVENTS THAT
12 BROUGHT THIS ON. ALSO, COUNSEL HAS DOCTORS'
13 OPINIONS THAT INDICATE THAT THE PROBLEM HE HAS IS
14 EITHER CAUSED BY OR AGGRAVATED BY STRESS. AT ANY
15 RATE, COUNSEL STATES THAT THE CLAIMANT, WHILE HE MAY
16 HAVE RETIRED FROM WORK, HE'S LIMITED TO SEDENTARY
17 WORK TO THIS DATE. HE'S NOT PERMANENTLY AND TOTALLY
18 DISABLED AS A RESULT OF THIS, BUT HE DOES SEEK THE
19 FULL 250 WEEKS THAT'S PROVIDED UNDER THE REGULATION.

20 THE POSITION OF THE DEFENDANT IS THE CASE IS
21 DENIED, AND, AGAIN, WITNESSES WILL GIVE ACCOUNTS ON
22 WHY, THE REASONS WHY THE EVENTS DURING THIS TIME
23 PERIOD WERE NOT UNUSUAL AND EXTRAORDINARY.
24 ACTUALLY, THE CLAIMANT RETIRED, NEVER WORKED MORE
25 THAN A 40-HOUR WEEK, ACCORDING TO COUNSEL, AND HAS

1 ACTUALLY FILED A CLAIM, AS I UNDERSTAND IT, UNDER
2 THE V.A. FOR A DIFFERENT MATTER, FOR A DIFFERENT
3 PURPOSE FOR THIS INJURY. THIS WILL COME OUT IN
4 TESTIMONY. COUNSEL ALSO ASKED THAT I PAY CLOSE
5 ATTENTION TO THE RATING. THE RATING REALLY DOESN'T
6 -- IT'S NOT VERY SPECIFIC. IT DOESN'T MENTION TO A
7 REASONABLE DEGREE OF MEDICAL CERTAINTY CAUSALLY
8 RELATED AND THEN A RATING. IT'S JUST A RATING
9 SITTING IN THE ABSTRACT. COUNSEL STATES THAT I
10 SHOULD GIVE THAT VERY LITTLE CREDENCE AND THAT
11 WITNESS TESTIMONY WILL, AGAIN, INDICATE THAT WHAT --
12 THE EVENTS IN THAT PERIOD OF TIME WERE NOT UNUSUAL
13 AND EXTRAORDINARY, AND THAT WILL BE EXPANDED UPON.

14 ANYTHING TO ADD TO THAT?

15 **BY MR. HASELDEN:**

16 NO, SIR.

17 **BY MR. McDANIEL:**

18 COMMISSIONER, ONE THING, ON THE REPORT ON PAGE
19 20, IN YOUR CONSIDERATION I JUST WANTED TO NOTE A
20 COUPLE OF THINGS. I WILL NOT OBJECT TO IT BEING PUT
21 IN ON THE GENERAL BASIS THAT I DON'T AGREE IT PUT
22 IN. HOWEVER, I'D ASK YOU, BECAUSE I CAN'T -- I HAD
23 THIS COME UP IN ANOTHER CASE WITH YOU ONE TIME
24 BEFORE. THIS DOCTOR HAS NEVER SEEN MR. MENIE, AND I
25 WOULD ASK YOU TO REMEMBER -- NOTE A COUPLE OF

1 THINGS. NUMBER ONE, THE DEPOSITION OF DR. HENDRICKS
2 IS NOT BEING PUT IN. THERE IS NO REFERENCE TO ANY
3 OF THE REPORTS THAT I HAVE PUT IN. IT REFERS TO
4 ONLY HAVING REVIEWED LIMITED OFFICE VISIT REPORTS.
5 IT ALSO REFERS TO AN ARTICLE THAT HAS NOT BEEN PUT
6 INTO EVIDENCE, A CARDIOSMART ATRIAL FIBRILLATION
7 ARTICLE. BUT EVEN IF IT IS, I WOULD OBJECT. IF
8 THAT HAS BEEN PUT IN, I WOULD OBJECT TO THAT AS
9 BEING HEARSAY AND WOULD SUBMIT THAT SHOULD NOT BE
10 PUT IN.

11 BY THE COMMISSIONER:

12 BUT IT'S NOT IN EVIDENCE, RIGHT?

13 BY MR. McDANIEL:

14 CORRECT.

15 BY MR. HASELDEN:

16 YES, IT IS.

17 BY THE COMMISSIONER:

18 WHAT PAGE?

19 BY MR. HASELDEN:

20 THIRTY-FOUR OF MY PREHEARING BRIEF.

21 BY MR. McDANIEL:

22 WELL, I'M GOING TO OBJECT TO THAT ARTICLE
23 COMING IN. I WOULD OBJECT TO THAT ARTICLE COMING IN
24 BECAUSE THAT IS HEARSAY, AND THERE'S NOTHING IN
25 EVIDENCE ABOUT THAT.

1 BY THE COMMISSIONER:

2 WELL, I'LL NOTE YOUR OBJECTION. THE ARTICLES
3 THAT ARE PULLED UP OFF THE INTERNET AND ENTERED --
4 I'VE LET A LOT OF THINGS IN. BELIEVE ME, MY
5 DECISION WON'T REST HEAVILY ON THAT.

6 BY MR. McDANIEL:

7 OKAY. I UNDERSTAND. BUT I WOULD NOTE THAT
8 OBJECTION TO THAT ARTICLE ON THE BASIS IT'S HEARSAY.

9 BY THE COMMISSIONER:

10 I WILL NOTE THAT OBJECTION, BUT I WILL ALLOW
11 IT. I WILL ALLOW IT IN. ANYTHING ELSE?

12 BY MR. McDANIEL:

13 NOW, THE OTHER THING IS, IS THAT COMMUNICATION
14 BETWEEN ME AND DR. HENDRICKS, I'M NOT SURE WHICH ONE
15 THAT'S REFERRED TO, BUT THERE WERE -- COMMUNICATIONS
16 WERE PUT IN AS PART OF THE DEPOSITION. I DON'T HAVE
17 ANY OBJECTION TO ANY COMMUNICATION. I'D LIKE FOR
18 THE COMMISSION TO SEE WHAT THAT WAS. I'D LIKE TO
19 HAVE THAT COMMUNICATION PUT INTO EVIDENCE.

20 BY MR. HASELDEN:

21 IT IS.

22 BY MR. McDANIEL:

23 WE CAN SUBMIT IT LATER.

24 BY MR. HASELDEN:

25 IT IS. YOU PUT IT INTO EVIDENCE. IT'S YOUR

CHECKLIST.

BY MR. McDANIEL:

OH, IT'S THE CHECKLIST. OKAY; I'M SORRY. I'M
SORRY, COMMISSIONER.

BY THE COMMISSIONER:

AND WE DID REVIEW THAT CHECKLIST.

BY MR. McDANIEL:

THAT WAS THE CHECKLIST. I APOLOGIZE. I
THOUGHT IT WAS A COMMUNICATION. ALL RIGHT. THE
OTHER THING IS, YOU WILL NOTE THAT WE PUT IN
RECORDS. THE STATE ACCIDENT FUND SENT MR. MENIE TO
DR. SELMAN WATSON FOR AN EVALUATION IN JUNE DURING
THEIR INVESTIGATION AS TO WHETHER OR NOT THIS WAS
RELATED TO THE JOB. NO REPORTS FROM DR. SELMAN
WATSON ARE REFERENCED IN THAT DOCUMENT, AND I WOULD
JUST ASK YOU TO NOTE THAT IN YOUR CONSIDERATION OF.

BY THE COMMISSIONER:

AND THERE WAS JUST ONE OTHER HOUSEKEEPING
MATTER -- I BELIEVE THIS WAS STATED NOT ON THE
RECORD -- ON PAGE 29 ABOUT THAT INVOICE. THAT WOULD

BY MR. McDANIEL:

THAT'S CORRECT. WE WILL PAY THE INVOICE TO THE
STATE ACCIDENT FUND.

BY THE COMMISSIONER:

1 ALL RIGHT. WAS THERE ANYTHING ELSE?

2 BY MR. HASELDEN:

3 NO, SIR.

4 BY MR. McDANIEL:

5 NONE, COMMISSIONER.

6 BY THE COMMISSIONER:

7 AND YOUR FIRST WITNESS IS MS. HOLMAN, RIGHT?

8 BY MR. McDANIEL:

9 YES, IT IS.

10 BY THE COMMISSIONER:

11 MA'AM, IF YOU'D STATE YOUR FULL NAME FOR THE

12 RECORD.

13 BY THE WITNESS:

14 SHAWN HOLMAN.

15 * * * * *

16 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE

17 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE

18 MATTER HEREIN:

19 SHAWN HOLMAN,

20 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS

21 FOLLOWS:

22 BY THE COMMISSIONER:

23 ANSWER ANY QUESTIONS THAT MR. McDANIEL HAS,

24 PLEASE.

25 BY THE WITNESS:

1 YES, SIR.

2 **DIRECT EXAMINATION BY MR. McDANIEL:**

3 Q. MS. HOLMAN, IF YOU WOULD, TELL ME HOW LONG YOU WERE
4 WITH THE STATE ACCIDENT FUND AND WHAT YOUR POSITION
5 WAS WITH THE STATE ACCIDENT FUND.

6 A. I WAS WITH THE STATE ACCIDENT FUND FOR ABOUT 15
7 YEARS. WHEN I LEFT I WAS THE MANAGER OF MEMBER
8 SERVICES. ALSO, A PREMIUM AUDITOR IN THE PREMIUM
9 AUDIT DEPARTMENT. NOT FOR THE -- I WASN'T THERE THE
10 ENTIRE 15 YEARS AS A PREMIUM AUDITOR.

11 Q. OKAY. WERE YOU A PREMIUM AUDITOR FOR THE ENTIRE
12 YEAR OF 2002?

13 A. YES.

14 Q. AND WHEN YOU LEFT THE STATE ACCIDENT FUND, I
15 BELIEVE, ACCORDING TO WHAT I HAVE, YOU LEFT ABOUT
16 DECEMBER 31ST, OR RIGHT AROUND THAT TIME, OF 2002?

17 A. YES, SIR.

18 Q. AND WHERE DID YOU GO THEN, AND WHERE DO YOU WORK
19 NOW?

20 A. THE RETIREMENT SYSTEMS AND CUSTOMER SERVICE MANAGER
21 NOW AT THE RETIREMENT SYSTEMS.

22 Q. NOW, I'M GOING TO TRY TO CUT THROUGH YOUR TESTIMONY
23 AS MUCH AS I CAN. TELL ME ABOUT, YOU WERE UNDER A
24 TEAM CONCEPT WITH THE STATE ACCIDENT FUND IN 2002;
25 IS THAT CORRECT?

1 A. CORRECT.

2 Q. TELL ME ABOUT HOW THE TEAM CONCEPT WAS SUPPOSED TO
3 WORK.

4 A. WELL, IT WAS DIVIDED UP INTO THREE OR FOUR TEAMS.
5 THEY WERE ASSIGNED ACCOUNTS, PERHAPS BASED ON A
6 GEOGRAPHICAL LOCATION, AND THIS PARTICULAR TEAM WAS
7 RESPONSIBLE FOR THOSE ACCOUNTS FROM BEGINNING TO END
8 AS FAR AS THOSE EMPLOYERS, POLICYHOLDERS OF THE
9 STATE ACCIDENT FUND. YOU HAD A GROUP OF ADJUSTERS,
10 AND THEY WOULD ADJUST THE CLAIM, HAD A SAFETY REP,
11 HAD THE PREMIUM AUDITORS RESPONSIBLE FOR THE
12 PREMIUM, AND, YOU KNOW, SEVERAL ASSISTANTS FOR THE
13 MOST PART FOR THE CLAIMS ADJUSTERS. THE CONCEPT WAS
14 SET UP BASED ON THESE PEOPLE WERE SOLELY RESPONSIBLE
15 FOR THESE 200-PLUS ACCOUNTS, ANY AND EVERYTHING AS
16 IT RELATED TO THEIR WORKERS' COMP PREMIUM WITH US,
17 POLICY.

18 Q. IN REFERENCE TO EMAILS, MAIL, COMMUNICATIONS,
19 QUESTIONS THAT HAD TO DO WITH ANYTHING IN REFERENCE
20 TO THE AUDITING FUNCTION, IF IT CAME IN FROM THOSE
21 ACCOUNTS WHO WOULD HANDLE THAT WITHIN THE AUDITING
22 DEPARTMENT?

23 A. ONLY THE PREMIUM AUDITOR.

24 Q. AND SO, UNDER THIS TEAM CONCEPT THERE WAS SORT OF A
25 DIVISION OF THE ACCOUNTS, AND THEN YOU WERE

1 RESPONSIBLE FOR HANDLING ALL THE ACTIVITIES IN
2 REFERENCE TO THE AUDITING FUNCTION; IS THAT CORRECT?

3 A. CORRECT.

4 Q. TELL ME WHAT AN AUDITOR FOR THE STATE ACCIDENT FUND
5 IN 2002 UNDER THIS TEAM CONCEPT DID. WE UNDERSTAND
6 PREMIUM AUDITS, THAT TYPE OF THING. I'M GOING TO
7 ASK YOU SOMETHING ABOUT SCHEDULING IN A MINUTE. BUT
8 FIRST OFF, JUST TELL ME WHAT ALL THAT ENTAILED OTHER
9 THAN -- INCLUDING THE AUDITS, BUT WHAT ALL IT
10 ENTAILED.

11 A. WELL, WE GENERATED THEIR PREMIUM. THE STATE
12 AGENCIES WERE ON AN F-Y SCHEDULE; CITIES, COUNTIES,
13 MUNICIPALITIES ON A CALENDAR. AND SO THEY RECEIVED
14 AN ESTIMATE AT THE BEGINNING OF THE POLICY PERIOD,
15 AND THEY RECEIVED AN AUDIT AT THE END OF THE POLICY
16 PERIOD, OR AFTER THE POLICY PERIOD HAD EXPIRED. OF
17 COURSE, WITH THOSE 200-PLUS ACCOUNTS, WHETHER YOU
18 WERE DISCUSSING THE BASE AMOUNT BASED ON THOSE CLASS
19 CODES FOR THAT TYPE OF BUSINESS, IT WAS OUR
20 RESPONSIBILITY TO ASSIGN THAT, TO DEFEND IT OR
21 JUSTIFY IT, AS WELL AS THE EXPERIENCE MODIFIER. IN
22 THE EVENT THAT THE EMPLOYER QUESTIONED THEIR
23 EXPERIENCE MODIFIER, AS TO WHY IT WAS SO HIGH OR
24 WHATEVER, IT WAS OUR RESPONSIBILITY TO EXPLAIN THAT.
25 THOSE USUALLY CONSISTED OF MEETINGS.

1 Q. TELL ME ABOUT THOSE MEETINGS. WHEN SOMEBODY WOULD
2 GET AN EXPERIENCE MODIFIER -- AND THE COMMISSIONER
3 IS AWARE OF THIS SOMEWHAT ALSO. AND ALSO, JUST IN
4 CASE HE SEES THIS -- I'M NOT SURE THAT HE WILL --
5 BUT IN ANY OF THE DOCUMENTS IF HE SEES E-MOD IS THAT
6 REFERRING TO THE EXPERIENCE MODIFIER?

7 A. CORRECT.

8 Q. AND I BELIEVE THAT'S THE VERNACULAR YOU ALL USUALLY
9 REFERRED TO?

10 A. E-MOD.

11 Q. WAS AS AN E-MOD?

12 A. RIGHT.

13 Q. TELL ME WHAT WOULD GENERALLY CAUSE AN AUDITOR TO
14 HAVE TO GO OUT AND HAVE A MEETING WITH AN ACCOUNT.

15 A. WELL, I THINK THE STATE -- MOST OF THE -- FOR THE
16 MOST PART THE STATE AGENCIES WERE THE WORST BECAUSE
17 YOU'RE TALKING ABOUT HUGE ORGANIZATIONS WITH A LOT
18 OF PAYROLL -- DEPARTMENT OF CORRECTIONS, MENTAL
19 HEALTH, D.S.N. AND SO THEY COULD VERY WELL HAVE A
20 \$1,000,000 BASE PREMIUM BASED ON THOSE CLASS CODES
21 FOR THAT INDUSTRY, BUT THE EXPERIENCE MODIFIER, THE
22 E-MOD, TOOK INTO ACCOUNT THE FREQUENCY AND SEVERITY
23 OF THOSE CLAIMS. SO INSTEAD OF THAT PREMIUM BEING
24 FOR ONE YEAR 1,000,000, IF THEY HAD A 2.0 E-MOD IT
25 WOULD DOUBLE, OR ON OCCASION THEY WOULD TRIPLE. AND

1 SO, YOU WERE CALLED OUT TO THAT AGENCY, AND THEY'D
2 KIND OF BLIND SIDE YOU BECAUSE YOU WOULD BE UNDER
3 THE IMPRESSION THAT YOU WERE MEETING WITH AN H.R.
4 PERSON, AND WHEN YOU WALKED INTO THE ROOM THEY WOULD
5 HAVE A C.P.A., THEY'D HAVE THEIR DIRECTOR AND THEIR
6 BENEFITS ADMINISTRATOR, AND YOU'RE ACTUALLY JUST
7 THERE TO BREAK THIS DOWN TO THEM TO HELP THEM
8 UNDERSTAND AND JUSTIFY THE NUMBERS. AND THE NUMBERS
9 WEREN'T ALWAYS JUSTIFIABLE. NOW, HOPEFULLY WE WOULD
10 HONE IN ON THAT BEFORE WE WENT OUT THERE. YOU COULD
11 MAKE CORRECTIONS. BUT ANYTIME SOMEONE WOULD
12 CHALLENGE THE VALIDITY OF YOUR CLASS CODES OR YOUR
13 E-MOD, YOU KNOW, IT WAS A PROBLEM, SOMETIMES SEVERAL
14 MEETINGS BEFORE A CONCLUSION.

15 Q. SO, ON A YEAR-TO-YEAR BASIS IF SOMEBODY'S E-MOD WENT
16 UP YOU COULD PRETTY WELL EXPECT A CALL?

17 A. THEY MORE OR LESS HAD TO CALL JUST TO KEEP THEIR JOB
18 IN A LOT OF INSTANCES BECAUSE, YOU KNOW, THERE ARE A
19 COUPLE OF PEOPLE -- ESPECIALLY A HUGE AGENCY, YOU
20 KNOW. THEY'VE GOT BENEFITS ADMINISTRATORS, AND FOR
21 SOME OF THEM THAT MAY BE THEIR ONLY JOB. IF IT'S A
22 SMALL ORGANIZATION, THEY MIGHT BE DOING WORKERS'
23 COMP AND A NUMBER OF OTHER THINGS. YOU KNOW, THEY
24 HAVE A SAFETY REP WHO IS, YOU KNOW, RESPONSIBLE FOR
25 DECREASING THOSE CLAIMS AS WELL. SO, CHANCES ARE IF

1 IT -- YOU KNOW, AND ESPECIALLY IF IT DRASTICALLY
2 INCREASED FROM ONE YEAR TO THE NEXT, I MEAN, YOU
3 WOULD ACTUALLY HAVE TO GO OUT ON OCCASION AND SHOW
4 THEM EVERY CLAIM, AND THEY WOULD WANT TO CHALLENGE,
5 WELL, THIS SHOULD HAVE BEEN -- SHOULDN'T HAVE THIS
6 RESERVE ON IT BECAUSE IT WAS CLOSED, SO IT SHOULD
7 ONLY REFLECT WHAT YOU PAID ON IT. BUT IF SOMEBODY
8 -- YOU KNOW, AND EVERY YEAR WAS DIFFERENT AS FAR AS,
9 PERHAPS, THE CUSTOMERS THAT WOULD HAVE THOSE KINDS
10 OF COMPLAINTS OR CONCERNS FOR MEETINGS BECAUSE THE
11 MOD WOULD CHANGE EVERY YEAR. SO, IN A GIVEN YEAR IT
12 WAS HARD TO SAY, YOU KNOW, HOW MANY OF THOSE WOULD
13 OCCUR. IT JUST DEPENDED ON THE ORGANIZATION, THE
14 PEOPLE THAT WERE IN CHARGE, AND, YOU KNOW, BASED ON
15 THEIR REQUEST.

16 Q. BUT WOULD IT BE SAFE TO SAY THAT ANYTIME THERE WAS A
17 SIGNIFICANT CHANGE IN THE RATE OF ANY OF THE
18 AGENCIES, THAT WOULD PUT AN ADDITIONAL STRESS ON
19 THOSE AGENCY PERSONNEL TO -- BECAUSE OF THE INCREASE
20 IN THE BUDGET AND THE PROBLEMS THAT IT CAUSED FOR
21 THEIR BUDGETS; IS THAT CORRECT?

22 A. OH, DEFINITELY. I HAD GREENVILLE SANITATION TELL ME
23 ONCE THAT THEY WERE GOING TO HAVE TO LET SOMEBODY GO
24 JUST TO PAY THEIR WORKERS' COMP PREMIUM. I DON'T
25 KNOW IF THAT REALLY ACTUALLY HAPPENED, BUT IT WASN'T

1 JUST THE LARGE AGENCIES; IT WAS OCCASIONALLY THE
2 SMALLER AGENCIES. IF THEY HAD BUDGETED FOR THIS
3 PREMIUM THAT DOUBLED OR TRIPLED, IT COULD BE A
4 PROBLEM. IT WOULD BE A PROBLEM.

5 Q. NOW, BEFORE WE GET INTO THAT A LITTLE FURTHER -- AND
6 I WANT TO GET INTO THAT A LITTLE BIT MORE. TELL ME
7 ABOUT -- YOU SAID THAT STATE AGENCIES WERE ON A
8 FISCAL YEAR BASIS, AND LOCAL AND COUNTY AGENCIES
9 WERE ON AN ANNUAL BASIS. WHEN DID YOU DO -- WAS
10 THERE A PARTICULAR TIME OF THE YEAR THAT YOU DID THE
11 AUDITS FOR THE STATE AGENCIES VERSUS THE COUNTY AND
12 LOCAL AGENCIES? AND IF SO, TELL ME ABOUT THAT.

13 A. THE STATE AGENCIES WERE SEVEN -- YOUR TYPICAL F-Y,
14 7/1 TO 6/30. THAT WAS THE BEGINNING OF THE POLICY
15 PERIOD. SO, THE POLICY PERIOD ENDED AS OF 6/30, AND
16 SO IT WOULD BE THAT MONTH, OR WHATEVER THE
17 REQUIREMENT WAS TO COMPLETE THAT AUDIT, IT WOULD BE
18 AFTER THAT DATE. ALL OF THE OTHER POLICYHOLDERS
19 WERE ON A CALENDAR YEAR. THEIR POLICY PERIOD BEGAN
20 1/1 AND ENDED 12/31. AND, AGAIN, WHATEVER THE
21 REQUIREMENT WAS AT THE TIME -- AND IT WOULD CHANGE
22 AS FAR AS, YOU KNOW, AFTER THOSE POLICY PERIODS
23 ENDED YOU HAD TO COMPLETE THE AUDIT.

24 Q. SO, BASICALLY, IN THE FALL THROUGH DECEMBER 31ST YOU
25 DID STATE AGENCIES, AND BEGINNING JANUARY 1 THROUGH

1 JUNE 30TH YOU DID CITIES, COUNTIES, AND
2 MUNICIPALITIES AND OTHER LOCAL AGENCIES?

3 A. CORRECT.

4 Q. OKAY. BASE ON YOUR RECOLLECTION, AS TO EACH TEAM,
5 HOW MANY AUDITS OR AGENCIES WERE ASSIGNED, DID YOU
6 HAVE TO DO PER YEAR?

7 A. IT WAS OVER 200, A LITTLE OVER 200, BECAUSE YOU WERE
8 ALWAYS PICKING UP NEW EMPLOYERS, BUT IT WAS NEVER A
9 SIGNIFICANT NUMBER IN A GIVEN YEAR. BUT A LITTLE
10 OVER 200.

11 Q. AND I THINK YOU WERE TELLING ME SOMETHING ONE TIME
12 ALSO, IT DEPENDED ON SOMEWHAT AS TO THE TOTAL NUMBER
13 AS TO HOW THE BUDGET CONTROL BOARD BROKE THEM OUT
14 AND ALSO WHAT AGENCIES HAVE BEEN COMBINED OR BROKEN
15 APART IN A GIVEN YEAR?

16 A. YEAH. I MEAN, YOU WOULD HAVE SITUATIONS WHERE YOU
17 WOULD HAVE MERGERS, A COUNTY AND A D.S.N. WOULD
18 MERGE, AND SO I GUESS THAT -- IT WAS APPEAR THAT
19 INITIALLY THEY WERE TWO, BUT NOW THEY'RE ONE POLICY
20 PERIOD, ALL ONE POLICY PERIOD.

21 Q. SO TO USE AN EXAMPLE OF A STATE AGENCY, SOMETHING
22 LIKE WHEN THE D.O.T. -- THE DEPARTMENT OF PUBLIC
23 SAFETY, THE D.O.T., AND THE HIGHWAY PATROL, THEY
24 WERE ALL PUT UNDER DIFFERENT FUNCTIONS?

25 A. OH, YEAH. 1997 WAS A BIG REORGANIZATION YEAR. IT

1 WENT FROM LIKE 130 STATE AGENCIES TO 100 OR
2 SOMETHING LIKE THAT, IF I'M NOT MISTAKEN.

3 Q. NOW, YOU REFERRED TO -- WE TALKED ABOUT A
4 SIGNIFICANT CHANGE IN A PREMIUM AUDIT, AND I'M GOING
5 TO SHOW YOU A DOCUMENT THAT'S BEEN PUT INTO --
6 BEFORE THE COMMISSIONER UNDER THE APA.

7 **BY MR. McDANIEL:**

8 COMMISSIONER, PAGE 113 OF THE CLAIMANT'S APA
9 SUBMISSIONS.

10 **BY THE COMMISSIONER:**

11 ALL RIGHT.

12 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

13 Q. AND I'M GOING TO SHOW YOU THIS JUST TO ASK YOU SOME
14 QUESTIONS, IF YOU COULD VERIFY SOMETHING FOR ME.

15 A. OKAY.

16 Q. LOOKING AT THE FIRST SENTENCE, IT SAYS THAT AS OF
17 JANUARY 1ST, 2003, ALL THE AGENCIES INCURRED AN
18 AVERAGE RATE INCREASE OF 24.7 PERCENT AND THAT THIS
19 WAS THE FIRST BASE PREMIUM RAISE THAT HAD BEEN
20 ISSUED BY THE STATE FUND SINCE 1996. DOES THAT
21 CONCUR WITH YOUR RECOLLECTION, THAT FROM 1996 TO
22 2003 TO YOUR KNOWLEDGE THERE HAD NOT BEEN A BASE
23 PREMIUM RATE INCREASE?

24 A. NOT SIGNIFICANT. I MEAN, WE WOULD ACTUALLY -- I CAN
25 RECALL LOADING THE TABLES, BUT, YOU KNOW, IT WAS

1 NEVER ANYTHING SIGNIFICANT. THEY MAY ADJUST
2 SOMEWHAT BUT NEVER TO THIS EXTENT.

3 Q. NOW, YOU'VE TOLD ME ABOUT WHAT HAPPENED WHENEVER AN
4 AGENCY GOT, FOR A BETTER TERM, A SURPRISE OR GOT AN
5 UNEXPECTED E-MOD, WHAT IT DID. IN YOUR OPINION
6 BASED ON YOUR EXPERIENCE AS AN AUDITOR IN THE STATE
7 ACCIDENT FUND, WHAT DO YOU THINK HAPPENED WHENEVER
8 ALL THE AGENCIES GOT THAT NOTIFICATION AND WHEN THEY
9 ACTUALLY GOT THEIR ESTIMATED PREMIUM? I BELIEVE
10 THAT LETTER -- A LETTER WENT OUT NOTIFYING THEM OF
11 THIS THE FIRST OF DECEMBER THAT IT WAS EFFECTIVE
12 JANUARY 1; IS THAT YOUR UNDERSTANDING? I BELIEVE
13 YOU WERE STILL THERE DURING THE TIME THAT THAT
14 LETTER HAD GONE OUT?

15 A. RIGHT, DECEMBER.

16 Q. TELL ME WHAT HAPPENED.

17 A. IT WOULD CAUSE EVERYBODY TO WONDER IF THEY WERE
18 GONNA HAVE AN INCREASE. IT WOULD, PERHAPS -- AND
19 THIS WOULD -- EVEN WITHOUT A RATE INCREASE, YOU
20 KNOW, THE BASE RATES, YOU WOULD HAVE SOME EMPLOYERS
21 THAT WANTED TO ARGUE THAT THEIR INDUSTRY SHOULD HAVE
22 BEEN CLASSIFIED DIFFERENTLY. AND, OF COURSE,
23 DIFFERENTLY ALWAYS MEANT THEY WANTED A LOWER RATE,
24 SAY THAT THAT BASE RATE WOULD BE LOWER, YOU KNOW,
25 WITH THE PAYROLL. SO, BASED ON THIS I'M SURE

1 EVERYBODY WANTED TO SEE OR KNOW JUST HOW MUCH OF AN
2 INCREASE THEY'D RECEIVE BECAUSE THIS WOULD APPLY TO
3 PEOPLE -- OR EMPLOYERS THAT WEREN'T EXPERIENCE
4 RATED. THEY JUST DEALT WITH A 1.0 OR THE BASE RATE.
5 AND, AGAIN, IT ALL GENERATED -- IT ALL STEMMED FROM
6 BUDGETS AND WHAT WAS BUDGETED. AND SO, PEOPLE COULD
7 EASILY BUDGET FIVE PERCENT MORE FOR THIS PREMIUM BUT
8 END UP NOT HAVING ENOUGH MONEY TO PAY IT.

9 Q. FOR EXAMPLE, YOU USED AN EXAMPLE -- LET'S TALK ABOUT
10 A SMALL AGENCY LIKE THE ONE THAT YOU GOT THE CALL
11 FROM AT SOME POINT IN TIME, YOU REFERENCED, ABOUT
12 WHAT WAS GOING TO HAPPEN. WHAT KIND OF EFFECT WOULD
13 THAT KIND OF RATE INCREASE HAVE ON MANY OF THE SMALL
14 AGENCIES?

15 A. I MEAN, THAT WAS A SMALL ONE. GREENVILLE SANITATION
16 IS, YOU KNOW -- IT'S NOT A -- I DON'T RECALL IT
17 BEING A MILLION DOLLAR POLICY. BUT, YOU KNOW, THAT
18 WOULD BE A TYPICAL KIND OF INDUSTRY THAT, PERHAPS,
19 FOR WHATEVER REASON N.C.C.I., THE NATIONAL COUNCIL
20 ON COMPENSATION INSURANCE, BECAUSE ALL THE EMPLOYERS
21 WOULD REPORT INFORMATION TO THOSE HEADQUARTERS, THEY
22 COULD HAVE DETERMINED THAT, YOU KNOW, GARBAGE
23 COLLECTORS, THAT TYPE OF BUSINESS, THEY ARE GONNA --
24 YOU KNOW, THEY'RE GONNA BE PART OF THIS RATE
25 INCREASE. AND I THINK THERE WAS A SITUATION LIKE

1 THAT AS TO WHY -- THAT EMPLOYER SAID, "I'M GONNA
2 HAVE TO LET SOMEBODY GO JUST TO PAY FOR MY WORKERS'
3 COMP PREMIUM." AND WE WOULD HAVE PEOPLE THAT WOULD
4 ACTUALLY -- I MEAN, IT WAS FRAUD. IN THE EVENT THAT
5 YOU TRY TO FORCE ME TO CHANGE YOUR CODES AND YOU
6 KNOW THAT THAT'S NOT YOUR BOOK OF BUSINESS, BUT YOU
7 WANT IT BECAUSE OF THE FACT THAT IT'S A LOWER RATE.
8 I MEAN, PEOPLE WOULD ATTEMPT TO DO THAT, OR THEY
9 WOULD WANT TO CHALLENGE IT. WE EVEN -- AT ONE POINT
10 WE EVEN BROUGHT IN AN INDEPENDENT OUTSIDE SOURCE
11 JUST TO VALIDATE HOW THESE EMPLOYERS WERE CLASSED.

12 Q. LET'S TALK A LITTLE BIT ABOUT -- GO BACK TO THE TEAM
13 CONCEPT. AND I BELIEVE EACH AUDITOR WAS ASSIGNED TO
14 A TEAM. ~~THERE WERE THREE AUDITORS. IT WAS YOU, MR.~~
15 ~~MENTE, AND CARLA JOHNSON, IS THAT RIGHT?~~

16 A. CORRECT.

17 Q. ALL RIGHT. AND EACH ONE OF YOU HAD YOUR SEPARATE
18 EMAILS, AND EACH ONE OF YOU HAD YOUR SEPARATE
19 VOICEMAIL?

20 A. CORRECT.

21 Q. AND I IMAGINE THE MAIL WAS BROKEN OUT SO THAT ANY
22 CORRESPONDENCE WOULD COME TO YOU THAT APPLIED TO
23 YOUR AGENCIES, IS THAT RIGHT?

24 A. YES, SIR.

25 Q. HOW WAS IT HANDLED WHEN SOMEBODY KNEW THEY HAD TO BE

1 -- I BELIEVE YOU HAVE GIVEN SOME TREMENDOUS SERVICE
2 TO OUR COUNTRY, AND YOU WERE FORMERLY IN THE
3 MILITARY RESERVE; IS THAT CORRECT?

4 A. CORRECT.

5 Q. IS IT AIR FORCE OR WHICH ---

6 A. ARMY.

7 Q. ARMY, OKAY. AND SO WE KNEW YOU HAD TO BE -- THEY
8 KNEW YOU HAD BE OUT FOR A COUPLE WEEKS FOR TRAINING,
9 OR IF SOMEBODY WAS OUT, WE KNEW HE WAS GOING TO BE
10 OUT FOR A WEEK OR FOR VACATION OR WHATEVER, HOW DID
11 YOU ALL HANDLE THAT WITHIN THE AUDITING DEPARTMENT?

12 A. WELL, PRIOR TO GOING TO THE TEAM CONCEPT WE WERE A
13 UNIT. SO IF I WAS GONNA BE OUT FOR TWO WEEKS, AL
14 AND CARLA WOULD PICK UP MY WORKLOAD, OR IF SOMEBODY
15 WAS GONNA BE IN THE HOSPITAL, CARLA WAS GONNA BE IN
16 THE HOSPITAL, AL AND I WOULD PICK UP HER WORKLOAD.
17 ONE OF THE PROBLEMS THAT WE PERCEIVED AS FAR AS THIS
18 TEAM ENVIRONMENT WAS THAT WE WERE BEING PLACED ON
19 THESE TEAMS, BUT NOBODY ON THAT TEAM COULD HELP ME
20 DO PREMIUM -- WORKERS' COMP PREMIUM WORK, WHETHER
21 IT'S ESTIMATE, AUDIT, PHONES, MEETINGS, TRAVEL.
22 THAT WAS ONE OF OUR BIG CONCERNS, THAT AL WOULD
23 STILL BE WILLING -- SAY IF I'M GONNA BE OUT FOR TWO
24 WEEKS AT RESERVES, YOU KNOW, AL IS ON ANOTHER TEAM.
25 IS HE STILL GONNA BE WILLING TO DO THE WORK WHILE

1 I'M OUT, BECAUSE NO ONE ON MY TEAM CAN DO IT.
2 UNLIKE IN A DEPARTMENT, IT WASN'T AN ISSUE. YOU
3 JUST DID IT. I DIDN'T STAY AROUND LONG ENOUGH TO
4 FIND OUT 'CAUSE SHORTLY AFTER THEY DID THAT I GOT
5 ANOTHER JOB.

6 Q. ALL RIGHT. NOW, LET ME -- LET'S GO TO ANOTHER
7 ISSUE, AND I WANT TO JUST ASK YOU ABOUT THAT. ~~THERE~~
8 WAS A NEW COMPUTER SYSTEM THAT CAME IN, IN 2002.
9 TELL ME WHAT THAT DID TO -- DID IT JUST COME OFF THE
10 GROUND SMOOTHLY, OR DID YOU ALL HAVE PROBLEMS WITH
11 IT?

12 A. UNFORTUNATELY, FROM WHAT I RECALL I ~~THINK WE JUST~~
13 GOT THE WRONG VENDOR. THE OTHER COMPANY DIDN'T
14 REACH THE BID PROCESS ON TIME OR SOMETHING. BUT,
15 YOU KNOW, WE -- THE COMPUTER SYSTEM THAT WE GOT, AT
16 THAT TIME IT HAD A LOT OF GLITCHES, THE PREMIUM
17 PIECE. THEY -- YOU KNOW, I THINK THEY HAD THE
18 CLAIMS PIECE DOWN, THAT MODEL. BUT THE PREMIUMS, IT
19 WAS A LOT OF WORK. IT WAS A LOT OF -- THERE WERE A
20 LOT OF GLITCHES IN THE SYSTEM, AND THE ONLY WAY TO
21 ENSURE INITIALLY THAT THESE E-MODS WERE CORRECT --
22 BECAUSE EVERYBODY ELSE IN THE STATE, THEY HAD --
23 NORMALLY THEY GO THROUGH N.C.C.I. SO N.C.C.I., THEY
24 ARE GENERATING THOSE E-MODS. WELL, WE GENERATED OUR
25 OWN E-MODS, AND IT WAS AN UNSTABLE COMPUTER AS FAR

1 AS THIS NEW PROGRAM. LIKE ANYTHING ELSE, IT HAD TO
2 IRON OUT THE KINKS. SO WE WOULD ACTUALLY HAVE TO
3 TEST THEM BECAUSE IT TOOK A WHILE BEFORE THAT SYSTEM
4 WAS FULLY FUNCTIONAL.

5 Q. SO, IN REFERENCE TO -- I THINK YOU HAD TOLD ME
6 SOMETHING EARLIER ABOUT THE FACT ABOUT HOW YOU WOULD
7 NORMALLY ENTER AN AUDIT VERSUS HOW -- THE NUMBER OF
8 TIMES YOU HAD TO REDO THAT OR REENTER AN AUDIT WITH
9 THIS NEW COMPUTER SYSTEM.

