

TRANSCRIPT OF PROCEEDINGS

FILED - CLERK 1
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DEC 16 PM 1:10
TX EASTERN-BEAUMONT

SYLVESTER MCCLAIN, ET AL,
PLAINTIFFS

CIVIL DOCKET NO.
9:97-CV-63

VS

BEAUMONT, TEXAS

LUFKIN INDUSTRIES, INC.,
DEFENDANT

DECEMBER 5, 2003
9:00 A.M.

TRANSCRIPT OF BENCH TRIAL
DAY 2
BEFORE THE HONORABLE HOWELL COBB
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

TIMOTHY GARRIGAN
STUCKEY, GARRIGAN & CASTETTER
P.O. BOX 631902
NACOGDOCHES, TX 75963-1902

TERESA DEMCHAK
DARCI BURRELL
JOSHUA KONECKY
MORRIS BALLER
SAPERSTEIN GOLDSTEIN DEMCHAK &
BALLER
300 LAKESIDE DRIVE, SUITE 1000
OAKLAND, CA 94612

FOR THE DEFENDANT:

DOUGLAS HAMEL
CHRISTOPHER BACON
MICHELLE MAHONY
VINSON & ELKINS
1001 FANNIN STREET, SUITE 2300
HOUSTON, TX 77002-6760

387

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1 COURT REPORTER: WENDELL R. PARKS CSR/CP/CM
2 FEDERAL COURT REPORTER
3 ROOM 103 FEDERAL COURTHOUSE
4 300 WILLOW
5 BEAUMONT, TX 77701

6 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY;
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TRANSCRIPT PRODUCED BY COMPUTER

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WITNESSES FOR THE
PLAINTIFF:

TAMI POULAN

4 40 64 73 77 80

LISA DUNGAN

81 134 183

KELVIN POPE

185 202 214 217

1 DECEMBER 5, 2003

9:03 A.M.

09:03 AM 2 THE COURT: WHAT DO YOU HAVE NEXT, SIR?

09:03 AM 3 MR. GARRIGAN: TAMI POULAN. I THINK SHE'S

09:03 AM 4 OUTSIDE.

09:04 AM 5 THE MARSHAL: I'LL GET HER, SIR.

6

7 TAMI POULAN, PLAINTIFF WITNESS, SWORN

8

9 DIRECT EXAMINATION

10 BY MR. GARRIGAN:

09:06 AM 11 Q. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

09:06 AM 12 A. TAMI POULAN.

09:06 AM 13 Q. MS. POULAN, WHERE DO YOU WORK?

09:06 AM 14 A. I WORK AT THE -- IT'S NOW CALLED ANGELINA COUNTY
09:06 AM 15 WORKFORCE SOLUTIONS FOR THE TEXAS WORKFORCE COMMISSION.

09:06 AM 16 Q. AND I GUESS WITH ONE HIATUS YOU'VE WORKED FOR THE
09:06 AM 17 TEXAS WORKFORCE COMMISSION SINCE '93?

09:06 AM 18 A. YES. THERE WAS A BREAK THERE BETWEEN '96 AND '97,
09:06 AM 19 BUT OFF AND ON SINCE THEN.

09:06 AM 20 Q. ALL RIGHT. THE FIRST THING I WOULD LIKE TO ASK YOU
09:06 AM 21 ABOUT IS SOME OF THE EXHIBITS IN FRONT OF YOU. DO YOU SEE
09:06 AM 22 THOSE TWO BINDERS?

09:06 AM 23 A. UH-HUH.

09:06 AM 24 Q. WOULD YOU TRY TO LOCATE PLAINTIFF'S EXHIBIT 10?

09:07 AM 25 A. OKAY.

09:07 AM 1 Q. ALL RIGHT. WOULD YOU DESCRIBE THAT EXHIBIT, PLEASE?

09:07 AM 2 A. IT IS FROM LUFKIN INDUSTRIES, THEIR ENTRY-LEVEL
09:07 AM 3 EMPLOYMENT QUALIFICATIONS FOR GENERAL FOUNDRYMEN, HELPERS
09:07 AM 4 AND LABORERS.

09:07 AM 5 Q. ALL RIGHT. AND IS THAT ONE OF THE DOCUMENTS YOU USE
09:07 AM 6 IN YOUR WORK?

09:07 AM 7 A. YES.

09:07 AM 8 Q. IN PARTICULAR, DOES THAT HELP YOU TO GUIDE YOUR
09:07 AM 9 SELECTION OF REFERRALS FOR LUFKIN INDUSTRIES?

09:07 AM 10 A. A GUIDE IN WRITING THE JOB ORDERS, YES.

09:07 AM 11 Q. ALL RIGHT.

09:07 AM 12 MR. GARRIGAN: WE WOULD ASK THAT PLAINTIFF'S
09:08 AM 13 EXHIBIT 10 BE ADMITTED.

09:08 AM 14 THE COURT: ANY OBJECTION?

09:08 AM 15 MR. HAMEL: NO OBJECTION, YOUR HONOR.

09:08 AM 16 THE COURT: IT'S ADMITTED AS MARKED.

09:08 AM 17 BY MR. GARRIGAN:

09:08 AM 18 Q. WOULD YOU LOOK NOW AT PLAINTIFF'S EXHIBIT 11?

09:08 AM 19 A. OKAY.

09:08 AM 20 Q. OKAY. NOW, THAT'S CONSIDERABLY BIGGER, SOMEWHERE
09:08 AM 21 BETWEEN A HUNDRED AND TWO HUNDRED PAGES. IS THAT WHAT
09:08 AM 22 YOU'RE LOOKING AT?

09:08 AM 23 A. YES.

09:08 AM 24 Q. OKAY. AND WOULD YOU DESCRIBE THOSE RECORDS FOR THE
09:08 AM 25 RECORD?

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09:08 AM 1 A. THIS ARE PURGED FILES THAT CAME OFF THE HISTORY FILE
09:08 AM 2 AT THE TEXAS WORKFORCE COMMISSION IN AUSTIN.

09:08 AM 3 Q. OKAY. AND I BELIEVE WE'VE REFERRED TO THESE IN YOUR
09:08 AM 4 DEPOSITION AND THROUGHOUT THIS CASE AS TWC JOB ORDERS?

09:08 AM 5 A. YES. PURGED ORDERS, YES.

09:08 AM 6 Q. IS THAT A FAIR WAY FOR US TO REFER TO THEM?

09:08 AM 7 A. YES.

09:08 AM 8 Q. ALL RIGHT. NOW, DO THESE DOCUMENTS IN PLAINTIFF'S
09:09 AM 9 EXHIBIT 11, DO THOSE REFLECT THE ACTIVITIES OF YOUR
09:09 AM 10 AGENCY?

09:09 AM 11 A. YES.

09:09 AM 12 Q. ALL RIGHT.

09:09 AM 13 MR. GARRIGAN: I WOULD ASK THAT PLAINTIFF'S
09:09 AM 14 EXHIBIT 11 BE ADMITTED.

09:09 AM 15 THE COURT: ANY OBJECTION?

09:09 AM 16 MR. HAMEL: YOUR HONOR, MAY I TAKE THIS WITNESS
09:09 AM 17 ON VOIR DIRE?

09:09 AM 18 THE COURT: NO. YOU CAN TAKE HER ON CROSS. BUT
09:09 AM 19 IF THERE'S AN OBJECTION, STATE IT.

09:09 AM 20 MR. HAMEL: YOUR HONOR, WE HAVE AN OBJECTION.
09:09 AM 21 NO FOUNDATION. THIS WITNESS IS NOT FAMILIAR WITH THESE
09:09 AM 22 DOCUMENTS. SHE USES A COMPUTER SCREEN, WHICH IS VERY
09:09 AM 23 DIFFERENT FROM THESE DOCUMENTS.

09:09 AM 24 THE COURT: TELL ME WHAT THESE DOCUMENTS ARE AND
09:09 AM 25 HOW THEY'RE KEPT AND HOW YOU HAPPENED TO BE ABLE TO

09:09 AM 1 IDENTIFY THEM, PLEASE, MA'AM.

09:09 AM 2 THE WITNESS: OKAY. WELL, ALL OF THE
09:09 AM 3 INFORMATION IT LOOKS LIKE BASICALLY IS INFORMATION THAT
09:09 AM 4 I --

09:09 AM 5 AND I DO WORK OFF A COMPUTER SCREEN, LIKE HE
09:09 AM 6 SAID. I MEAN, I DO NOT SEE IT IN THIS FORM, BUT THIS IS
09:09 AM 7 WHAT IT TURNS OUT TO BE WHEN IT GETS TO AUSTIN INTO THE
09:09 AM 8 PURGED FILE.

09:09 AM 9 MR. HAMEL: WE WITHDRAW OUR OBJECTION, YOUR
09:09 AM 10 HONOR.

09:09 AM 11 THE COURT: THE OBJECTION IS WITHDRAWN. EXHIBIT
09:10 AM 12 11 IS ADMITTED.

09:10 AM 13 BY MR. GARRIGAN:

09:10 AM 14 Q. ALL RIGHT. WOULD YOU TURN NOW TO PLAINTIFF'S
09:10 AM 15 EXHIBIT 12?

09:10 AM 16 WOULD YOU DESCRIBE THAT RECORD FOR THE COURT?

09:10 AM 17 A. THIS RECORD I THINK CAME FROM AN EMPLOYMENT
09:10 AM 18 SERVICE'S MANUAL ON PROBABLY TRAINING THAT'S GIVEN MAYBE
09:10 AM 19 TO SOME EMPLOYEES WHEN THEY FIRST START AT THE WORKFORCE
09:10 AM 20 CENTER.

09:10 AM 21 Q. ALL RIGHT. AND DOES PLAINTIFF'S EXHIBIT 12 DESCRIBE
09:10 AM 22 THE DIFFERENT CODES THAT APPEAR ON THE JOB ORDERS IN
09:10 AM 23 PLAINTIFF'S EXHIBIT 11?

09:10 AM 24 A. YES.

09:10 AM 25 Q. ALL RIGHT.

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09:10 AM 1 MR. GARRIGAN: I WOULD ASK THAT PLAINTIFF'S
09:11 AM 2 EXHIBIT 12 BE ADMITTED.

09:11 AM 3 THE COURT: ANY OBJECTION?

09:11 AM 4 MR. HAMEL: NO, YOUR HONOR.

09:11 AM 5 THE COURT: IT'S ADMITTED AS MARKED.

09:11 AM 6 BY MR. GARRIGAN:

09:11 AM 7 Q. WOULD YOU TURN NOW TO PLAINTIFF'S EXHIBIT 13?

09:11 AM 8 DO YOU HAVE THAT IN FRONT OF YOU?

09:11 AM 9 A. YES.

09:11 AM 10 Q. A FEW PAGES BEHIND THAT IS EXHIBIT 15. DO YOU SEE
09:11 AM 11 THAT ALSO?

09:11 AM 12 A. YES.

09:11 AM 13 Q. OKAY. WOULD YOU DESCRIBE THOSE EXHIBITS FOR THE
09:11 AM 14 COURT?

09:11 AM 15 A. THE FIRST ONE, 13, IS THE WORKFORCE CENTER
09:12 AM 16 APPLICATION I BELIEVE THAT WE USED WHEN OUR OFFICE WAS
09:12 AM 17 IDENTIFIED AS THE TEXAS WORKFORCE COMMISSION, AND THEN NOW
09:12 AM 18 THAT WE HAVE BEEN PRIVATIZED, WE'RE USING THIS CUSTOMER
09:12 AM 19 INFORMATION DEEP EAST TEXAS WORKFORCE APPLICATION.

09:12 AM 20 Q. OKAY. AND THAT'S THE ONE MARKED AS EXHIBIT 15?

09:12 AM 21 A. YES. IT REPLACED 13.

09:12 AM 22 Q. ALL RIGHT. AND TOGETHER EXHIBITS 13 AND 15 ARE THE
09:12 AM 23 PAPER RECORDS YOU USE TO GATHER APPLICANT DATA FROM THE
09:12 AM 24 PEOPLE WHO COME IN TO THE WORKFORCE COMMISSION LOOKING FOR
09:12 AM 25 WORK?

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09:12 AM 1 A. YES.

09:12 AM 2 Q. AND YOU GATHER THAT DATA IN ORDER TO ENTER IT ONTO
09:12 AM 3 THE -- INTO YOUR COMPUTER SYSTEM?

09:12 AM 4 A. YES.

09:12 AM 5 MR. GARRIGAN: I WOULD ASK THAT EXHIBITS 13 AND
09:12 AM 6 15 BE ADMITTED.

09:12 AM 7 THE COURT: ANY OBJECTION?

09:12 AM 8 MR. HAMEL: NO. NO, YOUR HONOR.

09:12 AM 9 THE COURT: THEY'RE ADMITTED AS MARKED.

09:12 AM 10 MR. GARRIGAN: THANK YOU.

09:12 AM 11 BY MR. GARRIGAN:

09:12 AM 12 Q. OKAY. NOW THAT WE HAVE THAT OUT OF THE WAY, MS.
09:12 AM 13 POULAN, WHERE DO YOU LIVE?

09:13 AM 14 A. IN ETOILE, TEXAS.

09:13 AM 15 THE COURT: WHERE?

09:13 AM 16 THE WITNESS: ETOILE.

09:13 AM 17 THE COURT: OKAY. THANK YOU.

09:13 AM 18 BY MR. GARRIGAN:

09:13 AM 19 Q. WHERE IS THAT IN RELATION TO LUFKIN?

09:13 AM 20 A. IT'S ABOUT TWENTY MILES FROM LUFKIN, ON THE LAKE.

09:13 AM 21 Q. ALL RIGHT. WHICH LAKE?

09:13 AM 22 A. SAM RAYBURN.

09:13 AM 23 Q. AND YOU LIVE WITH YOUR HUSBAND AND KIDS?

09:13 AM 24 A. YES.

09:13 AM 25 Q. AND WHAT IS YOUR CURRENT POSITION?

09:13 AM 1 A. WORKFORCE DEVELOPMENT SPECIALIST II.

09:13 AM 2 Q. AND HOW LONG HAVE YOU BEEN IN THAT POSITION, JUST
09:13 AM 3 YOUR BEST ESTIMATE?

09:13 AM 4 A. I THINK MAYBE SINCE 2001, MAYBE.

09:13 AM 5 Q. ALL RIGHT. WHAT WAS YOUR POSITION BEFORE THEN?

09:13 AM 6 A. WORKFORCE DEVELOPMENT SPECIALIST I.

09:13 AM 7 Q. AND HOW LONG WERE YOU IN THAT POSITION?

09:13 AM 8 A. PROBABLY ABOUT A YEAR.

09:14 AM 9 Q. WHAT WAS YOUR POSITION BEFORE WORKFORCE DEVELOPMENT
09:14 AM 10 SPECIALIST I?

09:14 AM 11 A. I BELIEVE IT WAS AN ADMIN TECH.

09:14 AM 12 THE COURT: A WHAT?

09:14 AM 13 THE WITNESS: ADMIN TECH, ADMINISTRATIVE --

09:14 AM 14 THE COURT: TECHNICIAN?

09:14 AM 15 THE WITNESS: TECHNICIAN, UH-HUH.

09:14 AM 16 THE COURT: THANK YOU.

09:14 AM 17 THE WITNESS: UH-HUH.

09:14 AM 18 BY MR. GARRIGAN:

09:14 AM 19 Q. AND HOW LONG WERE YOU AN --

09:14 AM 20 THE COURT: I'M NOT FAMILIAR WITH THESE
09:14 AM 21 ABBREVIATIONS.

09:14 AM 22 THE WITNESS: OKAY.

09:14 AM 23 BY MR. GARRIGAN:

09:14 AM 24 Q. HOW LONG WERE YOU AN ADMINISTRATIVE TECHNICIAN?

09:14 AM 25 A. FROM WHEN I RETURNED TO THE AGENCY IN MARCH OF '97

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09:14 AM 1 UNTIL I WAS PROMOTED TO A SPECIALIST I, AND I HONESTLY
09:14 AM 2 DON'T KNOW WHAT THE DATE WAS.

09:14 AM 3 Q. OKAY. ALL RIGHT. AND WHAT WAS YOUR POSITION BEFORE
09:14 AM 4 BEING ADMINISTRATIVE TECHNICIAN?

09:14 AM 5 A. AT THE AGENCY I WAS A CLERK III.

09:14 AM 6 Q. OKAY. AND IN FACT, BEFORE YOU WERE AN
09:14 AM 7 ADMINISTRATIVE TECHNICIAN, IS THAT WHEN THERE WAS --

09:14 AM 8 A. THE GAP.

09:14 AM 9 Q. -- A FEW MONTHS HIATUS IN YOUR WORK?

09:14 AM 10 A. UH-HUH.

09:15 AM 11 Q. HOW LONG WERE YOU AWAY FROM THE TEXAS WORKFORCE
09:15 AM 12 COMMISSION?

09:15 AM 13 A. IT WAS EIGHT OR NINE MONTHS.

09:15 AM 14 Q. AND BEFORE THAT, WHAT WAS YOUR POSITION WITH THE
09:15 AM 15 TEXAS WORKFORCE COMMISSION?

09:15 AM 16 A. CLERK III.

09:15 AM 17 Q. ALL RIGHT. AND WHEN DID YOU -- ROUGHLY, AS BEST YOU
09:15 AM 18 CAN ESTIMATE, WHEN WERE YOU A CLERK III, FROM WHEN TO
09:15 AM 19 WHEN?

09:15 AM 20 A. I STARTED IN SEPTEMBER OF '93 AND I LEFT IN JUNE OF
09:15 AM 21 '96 I THINK IT WAS.

09:15 AM 22 Q. ALL RIGHT. NOW, THROUGHOUT YOUR WORK AT THE TEXAS
09:15 AM 23 WORKFORCE COMMISSION YOU HAVE BEEN INVOLVED AND WORKED
09:15 AM 24 WITH THEIR COMPUTER MATCHING SYSTEM, IS THAT CORRECT?

09:15 AM 25 A. THAT'S CORRECT.

09:16 AM 1 Q. OKAY. AND WOULD YOU DESCRIBE FOR US YOUR DUTIES IN
09:16 AM 2 YOUR CURRENT POSITION AS A WORKFORCE DEVELOPMENT
09:16 AM 3 SPECIALIST?

09:16 AM 4 A. INTERVIEWING CUSTOMERS WHO ARE LOOKING FOR WORK,
09:16 AM 5 TALKING WITH EMPLOYERS, WRITING JOB ORDERS, JOB DEVELOP
09:16 AM 6 CUSTOMERS TO JOBS EVEN IF THERE'S NOT A JOB ORDER, TRYING
09:16 AM 7 TO FIND THEM WORK. WE HELP WITH WRITING RESUMES, JUST
09:16 AM 8 ANYTHING REALLY INVOLVING, YOU KNOW, EMPLOYMENT. A LOT
09:16 AM 9 OF --

09:16 AM 10 THERE MAY BE --

09:16 AM 11 I MAY GO OUT TO A SCHOOL AND SPEAK TO STUDENTS
09:16 AM 12 ON FILLING OUT APPLICATIONS OR HOW TO APPLY FOR JOBS.

09:16 AM 13 IT'S ANYTHING INVOLVING EMPLOYMENT SERVICES.

09:16 AM 14 Q. ALL RIGHT. NOW, YOU REFERRED -- TWO OF THE THINGS
09:16 AM 15 YOU MENTIONED WERE INTERVIEWING APPLICANTS?

09:16 AM 16 A. YES, CUSTOMERS.

09:16 AM 17 Q. ALL RIGHT. THOSE WOULD BE THE INDIVIDUALS LOOKING
09:17 AM 18 FOR WORK?

09:17 AM 19 A. CORRECT.

09:17 AM 20 Q. AND YOU SAID YOU ALSO ACCEPTED JOB ORDERS, IS THAT
09:17 AM 21 CORRECT?

09:17 AM 22 A. UH-HUH.

09:17 AM 23 Q. FOR THE RECORD, AND I'M NOT TRYING TO BE
09:17 AM 24 PARTICULARLY FORMAL, BUT I NEED YOU TO SAY YES OR NO.

09:17 AM 25 A. OKAY. YES.

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09:17 AM 1 Q. THANK YOU.

09:17 AM 2 WHAT PORTION OF YOUR --

09:17 AM 3 WELL, WHEN YOU TALK ABOUT ACCEPTING WORK ORDERS,
09:17 AM 4 THAT'S WHEN AN EMPLOYER CALLS YOUR AGENCY AND IS LOOKING
09:17 AM 5 FOR CANDIDATES, APPLICANTS FOR EMPLOYMENT?

09:17 AM 6 A. THAT, OR THE INTERVIEWER CALLS CUSTOMERS, ASKING IF
09:17 AM 7 THEY HAVE -- CALLS EMPLOYERS, ASKING IF THEY HAVE ANY
09:17 AM 8 OPENINGS THEY WOULD LIKE TO LIST WITH THE WORKFORCE
09:17 AM 9 CENTER.

09:17 AM 10 Q. OKAY. SO SOMETIMES YOU SOLICIT --

09:17 AM 11 A. YES.

09:17 AM 12 Q. -- THE WORK ORDERS?

09:17 AM 13 A. YES.

09:17 AM 14 Q. SOMETIMES THE EMPLOYERS CALL YOU?

09:17 AM 15 A. YES.

09:17 AM 16 Q. ALL RIGHT. AND YOU DO --

09:18 AM 17 DOES YOUR ASSIGNMENT PARTICULARLY CONCERN LUFKIN
09:18 AM 18 INDUSTRIES?

09:18 AM 19 A. PARTICULARLY CONCERN?

09:18 AM 20 Q. WELL, ARE YOU THE PERSON AT THE TEXAS WORKFORCE
09:18 AM 21 COMMISSION IN LUFKIN THAT IS PRIMARILY ASSIGNED TO LUFKIN
09:18 AM 22 INDUSTRIES?

09:18 AM 23 A. YES.

09:18 AM 24 Q. I BELIEVE YOU SAID BEFORE YOU DO ABOUT NINETY-FIVE
09:18 AM 25 PERCENT OF THEIR JOB ORDERS?

09:18 AM 1 A. SINCE 2000, YES.

09:18 AM 2 Q. ALL RIGHT. I WOULD LIKE TO ASK YOU SOME QUESTIONS
09:18 AM 3 NOW ABOUT WHAT WE'VE REFERRED TO AS THE MATCHING PROCESS.

09:18 AM 4 A. OKAY.

09:18 AM 5 Q. AND SPECIFICALLY WE'RE TALKING ABOUT THE SYSTEM YOU
09:18 AM 6 USE TO MAKE REFERRALS TO LUFKIN INDUSTRIES. ALL RIGHT?

09:18 AM 7 A. UH-HUH.

09:18 AM 8 Q. DO YOU UNDERSTAND?

09:18 AM 9 A. YES.

09:18 AM 10 Q. OKAY. THANK YOU.

09:19 AM 11 NOW, AS I UNDERSTAND IT, THE FIRST STEP OF THE
09:19 AM 12 MATCHING PROCESS IS WHEN YOU INTERVIEW THE APPLICANTS, IS
09:19 AM 13 THAT CORRECT?

09:19 AM 14 A. TO GET THEIR APPLICATION INTO THE WORKFORCE, TO TWC,
09:19 AM 15 YES.

09:19 AM 16 Q. ALL RIGHT. AND THAT'S WHEN YOU WOULD USE THESE
09:19 AM 17 EXHIBITS 13 AND 15?

09:19 AM 18 A. YES.

09:19 AM 19 Q. WHO FILLS OUT 13 OR 15?

09:19 AM 20 A. THE CUSTOMER.

09:19 AM 21 Q. OKAY. WHEN YOU SAY CUSTOMER, THAT'S ALSO THE
09:19 AM 22 APPLICANT?

09:19 AM 23 A. THE APPLICANT, YES.

09:19 AM 24 Q. WHAT KIND OF INFORMATION IS ON THOSE FORMS?

09:19 AM 25 A. THEIR SOCIAL SECURITY NUMBER, THEIR NAME, THEIR

09:19 AM 1 ADDRESS, THEIR DATE OF BIRTH, SEX, THEIR EDUCATION, THEIR
09:19 AM 2 EMPLOYMENT HISTORY. THE RACE IS ON THERE, WHAT -- THEIR
09:19 AM 3 MINIMUM REQUIRED SALARY, WHAT COUNTIES THEY'RE AVAILABLE
09:20 AM 4 TO WORK IN, IF THEY HAVE ANY OCCUPATIONAL LICENSE, IF THEY
09:20 AM 5 HAVE A TYPING SPEED OR A SHORTHAND, IF THEY HAVE AN
09:20 AM 6 ELECTRICAL LICENSE, THINGS LIKE THAT.

09:20 AM 7 Q. ALL RIGHT. AND WHEN THEY FILL OUT THE FORM AND
09:20 AM 8 PROVIDE THIS INFORMATION, WHAT DOES THE TEXAS WORKFORCE
09:20 AM 9 COMMISSION DO WITH IT?

09:20 AM 10 A. THEY SIT DOWN FOR AN INTERVIEW IF THEY WANT, OR THEY
09:20 AM 11 CAN JUST DROP IT OFF. THEY CAN SIT DOWN WITH AN
09:20 AM 12 INTERVIEWER, AND WE GO OVER THE WORK HISTORY.

09:20 AM 13 THEY ALSO FILL OUT KEYWORD SHEETS THAT REFLECTS
09:20 AM 14 WHAT KIND OF WORK EXPERIENCE OR INTERESTS OR EDUCATION
09:20 AM 15 THEY HAVE, AND THAT IS CODED ONTO THEIR APPLICATION AND
09:20 AM 16 ENTERED INTO THE SYSTEM.

09:20 AM 17 Q. ALL RIGHT. NOW, WE'RE TALKING ABOUT A COMPUTER
09:20 AM 18 SYSTEM AT THE WORKFORCE COMMISSION?

09:20 AM 19 A. A COMPUTER SYSTEM, YES.

09:21 AM 20 Q. AND THEN THE COMPUTER SYSTEM ANALYZES THAT
09:21 AM 21 INFORMATION AND ASSIGNS AN OCCUPATION CODE TO THE
09:21 AM 22 APPLICANT?

09:21 AM 23 A. YES.

09:21 AM 24 Q. AND THE OCCUPATION CODE IN TURN IS ASSOCIATED WITH
09:21 AM 25 CERTAIN TYPES OF WORK?

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09:21 AM 1 A. RIGHT.

09:21 AM 2 Q. ALL RIGHT. NOW, WHAT I THINK OF AS THE SECOND STEP
09:21 AM 3 OF THIS SYSTEM, YOU GATHER SIMILAR INFORMATION FROM THE
09:21 AM 4 EMPLOYER SIDE, IS THAT CORRECT?

09:21 AM 5 A. YES.

09:21 AM 6 Q. WOULD YOU DESCRIBE FOR THE COURT HOW THAT HAPPENS?

09:21 AM 7 A. IT'S E-MAILED TO ME, THE JOB OPENINGS, THE NUMBER OF
09:21 AM 8 OPENINGS, THE REQUIREMENTS, AND THE SHIFT, THE SALARY, YOU
09:21 AM 9 KNOW, WHAT THE JOB IS, AND IT'S ENTERED INTO THE SYSTEM.

09:21 AM 10 Q. OKAY. YOU SAY IT'S E-MAILED TO YOU?

09:21 AM 11 A. YES.

09:21 AM 12 Q. YOU'RE SPECIFICALLY REFERRING TO THE PROCESS WITH
09:22 AM 13 LUFKIN INDUSTRIES?

09:22 AM 14 A. THE REQUISITION, UH-HUH.

09:22 AM 15 Q. WHO IS IT AT LUFKIN INDUSTRIES THAT YOU DEAL WITH?

09:22 AM 16 A. VIRON BARBAY.

09:22 AM 17 Q. AND FOR HOW LONG HAS HE BEEN E-MAILING YOU THIS
09:22 AM 18 INFORMATION?

09:22 AM 19 A. TOWARD THE END OF 2002.

09:22 AM 20 Q. ALL RIGHT. SO JUST FOR ABOUT THE LAST YEAR?

09:22 AM 21 A. YES.

09:22 AM 22 Q. AND BEFORE THAT MR. BARBAY WOULD TELEPHONE THE
09:22 AM 23 INFORMATION TO YOU?

09:22 AM 24 A. YES.

09:22 AM 25 Q. ALL RIGHT. AND THE INFORMATION THAT LUFKIN PROVIDES

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09:22 AM 1 TO YOU INCLUDES DESCRIPTIONS OF THE JOBS THAT THEY HAVE
09:22 AM 2 OPENINGS FOR?

09:22 AM 3 A. YES.

09:22 AM 4 Q. YOU ENTER ALL OF THAT INTO THE COMPUTER, AND IT ALSO
09:22 AM 5 ASSOCIATES OCCUPATIONAL CODES WITH THEIR INFORMATION?

09:22 AM 6 A. YES.

09:23 AM 7 Q. ALL RIGHT. SO IN YOUR SYSTEM, ONCE YOU HAVE THE
09:23 AM 8 INFORMATION FROM THE APPLICANTS, YOU GET A JOB ORDER FROM
09:23 AM 9 THE EMPLOYER, IN THIS CASE LUFKIN INDUSTRIES. HOW DOES
09:23 AM 10 THE SYSTEM WORK AT THAT POINT?

09:23 AM 11 A. YOU COMMAND THE SYSTEM TO DO A SEARCH FOR APPLICANTS
09:23 AM 12 OR CUSTOMERS THAT MEET THOSE MINIMUM QUALIFICATIONS, AND
09:23 AM 13 IT GENERATES A REPORT.

09:23 AM 14 Q. IS THIS WHAT YOU REFERRED TO AS THE OVERNIGHT MATCH?

09:23 AM 15 A. YES.

09:23 AM 16 Q. AND SO AFTER YOU GET THE WORK ORDER FROM LUFKIN, THE
09:23 AM 17 OVERNIGHT MATCH GETS RUN, AND IN THE MORNING YOU HAVE A
09:23 AM 18 LIST OF QUALIFIED CANDIDATES, HOPEFULLY QUALIFIED
09:23 AM 19 CANDIDATES THAT MIGHT END UP BEING REFERRED TO LUFKIN?

09:23 AM 20 A. UH-HUH. YES.

09:24 AM 21 Q. ALL RIGHT. AND WHAT DO YOU DO WITH THAT LIST WHEN
09:24 AM 22 YOU GET IT THE NEXT MORNING?

09:24 AM 23 A. YOU START AT THE TOP PHONING THE CUSTOMER, TRYING TO
09:24 AM 24 CONTACT THEM TO SEE IF THEY ARE INTERESTED IN LUFKIN
09:24 AM 25 INDUSTRIES, AND IF THEY MEET THE MINIMUM QUALIFICATIONS.

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09:24 AM 1 Q. ALL RIGHT. AND WHEN YOU FIRST CONTACT THE
09:24 AM 2 APPLICANTS ABOUT OPENINGS AT LUFKIN INDUSTRIES, THAT'S THE
09:24 AM 3 PHONE CALL YOU'RE TALKING ABOUT?

09:24 AM 4 A. YES.

09:24 AM 5 Q. DO YOU TELL THEM WHAT JOB IS OPEN AT LUFKIN
09:24 AM 6 INDUSTRIES?

09:24 AM 7 A. YES.

09:24 AM 8 Q. AND IS THAT A ROUTINE PART OF THAT PHONE CALL?

09:24 AM 9 A. YES.

09:24 AM 10 Q. HAS THAT ALWAYS BEEN TRUE IN YOUR EXPERIENCE?

09:24 AM 11 A. YES.

09:24 AM 12 Q. AND WHEN YOU TELL THEM WHAT JOB IS OPEN, YOU TAKE
09:24 AM 13 THAT INFORMATION OFF OF THE JOB ORDER?

09:24 AM 14 A. YES.

09:24 AM 15 Q. OKAY. AND THAT'S THE SAME --

09:25 AM 16 YOU USE THE COMPUTER WHEN YOU'RE TALKING TO
09:25 AM 17 THEM?

09:25 AM 18 A. YES.

09:25 AM 19 Q. IS THE SAME INFORMATION CONTAINED IN EXHIBIT 11, THE
09:25 AM 20 PAPER JOB ORDERS?

09:25 AM 21 A. I'M NOT SURE IF ALL OF THE INFORMATION IS ON THIS,
09:25 AM 22 BECAUSE THIS IS PURGED, AND PURGED ORDERS -- I BELIEVE
09:25 AM 23 PURGED ORDERS DON'T PULL UP EVERYTHING THAT IS ON THE JOB
09:25 AM 24 ORDER WHEN IT'S WRITTEN.

09:25 AM 25 Q. ALL RIGHT. WHAT I'M MOST INTERESTED IN NOW IS THE

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09:25 AM 1 INFORMATION ABOUT THE OPENINGS. IN THIS CASE, AND FOR

09:26 AM 2 LUFKIN INDUSTRIES, WE'RE TALKING ABOUT ENTRY-LEVEL JOBS?

09:26 AM 3 A. UH-HUH. IT WOULD DEFINITELY SAY GENERAL LABOR WORK,

09:26 AM 4 EXPERIENCE IN GENERAL LABOR WORK, TWELVE MONTHS REQUIRED.

09:26 AM 5 IT DEFINITELY WOULD SAY THAT.

09:26 AM 6 AND I BELIEVE THE -- I BELIEVE IT SHOULD HAVE ON

09:26 AM 7 THERE WHAT AREA IT'S IN.

09:26 AM 8 Q. AND BY THAT YOU MEAN WHETHER IT WOULD BE POWER

09:26 AM 9 TRANSMISSION, GEAR REPAIR, FOUNDRY OR TRAILER?

09:26 AM 10 A. FOUNDRY OR TRAILER, UH-HUH.

09:26 AM 11 Q. YES?

09:26 AM 12 A. YES.

09:26 AM 13 Q. OKAY. AND THAT INFORMATION IS ON THE PAPER WORK

09:26 AM 14 ORDERS AS WELL AS YOUR -- THE COMPUTER SCREEN YOU WOULD BE

09:26 AM 15 LOOKING AT?

09:26 AM 16 MR. HAMEL: YOUR HONOR, OBJECTION, LEADING.

09:26 AM 17 THE WITNESS: PAPER WORK ORDERS? I'M NOT SURE

09:26 AM 18 WHAT YOU'RE --

09:26 AM 19 THE COURT: WELL, THIS IS RATHER FORMALISTIC

09:26 AM 20 TESTIMONY. I'M GOING TO LET HIM LEAD IN THE INTEREST OF

09:27 AM 21 TIME. SO --

09:27 AM 22 MR. HAMEL: IS THAT A DEFINITIVE RULING, YOUR

09:27 AM 23 HONOR?

09:27 AM 24 THE COURT: SIR?

09:27 AM 25 MR. HAMEL: IS THAT A DEFINITIVE RULING, YOUR

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09:27 AM 1 HONOR, JUST SO I DON'T HAVE TO MAKE THE OBJECTION AGAIN?

09:27 AM 2 THE COURT: WELL, YOU CAN MAKE THE OBJECTION ANY
09:27 AM 3 TIME YOU WANT TO.

09:27 AM 4 MR. HAMEL: WELL, WHAT I'M --

09:27 AM 5 THE COURT: I'M GOING TO LET HIM LEAD ON THIS
09:27 AM 6 TYPE OF TESTIMONY IN THE INTEREST OF TIME.

09:27 AM 7 MR. HAMEL: THANK YOU, YOUR HONOR.

09:27 AM 8 THE COURT: NO JURY BEING PRESENT.

09:27 AM 9 BY MR. GARRIGAN:

09:27 AM 10 Q. OKAY. OKAY. MS. POULAN, IS THE --

09:27 AM 11 THE POSITION THAT'S OPEN THAT YOU'RE CALLING THE
09:27 AM 12 APPLICANT ABOUT, IS THAT POSITION DESCRIBED IN THE PAPER
09:27 AM 13 WORK ORDERS THAT ARE IN PLAINTIFF'S EXHIBIT 11?

09:27 AM 14 A. YES.

09:27 AM 15 Q. ALL RIGHT. AND IS THAT THE SAME INFORMATION THAT
09:27 AM 16 YOU'RE LOOKING AT ON THE COMPUTER SCREEN WHEN YOU'RE
09:27 AM 17 TALKING TO THEM TO ARRANGE THE INTERVIEW?

09:28 AM 18 A. YES.

09:28 AM 19 Q. ALL RIGHT. AND IT'S A --

09:28 AM 20 THE ROUTINE BUSINESS PRACTICE AT THE TEXAS
09:28 AM 21 WORKFORCE COMMISSION IS TO TELL THE POTENTIAL APPLICANT
09:28 AM 22 WHAT THE OPENING IS?

09:28 AM 23 A. YES.

09:28 AM 24 Q. AND WITH REGARD TO LUFKIN INDUSTRIES, WOULD THAT
09:28 AM 25 INCLUDE TELLING THEM WHAT DIVISION THE REFERRAL WOULD BE

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09:28 AM 1 TO?

09:28 AM 2 A. YES.

09:28 AM 3 Q. OKAY. SO IF THE WORK ORDER, FOR INSTANCE, IN
09:28 AM 4 PLAINTIFF'S EXHIBIT 11, SAYS FOUNDRY, YOU WOULD TELL THE
09:28 AM 5 APPLICANT WHEN YOU FIRST MADE CONTACT THAT THE OPENINGS
09:28 AM 6 ARE IN THE FOUNDRY?

09:28 AM 7 A. YES.

09:28 AM 8 Q. OKAY. AND THEN WHAT'S THE REST OF YOUR CONVERSATION
09:28 AM 9 WITH THE POTENTIAL APPLICANTS?

09:28 AM 10 THE COURT: WELL, THAT WOULD BE HEARSAY, SIR.

09:29 AM 11 MR. GARRIGAN: EXCUSE ME?

09:29 AM 12 THE COURT: THAT WOULD BE HEARSAY, WHAT THE REST
09:29 AM 13 OF THE CONVERSATION WAS. IT'S WIDE OPEN.

09:29 AM 14 MR. GARRIGAN: ALL RIGHT. LET ME TRY IT THIS
09:29 AM 15 WAY.

09:29 AM 16 THE COURT: WELL, TRY IT IN AN ADMISSIBLE FORM.
09:29 AM 17 SHE TELLS THEM WHAT DIVISION IT'S IN. SHE EITHER READS IT
09:29 AM 18 OFF A PAPER OR A COMPUTER SCREEN, RELAYS IT TO THAT
09:29 AM 19 PERSON. THE APPLICANT EITHER ACCEPTS OR REJECTS.

09:29 AM 20 IS THAT TRUE?

09:29 AM 21 THE WITNESS: THAT'S TRUE.

09:29 AM 22 THE COURT: OR DO THEY SAY "I'LL CALL YOU BACK
09:29 AM 23 AND LET YOU KNOW IF I DON'T GET ANYTHING BETTER"?

09:29 AM 24 THE WITNESS: THEY WILL USUALLY EITHER SAY
09:29 AM 25 THEY'RE INTERESTED OR THEY'RE NOT INTERESTED.

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09:29 AM 1 THE COURT: MA'AM?

09:29 AM 2 PROSPECTIVE JUROR: THEY'LL EITHER SAY THEY'RE
09:29 AM 3 INTERESTED OR THEY'RE NOT INTERESTED.

09:29 AM 4 THE COURT: OKAY.

09:29 AM 5 BY MR. GARRIGAN:

09:29 AM 6 Q. ALL RIGHT. AND IF THEY'RE INTERESTED, WHAT
09:29 AM 7 HAPPENS? WHAT'S THE NEXT STEP?

09:29 AM 8 A. IF THEY'RE INTERESTED, AND THEY MEET ALL THE
09:29 AM 9 QUALIFICATIONS, THEY'RE SET UP FOR AN INTERVIEW WITH
09:30 AM 10 LUFKIN INDUSTRIES.

09:30 AM 11 Q. ALL RIGHT. AND AT THAT POINT THE TEXAS WORKFORCE
09:30 AM 12 COMMISSION HAS REFERRED THAT APPLICANT TO LUFKIN
09:30 AM 13 INDUSTRIES, IS THAT CORRECT?

09:30 AM 14 A. CORRECT.

09:30 AM 15 Q. AND BASICALLY YOUR JOB IS DONE?

09:30 AM 16 A. CORRECT.

09:30 AM 17 Q. NOW, IF YOU LOOK AT EXHIBIT 11, AT ANY ONE OF THE
09:30 AM 18 JOB ORDER FORMS, EVEN AFTER YOU REFER THE APPLICANT TO
09:30 AM 19 LUFKIN INDUSTRIES FOR THEIR INTERVIEW, LUFKIN INDUSTRIES
09:30 AM 20 REPORTS BACK WHETHER OR NOT THEY'VE HIRED THAT INDIVIDUAL?

09:30 AM 21 A. CORRECT.

09:30 AM 22 Q. AND THAT IS ALSO RECORDED ON THE JOB ORDER FORM?

09:30 AM 23 A. YES.

09:30 AM 24 Q. OKAY. NOW, THIS JOB MATCHING SYSTEM THAT WE'VE JUST
09:30 AM 25 DESCRIBED, THAT HASN'T CHANGED SINCE YOU'VE BEEN AT THE

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09:30 AM 1 TEXAS WORKFORCE COMMISSION?

09:30 AM 2 A. IT HAS NOT.

09:31 AM 3 Q. ALL RIGHT. THE PROCESS AS YOU'VE EXPLAINED IT
09:31 AM 4 REMAINS THE SAME?

09:31 AM 5 A. YES.

09:31 AM 6 Q. AND I BELIEVE THE ONLY CHANGE THAT YOU'VE MENTIONED
09:31 AM 7 IS THAT FOR ABOUT THE LAST YEAR MR. BARBAY WOULD E-MAIL
09:31 AM 8 THE JOB ORDER INFORMATION TO YOU AS OPPOSED TO A TELEPHONE
09:31 AM 9 CALL?

09:31 AM 10 A. AND THEY'VE ADDED REQUISITION NUMBERS TO THEIR JOB
09:31 AM 11 ORDERS.

09:31 AM 12 Q. AND AGAIN, THAT'S ALL WITHIN THE LAST YEAR?

09:31 AM 13 A. CORRECT.

09:31 AM 14 Q. OKAY. NOW, WHEN LUFKIN REPORTS BACK TO YOU ABOUT
09:31 AM 15 WHETHER OR NOT AN APPLICANT IS HIRED, DO THEY TELL YOU
09:31 AM 16 WHAT POSITION THE APPLICANT WAS HIRED INTO?

09:31 AM 17 A. NO.

09:31 AM 18 Q. SO ALL YOU KNOW IS WHAT POSITION YOU HAVE REFERRED
09:32 AM 19 THE APPLICANT FOR?

09:32 AM 20 A. CORRECT.

09:32 AM 21 Q. AND THE TEXAS WORKFORCE COMMISSION HAS NOTHING TO DO
09:32 AM 22 WITH WHETHER THAT APPLICANT GETS HIRED?

09:32 AM 23 A. NO.

09:32 AM 24 Q. DOES THE TEXAS WORKFORCE COMMISSION HAVE ANYTHING TO
09:32 AM 25 DO WITH WHAT JOB THE APPLICANT IS ASSIGNED TO IF THEY ARE

09:32 AM 1 HIRED?

09:32 AM 2 A. NO.

09:32 AM 3 Q. OKAY. WHEN YOU'RE RECRUITING PEOPLE FOR LUFKIN

09:32 AM 4 INDUSTRIES, YOU'RE GENERALLY FAMILIAR WITH THEIR

09:32 AM 5 ENTRY-LEVEL REQUIREMENTS?

09:32 AM 6 A. YES.

09:32 AM 7 Q. THAT'S WHAT YOU SCREEN THE APPLICANT FOR, IS THAT

09:32 AM 8 RIGHT?

09:32 AM 9 A. YES.

09:32 AM 10 Q. AND YOU DON'T RECOGNIZE ANY MEANINGFUL DISTINCTION

09:32 AM 11 BETWEEN THE ENTRY-LEVEL JOB REQUIREMENTS FOR THE DIFFERENT

09:32 AM 12 DIVISIONS AT LUFKIN, IS THAT RIGHT?

09:32 AM 13 A. FOR AN ENTRY-LEVEL POSITION?

09:32 AM 14 Q. YES.

09:32 AM 15 A. THERE ARE NO DIFFERENCES IN TRAILER AND FOUNDRY AT

09:33 AM 16 ALL.

09:33 AM 17 Q. OKAY. AREN'T THE ENTRY-LEVEL REQUIREMENTS THE SAME

09:33 AM 18 FOR ALL OF THE ENTRY-LEVEL JOBS AT LUFKIN INDUSTRIES AS

09:33 AM 19 FAR AS YOU'RE CONCERNED?

09:33 AM 20 A. THE ONES I'M MORE FAMILIAR WITH ARE FOR THE FOUNDRY

09:33 AM 21 AND THE TRAILER, AND THERE ARE NO DIFFERENCES ON THOSE TWO

09:33 AM 22 JOBS.

09:33 AM 23 IF IT'S AN ENTRY-LEVEL JOB IN ANOTHER DIVISION,

09:33 AM 24 THE REQUIREMENTS MAY BE DIFFERENT. I WOULD HAVE TO LOOK

09:33 AM 25 AT THE REQUIREMENTS ON IT.

09:33 AM 1 AND IF A JOB ORDER WERE LISTED WIT US IN ONE OF
09:33 AM 2 THOSE DIVISIONS, I WOULD SPEAK WITH VIRON ABOUT IT AND ASK
09:33 AM 3 HIM WHAT THE REQUIREMENTS ARE, BECAUSE SOME OF THEIR JOBS
09:33 AM 4 REQUIRE, DO REQUIRE HIGH SCHOOL OR G.E.D., VERSUS THE
09:33 AM 5 GENERAL FOUNDRYMEN AND THE TRAILER DOES NOT.

09:34 AM 6 MR. GARRIGAN: MAY I APPROACH THE WITNESS?

09:34 AM 7 THE COURT: YOU MAY.

09:34 AM 8 BY MR. GARRIGAN:

09:34 AM 9 Q. DO YOU REMEMBER GIVING YOUR DEPOSITION TESTIMONY IN
09:34 AM 10 THIS CASE?

09:34 AM 11 A. YES.

09:34 AM 12 Q. ALL RIGHT. I'M SHOWING YOU PAGE 52 OF YOUR
09:34 AM 13 DEPOSITION. DO YOU RECOGNIZE THAT?

09:34 AM 14 A. YEAH, SURE.

09:34 AM 15 Q. DID YOU HAVE A CHANCE TO REVIEW THE DEPOSITION?

09:34 AM 16 A. I DID.

09:34 AM 17 Q. NOW, BEGINNING AT PAGE -- AT LINE 6. BEGINNING AT
09:34 AM 18 LINE 6, I ASKED "DO YOU RECOGNIZE ANY MEANINGFUL
09:34 AM 19 DISTINCTIONS BETWEEN THE ENTRY-LEVEL REQUIREMENTS FOR
09:34 AM 20 DIFFERENT JOBS IN THE DIFFERENT DIVISIONS AT LUFKIN OR IS
09:34 AM 21 IT ALL THE SAME TO YOU?"

09:34 AM 22 AND YOUR ANSWER WAS --

09:34 AM 23 WOULD YOU PLEASE READ THAT?

09:34 AM 24 A. "AS FAR AS, YOU KNOW, THE QUALIFICATIONS COULD BE
09:34 AM 25 DIFFERENT, WORK EXPERIENCE QUALIFICATIONS COULD BE

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09:34 AM 1 DIFFERENT ON DIFFERENT JOBS. AS FAR AS REQUIREMENTS THAT
09:35 AM 2 HAVE TO BE MET, THEY ARE THE SAME, BUT WORK QUALIFICATIONS
09:35 AM 3 OR EDUCATION QUALIFICATIONS COULD BE DIFFERENT."

09:35 AM 4 Q. OKAY. THEN I CLARIFIED, I ASKED YOU "FOR
09:35 AM 5 ENTRY-LEVEL JOBS?"

09:35 AM 6 AND YOU SAID WHAT?

09:35 AM 7 A. "NOT FOR ENTRY-LEVEL JOBS."

09:35 AM 8 Q. AND THEN I ASKED YOU AGAIN "FOR ENTRY-LEVEL JOBS YOU
09:35 AM 9 SEE THEM ALL THE SAME?"

09:35 AM 10 AND YOUR ANSWER?

09:35 AM 11 A. "CORRECT."

09:35 AM 12 Q. OKAY. SO YOUR TESTIMONY HAS BEEN IN THIS CASE SO
09:35 AM 13 FAR, OR AT LEAST UP UNTIL TODAY, WAS THAT ALL OF THE
09:35 AM 14 ENTRY-LEVEL JOBS HAVE THE SAME REQUIREMENTS?

09:35 AM 15 MR. HAMEL: OBJECTION, YOUR HONOR,
09:35 AM 16 ARGUMENTATIVE.

09:35 AM 17 THE COURT: I'M GOING TO TAKE IT INTO
09:35 AM 18 CONSIDERATION.

09:35 AM 19 MA'AM, IF THEY WANT SOMEBODY TO WORK IN A
09:35 AM 20 MACHINE SHOP CUTTING GEARS, THAT WOULD BE DIFFERENT THAN
09:35 AM 21 SOMEBODY WORKING IN THE FOUNDRY OR TRAILER?

09:35 AM 22 THE WITNESS: THAT'S MORE OF A SKILLED JOB.

09:35 AM 23 THE COURT: YES.

09:35 AM 24 THE WITNESS: AND YOU HAVE TO HAVE A LOT OF SHOP
09:35 AM 25 MATH TO DO THAT, AND IT'S USUALLY ON HIGH SCHOOL OR ABOVE

09:36 AM 1 ALGEBRA. YOU HAVE TO PASS, BE ABLE TO PASS THAT KIND OF
09:36 AM 2 TEST.

09:36 AM 3 THE COURT: THAT WOULD BE ON AN ENTRY-LEVEL,
09:36 AM 4 SOMEBODY WORKING ON MACHINES?

09:36 AM 5 THE WITNESS: RIGHT.

09:36 AM 6 THE COURT: OR THE SO-CALLED POWER TRANSMISSION,
09:36 AM 7 USED TO BE CALLED MACHINISTS, IS THAT CORRECT?

09:36 AM 8 THE WITNESS: CORRECT.

09:36 AM 9 THE COURT: SOMEBODY WHO IS ENTERING INTO THE
09:36 AM 10 ADMINISTRATION PART OF IT, WOULD THAT HAVE -- WOULD THEY
09:36 AM 11 HAVE DIFFERENT REQUIREMENTS, SAY AN INSURANCE CLERK OR A
09:36 AM 12 BENEFITS --

09:36 AM 13 THE WITNESS: IT'S HIGH SCHOOL OR G.E.D. USUALLY
09:36 AM 14 FOR THOSE TYPE JOBS.

09:36 AM 15 THE COURT: AND SO THEY'RE NOT ALL -- ALL ENTRY
09:36 AM 16 JOBS ARE NOT EXACTLY THE SAME?

09:36 AM 17 THE WITNESS: THEY'RE NOT EXACTLY THE SAME.

09:36 AM 18 THE COURT: PROCEED, SIR.

09:36 AM 19 BY MR. GARRIGAN:

09:36 AM 20 Q. OKAY. MS. POULAN, IS IT YOUR UNDERSTANDING THAT A
09:36 AM 21 MACHINIST IS AN ENTRY-LEVEL JOB?

09:36 AM 22 A. I HAVE NOT WORKED THAT MANY JOB ORDERS ON
09:36 AM 23 MACHINISTS. I MEAN, I WOULD JUST HAVE TO SEE THE
09:37 AM 24 REQUIREMENTS ON IT. BUT A MACHINIST IS PROBABLY NOT ENTRY
09:37 AM 25 LEVEL.

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09:37 AM 1 Q. IN FACT, ENTRY-LEVEL JOBS, EVEN IN POWER

09:37 AM 2 TRANSMISSION, ISN'T THAT CALLED A HELPER?

09:37 AM 3 A. IT COULD BE.

09:37 AM 4 Q. AND AN ENTRY-LEVEL JOB IN THE TRAILER DIVISION IS
09:37 AM 5 ALSO CALLED A HELPER?

09:37 AM 6 A. CORRECT.

09:37 AM 7 Q. AND WHEN I ASKED YOU BEFORE ABOUT THE QUALIFICATIONS
09:37 AM 8 FOR ENTRY-LEVEL JOBS, IS THAT WHAT YOU WERE THINKING
09:37 AM 9 ABOUT?

09:37 AM 10 A. I WAS THINKING MORE OF TRAILER AND FOUNDRY, BECAUSE
09:37 AM 11 THAT'S THE JOBS THAT I HAVE HAD MORE EXPERIENCE WITH WITH
09:37 AM 12 LUFKIN INDUSTRIES, BECAUSE THAT'S WHAT THEY'VE HAD A NEED
09:37 AM 13 FOR.

09:38 AM 14 Q. ALL RIGHT. WHEN YOU PLUG IN THE INFORMATION FROM
09:38 AM 15 LUFKIN INDUSTRIES INTO THE MATCHING SYSTEM, WE DISCUSSED
09:38 AM 16 THIS BEFORE, THE MATCHING SYSTEM ASSIGNS AN OCCUPATION
09:38 AM 17 CODE, IS THAT RIGHT?

09:38 AM 18 A. FOR A JOB ORDER, THE INTERVIEWER SHOULD BE PUTTING
09:38 AM 19 THE D.O.T. ON THERE FOR WHATEVER KIND OF JOB IT IS.

09:38 AM 20 Q. ALL RIGHT.

09:38 AM 21 A. YES.

09:38 AM 22 Q. AND THE OCCUPATIONAL CODES FOR ALL THE ENTRY-LEVEL
09:38 AM 23 POSITIONS AT LUFKIN ARE ALL GENERAL LABOR CODES, IS THAT
09:38 AM 24 RIGHT?

09:38 AM 25 A. THAT'S PRETTY MUCH THE ONE THAT I'VE BEEN USING.

09:38 AM 1 Q. AND AGAIN, THAT COVERED ALL ENTRY-LEVEL POSITIONS AT
09:39 AM 2 LUFKIN?

09:39 AM 3 A. YES.

09:39 AM 4 Q. AND SO WHEN THE COMPUTER SYSTEM IS MATCHING
09:39 AM 5 APPLICANTS TO LUFKIN, IT'S LOOKING FOR THE SAME PEOPLE,
09:39 AM 6 REGARDLESS OF THE DIVISION, AS LONG AS IT'S AN ENTRY-LEVEL
09:39 AM 7 JOB?

09:39 AM 8 A. IT'S LOOKING FOR PEOPLE THAT HAVE THE SAME
09:39 AM 9 EXPERIENCE OR REQUIREMENTS ON THEIR APPLICATION, IS WHAT
09:39 AM 10 IS WRITTEN ON THE JOB ORDER. IF THE D.O.T. AND THE
09:39 AM 11 KEYWORDS MATCH, OR THE KEYWORDS OR EXPERIENCE MATCH,
09:39 AM 12 THAT'S WHAT IT'S LOOKING FOR.

09:39 AM 13 Q. OKAY. DO YOU REMEMBER TESTIFYING THAT THE
09:39 AM 14 OCCUPATIONAL CODES FOR LUFKIN INDUSTRIES' ENTRY-LEVEL JOBS
09:39 AM 15 ARE ALL GENERAL LABOR?

09:39 AM 16 A. THAT'S PRETTY MUCH THE ONE I USE ON GENERAL LABOR.

09:39 AM 17 Q. AND AS A RESULT, THE MATCHING SYSTEM IS MATCHING
09:39 AM 18 APPLICANTS THAT HAVE THE SAME GENERAL LABOR OCCUPATION
09:40 AM 19 CODE TO THE JOB ORDERS, REGARDLESS OF THE DIVISION?

09:40 AM 20 A. CORRECT.

09:40 AM 21 Q. OKAY. NOW, THESE JOB ORDER FORMS IN EXHIBIT 11,
09:40 AM 22 THOSE REFLECT THE TEXAS WORKFORCE COMMISSION'S REFERRALS
09:40 AM 23 TO LUFKIN INDUSTRIES RESPONSIVE TO A PARTICULAR JOB ORDER?

09:40 AM 24 A. SOME OF THEM. SOME OF THEM ARE DELAYED
09:40 AM 25 VERIFICATIONS, WHICH IS DIFFERENT THAN A JOB ORDER.

09:40 AM 1 THE FIRST PAGE, IF YOU'LL LOOK AT THAT, I'LL
09:40 AM 2 SHOW YOU THE DIFFERENCE.

09:40 AM 3 Q. OKAY.

09:40 AM 4 A. SOME OF THEM ARE JD'S, WHICH IS THE JOB DEVELOPMENT.
09:40 AM 5 IT'S NOT AN ACTUAL JOB ORDER.

09:41 AM 6 THE COURT: WHAT'S THE DIFFERENCE?

09:41 AM 7 BY MR. GARRIGAN:

09:41 AM 8 Q. OKAY. GO AHEAD AND TELL ME ABOUT THE EXAMPLE.

09:41 AM 9 A. THE DIFFERENCE ON A DELAYED VERIFICATION?

09:41 AM 10 THE COURT: YEAH.

09:41 AM 11 THE WITNESS: IT MAY HAVE BEEN SOME MONTHS AGO
09:41 AM 12 THERE WAS A JOB ORDER IN OUR SYSTEM THAT A CUSTOMER WAS
09:41 AM 13 REFERRED ON AND WE DIDN'T GET THE PLACEMENT ON IT. IN
09:41 AM 14 OTHER WORDS, FOR SOME REASON THE EMPLOYER DIDN'T TELL US
09:41 AM 15 THEY WERE HIRED, AND IT CAME OFF OF A POTENTIAL EMPLOYMENT
09:41 AM 16 REPORT THAT COMES FROM AUSTIN.

09:41 AM 17 THE COURT: UH-HUH. ALL RIGHT. BUT YOU WOULD
09:41 AM 18 EXPECT A REPORT BACK IF THEY'RE HIRED, AND SOMETIMES YOU
09:41 AM 19 DON'T GET IT?

09:41 AM 20 THE WITNESS: SINCE I'VE BEEN WORKING WITH THEM
09:41 AM 21 SINCE 2000, I'VE HAD REAL GOOD COMMUNICATION ON GETTING
09:41 AM 22 OUR HIRES TIMELY.

09:41 AM 23 BEFORE I STARTED, THERE WERE JUST DIFFERENT
09:41 AM 24 INTERVIEWERS THAT WOULD WORK A YEAR AND QUIT AND WORK A
09:41 AM 25 YEAR AND QUIT, AND THERE WASN'T ANY REAL GOOD, A REAL GOOD

09:41 AM 1 COMMUNICATION. OUR COMMUNICATION MAY NOT HAVE BEEN AS
09:41 AM 2 GOOD THEN AS IT IS NOW.

09:41 AM 3 BUT IF WE DIDN'T GET IT FROM THE EMPLOYER, WE
09:42 AM 4 GOT IT FROM THE POTENTIAL PLACEMENT REPORT.

09:42 AM 5 BY MR. GARRIGAN:

09:42 AM 6 Q. OKAY. LET ME ASK YOU TO LOOK AT PLAINTIFF'S EXHIBIT
09:42 AM 7 11. IF YOU WOULD TURN TO THE PAGE THAT'S MARKED TWC00034.

09:42 AM 8 A. WELL --

09:42 AM 9 THE COURT: WHICH EXHIBIT?

09:42 AM 10 MR. GARRIGAN: I'M GUESSING THAT'S MAYBE FIFTEEN
09:42 AM 11 PAGES INTO THE EXHIBIT.

09:42 AM 12 THE COURT: WHICH EXHIBIT?

09:42 AM 13 MR. GARRIGAN: EXHIBIT 11.

09:42 AM 14 THE WITNESS: I THINK I'M LOST HERE. HOLD ON.
09:43 AM 15 I DON'T KNOW IF I'M SKIPPING IT. HANG ON. OKAY.

09:43 AM 16 Q. ALL RIGHT. NOW, THAT'S ONE OF THE RECORDS OR THE
09:43 AM 17 FIRST PAGE OF ONE OF THE RECORDS THAT WE'VE BEEN REFERRING
09:43 AM 18 TO AS A JOB ORDER?

09:43 AM 19 A. CORRECT.

09:43 AM 20 THE COURT: TWC --

09:43 AM 21 MR. GARRIGAN: 00034.

09:43 AM 22 THE COURT: THANK YOU.

09:43 AM 23 THE FIRST NAME ON IT IS BALLOU?

09:43 AM 24 MR. GARRIGAN: YES.

09:43 AM 25 THE COURT: ALL RIGHT. I HAVE IT. GO AHEAD.

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09:43 AM 1 BY MR. GARRIGAN:

09:44 AM 2 Q. IS THAT CORRECT?

09:44 AM 3 A. THAT'S CORRECT.

09:44 AM 4 Q. ALL RIGHT. NOW, THIS IS A JOB ORDER FOR LUFKIN
09:44 AM 5 INDUSTRIES, CORRECT?

09:44 AM 6 A. CORRECT.

09:44 AM 7 Q. AND WHAT KIND OF --

09:44 AM 8 THE COURT: I THOUGHT THEY ALL WERE?

09:44 AM 9 MR. GARRIGAN: THEY ARE.

09:44 AM 10 THE COURT: ALL RIGHT. SO --

09:44 AM 11 BY MR. GARRIGAN:

09:44 AM 12 Q. AND THIS JOB ORDER REFERS TO OPENINGS IN THE TRAILER
09:44 AM 13 DIVISION, IS THAT RIGHT?

09:44 AM 14 A. CORRECT.

09:44 AM 15 Q. ENTRY-LEVEL POSITIONS?

09:44 AM 16 A. YES.

09:44 AM 17 Q. AND YOU REFERRED TO THEM HERE AS TRAILER ASSEMBLER?

09:44 AM 18 A. THAT'S WHAT THE INTERVIEWER REFERRED TO IT.

09:44 AM 19 Q. ALL RIGHT. PAYS SEVEN DOLLARS AND FORTY CENTS AN
09:44 AM 20 HOUR?

09:44 AM 21 A. YES.

09:44 AM 22 Q. THAT'S REFLECTED ON HERE ALSO?

09:44 AM 23 A. YES.

09:44 AM 24 Q. AND THE INDIVIDUALS LISTED ON THIS REPORT, THOSE ARE
09:44 AM 25 ALL THE PEOPLE THAT THE TEXAS WORKFORCE COMMISSION

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09:45 AM 1 REFERRED TO LUFKIN?

09:45 AM 2 A. YES.

09:45 AM 3 Q. AND THEN IF YOU LOOK DOWN WHERE THE INDIVIDUALS'
09:45 AM 4 NAMES ARE LISTED, THE INFORMATION FOR EACH ONE, THE FIRST
09:45 AM 5 COLUMN IS SOCIAL SECURITY NUMBER, CORRECT?

09:45 AM 6 A. AND MARKED OUT, YES.

09:45 AM 7 Q. THAT'S RIGHT. YOUR AGENCY REDACTED THAT?

09:45 AM 8 A. YES.

09:45 AM 9 Q. THE SECOND COLUMN IS THE NAME?

09:45 AM 10 A. YES.

09:45 AM 11 Q. THE THIRD COLUMN, IT SAYS APPOINTMENT DATE. WHAT
09:45 AM 12 DOES THAT REFER TO?

09:45 AM 13 A. I BELIEVE THAT'S THEIR APPOINTMENT DATE, THEIR
09:45 AM 14 INTERVIEW DATE. I BELIEVE THAT'S WHAT IT IS.

09:45 AM 15 Q. OKAY. THAT WOULD BE THE DATE THAT THE APPLICANT WAS
09:45 AM 16 TO COME IN AND INTERVIEW WITH MR. BARBAY?

09:45 AM 17 A. OR WHOEVER AT LUFKIN INDUSTRIES BACK IN '97, WHOEVER
09:45 AM 18 WAS INTERVIEWING.

09:45 AM 19 HIS NAME IS ON THERE, SO, YES.

09:45 AM 20 Q. ALL RIGHT. THEN REFERRAL RESULT, WHAT DOES THAT
09:46 AM 21 REFER TO?

09:46 AM 22 A. I DIDN'T KNOW IN MY DEPOSITION. I KNOW WHAT ALL OF
09:46 AM 23 THEM ARE NOW.

09:46 AM 24 Q. ALL RIGHT. WELL, I DON'T NEED YOU TO DESCRIBE EACH
09:46 AM 25 CODE RIGHT NOW.

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09:46 AM 1 A. OKAY. THAT MEANS WHETHER THEY WERE HIRED OR NOT
09:46 AM 2 HIRED, OR IF THEY DID NOT SHOW FOR THEIR INTERVIEW OR IF
09:46 AM 3 THEY DID NOT SHOW FOR THEIR JOB.

09:46 AM 4 Q. AND BASICALLY --

09:46 AM 5 AND THAT'S INFORMATION THAT LUFKIN INDUSTRIES
09:46 AM 6 REPORTS BACK TO YOU?

09:46 AM 7 A. YES.

09:46 AM 8 Q. AND THE NEXT COLUMN, RESULT DATE?

09:46 AM 9 A. THAT IS THE DATE THE JOB ORDER WAS CLOSED OUT OR
09:46 AM 10 THAT THEY GOT THE INFORMATION FROM THE EMPLOYER THAT THE
09:46 AM 11 PERSON EITHER WENT TO WORK OR DIDN'T.

09:46 AM 12 Q. AND THEN THAT'S THE DATE IT WAS REPORTED BACK TO THE
09:46 AM 13 TEXAS WORKFORCE COMMISSION?

09:46 AM 14 A. UH-HUH.

09:46 AM 15 Q. SO THE --

09:46 AM 16 A. YES.

09:46 AM 17 Q. -- DIFFERENCE BETWEEN --

09:46 AM 18 YOU KNOW, THE HIRE DATE, IF SOMEBODY WAS HIRED,
09:46 AM 19 WOULD PROBABLY BE BETWEEN THE APPOINTMENT DATE AND THE
09:47 AM 20 DATE LUFKIN GOT BACK TO YOU WITH THE RESULTS?

09:47 AM 21 A. YES.

09:47 AM 22 Q. NOW, ALL OF THE PEOPLE ON THIS LIST, YOU'VE SCREENED
09:47 AM 23 THEM ALL FOR MINIMUM QUALIFICATIONS?

09:47 AM 24 A. YES.

09:47 AM 25 Q. AND SO IF THEY'RE ON THIS LIST, THEY'VE MET THOSE

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09:47 AM 1 QUALIFICATIONS?

09:47 AM 2 A. YES.

09:47 AM 3 Q. ALL RIGHT. AND ALL OF THE PEOPLE ON THE LIST ALSO

09:47 AM 4 EXPRESSED AN INTEREST IN THE POSITION LISTED AT THE TOP OF

09:47 AM 5 THE REPORT?

09:47 AM 6 A. YES.

09:47 AM 7 THE COURT: WHAT DOES THE "NHO" MEAN?

09:47 AM 8 THE WITNESS: NOT HIRED, OTHER.

09:47 AM 9 THE COURT: OTHER?

09:47 AM 10 THE WITNESS: NOT HIRED, OTHER.

09:47 AM 11 BY MR. GARRIGAN:

09:47 AM 12 Q. OKAY. LET'S GO AHEAD, AND LET ME ASK YOU --

09:47 AM 13 THE COURT: WHAT IS "DNR," WHICH IS MR. MCGRAW

09:47 AM 14 AND MR. JANCONNA?

09:47 AM 15 THE WITNESS: DID NOT REPORT TO THE INTERVIEW.

09:47 AM 16 THE COURT: ALL RIGHT. PROCEED. I'M SORRY.

09:48 AM 17 AND I DON'T SEE WHERE IT SAYS SEVEN DOLLARS AND

09:48 AM 18 SOMETHING AN HOUR.

09:48 AM 19 WHERE IS THAT?

09:48 AM 20 THE WITNESS: IN THE UPPER RIGHT-HAND CORNER.

09:48 AM 21 IT WOULD BE LIKE THE SIXTH LINE DOWN, UPPER RIGHT-HAND

09:48 AM 22 CORNER, WHERE IT SAYS "SALARY."

09:48 AM 23 THE COURT: OH, SEVEN FORTY-NINE AN HOUR.

09:48 AM 24 THE WITNESS: YES.

09:48 AM 25 THE COURT: I SEE IT NOW. THANK YOU.

TRANSCRIPT OF PROCEEDINGS

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09:48 AM 1 THE WITNESS: UH-HUH.

09:48 AM 2 BY MR. GARRIGAN:

09:48 AM 3 Q. AND THAT WOULD HAVE BEEN THE ENTRY-LEVEL PAY AT
09:48 AM 4 LUFKIN BACK AT THIS TIME?

09:48 AM 5 A. I'M ASSUMING, UH-HUH.

09:48 AM 6 Q. ALL RIGHT. AND AGAIN I WANT TO CLARIFY. WHEN THE
09:48 AM 7 MATCHING SYSTEM WORKS, IT IDENTIFIES THE INDIVIDUALS THAT
09:48 AM 8 ARE ULTIMATELY SCREENED FOR REFERRAL, CORRECT?

09:48 AM 9 A. YES.

09:48 AM 10 Q. AND IT IS SCREENING BASICALLY FOR THIS GENERAL LABOR
09:48 AM 11 OCCUPATIONAL CODE?

09:49 AM 12 A. YES.

09:49 AM 13 Q. AND IT WOULD BE SCREENING FOR THE SAME SET OF
09:49 AM 14 POTENTIAL APPLICANTS FOR ANY ENTRY-LEVEL POSITION AT
09:49 AM 15 LUFKIN?

09:49 AM 16 A. YES.

09:49 AM 17 Q. OKAY. LET ME ASK YOU TO LOOK AT A FEW PAGES DOWN ON
09:49 AM 18 THAT SAME JOB ORDER, ON PAGE 37.

09:49 AM 19 I PICKED OUT THE NAME OF ONE OF MY FAVORITE
09:49 AM 20 BEERS. THERE'S A SAM ADAMS A FEW LINES DOWN. DO YOU SEE
09:49 AM 21 THAT?

09:49 AM 22 A. YES.

09:49 AM 23 Q. WHAT DOES THIS REFLECT ABOUT SAM ADAMS?

09:49 AM 24 A. HE WAS REFERRED ON OCTOBER 28, '97, AND I'M ASSUMING
09:49 AM 25 THE INTERVIEWER SPOKE WITH LUFKIN INDUSTRIES OR FOUND OUT

TRANSCRIPT OF PROCEEDINGS

37

09:49 AM 1 HE WENT TO WORK ON 11-20-97.

09:49 AM 2 Q. SO HE WAS HIRED BY LUFKIN?

09:50 AM 3 A. YES.

09:50 AM 4 Q. AND THAT INFORMATION WAS REPORTED BACK TO THE
09:50 AM 5 WORKFORCE COMMISSION SEPTEMBER 20, '97, OR EXCUSE ME,
09:50 AM 6 NOVEMBER 20TH?

09:50 AM 7 MR. HAMEL: I'M SORRY, COUNSEL. COULD YOU TELL
09:50 AM 8 ME WHERE THIS ENTRY IS?

09:50 AM 9 MR. GARRIGAN: THIS IS ON PAGE TWC00037.

09:50 AM 10 MR. HAMEL: THANK YOU.

09:50 AM 11 MR. GARRIGAN: AND MR. ADAMS WAS SIX NAMES DOWN
09:50 AM 12 FROM THE TOP.

09:50 AM 13 MR. HAMEL: RIGHT. I SEE IT. THANK YOU.

09:50 AM 14 BY MR. GARRIGAN:

09:50 AM 15 Q. ALL RIGHT. AND IF YOU WOULD LOOK ACROSS THAT LINE A
09:50 AM 16 LITTLE FURTHER, UNDER THE COLUMN "ETH," THERE'S A CODE 2.
09:50 AM 17 DO YOU SEE THAT?

09:50 AM 18 A. YES.

09:50 AM 19 Q. WHAT DOES THAT INDICATE TO YOU?

09:50 AM 20 A. BLACK.

09:50 AM 21 Q. THAT'S MR. ADAMS RACE?

09:50 AM 22 A. YES.

09:50 AM 23 Q. LET ME ASK YOU ABOUT ANOTHER EXAMPLE. WOULD YOU
09:51 AM 24 LOOK -- IT'S GOING TO BE ABOUT A HALF A PAGE OR A HALF AN
09:51 AM 25 INCH DOWN IN THE STACK FOR TWC131.

09:51 AM 1 HAVE YOU FOUND THAT PAGE?

09:51 AM 2 A. YES.

09:51 AM 3 Q. OKAY. AND MOST OF THE WAY DOWN, IT LOOKS LIKE MAYBE
09:51 AM 4 TEN LINES FROM THE BOTTOM, IS A J. MESHELLE. DO YOU SEE
09:51 AM 5 THAT?

09:51 AM 6 A. YES.

09:51 AM 7 Q. AND SO WAS HE REFERRED TO LUFKIN INDUSTRIES BY THE
09:52 AM 8 TEXAS WORKFORCE COMMISSION?

09:52 AM 9 A. YES.

09:52 AM 10 Q. AND FOR WHAT JOB WAS HE REFERRED?

09:52 AM 11 A. IT SHOWS A FOUNDRY WORKER.

09:52 AM 12 Q. OKAY. AND WHEN --

09:52 AM 13 AND IT REFLECTS THAT HE WAS HIRED BY LUFKIN?

09:52 AM 14 A. YES.

09:52 AM 15 Q. ALL RIGHT. DO YOU KNOW WHAT POSITION HE WAS HIRED
09:52 AM 16 INTO?

09:52 AM 17 A. JUST AS A FOUNDRY WORKER, IS WHAT IT SHOWS ON THE
09:52 AM 18 JOB ORDERS.

09:52 AM 19 Q. SO YOU WOULD EXPECT THAT HE WAS HIRED INTO THE
09:52 AM 20 FOUNDRY?

09:52 AM 21 A. YES.

09:52 AM 22 Q. AND WHAT IS MR. MESHELLE'S RACE?

09:52 AM 23 A. WHITE.

09:52 AM 24 Q. NOW, IF HE WASN'T HIRED INTO THE FOUNDRY BUT WAS
09:52 AM 25 SENT TO SOME OTHER DIVISION, DOES THE TEXAS WORKFORCE

TRANSCRIPT OF PROCEEDINGS

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09:52 AM 1 COMMISSION HAVE ANYTHING TO DO WITH THAT?

09:52 AM 2 A. NO.

09:52 AM 3 Q. WHO WOULD MAKE THAT DECISION?

09:52 AM 4 A. I DON'T KNOW.

09:52 AM 5 Q. WOULD IT HAVE TO BE SOMEBODY AT LUFKIN INDUSTRIES?

09:52 AM 6 A. YES.

09:53 AM 7 Q. JUST ONE MORE EXAMPLE, ANOTHER QUARTER INCH OR SO

09:53 AM 8 DOWN INTO THE STACK, TWC157.

09:53 AM 9 A. OKAY.

09:53 AM 10 Q. WHAT OPENING IS DESCRIBED IN THAT WORK ORDER?

09:53 AM 11 A. A FOUNDRY WORKER.

09:53 AM 12 Q. IF YOU LOOK OVER ON THE NEXT PAGE, THERE'S A --

09:53 AM 13 ABOUT TWO INCHES DOWN, THE NAME ETHRIDGE.

09:54 AM 14 A. OKAY.

09:54 AM 15 Q. OKAY. WAS ETHRIDGE REFERRED BY THE TEXAS WORKFORCE

09:54 AM 16 COMMISSION TO LUFKIN FOR A JOB IN THE FOUNDRY?

09:54 AM 17 A. YES.

09:54 AM 18 Q. AND WAS HE HIRED BY LUFKIN INDUSTRIES?

09:54 AM 19 A. YES.

09:54 AM 20 Q. DO YOU KNOW WHAT POSITION HE WAS HIRED INTO?

09:54 AM 21 A. NO.

09:54 AM 22 Q. AND WHAT WAS MR. ETHRIDGE'S RACE?

09:54 AM 23 A. WHITE.

09:54 AM 24 Q. WHAT CODE DO YOU SEE FOR ETHNICITY?

09:54 AM 25 A. A 1.

09:54 AM 1 Q. AND DOES THAT INDICATE BLACK OR WHITE?

09:54 AM 2 A. WHITE.

09:54 AM 3 Q. OKAY. I'M SORRY. I THOUGHT I HEARD YOU SAY BLACK.

09:54 AM 4 A. I SAID WHITE.

09:54 AM 5 Q. OKAY. THANK YOU.

09:55 AM 6 OKAY. THE ONE POINT I WANT TO TRY TO COVER

09:55 AM 7 HERE, IF THE JOB ORDER SAYS "FOUNDRY" AT THE TOP, AS FAR

09:55 AM 8 AS THE TEXAS WORKFORCE COMMISSION IS CONCERNED, THE NAMES

09:55 AM 9 BELOW THERE WERE REFERRED TO LUFKIN INDUSTRIES FOR AN

09:55 AM 10 OPENING IN THE FOUNDRY?

09:55 AM 11 A. YES.

09:55 AM 12 Q. IS THAT RIGHT?

09:55 AM 13 A. YES.

09:55 AM 14 MR. GARRIGAN: PASS THE WITNESS.

09:55 AM 15 THANK YOU VERY MUCH.

09:55 AM 16 CROSS-EXAMINATION

09:55 AM 17 BY MR. HAMEL:

09:56 AM 18 Q. GOOD MORNING, MS. POULAN.

09:56 AM 19 A. GOOD MORNING.

09:56 AM 20 Q. I'M DOUG HAMEL.

09:56 AM 21 I WOULD FIRST LIKE YOU TO TAKE A LOOK --

09:56 AM 22 WOULD YOU PASS ME THAT NOTEBOOK, PLEASE?

09:56 AM 23 I BELIEVE AT EXHIBIT 9, MS. POULAN, IN YOUR --

09:56 AM 24 THAT'S BEEN PROVIDED BY THE PLAINTIFF --

09:57 AM 25 A. OKAY.

TRANSCRIPT OF PROCEEDINGS

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09:57 AM 1 Q. NOW, EXHIBIT 9 IS A DOCUMENT THAT WAS PROVIDED TO
09:57 AM 2 THE TWC BY LUFKIN INDUSTRIES?

09:57 AM 3 A. YES.

09:57 AM 4 Q. AND THIS IS FOR ENTRY-LEVEL EMPLOYMENT
09:57 AM 5 QUALIFICATIONS IN THE OILFIELD AND POWER TRANSMISSION
09:57 AM 6 DIVISIONS?

09:57 AM 7 A. YES.

09:57 AM 8 Q. AND DOES IT SHOW THAT A MINIMUM QUALIFICATION FOR
09:57 AM 9 ENTRY LEVEL IN THOSE DIVISIONS IS A G.E.D. OR BETTER?

09:57 AM 10 A. YES.

09:57 AM 11 Q. OKAY. THERE IS A HANDWRITTEN NOTE NEXT TO THAT. IS
09:57 AM 12 THAT YOUR HANDWRITING?

09:57 AM 13 A. NO.

09:57 AM 14 Q. DO YOU KNOW WHOSE HANDWRITING IT IS?

09:57 AM 15 A. NO.

09:57 AM 16 Q. CAN I ASSUME THAT IT WOULD BE SIMPLY SPECULATION ON
09:57 AM 17 YOUR PART WHAT THAT HANDWRITING MEANS?

09:57 AM 18 A. YES.

09:57 AM 19 Q. OKAY. NOW, IF YOU'LL LOOK AT EXHIBIT 10, IS THIS
09:58 AM 20 THE ENTRY-LEVEL EMPLOYMENT QUALIFICATIONS PROVIDED TO TWC
09:58 AM 21 BY LUFKIN FOR THE GENERAL FOUNDRYMEN AND TRAILER HELPER
09:58 AM 22 POSITIONS?

09:58 AM 23 A. YES.

09:58 AM 24 Q. AND DO YOU HAVE TO HAVE A HIGH SCHOOL EDUCATION OR A
09:58 AM 25 G.E.D. TO WORK ON THOSE POSITIONS?

TRANSCRIPT OF PROCEEDINGS

42

09:58 AM 1 A. NO.

09:58 AM 2 Q. NOW, MS. POULAN, I WOULD LIKE TO TAKE YOU BACK FOR A
09:58 AM 3 MOMENT TO THE PROCESS THAT YOU HAVE GONE -- THAT YOU GO
09:58 AM 4 THROUGH AT THE TWC SO THAT I'M SURE THAT WE UNDERSTAND IT.

09:58 AM 5 FIRST, AN APPLICANT OR A CUSTOMER COMES IN AND
09:58 AM 6 HE SAYS THAT HE'S SEEKING WORK, AND YOU ASK HIM TO FILL
09:58 AM 7 OUT AN INFORMATION FORM?

09:58 AM 8 A. CORRECT.

09:58 AM 9 Q. AND THEN IF HE'S WILLING TO DO SO OR SHE'S WILLING
09:58 AM 10 TO DO SO, YOU HAVE AN INTERVIEW, IS THAT RIGHT?

09:58 AM 11 A. CORRECT.

09:58 AM 12 Q. PART OF THIS INFORMATION THAT YOU RECEIVE FROM THE
09:58 AM 13 CUSTOMER IS WHAT JOBS THEY HAVE WORKED IN THE PAST, RIGHT?

09:59 AM 14 A. CORRECT.

09:59 AM 15 Q. AND WHAT JOBS THEY ARE INTERESTED IN WORKING IN?

09:59 AM 16 A. CORRECT.

09:59 AM 17 Q. IN ADDITION TO WHETHER THEY'RE WILLING TO WORK ANY
09:59 AM 18 SHIFT, AND WHERE THEY LIVE, AND WHAT COUNTIES THEY'RE
09:59 AM 19 WILLING TO WORK IN AND THE LIKE?

09:59 AM 20 A. CORRECT.

09:59 AM 21 Q. THAT'S ALL PUT INTO A COMPUTER?

09:59 AM 22 A. YES.

09:59 AM 23 Q. AND THEN WHEN THE TWC GETS JOB REQUESTS, OR
09:59 AM 24 REQUISITIONS IN THE CASE OF LUFKIN, YOU ENTER INTO THE
09:59 AM 25 COMPUTER DATA WITH RESPECT TO THAT REQUISITION, IS THAT

TRANSCRIPT OF PROCEEDINGS

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09:59 AM 1 RIGHT?

09:59 AM 2 A. CORRECT.

09:59 AM 3 Q. AND THEN THE COMPUTER PRINTS OUT A LIST OF PEOPLE
09:59 AM 4 THAT THE TWC BELIEVES SHOULD BE INTERVIEWED FOR THAT
09:59 AM 5 POSITION?

09:59 AM 6 A. THAT ACCORDING TO THE KEYWORDS WOULD MATCH THE JOB
09:59 AM 7 ORDER.

09:59 AM 8 Q. ALL RIGHT. SO YOU PUT IN KEYWORDS, AND FOR EXAMPLE,
09:59 AM 9 YOU MAY PUT IN A KEYWORD THAT SAYS FOUNDRY, RIGHT?

09:59 AM 10 A. CORRECT.

09:59 AM 11 Q. AND THE COMPUTER THEN WOULD LOOK AT PEOPLE WHO MAY
09:59 AM 12 BE SUITABLE FOR THE FOUNDRY?

09:59 AM 13 A. CORRECT. YOU HAVE EXPERIENCE OR INTERESTS.

10:00 AM 14 Q. ALL RIGHT. AND AM I CORRECT THAT THAT IS A
10:00 AM 15 MECHANICAL PROCESS WHICH IS NOT DONE BY, NOT INFLUENCED BY
10:00 AM 16 ANY HUMAN OTHER THAN THE FACT THAT THEY ENTER IN THE DATA?

10:00 AM 17 A. CORRECT.

10:00 AM 18 Q. OKAY. IT IS AN OBJECTIVE PROCESS, THE COMPUTER JUST
10:00 AM 19 SELECTS OUT PEOPLE BASED ON A PREDETERMINED PROGRAM AS TO
10:00 AM 20 WHAT IS IMPORTANT?

10:00 AM 21 A. CORRECT.

10:00 AM 22 Q. AND AM I CORRECT THAT, WITH RESPECT TO FOUNDRY WORK,
10:00 AM 23 IF A PERSON HAS LISTED PRIOR EXPERIENCE IN THE FOUNDRY,
10:00 AM 24 THEY ARE MORE LIKELY THAN SOMEONE WHO DOES NOT TO GET ON
10:00 AM 25 THE FOUNDRY LIST?

TRANSCRIPT OF PROCEEDINGS

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10:00 AM 1 A. CORRECT.

10:00 AM 2 Q. IF A PERSON LISTS THAT THEY ARE INTERESTED IN DOING
10:00 AM 3 FOUNDRY WORK, THEY'RE MORE LIKELY TO GET ON THE FOUNDRY
10:00 AM 4 LIST?

10:00 AM 5 A. CORRECT.

10:00 AM 6 Q. IF A PERSON HAS GREATER EXPERIENCE IN DOING FOUNDRY
10:00 AM 7 WORK THAN SOMEONE ELSE, SAY SOMEBODY ONLY HAS SIX MONTHS
10:00 AM 8 OF FOUNDRY WORK AND SOMEBODY HAS THREE YEARS OF FOUNDRY
10:00 AM 9 WORK, THE PERSON WHO HAS THREE YEARS IS MORE LIKELY TO GET
10:00 AM 10 ON THE LIST?

10:00 AM 11 A. CORRECT. AND NORMALLY, IF SOMEONE HAS GENERAL
10:00 AM 12 FOUNDRY ON THERE, THEY ALSO HAVE GENERAL LABOR, WHICH
10:01 AM 13 EITHER ONE WOULD GET THEM ON THE LIST.

10:01 AM 14 Q. OKAY. BUT AM I CORRECT THAT IF YOU'RE LOOKING FOR A
10:01 AM 15 FOUNDRY SITUATION, YOU MAY SEE THAT PEOPLE ARE HIGHER UP
10:01 AM 16 ON THE LIST IF THEY HAVE PREVIOUSLY WORKED IN THE FOUNDRY?

10:01 AM 17 A. RIGHT.

10:01 AM 18 Q. OR THEY HAVE INDICATED FOUNDRY IS ONE OF THEIR
10:01 AM 19 DESIRES?

10:01 AM 20 A. YES.

10:01 AM 21 Q. AND AS I UNDERSTAND THE PROCESS, ONCE YOU GET THIS
10:01 AM 22 LIST FROM THE COMPUTER, YOU DON'T ADD ANYBODY TO IT, YOU
10:01 AM 23 JUST TAKE PEOPLE OFF AS YOU CALL THEM, AND YOU DETERMINE
10:01 AM 24 IF IN FACT THEY DO HAVE THE MINIMUM QUALIFICATIONS, RIGHT?

10:01 AM 25 A. CORRECT.

TRANSCRIPT OF PROCEEDINGS

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10:01 AM 1 Q. OR IF THEY'RE --

10:01 AM 2 OR IF THEY CONTINUE TO BE INTERESTED IN THE JOB?

10:01 AM 3 A. CORRECT.

10:01 AM 4 Q. OKAY. AND AM I CORRECT THAT IN YOUR EXPERIENCE YOU

10:01 AM 5 HAVE HAD PEOPLE WHO, WHEN YOU TELL THEM THAT YOU'RE

10:01 AM 6 LOOKING FOR FOUNDRY WORK, THEY SAY THEY'RE NOT INTERESTED?

10:01 AM 7 A. CORRECT.

10:01 AM 8 Q. AND HOW ABOUT CHIPPER/GRINDER WORK, DO YOU EVER TELL

10:01 AM 9 THEM THAT YOU'RE LOOKING FOR A CHIPPER/GRINDER?

10:01 AM 10 A. YES, AND A LOT OF THEM AREN'T INTERESTED.

10:01 AM 11 Q. OKAY. AND THAT'S UP TO THE INDIVIDUAL TO TELL YOU

10:02 AM 12 THAT, ISN'T THAT RIGHT?

10:02 AM 13 A. THAT'S CORRECT.

10:02 AM 14 Q. AND AS YOU'RE DOING THIS INTERVIEWING PROCESS, YOU

10:02 AM 15 ARE CROSSING OFF PEOPLE FROM THE LIST FROM TOP TO BOTTOM?

10:02 AM 16 AND YOU FOLLOW THE LIST TOP TO BOTTOM, DON'T

10:02 AM 17 YOU?

10:02 AM 18 A. CORRECT.

10:02 AM 19 Q. OKAY. UNTIL YOU GET ENOUGH PEOPLE TO INTERVIEW FOR

10:02 AM 20 THE JOB, RIGHT?

10:02 AM 21 A. THAT'S CORRECT.

10:02 AM 22 Q. AND DO YOU THEN STOP BASICALLY?

10:02 AM 23 A. WELL, WE KEEP SEARCHING UNTIL WE HAVE FOUND ENOUGH

10:02 AM 24 PEOPLE TO FILL THE JOB ORDERS.

10:02 AM 25 Q. OKAY. NOW, AM I CORRECT THAT YOU TELL THESE

TRANSCRIPT OF PROCEEDINGS

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10:02 AM 1 INDIVIDUALS THAT SAY THAT, YES, THEY ARE INTERESTED THAT

10:02 AM 2 "YOU NEED TO COME IN FOR AN INTERVIEW"?

10:02 AM 3 A. THAT'S CORRECT.

10:02 AM 4 Q. AND DOES LUFKIN TYPICALLY INTERVIEW AT THE TWC
10:02 AM 5 OFFICES?

10:02 AM 6 A. YES.

10:02 AM 7 Q. IN FACT, IN YOUR EXPERIENCE THAT'S WHERE THEY ALWAYS
10:02 AM 8 INTERVIEW, ISN'T THAT RIGHT?

10:02 AM 9 A. NO.

10:02 AM 10 Q. OKAY. DO THEY ALWAYS INTERVIEW FOR HELPER AND
10:02 AM 11 GENERAL FOUNDRYMEN POSITIONS THERE?

10:02 AM 12 A. IF IT'S -- MAYBE -- LIKE IF IT'S ONLY ONE POSITION,
10:02 AM 13 THEY MAY INTERVIEW AT LUFKIN INDUSTRIES. IF IT'S FOR MORE
10:02 AM 14 THAN ONE POSITION, IF THEY'RE GOING TO HAVE TWO OR THREE
10:03 AM 15 PEOPLE IN THE OFFICE, THEY'LL COME TO OUR OFFICE.

10:03 AM 16 Q. OKAY. AND WHEN THE CUSTOMER COMES TO YOUR OFFICE,
10:03 AM 17 THE RECEPTIONIST GIVES THEM A LUFKIN INDUSTRIES'
10:03 AM 18 APPLICATION?

10:03 AM 19 A. THAT'S CORRECT.

10:03 AM 20 Q. AND THE PERSON FILLS IT OUT, RIGHT?

10:03 AM 21 A. CORRECT.

10:03 AM 22 Q. AND RETURNS IT TO THE RECEPTIONIST?

10:03 AM 23 A. CORRECT.

10:03 AM 24 Q. AND THE RECEPTIONIST PUTS IT IN A CUBBYHOLE
10:03 AM 25 SOMEWHERE, RIGHT?

TRANSCRIPT OF PROCEEDINGS

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10:03 AM 1 A. CORRECT.

10:03 AM 2 Q. AND THEN LUFKIN INTERVIEWS IN THE ORDER THAT THE
10:03 AM 3 APPLICATIONS ARE RETURNED?

10:03 AM 4 A. CORRECT.

10:03 AM 5 Q. SO LUFKIN DOESN'T PICK AND CHOOSE FROM THE PEOPLE
10:03 AM 6 SITTING IN THE WAITING AREA, THEY GO AND THEY PICK THE
10:03 AM 7 APPLICATIONS IN THE ORDER THAT THEY'RE RETURNED AND THEY
10:03 AM 8 INTERVIEW PEOPLE?

10:03 AM 9 A. CORRECT.

10:03 AM 10 Q. OKAY. AND FROM THAT POINT, LUFKIN THEN MAKES A
10:03 AM 11 DETERMINATION OF WHETHER THEY'RE GOING TO BE HIRED OR NOT?

10:03 AM 12 A. CORRECT.

10:03 AM 13 Q. OKAY. NOW, AM I CORRECT THAT IN YOUR EXPERIENCE
10:03 AM 14 WITH LUFKIN MR. BARBAY HAS BEEN THE PERSON WHO HAS BEEN
10:03 AM 15 RESPONSIBLE FOR HIRING?

10:03 AM 16 A. YES.

10:03 AM 17 Q. OKAY. DOES THE TWC HAVE ANY REQUIREMENTS WITH
10:03 AM 18 RESPECT TO WHETHER OR NOT THEY WILL PERMIT AN EMPLOYER TO
10:03 AM 19 DISCRIMINATE ON THE BASIS OF RACE?

10:04 AM 20 A. WE WILL NOT TAKE THE JOB ORDER.

10:04 AM 21 Q. OKAY. HAVE YOU EVER HAD ANY DIFFICULTY WITH RESPECT
10:04 AM 22 TO THAT WITH MR. BARBAY OR WITH LUFKIN INDUSTRIES?

10:04 AM 23 A. NO.

10:04 AM 24 Q. ALL RIGHT. SO -- AND IF YOU HAD SUCH DIFFICULTY,
10:04 AM 25 YOU AS A STATE AGENCY WOULD REFUSE TO TAKE THE JOB ORDER?

10:04 AM 1 A. CORRECT.

10:04 AM 2 Q. OKAY. AM I CORRECT THAT YOU HAVE NEVER REFUSED TO

10:04 AM 3 TAKE A JOB ORDER FROM LUFKIN INDUSTRIES?

10:04 AM 4 A. WE HAVE NOT.

10:04 AM 5 Q. OKAY. NOW, WHEN MR. BARBAY CALLS YOU AND WHEN HE

10:04 AM 6 E-MAILS YOU, DOES HE TELL YOU BY REQUISITION SPECIFICALLY

10:04 AM 7 WHAT JOB THEY'RE LOOKING FOR?

10:04 AM 8 A. YES.

10:04 AM 9 Q. SUCH AS HE'LL TELL YOU "WE WANT A GENERAL

10:04 AM 10 FOUNDRYMAN"?

10:04 AM 11 A. YES.

10:04 AM 12 Q. AND HE'LL OFTEN TELL YOU EXACTLY WHERE THAT PERSON

10:04 AM 13 IS GOING TO GO TO WORK, WON'T HE?

10:04 AM 14 A. YES.

10:04 AM 15 Q. OKAY. OR HE'LL SAY, "I WANT A TRAILER BUILDER,"

10:04 AM 16 RIGHT?

10:04 AM 17 A. CORRECT.

10:04 AM 18 Q. AND YOUR BASIC EXPERIENCE HAS BEEN, THOSE ARE THE

10:04 AM 19 TWO JOBS THAT GET FILLED, GET FILLED, AS OPPOSED TO A

10:04 AM 20 MACHINIST HELPER FOR EXAMPLE?

10:04 AM 21 A. I DON'T SEE THOSE ORDERS VERY OFTEN.

10:04 AM 22 Q. OKAY. AND A MACHINIST HELPER IS SOMEONE WHO, IF

10:05 AM 23 THEY'RE WORKING IN POWER TRANSMISSION OR OILFIELD, WOULD

10:05 AM 24 NEED TO HAVE A HIGH SCHOOL EDUCATION OR A G.E.D. OR

10:05 AM 25 BETTER, RIGHT?

TRANSCRIPT OF PROCEEDINGS

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10:05 AM 1 A. CORRECT.

10:05 AM 2 Q. AND THAT'S -- YOUR UNDERSTANDING, THAT'S BECAUSE
10:05 AM 3 THEY WOULD NEED TO BE ABLE TO DO SHOP MATH CALCULATIONS TO
10:05 AM 4 ASSIST THE MACHINISTS?

10:05 AM 5 A. CORRECT.

10:05 AM 6 Q. OKAY. HAVE YOU BEEN TO LUFKIN INDUSTRIES?

10:05 AM 7 A. YES.

10:05 AM 8 Q. DID LUFKIN BRING YOU THERE WHEN THEY LEARNED THAT
10:05 AM 9 YOU WERE GOING TO BE THEIR PRINCIPAL CONTACT SO YOU COULD
10:05 AM 10 TOUR THE ENTIRE FACILITY?

10:05 AM 11 A. I TOURED MOST OF THE FACILITY.

10:05 AM 12 Q. OKAY. DID YOU TOUR THE FOUNDRY?

10:05 AM 13 A. YES.

10:05 AM 14 Q. DID THEY SHOW YOU EVERYTHING IN THE FOUNDRY?

10:05 AM 15 A. YES.

10:05 AM 16 Q. DID YOU TOUR TRAILER?

10:05 AM 17 A. YES.

10:05 AM 18 Q. DID YOU TOUR OILFIELD?

10:05 AM 19 A. NO.

10:05 AM 20 Q. OKAY. DID YOU TOUR POWER TRANSMISSION?

10:05 AM 21 A. NO.

10:05 AM 22 Q. OKAY. SO YOU WENT TO TRAILER AND OILFIELD (SIC),
10:05 AM 23 WHICH ARE THE JOBS THAT YOU MOST OFTEN FILL AS YOU RECALL
10:05 AM 24 IT?

10:05 AM 25 A. CORRECT.

TRANSCRIPT OF PROCEEDINGS

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10:05 AM 1 Q. OKAY. NOW, AM I CORRECT IN UNDERSTANDING THAT SINCE
10:06 AM 2 YOU SAID YOU HAVE BEEN ON THE JOB YOU HAVE DONE JOB
10:06 AM 3 REQUISITIONS OR YOU HAVE TAKEN INDIVIDUAL REQUISITIONS AND
10:06 AM 4 YOU HAVE CREATED AN INDIVIDUAL JOB ORDER, IS THAT RIGHT?

10:06 AM 5 A. REPEAT THAT.

10:06 AM 6 Q. YEAH. LET ME TRY TO REPEAT IT.

10:06 AM 7 IN FACT, LET ME ASK YOU TO LOOK AT EXHIBIT 11,
10:06 AM 8 PLEASE.

10:06 AM 9 WHEN I WAS LOOKING AT EXHIBIT 11, MS. POULAN, I
10:06 AM 10 NOTICED THERE SEEMED TO BE A SUBSTANTIAL CHANGE IN HOW
10:06 AM 11 THINGS WERE DONE AT ABOUT THE DEMARCATION OF TWC00177 AND
10:06 AM 12 00298. DO YOU SEE THOSE TWO PAGES?

10:07 AM 13 A. JUST A SECOND. WELL, 177 IS A JOB DEVELOPMENT.
10:07 AM 14 IT'S NOT A JOB ORDER, IT'S A JOB DEVELOPMENT.

10:07 AM 15 Q. OKAY. IS THAT THE ONE THAT SAYS FOR MAINTENANCE
10:07 AM 16 ELECTRICIAN?

10:07 AM 17 A. YES.

10:07 AM 18 Q. OKAY. LET ME ASK --

10:07 AM 19 A. IT'S A PLACEMENT AS A RESULT OF A JOB DEVELOPMENT.

10:07 AM 20 Q. OKAY. AND THAT WAS A JOB DEVELOPMENT AT FEBRUARY
10:07 AM 21 27, 1997?

10:07 AM 22 A. CORRECT.

10:07 AM 23 Q. NOW, LOOK AT TWC298. THAT'S AN ORDER THAT IS PLACED
10:07 AM 24 IN JULY OF 2001, IS IT NOT?

10:07 AM 25 A. 298 IS A DELAYED VERIFICATION.

TRANSCRIPT OF PROCEEDINGS

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10:08 AM 1 Q. ALL RIGHT. AM I CORRECT THAT --

10:08 AM 2 FIRST OF ALL, THERE ARE NO -- IN EXHIBIT 11

10:08 AM 3 THERE ARE NO DOCUMENTS BATES-STAMPED FROM 00178 TO 00297?

10:08 AM 4 A. I'M NOT FOLLOWING YOU.

10:08 AM 5 Q. WELL, LET ME APPROACH. OKAY. I'M JUST WANTING TO

10:08 AM 6 BE SURE -- EXCUSE ME. I'M JUST WANTING TO BE SURE THAT

10:08 AM 7 I'M NOT MISSING SOMETHING FROM MY BOOK. I DON'T THINK I

10:08 AM 8 AM.

10:08 AM 9 WHAT I'M --

10:08 AM 10 AM I CORRECT, AS FAR AS YOU CAN SEE, THAT

10:08 AM 11 EXHIBIT 11 STARTS WITH TWC14?

10:08 AM 12 A. UH-HUH.

10:08 AM 13 Q. AND IT SEEMS TO RUN SEQUENTIALLY 73, 74, 76 UNTIL IT

10:08 AM 14 GETS TO NUMBER TWC00177?

10:08 AM 15 A. OKAY.

10:08 AM 16 Q. AND THEN IT SKIPS AND IT GOES TO TWC00298?

10:08 AM 17 A. YES.

10:08 AM 18 Q. SO WE'RE KIND OF MISSING FROM 178 TO 297, IS THAT

10:09 AM 19 RIGHT?

10:09 AM 20 A. I HADN'T NOTICED, BUT, YES.

10:09 AM 21 Q. OKAY. AND IF YOU WOULD LOOK FROM 298, DO THEY

10:09 AM 22 APPEAR TO BE JOB ORDERS THAT HAVE BEEN TAKEN RECENTLY WHEN

10:09 AM 23 YOU WERE HANDLING LUFKIN?

10:09 AM 24 A. 298?

10:09 AM 25 Q. FROM 298 ON.

10:09 AM 1 A. 298 IS JULY, '01.

10:09 AM 2 Q. OKAY. HOW ABOUT --

10:09 AM 3 AND WHEN DID YOU START HANDLING LUFKIN?

10:09 AM 4 A. I THINK AROUND MARCH -- MARCH, 2000.

10:09 AM 5 Q. OKAY.

10:09 AM 6 A. BUT THIS IS A DELAYED VERIFICATION.

10:09 AM 7 Q. I SEE.

10:09 AM 8 A. IT'S NOT A JOB ORDER.

10:09 AM 9 Q. OKAY. HOW ABOUT THE NEXT PAGE?

10:09 AM 10 A. IT'S A DELAYED VERIFICATION.

10:09 AM 11 Q. ALL RIGHT. AND GO THROUGH AND TELL ME WHERE IS THE

10:09 AM 12 FIRST JOB ORDER THAT YOU SEE.

10:09 AM 13 A. OKAY. DELAYED VERIFICATION, DELAYED VERIFICATION.

10:09 AM 14 OKAY. JUNE, '01.

10:09 AM 15 Q. AND THAT'S TWC302?

10:09 AM 16 A. YES.

10:09 AM 17 Q. OKAY. I WANT YOU TO DO -- AND I APOLOGIZE FOR

10:09 AM 18 MAKING YOU FLIP BACK AND FORTH, BUT I WANT YOU TO DO A

10:10 AM 19 LITTLE COMPARISON FOR ME IF YOU COULD.

10:10 AM 20 WOULD YOU TAKE A LOOK AT TWC PAGE 335? DO YOU

10:10 AM 21 SEE THAT?

10:10 AM 22 A. 335, YES.

10:10 AM 23 Q. YES. THAT'S FOR GENERAL FOUNDRYMEN, ISN'T IT?

10:10 AM 24 A. YES.

10:10 AM 25 Q. AND IT WAS AN ORDER TAKEN IN FEBRUARY OF '03?

TRANSCRIPT OF PROCEEDINGS

53

10:10 AM 1 A. CORRECT.

10:10 AM 2 Q. OKAY. AND THIS HAS THREE NAMES ON IT OF PEOPLE WHO

10:10 AM 3 WERE REFERRED AND ACTUALLY ONE WAS HIRED?

10:10 AM 4 A. YES.

10:10 AM 5 Q. OKAY. DOES THIS HAVE THE ACTUAL REQUISITION NUMBER

10:10 AM 6 THAT LUFKIN WOULD PROVIDE TO YOU FROM THEIR SYSTEM?

10:10 AM 7 A. IT'S NOT ON HERE.

10:10 AM 8 Q. OKAY. ALL RIGHT. THEN LOOK AT 334, OR 336, PLEASE.

10:11 AM 9 A. OKAY.

10:11 AM 10 Q. AND THIS IS A GENERAL FOUNDRYMAN JOB ORDER FOR

10:11 AM 11 FEBRUARY OF 2003, AND IT HAS TWO NAMES ON IT?

10:11 AM 12 A. YES.

10:11 AM 13 Q. ONE OF WHICH WAS HIRED?

10:11 AM 14 A. YES.

10:11 AM 15 Q. AND THEN IF YOU WOULD LOOK AT 338. THIS IS A

10:11 AM 16 GENERAL FOUNDRYMAN REQUISITION, AND IT HAS FOUR NAMES ON

10:11 AM 17 IT, ONE OF WHOM WAS HIRED?

10:11 AM 18 A. CORRECT.

10:11 AM 19 Q. NOW, DOES 338 HAVE A REQUISITION NUMBER ON IT AT

10:11 AM 20 ALL?

10:11 AM 21 A. I DON'T SEE ONE.

10:11 AM 22 Q. OKAY. NOW, IF YOU WOULD TURN BACK AND LOOK AT TWC

10:11 AM 23 NUMBER 138. DO YOU SEE THAT?

10:12 AM 24 A. YES.

10:12 AM 25 Q. NOW, 138 IS A REQUISITION BACK IN '96, ISN'T THAT

TRANSCRIPT OF PROCEEDINGS

54

10:12 AM 1 RIGHT?

10:12 AM 2 A. YES.

10:12 AM 3 Q. AND IT HAS TWO AND A HALF PAGES OF PEOPLE WHO WERE
10:12 AM 4 REFERRED AND HIRED, CORRECT?

10:12 AM 5 A. YES.

10:12 AM 6 Q. AND THEN IF YOU LOOK AT TWC153, THAT'S A REQUISITION
10:12 AM 7 IN APRIL OF '96, AND IT HAS ABOUT THREE AND A QUARTER
10:12 AM 8 PAGES OF PEOPLE WHO WERE REFERRED AND HIRED?

10:12 AM 9 A. YES.

10:12 AM 10 Q. SO THE REQUISITIONS BACK IN TIME SEEM TO HAVE A LOT
10:12 AM 11 MORE APPLICANTS THAT WERE REFERRED AND A LOT MORE
10:12 AM 12 INDICATION OF HIRING THAN MORE RECENTLY, AM I CORRECT?

10:12 AM 13 A. CORRECT.

10:12 AM 14 Q. OKAY. DO I --

10:13 AM 15 I BELIEVE YOU TESTIFIED, BUT LET ME BE SURE,
10:13 AM 16 THAT YOU STARTED TO WORK WITH LUFKIN IN 2000, AND THAT IN
10:13 AM 17 THE TIME PERIOD OF 1996 TO 1999 YOU HAD A DIFFERENT JOB
10:13 AM 18 AND YOU WEREN'T INVOLVED IN PREPARING THESE JOB ORDERS?

10:13 AM 19 A. NOT PREPARING THE JOB ORDERS.

10:13 AM 20 Q. OKAY. AND THAT YOU IN FACT WERE WITH TWC BUT YOU
10:13 AM 21 WEREN'T WORKING WITH LUFKIN?

10:13 AM 22 A. I MADE SOME LIMITED REFERRALS ON SOME OF THE ORDERS
10:13 AM 23 IN THE LATTER PART, BUT I DID NOT WRITE THE JOB ORDERS.

10:13 AM 24 Q. OKAY. AND I AM ALSO CORRECT, AM I NOT, THAT IT
10:13 AM 25 WOULD BE APPROPRIATE UNDER TWC POLICY -- IT WOULDN'T BE AN

TRANSCRIPT OF PROCEEDINGS

55

10:13 AM 1 ERROR IN THIS PAST TIME FRAME FOR SOMEONE TO USE AN
10:13 AM 2 EXISTING JOB ORDER AND REFER PEOPLE ON DIFFERENT
10:13 AM 3 REQUISITIONS TO DIFFERENT DIVISIONS?

10:13 AM 4 A. AS LONG AS THE QUALIFICATIONS WERE THE SAME, IT
10:13 AM 5 WOULD NOT BE AN ERROR.

10:13 AM 6 Q. OKAY. SO A PERSON IN THE PAST COULD HAVE TAKEN A
10:13 AM 7 JOB ORDER, FOR EXAMPLE, FOR A FOUNDRY WORKER, AND SINCE
10:13 AM 8 ITS QUALIFICATIONS ARE THE SAME AS TRAILER BUILDER -- IF
10:14 AM 9 SOMEBODY CALLED IN AND SAID, "WE NEED TRAILER BUILDERS,"
10:14 AM 10 THEY MAY JUST PULL THIS UP ON THE SCREEN AND FILL IT FROM
10:14 AM 11 A JOB ORDER, RIGHT?

10:14 AM 12 A. IDEALLY THERE WOULD HAVE BEEN TWO JOB ORDERS IN
10:14 AM 13 THERE, BUT, YOU KNOW, IT COULD HAVE --

10:14 AM 14 I MEAN, IF THE JOB ORDERS ARE THE SAME, I MEAN,
10:14 AM 15 IF THE QUALIFICATIONS ARE THE SAME, IT'S NOT AN ERROR AS
10:14 AM 16 FAR AS -- YOU KNOW, IF YOU'RE LOOKING FOR ERROR MADE ON
10:14 AM 17 REFERRALS, IT WOULDN'T BE AN ERROR.

10:14 AM 18 Q. OKAY. WELL, YOU BELIEVE -- I TAKE IT YOU BELIEVE
10:14 AM 19 THAT, GIVEN THE NUMBER OF PEOPLE THAT WE'RE TALKING ABOUT
10:14 AM 20 HERE, IT IS ENTIRELY POSSIBLE THAT THESE JOB ORDERS WERE
10:14 AM 21 USED TO FILL MULTIPLE REQUISITIONS, RIGHT?

10:14 AM 22 A. I WASN'T WORKING DURING THAT TIME, I CAN'T SAY, BUT,
10:14 AM 23 I MEAN, IT IS POSSIBLE.

10:14 AM 24 Q. AND IT IS POSSIBLE THAT THOSE REQUISITIONS WERE FOR
10:14 AM 25 DIFFERENT DEPARTMENTS, PROVIDED THEY MAY HAVE HAD THE SAME

TRANSCRIPT OF PROCEEDINGS

56

10:14 AM 1 ENTRY-LEVEL QUALIFICATIONS?

10:14 AM 2 A. A POSSIBILITY.

10:14 AM 3 Q. OKAY. WELL, LET ME GET TO A RANGE OF A LITTLE MORE
10:15 AM 4 WITH RESPECT TO THIS.

10:15 AM 5 IT HAS BEEN YOUR EXPERIENCE, HASN'T IT, THAT
10:15 AM 6 LUFKIN NEEDS PEOPLE TO WORK IN THE FOUNDRY AND THE TRAILER
10:15 AM 7 DIVISIONS FAIRLY OFTEN?

10:15 AM 8 A. THE FOUNDRY MORE OFTEN THAN THE TRAILER.

10:15 AM 9 Q. SO IT IS A SITUATION IN WHICH YOU WOULD EXPECT THEM
10:15 AM 10 TO BE SENDING YOU REQUISITIONS BECAUSE OF THE TURNOVER IN
10:15 AM 11 THE FOUNDRY EVERY COUPLE OF WEEKS OR THREE WEEKS OR SO, IS
10:15 AM 12 THAT BASICALLY RIGHT, OR EVERY MONTH?

10:15 AM 13 A. I'M GETTING THEM ALMOST DAILY NOW.

10:15 AM 14 Q. ALMOST DAILY? AND AS FAR AS YOU KNOW, FROM THE
10:15 AM 15 SITUATION AT LUFKIN, THAT WAS THE CASE -- THAT'S BEEN THE
10:15 AM 16 CASE FOR AS LONG AS THEY'VE BEEN LOOKING FOR FOUNDRY
10:15 AM 17 WORKERS?

10:15 AM 18 A. RIGHT. WHEN THE ECONOMY IS GOOD THEY'RE LOOKING FOR
10:15 AM 19 EMPLOYEES, WHEN THE ECONOMY IS BAD, THEY'RE NOT.

10:15 AM 20 Q. OKAY. AND LET ME SAY THAT, IF YOU LOOK AT THE TWC
10:15 AM 21 EXHIBITS, YOU WILL SEE THAT IN THE SERIES THAT THE
10:15 AM 22 PLAINTIFF HAS PROVIDED FROM TWC14 TO TWC178, THERE WERE
10:16 AM 23 ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN REQUISITIONS FOR
10:16 AM 24 FOUNDRY WORKER. THE FIRST WAS FOUND AT TWC041, THE SECOND
10:16 AM 25 AT 059. YOU CAN TAKE A LOOK AT THOSE.

TRANSCRIPT OF PROCEEDINGS

57

10:16 AM 1 A. 041, UH-HUH.

10:16 AM 2 Q. 041 IS A FOUNDRY WORKER, RIGHT?

10:16 AM 3 A. YES.

10:16 AM 4 Q. OKAY. AND THAT REQUISITION WAS PLACED ON 11-2-97,
10:16 AM 5 RIGHT?

10:16 AM 6 A. CORRECT.

10:16 AM 7 Q. OKAY. AND I'M NOT --

10:16 AM 8 LET ME SAY, IN THE INTEREST OF TIME CONSTRAINTS,
10:16 AM 9 I'M GOING TO TRY TO DO THIS QUICKLY. SO IF YOU WOULD LOOK
10:16 AM 10 QUICKLY THROUGH THERE, DO YOU SEE ANYBODY WHO HAD AN
10:16 AM 11 APPOINTMENT DATE AFTER MARCH 28, 1988?

10:16 AM 12 A. AFTER MARCH 28TH?

10:17 AM 13 Q. YES.

10:17 AM 14 A. NO.