10 A. IT WASN'T SO MUCH THE AUDIT; IT WAS -- IT WASN'T --
11 I DON'T THINK IT WAS SO MUCH THE AUDIT. I THINK THE
12 BIGGEST PROBLEM WAS THE EXPERIENCE MODIFIER, AND
13 THAT WAS SUCH A CRUCIAL FACTOR AS FAR AS THE
14 PREMIUM. IF YOU COULDN'T BACK THAT UP OR IF YOU
15 WERE CALLED TO JUSTIFY WHY IT IS WHAT IT IS,
16 ESPECIALLY IF IT'S ANYTHING BELOW -- ABOVE A 1.0, WE
17 WOULD HAVE TO ACTUALLY GO THROUGH AND KIND OF
18 MANUALLY ENTER THAT INFORMATION TO ENSURE THAT THE
19 SYSTEM WAS GENERATING A VALID E-MOD. AND EVEN IF IT
20 WAS VALID FROM THE SYSTEM, YOU'D STILL HAVE TO DO
21 THAT IF YOU WERE CALLED INTO A MEETING TO EXPLAIN
22 IT, AS TO WHY IT DOUBLED OR TRIPLED.

23 Q. SO GOING BACK TO YOUR EARLIER TESTIMONY ABOUT E-
24 MODS, SO IF SOMEBODY THAT DOESN'T KNOW WHAT WE'RE
25 TALKING ABOUT REFERS TO THAT, IF YOUR EXPERIENCE

1 MODIFIER WENT FROM 1.0 TO 2.0 AND YOUR PREMIUM WAS
2 \$1,000,000 ON THE BASE PREMIUM, THAT MEANT THAT YOUR
3 PREMIUM WOULD GO FROM 1,000,000 TO 2,000,000?

4 A. CORRECT.

5 Q. AND THIS BASE PREMIUM, IN THAT SAME SCENARIO, IF
6 YOUR BASE PREMIUM WOULD GO UP, IT WOULD BE GOING UP
7 FROM 1,000,000 TO \$1,247,000 JUST ON THE BASE
8 PREMIUM, AND IF YOU HAD THAT SAME 2.0 MOD, THAT
9 WOULD MEAN YOU WOULD PAY \$2,540,000. IS THAT ABOUT
10 ---

11 A. I'LL TRUST YOU ON THAT ONE. I DON'T -- I'M NOT
12 RUNNING THOSE NUMBERS IN MY HEAD. OKAY. YEAH. BUT
13 IT WOULD -- YOU KNOW, THOSE RATES, IF YOU'RE BASING
14 IT ON THAT, THAT IS AN EMPLOYER WITH THAT 24 PERCENT
15 BASE RATE INCREASE ON TOP OF A 2.0 MOD.

16 Q. RIGHT. SO IN OTHER WORDS, BASICALLY HIS PREMIUM
17 WOULD GO FROM 1,000,000 TO 2,500,000?

18 A. POSSIBLE.

19 Q. NOW, LET'S TALK ABOUT -- THERE WERE THREE OF YOU IN
20 THE DEPARTMENT ASSIGNED TO THREE DIFFERENT TEAMS.
21 WE KNOW THAT THE OTHER LADY, MS. CARLA JOHNSON, I
22 BELIEVE YOU'RE STILL FRIENDS WITH HER, KNOW HER?

23 A. I KNOW HER. I SEE HER SELDOM.

24 Q. ALL RIGHT. SHE, OBVIOUSLY, HAD TO GO OUT FOR BACK
25 SURGERY. HOW WAS HER HEALTH AND HER WORK ATTENDANCE

1 DURING THE FALL OF 2002?

2 A. CARLA HAD ALWAYS HAD POOR HEALTH AS WELL AS
3 ATTENDANCE. YOU KNOW, SHE WAS A PROTECTED CLASS TO
4 SOME EXTENT, THOUGH, BECAUSE SHE ALWAYS HAD HEALTH
5 PROBLEMS.

6 Q. WAS SHE OUT A LOT IN THE FALL OF 2002?

7 A. PROBABLY.

8 Q. ALL RIGHT. THEN WHO PICKED UP HER WORK WHENEVER SHE
9 WAS OUT?

10 A. AL AND I DID HER WORK FOR A WHILE. I MEAN, EVEN
11 WHEN WE INITIALLY WENT TO THIS WHOLE TEAM CONCEPT,
12 WE WEREN'T -- WE TRIED NOT TO JUST, YOU KNOW -- WE
13 KNEW THAT NO ONE ELSE COULD DO THE WORK FOR US ON
14 THOSE TEAMS. SO I THINK -- I BELIEVE WE WOULD HELP
15 EACH OTHER ON OCCASION. BUT, OF COURSE, I'M GONNA
16 DO MINE FIRST. YOU KNOW, BASED ON THAT CONCEPT I'M
17 GONNA WORK MINE FIRST, AND IF I HAD TIME FOR YOURS
18 -- WE -- I THINK WE WOULD TRY TO HELP ONE ANOTHER.
19 WE WOULD ATTEMPT TO ANYWAY.

20 Q. DID JUST HER BEING OUT FOR SHORT PERIODS OF TIME
21 SPORADICALLY, DID THAT PUT ADDITIONAL WORKLOAD,
22 ADDITIONAL STRESS ON YOU AND AL IN YOUR OPINION?

23 **BY MR. HASELDEN:**

24 I'M GOING TO OBJECT TO ---

25 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

1 Q. IN YOUR OPINION.

2 **BY MR. HASELDEN:**

3 I'M GOING TO OBJECT, YOUR HONOR. SHE CAN
4 TESTIFY AS TO HER. SHE CAN'T TESTIFY AS TO MR.
5 MENIE.

6 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

7 Q. IN REFERENCE TO YOU, THEN.

8 **BY THE COMMISSIONER:**

9 WAIT, WAIT, WAIT. WE'VE GOT THE OBJECTION.
10 IT'S MY UNDERSTANDING THAT YOU HAD A DEPARTMENT
11 CONCEPT AND A TEAM CONCEPT, AND WHEN YOU WENT TO THE
12 TEAM CONCEPT IT REALLY DID AWAY, IN THEORY AT LEAST,
13 WITH YOU ALL HELPING EACH OTHER. YOU JUST SAID, I
14 BELIEVE, THAT EVEN THOUGH YOU WENT TO THE TEAM
15 CONCEPT, YOU WEREN'T GOING TO LET ANYBODY JUST STAND
16 UP THERE AND NOT GET THEIR JOB DONE, BUT YOUR JOB
17 WENT FIRST?

18 **BY THE WITNESS:**

19 CORRECT.

20 **BY THE COMMISSIONER:**

21 BUT YOU WOULD HELP THE OTHER PERSON?

22 **BY THE WITNESS:**

23 IF -- YES, SIR.

24 **BY THE COMMISSIONER:**

25 WHAT ELSE DO I NEED TO KNOW? I MEAN, IT'S VERY

1 CLEAR TO ME.

2 **BY MR. McDANIEL:**

3 ALL RIGHT. I DON'T THINK YOU NEED TO KNOW
4 ANYTHING MORE ON THAT POINT.

5 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

6 Q. NOW, YOU WERE THERE DECEMBER 1ST. TELL ME ABOUT
7 YOUR WORKLOAD. I MEAN, HOW WOULD YOU DESCRIBE IT?
8 OBVIOUSLY, I'M SURE YOU'RE GOING TO TELL ME THAT YOU
9 CAN HANDLE IT, THAT YOU WERE ABLE TO HANDLE IT. IT
10 WAS IT A FULL WORKLOAD, THOUGH?

11 A. IT WAS. AND, AGAIN, IT WOULD VARY FROM ONE YEAR TO
12 THE NEXT OR FROM ONE POLICY PERIOD TO THE NEXT
13 BECAUSE OF THOSE UNKNOWN FACTORS. YOU KNOW, WHAT IS
14 THE E-MOD GONNA BE THIS YEAR COMPARED TO LAST YEAR
15 AS FAR AS HAVING TO JUSTIFY AN INCREASE. OR TRAVEL,
16 FOR THAT MATTER, YOU COULD HAVE A YEAR WHERE YOU
17 COULD HAVE A LOT MORE TRAVEL THAN, PERHAPS, A
18 PREVIOUS YEAR AS IT RELATES TO THE SAME GROUP OF
19 POLICIES.

20 Q. NOW, BEFORE I ASK YOU THAT ONE OTHER QUESTION, I'M
21 GOING TO ---

22 **BY MR. McDANIEL:**

23 COMMISSIONER, PAGE 186 OF THE CLAIMANT'S APA
24 SUBMISSIONS.

25 **BY THE COMMISSIONER:**

1 ALL RIGHT.

2 BY MR. McDANIEL:

3 AND PAGE 189.

4 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

5 Q. FIRST, AT PAGE 189 THERE'S A COMMENT MADE ON ONE OF
6 AL'S PERFORMANCE -- EMPLOYEE PERFORMANCE MANAGEMENT
7 SYSTEM EVALUATION. AND THE LAST SENTENCE INCLUDES
8 THE STATEMENT THAT, "HE CONTINUES TO MAKE EVERY
9 EFFORT TO DELIGHT ALL CUSTOMERS NEEDING ASSISTANCE."
10 DO YOU REMEMBER ANYTHING ABOUT THAT PHRASE,
11 "...EVERY EFFORT TO DELIGHT ALL CUSTOMERS"?

12 A. WELL, I MEAN, THAT WAS THE STANDARD TOTAL QUALITY
13 MANAGEMENT CLICHE, SO TO SPEAK, YOU KNOW. IT WASN'T
14 ENOUGH TO JUST PLEASE THEM OR DO THE MINIMUM. YOU
15 WERE TO DELIGHT THEM, GOING ABOVE AND BEYOND.

16 Q. I'M GOING TO ASK YOU ABOUT -- OF COURSE, YOU KNEW
17 MR. ROSS GAMBLE?

18 A. YES.

19 Q. HE WAS DEPUTY DIRECTOR OF THE AGENCY?

20 A. YES, SIR.

21 Q. ALL RIGHT. WORKED WITH HIM FOR -- HOW LONG WAS HE
22 WITH THE AGENCY BEFORE YOU LEFT? AN IDEA.

23 A. IT HAD TO BE A GOOD FIVE, SEVEN YEARS, I'M THINKING.

24 Q. DID HE DO YOUR EVALUATION ALSO?

25 A. HE DID.

1 Q. OKAY. I'VE GOT AN EVALUATION AT PAGE 186 WHERE HE'S
2 TALKING ABOUT DOING THE EVALUATION -- HE DID THE
3 EVALUATION OF MR. AL MENIE. AND YOU WORKED -- HOW
4 MANY YEARS DID YOU WORK IN THE AUDITING DEPARTMENT
5 WITH AL? ESTIMATE.

6 A. I MEAN, I KNOW IT'S -- I KNOW IT'S GOT TO BE TEN.
7 INITIALLY I WAS THERE BEFORE AL CAME OVER. AT LEAST
8 TEN.

9 Q. I MEAN, AL HAD BEEN AN INTERNAL AUDITOR?

10 A. HE WAS -- RIGHT. HE WAS IN THE AGENCY, BUT HE WAS
11 AN INTERNAL AUDITOR INITIALLY.

12 Q. AND THEN YOU ALL CHANGED THE CONCEPT AND ALL THAT?

13 A. WELL, THE -- SOME PEOPLE LEFT, HAD TO DO WITH THE
14 NUMBERS AS TO WHY THEY LEFT, AND SO AL WAS
15 TRANSFERRED TO THE PREMIUM AUDIT TO HELP OUT, GET
16 THE WORK CAUGHT UP, THAT SORT OF THING.

17 Q. IN REFERENCE TO THE REVIEWING OFFICE, MR. ROSS
18 GAMBLE, HE SAID OF AL ON OCTOBER 10TH, 2003, SAID,
19 "AL IS DILIGENT AND HIGHLY CUSTOMER-FOCUSED." IN
20 YOUR EXPERIENCE WITH AL AND OBSERVING HIM ON A DAY-
21 TO-DAY BASIS, WOULD YOU DESCRIBE HIM AS DILIGENT?

22 A. YES.

23 Q. WAS HE -- TELL ME ABOUT HIS -- HOW YOU WOULD
24 DESCRIBE HIM AS FAR AS LIKE HIS DESIRE OR GETTING
25 HIS WORK DONE, THAT TYPE OF THING? HOW WOULD YOU

1 DESCRIBE AL AS AN EMPLOYEE?

2 A. HE -- I MEAN, HE WOULD DEFINITELY TRY HIS VERY BEST
3 TO MAKE PEOPLE HAPPY, VERY PERSONABLE. A LOT OF
4 POLICYHOLDERS KNEW HIM VERY WELL, AND HE KNEW THAT
5 IT WAS IMPORTANT THAT WE STAY ON TRACK AS FAR AS OUR
6 TIMELINESS. THEY HAD A NUMBER OF REPORTS AND WHAT-
7 HAVE-YOU IN PLACE TO ENSURE THAT YOU HAD THE
8 PREMIUMS, THE ESTIMATES DONE ON TIME, THE AUDITS
9 DONE BASED ON WHATEVER THE REQUIREMENT WAS, THAT'S
10 IT'S COMPLETED 30 DAYS AFTER IT EXPIRES OR WHAT.
11 SO, YOU -- IN THAT SITUATION IF SOMEONE DIDN'T SEND
12 YOU A REPORT, YOU HAD TO GO OUT AND GET IT, OR
13 WHATEVER MEANS POSSIBLE TO GET IT.

14 Q. SO HE STAYED ON TOP OF HIS ACCOUNTS AND STAYED ON
15 TOP OF HIS TASKS AND GOT THEM DONE IN A TIMELY
16 FASHION; WOULD THAT BE A FAIR STATEMENT?

17 A. FOR THE MOST PART. YOU KNOW, NO ONE IS GOING TO DO
18 IT 100 PERCENT. I MEAN, I'VE GIVEN HIM EVALUATIONS
19 BEFORE. THEY WERE ALWAYS GOOD EVALUATIONS. FOR THE
20 MOST PART, THOUGH, YES.

21 Q. NOW, I THINK -- AND I DON'T WANT TO MISCHARACTERIZE
22 YOUR TESTIMONY, BUT I THINK YOU SAID THAT YOU WOULD
23 DESCRIBE YOUR JOB AS BEING, AS FAR AS YOUR WORKLOAD
24 WHEN YOU WERE THERE AS AN AUDITOR, AS BEING FULL;
25 THAT YOU WERE ABLE TO GET THE JOB DONE, BUT IT WAS A

1 FULL WORKLOAD?

2 A. YES.

3 Q. NOW, KNOWING THOSE, YOUR USUAL DUTIES, AND KNOWING
4 YOUR ORDINARY AND COMMON DUTIES AND ORDINARY -- YOUR
5 USUAL AND ORDINARY DUTIES AND THAT YOU HAD A FULL
6 LOAD TO DO THOSE, IF YOU HAD TO DO ALL OF THE DUTIES
7 -- IN YOUR OPINION AS AN AUDITOR WITH THE STATE
8 ACCIDENT FUND, KNOWING WHAT THAT JOB REQUIRES,
9 KNOWING ALL THAT, AND YOU ALL OF A SUDDEN HAD TO DO
10 ALL OF THE DUTIES OF ALL THREE AUDITORS AND THE
11 ENTIRE AUDITING DEPARTMENT, IN YOUR OPINION WOULD
12 THAT BE UNUSUAL AND EXTRAORDINARY TO THE NORMAL
13 ~~WAS~~ CONDITION, YOUR USUAL AND ORDINARY OCCUPATION?

14 **BY MR. HASELDEN:**

15 YOUR HONOR, I'M GOING TO OBJECT TO THE
16 QUESTION.

17 **BY MR. McDANIEL:**

18 THAT'S FINE.

19 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

20 Q. GO AHEAD, MA'AM.

21 A. YES.

22 **BY THE COMMISSIONER:**

23 LET ME -- I WAS GOING TO ASK THIS QUESTION. I
24 BELIEVE THE WITNESS STATED THAT THE WORKLOAD VARIED
25 FROM YEAR TO YEAR, IS THAT RIGHT, DEPENDING ON THE

1 E-MOD?

2 **BY THE WITNESS:**

3 RIGHT. AS FAR AS THE REQUESTS AND OTHER THINGS
4 THAT WERE REQUIRED, CORRECT.

5 **BY THE COMMISSIONER:**

6 DID WORK COME IN FITS AND STARTS SOMETIMES?

7 **BY THE WITNESS:**

8 YOU COULD JUST HAVE A YEAR WHERE EVERYBODY HAD
9 A HIGH MOD AND SO YOU WERE HAVING TO NOT ONLY GET
10 THAT WORK DONE IN THE OFFICE, BUT TRAVEL AROUND THE
11 STATE TO JUSTIFY THE NUMBERS AS FAR AS THE -- YOU
12 KNOW, THE FLUCTUATING.

13 **BY THE COMMISSIONER:**

14 YOU ALSO SAID PEOPLE WOULD HELP IF THEY COULD,
15 RIGHT?

16 **BY THE WITNESS:**

17 WE WOULD IF ONE -- IF SOMEBODY WAS OUT. OR I
18 WOULD OFTEN -- BECAUSE I WAS A MANAGER OF THAT AREA,
19 TOO, AND IT WAS ALWAYS BETTER IF YOU WERE GOING OUT
20 IN MEETINGS TO DOUBLE-TEAM THE EMPLOYERS SINCE THEY
21 WOULD DO THE SAME THING TO US, YOU KNOW, I WOULD
22 OFTEN GO OUT WITH ONE OF THEM, AND SO IT WAS BETTER
23 TO HAVE TWO PEOPLE FACING AN AGENCY OF SEVEN OR
24 EIGHT. BUT, YOU KNOW, IT COULD BE A YEAR WHERE YOU
25 HAD A LOT OF THAT, AND SO NOT ONLY ARE YOU HAVING TO

1 ANSWER THE PHONE, DO FOLLOW-UP WORK, GENERATE THESE
2 PREMIUMS, GET THEM OUT IN THE MAIL, BUT YOU'RE ALSO
3 HAVING TO GO ONSITE AND DO THESE EXPLANATIONS. THAT
4 COULD BE A LOT OF ADDITIONAL WORK COMPARED TO FOR
5 SOME REASON THIS YEAR EVERYBODY'S MODS ARE
6 REASONABLE.

7 **BY THE COMMISSIONER:**

8 SO, THEN IS IT FAIR TO SAY THAT ONE PERSON MAY
9 BE ABLE TO DO A LOT OF THE WORK, AND THEN THERE ARE
10 TIMES THAT MAYBE THREE PEOPLE COULDN'T DO ALL THE
11 WORK?

12 **BY THE WITNESS:**

13 AS FAR AS THE 200-PLUS ACCOUNTS THAT WE'RE
14 TALKING ABOUT?

15 **BY THE COMMISSIONER:**

16 YES, MA'AM.

17 **BY THE WITNESS:**

18 YES.

19 **BY THE COMMISSIONER:**

20 YOU HAD THREE. AND I BELIEVE WHAT WE'RE
21 GETTING AT IS, IT CAME DOWN TO ONE FOR A PERIOD OF
22 TIME, RIGHT?

23 **BY THE WITNESS:**

24 RIGHT. THE 200-AND-SOME ACCOUNTS ARE MORE THAN
25 ENOUGH FOR ONE PERSON, BUT THERE ARE TIMES WHEN

1 OTHER PEOPLE HAD TO HELP OUT WITH YOUR 200 ACCOUNTS.

2 **BY THE COMMISSIONER:**

3 AND WHEN WAS YOUR LAST DAY WORKING IN THAT
4 DEPARTMENT?

5 **BY THE WITNESS:**

6 IT HAD TO BE LIKE DECEMBER 30TH OR 31ST OF
7 2002.

8 **BY THE COMMISSIONER:**

9 THE REASON I ASKED THOSE QUESTIONS, WHAT'S BEEN
10 OBJECTED TO, HE WAS ASKING -- HE USED THE EXACT
11 LEGAL DEFINITION OF UNUSUAL AND EXTRAORDINARY
12 CONDITIONS TO EMPLOYMENT. WAS THAT UNUSUAL FOR --
13 AND I'LL NOTE YOUR OBJECTION, MR. HASELDEN -- FOR A
14 PERSON TO HAVE TO HANDLE BY HIMSELF OR BY HERSELF?

15 **BY THE WITNESS:**

16 SIX HUNDRED ACCOUNTS? EXTREMELY UNUSUAL.
17 THAT'S THE KIND OF THING THAT, YEAH, YOU MIGHT BE
18 ABLE TO GET BY WITH DOING IT FOR A WHILE, BUT YOU'D
19 PROBABLY BE LOOKING FOR ANOTHER JOB, WHICH HAD
20 SOMETHING TO DO WITH ME LOOKING FOR ANOTHER JOB.

21 **BY THE COMMISSIONER:**

22 WAS IT POSSIBLE TO DO IT?

23 **BY THE WITNESS:**

24 SURE, IT IS. IT'S POSSIBLE TO DO IT. NOT FOR
25 ANY LENGTH OF TIME.

1 **BY THE COMMISSIONER:**

2 HOW COULD IT BE POSSIBLE TO DO IT?

3 **BY THE WITNESS:**

4 THE WAY YOU CAN DO IT IS YOU DON'T DO THE OTHER
5 THINGS THAT ARE REQUIRED. YOU DON'T CHALLENGE
6 ANYTHING THAT LOOKS SUSPICIOUS AS FAR AS A RED FLAG.
7 YOU LET IT GO AND SAY, "WELL, I'LL GET IT ON THE
8 BACK END WHEN I DO THE AUDIT," OR, YOU KNOW, YOU TRY
9 TO DO -- YOU'RE NOT GONNA DO ANY TRAVEL. YOU JUST
10 TRY TO TALK TO THESE PEOPLE ON THE PHONE, TALK THEM
11 DOWN, TELL THEM YOU'RE GONNA SEND THEM SOMETHING SO
12 THAT YOU CAN BE IN THE OFFICE EVERY DAY ALL DAY.

13 **BY THE COMMISSIONER:**

14 AND COULD YOU DO THAT IN A NORMAL WORK WEEK?

15 **BY THE WITNESS:**

16 FOR YOUR ACCOUNTS OR ALL THE ACCOUNTS?

17 **BY THE COMMISSIONER:**

18 ALL THE ACCOUNTS.

19 **BY THE WITNESS:**

20 IN A NORMAL WORK WEEK YOU CAN DO SOME OF IT.

21 YOU CAN'T DO ALL OF IT FOR ALL THE ACCOUNTS.

22 **BY THE COMMISSIONER:**

23 IS THERE ANY PENALTY FOR NOT DOING IT ALL?

24 **BY THE WITNESS:**

25 WELL, THE AGENCY'S CREDIBILITY. IF THE

1 DIRECTOR -- WE MET THE DIRECTOR OF DEPARTMENT OF
2 MENTAL HEALTH, WONDERFUL ELDERLY MAN, YEARS AGO, AND
3 HE WAS A VERY, VERY KIND PERSON. HE -- THE WAY HE
4 HANDLED THAT SITUATION. BUT EVERYBODY WASN'T LIKE
5 THAT. AND SO, YOU COULD RUN INTO SOME -- YOU COULD
6 DEAL WITH SOME PEOPLE -- AND THIS IS A SMALL TOWN,
7 YOU KNOW, AGENCIES KNOW AGENCIES. WHERE I AM NOW, A
8 LOT OF THE PEOPLE I USED TO WORK WITH THERE AS FAR
9 AS OTHER AGENCIES, WE KNOW EACH OTHER. YOUR
10 CREDIBILITY COULD BE SHOT BY NOT DOING CERTAIN
11 THINGS. WHEN -- IF THEY RAN THE REPORTS TO DO YOUR
12 EVALUATION AND YOU'RE, YOU KNOW, 50 PERCENT AT THE
13 END OF THE CALENDAR YEAR FOR ALL THESE ACCOUNTS, YOU
14 DIDN'T HAVE 50 PERCENT OF YOUR AUDITS COMPLETED, IT
15 WOULD PROBABLY BE REFLECTED ON YOUR EVALUATION, YOU
16 KNOW, OR SOMEBODY IS GONNA HAVE A VERBAL WITH YOU.

17 **BY THE COMMISSIONER:**

18 DID THAT EVER HAPPEN?

19 **BY THE WITNESS:**

20 TO ME? NO.

21 **BY THE COMMISSIONER:**

22 I REALLY NOTED THE OBJECTION. SHE'S ANSWERED.
23 SHE'S STATED THAT IT WOULD BE UNUSUAL. THERE ARE,
24 APPARENTLY, NO CONSEQUENCES EXCEPT SELF-IMPOSED
25 CONSEQUENCES, IS THAT RIGHT, FOR NOT ---

1 **BY THE WITNESS:**

2 OR YOUR EVALUATION. IF -- AT SOME POINT ONCE
3 THIS COMPUTER SYSTEM WAS STABLE, IT WAS ABLE TO
4 DEMONSTRATE THE PERCENTAGE OF AUDITS THAT YOU HAD
5 COMPLETED BASED ON THE TIME FRAME. LET'S SAY IT'S
6 30 DAYS AFTER THIS POLICY PERIOD EXPIRES. SO IF
7 YOU'RE NOT -- YOU KNOW, I MEAN, IF YOU'RE NOT AT 100
8 PERCENT, YOU COULD VERY WELL NOT GET A "MEETS" ON
9 YOUR EVALUATION. IT JUST DEPENDED ON WHO WAS
10 EVALUATING YOU.

11 **BY THE COMMISSIONER:**

12 IS THERE ANY EVIDENCE IN THIS PERIOD OF TIME --
13 AND I SEE THAT YOU LEFT JUST PRIOR TO THIS. BUT IS
14 THERE ANY EVIDENCE THAT THAT WAS THE CASE, THAT IT
15 WAS THAT HEAVY DURING THIS PERIOD OF TIME, OR DO YOU
16 KNOW?

17 **BY THE WITNESS:**

18 IN 2002 IT WAS -- THE ONLY REASON AT THE END OF
19 2002 IT COULD HAVE BEEN A LITTLE HEAVY IS BECAUSE
20 CARLA WAS OUT AND AL AND I WERE, PERHAPS, WORKING
21 OUR ACCOUNTS AND HER ACCOUNTS. BUT AT THAT POINT IT
22 REALLY HAD NOT SNOWBALLED. I MEAN, SHE'D ONLY BEEN
23 OUT FOR A SHORT PERIOD OF TIME, AND I WAS LEAVING.
24 I HAD ALREADY PUT IN A TWO-WEEK NOTICE. I MEAN, I
25 BELIEVE THAT I DID, YOU KNOW, COMPLETE THINGS THAT I

1 WAS SUPPOSED TO COMPLETE, BUT AT THAT TIME IT
2 PROBABLY -- AS OF DECEMBER 2002, IT MAY HAVE BEEN A
3 LITTLE BEHIND BUT NOT TO ANY GREAT EXTENT, I
4 WOULDN'T THINK, BECAUSE, AGAIN, AL AND I WERE TRYING
5 TO TAKE CARE OF HER LOAD FOR THE PERIOD OF TIME SHE
6 WAS OUT. WHAT SHE DID AFTER THAT, I'M NOT SURE.

7 **BY THE COMMISSIONER:**

8 OKAY. WE CAN MOVE ON.

9 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

10 Q. ONLY A COUPLE MORE QUESTIONS. I THINK -- AM I
11 CORRECT THAT ROSS GAMBLE CAME WITH -- HAD SOME
12 EXPERIENCE IN AUDITING AND EXPERIENCE MODIFIER
13 BACKGROUND?

14 A. ROSS GAMBLE CAME FROM SEIBELS AND BRUCE, AND HE HAD
15 A LOT OF TECHNICAL -- TECHNICAL EXPERTISE AS IT
16 RELATES TO THE INSURANCE INDUSTRY. HE COULDN'T -- I
17 MEAN, HE DIDN'T KNOW THE DAY-TO-DAY DETAILS AS FAR
18 AS PROCEDURES AS FAR AS HOW WE DID THINGS. BECAUSE
19 HE WAS AT HIGH LEVEL OF MANAGEMENT HE WOULDN'T. YOU
20 KNOW, I COULD GO TO HIM WITH QUESTIONS REGARDING
21 N.C.C.I. GUIDELINES OR THINGS OF THAT NATURE, AND,
22 YEAH, HE WAS AN EXPERT IN SUBJECT MATTER AS FAR AS
23 THE INDUSTRY.

24 Q. THE REASON I ASK THAT IS, I THINK YOU TESTIFIED
25 EARLIER THAT GENERALLY SPEAKING N.C.C.I. DOES THE

1 EXPERIENCE MODIFIERS FOR ALL OF THEIR ACCOUNTS?

2 A. FOR EMPLOYERS.

3 Q. EXACTLY, FOR ALL THEIR EMPLOYERS. AND WHEREAS THE
4 STATE ACCIDENT FUND DID THEIR -- THE AUDITING
5 DEPARTMENT DID THEIR OWN EXPERIENCE MODIFIERS, THE
6 E-MODS?

7 A. CORRECT.

8 Q. AND I'M ASKING THAT AND I'M ASKING IN REFERENCE TO
9 ROSS GAMBLE BECAUSE NO MATTER IF IT WAS YOU AND
10 CARLA OR IF IT WAS AL AND CARLA THAT WAS OUT AND YOU
11 WERE THERE, WHO ELSE HAD A WORKING KNOWLEDGE OF THE
12 AUDITING DEPARTMENT THAT WAS AVAILABLE IN THE AGENCY
13 TO COME IN AND HELP OUT?

14 A. NO ONE OTHER THAN, PERHAPS -- I MEAN, THERE WERE
15 PEOPLE THAT PROBABLY IF YOU SHOWED THEM HOW TO DO IT
16 THEY WOULD HAVE BEEN ABLE TO DO IT, PERHAPS, BECAUSE
17 THERE WERE A COUPLE OF LADIES THAT HANDLED THE
18 RECEIPTS, RECEIVABLES, THAT SORT OF THING. IT'S
19 POSSIBLE THAT HAD THEY BEEN TRAINED THEY COULD HAVE
20 DONE IT 'CAUSE THEY HAD A GENERAL IDEA AS TO HOW WE
21 WERE DOING IT. BUT THERE WAS NO ONE ELSE THAT COULD
22 ACTUALLY JUST STEP IN AND DO IT.

23 Q. HOW LONG DID IT TAKE YOU -- BY THE WAY, WE KNOW THAT
24 ANOTHER GENTLEMAN CAME IN, I BELIEVE, ON MARCH 3RD
25 AFTER YOU AND CARLA HAD LEFT. WE KNOW THAT HE CAME

1 IN ACTUALLY ON THE SAME DAY. HOW LONG WOULD YOU SAY
2 IT TAKES TO TRAIN -- BECAUSE YOU WERE ACTUALLY
3 FORMERLY A MANAGER OVER THE AUDITING DEPARTMENT; AM
4 I RIGHT ON THAT?

5 A. CORRECT.

6 Q. AND HOW LONG WOULD YOU SAY IT TAKES TO GET SOMEBODY
7 TO WHERE THEY WERE WORTH HAVING IN THE DEPARTMENT,
8 SO TO SPEAK? YOU KNOW, FOR A PERIOD OF TIME BEING A
9 MANAGER, WOULD YOU AGREE THAT THERE'S AT LEAST A FEW
10 WEEKS OR A COUPLE MONTHS THAT YOU REALLY -- IT COSTS
11 YOU MORE TIME TO TRAIN THEM THAN THEY'RE REALLY --
12 IT TAKES YOU AWAY FROM YOUR WORK BECAUSE YOU'VE GOT
13 TO TRAIN THEM?

14 A. YEAH. THERE WAS A LEARNING CURVE, NO DOUBT, FOR
15 ANYBODY BECAUSE OF THE FACT THAT WE DID NOT HAVE THE
16 SUPPORT OF N.C.C.I. YOU KNOW, WE'RE NOT GETTING
17 THIS INFORMATION FROM THEM. YOU'RE HAVING TO
18 GENERATE IT. YOU'RE HAVING TO ENSURE THAT IT'S
19 ACCURATE. IF SOMEBODY HAD SOME INSURANCE INDUSTRY
20 BACKGROUND JUST TO LEARN THE PROCEDURES, THE
21 CUSTOMERS THAT YOU'RE DEALING WITH, YOU KNOW, THE
22 COMPUTER SYSTEM, ALL OF THAT, I'D EASILY SAY TWO TO
23 THREE MONTHS.

24 Q. OKAY. AND SO, IF YOU HIRED SOMEBODY IN THERE, EVEN
25 BEST CASE SCENARIO THAT'S GOING TO PUT REALLY AN

1 ADDITIONAL LOAD TO TRAIN THEM; WOULD THAT BE FAIR?

2 A. WE -- 'CAUSE WE WOULD HAVE TO TRAIN THEM. IT WOULD
3 HAVE TO BE ONE OF US, THE THREE OF US.

4 **BY MR. McDANIEL:**

5 COMMISSIONER, I HAVE NO FURTHER QUESTIONS.

6 ANSWER ANY QUESTIONS THAT ---

7 **BY THE COMMISSIONER:**

8 MR. HASELDEN?

9 **BY MR. HASELDEN:**

10 I DON'T HAVE A LOT. I HAVE A FEW.

11 **CROSS EXAMINATION BY MR. HASELDEN:**

12 Q. MS. HOLMAN, YOU SAID YOUR TITLE WAS MANAGER OF
13 MEMBER SERVICES AND PREMIUM AUDITOR?

14 A. WE WERE MEMBER SERVICES AT ONE TIME. IT WAS MEMBER
15 SERVICES MANAGER. YOU KNOW, THE STATE GOVERNMENT,
16 WE HAVE THESE -- WE MAKE UP NAMES FOR OUR TITLES.
17 IT'S JUST A PROGRAM MANAGER, AND YOU'RE THE MANAGER,
18 BUT I THINK IT CHANGED A COUPLE OF TIMES.

19 Q. HOW MUCH OF YOUR TIME AT WORK WAS SPENT DEALING WITH
20 MANAGEMENT ISSUES VERSUS PREMIUM ISSUES?

21 A. THE MAJORITY OF MY TIME WAS PREMIUM ISSUES BECAUSE
22 OF THE FACT THAT THE WAY WE WERE SET UP THERE WAS A
23 MANAGER OVER SAFETY AND LOSS CONTROL. THAT WAS THE
24 ONLY OTHER AREA. AND SO, I WAS THE MANAGER OVER THE
25 PREMIUMS, BUT, YOU KNOW, WE MANAGED -- I MEAN, WHEN

1 YOU'RE DEALING WITH SEASONED PEOPLE, YOU KNOW, THE
2 COMPUTER REPORTS ARE GOING TO TELL YOU ABOUT
3 TIMELINESS AND THOSE KINDS OF MANAGEMENT THINGS.
4 PREMIUMS, DEFINITELY MORE BECAUSE I HAD 200
5 ACCOUNTS.

6 Q. ALL RIGHT. SO YOU SPENT MORE TIME ON PREMIUMS THAN
7 ---

8 A. CORRECT.

9 Q. OKAY. I'LL DEAL WITH THAT LATER. THESE MEETINGS
10 THAT YOU WENT TO WHEN YOU SAID YOU FELT THAT YOU
11 WERE BLIND SIDED, THOSE WEREN'T LIMITED THIS ONE
12 PREMIUM INCREASE, WERE THEY? I MEAN, THEY WENT ON
13 ALL THE TIME?

14 A. THEY WENT ON ALL THE TIME.

15 Q. NOBODY EVER CALLED YOU UP AND SAID, "I'M REALLY
16 HAPPY WITH OUR PREMIUM INCREASE"?

17 A. NO, THEY REALLY DIDN'T USUALLY SAY THAT, THAT I'M
18 HAPPY, UNLESS THEY GOT SOMETHING LESS THAN A 1.0.
19 THEY WOULDN'T CALL YOU OVER FOR A MEETING IF THEY
20 GOT SOMETHING LESS THAN A 1.0. IF THEY GOT A
21 DISCOUNT THEY WERE ALWAYS HAPPY, BUT THAT'S NOT A
22 MEETING.

23 Q. DO YOU REMEMBER THERE BEING A 10.9 PERCENT RATE
24 INCREASE IN 2001? CAN YOU TESTIFY THAT THAT WASN'T
25 THE RATE INCREASE?

1 A. I'M SURE IT WAS IF THE DOCUMENTS ARE THERE. IT'S
2 JUST THAT, YOU KNOW, IT WAS A WHILE AGO. I MEAN, IF
3 THAT'S THE CASE, I HOPE THAT WE DID IT.
4 OCCASIONALLY THINGS WOULD SLIP, YOU KNOW, AND WE
5 WOULDN'T FIND OUT ABOUT IT UNTIL AFTERWARDS.

6 Q. HOW LONG AFTER A POLICY PERIOD ENDS UNDER E.P.M. DID
7 YOU HAVE TO DO AN AUDIT ON A PARTICULAR POLICY?

8 A. I'M GONNA BE HONEST. IT WAS PROBABLY 30 -- IT COULD
9 BE 30, 60, OR 90. I HAVEN'T -- I HAVEN'T DONE THAT
10 JOB IN LIKE NINE YEARS, AND AT 50 I KIND OF LIKE --
11 YOU KNOW, I'M SELECTIVE AS FAR AS WHAT I REMEMBER.
12 BUT IT HAD TO BE 30, 60, OR 90 DAYS MAX.

13 Q. AND IF I REPRESENTED TO YOU UNDER THE E.P.M. IT'S
14 180 DAYS, WOULD YOU DISPUTE THAT?

15 A. I WOULDN'T THINK THAT IT WOULD BE SIX MONTHS.

16 Q. PREMIUM BILLS FOR THIS RATE INCREASE WENT OUT ON
17 DECEMBER 9TH, 2002. DO YOU HAVE ANY REASON TO
18 DISPUTE THAT?

19 A. I DON'T DISPUTE THAT.

20 Q. SO, AFTER FOUR OR FIVE DAYS, AT THAT POINT,
21 SOMEWHERE AROUND, LET'S SAY, 13TH, 14TH, 15TH OF
22 DECEMBER, EVERYONE KNEW WHAT THEIR RATE INCREASE WAS
23 GOING TO BE, DIDN'T THEY?