10:17 AM 15 Q. OKAY. NOW, I'M GOING TO REPRESENT TO YOU, BECAUSE
10:17 AM 16 IT'S IN THE DOCUMENT, AND I'M NOT GOING TO MAKE YOU WORK
10:17 AM 17 THROUGH IT, MS. POULAN, BECAUSE YOUR TIME IS MORE VALUABLE
10:17 AM 18 THAN THAT, BUT I'M GOING TO REPRESENT TO YOU THAT THESE
10:17 AM 19 SEVEN REQUISITIONS ARE ALL THE GENERAL FOUNDRY WORKER
10:17 AM 20 REQUISITIONS FOUND IN THAT FIRST SERIES OF BATES NUMBERS,
10:18 AM 21 AND THAT WHAT THEY REFLECT IS THAT THERE WASN'T ANY
10:18 AM 22 FOUNDRY WORKER REQUESTED BY LUFKIN INDUSTRIES UNTIL
10:18 AM 23 OCTOBER OF 1995.

10:18 AM 24 NOW, WOULD IT BE YOUR EXPERIENCE THAT, FOR
10:18 AM 25 EXAMPLE, IF WE TAKE THE BENCHMARK PERIOD MARCH 6, 1994,

TRANSCRIPT OF PROCEEDINGS

58

10:18 AM 1 AND WE GO THROUGH TO OCTOBER OF 1995, WHICH IS A PERIOD OF
10:18 AM 2 ABOUT EIGHTEEN MONTHS, THAT LUFKIN WOULD HAVE NEVER NEEDED
10:18 AM 3 A FOUNDRY WORKER?

10:18 AM 4 A. HIGHLY UNLIKELY.

10:18 AM 5 Q. HIGHLY UNLIKELY, ISN'T IT?

10:18 AM 6 A. YES.

10:18 AM 7 Q. AND THESE DOCUMENTS WILL ALSO REFLECT THAT, WITH THE
10:18 AM 8 EXCEPTION OF TWO OR THREE PEOPLE FROM JANUARY 1, 1997, TO
10:18 AM 9 NOVEMBER, 1997, THERE WAS NO REQUIREMENT FOR A FOUNDRY
10:18 AM 10 WORKER, ABOUT A TEN-MONTH PERIOD, AND THAT WOULD BE
10:18 AM 11 UNUSUAL IN YOUR EXPERIENCE AS WELL, WOULDN'T IT?

10:18 AM 12 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT ON
10:18 AM 13 THE BASIS OF FOUNDATION. HE'S ASKING ABOUT DETAILS THAT
10:19 AM 14 SHE CLEARLY HAS NO KNOWLEDGE OF.

10:19 AM 15 THE COURT: THAT'S TRUE. IT'S A HYPOTHETICAL
10:19 AM 16 QUESTION. I'M GOING TO ALLOW IT.

10:19 AM 17 ISN'T IT A HYPOTHETICAL QUESTION?

10:19 AM 18 MR. HAMEL: IT IS, YOUR HONOR.

10:19 AM 19 THE COURT: I THOUGHT SO.

10:19 AM 20 THE WITNESS: OF ELEVEN MONTHS, NO JOB ORDER?

10:19 AM 21 BY MR. HAMEL:

10:19 AM 22 Q. YES.

10:19 AM 23 A. IT'S UNLIKELY.

10:19 AM 24 Q. THAT WOULD BE VERY INCONSISTENT WITH YOUR EXPERIENCE
10:19 AM 25 AS TO THE NEEDS IN THE FOUNDRY?

TRANSCRIPT OF PROCEEDINGS

59

10:19 AM 1 A. CORRECT.

10:19 AM 2 Q. OKAY. AND IF THE REQUISITIONS FOR GENERAL
10:19 AM 3 FOUNDRYMEN DON'T COVER THOSE TIME PERIODS, THEN THE
10:19 AM 4 PEOPLE -- IF THEY WERE ASKING FOR GENERAL FOUNDRYMEN, THEY
10:19 AM 5 MUST BE -- I'M SORRY. IF THE JOB ORDERS FOR GENERAL
10:19 AM 6 FOUNDRYMEN DON'T COVER THOSE TIME PERIODS, THEN IF LUFKIN
10:19 AM 7 NEEDED GENERAL FOUNDRYMEN, THEY MUST BE FOUND ON SOME
10:19 AM 8 OTHER JOB ORDER, ISN'T THAT RIGHT?

10:19 AM 9 A. THEY COULD BE.

10:19 AM 10 Q. OKAY. AND SO --

10:19 AM 11 THE COURT: IF THE RECORDS ARE ACCURATE AND
10:19 AM 12 THEY'VE NOT BEEN CHANGED?

10:19 AM 13 THE WITNESS: RIGHT.

10:19 AM 14 BY MR. HAMEL:

10:19 AM 15 Q. AND SO IT COULD BE THAT SOMEONE AT THE TWC, EVEN
10:19 AM 16 THOUGH, YOU KNOW, IT'S NOT THE PRACTICE YOU FOLLOW, BUT IT
10:20 AM 17 COULD BE THAT SOMEONE IN THE TWC PULLED UP AN OPEN JOB
10:20 AM 18 ORDER THAT WAS, SAY, FOR TRAILER, KNEW IT HAD THE SAME
10:20 AM 19 ENTRY-LEVEL REQUIREMENTS, AND SIMPLY RAN A SEARCH BECAUSE
10:20 AM 20 THEY HAD GOTTEN SOMETHING FOR GENERAL FOUNDRYMEN FROM
10:20 AM 21 LUFKIN? THAT'S A POSSIBILITY?

10:20 AM 22 A. IF THEY DID NOT CHANGE THE JOB DESCRIPTION, IT COULD
10:20 AM 23 HAPPEN.

10:20 AM 24 Q. OKAY. AND DOESN'T THE TWC, WHEN THEY GET BY
10:20 AM 25 TELEPHONE A REQUISITION FROM A COMPANY LIKE LUFKIN, DON'T

10:20 AM 1 THEY WRITE DOWN THE REQUISITION THAT THEY'VE GOTTEN?

10:20 AM 2 A. WE WRITE DOWN THE JOB ORDER ON A JOB ORDER PAD.

10:20 AM 3 Q. ON A JOB ORDER PAD? AND THOSE DOCUMENTS ARE

10:20 AM 4 DESTROYED BY THE TWC AFTER THEY --

10:20 AM 5 A. THEY'RE SHREDDED.

10:20 AM 6 Q. OKAY. BUT WHEN YOU'RE ACTUALLY CALLING PEOPLE, YOU

10:20 AM 7 HAVE THE JOB ORDER PAD THERE, DON'T YOU?

10:20 AM 8 A. YES.

10:20 AM 9 Q. AND IN FACT, THIS ISN'T SOMETHING THAT --

10:20 AM 10 YOU'RE DOING IT IN REALTIME. YOU GET A

10:20 AM 11 REQUISITION FROM LUFKIN AND THEY SAY, "I NEED SOME GENERAL

10:20 AM 12 FOUNDRYMEN." YOU RUN A LIST FROM THE COMPUTER AND YOU

10:20 AM 13 START CALLING PEOPLE FOR GENERAL FOUNDRYMEN?

10:21 AM 14 A. YES, IF IT'S A GENERAL FOUNDRYMAN JOB.

10:21 AM 15 Q. OKAY. SO IT'S FRESH IN YOUR MIND THAT THEY TOLD YOU

10:21 AM 16 "WE NEED GENERAL FOUNDRYMEN," EVEN IF YOU WOULD HAVE RUN

10:21 AM 17 THAT LIST AGAINST A JOB ORDER THAT HAD BEEN PLACED MONTHS

10:21 AM 18 BEFORE FOR TRAILER, ISN'T THAT RIGHT?

10:21 AM 19 A. YOU'LL HAVE TO REPEAT THAT.

10:21 AM 20 Q. I'M SORRY. I'M GOING A LITTLE FAST.

10:21 AM 21 LET ME ASK HYPOTHETICALLY IF FROM YOUR

10:21 AM 22 EXPERIENCE WITH THE TWC YOU THINK THIS IS A POSSIBILITY.

10:21 AM 23 LET'S ASSUME BACK IN '96, WHEN YOU WEREN'T DOING THIS, BUT

10:21 AM 24 SOMEBODY ELSE WAS DOING IT, AND KNOWING THAT IT WASN'T AN

10:21 AM 25 ERROR, AN ERROR UNDER TWC PROCEDURES, THEY GOT A JOB ORDER

TRANSCRIPT OF PROCEEDINGS

61

10:21 AM 1 CURRENTLY IN THE SYSTEM FOR A TRAILER, A TRAILER POSITION.

10:21 AM 2 A. UH-HUH.

10:21 AM 3 Q. AND VIRON BARBAY CALLS THEM AND SAYS, "I NEED SOME
10:21 AM 4 GENERAL FOUNDRYMEN."

10:21 AM 5 A. UH-HUH.

10:21 AM 6 Q. AND THE PERSON WRITES IT DOWN ON THE PAD, AND GOES
10:21 AM 7 INTO THE SYSTEM AND SEES THAT THEY HAVE A TRAILER JOB
10:21 AM 8 ORDER OPEN, AND SAYS, "IT'S THE END OF THE DAY, I CAN'T --
10:21 AM 9 I CAN'T GET ALL THIS STUFF ENTERED IN TO DO A NEW JOB
10:22 AM 10 ORDER, SO I'M JUST GOING TO RUN THIS REQUISITION AGAINST
10:22 AM 11 THE EXISTING JOB ORDER, BECAUSE, AFTER ALL, IT HAS THE
10:22 AM 12 SAME REQUIREMENTS."

10:22 AM 13 A. HUH-UH.

10:22 AM 14 Q. OKAY?

10:22 AM 15 A. NO.

10:22 AM 16 Q. WOULDN'T DO THAT?

10:22 AM 17 A. NO.

10:22 AM 18 Q. WHY NOT?

10:22 AM 19 A. YOU'VE GOT THE JOB ORDER PAD IN FRONT OF YOU?

10:22 AM 20 Q. RIGHT.

10:22 AM 21 A. IF YOU'RE WRITING ANOTHER JOB ORDER, THAT IS ANOTHER
10:22 AM 22 JOB ORDER NUMBER, IT'S A SEPARATE JOB ORDER NUMBER.

10:22 AM 23 Q. WELL --

10:22 AM 24 A. WHETHER YOU RAN OUT OF TIME THAT DAY OR NOT, YOU
10:22 AM 25 WOULD DO IT THE NEXT MORNING.

TRANSCRIPT OF PROCEEDINGS

62

10:22 AM 1 Q. OKAY. BUT AM I --

10:22 AM 2 THEN HOW WOULD YOU EXPLAIN, MS. POULAN, THAT
10:22 AM 3 THERE ARE MANY MORE REQUISITIONS THAN THERE ARE JOB
10:22 AM 4 ORDERS, IF EACH REQUISITION IS A SEPARATE JOB ORDER?

10:22 AM 5 A. WELL, I'M SAYING --

10:22 AM 6 MR. GARRIGAN: OBJECTION. HE'S ASSUMING FACTS
10:22 AM 7 THAT ARE NOT IN EVIDENCE.

10:22 AM 8 THE COURT: I'M GOING TO ALLOW THE QUESTION.
10:22 AM 9 IT'S CROSS-EXAMINATION.

10:22 AM 10 THE WITNESS: I WOULD SAY NO, BECAUSE THAT IS
10:22 AM 11 JUST NOT A PRACTICE THAT I WOULD DO. I CAN'T TELL YOU
10:22 AM 12 WHAT SOMEBODY ELSE DID IN '96 OR '97, BUT I'M TELLING YOU
10:22 AM 13 I WOULDN'T DO IT.

10:22 AM 14 BY MR. HAMEL:

10:22 AM 15 Q. WELL, LET ME SAY I APPRECIATE THAT, AND THE
10:23 AM 16 MATERIALS THAT YOU'VE DONE ARE IN 2000 AND SINCE THEN.

10:23 AM 17 A. UH-HUH.

10:23 AM 18 Q. AND THERE DOESN'T SEEM TO BE A DISCREPANCY THERE.
10:23 AM 19 I'M JUST ASKING ABOUT 1996. IS IT POSSIBLE THAT SOMEBODY
10:23 AM 20 COULD HAVE DONE THAT?

10:23 AM 21 A. I GUESS IT COULD BE POSSIBLE, BUT THEY SHOULDN'T DO
10:23 AM 22 IT. IT COULD BE POSSIBLE, IF THE REQUIREMENTS ARE THE
10:23 AM 23 SAME. YOU KNOW, IF THEY SAID, "WELL, THERE'S ALREADY A
10:23 AM 24 JOB ORDER IN THERE, I'LL JUST WORK OFF OF IT," YOU KNOW, I
10:23 AM 25 GUESS THEY COULD.

TRANSCRIPT OF PROCEEDINGS

63

10:23 AM 1 Q. WELL, LET ME HELP REFRESH YOUR RECOLLECTION. DO YOU
10:23 AM 2 RECALL IN YOUR DEPOSITION TESTIFYING THAT, PRIOR TO THE
10:23 AM 3 TIME THAT YOU TOOK OVER, THAT IT WAS -- THAT THERE COULD
10:23 AM 4 BE MULTIPLE REQUESTS FOR MULTIPLE POSITIONS FROM LUFKIN
10:23 AM 5 THAT WOULD BE DEALT WITH ON A SINGLE JOB ORDER?

10:23 AM 6 A. YES.

10:23 AM 7 Q. OKAY. YOU DID TESTIFY TO THAT IN YOUR DEPOSITION?

10:23 AM 8 A. YES.

10:23 AM 9 Q. AND THAT YOU BELIEVE THAT PRIOR TO THE TIME YOU TOOK
10:23 AM 10 OVER THERE WERE SITUATIONS IN WHICH REQUESTS FOR PEOPLE TO
10:23 AM 11 BE EMPLOYED IN DIFFERENT DIVISIONS WERE PUT ON THE SAME
10:23 AM 12 JOB ORDER, ISN'T THAT RIGHT?

10:23 AM 13 A. IT COULD BE.

10:24 AM 14 Q. OKAY. AND I BELIEVE, AS YOU'VE TESTIFIED, WHAT
10:24 AM 15 YOU'VE SAID IS, WHILE THAT'S NOT A PRACTICE THAT YOU WOULD
10:24 AM 16 HAVE DONE, THE PERSON IN 1996 WOULD NOT HAVE BEEN IN ERROR
10:24 AM 17 IN DOING IT, IT'S JUST NOT A PRACTICE YOU THINK IS
10:24 AM 18 APPROPRIATE?

10:24 AM 19 A. THAT'S RIGHT.

10:24 AM 20 Q. OKAY. SO IT WOULD HAVE BEEN CONSISTENT WITH TWC
10:24 AM 21 POLICY, EVEN THOUGH IT'S NOT THE BEST PRACTICE?

10:24 AM 22 A. RIGHT.

10:24 AM 23 Q. AND IT IS YOUR -- IT IS CONSISTENT WITH YOUR
10:24 AM 24 UNDERSTANDING THAT YOU WOULD NOT HAVE EXPECTED TO FIND
10:24 AM 25 GAPS OF TEN OR TWELVE OR EIGHTEEN MONTHS WHERE LUFKIN SAID

TRANSCRIPT OF PROCEEDINGS

64

10:24 AM 1 THEY DIDN'T NEED ANYBODY FOR THE FOUNDRY?

10:24 AM 2 A. RIGHT.

10:24 AM 3 Q. AM I CORRECT --

10:24 AM 4 AND LET ME JUST BE SURE THAT --

10:24 AM 5 YOU TELL THE PERSON THAT IS CALLED WHAT JOB THEY

10:25 AM 6 ARE INTERVIEWING FOR, SO WHEN THEY COME IN TO THE

10:25 AM 7 INTERVIEW, THEY SHOULD KNOW WHAT THEY'RE THERE TO TALK

10:25 AM 8 ABOUT, RIGHT?

10:25 AM 9 A. WE GIVE THEM A JOB TITLE AND A BRIEF JOB

10:25 AM 10 DESCRIPTION.

10:25 AM 11 Q. AND IT'S A SINGLE JOB, ISN'T IT?

10:25 AM 12 A. YES.

10:25 AM 13 Q. OKAY.

10:25 AM 14 MR. HAMEL: THANK YOU, YOUR HONOR. THAT'S ALL

10:25 AM 15 THE QUESTIONS I HAVE.

10:25 AM 16 REDIRECT EXAMINATION

10:25 AM 17 BY MR. GARRIGAN:

10:25 AM 18 Q. I APOLOGIZE, BUT I GET TO ASK YOU SOME MORE

10:25 AM 19 QUESTIONS.

10:25 AM 20 A. OKAY.

10:25 AM 21 Q. WOULD YOU LOOK AT PLAINTIFF'S EXHIBIT 10? DO YOU

10:25 AM 22 HAVE THAT IN FRONT OF YOU?

10:25 AM 23 A. YES.

10:26 AM 24 Q. ALL RIGHT. NOW, WHEN MR. HAMEL WAS QUESTIONING YOU,

10:26 AM 25 I BELIEVE YOU INDICATED THAT THAT ONLY CONCERNED POSITIONS

TRANSCRIPT OF PROCEEDINGS

65

10:26 AM 1 IN POWER TRANSMISSION AND OILFIELD. DO YOU RECALL
10:26 AM 2 TESTIFYING TO THAT EFFECT?

10:26 AM 3 A. O13, ISN'T THAT WHAT YOU'RE LOOKING AT?

10:26 AM 4 Q. NO. I'M LOOKING AT EXHIBIT 10. IT SHOULD BE
10:26 AM 5 TWC184.

10:26 AM 6 A. OKAY. THAT'S PRIMARILY A CHIPPER/GRINDER, A GENERAL
10:26 AM 7 FOUNDRYMAN, TRAILER HELPER, LABOR, YES.

10:26 AM 8 Q. OKAY. DOES IT SAY --

10:26 AM 9 WHERE ON THAT FORM DOES IT SAY TRAILER HELPER?

10:26 AM 10 A. THE HELPER IS THE HELPER AT THE TRAILER DIVISION.
10:26 AM 11 THAT IS THE JOB TITLE.

10:26 AM 12 Q. DOES IT SAY ON THAT FORM ANYWHERE THAT IT'S
10:26 AM 13 REFERRING TO HELPERS ONLY IN THE TRAILER DIVISION?

10:26 AM 14 A. NO.

10:26 AM 15 Q. AREN'T HELPERS ALSO HIRED IN POWER TRANSMISSION?

10:27 AM 16 A. THEY COULD BE. I'VE NOT TAKEN A JOB ORDER I DON'T
10:27 AM 17 THINK.

10:27 AM 18 Q. ALL RIGHT. AREN'T LABORERS ALSO HIRED IN OTHER
10:27 AM 19 DIVISIONS?

10:27 AM 20 A. NOT -- WELL, SINCE I'VE WORKED WITH THEM, THE
10:27 AM 21 LABORERS -- A LABORER -- GENERAL LABOR, IT'S ALL THE SAME
10:27 AM 22 FOR FOUNDRY OR TRAILER. IT'S A LABOR JOB.

10:27 AM 23 Q. OKAY. WHERE ON THIS DOCUMENT, PLAINTIFF'S EXHIBIT
10:27 AM 24 10, DOES IT INDICATE THAT IT'S ONLY TALKING ABOUT HELPERS
10:27 AM 25 OR LABORERS IN THE FOUNDRY OR THE TRAILER DIVISION?

TRANSCRIPT OF PROCEEDINGS

66

10:27 AM 1 A. WELL, I MEAN, YOU PICK UP THE GENERAL FOUNDRYMEN
10:27 AM 2 FROM FOUNDRY, BUT THAT'S ALL.

10:27 AM 3 Q. I UNDERSTAND. IT DOES COVER GENERAL FOUNDRYMEN?

10:27 AM 4 A. SO, YOU KNOW, THAT'S FOUNDRY, IF YOU'RE TALKING
10:27 AM 5 ABOUT A FOUNDRYMAN. BUT AS FAR AS SAYING TRAILER
10:27 AM 6 DIVISION, IT DOESN'T.

10:27 AM 7 Q. OKAY. WELL, I'M JUST AFRAID YOU MAY HAVE LEFT THE
10:27 AM 8 IMPRESSION THAT THESE REQUIREMENTS WERE EXCLUSIVELY
10:28 AM 9 RELATED TO TRAILER AND FOUNDRY AND NOT THE OTHER
10:28 AM 10 DIVISIONS, WHEN IN FACT THERE'S NO INDICATION TO THAT
10:28 AM 11 EFFECT ON HERE.

10:28 AM 12 A. NO.

10:28 AM 13 Q. SO THESE -- THIS FORM SEEMS TO COVER ALL THE
10:28 AM 14 ENTRY-LEVEL POSITIONS, DOESN'T IT?

10:28 AM 15 A. IT COVERS THE ENTRY-LEVEL POSITIONS THAT I WORK WITH
10:28 AM 16 FOR THE FOUNDRY AND TRAILER DIVISION.

10:28 AM 17 Q. OKAY. DOES IT ALSO COVER THE ENTRY-LEVEL POSITIONS
10:28 AM 18 IN THE OTHER DIVISIONS?

10:28 AM 19 A. NOT IF IT'S FOR MACHINISTS, LIKE A HELPER, BECAUSE
10:28 AM 20 YOU'VE GOT TO HAVE HIGH SCHOOL MATH, SHOP MATH. THEN, NO.

10:28 AM 21 Q. OKAY. DOES IT INDICATE ANYWHERE ON HERE THAT THIS
10:28 AM 22 IS LIMITED TO TRAILER AND FOUNDRY?

10:29 AM 23 A. NO.

10:29 AM 24 Q. OKAY. NOW, YOU ALSO SAID I BELIEVE --

10:29 AM 25 YOU WERE ASKED ABOUT PLAINTIFF'S EXHIBIT 9.

TRANSCRIPT OF PROCEEDINGS

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10:29 AM 1 WOULD YOU TURN TO THAT?

10:29 AM 2 A. OKAY.

10:29 AM 3 MR. GARRIGAN: FIRST, I'VE NEVER ASKED HER ANY
10:29 AM 4 QUESTIONS ABOUT THAT DOCUMENT.

10:29 AM 5 THE COURT: WELL, I KNOW THAT.

10:29 AM 6 MR. GARRIGAN: OKAY. I WOULD ASK THAT, SINCE
10:29 AM 7 YOU HAVE BEEN QUESTIONED ABOUT IT, I WOULD LIKE THAT TO BE
10:29 AM 8 ADMITTED AS AN EXHIBIT.

10:29 AM 9 THE COURT: ANY OBJECTION?

10:29 AM 10 MR. HAMEL: NO, YOUR HONOR.

10:29 AM 11 THE COURT: IT'S ADMITTED AS MARKED WITHOUT
10:29 AM 12 OBJECTION.

10:29 AM 13 BY MR. GARRIGAN:

10:29 AM 14 Q. OKAY. NOW, AGAIN, WHEN MR. HAMEL QUESTIONED YOU,
10:29 AM 15 YOU SAID YOU HAD NO IDEA WHAT THE WORD "PREF" MEANT?

10:29 AM 16 A. NO, I DIDN'T SAY I HAD NO IDEA.

10:29 AM 17 Q. OKAY. WHAT DOES THAT MEAN TO YOU AS A TWC --

10:29 AM 18 A. WELL, IF I SEE THAT WRITING ANYWHERE, NOT AT TWC, AT
10:30 AM 19 HOME OR ANYWHERE, I WOULD THINK THAT WOULD MEAN
10:30 AM 20 "PREFERRED," THAT SOMEONE WROTE "PREFERRED," THAT'S WHAT
10:30 AM 21 IT SOUNDS LIKE TO ME, OR "PREFERENCE."

10:30 AM 22 Q. OKAY.

10:30 AM 23 A. BUT I DON'T -- I MEAN, THAT'S JUST WHAT I THINK.

10:30 AM 24 Q. OKAY.

10:30 AM 25 A. I DON'T KNOW.

TRANSCRIPT OF PROCEEDINGS

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10:30 AM 1 MR. HAMEL: OBJECTION, YOUR HONOR. THE WITNESS
10:30 AM 2 HAS SAID IT WOULD BE SPECULATION FOR HER.

10:30 AM 3 THE COURT: I'M GOING TO TAKE HER ANSWER, GIVE
10:30 AM 4 IT SUCH WEIGHT AS I THINK IT'S ENTITLED TO RECEIVE.

10:30 AM 5 AND I'LL GO IN THE UNABRIDGED DICTIONARY IN MY
10:30 AM 6 OFFICE AND SEE HOW MANY P-R-E-F WORDS THERE ARE BESIDES
10:30 AM 7 "PROFESSIONAL."

10:30 AM 8 BY MR. GARRIGAN:

10:30 AM 9 Q. MS. POULAN, YOU WERE ALSO QUESTIONED ABOUT THE
10:30 AM 10 KEYWORDS AND HOW THOSE MIGHT AFFECT THE MATCHING SYSTEM.
10:30 AM 11 DO YOU KNOW HOW SPECIFIC KEYWORDS MIGHT AFFECT THE
10:31 AM 12 MATCHING SYSTEM?

10:31 AM 13 A. YES.

10:31 AM 14 Q. OKAY. OKAY. YOU SAID I THINK THAT "GENERAL LABOR"
10:31 AM 15 OR "LABOR" WAS ONE OF THE WORDS THAT WOULD GET YOU ON THE
10:31 AM 16 FOUNDRY LIST?

10:31 AM 17 A. IT COULD.

10:31 AM 18 Q. WOULD THAT GET YOU ON ANY LIST FOR ANY OF THE
10:31 AM 19 ENTRY-LEVEL POSITIONS AT LUFKIN?

10:31 AM 20 A. IF THE JOB ORDER IS WRITTEN WITH THAT KEYWORD, THEN,
10:31 AM 21 YES, IT COULD.

10:31 AM 22 Q. OKAY. YOU SAY IT COULD?

10:31 AM 23 A. UH-HUH.

10:31 AM 24 Q. THAT'S YOUR UNDERSTANDING?

10:31 AM 25 A. UH-HUH.

TRANSCRIPT OF PROCEEDINGS

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10:31 AM 1 Q. DO YOU KNOW FOR A FACT HOW DIFFERENT KEYWORDS MIGHT
10:31 AM 2 AFFECT THE MATCHING SYSTEM?

10:31 AM 3 A. WELL, I MEAN, YOUR KEYWORDS ON YOUR APPLICATION AS
10:31 AM 4 FAR AS YOUR EXPERIENCE, IF THEY MATCH CLOSELY TO THE
10:31 AM 5 KEYWORDS ON THE JOB ORDER, THAT'S WHEN THEY CROSS AND THEY
10:31 AM 6 MAKE A MATCH.

10:31 AM 7 Q. OKAY. ARE SOME KEYWORDS MORE IMPORTANT THAN OTHERS?

10:31 AM 8 A. I MEAN, IT'S -- WELL, IT'S IMPORTANT IF YOU'VE GOT
10:31 AM 9 GENERAL LABOR EXPERIENCE. IF AN EMPLOYER NEEDS A GENERAL
10:32 AM 10 LABORER WITH EXPERIENCE, THEN THAT IS IMPORTANT.

10:32 AM 11 IF THERE'S A CASHIER JOB AND SOMEONE HAS TEN
10:32 AM 12 YEARS CASHIERING, AND THEY NEED SOMEONE WITH AT LEAST
10:32 AM 13 THREE YEARS CASHIERING, THEN THAT PERSON HAS A GOOD CHANCE
10:32 AM 14 OF GETTING ON THAT JOB ORDER.

10:32 AM 15 Q. OKAY. WELL, I GUESS I'M ASKING WITH REGARD TO THE
10:32 AM 16 KEYWORD AFFECT ON THE MATCHING SYSTEM. DO YOU KNOW WHICH
10:32 AM 17 KEYWORDS WOULD HAVE A MORE IMPORTANT IMPACT THAN OTHER
10:32 AM 18 KEYWORDS?

10:32 AM 19 A. FOR THE JOB ORDERS THAT I WORK ON, GENERAL LABOR,
10:32 AM 20 ASSEMBLY WORK, CONSTRUCTION LABOR, MATERIAL HANDLING, ANY
10:32 AM 21 OF THOSE KEYWORDS COULD GET YOU ON THAT JOB ORDER, ON THAT
10:32 AM 22 LIST.

10:32 AM 23 Q. OKAY. WELL, I'M TRYING TO BE MORE SPECIFIC. ARE
10:32 AM 24 SOME OF THOSE WORDS MORE LIKELY TO GET YOU ONTO A LIST
10:32 AM 25 THAN OTHERS, OR IS IT JUST LOOKING FOR ANY MATCH?

TRANSCRIPT OF PROCEEDINGS

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10:33 AM 1 A. JUST LOOKING FOR A MATCH.

10:33 AM 2 Q. OKAY.

10:33 AM 3 A. AS FAR AS I KNOW.

10:33 AM 4 Q. YOU TESTIFIED THAT THE TEXAS WORKFORCE COMMISSION

10:33 AM 5 WOULD NOT PERMIT LUFKIN INDUSTRIES TO DISCRIMINATE?

10:33 AM 6 A. NO.

10:33 AM 7 Q. IS THAT RIGHT?

10:33 AM 8 A. WE WOULDN'T TAKE A JOB ORDER IF THEY WERE

10:33 AM 9 DISCRIMINATING.

10:33 AM 10 Q. HOW WOULD YOU KNOW IF THEY WERE DISCRIMINATING?

10:33 AM 11 A. WELL, IF SOMEONE --

10:33 AM 12 WAL-MART, FOR EXAMPLE, HAS CALLED US, NEEDING --

10:33 AM 13 AND THEY ASK FOR A LADY. THEY WANTED A LADY. WELL, THEY

10:33 AM 14 HAD TO TELL US WHY THEY NEEDED A LADY. THEY NEEDED A LADY

10:33 AM 15 BECAUSE IT WAS IN THE LADIES' DRESSING ROOM. THAT'S OKAY.

10:33 AM 16 BUT IF YOU JUST NEED A LADY BECAUSE YOU WANT A LADY TO

10:33 AM 17 SWEEP YOUR FLOORS, THAT'S NOT OKAY, AND WE WOULD NOT TAKE

10:33 AM 18 THAT JOB ORDER.

10:33 AM 19 Q. SO IF IT'S OBVIOUS TO THE TEXAS WORKFORCE

10:33 AM 20 COMMISSION --

10:33 AM 21 A. RIGHT.

10:33 AM 22 Q. -- YOU WOULD NOT FACILITATE THE DISCRIMINATION, IS

10:33 AM 23 THAT RIGHT?

10:33 AM 24 A. WE WOULD NOT TAKE THE JOB ORDER.

10:34 AM 25 Q. ALL RIGHT. WELL, SUPPOSE LUFKIN -- HYPOTHETICALLY,

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10:34 AM 1 SUPPOSE LUFKIN INDUSTRIES WAS STEERING MINORITIES INTO
10:34 AM 2 MORE ONEROUS WORK CONDITIONS AT THE FOUNDRY AND STEERING
10:34 AM 3 WHITES TO MORE FAVORABLE WORK CONDITIONS AT POWER
10:34 AM 4 TRANSMISSION. WOULD THE TEXAS WORKFORCE COMMISSION KNOW
10:34 AM 5 THAT?

10:34 AM 6 A. NO.

10:34 AM 7 Q. DID ANYBODY AT LUFKIN TELL THE TEXAS WORKFORCE
10:34 AM 8 COMMISSION THAT THE OFCCP HAD FOUND DISCRIMINATORY JOB
10:34 AM 9 PRACTICES?

10:34 AM 10 A. WHAT IS THE OFCCP?

10:34 AM 11 Q. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, THE
10:34 AM 12 FEDERAL AGENCY THAT --

10:34 AM 13 A. I DON'T KNOW IF THEY TOLD ANYONE. THEY HAVEN'T TOLD
10:34 AM 14 ME.

10:34 AM 15 Q. OKAY. BUT BASICALLY THERE'S AN AWFUL LOT OF
10:34 AM 16 DISCRIMINATION THAT COULD GO ON AT LUFKIN INDUSTRIES AND
10:34 AM 17 THE TWC WOULD KNOW NOTHING ABOUT IT?

10:35 AM 18 MR. HAMEL: OBJECTION, YOUR HONOR, CALLS FOR
10:35 AM 19 SPECULATION.

10:35 AM 20 THE WITNESS: WE DON'T KNOW ANYTHING ABOUT ANY
10:35 AM 21 DISCRIMINATION.

10:35 AM 22 THE COURT: OVERRULED. SHE'S ANSWERED IT. SHE
10:35 AM 23 SAYS SHE DOESN'T KNOW ANYTHING ABOUT IT.

10:35 AM 24 BY MR. GARRIGAN:

10:35 AM 25 Q. OKAY. NOW, MR. HAMEL BROUGHT TO YOUR ATTENTION A

TRANSCRIPT OF PROCEEDINGS

72

10:35 AM 1 GAP IN THE TWC BATES NUMBERS. DO YOU REMEMBER THAT?

10:35 AM 2 A. UH-HUH.

10:35 AM 3 Q. DO YOU KNOW WHY THAT GAP EXISTS?

10:35 AM 4 A. NO.

10:35 AM 5 Q. DO YOU KNOW WHETHER THOSE TWC RECORDS ARE COMPLETE
10:35 AM 6 OR NOT?

10:35 AM 7 A. THOSE ARE PURGED ORDERS. I DON'T KNOW.

10:35 AM 8 Q. IS IT POSSIBLE THAT THE EARLIER SERIES OF NUMBERS
10:35 AM 9 WAS PRODUCED AT AN EARLIER TIME AND THE LATER SERIES OF
10:35 AM 10 NUMBERS WAS PRODUCED AT A LATER TIME?

10:35 AM 11 A. FROM AUSTIN?

10:35 AM 12 Q. YES.

10:35 AM 13 A. I GUESS YOU WOULD HAVE TO ASK THEM. I DON'T KNOW
10:36 AM 14 WHEN THEY PRODUCED THEM.

10:36 AM 15 Q. OKAY. THERE'S NO REASON TO THINK THAT THAT GAP
10:36 AM 16 INDICATES THAT RECORDS HAVE BEEN REMOVED, IS THERE?

10:36 AM 17 A. I DON'T KNOW. THE NUMBERS ARE JUST -- THEY AREN'T
10:36 AM 18 IN SEQUENCE. I DON'T KNOW WHY THEY AREN'T IN SEQUENCE.

10:36 AM 19 Q. OKAY. OKAY. IS IT CONSISTENT WITH TWC POLICY TO
10:36 AM 20 PUT SEVERAL REQUISITIONS OR REQUESTS FROM AN EMPLOYER ONTO
10:36 AM 21 A SINGLE JOB ORDER?

10:36 AM 22 A. YES.

10:36 AM 23 Q. THAT IS CONSISTENT?

10:36 AM 24 A. WE HAVE DONE IT BEFORE.

10:36 AM 25 Q. OKAY. I KNOW YOU HAVE DONE IT. I'M ASKING, IS THAT

10:36 AM 1 CONSISTENT WITH POLICY?

10:36 AM 2 A. NO.

10:36 AM 3 Q. THAT WOULD BE AGAINST YOUR POLICY?

10:36 AM 4 A. I DON'T KNOW IF IT WOULD BE AGAINST THE POLICY, IT'S
10:37 AM 5 JUST WHATEVER THE INTERVIEWER, WHATEVER PROCESS THE
10:37 AM 6 INTERVIEWER FOLLOWS.

10:37 AM 7 Q. AND AGAIN, THAT'S WHAT YOU TESTIFIED BEFORE YOU
10:37 AM 8 WOULD NOT DO?

10:37 AM 9 A. NO.

10:37 AM 10 Q. AND YOU WOULD NOT CONSIDER THAT TO BE CONSISTENT
10:37 AM 11 WITH POLICY?

10:37 AM 12 A. NO.

10:37 AM 13 Q. OKAY.

10:37 AM 14 MR. GARRIGAN: I'LL PASS THE WITNESS. THANK
10:37 AM 15 YOU.

10:37 AM 16 MR. HAMEL: JUST BRIEFLY, YOUR HONOR.

10:37 AM 17 RE CROSS EXAMINATION

10:37 AM 18 BY MR. HAMEL:

10:37 AM 19 Q. MS. POULAN, WOULD YOU LOOK AT EXHIBIT 9, AS LONG AS
10:37 AM 20 WE'RE GOING TO SPECULATE HERE?

10:37 AM 21 A. OKAY.

10:37 AM 22 Q. AND EXHIBIT 9, WHERE IT SAYS --

10:37 AM 23 FIRST OF ALL, EXHIBIT 9 SAYS SPECIFICALLY
10:37 AM 24 "ENTRY-LEVEL EMPLOYMENT QUALIFICATIONS, OILFIELD AND POWER
10:37 AM 25 TRANSMISSION," DOES IT NOT?

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10:37 AM 1 A. YES.

10:37 AM 2 Q. DATED AUGUST 22, 1997?

10:37 AM 3 A. YES.

10:37 AM 4 Q. AND WHEN YOU GET DOWN TO THE LAST BULLET POINT IN

10:38 AM 5 THE MINIMUM QUALIFICATIONS, IT SAYS "G.E.D. OR BETTER,"

10:38 AM 6 AND RIGHT NEXT TO THE "BETTER" YOU HAVE THE HANDWRITTEN

10:38 AM 7 NOTE "P-R-E-F," WHICH YOU CAN'T IDENTIFY?

10:38 AM 8 A. NO.

10:38 AM 9 Q. ALL RIGHT. BUT WOULD IT BE POSSIBLE, GIVEN WHAT YOU

10:38 AM 10 GENERALLY UNDERSTAND P-R-E-F TO MEAN, THAT WHAT IS

10:38 AM 11 PREFERRED IN THIS SITUATION IS BETTER THAN A G.E.D.?

10:38 AM 12 A. G.E.D. OR BETTER WOULD BE PREFERRED.

10:38 AM 13 Q. WELL, HOW ABOUT JUST THE IDEA THAT YOU HAVE TO HAVE

10:38 AM 14 A G.E.D., BUT IF YOU HAVE, SAY, A YEAR'S COLLEGE, THAT'S

10:38 AM 15 EVEN BETTER?

10:38 AM 16 A. YES.

10:38 AM 17 Q. AND THAT'S PREFERRED?

10:38 AM 18 A. YES.

10:38 AM 19 Q. THAT WOULD BE CONSISTENT WITH THE NOTE, WOULDN'T IT?

10:38 AM 20 A. YES.

10:38 AM 21 Q. ALL RIGHT. LET ME SHOW YOU YOUR DEPOSITION. I JUST

10:38 AM 22 WANT TO BE --

10:38 AM 23 I JUST WOULD LIKE TO ASK YOU TO REFRESH YOUR

10:38 AM 24 RECOLLECTION WITH RESPECT TO SOME TESTIMONY.

10:38 AM 25 COULD YOU TURN TO PAGE 67 OF THAT DEPOSITION?

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10:38 AM 1 AND THIS IS A DEPOSITION THAT WAS TAKEN ON
10:39 AM 2 AUGUST 7, 2003, WAS IT NOT?

10:39 AM 3 A. YES.

10:39 AM 4 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT TO
10:39 AM 5 THE HEARSAY. HE'S JUST TRYING TO REVIEW OUT-OF-COURT
10:39 AM 6 TESTIMONY FROM A DEPOSITION, WHEN THE WITNESS IS PRESENT
10:39 AM 7 RIGHT HERE.

10:39 AM 8 MR. HAMEL: YOUR HONOR, THIS IS IMPEACHMENT WITH
10:39 AM 9 RESPECT TO QUESTIONS MADE BY MR. GARRIGAN, AND I'M SIMPLY
10:39 AM 10 READING THE MATERIAL.

10:39 AM 11 THE COURT: HE'S ENTITLED TO IMPEACH HER WITH
10:39 AM 12 HER DEPOSITION.

10:39 AM 13 BY MR. HAMEL:

10:39 AM 14 Q. MS. POULAN, LET ME START READING AT LINE 7 OF PAGE
10:39 AM 15 67.

10:39 AM 16 A. OKAY.

10:39 AM 17 Q. AND I'LL READ THE QUESTION AND THEN WOULD YOU READ
10:39 AM 18 YOUR ANSWER FOR ME?

10:39 AM 19 A. OKAY.

10:39 AM 20 Q. OKAY. AND THESE WERE QUESTIONS THAT MR. GARRIGAN
10:39 AM 21 HAD PUT TO YOU. HE WAS THE ONE EXAMINING YOU AT THE TIME,
10:39 AM 22 WAS HE NOT?

10:39 AM 23 A. YES.

10:39 AM 24 Q. ALL RIGHT. AT LINE 7, QUESTION FROM MR. GARRIGAN:

10:39 AM 25 "I BELIEVE YOU'VE ALREADY TESTIFIED THAT UP UNTIL 2002

TRANSCRIPT OF PROCEEDINGS

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10:39 AM 1 LUFKIN WOULD MAKE REQUESTS FOR REFERRALS TO ENTRY-LEVEL
10:39 AM 2 POSITIONS IN ANY OF ITS DIVISIONS, AND THAT THOSE REQUESTS
10:40 AM 3 AND MULTIPLE REQUESTS WOULD BE REFLECTED ON A SINGLE JOB
10:40 AM 4 ORDER?"

10:40 AM 5 YOUR ANSWER?

10:40 AM 6 A. "YES."

10:40 AM 7 Q. NOW, LET'S GO TO -- WELL, LET'S JUST GO AHEAD AND
10:40 AM 8 WE'LL READ IT THROUGH.

10:40 AM 9 "QUESTION: OKAY. ON THOSE -- SO UP UNTIL 2002
10:40 AM 10 IS THERE ANY WAY TO TELL WHETHER OR WHICH REQUEST OR WHICH
10:40 AM 11 POSITION A PARTICULAR REFERRAL WAS MADE TO?"

10:40 AM 12 ANSWER?

10:40 AM 13 A. "NO."

10:40 AM 14 Q. "SINCE 2002 IS THAT POSSIBLE?"

10:40 AM 15 ANSWER?

10:40 AM 16 A. "TO TELL THE ORDER?"

10:40 AM 17 Q. AND THEN QUESTION INDICATES MR. GARRIGAN MOVING HEAD
10:40 AM 18 UP AND DOWN AFFIRMATIVELY.

10:40 AM 19 AND YOUR ANSWER?

10:40 AM 20 A. "YES."

10:40 AM 21 Q. NOW, QUESTION: "AND LET ME TRY TO -- I NEED TO
10:40 AM 22 CLARIFY THAT I THINK WE KNOW WHAT I'M TALKING ABOUT HERE.
10:40 AM 23 IN 2002 YOU MADE A CHANGE IN PROCEDURE WITH REGARD TO THE
10:40 AM 24 WAY THAT THE TEXAS WORKFORCE COMMISSION MADE REFERRALS TO
10:40 AM 25 LUFKIN, AND THE CHANGE I'M TALKING ABOUT NOW IS THAT

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10:40 AM 1 BEGINNING IN 2002 SOMETIME ANY SPECIFIC REQUEST FROM

10:40 AM 2 LUFKIN WOULD CORRESPOND TO A SPECIFIC JOB ORDER?"

10:40 AM 3 YOUR ANSWER?

10:41 AM 4 A. "CORRECT."

10:41 AM 5 Q. AND THEN QUESTION AT LINE 6: "ALL RIGHT. AND

10:41 AM 6 BEFORE 2002 THERE MIGHT BE MULTIPLE REQUESTS FOR MULTIPLE

10:41 AM 7 POSITIONS FROM LUFKIN THAT WOULD BE DEALT WITH BY A SINGLE

10:41 AM 8 JOB ORDER AT TWC?"

10:41 AM 9 YOUR ANSWER?

10:41 AM 10 A. "CORRECT."

10:41 AM 11 Q. ALL RIGHT. THANK YOU VERY MUCH.

10:41 AM 12 HAVE I CORRECTLY READ AND YOU CORRECTLY

10:41 AM 13 RESPONDED TO THE TESTIMONY YOU GAVE IN AUGUST OF 2002?

10:41 AM 14 A. YES.

10:41 AM 15 Q. THANK YOU.

10:41 AM 16 MR. HAMEL: THAT'S ALL THE QUESTIONS I HAVE,

10:41 AM 17 YOUR HONOR.

10:41 AM 18 THE COURT: I'M GOING TO RECESS. I DON'T KNOW

10:41 AM 19 HOW LONG YOU'RE GOING TO BE.

10:41 AM 20 MR. GARRIGAN: LESS THAN FIVE MINUTES.

10:41 AM 21 THE COURT: I'LL GIVE YOU -- I WILL GIVE YOU

10:41 AM 22 LESS THAN FIVE MINUTES.

10:41 AM 23 REDIRECT EXAMINATION

10:41 AM 24 BY MR. GARRIGAN:

10:41 AM 25 Q. DO YOU STILL HAVE THAT DEPOSITION WITH YOU?

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10:41 AM 1 MR. GARRIGAN: MAY I APPROACH?

10:41 AM 2 THE COURT: YOU MAY.

10:41 AM 3 MR. HAMEL: I'LL GIVE IT TO HER, MR. GARRIGAN.

10:41 AM 4 BY MR. GARRIGAN:

10:41 AM 5 Q. THIS MIGHT BE QUICKER IF I'M HERE.

10:42 AM 6 A. OKAY.

10:42 AM 7 Q. ALL RIGHT. I'M SHOWING YOU THE SAME DEPOSITION, BUT
10:42 AM 8 A FEW PAGES LATER, PAGE 77.

10:42 AM 9 A. OKAY.

10:42 AM 10 Q. DO YOU SEE THAT?

10:42 AM 11 A. YES.

10:42 AM 12 Q. ALL RIGHT. DO YOU RECALL CHANGING YOUR TESTIMONY IN
10:42 AM 13 THAT DEPOSITION AND ULTIMATELY COMING TO THE CONCLUSION
10:42 AM 14 THAT IN FACT IF THERE'S A JOB ORDER THAT REFERS TO THE
10:42 AM 15 FOUNDRY, AN OPEN POSITION IN THE FOUNDRY, ANYBODY REFERRED
10:42 AM 16 PURSUANT TO THAT JOB ORDER FORM SHOULD HAVE BEEN ASSIGNED
10:42 AM 17 TO THE FOUNDRY?

10:42 AM 18 A. OKAY. I'M NOT FOLLOWING YOU. JUST A SECOND. DO
10:42 AM 19 YOU WANT ME TO READ IT? IS THAT WHAT YOU'RE ASKING ME TO
10:42 AM 20 DO?

10:42 AM 21 Q. YES.

10:42 AM 22 A. OKAY.

10:42 AM 23 Q. START AT PAGE -- EXCUSE ME -- LINE 5.

10:42 AM 24 A. START AT 5? OKAY. SO IF THERE WAS A GENERAL
10:43 AM 25 FOUNDRYMEN JOB ORDER, THEN THAT'S THE ONE WE WOULD HAVE

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10:43 AM 1 PUT THEM ON, WAS GENERAL FOUNDRYMEN.

10:43 AM 2 Q. OKAY. AND ONLY GENERAL FOUNDRYMEN REFERRALS WOULD
10:43 AM 3 BE ON AN ORDER FOR THE FOUNDRY?

10:43 AM 4 A. YES.

10:43 AM 5 Q. CORRECT?

10:43 AM 6 A. YES.

10:43 AM 7 Q. AND LATER ON, BEGINNING AT LINE 20, THE SAME PAGE.

10:43 AM 8 A. OKAY.

10:43 AM 9 Q. "AND FROM TWC'S PERSPECTIVE, WHEN PEOPLE WERE
10:43 AM 10 ASSIGNED PURSUANT TO A JOB ORDER THAT REFERRED TO FOUNDRY
10:43 AM 11 WORKERS, THE UNDERSTANDING WAS THAT THOSE REFERRALS WERE
10:43 AM 12 GOING TO WORK AT THE FOUNDRY?"

10:43 AM 13 AND YOUR ANSWER?

10:43 AM 14 A. "YES."

10:43 AM 15 Q. OKAY. DO YOU REMEMBER AT YOUR DEPOSITION THAT THERE
10:43 AM 16 WAS SOME BACK AND FORTH ON THAT ISSUE?

10:44 AM 17 A. YES, BECAUSE A LOT OF TIMES, EVEN WHEN I'VE READING
10:44 AM 18 WHAT YOU WERE SAYING, I MEAN, I REALLY HAVE TO WORK ON
10:44 AM 19 FIGURING OUT WHAT YOU'RE ASKING ME. I'M SORRY.

10:44 AM 20 Q. I UNDERSTAND. AND THERE WAS SOME CONFUSION DURING
10:44 AM 21 THE DEPOSITION?

10:44 AM 22 A. UH-HUH.

10:44 AM 23 Q. BUT ULTIMATELY WASN'T IT YOUR CONCLUSION --

10:44 AM 24 AND LET'S LOOK AT PAGE 78, LINE 11. I ASKED
10:44 AM 25 YOU: "YOUR TESTIMONY IS THAT IF THE JOB ORDER FORM SAID

TRANSCRIPT OF PROCEEDINGS

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10:44 AM 1 FOUNDRY WORKER, ALL OF THE REFERRALS CORRESPONDING TO THAT
10:44 AM 2 JOB ORDER SHOULD HAVE GONE TO THE FOUNDRY, CORRECT?"

10:44 AM 3 A. "YES."

10:44 AM 4 Q. ALL RIGHT. THANK YOU.

10:44 AM 5 MR. GARRIGAN: THAT'S ALL I HAVE, YOUR HONOR.

10:44 AM 6 RECROSS EXAMINATION

10:44 AM 7 BY MR. HAMEL:

10:44 AM 8 Q. MS. POULAN, THAT WAS YOUR PRACTICE, WASN'T IT?

10:44 AM 9 A. YES.

10:44 AM 10 MR. HAMEL: THANK YOU.

10:44 AM 11 THE COURT: WE'RE GOING TO RECESS.

10:44 AM 12 MAY THIS WITNESS BE EXCUSED?

10:45 AM 13 MR. GARRIGAN: THAT'S FINE WITH US.

10:45 AM 14 MR. HAMEL: CERTAINLY, YOUR HONOR.

10:45 AM 15 THE COURT: ALL RIGHT. YOU'RE EXCUSED, MA'AM.

10:44 AM 16 I AM NOT GOING TO BE HERE ON MONDAY. THE
10:44 AM 17 CRIMINAL DOCKET WILL BE SOUNDED, AND ANY OTHER CIVIL
10:44 AM 18 CASES, ON TUESDAY. SO THAT WHEN WE RECESS AT 5:00 O'CLOCK
10:44 AM 19 OR 5:30 TODAY, THIS CASE WON'T RESUME UNTIL WEDNESDAY AT
10:44 AM 20 9:00 O'CLOCK.

10:44 AM 21 MR. GARRIGAN: THANK YOU.

10:44 AM 22 THE COURT: AND IF THERE'S ANY CHANGE IN THAT,
10:45 AM 23 I'LL TRY AND NOTIFY YOU BY PHONE.

10:45 AM 24 I ANTICIPATE THAT IF ON WEDNESDAY I HAVE SOME
10:45 AM 25 CRIMINAL, A CRIMINAL CASE TO GO TO TRIAL, THAT I WILL

TRANSCRIPT OF PROCEEDINGS

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10:45 AM 1 SELECT A JURY, AND I WILL NOT SEAT THEM OR SWEAR THEM OR
10:45 AM 2 HAVE THE DEFENDANT PLEAD TO THE INDICTMENT OR INFORMATION,
10:45 AM 3 BUT BY SELECTING A JURY I CAN ESCAPE THE RIGORS OF THE
10:45 AM 4 SPEEDY TRIAL ACT. I DON'T HAVE TO START THE TRIAL BUT I
10:45 AM 5 HAVE TO SELECT A JURY, AND I CAN BRING IT BACK TO A TIME
10:45 AM 6 CERTAIN.

10:45 AM 7 THIS COURT'S IN RECESS FOR FIFTEEN MINUTES.

10:45 AM 8 THE CSO: ALL RISE.

10:45 AM 9 (RECESS)

11:06 AM 10 THE COURT: WHO DO YOU HAVE NEXT?

11:06 AM 11 MS. BURRELL: PLAINTIFFS CALL LISA DUNGAN.

11:06 AM 12 WE'RE GOING TO BE REFERRING TO PLAINTIFFS'

11:06 AM 13 EXHIBIT 11, WHICH WAS JUST INTRODUCED, AND EXHIBITS 75 AND
11:06 AM 14 77, WHICH I THINK YOU ALREADY HAVE.

15 THE COURT: ALL RIGHT.

16

17 LISA DUNGAN, PLAINTIFF WITNESS, SWORN

18

19 DIRECT EXAMINATION

20 BY MS. BURRELL:

11:06 AM 21 Q. COULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

11:07 AM 22 A. LISA DUNGAN.

11:07 AM 23 Q. MS. DUNGAN, WHERE ARE YOU CURRENTLY EMPLOYED?

11:07 AM 24 A. I WORK AT THE LAW FIRM OF GOLDSTEIN, DEMCHAK,
11:07 AM 25 BALLER, BORGAN & DARDARIAN.

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11:07 AM 1 Q. AND WHAT IS YOUR POSITION THERE?

11:07 AM 2 A. I'M A SENIOR PARALEGAL THERE.

11:07 AM 3 Q. I'M GOING TO ASK YOU TO REFER TO PLAINTIFFS' EXHIBIT
11:07 AM 4 NUMBER 11, WHICH IS THE TEXAS WORKFORCE COMMISSION JOB
11:07 AM 5 ORDERS THAT WERE INTRODUCED EARLIER TODAY.

11:07 AM 6 A. OKAY.

11:07 AM 7 Q. DO YOU RECOGNIZE THESE DOCUMENTS?

11:07 AM 8 A. I DO.

11:07 AM 9 Q. DID YOU COMPLETE AN ANALYSIS OF THESE DOCUMENTS?
11:07 AM 10 I'M SORRY. GO AHEAD.

11:07 AM 11 A. I WORKED WITH A TEAM OF THREE OTHER PARALEGALS, AND
11:07 AM 12 I SUPERVISED THEIR WORK ON THE ANALYSIS OF THE TWC JOB
11:07 AM 13 ORDERS.

11:07 AM 14 Q. I'M NOW GOING TO ASK YOU TO REFER TO PLAINTIFFS'
11:07 AM 15 EXHIBIT 75.

11:08 AM 16 A. OKAY.

11:08 AM 17 Q. DO YOU RECOGNIZE THIS DOCUMENT?

11:08 AM 18 A. I DO.

11:08 AM 19 Q. CAN YOU TELL ME WHAT IT IS, PLEASE?

11:08 AM 20 A. IT'S A MICROSOFT EXCEL CHART OF THE REVIEW,
11:08 AM 21 COMPILING THE REVIEW OF THE TWC JOB ORDERS THAT WE DID AT
11:08 AM 22 OUR OFFICE.

11:08 AM 23 MS. BURRELL: WE WOULD LIKE TO OFFER PLAINTIFFS'
11:08 AM 24 EXHIBIT NUMBER 75 INTO EVIDENCE.

11:08 AM 25 MR. BACON: PLAINTIFFS' NUMBER 75 --

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11:08 AM 1 I OBJECT UNLESS THEY ESTABLISH A FOUNDATION. I
11:08 AM 2 THINK THIS IS A SUMMARY.

11:08 AM 3 THE COURT: WELL, I DON'T HAVE EXHIBIT 75. I'VE
11:08 AM 4 GOT 103 TO 128, 13 TO 21, AND 1 TO 12, UNLESS IT'S IN THIS
11:09 AM 5 ONE. I DON'T KNOW.

11:09 AM 6 WAIT A SECOND. I DO HAVE 75.

11:09 AM 7 IS IT THE LONG ONE?

11:09 AM 8 MS. BURRELL: IT SHOULD BE THE LONG ONE THAT
11:09 AM 9 STICKS OUT.

11:09 AM 10 MR. BACON: JUST TO MAKE SURE, IT'S TWENTY-SIX
11:09 AM 11 PAGES.

11:09 AM 12 MS. BURRELL: WELL, IT BEGINS ABOUT THE --
11:09 AM 13 (OFF-THE-RECORD DISCUSSION)

11:09 AM 14 THE COURT: WELL, I'M HOLDING TAB 75. THESE ARE
11:10 AM 15 PUT IN HERE BACKWARDS. AND THERE SEEMS TO BE A LONG ONE.

11:10 AM 16 IS THIS IT?

11:10 AM 17 THE WITNESS: YES, THAT'S RIGHT.

11:10 AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:10 AM 19 WHAT'S YOUR OBJECTION, MR. BACON?

11:10 AM 20 MR. BACON: MY OBJECTION AT THIS POINT IS, SHE'S
11:10 AM 21 FAILED TO ESTABLISH A FOUNDATION FOR THIS EXHIBIT. I
11:10 AM 22 MEAN, IF SHE CAN ESTABLISH A FOUNDATION, I PROBABLY HAVE
11:10 AM 23 NO OBJECTION TO IT, BUT AT THIS POINT THERE IS NO
11:10 AM 24 FOUNDATION.

11:10 AM 25 THE COURT: ALL RIGHT. EXPLAIN WHAT THIS IS.

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11:10 AM 1 THE WITNESS: WELL, WE WENT THROUGH TWC JOB
11:10 AM 2 ORDERS THAT WE HAD IN OUR OFFICE AND REVIEWED THOSE JOB
11:10 AM 3 ORDERS, AND CHECKING THE NAMES OF THE PEOPLE THAT WERE
11:10 AM 4 HIRED, AND THEN WE CHECKED THOSE NAMES AGAINST THE LUFKIN
11:10 AM 5 PERSONNEL DATA BASE THAT WE HAVE, AND CHECKED TO SEE WHEN
11:11 AM 6 THESE PEOPLE WERE HIRED, AND THEN CONFIRMED --

11:11 AM 7 THE COURT: SO THIS IS A SUMMARY OF THINGS THAT
11:11 AM 8 ARE ALREADY IN EVIDENCE?

11:11 AM 9 THE WITNESS: IT'S A SUMMARY OF THE TWC JOB
11:11 AM 10 ORDERS, THAT'S CORRECT.

11:11 AM 11 MR. BACON: I'M NOT SURE THAT LUFKIN'S DATA BASE
11:11 AM 12 IS IN EVIDENCE YET WHICH WAS USED TO COMPARE THIS WITH.

11:11 AM 13 THE COURT: WELL, IT WILL BE.

11:11 AM 14 MR. BACON: YOU'RE RIGHT, IT WILL BE.

11:11 AM 15 THE COURT: SUBJECT TO BEING CONNECTED UP, THEN
11:11 AM 16 I'M GOING TO ADMIT IT.

11:11 AM 17 MS. BURRELL: ALL RIGHT. THANK YOU, YOUR HONOR.
11:11 AM 18 BY MS. BURRELL:

11:11 AM 19 Q. WELL, YOU JUST TALKED ABOUT THIS A LITTLE BIT, BUT
11:11 AM 20 LET'S GO INTO THAT.

11:11 AM 21 HOW DID YOU BEGIN YOUR ANALYSIS OF THE DOCUMENTS
11:11 AM 22 THAT ARE IN PLAINTIFFS' EXHIBIT 11, THE TWC JOB ORDERS?

11:11 AM 23 A. WE TOOK THE JOB ORDERS AND HIGHLIGHTED ALL THE
11:11 AM 24 PEOPLE WHO WERE INDICATED AS BEING HIRED, AND THEN WE
11:11 AM 25 WOULD TAKE THOSE, COMPILED THOSE NAMES AND CHECKED THOSE

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11:11 AM 1 NAMES AGAINST THE LUFKIN DATE BASE, AND --

11:11 AM 2 THE COURT: AND WHERE DID YOU GET THE LUFKIN
11:11 AM 3 DATA BASE?

11:12 AM 4 THE WITNESS: IT WAS PRODUCED BY LUFKIN I
11:12 AM 5 BELIEVE.

11:12 AM 6 THE COURT: ALL RIGHT.

11:12 AM 7 BY MS. BURRELL:

11:12 AM 8 Q. AND HOW DID YOU DETERMINE INTO WHICH EACH
11:12 AM 9 POSITION -- INTO WHICH POSITION EACH APPLICANT WAS HIRED?

11:12 AM 10 A. WE WOULD CHECK THEIR NAME IN THE DATA BASE, AND --
11:12 AM 11 THAT PERSON'S NAME, OR SOMETIMES THERE WERE MORE THAN ONE
11:12 AM 12 PERSON THAT HAD THE SAME NAME. THEIR NAMES WOULD COME UP.
11:12 AM 13 AND ON THE TWC JOB ORDERS, THE VERSIONS THAT WE HAD HAD
11:12 AM 14 THE SOCIAL SECURITY NUMBERS BLACKED OUT, SO WE WOULD
11:12 AM 15 ATTEMPT TO CONFIRM THE PERSON'S NAME BY CHECKING THE
11:12 AM 16 SOCIAL SECURITY NUMBER.

11:12 AM 17 IF WE HAD -- FOR INSTANCE, THE FIRST NUMBER WAS
11:12 AM 18 2 AND THE LAST NUMBER WAS 0, IF THAT PERSON'S NAME
11:12 AM 19 CORRESPONDED TO THAT PART OF THE SOCIAL SECURITY NUMBERS,
11:12 AM 20 THEN WE WOULD CHECK AGAINST, THEIR HIRE DATES AGAINST THE
11:12 AM 21 TWC JOB ORDER RESULT DATE. AND IF THOSE THREE THINGS
11:12 AM 22 MATCHED, THEN WE WOULD ALSO CHECK THEIR RACE. AND IF ALL
11:13 AM 23 THOSE THINGS MATCHED, THEN WE WOULD ASSUME THAT THIS WAS
11:13 AM 24 THE PERSON MOST LIKELY TO HAVE BEEN INDICATED ON THE TWC
11:13 AM 25 JOB ORDER.

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11:13 AM 1 Q. AND YOU SAID THE SOCIAL SECURITY NUMBERS ARE
11:13 AM 2 REDACTED. ARE THEY ENTIRELY OBSCURED?

11:13 AM 3 A. NO, THEY'RE NOT. THAT'S WHAT I MEANT. SOMETIMES
11:13 AM 4 YOU CAN SEE MAYBE ONE NUMBER OR TWO NUMBERS, AND WHEN YOU
11:13 AM 5 GO INTO THE DATA BASE, WHAT'S PULLED UP IS THE PERSON'S
11:13 AM 6 NAME AND THE SOCIAL SECURITY NUMBER. AND SO WE WOULD
11:13 AM 7 CHECK -- IF IT WAS ONE PERSON, WE WOULD CONFIRM AS MUCH AS
11:13 AM 8 POSSIBLE THAT THAT WAS THE SAME PERSON. AND IF THERE'S
11:13 AM 9 THREE OR FOUR PEOPLE, WE WOULD GO THROUGH THE SAME
11:13 AM 10 PROCESS.

11:13 AM 11 Q. SO CAN I TURN YOUR ATTENTION TO THE FIRST PAGE OF
11:13 AM 12 PLAINTIFFS' EXHIBIT 75?

11:13 AM 13 A. OKAY.

11:13 AM 14 Q. WHICH IS PTSF02941. DO YOU SEE THAT?

11:13 AM 15 A. I DO.

11:13 AM 16 Q. AND WHAT'S THE FIRST NAME ON THERE?

11:13 AM 17 A. MCMASTER, LAST NAME, RICHARD C.

11:13 AM 18 Q. OKAY. SO IF YOU WERE LOOKING UP MR. MCMASTER --

11:14 AM 19 SO TO GIVE A SPECIFIC EXAMPLE, CAN YOU EXPLAIN
11:14 AM 20 WHAT THE PARALEGALS WOULD HAVE DONE TO FIND MR. MCMASTER?

11:14 AM 21 A. WE WOULD TAKE HIS NAME AND GO INTO THE LUFKIN DATA
11:14 AM 22 BASE, AND YOU CAN TYPE IN A PERSON'S NAME, AND WHEN YOU
11:14 AM 23 SEARCH THAT NAME, THEN THEIR NAME COMES UP IN THE DATA
11:14 AM 24 BASE IF THEY ARE IN THE DATA BASE.

11:14 AM 25 AND SO, FOR INSTANCE, IF WE SEARCHED MR.

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11:14 AM 1 MCMASTER, HIS NAME WOULD COME UP, AND WE WOULD CHECK THE
11:14 AM 2 PARTIAL SOCIAL SECURITY NUMBER WE HAD ON THE TWC JOB ORDER
11:14 AM 3 AGAINST WHATEVER THE SOCIAL SECURITY NUMBER WAS THAT CAME
11:14 AM 4 UP IN THE DATA BASE.

11:14 AM 5 AND THEN WE WOULD OPEN UP HIS FILE, AND IN HIS
11:14 AM 6 FILE YOU COULD SEE WHEN HE WAS HIRED, AND WE WOULD CHECK
11:14 AM 7 HIS HIRE DATE AGAINST THE TWC JOB ORDER TO SEE WHAT THE
11:14 AM 8 RESULT DATE WAS ON THE TWC JOB ORDER AND SEE IF THAT
11:14 AM 9 MATCHED.

11:14 AM 10 AND THEN WE WOULD ALSO CHECK THE RACE OF MR.
11:15 AM 11 MCMASTER TO SEE IF THAT MATCHED AS WELL.

11:15 AM 12 AND IF ALL FOUR OF THOSE COMPONENTS MATCHED,
11:15 AM 13 THEN WE WOULD ASSUME THAT HE WAS THE PERSON MOST LIKELY TO
11:15 AM 14 BE THE ONE IDENTIFIED ON THE JOB ORDER.

11:15 AM 15 Q. AND IF YOU PUT MR. MCMASTER'S NAME INTO THE DATA
11:15 AM 16 BASE AND IT PULLED UP MORE THAN ONE MCMASTER, WHAT WOULD
11:15 AM 17 YOU DO?

11:15 AM 18 A. WE WOULD ESSENTIALLY DO THE SAME PROCESS. WE WOULD
11:15 AM 19 JUST GO THROUGH EACH ONE AND BY PROCESS OF ELIMINATION TRY
11:15 AM 20 TO DETERMINE WHICH MCMASTER WAS THE CORRECT ONE.

11:15 AM 21 Q. OKAY. SO BY LOOKING AT --

11:15 AM 22 YOU LOOKED AT LUFKIN'S DATA BASE TO DETERMINE
11:15 AM 23 WHERE THE INDIVIDUAL WAS HIRED?

11:15 AM 24 A. THAT'S RIGHT.

11:15 AM 25 Q. SO FROM LUFKIN'S DATA BASE COULD YOU DETERMINE WHERE

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11:15 AM 1 SAMUEL ADAMS WAS HIRED?

11:15 AM 2 A. YES. IF HE WAS IN THE DATA BASE, WE COULD CERTAINLY
11:16 AM 3 FIND OUT WHICH DIVISION HE WAS HIRED INTO.

11:16 AM 4 Q. AND WHERE WAS SAMUEL ADAMS HIRED?

11:16 AM 5 A. IS ADAMS ON THIS PAGE OF EXHIBIT 75?

11:16 AM 6 Q. NO. I'M JUST ASKING YOU WHERE SAMUEL ADAMS WAS
11:16 AM 7 HIRED.

11:16 AM 8 THE COURT: INTO WHAT DEPARTMENT?

11:16 AM 9 MS. BURRELL: YES.

11:16 AM 10 BY MS. BURRELL:

11:16 AM 11 Q. INTO WHAT DIVISION WAS SAMUEL ADAMS HIRED?

11:16 AM 12 A. IS HE OWN THIS LIST? I'M NOT SURE WHAT YOU'RE
11:16 AM 13 ASKING. I'M SORRY.

11:16 AM 14 Q. I'M ASKING YOU FOR SOME CONCRETE EXAMPLES OF
11:16 AM 15 INDIVIDUALS THAT YOU COULD LOOK UP IN LUFKIN'S PERSONNEL
11:16 AM 16 DATA BASE.

11:16 AM 17 THE FIRST PERSON I'M ASKING YOU ABOUT --

11:16 AM 18 A. OKAY.

11:16 AM 19 Q. -- IS SAMUEL ADAMS.

11:16 AM 20 A. YES. SAMUEL ADAMS WAS HIRED INTO THE FOUNDRY.

11:16 AM 21 THE COURT: WHAT PAGE DOES HIS NAME APPEAR ON?
11:16 AM 22 THESE ARE NUMBERED 1 THROUGH --

11:16 AM 23 MS. BURRELL: SAMUEL ADAMS APPEARS ON -- IT'S IN
11:17 AM 24 PLAINTIFFS' EXHIBIT NUMBER 11, AND IT'S ON -- HE'S ON
11:17 AM 25 TWC00037.

11:17 AM 1 THE COURT: I'M ASKING WHAT PAGE --

11:17 AM 2 THESE ARE NUMBERED AT THE BOTTOM, STARTING 1
11:17 AM 3 THROUGH -- I SEE 19. WHAT PAGE OF THIS EXHIBIT DOES
11:17 AM 4 SAMUEL ADAMS --

11:17 AM 5 MS. BURRELL: I'M SORRY, YOUR HONOR. SAMUEL
11:17 AM 6 ADAMS WOULD BE FOUND -- THE REFERENCE THAT I HAVE, SAMUEL
11:17 AM 7 ADAMS WOULD BE FOUND ON PLAINTIFFS' EXHIBIT NUMBER 11.

11:17 AM 8 THE COURT: DOES HE APPEAR ON --

11:17 AM 9 MS. BURRELL: HE DOES APPEAR ON EXHIBIT NUMBER
11:17 AM 10 75. I'M NOT SURE EXACTLY WHERE IN EXHIBIT 75 HE APPEARS.

11:17 AM 11 THE COURT: DO YOU HAPPEN TO KNOW WHERE HE'S --

11:17 AM 12 MS. BURRELL: WE COULD FIND THAT INFORMATION IF
11:17 AM 13 YOU WOULD LIKE US TO, YOUR HONOR.

11:17 AM 14 THE COURT: I KNOW IT. IF YOU'RE GOING TO USE
11:17 AM 15 AN EXAMPLE, I WANT TO KNOW WHAT PAGE OF THE EXHIBIT 75 IT
11:18 AM 16 APPEARS ON.

11:18 AM 17 MS. BURRELL: OKAY, YOUR HONOR.

11:18 AM 18 THE COURT: DO YOU KNOW?

11:18 AM 19 THE WITNESS: I'M CHECKING, YOUR HONOR.

11:18 AM 20 THE COURT: IT DOESN'T APPEAR TO BE ON THE FIRST
11:18 AM 21 PAGE.

11:18 AM 22 THE WITNESS: DO YOU HAVE EXHIBIT 11 UP THERE?
11:18 AM 23 IT'S ACTUALLY ON EXHIBIT 11.

11:18 AM 24 THE COURT: YES. IS HE ON EXHIBIT 75, AND IF
11:18 AM 25 SO, WHAT PAGE?

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11:19 AM 1 ALL OF 75, THE NAMES ON 75, YOU SAY YOU CHECKED
11:19 AM 2 AND THEY WERE HIRED?

11:19 AM 3 THE WITNESS: THAT'S CORRECT.

11:19 AM 4 THE COURT: YOU PUT THEM IN EXHIBIT 75 WHEN
11:19 AM 5 YOU -- AND I JUST WANT TO KNOW WHAT PAGE.

11:19 AM 6 THE CLERK: HE'S ON PAGE 14, JUDGE.

11:19 AM 7 THE COURT: THANK YOU.

11:19 AM 8 THE CLERK: ABOUT HALFWAY DOWN, ALMOST HALFWAY
11:19 AM 9 DOWN.

11:19 AM 10 THE COURT: MA'AM?

11:19 AM 11 THE CLERK: HE'S ABOUT HALFWAY DOWN.

11:19 AM 12 MS. BURRELL: AND SAMUEL ADAMS APPEARS ON PAGE
11:19 AM 13 14 OF EXHIBIT 75, AND IT IS PTSF02954.

11:19 AM 14 THE COURT: I FOUND IT, SAMUEL M. ADAMS. ALL
11:19 AM 15 RIGHT.

11:20 AM 16 BY MS. BURRELL:

11:20 AM 17 Q. AND I'LL ASK YOU, SINCE WE'RE LOOKING AT THIS
11:20 AM 18 EXHIBIT, MS. DUNGAN, DOES IT INDICATE ON EXHIBIT 75 INTO
11:20 AM 19 WHICH TYPE OF OPENING SAMUEL ADAMS -- WELL, I'M SORRY.
11:20 AM 20 FOR WHICH TYPE OF OPENING SAMUEL ADAMS WAS REFERRED?

11:20 AM 21 A. IT SAYS TRAILER DIVISION.

11:20 AM 22 Q. AND DOES IT INDICATE ON EXHIBIT 75 INTO WHICH
11:20 AM 23 POSITION MR. ADAMS WAS HIRED?

11:20 AM 24 A. YES, IT SAYS GENERAL FOUNDRYMAN.

11:21 AM 25 Q. MS. DUNGAN, HOW MANY WORK ORDERS OF TWC WORK ORDERS

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11:21 AM 1 DID YOU ANALYZE?

11:21 AM 2 A. THERE WERE FIFTY-FIVE.

11:21 AM 3 Q. OF THOSE WORK ORDERS, HOW MANY INCLUDED AT LEAST ONE
11:21 AM 4 APPLICANT WHO WAS ASSIGNED TO A POSITION THAT WAS
11:21 AM 5 DIFFERENT THAN WHAT WAS INDICATED ON THE JOB ORDERS AS
11:21 AM 6 BEING THE REFERRAL DEPARTMENT?

11:21 AM 7 A. WE FOUND THIRTY-ONE.

11:21 AM 8 Q. AND WHAT WERE THE TOTAL NUMBER OF APPLICANTS ON THE
11:21 AM 9 JOB ORDERS WHO WERE ASSIGNED TO A POSITION THAT WAS
11:21 AM 10 DIFFERENT THAN THE ONE FOR WHICH THEY WERE REFERRED?

11:21 AM 11 A. WE FOUND THREE HUNDRED AND NINETY-TWO IN THAT
11:21 AM 12 CATEGORY.

11:21 AM 13 Q. OKAY. SO I WOULD LIKE TO NOW MOVE ON TO ANOTHER
11:21 AM 14 EXHIBIT.

11:21 AM 15 A. OKAY.

11:21 AM 16 Q. CAN YOU -- I JUST WANT YOU TO LOOK AT EXHIBIT NUMBER
11:22 AM 17 76, PLEASE.

11:22 AM 18 A. ALL RIGHT.

11:22 AM 19 Q. CAN YOU TELL ME, DID THE PLAINTIFFS RECEIVE FROM
11:22 AM 20 LUFKIN A DATA BASE THAT WAS CREATED FROM HOURLY BID
11:22 AM 21 SHEETS?

11:22 AM 22 A. WE DID.

11:22 AM 23 Q. AND DID THEY RECEIVE A DATA BASE ON AUGUST 19, 2003?

11:22 AM 24 A. THAT'S CORRECT.

11:22 AM 25 Q. DID YOU CONDUCT AN ANALYSIS OF THOSE BID SHEETS --

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11:22 AM 1 OF THAT DATA BASE? I'M SORRY.

11:22 AM 2 A. WE DID.

11:22 AM 3 Q. ALL RIGHT. NOW, REFERRING TO PLAINTIFFS' EXHIBIT
11:22 AM 4 NUMBER 76, DO YOU RECOGNIZE THIS DOCUMENT?

11:22 AM 5 A. I DO. IT'S THE CHARTS OF OUR ANALYSIS OF THE DATA
11:22 AM 6 BASE THAT WE RECEIVED.

11:22 AM 7 Q. AND YOU'RE REFERRING TO THE ANALYSIS OF THE DATA
11:22 AM 8 BASE THAT WAS CREATED FROM HOURLY BID SHEETS?

11:22 AM 9 A. THAT'S CORRECT.

11:22 AM 10 Q. THE DATA BASE THAT WAS RECEIVED ON AUGUST 19TH?

11:22 AM 11 A. YES.

11:23 AM 12 MS. BURRELL: WE WOULD LIKE TO OFFER EXHIBIT 76
11:23 AM 13 INTO EVIDENCE.

11:23 AM 14 MR. BACON: YOUR HONOR, WE OBJECT TO THIS
11:23 AM 15 EXHIBIT, ON SEVERAL GROUNDS.

11:23 AM 16 FIRST, IT IS A SUMMARY RECORD, AND WE BELIEVE WE
11:23 AM 17 CAN SHOW THE RECORD IS VERY INACCURATE. IT DOES NOT
11:23 AM 18 REPRESENT THE DATA THAT IT IS MEANT TO SUMMARIZE. AND FOR
11:23 AM 19 THAT REASON WE THINK IT SHOULD NOT BE ALLOWED INTO
11:23 AM 20 EVIDENCE.

11:23 AM 21 THE COURT: WELL, I'M GOING TO -- I'M GOING TO
11:23 AM 22 ADMIT IT AT THIS TIME FOR WHATEVER IT'S WORTH, AND YOU CAN
11:23 AM 23 CROSS-EXAMINE HER ON THAT.

11:23 AM 24 MR. BACON: THANK YOU, YOUR HONOR.

11:23 AM 25 BY MS. BURRELL:

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11:23 AM 1 Q. CAN YOU EXPLAIN HOW YOU CONDUCTED YOUR ANALYSIS FOR
11:23 AM 2 EXHIBIT 76, PLEASE?

11:23 AM 3 A. WELL, IN ADDITION TO THE DATA BASE, WE RECEIVED THE
11:23 AM 4 HARD COPY BID SHEETS, AND SO WHAT WE DID WAS, WE WENT
11:23 AM 5 THROUGH THE BID SHEETS THAT WE HAD AND ORGANIZED THEM
11:23 AM 6 CHRONOLOGICALLY.

11:23 AM 7 AND THEN WE CHECKED FOR DUPLICATES OF THE BID
11:24 AM 8 SHEETS AND ORGANIZED THOSE AS WELL.

11:24 AM 9 AND THEN WE REVIEWED EACH BID SHEET AGAINST THE
11:24 AM 10 DATA BASE THAT WE RECEIVED, AND THEN WE CHECKED THAT
11:24 AM 11 INFORMATION FROM THE BID SHEETS, THE HARD COPY BID SHEETS,
11:24 AM 12 AND THE MARY BAKER DATA BASE AGAINST THE LUFKIN PERSONNEL
11:24 AM 13 DATA BASE THAT WE HAD AND CHECKED FOR ANY DISCREPANCIES,
11:24 AM 14 AND REVIEWING TO SEE IF THE INFORMATION WAS ACCURATE FROM
11:24 AM 15 THE HARD COPY TO THE DATA BASE.

11:24 AM 16 Q. YOU MENTIONED MARY BAKER. WHO IS MARY BAKER?

11:24 AM 17 A. SHE IS THE EXPERT FOR THE DEFENDANTS.

11:24 AM 18 Q. AND YOU SAY WHEN YOU -- YOU REFERRED TO THE DATA
11:24 AM 19 BASE AS THE MARY BAKER DATA BASE?

11:24 AM 20 A. YES.

11:24 AM 21 Q. YOU'RE REFERRING TO THE HOURLY --

11:24 AM 22 A. THAT'S CORRECT.

11:24 AM 23 Q. THE DATA BASE THAT'S BEEN CREATED FROM HOURLY BID
11:24 AM 24 SHEETS?

11:24 AM 25 A. THAT'S CORRECT, THE HOURLY BID SHEETS.

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11:24 AM 1 Q. AND YOU TESTIFIED THAT YOU WERE LOOKING TO SEE IF
11:24 AM 2 THERE WERE DISCREPANCIES BETWEEN THE PAPER RECORDS, THE
11:24 AM 3 DATA BASE AND THE PERSONNEL DATA, IS THAT CORRECT?

11:25 AM 4 A. BASICALLY WE REVIEWED THEM TO SEE IF IT MATCHED, IF
11:25 AM 5 WHAT WAS ON THE BID SHEET MATCHED MARY BAKER'S DATA BASE,
11:25 AM 6 AND IF THAT ALSO MATCHED THE PERSONNEL DATA BASE, AND IF
11:25 AM 7 IT DIDN'T, THEN WE NOTED ANY DISCREPANCIES, AND THAT'S
11:25 AM 8 WHAT'S INDICATED ON THIS CHART.

11:25 AM 9 Q. ALL RIGHT. SO DID YOU FIND ANY DISCREPANCIES?

11:25 AM 10 A. WE DID.

11:25 AM 11 Q. CAN YOU GIVE ME A EXAMPLE OF ONE OF THE
11:25 AM 12 DISCREPANCIES YOU FOUND?

11:25 AM 13 A. YES. ON -- IT'S BID SHEETS NUMBER L12522 THROUGH
11:25 AM 14 24, AND THAT'S ON --

11:25 AM 15 Q. CAN YOU TELL ME WHERE IN EXHIBIT 76 YOU'RE REFERRING
11:25 AM 16 TO?

11:25 AM 17 A. YES. IT'S ON PAGE 18 OF EXHIBIT 76.

11:25 AM 18 MR. BACON: I BEG YOUR PARDON. COULD I HAVE
11:25 AM 19 THAT NUMBER AGAIN?

11:25 AM 20 THE WITNESS: OF THE BID SHEET OR --

11:25 AM 21 MR. BACON: THE BID SHEET NUMBER.

11:25 AM 22 THE WITNESS: YES. IT'S L12522 THROUGH 24.

11:25 AM 23 MR. BACON: THANK YOU.

11:26 AM 24 THE WITNESS: UH-HUH. AND ON THIS BID SHEET, WE
11:26 AM 25 FOUND THAT THE NUMBER OF BIDDERS ON THE ACTUAL HARD COPY

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11:26 AM 1 WAS SIXTY-THREE, AND IN THE DATA BASE, THE HOURLY BID DATA
11:26 AM 2 BASE THAT WE HAD RECEIVED, THEY HAD A LIST OF FORTY-SIX.
11:26 AM 3 SO THERE WAS A DIFFERENCE OF APPROXIMATELY SEVENTEEN
11:26 AM 4 BETWEEN THE HARD COPY AND WHAT WAS IN THE DATA BASE.

11:26 AM 5 THE COURT: AND THAT'S UNDER "NOTES" OVER THERE?

11:26 AM 6 THE WITNESS: THAT'S CORRECT.

11:26 AM 7 THE COURT: ALL RIGHT.

11:26 AM 8 BY MS. BURRELL:

11:26 AM 9 Q. CAN YOU GIVE ME AN EXAMPLE OF ANOTHER DISCREPANCY
11:26 AM 10 THAT YOU FOUND?

11:26 AM 11 A. YES. AND THIS WOULD BE BATES NUMBER L13044.

11:26 AM 12 Q. CAN YOU -- I'M SORRY, I DON'T WANT TO INTERRUPT YOU,
11:26 AM 13 BUT CAN YOU TELL US FIRST WHAT PAGE OF THE EXHIBIT?

11:26 AM 14 A. SURE. IT'S ON PAGE 53 OF THAT EXHIBIT.

11:26 AM 15 THE COURT: NOW, WHILE I HAVE ADMITTED THIS, AND
11:26 AM 16 THERE'S A NOTE "DISCREPANCY," MANY OF THEM ARE -- THE
11:27 AM 17 NOTES ARE ILLEGIBLE, AND IT LOOKS LIKE SHE SKIPPED THEM
11:27 AM 18 ALTOGETHER. I AM CERTAINLY NOT GOING TO CONSIDER THAT
11:27 AM 19 COMMENT. WHETHER SHE DID SKIP THEM OR DIDN'T SKIP THEM, I
11:27 AM 20 DON'T KNOW, BUT I'M NOT GOING TO TAKE YOUR --

11:27 AM 21 MS. DUNGAN, I'M NOT GOING TO TAKE YOUR
11:27 AM 22 CONCLUSION ON THAT AS SOMETHING AS A FACT IN THE TRIAL OF
11:27 AM 23 THIS CASE.

11:27 AM 24 THE WITNESS: I UNDERSTAND.

11:27 AM 25 THE COURT: I JUST WANTED TO EXPLAIN TO MR.

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11:27 AM 1 HAMEL AND MR. BACON AND ALSO TO MS. DEMCHAK AND MR.
11:28 AM 2 GARRIGAN.

11:28 AM 3 THE WITNESS: I UNDERSTAND, YOUR HONOR.

11:28 AM 4 BY MS. BURRELL:

11:28 AM 5 Q. SO GOING --

11:28 AM 6 MR. BACON: I'M SORRY, MS. BURRELL. WHAT IS THE
11:28 AM 7 NUMBER OF THE BATES STAMP? I'M KIND OF SLOW.

11:28 AM 8 THE WITNESS: IT'S L13044.

11:28 AM 9 MR. BACON: THANK YOU VERY MUCH.

11:28 AM 10 THE WITNESS: AND ON THE BIDS -- IT INDICATED IN
11:28 AM 11 THE DATA BASE THAT MR. PHIPPS AND MR. EVANS DID NOT
11:28 AM 12 RECEIVE THEIR PROMOTION, ALTHOUGH THE HOURLY BID DATA BASE
11:28 AM 13 SAID THAT THEY DID.

11:28 AM 14 BY MS. BURRELL:

11:28 AM 15 Q. LET'S HOLD ON ONE SECOND. I WOULD LIKE TO GO
11:28 AM 16 BACK --

11:28 AM 17 THE COURT: I HAVE NO IDEA WHAT --

11:28 AM 18 BY MS. BURRELL:

11:28 AM 19 Q. LET'S GO BACK TO THE EXHIBIT, TO PAGE 18 THAT WE
11:28 AM 20 WERE JUST TALKING ABOUT.

11:28 AM 21 A. OKAY.

11:28 AM 22 Q. OKAY. NOW, REFERRING TO THE EXHIBIT IN THAT ENTRY
11:29 AM 23 FOR THE BID SHEET WITH THE BATES NUMBER 12522 THROUGH
11:29 AM 24 24 --

11:29 AM 25 A. YES.

11:29 AM 1 Q. NOW, I JUST WANT TO -- ASIDE FROM THE CONCLUSION
11:29 AM 2 THAT'S WRITTEN HERE, I JUST WANT TO GET -- CLARIFY WHAT
11:29 AM 3 WAS SEEN WHEN LOOKING AT THE RECORDS.

11:29 AM 4 A. THE HARD COPIES, IS THAT --

11:29 AM 5 Q. YES. THAT'S RIGHT.

11:29 AM 6 A. WELL, WE WOULD LOOK AT THE ACTUAL HARD COPY OF THE
11:29 AM 7 BID SHEETS, AND OFTEN TIMES THEY'RE HANDWRITTEN LISTS,
11:29 AM 8 SOMETIMES THEY'RE TYPED, AND ON THOSE BIDS SHEETS THERE'S
11:29 AM 9 A LIST OF NAMES OF PEOPLE THAT BID FOR THE JOB. SO WE
11:29 AM 10 WOULD LOOK AT THAT, AND THEN WE CHECKED THOSE NAMES
11:29 AM 11 AGAINST WHAT MARY BAKER HAD LISTED FOR THIS PARTICULAR
11:29 AM 12 BATES NUMBER BID SHEET, AND THAT WAS THE DIFFERENCE THAT
11:29 AM 13 WE FOUND.

11:29 AM 14 Q. SO WHEN YOU'RE SAYING WHAT MARY BAKER HAD LISTED,
11:30 AM 15 YOU MEAN WHAT WAS IN THE HOURLY, THE DATA BASE THAT WAS
11:30 AM 16 CREATED FROM THE HOURLY BID SHEETS?

11:30 AM 17 A. THAT'S CORRECT.

11:30 AM 18 Q. IN THAT DATA BASE THERE WERE FORTY-SIX NAMES, IS
11:30 AM 19 THAT CORRECT?

11:30 AM 20 A. THAT'S CORRECT.

11:30 AM 21 Q. AND THE PAPER RECORD, THERE WERE SIXTY-THREE NAMES?

11:30 AM 22 A. THAT'S CORRECT.

11:30 AM 23 Q. ALL RIGHT. SO NOW WE CAN MOVE ON TO THE EXAMPLE
11:30 AM 24 THAT YOU WERE DISCUSSING. CAN YOU TELL ME AGAIN WHAT PAGE
11:30 AM 25 THAT WAS AT?

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11:30 AM 1 A. PAGE 53.

11:30 AM 2 Q. AND CAN YOU REPEAT THE BATES NUMBER?

11:30 AM 3 A. YES. IT'S L13044.

11:30 AM 4 Q. OKAY. AND SO CAN YOU GO ON ONCE AGAIN AND EXPLAIN
11:31 AM 5 WHAT YOU FOUND WITH RESPECT TO THIS PARTICULAR ENTRY?

11:31 AM 6 A. ON THIS ENTRY IT INDICATED IN THE LUFKIN DATA BASE
11:31 AM 7 THAT MR. PHIPPS AND MR. EVANS DID NOT RECEIVE THE
11:31 AM 8 PROMOTION, BUT IN THE HOURLY BID DATA BASE IT INDICATED
11:31 AM 9 THAT THEY DID.

11:31 AM 10 THE COURT: THAT'S PAGE 53?

11:31 AM 11 THE WITNESS: THAT'S RIGHT.

11:31 AM 12 THE COURT: AND WHICH EMPLOYEES -- WHAT'S THE
11:31 AM 13 DISCREPANCY?

11:31 AM 14 THE WITNESS: ACCORDING TO THE LUFKIN PERSONNEL
11:31 AM 15 DATA BASE, MR. PHIPPS AND MR. EVANS DID NOT RECEIVE A
11:31 AM 16 PROMOTION, BUT IN THE HOURLY BID DATA BASE IT SHOWED THAT
11:31 AM 17 THEY HAD RECEIVED THAT PROMOTION.

11:31 AM 18 BY MS. BURRELL:

11:31 AM 19 Q. AND WHAT IS MR. PHIPPS' RACE?

11:31 AM 20 A. MR. PHIPPS IS BLACK.

11:31 AM 21 Q. AND THAT'S INDICATED HERE ON THE EXHIBIT?

11:31 AM 22 A. YES, IN PARENS "B."

11:32 AM 23 Q. SO ON THIS EXHIBIT, THE "B" NEXT TO MR. PHIPPS' NAME
11:32 AM 24 STANDS FOR BLACK?

11:32 AM 25 A. THAT'S CORRECT.

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11:32 AM 1 Q. AND SO WHAT --

11:32 AM 2 AND THE "W" NEXT TO MR. EVANS' NAME, THAT STANDS
11:32 AM 3 FOR?

11:32 AM 4 A. INDICATES WHITE.

11:32 AM 5 Q. AND WHERE DID YOU GET THE RACIAL DATA TO IDENTIFY
11:32 AM 6 THESE INDIVIDUALS BY RACE?

11:32 AM 7 A. THAT'S IN THE LUFKIN PERSONNEL DATA BASE.

11:32 AM 8 Q. DO YOU HAVE ANY OTHER EXAMPLES FROM THIS EXHIBIT?

11:32 AM 9 A. ON PAGE 86 OF THE EXHIBIT, AND THAT IS BATES NUMBER,
11:32 AM 10 REFERENCING BATES NUMBER L23294 THROUGH 95.

11:32 AM 11 THE COURT: PAGE WHAT OF THE EXHIBIT?

11:32 AM 12 THE WITNESS: 86, YOUR HONOR.

11:33 AM 13 THE COURT: ALL RIGHT.

11:33 AM 14 MR. BACON: I'M SORRY AGAIN. WHAT --

11:33 AM 15 THE WITNESS: DO YOU NEED THAT?

11:33 AM 16 MR. BACON: I DON'T THINK SO.

11:33 AM 17 THE WITNESS: OKAY.

11:33 AM 18 THE COURT: WELL, OKAY.

11:33 AM 19 BY MS. BURRELL:

11:33 AM 20 Q. AND DO YOU WANT TO DESCRIBE OR EXPLAIN WHAT YOU
11:33 AM 21 FOUND WITH RESPECT TO THIS ENTRY?

11:33 AM 22 A. WELL, WHAT WE FOUND WHEN WE LOOKED AT THE HARD COPY
11:33 AM 23 IS THAT THIS IS NOT ACTUALLY A BID SHEET, IT'S A COPY OF A
11:33 AM 24 FILE FOLDER. AND THEN -- AND THAT'S PAGE L23294.

11:33 AM 25 AND THEN THE NEXT PAGE IS ACTUALLY A NOTICE OF

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11:33 AM 1 THE BID WINNER, IT'S NOT ACTUALLY A BID SHEET.

11:33 AM 2 Q. OKAY. NOW, IN THE COLUMN UNDER "NOTES" --

11:33 AM 3 A. YES.

11:33 AM 4 Q. IT SAYS "THE NAMES ON THE BAKER DATA ARE NOT LISTED
11:33 AM 5 ON THE CITED PAGES." WHAT DOES THAT MEAN?

11:33 AM 6 A. THAT MEANS THAT THE CITED PAGES AS REFERENCED TO THE
11:33 AM 7 BID SHEETS AND THE NAMES IN THE MARY BAKER DATA BASE ARE
11:34 AM 8 NOT THE SAME AS THE ONES LISTED ON THE HARD COPY.

11:34 AM 9 Q. DID PLAINTIFFS ALSO RECEIVE A DATA BASE THAT WAS
11:34 AM 10 CREATED FROM SALARIED BID SHEETS?

11:34 AM 11 A. WE DID.

11:34 AM 12 Q. AND DID YOU ALSO CONDUCT AN ANALYSIS OF THOSE?

11:34 AM 13 A. I DID.

11:34 AM 14 Q. FOR THAT DATA BASE?

11:34 AM 15 A. YES.

11:34 AM 16 Q. I WOULD LIKE YOU TO TURN TO PLAINTIFFS' EXHIBIT
11:34 AM 17 NUMBER 77.

11:34 AM 18 A. OKAY.

11:34 AM 19 Q. ARE YOU THERE?

11:34 AM 20 A. YES, I AM.

11:34 AM 21 Q. DO YOU RECOGNIZE THIS DOCUMENT?

11:34 AM 22 A. I DO.

11:34 AM 23 Q. CAN YOU TELL ME WHAT IT IS, PLEASE?

11:34 AM 24 A. IT'S A CHART SHOWING THE SALARIED BID SHEETS THAT WE
11:35 AM 25 REVIEWED.

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11:35 AM 1 Q. AND THIS IS SIMILARLY A COMPARISON BETWEEN -- IS IT
11:35 AM 2 A COMPARISON BETWEEN THE PAPER RECORDS, THE DATA BASE --
11:35 AM 3 WELL, THE SALARIED BID DATA BASE AND THE PERSONNEL DATA
11:35 AM 4 BASE?

11:35 AM 5 A. THAT'S CORRECT. WE USED A SIMILAR APPROACH TO WHAT
11:35 AM 6 WE USED WITH THE HOURLY BID DATA BASE. THE ONLY
11:35 AM 7 DIFFERENCE IS THAT WE ONLY CHECKED THE INDIVIDUALS WHO
11:35 AM 8 WERE DESIGNATED AS THE WINNERS IN THE SALARIED DATA BASE.

11:35 AM 9 Q. OKAY. I'M GOING TO ASK YOU ABOUT THAT IN A MOMENT.

11:35 AM 10 MS. BURRELL: BUT RIGHT NOW I WOULD LIKE TO
11:35 AM 11 OFFER THIS AS EXHIBIT, PLAINTIFFS' EXHIBIT NUMBER 77.

11:35 AM 12 MR. BACON: YOUR HONOR, WE MAKE THE SAME
11:35 AM 13 OBJECTION THAT WE MADE AS TO EXHIBIT 76, ON THE GROUNDS
11:36 AM 14 THAT IT'S --

11:36 AM 15 THE COURT: SUBJECT TO IT BEING CONNECTED UP
11:36 AM 16 WITH LUFKIN'S --

11:36 AM 17 THIS IS APPARENTLY A CRITICISM OF WHAT WAS
11:36 AM 18 FURNISHED AS LUFKIN'S RECORDS, AND I'M ALLOWING HER TO DO
11:36 AM 19 THAT CONTINGENT UPON EVENTUALLY GETTING THE LUFKIN RECORDS
11:36 AM 20 IN EVIDENCE.

11:36 AM 21 MR. BACON: WELL, ACTUALLY IT'S MORE THAN THAT.
11:36 AM 22 IT'S A CRITICISM OF LUFKIN'S STATISTICIAN'S INTERPRETATION
11:36 AM 23 OF LUFKIN'S RECORDS, AND THAT'S WHAT I THINK THEY'RE
11:36 AM 24 OFFERING THIS FOR, IS TO SHOW THAT THAT DATA BASE THAT WAS
11:36 AM 25 CREATED BY OR FOR LUFKIN'S EXPERT IS UNRELIABLE.

11:36 AM 1 AND WE OBJECT TO THIS EXHIBIT BECAUSE WE THINK
11:36 AM 2 IT IS UNRELIABLE, AND IT DOES NOT INTERPRET THE DATA BASE
11:36 AM 3 CORRECTLY.

11:36 AM 4 THE COURT: I'LL TAKE IT INTO CONSIDERATION
11:36 AM 5 INSOFAR AS -- IN COMPARISON TO THE EXHIBITS YET TO COME
11:37 AM 6 INTO THE RECORD. THE PLAINTIFF HASN'T RESTED.

11:37 AM 7 AND I ASSUME THAT YOU ARE GOING --
11:37 AM 8 YOU HAVE PRODUCED BID SHEETS, AND THAT THIS IS
11:37 AM 9 A --

11:37 AM 10 AND YOU'VE PRODUCED DR. BAKER'S REPORT, AND
11:37 AM 11 THAT'S BEEN FURNISHED TO THE PLAINTIFF, THEY'VE ANALYZED
11:37 AM 12 IT, AND THESE ARE THE DISCREPANCIES THAT THEY CLAIM THEY
11:37 AM 13 MAKE.

11:37 AM 14 AND THAT'S THE ONLY REASON THAT IT'S BEING
11:37 AM 15 ADMITTED.

11:37 AM 16 IT'S CONTINGENT ON THE INTRODUCTION BOTH OF
11:37 AM 17 LUFKIN'S DOCUMENTS FURNISHED TO THE PLAINTIFF BY ORDER OF
11:37 AM 18 THE COURT.

11:37 AM 19 SECOND, THEY'VE REVIEWED DR. BAKER'S FIRST AND
11:37 AM 20 SECOND REPORT, AND THESE ARE THEIR ANALYSIS OF
11:37 AM 21 SHORTCOMINGS IN HER REPORT, AND THAT'S ALL THAT I'M
11:38 AM 22 CONSIDERING THEM FOR.

11:38 AM 23 WHETHER THAT TURNS OUT TO BE TRUE OR NOT, I
11:38 AM 24 DON'T KNOW.

11:38 AM 25 MR. BACON: ALL RIGHT. YOU'RE OVERRULING MY

11:38 AM 1 OBJECTION.

11:38 AM 2 THANK YOU.

11:38 AM 3 THE COURT: WELL, YES, SIR.

11:38 AM 4 THE WITNESS: THANK YOU, YOUR HONOR.

11:38 AM 5 BY MS. BURRELL:

11:38 AM 6 Q. SO, JUST TO GO BACK AND CLARIFY, EXHIBIT 77 IS A
11:38 AM 7 COMPARISON BETWEEN THE PAPER BID RECORDS, THE SALARIED BID
11:38 AM 8 DATA BASE THAT WAS PRODUCED BY LUFKIN AND THE PERSONNEL
11:38 AM 9 DATA, CORRECT?

11:38 AM 10 A. THAT'S CORRECT.

11:38 AM 11 Q. AND YOU WENT INTO THIS A LITTLE BIT, BUT CAN YOU
11:38 AM 12 EXPLAIN AGAIN, HOW DID YOU CONDUCT THE ANALYSIS OF THE
11:38 AM 13 PAPER -- WELL, THE ANALYSIS THAT WE JUST TALKED ABOUT?

11:38 AM 14 A. WE ESSENTIALLY USED THE SAME METHOD THAT WE USED TO
11:38 AM 15 REVIEW THE HOURLY BID SHEET DATA BASE. WE ORGANIZED THEM
11:38 AM 16 CHRONOLOGICALLY, AND THEN WE CHECKED FOR DUPLICATES OF THE
11:38 AM 17 BID SHEETS, AND THEN WE REVIEWED THE HARD COPIES OF THE
11:39 AM 18 BID SHEETS AGAINST THE SALARIED BID DATA BASE AND THE
11:39 AM 19 LUFKIN PERSONNEL DATA BASE AND CHECKED TO SEE HOW IT
11:39 AM 20 MATCHED UP OR NOT, AND THE ONLY DIFFERENCE WAS THAT WITH
11:39 AM 21 THE SALARIED BID SHEETS, WE ONLY CHECKED FOR THE PERSON
11:39 AM 22 THAT WAS DESIGNATED AS THE WINNER THERE.

11:39 AM 23 Q. AND DID YOU FIND ANY DISCREPANCIES?

11:39 AM 24 A. YES, WE DID.

11:39 AM 25 Q. AND CAN YOU GIVE ME SOME EXAMPLES OF SOME

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11:39 AM 1 DISCREPANCIES? WELL, GIVE MY ONE EXAMPLE OF A DISCREPANCY
11:39 AM 2 THAT YOU FOUND.

11:39 AM 3 A. ON EXHIBIT 77, IT'S PAGE PTSF07468, AND THAT BID
11:39 AM 4 NUMBER IS L1214.

11:39 AM 5 Q. HOLD ON ONE SECOND.

11:39 AM 6 YOU KNOW, IT MIGHT BE EASIER IF YOU WOULD GIVE
11:40 AM 7 US, YOU KNOW, THE PAGE 1 OUT OF -- COULD YOU TELL US THAT
11:40 AM 8 NUMBER, THAT PAGE NUMBER?

11:40 AM 9 THE COURT: IT'S 3.

11:40 AM 10 THE WITNESS: IT'S 3. THANK YOU. PAGE 3.

11:40 AM 11 SO, FOR THIS EXAMPLE, IN THE COMMENTS FIELD
11:40 AM 12 THERE WAS A NOTE ON THE ACTUAL BID SHEET THAT SAID "STEVE
11:40 AM 13 HAS OTHER PLANS FOR NED HIGHTSMAN." THAT'S IN QUOTES.

11:40 AM 14 AND THEN ON PAGE 5 OF EXHIBIT 77, IT INDICATES
11:40 AM 15 THAT MR. HIGHTSMAN WAS AWARDED A SUPERVISOR JOB.

11:40 AM 16 SO THOSE TWO, COMPARING THOSE TWO, IT APPEARS
11:40 AM 17 THAT MR. HIGHTSMAN -- IT APPEARED TO US THAT MR. HIGHTSMAN
11:40 AM 18 WAS PRESELECTED FOR THIS SUPERVISOR POSITION.

11:40 AM 19 BY MS. BURRELL:

11:40 AM 20 Q. DO YOU HAVE ANY OTHER EXAMPLES OF DISCREPANCIES THAT
11:41 AM 21 YOU FOUND?

11:41 AM 22 A. THIS IS PAGE 10 OF EXHIBIT 77, AND THAT'S BATES
11:41 AM 23 NUMBER L1264. IT'S THE THIRD ROW THERE.

11:41 AM 24 IN THE COMMENTS FIELD, WHAT WE FOUND IS THAT
11:41 AM 25 JAMES WHITE -- JAMES WHITE IS BLACK, AND HE -- IT WAS

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11:41 AM 1 SHOWN ON THE DATA BASE THAT HE WAS WHITE. AND SO THAT --
11:41 AM 2 WHAT HAPPENED WAS THAT THE NUMBER OF BLACK APPLICANTS WAS
11:41 AM 3 UNDERCOUNTED.

11:41 AM 4 Q. HOW DO YOU KNOW THAT JAMES WHITE IS BLACK?

11:41 AM 5 A. BECAUSE HE HAS BEEN DEPOSED IN THIS CASE.

11:41 AM 6 Q. WHO TOOK HIS DEPOSITION?

11:41 AM 7 A. LUFKIN'S COUNSEL.

11:42 AM 8 MS. BURRELL: YOUR HONOR, WHAT WE WOULD LIKE TO
11:42 AM 9 INTRODUCE SOME TESTIMONY ABOUT NOW ARE THE APPLICATIONS
11:42 AM 10 THAT WE RECENTLY RECEIVED FROM LUFKIN. WE JUST
11:42 AM 11 RECEIVED -- WE RECEIVED THE BULK OF THEM WITHIN THE PAST
11:42 AM 12 WEEK. WE HAVEN'T HAD AN OPPORTUNITY TO MAKE COPIES OF
11:43 AM 13 THEM. SO WHAT WE WANT TO DO IS INTRODUCE A SET OF THEM.

11:43 AM 14 AND WE ALSO HAVE NOT BEEN ABLE TO ANALYZE ALL OF
11:43 AM 15 THEM.

11:43 AM 16 WHAT WE HAVE HERE IS A SET, ONE SET OF WHAT WE
11:43 AM 17 HAVE BEEN ABLE TO ANALYZE, BUT WE WOULD LIKE -- AND WE
11:43 AM 18 WOULD LIKE TO OFFER THEM INTO EVIDENCE, AND OFFER SOME
11:43 AM 19 TESTIMONY ON THEM, BUT THEY'RE GOING TO NEED TO BE COPIED.
11:43 AM 20 WE NEED TO COPY THEM SO THAT WE CAN PROVIDE A COPY OF THIS
11:43 AM 21 EXHIBIT TO THE DEFENDANTS AND --

11:43 AM 22 THE COURT: WELL, WERE THEY FURNISHED TO YOU BY
11:43 AM 23 THE DEFENDANT?

11:43 AM 24 MS. BURRELL: YES, THEY WERE.

11:43 AM 25 THE COURT: ALL RIGHT.

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11:43 AM 1 MS. BURRELL: THESE ARE THE APPLICATIONS THAT
11:43 AM 2 MR. GARRIGAN REFERENCED YESTERDAY THAT WERE ORDERED TO BE
11:43 AM 3 PRODUCED BY THE COURT ON NOVEMBER 13TH.

11:43 AM 4 MR. BACON: YOUR HONOR, YOU WILL RECALL THAT YOU
11:43 AM 5 ORDERED LUFKIN TO PRODUCE --

11:43 AM 6 THE COURT: YES.

11:43 AM 7 MR. BACON: -- COPIES OF ALL APPLICATIONS OF ALL
11:43 AM 8 THE EMPLOYEES IN THE RELEVANT TIME PERIOD, WHICH IS A HUGE
11:43 AM 9 NUMBER OF APPLICATIONS, AND THEY HAVE BEEN COPIED AND
11:43 AM 10 THEY'VE BEEN PRODUCED.

11:44 AM 11 WE WOULD BE AT A DISADVANTAGE AT THIS POINT,
11:44 AM 12 YOUR HONOR, WITHOUT KNOWING WHAT SELECT GROUP THEY'RE
11:44 AM 13 GOING TO USE AS AN EXHIBIT, WITHOUT HAVING THE OPPORTUNITY
11:44 AM 14 TO HAVE ANALYZED IT. SO --

11:44 AM 15 THE COURT: WELL, WHAT DO YOU WANT, TO ADJOURN?

11:44 AM 16 MR. BACON: EITHER ADJOURN, OR AT LEAST --

11:44 AM 17 I'M NOT OPPOSED TO LETTING THEM RECALL -- I
11:44 AM 18 MEAN, I CAN TAKE HER ON CROSS AND STUFF, AND RECALL HER
11:44 AM 19 LATER, THIS WITNESS LATER ON THIS ISSUE ONCE WE'VE HAD AN
11:44 AM 20 OPPORTUNITY TO LOOK AT THIS EXHIBIT.

11:44 AM 21 I DON'T MIND SPLITTING THIS WITNESS UP AT SOME
11:44 AM 22 OTHER TIME, IF MS. BURRELL IS NOT OPPOSED AND THE COURT IS
11:44 AM 23 NOT OPPOSED.

11:44 AM 24 MS. BURRELL: WELL, THE INFORMATION THAT I CAN
11:44 AM 25 OFFER, AND YOU CAN DETERMINE WHETHER THIS IS SUFFICIENT

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11:44 AM 1 FOR YOU, THESE ARE FROM THE FIRST SET --

11:44 AM 2 THE FIRST APPLICATIONS THAT WE RECEIVED I
11:45 AM 3 BELIEVE WERE THE ONE BOX OF APPLICATIONS, AND THEY WERE
11:45 AM 4 IDENTIFIED TO US AS CURRENT, APPLICATIONS FOR CURRENT
11:45 AM 5 EMPLOYEES DURING THE LIABILITY PERIOD. THAT IS ALL THAT'S
11:45 AM 6 IN THIS SET.

11:45 AM 7 MR. BACON: THAT STILL DOESN'T --

11:45 AM 8 WE'RE CERTAINLY NOT GOING TO OBJECT TO THEIR
11:45 AM 9 ADMISSIBILITY. THEY'RE LUFKIN'S RECORDS. THE ISSUE HERE
11:45 AM 10 IS, WE HAVE NOT HAD AN OPPORTUNITY TO EXAMINE THE --

11:45 AM 11 THE COURT: WELL, YOU KNOW WHAT YOU SENT THEM.

11:45 AM 12 MR. BACON: YOUR HONOR, WE SENT THEM OUR
11:45 AM 13 APPLICATIONS OVER A LONG PERIOD OF TIME. THEY HAVE
11:45 AM 14 FOCUSED ON A PARTICULAR GROUP. WE HAVE NOT HAD AN
11:45 AM 15 OPPORTUNITY TO LOOK AT THE GROUP THAT THEY'RE GOING TO ASK
11:45 AM 16 QUESTIONS ABOUT AND TO PREPARE TO CROSS-EXAMINE A WITNESS
11:45 AM 17 ON THAT. I HAVE NO IDEA WHICH APPLICATIONS THAT --

11:45 AM 18 THE COURT: TELL ME WHICH ONES YOU'RE GOING TO
11:45 AM 19 INTRODUCE AND --

11:45 AM 20 MS. BURRELL: THESE ARE CURRENT EMPLOYEES.

11:45 AM 21 THE COURT: TELL ME THE NAMES.

11:45 AM 22 MS. BURRELL: WELL, THERE'S QUITE A FEW OF THEM.
11:45 AM 23 THERE'S A WHOLE BOX. I CAN'T TELL YOU THE NAMES.

11:45 AM 24 THE COURT: YOU CAN'T TELL ME THE NAMES?
11:45 AM 25 THEY'RE NOT ON THERE?

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11:45 AM 1 MS. BURRELL: THEY ARE ON THERE, BUT THERE'S
11:45 AM 2 SEVERAL OF THEM.

11:46 AM 3 THE COURT: WELL, THERE'S ONE ON THE TOP. IT
11:46 AM 4 HAS A NAME ON IT.

11:46 AM 5 MS. BURRELL: THE ONE ON THE TOP --

11:46 AM 6 WELL, LET ME --

11:46 AM 7 OKAY. ONE POSSIBILITY IS, WE COULD COMPLETE THE
11:46 AM 8 DIRECT EXAMINATION, GIVE LUFKIN THESE DOCUMENTS TO EXAMINE
11:46 AM 9 OVER LUNCH, SO THAT -- BEFORE YOU DO YOUR
11:46 AM 10 CROSS-EXAMINATION.

11:46 AM 11 THE COURT: YOU DO NOT WISH ME TO KNOW THE NAME?

11:46 AM 12 MS. BURRELL: I'M SORRY. ABSOLUTELY.

11:46 AM 13 BUT I CAN TELL YOU, THIS --

11:46 AM 14 WE ORGANIZED THESE INTO CHRONOLOGICAL ORDER, SO
11:46 AM 15 THIS IS NOT THE ORDER IN WHICH WE GAVE THEM. BUT THE
11:46 AM 16 FIRST NAME THAT ON HERE IS RYAN KEITH THIGPEN, AND HE
11:46 AM 17 APPLIED FOR A POSITION IT SAYS IN THE TRAILER PLANT ON
11:46 AM 18 JANUARY 25, 1994.

11:47 AM 19 AND THERE'S A BATES NUMBER ON THE BOTTOM, WHICH
11:47 AM 20 IS 002485.

11:47 AM 21 THE COURT: AND THESE WERE ALL FURNISHED TO YOU
11:47 AM 22 OVER DIFFERING -- AT DIFFERENT TIMES?

11:47 AM 23 MS. BURRELL: NO. THIS BOX WE RECEIVED ALL AT
11:47 AM 24 ONE TIME. WE INITIALLY RECEIVED ONE BOX OF APPLICATIONS.
11:47 AM 25 WE RECEIVED SOME MORE APPLICATIONS THE NEXT WEEK, AND THEN

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11:47 AM 1 THE DAY BEFORE TRIAL STARTED WE RECEIVED SEVERAL
11:47 AM 2 ADDITIONAL BOXES. THIS IS THE FIRST -- THIS IS FROM THE
11:47 AM 3 FIRST SET OF APPLICATIONS WE RECEIVED, JUST THIS ONE BOX.

11:47 AM 4 MR. BACON: LET ME EXPLAIN ALSO, THE SERVICE
11:47 AM 5 THAT DID THIS JOB, SO IT DOESN'T SEEM LIKE THE SERVICE
11:47 AM 6 TOOK FOREVER --

11:47 AM 7 A LOT OF THESE APPLICATIONS WERE ON MICROFICHE,
11:47 AM 8 SO IT WASN'T SIMPLY A MATTER OF TAKING AN APPLICATION AND
11:47 AM 9 XEROXING IT. THEY HAD TO ACTUALLY BE PUT ON THIS LITTLE
11:47 AM 10 MACHINE, AND IT'S MY UNDERSTANDING IT TAKES QUITE A BIT OF
11:47 AM 11 TIME TO PRINT SOMETHING ON A MICROFICHE FEEDER.

11:47 AM 12 THEN THEY HAD TO MAKE COPIES FOR THE PLAINTIFF
11:48 AM 13 AND COPIES FOR US FOR A LOT OF THESE APPLICATIONS.

11:48 AM 14 BUT, YOU KNOW, AGAIN, MY --

11:48 AM 15 I DON'T HAVE AN OBJECTION TO THESE EXHIBITS PER
11:48 AM 16 SE. WE NEED TIME TO BE ABLE TO --

11:48 AM 17 THE COURT: WELL --

11:48 AM 18 MR. BACON: I MEAN, TYPICALLY WE GET THIRTY DAYS
11:48 AM 19 AND MORE TIME TO LOOK AT EXHIBITS, BUT WE AT LEAST NEED,
11:48 AM 20 YOU KNOW, I THINK AT LEAST THE WEEKEND TO BE ABLE TO LOOK
11:48 AM 21 AT WHAT THEY'RE INTRODUCING, TO BE ABLE TO LOOK THROUGH
11:48 AM 22 EACH AND EVERY APPLICATION TO SEE WHAT INFORMATION IS IN
11:48 AM 23 IT.