24 A. YOU KNOW, I GUESS IT DEPENDS ON -- I CAN'T TELL YOU
25 WHEN THAT LETTER WAS PUT IN THE MAIL. AND, I'M

1 SORRY, GOING BACK TO THAT 180, I REMEMBER 180 DAYS.
2 RIGHT? I DO REMEMBER 180 DAYS.

3 Q. SIX MONTHS TO COMPLETE THEM ALL?

4 A. I THINK I DO REMEMBER THAT.

5 Q. OKAY. SO, THE POLICIES THAT ENDED DECEMBER 31ST,
6 2002, THE AUDIT DIDN'T HAVE TO BE COMPLETED ON THOSE
7 UNTIL THE END OF JUNE OF 2003?

8 A. NOW, I DON'T KNOW IF IT WAS THAT YEAR BECAUSE WE
9 WOULD CHANGE THAT NUMBER. I MEAN, AS FAR AS THE
10 REQUIREMENT, AS FAR AS WHEN THOSE HAD TO BE
11 COMPLETED, A LOT OF THAT HAD TO DO WITH, YOU KNOW,
12 WHAT WAS GOING ON AT THE TIME, YOU KNOW. THAT
13 NUMBER COULD CHANGE AS FAR AS MEASUREMENTS.

14 Q. OKAY. GETTING BACK TO MY OTHER QUESTION, AS OF
15 ROUGHLY DECEMBER 15TH, 2002, THE AGENCIES KNEW WHAT
16 THEIR RATE INCREASE WAS GOING TO BE, DIDN'T THEY?

17 A. I DON'T KNOW ABOUT THAT. I REALLY DON'T, I MEAN,
18 HONESTLY, ONLY BECAUSE -- AND I'M NOT TRYING TO BE
19 EVASIVE -- WE WOULD GENERATE LETTERS LIKE THAT, AND
20 THEY COULD SIT AROUND IN THE BOX, AND IT WAS A
21 HOLIDAY. I MEAN, THERE WAS NOT A LOT OF WORK GOING
22 ON ANYWHERE IN DECEMBER TO SOME EXTENT BECAUSE OF
23 THE HOLIDAYS. SO I REALLY DON'T KNOW WHEN THAT
24 LETTER WENT OUT.

25 Q. NOW, WITH RESPECT TO THIS COMPUTER SYSTEM CHANGE-

1 OUT, IF I REPRESENTED TO YOU THE COMPLETE SYSTEM WAS
2 ONLINE AS OF MAY 25TH, 1999, THREE YEARS BEFORE THIS
3 INCIDENT, WOULD YOU HAVE A REASON TO DISPUTE THAT?

4 A. EVEN IF THAT WERE THE CASE, SOMEBODY MAY HAVE SIGNED
5 OFF ON THAT FOR A BILL OR SOMETHING LIKE THAT, BUT
6 THOSE PEOPLE WERE ONSITE FOR A LONG TIME AFTER THAT
7 DATE, AND WE WERE STILL DEALING WITH -- THERE WAS A
8 LIST OF UNRESOLVED ISSUES. SO, FOR WHATEVER REASON,
9 IF YOU'VE GOT SOMETHING LIKE THAT THERE, IT COULD BE
10 A NUMBER OF REASONS WHY. LIKE I SAID, FOR A PAYMENT
11 TO BE RECEIVED. BUT WE HAD A LONG LAUNDRY LIST OF
12 PROBLEMS WITH THE SYSTEM.

13 Q. BUT YOU'LL ADMIT FOR ME IF IT CAME ONLINE MAY 25TH,
14 1999, IT WASN'T A BRAND-NEW SYSTEM IN 2002?

15 A. I COULD SEE -- IT'S STILL -- IN A SENSE IT IS A
16 BRAND-NEW SYSTEM 'CAUSE I DON'T THINK THAT'S
17 ACCURATE AS FAR AS '99, NOT WHEN YOU HAVE A LAUNDRY
18 LIST OF ISSUES THAT ARE STILL BEING WORKED OUT, AND
19 I DO KNOW THAT WE HAD TO MANUALLY RUN THESE SAME
20 NUMBERS TO VALIDATE WHAT THE SYSTEM WAS GIVING US.

21 Q. DO YOU KNOW WHO WARREN FARRAY IS?

22 A. YES.

23 Q. WHO IS WARREN FARRAY?

24 A. I THINK HE WAS THE PREMIUM -- I THINK WARREN WAS THE
25 PREMIUM AUDITOR THAT REPLACED ME, AND HE'S DECEASED

1 NOW.

2 Q. IF I REPRESENT TO YOU THAT MR. FARRAY, WHEN HE CAME
3 TO WORK ON MARCH 4TH OF 2003, HAD 20 YEARS OF
4 EXPERIENCE IN PREMIUM AUDITING AND UNDERWRITING,
5 WOULD YOU HAVE ANY REASON TO DISPUTE THAT?

6 A. WORKERS' COMP OR -- 'CAUSE, I MEAN, CHRIS HAD
7 WORKERS' COMP PREMIUM AUDITING EXPERIENCE. WARREN,
8 I THINK HE HAD SOME OTHER LINE OF INDUSTRY AS FAR AS
9 INSURANCE.

10 Q. DO YOU KNOW THAT FOR A FACT?

11 A. I DON'T THINK IT WAS WORKERS' COMP. I COULD BE
12 WRONG, BUT I DON'T THINK -- AND, I MEAN, I'VE MET
13 HIM ON SEVERAL OCCASIONS. I DON'T THINK IT WAS
14 WORKERS' COMP SOLELY.

15 Q. WITH RESPECT TO THERE NOT BEING ANYBODY ELSE TO
16 HANDLE ANY OF THE TASKS WHEN YOU'RE THERE BY
17 YOURSELF, AS MR. MENIE WAS, IS THERE NOT ANYBODY IN
18 THE AGENCY CAPABLE OF ANSWERING THE PHONE WHEN IT
19 RINGS?

20 A. I ABSOLUTELY AGREE. YEAH, I THINK THAT THEY SHOULD
21 HAVE MAYBE BROUGHT SOMEONE IN FROM A TEMP AGENCY IF
22 FOR NOTHING ELSE TO ANSWER THE PHONE AT A MINIMUM.
23 THERE WERE PEOPLE THERE THAT COULD ANSWER THE PHONE.

24 **BY MR. HASELDEN:**

25 I DON'T HAVE ANY FURTHER QUESTIONS.

1 BY THE COMMISSIONER:

2 OKAY. MR. McDANIEL, GO AHEAD.

3 BY MR. McDANIEL:

4 NO FURTHER QUESTIONS.

5 BY THE COMMISSIONER:

6 THANK YOU VERY MUCH. YOU CAN BE EXCUSED.

7 BY THE WITNESS:

8 THANK YOU.

9 BY MR. McDANIEL:

10 COMMISSIONER, CAN WE HAVE JUST A MINUTE? I

11 NEED TO CALL MY OFFICE.

12 BY THE COMMISSIONER:

13 THAT'S FINE. LET'S GO OFF THE RECORD.

14 (OFF THE RECORD)

15 BY THE COMMISSIONER:

16 WE'RE BACK ON THE RECORD, AND I BELIEVE YOUR

17 NEXT WITNESS, SIR, IS THE CLAIMANT, IS THAT RIGHT?

18 BY MR. McDANIEL:

19 YES, COMMISSIONER.

20 BY THE COMMISSIONER:

21 MR. MENIE, WOULD YOU STATE YOUR FULL NAME FOR

22 THE RECORD, SIR?

23 BY THE WITNESS:

24 ALVIN LLOYD MENIE.

25 * * * * *

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
2 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
3 MATTER HEREIN:

4 ALVIN LLOYD MENIE,

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

7 BY THE COMMISSIONER:

8 ANSWER ANY QUESTIONS COUNSEL MAY HAVE, PLEASE,
9 SIR.

10 BY THE WITNESS:

11 YES, SIR.

12 DIRECT EXAMINATION BY MR. McDANIEL:

13 Q. MR. MENIE, FIRST OFF, HOW OLD ARE YOU, SIR?

14 A. I'M 68 YEARS OLD.

15 Q. SIXTY-EIGHT, ALL RIGHT. AND I BELIEVE YOU ARE --
16 ARE YOU MARRIED?

17 A. I AM.

18 Q. IS THERE ANYBODY OTHER THAN YOU AND YOUR WIFE THAT'S
19 LIVING AT HOME WITH YOU THAT'S DEPENDENT UPON YOU
20 FOR SUPPORT?

21 A. NO ONE.

22 Q. NO ONE; ALL RIGHT. YOU'VE PROBABLY GOT CHILDREN,
23 BUT THEY ARE ALL GROWN?

24 A. YES, SIR.

25 Q. NOW, TELL ME ABOUT YOUR EDUCATIONAL BACKGROUND.

1 A. I HAVE A B.A. DEGREE IN ECONOMICS WITH A MINOR OF
2 PSYCHOLOGY AND BUSINESS ADMINISTRATION.

3 Q. FROM WHERE?

4 A. AND I HAVE TWO ASSOCIATE DEGREES, ONE IN ACCOUNTING
5 AND ONE IN BUSINESS MANAGEMENT.

6 Q. WHERE ARE THOSE DEGREES FROM?

7 A. THE B.A. IS FROM TAHLEQUAH, OKLAHOMA, GRADUATED IN
8 1965, AND IN 1977 I ACQUIRED THE ACCOUNTING DEGREE
9 AND THE BUSINESS MANAGEMENT DEGREE.

10 Q. WHERE FROM?

11 A. OH, MIDLANDS TECH.

12 Q. MIDLANDS TECH HERE IN COLUMBIA?

13 A. RIGHT.

14 Q. TELL ME ABOUT YOUR MILITARY BACKGROUND. HOW LONG
15 DID YOU SERVE IN THE MILITARY?

16 A. THREE YEARS.

17 Q. WHAT BRANCH DID YOU SERVE IN?

18 A. ARMY.

19 Q. ARMY? DID YOU SERVE IN -- I BELIEVE YOU SERVED IN
20 VIETNAM?

21 A. I DID.

22 Q. HOW MANY TOURS DID YOU DO IN VIETNAM?

23 A. ONE.

24 Q. AFTER YOU GOT OUT OF THE ARMY, TELL ME ABOUT YOUR --
25 I'LL TELL YOU WHAT, THERE'S A COUPLE QUESTIONS CAME

1 UP EARLIER. YOU GET SOME OF YOUR MEDICAL CARE
2 THROUGH THE VETERANS ADMINISTRATION, IS THAT RIGHT?

3 A. RIGHT.

4 Q. ALL RIGHT. AND THERE'S REFERENCE IN THERE TO THAT I
5 BELIEVE YOU WERE EXPOSED, LIKE EVERYBODY IN VIETNAM,
6 TO AGENT ORANGE?

7 A. CORRECT.

8 Q. I BELIEVE YOU TOLD ME THAT YOU DID FILE A CLAIM?

9 A. RIGHT, I FILED A CLAIM IN JULY OF '09.

10 Q. JULY OF '09?

11 A. RIGHT.

12 Q. SUBSEQUENT TO THAT DID YOU HAVE ANY DISCUSSIONS IN
13 REFERENCE TO WHAT WE'RE TALKING ABOUT HERE WITH DR.
14 -- VARIOUS DOCTORS, INCLUDING DR. HENDRICKS?

15 A. WELL, YES, MY G.P., YOU KNOW, AS FAR AS MY PROBLEMS
16 THAT -- WELL, I DIDN'T KNOW I HAD DIABETES, WHICH
17 WAS A DERIVATIVE OF AGENT ORANGE.

18 Q. NOW, ARE YOU RECEIVING BENEFITS FOR YOUR EXPOSURE TO
19 AGENT ORANGE?

20 A. YES. I'M RECEIVING BENEFITS.

21 Q. OKAY. AND DO YOU KNOW WHAT BENEFITS -- NOT WHAT
22 BENEFITS YOU'RE RECEIVING, BUT WHAT THOSE BENEFITS
23 ARE FOR? WHAT CONDITIONS HAS THE ARMY ACCEPTED AS
24 BEING CAUSED BY AGENT ORANGE? DO YOU KNOW?

25 A. WELL, YES. YES, DIABETES, AND FROM THOSE DIABETES I

1 HAVE CHRONIC KIDNEY DISEASE TO THE THIRD LEVEL. I
2 HAVE WHAT THEY CALL A DEAD CREATIVE ORGAN, WHICH IS,
3 YOU KNOW ---

4 Q. I THINK WE CAN UNDERSTAND THAT. BUT, ANYWAY, IS
5 THERE ANYTHING SPECIFIC AS TO YOUR HEART CONDITION,
6 ATRIAL FIBRILLATION? ARE YOU RECEIVING ANY BENEFITS
7 SPECIFICALLY FOR THAT CONDITION?

8 A. NO, NO, NOT AT ALL.

9 Q. NOW LET'S TALK ABOUT, DID YOU GO OUT OF HIGH SCHOOL
10 AND COLLEGE INTO THE MILITARY OR OUT OF HIGH SCHOOL
11 AND MILITARY AND THEN COLLEGE?

12 A. NO, I WENT TO HIGH SCHOOL, COLLEGE, AND DRAFTED IN
13 1966.

14 Q. OKAY. AND AFTER YOU GOT THROUGH WITH YOUR MILITARY
15 SERVICE, TELL ME ABOUT YOUR WORK EXPERIENCE. BEFORE
16 YOU WENT TO WORK FOR THE STATE ACCIDENT FUND, WHAT
17 TYPE OF WORK DID YOU DO?

18 A. I CAME OUT OF THE ARMY IN '69, AND I THINK IT'S
19 FEBRUARY THE 7TH I WENT TO WORK WITH ALLIS-CHALMERS,
20 INCORPORATED, MAKING LAWN GARDEN EQUIPMENT, TERRA
21 TIGER AMPHIBIOUS VEHICLES AT THAT TIME, AND I WAS IN
22 AUDITING, QUALITY CONTROL. AT THAT TIME THEY CALLED
23 IT QUALITY ASSURANCE. AND I WORKED THERE FOR 11
24 YEARS. WELL, I TAKE THAT BACK. WHEN SIMPLICITY WAS
25 -- SIMPLICITY WAS A SUBSIDIARY OF ALLIS-CHALMERS.

1 WHEN THEY WENT BACK TO PORT WASHINGTON, WISCONSIN,
2 THEN I BECAME AN ACCOUNTING -- I WENT INTO
3 ACCOUNTING.

4 Q. ACCOUNTING?

5 A. RIGHT. AND I WAS IN ACCOUNTING -- ACCOUNTS
6 RECEIVABLE SECTION AS SUPERVISOR OF ACCOUNTS
7 RECEIVABLE.

8 Q. NOW, WHERE WERE YOU WORKING -- I GUESS MAYBE BETTER
9 PUT, WHEN DID YOU COME TO SOUTH CAROLINA?

10 A. I CAME TO SOUTH CAROLINA IN JULY OF 1968.

11 Q. OKAY. SO, THIS WORK THAT YOU DID FOR ALLIS-
12 CHALMERS, WAS THAT HERE IN SOUTH CAROLINA?

13 A. YES, IT WAS.

14 Q. WHERE WAS THAT PLANT LOCATED?

15 A. IN LEXINGTON.

16 Q. LEXINGTON, ALL RIGHT. AND I BELIEVE SIMPLICITY WAS
17 OVER IN LEXINGTON, TOO?

18 A. RIGHT.

19 Q. AND THEN AFTER THAT -- YOU WORKED THERE FOR 11 YEARS
20 IN THAT AND/OR ACCOUNTING; IS THAT CORRECT?

21 A. RIGHT.

22 Q. AND THEN WHEN DID YOU GO TO -- WHEN DID YOU START
23 WORKING FOR THE STATE ACCIDENT FUND?

24 A. I STARTED WORKING FOR STATE ACCIDENT FUND ON MARCH
25 THE 17TH, 1984.

1 Q. AND TELL ME ABOUT THE CAPACITIES YOU'VE WORKED IN AT
2 THE STATE ACCIDENT FUND. WHAT DID YOU START OUT
3 DOING, AND THEN WHAT WAS YOUR POSITION?

4 A. I CAME -- I CAME INTO THE STATE ACCIDENT FUND AS AN
5 INTERNAL AUDITOR, AND I WORKED THERE ALMOST FIVE
6 YEARS AS INTERNAL AUDIT. AND THEN MEMBER SERVICES
7 HAD A GREAT PROBLEM WITH THEIR AUDITS AND UP TO DATE
8 AND SO FORTH THAT I HAD DISCOVERED IN MY DUTIES OF
9 INTERNAL AUDIT, AND THEY ASKED -- SHAWN ASKED ME --
10 THE WITNESS EARLIER ASKED ME TO COME IN HER
11 DEPARTMENT OF MEMBER SERVICES AS AUDIT SUPERVISOR.

12 Q. AND JUST FOR SOMEBODY THAT DOESN'T KNOW -- WE'RE ALL
13 VERY FAMILIAR WITH THE STATE ACCIDENT FUND, BUT THE
14 STATE ACCIDENT FUND IS THE AGENCY THAT'S CHARGED
15 WITH PROVIDING INSURANCE FOR STATE, LOCAL, AND
16 COUNTY, AND OTHER AGENCIES WITHIN THE STATE OF SOUTH
17 CAROLINA WITH WORKERS' COMPENSATION COVERAGE?

18 A. YES.

19 Q. AND WHEN YOU REFER TO THIS BRANCH THAT WAS CALLED
20 MEMBER SERVICES, THAT'S SORT OF AN ODD TERM, BUT I
21 BELIEVE -- WHAT DOES THAT REALLY MEAN WHEN YOU SAY

22 ---

23 A. WELL, MEMBER SERVICES, WHICH PROVIDED SAFETY, SAFETY
24 TRAINING TO THE PREMIUM HOLDERS AND PROVIDED -- AT
25 THAT TIME THE SECOND INJURY FUND WAS INCLUDED, AND

1 THEN THIRDLY WITH THE AUDIT, WHICH IS PREMIUMS,
2 ESTIMATE OF PREMIUMS, AUDIT PREMIUMS, TRAINING OF
3 POLICYHOLDERS.

4 Q. AND THEN SO YOU WENT TO WORK THERE ABOUT 1989 IN THE
5 PREMIUM AUDIT DIVISION OR ---

6 A. WELL, I STARTED -- IN THE PREMIUM AUDIT I THINK IT
7 WAS MAY OF '93.

8 Q. OKAY. SO IN 1993 YOU WENT INTO -- AND I BELIEVE
9 THEN IT WAS THE AUDIT DEPARTMENT, IS THAT RIGHT?

10 A. IT WAS STILL UNDER MEMBER SERVICES, AND IT -- LIKE I
11 SAY, I WAS SUPERVISOR OF THE AUDIT DEPARTMENT.

12 Q. OKAY. AND AT THAT TIME YOU WERE SUPERVISOR OF THE
13 AUDIT DEPARTMENT UNDER MEMBER SERVICES?

14 A. RIGHT, UNDER SHAWN HOLMAN.

15 Q. AND THEN YOU ALL HAD SOME REORGANIZATION, AND
16 BASICALLY THE AUDIT -- AN ENTITY CALLED THE AUDIT
17 DEPARTMENT WENT AWAY, AND YOU WENT -- THEN WENT TO A
18 TEAM CONCEPT; IS THAT PRETTY MUCH CORRECT?

19 A. RIGHT, YES.

20 Q. AND WERE YOU ALL IN THE TEAM CONCEPT IN 2002?

21 A. RIGHT, YES.

22 Q. NOW, I'M NOT GOING TO GO BACK OVER THAT. THE
23 COMMISSIONER HAS ALREADY HEARD ABOUT WHAT THE TEAM
24 CONCEPT ENTAILED. DO YOU AGREE PRETTY MUCH WITH THE
25 WAY MS. HOLMAN DESCRIBED TEAM CONCEPT, ABOUT THERE

1 WERE THREE OF YOU; EACH AUDITOR WAS ASSIGNED TO A
2 TEAM, AND THEN WITHIN THE TEAM YOU DID ALL OF THE
3 FUNCTIONS FROM START TO FINISH FOR THE STATE FUND;
4 IS THAT PRETTY MUCH ---

5 A. CORRECT. YES, SIR.

6 Q. NOW, IN THE FALL OF 2002, ALSO, THERE WERE THREE OF
7 YOU IN THE AUDITING DEPARTMENT?

8 A. CORRECT.

9 Q. YOU, CARLA JOHNSON, AND SHAWN HOLMAN?

10 A. YES.

11 Q. LET'S FIRST TALK ABOUT THE COMPUTER SYSTEM.

12 A. OKAY.

13 Q. TELL ME YOUR RECOLLECTION OF THE NEW COMPUTER
14 SYSTEM, AND HOW WAS IT DOING THROUGHOUT THE YEAR OF
15 2002?

16 A. THE OPPOSING ATTORNEY CORRECT -- OF 1999 IS CORRECT.
17 THAT'S WHEN IT WAS SIGNED OFF, BUT IT WAS SIGNED OFF
18 WITH 92 INCOMPLETE PROCESSES. AND AS THEY WORKED
19 THOSE OUT, THEN THE COMPUTER SYSTEM BECAME MORE
20 EASILY USED, AND YOU COULD DEPEND ON IT. BUT WHEN
21 YOU GO OUT AND GIVE A PRESENTATION TO A
22 POLICYHOLDER, YOU WANT TO HAVE THE CONFIDENCE THAT
23 EVERYTHING THAT YOU'RE PRESENTING TO THEM IS 100
24 PERCENT CORRECT, AND WITH THAT COMPUTER SYSTEM YOU
25 COULDN'T RELY ON THAT AT ALL.

1 Q. LET'S TALK ABOUT THAT IN 2002. JUST AS YOU JUST
2 SAID, AS TIME WENT ON THEY GOT MORE AND MORE OF, FOR
3 A BETTER TERM, THE BUGS OUT OF IT?

4 A. RIGHT.

5 Q. AND GOT THE PROBLEMS AND INCONSISTENCIES CORRECTED.
6 BUT TELL ME WHAT KIND OF PROBLEMS IN THE AUDITING
7 DEPARTMENT YOU WERE HAVING WITH THE COMPUTERS IN THE
8 FALL OF 2002 GOING INTO JANUARY OF 2003.

9 A. WELL, LIKE MS. HOLMAN HAD STATED, THE EXPERIENCE
10 MODIFIER WAS PROBABLY THE GREATEST DEFICIENCY OF
11 THAT COMPUTER SYSTEM. THE PEOPLE THAT WERE DOING
12 IT, THE COMPUTER TECHS THAT WERE DOING IT FROM THE
13 I.T. DEPARTMENT, THEY WOULD SUBMIT THE EXPERIENCE
14 MODIFIERS TO US, THE THREE AUDITORS, AND WE WERE TO
15 VERIFY ALL THE DATA IN THERE AS BEING ACCURATE, AND
16 WHICH WE WOULD FIND A PROBLEM THAT THEY DIDN'T SEE,
17 AND WE'D RESUBMIT IT BACK TO THEM AND TELL THEM WE
18 CAN'T USE THESE EXPERIENCE MODIFIERS BECAUSE
19 THEY'RE, YOU KNOW, WRONG.

20 Q. THE PROBLEM YOU HAD FOUND?

21 A. YEAH, THE PROBLEM WE FOUND MADE THE EVIDENCE WRONG
22 AS FAR AS EACH INDIVIDUAL EXPERIENCE MODIFIER. SO
23 WE WOULD HAVE TO -- THEY WOULD CORRECT IT. THEN
24 WE'D HAVE TO TEST IT, AND WE'D HAVE TO TEST IT
25 ANYWHERE FROM THREE TO FIVE TIMES EACH YEAR TO GET

1 THE CORRECT EXPERIENCE MODIFIER.

2 Q. OKAY. SO INSTEAD OF WORKING UP THE EXPERIENCE
3 MODIFIER, WHICH PRIOR TO THIS COMPUTER SYSTEM YOU
4 WOULD DO, NOW IT WOULD TAKE YOU RESUBMITTING THIS,
5 FOR A BETTER TERM, FOR THE COMPUTER TO GET IT RIGHT
6 OR IT TO BE PROPERLY ENTERED INTO THE COMPUTER OR
7 WHATEVER YOU WANT TO SAY?

8 A. RIGHT.

9 Q. IT WOULD TAKE YOU HAVING TO GO BACK AND FORTH THREE
10 TO FIVE TIMES ON EACH ACCOUNT?

11 A. RIGHT, ON EACH YEAR.

12 Q. FOR EACH ACCOUNT FOR EACH YEAR?

13 A. WELL, THAT'S TRUE, BUT ONCE IT'S CORRECTED, THEN IT
14 WAS CORRECTED FOR ALL ACCOUNTS.

15 Q. OKAY. BECAUSE YOU'RE TALKING ABOUT -- I'M SORRY;
16 YOU'RE CORRECT. AND THAT IS BECAUSE --
17 UNFORTUNATELY, HAVING GONE THROUGH SOME OF THIS WITH
18 SENATOR McCONNELL, I KNOW A LITTLE BIT TOO MUCH
19 ABOUT IT MYSELF. BUT THE BOTTOM LINE IS, IS THAT
20 WHAT YOU WERE DOING WAS DOING THE EXPERIENCE
21 MODIFIER FOR EACH CLASSIFICATION, AND THAT
22 CLASSIFICATION WOULD THEN APPLY TO ALL OF THE
23 DIFFERENT ACCOUNTS. IS THAT PRETTY MUCH CORRECT?

24 A. WELL, EACH EXPERIENCE MODIFIER HAD CLASS CODES OF,
25 YOU KNOW, ATTORNEYS, OFFICE PEOPLE, JANITORIAL,

1 BASICALLY ANY ---

2 Q. RIGHT.

3 A. YEAH, RIGHT.

4 Q. SO, PART OF THAT PROBLEM WAS GETTING THOSE
5 CLASSIFICATIONS RIGHT. NOW, SO INSTEAD OF DOING
6 THIS ONE TIME OR APPLYING YOUR STANDARD E-MODS, YOU
7 WERE HAVING TO GO BACK AND FORTH DURING 2002 AND
8 INTO JANUARY OF 2003 THREE TO FIVE TIMES WITH THE
9 TECHS THAT WERE ENTERING THE INFORMATION INTO THE
10 COMPUTER. IS THAT RIGHT? DID THAT PUT ADDITIONAL
11 WORKLOAD ON YOU?

12 A. OH, IT -- YEAH, TREMENDOUSLY DIFFERENT. BUT THE --
13 YOU KNOW, YOU HAD TO EXPLAIN TO -- ESPECIALLY --
14 NOW, AS OF JANUARY THE 1ST, 2003, WE'RE ONLY TALKING
15 ABOUT THE 500-PLUS CITIES AND COUNTIES AND
16 MUNICIPALITIES THAT -- THAT YOUR ESTIMATED PREMIUM
17 WAS GOING OUT ON AT THAT TIME. NOW, JULY 1 -- BUT
18 WE HAD TWO -- WE HAD TWO STATE AGENCIES THAT THEIR
19 POLICY YEAR WAS LIKE A CALENDAR YEAR, STARTED
20 JANUARY 1 AND WENT TO DECEMBER 31ST, INSTEAD OF THE
21 TRADITIONAL JULY 1 TO, YOU KNOW, JUNE THE 30TH OF,
22 YOU KNOW, NEXT YEAR.

23 Q. ALL RIGHT. SO WE HAVE THIS COMPUTER SYSTEM GOING
24 ON. NOW, WOULD YOU AGREE WITH MS. HOLMAN THAT UNDER
25 THE TEAM CONCEPT EACH OF THE AUDITORS AND EACH ONE

1 OF THE TEAMS HAD 200-PLUS ACCOUNTS FOR EACH TEAM?

2 A. YES.

3 Q. NOW, AND AS SHE TESTIFIED, YOU GENERALLY DID ALMOST
4 ALL OF THE STATE AGENCIES, THEIR AUDITS, BETWEEN
5 JULY 1ST AND DECEMBER 30TH?

6 A. CORRECT.

7 Q. 31ST?

8 A. RIGHT.

9 Q. AND THEN YOU DID ALL OF THE COUNTIES, CITIES,
10 MUNICIPALITIES, AND OTHER LOCAL AGENCIES BETWEEN
11 JANUARY 1 AND JUNE 30TH?

12 A. CORRECT.

13 Q. NOW, LET'S CLARIFY SOMETHING THAT CAME UP ABOUT THAT.
14 THE AUDIT HAD TO BE DONE WITHIN 180 DAYS FROM THE
15 DATE IT BECAME DUE. IS THAT REFERRING -- DID THEY
16 ALL -- ALL THE LOCAL COUNTIES AND CITIES, DID THEY
17 ALL START ON JANUARY 1? I MEAN, DID THEIR AUDITS
18 HAVE TO BE DONE BY JUNE 30TH?

19 A. RIGHT.

20 Q. OKAY. NOW, IN REFERENCE TO CARLA JOHNSON, TELL ME
21 ABOUT ANY PROBLEMS YOU HAD -- TELL ME ABOUT HER WORK
22 ATTENDANCE DURING THE FALL -- PARTICULARLY THE FALL
23 OF 2002, BECAUSE WE KNOW SHE HAD TO HAVE SURGERY ON
24 DECEMBER 27TH, OR WENT OUT FOR SURGERY AROUND THAT
25 TIME.

1 A. RIGHT. SHE WENT OUT OF SERVICE THEN. BUT SHE HAD
2 NUMEROUS DAYS THAT SHE WOULD NOT BE AT WORK OR SHE
3 WOULD COME TO WORK, THEN SHE WOULD LEAVE BECAUSE OF
4 THE PAIN AND AGONY THAT -- WHICH FINALLY CAME OUT TO
5 BE REQUIRING MAJOR BACK SURGERY, AND SO, YES, THAT
6 WAS INCREASED LOAD ON SHAWN AND I, YOU KNOW,
7 GREATLY.

8 Q. TELL ME ABOUT THE DIFFERENCE BETWEEN HANDLING ALL OF
9 THE AUDIT FUNCTIONS -- AND, ALSO, I WANT TO KNOW
10 WHAT THE AUDIT FUNCTIONS ARE FOR AN INDIVIDUAL
11 AUDITOR UNDER THE TEAM CONCEPT VERSUS HOW YOU ALL
12 WORKED BEFORE THE STATE ACCIDENT FUND WENT TO THE
13 TEAM CONCEPT. HOW WAS -- HOW WAS THAT DIFFERENT?

14 A. WELL, THE TEAM CONCEPT WAS EACH INDIVIDUAL TEAM HAD,
15 YOU KNOW, A LEGAL ASSISTANT OR HAD A LEGAL PERSON;
16 IT HAD A SAFETY PERSON; IT HAD A CLAIMS INVESTIGATOR
17 PERSON; IT HAD AN AUDITOR, AND IT HAD FOUR ADJUSTERS
18 AND TWO ASSISTANTS FOR THE FOUR ADJUSTERS. I THINK
19 THAT'S WHAT IT WAS.

20 Q. AND ---

21 A. EXCUSE ME. AND IN THE -- BUT THOSE WERE MAINTAINED
22 -- YOU WERE TO MAINTAIN THOSE 200-PLUS AUDITS ON
23 YOUR OWN. YOU HAD NO HELP FROM EITHER OF THE TWO
24 OTHER AUDITORS UNLESS THE DIRECTOR OR THE -- OR MR.
25 GAMBLE, THE DEPUTY DIRECTOR, WHICH WAS OUR

1 SUPERVISOR, INDICATED, YOU KNOW, I WANT YOU TO WORK
2 ON THIS PARTICULAR CASE OR FIX THE PROBLEMS WITH
3 THIS PARTICULAR POLICYHOLDER.

4 Q. SO, BASICALLY YOUR MAIL CAME IN SEPARATE OR WAS
5 SEPARATED OUT AND WENT TO YOU; THEIR MAIL WENT TO
6 THEM?

7 A. RIGHT.

8 Q. YOUR EMAILS ON YOUR ACCOUNTS, THOSE 200-PLUS
9 ACCOUNTS, CAME TO YOU; THEIRS WENT TO THEM?

10 A. WELL, ACTUALLY, THE MAIL CAME IN, IN OUR BOX, AND
11 EITHER I SORTED -- WHOEVER PICKED IT UP WOULD SORT
12 THE MAIL TO THE THREE AUDITORS AND DROP IT OFF IN
13 THERE.

14 Q. BUT THEN YOU DEALT WITH THE MAIL FOR YOUR ACCOUNTS
15 ONLY, CORRECT?

16 A. RIGHT.

17 Q. THEN TELEPHONE MESSAGES, YOU HAD YOUR OWN VOICEMAIL,
18 EACH ONE OF YOU?

19 A. YES, WE DID.

20 Q. WHENEVER SOMEBODY WAS OUT FOR A SHORT PERIOD OF
21 TIME, THE OTHER TWO AUDITORS, I GUESS, LIKE WE
22 TALKED WITH MS. HOLMAN AND ALL, YOU WOULD PITCH IN
23 TO, FOR A BETTER TERM, TAKE CARE OF THE EMERGENCIES?

24 A. IN THE TEAM CONCEPT WE WOULD NOT, BUT IN THE OTHER
25 DEPARTMENTAL ACCOUNTING OR DEPARTMENT AUDITING WE

1 WOULD; WE WOULD PITCH IN.

2 Q. OKAY. WITHIN THE TEAM CONCEPT, WHO WOULD LOOK AT
3 THEIR STUFF WHILE THEY WERE OUT?

4 A. NO ONE. THE MESSAGE WOULD GO TO THEIR VOICEMAIL,
5 AND IF THERE -- EXAMPLE, CARLA JOHNSON'S TEAM LEADER
6 WAS JIMMY COLEMAN, WHICH IS THE SAFETY MAN. HE WAS
7 HER SUPERVISOR OR TEAM LEADER, AND SO HE WOULD
8 RESPOND TO SOME POLICYHOLDERS THAT NEEDED EMERGENCY
9 OR FIRSTHAND INFORMATION NEEDED, AND THEN HE WOULD
10 EITHER GET ROSS GAMBLE OR SOMEONE TO GIVE HIM
11 AUTHORITY TO ASK IF I WOULD OR IF SHAWN WOULD HELP
12 OUT AT THAT TIME.

13 Q. WE'VE TALKED ABOUT A LETTER GOING OUT ON DECEMBER
14 1ST OR THEREABOUTS. DO YOU ACTUALLY -- BY THE WAY,
15 YOU TEND TO HAVE A PRETTY GOOD MEMORY. DO YOU KNOW
16 WHEN THAT LETTER WENT OUT, THE ACTUAL ONE NOTIFYING
17 THAT THERE WAS GOING TO BE ---

18 A. WE TRIED TO GET THAT LETTER TO GO OUT BY DECEMBER
19 THE 1ST TO GIVE THE POLICYHOLDER THE CHANCE TO OR
20 THE TIME FACTOR TO GET ANOTHER WORKERS' COMP
21 INSURANCE COMPANY IF THEY SO DESIRED TO LEAVE US.
22 THAT WAS THAT. SO THAT THEY WOULDN'T HAVE TO PAY
23 THEIR JANUARY THE 1ST PAYMENT, EITHER IN PAYMENTS OR
24 IN TOTAL PREMIUM. AND SO THAT'S WHEN IT WAS
25 ACTUALLY SET UP TO DO BECAUSE IT WAS REQUIRED, I

1 THINK, IN THE WORKERS' COMP LAW THAT WE HAD TO GIVE
2 THEM THAT 30 DAYS. SO, THAT'S WHEN IT WENT OUT,
3 ESTIMATED -- THE ESTIMATED PREMIUM.

4 Q. I BELIEVE, OF COURSE, CHRISTMAS YOU ALL -- STATE
5 AGENCIES CLOSE UP TWO DAYS BEFORE CHRISTMAS, A DAY
6 OR SO BEFORE CHRISTMAS. AND THEN WHEN YOU CAME BACK
7 ON JANUARY 2ND, MS. HOLMAN HAD LEFT FOR ANOTHER
8 AGENCY, ONE OF THE AUDITORS, AND MS. CARLA JOHNSON
9 WAS OUT DUE TO HER BACK SURGERY, IS THAT RIGHT?

10 A. CORRECT.

11 Q. TELL ME, FIRST OFF, DO YOU REMEMBER ANYTHING ABOUT
12 DECEMBER AFTER THESE LETTERS WENT OUT AS TO THE CALL
13 LOAD OR THE WORKLOAD?

14 A. WELL, YEAH, WE GOT A LOT OF RESPONSES, PEOPLE
15 CALLING AND WRITING AND WANTING TO KNOW WHY THEIR
16 PREMIUMS WENT UP. THEREFORE, WITH THAT 24.7 PERCENT
17 AVERAGE I THINK THERE'S ONE CLASS CODE THAT WENT
18 BELOW THAT 24.7 PERCENT, BUT THERE WAS SEVERAL, LIKE
19 THE D.S.N. BOARDS, DISABILITY AND SPECIAL NEEDS
20 BOARDS, WHICH THEY REALLY CAN'T CONTROL THEIR CLAIMS
21 BECAUSE OF THE TYPE OF PATIENTS THAT THEY HAVE, AND
22 THEIRS WENT UP 33 PERCENT. SO WHEN THEY GOT THEIR
23 ESTIMATED PREMIUM WITH A 33 PERCENT RATE INCREASE
24 AND EXPERIENCE MODIFIERS FOR THEM WAS USUALLY VERY
25 HIGH ANYWAY, AND PERHAPS THEIR EXPERIENCE MODIFIER

1 HAD GONE UP ANOTHER ONE POINT OR TWO POINTS OR, YOU
2 KNOW, THAT TYPE.

3 Q. TELL ME, WHENEVER YOU GOT BACK ON JANUARY 2ND, BACK
4 IN THE OFFICE, TELL ME HOW -- TELL ME WHAT THOSE
5 WEEKS WERE LIKE AFTER THAT.