11:48 AM 24 MS. BURRELL: WELL, WHILE I DON'T DISAGREE THAT
11:48 AM 25 TYPICALLY YOU WOULD BE ALLOWED THIRTY DAYS, WE JUST

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11:48 AM 1 RECEIVED THESE WITHIN THE LAST FEW WEEKS.

11:48 AM 2 IT'S A FAIRLY SMALL BOX OF DOCUMENTS. I'M NOT
11:48 AM 3 CERTAIN IT WOULD TAKE YOU THE WEEKEND TO LOOK THROUGH
11:48 AM 4 THEM.

11:48 AM 5 AND THESE ARE SIMPLY DOCUMENTS THAT YOU PRODUCED
11:48 AM 6 TO US.

11:49 AM 7 THE COURT: WELL, WE'RE ADJOURNED UNTIL 2:00
11:49 AM 8 O'CLOCK. RUN THROUGH THEM BETWEEN NOW AND 2:00 O'CLOCK.

11:49 AM 9 THE CSO: ALL RISE.

11:49 AM 10 THE COURT: WE'RE IN RECESS UNTIL 2:00 O'CLOCK.

11:49 AM 11 INCIDENTALLY, I MADE AN ERROR THIS MORNING WHEN
11:49 AM 12 I SAID I WAS GOING TO LOOK UP EVERY WORD THAT STARTED WITH
11:49 AM 13 P-R-E, AND THAT -- AND I MISSPOKE. I SAID STARTING WITH
11:49 AM 14 "PROFESSION." I THOUGHT ABOUT THAT VERY SHORTLY AFTER I
11:50 AM 15 SAID IT, AND I DIDN'T HAVE A CHANCE TO CORRECT MYSELF.

11:50 AM 16 I HOPE YOU CAN LET THEM SEE WHAT THEY GOT, AND
11:50 AM 17 MAKE A HAND LIST, AND YOU CAN SPLIT IT UP, AND YOU CAN
11:50 AM 18 TAKE TEN OF THEM, AND YOU CAN GET THEM A LIST OF THEM.

11:50 AM 19 MS. BURRELL: OKAY.

11:50 AM 20 THE COURT: WE'RE IN RECESS UNTIL 2:00.

11:50 AM 21 (RECESS)

02:04 PM 22 THE COURT: ARE YOU READY TO PROCEED?

02:04 PM 23 MS. BURRELL: YES, WE ARE, YOUR HONOR.

02:05 PM 24 THE COURT: PLEASE BE SEATED.

02:05 PM 25 PLEASE PROCEED.

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02:05 PM 1 MS. BURRELL: THANK YOU, YOUR HONOR.

02:05 PM 2 WE APOLOGIZE FOR THE DELAY, AND WE'RE READY TO

02:05 PM 3 GO NOW.

02:05 PM 4 CONTINUED BY MS. BURRELL:

02:05 PM 5 Q. MS. DUNGAN, I WANT TO REFER BACK TO PLAINTIFFS'

02:05 PM 6 EXHIBIT NUMBER 75.

02:05 PM 7 A. OKAY.

02:06 PM 8 Q. CAN YOU TURN TO PAGE 8 OF THAT EXHIBIT?

02:06 PM 9 THE COURT: PAGE WHAT?

02:06 PM 10 MS. BURRELL: PAGE 8.

02:06 PM 11 THE COURT: ALL RIGHT. THANK YOU.

02:06 PM 12 THE WITNESS: OKAY.

02:06 PM 13 BY MS. BURRELL:

02:06 PM 14 Q. ALL RIGHT. AND WHICH IS NUMBERED PTSF02948, IS

02:06 PM 15 THAT CORRECT?

02:06 PM 16 A. THAT'S CORRECT.

02:06 PM 17 Q. DO YOU SEE ON THAT LIST THE NAME JOSEPH MESHELLE?

02:06 PM 18 A. I DO.

02:06 PM 19 Q. AND THAT'S ON THE SAME LINE AS A NUMBER, WHICH IS

02:06 PM 20 TX7398299, IS THAT CORRECT?

02:07 PM 21 A. THAT'S CORRECT.

02:07 PM 22 Q. SO FROM THIS --

02:07 PM 23 LET ME JUST REMIND YOU THAT EXHIBIT 75 IS THE

02:07 PM 24 ANALYSIS THAT YOU SUPERVISED OF THE WORK ORDERS THAT WE

02:07 PM 25 RECEIVED FROM THE -- THAT PLAINTIFFS RECEIVED FROM THE

02:07 PM 1 TEXAS WORKFORCE COMMISSION, CORRECT?

02:07 PM 2 A. THAT'S CORRECT.

02:07 PM 3 Q. ALL RIGHT. SO LOOKING AT THAT EXHIBIT FOR MR.

02:07 PM 4 MESHELLE, WHAT DOES IT INDICATE THAT MR. MESHELLE -- FOR

02:07 PM 5 WHAT POSITION HE WAS REFERRED TO?

02:07 PM 6 A. IT INDICATES THAT HE WAS REFERRED TO THE FOUNDRY.

02:07 PM 7 Q. AND LOOKING AT THAT SAME DOCUMENT, WHERE DOES IT

02:07 PM 8 INDICATE THAT MR. MESHELLE WAS HIRED?

02:07 PM 9 A. INTO GEAR REPAIR.

02:07 PM 10 Q. AND WHAT POSITION WAS HE HIRED FOR?

02:07 PM 11 A. GEAR REPAIR SPECIALIST.

02:07 PM 12 THE COURT: I DON'T -- I DON'T --

02:07 PM 13 IS THAT PAGE 8 OF 107?

02:08 PM 14 THE WITNESS: I THINK YOU NEED EXHIBIT 75.

02:08 PM 15 MS. BURRELL: EXHIBIT 75, YOUR HONOR.

02:08 PM 16 THE WITNESS: I THINK YOU'RE IN '76.

02:08 PM 17 (OFF-THE-RECORD DISCUSSION)

02:08 PM 18 THE COURT: EXCUSE ME. WHAT NAME WAS IT?

02:08 PM 19 MS. BURRELL: IT'S JOSEPH MESHELLE, AND HE'S

02:08 PM 20 ABOUT -- HE'S TWELVE NAMES DOWN.

02:08 PM 21 THE COURT: YES, MA'AM, I SEE IT.

02:08 PM 22 MS. BURRELL: OKAY.

02:08 PM 23 BY MS. BURRELL:

02:08 PM 24 Q. AND YOU TESTIFIED, MS. DUNGAN, THAT ACCORDING TO THE

02:08 PM 25 ANALYSIS THAT YOU SUPERVISED, HE WAS ON -- HE WAS REFERRED

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02:08 PM 1 FOR A POSITION IN THE FOUNDRY, CORRECT?

02:08 PM 2 A. THAT'S CORRECT.

02:08 PM 3 Q. BUT IT APPEARS THAT HE WAS HIRED INTO A POSITION IN
02:08 PM 4 GEAR REPAIR?

02:08 PM 5 A. THAT'S RIGHT.

02:08 PM 6 Q. AS A GEAR REPAIR SPECIALIST?

02:09 PM 7 A. THAT'S RIGHT.

02:09 PM 8 Q. ALL RIGHT. SO OF THAT SAME EXHIBIT, EXHIBIT 75, CAN
02:09 PM 9 YOU TURN TO PAGE 25?

02:09 PM 10 A. OKAY.

02:09 PM 11 Q. WHICH IS NUMBERED, BATES-STAMPED PTFS02965.

02:09 PM 12 AND DO YOU SEE THE NAME RICKY W. ETHRIDGE ON
02:09 PM 13 THAT PAGE?

02:09 PM 14 A. I DO.

02:09 PM 15 Q. AND MR. ETHRIDGE IS ABOUT EIGHT NAMES UP FROM THE
02:09 PM 16 BOTTOM.

02:09 PM 17 MR. BACON: EXCUSE ME, COUNSEL. WHAT PAGE ARE
02:09 PM 18 WE ON?

02:09 PM 19 MS. BURRELL: PAGE 25.

02:09 PM 20 THE COURT: PAGE 25.

02:09 PM 21 BY MS. BURRELL:

02:09 PM 22 Q. NOW, REFERRING BACK TO THAT SAME DOCUMENT, WHERE
02:09 PM 23 DOES IT INDICATE THAT MR. ETHRIDGE WAS REFERRED?

02:09 PM 24 A. THE FOUNDRY DIVISION.

02:10 PM 25 Q. AND WHAT DEPARTMENT DOES THIS INDICATE HE WAS HIRED

02:10 PM 1 INTO?

02:10 PM 2 A. IT SAYS POWER TRANSMISSION.

02:10 PM 3 Q. AND WHAT POSITION WAS HE HIRED FOR?

02:10 PM 4 A. MACHINIST HELPER.

02:10 PM 5 Q. SO NOW -- I WOULD LIKE NOW FOR YOU TO TURN TO

02:10 PM 6 EXHIBIT 76.

02:10 PM 7 THE COURT: ARE YOU BACK ON 76?

02:10 PM 8 MS. BURRELL: 76, YES, SIR.

02:10 PM 9 THE WITNESS: OKAY.

02:10 PM 10 BY MS. BURRELL:

02:10 PM 11 Q. AND IF YOU COULD, COULD YOU TURN TO PAGE 18 OF 107

02:10 PM 12 ON THAT EXHIBIT?

02:10 PM 13 A. ALL RIGHT.

02:11 PM 14 Q. ALL RIGHT.

02:11 PM 15 MS. BURRELL: YOUR HONOR, I HAVE -- LET ME

02:11 PM 16 JUST -- I HAVE A BID SHEET WHICH IS PART OF PLAINTIFFS'

02:11 PM 17 EXHIBIT NUMBER 117.

02:11 PM 18 MAY I APPROACH THE WITNESS, YOUR HONOR?

02:11 PM 19 THE COURT: YES.

02:11 PM 20 THE WITNESS: THANK YOU.

02:11 PM 21 BY MS. BURRELL:

02:12 PM 22 Q. MS. DUNGAN, DO YOU RECOGNIZE THIS DOCUMENT?

02:12 PM 23 A. I DO.

02:12 PM 24 Q. CAN YOU PLEASE TELL ME WHAT IT IS?

02:12 PM 25 A. IT'S AN HOURLY BID SHEET FOR AN INSPECTOR, SECOND

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02:12 PM 1 SHIFT.

02:12 PM 2 Q. AND WHERE DID PLAINTIFFS RECEIVE THIS DOCUMENT?

02:12 PM 3 A. THEY WERE PRODUCED BY LUFKIN'S COUNSEL.

02:12 PM 4 Q. AND SO THIS IS A DOCUMENT THAT IS ENTITLED THE
02:12 PM 5 JOB -- AT THE TOP IS THE WORD "NOTICE," IS THAT CORRECT?

02:12 PM 6 A. THAT'S RIGHT.

02:12 PM 7 Q. AND UNDERNEATH IS THE JOB VACANCY OF INSPECTOR,
02:12 PM 8 SECOND SHIFT, IS THAT CORRECT?

02:12 PM 9 A. CORRECT.

02:12 PM 10 Q. AND IT'S BATES NUMBER L12522?

02:12 PM 11 A. THAT'S RIGHT.

02:12 PM 12 Q. IS THAT CORRECT?

02:12 PM 13 MS. BURRELL: THE PLAINTIFFS WOULD LIKE TO OFFER
02:12 PM 14 THIS EXHIBIT INTO EVIDENCE.

02:13 PM 15 MR. BACON: NO OBJECTION, YOUR HONOR.

02:13 PM 16 THE COURT: WITHOUT OBJECTION, IT'S ADMITTED AS
02:13 PM 17 MARKED.

02:13 PM 18 BY MS. BURRELL:

02:13 PM 19 Q. SO EARLIER TODAY, MS. DUNGAN, YOU TESTIFIED AS TO AN
02:13 PM 20 ENTRY ON PAGE 10 OF EXHIBIT 76?

02:13 PM 21 A. THAT'S RIGHT.

02:13 PM 22 Q. AND THAT WAS THE -- IT'S ACTUALLY THE VERY FIRST
02:13 PM 23 ENTRY, AND IT'S FOR A BID SHEET, THE BID SHEET WHICH IS
02:13 PM 24 NUMBERED L12522, IS THAT CORRECT?

02:13 PM 25 A. THAT'S CORRECT.

TRANSCRIPT OF PROCEEDINGS

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02:13 PM 1 Q. AND THE DOCUMENT THAT WE JUST ENTERED INTO EVIDENCE
02:13 PM 2 IS NUMBERED L12522, IS THAT CORRECT?

02:13 PM 3 A. THAT'S RIGHT, THROUGH 24.

02:13 PM 4 THE COURT: 23.

02:13 PM 5 MS. BURRELL: IT'S 22.

02:13 PM 6 THE COURT: 23, THE ONE THAT WAS HANDED ME.

02:14 PM 7 MS. BURRELL: THE FIRST PAGE OF THE DOCUMENT YOU
02:14 PM 8 HAVE, YOUR HONOR, IS 23?

02:14 PM 9 THE COURT: YES, MA'AM, 23.

02:14 PM 10 MS. BURRELL: IT'S THE -- THE FIRST PAGE OF THAT
02:14 PM 11 DOCUMENT IS WHAT I'M REFERRING TO, JUST TO IDENTIFY IT.

02:14 PM 12 I'M SORRY.

02:14 PM 13 THE COURT: IT'S 22, YES, MA'AM.

02:14 PM 14 MS. BURRELL: OKAY.

02:14 PM 15 THE COURT: THAT'S THE NOTICE THAT'S BEEN FILLED
02:14 PM 16 BY KENNY FERRIS.

02:14 PM 17 MS. BURRELL: THAT'S RIGHT.

02:14 PM 18 BY MS. BURRELL:

02:14 PM 19 Q. AND EARLIER THIS MORNING, MS. DUNGAN, YOU TESTIFIED
02:14 PM 20 THAT -- WHAT THE -- AS TO THE ENTRY ON EXHIBIT 76 WITH
02:14 PM 21 RESPECT TO THE BID SHEET THAT BEGINS WITH L12522?

02:14 PM 22 A. THAT'S CORRECT.

02:14 PM 23 Q. CORRECT?

02:14 PM 24 A. THAT'S CORRECT.

02:14 PM 25 Q. AND YOU TESTIFIED THAT WHEN YOU COMPARED THIS BID

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02:14 PM 1 SHEET WITH THE DATA BASE THAT WAS PRODUCED BY LUFKIN, AND
02:14 PM 2 THEN -- THAT YOU FOUND THAT THE BID SHEET HAD FORTY-SIX
02:15 PM 3 NAMES?

02:15 PM 4 A. THAT'S RIGHT.

02:15 PM 5 MR. BACON: OBJECTION, LEADING.

02:15 PM 6 MS. BURRELL: I'M SORRY, THAT WAS ACTUALLY
02:15 PM 7 INACCURATE.

02:15 PM 8 BY MS. BURRELL:

02:15 PM 9 Q. YOU FOUND THAT THE --

02:15 PM 10 WELL, LET ME ASK IT THIS LIKE THIS.

02:15 PM 11 MR. BACON: I HAVE AN OBJECTION.

02:15 PM 12 MS. BURELL: I UNDERSTAND THAT --

02:15 PM 13 THE COURT: HOW MANY DID MS. BAKER SAY IT HAD?

02:15 PM 14 THE WITNESS: THE BID SHEET HAS SIXTY-THREE
02:15 PM 15 NAMES AND DR. BAKER'S DATA BASE INDICATES THAT THERE WERE
02:15 PM 16 FORTY-SIX.

02:15 PM 17 BY MS. BURRELL:

02:15 PM 18 Q. SO, REFERRING TO THIS DOCUMENT, HOW DID YOU
02:15 PM 19 DETERMINE THAT THERE WERE SIXTY-THREE NAMES ON THIS BID
02:15 PM 20 SHEET?

02:15 PM 21 THE COURT: PROBABLY COUNTED THEM.

02:15 PM 22 THE WITNESS: THAT'S CORRECT.

02:15 PM 23 BY MS. BURRELL:

02:15 PM 24 Q. OKAY.

02:15 PM 25 A. WE REVIEWED IT AND COUNTED THE NAMES ON THE BID

02:15 PM 1 SHEET.

02:15 PM 2 Q. AND THEN WHAT DID YOU DO?

02:15 PM 3 A. WE CHECKED IN THE MARY BAKER DATA BASE TO SEE HOW

02:15 PM 4 SHE HAD IDENTIFIED THE BID SHEET.

02:15 PM 5 Q. AND DID YOU FIND THAT THE NUMBER THAT SHE HAD THAT

02:15 PM 6 WAS IN THE DATA BASE WAS DIFFERENT FROM THE NUMBER THAT --

02:15 PM 7 THE COURT: FORTY-SIX, THAT'S DIFFERENT THAN

02:16 PM 8 SIXTY-THREE.

02:16 PM 9 MS. BURRELL: YES. THANK YOU.

02:16 PM 10 MAY I APPROACH THE WITNESS, YOUR HONOR?

02:16 PM 11 THE COURT: YES. YES, MA'AM.

02:16 PM 12 BY MS. BURRELL:

02:17 PM 13 Q. ALL RIGHT. MS. DUNGAN, I'VE JUST HANDED YOU A

02:17 PM 14 DOCUMENT, THE TITLE OF WHICH IS POWER TRANSMISSION

02:17 PM 15 MANUFACTURING AND OILFIELD PRODUCTS MACHINING, IS THAT

02:17 PM 16 CORRECT?

02:17 PM 17 A. THAT'S CORRECT.

02:17 PM 18 Q. AND IT'S BATES NUMBER L13044, IS THAT CORRECT?

02:17 PM 19 A. THAT'S CORRECT.

02:17 PM 20 Q. AND DO YOU RECOGNIZE THIS DOCUMENT?

02:17 PM 21 A. I DO.

02:17 PM 22 Q. AND CAN YOU TELL ME WHAT IT IS?

02:17 PM 23 A. IT'S AN HOURLY BID SHEET FOR A POSITION OF

02:17 PM 24 ELECTRONICS TECHNICIAN, MAINTENANCE, C-64, THE SECOND

02:17 PM 25 SHIFT.

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02:18 PM 1 MS. BURRELL: PLAINTIFFS WOULD LIKE TO OFFER
02:18 PM 2 THIS DOCUMENT INTO EVIDENCE.

02:18 PM 3 THE COURT: ANY OBJECTION?

02:18 PM 4 MR. BACON: I HAVE NO OBJECTION.

02:18 PM 5 HOW ARE YOU MARKING THESE PARTICULAR DOCUMENTS?

02:18 PM 6 MS. BURRELL: WELL, THEY'RE PART OF EXHIBIT 117.
02:18 PM 7 PROBABLY THE EASIEST WAY TO DO IT -- WE'LL DO IT SIMILAR
02:18 PM 8 TO WHAT YOU DID YESTERDAY MAYBE. THIS WILL BE 117-B, AND
02:18 PM 9 CAN BE MARKED AS -- THE OTHER -- THE LAST BID SHEET IS
02:18 PM 10 117-A.

02:18 PM 11 MR. BACON: THAT'S FINE. I HAVE NO OBJECTION TO
02:18 PM 12 THAT.

02:18 PM 13 THE COURT: IT'S ADMITTED AS MARKED.

02:18 PM 14 NOW, TELL ME WHOSE INITIALS "WM" AND "BM" ARE,
02:18 PM 15 AND "HM."

02:18 PM 16 THE WITNESS: ARE YOU ASKING ME, YOUR HONOR?

02:18 PM 17 THE COURT: MA'AM?

02:18 PM 18 THE WITNESS: WE -- THOSE INDICATE -- "WM"
02:18 PM 19 INDICATES WHITE MALE AND "BM" INDICATES BLACK MALE AND
02:18 PM 20 "HM" INDICATES HISPANIC MALE. THAT WAS OUR UNDERSTANDING.

02:18 PM 21 THE COURT: THANK YOU.

02:18 PM 22 BY MS. BURRELL:

02:18 PM 23 Q. AND, MS. DUNGAN, DID YOU MAKE THESE MARKS?

02:18 PM 24 A. NO. THEY WERE ON THE DOCUMENT WHEN WE RECEIVED IT.

02:19 PM 25 Q. SO EARLIER THIS MORNING YOU REFERRED TO PAGE 53 OF

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02:19 PM 1 EXHIBIT 76. CAN WE TURN TO THAT RIGHT NOW?

02:19 PM 2 A. YES.

02:19 PM 3 THE COURT: 63?

02:19 PM 4 THE WITNESS: 53.

02:19 PM 5 MS. BURRELL: 53.

02:19 PM 6 THE COURT: THANK YOU.

02:19 PM 7 BY MS. BURRELL:

02:19 PM 8 Q. AND THIS IS THE ENTRY FOR THE BID SHEET WHICH IS
02:19 PM 9 NUMBERED L13044, IS THAT CORRECT?

02:20 PM 10 A. THAT'S CORRECT.

02:20 PM 11 Q. NOW, CAN YOU TELL ME AGAIN WHAT THIS ENTRY REFLECTS?

02:20 PM 12 A. IT SHOWS THAT MR. PHIPPS AND MR. EVANS -- WHEN WE
02:20 PM 13 CHECKED THE LUFKIN DATA BASE, IT INDICATED THAT MR. PHIPPS
02:20 PM 14 AND MR. EVANS DID NOT RECEIVE THE PROMOTION, ALTHOUGH IN
02:20 PM 15 THE MARY BAKER DATA BASE IT SHOWS THAT HE DID.

02:20 PM 16 Q. OKAY. WELL, LET ME TAKE A STEP BACK FOR A MINUTE.
02:20 PM 17 YOU MENTIONED THE LUFKIN DATA BASE. WHAT IS THE LUFKIN
02:20 PM 18 DATA BASE THAT YOU'RE REFERRING TO?

02:20 PM 19 A. IT'S THE PERSONNEL DATA BASE THAT WE RECEIVED FROM
02:20 PM 20 LUFKIN.

02:20 PM 21 Q. AND HOW DID WE -- DO YOU RECALL HOW WE RECEIVED
02:20 PM 22 THAT?

02:20 PM 23 A. IT WAS A CD.

02:20 PM 24 Q. AND WHAT DID WE DO WITH THE CD WHEN WE RECEIVED IT?

02:20 PM 25 A. WE SENT IT TO OUR EXPERT, DR. DROGIN.

02:20 PM 1 Q. AND THEY USED THAT CD TO CREATE A DATA BASE?

02:20 PM 2 A. THAT'S CORRECT.

02:20 PM 3 Q. AND WHAT DO YOU DO WITH THE DATA BASE THAT WAS
02:21 PM 4 CREATED BY DR. DROGIN?

02:21 PM 5 A. WE LOADED IT ONTO OUR SYSTEM IN OUR OFFICE AND HAVE
02:21 PM 6 USED THAT TO REVIEW IN OUR REVIEW OF THE BID SHEETS.

02:21 PM 7 Q. AND IS THAT HOW YOU DETERMINED WHETHER OR NOT THE
02:21 PM 8 MEN THAT ARE LISTED AS WINNERS ON EXHIBIT 75, WHETHER THEY
02:21 PM 9 WERE IN FACT PROMOTED?

02:21 PM 10 A. THAT IS HOW WE DID THAT.

02:21 PM 11 Q. ALL RIGHT.

02:21 PM 12 MS. BURRELL: MAY I APPROACH THE WITNESS, YOUR
02:21 PM 13 HONOR?

02:21 PM 14 THE COURT: YES, MA'AM.

02:21 PM 15 THE WITNESS: THANK YOU.

02:21 PM 16 BY MS. BURRELL:

02:22 PM 17 Q. MS. DUNGAN, DO YOU RECOGNIZE THIS DOCUMENT?

02:22 PM 18 A. I DO.

02:22 PM 19 Q. CAN YOU DESCRIBE WHAT IT IS FOR US, PLEASE?

02:22 PM 20 A. IT'S A PRINTOUT OF THE PERSONNEL HISTORY FOR DANIEL
02:22 PM 21 PHIPPS, AND THIS IS A PRINTOUT FROM THE DATA BASE THAT WE
02:22 PM 22 RECEIVED FROM LUFKIN.

02:22 PM 23 Q. SO THIS IS FROM THE DATA BASE THAT WAS RECEIVED FROM
02:22 PM 24 LUFKIN, OR IS IT FROM THE INFORMATION, THE ELECTRONIC DATA
02:22 PM 25 AND PERSONNEL DATA THAT WE RECEIVED FROM LUFKIN?

02:22 PM 1 A. THE PERSONNEL DATA WE RECEIVED FROM LUFKIN.

02:22 PM 2 MS. BURRELL: WE WOULD PLEASE LIKE TO OFFER THIS
02:22 PM 3 INTO EVIDENCE. IT'S PART OF PLAINTIFFS' -- ACTUALLY, IT'S
02:22 PM 4 PART OF DEFENDANT'S EXHIBIT NUMBER 135, WHICH IS DR.
02:23 PM 5 DROGIN'S DATA BASE, PERSONNEL DATA BASE, WHICH ARE
02:23 PM 6 COMPRISED FROM THE CYBORG AND MAINFRAME DATA THAT WE
02:23 PM 7 RECEIVED FROM LUFKIN.

02:23 PM 8 MR. BACON: I CONFESS I'VE NEVER SEEN THIS, BUT
02:23 PM 9 I'M NOT SAYING WE HAVEN'T BEEN GIVEN IT, YOUR HONOR.

02:23 PM 10 DR. DROGIN'S --

02:23 PM 11 I WOULD OBJECT TO IT AS HEARSAY. IT'S FROM HIS
02:23 PM 12 EXPERT REPORT, AND I THINK HE SHOULD TESTIFY ABOUT IT AND
02:23 PM 13 NOT SOMEONE ELSE.

02:23 PM 14 THE COURT: WELL, I'M GOING TO LET HER EXPLAIN
02:23 PM 15 IT, IF SHE CAN.

02:23 PM 16 BUT BASICALLY THESE -- 75 AND 76 ARE A REVIEW OF
02:23 PM 17 DR. BAKER'S REPORT AND UNDERLYING FACTS, AND THEY'RE IN
02:23 PM 18 ANTICIPATION OF CROSS-EXAMINATION, AND I WILL ACCEPT THEM
02:24 PM 19 ONCE EITHER DR. BAKER OR DR. DROGIN TESTIFIES.

02:24 PM 20 BUT YOU DON'T HAVE TO GO INTO THIS MUCH DETAIL
02:24 PM 21 OF THEM, AND ESPECIALLY THE COMMENTS THAT DR. BAKER EITHER
02:24 PM 22 OVERLOOKED THEM OR JUST COULDN'T READ THEM. WELL, I CAN'T
02:24 PM 23 READ THEM EITHER, THE PHOTOSTATIC COPIES. SOME OF THEM
02:24 PM 24 ARE BLANK.

02:24 PM 25 MS. BURRELL: OKAY. WELL --

02:24 PM 1 THE COURT: BUT I ACCEPT THEM IN ANTICIPATION OF
02:24 PM 2 THE CROSS-EXAMINATION OF DR. BAKER.

02:24 PM 3 MS. BURRELL: OKAY. THANK YOU, YOUR HONOR.

02:24 PM 4 MR. BACON: EXCUSE ME, YOUR HONOR. HOW WILL
02:24 PM 5 THIS BE MARKED?

02:24 PM 6 MS. BURRELL: LET'S MARK IT AS 135-A.

02:24 PM 7 THE CLERK: DEFENDANT'S?

02:24 PM 8 MS. BURRELL: WELL, LET'S MARK IT AS PLAINTIFFS'
02:24 PM 9 135-A. DO WE HAVE --

02:25 PM 10 ALL RIGHT. MARK IT AS DEFENDANT'S 135-A. I'M
02:25 PM 11 SORRY.

02:25 PM 12 THE CLERK: OKAY.

02:25 PM 13 MS. BURRELL: I'M TRYING TO MAKE THINGS AS
02:25 PM 14 UNCOMPLICATED AS POSSIBLE.

02:25 PM 15 THE COURT: ALL 75 AND 76 ARE IS IN ANTICIPATION
02:25 PM 16 OF DR. BAKER'S EXPERT REPORT AND SECOND EXPERT'S REPORT,
02:25 PM 17 AND I UNDERSTAND THAT, AND THESE ARE AN ADVANCE ATTEMPT TO
02:25 PM 18 POKE HOLES AT IT, AND I UNDERSTAND THAT.

02:25 PM 19 NOW, I DON'T HAVE HER REPORT. I DON'T HAVE DR.
02:25 PM 20 DROGIN'S. WELL, I DO HAVE A COPY OF DR. DROGIN'S REPORT.
02:25 PM 21 I DON'T HAVE A COPY OF DR. BAKER'S REPORT.

02:25 PM 22 BUT THEY AREN'T PER SE IN EVIDENCE. THEY'VE
02:25 PM 23 BEEN MARKED, AND I'VE READ THEM.

02:25 PM 24 MS. BURRELL: ALL RIGHT. I UNDERSTAND, YOUR
02:25 PM 25 HONOR. I WILL TIE THIS UP QUICKLY.

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02:25 PM 1 BY MS. BURRELL:

02:25 PM 2 Q. SO REFERRING TO THE DOCUMENT THAT YOU JUST DESCRIBED
02:26 PM 3 AS BEING A PRINTOUT FROM THE DATA BASE CONTAINING LUFKIN'S
02:26 PM 4 PERSONNEL INFORMATION --

02:26 PM 5 A. YES.

02:26 PM 6 Q. CAN YOU TELL ME THE NAME OF THE INDIVIDUAL TO WHOM
02:26 PM 7 THIS DOCUMENT REFERS?

02:26 PM 8 A. DANIEL PHIPPS.

02:26 PM 9 Q. AND YOU KNOW THAT BECAUSE THAT'S AT THE TOP OF THE
02:26 PM 10 DOCUMENT, IS THAT CORRECT?

02:26 PM 11 NOW, REFERRING BACK TO EXHIBIT 76 --

02:26 PM 12 A. OKAY.

02:26 PM 13 Q. YOU TESTIFIED EARLIER THAT EXHIBIT 76 REFLECTS THAT
02:26 PM 14 D. EVANS AND D. PHIPPS WERE BOTH PROMOTED, WERE BOTH
02:26 PM 15 WINNERS OF THIS PARTICULAR BID ACCORDING TO THE HOURLY BID
02:26 PM 16 DATA BASE, IS THAT CORRECT?

02:26 PM 17 A. THAT'S CORRECT.

02:26 PM 18 Q. SO LOOKING NOW BACK AT THE EXHIBIT 135-A, WHICH WE
02:27 PM 19 JUST IDENTIFIED AS BEING -- REFERRING TO DANIEL PHIPPS,
02:27 PM 20 CAN YOU DESCRIBE THE --

02:27 PM 21 WELL, LET ME JUST DO IT --

02:27 PM 22 UNDERNEATH THERE'S THE WORD "HISTORY RESULTS,"
02:27 PM 23 CORRECT?

02:27 PM 24 A. THAT'S CORRECT.

02:27 PM 25 Q. AND UNDERNEATH THAT THERE'S SOME NUMBERS AND

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02:27 PM 1 LETTERS?

02:27 PM 2 A. THAT'S RIGHT.

02:27 PM 3 Q. AND THEN UNDERNEATH THAT THERE IS WHAT APPEARS TO BE
02:27 PM 4 SEVERAL LINES OF THE SOCIAL SECURITY NUMBER?

02:27 PM 5 A. THAT'S RIGHT.

02:27 PM 6 Q. AND THEN UNDER EFFECTIVE DATE, E-F-F D-A-T-E --

02:27 PM 7 A. UH-HUH.

02:27 PM 8 Q. -- THERE'S A DATE, IS THAT CORRECT?

02:27 PM 9 A. THAT'S CORRECT.

02:27 PM 10 Q. AND THEN IF YOU GO OVER TO THE COLUMN AFTER THAT,
02:27 PM 11 IT'S JOB TITLE?

02:27 PM 12 A. THAT'S RIGHT.

02:27 PM 13 Q. AND THEN DEPARTMENT?

02:27 PM 14 A. RIGHT.

02:27 PM 15 Q. ALL RIGHT. NOW, LOOKING THROUGH THIS DOCUMENT, DO
02:27 PM 16 YOU SEE --

02:27 PM 17 WELL, LET ME GO BACK UP FOR A SECOND. THIS
02:27 PM 18 DOCUMENT APPEARS TO REFLECT MR. PHIPPS', DANIEL PHIPPS'
02:28 PM 19 EMPLOYMENT HISTORY AT LUFKIN INDUSTRIES FROM THE FIRST
02:28 PM 20 DATE, WHICH IS NOVEMBER 2, 1979?

02:28 PM 21 A. RIGHT.

02:28 PM 22 Q. THROUGH THE LAST DATE, WHICH IS ON THE THIRD PAGE OF
02:28 PM 23 THE DOCUMENT?

02:28 PM 24 A. YES.

02:28 PM 25 Q. WHICH IS MARCH 9, 2003. DO YOU SEE THAT? IS THAT

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02:28 PM 1 CORRECT?

02:28 PM 2 A. THAT'S RIGHT.

02:28 PM 3 Q. NOW, REFERRING TO THIS DOCUMENT, DO YOU SEE AN
02:28 PM 4 IDENTIFICATION ON THIS DOCUMENT THAT MR. PHIPPS WAS
02:28 PM 5 PROMOTED TO ELECTRONICS TECHNICIAN?

02:28 PM 6 A. I DO NOT.

02:29 PM 7 THE COURT: THE LAST ONE I SEE IS LUFKIN MACHINE
02:29 PM 8 OPERATOR, CLASS "A," SENIORITY ROSTER 5.

02:29 PM 9 MS. BURRELL: AND IF YOU GO TO THE NEXT PAGE,
02:29 PM 10 YOUR HONOR, IT ENDS WITH MACHINIST.

02:29 PM 11 THE COURT: THIS IS PAGE 4 OF 4.

02:29 PM 12 MS. BURRELL: ON THE THIRD PAGE.

02:29 PM 13 THE COURT: MACHINIST.

02:30 PM 14 MS. BURRELL: ONE MORE THING ON THIS, YOUR
02:30 PM 15 HONOR, AND THEN I WILL MOVE ON.

02:30 PM 16 MAY I APPROACH THE WITNESS, YOUR HONOR?

02:30 PM 17 THE COURT: OF COURSE.

02:30 PM 18 MS. BURRELL: I'M SORRY. IF YOU DON'T WANT ME
02:30 PM 19 TO ASK, I WON'T ASK IT.

02:30 PM 20 THE COURT: MA'AM?

02:30 PM 21 MS. BURRELL: WOULD YOU NOT LIKE ME TO ASK THAT
02:30 PM 22 ANY MORE?

02:30 PM 23 THE COURT: NO, I CAN'T STOP YOU. YOU HAVE A
02:30 PM 24 CERTAIN NUMBER OF HOURS FOR YOUR SIDE, AND WHEN THAT'S
02:30 PM 25 OVER, THE PLAINTIFF IS THROUGH. IF YOU WANT TO SPEND THEM

02:31 PM 1 THIS WAY, THAT'S YOUR CHOICE.

02:31 PM 2 THANK YOU, MA'AM.

02:31 PM 3 MS. BURRELL: WE SEEM TO BE A COPY SHORT. CAN
02:31 PM 4 WE GIVE YOU A COPY AS SOON AS WE'RE DONE HERE?

02:31 PM 5 THE CLERK: SURE. UH-HUH.

02:31 PM 6 MS. BURRELL: OKAY.

02:32 PM 7 THE COURT: THANK YOU.

02:32 PM 8 BY MS. BURRELL:

02:32 PM 9 Q. ALL RIGHT. REFERRING BACK TO EXHIBIT 76 AGAIN, CAN
02:32 PM 10 YOU TURN TO PAGE 103 OF 107?

02:33 PM 11 A. OKAY.

02:33 PM 12 Q. AND THE SECOND ENTRY ON THAT PAGE REFERS TO L27902
02:33 PM 13 THROUGH L27916, IS THAT CORRECT?

02:33 PM 14 A. THAT'S CORRECT.

02:33 PM 15 Q. NOW, CAN YOU JUST TELL ME, IN THE FIELD UNDER BID
02:33 PM 16 WINNER ON BAKER DATA, WHAT DOES -- CAN YOU TELL ME WHAT
02:33 PM 17 THAT SAYS?

02:33 PM 18 A. UNCLEAR.

02:33 PM 19 Q. NOW, THAT'S THE BID WINNER ON THE BID SHEET. THE
02:33 PM 20 NEXT COLUMN, BID WINNER UNDER BAKER DATA.

02:33 PM 21 A. I'M SORRY. JOSE MARTINEZ, SR., GAYLON F. TAYLOR AND
02:34 PM 22 CURTIS R. WASHBURN.

02:34 PM 23 Q. AND IN THE NEXT COLUMN, BID WINNER ON CYBORG
02:34 PM 24 MAINFRAME DATA BASE?

02:34 PM 25 A. JOSE MARTINEZ, SR., CURTIS WASHBURN.

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02:34 PM 1 Q. NOW, I WANT TO REFER YOUR ATTENTION TO THE E-MAIL
02:34 PM 2 COMMUNICATION FROM CHRIS BACON TO JOHN GODKIN, WHICH IS
02:34 PM 3 DATED NOVEMBER 21, 2003. DO YOU SEE THAT?

02:34 PM 4 A. I DO.

02:34 PM 5 Q. CAN YOU JUST DESCRIBE WHAT IS IN THAT DOCUMENT?

02:34 PM 6 A. THE SUBJECT LINE SAYS "A FEW MORE CHANGES FROM
02:34 PM 7 PLAINTIFFS' EXHIBIT 76," AND THERE'S --

02:34 PM 8 MR. BACON: EXCUSE ME. I'M SORRY.

02:34 PM 9 THE WITNESS: SURE.

02:34 PM 10 MR. BACON: OBJECTION ONLY FOR THE PURPOSES OF
02:34 PM 11 FOUNDATION. IF SHE'S GOING TO BE READING AN E-MAIL THAT I
02:34 PM 12 WROTE TO A CONSULTING EXPERT, I NEED TO KNOW WHAT HER
02:34 PM 13 FOUNDATION IS TO BE ABLE TO TESTIFY ABOUT THIS PARTICULAR
02:35 PM 14 EXHIBIT.

02:35 PM 15 THE COURT: WELL, YOU SENT IT TO THE PLAINTIFFS'
02:35 PM 16 REPRESENTATIVES, DID YOU NOT?

02:35 PM 17 MR. BACON: YES, YOUR HONOR.

02:35 PM 18 THE COURT: SENT A COPY TO MR. HAMEL, DID YOU
02:35 PM 19 NOT?

02:35 PM 20 MR. BACON: I DID, YOUR HONOR.

02:35 PM 21 THE COURT: ALL RIGHT.

02:35 PM 22 MR. BACON: BUT THE QUESTION IS THOUGH, DOES
02:35 PM 23 THIS PARTICULAR WITNESS HAVE A FOUNDATION TO TESTIFY ABOUT
02:35 PM 24 THIS PARTICULAR EXHIBIT, OR IS SHE JUST SIMPLY READING THE
02:35 PM 25 EXHIBIT INTO THE RECORD?

02:35 PM 1 THE COURT: WELL, SHE'S OFFERED IT AND YOU
02:35 PM 2 HAVEN'T OBJECTED TO IT.

02:35 PM 3 YOU'RE OBJECTING TO THIS?

02:35 PM 4 MR. BACON: I'M OBJECTING TO THIS PARTICULAR
02:35 PM 5 EXHIBIT.

02:35 PM 6 THE COURT: ON WHAT BASIS? I MEAN, IF YOU WROTE
02:35 PM 7 IT AND THEN SENT IT TO THE --

02:35 PM 8 IT'S CORRECTIONS THAT YOU MADE, WHICH UPON
02:35 PM 9 EXAMINATION YOU FELT WAS NECESSARY FOR YOU TO MAKE.

02:35 PM 10 WHAT'S YOUR OBJECTION, THAT YOU SHOULDN'T HAVE
02:35 PM 11 MADE THE CORRECTIONS? I'LL EXCLUDE IT AND LET YOUR
02:35 PM 12 INITIAL TENDER BE WHAT THE DEFENDANT WANTS --

02:36 PM 13 MR. BACON: YOUR HONOR, I WITHDRAW MY OBJECTION.
02:36 PM 14 SHE CAN READ MY E-MAIL.

02:36 PM 15 THE COURT: THANK YOU.

02:36 PM 16 THE WITNESS: WELL --

02:36 PM 17 THE COURT: IT'S JUST A CORRECTION THAT HE
02:36 PM 18 E-MAILED TO THE ONE THAT WAS YOUR EXPERT, OR SORT OF
02:36 PM 19 HERDING THE PARALEGALS TOGETHER, AND I UNDERSTAND THAT.

02:36 PM 20 THE WITNESS: OKAY.

02:36 PM 21 THE COURT: HE MADE A CORRECTION, FOUND AN
02:36 PM 22 ERROR, MADE A CORRECTION.

02:36 PM 23 WHAT DO YOU WANT --

02:36 PM 24 WHAT'S THIS WITNESS GOT TO DO WITH THE
02:36 PM 25 CORRECTIONS THAT WERE SENT FROM YOUR EXPERT, I MEAN, FROM

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02:36 PM 1 DEFENDANT'S LAWYER, MR. BACON, TO ONE OF YOUR
02:36 PM 2 SUPERVISING -- A PERSON SUPERVISING THE PARALEGALS?

02:36 PM 3 MS. BURRELL: WELL, YOUR HONOR, YOU CAN SEE FROM
02:36 PM 4 THE SUBJECT, WHICH YOU NOTED THAT THESE WERE CHANGES. IT
02:36 PM 5 NOTES THERE'S A FEW MORE CHANGES FROM PLAINTIFFS' EXHIBIT
02:36 PM 6 76.

02:36 PM 7 I'M GOING TO --

02:36 PM 8 WE WERE JUST INTENDING TO HAVE HER TESTIFY THAT
02:36 PM 9 A PARTICULAR CHANGE THAT IS INDICATED ON HERE IS IN FACT
02:36 PM 10 IN EXHIBIT 76.

02:37 PM 11 THE COURT: IT IS. THAT'S WHAT THEY --

02:37 PM 12 MS. BURRELL: OKAY.

02:37 PM 13 THE COURT: THAT'S WHAT EXHIBIT 76 TRIES TO DO,
02:37 PM 14 IS TO POINT OUT THE MISINFORMATION THAT WAS FURNISHED BY
02:37 PM 15 LUFKIN INDUSTRIES TO COUNSEL FOR PLAINTIFFS, AND I
02:37 PM 16 UNDERSTAND THAT.

02:37 PM 17 MS. BURRELL: OKAY.

02:37 PM 18 THE COURT: YOU DON'T HAVE TO GO THROUGH EACH
02:37 PM 19 ONE OF THEM.

02:37 PM 20 MS. BURRELL: OKAY. WE'LL MOVE ON, YOUR HONOR.

02:37 PM 21 THE COURT: IT'S LAYING A FOUNDATION FOR THE
02:37 PM 22 CROSS-EXAMINATION OF DR. BAKER. I UNDERSTAND THAT.

02:37 PM 23 HER STATISTICS ARE NOT THE SAME AS DR. DROGIN,
02:37 PM 24 AND I UNDERSTAND THAT.

02:37 PM 25 MS. BURRELL: OKAY. THANK YOU, YOUR HONOR.

02:38 PM 1 WE ONLY HAVE ONE COPY OF THIS. I'M NOT SURE HOW
02:38 PM 2 TO HANDLE THIS.

02:38 PM 3 MAY I APPROACH THE WITNESS?

02:38 PM 4 THE COURT: ONE COPY OF WHAT?

02:38 PM 5 MS. BURRELL: OF THE APPLICATIONS. I'M SORRY.

02:38 PM 6 I'M GOING TO FINISH MY EXAMINATION OF MS. DUNGAN BY ASKING
02:38 PM 7 HER SOME QUESTIONS REGARDING THE APPLICATIONS THAT WERE
02:38 PM 8 THE DISCUSSION THIS MORNING BEFORE WE WENT TO LUNCH.

02:38 PM 9 THE COURT: THAT CAME FROM LUFKIN INDUSTRIES'
02:38 PM 10 FILES AND WERE FORWARDED TO YOU AFTER AN ORDER BY THIS
02:38 PM 11 COURT.

02:38 PM 12 MS. BURRELL: OKAY.

02:38 PM 13 THE COURT: AND I UNDERSTAND THAT. YOU DON'T
02:38 PM 14 HAVE TO PROVE THAT, AND YOU CAN'T, AND I CANNOT TESTIFY.

02:38 PM 15 MS. BURRELL: OKAY. OKAY.

02:38 PM 16 BY MS. BURRELL:

02:38 PM 17 Q. WELL, THEN, REFERRING TO THESE APPLICATIONS, MS.
02:38 PM 18 DUNGAN, DID YOU CONDUCT AN ANALYSIS --

02:38 PM 19 WELL, FIRST OFF, DID YOU CONDUCT AN ANALYSIS OF
02:38 PM 20 THIS FIRST SET OF APPLICATIONS?

02:38 PM 21 A. I REVIEWED THEM.

02:38 PM 22 Q. OKAY. AND CAN YOU EXPLAIN TO ME HOW YOU CONDUCTED
02:39 PM 23 THE ANALYSIS?

02:39 PM 24 A. WELL, WHEN WE RECEIVED THEM, THEY WEREN'T ORGANIZED
02:39 PM 25 CHRONOLOGICALLY, SO -- AND THEY INCLUDED APPLICATIONS FROM

02:39 PM 1 OUTSIDE ANGELINA COUNTY. SO FIRST WE SEPARATED OUT THE
02:39 PM 2 APPLICATIONS THAT WERE FROM OUTSIDE ANGELINA COUNTY, AND
02:39 PM 3 THEN -- WE DID THAT BY CHECKING AREA CODES TO MAKE SURE
02:39 PM 4 THAT WE HAD THEM CORRECT.

02:39 PM 5 AND WE ALSO EXCLUDED THE APPLICATIONS THAT
02:39 PM 6 WERE -- DIDN'T HAVE ANY DATE, OR IF THEY WERE OUTSIDE THE
02:39 PM 7 LIABILITY PERIOD, OR IF THEY HAD ANY RESUMES ATTACHED, AND
02:39 PM 8 THEN WE ORGANIZED THEM BY YEAR.

02:39 PM 9 Q. AND WHAT DID YOU DO NEXT IN YOUR REVIEW?

02:39 PM 10 A. WE WENT THROUGH THEM AND CHECKED TO SEE IF THERE
02:39 PM 11 WERE ANY -- EXCUSE ME -- CHECKED THE APPLICATIONS TO SEE
02:39 PM 12 IF THERE WERE ANY REQUISITION NUMBERS ON THEM.

02:39 PM 13 AND THEN WE CHECKED TO SEE IF AN APPLICANT
02:39 PM 14 INDICATED ON THE APPLICATION, HE OR SHE INDICATED ON THE
02:39 PM 15 APPLICATION WHETHER THERE WAS A JOB THAT THEY WERE
02:39 PM 16 SPECIFICALLY APPLYING FOR.

02:40 PM 17 Q. AND WHY DID YOU LOOK FOR THE REQUISITION NUMBER?

02:40 PM 18 A. BECAUSE MY UNDERSTANDING WAS THAT LUFKIN HAD
02:40 PM 19 INDICATED THAT THEY ALWAYS HAD A REQUISITION NUMBER ON
02:40 PM 20 THEIR APPLICATIONS.

02:40 PM 21 Q. AND WHY DID YOU LOOK FOR THE INFORMATION WITH
02:40 PM 22 RESPECT TO WHAT POSITION THE APPLICANTS APPLIED FOR?

02:40 PM 23 A. IT WAS MY UNDERSTANDING THAT THAT WAS ANOTHER PIECE
02:40 PM 24 OF INFORMATION THAT WAS SUPPOSED TO BE INCLUDED ON THE
02:40 PM 25 APPLICATION.

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02:40 PM 1 Q. AND WHAT DID YOU FIND WITH RESPECT TO WHETHER
02:40 PM 2 REQUISITION NUMBERS APPEARED ON THE APPLICATIONS THAT YOU
02:40 PM 3 REVIEWED?

02:40 PM 4 A. THAT INITIAL BOX, THERE'S THREE HUNDRED AND EIGHTEEN
02:40 PM 5 APPLICATIONS, AND WE ONLY FOUND SIXTY THAT HAD A
02:40 PM 6 REQUISITION NUMBER ON THEM.

02:40 PM 7 Q. OKAY. AND OF THOSE SIXTY THAT HAD A NUMBER ON THEM,
02:40 PM 8 WERE THEY FROM THROUGHOUT THE LIABILITY PERIOD?

02:40 PM 9 A. NO. FIFTY-EIGHT OF THE SIXTY WERE FROM THIS YEAR,
02:41 PM 10 2003.

02:41 PM 11 Q. AND DID YOU FIND INFORMATION ON THE APPLICATIONS
02:41 PM 12 REGARDING THE POSITIONS FOR WHICH PEOPLE APPLIED?

02:41 PM 13 A. IN SOME INSTANCES IT WAS THERE. IN OTHER INSTANCES
02:41 PM 14 IT WASN'T.

02:41 PM 15 Q. OKAY. AND WHAT DID YOU FIND WITH RESPECT TO THE
02:41 PM 16 INSTANCES WHERE IT WAS NOT THERE?

02:41 PM 17 A. ARE YOU TALKING ABOUT THE TOTAL NUMBER OR --

02:41 PM 18 Q. YES.

02:41 PM 19 A. LET ME CHECK MY --

02:41 PM 20 WELL, THERE WERE THREE HUNDRED AND EIGHTEEN IN
02:41 PM 21 THAT BOX, AND WE ELIMINATED ANY OF THE SALARIED,
02:41 PM 22 APPLICATIONS FOR SALARIED POSITIONS. THAT LEFT US WITH
02:41 PM 23 TWO HUNDRED AND SEVENTY-FIVE. AND OF THAT, THERE WERE
02:41 PM 24 THIRTY-FOUR WITH NOTHING WRITTEN ON THEM FOR A POSITION OF
02:41 PM 25 ANY KIND, AND FORTY-FIVE THAT HAD WRITTEN ON THEM

TRANSCRIPT OF PROCEEDINGS

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02:41 PM 1 "ANYTHING" OR "ANY JOB OPEN," AND THIRTY-ONE WHERE THERE
02:42 PM 2 WAS INFORMATION ABOUT A DIVISION WHERE THEY WERE ASSIGNED
02:42 PM 3 BUT -- OR APPLYING BUT NO SPECIFIC JOB.

02:42 PM 4 Q. ALL RIGHT.

02:42 PM 5 THE COURT: NO WHAT?

02:42 PM 6 THE WITNESS: NO SPECIFIC JOB.

02:42 PM 7 MS. BURRELL: ALL RIGHT. PASS THE WITNESS.

02:42 PM 8 CROSS-EXAMINATION

02:42 PM 9 BY MR. BACON:

02:42 PM 10 Q. GOOD AFTERNOON, MS. DUNGAN.

02:42 PM 11 A. GOOD AFTERNOON.

02:42 PM 12 Q. I WOULD LIKE TO BEGIN BY TALKING ABOUT EXHIBIT 75.

02:42 PM 13 A. OKAY.

02:42 PM 14 Q. AND MY UNDERSTANDING FROM YOUR TESTIMONY IS THAT
02:42 PM 15 EXHIBIT 75 IS AN ANALYSIS THAT YOU DID OF THE DOCUMENTS
02:42 PM 16 THAT THE TEXAS WORKFORCE COMMISSION PRODUCED TO MR.
02:42 PM 17 GARRIGAN?

02:42 PM 18 A. THAT'S CORRECT.

02:42 PM 19 Q. AND THESE WERE DOCUMENTS --

02:42 PM 20 WERE YOU IN THE COURTROOM EARLIER TODAY WHEN MS.
02:42 PM 21 POULAN FROM THE TEXAS WORKFORCE COMMISSION WAS TESTIFYING?

02:43 PM 22 A. I WAS HERE FOR PART OF HER TESTIMONY.

02:43 PM 23 Q. HAVE YOU EVER READ HER DEPOSITION?

02:43 PM 24 A. I HAVE NOT.

02:43 PM 25 Q. OKAY. THOSE WERE DOCUMENTS THAT THE TWC HAD SENT TO

TRANSCRIPT OF PROCEEDINGS

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02:43 PM 1 MR. GARRIGAN, AND WHAT I UNDERSTAND YOU DID, AND CORRECT
02:43 PM 2 ME IF I'M WRONG, IS, YOU TOOK THE DATA FROM EACH OF THE
02:43 PM 3 WORK ORDERS -- AND I'M JUST GOING TO USE THAT TERM, I
02:43 PM 4 DON'T KNOW IF THAT'S REALLY WHAT THE OFFICIAL TERM IS --
02:43 PM 5 AND YOU PUT THEM INTO SOME FORM OF DATA BASE?

02:43 PM 6 A. THAT'S RIGHT.

02:43 PM 7 Q. AND YOU I THINK SAID THERE WERE -- YOU FOUND
02:43 PM 8 FIFTY-FIVE DISTINCT WORK ORDERS?

02:43 PM 9 A. THAT'S CORRECT.

02:43 PM 10 Q. AND EACH ONE IS IN EXHIBIT NUMBER 75. THE FIRST ONE
02:43 PM 11 IS ACTUALLY A FAIRLY LONG WORK ORDER, BECAUSE IT ACTUALLY
02:43 PM 12 GOES ON FOR THREE PAGES, IS THAT CORRECT? THIS IS EXHIBIT
02:43 PM 13 75.

02:43 PM 14 A. THAT'S RIGHT.

02:43 PM 15 Q. AND IT'S THE FIRST THREE PAGES?

02:43 PM 16 A. THAT'S CORRECT.

02:43 PM 17 Q. OR FIRST TWO AND TWO-THIRDS PAGES?

02:43 PM 18 A. CORRECT.

02:43 PM 19 Q. AND JUST FROM LOOKING AT THIS, FROM READING YOUR
02:44 PM 20 EXHIBIT, I GATHER THAT THE FIRST COLUMN IS THE NUMBER THAT
02:44 PM 21 WAS ON THE ORDER ITSELF?

02:44 PM 22 A. THAT'S RIGHT.

02:44 PM 23 Q. AND THEN THE SECOND COLUMN IS THE BATES RANGE THAT
02:44 PM 24 MR. GARRIGAN'S LAW FIRM PLACED ON THE DOCUMENTS?

02:44 PM 25 A. THAT'S RIGHT.

02:44 PM 1 Q. AND THEN WE HAVE THE SOCIAL SECURITY NUMBER, THE
02:44 PM 2 APPLICANT NAME, THE RACE.

02:44 PM 3 AND THEN ALL OF THESE PEOPLE HAVE THE SAME TERM
02:44 PM 4 IN THE NEXT COLUMN, WHICH IS TRAILER, AND I'M ASSUMING YOU
02:44 PM 5 DID THAT BECAUSE ON THIS PARTICULAR WORK ORDER, AT THE
02:44 PM 6 TITLE PAGE, OR AT THE TOP OF IT, IT SAID "TRAILER"?

02:44 PM 7 A. CORRECT.

02:44 PM 8 Q. AND WHAT YOU ENDED UP DOING IS, YOU TOOK ALL THESE
02:44 PM 9 NAMES AND YOU LOOKED INTO LUFKIN'S PERSONNEL DATA BASES TO
02:44 PM 10 SEE WHERE THEY ACTUALLY STARTED WORKING WHEN THEY WENT TO
02:44 PM 11 LUFKIN?

02:44 PM 12 A. THAT'S WHAT WE DID.

02:44 PM 13 Q. AND I GUESS YOU WERE TRYING TO TEST THE THEORY OF
02:44 PM 14 DID THEY END UP IN TRAILER, LIKE IT WOULD APPEAR THEY
02:44 PM 15 SHOULD END UP, OR DID THEY END UP SOMEWHERE ELSE?

02:44 PM 16 A. THAT'S CORRECT.

02:44 PM 17 Q. THAT WAS YOUR TASK?

02:44 PM 18 A. THAT'S RIGHT.

02:44 PM 19 Q. AND IN ORDER TO DETERMINE WHERE THEY ENDED UP, YOU
02:45 PM 20 WERE ABLE TO GET INTO LUFKIN'S PERSONNEL DATA BASES
02:45 PM 21 BECAUSE THOSE HAD BEEN PRODUCED TO THE PLAINTIFFS?

02:45 PM 22 A. THAT'S RIGHT.

02:45 PM 23 Q. YOU HAD A COMPUTER DATA BASE AND YOU COULD FIND OUT
02:45 PM 24 WHEN ANYBODY HAD BEEN HIRED, PROMOTED, WHAT THEY MAKE, ALL
02:45 PM 25 THAT KIND OF STUFF?

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02:45 PM 1 A. THAT'S RIGHT.

02:45 PM 2 Q. AND WHAT YOU DETERMINED FROM LOOKING AT THIS, IT
02:45 PM 3 APPEARED THAT NOT EVERYBODY, FOR EXAMPLE, IN THIS FIRST
02:45 PM 4 REQUISITION ENDED UP IN TRAILER, THEY ENDED UP IN
02:45 PM 5 DIFFERENT PLACES?

02:45 PM 6 A. THAT'S WHAT WE FOUND, YEAH.

02:45 PM 7 Q. YEAH. NOW, DID YOU HEAR THE PART OF MS. POULAN'S
02:45 PM 8 TESTIMONY THIS MORNING WHERE SHE INDICATED THAT IT WAS
02:45 PM 9 CONCEIVABLE THAT AT LEAST PRIOR TO 2000 WORK ORDERS MAY
02:45 PM 10 HAVE COMBINED, OR 2001, MAY HAVE COMBINED SEVERAL
02:45 PM 11 DIFFERENT REQUISITIONS FROM LUFKIN INDUSTRIES?

02:45 PM 12 A. I HEARD PART OF THAT, YES.

02:45 PM 13 Q. HAD YOU EVER HEARD ANY OF THAT BEFORE?

02:45 PM 14 A. NO.

02:45 PM 15 Q. ALL RIGHT. YOU HAD NOT -- YOU WERE NOT AWARE THAT
02:45 PM 16 SOME PEOPLE HAVE CLAIMED THAT MAYBE SOME OF THESE WERE
02:45 PM 17 COMBINED WITH SEVERAL DIFFERENT REQUISITIONS?

02:45 PM 18 A. I DIDN'T KNOW THAT, NO.

02:45 PM 19 Q. IN LOOKING THROUGH THESE FIFTY-FIVE REQUISITIONS,
02:45 PM 20 DID YOU NOTICE THAT THE SIZE OF THE REQUISITIONS, AND WHEN
02:46 PM 21 I SAY SIZE, THE NUMBER OF APPLICANTS IN A REQUISITION WAS
02:46 PM 22 CONSIDERABLY GREATER IN THE YEARS PRIOR TO 2000?

02:46 PM 23 A. I DON'T REMEMBER SPECIFICALLY KNOWING THAT. I
02:46 PM 24 REMEMBER THERE WERE SOME THAT WERE A LOT LONGER THAN
02:46 PM 25 OTHERS. I DON'T REMEMBER DATES, BUT --

TRANSCRIPT OF PROCEEDINGS

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02:46 PM 1 Q. YOU DIDN'T FOCUS ON THE TIME FRAME AS TO WHICH ONES
02:46 PM 2 SEEMED TO BE -- WHAT YEARS SEEM TO HAVE VERY BIG
02:46 PM 3 REQUISITIONS?

02:46 PM 4 A. WE DID NOT, WE JUST WENT ALL THROUGH ALL THE TWC JOB
02:46 PM 5 ORDERS.

02:46 PM 6 Q. LET'S TAKE A LOOK AT THIS PARTICULAR REQUISITION.
02:46 PM 7 IT APPEARS THAT SOME OF THE PEOPLE WHO WERE ON THIS
02:46 PM 8 TRAILER REQUISITION ACTUALLY ENDED UP AS GENERAL
02:46 PM 9 FOUNDRYMEN, IS THAT CORRECT?

02:46 PM 10 A. THAT'S CORRECT.

02:46 PM 11 Q. CAN YOU TELL ME HOW MANY OF THE PEOPLE IN THIS
02:46 PM 12 TRAILER REQUISITION ENDED UP AS GENERAL FOUNDRYMEN?

02:46 PM 13 A. DO YOU WANT ME TO COUNT RIGHT NOW OR --

02:46 PM 14 Q. I BEG YOUR PARDON?

02:46 PM 15 A. DO YOU WANT ME TO COUNT IT RIGHT NOW?

02:47 PM 16 Q. YES.

02:47 PM 17 A. I GOT 11.

02:47 PM 18 Q. OKAY. I COUNTED TWELVE, BUT I MAY HAVE MISCOUNTED.

02:47 PM 19 OF THOSE, HOW MANY WERE WHITE?

02:47 PM 20 A. I GOT FOUR.

02:47 PM 21 Q. YOU GOT FOUR? I COUNTED FIVE, BUT --

02:47 PM 22 A. OKAY. WE KEEP BEING OFF. BUT --

02:47 PM 23 Q. WE'RE OFF ONE.

02:47 PM 24 THE COURT: WELL, I COUNTED THREE. I REMEMBER
02:48 PM 25 TESTIMONY ABOUT THREE.

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02:48 PM 1 MR. BACON: I BEG YOUR PARDON?

02:48 PM 2 THE COURT: I REMEMBER TESTIMONY ABOUT THREE,
02:48 PM 3 TWO BROTHERS AND THEN ONE OTHER MAN THAT BECAME A
02:48 PM 4 STOREKEEPER.

02:48 PM 5 BY MR. BACON:

02:48 PM 6 Q. SO IT APPEARS THAT, ASSUMING THESE RECORDS ARE
02:48 PM 7 CORRECT, THERE ARE PEOPLE WHO ENDED UP ON A JOB ORDER FOR
02:48 PM 8 TWC, AND I'M USING -- AGAIN, THAT'S THE TERM THEY WERE
02:48 PM 9 USING THIS MORNING --

02:48 PM 10 A. RIGHT.

02:48 PM 11 Q. -- FOR TRAILER, AND ELEVEN, TEN, ELEVEN OR TWELVE
02:48 PM 12 OF THEM ENDED UP AS GENERAL FOUNDRYMEN, AND, YOU KNOW,
02:48 PM 13 FOUR OR FIVE OF THEM WERE WHITE?

02:48 PM 14 A. OKAY.

02:48 PM 15 Q. SO NOT ALL OF THE PEOPLE WHO MAY HAVE BEEN SENT TO
02:48 PM 16 WORK AS GENERAL FOUNDRYMEN WERE BLACKS?

02:48 PM 17 A. SAY THAT AGAIN. I'M SORRY.

02:48 PM 18 Q. NOT ALL OF THE PEOPLE WHO HAD BEEN SENT TO WORK AS
02:48 PM 19 GENERAL FOUNDRYMEN WOULD HAVE BEEN BLACK?

02:48 PM 20 A. THAT'S CORRECT.

02:48 PM 21 Q. OKAY. COULD YOU PUT UP TWC77? IF YOU COULD MAKE IT
02:49 PM 22 A LITTLE BIT BIGGER.

02:49 PM 23 THIS IS DOCUMENT TWC77. DO YOU HAVE THAT UP
02:49 PM 24 THERE? IT'S WITHIN EXHIBIT 11.

02:49 PM 25 A. RIGHT. 77 YOU SAID?

TRANSCRIPT OF PROCEEDINGS

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02:49 PM 1 Q. YES.

02:49 PM 2 A. YEAH, I'VE GOT IT.

02:49 PM 3 Q. DO YOU FIND IT?

02:49 PM 4 A. I DO.

02:49 PM 5 Q. ALL RIGHT. AND IT APPEARS, LOOKING AT YOUR EXHIBIT
02:49 PM 6 75, THAT YOU RECORDED THE INFORMATION FROM TWC77 ON PAGE 7
02:49 PM 7 OF EXHIBIT 75?

02:49 PM 8 A. THAT'S RIGHT.

02:50 PM 9 Q. ALL RIGHT. WHAT I WOULD LIKE TO DO --

02:50 PM 10 COULD YOU FOCUS ON THIS LITTLE AREA OVER HERE?

02:50 PM 11 AND DO YOU SEE AT THE VERY TOP THERE IS A PLACE
02:50 PM 12 WHERE THERE'S A REFERENCE TO ORIGINAL REFERENCE DATES IN
02:50 PM 13 THIS PARTICULAR DOCUMENT?

02:50 PM 14 A. YOU'RE TALKING ABOUT TWC77?

02:50 PM 15 Q. ON TWC77.

02:50 PM 16 A. AT THE TOP?

02:50 PM 17 Q. AT THE TOP. WELL, SORT OF IN THE CENTER, NOT THE
02:50 PM 18 VERY TOP AREA, BUT THE SECOND LITTLE AREA. IT'S ABOVE THE
02:50 PM 19 NAMES.

02:50 PM 20 A. OKAY.

02:50 PM 21 Q. AND YOU SEE THOSE DATES?

02:50 PM 22 A. I DO.

02:50 PM 23 Q. DID YOU NOTICE THOSE DATES WHEN YOU WERE INPUTTING
02:50 PM 24 THE DATA?

02:50 PM 25 A. I'M SURE WE NOTICED THEM, YES.

TRANSCRIPT OF PROCEEDINGS

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02:50 PM 1 Q. OKAY. BUT YOU DIDN'T THINK ANYTHING OF THEM?

02:50 PM 2 A. WE DIDN'T, NO.

02:50 PM 3 Q. SO YOU JUST ASSUMED THERE WAS JUST ONE DATE AND THIS
02:50 PM 4 WAS ONE JOB ORDER?

02:51 PM 5 A. I BELIEVE THAT'S CORRECT, YES.

02:51 PM 6 Q. ALL RIGHT. LET ME ASK YOU, IN YOUR CAPACITY AS A
02:51 PM 7 PARALEGAL, DID YOU HANDLE THE DOCUMENTS FOR GETTING READY
02:51 PM 8 FOR TRIAL IN THIS CASE?

02:51 PM 9 A. YES, I WAS ONE OF THE PEOPLE WHO WAS DOING THAT.

02:51 PM 10 Q. DID YOU EVER LOOK AT THE REQUISITIONS THAT LUFKIN
02:51 PM 11 MAINTAINS FOR PEOPLE THAT IT HIRES FROM THE TWC?

02:51 PM 12 A. I'M FAMILIAR WITH THEM. I HAVEN'T LOOKED AT THEM IN
02:51 PM 13 DETAIL, NO.

02:51 PM 14 Q. ALL RIGHT. YOU'VE SEEN THE DOCUMENTS BUT YOU DIDN'T
02:51 PM 15 DO ANY KIND OF STUDY WITH THOSE DOCUMENTS?

02:51 PM 16 A. NO.

02:51 PM 17 Q. YOU DON'T KNOW HOW MANY DOCUMENTS THERE ARE?

02:51 PM 18 A. REQUISITIONS?

02:51 PM 19 Q. YES.

02:51 PM 20 A. I KNOW IT'S A SIZEABLE AMOUNT. I DON'T HAVE AN
02:51 PM 21 EXACT NUMBER.

02:51 PM 22 Q. WOULD IT SURPRISE YOU THAT THERE ARE SEVEN HUNDRED
02:51 PM 23 AND FIFTY OR SO REQUISITIONS FOR THE TIME PERIOD THAT
02:51 PM 24 THESE PARTICULAR --

02:51 PM 25 MR. GARRIGAN: OBJECTION. HE'S ASSUMING FACTS

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02:52 PM 1 NOT IN EVIDENCE.

02:52 PM 2 THE COURT: I'M GOING TO OVERRULE IT.

02:52 PM 3 THEY'RE PUBLIC DOCUMENTS MAINTAINED, I MEAN,
02:52 PM 4 GENERATED BY ONE OF THE PARTIES IN THE CASE AND MAINTAINED
02:52 PM 5 BY MS. POULAN OR HER AGENCY. THEY'RE PUBLIC DOCUMENTS.

02:52 PM 6 MR. GARRIGAN: I BELIEVE WHAT HE'S REFERRING TO
02:52 PM 7 ARE JUST DOCUMENTS THAT LUFKIN PRODUCED.

02:52 PM 8 THE COURT: THAT'S RIGHT.

02:52 PM 9 MR. BACON: WITH ALL DUE RESPECT, YOUR HONOR, I
02:52 PM 10 BELIEVE THAT THE RULES OF PROCEDURE REQUIRE FOR THE LAWYER
02:52 PM 11 WHO TOOK THIS WITNESS ON DIRECT TO BE THE ONE WHO
02:52 PM 12 INTERPOSES THE OBJECTION.

02:52 PM 13 THE COURT: YOU'RE RIGHT, YEAH. I'M NOT GOING
02:52 PM 14 TO HAVE ALL THE LAWYERS TAKING POTSHOTS AT A WITNESS.

02:52 PM 15 MR. BACON: OR A LAWYER.

02:52 PM 16 THE COURT: SIR?

02:52 PM 17 MR. BACON: OR A LAWYER.

02:52 PM 18 THE COURT: WELL, OF COURSE, LAWYERS ARE
02:52 PM 19 SACROSANCT IN THE HALLS OF JUSTICE.

02:52 PM 20 BY MR. BACON:

02:53 PM 21 Q. LET ME -- THE QUESTION I HAVE IS --

02:53 PM 22 THE COURT: THE LAWYER THAT SPONSORED THIS
02:53 PM 23 WITNESS WILL MAKE ALL OBJECTIONS.

02:53 PM 24 BY MR. BACON:

02:53 PM 25 Q. WOULD IT SURPRISE YOU THAT THERE WERE IN EXCESS OF

02:53 PM 1 SEVEN HUNDRED REQUISITIONS FOR THE TIME PERIOD AT LUFKIN
02:53 PM 2 THAT WERE KEPT THAT MATCHED TO THESE JOB ORDERS?

02:53 PM 3 A. I DON'T KNOW IF IT WOULD SURPRISE ME. I KNOW THAT
02:53 PM 4 THERE WERE A LOT.

02:53 PM 5 Q. YOU KNEW THERE WERE A LOT? YOU KNEW THERE WERE A
02:53 PM 6 LOT MORE JOB REQUISITIONS AT LUFKIN FOR THIS TIME PERIOD
02:53 PM 7 THAN THERE WERE JOB ORDERS AT TWC?

02:53 PM 8 A. I NEVER THOUGHT ABOUT IT IN THAT WAY, BUT --
02:53 PM 9 NO, I DIDN'T THINK ABOUT IT IN THAT WAY.

02:53 PM 10 Q. I'M GOING TO MOVE ON, AND I WOULD LIKE TO TALK ABOUT
02:53 PM 11 YOUR OTHER PROJECTS.

02:53 PM 12 A. OKAY.

02:53 PM 13 Q. AND THAT'S THE PROJECT THAT YOU DID IN EXHIBITS 76
02:53 PM 14 AND 77. AND MY UNDERSTANDING, WHAT YOU DID THERE, THERE
02:54 PM 15 WAS REALLY SORT OF TWO DIFFERENT PROJECTS THAT YOU HAD.
02:54 PM 16 ONE OF THE PROJECTS YOU HAD WAS TO TAKE THE BID SHEET
02:54 PM 17 DOCUMENTS AND COMPARE THE BID SHEET DOCUMENTS WITH THE
02:54 PM 18 DATA BASE THAT DR. MARY BAKER HAD USED FOR HER ANALYSIS OF
02:54 PM 19 PROMOTIONS, IS THAT CORRECT?

02:54 PM 20 A. THAT'S CORRECT.

02:54 PM 21 Q. IN OTHER WORDS, YOU WANTED TO MAKE SURE THAT WHAT IS
02:54 PM 22 IN DR. BAKER'S DATA BASE ACCURATELY IS REFLECTED IN THE
02:54 PM 23 PAPER DOCUMENTS?

02:54 PM 24 A. WE CHECKED IT, YES.

02:54 PM 25 Q. AND THE SECOND THING YOU DID WAS, YOU COMPARED DR.

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02:54 PM 1 BAKER'S RESULTS AND ALSO THE RESULTS ON THE PAPER WITH
02:54 PM 2 WHAT YOU COULD FIND IN THE CYBORG OR IN LUFKIN'S COMPUTER
02:54 PM 3 DATA BASE?

02:54 PM 4 A. THAT'S RIGHT.

02:54 PM 5 Q. SO YOU REALLY HAD TWO DIFFERENT PROJECTS THAT YOU
02:54 PM 6 WERE WORKING ON, IS THAT RIGHT?

02:54 PM 7 A. IT WAS ALL ONE, BUT, YES.

02:54 PM 8 Q. BUT THERE WAS TWO MAJOR TASKS?

02:55 PM 9 A. RIGHT.

02:55 PM 10 Q. I WANT TO FOCUS FIRST ON THE TASK OF LOOKING AT DR.
02:55 PM 11 BAKER'S DATA BASE AND DETERMINING WHETHER THAT DATA BASE
02:55 PM 12 ACCURATELY REFLECTS THE BID SHEET DOCUMENTS.

02:55 PM 13 NOW, LET'S TALK ABOUT THE BID SHEET DOCUMENTS
02:55 PM 14 FOR A MOMENT.

02:55 PM 15 A. OKAY.

02:55 PM 16 Q. THERE WERE --

02:55 PM 17 WHEN I SAY BID SHEET DOCUMENTS, THERE'S
02:55 PM 18 DIFFERENT TYPES OF BID SHEET DOCUMENTS?

02:55 PM 19 A. RIGHT.

02:55 PM 20 Q. WOULD YOU PUT UP 12243? AND SEE IF YOU CAN JUST
02:55 PM 21 BLOW UP THE PLACE WHERE THE NAMES ARE JUST A BIT.

02:55 PM 22 ONE TYPE OF DOCUMENT THAT YOU HAD AND THAT
02:55 PM 23 LUFKIN HAS ARE SIGN-UP SHEETS, IS THAT CORRECT?

02:55 PM 24 A. THAT'S CORRECT.

02:55 PM 25 Q. AND, YOU KNOW, THE TYPICAL SIGN-UP SHEET -- THEY HAD

02:56 PM 1 DIFFERENT FORMS ACROSS DIVISIONS, BUT THEY PRETTY MUCH
02:56 PM 2 LOOKED THE SAME IN THE SENSE THAT THEY WOULD HAVE USUALLY
02:56 PM 3 THE DIVISION, IS THAT CORRECT?
02:56 PM 4 A. THAT'S CORRECT.
02:56 PM 5 Q. AND THEY WOULD HAVE A PARTICULAR JOB?
02:56 PM 6 A. THAT'S RIGHT.
02:56 PM 7 Q. AND THEY WOULD IDENTIFY A DATE?
02:56 PM 8 A. RIGHT.
02:56 PM 9 Q. AND THERE MAY BE ONE OR TWO BID SHEETS WHERE THEY
02:56 PM 10 DIDN'T PUT THE DATE ON, AND, YOU KNOW, THERE ARE LOTS AND
02:56 PM 11 LOTS OF BID SHEETS, BUT GENERALLY THAT WAS THE INFORMATION
02:56 PM 12 THAT WAS ON ALL THE BID SHEETS?
02:56 PM 13 A. WE'RE TALKING ABOUT THIS PARTICULAR ONE?
02:56 PM 14 Q. WELL, ON THIS PARTICULAR BID SHEET, BUT YOU LOOKED
02:56 PM 15 AT A LOT OF BID SHEETS LIKE THIS?
02:56 PM 16 A. YEAH, THERE WERE SOME THAT -- THERE WERE A LOT THAT
02:56 PM 17 WERE SIMILAR TO THAT.
02:56 PM 18 Q. WOULD YOU SAY THAT THE VAST MAJORITY OF THE POSTING
02:56 PM 19 SHEETS, THESE KINDS OF DOCUMENTS, HAD A DIVISION, A
02:56 PM 20 CLASSIFICATION AND A DATE ON IT?
02:56 PM 21 A. YES.
02:56 PM 22 Q. ALL RIGHT. AND THEN THEY WOULD HAVE PLACES WHERE
02:56 PM 23 PEOPLE COULD SIGN THEIR NAMES, AND ON THOSE DOCUMENTS --
02:56 PM 24 IS THAT CORRECT?
02:56 PM 25 A. SOME OF THEM DID, AND SOME OF THEM ARE TYPED.

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02:56 PM 1 Q. ALL RIGHT. AND PEOPLE USUALLY SIGN THEIR NAMES, AND
02:56 PM 2 THEY WOULD PUT THEIR CLOCK NUMBER?

02:56 PM 3 A. SOMETIMES, NOT ALL THE TIME, YES.

02:57 PM 4 Q. WELL, YOU SAY SOMETIMES THEY WERE TYPED, AND LET ME
02:57 PM 5 TALK ABOUT THAT. THERE WERE SOME DOCUMENTS THAT WERE
02:57 PM 6 SUMMARY SHEETS THAT APPEARED TO HAVE BEEN PREPARED BY
02:57 PM 7 SUPERVISORS AT LUFKIN, WHERE THEY LISTED ALL THE PEOPLE
02:57 PM 8 WHO HAD BID ON A JOB?

02:57 PM 9 MS. BURRELL: YOUR HONOR, I JUST WANT TO OBJECT
02:57 PM 10 BECAUSE MR. BACON IS TESTIFYING AS OPPOSED TO ACTUALLY
02:57 PM 11 ASKING A QUESTION.

02:57 PM 12 MR. BACON: IT'S CROSS-EXAMINATION, YOUR HONOR.
02:57 PM 13 THE COURT: OVERRULED. IT IS CROSS-EXAMINATION,
02:57 PM 14 AND --

02:57 PM 15 MS. BURRELL: THANK YOU, YOUR HONOR.

02:57 PM 16 THE COURT: -- HE'S ENTITLED TO GO INTO IT.

02:57 PM 17 BY MR. BACON:

02:57 PM 18 Q. MS. DUNGAN, THERE WERE SOME DOCUMENTS THAT APPEARED
02:57 PM 19 TO BE MORE LIKE SUMMARY SHEETS, WHERE SOMEONE AT LUFKIN
02:57 PM 20 HAD TYPED UP NAMES, USUALLY IN ORDER OF SENIORITY, AND
02:57 PM 21 SOMETIMES THERE WERE MARKINGS AS TO WHO GOT SELECTED FOR A
02:57 PM 22 JOB?

02:57 PM 23 MS. BURRELL: OBJECTION, YOUR HONOR, ASSUMES
02:57 PM 24 FACTS NOT IN EVIDENCE, THAT THEY WERE IN ORDER OF
02:57 PM 25 SENIORITY.

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02:57 PM 1 THE COURT: MA'AM? I DON'T KNOW WHETHER THEY
02:58 PM 2 WERE IN ORDER OF SENIORITY OR NOT. YOU CAN'T TESTIFY TO
02:58 PM 3 THAT.

02:58 PM 4 MS. BURRELL: WELL, THAT'S WHY I WAS OBJECTING,
02:58 PM 5 BECAUSE HE'S --

02:58 PM 6 THE COURT: WELL --

02:58 PM 7 MS. BURRELL: MR. BACON'S STATEMENT WAS THAT
02:58 PM 8 THEY USUALLY WERE --

02:58 PM 9 THE COURT: HE SAID SOMETIMES THEY HAD ORDERS --
02:58 PM 10 SOMETIMES THEY WERE LIKE THAT. THAT DOESN'T HAVE ANY DATE
02:58 PM 11 OF SENIORITY.

02:58 PM 12 SOME OF THEM THAT HE'S TALKING ABOUT THAT A
02:58 PM 13 FOREMAN OR A DIVISION MANAGER MIGHT HAVE TYPED UP, HE
02:58 PM 14 WOULD HAVE PUT A SENIORITY DATE ON THEM, AND HE'S ASKING
02:58 PM 15 THE WITNESS IF SHE NOTICED THAT, AND I HAVEN'T HEARD AN
02:58 PM 16 ANSWER.

02:58 PM 17 MS. BURRELL: OKAY. THANK YOU, YOUR HONOR.
02:58 PM 18 BY MR. BACON:

02:58 PM 19 Q. DID YOU NOTICE THAT?

02:58 PM 20 A. YES.

02:58 PM 21 Q. ALL RIGHT. LET'S TALK ABOUT THE SIGN-UP SHEET --

02:58 PM 22 THE COURT: THE OBJECTION IS OVERRULED.

02:58 PM 23 BY MR. BACON:

02:58 PM 24 Q. -- DOCUMENTS.

02:58 PM 25 A. OKAY.

02:58 PM 1 Q. DID YOU EVER FIND SITUATIONS WHERE THERE WERE
02:58 PM 2 MULTIPLE SIGN-UP SHEET DOCUMENTS OR SIGN-UP SHEETS FOR
02:58 PM 3 ONE JOB ON THE SAME DATE?

02:58 PM 4 A. I DON'T RECALL SEEING THAT, NO.

02:58 PM 5 Q. YOU DON'T RECALL IF THERE WERE THOSE? OKAY. DID
02:59 PM 6 YOU FIND ON OCCASION THAT SOME OF THE NAMES WERE HARD TO
02:59 PM 7 READ ON THE SIGN-UP SHEETS?

02:59 PM 8 A. YES, WE DID FIND THAT.

02:59 PM 9 Q. AND DID YOU EVER, WHEN YOU HAD TROUBLE READING THE
02:59 PM 10 NAMES, DID YOU USE THE CLOCK NUMBER TO TRY TO FIGURE OUT
02:59 PM 11 IF YOU COULD READ THE NAME?

02:59 PM 12 A. WE DID NOT.

02:59 PM 13 Q. ALL RIGHT. BUT YOU HAD -- YOU DID HAVE LUFKIN'S
02:59 PM 14 DATA BASE WHERE YOU COULD HAVE DONE THAT?

02:59 PM 15 A. RIGHT.

02:59 PM 16 Q. ALL RIGHT. NOW, LET ME -- LET'S LOOK AT A SECOND
02:59 PM 17 TYPE OF DOCUMENT THAT YOU HAD, 12679.

02:59 PM 18 THE COURT: YOU BETTER MAKE IT LARGER.

02:59 PM 19 MR. BACON: YEAH, CUT SOME OF THAT, IT DOESN'T
02:59 PM 20 MATTER. JUST GIVE ME THE NATURE OF THE DOCUMENT.

02:59 PM 21 THAT'S FINE.

02:59 PM 22 CAN YOU ENLARGE THAT A BIT?

03:00 PM 23 OKAY. THAT'S FINE.

03:00 PM 24 BY MR. BACON:

03:00 PM 25 Q. MS. DUNGAN, THIS IS WHAT I MEANT. THIS IS THE

03:00 PM 1 SECOND TYPE OF DOCUMENT THAT I WAS TALKING ABOUT AS A
03:00 PM 2 SUMMARY SHEET DOCUMENT, AND SOMETIMES YOU FOUND THESE
03:00 PM 3 KINDS OF DOCUMENTS?

03:00 PM 4 A. THAT'S RIGHT.

03:00 PM 5 Q. AND, YOU KNOW, THESE WERE DOCUMENTS -- WOULD YOU
03:00 PM 6 AGREE THAT GENERALLY THESE DOCUMENTS HAD THE EMPLOYEES
03:00 PM 7 LISTED IN ORDER OF SENIORITY?

03:00 PM 8 A. I CAN'T SAY THAT FOR SURE, NO.

03:00 PM 9 Q. WERE THEY EVER LISTED IN ORDER OF SENIORITY?

03:00 PM 10 A. I HAVE SEEN THAT SOMETIMES.

03:00 PM 11 Q. ALL RIGHT. DID YOU FOCUS ON SENIORITY DATES WHEN
03:00 PM 12 YOU LOOKED AT THESE DOCUMENTS?

03:00 PM 13 A. NO.

03:00 PM 14 Q. WHAT YOU WERE FOCUSING ON WAS WHO WAS ON THE LIST?

03:00 PM 15 A. RIGHT.

03:00 PM 16 Q. AND YOU WERE ALSO TRYING TO FOCUS ON WHETHER ANYBODY
03:00 PM 17 ON -- WHO ON THE LIST COULD BE DETERMINED AS A WINNER?

03:00 PM 18 A. RIGHT.

03:00 PM 19 Q. THOSE WERE THE TWO THINGS THAT YOU WERE LOOKING AT,
03:00 PM 20 IS THAT CORRECT?

03:00 PM 21 A. WE LOOKED AT THE HARD COPIES AND CHECKED TO SEE --
03:00 PM 22 CHECKED -- EXCUSE ME -- AGAINST THE DATA BASE, THE MARY
03:00 PM 23 BAKER DATA BASE, AND THEN THE LUFKIN DATA BASE. OFTEN
03:00 PM 24 TIMES THERE WAS NO INDICATION, NO, THERE WASN'T AN
03:01 PM 25 INDICATION ON THE SHEET WHO WON IT.

03:01 PM 1 Q. MS. DUNGAN, WHEN YOU WERE DOING THIS PROJECT, YOU
03:01 PM 2 DISCOVERED THAT OCCASIONALLY THERE WERE SOME DOCUMENTS
03:01 PM 3 THAT WERE DUPLICATED?

03:01 PM 4 A. THAT'S RIGHT.

03:01 PM 5 Q. AND SOMETIMES DOCUMENTS APPEARED THREE TIMES?

03:01 PM 6 A. YES.

03:01 PM 7 Q. AND THEY HAD DIFFERENT BATES NUMBERS?

03:01 PM 8 A. RIGHT.

03:01 PM 9 Q. AND ALL THE DOCUMENTS YOU LOOKED AT WERE COPIES?

03:01 PM 10 A. THAT'S RIGHT.

03:01 PM 11 Q. BECAUSE YOU NEVER LOOKED AT THE ACTUAL ORIGINALS?

03:01 PM 12 A. NO.

03:01 PM 13 Q. DID YOU KNOW THAT THE ORIGINALS WERE AVAILABLE TO BE
03:01 PM 14 REVIEWED?

03:01 PM 15 A. I KNOW THAT -- I BELIEVE MR. GARRIGAN HAD -- I THINK
03:01 PM 16 COPIES OF THE ORIGINALS WERE AVAILABLE.

03:01 PM 17 Q. ALL RIGHT. DID YOU KNOW THAT THE ORIGINALS WERE
03:01 PM 18 AVAILABLE TO BE REVIEWED?

03:01 PM 19 A. I DID NOT.

03:01 PM 20 Q. OKAY. AND YOU NEVER LOOKED AT THE ORIGINALS?

03:01 PM 21 A. NO.

03:01 PM 22 Q. SO SOME OF THE DOCUMENTS YOU HAD WERE COPIES AND
03:01 PM 23 SOME WERE COPIES OF COPIES?

03:01 PM 24 A. PROBABLY.

03:01 PM 25 Q. AND SOME WERE HARD TO READ?

03:01 PM 1 A. YES.

03:01 PM 2 Q. AND THEY WERE HARD TO READ BECAUSE THEY HAD BEEN
03:01 PM 3 COPIED SO MUCH, IS THAT CORRECT?

03:01 PM 4 A. I DON'T KNOW THAT FOR SURE.

03:02 PM 5 Q. OKAY. IN DETERMINING WHO HAD BEEN THE WINNER, THERE
03:02 PM 6 WERE DIFFERENT WAYS THAT DIFFERENT SUPERVISORS HAD MARKED
03:02 PM 7 THE WINNER ON THESE BID SHEETS?

03:02 PM 8 A. THAT'S CORRECT.

03:02 PM 9 Q. ON SOME OF THE BID SHEETS THE WINNER IS MARKED
03:02 PM 10 CLEARLY AS "THE WINNER" OR "SELECTED"?

03:02 PM 11 A. SOMETIMES, YES.

03:02 PM 12 Q. SOMETIMES THE WINNER IS MARKED CLEARLY BECAUSE HE IS
03:02 PM 13 CIRCLED OR HIGHLIGHTED, BUT THERE'S NO VERBAL LANGUAGE
03:02 PM 14 THAT THE PERSON HAS BEEN A WINNER?

03:02 PM 15 A. THAT HAPPENS, YES.

03:02 PM 16 Q. AND THEN THERE'S SOMETIMES THE MARKS ARE A LITTLE
03:02 PM 17 BIT VAGUER, THERE MIGHT BE AN ASTERISK OR A CHECK BY THE
03:02 PM 18 NAME?

03:02 PM 19 A. THAT'S RIGHT.

03:02 PM 20 Q. IN THOSE CASES YOU'RE NOT SURE IF THE CHECK IS THERE
03:02 PM 21 BECAUSE THE PERSON GOT SELECTED OR IF IT'S FOR SOME OTHER
03:02 PM 22 REASON?

03:02 PM 23 A. THAT'S RIGHT.

03:02 PM 24 Q. LET ME ASK YOU, DID YOU EVER LOOK AT LUFKIN'S
03:02 PM 25 PERSONNEL DATA BASE, THE CYBORG DATA BASE, WHENEVER YOU

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03:02 PM 1 HAD ONE OF THOSE UNCLEAR SITUATIONS, WHERE IT WAS JUST A
03:02 PM 2 CHECK AND YOU WANTED TO SEE IF THAT PERSON HAD GOTTEN THE
03:02 PM 3 JOB AROUND THAT TIME?

03:02 PM 4 A. WE DID.

03:02 PM 5 Q. ALL RIGHT. AND SO SOMETIMES YOU DETERMINED THAT THE
03:03 PM 6 CHECK WAS ACTUALLY A SELECTION MARK?

03:03 PM 7 A. SOMETIMES IT WAS, YES.

03:03 PM 8 Q. AND WHEN YOU SAID THAT YOU LOOKED AT DR. BAKER'S
03:03 PM 9 DATA BASE, WERE YOU LOOKING AT -- DID YOU PRINT OUT A HARD
03:03 PM 10 COPY OF IT?

03:03 PM 11 A. WE DID HAVE A HARD COPY, BUT USUALLY WE USED THE
03:03 PM 12 DATA VERSION.

03:03 PM 13 Q. LET'S LOOK AT THE FIRST PAGE OF THIS DOCUMENT. DOES
03:04 PM 14 THIS LOOK LIKE THE DATA BASE THAT DR. BAKER HAD CREATED
03:04 PM 15 FOR THE ANALYSIS OF PROMOTIONS?

03:04 PM 16 A. YES.

03:04 PM 17 Q. OKAY. COULD YOU FIND THE INFORMATION -- WAS THERE A
03:04 PM 18 BATES NUMBER COLUMN?

03:04 PM 19 A. YES, THERE IS.

03:04 PM 20 Q. AND THEN THERE WAS A JOB TITLE?

03:04 PM 21 A. CORRECT.

03:04 PM 22 Q. AND THEN THE IMPORTANT PART WAS, YOU KNOW, IF YOU
03:04 PM 23 LOOK AT, FOR EXAMPLE, THE FIRST ONE, THERE WOULD BE A LIST
03:04 PM 24 OF PEOPLE, AND THOSE WERE THE PEOPLE WHO HAD APPLIED FOR
03:04 PM 25 THE JOB?

03:04 PM 1 A. YOU'RE TALKING ABOUT THE NAME?

03:04 PM 2 Q. THE NAMES.

03:04 PM 3 A. YES.

03:04 PM 4 Q. AND, FOR EXAMPLE, ON THE FIRST ONE, WHICH IS 12198,

03:04 PM 5 WHICH IS A MATERIAL HANDLER, CLASS "A," AND I'M GOING TO

03:04 PM 6 GUESS, IT LOOKS LIKE ELEVEN OR SO PEOPLE, BUT I'VE BEEN

03:04 PM 7 COUNTING WRONG ALL DAY, SO I'M NOT GOING TO DO THAT.

03:04 PM 8 BUT --

03:04 PM 9 AND THEN THERE'S A COLUMN WITH THEIR SOCIAL

03:04 PM 10 SECURITY NUMBER, IS THAT RIGHT?

03:04 PM 11 A. CORRECT.

03:04 PM 12 Q. AND THEIR RACE. BUT -- IN A LOT OF CASES THERE'S

03:04 PM 13 THEIR SENIORITY DATE, NOT ALWAYS?

03:05 PM 14 A. RIGHT.

03:05 PM 15 Q. AND THEN THERE'S A COLUMN -- THERE'S TWO LAST

03:05 PM 16 COLUMNS FOR SELECTED AND DECLINED.

03:05 PM 17 AND WHAT WAS YOUR UNDERSTANDING IF SOMEONE HAD

03:05 PM 18 SOMETHING OTHER THAN AN "N," SAY A "Y" IN THE SELECTED

03:05 PM 19 COLUMN? WHAT WAS YOUR UNDERSTANDING OF WHAT THAT MEANT?

03:05 PM 20 A. THAT THEY HAD BEEN SELECTED FOR THE POSITION.

03:05 PM 21 Q. OKAY. AND WHAT IF SOMEONE HAD --

03:05 PM 22 WHAT WAS THE LAST COLUMN FOR? WHAT WAS YOUR

03:05 PM 23 UNDERSTANDING OF THAT COLUMN?

03:05 PM 24 A. THAT ACCORDING TO THIS THEY DECLINED THE POSITION.

03:05 PM 25 Q. THAT THEY DECLINED THE POSITION? SO SOMETIMES YOU

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03:05 PM 1 HAVE A PERSON WHO GOT THE JOB, THEY HAD A "YES," BUT THEN
03:05 PM 2 THEY HAD DECLINED THE POSITION?

03:05 PM 3 DID YOU HAVE ANY IDEA WHAT --

03:05 PM 4 A. ACCORDING TO THIS DATA BASE, YES.

03:05 PM 5 Q. DID YOU HAVE ANY IDEA WHY THAT INFORMATION WAS IN
03:05 PM 6 THERE?

03:05 PM 7 A. THE "SELECTED" AND "DECLINED"?

03:05 PM 8 Q. YEAH. OR THE "DECLINED," THE LAST COLUMN.

03:05 PM 9 MS. BURRELL: I'M SORRY, YOUR HONOR. COUNSEL
03:05 PM 10 HAS IDENTIFIED THIS AS BEING OUT OF DR. BAKER'S DATA BASE.
03:05 PM 11 PLAINTIFFS RECEIVED TWO DATA BASES FROM DR. BAKER.

03:06 PM 12 MR. BACON: WELL, LET ME --

03:06 PM 13 YOUR HONOR, I WOULD LIKE TO OFFER THIS EXHIBIT
03:06 PM 14 EXHIBIT 7 INTO EVIDENCE.

03:06 PM 15 THE COURT: WELL --

03:06 PM 16 MS. BURRELL: I MEAN --

03:06 PM 17 THE COURT: IT'S PREMATURE. WHEN YOU CONNECT IT
03:06 PM 18 UP WHEN DR. BAKER TESTIFIES, IT WILL BE ADMITTED THEN.

03:06 PM 19 BUT IT'S ADMITTED NOW FOR THE LIMITED PURPOSE OF
03:06 PM 20 SHOWING WHAT THIS WITNESS REVIEWED AND FOUND, SOMETIMES
03:06 PM 21 FOUND FAULT WITH, OR INACCURACIES AND SO ON.

03:06 PM 22 AS TO THE SELECTED --

03:06 PM 23 THERE ARE A BUNCH OF "N'S" AND "Y'S." I ASSUME
03:06 PM 24 THAT'S "YES" AND "NO."

03:06 PM 25 I DON'T KNOW WHAT "DECLINED" MEANS, BECAUSE I

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03:06 PM 1 SEE SOME --

03:07 PM 2 I THOUGHT I SAW SOME "H'S" OVER THERE, BUT ON
03:07 PM 3 FURTHER REVIEW, I THINK THEY'RE ALL "N'S." AND I DON'T
03:07 PM 4 KNOW WHETHER THAT MEANS NO, THEY DIDN'T DECLINE, OR NO,
03:07 PM 5 THEY DID DECLINE. I HAVE NO IDEA.

03:07 PM 6 MS. BURRELL: WELL, THE REASON THAT I'M RAISING
03:07 PM 7 THE ISSUE AND ASKING THAT THIS BE IDENTIFIED IS THAT WE
03:07 PM 8 RECEIVED I BELIEVE AT LEAST TWO OR THREE DIFFERENT
03:07 PM 9 VERSIONS OF AN HOURLY BID DATA BASE.

03:07 PM 10 THE COURT: WELL, THEY MAY BE, AND YOU'LL BE
03:07 PM 11 ABLE TO PROVE THAT.

03:07 PM 12 MS. BURRELL: NO. I UNDERSTAND, YOUR HONOR.
03:07 PM 13 THE REASON I'M RAISING IT IS BECAUSE HE'S ASKING HER ABOUT
03:07 PM 14 THIS, AND IT'S SO NOT CLEAR THAT THIS IS THE DATA BASE
03:07 PM 15 THAT SHE REVIEWED. BUT HE'S ASKING --

03:07 PM 16 THE COURT: I DON'T KNOW WHETHER IT IS OR NOT.
03:07 PM 17 I THINK HE CAN INQUIRE.

03:07 PM 18 MS. BURRELL: OKAY.

03:07 PM 19 MR. BACON: AND I WILL GET TO THAT, YOUR HONOR.

03:07 PM 20 MS. BURRELL: ALL RIGHT. THANK YOU.

03:07 PM 21 BY MR. BACON:

03:07 PM 22 Q. MS. DUNGAN, YOU WERE AWARE THAT THERE WAS MORE THAN
03:08 PM 23 ONE DATA BASE THAT WAS SENT TO YOUR OFFICE?

03:08 PM 24 A. THAT'S RIGHT.

03:08 PM 25 Q. ONE DATA BASE WAS SENT WHEN DR. BAKER DID HER FIRST

03:08 PM 1 REPORT?

03:08 PM 2 A. THAT'S RIGHT.

03:08 PM 3 Q. AND ANOTHER DATA BASE WAS SENT WITH HER SECOND
03:08 PM 4 REPORT?

03:08 PM 5 A. YOU'RE TALKING ABOUT THE REVISED REPORT?

03:08 PM 6 Q. THE REVISED REPORT.

03:08 PM 7 A. THAT'S RIGHT.

03:08 PM 8 Q. AND YOU WERE AWARE THAT THE SECOND DATA BASE HAD
03:08 PM 9 CORRECTIONS FROM THE FIRST DATA BASE?

03:08 PM 10 A. I HAVEN'T ACTUALLY LOOKED AT IT, BUT, YES, WE USED
03:08 PM 11 THE FIRST DATA BASE.

03:08 PM 12 Q. ALL RIGHT. SO WHEN YOU POINTED OUT --

03:08 PM 13 THE COURT: WAS THIS THE FIRST OR SECOND ONE?

03:08 PM 14 MR. BACON: THIS IS THE SECOND. THIS IS THE
03:08 PM 15 FINAL.

03:08 PM 16 THE COURT: YOU'RE ASKING HER IN EFFECT WHETHER
03:08 PM 17 SHE REVIEWED THIS ONE, AND SHE AS I UNDERSTAND IT SAID NO.
03:08 PM 18 BY MR. BACON:

03:08 PM 19 Q. SO YOU DON'T KNOW IF THE ERRORS THAT WERE POINTED
03:08 PM 20 OUT EARLIER TODAY BY YOU HAVE NOT BEEN CORRECTED OR HAVE
03:09 PM 21 BEEN CORRECTED IN THE SECOND DATA BASE?

03:09 PM 22 A. I DON'T KNOW, BECAUSE WE USED THE FIRST.

03:09 PM 23 Q. ALL RIGHT. DID YOU CONSIDER DOING A STUDY OF THE
03:09 PM 24 FINAL DATA BASE?

03:09 PM 25 A. IT WAS -- BY THE TIME WE GOT IT, IT WAS TOO LATE TO

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03:09 PM 1 DO THAT.

03:09 PM 2 Q. LET'S TAKE A LOOK AT --

03:09 PM 3 THE COURT: WELL, LET ME INTERRUPT YOU.

03:09 PM 4 MR. BACON: YES.

03:09 PM 5 THE COURT: I CAN REMEMBER THE NAME MCMASTER,

03:09 PM 6 AND HE APPEARS ON HERE, AND IT SAYS THAT HE WAS NOT

03:09 PM 7 SELECTED AND NOT HIRED.

03:10 PM 8 WAS A RICHARD C. MCMASTER IN YOUR

03:10 PM 9 RECOLLECTION -- HE WAS USED AS AN EXAMPLE ON EITHER 75 OR

03:10 PM 10 76. WAS HE HIRED OR NOT?

03:10 PM 11 THE WITNESS: THAT WAS ONE OF THE EXAMPLES WE

03:10 PM 12 TALKED ABOUT EARLIER.

03:10 PM 13 THE COURT: YEAH.

03:10 PM 14 MS. BURRELL: YOUR HONOR, I'M SORRY. THE

03:10 PM 15 MCMASTER CAME FROM EXHIBIT 75, WHICH WAS JUST A HIRE --

03:10 PM 16 WHICH HAD THE TWC JOB ORDER. IT'S NOT THE SAME AS THE

03:10 PM 17 INFORMATION THAT'S CONTAINED IN THE EXHIBIT 7 THAT MR.

03:10 PM 18 BACON JUST PRODUCED.

03:10 PM 19 THE COURT: ALL RIGHT. PROCEED.

03:10 PM 20 MR. BACON: YOUR HONOR, EARLIER TODAY I MADE AN

03:10 PM 21 OBJECTION TO EXHIBITS 76 AND 77 AS THAT THEY WERE NOT

03:11 PM 22 RELIABLE, AND IN PART, AND PRINCIPALLY THEY'RE NOT

03:11 PM 23 RELIABLE BECAUSE THEY'RE BASED ON THE OLDER VERSION OF DR.

03:11 PM 24 BAKER'S DATA.

03:11 PM 25 I CAN SHORT-CIRCUIT THIS PROCESS. IF THE COURT

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03:11 PM 1 DOES NOT ADMIT THOSE EXHIBITS, THERE'S NO NEED FOR ME TO
03:11 PM 2 FURTHER QUESTION --

03:11 PM 3 THE COURT: OH, I'M GOING TO ADMIT THEM.

03:11 PM 4 MR. BACON: I BEG YOUR PARDON?

03:11 PM 5 THE COURT: I AM GOING TO ADMIT THEM, BECAUSE
03:11 PM 6 THEY ARE ADVANCE SHOTS AT DR. BAKER, AND I UNDERSTAND
03:11 PM 7 THAT. AND I HOPE IT DOESN'T GET BELABORED TOO MUCH. I
03:11 PM 8 KNOW SHE MADE TWO REPORTS.

03:11 PM 9 MR. BACON: WELL, THEN I'M AFRAID, YOUR HONOR,
03:11 PM 10 WHAT I'M GOING TO HAVE TO DO THEN IS, I'M GOING TO HAVE TO
03:11 PM 11 GO THROUGH THE AREAS THAT THEY HAVE ALLEGED ARE INCORRECT
03:11 PM 12 AND SHOW THAT THEY HAVE BEEN CORRECTED.

03:11 PM 13 THE COURT: WELL, ISN'T THAT FOR ME TO DETERMINE
03:11 PM 14 FROM ALL THE EVIDENCE AS TO THE RELIABILITY OF THE
03:11 PM 15 EXPERTS?

03:11 PM 16 MR. BACON: WELL, WE'RE NOT TALKING ABOUT
03:12 PM 17 RELIABILITY OF THE EXPERTS THOUGH, WE'RE ALSO TALKING
03:12 PM 18 ABOUT THE RELIABILITY OF THE DATA BASE.

03:12 PM 19 THE COURT: YEAH, OF THE EVIDENCE ON WHICH THEY
03:12 PM 20 BASE THEIR REPORTS.

03:12 PM 21 MR. BACON: MAY I HAVE --

03:12 PM 22 THE COURT: I MEAN, AN EXPERT CAN OPINE ON
03:12 PM 23 ANYTHING HE'S SUPPOSEDLY AN EXPERT AT, BUT IF HE HAS THE
03:12 PM 24 WRONG DATA, HIS OPINION IS SOMEWHAT FLAWED.

03:12 PM 25 MR. BACON: WELL, ONE OF THE THINGS THAT I NEED

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03:15 PM 1 BY MR. BACON:

03:15 PM 2 Q. NOW, WHAT I'VE HANDED YOU IS THE ORIGINAL COPY OF
03:15 PM 3 THOSE BID SHEETS. THERE IN THE RED FOLDER OF THAT
03:15 PM 4 EXHIBIT. DO YOU SEE THAT?

03:15 PM 5 A. IT'S GOT A DIFFERENT BATES NUMBER ON IT?

03:15 PM 6 Q. IT HAS A DIFFERENT BATES NUMBER. BUT DOES IT LOOK
03:15 PM 7 LIKE THE SAME DOCUMENT THAT YOU REVIEWED, ONLY IT'S AN
03:15 PM 8 ORIGINAL?

03:15 PM 9 A. IT DOES.

03:15 PM 10 Q. ARE THE NAMES LEGIBLE ON THAT DOCUMENT?

03:15 PM 11 A. WHICH ONE?

03:15 PM 12 Q. THE ONE -- THE ORIGINAL AS OPPOSED TO THE COPY.

03:15 PM 13 A. THEY ARE MORE LEGIBLE.

03:15 PM 14 Q. ARE THERE ANY NAMES THAT YOU SEE ON THAT LIST THAT
03:16 PM 15 ARE DUPLICATES OF EACH OTHER, IN OTHER WORDS, PEOPLE THAT
03:16 PM 16 SIGNED THE LIST TWICE?

03:16 PM 17 A. I WOULD HAVE TO READ ALL THE NAMES. DO YOU WANT ME
03:16 PM 18 TO DO THAT?

03:16 PM 19 Q. COULD YOU PLEASE DO THAT?

03:16 PM 20 WHAT I WOULD LIKE TO DO -- I'M SORRY -- SINCE NO
03:16 PM 21 ONE ELSE CAN SEE THE ORIGINAL, I'M GOING TO PUT IT UP ON
03:16 PM 22 AN OVERHEAD AND THEN --

03:16 PM 23 THE COURT: THAT'S NOT HELPFUL, UPSIDE DOWN.

03:17 PM 24 MR. BACON: OKAY.

03:17 PM 25 THE COURT: OR OUT OF FOCUS NOW.

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03:17 PM 1 LET THE EXPERT DO IT, MR. BACON.

03:17 PM 2 BY MR. BACON:

03:17 PM 3 Q. LET ME JUST POINT OUT SOME THINGS HERE.

03:17 PM 4 DO YOU SEE THIS NAME HERE, IT SAYS M. MENEFEET?

03:17 PM 5 CAN YOU SEE THAT?

03:17 PM 6 A. YES.

03:17 PM 7 Q. CAN YOU SEE THIS NAME BENJI?

03:17 PM 8 A. IT'S VERY FAINT.

03:17 PM 9 Q. OKAY.

03:17 PM 10 A. I BELIEVE.

03:17 PM 11 Q. CAN YOU SEE THIS NAME KEVIN STOCK?

03:17 PM 12 A. YES.

03:17 PM 13 Q. NOW, THIS WAS A TWO-PAGE BID SHEET, WASN'T IT?

03:17 PM 14 A. THE ONE YOU JUST SHOWED ME?

03:17 PM 15 Q. YES.

03:17 PM 16 A. YES.

03:17 PM 17 Q. THIS IS THE SECOND PAGE OF THIS BID SHEET. DO YOU
03:17 PM 18 SEE THE NAME BENJI THERE AGAIN?

03:17 PM 19 A. AGAIN, IT'S VERY FAINT, BUT, YES, I BELIEVE.

03:17 PM 20 Q. DO YOU SEE THE NAME MENEFEET AGAIN?

03:17 PM 21 A. I SEE THAT, YES.

03:17 PM 22 Q. OKAY. WHEN YOU LOOKED AT THESE BID SHEETS AND YOU
03:17 PM 23 COUNTED, DID YOU CHECK FOR DUPLICATES OF NAMES?

03:18 PM 24 A. WHEN WE WERE GOING THROUGH THEM, YES.

03:18 PM 25 Q. ALL RIGHT. YOU DIDN'T CATCH THE DUPLICATES?

TRANSCRIPT OF PROCEEDINGS

163

03:18 PM 1 A. ON THE COPY THAT WE HAD, IT WAS FAIRLY ILLEGIBLE.

03:18 PM 2 Q. WOULD YOU HAND ME THAT EXHIBIT BACK?

03:18 PM 3 WHEN YOU COUNTED APPLICANTS, YOU WOULD COUNT AS
03:18 PM 4 AN APPLICANT SOMEONE WHOSE NAME HAD BEEN SCRIBBLED OUT,
03:18 PM 5 DIDN'T YOU?

03:18 PM 6 A. WE WOULD COUNT -- I'M SORRY. WHAT DID YOU SAY?

03:18 PM 7 Q. WHEN YOU WOULD COUNT APPLICANTS, YOU WOULD COUNT
03:18 PM 8 SOMEONE AS AN APPLICANT EVEN IF THEIR NAME HAD BEEN
03:18 PM 9 SCRATCHED OUT?

03:18 PM 10 A. I DON'T THINK THAT'S TRUE, NO. IF WE COULDN'T READ
03:18 PM 11 THEIR NAME, WE COULDN'T COUNT THEM AS AN APPLICANT.

03:18 PM 12 Q. BUT IF YOU COULD READ THEIR NAME THROUGH THE
03:18 PM 13 SCRATCHING OUT, YOU WOULD COUNT THEM AS AN APPLICANT?

03:18 PM 14 A. IF WE COULD DETERMINE THEIR NAME, WE WOULD REVIEW
03:18 PM 15 THEM, YES.

03:18 PM 16 Q. AND IN FACT, ONE OF THE THINGS YOU DID IN EXHIBITS
03:18 PM 17 76 AND 77 IS, YOU WENT THROUGH AND YOU POINTED OUT
03:19 PM 18 THROUGHOUT THAT EXHIBIT PLACES WHERE PEOPLE WHO HAD BEEN
03:19 PM 19 CROSSED OUT HAD NOT BEEN INCLUDED IN THE APPLICANT DATA
03:19 PM 20 BASE?

03:19 PM 21 A. WE DID NOTE ANYTHING LIKE THAT, YES.

03:19 PM 22 Q. YOU DID DO THAT OR YOU DID NOT DO THAT?

03:19 PM 23 A. WE WENT THROUGH AND CHECKED THINGS LIKE THAT, YES.

03:19 PM 24 Q. AND LET ME ASK YOU, WHEN YOU WERE DOING THAT, WERE
03:19 PM 25 YOU SIMPLY POINTING OUT THAT THERE WERE NAMES CROSSED OUT

TRANSCRIPT OF PROCEEDINGS

164

03:19 PM 1 OR WERE YOU SUGGESTING THAT DR. BAKER SHOULD HAVE INCLUDED
03:19 PM 2 THE CROSS-OUTS IN HER APPLICANT POOL?

03:19 PM 3 A. WE WERE REVIEWING WHAT WE HAD AND NOTING WHERE
03:19 PM 4 THINGS LIKE THAT HAPPENED.

03:19 PM 5 Q. OKAY. I'M NOT SURE YOU'VE ANSWERED MY QUESTION
03:19 PM 6 THERE. I UNDERSTAND YOU WERE --

03:19 PM 7 IT'S ONE THING TO NOTE WHAT YOU OBSERVED, AND
03:19 PM 8 YOU OBSERVED THAT SOME PEOPLE, IN FACT, A LOT OF TIMES
03:19 PM 9 PEOPLE HAD CROSSED OUT THEIR NAMES OR SOMEONE HAD CROSSED
03:19 PM 10 OUT THEIR NAMES?

03:19 PM 11 A. THAT HAPPENED, YES.

03:19 PM 12 Q. YES. THE QUESTION I HAVE IS, WAS IT YOUR
03:19 PM 13 POSITION -- DID YOU THINK THAT DR. BAKER SHOULD HAVE
03:19 PM 14 INCLUDED SOMEONE WHOSE NAME HAD BEEN CROSSED OUT AS PART
03:19 PM 15 OF THE APPLICANT POOL?

03:20 PM 16 MS. BURRELL: I JUST WANT TO OBJECT TO THAT TO
03:20 PM 17 THE EXTENT THAT MS. DUNGAN TESTIFIED THAT SHE SUPERVISED
03:20 PM 18 SEVERAL PEOPLE IN CREATING THIS DATA BASE, AND SHE CAN'T
03:20 PM 19 TESTIFY AS TO WHAT THEY THOUGHT. SHE CAN ONLY TESTIFY AS
03:20 PM 20 TO WHAT SHE THOUGHT IF SHE WAS THE ONE THAT MADE THAT
03:20 PM 21 ANALYSIS OR MADE THAT DECISION.

03:20 PM 22 THE WITNESS: I CAN'T RECALL DOING ONE OF THOSE
03:20 PM 23 MYSELF, NO.

03:20 PM 24 BY MR. BACON:

03:20 PM 25 Q. OKAY. WERE THERE -- WERE THE PEOPLE THAT WERE

TRANSCRIPT OF PROCEEDINGS

165

03:20 PM 1 WORKING ON THIS, WERE THEY WORKING UNDER YOUR DIRECTION?

03:20 PM 2 A. THAT'S CORRECT.

03:20 PM 3 Q. DID PEOPLE RAISE QUESTIONS AS TO HOW THEY SHOULD

03:20 PM 4 COUNT SOMETHING OR NOT COUNT SOMETHING DURING THE PROCESS?

03:20 PM 5 A. THEY DID SOMETIMES, YES.

03:20 PM 6 Q. DO YOU RECALL THAT ISSUE OF CROSSING-OUTS COMING UP?

03:20 PM 7 A. I DON'T RECALL AT THIS TIME, NOT RIGHT NOW.

03:20 PM 8 Q. AND YOU DON'T RECALL IF YOU DEVELOPED A CONSISTENT

03:20 PM 9 POSITION AS TO HOW YOU WERE GOING TO HANDLE IT?

03:20 PM 10 A. I DON'T RECALL.

03:20 PM 11 Q. OKAY. COULD YOU PUT UP 12236, WHICH IS I THINK PAGE

03:21 PM 12 3 OF HER ANALYSIS? THIS IS PAGE 3 OF EXHIBIT 76.