6 **BY MR. HASELDEN:**

7 YOUR HONOR, I'M GOING TO START A RUNNING
8 OBJECTION THAT ANY TESTIMONY AS TO THIS IS SELF-
9 SERVING TO THE CLAIMANT BASED ON YOUR PREHEARING ---

10 **BY THE COMMISSIONER:**

11 I'LL NOTE YOUR OBJECTION, BUT I'LL ALLOW HIM TO
12 ANSWER THE QUESTIONS. GO AHEAD.

13 **BY MR. McDANIEL:**

14 COMMISSIONER, FIRST OFF, I'VE NEVER HEARD ANY
15 TESTIMONY FROM AN INSURANCE COMPANY, AN EMPLOYER, OR
16 ANY WITNESS THAT WASN'T SELF-SERVING, SO I DON'T
17 KNOW WHAT KIND OF OBJECTION THAT IS AS TO HIS
18 TESTIMONY FROM A FACTUAL BASIS. HOWEVER, I JUST
19 WANT TO NOTE THAT FOR THE RECORD.

20 **BY THE COMMISSIONER:**

21 AND I NOTED HIS OBJECTION. I BELIEVE HE DID
22 REFERENCE OUR PREHEARING CONFERENCE IN THAT THIS IS
23 GENERALLY WITNESS-DRIVEN, AND YOU HAVE HAD ONE
24 WITNESS, AND A VERY MUCH FACT-SPECIFIC TYPE OF CASE.
25 AND -- WHICH MEANS ALL THE ELEMENTS OR MOST OF THE

1 ELEMENTS OR MOST ALL, MORE THAN HALF THE ELEMENTS
2 SHOULD BE PROVED BY FACTS. WE HAD ONE FACT WITNESS,
3 AND NOW WE'VE GOT THE CLAIMANT. I THINK -- I
4 BELIEVE MR. HASELDEN WAS STATING THAT IT COULD BE
5 ANTICIPATED AS TO WHAT HE'S GOING TO SAY.
6 NEVERTHELESS, I'VE NOTED HIS OBJECTION. IT'S A
7 RUNNING OBJECTION, AND I'M GOING TO ALLOW YOU TO ASK
8 THE QUESTIONS.

9 **BY MR. McDANIEL:**

10 THANK YOU, COMMISSIONER.

11 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

12 Q. MR. MENIE, I DON'T WANT TO -- JUST TELL THE
13 COMMISSIONER WHAT YOUR WEEKS WERE LIKE, YOU KNOW,
14 WHAT ALL YOU CAME BACK TO AND WHAT YOU FOUND AND ALL
15 THAT WHEN YOU CAME BACK AFTER THE TWO OTHER AUDITORS
16 WERE GONE.

17 A. WELL, JANUARY THE 2ND I CAME BACK. NOW, I HAVE
18 ALWAYS BEEN A VERY CONSCIENTIOUS PERSON THAT I WANT
19 TO GET ALL OF MY WORK DONE EVERY DAY SO I WON'T HAVE
20 ANYTHING LEFT OVER TO PICK UP THE NEXT DAY BECAUSE
21 THAT WORKLOAD IS GONNA BE THERE AS WELL. SO, HAVING
22 ALL THESE LETTERS OF COMMUNICATION REQUESTING WHY
23 THEIR EXPERIENCE MODIFIER HAD INCREASED OR WHY THIS
24 PREMIUM OF 24.7 AVERAGE, WHY DID THAT COME INTO
25 EFFECT, WHY DIDN'T THEY BREAK IT DOWN IN THE YEARS

1 PRIOR, YOU KNOW, AT 10 AND 15 PERCENT UP 'TIL THE
2 TIME OF THIS TOTAL AMOUNT, AND JUST ALL KIND OF
3 QUESTIONS. I WOULD HANDLE 800-NUMBER CALLS, WHICH
4 WOULD COME IN OUTSIDE OF COLUMBIA, AND DIRECT CALLS
5 DIRECTLY TO MY LINE, AND THEN WHATEVER THE OPERATOR
6 WOULD TRANSFER TO ME. I COULD HANDLE MOST OF THOSE
7 ON A ONE-ON-ONE BASIS. NOW, THE ONES THAT COME IN
8 MY VOICEMAIL, WHICH WAS A TOTAL OF 25, WHEN IT
9 LOADED TO 25 THEN THEY GOT A MESSAGE THAT THEY CAN'T
10 LEAVE A MESSAGE. BUT THEN ALL THREE OF THE PHONES
11 -- OF THE AUDITORS' PHONES WERE TRANSFERRED TO MY
12 PHONE. SO, I HAD ALL OF THE WRITTEN CORRESPONDENCE,
13 ALL OF THE PHONE CALLS, AND ALL OF THE -- YOU WOULD
14 THINK THAT YOU -- I COULD PRODUCE 300 PERCENT OF THE
15 AUDITS, BUT BASED ON ALL OF THE CORRESPONDENCE AND
16 THE MAIL OR THE PHONE CALLS I GOT, I COULDN'T REALLY
17 DO VERY MANY AUDITS AT ALL BECAUSE IT HAD TAKEN UP,
18 YOU KNOW, MY DAYS, MY DAYS. AND SO I ALWAYS
19 THOUGHT, WELL, YOU KNOW, THE 3RD, THE 4TH AND 5TH OF
20 JANUARY, GOSH, I DIDN'T GET NOTHING DONE OTHER THAN
21 TO TALK TO PEOPLE ON THE PHONE. AND SO, ALL OF THAT
22 WAS BUILDING UP IN MY MIND AND ACTUALLY IN WORK
23 STATUS OF GETTING SO FAR BEHIND THAT I JUST -- IT
24 WAS DEFINITELY AN OVERLOAD.

25 Q. I BELIEVE THAT YOU COULDN'T VERIFY A LOT OF THE

1 INFORMATION, BUT I BELIEVE YOU ACTUALLY -- PETE
2 PARKER WAS THE ACTUAL EXECUTIVE DIRECTOR AT THE
3 TIME, IS THAT RIGHT?

4 A. YES, SIR. YES, SIR; HE WAS.

5 Q. AND AS PART OF YOUR CLAIM, WHICH YOU ORIGINALLY
6 FILED BACK AT THE FIRST OF JUNE ---

7 A. RIGHT.

8 Q. --- OF 2003, BEST OF YOUR RECOLLECTION, ---

9 A. RIGHT.

10 Q. --- I BELIEVE YOU WENT BACK AND VERIFIED AS MUCH AS
11 YOU COULD ABOUT HOW MUCH INCREASE YOU WERE GETTING,
12 AND THE RECORDS YOU COULD VERIFY WAS FROM YOUR
13 VOICEMAILS, IS THAT RIGHT?

14 A. RIGHT. I HAD VOICEMAIL, AND I HAD DOCUMENTATION
15 THAT'S ON MY DESK THAT I HAD GENERATED FOR ALL THESE
16 POLICYHOLDERS WITH ALL THESE QUESTIONS AND DEMANDS,
17 AND I HAD THAT MUCH PAPERWORK. NOW, BOTH THE PHONE
18 CALLS AND THE PAPERWORK, AS I SUMMARIZED THEM, 58
19 PERCENT OF MY TIME WENT TO THE OTHER TWO AUDITORS'
20 TERRITORIES TO TRY TO REACH -- OR KEEP THE DEMAND
21 OF, YOU KNOW, ALL THE POLICYHOLDERS.

22 Q. SO, EXCLUDING -- I THINK, AS YOU TOLD MR. PARKER AT
23 THAT TIME, EXCLUDING ALL OF THE PHONE CALLS FROM 800
24 NUMBERS, OPERATOR ASSISTANCE, AND DIRECT CALLS, THAT
25 BASED ON THE LOG ALONE THAT YOU WERE -- TO THE OTHER

1 TERRITORIES YOU VERIFIED, WHAT WAS IT, 58 PERCENT

2 ---

3 A. YES, SIR.

4 Q. --- INCREASE? OKAY. FROM JUST THOSE CALLS THAT YOU
5 HAD DOCUMENTED?

6 A. FROM MY VOICEMAIL. THAT'S THE ONLY ONE I HAD REALLY
7 A RECORD OF, YOU KNOW.

8 Q. NOW, YOU TALKED ABOUT -- HOW WAS EACH INDIVIDUAL
9 WORK DAY WHEN YOU'D COME IN IN THE MORNING DIFFERENT
10 THAN IT HAD BEEN BEFORE THE TWO AUDITORS WENT OUT?
11 I THINK YOU'VE ALREADY TOLD THE COMMISSIONER THAT,
12 BUT IF YOU'D JUST GO OVER THAT AGAIN.

13 A. WELL, I -- THE DAY OF THE -- AS STARTING JANUARY THE
14 2ND OF 2003, I JUST EXPLAINED THAT. NOW, MY WEEKS
15 PRIOR TO THAT OR, SAY, THE MONTH OF DECEMBER, I WAS
16 CAUGHT UP WITH MY AUDITS FOR THE STATE AGENCIES, AND
17 CARLA WAS QUITE BEHIND ON HERS BECAUSE OF THE
18 ABSENTEEISM THAT SHE CREATED DURING THAT MONTH AND
19 PREVIOUS MONTHS. AND SO -- BUT WE WERE PRETTY WELL,
20 YOU KNOW, WORKING UP TO DATE. I KNEW THAT I WAS
21 GONNA HAVE TO DO SOME MORE OF HER AUDITS IN THE
22 UPCOMING MONTHS OF JANUARY, FEBRUARY, AND MARCH, YOU
23 KNOW, BECAUSE MR. MURPHY OVER THERE, HE KEPT UP WITH
24 THE RECORDS OF AUDITS AND ACCOUNTABILITY, I THINK
25 WAS THE REPORT, AND WE WERE TRYING TO MEET THAT

1 ACCOUNTABILITY REPORT DESTINATION, AND PRIOR TO --
2 PRIOR TO JANUARY OF '03, IT WAS AN ORGANIZED, WELL-
3 MOVING OPERATION, BUT JANUARY 2ND OF '03 IT JUST --
4 EVERYTHING CAME TO ME AND ONLY ME.

5 Q. HOW WAS IT AS OF MARCH 3RD?

6 A. MARCH 3RD? WELL, I WAS STILL IN THE MIDST OF TRYING
7 TO GET ALL OF THIS DONE FOR ALL THESE POLICYHOLDERS,
8 AND THEN ON MARCH THE 3RD THE SECOND AUDITOR BESIDES
9 MYSELF STARTED ON MARCH THE 3RD OF 2003. AND WHEN
10 -- THAT DAY AS I THOUGHT ABOUT, OH, I'VE GOT THIS
11 MAN TO TRAIN AND I'VE GOT TO KEEP UP WITH ALL OF
12 THESE OTHER THINGS AS WELL, AND THEN WHEN I WENT
13 HOME ABOUT 6:00. WELL, I LEFT BEFORE 6:00, BUT WHEN
14 I GOT HOME ABOUT 6:00 ONE OF THESE A-FIB -- THE
15 FIRST A-FIB STARTED, AND QUITE AN EXPERIENCE.

16 Q. AND I BELIEVE YOU WERE TAKEN BY AMBULANCE TO
17 LEXINGTON COUNTY?

18 A. YES.

19 Q. AND YOU CAME UNDER TREATMENT AT THAT TIME BY DR.
20 C.W. HENDRICKS, IS THAT RIGHT?

21 A. TRUE, TRUE.

22 Q. AND HE'S BEEN YOUR TREATING CARDIOLOGIST EVER SINCE
23 THAT TIME?

24 A. YES, SIR.

25 Q. NOW, AS PART OF -- I BELIEVE YOU CARRY A CARD AROUND

1 IN YOUR WALLET PRETTY PROUDLY ABOUT YOUR BLOOD
2 DONATIONS. DO YOU HAVE THAT CARD WITH YOU?

3 A. YES, SIR.

4 Q. TELL ME WHAT THAT CARD IS FOR.

5 A. IT'S FOR A PINT OF BLOOD FOR EACH DONATION, AND THIS
6 IS A LIFETIME UNITS OF 34. THEY CALL IT A HERO
7 CARD.

8 Q. HAVE YOU BEEN ABLE TO GIVE BLOOD AT ALL SINCE THE
9 FIRST ATRIAL FIBRILLATION?

10 A. NO. I WAS PUT ON COUMADIN, AND WITH COUMADIN THEY
11 WON'T ACCEPT YOUR BLOOD, COUMADIN BEING A BLOOD
12 THINNER.

13 Q. NOW, AS PART OF THAT MEMO YOU WROTE TO MR. PARKER AT
14 HIS REQUEST, I BELIEVE, AND YOU PUT IN ALL THE
15 DOCUMENTATION, INCLUDING, I BELIEVE, THE REPORTS YOU
16 RECEIVED FROM DR. SELMAN WATSON, IS THAT RIGHT?

17 A. YES, SIR.

18 Q. AND I BELIEVE YOU RECEIVED ONE REPORT FROM DR.
19 SELMAN WATSON; IS THAT CORRECT?

20 A. TRUE.

21 Q. BEST OF YOUR RECOLLECTION?

22 A. VERY TRUE.

23 Q. OKAY. AND AFTER YOU REPORTED THE CLAIM, THE STATE
24 ACCIDENT FUND SENT YOU TO DR. SELMAN WATSON, IS THAT
25 NOT RIGHT?

1 A. THAT'S TRUE.

2 Q. NOW, LET'S TALK FIRST ABOUT -- JUST FINISH UP WITH
3 THE RED CROSS. DO YOU REMEMBER WRITING MR. PETE
4 PARKER THAT YOU HAD -- "I PICKED UP THIS AMERICAN
5 RED CROSS MEMO SHOWING MY BLOOD PRESSURE READINGS ON
6 A GIVEN DATE FOR BLOOD DONATIONS. THE RECORD SHOWS
7 NO BLOOD PRESSURE PROBLEM BEFORE MARCH 3RD, 2003."
8 DO YOU REMEMBER PICKING THAT UP AND GIVING IT TO MR.
9 PARKER?

10 A. YES, SIR.

11 **BY MR. HASELDEN:**

12 YOUR HONOR, I'M GOING TO ASK WHERE THAT IS IN
13 THE APA SUBMISSIONS.

14 **BY THE COMMISSIONER:**

15 IS IT NOT IN THE APAs?

16 **BY MR. McDANIEL:**

17 NO. I DON'T THINK I HAVE TO REFERENCE THAT.

18 **BY THE COMMISSIONER:**

19 WELL, I BELIEVE IN OUR PREHEARING CONFERENCE
20 THIS CAME UP, AND I THINK THERE IS A POINT -- I
21 CAN'T REMEMBER, BUT I REMEMBER THAT SAYING THAT IF
22 YOUR BLOOD PRESSURE IS AT A CERTAIN LEVEL THEY WON'T
23 TAKE IT, HIGH OR LOW. IT CAN BE TOO LOW, OR IT CAN
24 BE TOO HIGH.

25 **BY MR. McDANIEL:**

1 CORRECT.

2 **BY THE COMMISSIONER:**

3 I FORGET WHAT THE CUTOFF IS. THEY TOOK HIS
4 BLOOD, SO APPARENTLY IT WAS IN THOSE LEVELS. I'LL
5 NOTE YOUR OBJECTION. WE CAN MOVE ON.

6 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

7 Q. HOW WOULD YOU DESCRIBE YOUR FEELINGS OF STRESS
8 DURING THE TIME OF JANUARY AND FEBRUARY?

9 A. WELL, WITH MY EGO I THOUGHT I COULD HANDLE
10 EVERYTHING THAT CAME FORTH IN THOSE MONTHS, BUT AS I
11 WORKED EACH DAY AND REALIZED HOW MUCH FURTHER I'M
12 GETTING BEHIND -- WE HAD -- JANUARY, FOR EXAMPLE,
13 THE AUDITS, YOU HAD TO HAVE ONE-SIXTH OF THE AUDITS
14 FOR THE 500-PLUS AUDITS FOR CITIES, COUNTIES, AND
15 MUNICIPALITIES. EXCUSE ME. MY -- I HAVE TO --
16 PARDON ME; I HAVE TO USE THIS. MY MOUTH DRIES UP.
17 I'VE GOT ABOUT THREE MEDICINES THAT HELPS AID IN THE
18 DRYING OF MY MOUTH. BUT WITH ALL OF THAT ACTIVITY
19 THAT WAS GOING ON -- WOULD YOU ASK ME THAT QUESTION
20 AGAIN?

21 Q. I JUST -- I HAD ASKED YOU HOW WAS YOUR STRESS LEVEL.

22 A. OH, WELL, NOT KNOWING, YOU KNOW, WHAT STRESS LEVEL
23 OR WHAT STRESS REALLY REPRESENTS, LIKE I SAID, I
24 THOUGHT I COULD HANDLE ALL OF THOSE, AND I WORKED ON
25 HANDLING ALL OF THIS. NOW, WHEN I WOULD GET HOME I

1 WOULD JUST BE TOTALLY EXHAUSTED. BUT I WOULD WORK
2 ON IT AND TRY TO KEEP UP. NOW, MY LUNCH HOURS WERE
3 LESS THAN 30 MINUTES, AND I HAD TO TAKE NO BREAKS
4 OTHER THAN GOING TO THE RESTROOM, AND I WAS JUST
5 REALLY ON IT TRYING TO GET ALL THIS -- WELL, TRYING
6 TO GET ENOUGH INFORMATION TOGETHER TO GET MY AUDITS.
7 NOW, LIKE I SAY, THE ACCOUNTABILITY REPORT REQUIRED
8 THAT ALL THESE AUDITS BE DONE IN THAT 180 DAYS. BUT
9 ONE-SIXTH OF THOSE AUDITS YOU WOULD HAVE TO HAVE FOR
10 JANUARY. JANUARY WAS A MONTH IN WHICH YOU DIDN'T
11 EVEN SEND OUT THE ACTUAL REPORT REQUESTING THEIR
12 PAYROLL INFORMATION FOR THE PREVIOUS POLICY PERIOD
13 UNTIL LIKE FEBRUARY THE 15TH. SO, THE AUDITS THAT
14 YOU HAD FOR JANUARY, WHICH IS, YOU KNOW, LIKE 33
15 AUDITS THAT HAD TO BE DONE FOR JANUARY, THEN YOU
16 WOULD HAVE TO GET VOLUNTEER FIRE DEPARTMENTS AND ALL
17 OF THOSE THAT DID NOT REALLY HAVE W-2s AND W-3s, YOU
18 KNOW, FOR THE REPORT.

19 Q. NOW, THIS 33, IS THAT YOUR REQUIREMENT FOR YOUR
20 AUDITING POSITION?

21 A. NO, NO, THAT'S FOR ALL THE POLICYHOLDERS WITH ALL OF
22 THEIR EMPLOYEES. THEY'D HAVE TO HAVE A W-2, WHICH
23 IS A W-3 OF THE SUMMARY OF ALL OF THE W-2s THAT WERE
24 PAID EMPLOYEES.

25 Q. RIGHT. MR. MENIE, WHAT I'M ASKING YOU IS, IS THAT

1 YOU REFERENCED THAT THESE AUDITS HAD TO BE DONE BY
2 JUNE 30TH, AND JANUARY -- SO YOU HAD TO DO BASICALLY
3 33 EACH MONTH. IS THAT HOW MANY YOU NORMALLY WERE
4 SUPPOSED TO DO, WAS 33?

5 A. YEAH, NORMALLY I WOULD HAVE TO DO 33.

6 Q. OKAY. SO, AS ---

7 A. NOW -- BUT NOW, AS OF JANUARY HERE I'VE GOT 99 TO
8 DO.

9 Q. THAT'S WHAT I'M SAYING.

10 A. YEAH.

11 Q. SO, IN OTHER WORDS, TO REALLY DO THE JOB, TO HAVE
12 DONE EVERYTHING, YOU WOULD HAVE HAD TO DO 99 AUDITS?

13 A. RIGHT.

14 Q. OKAY. NOW, OF COURSE, WE'VE TALKED ABOUT ALL THAT.

15 A. RIGHT.

16 Q. HOW MANY TIMES -- MR. MENIE, LET'S TALK A LITTLE BIT
17 -- I KNOW YOU WENT TO DR. SELMAN WATSON, AND THE
18 STATE ACCIDENT FUND SENT YOU THERE. AND DID HE
19 DISCUSS WITH YOU WHAT HIS FINDINGS WERE?

20 A. YES, HE TOLD ME ---

21 BY MR. HASELDEN:

22 I'M GOING TO OBJECT, YOUR HONOR, TO WHAT THE
23 DOCTOR TOLD HIM.

24 BY THE COMMISSIONER:

25 TRY NOT TO QUOTE THE DOCTOR. I THINK WE HAVE

1 SOME MEDICAL RECORDS. THERE'S A DIFFERENT WAY YOU
2 PROBABLY CAN GET AT YOUR ANSWER.

3 **BY MR. McDANIEL:**

4 WELL, I WAS JUST GOING TO ASK HIM ---

5 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

6 Q. DID HE RELATE TO YOU, AS IS REFLECTED IN HIS RECORD
7 AT PAGE 110, THAT IN HIS OPINION "APPEARS TO HAVE
8 SUFFERED A CARDIAC ARRHYTHMIA FROM THE ACCUMULATION
9 OF STRESS ON THE JOB"?

10 **BY MR. HASELDEN:**

11 YOUR HONOR, I'M GOING TO OBJECT. I'M GOING TO
12 OBJECT. THE DOCUMENT SPEAKS FOR ITSELF.

13 **BY THE COMMISSIONER:**

14 AND IT DOES SPEAK FOR ITSELF. WE CAN MOVE ON.

15 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

16 Q. WELL, LET ME ASK YOU THIS: MR. WILLIE HIGHTOWER WAS
17 CHARGED WITH THE RESPONSIBILITY OF INVESTIGATING
18 THAT CLAIM, WASN'T HE?

19 A. YES, HE WAS.

20 Q. OKAY. AND YOU TALKED MANY TIMES WITH MR. WILLIE
21 HIGHTOWER, DIDN'T YOU?

22 A. YES, SIR; I DID.

23 Q. OKAY. AND I BELIEVE YOU WERE ABLE -- GIVEN BY THE
24 STATE ACCIDENT FUND ONE REPORT FROM DR. SELMAN
25 WATSON, WERE YOU NOT?

1 A. YES, I WAS.

2 Q. DID YOU KNOW, IN FACT, DR. SELMAN WATSON ISSUED TWO
3 MORE REPORTS THAT I GOT FROM THEIR RECORDS?

4 A. I WASN'T AWARE OF THOSE.

5 Q. ARE YOU AWARE THAT ON JULY 30TH, 2003, WROTE MR.
6 HIGHTOWER?

7 A. NO.

8 Q. OKAY. "ENCLOSED IS MY EVALUATION..." ---

9 **BY MR. HASELDEN:**

10 YOUR HONOR, I'M GOING TO OBJECT. THIS DOCUMENT
11 SPEAKS FOR ITSELF. HE DIDN'T PUT IT IN THE APAs.

12 **BY MR. McDANIEL:**

13 I WANT TO KNOW IF HE WAS EVER ADVISED BY MR.
14 WILLIE HIGHTOWER BY THE STATE FUND ---

15 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

16 Q. WERE YOU EVER ADVISED BY MR. WILLIE HIGHTOWER OR
17 ANYONE AT THE STATE ACCIDENT FUND THAT THEY HAD
18 RECEIVED A DOCUMENT FROM DR. SELMAN WATSON
19 EXPRESSING ---

20 **BY THE COMMISSIONER:**

21 WAIT, WAIT, WAIT.

22 **BY MR. HASELDEN:**

23 WHAT OBLIGATION DID THEY HAVE TO TURN THAT OVER
24 TO HIM?

25 **BY THE COMMISSIONER:**

1 YES. HOLD ON. I THINK YOU CAN ASK THE
2 QUESTION IF HE EVER HAD THIS CONVERSATION BECAUSE
3 THIS PERSON IS A WITNESS, IS HE NOT?

4 BY MR. HASELDEN:

5 HE'S NOT.

6 BY MR. McDANIEL:

7 HE'S NOT?

8 BY MR. HASELDEN:

9 HE'S NOT A WITNESS.

10 BY MR. McDANIEL:

11 HE IS A MEMBER OF MANAGEMENT ASSIGNED TO
12 INVESTIGATE THIS WITH THE STATE ACCIDENT FUND.

13 BY THE COMMISSIONER:

14 WELL, YOU CAN FRAME IT THAT WAY, BUT TRY NOT TO
15 SAY WHAT THE MEDICAL REPORT SAID. DID HE TALK TO
16 SOMEBODY. SO ---

17 BY MR. McDANIEL:

18 I BELIEVE IT'S CALLED AN ADMISSION AGAINST
19 INTEREST, COMMISSIONER.

20 BY THE COMMISSIONER:

21 IT IS.

22 BY MR. McDANIEL:

23 ALL RIGHT. AND I BELIEVE IT'S AN EXCEPTION TO
24 THE HEARSAY RULE.

25 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

1 Q. AND SO MY QUESTION IS --

2 BY THE COMMISSIONER:

3 RATHER THAN READ THE MEDICAL REPORT IN THE
4 RECORD, HE HAD A CONVERSATION WITH A MR. HIGHTOWER,
5 WHO I DID THINK WAS A WITNESS, AND HE WAS NOT A
6 WITNESS OBVIOUSLY.

7 BY MR. McDANIEL:

8 RIGHT.

9 BY THE COMMISSIONER:

10 I UNDERSTAND.

11 BY MR. McDANIEL:

12 HE WAS HERE -- THEY WERE GOING TO CALL HIM ON
13 ANOTHER ISSUE IN REFERENCE TO THE BILL FOR THE
14 MEDICAL RECORDS.

15 BY THE COMMISSIONER:

16 AND THAT BECAME A NON-ISSUE, AND HE'S GONE,
17 RIGHT?

18 BY MR. McDANIEL:

19 THAT BECAME -- WELL, I DON'T KNOW IF HE'S GONE
20 OR NOT. I TOLD YOU I MIGHT CALL HIM AS A WITNESS
21 MYSELF, AND THEN, IF YOU REMEMBER, COUNSEL SAID HE
22 WASN'T LISTED AS A WITNESS SO I COULDN'T CALL HIM.
23 I THINK I COULD CALL HIM IF YOU DECIDE TO ALLOW --
24 IF HE'S STILL HERE. I'LL BE GLAD TO PUT THESE IN
25 THROUGH HIM.

1 **BY MR. HASELDEN:**

2 PART OF THE PURPOSE OF THE PREHEARING BRIEF AND
3 THE NOTICE OF WITNESSES IS THAT YOU GET A CHANCE TO
4 KNOW WHO THE WITNESSES ARE GOING TO BE AND PREPARE
5 FOR IT, AND TO CALL SOMEBODY THAT'S NOT LISTED BY
6 HIM OR ME RIGHT NOW IS HIGHLY PREJUDICIAL AND
7 OBJECTIONABLE.

8 **BY THE COMMISSIONER:**

9 WELL, HE'S NOT LISTED BY EITHER PARTY, RIGHT?

10 **BY MR. HASELDEN:**

11 RIGHT.

12 **BY THE COMMISSIONER:**

13 AND I'VE NEVER PUT ANYBODY UP WHO WASN'T
14 LISTED.

15 **BY MR. McDANIEL:**

16 COMMISSIONER, BY THE WAY, THERE'S ONE -- WELL,
17 COUNSEL KNOWS THERE'S ONE -- OUR PREHEARING BRIEF IS
18 FORMULATED OFF OUR DISCOVERY RULES IN CIVIL COURT.
19 THAT'S EXACTLY WHERE THEY CAME FROM. IT'S THE SAME
20 CONCEPT. THERE IS ABSOLUTELY NO REASON THAT A
21 PERSON MAY NOT CALL A PARTY NOT LISTED AS A WITNESS
22 AS A REBUTTAL WITNESS. SO, I CAN EITHER CALL HIM OR
23 HE CAN CALL HIM TO SAY THAT THIS DID NOT OCCUR. IF
24 I WANT TO ASK HIM A QUESTION -- SO I CAN CALL MR.
25 HIGHTOWER AS A REBUTTAL WITNESS IF THEY SAY THEY

1 DIDN'T -- IF ANYBODY GETS UP HERE AND TESTIFIES THEY
2 DON'T KNOW IT WITHOUT LISTING HIM. IT'S MY RIGHT TO
3 CALL ANYBODY TO REBUT WHATEVER THEY PUT UP. THAT'S
4 A NOTED EXCEPTION TO THE DISCOVERY RULE AND THE
5 DISCOVERY PROCESS UNDER THE CIVIL RULES OF CIVIL
6 PROCEDURE.

7 **BY MR. HASELDEN:**

8 NONE OF THE DOCUMENTS HE WANTS TO CROSS EXAMINE
9 HIM ABOUT WERE IN HIS PREHEARING BRIEF OR MINE. SO,
10 THAT DEFINITELY ---

11 **BY THE COMMISSIONER:**

12 TO THAT EXTENT I'LL SUSTAIN YOUR OBJECTION. I
13 THINK HE CAN ASK IF HE HAD A CONVERSATION WITH
14 ANYBODY. DON'T READ THE MEDICAL REPORT IN THE
15 RECORD. THAT WAS THE MAIN THING. THAT'S KIND OF
16 THE GIST OF IT, IS THE MEDICAL REPORT.

17 **BY MR. McDANIEL:**

18 THAT'S FINE.

19 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

20 Q. DID MR. -- DID YOU EVER HAVE A CONVERSATION WITH MR.
21 WILLIE HIGHTOWER IN WHICH HE ADVISED YOU THAT DR.
22 SELMAN WATSON WAS OF THE OPINION THAT ANXIETY
23 CONTRIBUTED TO HIS HEART CONDITION LAST MARCH, WHICH
24 WAS LIKELY BORNE FROM WORK?

25 A. NO.

1 Q. DID HE EVER TELL YOU THAT?

2 A. NO, SIR. NO, SIR.

3 Q. NOW, YOU DID HAVE NUMEROUS CONVERSATIONS WITH MR.
4 HIGHTOWER. DID MR. HIGHTOWER COME AND TALK TO YOU
5 ABOUT WHETHER OR NOT THIS CLAIM WAS GOING TO BE
6 ACCEPTED?

7 **BY MR. HASELDEN:**

8 I'M GOING TO OBJECT, YOUR HONOR. THAT'S
9 HEARSAY.

10 **BY MR. McDANIEL:**

11 I THINK THAT'S ADMISSION AGAINST INTEREST.

12 **BY MR. HASELDEN:**

13 THAT'S CLEARLY HEARSAY. IT'S NOT DOCUMENTED IN
14 ANY DOCUMENTS. THAT'S A CONVERSATION.

15 **BY MR. McDANIEL:**

16 IT'S CALLED ADMISSION AGAINST INTEREST.

17 **BY THE COMMISSIONER:**

18 IT IS, BUT I THINK THERE'S ANOTHER WAY TO ASK
19 THE QUESTION, IF HE EVER HAD AN IMPRESSION THIS WAS
20 AN ACCEPTED CLAIM. IT DOESN'T MEAN IT CAN'T BE
21 DENIED AT ANY POINT. SO I'LL NOTE YOUR OBJECTION.
22 ANSWER THE QUESTION.

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

24 Q. DURING THE SUMMER OR AT SOME POINT AFTER YOU FILED A
25 CLAIM AT THE STATE ACCIDENT FUND -- YOU NEVER

1 ACTUALLY FILED A CLAIM HERE, BUT YOU ACTUALLY FILED
2 AN INTERNAL CLAIM AT THE STATE ACCIDENT FUND?

3 A. TRUE.

4 Q. THEY SENT YOU TO DR. SELMAN WATSON?

5 A. TRUE.

6 Q. THEY ALSO ASSIGNED A GROUP CALLED CRAWFORD TO
7 INVESTIGATE THAT?

8 A. YES, SIR.

9 Q. ALL RIGHT. AND THEN INTERNALLY, THOUGH, MR. WILLIE
10 HIGHTOWER WAS RESPONSIBLE FOR OVERSEEING YOUR
11 REQUEST FOR BENEFITS, IS THAT RIGHT?

12 A. RIGHT.

13 Q. ALL RIGHT. DID YOU HAVE A CONVERSATION IN WHICH MR.
14 WILLIE HIGHTOWER CAME TO YOU AND RELATED WHETHER OR
15 NOT THEY WERE ACCEPTING THE CASE FROM THE STATE
16 ACCIDENT FUND? WOULD YOU PLEASE TELL ME WHAT HE
17 SAID.

18 BY MR. HASELDEN:

19 SAME OBJECTION, YOUR HONOR.

20 BY THE COMMISSIONER:

21 I'LL NOTE YOUR OBJECTION. GO AHEAD AND ANSWER
22 THE QUESTION.

23 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

24 Q. TELL ME WHAT WAS SAID.

25 A. YES. HE -- WILLIE AND I HAD A DISCUSSION, AND HE

1 SAID THAT MR. PARKER, THE DIRECTOR AT THAT TIME, HAD
2 INDICATED THAT THEY WOULD ACCEPT THE CLAIM ON PAYING
3 MY OUT-OF-POCKET EXPENSE ONLY, AND I THOUGHT ABOUT
4 THAT, AND I SAID, WELL, IF I HAVE ANY AFTEREFFECT ON
5 THIS HEART CONDITION IN MY LATER YEARS, THEN I'M
6 SELLING MYSELF SHORT BY ACCEPTING JUST TO PAY THEM
7 OUT OF MY POCKET. SO I TOLD THEM NO, I WOULDN'T
8 ACCEPT THAT.

9 Q. NOW, YOU'VE BEEN UNDER THE CARE OF DR. HENDRICKS
10 EVER SINCE THIS FOR ATRIAL FIBRILLATION; IS THAT
11 CORRECT?

12 A. RIGHT. YES, SIR.

13 Q. AND ACCORDING TO HIS RECORDS AND HIS DOCUMENTS THAT
14 HAVE BEEN PUT INTO EVIDENCE, HE HAS NOW DIAGNOSED
15 YOU WITH CHRONIC ATRIAL FIBRILLATION?

16 **BY MR. HASELDEN:**

17 YOUR HONOR, I'M GOING TO OBJECT. THE DOCUMENTS
18 SPEAK FOR THEMSELVES.

19 **BY MR. McDANIEL:**

20 OKAY, OKAY.

21 **BY THE COMMISSIONER:**

22 WE HAVE DISCUSSED THAT. WE KNOW WHAT IT IS.

23 WE KNOW WHAT HIS PROBLEM IS.

24 **BY MR. McDANIEL:**

25 COMMISSIONER, IT'S IN MY APA SUBMISSION IN THE

1 QUESTIONNAIRE, AND IT'S ALSO IN ANOTHER DOCUMENT
2 THAT HE WROTE, AND IT'S REFERRED TO IN ALL HIS
3 TREATMENT RECORDS. HE HAS CHRONIC ATRIAL
4 FIBRILLATION.

5 **BY THE COMMISSIONER:**

6 FOUR, FIVE, AND SIX, I BELIEVE, IN YOURS.

7 **BY MR. McDANIEL:**

8 COMMISSIONER, IF YOU WILL TURN TO PAGE 104,
9 DIRECTLY OUT OF THE DOCTOR'S TREATMENT NOTES,
10 CHRONIC ATRIAL FIBRILLATION.

11 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

12 Q. NOW, MR. MENIE, HOW MANY TIMES HAVE YOU HAD TO BE
13 HOSPITALIZED FOR YOUR ATRIAL FIBRILLATION SINCE THAT
14 INITIAL ATRIAL FIBRILLATION?

15 A. THREE MORE TIMES.

16 Q. AND WHAT TYPES OF MEDICATIONS ARE YOU ON NOW, SIR?

17 A. I'M ON -- FOR MY HEART CONDITION OR ---

18 Q. YES, FOR YOUR HEART.

19 A. --- FOR MY TOTAL?

20 Q. YES, SIR.

21 A. I'M ON HCTZ, WHICH IS A FLUID PILL THAT HELPS WITH
22 TAKING SWELLING OUT OF MY BODY AND AS WELL AS A HIGH
23 BLOOD PRESSURE REDUCER, REDUCTION OF HIGH BLOOD
24 PRESSURE, AND I'M TAKING METFORMIN, WHICH IS FOR THE
25 DIABETES, 1,000 MILLIGRAMS TWICE A DAY. I'M TAKING

1 4,000 MILLIGRAMS OF FISH OIL AS DESIGNATED BY MY
2 G.P. DOCTOR, DR. DEE CARTER, AND I'M TAKING ---

3 **BY MR. McDANIEL:**

4 COMMISSIONER, IT MIGHT BE EASIER JUST TO REFER
5 TO PAGE 85. I WAS TRYING TO ---

6 **BY THE COMMISSIONER:**

7 I'M LOOKING FOR IT. THANK YOU.

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

9 Q. TELL ME, MR. MENIE, OUTSIDE OF THE HOSPITALS WHAT
10 CAUSES YOU TO GO TO THE HOSPITALIZATION -- REQUIRES
11 YOU TO GO TO THE HOSPITAL, AND WHAT KIND OF PROBLEMS
12 DO YOU HAVE RELATED TO YOUR ATRIAL FIBRILLATION ON A
13 DAY-TO-DAY BASIS?

14 A. WHAT CAUSED IT WAS THAT STRESS LEVEL THAT THREW ME
15 INTO THAT HYPERTENSION MODE.

16 Q. NO, SIR. WHAT I'M TALKING ABOUT IS, WHAT KIND OF
17 PROBLEMS DO YOU HAVE NOW THAT -- OR SINCE THAT FIRST
18 ONE -- THAT'S IN THE RECORDS. WE KNOW WHAT CAUSED
19 THAT. BUT MY POINT IS, IS THAT WHAT WILL CAUSE YOU
20 TO GO TO THE HOSPITAL? WHAT KIND OF PROBLEMS DO YOU
21 DEVELOP THAT RESULTS IN YOUR HOSPITALIZATION?