03:21 PM 13 LET ME GIVE YOU A DIFFERENT -- WHERE'S THE --

03:22 PM 14 13 --

03:22 PM 15 I WOULD LIKE TO LOOK AT 117-B. THIS WON'T --

03:22 PM 16 YOU DON'T HAVE IT. THIS IS THE BID SHEET OR SUMMARY SHEET

03:22 PM 17 FOR L13044.

03:22 PM 18 A. OKAY.

03:22 PM 19 Q. AND THIS IS THE ONE WHERE YOU SAID THAT MR. EVANS

03:22 PM 20 AND MR. PHIPPS HAD BEEN ERRONEOUSLY INCLUDED AS WINNERS OF

03:22 PM 21 THE BID. DO YOU REMEMBER THIS ONE?

03:22 PM 22 A. I DO.

03:22 PM 23 Q. ALL RIGHT. CAN YOU LOOK AT DR. BAKER'S CURRENT DATA

03:22 PM 24 BASE AND DETERMINE IF THIS -- IF THEY ARE STILL SHOWN AS

03:22 PM 25 WINNERS IN THE DATA BASE?

TRANSCRIPT OF PROCEEDINGS

166

03:22 PM 1 A. DO YOU HAVE THE PAGE? DO YOU WANT ME TO FLIP
03:22 PM 2 THROUGH HERE?

03:22 PM 3 Q. I THINK I DO. PAGE 155 OUT OF 304.

03:23 PM 4 A. OKAY.

03:23 PM 5 Q. NOW, LOOKING AT THE CURRENT VERSION OF THE DATA
03:23 PM 6 BASE, WHO APPEARS TO BE THE WINNER FOR 13044?

03:23 PM 7 A. THERE IS A "Y" IN THE "SELECTED" COLUMN FOR STEVEN
03:23 PM 8 BARFIELD.

03:23 PM 9 Q. WAS MR. BARFIELD THE PERSON WHO WAS SHOWN ON THE
03:23 PM 10 ACTUAL BID SHEET DOCUMENT AS THE WINNER?

03:24 PM 11 A. HIS NAME IS ON HERE. IT DOESN'T INDICATE, UNLESS
03:24 PM 12 I'M JUST MISSING IT, THAT HE WAS THE WINNER.

03:24 PM 13 Q. NOW, THIS IS ONE OF THOSE BID SHEETS THAT YOU
03:24 PM 14 ACTUALLY LOOKED AT CYBORG, OR CYBORG BEING LUFKIN'S USUAL
03:24 PM 15 DATA BASE SYSTEM, AND WAS MR. BARFIELD SHOWN AS A WINNER
03:24 PM 16 AT THAT TIME IN THAT DATA BASE?

03:24 PM 17 A. YES.

03:24 PM 18 Q. OKAY. SO DOES IT APPEAR TO YOU THAT THE ERRORS THAT
03:24 PM 19 YOU NOTED BEFORE HAVE BEEN CORRECTED IN THE CURRENT DATA
03:24 PM 20 BASE?

03:25 PM 21 A. IT APPEARS SO.

03:25 PM 22 MS. BURRELL: COULD I JUST -- YOU'RE ASKING
03:25 PM 23 FOR -- HE ASKED HER ABOUT ALL OF THE ERRORS.

03:25 PM 24 THE COURT: I DON'T KNOW WHETHER HE IS OR NOT.

03:25 PM 25 MS. BURRELL: WELL, I'M JUST --

TRANSCRIPT OF PROCEEDINGS

167

03:25 PM 1 THE COURT: YOU WENT IN GREAT LENGTH AND SOME
03:25 PM 2 DEGREE OF SPECIFICITY ABOUT POINTING OUT THE ERRORS IN DR.
03:25 PM 3 BAKER'S DATA BASE, AND IF THIS IS THE NEW ONE, HE'S
03:25 PM 4 ENTITLED TO SHOW THAT IT'S BEEN CORRECTED.

03:25 PM 5 MS. BURRELL: I UNDERSTAND THAT. I'M JUST
03:25 PM 6 OBJECTING TO THE USE OF THE TERM "ALL THE ERRORS" AS
03:25 PM 7 OPPOSED TO THIS PARTICULAR ERROR THAT HE JUST POINTED OUT
03:25 PM 8 TO HER.

03:25 PM 9 THE COURT: I DON'T KNOW WHETHER THEY'VE ALL
03:25 PM 10 BEEN CORRECTED OR NOT. TIME WILL TELL.

03:25 PM 11 MS. BURRELL: OKAY.

03:25 PM 12 BY MR. BACON:

03:25 PM 13 Q. ALL RIGHT. WAS THIS PARTICULAR --

03:25 PM 14 THE COURT: THE OBJECTION IS OVERRULED.

03:25 PM 15 MR. BACON: EXCUSE ME, YOUR HONOR.

03:25 PM 16 BY MR. BACON:

03:25 PM 17 Q. WAS THIS PARTICULAR ERROR CORRECTED?

03:25 PM 18 A. IT LOOKS LIKE IT.

03:25 PM 19 Q. OKAY. ALL RIGHT. PLEASE PUT PAGE 3 UP AGAIN.

03:26 PM 20 THAT'S NOT GOING TO SHOW UP AT ALL.

03:26 PM 21 OKAY. THIS IS PAGE 3 OF YOUR EXHIBIT NUMBER 76.

03:26 PM 22 IT'S NOT REALLY SHOWING UP VERY WELL.

03:26 PM 23 OKAY. COULD I ASSUME --

03:26 PM 24 I'M AFRAID NOT.

03:26 PM 25 THE COURT: ARE YOU TESTING FOR MY NYSTAGMUS?

TRANSCRIPT OF PROCEEDINGS

168

03:26 PM 1 BY MR. BACON:

03:26 PM 2 Q. LET ME JUST SORT OF POINT OUT ON THAT FIRST ROW,
03:26 PM 3 WHICH IS 12236-37, AND YOU POINTED OUT HERE THAT THERE ARE
03:27 PM 4 ELEVEN NAMES ON BAKER DATA THAT ARE NOT ON THE BID, AND
03:27 PM 5 THEN YOU LIST THOSE NAMES?

03:27 PM 6 A. YES.

03:27 PM 7 Q. ALL RIGHT. LET'S SEE. LET'S JUST PASS ON THAT FOR
03:27 PM 8 NOW. OH, IT'S DOING BETTER.

03:27 PM 9 OKAY. DID YOU LOOK AT --

03:27 PM 10 I WOULD LIKE TO LOOK AT --

03:27 PM 11 I'VE LOST MY PLACE NOW.

03:28 PM 12 I'M GOING TO PASS -- I'M GOING TO STRIKE THAT
03:28 PM 13 QUESTION BECAUSE I CAN'T FIND THE DOCUMENT THAT I WANT.

03:28 PM 14 I WANT TO ASK YOU A FEW QUESTIONS ABOUT THE BID
03:28 PM 15 SHEETS.

03:28 PM 16 ON SOME OF THE BID SHEETS YOU WOULD HAVE A LIST
03:28 PM 17 OF NAMES IN ORDER, AND THEN YOU WOULD HAVE EXPLANATIONS TO
03:28 PM 18 THE SIDE OF EACH NAME? FOR EXAMPLE, YOU MIGHT SEE THE
03:28 PM 19 WORD "LATERAL"?

03:28 PM 20 A. RIGHT.

03:28 PM 21 Q. DO YOU REMEMBER SEEING THE WORD "LATERAL"?

03:28 PM 22 A. I DO.

03:28 PM 23 Q. AND WHAT WAS YOUR INTERPRETATION OF THE WORD
03:28 PM 24 "LATERAL"?

03:28 PM 25 A. THAT IT WAS A LATERAL MOVE.

TRANSCRIPT OF PROCEEDINGS

169

03:28 PM 1 Q. OKAY. WHEN THE PEOPLE HAD THE WORD "LATERAL" NEXT
03:28 PM 2 TO THEM, DID YOU CONSIDER THOSE PEOPLE AS PEOPLE WHO
03:28 PM 3 SHOULD GET THE BID?

03:28 PM 4 A. WE CHECKED THEIR NAME.

03:28 PM 5 Q. OKAY. BUT DID YOU KNOW THAT PEOPLE WHO ARE TRYING
03:29 PM 6 TO MOVE Laterally typically cannot get a bid?

03:29 PM 7 A. I HAVE HEARD THAT.

03:29 PM 8 Q. ALL RIGHT. SO THAT THE EXPLANATION OF THE WORD
03:29 PM 9 "LATERAL" WASN'T NECESSARILY MEANING ANYTHING ABOUT THAT
03:29 PM 10 PERSON OTHER THAN THE FACT THAT THAT PERSON WAS
03:29 PM 11 DISQUALIFIED? WERE YOU AWARE OF THAT?

03:29 PM 12 A. I HEARD THAT A LATERAL MOVE WAS PART OF THE
03:29 PM 13 EVALUATION OF WHETHER SOMEBODY SHOULD GET A BID OR NOT.

03:29 PM 14 Q. THERE WERE A NUMBER OF PLACES WHERE YOU POINT OUT
03:29 PM 15 THAT THE WORD "DEMOTION" IS NEXT TO SOMEONE'S NAME ON A
03:29 PM 16 BID SHEET SUMMARY SHEET. DO YOU REMEMBER THAT?

03:29 PM 17 A. YES.

03:29 PM 18 Q. AND THEN OVER ON THE SIDE YOU DID SOME RESEARCH IN
03:29 PM 19 CYBORG, AND YOU POINT OUT THERE'S NO DEMOTION FOR THAT
03:29 PM 20 PERSON IN CYBORG?

03:29 PM 21 A. RIGHT.

03:29 PM 22 Q. DID IT OCCUR TO YOU THAT MAYBE THE WORD "DEMOTION"
03:29 PM 23 ON THE SIDE MEANT THAT THAT PERSON, IF THEY TOOK THAT JOB,
03:29 PM 24 WOULD BE GETTING A DEMOTION, AND THAT'S WHY THEY COULDN'T
03:29 PM 25 HAVE THE JOB?

TRANSCRIPT OF PROCEEDINGS

170

03:29 PM 1 A. I GUESS IT'S POSSIBLE.

03:29 PM 2 Q. ALL RIGHT. YOU DIDN'T THINK OF THAT AT THE TIME?

03:30 PM 3 A. WE CHECKED.

03:30 PM 4 Q. YOU CHECKED? WHAT DID YOU CHECK?

03:30 PM 5 A. I'M NOT SURE WHAT YOU'RE ASKING ME ACTUALLY.

03:30 PM 6 Q. ALL RIGHT. DID YOU EVER READ THE COLLECTIVE
03:30 PM 7 BARGAINING AGREEMENT BEFORE READING THESE BID SHEETS?

03:30 PM 8 A. NO. I HAVEN'T READ THE WHOLE COLLECTIVE BARGAINING
03:30 PM 9 AGREEMENT, NO.

03:30 PM 10 Q. DID YOU HAVE ANY KNOWLEDGE ABOUT HOW THE COLLECTIVE
03:30 PM 11 BARGAINING AGREEMENT WORKED WHEN YOU WERE LOOKING AT THE
03:30 PM 12 BID SHEETS?

03:30 PM 13 A. I UNDERSTAND THAT A DEMOTION IS SOMETIMES NOT
03:30 PM 14 ALLOWED.

03:30 PM 15 Q. ALL RIGHT. SO WHY WOULD YOU POINT OUT THAT THERE
03:30 PM 16 WAS NO DEMOTION FOR THAT PARTICULAR INDIVIDUAL IN CYBORG
03:30 PM 17 WHEN IT APPEARED THAT THE PERSON WAS SIMPLY BEING
03:30 PM 18 DISQUALIFIED BECAUSE THE JOB, IF THEY TOOK THAT JOB, WOULD
03:30 PM 19 HAVE BEEN A DEMOTION FOR THEM?

03:30 PM 20 A. BECAUSE WE WERE TRACKING ALL THE INFORMATION JUST TO
03:30 PM 21 CHECK EVERYTHING THAT WAS ON THERE.

03:30 PM 22 Q. AND SIMILARLY FOR "LATERAL," WHAT WERE YOU LOOKING
03:30 PM 23 FOR IN CYBORG WHEN THE WORD "LATERAL" APPEARED NEXT TO
03:30 PM 24 SOMEONE?

03:31 PM 25 A. I DON'T RECALL ACTUALLY DOING ONE OF THOSE MYSELF.

TRANSCRIPT OF PROCEEDINGS

171

03:31 PM 1 MS. BURRELL: I JUST WANT TO MAKE AN OBJECTION,
03:31 PM 2 BECAUSE YOU'RE ASSUMING THAT -- THE QUESTION ASSUMES THAT
03:31 PM 3 YOU WERE LOOKING -- THAT SHE WAS LOOKING INTO CYBORG FOR
03:31 PM 4 INFORMATION WITH RESPECT TO LATERALS, AND THAT ASSUMES
03:31 PM 5 FACTS NOT IN EVIDENCE. I DON'T BELIEVE THAT THAT WAS HER
03:31 PM 6 TESTIMONY.

03:31 PM 7 THE COURT: THIS IS CROSS. I'M GOING TO
03:31 PM 8 OVERRULE IT.

03:31 PM 9 THE WITNESS: I DON'T RECALL DOING A LATERAL
03:31 PM 10 MYSELF, SO I CAN'T ANSWER YOUR QUESTION.
03:31 PM 11 BY MR. BACON:

03:31 PM 12 Q. DID YOU EVER SEE THE WORD "BYPASS" APPEAR NEXT TO
03:31 PM 13 SOMEONE?

03:31 PM 14 A. I DON'T REMEMBER SEEING THAT, NO.

03:31 PM 15 Q. ALL RIGHT. ONE OF THE THINGS THAT YOU POINTED OUT,
03:31 PM 16 OR ONE OF THE THINGS THAT YOU DID IN THE SECOND PART OF
03:31 PM 17 YOUR STUDY WAS, YOU COMPARED THE CYBORG RESULTS WITH DR.
03:31 PM 18 BAKER'S RESULTS?

03:31 PM 19 A. RIGHT.

03:31 PM 20 Q. AND YOU TRIED TO SEE IF THERE WERE ANY
03:31 PM 21 INCONSISTENCIES BETWEEN CYBORG AND DR. BAKER?

03:32 PM 22 A. RIGHT.

03:32 PM 23 Q. AND, FOR EXAMPLE, YOU KNOW, SOMETIMES DR. BAKER HAD
03:32 PM 24 SOMEONE BEING PROMOTED ON, YOU KNOW, MARCH 7TH TO A
03:32 PM 25 PARTICULAR POSITION, AND CYBORG HAD, YOU KNOW, A SIMILAR

TRANSCRIPT OF PROCEEDINGS

172

03:32 PM 1 PROMOTION, IF NOT ON THAT DAY, WITHIN SEVERAL DAYS?

03:32 PM 2 A. THEY WERE SOMETIMES DIFFERENCES IN DATES, YES.

03:32 PM 3 Q. AND SOMETIMES THEY WERE CLOSE AND SOMETIMES THEY
03:32 PM 4 WEREN'T SO CLOSE?

03:32 PM 5 A. THAT'S RIGHT.

03:32 PM 6 Q. NOW, I'M ASSUMING THAT WHEN THEY WERE CLOSE, YOU
03:32 PM 7 CONCLUDED THAT DR. BAKER'S DATA BASE WAS AGREEING WITH
03:32 PM 8 CYBORG, THERE WAS A CONSISTENCY?

03:32 PM 9 A. IF THEY WERE CLOSE, YES.

03:32 PM 10 Q. OKAY. BUT THERE WERE TIMES THAT THERE MIGHT BE
03:32 PM 11 SEVERAL MONTHS SEPARATING THE PROMOTION OR THE DATE THAT
03:32 PM 12 SOMEONE GOT A JOB IN DR. BAKER'S DATA BASE AND LUFKIN'S
03:32 PM 13 PERSONNEL DATA BASE?

03:32 PM 14 A. I DO REMEMBER THAT'S HAPPENED, YES.

03:32 PM 15 Q. AND AM I CORRECT THAT IT HAPPENED A LOT IN CERTAIN
03:32 PM 16 KINDS OF JOBS?

03:33 PM 17 A. I DON'T KNOW FOR SURE.

03:33 PM 18 Q. ALL RIGHT. YOU DO NOT RECALL WHICH JOBS IT OCCURRED
03:33 PM 19 IN MOST FREQUENTLY?

03:33 PM 20 A. WHEN --

03:33 PM 21 ASK THE QUESTION AGAIN. EXCUSE ME.

03:33 PM 22 Q. YOU DO NOT HAVE A RECOLLECTION, YOU DO NOT RECALL IN
03:33 PM 23 WHICH JOBS YOU WOULD HAVE THE TIME LAPSE THAT MIGHT BE
03:33 PM 24 SEVERAL MONTHS LONG OR SOMETIMES FOUR OR FIVE OR SIX
03:33 PM 25 MONTHS LONG? YOU DO NOT RECALL THAT?

TRANSCRIPT OF PROCEEDINGS

173

03:33 PM 1 A. I DON'T RECALL SPECIFIC JOBS, NO.

03:33 PM 2 Q. DO YOU RECALL THAT THERE WERE SOME INSTANCES WHERE
03:33 PM 3 YOU WOULD LOOK IN CYBORG AND THE PERSON WOULD GET A
03:33 PM 4 DIFFERENT JOB THAN THE JOB THAT THEY HAD IN DR. BAKER'S
03:33 PM 5 DATA BASE?

03:33 PM 6 A. I BELIEVE THAT'S HAPPENED, YES.

03:33 PM 7 Q. AND, FOR EXAMPLE, A LOT OF TIMES YOU WOULD HAVE
03:33 PM 8 CASES WHERE SOMEONE MIGHT BID ON A MACHINE OPERATOR JOB
03:33 PM 9 AND IN CYBORG THEY WERE SHOWN AS A MACHINIST TRAINEE?

03:33 PM 10 A. THAT'S HAPPENED, YES.

03:33 PM 11 Q. THAT WAS A VERY COMMON OCCURRENCE?

03:33 PM 12 A. I'M NOT SAYING THAT. YOU ARE. YES.

03:33 PM 13 Q. AND YOU POINTED THAT OUT AS A DISCREPANCY?

03:34 PM 14 A. YES.

03:34 PM 15 Q. ALL RIGHT. NOW, YOU DON'T KNOW IF THERE'S NO
03:34 PM 16 DISCREPANCY AT ALL THERE, YOU'RE JUST POINTING OUT WHAT
03:34 PM 17 YOU WERE OBSERVING?

03:34 PM 18 A. RIGHT.

03:34 PM 19 Q. YOU DON'T REALLY KNOW HOW JOBS -- YOU KNOW, WHETHER
03:34 PM 20 SOMEONE MIGHT BECOME A TRAINEE EVEN AFTER BEING PROMOTED
03:34 PM 21 INTO A MACHINE OPERATOR JOB?

03:34 PM 22 A. NO. WE WERE JUST SIMPLY EVALUATING THE BID SHEETS.

03:34 PM 23 Q. YOU WERE JUST KEEPING THE RECORDS?

03:34 PM 24 MR. BACON: YES, SIR?

03:34 PM 25 THE COURT: HOW LONG DO YOU INTEND TO BE?

TRANSCRIPT OF PROCEEDINGS

174

03:34 PM 1 MR. BACON: I DON'T KNOW, YOUR HONOR. IT COULD
03:34 PM 2 BE SOME TIME.

03:34 PM 3 THE COURT: WELL --

03:34 PM 4 MR. BACON: IT MIGHT BE A GOOD TIME FOR A BREAK.

03:34 PM 5 THE COURT: WHY DO YOU THINK I HELD UP MY HAND?

03:34 PM 6 WELL, BETWEEN FOURTEEN AND TWELVE MINUTES.

03:34 PM 7 THE CSO: ALL RISE.

03:34 PM 8 (RECESS)

04:07 PM 9 THE COURT: I HAD TELEPHONE CONVERSATIONS WITH
04:07 PM 10 TWO, THREE, FOUR, FIVE -- WITH FORMER CLERKS, ALL OF WHOM
04:07 PM 11 HAVE CASES PENDING HERE, ONE OF WHOM I'VE CONSISTENTLY
04:07 PM 12 RULED AGAINST.

04:07 PM 13 MR. BACON: WHICH ONE?

04:07 PM 14 THE COURT: WELL, THAT'S NOT RELEVANT TO
04:07 PM 15 ANYTHING BEFORE YOU.

04:07 PM 16 I'M SORRY IT WAS SO LONG, SIR.

04:07 PM 17 BY MR. BACON:

04:07 PM 18 Q. MS. DUNGAN, EXHIBIT 76, WHICH I GUESS IS A HUNDRED
04:08 PM 19 AND SEVEN PAGES LONG, ONE OF THE THINGS I WANT TO CLARIFY
04:08 PM 20 ABOUT THIS EXHIBIT, THE FACT THAT YOU HAVE A BATES NUMBER
04:08 PM 21 DOCUMENT INCLUDED IN THIS EXHIBIT DOESN'T MEAN THAT YOU
04:08 PM 22 ARE CHALLENGING DR. BAKER'S INTERPRETATION OF THE BID
04:08 PM 23 SHEET DOCUMENTS FOR THAT PARTICULAR BATES NUMBER, IS THAT
04:08 PM 24 CORRECT?

04:08 PM 25 A. I'M NOT SURE WHAT YOU'RE ASKING. CAN YOU REPHRASE

TRANSCRIPT OF PROCEEDINGS

175

04:08 PM 1 THAT?

04:08 PM 2 Q. WELL, THE QUESTION IS, THIS IS A VERY THICK

04:08 PM 3 DOCUMENT, AND --

04:08 PM 4 A. EXHIBIT 76 YOU HAVE?

04:08 PM 5 Q. EXHIBIT 76.

04:08 PM 6 A. OKAY.

04:08 PM 7 Q. AND THE FACT THAT YOU HAVE LISTED A BATES NUMBER

04:08 PM 8 DOCUMENT --

04:08 PM 9 WELL, LET'S LOOK AT THE FIRST PAGE, FOR EXAMPLE.

04:08 PM 10 A. ALL RIGHT.

04:08 PM 11 Q. THE VERY FIRST DOCUMENT, BATES NUMBER 12198.

04:08 PM 12 A. OKAY.

04:08 PM 13 Q. AND ACCORDING TO YOU, YOU LOOKED AT THE BID SHEET

04:08 PM 14 AND THE BID SHEET SHOWS KITRICK MURPHY?

04:08 PM 15 A. RIGHT.

04:08 PM 16 Q. AND YOU LOOKED AT THE WINNER IN THE BAKER DATA AND

04:09 PM 17 IT SHOWS KITRICK MURPHY?

04:09 PM 18 A. THAT'S WHAT IT SAYS.

04:09 PM 19 Q. ALL RIGHT. SO BASED ON YOUR REVIEW OF THE BID SHEET

04:09 PM 20 IN DR. BAKER'S DATA, YOU'RE NOT SAYING THAT DR. BAKER

04:09 PM 21 MISINTERPRETED THAT PARTICULAR BID SHEET?

04:09 PM 22 A. I'M NOT CHARACTERIZING DR. BAKER'S TESTIMONY OR WHAT

04:09 PM 23 SHE'S PUT IN HER REPORT. ALL I DID WAS CHECK THE DATA

04:09 PM 24 THAT WE HAD.

04:09 PM 25 Q. AND SIMILARLY IN THE SECOND ONE, YOU SAY JUSTIN

TRANSCRIPT OF PROCEEDINGS

176

04:09 PM 1 LOONEY IS SHOWN AS THE WINNER, YOU DON'T HAVE ANY REASON
04:09 PM 2 TO SUSPECT THAT JUSTIN LOONEY WAS NOT THE WINNER BECAUSE
04:09 PM 3 YOU SAY YOU DIDN'T HAVE THE ORIGINAL DOCUMENT?

04:09 PM 4 A. ALL WE DID WAS REVIEW WHAT WE HAD.

04:09 PM 5 Q. OKAY.

04:09 PM 6 A. I'M NOT CHARACTERIZING DR. BAKER'S TESTIMONY.

04:09 PM 7 Q. AND DID YOU TRY TO FIND DOCUMENT L12200 WHEN YOU
04:09 PM 8 COULDN'T FIND IT?

04:09 PM 9 A. I'M SURE WE DID, YES.

04:09 PM 10 Q. OKAY. DID YOU ASK ANYBODY TO REQUEST IT FROM US IF
04:09 PM 11 YOU HAD LOST A COPY OF IT?

04:09 PM 12 A. I DON'T -- I DON'T REMEMBER DOING THAT, NO.

04:09 PM 13 Q. BUT BASED ON THE INFORMATION --

04:09 PM 14 AND ONE OF THE REASONS I'M POINTING OUT THIS
04:10 PM 15 PARTICULAR ONE IS THAT YOU HAVE -- SOME OF THESE ARE
04:10 PM 16 HIGHLIGHTED, AND I'M ASSUMING YOU HIGHLIGHTED THINGS TO
04:10 PM 17 DRAW OUR ATTENTION TO THEM, IS THAT CORRECT?

04:10 PM 18 A. THAT'S RIGHT.

04:10 PM 19 Q. ALL RIGHT. AND YOU CAN'T TELL FROM --

04:10 PM 20 YOU HAVE NO CONCLUSION THAT DR. BAKER
04:10 PM 21 MISINTERPRETED BID SHEET 12200, DO YOU?

04:10 PM 22 A. I'M NOT MAKING CONCLUSIONS, I'M JUST CHECKING WHAT
04:10 PM 23 WE HAVE.

04:10 PM 24 Q. YEAH. AND, IN FACT, YOU EVEN LOOKED IN CYBORG DATA
04:10 PM 25 BASE AND THE CYBORG DATA BASE SHOWED JUSTIN LOONEY WAS THE

TRANSCRIPT OF PROCEEDINGS

177

04:10 PM 1 WINNER?

04:10 PM 2 A. THAT'S WHAT IT SHOWED.

04:10 PM 3 Q. AND, YOU KNOW, 12201, NO PROBLEM. AM I TO ASSUME
04:10 PM 4 THAT IF IT'S NOT SHADED, THAT YOU FOUND NO PROBLEM?

04:10 PM 5 A. YES. WE USED THE SHADING TO HIGHLIGHT THE THINGS,
04:10 PM 6 THE PROBLEMS THAT WE FOUND.

04:10 PM 7 Q. BECAUSE YOU WOULD FOCUS PRIMARILY REALLY ON THE
04:10 PM 8 SHADED ONES?

04:10 PM 9 A. THAT'S WHY WE DID IT, YES.

04:10 PM 10 Q. AND THE FACT THAT IT'S SHADED DOESN'T MEAN
04:10 PM 11 NECESSARILY THAT DR. BAKER MISINTERPRETED THE DATA?

04:10 PM 12 A. AGAIN, I'M NOT CHARACTERIZING DR. BAKER'S TESTIMONY
04:10 PM 13 OR ANYTHING THAT SHE'S DONE.

04:10 PM 14 Q. SO YOU WHAT YOU REALLY WERE DOING HERE, YOU WERE
04:11 PM 15 TAKING NOTES, THE BID SHEETS, AND COMPARING THEM TO DR.
04:11 PM 16 BAKER, AND THIS WAS SORT OF YOUR NOTE-TAKING DEVICE?

04:11 PM 17 A. WE CHECKED THE BID SHEETS, DR. BAKER'S DATA AND THE
04:11 PM 18 LUFKIN DATA BASE.

04:11 PM 19 Q. OKAY. AND JUST SO WE'RE CLEAR, THIS IS YOUR
04:11 PM 20 ANALYSIS BASED ON THE EARLIER VERSION OF DR. BAKER'S DATA?

04:11 PM 21 A. IT'S THE ONLY VERSION WE HAD UNTIL -- I THINK IT WAS
04:11 PM 22 NOVEMBER 22ND WHEN WE RECEIVED IT FROM YOUR OFFICE.

04:11 PM 23 Q. BY THE WAY, WERE YOU AWARE THAT DR. DROGIN PROVIDED
04:11 PM 24 A SUPPLEMENTAL REPORT AT THE END OF OCTOBER?

04:11 PM 25 A. I'M AWARE OF THAT, YES.

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04:11 PM 1 Q. ALL RIGHT. AND THESE PARTICULAR EXHIBITS, 76 AND
04:11 PM 2 77, THEY WEREN'T READY AT THE TIME THE OTHER EXHIBITS WERE
04:11 PM 3 PRODUCED, WERE THEY?

04:11 PM 4 A. THE OTHER EXHIBITS, MEANING --

04:11 PM 5 Q. MOST OF THE EXHIBITS. WERE YOU RESPONSIBLE FOR
04:11 PM 6 PUTTING THE EXHIBITS TOGETHER WHEN THEY WERE TO BE
04:11 PM 7 PRODUCED?

04:11 PM 8 A. I WAS PART OF THAT, YES.

04:11 PM 9 Q. ALL RIGHT. THESE TWO EXHIBITS WERE NOT READY AT
04:11 PM 10 THAT TIME?

04:11 PM 11 A. RIGHT. THESE WERE PRODUCED -- I FORGET THE EXACT
04:12 PM 12 DATE. BUT, YEAH.

04:12 PM 13 Q. WOULD IT BE LIKE NOVEMBER 17TH, NOVEMBER 18TH,
04:12 PM 14 AROUND THAT TIME?

04:12 PM 15 A. I CAN'T REMEMBER FOR SURE, BUT, YEAH.

04:12 PM 16 Q. ALL RIGHT. WOULD YOU AGREE THAT, TO THE EXTENT THAT
04:12 PM 17 YOU DID FIND ANY ERRORS IN LUFKIN'S DATA BASE, THAT THEY
04:12 PM 18 MISSED A NAME OR MISSELECTED SOMEONE, THAT IT WOULD MAKE
04:12 PM 19 SENSE TO CORRECT THOSE MISTAKES?

04:12 PM 20 A. I GUESS. IT MAKES SENSE TO CORRECT MISTAKES, SURE.

04:12 PM 21 Q. WELL, WOULD YOU THINK THAT DR. BAKER'S STATISTICAL
04:12 PM 22 ANALYSIS MAY BE MORE RELIABLE IF ANY ERRORS HAVE BEEN
04:12 PM 23 CORRECTED?

04:12 PM 24 MS. BURRELL: OBJECTION, YOUR HONOR. THAT CALLS
04:12 PM 25 FOR A LEGAL CONCLUSION AS TO WHETHER --

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04:12 PM 1 THE COURT REPORTER: I CAN'T HEAR YOU. WOULD
04:12 PM 2 YOU SPEAK UP?

04:12 PM 3 MS. BURRELL: I SAID OBJECTION, IT CALLS FOR A
04:12 PM 4 LEGAL CONCLUSION AS TO WHETHER THE DATA BASE IS RELIABLE
04:12 PM 5 OR NOT.

04:13 PM 6 THE COURT: THIS IS AN EMPLOYEE OF YOUR OWN LAW
04:13 PM 7 FIRM. IT WOULD SEEM TO ME THAT, WHILE IT MAY CALL FOR A,
04:13 PM 8 QUOTE, LEGAL CONCLUSION, I'M THE ONE THAT'S GOING TO
04:13 PM 9 DECIDE ON WHICH EXPERT IS MORE RELIABLE AND THE
04:13 PM 10 INFORMATION THAT THAT'S BASED UPON.

04:13 PM 11 AND I UNDERSTAND DR. BAKER'S DEPOSITION IS
04:13 PM 12 SCHEDULED IMMINENTLY ON THE SECOND REPORT.

04:13 PM 13 IS THAT CORRECT?

04:13 PM 14 MR. BACON: I BELIEVE SO, YOUR HONOR.

04:13 PM 15 THE COURT: SO THE OBJECTION IS NOTED.

04:13 PM 16 I'M GOING TO LET HIM CROSS-EXAMINE THE PERSON
04:13 PM 17 WHO SPONSORED THESE EXHIBITS AND SUPERVISED THE
04:13 PM 18 PREPARATION OF THEM.

04:13 PM 19 I THINK I UNDERSTAND WHAT THEY ARE.

04:13 PM 20 MS. BURRELL: THANK YOU, YOUR HONOR.

04:14 PM 21 THE COURT: SO I'M GOING TO OVERRULE IT.

04:14 PM 22 THE WITNESS: WOULD YOU ASK IT AGAIN? I'M
04:14 PM 23 SORRY.

04:14 PM 24 BY MR. BACON:

04:14 PM 25 Q. THE QUESTION I HAVE, AND I'VE FORGOTTEN THE EXACT

04:14 PM 1 FORM IT WAS IN, BUT WOULD YOU AGREE THAT --

04:14 PM 2 THE COURT: HIS QUESTION IS, BASICALLY, IF YOU
04:14 PM 3 MADE SOME MISTAKES OR ERRORS OR OMISSIONS, AND THEY WERE
04:14 PM 4 BROUGHT TO YOUR ATTENTION, WOULD IT BE BETTER TO CORRECT
04:14 PM 5 THEM BEFORE PRESENTING THEM TO THE PRESIDING JUDGE?

04:14 PM 6 THE WITNESS: I BELIEVE THAT WOULD BE THE BETTER
04:14 PM 7 WAY.

04:14 PM 8 THE COURT: PROCEED TO SOMETHING ELSE.

04:14 PM 9 MR. BACON: OKAY.

04:14 PM 10 BY MR. BACON:

04:14 PM 11 Q. DO YOU KNOW HOW MANY OF THE PROBLEMS THAT YOU NOTED
04:14 PM 12 IN 76 AND 77 WERE CORRECTED?

04:14 PM 13 A. I DON'T, BECAUSE I HAVEN'T HAD A CHANCE TO GO
04:14 PM 14 THROUGH ALL THE CORRECTIONS THAT HAVE BEEN MADE.

04:14 PM 15 MR. BACON: YOUR HONOR, I HAVE EXHAUSTED ALL THE
04:14 PM 16 TIME THAT WE HAVE ALLOCATED FOR THIS WITNESS IN LIGHT OF
04:15 PM 17 THE COURT'S CONSTRAINTS ON TIME IN THIS CASE.

04:15 PM 18 I WOULD REQUEST ADDITIONAL TIME TO QUESTION THIS
04:15 PM 19 WITNESS, BECAUSE, QUITE FRANKLY, WHAT WE REALLY NEED TO
04:15 PM 20 DO, SINCE THIS IS A SUMMARY EXPERT, A SUMMARY EXHIBIT THAT
04:15 PM 21 THEY'RE TESTIFYING FROM AND THAT THEY'RE PROFFERING, WE
04:15 PM 22 WOULD REALLY NEED TO SHOW HOW IT IS INACCURATE. IT WAS
04:15 PM 23 INACCURATE EVEN IN THE ORIGINAL VERSION, AND IT'S STILL
04:15 PM 24 MUCH MORE INACCURATE TODAY. I BELIEVE THERE MAY BE SOME
04:15 PM 25 NINETY-ONE, OR IN EXCESS OF NINETY AREAS WHERE WE COULD

04:15 PM 1 SHOW INCONSISTENCIES WHICH WOULD CHALLENGE THIS EXHIBIT,
04:15 PM 2 BUT I DON'T HAVE THE TIME TO DO THAT.

04:15 PM 3 ALTERNATIVELY, IF THE COURT DENIES MY REQUEST
04:15 PM 4 FOR ADDITIONAL TIME, THAT WOULD NOT COUNT AGAINST OUR
04:15 PM 5 TWENTY HOURS --

04:15 PM 6 THE COURT: WELL, WAIT A MINUTE. WAIT A MINUTE.
04:15 PM 7 THE ADDITIONAL TIME IS DIFFICULT FOR ME TO UNDERSTAND THAT
04:16 PM 8 YOU NEED, WHEN LUFKIN WAS -- WHEN YOU AND MR. HAMEL AS
04:16 PM 9 LUFKIN'S LAWYERS DIDN'T FURNISH THE UP-TO-DATE REPORT OF
04:16 PM 10 DR. BAKER UNTIL --

04:16 PM 11 IT'S DATED, OR THIS INFORMATION IS DATED THE
04:16 PM 12 22ND OF NOVEMBER AND THE REPORT IS DATED THE 24TH I
04:16 PM 13 UNDERSTAND OF NOVEMBER.

04:16 PM 14 AND I'M GOING TO GIVE YOU SOME ADDITIONAL TIME,
04:16 PM 15 BUT IT'S GOING TO BE ON YOUR TIME DURING A PERIOD OF A
04:16 PM 16 RECESS OF THIS CASE, AND NOT ON THE COURT'S TIME. IT'S
04:17 PM 17 GOING TO BE AFTER DR. BAKER'S DEPOSITION IS TAKEN ON
04:17 PM 18 TUESDAY.

04:17 PM 19 MR. BACON: THAT'S FINE.

04:17 PM 20 AND THIS WOULD NOT COUNT AGAINST OUR TWENTY
04:17 PM 21 HOURS, IS THAT WHAT YOU'RE SAYING?

04:17 PM 22 THE COURT: NO, I'M NOT SAYING THAT. I'M SAYING
04:17 PM 23 I'LL GIVE YOU TIME TO REVIEW IT, AND GIVE THE PLAINTIFF
04:17 PM 24 TIME TO REVIEW THIS NEWLY-PROFFERED DEFENDANT'S EXHIBIT 7,
04:17 PM 25 AND COMPLETE THE DEPOSITION OF DR. BAKER, THE SECOND ONE,

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04:17 PM 1 ON HER SECOND REPORT.

04:17 PM 2 SO THAT'S THE RECESS THAT I'M GOING TO DECLARE.

04:17 PM 3 MR. BACON: OKAY.

04:17 PM 4 THE COURT: I TOLD YOU THAT THIS WOULD NOT ALL
04:17 PM 5 BE TRIED AT ONE TIME.

04:17 PM 6 MR. GARRIGAN: YOUR HONOR, THE PLAINTIFFS DO NOT
04:18 PM 7 SEEK A RECESS IN THIS CASE. WE --

04:18 PM 8 THE COURT: WELL, THE COURT SEEKS A RECESS. I
04:18 PM 9 HAVE TO GO TO TYLER ON MONDAY. I HAVE A CRIMINAL DOCKET
04:18 PM 10 SET ON TUESDAY.

04:18 PM 11 I HAVE SEVERAL HUNDRED OTHER CASES ON MY DOCKET.
04:18 PM 12 I AM GOING TO RECEIVE QUITE A FEW MORE FROM JUDGE HANNAH'S
04:18 PM 13 DOCKET I FEAR.

04:18 PM 14 MR. GARRIGAN: I GUESS MAYBE I'M NOT
04:18 PM 15 UNDERSTANDING. ARE YOU TALKING ABOUT A RECESS UNTIL NEXT
04:18 PM 16 WEDNESDAY, OR ARE YOU TALKING ABOUT A RECESS BEYOND THAT?

04:18 PM 17 THE COURT: OH, I DON'T -- I MEAN, CERTAINLY
04:18 PM 18 UNTIL NEXT WEDNESDAY. BUT I'LL BE BACK IN BEAUMONT MONDAY
04:18 PM 19 NIGHT, AND DURING THE DAY TUESDAY I HOPE TO HAVE TIME
04:19 PM 20 ENOUGH TO DECIDE WHEN WE'LL RESUME THE TRIAL.

04:19 PM 21 HE'S ENTITLED TO MORE TIME TO REVIEW. YOU'RE
04:19 PM 22 ENTITLED TO TIME TO REVIEW BAKER'S DEPOSITION.

04:19 PM 23 MR. GARRIGAN: IT WOULD BE OUR POSITION THAT WE
04:19 PM 24 WOULD LIKE TO PROCEED WITH TRIAL AS QUICKLY AS THE COURT
04:19 PM 25 CAN PERMIT.

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04:19 PM 1 THE COURT: YES, SIR, I UNDERSTAND.

04:19 PM 2 MR. BACON: ALL RIGHT. THANK YOU, YOUR HONOR.

04:19 PM 3 THE COURT: DO YOU HAVE ANY MORE QUESTIONS OF
04:19 PM 4 THIS WITNESS AT THIS TIME?

04:19 PM 5 MS. BURRELL: YES, I DO, YOUR HONOR.

04:19 PM 6 REDIRECT EXAMINATION

04:20 PM 7 BY MS. BURRELL:

04:20 PM 8 Q. MS. DUNGAN, EARLIER MR. BACON ASKED YOU ABOUT
04:20 PM 9 INSTANCES WHERE THERE WAS THE NOTATION "LATERAL" WRITTEN
04:20 PM 10 ON A BID SHEET. DO YOU REMEMBER THAT?

04:20 PM 11 A. I DO.

04:20 PM 12 Q. ARE THERE INSTANCES WHERE THE BID SHEET INDICATED
04:20 PM 13 THAT THE POSITION FOR AN INDIVIDUAL WOULD BE A LATERAL AND
04:20 PM 14 THAT PERSON WAS INCLUDED AS A WINNER IN DR. BAKER'S DATA
04:20 PM 15 BASE?

04:20 PM 16 A. I BELIEVE THAT'S TRUE, YES.

04:20 PM 17 Q. WERE THERE INSTANCES WHERE THE BID SHEET INDICATED
04:20 PM 18 THAT A POSITION WOULD BE A LATERAL FOR AN INDIVIDUAL, BUT
04:20 PM 19 THAT PERSON WAS NOT INDICATED AS A WINNER IN DR. BAKER'S
04:20 PM 20 DATA BASE?

04:20 PM 21 A. I BELIEVE THAT'S TRUE AS WELL.

04:20 PM 22 Q. DID YOU NOTE THOSE INSTANCES WHERE IT INDICATED THAT
04:20 PM 23 THERE WAS A LATERAL IN PART TO KEEP TRACK OF THOSE
04:20 PM 24 INSTANCES?

04:20 PM 25 A. YES.

04:21 PM 1 Q. YOU MENTIONED EARLIER IN YOUR TESTIMONY THAT YOU
04:21 PM 2 SUPERVISED PARALEGALS IN PERFORMING THIS ANALYSIS, IS THAT
04:21 PM 3 CORRECT?

04:21 PM 4 A. THAT'S CORRECT.

04:21 PM 5 Q. AND YOU ALSO DESCRIBED EARLIER FOR THE COURT THE
04:21 PM 6 METHODOLOGY THAT YOU FOLLOWED IN TERMS OF HOW YOU ANALYZED
04:21 PM 7 THE DATA?

04:21 PM 8 A. THAT'S CORRECT.

04:21 PM 9 Q. DID YOU DISCUSS WITH THE PARALEGALS A SET OF
04:21 PM 10 PROTOCOLS THAT YOU WOULD FOLLOW IN TERMS OF GOING THROUGH
04:21 PM 11 THE DATA?

04:21 PM 12 A. YES, WE DID INITIALLY, AND THEN OVER THE WEEKS THAT
04:21 PM 13 IT TOOK TO DO THIS WE WOULD MEET WHENEVER QUESTIONS CAME
04:21 PM 14 UP. I WOULD TALK TO THEM WHENEVER QUESTIONS CAME UP.

04:21 PM 15 Q. NOW, EARLIER WE TALKED ABOUT EXAMPLES OF
04:21 PM 16 DISCREPANCIES THAT YOU FOUND IN THE ANALYSIS. WERE THOSE
04:21 PM 17 THE ONLY DISCREPANCIES THAT YOU FOUND?

04:21 PM 18 A. NO, THOSE WERE JUST EXAMPLES.

04:21 PM 19 Q. AND DID YOU FIND MANY MORE DISCREPANCIES?

04:21 PM 20 A. THERE WERE A NUMBER OF THEM, YES.

04:22 PM 21 MS. BURRELL: PASS THE WITNESS.

04:22 PM 22 MR. BACON: I'LL RESERVE ANY QUESTIONS FOR WHEN
04:22 PM 23 WE RESUME.

04:22 PM 24 THE COURT: YOU'RE EXCUSED TEMPORARILY.

04:22 PM 25 WHO DO YOU HAVE NEXT?

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04:22 PM 1 MR. GARRIGAN: KELVIN POPE.

2 THE COURT: COME AROUND, MR. POPE.

3

4 KELVIN POPE, PLAINTIFF WITNESS, SWORN

5

6 DIRECT EXAMINATION

04:22 PM 7 BY MR. GARRIGAN:

04:22 PM 8 Q. WOULD YOU PLEASE TELL US YOUR NAME?

04:23 PM 9 A. KELVIN POPE.

04:23 PM 10 Q. MR. POPE, WHERE DO YOU WORK?

04:23 PM 11 A. LUFKIN INDUSTRIES, TRAILER DIVISION.

04:23 PM 12 Q. ALL RIGHT. BEFORE I ASK YOU SOME QUESTIONS ABOUT

04:23 PM 13 YOUR WORK AND HOW YOU GOT YOUR JOB, TELL ME A LITTLE BIT

04:23 PM 14 ABOUT YOURSELF. HOW OLD A MAN ARE YOU?

04:23 PM 15 A. THIRTY-THREE.

04:23 PM 16 Q. WHERE DO YOU LIVE?

04:23 PM 17 A. LUFKIN, TEXAS.

04:23 PM 18 Q. WHO DO YOU LIVE WITH?

04:23 PM 19 A. MY WIFE AND KIDS.

04:23 PM 20 Q. WHAT'S YOUR EDUCATIONAL BACKGROUND?

04:23 PM 21 A. I'VE GOT ONE YEAR OF COLLEGE, THIRTY-TWO HOURS.

04:23 PM 22 Q. ALL RIGHT. AND DID YOU FINISH HIGH SCHOOL ALSO?

04:23 PM 23 A. YES.

04:23 PM 24 THE COURT: ISN'T THAT A PREREQUISITE FOR ENTRY

04:23 PM 25 TO COLLEGE, EXCEPT IN RARE CASES?

04:23 PM 1 MR. GARRIGAN: I THINK SO. I JUST WANTED TO
04:23 PM 2 MAKE SURE EVERYBODY KNEW HE MET THAT REQUIREMENT.

04:24 PM 3 THE COURT: ALL RIGHT.

04:24 PM 4 BY MR. GARRIGAN:

04:24 PM 5 Q. WHEN DID YOU START WORKING AT LUFKIN INDUSTRIES?

04:24 PM 6 A. JULY 21ST.

04:24 PM 7 Q. OF THIS YEAR?

04:24 PM 8 A. OF 2003, YES.

04:24 PM 9 Q. THANK YOU. NOW, HOW DID YOU GO ABOUT GETTING YOUR
04:24 PM 10 JOB AT LUFKIN INDUSTRIES?

04:24 PM 11 A. THE TWC CALLED ME.

04:24 PM 12 Q. OKAY. BEFORE TWC CALLED YOU, DID YOU FILL OUT AN
04:24 PM 13 APPLICATION OR REGISTER THERE?

04:24 PM 14 A. I REGISTERED IN JACKSONVILLE AT TWC.

04:24 PM 15 Q. ALL RIGHT. AND AFTER THAT YOU RECEIVED A CALL?

04:24 PM 16 A. YES.

04:24 PM 17 Q. DO YOU KNOW WHICH TWC OFFICE CALLED YOU?

04:24 PM 18 A. THE ONE IN LUFKIN, TEXAS.

04:24 PM 19 Q. AND WHAT DID THEY TELL YOU WHEN THEY CALLED YOU?

04:25 PM 20 A. THEY TOLD ME THEY HAD POSITIONS OPEN FOR HELPERS AND
04:25 PM 21 WELDERS.

04:25 PM 22 Q. WHO HAD POSITIONS OPEN?

04:25 PM 23 A. LUFKIN INDUSTRIES.

04:25 PM 24 Q. AND HOW DID YOU RESPOND TO THAT INFORMATION?

04:25 PM 25 A. SHE ASKED ME WAS I INTERESTED, AND AT THE TIME I WAS

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04:25 PM 1 LOOKING FOR A JOB, AND I TOLD HER, YES, I WAS.

04:25 PM 2 Q. ALL RIGHT. WHAT WAS THE NEXT STEP?

04:25 PM 3 A. THE NEXT DAY I WENT DOWN FOR AN INTERVIEW.

04:25 PM 4 Q. AND WHO DID YOU INTERVIEW WITH?

04:25 PM 5 A. MR. VIRON BARBAY.

04:25 PM 6 Q. WHEN YOU SHOWED UP FOR THE INTERVIEW, WHAT WAS THE
04:25 PM 7 FIRST THING YOU DID?

04:25 PM 8 A. WENT TO THE FRONT DESK AND GOT AN APPLICATION AND
04:25 PM 9 FILLED IT OUT.

04:25 PM 10 Q. IS THAT A LUFKIN INDUSTRIES APPLICATION?

04:25 PM 11 A. YES.

04:25 PM 12 Q. THEN WHAT WAS THE NEXT STEP?

04:26 PM 13 A. I WAITED.

04:26 PM 14 (LAUGHTER)

04:26 PM 15 BY MR. GARRIGAN:

04:26 PM 16 Q. HOW LONG DID YOU WAIT?

04:26 PM 17 A. APPROXIMATELY AN HOUR AND A HALF.

04:26 PM 18 Q. AND WHAT WERE YOU WAITING FOR?

04:26 PM 19 A. I WAS WAITING TO BE INTERVIEWED.

04:26 PM 20 Q. BY MR. BARBAY?

04:26 PM 21 A. YES.

04:26 PM 22 Q. AND DID YOU EVENTUALLY INTERVIEW WITH MR. BARBAY?

04:26 PM 23 A. YES.

04:26 PM 24 Q. HOW LONG DID THAT INTERVIEW LAST?

04:26 PM 25 A. APPROXIMATELY TEN MINUTES.

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04:26 PM 1 Q. OKAY. BEFORE I GET TO THAT, LET ME ASK ABOUT THE
04:26 PM 2 APPLICATION YOU FILLED OUT. DID YOU WRITE DOWN WHAT KIND
04:26 PM 3 OF JOBS YOU WERE INTERESTED IN?

04:26 PM 4 A. YES.

04:26 PM 5 Q. WHAT DID YOU WRITE DOWN?

04:26 PM 6 A. FORKLIFT OPERATOR AND MACHINIST HELPER.

04:26 PM 7 Q. HOW DID YOU KNOW --

04:26 PM 8 THE COURT: HAD YOU HAD EXPERIENCE OPERATING A
04:26 PM 9 FORKLIFT?

04:26 PM 10 THE WITNESS: YES, SIR.

04:26 PM 11 THE COURT: WHEREABOUTS?

04:26 PM 12 THE WITNESS: WESTCRAFT MANUFACTURING IN ALEDO,
04:27 PM 13 TEXAS.

04:27 PM 14 THE COURT: AND WHAT WAS THE OTHER POSITION
04:27 PM 15 BESIDES FORKLIFT?

04:27 PM 16 THE WITNESS: MACHINIST.

04:27 PM 17 THE COURT: MACHINIST?

04:27 PM 18 THE WITNESS: YES, SIR.

04:27 PM 19 THE COURT: YOU HAD HAD EXPERIENCE IN THAT?

04:27 PM 20 THE WITNESS: YES, SIR.

04:27 PM 21 THE COURT: WHAT TYPE?

04:27 PM 22 THE WITNESS: AN ENGINE LATHE.

04:27 PM 23 THE COURT: WHEREABOUTS?

04:27 PM 24 THE WITNESS: WESTCRAFT.

04:27 PM 25 THE COURT: WHAT DOES WESTCRAFT BUILD?

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04:27 PM 1 THE WITNESS: HYDRAULIC CYLINDERS.

04:27 PM 2 THE COURT: FOR WHAT?

04:27 PM 3 THE WITNESS: FORKLIFTS, TRACTORS, DUMPTRUCKS.

04:27 PM 4 THE COURT: SUV'S?

04:27 PM 5 THE WITNESS: OH, NO. NO. NO.

04:27 PM 6 (LAUGHTER)

04:27 PM 7 THE COURT: ALL RIGHT. GO AHEAD.

04:27 PM 8 BY MR. GARRIGAN:

04:27 PM 9 Q. ALL RIGHT. NOW, HOW DID YOU KNOW TO PUT DOWN
04:27 PM 10 MACHINIST HELPER AND FORKLIFT OPERATOR ON YOUR
04:27 PM 11 APPLICATION?

04:27 PM 12 A. BECAUSE ON THE FRONT OF THE APPLICATION IT HAD A
04:27 PM 13 BROCHURE ADVERTISING DIFFERENT POSITIONS THERE AT THE
04:27 PM 14 TRAILER DIVISION.

04:28 PM 15 Q. OKAY. AND OUT OF ALL THE POSITIONS DESCRIBED, WHY
04:28 PM 16 DID YOU PUT DOWN MACHINIST HELPER AND FORKLIFT OPERATOR?

04:28 PM 17 A. BECAUSE I ENJOY DOING THAT MORE.

04:28 PM 18 Q. ALL RIGHT. DID YOU -- WHEN YOU FILLED OUT YOUR
04:28 PM 19 APPLICATION, DID YOU ALSO INDICATE YOUR EXPERIENCE AS A
04:28 PM 20 WELDER?

04:28 PM 21 A. YES.

04:28 PM 22 Q. HOW MUCH WELDING EXPERIENCE DID YOU PUT IN THE
04:28 PM 23 APPLICATION?

04:28 PM 24 A. SEVEN YEARS.

04:28 PM 25 Q. ALL RIGHT. AND THEN YOU SAT DOWN AND WAITED FOR AN

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04:28 PM 1 HOUR AND A HALF AND YOUR INTERVIEW STARTED?

04:28 PM 2 A. YES.

04:28 PM 3 Q. TELL US WHAT HAPPENED IN THE INTERVIEW.

04:28 PM 4 A. I WENT IN AND I INTRODUCED MYSELF, WE INTRODUCED
04:28 PM 5 OURSELVES, AND WE TALKED.

04:28 PM 6 VIRON LOOKED AT MY APPLICATION AND SAID "WE
04:29 PM 7 WEREN'T HIRING FOR MACHINIST HELPER AND FORKLIFT
04:29 PM 8 OPERATOR," AND I TOLD HIM THAT I HAD SEVEN YEARS OF
04:29 PM 9 WELDING EXPERIENCE.

04:29 PM 10 Q. AND HOW DID HE RESPOND SO THAT?

04:29 PM 11 A. HE PROCEEDED TO TELL ME ABOUT THE TEST, THE WELDING
04:29 PM 12 TEST.

04:29 PM 13 Q. OKAY. DID HE TELL YOU YOU WERE GOING TO HAVE -- IF
04:29 PM 14 YOU WANTED TO BE A WELDER, YOU HAD TO TAKE A WELDING TEST?

04:29 PM 15 A. HE SAID IF I WANTED TO BE A WELDER, I HAD TO TAKE
04:29 PM 16 THE WELDING TEST.

04:29 PM 17 Q. DID HE ENCOURAGE YOU TO TRY TO HIRE ON AS A WELDER?

04:29 PM 18 A. NO.

04:29 PM 19 Q. DID HE DISCOURAGE YOU?

04:29 PM 20 A. YES.

04:29 PM 21 Q. HOW DID HE DISCOURAGE YOU?

04:29 PM 22 A. HE DESCRIBED THE TEST TO ME AS BEING A VERY
04:29 PM 23 DIFFICULT WELDING TEST.

04:29 PM 24 Q. HAD YOU TAKEN WELDING TESTS BEFORE?

04:29 PM 25 A. NO.

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04:29 PM 1 THE COURT: HAD YOU DONE WELDING BEFORE?

04:29 PM 2 THE WITNESS: YES.

04:29 PM 3 THE COURT: WHAT TYPE OF WELDING?

04:29 PM 4 THE WITNESS: MIG.

04:30 PM 5 THE COURT: SIR?

04:30 PM 6 THE WITNESS: MIG WELDING, WIRE WELDING.

04:30 PM 7 THE COURT: OH.

04:30 PM 8 BY MR. GARRIGAN:

04:30 PM 9 Q. IS THAT WHERE YOU -- YOU HAD SEVEN YEARS OF MIG
04:30 PM 10 WELDING EXPERIENCE?

04:30 PM 11 A. YES.

04:30 PM 12 Q. BUT YOU HAD NEVER TAKEN A WELDING TEST?

04:30 PM 13 A. I'VE NEVER TAKEN A WELDING TEST.

04:30 PM 14 Q. ALL RIGHT. DO YOU CONSIDER YOURSELF A PRETTY GOOD
04:30 PM 15 WELDER?

04:30 PM 16 A. YES, I THINK SO.

04:30 PM 17 Q. HOW DID HE DESCRIBE THE TEST TO YOU THAT MADE YOU
04:30 PM 18 NERVOUS ABOUT IT?

04:30 PM 19 A. HE DESCRIBED THE TEST. HE TOLD ME THERE WAS A STICK
04:30 PM 20 TEST, SAID THEY DO AN X-RAY TEST, A BEND TEST AND A STRESS
04:30 PM 21 TEST.

04:30 PM 22 Q. HE SAID A STICK TEST?

04:30 PM 23 A. YES.

04:30 PM 24 Q. OKAY. STICK WELDING --

04:30 PM 25 A. STICK WELDING.

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04:30 PM 1 Q. -- IS DIFFERENT THAN MIG OR WIRE WELDING, CORRECT?

04:30 PM 2 A. CORRECT.

04:30 PM 3 Q. ALL RIGHT. AND I'M SORRY. HE SAID -- AND WHAT

04:31 PM 4 OTHER KINDS OF TESTS DID HE MENTION?