22 A. WELL ---

23 Q. DO YOU PASS OUT? DO YOU GET DIZZY? WHAT HAPPENS TO
24 YOU ---

25 A. OH, OH, OKAY.

1 Q. --- SYMPTOM-WISE?

2 A. WELL, YOU'RE SAYING WHAT CAUSED IT, AND THEN -- BUT
3 YOU WANT TO KNOW THE PROCEDURE THAT I GO THROUGH.

4 Q. WHAT SYMPTOMS DO YOU HAVE THAT CAUSE YOU ---

5 A. I HAVE A MASSIVE HEADACHE THAT'S IN THE BACK OF MY
6 HEAD, IN THE CROWN OF MY HEAD, AND FROM THAT THEN I
7 GO INTO A BLIND DIZZINESS THAT I CAN'T GET OUT OF.
8 I CAN SHUT MY EYES, CLOSE MY EYES, BOW MY HEAD AND
9 ALL THIS, AND I CAN'T GET OUT OF THE DIZZINESS. THE
10 DIZZINESS GOES INTO THE EFFECT OF THROWING -- MAKING
11 ME VOMIT A LOT. THEN I GO INTO A DEEP, DEEP SWEAT,
12 AND MY BODY JUST STARTS PRODUCING SWEAT ALL OVER MY
13 BODY. AND THEN THAT'S WHEN I'D SAY, "OKAY, REBECCA,
14 YOU NEED TO CALL 911 'CAUSE I CAN'T RECOVER FROM
15 WHAT THIS IS GOING ON." NOW, THAT WAS THE FIRST
16 ONE, NOT KNOWING WHAT IS HAPPENING, YOU KNOW, IN THE
17 -- SHORTLY AFTER THAT PERIOD OF TIME. BUT NOW AS
18 I'VE GONE THROUGH FOUR OF THEM, THEN, YEAH, I CAN
19 EXPLAIN WHAT ALL OF THEM ARE.

20 Q. YOU FEEL WHAT'S COMING ON?

21 A. OH, YEAH.

22 Q. AND HAS A DOCTOR GIVEN YOU INSTRUCTION ON WHAT TO DO
23 TO TRY TO AVOID HOSPITALIZATIONS?

24 A. WELL, I HAVE SOME VERTIGO PILLS THAT I CAN TAKE TO
25 TAKE THE DIZZINESS AWAY. I HAVE A NAUSEA PILL THAT

1 I CAN TAKE TO KEEP ME FROM THROWING UP. NOW, THEY
2 DON'T -- THEY SAY TAKE ONE OR -- AS NECESSARY. BUT
3 I USUALLY TAKE TWO OF EACH TO STAY OUT OF THOSE
4 EXTREME DIZZINESS AND THE EXTREME THROWING UP
5 PROCESS 'CAUSE ALL THAT WAS ---

6 Q. NOW, ON THE ATRIAL FIBRILLATION, ON A REGULAR BASIS
7 WHAT KIND OF EFFECT DOES IT HAVE NOW IF YOU DO TOO
8 MUCH, TOO MUCH EXERCISE, THAT KIND OF THING?

9 A. WELL, I CAN TAKE A SHOWER TO GET READY TO GO
10 SOMEWHERE AND I'M KINDLY IN A HURRY TO GET IT DONE,
11 AND I'LL -- I HAVE TO LAY DOWN ON THE BED WHEN I GET
12 OUT OF THE SHOWER. IT'S LIKE I'VE JUST RUN A 100-
13 YARD DASH OR I'VE RUN A MILE RELAY OR SOMETHING.
14 I'M JUST TOTALLY BUSHED, JUST TOTALLY -- I HAVE TO
15 LAY DOWN AND RECUPERATE.

16 Q. SO IF YOU GET ANY KIND OF PHYSICALLY STRESSFUL
17 SITUATION OR WHATEVER NOW, THAT'S THE KIND OF --
18 THAT'S WHAT HAPPENS TO YOU WHEN YOU TRY TO DO TOO
19 MUCH?

20 A. YEAH. I CAN WALK -- I CAN WALK ABOUT 100 YARDS, AND
21 BY THAT TIME I JUST ABOUT HAVE TO SIT DOWN.

22 Q. OKAY.

23 A. AND IF I GO TO WALMART SHOPPING OR IF I GO TO THE
24 DRUG STORE SHOPPING, I'LL GET ON ONE OF THOSE LITTLE
25 ELECTRIC CARTS, AND THAT RESOLVES MY PROBLEM.

1 Q. OKAY. SO THAT'S HOW YOUR CONDITION PRETTY MUCH IS
2 NOW, IS THAT RIGHT?

3 A. YES, SIR; IT IS. I'M AN AVID FISHERMAN, AND I LOVE
4 TO FISH, BUT I HAVEN'T BEEN FISHING IN ABOUT THREE
5 YEARS.

6 Q. IS THAT -- WHY IS THAT?

7 A. BECAUSE OF MY HEART. IT DON'T PRODUCE ENOUGH BLOOD
8 WHEN YOU'RE IN THAT EXERTION STATE. MY HEART
9 PRODUCES ABOUT 50 PERCENT OF THE BLOOD THAT NEEDS TO
10 GO THROUGH YOUR SYSTEM IN ORDER TO SUPPLY OXYGEN AND
11 ENERGY THROUGH YOUR BLOOD TO, YOU KNOW, KEEP YOU AT
12 FIXED EXERTING, YOU KNOW, PERIOD OF TIME.

13 Q. WHAT KIND OF EFFECT DO YOU HAVE IF YOU GET IN ANY
14 KIND OF AN EMOTIONALLY UPSETTING SITUATION? LIKE
15 HOW -- QUITE HONESTLY, HOW TOUGH IS THIS ON YOU
16 TODAY?

17 A. VERY, VERY TOUGH.

18 Q. HOW ARE YOU FEELING? I'M NOT TRYING TO CAUSE
19 ANYTHING TO HAPPEN.

20 A. WELL, NO. WHAT'S IN MY MIND IS ALL OF WHAT I WAS
21 DOING. UNTIL I FILED A CLAIM EVERYTHING WAS JUST
22 GREAT, ALL THE SUPERVISORS AND ALL -- THE DIRECTOR
23 AND THE ASSISTANT DIRECTOR, EVERYTHING WAS JUST
24 GREAT 'CAUSE I WAS IN THAT MODE OF TRYING TO SOLVE
25 EVERYBODY'S PROBLEMS. AND THEN WHEN I FILED THE

1 ACCORD FORM, THE FIRST QUESTION WAS, "WHO IS YOUR
2 ATTORNEY?" AND I SAID, "HEY, MAN, I DON'T NEED AN
3 ATTORNEY. I'VE BEEN TRAINED THAT WORKMAN'S COMP IS
4 BLACK AND WHITE, AND I DON'T NEED AN ATTORNEY. IT'S
5 DETERMINED BY LAW, AND THE MORE THAT I WAS
6 CONFRONTED WITH IT, THE MORE I REALIZED THAT, HEY,
7 I'VE GOT TO HAVE AN ATTORNEY. SO I GOT ME AN
8 ATTORNEY.

9 Q. THE -- AND DR. -- I BELIEVE ACCORDING TO HIS RECORDS
10 DR. HENDRICKS WAS AWARE FROM THE VERY BEGINNING AND
11 WHENEVER ALL THE TESTS WERE COMING BACK NEGATIVE AS
12 TO CAUSATION, ALL THE TESTS THAT THEY WERE RUNNING
13 WERE COMING BACK NEGATIVE, I BELIEVE YOU AND HE HAD
14 A DISCUSSION THE FIRST TIME YOU WERE HOSPITALIZED
15 ABOUT WHAT YOU WERE DOING IN THE JOB, IS THAT RIGHT?

16 A. RIGHT. HE HAD PUT ME THROUGH EVERY TEST THAT HE
17 COULD PUT ME THROUGH, AND ON THURSDAY, MARCH THE
18 6TH, HE CAME INTO MY ROOM ---

19 **BY MR. HASELDEN:**

20 YOUR HONOR ---

21 **BY THE COMMISSIONER:**

22 TRY NOT TO QUOTE A DOCTOR. HE'S ANTICIPATING
23 YOUR QUOTING A DOCTOR. YOU'VE BEEN REAL SPECIFIC
24 ABOUT THE PROBLEMS YOU HAVE. IT'S VERY CLEAR IN MY
25 MIND. WE CAN PROBABLY FAST-FORWARD THIS.

1 BY MR. McDANIEL:

2 OKAY; ALL RIGHT.

3 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

4 Q. BASICALLY YOU HAD A DISCUSSION WITH HIM ABOUT THAT
5 AND WHAT YOU WERE DOING AT WORK?

6 A. YES, YES.

7 BY MR. McDANIEL:

8 COMMISSIONER, I BELIEVE IF YOU'LL READ -- I WAS
9 TRYING TO RAPIDLY FIND THE QUESTION, BUT YOU'LL FIND
10 THAT REFLECTED IN THE QUESTIONNAIRE THAT DR.
11 HENDRICKS PROVIDED, WHICH IS ---

12 BY THE COMMISSIONER:

13 PAGE SIX?

14 BY MR. McDANIEL:

15 --- PAGE THREE THROUGH PAGE SIX, AND IT
16 ACTUALLY ENDS ON PAGE EIGHT.

17 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

18 Q. NOW, MR. MENIE, YOU RETIRED FROM THE STATE; IS THAT
19 CORRECT?

20 A. I RETIRED MAY THE 1ST OF 2009 FROM THE STATE.

21 Q. AND WE'VE MADE REFERENCE TO IT ON SEVERAL OCCASIONS;
22 I JUST ---

23 BY MR. McDANIEL:

24 COMMISSIONER, I'LL TRY TO STICK TO MY WORD. I
25 HAVE A COUPLE OF QUESTIONS.

DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

Q. THAT IS, ROSS GAMBLE WAS THE DEPUTY DIRECTOR AT THAT TIME?

A. YES.

Q. AT THE TIME YOU WERE GOING THROUGH THIS. AND ROSS GAMBLE IS THE ONE WHO DID YOUR EVALUATIONS DURING THIS TIME?

A. YES.

Q. ALL RIGHT. AND DID HE DO YOUR EVALUATION THAT WE HAVE PUT INTO EVIDENCE? I'M GOING TO ASK YOU TO TAKE A LOOK AT THIS AND SEE IF THIS IS THE EVALUATION THAT HE PERFORMED ON YOU ON, ACCORDING TO THIS, OCTOBER THE 10TH OF 2003. I'M GOING TO ASK YOU ---

BY MR. McDANIEL:

BEGINNING AT PAGE, COMMISSIONER, 186.

BY THE COMMISSIONER:

ALL RIGHT.

BY MR. McDANIEL:

AND I'M GOING TO FLIP OVER, COMMISSIONER, TO PAGE 189.

DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

Q. UNDER SUMMARY AND IMPROVEMENT PLAN, DID YOU AND HE DISCUSS -- DID HE COMMEND YOU AT THAT TIME FOR YOUR PERSONAL ON TAKING ON -- HE VOLUNTARILY TOOK ON

1 EXTRA DUTY, WHICH WE WERE SHORT TWO PREMIUM
2 AUDITORS? DO YOU REMEMBER DISCUSSING THAT AND HIM
3 MAKING THOSE COMMENTS?

4 A. YES, SIR.

5 Q. AND THOSE ARE HIS COMMENTS; IS THAT CORRECT?

6 A. YES, DEFINITELY.

7 BY MR. McDANIEL:

8 AND, ALSO, COMMISSIONER, AGAIN AT PAGE ---

9 BY THE COMMISSIONER:

10 ONE TWELVE?

11 BY MR. McDANIEL:

12 --- 112.

13 DIRECT EXAMINATION RESUMED BY MR. McDANIEL:

14 Q. YOU DIDN'T ASK MR. ROSS GAMBLE TO WRITE THAT, DID
15 YOU?

16 A. OH, NO, SIR. NO, SIR.

17 Q. I MEAN, THAT'S WHAT HE COMMENTED TO YOU BASICALLY,
18 AND HE WAS AWARE -- MR. MENIE, HE WAS AWARE WHEN YOU
19 WERE GOING THROUGH THIS, WASN'T HE? I MEAN, HE
20 KNOWS WHAT WAS GOING ON?

21 BY MR. HASELDEN:

22 YOUR HONOR, I'M GOING TO OBJECT.

23 WITNESS ANSWERS:

24 A. RIGHT, RIGHT.

25 BY THE COMMISSIONER:

1 AND THE OBJECTION IS WHAT, SIR?

2 **BY MR. HASELDEN:**

3 WELL, THE OBJECTION IS WHAT MR. GAMBLE WAS
4 AWARE OF, THE WITNESS CAN'T TESTIFY TO THAT.

5 **BY THE COMMISSIONER:**

6 WELL, I MISSED -- THE LITERAL READING OF THE
7 189, THE SUMMARY OF THE -- HIS JOB DUTIES, WHAT HE
8 HAD DONE, IN CONJUNCTION WITH THE LETTER OF 112 THAT
9 INDICATED HE WAS A GOOD EMPLOYEE, I DON'T THINK
10 THAT'S BEEN QUESTIONED BY ANYBODY IN THE ROOM, SO
11 FAR AT LEAST, AND THAT HE WAS GIVEN A PAY INCREASE,
12 AND THAT HE HAD DONE THIS VOLUNTARILY.

13 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

14 Q. MR. MENIE, OF COURSE YOU'VE HAD TO -- OVER THE YEARS
15 YOU'VE HAD TO COME OUT OF POCKET FOR YOUR MEDICAL
16 EXPENSES, YOUR COPAYS, THAT TYPE OF THING?

17 A. OH, YES.

18 Q. HAVE YOU GOT ANY IDEA HOW MUCH YOU ARE OUT OF POCKET
19 SO FAR? I BELIEVE YOU CALCULATED SOME OF THEM FOR
20 ME?

21 A. I WOULD ESTIMATE AROUND 40,000.

22 **BY MR. McDANIEL:**

23 ALL RIGHT. COMMISSIONER ---

24 **WITNESS RESUMES:**

25 A. I'M TALKING ABOUT MY TIME AND MILEAGE AND, YOU KNOW,

1 EVERYTHING THAT'S OUT OF POCKET.

2 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

3 Q. YOU WERE DOING AUDITING FOR THE STATE FUND FOR A
4 LONG TIME, AND YOU WERE AWARE OF YOUR REGULAR AND
5 ORDINARY JOB DUTIES PRIOR TO JANUARY 1, 2003, WERE
6 YOU NOT?

7 A. YES, SIR.

8 Q. ABLE TO DO YOUR JOB UP UNTIL JANUARY 1, 2003?

9 A. YES, SIR.

10 Q. WOULD YOU DESCRIBE IT AS A FULL WORKLOAD TO DO YOUR
11 JOB, THE JOB THAT WAS REQUIRED OF YOU TO DO THE
12 AUDITOR'S JOB ONE JOB?

13 A. YES, YES.

14 Q. AS COMPARED TO YOUR NORMAL AND USUAL DAILY
15 ACTIVITIES, HOW WOULD YOU DESCRIBE THE ACTIVITIES IN
16 JANUARY AND FEBRUARY? WERE THEY ORDINARY AND USUAL,
17 OR WERE THEY EXTRAORDINARY AND UNUSUAL TO YOUR NORMAL
18 JOB DUTIES?

19 **BY MR. HASELDEN:**

20 SAME OBJECTION.

21 **BY THE COMMISSIONER:**

22 I'LL NOTE YOUR OBJECTION. YOU CAN ANSWER IT.

23 **WITNESS ANSWERS:**

24 A. THEY -- YEAH, THEY WAS EXTREMELY UNORDINARY AND OUT
25 OF SEQUENCE OF PREVIOUS MONTHS OF '02 OR '01 OR SO

1 FORTH. LIKE I SAY, I WAS A VERY CONSCIENTIOUS
2 PERSON, AND I KEPT MY WORK UP TO DATE IN '02 AND
3 PREVIOUS YEARS, BUT IN '03 IT WAS SUCH A STRESS LOAD
4 ON TRYING TO GET ALL THIS DONE AND TRYING TO
5 ACCOMPLISH BY TALKING TO EACH OF THESE
6 POLICYHOLDERS. I SYMPATHIZED WITH THEM WHEN THEIR
7 POLICY PREMIUM WENT UP 300 PERCENT, THAT THEY FELT
8 THEY WOULD HAVE TO DISMISS SOMEONE TO PAY THEIR
9 PREMIUMS. I MEAN, THAT TYPE OF STUFF KINDLY GETS TO
10 A PERSON THAT HAS A SYMPATHY FEELING TOWARDS PEOPLE
11 UNDER THOSE CONDITIONS.

12 **DIRECT EXAMINATION RESUMED BY MR. McDANIEL:**

13 Q. MR. MENIE, IS THERE ANYTHING ELSE YOU THINK THE
14 COMMISSIONER NEEDS TO KNOW?

15 A. NO. I THINK WE'VE COVERED MOST EVERYTHING.

16 **BY MR. McDANIEL:**

17 THAT'S ALL THE QUESTIONS I HAVE, COMMISSIONER.

18 **BY THE COMMISSIONER:**

19 OKAY. MR. HASELDEN?

20 **BY MR. HASELDEN:**

21 COMMISSIONER, I REALLY WON'T BE LONG.

22 **CROSS EXAMINATION BY MR. HASELDEN:**

23 Q. MR. MENIE, YOU BEGAN SEEING DR. HENDRICKS ON MARCH
24 3RD, 2003, CORRECT?

25 A. I WAS SENT -- I WAS TAKEN TO THE HOSPITAL, AND DR.

1 ALEXANDER, I BELIEVE, HE WAS ON DUTY FOR THAT GROUP
2 OF DOCTORS, HEART DOCTORS, AND HE TREATED ME AT
3 EMERGENCY, AND THEN, I DON'T KNOW, SOMETIME THAT
4 NIGHT AT 11:00 OR SOMETHING HE ADMITTED ME TO THE
5 HOSPITAL, AND HE CONFERRED ALL OF THAT INFORMATION
6 TO DR. HENDRICKS, AND DR. HENDRICKS PICKED ME UP ON
7 -- LATER THAT -- I GUESS THAT NIGHT OR EARLY THAT
8 NEXT MORNING OF THE 4TH, 'CAUSE I WAS PUT INTO
9 GENERAL HOSPITAL.

10 Q. YOU'VE CONTINUED TO SEE DR. HENDRICKS SINCE?

11 A. YES, SIR.

12 Q. AND IF I RELATE TO YOU THAT BETWEEN YOUR
13 HOSPITALIZATION IN MARCH OF '03 AND APRIL 18TH OF
14 '04 -- I'M SORRY, FEBRUARY 18TH OF '04 -- THAT YOU
15 SAW DR. HENDRICKS SIX TIMES, WOULD YOU HAVE ANY
16 REASON TO DISPUTE THAT?

17 A. THERE'S TWO -- DR. HENDRICKS HIMSELF, BUT THEN EVERY
18 MONTH I WOULD GO AND GET MY P.T. OR COUMADIN LEVEL
19 CHECKED FOR THINNESS OF MY BLOOD EVERY MONTH. SO,
20 WITH THAT AND SEEING HIM, IT PROBABLY IS MORE THAN
21 SIX.

22 Q. OKAY. THAT'S FAIR. CAN YOU TELL ME WHY IN NINE OF
23 DR. HENDRICKS'S NOTES FROM MARCH OF '03 UNTIL
24 FEBRUARY 18TH OF '04 THERE'S NOT ANY MENTION OF JOB-
25 RELATED STRESS?

1 A. WELL, BACK TO -- IF YOU -- JUST THAT QUESTIONNAIRE,
2 MR. McDANIEL HAD JUST INDICATED THAT THE JOB
3 RELATION STRESS WAS NOTED ON -- I SPOKE TO HIM IN
4 THE HOSPITAL, I BELIEVE ON THE 4TH WHEN I WAS
5 ESTABLISHED, AS FAR AS EQUILIBRIUM TO BE ABLE TO NOT
6 HAVE ANY OF THESE SYMPTOMS OF THIS A-FIBRILLATION
7 WITH ALL THESE DRUGS THAT THEY PUMPED INTO ME. AND
8 I TOLD HIM THAT I FELT THAT THE REASON THAT I WAS IN
9 HERE WITH THIS FIBRILLATION WAS THE STRESS ON THE
10 JOB, THAT I WAS TRYING TO HOLD DOWN THREE AUDITORS'
11 POSITIONS AND ALL THE INFORMATION AND EVERYTHING.
12 AND HE DID ALL THE TESTS. THEN ON THURSDAY, MARCH
13 THE 6TH, HE CAME INTO MY ROOM ---

14 **BY MR. HASELDEN:**

15 I'M GOING TO OBJECT, YOUR HONOR. THIS ISN'T
16 WHAT I ASKED HIM.

17 **BY THE COMMISSIONER:**

18 I THINK, IF I UNDERSTOOD THE QUESTION, IS THAT
19 YOU SAW THE DOCTOR ROUGHLY SIX TIMES. WE KNOW YOU
20 HAD YOUR P.T. CHECKED BECAUSE THEY DO THAT AS A
21 MATTER OF COURSE, BUT YOU SAW, I BELIEVE, DR.
22 HENDRICKS FROM MARCH 3RD TO APRIL THE 20TH, '04,
23 ABOUT SIX TIMES FOR YOUR HEART, ACCORDING TO THE
24 RECORDS THAT WE HAVE. AND I BELIEVE THE QUESTION
25 WAS NONE OF HIS NOTES CONTAIN OR MENTION STRESS, AND

1 YOU WERE TRYING TO EXPLAIN THAT YOU DID TELL HIM YOU
2 HAD STRESS, IS THAT RIGHT?

3 BY THE WITNESS:

4 RIGHT.

5 BY THE COMMISSIONER:

6 WE CAN MOVE ON.

7 BY THE WITNESS:

8 BUT, NOW, FOR THAT PERIOD OF TIME IT'S -- IT'S
9 NOT MAYBE NOTED, BUT IT WAS DISCUSSED -- AND DURING
10 THE DEPOSITION ---

11 BY MR. HASELDEN:

12 YOUR HONOR, I'LL MOVE TO STRIKE. THAT'S NON-
13 RESPONSIVE TO THE QUESTION.

14 BY THE COMMISSIONER:

15 THAT'S ALL YOU NEED. YOU'VE ANSWERED.

16 BY THE WITNESS:

17 ALL RIGHT.

18 CROSS EXAMINATION RESUMED BY MR. HASELDEN:

19 Q. I'LL HAND YOU YOUR PREHEARING BRIEF BECAUSE I HAVE
20 SOME QUESTIONS ---

21 A. ALL RIGHT, SIR..

22 Q. --- ABOUT WHAT'S IN THERE AND WHAT'S NOT IN THERE.
23 YOU MADE REFERENCE TO SOME DOCUMENTATION OF YOUR
24 DAILY ACTIVITIES, PARTICULARLY ALL THE PHONE CALLS
25 THAT WERE COMING IN, THAT YOU GAVE TO PETE PARKER.

1 DID YOU GIVE IT TO MR. PARKER?

2 A. IN THE LETTER THAT I SUBMITTED TO MR. PARKER ON
3 OCTOBER 31ST, 2003? IS THAT WHAT YOU'RE REFERENCING
4 TO?

5 Q. YES. IS THAT IN YOUR APA SUBMISSIONS ANYWHERE?

6 A. I'M SURE IT IS.

7 **BY MR. McDANIEL:**

8 COMMISSIONER, I'M GOING TO OBJECT.

9 **BY THE WITNESS:**

10 I DON'T KNOW EXACTLY WHERE THAT IS.

11 **BY MR. McDANIEL:**

12 COMMISSIONER, I'M GOING TO OBJECT BECAUSE
13 COUNSEL HAS ALREADY RAISED SOME ISSUES ABOUT WHAT HE
14 ALLEGED, AND HIS OBJECTION WAS SELF-SERVING
15 DECLARATIONS. I DON'T THINK I CAN PUT IN MR.
16 MENIE'S STATEMENT BECAUSE IT WOULD BE A SELF-SERVING
17 DECLARATION. I CAN PUT IN THEIR INTERNAL DOCUMENTS,
18 BUT I CANNOT PUT IN -- I DON'T BELIEVE I CAN
19 PROPERLY PUT THAT IN.

20 **BY THE COMMISSIONER:**

21 SOMEHOW I'M MISSING THE POINT HERE.

22 **BY MR. HASELDEN:**

23 WELL, HE'S TESTIFIED THAT HE KEPT ALL THIS
24 DOCUMENTATION OF HIS DAILY ACTIVITIES AND HIS PHONE
25 LOGS.

1 BY THE COMMISSIONER:

2 WELL, THE WAY I HEARD IT WAS PHONE LOG ONLY.
3 BECAUSE THE ONLY THING YOU COULD ACTUALLY VERIFY
4 WERE VOICEMAILS, IS THAT RIGHT? DID I HEAR THAT
5 RIGHT?

6 BY THE WITNESS:

7 YEAH, VOICEMAIL BECAUSE IT WAS -- YOU KNOW, I
8 COULD WRITE THOSE DOWN AND FIND OUT WHAT WAS NEEDED
9 FROM WHOM, AND I COULD EITHER CALL THEM BACK AND
10 GIVE THEM SOMETHING SHORT VERBAL OVER THE PHONE, OR
11 I HAD TO DO RESEARCH ON THE EXPERIENCE MODIFIER OR

12 ---

13 BY THE COMMISSIONER:

14 THAT HE COULD NOT GO BACK AND RECREATE ANYTHING
15 ELSE, IS WHAT HEARD, AND THAT WOULD BE AN ESTIMATE,
16 AS I UNDERSTAND IT. BUT HIS PHONE MESSAGES, THERE
17 IS A LOG OF THAT APPARENTLY, AND THERE WERE, I THINK
18 YOU SAID, 58, IS THAT RIGHT?

19 BY THE WITNESS:

20 FIFTY-EIGHT PERCENT OF MY TIME WAS ---

21 BY THE COMMISSIONER:

22 FIFTY-EIGHT PERCENT OF YOUR TIME WAS SPENT ---

23 BY THE WITNESS:

24 --- WAS DEDICATED TO THE OTHER TWO TEAMS, YEAH.

25 BY MR. HASELDEN:

1 AND I'M JUST ASKING WHERE THE DOCUMENTATION OF
2 THAT IS.

3 BY THE COMMISSIONER:

4 AND, AGAIN, I HATE TO INTERRUPT; IT JUST SEEMS
5 TO ME YOU WERE SAYING YOU DIDN'T HAVE THAT WRITTEN
6 DOWN. THAT WAS THE ONLY THING YOU COULD PERSONALLY
7 DOCUMENT. THERE IS NO RECORD OF THAT, RIGHT?

8 BY THE WITNESS:

9 OH, YES, SIR; I'VE GOT THE ---

10 BY THE COMMISSIONER:

11 YOU DON'T HAVE IT HERE TODAY; THAT'S WHAT I'M
12 SAYING.

13 BY THE WITNESS:

14 NO, NO; I DON'T HAVE IT HERE.

15 BY THE COMMISSIONER:

16 OKAY. WE CAN MOVE ON.

17 CROSS EXAMINATION RESUMED BY MR. HASELDEN:

18 Q. OKAY. YOU TESTIFIED THAT ONE-SIXTH OF YOUR AUDITS
19 HAD TO BE DONE IN JANUARY, CORRECT?

20 A. RIGHT.

21 Q. HOW CAN YOU DO AN AUDIT IF YOU DON'T HAVE THE
22 PAYROLL FROM THE PREVIOUS ---

23 A. WELL, LIKE I SAY, VOLUNTEER FIRE DEPARTMENTS, THEY
24 HAVE 20 VOLUNTEERS. ESTIMATE WAS 20; ACTUAL WAS 20.
25 THEY OWE NO ADDITIONAL PREMIUM OR THEY DON'T GET ANY

1 CREDIT BECAUSE OF THOSE. AND EACH ONE OF US HAD,
2 WHAT, 26 OR 30 VOLUNTEER FIRE DEPARTMENTS AND FIRE
3 DEPARTMENTS. SOME -- SOME PEOPLE DON'T HAVE TO WAIT
4 UNTIL THEY GET THEIR W-3s. LIKE NOW I HAVEN'T
5 GOTTEN MINE FROM MY -- YOU KNOW, FROM MY RETIREMENT
6 YET. SO -- BUT OTHERS HAVE -- HAVE THEIRS READY AND
7 AVAILABLE THAT YOU COULD DO AUDITS ON PRIOR TO
8 FEBRUARY THE 1ST. SO YOU DID HAVE TO HAVE 33
9 AUDITS, OR ONE-SIXTH OF YOUR AUDITS DONE IN JANUARY.

10 Q. CAN YOU TELL ME WHERE THAT WAS DOCUMENTED IN ANY
11 MATERIALS?

12 A. I HAVE A REPORT THAT ONE TIME I DID NOT HAVE MY 33
13 PERCENT DONE, AND MR. PARKER CALLED ME DOWN IN ONE
14 OF MY -- OUR UNIT OR TEAM STAFF MEETINGS, AND I TOLD
15 HIM, "WELL, I -- I GO FOR HELPING THE CUSTOMER
16 RATHER THAN PROVIDING NUMBERS FOR Y'ALL." SO, I
17 DIDN'T HAVE MY 33 AUDITS FOR THAT JANUARY.

18 Q. DID YOU GET PAY REDUCED OR ANYTHING PUT IN YOUR FILE
19 BECAUSE OF THAT, BECAUSE YOU DIDN'T HAVE YOUR 33
20 PERCENT DONE?

21 A. NO.

22 Q. DID MR. PARKER THREATEN YOU IN ANY WAY, THREATEN
23 YOUR JOB BECAUSE YOU DIDN'T HAVE IT DONE?

24 A. NO, AND WHEN I EXPLAINED TO HIM THAT I'M CUSTOMER-
25 ORIENTED AND I'M NOT NUMBER-ORIENTED TO HAVE THESE

1 AND HE SAID, "WELL, YOU NEED TO HAVE ALL OF YOUR
2 AUDITS DONE," AND I SAID, "YES, SIR; I AGREE. I
3 SHOULD, BUT THIS IS THE REASON THAT I DID NOT HAVE."

4 Q. DO YOU REMEMBER WHEN YOU WENT TO THE V.A. IN
5 DECEMBER OF '10, DECEMBER OF 2010? DO YOU REMEMBER
6 THAT? DOES THAT SOUND ABOUT RIGHT?

7 A. IS THAT FOR AN EXAMINATION, YOU'RE TALKING ABOUT?

8 Q. YES. DO YOU REMEMBER GOING THERE FOR THAT?

9 A. DECEMBER, YEAH.

10 Q. DO YOU REMEMBER TELLING THEM THAT ON OCTOBER 17TH,
11 2008, THAT YOU INJURED YOUR BACK LIFTING YOUR JON
12 BOAT?

13 A. IT WASN'T -- I WAS JUST LIFTING THE FRONT OF THE JON
14 BOAT, AND IT WASN'T MINE; IT WAS SOMEONE ELSE'S.

15 Q. OKAY. LIFTING A JON BOAT. DO YOU REMEMBER TELLING
16 THEM THAT?

17 A. YES.

18 Q. WITH RESPECT TO THIS 40,000 IN COPAYS, ETCETERA,
19 HAVE YOU SUBMITTED ANY DOCUMENTATION TO VERIFY THAT?

20 A. FORTY THOUSAND?

21 Q. YOU TESTIFIED TO 40,000 IN COPAYS?

22 A. I SUBMITTED -- I SUBMITTED FOR A-FIB ONE AND A-FIB
23 TWO, AND I -- LIKE I SAY, I'M ESTIMATING FROM MARCH
24 THE 3RD -- MARCH THE 3RD OF 2003 UNTIL THIS DAY I'M
25 ESTIMATING THAT IT'S PROBABLY SOMEWHERE IN THE

1 NEIGHBORHOOD OF \$40,000.

2 Q. BUT YOU HAVEN'T PRODUCED ANY DOCUMENTATION? YOU
3 HAVEN'T GONE BACK TO SEE EXACTLY WHAT THE NUMBER IS,
4 HAVE YOU?

5 A. LIKE I SAID, I DID FOR A-FIB ONE AND A-FIB TWO.
6 IT'S DOCUMENTED, YES, THE HOURS AND THE TRIPS AND
7 THE MILEAGE AND, YOU KNOW, ALL OF THAT. SO I'M JUST
8 GIVING AN ESTIMATE FOR THE FOUR TIMES I WAS AT THE
9 HOSPITAL WITH A-FIBS AND THROUGH MY CURRENT TIME,
10 YOU KNOW.

11 **BY MR. HASELDEN:**

12 I DON'T HAVE ANY MORE QUESTIONS, MR. MENIE. I
13 WOULD NOTE THERE'S NOTHING IN THIS ABOUT COPAYS.

14 **BY MR. McDANIEL:**

15 COMMISSIONER, I'LL BE GLAD TO STIPULATE WE
16 HAVEN'T PUT IN ANY INFORMATION AT THIS TIME. WE
17 JUST WERE PROVIDING THE COMMISSIONER WITH AN
18 ESTIMATE OF WHAT HE HAD.

19 **BY THE COMMISSIONER:**

20 LET ME JUST CLEAR UP A COUPLE OF THINGS.

21 **BY THE WITNESS:**

22 YES, SIR.

23 **BY THE COMMISSIONER:**

24 WHEN YOU WENT FROM THE AUDIT DEPARTMENT TO THE
25 TEAM AUDIT AND THIS ONE LADY WHO HAD HEALTH PROBLEMS

1 AND ANOTHER LADY, THE FIRST WITNESS, WHO LEFT, DID
2 YOU EVER ASK FOR HELP?

3 **BY THE WITNESS:**

4 OH, YES. FOR EXAMPLE, THEY ---

5 **BY THE COMMISSIONER:**

6 Q. WE KNOW YOU GOT A TRAINEE IN MARCH, ON THE 3RD,
7 RIGHT?

8 A. RIGHT. BUT WHAT I WAS GONNA SAY, THE HELP THAT I
9 GOT -- I GOT A -- INSTEAD OF WALKING HALFWAY ACROSS
10 THE BUILDING TO GET MY DOCUMENTS THAT I'M PRINTING
11 UP TO SEND TO THE -- TO FAX TO THESE POLICYHOLDERS,
12 ROSS GAMBLE PROVIDED ME WITH A PRINTER INSIDE MY
13 OFFICE. AND SO, THAT WAS SOMEWHAT OF A HELP.

14 Q. SO THAT WOULD KEEP YOU FROM HAVING TO WALK TO THE
15 OTHER END OF THE BUILDING?

16 A. RIGHT.

17 Q. SO IT GAVE YOU MORE TIME ---

18 A. AND I USED -- AND I'D DO THAT 20 TO 30 TIMES A DAY,
19 YOU KNOW.

20 Q. SO WOULD YOU SAY THAT SAVED YOU A SUBSTANTIAL AMOUNT
21 OF TIME, YOU FEEL LIKE?

22 A. WELL, IT MAY HAVE SAVED ME EIGHT TO TEN PERCENT OR
23 SO.

24 Q. YOU SAID YOU WORKED -- I BELIEVE YOU WORKED ALL DAY.
25 YOU TOOK 30 MINUTE LUNCH BREAKS AND NO BREAKS, IS

1 THAT RIGHT?

2 A. YES, SIR.

3 Q. DID YOU EVER TAKE A VACATION?

4 A. NO, SIR, AND I DON'T THINK I -- OTHER THAN MY P.T.,
5 I DON'T THINK -- OR MY COUMADIN CHECK, I DON'T THINK
6 I HAD ANY SICK LEAVE DURING THAT TIME.

7 Q. OKAY. SO YOU WENT A YEAR WITHOUT TAKING ANY OF YOUR
8 ---

9 A. WELL, LET ME TAKE THAT BACK. ON MARCH -- FOLLOW-UP
10 DOCTOR WITH DR. HENDRICKS ON THAT FOLLOWING MONDAY.
11 SO IF IT WAS MAYBE THE 10TH OF MARCH, A FOLLOW-UP
12 APPOINTMENT, I WENT TO HIM AND HE CHECKED ME OUT AND
13 SAID, "WELL, EVERYTHING IS STILL ESTABLISHED. WE'RE
14 STILL ON TO GO, BUT IT SEEMS LIKE WE'RE DOING ALL
15 RIGHT AT THIS LEVEL." AND SO WHEN I CAME OUT OF THE
16 DOCTOR'S OFFICE I GOT REAL WEAK, AND SOME LADY
17 HELPED ME TO MY CAR, AND AS SOON AS I GOT TO A PHONE
18 I CALLED MR. GAMBLE AND TOLD HIM I'VE GOT TO TAKE
19 SOME TIME OFF. NOW, THE DOCTOR RECOMMENDED ME TO
20 TAKE THREE WEEKS OFF, BUT I WAS THIS GUNG HO,
21 IGNORANT EMPLOYEE THAT I WANTED TO GET BACK TO WORK
22 AND GET MY WORK DONE AND HELP TRAIN THE NEW MAN AND
23 JUST, YOU KNOW -- JUST MISSING WORK FOR THAT WEEK I
24 WAS IN THE HOSPITAL. I TOLD HIM, I SAID, "I'M TO
25 THE WEAK POINT I'M GONNA HAVE TO TAKE OFF AT LEAST A

1 WEEK FOR SICK LEAVE," AND SO HE AGREED.

2 Q. SO IT WAS SICK LEAVE AND NOT VACATION, IS THAT
3 RIGHT?

4 A. RIGHT, SICK LEAVE AND TO RECOUP, AND THEN INSTEAD OF
5 LIKE, SAY, FOLLOW RECOMMENDATIONS BY DR. HENDRICKS
6 TO TAKE OFF THREE WEEKS, I ONLY TOOK OFF TWO
7 INCLUDING THE WEEK THAT I WAS IN THE HOSPITAL. SO,
8 I WAS STILL IN THAT MODE OF HELPING MY CUSTOMERS.

9 Q. DID YOU EVER TELL ANYBODY YOU COULDN'T HANDLE THE
10 JOB? BECAUSE YOU ACTUALLY DID HANDLE IT. YOU GOT A
11 PAY RAISE AND YOU GOT GOOD REVIEWS; IS THAT FAIR TO
12 SAY?

13 A. YES, SIR. YES, SIR. BUT MY GOOD REVIEW WAS BEFORE.
14 THAT WAS IN OCTOBER BEFORE MY -- MY THING.

15 Q. SO, AS I UNDERSTOOD IT FROM YOU, THE STRESS THAT YOU
16 SAY YOU WERE SUFFERING WAS REALLY SELF-IMPOSED, AS I
17 UNDERSTAND IT, FROM EGO, I BELIEVE, WAS THE QUOTE.
18 IS THAT RIGHT?