04:31 PM 5 A. A BEND TEST, AN X-RAY TEST.

04:31 PM 6 Q. NOW -- AND YOU'VE NEVER TAKEN THOSE TESTS BEFORE?

04:31 PM 7 A. CORRECT.

04:31 PM 8 Q. DID YOU KNOW ANYTHING ABOUT X-RAY TESTS?

04:31 PM 9 A. ONLY FROM WHERE I OBSERVED FROM A FRIEND OF MINE

04:31 PM 10 TAKING AN X-RAY TEST.

04:31 PM 11 Q. AND WHAT DO YOU KNOW ABOUT X-RAY TESTS?

04:31 PM 12 A. IT PRETTY MUCH HAS TO BE A PERFECT WELD.

04:31 PM 13 Q. OKAY. DO YOU THINK YOU WOULD BE ABLE TO PASS AN

04:31 PM 14 X-RAY TEST WITH YOUR MIG WELDING?

04:31 PM 15 A. I'M NOT SURE.

04:31 PM 16 Q. OKAY. HOW ABOUT YOUR STICK WELDING?

04:31 PM 17 A. I DON'T HAVE A LOT OF EXPERIENCE IN STICK WELDING.

04:31 PM 18 I DOUBT IT.

04:31 PM 19 Q. IS THAT WHAT YOU TOLD MR. BARBAY?

04:31 PM 20 A. I TOLD HIM I DIDN'T HAVE A LOT OF EXPERIENCE IN

04:31 PM 21 STICK WELDING.

04:32 PM 22 Q. NOW, WHAT WAS MR. BARBAY'S ADVICE TO YOU ABOUT WHAT

04:32 PM 23 JOBS TO SEEK AT LUFKIN?

04:32 PM 24 A. HIS ADVICE FOR ME, TO HIRE IN AS A HELPER AND GET

04:32 PM 25 SOME PRACTICE AS A WELDER AND THEN TAKE THE TEST, GET MY

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04:32 PM 1 FOOT IN THE DOOR.

04:32 PM 2 Q. ALL RIGHT. WHAT -- HOW MUCH DOES A HELPER PAY?

04:32 PM 3 A. EIGHT DOLLARS AND FORTY CENTS.

04:32 PM 4 Q. HOW MUCH DOES WELDER PAY?

04:32 PM 5 A. ELEVEN DOLLARS AND FORTY-FOUR CENTS.

04:32 PM 6 Q. SO A THREE-DOLLAR-AN-HOUR DIFFERENCE IN PAY?

04:32 PM 7 A. YES.

04:32 PM 8 Q. AND HOW MANY KIDS DO YOU HAVE TO SUPPORT?

04:32 PM 9 A. SIX.

04:33 PM 10 Q. OKAY. DID YOU TAKE MR. BARBAY'S ADVICE?

04:33 PM 11 A. YES.

04:33 PM 12 Q. YOU SAID YOU WOULD ACCEPT THE HELPER -- EXCUSE ME --

04:33 PM 13 YEAH, THE HELPER POSITION?

04:33 PM 14 A. YES.

04:33 PM 15 Q. OKAY. NOW, HOW DOES HELPER, THE HELPER POSITION

04:33 PM 16 THAT HE WAS SUGGESTING THAT YOU PURSUE, HOW DOES THAT

04:33 PM 17 DIFFER FROM THE MACHINIST HELPER POSITION THAT YOU PUT ON

04:33 PM 18 THE APPLICATION?

04:33 PM 19 A. I DON'T THINK THERE'S A DIFFERENCE. A HELPER IS A

04:33 PM 20 HELPER.

04:33 PM 21 Q. ALL RIGHT. WELL, ACTUALLY, WHEN YOU FILLED OUT YOUR

04:33 PM 22 APPLICATION, DID YOU LEAVE THAT ON THE APPLICATION, THE

04:33 PM 23 MACHINIST HELPER AND THE FORKLIFT OPERATOR?

04:34 PM 24 A. NO. MR. BARBAY ASKED ME TO SCRATCH IT OUT.

04:34 PM 25 Q. AND WHAT DID HE TELL YOU TO WRITE IN THERE?

TRANSCRIPT OF PROCEEDINGS

194

04:34 PM 1 A. HELPER, JUST HELPER, TRAILER DIVISION.

04:34 PM 2 Q. OKAY. SO THAT WAS MR. BARBAY'S IDEA AND SUGGESTION,

04:34 PM 3 NOT YOUR OWN?

04:34 PM 4 A. YES.

04:34 PM 5 Q. DID YOU DO WHAT HE TOLD YOU?

04:34 PM 6 A. YES.

04:34 PM 7 Q. AND THEN DID YOU ACCEPT THE JOB AS A HELPER?

04:34 PM 8 A. YES.

04:34 PM 9 Q. DID YOU GO THROUGH AN ORIENTATION PROCESS?

04:34 PM 10 A. YES.

04:34 PM 11 Q. WHAT DID THAT CONSIST OF, VERY BRIEFLY?

04:34 PM 12 A. BRIEFLY, JUST THE RULES, THE RULES AND REGULATIONS

04:34 PM 13 OF THE COMPANY, PAY SCALE, INSURANCE.

04:34 PM 14 Q. DID THEY GIVE YOU A DRUG TEST?

04:34 PM 15 A. AND A DRUG TEST, YES. THE DRUG TEST WAS THE DAY OF

04:34 PM 16 THE INTERVIEW.

04:34 PM 17 Q. AND HOW LONG DID THE ORIENTATION TAKE?

04:34 PM 18 A. IT TOOK ABOUT THREE AND A HALF HOURS.

04:35 PM 19 Q. DURING THE ORIENTATION PROCESS DID ANYONE FROM

04:35 PM 20 LUFKIN COME TALK TO YOU ABOUT YOUR WELDING EXPERIENCE?

04:35 PM 21 A. NO.

04:35 PM 22 Q. DID MR. BARBAY COME TALK TO YOU ABOUT YOUR WELDING

04:35 PM 23 EXPERIENCE DURING YOUR ORIENTATION?

04:35 PM 24 A. NO.

04:35 PM 25 Q. WHEN YOU -- HOW LONG AFTER THE INTERVIEW DID YOU

TRANSCRIPT OF PROCEEDINGS

195

04:35 PM 1 REPORT FOR WORK?

04:35 PM 2 A. INCLUDING THE WEEKEND, THAT'S FIVE DAYS I BELIEVE,
04:35 PM 3 FOUR OR FIVE DAYS.

04:35 PM 4 Q. ALL RIGHT. AND ON YOUR FIRST DAY OF WORK, WHAT
04:35 PM 5 DIVISION DID YOU REPORT TO?

04:35 PM 6 A. CARPENTER'S DOCK, TRAILER DIVISION.

04:35 PM 7 Q. DID ANYBODY THERE TALK TO YOU ABOUT YOUR WELDING
04:36 PM 8 EXPERIENCE?

04:36 PM 9 A. YES.

04:36 PM 10 Q. HOW DID THAT COME UP?

04:36 PM 11 A. THE GUYS WAS ASKING ME WHERE DID I WORK BEFORE I
04:36 PM 12 CAME TO THE TRAILER DIVISION.

04:36 PM 13 Q. AND WHAT DID YOU TELL THEM?

04:36 PM 14 A. I TOLD THEM THAT I WORKED AT WESTCRAFT, AND I
04:36 PM 15 DESCRIBED IT TO THEM.

04:36 PM 16 AND THEY ASKED ME WHAT DID I DO THERE, AND I
04:36 PM 17 TOLD THEM THAT I WELDED.

04:36 PM 18 AND THEY ASKED ME WHY DIDN'T I HIRE IN AS A
04:36 PM 19 WELDER.

04:36 PM 20 Q. ALL RIGHT. AFTER YOU STARTED AS A HELPER, DID
04:36 PM 21 ANYBODY ENCOURAGE YOU TO GO FOR WELDER?

04:36 PM 22 A. YES.

04:36 PM 23 Q. WHO?

04:36 PM 24 A. KENNETH RICH, HOWARD PRICE, LARRY, I CAN'T RECALL
04:36 PM 25 HIS LAST NAME, A GUY NAMED AL, JUST SEVERAL OF THE GUYS

TRANSCRIPT OF PROCEEDINGS

196

04:36 PM 1 THAT HAD BEEN THERE FOR YEARS.

04:36 PM 2 Q. OKAY. DID YOU TELL THEM HOW MUCH WELDING EXPERIENCE
04:36 PM 3 YOU HAD?

04:36 PM 4 A. YES.

04:36 PM 5 Q. AND HOW DID THEY RESPOND TO THAT?

04:36 PM 6 A. WELL, THEY SAID THAT ANYBODY THAT HAD THAT MUCH
04:37 PM 7 EXPERIENCE SHOULD BE ABLE TO PASS THE TEST WITH FLYING
04:37 PM 8 COLORS.

04:37 PM 9 Q. DID YOU GO TAKE THE TEST?

04:37 PM 10 A. I TOOK THE TEST THAT THURSDAY.

04:37 PM 11 Q. HOW DID YOU DO ON THE TEST?

04:37 PM 12 A. I WAS TOLD I DID PRETTY GOOD.

04:37 PM 13 Q. WHO TOLD YOU THAT?

04:37 PM 14 A. MR. ROSS, LOUIS ROSS.

04:37 PM 15 THE COURT: WHO IS HE AND WHAT'S HIS JOB?

04:37 PM 16 THE WITNESS: HE'S THE WELDING TECHNICIAN.

04:37 PM 17 BY MR. GARRIGAN:

04:37 PM 18 Q. IS HE THE ONE THAT GAVE YOU THE TEST?

04:37 PM 19 A. YES.

04:37 PM 20 Q. DID HE ENCOURAGE YOU TO TAKE THE TEST?

04:37 PM 21 A. YES.

04:37 PM 22 Q. OKAY. DID HE HAVE A CHANCE TO SEE YOU WELD BEFORE
04:37 PM 23 YOU TOOK THE TEST?

04:37 PM 24 A. THE DAY BEFORE I TOOK THE TEST.

04:37 PM 25 Q. AND WHAT WERE HIS COMMENTS ABOUT YOUR WELDING WHEN

TRANSCRIPT OF PROCEEDINGS

197

04:37 PM 1 HE JUST SAW THE PRACTICING YOU WERE DOING?

04:37 PM 2 A. HE SAID AS FAR AS THE PRACTICE, AS FAR AS HE WAS
04:38 PM 3 CONCERNED THAT I HAD ALREADY PASSED THE TEST.

04:38 PM 4 Q. OKAY. AT ANY POINT UP UNTIL YOU ACTUALLY TOOK THE
04:38 PM 5 TEST DID MR. BARBAY COME BACK AND ENCOURAGE YOU TO TAKE
04:38 PM 6 THE TEST?

04:38 PM 7 A. I NEVER TALKED TO MR. BARBAY AGAIN.

04:38 PM 8 Q. AFTER THE INTERVIEW?

04:38 PM 9 A. AFTER THE INTERVIEW.

04:38 PM 10 Q. NOW, THE TEST, THE WELDING TEST THAT YOU TOOK, WAS
04:38 PM 11 IT AS MR. BARBAY DESCRIBED IT TO YOU?

04:38 PM 12 A. NO.

04:38 PM 13 Q. WAS THERE AN X-RAY TEST?

04:38 PM 14 A. NO.

04:38 PM 15 Q. WAS THERE A BEND TEST?

04:38 PM 16 A. NO.

04:38 PM 17 Q. WAS THERE A STRESS TEST?

04:38 PM 18 A. NO.

04:38 PM 19 Q. WHAT KIND OF TEST WAS THERE?

04:38 PM 20 A. I MADE AN UPHILL AND A DOWNHILL PASS WITH THE MIG.

04:38 PM 21 Q. AND HOW DID THEY TEST IT?

04:38 PM 22 A. VISUAL.

04:38 PM 23 Q. IS THAT A LOT EASIER THAN WHAT MR. BARBAY HAD
04:38 PM 24 DESCRIBED TO YOU?

04:38 PM 25 A. YES.

TRANSCRIPT OF PROCEEDINGS

198

04:39 PM 1 Q. DID YOU DO ANY STICK WELDING WHEN YOU TOOK THE TEST?

04:39 PM 2 A. NO.

04:39 PM 3 Q. DID YOU GET THE -- AFTER YOU PASSED THE TEST, DID

04:39 PM 4 YOU GET RECLASSIFIED?

04:39 PM 5 A. YES.

04:39 PM 6 Q. NOW, LET ME BACK UP A LITTLE BIT.

04:39 PM 7 THE COURT: WHAT WERE YOU RECLASSIFIED AS?

04:39 PM 8 THE WITNESS: WELDER, CLASS "A" WELDER.

04:39 PM 9 THE COURT: THANK YOU. PROCEED.

04:39 PM 10 BY MR. GARRIGAN:

04:39 PM 11 Q. ALL RIGHT. YOU WENT UP --

04:39 PM 12 THE COURT: WHAT'S THE DIFFERENCE BETWEEN A

04:39 PM 13 HELPER AND A CLASS "A" WELDER IN PAY?

04:39 PM 14 THE WITNESS: THREE DOLLARS AND FOUR CENTS.

04:39 PM 15 THE COURT: I GUESS THAT'S UP?

04:39 PM 16 THE WITNESS: THAT'S UP, YES, SIR.

04:39 PM 17 THE COURT: IT'S NOT DOWN?

04:39 PM 18 THE WITNESS: NO.

04:39 PM 19 THE COURT: ALL RIGHT. GO AHEAD.

04:39 PM 20 BY MR. GARRIGAN:

04:39 PM 21 Q. DID VIRON BARBAY TELL YOU THAT THERE WOULD BE SOME

04:39 PM 22 KIND OF PENALTY IF YOU HIRED IN AS A WELDER AND YOU DIDN'T

04:39 PM 23 PASS THE TEST?

04:39 PM 24 A. YES.

04:39 PM 25 Q. WHAT DID HE TELL YOU?

TRANSCRIPT OF PROCEEDINGS

199

04:39 PM 1 A. HE TOLD ME IF I TOOK THE WELDING TEST AND DIDN'T

04:40 PM 2 PASS IT, I WOULD HAVE TO WAIT SIXTY DAYS TO REAPPLY,

04:40 PM 3 WHEREAS IF I HIRED IN AS A HELPER AND TOOK THE TEST AND

04:40 PM 4 FAILED IT, I ONLY HAD TO WAIT SIX WEEKS.

04:40 PM 5 Q. DID HE TELL YOU THAT LUFKIN HAS A RULE THAT YOU'RE

04:40 PM 6 ON PROBATION FOR THE FIRST NINETY DAYS AND YOU'RE NOT

04:40 PM 7 SUPPOSED TO BE ABLE TO TRANSFER OR SEEK A TRANSFER DURING

04:40 PM 8 THE FIRST NINETY DAYS?

04:40 PM 9 A. NO.

04:40 PM 10 Q. SO LUCKILY, WITHIN A WEEK OR TWO, YOU DID PASS THE

04:40 PM 11 TEST AND THEY PROMOTED YOU ANYWAY?

04:40 PM 12 A. YES.

04:40 PM 13 THE COURT: WHO WAS THE PERSON THAT TOLD YOU

04:40 PM 14 THAT YOU WERE PROMOTED?

04:40 PM 15 THE WITNESS: NO ONE ACTUALLY TOLD ME, I JUST

04:40 PM 16 HAD AN INCREASE IN PAY ON MY NEXT CHECK.

04:40 PM 17 THE COURT: ALL RIGHT.

04:40 PM 18 BY MR. GARRIGAN:

04:40 PM 19 Q. ACTIONS SPEAK LOUDER THAN WORDS, DON'T THEY?

04:41 PM 20 A. EXACTLY.

04:41 PM 21 Q. NOW, DID THE OTHER -- DID THE OTHER WELDERS TAKE A

04:41 PM 22 STICK TEST?

04:41 PM 23 MS. MAHONY: OBJECTION, HEARSAY, AND LACK OF

04:41 PM 24 FOUNDATION.

04:41 PM 25 THE COURT: OVERRULED.

TRANSCRIPT OF PROCEEDINGS

200

04:41 PM 1 DID YOU KNOW --

04:41 PM 2 DID YOU SEE THEM TAKE THE TEST, ANYBODY ELSE
04:41 PM 3 TAKE A TEST?

04:41 PM 4 THE WITNESS: NO. I DIDN'T ACTUALLY SEE THEM
04:41 PM 5 TAKE THE TEST, NO.

04:41 PM 6 THE COURT: ALL RIGHT.

04:41 PM 7 MS. MAHONY: THEN I REURGE MY OBJECTION.

04:41 PM 8 THE COURT: WELL, HE SAID HE DIDN'T SEE THEM, SO
04:41 PM 9 I ASSUME HE DIDN'T SEE THEM, AND ANYTHING WOULD BE BASED
04:41 PM 10 ON HEARSAY.

04:41 PM 11 BUT GO AHEAD.

04:41 PM 12 BY MR. GARRIGAN:

04:41 PM 13 Q. OKAY. SINCE -- SO NOW YOU'VE BEEN WORKING AT LUFKIN
04:41 PM 14 INDUSTRIES SINCE JULY?

04:41 PM 15 A. YES.

04:41 PM 16 Q. WHERE ARE YOU ASSIGNED?

04:41 PM 17 A. THE DOOR DEPARTMENT.

04:42 PM 18 Q. IS THAT ANYWHERE NEAR THE CARPENTRY DOCK?

04:42 PM 19 A. IT'S RIGHT BESIDE THE CARPENTRY DOCK.

04:42 PM 20 Q. WHAT ARE THE WORKING CONDITIONS LIKE AT THE
04:42 PM 21 CARPENTRY DOCK OF THE TRAILER DIVISION?

04:42 PM 22 A. SOMETIMES HOT, NOT BAD WORKING CONDITIONS. I WORKED
04:42 PM 23 THERE FIRST.

04:42 PM 24 Q. IS IT HOT, NOISY, DIRTY, DUSTY?

04:42 PM 25 MS. MAHONY: OBJECTION, LEADING.

TRANSCRIPT OF PROCEEDINGS

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04:42 PM 1 THE COURT: SUSTAINED.

04:42 PM 2 IF IT'S OPEN TO THE OUTSIDE AIR, AND YOU WERE
04:42 PM 3 HIRED IN JULY, AND YOU BECAME A WELDER --

04:42 PM 4 I'VE BEEN TO LUFKIN IN JULY. I'VE BEEN TO
04:42 PM 5 LUFKIN IN AUGUST. I'VE BEEN THERE IN SEPTEMBER. IT IS
04:42 PM 6 HOT.

04:42 PM 7 THE WITNESS: IT'S HOT.

04:42 PM 8 THE COURT: OUTSIDE IT'S HOT, INSIDE IT'S HOT,
04:42 PM 9 UNLESS IT'S AN AIR-CONDITIONED PLACE. AND I IMAGINE
04:43 PM 10 WORKING AROUND WELDING AND WELDERS, OPENING TO THE
04:43 PM 11 OUTSIDE, IT WOULD BE HOT.

04:43 PM 12 AND IF IT'S NEXT TO THE PARKING LOT, IT WOULD BE
04:43 PM 13 DUSTY, IS MY GUESS.

04:43 PM 14 BY MR. GARRIGAN:

04:43 PM 15 Q. OKAY. WELL, MY QUESTION, DO YOU CONSIDER THE WORK
04:43 PM 16 CONDITIONS TO BE PARTICULARLY TOUGH OR ONEROUS?

04:43 PM 17 A. NO.

04:43 PM 18 Q. HAVE YOU SEEN ANY INDICATIONS OF RACISM OR PREJUDICE
04:43 PM 19 AT LUFKIN SINCE YOU'VE WORKED THERE?

04:43 PM 20 A. NO.

04:43 PM 21 Q. WHO'S YOUR SUPERVISOR?

04:43 PM 22 A. BILLY DURHAM.

04:43 PM 23 Q. DOES HE TREAT YOU THE SAME WAY HE TREATS THE WHITE
04:43 PM 24 WORKERS?

04:43 PM 25 A. NO.

TRANSCRIPT OF PROCEEDINGS

202

04:43 PM 1 Q. HOW DOES HE TREAT YOU DIFFERENTLY?

04:44 PM 2 A. WELL, HE TENDS TO TALK TO THE WHITE WORKERS A LITTLE
04:44 PM 3 MORE THAN HE DOES ME.

04:44 PM 4 Q. DOES HE TALK TO YOU AT ALL?

04:44 PM 5 A. SOMETIMES. NOT MUCH.

04:44 PM 6 Q. WHEN HE HAS TO TELL SOMETHING TO YOU OR GIVE YOU
04:44 PM 7 INFORMATION, HOW DOES HE DO THAT?

04:44 PM 8 A. HE TELLS THE OTHER WELDER AND THE OTHER WELDER WILL
04:44 PM 9 RELAY THE MESSAGE TO ME.

04:44 PM 10 Q. ARE THESE --

04:44 PM 11 WHAT'S THE RACE OF THESE OTHER WELDERS?

04:44 PM 12 A. HE'S WHITE.

04:44 PM 13 Q. OKAY.

04:44 PM 14 MR. GARRIGAN: PASS THE WITNESS, YOUR HONOR.

04:44 PM 15 THANK YOU VERY MUCH.

04:44 PM 16 THE COURT: HAVE THEY GOT MORE SENIORITY THAN
04:44 PM 17 YOU DO?

04:44 PM 18 THE WITNESS: THEY'VE GOT MORE SENIORITY, YES.

04:44 PM 19 THE COURT: ALL RIGHT.

04:44 PM 20 CROSS-EXAMINATION

04:44 PM 21 BY MS. MAHONY:

04:45 PM 22 Q. GOOD AFTERNOON, MR. POPE, MICHELLE MAHONY. I THINK
04:45 PM 23 WE MET AT YOUR DEPOSITION A COUPLE OF MONTHS AGO.

04:45 PM 24 A. YES, MA'AM.

04:45 PM 25 Q. FIRST I WANT TO GO BACK TO THE INTERVIEW PROCESS.

TRANSCRIPT OF PROCEEDINGS

203

04:45 PM 1 YOU SAID YOU WERE HIRED AT LUFKIN THROUGH THE TWC. NOW,
04:45 PM 2 THE FIRST YOU HEARD ABOUT A JOB AT LUFKIN WAS FROM A TWC
04:45 PM 3 REPRESENTATIVE, ISN'T THAT CORRECT?

04:45 PM 4 A. CORRECT.

04:45 PM 5 Q. AND THE TWC REPRESENTATIVE CALLED YOU ON THE PHONE
04:45 PM 6 AND TOLD YOU THEY HAD JOB OPENINGS FOR WELDERS AND HELPERS
04:45 PM 7 IN THE TRAILER DIVISION, ISN'T THAT CORRECT?

04:45 PM 8 A. CORRECT.

04:45 PM 9 Q. AND THE NEXT THING, THE TWC REPRESENTATIVE YOU
04:45 PM 10 TESTIFIED ASKED YOU IF YOU WANTED TO COME FOR AN
04:45 PM 11 INTERVIEW, AND YOU SAID YES, CORRECT?

04:45 PM 12 A. CORRECT.

04:45 PM 13 Q. NOW, THE TWC REPRESENTATIVE, SHE DIDN'T ASK YOU TO
04:45 PM 14 BRING ANYTHING TO THAT INTERVIEW, DID SHE? I MEAN, SHE
04:46 PM 15 DIDN'T ASK YOU TO BRING YOUR WELDING GEAR FOR INSTANCE,
04:46 PM 16 DID SHE?

04:46 PM 17 A. NO.

04:46 PM 18 Q. SO YOU WENT TO THE TWC THE NEXT DAY AND YOU FILLED
04:46 PM 19 OUT THE APPLICATION, CORRECT?

04:46 PM 20 A. CORRECT.

04:46 PM 21 Q. AND ALONG WITH THE APPLICATION WAS A PIECE OF PAPER
04:46 PM 22 THAT HAD JOB LISTINGS ON IT, CORRECT, THAT JUST DESCRIBED
04:46 PM 23 THE COMPANY?

04:46 PM 24 A. DESCRIBED LUFKIN INDUSTRIES OILFIELD AND THE
04:46 PM 25 FOUNDRY, YES.

TRANSCRIPT OF PROCEEDINGS

204

04:46 PM 1 Q. AN INFORMATIONAL BROCHURE, CORRECT?

04:46 PM 2 A. CORRECT.

04:46 PM 3 Q. BUT YOU UNDERSTOOD FROM WHAT THE TWC REPRESENTATIVE
04:46 PM 4 HAD TOLD YOU WHEN YOU CAME IN TO INTERVIEW THAT LUFKIN WAS
04:46 PM 5 HIRING FOR WELDERS AND HELPERS IN THE TRAILER DIVISION,
04:46 PM 6 ISN'T THAT RIGHT, MR. POPE?

04:46 PM 7 A. CORRECT.

04:46 PM 8 Q. NOW, WHEN YOU WENT IN TO INTERVIEW WITH MR. BARBAY,
04:46 PM 9 HE LOOKED AT YOUR APPLICATION AND HE LOOKED WHERE YOU HAD
04:46 PM 10 WRITTEN IN MACHINIST HELPER AND FORKLIFT OPERATOR, WHICH
04:47 PM 11 YOU HAD SEEN ON THIS INFORMATION SHEET AND JUST WRITTEN IT
04:47 PM 12 ON THE APPLICATION, CORRECT?

04:47 PM 13 A. CORRECT.

04:47 PM 14 Q. AND HE TOLD YOU THAT THERE WEREN'T ANY OPENINGS FOR
04:47 PM 15 THOSE POSITIONS, ISN'T THAT RIGHT?

04:47 PM 16 A. THAT'S CORRECT.

04:47 PM 17 Q. AND THAT'S WHEN YOU TOLD MR. BARBAY ABOUT YOUR
04:47 PM 18 WELDING EXPERIENCE, ISN'T THAT CORRECT?

04:47 PM 19 A. YES.

04:47 PM 20 Q. AND MR. BARBAY EXPLAINED TO YOU WHAT IT TAKES TO BE
04:47 PM 21 A WELDER AT LUFKIN, CORRECT?

04:47 PM 22 MR. GARRIGAN: OBJECTION. SHE'S

04:47 PM 23 MISCHARACTERIZING THE EVIDENCE. THE FACT IS, MR. BARBAY
04:47 PM 24 DID NOT TELL HIM WHAT IT TOOK TO BE A WELDER AT LUFKIN.

04:47 PM 25 THE COURT: WELL, HE SAID HE --

TRANSCRIPT OF PROCEEDINGS

205

04:47 PM 1 DID HE TELL YOU OR NOT WHAT IT TOOK TO BE A
04:47 PM 2 WELDER?

04:47 PM 3 THE WITNESS: HE TOLD ME ABOUT THE TEST.

04:47 PM 4 THE COURT: THAT YOU HAD TO PASS A TEST?

04:48 PM 5 THE WITNESS: YES, SIR.

04:48 PM 6 THE COURT: THE OBJECTION IS OVERRULED.

04:48 PM 7 BY MS. MAHONY:

04:48 PM 8 Q. AND MR. POPE, I MEAN, MR. BARBAY WAS CORRECT, I
04:48 PM 9 MEAN, BASED ON YOUR OWN EXPERIENCE, TO BE CLASSIFIED AS A
04:48 PM 10 WELDER AT LUFKIN YOU HAVE TO PASS A WELDING TEST, ISN'T
04:48 PM 11 THAT CORRECT?

04:48 PM 12 A. I WOULD HAVE TO PASS A BEND TEST, AN X-RAY TEST AND
04:48 PM 13 A STRESS TEST AND A STICK TEST. THAT WAS INCORRECT. IT
04:48 PM 14 WAS A VISUAL TEST.

04:48 PM 15 Q. SO IT'S YOUR TESTIMONY HERE TODAY THAT WHEN MR.
04:48 PM 16 BARBAY TOLD YOU THAT YOU WOULD HAVE TO TAKE A TEST, THAT
04:48 PM 17 HE TOLD YOU YOU WOULD HAVE TO TAKE A BEND TEST AND A
04:48 PM 18 STRESS TEST AND AN X-RAY TEST? DID I GET THEM ALL, MR.
04:48 PM 19 POPE?

04:48 PM 20 A. AND STICK.

04:48 PM 21 Q. AND A STICK TEST?

04:48 PM 22 A. UH-HUH.

04:49 PM 23 MS. MAHONY: YOUR HONOR, MAY I APPROACH THE
04:49 PM 24 WITNESS?

04:49 PM 25 THE COURT: MA'AM?

TRANSCRIPT OF PROCEEDINGS

206

04:49 PM 1 BY MS. MAHONY:

04:49 PM 2 Q. MR. POPE, DO YOU RECALL GIVING A DEPOSITION IN THIS
04:49 PM 3 CASE ON AUGUST 14, 2003?

04:49 PM 4 A. YES.

04:49 PM 5 Q. I'LL REPRESENT TO YOU THAT THIS IS A COPY OF THAT,
04:49 PM 6 OF YOUR DEPOSITION.

04:49 PM 7 WILL YOU PLEASE TURN TO PAGE 50?

04:49 PM 8 A. 50?

04:49 PM 9 Q. 50 OF YOUR DEPOSITION. AND LOOK AT LINE 5. NOW,
04:49 PM 10 THE QUESTION AT LINE 5: "OKAY. SO MR. BARBAY TOLD YOU
04:49 PM 11 THAT YOU WOULD HAVE TO TAKE A TEST?"

04:49 PM 12 WHAT DID YOU SAY IN RESPONSE? PLEASE READ YOUR
04:49 PM 13 ANSWER, MR. POPE.

04:49 PM 14 A. "I ASKED HIM ABOUT THE TEST."

04:49 PM 15 Q. OKAY. AND THE NEXT QUESTION, LINE 8: "AND WHAT HE
04:50 PM 16 TOLD YOU, A SERIES OF THREE TESTS?"

04:50 PM 17 WILL YOU PLEASE READ YOUR ANSWER, MR. POPE?

04:50 PM 18 A. "YES, HE SAID THEY DO A BEND TEST, A STRESS TEST."

04:50 PM 19 Q. AND THAT'S YOUR TESTIMONY, "HE SAID THEY DO A BEND
04:50 PM 20 TEST AND A STRESS TEST," AND IN YOUR DEPOSITION, THAT
04:50 PM 21 SENTENCE "THEY DO A BEND TEST AND A STRESS TEST," THAT'S
04:50 PM 22 IN QUOTES, CORRECT? YOU WERE QUOTING MR. BARBAY DURING
04:50 PM 23 YOUR DEPOSITION, IS THAT CORRECT?

04:50 PM 24 A. THAT'S CORRECT.

04:50 PM 25 Q. THE QUESTION AT LINE 12: "DID HE TELL YOU ANYTHING

TRANSCRIPT OF PROCEEDINGS

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04:50 PM 1 ELSE ABOUT THE TEST?"

04:50 PM 2 WILL YOU PLEASE READ YOUR ANSWER, MR. POPE?

04:50 PM 3 A. "BASICALLY A BEND AND A STRESS TEST."

04:50 PM 4 Q. THE NEXT QUESTION -- WELL, WE'LL STOP RIGHT THERE.

04:50 PM 5 NOW, WE'VE JUST READ THROUGH 50, LINE 5 THROUGH

04:50 PM 6 LINE 14. DID WE READ THROUGH YOUR TESTIMONY CORRECTLY,

04:50 PM 7 MR. POPE?

04:50 PM 8 A. YES.

04:50 PM 9 Q. AND --

04:50 PM 10 MR. GARRIGAN: YOUR HONOR, AGAIN I NEED TO MAKE

04:51 PM 11 AN OBJECTION ON THE GROUNDS OF OPTIONAL COMPLETENESS.

04:51 PM 12 THE COURT: WELL, YOU CAN MAKE IT AND YOU CAN

04:51 PM 13 INTRODUCE ANYTHING YOU WANT TO OUT OF THE SAME DEPOSITION

04:51 PM 14 AS A PRIOR CONSISTENT STATEMENT ON YOUR OWN TIME, BUT NOT

04:51 PM 15 ON THE DEFENDANT'S TIME.

04:51 PM 16 MR. GARRIGAN: ALL RIGHT. THANK YOU.

04:51 PM 17 BY MS. MAHONY:

04:51 PM 18 Q. MR. POPE, IN YOUR DEPOSITION, IN THE -- WHAT WE JUST

04:51 PM 19 READ, THERE'S NO MENTION OF AN X-RAY TEST, IS THERE?

04:51 PM 20 A. I FAILED TO MENTION THAT I GUESS.

04:51 PM 21 Q. OKAY.

04:51 PM 22 A. BUT I DID SAY A SERIES OF THREE TESTS.

04:51 PM 23 Q. NOW, MR. POPE, AFTER MR. BARBAY TOLD YOU ABOUT THE

04:51 PM 24 TEST, YOU TOLD HIM "I'M NOT SURE I CAN PASS THE TEST," IS

04:51 PM 25 THAT AN ACCURATE STATEMENT?

04:51 PM 1 A. THAT'S AN ACCURATE STATEMENT. I WASN'T FOR SURE

04:51 PM 2 THAT I COULD PASS THE TEST.

04:51 PM 3 Q. AND THAT'S BECAUSE ALL YOUR PRIOR EXPERIENCE HAD

04:51 PM 4 BEEN IN MIG WELDING, CORRECT?

04:52 PM 5 A. STICK WELDING.

04:52 PM 6 Q. I THOUGHT YOUR PRIOR EXPERIENCE --

04:52 PM 7 A. IS IN MIG, YES.

04:52 PM 8 Q. SO YOU DIDN'T HAVE ANY STICK WELDING EXPERIENCE?

04:52 PM 9 A. JUST AT HOME. I HAD A WELDING MACHINE AT HOME.

04:52 PM 10 Q. AND YOU'VE DONE SOME STICK WELDING SINCE YOU'VE BEEN

04:52 PM 11 AT LUFKIN INDUSTRIES, ISN'T THAT CORRECT?

04:52 PM 12 A. THAT'S CORRECT.

04:52 PM 13 Q. AND AT THE TIME OF THIS INTERVIEW YOU HAD NEVER

04:52 PM 14 TAKEN A BEND TEST, HAD YOU?

04:52 PM 15 A. NO.

04:52 PM 16 Q. NEVER TAKEN A STRESS TEST?

04:52 PM 17 A. NO.

04:52 PM 18 Q. IN FACT, YOU HAD NEVER TAKEN ANY KIND OF WELDING

04:52 PM 19 TEST, ISN'T THAT CORRECT, MR. POPE?

04:52 PM 20 A. THAT'S CORRECT.

04:52 PM 21 Q. NOW, MR. BARBAY'S RESPONSE TO THAT WAS: "WELL, IF

04:52 PM 22 YOU AREN'T SURE YOU CAN PASS THE TEST, YOU CAN HIRE ON AS

04:52 PM 23 A HELPER AND GET YOUR FOOT IN THE DOOR AND PRACTICE AND

04:52 PM 24 THEN TAKE THE TEST"? THAT WAS MR. BARBAY'S RESPONSE,

04:52 PM 25 WASN'T IT, MR. POPE?

TRANSCRIPT OF PROCEEDINGS

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04:52 PM 1 A. YES.

04:53 PM 2 Q. AND YOU TOLD MR. BARBAY "THAT'S WHAT I WANT TO DO,"

04:53 PM 3 ISN'T THAT CORRECT, MR. POPE?

04:53 PM 4 A. THAT'S CORRECT.

04:53 PM 5 Q. NOW, DURING YOUR INTERVIEW WITH MR. BARBAY, MR.

04:53 PM 6 BARBAY DIDN'T TALK ABOUT ANY OTHER DIVISIONS AT LUFKIN,

04:53 PM 7 DID HE?

04:53 PM 8 A. JUST THE TRAILER DIVISION.

04:53 PM 9 Q. JUST THE TRAILER DIVISION. MR. BARBAY NEVER LED YOU

04:53 PM 10 TO BELIEVE THAT YOU WOULD BE WORKING ANYWHERE OTHER THAN

04:53 PM 11 THE TRAILER DIVISION, DID HE?

04:53 PM 12 A. HE TOLD ME HE DIDN'T KNOW WHERE I WOULD BE WORKING.

04:53 PM 13 Q. WELL, YOU KNEW YOU WOULD BE WORKING IN THE TRAILER

04:53 PM 14 DIVISION?

04:53 PM 15 A. IN THE TRAILER DIVISION, YES.

04:53 PM 16 Q. OKAY. AND MR. BARBAY IN FACT NEVER TALKED ABOUT THE

04:53 PM 17 FOUNDRY DIVISION AT ANY POINT DURING YOUR INTERVIEW, DID

04:53 PM 18 HE?

04:53 PM 19 A. NO.

04:53 PM 20 Q. FINALLY, A LAST QUESTION ON THIS INTERVIEW, YOU SAID

04:53 PM 21 THAT YOU WERE -- YOU TESTIFIED THAT YOU WERE DISCOURAGED

04:54 PM 22 BY MR. BARBAY. NOW, YOU WERE DISCOURAGED --

04:54 PM 23 WELL, YOUR TESTIMONY IS THAT WHAT MR. BARBAY DID

04:54 PM 24 TO DISCOURAGE YOU IS THAT HE TOLD YOU ABOUT THE WELDING

04:54 PM 25 TEST?

TRANSCRIPT OF PROCEEDINGS

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04:54 PM 1 A. HE TOLD ME IT WAS A DIFFICULT WELDING TEST.

04:54 PM 2 Q. OKAY. BUT THAT'S IT, HE SAID THERE'S A DIFFICULT
04:54 PM 3 TEST?

04:54 PM 4 A. YES, AND IF I FAILED IT, I HAVE TO WAIT SIXTY DAYS
04:54 PM 5 BEFORE I COULD REAPPLY, NO JOB. AT THE TIME I WAS
04:54 PM 6 UNEMPLOYED.

04:54 PM 7 Q. AND YOU DECIDED TO SIGN ON AS A HELPER AND PRACTICE
04:54 PM 8 AND TAKE THE WELDING TEST THAT WAY?

04:54 PM 9 A. RIGHT, GET MY FOOT IN THE DOOR.

04:54 PM 10 Q. AND YOU STARTED TO WORK IN THE TRAILER DIVISION ON
04:54 PM 11 JULY 21, 2003, CORRECT?

04:54 PM 12 A. CORRECT.

04:54 PM 13 Q. AND I THINK ACTUALLY ON YOUR FIRST DAY AFTER WORK
04:54 PM 14 DIDN'T YOU DO SOME PRACTICE WELDING?

04:54 PM 15 A. THAT'S INCORRECT.

04:54 PM 16 Q. WHAT ABOUT ON YOUR SECOND DAY?

04:54 PM 17 A. THAT'S CORRECT.

04:54 PM 18 Q. SO YOUR SECOND DAY AT LUFKIN YOU DID SOME PRACTICE
04:54 PM 19 WELDING, AND YOU DID IT AT LUFKIN'S FACILITIES, DIDN'T
04:54 PM 20 YOU?

04:54 PM 21 A. THAT'S CORRECT.

04:54 PM 22 Q. AND YOU DID IT USING LUFKIN'S EQUIPMENT, DIDN'T YOU?

04:55 PM 23 A. WELDING EQUIPMENT, YES.

04:55 PM 24 Q. WELDING EQUIPMENT, THAT'S CORRECT.

04:55 PM 25 AND YOU TESTIFIED SEVERAL OF YOUR CO-FELLOW

TRANSCRIPT OF PROCEEDINGS

211

04:55 PM 1 EMPLOYEES ENCOURAGED YOU TO PRACTICE AND TO TAKE THE
04:55 PM 2 WELDING TEST, RIGHT?

04:55 PM 3 A. THEY ENCOURAGED ME TO TAKE THE TEST, YES.

04:55 PM 4 Q. AND YOU MENTIONED ONE MAN, KENNETH RICH. NOW,
04:55 PM 5 KENNETH RICH, HE'S A LEAD MAN, IS THAT CORRECT?

04:55 PM 6 A. KIND OF A LEAD MAN, YES.

04:55 PM 7 Q. KIND OF A LEAD MAN? AND HE'S WHITE, ISN'T HE?

04:55 PM 8 A. YES.

04:55 PM 9 Q. AND AFTER THE SECOND DAY, YOU PRACTICED AGAIN THE
04:55 PM 10 NEXT DAY, DIDN'T YOU?

04:55 PM 11 A. NO, I DIDN'T PRACTICE.

04:55 PM 12 Q. WELL, AFTER YOU PRACTICED ON THAT SECOND DAY, THE
04:55 PM 13 THIRD DAY, DIDN'T YOU -- THE NEXT TIME YOU PRACTICED, YOU
04:55 PM 14 PRACTICED WITH MR. ROSS, THE WELDING TECHNICIAN, DIDN'T
04:55 PM 15 YOU?

04:55 PM 16 A. I MADE A WELD FOR HIM. IT WASN'T A PRACTICE. I WAS
04:55 PM 17 JUST MAKING A WELD. IT WAS KIND OF A PRETEST I GUESS.

04:55 PM 18 Q. KIND OF A PRETEST, BECAUSE YOU KNEW IF YOU TOOK THE
04:55 PM 19 TEST AND YOU DIDN'T PASS IT, YOU WOULD HAVE TO WAIT SIXTY
04:55 PM 20 DAYS BEFORE YOU COULD TAKE IT AGAIN?

04:56 PM 21 A. SIX WEEKS.

04:56 PM 22 Q. OR YOU WOULD HAVE TO WAIT SIX WEEKS? THAT'S WHAT
04:56 PM 23 YOU'RE UNDERSTANDING, CORRECT?

04:56 PM 24 SO HE LET YOU TAKE A PRACTICE WELD?

04:56 PM 25 A. EXCUSE ME?

TRANSCRIPT OF PROCEEDINGS

212

04:56 PM 1 Q. SO HE LET YOU TAKE A PRACTICE WELD SO YOU WOULD KNOW

04:56 PM 2 IF YOU COULD TAKE THE TEST AND --

04:56 PM 3 A. HE TOLD ME TO SHOW HIM WHAT I COULD DO AS FAR AS A

04:56 PM 4 WELDER.

04:56 PM 5 Q. OKAY.

04:56 PM 6 A. AND I SHOWED HIM WHAT I COULD DO.

04:56 PM 7 Q. AND AGAIN, THAT WAS AT LUFKIN'S FACILITIES, WASN'T

04:56 PM 8 IT?

04:56 PM 9 A. YES.

04:56 PM 10 Q. AND IT WAS USING LUFKIN'S EQUIPMENT, WASN'T IT?

04:56 PM 11 A. YES.

04:56 PM 12 Q. AND MR. ROSS SET YOU UP FOR A TEST THE NEXT DAY,

04:56 PM 13 DIDN'T HE?

04:56 PM 14 A. YES.

04:56 PM 15 Q. AND YOU PASSED THE TEST?

04:56 PM 16 A. YES.

04:56 PM 17 Q. ISN'T THAT CORRECT?

04:56 PM 18 MS. MAHONY: YOUR HONOR, I WANT TO APPROACH.

04:56 PM 19 BY MS. MAHONY:

04:56 PM 20 Q. I WANT TO -- I JUST WANT TO REFRESH YOUR

04:56 PM 21 RECOLLECTION. MR. POPE, THIS IS A CLASS "A" WELDING TEST,

04:56 PM 22 AND THAT'S YOUR NAME AT THE TOP. WHAT'S THE DATE ON THIS

04:56 PM 23 TEST?

04:56 PM 24 A. 7-24-03.

04:57 PM 25 Q. OKAY. THANK YOU. SO JULY 24, 2003. SO LET ME

TRANSCRIPT OF PROCEEDINGS

213

04:57 PM 1 SUMMARIZE THIS. YOU STARTED WORK AT LUFKIN ON JULY 21,
04:57 PM 2 2003, ISN'T THAT CORRECT?

04:57 PM 3 A. THAT'S CORRECT.

04:57 PM 4 Q. YOU PRACTICED ONCE, YOUR SECOND DAY OF WORK, AND YOU
04:57 PM 5 PRACTICED AGAIN SOMETIME THE SECOND, MAYBE THE THIRD DAY.
04:57 PM 6 THIS SAYS YOU TOOK THE TEST ON A THURSDAY. BASICALLY YOU
04:57 PM 7 STARTED ON A MONDAY?

04:57 PM 8 MR. GARRIGAN: OBJECTION. SHE'S TRYING TO READ
04:57 PM 9 THAT DOCUMENT INTO EVIDENCE. IT'S COMPLETELY HEARSAY.
04:57 PM 10 IT'S NOT A MATTER OF EVIDENCE. IT'S ASSUMING --

04:57 PM 11 THE COURT: OH, IT'S WHAT HE'S ALREADY TESTIFIED
04:57 PM 12 TO.

04:57 PM 13 YOU TOOK THE TEST AND YOU PASSED IT THE THIRD
04:57 PM 14 DAY YOU WORKED THERE, IS THAT CORRECT?

04:57 PM 15 THE WITNESS: THE FOURTH DAY, SIR.

04:57 PM 16 THE COURT: THE FOURTH DAY? ALL RIGHT.

04:57 PM 17 BY MS. MAHONY:

04:57 PM 18 Q. OKAY. SO YOU STARTED WORK ON MONDAY, YOU TOOK THE
04:57 PM 19 TEST ON THURSDAY, YOU WERE PROMOTED TO WELDER, AND YOU
04:57 PM 20 WERE GIVEN A THREE-DOLLAR RAISE, AND ALL THIS OCCURRED
04:57 PM 21 WITHIN --

04:57 PM 22 THE COURT: THREE-O-FOUR.

04:57 PM 23 MS. MAHONY: PARDON?

04:57 PM 24 THE COURT: THREE-O-FOUR.

04:57 PM 25 BY MS. MAHONY:

04:58 PM 1 Q. A THREE-DOLLAR-AND-FOUR-CENTS RAISE. ACTUALLY, YOU
04:58 PM 2 WERE MAKING ELEVEN DOLLARS AND FORTY-FOUR CENTS AN HOUR,
04:58 PM 3 OR YOU WERE WHEN YOU GOT THE WELDING RAISE AND PROMOTION?

04:58 PM 4 A. YES.

04:58 PM 5 Q. THE CLASSIFICATION. OKAY. SO BASICALLY, IF I HEAR
04:58 PM 6 YOU RIGHT, MR. POPE, EVERYTHING THAT MR. BARBAY TOLD YOU
04:58 PM 7 AT THAT INTERVIEW WAS EXACTLY WHAT HAPPENED? YOU HIRED ON
04:58 PM 8 AS A HELPER, YOU GOT TO PRACTICE WELDING, YOU TOOK THE
04:58 PM 9 WELDING TEST, YOU BECAME A WELDER, YOU GOT A THREE-DOLLAR
04:58 PM 10 RAISE, ALL WITHIN FOUR DAYS OF STARTING AT LUFKIN
04:58 PM 11 INDUSTRIES?

04:58 PM 12 A. BUT THERE WAS NO BEND TEST, NO STRESS TEST, NO
04:58 PM 13 X-RAY. I TALKED TO MR. ROSS AND HE SAID THE ONLY THING
04:58 PM 14 THEY DO IS A VISUAL.

04:58 PM 15 Q. AGAIN, MR. POPE --

04:58 PM 16 MS. MAHONY: NO FURTHER QUESTIONS.

04:58 PM 17 THE COURT: ANYTHING FURTHER? ANYTHING OUT OF
04:58 PM 18 THE DEPOSITION FOR OPTIONAL COMPLETENESS?

04:59 PM 19 MR. GARRIGAN: YES, YOUR HONOR.

04:59 PM 20 MAY I APPROACH THE WITNESS? I'LL BE VERY QUICK
04:59 PM 21 HERE.

04:59 PM 22 THE COURT: ALL RIGHT.

04:59 PM 23 REDIRECT EXAMINATION

04:59 PM 24 BY MR. GARRIGAN:

04:59 PM 25 Q. I'VE GOT THE TINY VERSION OF THE DEPOSITION

TRANSCRIPT OF PROCEEDINGS

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04:59 PM 1 TRANSCRIPT. BUT LET ME DIRECT YOUR ATTENTION TO PAGE 52.

04:59 PM 2 A. OKAY.

04:59 PM 3 Q. NOW, BEFORE MS. MAHONY CITED SOME TESTIMONY FROM
04:59 PM 4 PAGE 50. AT PAGE 52, LINE 13 THROUGH 17, SHE READ YOU, OR
04:59 PM 5 SHE ASKED YOU THIS QUESTION: "WELL, WHY WEREN'T YOU SURE
04:59 PM 6 YOU COULD PASS THE TEST?"

04:59 PM 7 AND WHAT WAS YOUR ANSWER TO HER?

04:59 PM 8 A. "BECAUSE I WAS TOLD THEY DO A BEND AND A STRESS
04:59 PM 9 TEST, AND IF I'M NOT MISTAKEN, I THINK HE SAID AN X-RAY,
04:59 PM 10 TOO."

04:59 PM 11 Q. SO YOU DID TELL HER ABOUT THE X-RAY TEST DURING YOUR
05:00 PM 12 DEPOSITION, DIDN'T YOU?

05:00 PM 13 A. CORRECT.

05:00 PM 14 Q. NOW, WAS THE TEST DESCRIBED BY MR. BARBAY ACCURATE?

05:00 PM 15 MS. MAHONY: OBJECTION.

05:00 PM 16 THE WITNESS: NO.

05:00 PM 17 MS. MAHONY ASKED AND ANSWERED. WE COVERED THAT
05:00 PM 18 ON DIRECT.

05:00 PM 19 MR. GARRIGAN: I'LL PASS THE WITNESS, YOUR
05:00 PM 20 HONOR.

05:00 PM 21 THE COURT: THE OBJECTION IS SUSTAINED.

05:00 PM 22 HOWEVER, YOU WERE TOLD THERE WOULD BE AN X-RAY
05:00 PM 23 TEST?

05:00 PM 24 THE WITNESS: YES, SIR.

05:00 PM 25 THE COURT: WAS THERE?

TRANSCRIPT OF PROCEEDINGS

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05:00 PM 1 THE WITNESS: NO, SIR.

05:00 PM 2 THE COURT: YOU WERE TOLD THERE WOULD BE A

05:00 PM 3 STRESS TEST?

05:00 PM 4 THE WITNESS: YES, SIR.

05:00 PM 5 THE COURT: WAS THERE?

05:00 PM 6 THE WITNESS: NO, SIR.

05:00 PM 7 THE COURT: YOU WERE TOLD THERE WOULD BE A BEND

05:00 PM 8 TEST?

05:00 PM 9 THE WITNESS: YES, SIR.

05:00 PM 10 THE COURT: WAS THERE?

05:00 PM 11 THE WITNESS: NO, SIR.

05:00 PM 12 THE COURT: DID YOU GET PROMOTED WITHOUT ANY OF

05:00 PM 13 THOSE TESTS?

05:00 PM 14 THE WITNESS: YES, SIR.

05:00 PM 15 THE COURT: IN VIEW OF MY QUESTIONS, DO ANY

05:00 PM 16 COUNSEL HAVE ANY TESTS, I MEAN, ANY QUESTIONS?

05:00 PM 17 MR. GARRIGAN: NONE FROM THE PLAINTIFF.

05:00 PM 18 MS. MAHONY: JUST ONE.

05:00 PM 19 RE CROSS EXAMINATION

05:00 PM 20 BY MS. MAHONY:

05:00 PM 21 Q. MR. POPE, AFTER YOU TOOK THE TEST, THE WELDING TEST,

05:01 PM 22 YOU LEFT THE PLANT IMMEDIATELY AFTER THAT, CORRECT?

05:01 PM 23 A. EXCUSE ME?

05:01 PM 24 Q. AFTER YOU TOOK THE WELDING TEST, YOU LEFT

05:01 PM 25 IMMEDIATELY AFTER THAT, DIDN'T YOU?

05:01 PM 1 A. LEFT? WHAT DO YOU MEAN?

05:01 PM 2 Q. LEFT THE FACILITY. YOU WENT HOME?

05:01 PM 3 A. YES.

05:01 PM 4 Q. AND THE WELD, IT WAS STILL HOT AT THAT TIME,
05:01 PM 5 CORRECT, AND MR. ROSS HAD TAKEN IT INTO THE OFFICE TO LOOK
05:01 PM 6 IT OVER, CORRECT?

05:01 PM 7 A. I'M NOT SURE.

05:01 PM 8 Q. OKAY. SO YOU REALLY DON'T KNOW WHAT MR. ROSS,
05:01 PM 9 EXACTLY WHAT HE DID?

05:01 PM 10 A. I KNOW WHAT HE TOLD ME.

05:01 PM 11 Q. OKAY.

05:01 PM 12 MS. MAHONY: NO FURTHER QUESTIONS.

05:01 PM 13 REDIRECT EXAMINATION

05:01 PM 14 BY MR. GARRIGAN:

05:01 PM 15 Q. WHAT DID MR. ROSS TELL YOU ABOUT THE TEST?

05:01 PM 16 A. THEY DO A VISUAL TEST.

05:01 PM 17 MS. MAHONY: OBJECTION, HEARSAY. MR. ROSS IS A
05:01 PM 18 CLASS MEMBER.

05:01 PM 19 THE COURT: SUSTAINED.

05:01 PM 20 IS HE REACHABLE BY SUBPOENA?

05:01 PM 21 MS. MAHONY: SURE.

05:01 PM 22 THE COURT: ALL RIGHT. ANYTHING ELSE?

05:01 PM 23 MR. GARRIGAN: NOT FROM THE PLAINTIFFS. THANK
05:01 PM 24 YOU.

05:01 PM 25 THE COURT: THE LAST QUESTION AND ANSWER ARE

TRANSCRIPT OF PROCEEDINGS

218

05:01 PM 1 SUSTAINED, WON'T BE CONSIDERED. THEY'RE HEARSAY.

05:02 PM 2 ANYTHING FURTHER?

05:02 PM 3 MR. GARRIGAN: YOUR HONOR, I WOULD POINT OUT

05:02 PM 4 THAT IT'S NOT HEARSAY. MR. ROSS IS A SUPERVISOR. HE TOLD

05:02 PM 5 THIS MAN IT WAS ONLY A VISUAL TEST. THAT'S AN ADMISSION

05:02 PM 6 BY --

05:02 PM 7 THE COURT: I'VE RULED ON THAT.

05:02 PM 8 MR. GARRIGAN: OKAY.

05:02 PM 9 THE COURT: AND I'VE ASKED SOME QUESTIONS.

05:02 PM 10 MR. GARRIGAN: NO FURTHER QUESTIONS.

05:02 PM 11 THE COURT: DO YOU HAVE ANYTHING ELSE?

05:02 PM 12 MS. MAHONY: NOTHING FURTHER, YOUR HONOR.

05:02 PM 13 THE COURT: YOU'RE EXCUSED.

05:02 PM 14 WE'RE ADJOURNED UNTIL WEDNESDAY MORNING AT 9:00

05:02 PM 15 O'CLOCK.

05:02 PM 16 MR. GARRIGAN: THANK YOU, YOUR HONOR.

05:02 PM 17 MR. HAMEL: YOUR HONOR, YOU HAD EARLIER

05:02 PM 18 MENTIONED THAT YOU MIGHT BE SEATING A JURY ON WEDNESDAY

05:02 PM 19 MORNING. DO YOU WANT US TO COME WEDNESDAY MORNING OR DO

05:02 PM 20 YOU WANT --

05:02 PM 21 THE COURT: I'LL LET YOU KNOW TUESDAY.

05:02 PM 22 MR. HAMEL: WELL, I JUST --

05:02 PM 23 THE COURT: I MEAN, SOMETIME TUESDAY. I'LL LET

05:02 PM 24 YOU KNOW IF --

05:02 PM 25 I WON'T BE SEATING A JURY. I MIGHT BE SELECTING

TRANSCRIPT OF PROCEEDINGS

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05:02 PM 1 A JURY FOR A LATER HEARING.

05:02 PM 2 MR. HAMEL: I JUST WANTED TO KNOW IF YOU WANTED

05:03 PM 3 US TO CALL YOUR CHAMBERS SO YOU DIDN'T HAVE TO CALL US.

05:03 PM 4 WE COULD CALL ON TUESDAY AFTERNOON IF YOU WANTED.

05:03 PM 5 THE COURT: I'LL E-MAIL YOU.

05:03 PM 6 MR. HAMEL: THAT WILL BE GREAT.

05:03 PM 7 THANK YOU, YOUR HONOR. THAT'S FINE.

05:03 PM 8 THE COURT: I DON'T HAVE ANY IDEA WHAT YOUR

05:03 PM 9 E-MAIL ADDRESS IS.

05:03 PM 10 THE CSO: ALL RISE.

05:03 PM 11 THE COURT: WE'RE IN RECESS UNTIL WEDNESDAY

05:03 PM 12 MORNING AT 9:00 O'CLOCK, UNLESS YOU GET WORD OTHERWISE.

05:03 PM 13 THANK YOU VERY MUCH.

14 (RECESS UNTIL 9:00 A.M., DECEMBER 10, 2003)

15

16

17

CERTIFICATE

18

I CERTIFY THAT THE FOREGOING IS A CORRECT

19

TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

20

ABOVE-ENTITLED MATTER.

21

22

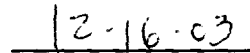


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WENDELL R. PARKS, CP CM

24

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DATE