19 A. WELL, IT WAS -- NO, IT WAS ---

20 Q. WELL, WERE THERE ANY CONSEQUENCES IF YOU HADN'T DONE
21 THOSE -- WHAT YOU'RE SAYING -- THREE JOBS?

22 A. NO. IT WASN'T REALLY A VOLUNTEER. IT WAS MORE
23 TRYING TO HELP THE CUSTOMER WITH HIS PROBLEMS WITH
24 THE 25 PERCENT APPROXIMATELY ACROSS THE BOARD
25 INCREASE IN RATES, WHICH MEANS THAT IF YOUR PREMIUM

1 WAS 10,000 IT'S GONNA GO TO, YOU KNOW, 12,500 AND
2 THAT TYPE OF THING.

3 Q. I UNDERSTAND.

4 A. AND WHATEVER YOUR EXPERIENCE MODIFIER, IF IT
5 INCREASED, THEN THAT INCREASED IT BY 200 PERCENT OR
6 300 PERCENT OR ---

7 Q. DID YOU EVER GET BEHIND?

8 A. OH, I WAS BEHIND FROM DAY ONE, FROM JANUARY 2ND. I
9 WAS BEHIND THAT DAY.

10 Q. IT WAS ANNOUNCED ON JANUARY 1ST, RIGHT? SO ALL OF
11 THE CALLS CAME -- WELL, I DON'T KNOW WHEN IT WAS
12 ANNOUNCED PRIOR TO THAT, BUT THE LETTER IS NOT
13 DATED, BUT IT SAYS EFFECTIVE JANUARY 1ST.

14 A. IT WAS SENT OUT -- IT WAS SENT OUT WITH THE
15 ESTIMATED PREMIUM, TRIED TO BE BY DECEMBER THE 1ST
16 SO, LIKE I SAY, THAT THEY WOULD HAVE THAT MONTH TO
17 RELOCATE WITH THEIR INSURANCE COMPANY IF THEY SO
18 DESIRED TO LEAVE THE STATE ACCIDENT FUND.

19 Q. WERE YOU UNDER THE IMPRESSION THAT THIS WAS A
20 TEMPORARY THING AND YOU WERE GOING TO GET A TRAINEE?

21 A. OH, I WAS UNDER THE IMPRESSION THAT I WAS GOING TO
22 GET TWO MORE AUDITORS AS QUICKLY AS THEY COULD
23 PROVIDE THEM.

24 Q. AND THE TRAINEE WAS TO BECOME AN AUDITOR, IS THAT
25 RIGHT? WAS THE TRAINEE TO BECOME AN AUDITOR, THE

1 ONE YOU WERE TRAINING, THE INDIVIDUAL YOU WERE
2 TRAINING?

3 A. OH, YEAH. ON MARCH THE 3RD? YES.

4 Q. SO THAT WOULD HAVE BEEN ONE OF THE TWO OTHER ---

5 A. RIGHT.

6 Q. AND YOU SAY YOU'VE HAD FOUR EPISODES IN NINE YEARS?
7 DID I HEAR YOU SAY THAT?

8 A. YES, SIR.

9 Q. AND OF THIS MILITARY PENSION YOU ARE -- THE
10 DISABILITY BENEFITS YOU'RE GETTING, IS ANY OF THAT
11 FOR HYPERTENSION?

12 A. NO, SIR.

13 Q. IS RENAL FAILURE BROUGHT ON BY HYPERTENSION? YOU
14 HAVE SOME KIDNEY DISEASE, DO YOU NOT?

15 A. YES. OH, I'M SORRY.

16 Q. IS THAT BROUGHT ON BY HYPERTENSION, BY HIGH BLOOD
17 PRESSURE?

18 A. NO, IT'S BROUGHT ON BY DIABETES THROUGH THAT AGENT
19 ORANGE.

20 Q. I SEE. SO JUST FOR THOSE TWO AILMENTS ARE YOU
21 GETTING BENEFITS?

22 A. WELL, I'M GETTING FOR THAT DEAD CREATIVE ORGAN,
23 YEAH.

24 Q. DO YOU KNOW EXACTLY WHAT THAT IS?

25 A. YEAH, IT'S THAT YOUR AROUSAL BY GOOD LOOKING WOMEN

1 IS NOT THERE ANYMORE.

2 Q. OH, I SEE. I DIDN'T MEAN TO GET THAT DEEP. AND HOW
3 LONG HAVE YOU BEEN GETTING V.A. BENEFITS?

4 A. I GOT DIABETES WITHIN 90 DAYS AFTER I SUBMITTED A
5 CLAIM ON JULY THE 28TH, 2009, AND THEN I -- AND THAT
6 WAS LIKE A 20 PERCENT RATING. AND THEN I WENT TO A
7 KIDNEY SPECIALIST THAT MY G.P. SENT ME TO, A KIDNEY
8 SPECIALIST, AND THEN HE FOUND THAT I HAD CHRONIC
9 KIDNEY DISEASE IN THE STAGE OF -- THIRD STAGE. AND
10 THEN THE CREATIVE ORGAN. THAT'S THE THREE THAT I
11 WAS GETTING -- RECEIVING AT THAT TIME. SINCE THEN I
12 HAVE HAD TINNITUS ADDED TO THAT.

13 Q. HOW MUCH MONEY ARE YOU GETTING A MONTH?

14 A. NINE HUNDRED AND FORTY-ONE DOLLARS, I THINK IT IS.

15 Q. AND YOU VOLUNTARILY RETIRED FOR WHAT REASON, SIR?

16 A. WELL, I VOLUNTEERED BECAUSE MY -- WHAT WAS THAT
17 SYSTEM THAT WE HAD?

18 Q. TERI.

19 A. TERI PLAN, YES. TERI PLAN, YES. IT'S TERRIBLE TO
20 BE 68 AND MEMORY -- YOU CAN'T PICK UP THINGS, YOU
21 KNOW. YEAH, THE TERI PLAN, RIGHT. IT ENDED AND,
22 THEREFORE, I CHOSE TO RETIRE.

23 Q. IT'S NOT TERRIBLE TO BE 68. YOU'RE FIVE DAYS
24 YOUNGER THAN I AM. YOU WERE BORN JUNE 25TH, '43. I
25 WAS BORN JUNE 20TH.

1 A. REALLY?

2 BY MR. McDANIEL:

3 FOR THE RECORD, IT'S A HECK OF A LOT BETTER
4 THAN THE ALTERNATIVE.

5 BY THE WITNESS:

6 DO WE LOOK -- DO WE LOOK ABOUT THE SAME AGE?

7 BY THE COMMISSIONER:

8 ABOUT THE SAME, YES.

9 BY THE WITNESS:

10 OKAY.

11 BY THE COMMISSIONER:

12 I DON'T THINK I HAVE ANY OTHER QUESTIONS. DO
13 EITHER OF YOU ALL HAVE A QUESTION BASED ON THAT?

14 BY MR. HASELDEN:

15 NO.

16 BY MR. McDANIEL:

17 COMMISSIONER, I HAVE JUST ONE.

18 REDIRECT EXAMINATION BY MR. McDANIEL:

19 Q. MR. MENIE, WHEN YOU SAY -- THE COMMISSIONER ASKED
20 YOU ABOUT YOU'VE HAD FIVE EPISODES. YOU'VE HAD FIVE
21 EPISODES THAT REQUIRED HOSPITALIZATION?

22 A. I HAD FOUR, FOUR EPISODES.

23 Q. FOUR EPISODES THAT REQUIRED HOSPITALIZATION?

24 A. YES.

25 Q. WHEN YOU'RE REFERRING TO THE PROBLEMS WITH THE

1 SHOWER OR WALKING OR GOING FISHING, ANY KIND OF
2 PHYSICAL EXERTION, THAT'S BECAUSE OF PROBLEMS WITH
3 YOUR ATRIAL FIBRILLATION, IS THAT RIGHT?

4 A. YES, SIR. YES, SIR.

5 Q. SO YOU HAVE REGULAR ALMOST DAILY PROBLEMS WITH YOUR
6 ATRIAL FIBRILLATION?

7 A. OH, YES, YES. SHOPPING OR, YOU KNOW, LIKE I SAY,
8 ANYTHING -- LIKE I SAY, I'VE BEEN WANTING TO GO
9 FISHING, BUT I'M AFRAID TO GO, TO LAUNCH MY BOAT AND
10 GET IN AND GO FISHING AND GET OUT AND GET MY BOAT
11 BACK ON THE -- AND ALL THAT. I'D HAVE TO PROBABLY
12 REST THREE TIMES EACH TIME. SO, THEN AGAIN, I'M
13 AFRAID THAT I MAY PASS OUT AND FALL IN THE WATER.
14 SO I DON'T KNOW, YOU KNOW, TO WHAT LEVEL I SHOULD
15 SEEK HELP OR NOT.

16 **BY MR. McDANIEL:**

17 NOTHING FURTHER, COMMISSIONER.

18 **BY THE COMMISSIONER:**

19 OKAY. YOU CAN HAVE A SEAT NEXT TO YOUR LAWYER.
20 AND YOU'VE GOT A WITNESS?

21 **BY MR. HASELDEN:**

22 YES. ARE YOU RESTING?

23 **BY MR. McDANIEL:**

24 THAT'S THE CLAIMANT'S CASE, COMMISSIONER. I'M
25 SORRY; I APOLOGIZE.

1 **BY MR. HASELDEN:**

2 THAT'S ALL RIGHT. YOUR HONOR, THE DEFENSE
3 WOULD CALL GERALD MURPHY.

4 **BY THE COMMISSIONER:**

5 ALL RIGHT. MR. MURPHY? SIR, IF YOU'D STATE
6 YOUR FULL NAME FOR THE RECORD.

7 **BY THE WITNESS:**

8 IT'S GERALD ALLEN MURPHY.

9 * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
12 MATTER HEREIN:

13 **GERALD ALLEN MURPHY,**

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

16 **BY THE COMMISSIONER:**

17 ANSWER ANY QUESTIONS THAT MR. HASELDEN MAY
18 HAVE, PLEASE, SIR.

19 **DIRECT EXAMINATION BY MR. HASELDEN:**

20 Q. BRIEFLY, GERALD, WHAT IS YOUR EMPLOYMENT BACKGROUND?

21 A. AFTER GRADUATING FROM HIGH SCHOOL I DID SOME MANUAL
22 LABOR WORK, CONSTRUCTION, WAS DRAFTED IN 1972, SPENT
23 20 YEARS, 10 MONTHS, 17 DAYS IN THE UNITED STATES
24 ARMY, RETIRED, GOT OUT, WORKED BRIEFLY, A LITTLE
25 LESS THAN TWO YEARS, FOR A PLACE CALLED CENTER FOR

1 MANAGEMENT DEVELOPMENT IN FLORIDA AS A MANAGEMENT
2 TRAINER, WENT TO WORK AT THE STATE ACCIDENT FUND IN
3 MARCH OF 1995.

4 Q. AND WHAT IS YOUR CURRENT POSITION AT STATE ACCIDENT
5 FUND?

6 A. MY CURRENT POSITION AT STATE ACCIDENT FUND IS
7 MANAGER OF ADMINISTRATIVE SERVICES.

8 Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

9 A. I ASSUMED THAT POSITION IN DECEMBER OF 2004.

10 Q. WHAT IS YOUR -- WHAT IS THE DEPARTMENT -- WHAT DOES
11 ADMINISTRATIVE SERVICES DO AT THE STATE ACCIDENT
12 FUND?

13 A. ADMINISTRATIVE SERVICES, WE'RE KIND OF THE UMBRELLA.
14 WE HANDLE ALL THE ADMINISTRATIVE THINGS. WE HANDLE
15 PERSONNEL, TO INCLUDE RECRUITMENT, PLACEMENT. WE
16 HANDLE LEAVE. WE HANDLE THE EMPLOYEE PERFORMANCE
17 MANAGEMENT SYSTEM. WE HANDLE TIME SHEETS. WE
18 HANDLE ALL THE BENEFITS. IN ADDITION TO THAT WE DO
19 ACCOUNTS RECEIVABLE, TRAINING AND DEVELOPMENT. I
20 DON'T KNOW IF I MENTIONED BUDGET. OH, AND ALSO
21 HUMAN AFFAIRS.

22 Q. AND IN YOUR CAPACITY AS MANAGER OF THAT DEPARTMENT,
23 HAVE YOU HAD THE OPPORTUNITY TO -- MR. MENIE WAS
24 THERE WHEN YOU TOOK THAT POSITION, BUT HAVE YOU HAD
25 THE OPPORTUNITY TO GO BACK NOW AND LOOK AT MR.

1 MENIE'S WORK HISTORY, BECOME FAMILIAR WITH IT IN
2 GENERAL?

3 A. YES, I DID HAVE AN OPPORTUNITY TO REVIEW THE FILES.

4 Q. OKAY. HAVE YOU REVIEWED THE HOURS WORKED BY MR.
5 MENIE DURING THE PERIOD OF JANUARY 1, 2002, THROUGH
6 MIDDLE OF MARCH 2003?

7 A. YES, 2003. I DID REVIEW THAT. THERE IS A PROGRAM
8 WE HAVE CALLED LOCATOR. IT KEEPS TRACK WHEN PEOPLE
9 SIGN IN AND SIGN OUT, AND I HAVE REVIEWED THAT.

10 Q. WHAT DID YOUR REVIEW INDICATE?

11 A. WELL, I DIDN'T SEE ANYTHING REALLY ABNORMAL. SEEMS
12 TO BE PRETTY MUCH THE SAME PATTERN. I DIDN'T SEE
13 ANY EXTRAORDINARILY LONG HOURS OR ANYTHING OF THAT
14 NATURE.

15 Q. AND WITH RESPECT TO -- IS THERE A SYSTEM BY WHICH
16 YOU CAN REVIEW ARRIVAL TIMES AND DEPARTURE TIMES
17 FROM THE OFFICE ITSELF?

18 A. YES, THAT'S ACTUALLY -- THE LOCATOR PROGRAM WAS
19 DEVELOPED TO KEEP TRACK OF THE STAFF FOR THE PURPOSE
20 OF THE RECEPTIONIST. SO WHEN THEY COME IN, IN THE
21 MORNING THEY SIGN IN, AND WHEN THEY GO ON LUNCH THEY
22 SIGN OUT, SIGN BACK IN, AND AT THE END OF THE DAY
23 THEY SIGN OUT AGAIN SO WE KNOW WHETHER OR NOT
24 THEY'RE IN THE AREA.

25 Q. OKAY. AND WHAT DID YOUR REVIEW OF MR. MENIE'S

1 ARRIVAL AND DEPARTURE TIMES INDICATE FOR THAT SAME
2 TIME PERIOD, THE YEAR BEFORE THIS INCIDENT AND
3 SOMETIME AFTER THAT?

4 A. I TOOK THE LOCATOR REPORT AND COMPARED JANUARY AND
5 FEBRUARY OF 2002 WITH JANUARY AND FEBRUARY OF 2003,
6 AND BASICALLY THE AVERAGE DIFFERENCE IN ARRIVAL
7 TIMES, DURING 2003 HE ARRIVED APPROXIMATELY THREE
8 MINUTES EARLIER, AND IN 2003 HE LEFT APPROXIMATELY
9 13 MINUTES LATER ON AN AVERAGE FOR THOSE TWO MONTHS.
10 SO, ABOUT 16 MINUTES LONGER.

11 Q. BASED ON YOUR REVIEW OF THE RECORDS, HOW MANY DAYS
12 DID MR. MENIE ACTUALLY WORK BY HIMSELF AS THE LONE
13 AUDITOR DURING 2003?

14 A. MR. MENIE ACTUALLY WAS THE -- WORKED BY HIMSELF FOR
15 A TOTAL OF 25 BUSINESS DAYS. HE HAD TWO DAYS DURING
16 THE MONTH OF JANUARY HE DID NOT WORK, TWO BUSINESS
17 DAYS, WHICH WERE THE 20TH, WHICH I ASSUME WAS A
18 MONDAY, SO IT WAS MARTIN LUTHER KING, AND THEN THE
19 23RD, AND THERE WAS NO INDICATION ON THE LOCATOR
20 REPORT WHY HE DID NOT WORK THAT DAY, BUT HE WAS NOT
21 SIGNED IN.

22 Q. THERE'S BEEN A LOT OF TALK ABOUT CARLA JOHNSON
23 MISSING A LOT OF WORK. BUT WAS SHE THERE IN
24 FEBRUARY OF 2003?

25 A. YES. AS A MATTER OF FACT, IN THE APA HER ACTUAL

1 TIME SHEET IS THERE. I BELIEVE IT'S PAGE 164, IF
2 I'M NOT MISTAKEN. IT SHOWS THAT SHE RETURNED TO
3 WORK ON FEBRUARY 10TH, I BELIEVE.

4 Q. OKAY. AND THIS WARREN FARRAY THAT MS. HOLMAN TALKED
5 ABOUT WHO CAME TO WORK ON MARCH 3RD OF 2003, WHAT
6 WAS MR. FARRAY'S EXPERIENCE LEVEL?

7 A. MR. FARRAY, WE WERE VERY FORTUNATE TO GET HIM. HE
8 HAD OVER 20 YEARS OF EXPERIENCE IN INSURANCE AND
9 UNDERWRITING AND IN PREMIUM AUDIT, EXTENSIVE
10 EXPERIENCE IN THE AREA OF WORKERS' COMP IN
11 PARTICULAR. SO HE WAS -- HE WAS -- WE WERE QUITE
12 FORTUNATE TO GET HIM.

13 Q. WHAT PAY -- ROUGHLY WHAT DID YOU HIRE HIM AT,
14 STARTING SALARY?

15 A. WE STARTED HIM OUT AT, I THINK IT WAS, \$45,000 A
16 YEAR.

17 Q. OKAY. NOW, THIS IS IMPORTANT. OTHER THAN THOSE 25
18 DAYS THAT MR. MENIE OPERATED AS THE LONE AUDITOR FOR
19 THE STATE ACCIDENT FUND, HAS THERE EVER BEEN ANOTHER
20 TIME WHEN ONLY ONE AUDITOR WAS WORKING?

21 A. OH, YES. AS A MATTER OF FACT, WHEN MR. MENIE
22 RETIRED IN MAY OF 2009, WE HAD TWO AUDITORS AT THAT
23 TIME, WHICH WERE, IN FACT, WARREN FARRAY AND CHRIS,
24 AND WE HAD TWO UP UNTIL NOVEMBER. CHRIS LEFT IN
25 NOVEMBER, SO WARREN WAS BY HIMSELF FOR THE REST OF

1 NOVEMBER, DECEMBER, JANUARY, AND THEN I BELIEVE JOHN
2 LONG CAME IN. JOHN LONG WAS THERE. WARREN PASSED
3 AWAY IN FEBRUARY, SO JOHN WAS BY HIMSELF FROM
4 FEBRUARY THROUGH MARCH, APRIL, MAY, JUNE, JULY,
5 AUGUST, SEPTEMBER, AND WE HIRED KIRK ADAIR, I
6 BELIEVE, IN OCTOBER. AND THEN KIRK ---

7 Q. THAT'S EIGHT MONTHS, RIGHT?

8 A. RIGHT. AND THEN KIRK -- WE HAD TWO AUDITORS THEN.
9 WE HAD KIRK AND JOHN LONG. JOHN RESIGNED IN
10 JANUARY, SO KIRK WAS BY HIMSELF IN JANUARY AND
11 FEBRUARY, AND TERESA SIMMONS WAS HIRED IN MARCH OF
12 2011. SO WE HAVE TWO RIGHT NOW. WE'VE NEVER FILLED
13 THAT THIRD POSITION.

14 Q. THAT'S WHAT I WAS GOING TO ASK. WHEN MR. MENIE
15 RETIRED, DID YOU ALL HIRE A THIRD AUDITOR TO PICK UP
16 THOSE OTHER 200 AUDITS THAT NO ONE COULD DO?

17 A. NO, WE DID NOT, AND THAT WAS BASICALLY BASED UPON
18 THE RECOMMENDATIONS OF CHRIS BOLES AND WARREN FARRAY
19 AT THE TIME. THEY SAID THAT THEY COULD HANDLE IT
20 WITH THE TWO OF THEM.

21 Q. IS THERE ANY RECORD OF MR. MENIE COMPLAINING TO
22 ANYONE DURING THOSE 25 DAYS THAT HE NEEDED HELP OR
23 THAT STRESS WAS UNBEARABLE?

24 A. NO, I FOUND NOTHING IN THE RECORDS INDICATING THAT.

25 Q. OR THAT THE WORK CONDITIONS WERE OUT OF THE

1 ORDINARY?

2 A. NO.

3 Q. WAS HELP AVAILABLE FOR MR. MENIE IF HE HAD ASKED FOR
4 IT AT THAT TIME?

5 A. ROSS GAMBLE WAS THE DEPUTY DIRECTOR AT THAT TIME --
6 HAD OFFERED VICKY LOOTER, WHO WAS THE EXECUTIVE
7 ASSISTANT FOR HIM AND PETE, IF SHE COULD BE OF
8 ASSISTANCE.

9 Q. NOW, WE'VE HEARD ABOUT MR. MENIE'S WORK HISTORY, THE
10 ACCOLADES AND ALL THAT. BUT WHAT WAS HIS WORK
11 HISTORY LIKE?

12 A. I'LL TELL YOU, AL IS REALLY A VERY WELL-LIKED
13 PERSON. HE'S VERY GREGARIOUS, ALWAYS HAS TIME TO
14 SIT AND TALK. IF YOU WANT TO STOP BY, HE LOVES TO
15 TALK FISHING, REALLY LOVES IT. USUALLY HAS A COUPLE
16 POLAROID PICTURES IN HIS POCKET OF THE LATEST FISH
17 HE CAUGHT. VERY EASY TO GET ALONG WITH, VERY
18 PERSONABLE INDIVIDUAL. AS FAR AS HIS ACTUAL JOB
19 PERFORMANCE, A REVIEW OF HIS RECORDS SHOWED THAT HE
20 ALWAYS RECEIVED "MEETS" RATINGS ON HIS EMPLOYEE
21 PERFORMANCE EVALUATION SYSTEM UP THROUGH 2002, AND
22 2003 WAS THE FIRST TIME, AS A MATTER OF FACT, THAT
23 HE RECEIVED AN "EXCEEDED" ON IT.

24 Q. BEAR WITH ME ONE SECOND. YOU'VE BEEN WITH THE STATE
25 ACCIDENT FUND HOW LONG?

1 A. MARCH 1995.

2 Q. AND YOU TOOK YOUR CURRENT POSITION IN 2004?

3 A. YES, SIR.

4 Q. PRIOR TO TODAY WERE YOU EVER AWARE THAT THERE WAS A
5 REQUIREMENT THAT AN AUDITOR HAD TO COMPLETE ONE-
6 SIXTH OF HIS AUDITS PER MONTH?

7 A. NO. THIS IS THE FIRST I'VE ACTUALLY HEARD OF THAT.
8 WHAT I WAS AWARE OF WAS THE 180 DAYS. ALL THE STATE
9 AGENCIES DO THIS ACCOUNTABILITY REPORT ONCE A YEAR,
10 AND THIS ACCOUNTABILITY REPORT YOU'VE GOT TO HAVE
11 DIFFERENT MEASURES. WELL, I KNOW ONE OF THE
12 AGENCY'S MEASURES WAS, IN FACT, THAT ALL AUDITS BE
13 COMPLETED WITHIN 180 DAYS AT THE END OF THE POLICY
14 PERIOD, AND THAT, IN FACT, WAS REPORTED IN THE
15 ACCOUNTABILITY REPORT.

16 Q. OKAY. AND WE'VE HEARD A LOT ABOUT THIS 24.7 PERCENT
17 RATE INCREASE. FROM YOUR PERSPECTIVE AS THE MANAGER
18 OF MEMBER SERVICES, WHAT EFFECT WOULD THAT HAVE HAD
19 ON MR. MENIE'S JOB?

20 A. WELL ---

21 **BY MR. McDANIEL:**

22 I THINK THAT'S -- THAT CALLS FOR SPECULATION
23 UNLESS HE'S GOT A BACKGROUND AND EXPERIENCE IN THE
24 AREA OF AUDITING.

25 **BY THE COMMISSIONER:**

1 WELL, IT'S BEEN ALMOST A FOCAL POINT BECAUSE IT
2 SEEMS LIKE EVERYTHING IS AN OUTGROWTH OF THAT
3 LETTER, WHICH I'LL STATE AGAIN IS NOT DATED, BUT IT
4 DOES SAY EFFECTIVE JANUARY THE 1ST, 2003. I BELIEVE
5 RATES GO UP 24.7 PERCENT. SO I'LL NOTE YOUR
6 OBJECTION. I'D LIKE TO HEAR ABOUT IT.

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

8 Q. DO YOU KNOW WHEN THE RENEWAL NOTICES WERE SENT OUT
9 INDICATING THEIR RATE INCREASES?

10 A. I'M SORRY, SIR?

11 Q. DO YOU KNOW WHEN THE RENEWAL NOTICES ACTUALLY WENT
12 OUT INDICATING THE RATE INCREASES?

13 A. ACCORDING TO THE COMPUTER SYSTEM, THE ACTUAL RENEWAL
14 NOTICES FOR THAT YEAR WERE DATED DECEMBER 9TH, 2002,
15 WITH A DUE DATE ON THE PREMIUM AS JANUARY 10TH. SO
16 I'M SURE THAT -- IF IT WENT OUT ON DECEMBER 9TH, I
17 WOULD IMAGINE THAT THEY WERE IN PEOPLE'S HANDS
18 WITHIN A REASONABLE AMOUNT OF TIME. I DO KNOW THAT
19 -- BY CHECKING THE COMPUTER RECORDS THAT BY JANUARY
20 10TH OF 2003, OUT OF THOSE 522 ACCOUNTS, 318 HAD
21 ALREADY PAID THEIR PREMIUM, WELL OVER 60 PERCENT.
22 SO EXACTLY WHAT TIME THEY RECEIVED IT, I DO NOT
23 KNOW.

24 Q. I'M GOING TO READ YOU THIS, AND THIS IS A PARTIAL
25 QUOTE FROM THE CLAIMANT'S PREHEARING BRIEF. I'M

1 GOING TO ASK YOU TO ADDRESS THIS. MR. MENIE'S
2 WORKLOAD INCREASED, QUOTE, "FROM AN AUDITING
3 STANDPOINT BY THREEFOLD DURING THE TIME OF JANUARY
4 THROUGH MARCH 2003, BUT HE WAS LEFT TO FIELD ALL THE
5 QUESTIONS, TELEPHONE CALLS, AND DO ALL THE RESPONSE
6 NECESSARY TO RESPOND TO THE TREMENDOUS RATE
7 INCREASE."

8 A. AUDITING RESPONSIBILITY, AS WE'VE HEARD, YOU KNOW,
9 SHAWN TESTIFY TO AND HEARD AL TESTIFY TO UP HERE,
10 THEIR STANDARD IS 180 DAYS. YOU'VE GOT TO HAVE YOUR
11 AUDITS -- AND THEY KEPT TALKING ABOUT THEIR TEAM'S
12 AUDITS -- DONE WITHIN 180 DAYS AT THE END OF THE
13 POLICY PERIOD, WHICH I BELIEVE THE END OF POLICY
14 PERIOD IS DECEMBER 31ST. I DID -- A REVIEW OF THE
15 AUDITS THAT WERE COMPLETED THAT YEAR AND A REVIEW OF
16 THE AUDITS THAT WERE COMPLETED IN 2002, I SAW NO
17 AUDITS THAT WERE COMPLETED DURING JANUARY OF 2002.
18 SO I DON'T KNOW WHAT AUDITS THEY'RE REFERRING TO.
19 MY UNDERSTANDING IS, IN FACT, AS AL SAYS, YOU'VE GOT
20 TO GET THE PAYROLL -- OR SHAWN SAID; EXCUSE ME --
21 YOU'VE GOT TO GET THE PAYROLL INFORMATION IN FIRST
22 BEFORE YOU CAN DO THE AUDITS. SO I DON'T KNOW HOW
23 THAT COULD BE TRUE.

24 Q. OKAY. I'M GOING TO HAND YOU CLAIMANT'S PREHEARING
25 BRIEF AND POINT YOU TO PAGE 112. THERE'S BEEN A LOT

1 OF DISCUSSION ABOUT THAT. CAN YOU EXPLAIN THAT
2 MEMO?

3 A. YES, I CAN. I'VE SEEN SEVERAL OF THESE. THIS IS AN
4 INTERAGENCY MEMORANDUM FROM RUBY FLATEAU. RUBY WAS
5 MY PREDECESSOR. SHE HELD MY POSITION PRIOR TO ME.
6 AND IT'S ADDRESSED TO AL, DATED APRIL 15TH, AND THE
7 SUBJECT IS PERFORMANCE PAY INCREASE.

8 **BY MR. McDANIEL:**

9 CAN I STOP JUST A MINUTE? WHAT PAGE WAS THAT?

10 **BY MR. HASELDEN:**

11 IT'S 112.

12 **BY THE COMMISSIONER:**

13 ONE TWELVE.

14 **BY MR. HASELDEN:**

15 IT'S YOURS.

16 **BY THE COMMISSIONER:**

17 IT'S ACTUALLY ---

18 **BY MR. McDANIEL:**

19 OH, I'M -- EXCUSE ME.

20 **BY THE COMMISSIONER:**

21 IT'S SIGNED BY GAMBLE, BUT IT'S FROM F-L-A-T-E-
22 A-U, RUBY.

23 **WITNESS RESUMES:**

24 A. YES, RUBY FLATEAU. AND WHAT THIS -- WHAT THIS IS
25 ACTUALLY -- WE'RE A STATE AGENCY. SO EVERY TIME YOU

1 GIVE SOMEBODY A PAY INCREASE YOU'VE GOT TO DOCUMENT
2 IT, AND THERE'S ONLY CERTAIN REASONS YOU CAN GIVE
3 PEOPLE A PAY INCREASE: ADDITIONAL DUTIES,
4 ADDITIONAL SKILLS AND KNOWLEDGE, PERFORMANCE
5 INCREASES, RETENTION INCREASE, SO ON AND SO FORTH.
6 SO WHEN YOU DID A PAY INCREASE YOU DOCUMENTED -- SHE
7 DOCUMENTED THE FILE USING AN INTERAGENCY MEMORANDUM.
8 YOU'LL SEE IT WAS SENT FROM THERE TO ROSS, AND ROSS
9 APPROVED THE PAY INCREASE.

10 **DIRECT EXAMINATION RESUMED BY MR. HASELDEN:**

11 Q. DO YOU KNOW WHY HE APPROVED THIS PAY INCREASE?

12 A. I KNOW THAT WE HAD JUST HIRED WARREN.

13 **BY MR. McDANIEL:**

14 THAT WOULD CALL FOR SPECULATION OR HEARSAY.

15 THEY HAVE CHOSEN NOT TO CALL MR. GAMBLE.

16 **BY MR. HASELDEN:**

17 HE'S THE MANAGER OF SERVICES.

18 **BY THE COMMISSIONER:**

19 WELL, I THINK WE'RE TRYING TO GET AROUND THE
20 SUBSTANCE OF THIS MEMO, WHETHER IT'S -- I DON'T KNOW
21 WHETHER YOU'RE TRYING TO GET ---

22 **BY MR. HASELDEN:**

23 I CAN ASK IT A DIFFERENT WAY.

24 **BY THE COMMISSIONER:**

25 ALL RIGHT.

1 BY MR. HASELDEN:

2 EASILY.

3 BY THE COMMISSIONER:

4 DO.

5 DIRECT EXAMINATION RESUMED BY MR. HASELDEN:

6 Q. WAS MR. FARRAY HIRED AT A SALARY OF \$5,000 MORE PER
7 YEAR THAN MR. MENIE?

8 A. YES, HE WAS.

9 Q. BASED ON YOUR KNOWLEDGE, WAS THAT AN ATTEMPT TO
10 RAISE MR. MENIE UP TO MEET MR. FARRAY'S SALARY IN
11 PART?

12 A. A GOOD COMPENSATION SYSTEM HAS EQUITY IN IT.

13 BY MR. McDANIEL:

14 COMMISSIONER ---

15 BY THE COMMISSIONER:

16 HE CAN -- I THINK HE'S MORE THAN QUALIFIED TO
17 ANSWER THAT QUESTION. HE'S OVER H.R. ADMINISTRATION

18 ---

19 BY MR. McDANIEL:

20 HE CALLS FOR A REASON FOR THAT. THERE IS
21 NOTHING STATING THAT REASON. THAT IS ROSS GAMBLE.
22 HE WAS NOT EVEN THE HEAD OF HUMAN RESOURCES AT THAT
23 TIME. UNLESS I'M WRONG, HE DID NOT ASSUME THAT
24 POSITION UNTIL DECEMBER OF 2003, AND HE IS TALKING
25 AS TO THE REASONING THAT THIS RAISE WAS GIVEN AT A

1 TIME PERIOD WHEN HE WAS NOT INVOLVED WITH IT. MR.
2 GAMBLE IS NOT HERE TO TALK ABOUT IT. IT IS HIS
3 SURMISE AS TO WHY THAT RAISE WAS GIVEN. THAT IS
4 WRONG.

5 **BY THE COMMISSIONER:**

6 THERE'S ANOTHER WAY TO ASK THE QUESTION, I
7 THINK. IS IT COMMON TO TRY TO KEEP PEOPLE IN THE
8 SAME JOB PAID RELATIVELY EQUAL?

9 **BY THE WITNESS:**

10 YES, WITHIN OUR POLICY, AND ACTUALLY IT'S A
11 POLICY WITHIN H.R. TO TRY TO HAVE FAIRNESS WITHIN
12 THE SYSTEM.

13 **BY THE COMMISSIONER:**

14 WITHIN A GRADE?

15 **BY THE WITNESS:**

16 YES, DOING SIMILAR OR THE SAME DUTIES.

17 **BY THE COMMISSIONER:**

18 ALL RIGHT, SIR.

19 **DIRECT EXAMINATION RESUMED BY MR. HASELDEN:**

20 Q. AS AN EMPLOYEE OF THE STATE AGENCY, ARE SALARIES
21 MADE PUBLIC?

22 A. OH, YES. THAT'S ONE GREAT THING ABOUT BEING A
23 PUBLIC EMPLOYEE. THEY CAN REQUEST YOUR SALARY AT
24 ANY TIME.

25 **BY MR. HASELDEN:**

1 I DON'T HAVE ANYTHING ELSE, MR. MURPHY.

2 **BY THE COMMISSIONER:**

3 ALL RIGHT. ANSWER ANY QUESTIONS MR. McDANIEL
4 MAY HAVE, PLEASE.

5 **BY THE WITNESS:**

6 YES, SIR.

7 **CROSS EXAMINATION BY MR. McDANIEL:**

8 Q. MR. MURPHY, FIRST OFF LET'S TALK ABOUT THIS
9 REQUIREMENT OF 180 DAYS. IS THAT RIGHT?

10 A. YES, SIR.

11 Q. OKAY. THAT'S JANUARY 1ST TO JUNE 30TH, IS WHEN YOU
12 DO THE AUDITING OF THE STATE -- I MEAN, THE
13 COUNTIES, LOCALS, AND MUNICIPALITIES; IS THAT
14 CORRECT?

15 A. PRETTY CLOSE. IT'S ACTUALLY THE 28TH OF JUNE, IS
16 180 DAYS.

17 Q. AND THAT WOULD GO BY -- SO, IN OTHER WORDS ALL OF
18 THE AUDITS FOR THOSE AGENCIES HAVE TO BE DONE
19 BETWEEN THAT TIME PERIOD?

20 A. YES. THAT'S OUR GOAL, IS TO ACHIEVE THAT.

21 Q. AND WOULD YOU AGREE WITH ME THAT IF YOU DIVIDE 200
22 BY SIX THAT COMES OUT TO ABOUT 33?

23 A. OKAY.

24 Q. OKAY. SO, BASICALLY THAT MEANS THAT YOU NEED TO DO
25 33 AGENCIES PER MONTH, AVERAGE 33 A MONTH?

- 1 A. IF YOU'RE LOOKING AT STRICTLY AN AVERAGE AND YOU DID
2 NO MORE ONE MONTH THAN YOU DID ANOTHER MONTH, THEN
3 THAT'S WHAT YOU WOULD NEED IN ORDER TO ACHIEVE IT.
- 4 Q. OKAY. NOW, YOU TALKED ABOUT -- HOW MANY MONTHS WAS
5 IT YOU SAID MR. FARRAY WAS ON THAT AUDITOR JOB BY
6 HIMSELF?
- 7 A. LET'S SEE. AGAIN, I'VE GOT TO GO BACK THROUGH AND
8 TRACK THIS, RIGHT?
- 9 Q. THAT'S FINE.
- 10 A. SO ---
- 11 Q. TAKE AS MUCH TIME AS YOU WANT, BECAUSE I WANT TO
12 KNOW HOW MANY MONTHS HE WAS IN THAT AUDITOR POSITION
13 BY HIMSELF.
- 14 A. OKAY. CHRIS LEFT IN NOVEMBER, ALL RIGHT? SO THAT
15 MEANT THAT WARREN WAS THERE FROM NOVEMBER TO
16 DECEMBER, FROM DECEMBER TO JANUARY -- LET ME SEE
17 WHEN MR. LONG ACTUALLY CAME ON BOARD. OH, ACTUALLY,
18 HE WENT 'TIL FEBRUARY BECAUSE HE PASSED AWAY THE
19 FIRST PART OF FEBRUARY. HE PASSED AWAY, ACTUALLY,
20 ABOUT A WEEK AFTER JOHN LONG CAME ON BOARD.
- 21 Q. ALL RIGHT. SO HE'D BEEN DOING THAT AUDITING
22 POSITION BY HIMSELF FOR ABOUT THREE MONTHS, IS THAT
23 RIGHT?
- 24 A. THAT'S CORRECT.
- 25 Q. AND I BELIEVE HE WAS FOUND LYING STRETCHED OUT ON

1 THE GROUND ON STATE PROPERTY?

2 A. IF YOU CONSIDERED A LEASED PROPERTY STATE PROPERTY.

3 Q. WELL, IN OTHER WORDS, HE HAD BEEN LEAVING -- HE WAS
4 LEAVING THE BUILDING. HE WAS FOUND IN A COMATOSE
5 STATE ON STATE PROPERTY, WAS RUSHED BY E.M.S. TO THE
6 HOSPITAL, AND DIED TWO WEEKS LATER; ISN'T THAT A
7 FACT?

8 A. YES.

9 Q. DO YOU KNOW THE CAUSE OF DEATH?

10 A. I THOUGHT IT WAS A HEMATOMA OR SOME TYPE OF INTERNAL
11 BLEEDING IN HIS BRAIN. THAT'S WHAT I WAS TOLD.

12 Q. OKAY. ALL RIGHT. NOW, WOULD YOU -- I BELIEVE YOU
13 REFERRED TO MR. CHRIS BOLES. OKAY. AND YOU
14 TESTIFIED ABOUT MR. FARRAY'S BACKGROUND.

15 A. YES.

16 Q. I DIDN'T SPECIFICALLY HEAR HIS BACKGROUND IN
17 REFERENCE TO AUDITING IN WORKERS' COMPENSATION.

18 A. YES, HE DID HAVE PAYROLL AUDIT EXPERIENCING IN
19 WORKERS' COMPENSATION.

20 Q. FOR WHO?

21 A. HE WORKED FOR A.I.G. AT ONE TIME UP IN NEW YORK.
22 THEN AFTER THAT HE LATER MOVED ON DOWN HERE AND WAS
23 OVER AT P.M.S.C. PRIOR TO COMING -- BUT THAT WAS
24 STRICTLY IN A COMPUTER SENSE.

25 Q. OKAY. SO, DID YOU KNOW MR. CHRIS BOLES USED TO WORK

1 FOR N.C.C.I.?

2 A. YES. CHRIS BOLES HAD EXTENSIVE EXPERIENCE IN

3 CLASSIFICATION.

4 Q. EXACTLY. AND CLASSIFICATION IS DIFFERENT FROM

5 AUDITING, ISN'T IT?

6 A. YES, IT IS.

7 Q. AND AS A MATTER OF FACT, AS WE'VE TESTIFIED EARLIER,

8 OF COURSE, CHRIS BOLES ACTUALLY WORKED FOR N.C.C.I.,

9 DIDN'T HE?

10 A. YES, SIR.

11 Q. HE USED TO WORK WITH A FELLOW BY THE NAME OF TOM

12 SMITH. DO YOU KNOW TOM SMITH?

13 A. NO.

14 Q. DID YOU EVER KNOW TOM SMITH, WHO USED TO BE THE

15 OTHER AUDITOR FOR N.C.C.I.?

16 A. NO.

17 Q. AND WAS ESTABLISHED IN RATE CLASSIFICATION THAT I

18 REPRESENTED ON A CASE THAT WENT TO THE SUPREME

19 COURT?

20 A. STILL DON'T KNOW HIM.

21 Q. OKAY. NOW, IN OTHER WORDS, WOULD YOU AGREE WITH ME

22 THAT EVERYBODY IN THE PRIVATE SECTOR USES N.C.C.I.

23 FOR THEIR CLASSIFICATION SYSTEM?

24 A. I WON'T SAY EVERYBODY DOES. THE VAST MAJORITY OF

25 PEOPLE USE N.C.C.I. THERE ARE SOME EXCEPTIONS IN

1 SOME STATES, I BELIEVE.

2 Q. OKAY. SO, OUTSIDE OF MR. BOLES, NONE OF THE PEOPLE
3 HAD BACKGROUND EXPERIENCE IN ESTABLISHING THE RATE
4 CLASSIFICATION SYSTEM THAT STATE ACCIDENT FUND
5 CHOOSES TO ESTABLISH ITSELF AS FAR AS YOU KNOW?

6 A. I WILL TELL YOU, I DO NOT KNOW THE EXTENT OF CHRIS'
7 -- EXCUSE ME -- OF WARREN FARRAY'S BACKGROUND IN
8 THAT SPECIFIC FIELD.

9 Q. NOW, LET ME ASK YOU ANOTHER QUESTION. IN REFERENCE
10 TO THAT LOCATOR SYSTEM, ISN'T IT A FACT THAT BACK IN
11 2003 THAT THE WAY YOU LOG IN IS IT'S WHENEVER YOU
12 LOG IN ON A COMPUTER?

13 A. WHAT DOES THAT MEAN?

14 Q. WELL, YOU TELL ME. WHEN YOU GO IN AND YOU LOG IN ON
15 YOUR COMPUTER, DOESN'T THAT ESTABLISH A TIME FOR THE
16 LOCATOR SYSTEM?

17 A. WHAT THE SYSTEM DID IS WHEN YOU WENT TO TURN YOUR
18 COMPUTER ON THERE IS A SCREEN THAT POPS UP, RIGHT?
19 AND YOU CLICK ON THE LOCATOR ICON, IT OPENS UP, YOU
20 PUT IN YOUR USERNAME, YOUR PASSWORD, IT CLOSES, AND
21 THAT GOES OUT AND STORES IN A FILE WHAT TIME YOU DID
22 THAT.

23 Q. AND IT ALSO -- IT ESTABLISHES ALSO, FOR PURPOSES OF
24 YOU IN HUMAN RESOURCES, BEING ABLE TO TELL HOW MANY
25 FULL-TIME PEOPLE YOU NEED? F.T.P.s, WE REFER TO

1 THEM?

2 A. WE CALL THEM F.T.E.s.

3 Q. F.T.E.s; EXCUSE ME.

4 A. RIGHT. AND WHAT IT REALLY DOES IS IT GIVES A REALLY
5 GOOD IDEA OF WHAT ATTENDANCE IS.

6 Q. OKAY. AND LIKE WHAT TIME THEY LEAVE FOR LUNCH, WHAT
7 TIME THEY COME BACK, THEN WHAT TIME THEY LEAVE AT
8 THE END OF THE DAY WHEN THEY LOG OFF?

9 A. RIGHT.

10 Q. WHAT'S THE STATE ACCIDENT FUND'S POLICY FOR COMP
11 TIME?

12 A. COMP TIME, THE STATE ACCIDENT FUND'S POLICY IS --
13 THERE ARE TWO DIFFERENT TYPES OF EMPLOYEES. I'M
14 GOING TO GIVE YOU A LESSON ON FAIR LABOR STANDARDS
15 ACT. YOU HAVE THOSE THAT ARE, IN FACT, PROTECTED
16 EMPLOYEES AND THOSE THAT ARE EXEMPT EMPLOYEES.

17 Q. CORRECT.

18 A. RIGHT. SO IF YOU ARE, IN FACT, A NONEXEMPT
19 EMPLOYEE, IN ORDER FOR YOU TO WORK OVERTIME, WHICH,
20 IN FACT, IS DEFINED AT OVER 40 HOURS PER WEEK, YOUR
21 EMPLOYER MUST GET A PREVIOUS APPROVAL FROM THE
22 DIRECTOR. IF HE GETS THAT PREVIOUS APPROVAL FROM
23 THE DIRECTOR, HE CAN THEN WORK YOU OVER 40 HOURS FOR
24 THAT AMOUNT. THAT AMOUNT THEN BECOMES COMPENSATORY
25 TIME AND IS, IN FACT, STORED IN THE SYSTEM. IF YOU

1 WERE TO LEAVE PRIOR TO THAT TIME, YOU WOULD BE
2 COMPENSATED FOR THAT TIME. IF YOU ARE, IN FACT, AN
3 EXEMPT EMPLOYEE, WHICH MEANS THAT YOU'RE NOT SUBJECT
4 TO THE FAIR LABOR STANDARDS ACT IN OVERTIME ---

5 Q. SALARIED? GENERALLY REFERRED TO AS SALARIED
6 EMPLOYEE?

7 A. ANOTHER WAY TO SAY IT. FAIR LABOR STANDARDS ACT, I
8 THINK, PRETTY MUCH CALLS THEM EXEMPT. IF YOU, IN
9 FACT, WANT TO WORK OVERTIME, THE SAME THING IS
10 SUPPOSED TO HAPPEN, IS THAT YOUR SUPERVISOR REQUESTS
11 YOU WORK OVERTIME. WE HAVE A FORM IN OUR POLICY
12 BOOK. IT IS, IN FACT, APPROVED, RIGHT? AND THEN
13 YOU WORK OVERTIME. HOWEVER, YOU ARE NOT REQUIRED TO
14 PAY AN EXEMPT EMPLOYEE COMPENSATORY TIME.

15 Q. OKAY. BUT THE STATE ACCIDENT FUND DOESN'T WANT YOU
16 WORKING OVER?

17 A. THE NATURE OF OUR BUSINESS, CONSIDERING THE FACT
18 THAT WE WORK PRIMARILY WITH GOVERNMENT ENTITIES,
19 THERE'S NOT A LOT OF THINGS THAT YOU CAN DO PAST
20 5:00 IN THE AFTERNOON OR BEFORE 8:00 IN THE MORNING.
21 SO IT IS -- IT IS NOT ENCOURAGED FOR PEOPLE TO BE IN
22 THERE BECAUSE OF, OF COURSE, LIABILITIES AND SO ON
23 AND SO FORTH.

24 Q. ALSO, YOU'RE SUBJECT TO WORKERS' COMP ---

25 A. SURE.

1 Q. --- IF THEY ARE ACTUALLY ON THE JOB? OKAY.

2 A. AND UNSUPERVISED. SO HOW DO YOU KNOW IF THEY'RE
3 REALLY WORKING OR THEY'RE JUST PUTTING TIME IN.

4 Q. CORRECT. HAVE YOU TALKED TO MS. RUBY FLATEAU ABOUT
5 THIS CASE TODAY?

6 A. RUBY FLATEAU? NO.

7 Q. HAVE YOU TALKED TO ROSS GAMBLE ABOUT IT?

8 A. NO, I HAVE NOT.

9 Q. SO YOU DON'T KNOW WHAT ROSS GAMBLE -- YOU HAVE
10 NOTHING TO CONTEST WHAT MR. MENIE SAYS HE KNEW AND
11 HIS DISCUSSIONS WITH HIM OR ANYTHING LIKE THAT, DO
12 YOU?

13 A. NO.

14 Q. DO YOU AGREE WITH THAT DESCRIPTION THEY'VE GIVEN OF
15 THE TEAM CONCEPT? IN OTHER WORDS, HOW THAT WAS
16 SUPPOSED TO WORK?

17 A. TEAM CONCEPT IS A MATTER OF THE MANAGEMENT GROUP
18 WHEN, IN FACT, IT WAS DEVELOPED, AND WITHIN THE
19 TEAMS YOU HAVE NOT ONLY TEAM AREAS OF
20 RESPONSIBILITY, BUT YOU ALSO HAVE -- I GUESS THE ONE
21 THING THAT I DIDN'T HEAR MENTIONED WAS THE
22 PROCESSES. YOU HAD PEOPLE THAT WERE STILL
23 RESPONSIBLE FOR OVERALL PROCESSES. YOU STILL HAD,
24 IN FACT, A CLAIMS SUPERVISOR WHO WAS RESPONSIBLE FOR
25 CLAIMS PROCESS. SHAWN, IN FACT, OVERSAW THE PREMIUM

1 PROCESS. RAY COLEMAN CONTINUED TO OVERSEE THE
2 SAFETY PROCESS. SO IF YOU JUST HAD ALL OF THESE
3 THINGS WORKING IN ISOLATION, IT WOULDN'T WORK. YOU
4 NEEDED TO HAVE CONTINUITY. SO WE -- THAT WAS THE
5 ONE THING, I THINK, THAT WASN'T MENTIONED.

6 Q. YES. IN OTHER WORDS, BASICALLY YOU JUST DIDN'T GO
7 FROM ONE TO THE OTHER; IT WAS SORT OF LIKE A MERGING
8 PROCESS, AND THERE WERE SOME POSITIONS THAT YOU
9 REALLY DIDN'T HAVE NECESSARILY THE POSITIONS FULLY
10 FILLED? WOULD THAT BE A FAIR STATEMENT? OR SERVED
11 MULTIPLE FUNCTIONS FOR MULTIPLE TEAMS OR SEVERAL
12 TEAMS, THAT KIND OF THING; IS THAT WHAT YOU
13 REQUIRED?

14 A. AT ONE POINT IN TIME WE DID HAVE PEOPLE THAT
15 PERFORMED MULTIPLE FUNCTIONS FOR MORE THAN ONE TEAM.
16 IN FACT, OUR ATTORNEYS AT ONE TIME SPLIT THE THREE
17 TEAMS BETWEEN TWO OF THEM.

18 Q. NOW, DID YOU HELP IN THE PREPARATION OF THE
19 INFORMATION THAT WAS PROVIDED TO ME BACK IN APRIL?

20 A. APRIL? I THINK THAT WAS ---

21 Q. SUBPOENAED INFORMATION.

22 A. WHAT?

23 Q. THE INFORMATION I SUBPOENAED?

24 A. OH, YES. I THINK THE EXTENT OF THAT WAS PROBABLY TO
25 HAVE MY ASSISTANT DONNA TO GO THROUGH THE FILES AND

1 LOOK THROUGH AND PROVIDE THAT INFORMATION. DONNA
2 READY WORKS FOR ME, AND I DIDN'T ACTUALLY PULL THE
3 INFORMATION MYSELF.

4 Q. OKAY. BY THE WAY, THE OTHER STUFF YOU'VE REFERRED
5 TO, DID YOU DO IT OR DID DONNA DO IT, THIS STUFF
6 ABOUT THE TIME CHARTS?

7 A. I DID THAT PERSONALLY.

8 Q. OKAY. SO YOU HAVE -- HAVE YOU LOOKED THROUGH THE
9 FILE?

10 A. THE APA OR -- I'VE LOOKED THROUGH THE APA.

11 Q. NO, NO, NO, NO, WHAT I HAVE SUBPOENAED. ARE YOU
12 AWARE OF THAT DOCUMENT I REFERRED TO WITH MR. SELMAN
13 WATSON, DR. SELMAN WATSON?

14 A. I'M NOT -- I DON'T KNOW WHICH FILE YOU'RE TALKING
15 ABOUT. I'VE LOOKED THROUGH MR. MENIE'S PERSONNEL
16 FILE; I'VE LOOKED THROUGH THE APA. BUT I DON'T KNOW
17 WHAT THAT IS THAT YOU ARE DISCUSSING.

18 Q. DID YOU SEE THE INVESTIGATIVE FILE DONE BY CRAWFORD
19 AND COMPANY?

20 A. NO, I DID NOT SEE THAT DOCUMENT.

21 Q. DID YOU SEE ANY REPORTS FROM DR. SELMAN WATSON?

22 A. I DIDN'T DO A LOT OF DOCTORS' REPORTS 'CAUSE I'M
23 REALLY NOT GOOD AT THE MEDICAL TERMINOLOGY. I'M NOT
24 A WORKERS' COMP PERSON.

25 Q. OKAY. LET ME ASK YOU THIS. DID YOU KNOW THAT MR.

1 WILLIE HIGHTOWER, DID YOU KNOW THAT HE WAS THE ONE
2 THAT HANDLED -- DID YOU GLEAN FROM THE FILE THAT MR.
3 WILLIE HIGHTOWER OVERSAW THE, IF YOU WANT TO CALL
4 IT, INVESTIGATION OR THE REVIEW OF MR. MENIE'S CLAIM
5 AFTER HE FILED IT IN JUNE?

6 A. I HOPE THIS ISN'T OUT OF LINE, BUT HIS NAME IS
7 ACTUALLY WILLIE HYSMITH.

8 Q. OH, I'M SORRY. I SAID HIGHTOWER. I APOLOGIZE.

9 **BY THE COMMISSIONER:**

10 I APPRECIATE IT BECAUSE WE'VE BEEN CALLING HIM
11 HIGHTOWER, I THINK, ALL DAY. SO IT SHOULD BE -- LET
12 THE RECORD SHOW -- IS IT H-Y-S-M-I-T-H?

13 **BY THE WITNESS:**

14 YES.

15 **BY MR. McDANIEL:**

16 WILLIE HYSMITH. I APOLOGIZE. I'VE BEEN
17 KNOWING WILLIE A LONG TIME, AND I MISSPOKE. I ALSO
18 HAVE A GOOD FRIEND NAMED MR. HIGHTOWER.

19 **WITNESS ANSWERS:**

20 A. I DO KNOW THIS, AND THAT IS THAT WILLIE IS THE
21 ADJUSTER THAT HANDLED ALL INTERNAL CLAIMS.

22 **BY MR. McDANIEL:**

23 ALL RIGHT. NOTHING FURTHER, COMMISSIONER.

24 **BY THE COMMISSIONER:**

25 SIR?

1 BY MR. McDANIEL:

2 NOTHING FURTHER, COMMISSIONER.

3 BY MR. HASELDEN:

4 YOU CAN STEP DOWN.

5 BY THE COMMISSIONER:

6 THANK YOU VERY MUCH.

7 (OFF THE RECORD)

8 BY THE COMMISSIONER:

9 STATE YOUR FULL NAME FOR THE RECORD, SIR.

10 BY THE WITNESS:

11 KIRK J. ADAIR.

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 KIRK J. ADAIR,

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

19 BY THE COMMISSIONER:

20 ANSWER ANY QUESTIONS MR. HASELDEN HAS, PLEASE,

21 SIR.

22 BY THE WITNESS:

23 OKAY.

24 DIRECT EXAMINATION BY MR. HASELDEN:

25 Q. MR. ADAIR, WHERE DO YOU WORK?

1 A. STATE ACCIDENT FUND.

2 Q. AND WHAT IS YOUR POSITION THERE?

3 A. I'M A PREMIUM AUDITOR.

4 Q. AND WHAT DOES THAT JOB ENTAIL?

5 A. WE DO AUDITS ON OUR CUSTOMERS EVERY YEAR TO UPDATE
6 THE PREMIUMS, AND THEN WE ALSO WORK WITH QUOTING NEW
7 POLICIES, GETTING NEW CLIENTS.

8 Q. WHAT'S YOUR WORK EXPERIENCE, KIRK?

9 A. I'VE BEEN AN INSURANCE PREMIUM AUDITOR FOR THE LAST
10 15 YEARS.

11 Q. AND WHERE ALL HAVE YOU WORKED?

12 A. I'VE WORKED FOR A.I.G. INSURANCE, FEDERATED
13 INSURANCE, AND OVERLAND SOLUTIONS, WHICH WAS AN
14 AUDITING COMPANY.

15 Q. HOW WOULD YOU COMPARE YOUR JOB AT STATE ACCIDENT
16 FUND TO THOSE JOBS?

17 A. OH, IT'S VERY LOW KEY. THE HOURS ARE EASY. JUST
18 LAID BACK.

19 Q. IS IT AS STRESSFUL AS YOUR FORMER EMPLOYMENT?

20 A. NO.

21 **BY MR. McDANIEL:**

22 COMMISSIONER, I'M GOING TO OBJECT TO RELEVANCY.
23 THIS IS TOTALLY IRRELEVANT AS TO TIME AND SPACE AS
24 TO WHAT THE CONDITIONS WERE LIKE IN 2002 AND 2003.

25 **BY THE COMMISSIONER:**

1 AND I'LL TAKE THAT INTO CONSIDERATION. I WILL
2 NOTE YOUR OBJECTION. I'LL NOTE THAT HE'S NOT
3 TALKING ABOUT 2002/2003. HE'S TALKING ABOUT TODAY,
4 IS WHAT YOU WERE ASKING HIM, IS THAT RIGHT, SIR?

5 BY MR. HASELDEN:

6 YES.

7 BY THE COMMISSIONER:

8 ALL RIGHT.

9 DIRECT EXAMINATION RESUMED BY MR. HASELDEN:

10 Q. KIRK, YOU HANDLED ALL THE ACCOUNTS, ALL THE AUDITS
11 FOR THE PERIOD OF JANUARY 14TH, 2011, THROUGH MARCH
12 14TH, 2011, CORRECT?

13 A. CORRECT.

14 Q. OKAY. WAS THERE A LITTLE MORE WORK INVOLVED?

15 A. A LITTLE BIT MORE, A FEW MORE PHONE CALLS, THAT KIND
16 OF THING.

17 Q. NOTHING OUT OF THE ORDINARY OTHER THAN PHONE CALLS?

18 A. NOTHING OUT OF THE ORDINARY.

19 Q. WAS THAT WORK STRESSFUL?

20 A. NO.

21 Q. OKAY. DID THE STRESS LEVEL DURING THAT TIME PERIOD
22 WHEN YOU WERE THE LONE ADJUSTER -- I MEAN, THE LONE
23 PREMIUM AUDITOR -- EVER RISE TO THE LEVEL OF THE
24 STRESS YOU ENCOUNTERED AT YOUR PRIOR EMPLOYMENT?

25 A. NO.

1 Q. LET ME ASK YOU THIS: YOU WORKED BY YOURSELF FOR
2 THOSE TWO MONTHS?

3 A. YES.

4 Q. DID YOU GO OUT AND LOOK FOR ANOTHER JOB AFTER THAT
5 WAS OVER?

6 A. NO.

7 Q. MATTER OF FACT, YOU'VE BEEN THERE ALMOST A YEAR
8 SINCE A SECOND AUDITOR CAME ON, CORRECT?

9 A. RIGHT, RIGHT.

10 Q. DO YOU AND THE OTHER AUDITOR HAVE ANY PROBLEM
11 PERFORMING THE JOB WITH JUST TWO AUDITORS?

12 A. NO.

13 **BY MR. HASELDEN:**

14 I DON'T HAVE ANYTHING ELSE FOR KIRK?

15 **BY THE COMMISSIONER:**

16 MR. McDANIEL?

17 **CROSS EXAMINATION BY MR. McDANIEL:**

18 Q. HOW IS THE COMPUTER SYSTEM WORKING?

19 A. IT'S OKAY. YOU CAN GET BY ON IT. IT TAKES A LOT OF
20 STEPS TO GET STUFF DONE, BUT YOU LEARN HOW TO DO IT,
21 AND YOU DO IT.

22 Q. HOW MANY TIMES DO YOU HAVE TO ENTER ANY OF THE
23 EXPERIENCE MODIFICATION SYSTEMS, LIKE WHEN YOU ENTER
24 IT FOR A PARTICULAR AGENCY?

25 A. THE EXPERIENCE MOD, THAT'S AUTOMATED. IT'S DONE

1 AUTOMATICALLY WHEN IT'S -- WHEN IT'S RENEWED.

2 Q. OH, OKAY. SO IT'S NOW AUTOMATIC; YOU MEAN THE
3 COMPUTER DOES IT NOW?

4 A. RIGHT.

5 Q. OKAY. HOW DO YOU DO AN AUDIT NOW? FOR EXAMPLE, I
6 MEAN, ON THE -- IS IT ALL IN THE COMPUTER? WHAT DO
7 YOU DO IN REFERENCE TO THE COMPUTER OR DOING THE
8 AUDIT NOW?

9 A. WELL, WE GET THE DOCUMENTS IN THAT HAVE THE PAYROLL
10 INFORMATION ON THEM, AND WE TYPE THAT INTO THE
11 COMPUTER, MATCH UP THE PAYROLL NUMBERS WITH THE
12 CORRECT CODES, AND MAKE SURE THAT BALANCES BACK TO
13 THE VERIFICATION DOCUMENTS. AND THEN YOU'VE GOT TO
14 RELEASE THAT AND THEN GO IN AND IF THEY HAVE A DRUG
15 AND ALCOHOL CREDIT YOU'VE GOT TO GO INTO ANOTHER
16 SCREEN AND DO THAT, AND THEN PUT YOUR NOTES DOWN AND
17 YOU'RE DONE.

18 Q. NOW, WERE YOU WORKING THERE WHEN CHRIS BOLES WAS
19 WORKING THERE?

20 A. NO.

21 Q. DID YOU KNOW THAT CHRIS BOLES RECOMMENDED THAT THEY
22 GO FROM THREE AUDITORS TO TWO AUDITORS?

23 A. NO.

24 Q. WERE YOU EVER MADE AWARE THAT THEY FELT LIKE THAT
25 THE COMPUTER SYSTEM WAS UP AND RUNNING TO THE DEGREE

1 THAT THEY COULD REDUCE THE AMOUNT OF AUDITORS NEEDED
2 NOW?

3 A. NO.

4 Q. DID YOU DO ANY CLASSIFICATION AT THE OTHER -- WHEN
5 YOU WERE IN PRIVATE INDUSTRY, DID YOU DO ANY RATE
6 CLASSIFICATION? FOR EXAMPLE, YOU KNOW, THE
7 CLASSIFICATION SYSTEM LIKE YOU'RE DOING NOW, WHERE
8 YOU ARE NOW?

9 A. OH, YES.

10 Q. YOU DID THAT INSTEAD OF RELYING ON THE N.C.C.I.?

11 A. NO. WE'D HAVE TO LOOK UP THE N.C.C.I.
12 CLASSIFICATIONS AND SEE IF THEY FIT THE JOB DUTIES
13 WE WERE FACED WITH AND WE WERE LOOKING AT ON THE
14 AUDITS.

15 Q. SO, DO YOU DO ANY CLASSIFICATIONS LIKE N.C.C.I. DOES
16 NOW? DO YOU DO ANY?

17 A. OH, YES. WE FOLLOW THE N.C.C.I. MODEL.

18 Q. OKAY. SO YOU'RE NOW FOLLOWING THE N.C.C.I. MODELS
19 FOR THE VARIOUS JOB CLASSIFICATIONS IN THE STATE
20 AGENCY?

21 A. RIGHT.

22 Q. AND WHERE ARE THOSE MODELS MAINTAINED; IN THE
23 COMPUTER? ARE THEY ON THE COMPUTER?

24 A. YES.

25 Q. SO YOU SIMPLY GO UP AND LOOK THE MODEL UP IN THE

1 COMPUTER AND THEN APPLY IT?

2 A. WELL, WE'D SEE THE JOB DUTIES THAT ARE ON THE AUDIT,
3 WHAT THE EMPLOYER TELLS US ARE THE JOB DUTIES, AND
4 THEN WE'LL GO INTO THE DATABASE OF CODES, WHICH IS
5 ONLINE FROM N.C.C.I., AND WE LOOK UP THE CODES AND
6 READ THOSE DESCRIPTIONS AND MAKE A DECISION AS TO
7 WHICH CODE BEST FITS THAT JOB.

8 Q. NOW, AM I UNDERSTANDING THAT NOW YOU USE THE CODES
9 THAT ARE ONLINE FOR N.C.C.I.?

10 A. YES, AS LONG AS THEY ARE APPROVED FOR SOUTH
11 CAROLINA.

12 Q. YOU DON'T CREATE YOUR OWN CODES ANYMORE?

13 A. NO.

14 **BY MR. McDANIEL:**

15 NOTHING FURTHER, COMMISSIONER.

16 **BY MR. HASELDEN:**

17 BRIEFLY.

18 **REDIRECT EXAMINATION BY MR. HASELDEN:**

19 Q. AFTER THE COMPUTER -- YOU PUT ALL THE INFORMATION IN
20 AND THE COMPUTER GENERATES THE MOD, DO YOU GO BACK
21 AND REVIEW THE ACTUAL MOD YOURSELF? YOU DON'T JUST
22 RELY ON THE COMPUTER TO SPIT IT OUT, RIGHT?

23 A. OH, NO. YEAH, WE SPOT CHECK THEM AND LOOK AT THEM.

24 **BY MR. HASELDEN:**

25 THAT'S ALL I HAVE.

1 BY THE COMMISSIONER:

2 OKAY. ANY OTHER WITNESSES?

3 BY MR. HASELDEN:

4 DEFENDANTS' CASE.

5 BY MR. McDANIEL:

6 NOTHING FURTHER, COMMISSIONER.

7 BY THE COMMISSIONER:

8 IF THERE'S NOTHING ELSE, THEN THAT CONCLUDES
9 THE PROCEEDING.

10 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
11 CONCLUDED AT THE HOUR OF 3:26 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0307461

EMPLOYEE/CLAIMANT: ALVIN MENIE

EMPLOYER: STATE ACCIDENT FUND

CARRIER: STATE ACCIDENT 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 **148** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **ALVIN MENIE**, TAKEN ON THE 30TH DAY OF JANUARY, 2012.

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 26TH DAY OF MARCH, 2012.

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.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0307461

ALVIN L. MENIE,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER ROCHE - CHAIR
STATE ACCIDENT FUND,	)	COMMISSIONER BARDEN
	)	COMMISSIONER McCASKILL
EMPLOYER,	)	
	)	
and	)	
	)	
SELF INSURED,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
_____	)	

 **COPY**

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
11:14 A.M., TUESDAY, AUGUST 28, 2012, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

**CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189**

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 843-216-6940

REPORTED BY

CORA ELLIS BRUTON
 COURT REPORTER
 131 BROWNING COURT
 LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

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EXHIBITS

(No Exhibits Proffered)

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

1 THE COURT REPORTER: Today is August 28th, 2012.
2 This is South Carolina Workers' Compensation Case
3 Number 0307461. This is the case of Alvin L. Menie,
4 Claimant, versus State Accident Fund, Employer and
5 they are self-insured. The Appellant is the Claimant
6 represented by Attorney Preston F. McDaniel. The
7 Respondent is represented by Attorney Andrew E.
8 Haselden. Each side is allowed ten minutes for oral
9 argument and Appellant three minutes in reply. You
10 are requested to argue the grounds of exception and
11 stay within the record.

12 THE COURT: All right. Mr. McDaniel.

13 BY MR. McDANIEL: May it please the Commission.

14 In December of 2002 there were three auditors in
15 the department -- Auditing Department of The State
16 Accident Fund. Ms. Carla Johnson, Ms. Shawn Hallman
17 and Mr. Al Menie. As of January 1st, 2003 there was
18 one; Mr. Al Menie. Ms. Johnson was out due to a
19 severe back injury requiring surgery; Ms. Shawn
20 Hallman had taken a job with The State Retirement
21 System. Also on January 1, 2003 The State Accident
22 Fund gave notice that there would be a 24.7 percent
23 increase in premiums to all accounts that The State
24 Accident Fund provided its coverage for effective
25 January 1, 2003. Every -- by everybody's agreement

1 the phones began to ring off the hook, letters
2 replying, Mr. Menie was then charged with the
3 responsibility of handling all the functions for the
4 auditing department during a period of at least six to
5 seven weeks. In addition to that The State Accident
6 Fund was implementing a new computer system and The
7 State Accident Fund had not been using NCCI Codes for
8 their E-Mods, their experienced modifiers. Instead
9 they had produced their own codes which require the
10 auditors to go in every time there was a mistake and
11 they were constantly doing this and had to do this
12 three or four times. Mr. Menie, therefore, assumed
13 the responsibility of three different auditors. He
14 had a heart related condition, an Atrial Fibrillation,
15 was taken on an emergency basis to the hospital on
16 March 3rd of 2003 and has had multiple ones after
17 that. This case will really boil down to a couple of
18 things. I would ask you to look at page 112 of the
19 Claimant's APA Submissions wherein Ms. Ruby Plateau,
20 Manager of The Administrative Services as approved by
21 Ross Gamble, gave Mr. Menie a raise in April of 2003
22 stating the following: "You helped keep these
23 essential functions going throughout a period of
24 transition caused by staff turnover and other
25 extraordinary circumstances." This is the Deputy

1 Director in his review of Mr. Menie. In October
2 Deputy Director Ross Gamble stated the following; and
3 this can be found at page 189 of our APA Submissions.
4 "He voluntarily took on extra duties while we were
5 short two premium auditors making sure that all policy
6 transactions were completed on a timely basis. During
7 the same time he continued to make every effort to
8 (inaudible) all customers needing assistance." In
9 addition, the only -- the testimony was from his
10 fellow auditor, Ms. Shawn Hallman, who testified on
11 his behalf and Ms. Shawn Hallman testified that in her
12 opinion being exposed or having to handle all the
13 accounts would have been unusual and extraordinary.
14 In addition to that she testified that in reference to
15 a question by Commissioner Lyndon that, "The reason I
16 asked you those questions when it's been objected to
17 he was asking -- he used exactly the definition of
18 unusual and extraordinary conditions to employment.
19 Was that unusual for -- and I'll note your objection,
20 Mr. Haselden, for a person to have to handle by
21 himself or herself?" Answer: "600 accounts, extremely
22 unusual." My client testified that having to handle
23 the -- all 600 accounts of the agency is unusual and
24 extraordinary conditions in employment as compared to
25 his usual and extra -- his usual and ordinary

1 conditions. Ms. Hallman testified that it was unusual
2 and extraordinary. There was no other testimony in
3 reference to that period of time or in reference to
4 anybody else in the auditing department involved with
5 the auditing process, involved with the process during
6 that time from the standpoint of whether or not the
7 conditions to which my client was exposed were unusual
8 and extraordinary. We have that testimony; we have
9 the Deputy Director saying that the circumstances at
10 that time were unusual and extraordinary. Our burden
11 of proof is simply to prove by a preponderance of the
12 evidence that the conditions to which my client was
13 exposed were unusual and extraordinary compared to his
14 usual and ordinary conditions. They put up no
15 substantive evidence as to whether or not those
16 conditions were usual and ordinary or was not -- they
17 were unusual and extraordinary. I would ask the
18 Commission to find, based on the un-contradicted
19 testimony and un-contradicted evidence there, is no
20 contradictory evidence to -- Mr. Ross Gamble that my
21 client was exposed to unusual and extraordinary
22 conditions. In addition, you will find in the records
23 that whenever my client filed his claim after the
24 Atrial Fibrillation that they sent him to Dr. Selman
25 Watson and you will find in Dr. Wellman's reports

1 which are placed into the submissions at Tab 5, the --
2 in Dr. Selman Watson's opinion -- stated the opinion
3 that the "Anxiety contributed to his heart condition
4 last March which was likely from his work." Mr.
5 Highsmith who was charged with investigating advised
6 Mr. Menie at one point that The State Accident Fund
7 had decided to accept the case and were willing to pay
8 him for all of his out-of-pocket expenses, however, my
9 client was concerned with his continuing future
10 medical care and his condition and they were not able
11 to reach an agreement. I don't know what else could
12 be put up. I have tried many unusual and
13 extraordinary condition cases. I would ask you to
14 apply the standard, which is, if the heart related
15 condition is as a result of unusual and extraordinary
16 conditions in the employment, then he -- the Claimant
17 has established that he is entitled to compensation
18 for that injury. There -- again, there is no
19 substantive evidence on that issue other than the
20 testimony from my client, the testimony from his
21 fellow auditor and the statements by his Deputy
22 Director, all of whom said that the conditions to
23 which Mr. Menie was exposed due to staff turnover and
24 other consequences, the implementation of the computer
25 system, the huge rate increase. As far as rate

1 increase, The State Accident Fund has given its --
2 (inaudible). And you've got people's jobs on the
3 line. So every agency, the testimony is in there --
4 it's in -- I recited a lot in my Brief. They were
5 calling and people's -- I mean if that experience mod
6 went from one to two, that means your premium went
7 from a million if you're a large agency to two million
8 dollars. All right. If you have a 24 percent rate
9 increase it could mean astro -- it could mean -- cost
10 people their jobs depending on their experience
11 modifier. They would call -- they would be called
12 into meetings. This was extremely pressure packed
13 situation and I'd ask you to find my client is
14 entitled to benefits in accordance with Mr. Ross
15 Gamble's review.

16 COMMISSIONER ROCHE: Mr. McDaniel, what exactly
17 was your client looking for benefits wise?

18 MR. McDANIEL: Commissioner, we would --

19 COMMISSIONER ROCHE: If you know the nature of
20 Atrial Fibrillation, it's something that will come and
21 go, come and go and I mean I don't know if y'all are
22 trying to claim that The State Accident Fund would be
23 responsible for the rest of his life for any Atrial
24 Fibrillation he has.

25 MR. McDANIEL: That the -- the -- we want all the

1 medical care because the doctor testified -- my -- the
2 questionnaire that he answered in there is -- he said
3 that -- that all the Atrial Fibrillations were as a
4 result of -- once this condition is triggered the
5 multiple ones that he has were all related to the
6 original Atrial Fibrillation and we would ask for
7 medical care for the original treatment and then
8 ongoing. In addition to that what we're asking for is
9 simply an award for injury to the heart. He gave my
10 -- he gave Mr. Menie a 50 percent -- a 30 to 50
11 percent impairment of the heart and we would ask for a
12 -- a ratable injury to the heart condition. But
13 basically Mr. Menie's concern was and the reason the
14 case was not originally resolved is because of his
15 need for medical care and his concern of how to pay
16 for that. And he would ask of the -- you know, would
17 ask for his medical care pursuant to the doctor's
18 testimony -- I mean and evidence submitted. We took
19 his deposition but then that was not submitted, so the
20 only thing you have before you is the doctor's
21 testimony in his questionnaire -- questionnaire he
22 says that the Atrial Fibrillation was underlying
23 condition that was aggravated and triggered and caused
24 to become symptomatic by the accident -- I mean by the
25 stress on the job and then as a result of that once

1 triggered it -- once aggravated it's now a symptomatic
2 condition and will be a symptomatic condition for the
3 remainder of his life. He could never -- just like
4 diabetes or high blood pressure, you don't have it
5 unless something triggers it. So we would ask for
6 medical care and for compensable injury. Or, if you
7 want to, I mean you can remand it for a de novo
8 hearing. I would -- I hope that when you review the
9 evidence that you'll find that we should -- that Mr.
10 Menie is entitled to benefits. Mr. Ross Gamble, I
11 mean I -- I -- I go back to that and I think he said
12 it best. I mean he's in a position to know and he
13 stated that the conditions were unusual and
14 extraordinary. So, thank you much.

15 THE COURT: Mr. Haselden.

16 BY MR. HASELDEN: May it please the Commission.

17 I need to point out two things that I disagree
18 with Mr. McDaniel about. To start with, The State
19 Accident Fund actually gave notice to their account
20 holders in early December of 2001 that they were going
21 to be -- 2001 -- 2002 that there was going to be a
22 rate increase of 24.7 percent starting on January 1st.
23 Important to note here is that by December -- by
24 January 10th, one week after Mr. Menie had been
25 working by himself two thirds of the accounts had

1 already paid up. So if the phones started ringing off
2 the hook they didn't start ringing as soon as Mr.
3 Menie was by himself; they started ringing in December
4 when they got notice. Further, there is no record Mr.
5 Menie -- other than Mr. Menie's testimony that the
6 phones rang off the hook. There are no phone records;
7 Mr. Menie claims he kept a log of phone record -- of
8 phone calls, but he didn't produce any of that. This
9 contention that he worked six to seven weeks by
10 himself is not true. He worked from January 3rd to
11 February 10th when Carla Johnson came back from
12 medical leave, a sum total of 25 business days,
13 because he took two days off in January. The computer
14 system was not new; it came in in '99. Pay raise, Mr.
15 Gamble saying whatever; if you read my Brief or read
16 the transcript, Gerald Murphy who has been there since
17 the early -- mid '80s testified they had to give an
18 objective reason for a pay raise and they were
19 bringing in a new adjuster in March of 2003 who was
20 going to be paid more than Mr. Menie was so they
21 wanted to raise him to the same level because state
22 employee's salaries are public. Now, as to Ms.
23 Hallman, she did say it would be unusual --
24 extraordinary to have to handle 600 accounts by
25 yourself, but there's a little issue there. Number

1 one, she's never done it by herself. Number two, she
2 wasn't there at the time in question. She doesn't
3 know what Mr. Menie was doing; she doesn't know how
4 long he had to answer the phone. It was just purely
5 her speculation that it would be extremely unusual and
6 quite frankly, since they've never hired a third
7 appraiser -- auditor back, and at various periods one
8 auditor has done the work of The State Accident Fund's
9 auditing. This Highsmith advised him that he was
10 going to pay everything, the only person that
11 testified to that is the Claimant. And more
12 importantly I want to point out some things that --
13 they're basically on pages one and two of my Brief,
14 but these are very important because if you look at
15 the Case Law in South Carolina it defines what unusual
16 and extraordinary conditions are. This is the worst
17 case -- there are three cases I cited in my Brief that
18 are far -- conditions were far more extraordinary than
19 this and they were denied compensable. In this case
20 Mr. Menie was a walking time bomb. He had every
21 preexisting condition necessary to cause Atrial
22 Fibrillation prior to this event. He didn't work
23 longer hours; he didn't work overtime during this
24 period of 25 days. I explained the premium increase.
25 Mr. Menie, importantly, didn't tell any of his

1 treating physicians that this may be stress related
2 until well over a year after he had the first onset.
3 Also importantly, and it's on page two of our Brief,
4 there is a direct quote from his treating physician's
5 notes, he says, "That Atrial Fibrillation on Menie's
6 part is clearly related to Agent Orange as far as I
7 could discern." Mr. Menie goes to the VA and presents
8 and says; I need benefits for Agent Orange exposure is
9 causing problems to my heart. It's in the APA
10 Submissions. Most importantly is that he worked for
11 six years after this with no problem, and this never
12 took him out of work. We had this independently
13 reviewed by the head of the cardiology department at
14 MUSC, he says, "The guy's a walking time bomb." And
15 I've noticed -- I've quoted him in my Brief. The most
16 Mr. Menie did that was unusual and extraordinary and
17 there's no relevance that he answered the phone a few
18 more times than usual. This absolutely does not arise
19 to the level of unusual and extraordinary. I would
20 ask that you fully affirm Commission Lyndon's decision
21 in the matter.

22 Thank you.

23 THE COURT: Mr. McDaniel.

24 BY MR. McDANIEL: Counsel and I would disagree on
25 several things, but one thing is that -- and I ask you

1 to think -- to listen to his argument. We presented
2 testimonial evidence under oath that these conditions
3 were unusual and extraordinary from Ms. Hallman, from
4 Mr. Menie, and in addition Mr. Ross Gamble. He -- he
5 can color it like he wants to, but the Deputy
6 Director, himself, said that the conditions in that
7 agency, in that auditing department were unusual and
8 extraordinary during that period of time. Mr. Menie
9 -- he said he is to be applauded for his work in
10 picking up the ball and handling for all these -- they
11 -- they had gone to a staffing system. I also want
12 you to recognize that -- you'll see that Dr. Hendricks
13 at page 3 and page 4 was asked a specific question as
14 to whether or not Mr. Menie had mentioned -- talked
15 about the stress on his job and he acknowledges that
16 they had a general discussion when he was in the
17 hospital about stress on the -- stress on the job.
18 They did not have a specific, you know, conversation
19 about, you know, whether or not it was, you know, what
20 it -- has caused until -- yes, some time later on, but
21 -- and when he was asking how was stress on the job at
22 that time a year later and he was recording the stress
23 on the job at that time. However, again, contrary to
24 what counsel argued, there's a -- Dr. Hendricks said
25 that when they discussed this that they discussed in

1 -- in general terms the stress that he was under at
2 his job. Commissioners, the decision has to be based
3 on the evidence. Okay? There is no contrary evidence
4 presented by the Defendants contrary to the
5 testimonial evidence of my client, his fellow auditor
6 who came back to testify for him as to the unusual and
7 extraordinary conditions. There is no evidence in the
8 record contrary to than what this rate increase was
9 going to do. There is no contrary evidence as to the
10 -- the statements of Mr. Ross Gamble. There's simply
11 nothing there. They brought in an auditor who, after
12 the computer is in place and all that, to come in and
13 say that now that the system is automated, now that
14 they don't have to enter the E-Mod codes. Now that
15 all he has to do is go in this comp -- nice computer
16 system and plug in the information and it comes up.
17 Yes, that's a total different ballgame than it takes a
18 lot more people to implement that computer system.
19 Also, one other thing counsel forgot to tell you.
20 That auditor they hired, he was found dead in the
21 parking lot. He was taken -- he was found passed out
22 in the parking lot at The State Accident Fund shortly
23 thereafter.

24 THE COURT: That concludes the hearing.

25 (The hearing concluded at 11:30 a.m.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 15
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
 OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 2ND DAY OF
 SEPTEMBER, 2013.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

Cora Bruton

CORA ELLIS BRUTON - COURT REPORTER
 131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

P778

State of South Carolina) In the Court of General Sessions
County of Richland) Fifth Judicial Circuit
2012-CP-40-08296

Alvin L. Menie,
Plaintiff,

Vs.

State Accident Fund
Defendant.

Transcript of Record

Columbia, South Carolina

B e f o r e:

The Honorable Alison Lee, Judge

A p p e a r a n c e s:

Preston F. McDaniel, Esquire
Attorney for the Plaintiff

Andrew E. Haselden, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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Certificate Page	29

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS ENTERED --

1 THE COURT: This is Document No. 2012-CP-40-08296,
2 *Alvin Menie vs. The State Accident Fund*. The plaintiff is
3 represented by Preston McDaniel, and the defendant's
4 represented by Andrew Haselden.

5 MR. HASELDEN: That's correct, Your Honor.

6 THE COURT: We're here on an appeal from the Workers
7 Comp Commission.

8 MR. MCDANIEL: We're close to ---

9 THE COURT: I was about to say ---

10 MR. MCDANIEL: --- making this thing a little -- last
11 a little --

12 THE COURT: --- because the Supreme Court said it was
13 -- the accident had to occur before July 1.

14 MR. MCDANIEL: Well, actually they -- you know, of
15 course, now everything goes directly to the Court of
16 Appeals ---

17 THE COURT: Right.

18 MR. MCDANIEL: --- after July 1, 2007.

19 MR. HASELDEN: Seven.

20 THE COURT: Seven. But that's only for accidents that
21 occurred before July 1, 2007.

22 MR. HASELDEN: That's correct.

23 MR. MCDANIEL: Yeah. Yes, Your Honor.

24 THE COURT: Or any -- any -- or afterwards, actually.

25 MR. MCDANIEL: Afterwards.

1 THE COURT: Any accident after that goes directly to
2 them.

3 MR. MCDANIEL: Right.

4 THE COURT: Yeah. So if -- hopefully we're on the
5 outside.

6 I received, I believe, briefs from both sides.

7 MR. HASELDEN: Yes, Your Honor.

8 MR. MCDANIEL: Yes, Your Honor.

9 THE COURT: And so, Mr. McDaniel, I'll hear from you.

10 MR. MCDANIEL: Your Honor, also, in addition, I
11 believe you have the record -- the torturous time it took
12 to get it.

13 Let me -- I have pulled from the record a group of
14 documents. Don't even let this set of documents make you
15 afraid -- a volume. But basically what I've done is I
16 pulled out our pre-hearing brief, selected documents that
17 were put into the record under Tab 2. Tab 3 is a complete
18 copy of the transcript; and then 4, 5, 6, 7, 8, and 9 have
19 to do with simply the recent file -- the appeal that was
20 filed to the full Commission; the full Commission order, a
21 copy of that just so you would have it readily available in
22 a more condensed version -- version, Your Honor. I'd like
23 to hand it up to the Court.

24 THE COURT: Okay. And you've provided some semblance
25 of that to the defense?

1 MR. MCDANIEL: Well, it's -- it's -- it's from the
2 entire record and the entire record is before the Court,
3 Your Honor.

4 THE COURT: Okay.

5 MR. MCDANIEL: In addition -- and I'm going to hand
6 up, just so the Court will have it -- and I have a copy for
7 counsel as well -- a copy of case law in reference to the
8 standards of Cline's case. I flagged -- it's a -- it's a
9 copy of -- these are all heart attack/heart related cases,
10 except for one, the *Kearse* case, which was actually a
11 cerebral thrombosis. And these are three cases, separate
12 out, that also deal with heart attack cases or heart
13 related issues.

14 (Mr. McDaniel hands documents to the Court.)

15 MR. MCDANIEL: Who -- of course, have occasion, in the
16 actual *Cline vs. Nosredna* case ---

17 THE COURT REPORTER: I'm sorry? Cline vs. ...

18 MR. MCDANIEL: Nosredna.

19 THE COURT REPORTER: Would you spell that for me,
20 please?

21 MR. MCDANIEL: N-o-s-r-e-d-n-a, Redna.

22 Your Honor, first I'd like to -- it's set out in our
23 brief extensively and I've quoted extensively from the
24 testimony in the brief. But I want to go over just a --
25 the set -- the facts of what happened.

1 Mr. Menie was an auditor for the State Accident Fund,
2 and prior to 2002, the State Accident Fund had divided its
3 staff in reference to premiums and handling claims into a
4 team concept. And basically, each team was assigned
5 approximately 200 accounts.

6 Within that team, you had the adjusters on the
7 adjusting end, you have various people handling the various
8 functions; but the auditing function was handled by one
9 auditor. And the -- a large part of the auditing function
10 is to establish the premium that the State agencies and
11 various local agencies will pay to the State Accident Fund,
12 just like we do in the voluntary market where, you know,
13 you determine the -- the number of employees you have, the
14 classification of the employees that you have; and then --
15 then that's the basis for the premium.

16 So -- and the auditors were totally responsible, each
17 one of these three auditors, for their 200-odd agencies.
18 That involved agencies like the State Department of Mental
19 Health all the way down to very small, rural water
20 districts, that type of thing, that maybe had as many -- as
21 few as 10 or -- fewer than 10 employees. So we go into
22 2002 -- that being the concept of the way things were
23 handled.

24 In 2002, also, going into January of 2003 -- which is
25 the critical point in this case -- at that point in time,

1 there were three auditors; but also, the State Accident
2 Fund was implementing a new computer system to handle the
3 premium auditing. And what that involved is, is the State
4 Accident Fund, unlike practically the entire nation, had
5 its own classification system. Jobs were classified into -
6 - for -- for example, Madam Court Reporter's job is in --
7 part of a job classification in which maybe all court
8 reporters, stenographers, or -- or any type of person that
9 would be doing continual transcription, they all might be
10 classified in a job classification. Then a rate is set for
11 that job classification, meaning, her job would be
12 classified as one dollar of premium for every hundred
13 dollars of salary. So if her salary was \$50,000 --
14 \$30,000, I think, is the example I usually bring -- her --
15 the premium for her job the -- the employer would have to
16 pay would be \$300.

17 So these classification codes -- then every job in the
18 State of South Carolina, within the State system or the
19 County local system, is classified into these job
20 classifications.

21 So now, one reason this is very important about the
22 job classifications that cause a tremendous amount of
23 problem with this case -- or for the entire State Accident
24 Fund -- is remember I said the State Accident Fund uses its
25 own classification system. Nationally is used a

1 classification system put out by NCCI, which is the
2 National Council of Compensation Insurers. Now, that is a
3 national organization that is -- has established a rate
4 classification system -- a -- excuse me -- a job
5 classification system through the entire -- that's used by
6 basically the entire nation.

7 At this time, the State Accident Fund was using it's
8 own job classification system. So what that meant was --
9 is when the State Accident Fund bought this new computer
10 system and software, they had to merge their classification
11 system into this. And -- and there's testimony in the
12 record that this required the auditors to go back and forth
13 with the people in IT, in the computer part, back and forth
14 to get the classifications to where they would fit all the
15 jobs that -- to which that job classification applied. It
16 created a tremendous amount of work in making this fit into
17 the State Accident system.

18 Now, so we got the computer system being implemented
19 in the fall of 2002. We've got the -- the three auditors
20 assigned the 200 premium audits each. And the next thing
21 is on January 1, Mr. Menie put out the notice in -- in the
22 early part of December, that for the first time in -- since
23 1996, the State Accident Fund was going to create a premium
24 increase.

25 And you can find that, Your Honor. I have flagged

1 those -- some of those documents, and you find those
2 documents flagged at -- under that -- in that black
3 notebook, you'll find that in reference to -- oh, excuse
4 me. I did not hand this up. I printed an additional copy
5 of the brief also, Your Honor.

6 (Mr. McDaniel hands a document to the Court.)

7 This is my brief that you already have in the file.
8 This is just an additional copy for the Court.

9 You'll see flagged at No. -- around No. -- excuse me -
10 - No. 3, you'll see a green flag under -- I believe it's
11 Tab No. 2 in the notebook, is a reference to a statement.
12 But right behind that you're going to see two documents
13 from the State Accident Fund, and one in particular that
14 refers to the premium audit increase. That should be at
15 page -- if you'll look at the bond page, there is a number
16 on that page, and it should reference page 113. You'll see
17 that effective January 1, 2003, rate increases, an average
18 of 24.7 percent.

19 Now, there's one other thing I need to tell the Court
20 that goes into this and I listened to a lot of discussion
21 of this over at the legislature when this became such an
22 issue several years ago. And Senator -- then Senator
23 McConnell was very -- this was very important to him
24 because one of the ways -- one of the other factors that
25 goes in is what is called "experience modification." And

1 what that means is is that your premium can be increased
2 multiple times, meaning you can have -- if your experience
3 modification increases, then you can literally have a
4 million dollar premium. The next year, if your experience
5 mod goes up, increase to two million.

6 So if you've got a 24 percent general overall rate
7 increase -- of course, that's 24 percent -- that means that
8 your budget, if your Workers Compensation premium is a
9 million dollars, it's gonna go to a million two hundred and
10 forty-seven thousand dollars automatically, a 24 percent
11 increase.

12 You can only imagine what some of the agencies's
13 budget is; and there's testimony in the record that
14 immediately, whenever there was a change in the experience
15 modifier or there was a change in the rate increase, the
16 phones started ringing off the hook because literally
17 people could lose their jobs because of, you know -- you
18 know, for example, the lady that testified for us testified
19 that -- one of the other auditors testified that, you know,
20 this one -- one -- because of the experience modifier and
21 the rate increase at one point in time, this small water
22 district, it literally was going to be higher than their
23 entire budget. It was just -- it could -- it could be
24 devastating.

25 So back in January 1, in -- in -- in the middle of

1 December, every state agency, every local and county and
2 public agency that's covered by the State Accident Fund got
3 notice that they were going to have a 24.7 percent rate
4 increase. You've got -- the auditors have to handle all of
5 these computer changes with IT, you've got the -- in
6 addition to that, you've got this 24.7 percent rate
7 increase going into effect, and you have -- so there we go.
8 There's what we have happening.

9 Effective January 1, 2003, two of the three auditors
10 were out of the State Accident Fund. One went to another
11 agency, and the other was out on sick leave due to a severe
12 back injury, I believe, if I remember correctly.

13 The -- as a result, Mr. Menie was left with handling
14 the auditing function for over six -- around --
15 approximately 600 accounts. 600, varied from small water
16 districts to every State agency in the State of South
17 Carolina.

18 On January 1, he testified that there was absolutely -
19 - his -- his -- he -- it took him two and a half days just
20 to work through all the telephone calls that he was
21 getting. As soon as he would work through them, it would
22 fill back up.

23 In addition to that, they had their auditing function,
24 which is where the auditors go out and would have to -- in
25 other words, confirm the rate -- premium -- the -- the

1 employees are properly classified and the rate -- the
2 premium is correct.

3 So in other words, okay, Madam Court Reporter is
4 appropriately categorized in the right category and all
5 that; and with a State agency, you can only imagine what
6 the numerous types of job titles and all that, qualifying
7 those. And of course, you have a HR person that's just
8 been hit with a 24.7 percent rate increase that can be
9 devastating on their budget. And so you have them calling
10 and both -- both Mr. Menie and the lady who testified for
11 us, both testifying that Ms. -- Ms. Shawn Hallman, that
12 testified for us, testified that they would be called out
13 and would be -- go in and everybody, practically, in the
14 agency would be in there, in an executive capacity, and
15 they'd just be -- it would sometimes take two or three days
16 of meetings to go through it.

17 So they were -- normally did and were assigned to do
18 about 33 audits out of their capacity of State audits, and
19 then there was a -- they did State audits during one part
20 of the year, and they did local and state agencies in
21 another part of the year. But basically, during a six
22 month period, they would do approximately -- required to do
23 and part of their performance requirements, was to do 33
24 audits.

25 Now, Mr. Menie goes from 200 accounts to 600 accounts.

1 He goes from 33 audits to 99 audits. He has -- he is in
2 charge of the entire -- now has to handle the entire
3 auditing function, working with IT, working with all that
4 for the agency for that period of time, between January and
5 when he had his atrial fibrillation on March 3.

6 Now, the first issue, Your Honor, is we have the
7 burden of proof of proving, by a preponderance of the
8 evidence, that Mr. Menie's heart related problems was
9 caused by unexpected strain or overexertion, or unusual or
10 extraordinary conditions in the employment.

11 Now, what's the evidence on that? Ms. Hallman -- who
12 had just left January 1/December 31 -- that in her opinion,
13 as one of the auditors for the State Accident Fund, that it
14 was unusual -- that the condition to which Mr. Menie was
15 exposed, having to handle 600 accounts, handle all those
16 audits, handle all those IT responsibilities, handle the
17 entire auditing function, was not only unusual and
18 extraordinary to the normal and usual conditions of
19 employment, but was extraordinarily unusual to the usual
20 and ordinary conditions of the employment.

21 Mr. Menie -- the only other auditor to testify and the
22 only other person involved in any way with the functions of
23 the agency, the day-to-day function of the agency, to
24 testify was Mr. Menie. And Mr. Menie testified that in his
25 opinion, as compared to his usual and ordinary conditions

1 of employment, that those conditions to which he was
2 exposed were unusual and extraordinary. Now, that's the
3 testimony in reference to that time period.

4 In addition, we have documentary evidence which you
5 will find -- if you'll look at the page just about where I
6 was citing the Court to, you'll find, right in front of
7 that, another document -- and actually two other documents.
8 But those two documents are this: Page -- found at page
9 112, this is from both Ruby Flateau and --

10 And Madam Court Reporter, Flateau is spelled F-l-a-t-
11 e-a-u. And Mr. Ross, double "s," Gamble. And Ross Gamble
12 is the Deputy Director.

13 And if Your Honor would look at page 112, and if
14 you'll look at the second sentence, here's what Mr. Ross
15 Gamble said, on April 15, about a month and a half after
16 Mr. Menie had had his atrial fibrillation and had been
17 hospitalized. He said (as read): "You -- you keep --
18 helped to keep these essential functions going throughout a
19 period of transition caused by staff turnover and other
20 extraordinary circumstances." That is the evidence, Your
21 Honor.

22 And then, you'll also find, in reference to another
23 document, that Mr. Gamble, when he evaluated Mr. Menie, he
24 also related in that document -- which I have attached --
25 which is actually page 189, but I -- I put it in as one of

1 the documents we pulled out.

2 A lot of the other documents had to do with time
3 schedule, leave, that type of thing; and evaluations. But
4 this -- this comes from his evaluation that was conducted
5 by Mr. Ross Gamble, and it's at page 189.

6 And at the very bottom, under "Summary and Improvement
7 Plan," where -- at -- it says that (as read): "Al is to be
8 commended for the personal initiative he took during late
9 2002 and early 2003, a time when he voluntarily took on
10 extra duties, while we were short two premium auditors, to
11 make sure that all policy transactions were completed on a
12 timely basis."

13 Now, the -- Dr. Hendrix, his board-certified
14 cardiologist -- and Your Honor, in reference to my brief,
15 page 22, I've listed five particular things that I'm going
16 over now. But you'll see I have tabbed, within the black
17 notebook, under number -- under No. 4, the opinions of Dr.
18 Charles Hendrix. And Dr. Charles Hendrix said he -- in --
19 he -- Dr. Hendrix was given a very detailed questionnaire
20 and asked for his answers and opinions in many areas.

21 But if you look at Question No. 5, found at page 4 of
22 -- of the APA submissions that's in the records of Dr.
23 Hendrix, you'll find that he's given a description of the
24 work activities. And then in his opinion, he states that -
25 - that these work activities were -- were the cause of his

1 atrial fibrillation and high blood pressure. They both
2 occurred at the same time. You'll find in the record that
3 prior to the atrial fibrillation, Mr. Menie had no history
4 of heart related problems at that time and no problem with
5 high blood pressure at that time.

6 There's -- but the bottom line is the doctor testified
7 that, in his opinion, the job stress caused his heart
8 related problem.

9 Now, in addition, this case was investigated by Mr.
10 Willie Highsmith who ---

11 THE COURT REPORTER: I'm sorry. Willie ...

12 MR. MCDANIEL: Highsmith, and it's just like -- Madam
13 Court Reporter, spelled just like it sounds: High and then
14 Smith together, one word.

15 But Mr. Highsmith conducted an investigation, but when
16 -- during the investigation, they sent Mr. Menie to a
17 psychologist. And I quoted from his and he said that, in
18 his opinion, his problems were related to his job related
19 stress. That's Dr. Selman Watson, and that can be found at
20 -- under -- let's see. That would be found at page 106 at
21 -- and I put that as part of the APAs.

22 And if you look at page 109, "Conclusions and
23 Recommendations" (as read): "Mr. Al -- Alvin Menie is a
24 60-year-old white male who appears to have suffered a
25 cardiac arrhythmia from an accumulation of stress on the

1 job."

2 Now, he also issued a later -- letter later on; and
3 Mr. Menie advised that he was never shown that letter by
4 Mr. -- Mr. Highsmith, nor was he told that it was Dr.
5 Selman Watson's opinion that his job related stress was the
6 cause of that in reference -- from a psychological
7 standpoint. I'm not offering that as medical opinion, Your
8 Honor.

9 That's it as far as time period, Your Honor.

10 What have defendants put in in -- in -- contrary to
11 that? They have a gentleman who was in Personnel come in
12 and testify that Mr. Menie did not work any overtime hours
13 during this time. We don't disagree with that, although Mr.
14 Menie testified about how his day changed from the moment
15 you walked in, the amount of stress, the inability to take
16 any kind of a break, you know, just eating through lunch,
17 doing everything he could to try to get everything on the
18 job.

19 I believe -- I didn't particularly go over this point,
20 but I believe it's also that they were not allowed to take
21 -- and it was not -- they hadn't -- could not take, on a
22 regular time base, overtime hours.

23 But no -- in any event, he testified as to the hours
24 and as to -- that this lady came back about a week or two
25 earlier than originally thought, but it was at the -- round

1 the end of February that she came back to work, the second
2 auditor. But Mr. Menie was in there, doing this job, for
3 all this time.

4 Now, the other thing is he testified then later that
5 after the computer system was in place and years later, in
6 -- after 2009, there had been two situations where the
7 auditors had handled the auditing function for a couple of
8 months alone. I guess we really didn't want the Commission
9 to know, which we knew, is that, yeah, after Mr. Menie left
10 in 2009, there was a period of time when the computer
11 system was in place and -- and one -- this one auditor,
12 because of transition at that time, was called upon to do
13 the duties; and he did them for about three months. And
14 then he was found comatose, outside of the building and
15 died three weeks later in the hospital.

16 Now, the other gentleman was a fellow that was there,
17 and testified, "Oh. All the experience modifiers, oh, all
18 of the codes, all the classification system, oh, they're
19 computerized. I don't have anything to do with that. I
20 mean, I just use the computer to do that." All right.

21 That is -- now, we're talking about testimony in
22 reference to after 2009 and currently, at the time of the
23 hearing, 2010. I say that ...

24 That is the sum testimony of the -- that they put into
25 evidence. That is the sum total of what they considered.

1 They took the deposition of Dr. Hendrix and -- which was
2 not put into the record. So what you see from Dr.
3 Hendrix's records is what's there.

4 Sometime in 2010, or some -- I believe it was 2010, I
5 put that particular note in there, but Dr. -- Mr. Menie,
6 who served in Vietnam and was exposed to Agent Orange,
7 brought to the doctor's attention. And doctor -- there was
8 new evidence at that time, and he and Dr. Hendrix discussed
9 the fact that Agent Orange has been linked to atrial
10 fibrillation, be -- as being a cause of atrial
11 fibrillation.

12 Now, however, Dr. Hendrix knew all about this and
13 you're going to find nothing in the record that says that
14 "in my opinion, I think this came from Agent Orange vs.
15 coming from ..." -- Dr. Hendrix was very clear, in his
16 answers to the questionnaires and everything in the record,
17 that in his opinion, the job stress to which Mr. Menie was
18 exposed, was the cause of this.

19 Your Honor, now I'm going to continue to argue on my
20 first point and that is this: I believe when this
21 Commission -- when this Court reviews that evidence, you're
22 going to find absolutely no reliable, probative, or
23 substantial evidence to sustain the decision of the
24 Commission to deny my client benefits. There is a blanket
25 thing of, "Oh, well. There's computer problems in all

1 industry and there's staff turnover in all industry. And
2 so, that's something that can happen in all industry."

3 Well, that's true. But it's -- the Commissioner did
4 not look at the combination of those factors all at the --
5 coming into one period of time period. When that has been
6 looked at in the past -- and there's numerous cases on this
7 -- but I was blessed to be one of the attorneys on the
8 *Stokes vs. First National Bank's* case. And Mr. Stokes --
9 the Supreme Court and everybody found that that constituted
10 unusual stress and strain.

11 There's just nothing there, Your Honor. There's no
12 substantial evidence in the record in reference to this
13 time period when Mr. Menie was in that building alone doing
14 all the auditing -- meaning "alone" as far as doing the
15 auditing functions -- to -- to sustain the decision of the
16 Commission.

17 Their decision cannot be based on surmise,
18 speculation, or innuendo. It has to be based on evidence
19 of substance and there's none. They didn't put up one
20 person to contradict either Ms. Holman -- Ms. Hallman or
21 Mr. Menie's testimony, nor that of the Deputy Commissioner.

22 I didn't use those terms, Mr. Menie didn't use those
23 terms, "extraordinary circumstances." That's what their
24 own Deputy Director and the other person in HR used, and he
25 approved, as being the reason they were giving him the

1 substantial raise they gave him.

2 So now, I want to address, in reference to that
3 argument, a couple of cases. And it's one of the seven
4 cases that I've handed up. And that's the cases of *Brown*
5 *vs. LaFrance*, *South Carolina Second Injury Fund vs. Liberty*
6 *Mutual*, and *Cline vs. Nosredna*.

7 Why do those -- why am I citing those cases to you?
8 Because they have, throughout this, have tried to make a
9 big deal that Mr. Menie, partly because of personnel
10 restriction and all that -- but did not work more than his
11 normal work hours.

12 All three of those cases involve situations where Mr.
13 Brown had worked on a new type of loom for a period of
14 approximately four months. His workload, as a result of
15 that, had greatly increased while he was doing his normal
16 work hours. South Carolina -- the *Second Injury Fund vs.*
17 *Liberty Mutual*, he was working the same number of hours,
18 but on the day of his heart related condition, while it was
19 part of his normal and usual duties to fight fires to
20 protect the wheat and that -- and the products of the farm,
21 they found it to be unusual and extraordinary conditions on
22 that day.

23 In *Cline vs. Noranda -- Nosredna*, at the time that the
24 heart attack occurred in August -- excuse me -- the atrial
25 fibrillation occurred, first one he had, he had a

1 tremendous amount more duties, but he was working the same
2 work schedule.

3 So the Court has never made the preface and so just
4 ours alone is not a -- Your Honor, I would submit that
5 we've established unusual and extraordinary conditions.
6 We've met our burden of proof by a preponderance of the
7 evidence. And then, if the Commissions going to try to
8 deny that, they have to point to substantial evidence and
9 they have to cite you substantial evidence. And they
10 cannot, did not, and cannot cite you any substantial
11 evidence in that record, for that period of time, that that
12 man, my client, was not exposed to unusual and
13 extraordinary conditions in employment.

14 Now, the only other issue I'm going to address -- I've
15 touched on argument No. 3, which is that the Commission
16 made this blanket finding not based on the facts or times
17 of the facts. The Commission is charged, and has been
18 charged, way before the advent of the Administrative
19 Procedures Act, with: Making detailed findings of fact or
20 conclusion of law are sufficient in detail and definite
21 enough to make sure that the fact -- that the decision's
22 based upon the facts, and that the law had been properly
23 applied.

24 You're not gonna find this here. You're not gonna
25 find that -- the detailed findings of fact in reference to

1 what we're alleging as to those conditions, and -- and to
2 his keying in on that period of time.

3 Now, the other argument is that they had a gentleman
4 testify who is currently with the -- the State Accident
5 Fund as an auditor, and I objected to his testimony coming
6 in at all. And my objection was very specific, and that
7 is, Your Honor, it is irrelevant and immaterial.

8 I have cited in the brief -- which is black-letter law
9 -- in reference to materiality, that no evidence should be
10 considered, and it should be excluded, where it is too
11 remote in time.

12 In support of that, in the case of *Henderson vs. St.*
13 *Francis Community Hospital*, our Supreme Court held -- our -
14 - excuse me, our Court of Appeals held that where there was
15 conditions of the parking lot, more than a year after the
16 slip and fall, that was immaterial and went -- and was of
17 no weight; and should not have been considered in reference
18 to the conditions of the parking lot at the time of the
19 accident.

20 In the case of *Rutledge vs. Saint Fire -- Paul*
21 *Fireman's Marine*, there had been a valuation of property
22 that had been conducted three years earlier. And the
23 Supreme Court -- the Court of Appeals again ruled that the
24 -- that we should not take that into consideration. That
25 was too remote in time to be considered.

1 What we're talking about here is this gentleman's
2 talking about him being an auditor in 2010, and the
3 Commission used that in reference to what occurred in 2003.
4 It should have been -- it should have been stricken from
5 the record. Should have been -- my objection should have
6 been sustained, and it should not have been allowed. He
7 should not have been allowed to testify at all.

8 I'll make the same objection to the other gentleman,
9 and -- and I -- I -- I -- I'll -- I think of -- of his --
10 his testimony as almost of no weight.

11 But however, I -- it should not have been allowed
12 either because he had nothing to do with -- he was in --
13 simply in Personnel. He had nothing to do, no knowledge of
14 the auditing functions, anything of that nature, what the
15 workload requirements of the job were, nothing. He just
16 simply was there to talk about hours; and that later on, in
17 2009 -- after 2009, they had a couple of periods of time
18 where an auditor was able to handle it.

19 And here again, his testimony in that regard was what
20 I was objecting to. He's talking about 2009. He didn't --
21 it's totally remotely irrelevant.

22 Your Honor, that would be our argument. I hope that
23 you will agree with me, and I'll be quiet.

24 THE COURT: Yes, sir, Mr. Haselden.

25 MR. HASELDEN: May it please the Court. Your Honor,

1 Your Honor's well aware of the standard of care in
2 reviewing cases from the -- the Workers Comp Commission.
3 And I know this is sort of the winding down period for the
4 -- the Circuit Courts on these cases.

5 Four fact finders have looked at this case so far and
6 have found that there was not substantial evidence of --
7 unusual and extraordinary, or that it caused Mr. Menie's
8 atrial fibrillation. They all agree on that, no doubt,
9 both single commissioner and full Commission; unanimous
10 ruling of the full Commission.

11 I basically hardly ever get up in a normal argument
12 like this where everything's been briefed and it's been
13 heard and you've got the full record, except to address a
14 couple of things that -- just need to point out very
15 briefly because you've already heard lengthy argument.

16 The first is that if -- even if the work was -- which
17 we dispute and it's in the record. We dispute this is
18 unusual and extraordinary -- it still has to cause the
19 problem.

20 And I've cited the language, on page 3 of my memo,
21 where Mr. Menie's treating physician says, in 2010, the
22 atrial fibrillation part of Mr. Menie's problem is "clearly
23 related to Agent Orange, as far as I can discern."

24 So there goes your cause right there. You -- we -- we
25 can just throw out the other things which are clear

1 factors: He weighed 300 pounds; he had every marker for
2 atrial fibrillation at the time of the episode, including
3 this Agent Orange exposure.

4 Now, with respect to Mr. O'dare [phonetic] there's one
5 finding of fact out of about 26 as far as it concerns Mr.
6 O'dare's testimony, which, I have to point out, Mr. Murphy
7 testified to the same thing Mr. O'dare did. Mr. Murphy's
8 testimony was not objected to. You can confirm that in the
9 record I have.

10 But even if you throw Mr. O'dare's testimony out as to
11 what he did at the time, you know, years later, there's
12 still plenty of evidence -- and I could go through every --
13 line by line and counter everything Mr. -- Mr. McDaniel
14 said, but it's all on the record.

15 I know Your Honor's going to read it. I will stand on
16 my brief for the rest of it, and we just ask that you
17 employ the standard that there is substantial evidence in
18 this case and affirm the Workers Comp Commission.

19 THE COURT: Anything further, Mr. McDaniel?

20 MR. MCDANIEL: No, Your Honor. You're -- Your Honor
21 was -- quite allowed me to have plenty of time to argue in
22 the first instance, so I'm not gonna rehash that.

23 But I think when you read it, as far as reference to
24 what period of time and condition we -- I think you'll find
25 there's no substantial evidence. I welcome your reading

1 the transcript.

2 THE COURT: All right. I will. Thank you.

3 MR. MCDANIEL: Thank you, Your Honor.

4 MR. HASELDEN: Thank you, Your Honor.

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6 -- END OF TRANSCRIPT OF RECORD --

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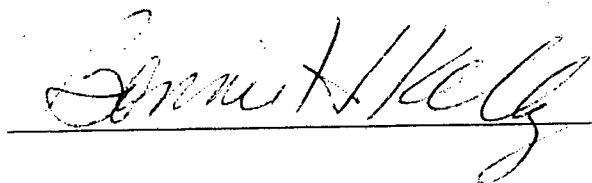
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 20th day of June, 2014.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 26, 2016

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC # 0307461

DATE/PLACE of HEARING: 1/20/2012 Columbia, SC

CLAIMANT: Alvin Menie

EMPLOYER: State Accident Fund

CARRIER: State Accident Fund

CLAIMANT'S ATTY: Preston McDaniel

DEFENDANT'S ATTY: Andrew Haselden

FINDINGS

1. Claimant alleges injury to the heart as a result of unusual and extraordinary conditions of employment on March 3, 2003.
2. Claimant was working as an auditor and claims that from January 1, 2003 to March 3, 2003 he was under stress as a result of the illness of a co-worker and labor turnover. The period was about 25 days. He stated the department reorganizational required more work.
3. Claimant did not work excessive overtime and the evidence shows he worked no more than 40 hours per week.
4. A witness for the Claimant testified about the team concept in the auditing department as compared with the department concept. She also testified that during the period of time in 2002/2003 there was a new computer system which had glitches at the outset.
5. Witness also testified that when they went to the team concept, they would still help each other so the job would not go undone.
6. Witness also testified that workloads always varied from one year to the next.
7. Witness testified it could take up to 180 days to complete an audit. Claimant stated that if computer system was installed in 199 there were still problems with in in 2002.
8. Witness for the Fund testified Claimant worked for about 25 days alone in the audit department. There was no overtime worked and a trainer had been hired to assist claimant.
9. Witness stated that there has been other times when auditors worked in a like position for as long as 8 months.
10. As of the hearing there just two auditors and the department never returned to 3.
11. Witness testified that Claimant never asked for help. If he had it was available.
12. This witness was credible.
13. A second witness for the Defendant testified had handled the job by himself and it was not as difficult as his previous job.
14. Claimant has had numerous health problems some of which are being treated by the VA due to exposure to agent orange in Vietnam.
15. After considering all of the evidence, I find Claimant failed to prove his heart condition was a result of unusual and extraordinary conditions of employment.
16. Linking heart disease to work based on what is unusual and extraordinary is impossible for a doctor to conclude, legally.

Commissioner's Notes for Decision and Order

Page 1 of 2

17. What pressure Claimant was under during the short period of time in 2003 was short in duration and not unusual based on witness testimony.
18. Labor turnover, illness, of co-workers and computer problems are common to almost all work environments and are not unusual.
19. Any pressure claimant was under was self-imposed. Claimant stated his ego would be damaged if he did not keep up. He did not work overtime.
20. Claimant voluntarily took on the position, was commended for his work and received a pay increase.
21. Claimant saw Dr. Hendrix 6 times in 2003 and 2004 for heart problems and never mentioned stress. None of Dr. Hendrix notes mention stress.
22. Compensation Rate: \$516.77.
23. Claim for Benefits Under the Act is Denied.

INSTRUCTIONS: Andy Haselden, attorney to prepare proposed Order. Proposed Order shall include Findings of Fact attached hereto. Any other Findings of Fact not inconsistent with those attached hereto may also be proposed. Proposed Order shall be submitted by March 26, 2012.. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box . Provide a copy of the proposed order to opposing counsel or *pro se* claimant **before or at the same time** one is submitted to the Commission.



The Commission now requires **the original and three copies** of the proposed order with self-addressed, stamped envelope to each party.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award

G. Bryan Lyndon, Commissioner
South Carolina Workers' Compensation Commission
March 2, 2012