

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF KANSAS

DANNY SMITH,)
)
 Plaintiff,) District Court
v.) Case No.
) 15-1304
MILLENNIUM RAIL, INC. And)
MARK BAUMGARDNER,)
)
 Defendant.)

TRANSCRIPT OF EXCERPT OF JURY TRIAL
TESTIMONY OF JAMIE WILSON

On the 1st day of June, 2017, came on to be heard proceedings in the above-entitled and numbered cause before the HONORABLE ERIC F. MELGREN, Judge of the United States District Court for the District of Kansas, sitting in Wichita, commencing at 8:34 A.M. Proceedings recorded by machine shorthand. Transcript produced by computer-aided transcription.

APPEARANCES:

The plaintiff appeared by and through:

Mr. Sean M. McGivern
Graybill & Hazlewood, LLC
218 North Mosley Street
Wichita, Kansas 67202

The defendants appeared, Mr. Baumgardner in person, and by and through:

Mr. Anthony B. Byergo
Ms. Stacy M. Bunck
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4520 Main Street
Suite 400
Kansas City, Missouri 64111

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WITNESSES

For the Defendant

JAMIE WILSON

Direct Examination By Ms. Bunck

3

Cross-Examination By Mr. McGivern

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REPORTER'S CERTIFICATE

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JAMIE WILSON,
having been first duly sworn to testify the truth, the whole
truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. BUNCK:

Q. Good morning. Could you please state your name.

A. Jamie Wilson.

Q. And by whom are you employed, Ms. Wilson?

A. Watco Companies.

Q. When did you start working for Watco?

A. September 24th, 2007.

Q. So you've been there coming on ten years; is that
right?

A. Ten years in September, yes.

Q. And what is your title at Watco?

**A. I'm claims manager, insurance compliance and claims
manager. We wear multi hats at the company.**

Q. Do you work out of the Pittsburg office or in Neodesha?

A. Pittsburg.

Q. And can you explain to the jury a bit of your
educational background?

**A. I have an associate's degree in science from Fort Scott
Community College and then a certificate of managed health
care, which is equivalent to an extra semester at the junior**

09:21:55 1 college for a new program that they had brought on back in that
09:21:59 2 day.

09:22:00 3 Q. And you mention that you took an extra semester. What
09:22:04 4 steps exactly did you take to acquire that managed health
09:22:07 5 certification?

09:22:08 6 A. I enrolled -- like I said, it was a new program they
09:22:11 7 were bringing in. They have several insurance companies in
09:22:14 8 Fort Scott, and so it was -- I enrolled in it, was accepted in
09:22:20 9 it, and completed the course, which equivocated [sic] to, like,
09:22:25 10 medical terminology, management of health care claims, and
09:22:28 11 payment structures and things like that, so insurance
09:22:32 12 information.

09:22:34 13 Q. And you explained to the jury what your title is, but
09:22:37 14 what are your responsibilities with the company?

09:22:42 15 A. I -- the insurance compliance, I handle, like, our
09:22:45 16 insurance certificates. Any requests that we get from
09:22:48 17 customers, vendors, that we are required to provide proof of
09:22:52 18 insurance, I provide those for all of our companies and
09:22:55 19 entities with Watco.

09:22:57 20 On the claims management side of that, I handle work
09:23:02 21 comp and help case manage. I'm basically the liaison with our
09:23:08 22 management, with the operations side, with our insurance
09:23:12 23 company, as well as if it goes into litigation, I interact with
09:23:16 24 attorneys involved with the team members and doctors, but
09:23:20 25 mostly through insurance, our insurance providers, as well. I

09:23:24 1 **also handle our auto claims in that respect.**

09:23:28 2 Q. At any given time can you estimate how many open
09:23:32 3 workers' comp claims you might have?

09:23:34 4 **A. At any given time there could be anywhere from 30 to 50**
09:23:38 5 **claims.**

09:23:39 6 Q. And can you explain just generally to the jury just
09:23:42 7 kind of some examples of what types of injuries you commonly
09:23:45 8 see.

09:23:48 9 **A. Repetitive traumas, back injuries, knees, shoulders,**
09:23:54 10 **carpal tunnel is one. Any time you have a job description that**
09:24:00 11 **it's repetitive in nature, you're going to see situations where**
09:24:05 12 **that could come about. That pretty much for the most part.**
09:24:09 13 **Soft tissue is a tough one, but, you know, they happen, the**
09:24:12 14 **back, that's back injuries and whatnot, and they're always**
09:24:15 15 **turned in to insurance as well, so --**

09:24:17 16 Q. Does the company have an internal process for
09:24:20 17 responding to workers' compensation claims?

09:24:23 18 **A. We do. We have --**

09:24:25 19 Q. Sorry. If you can explain. You anticipated my next
09:24:29 20 question.

09:24:29 21 **A. We do. We actually try to drive this out in new-hire**
09:24:35 22 **information, in any kind of safety stand-downs, if you will.**
09:24:39 23 **They have -- most locations that we have have weekly --**
09:24:42 24 **sometimes it's morning or as a shift change, they go over**
09:24:45 25 **safety procedures and just talk something through.**

09:24:47 1 If we see trends where we've had a situation that
09:24:51 2 something happened at another location, we will drill that out.
09:24:54 3 But any time a situation comes about, we report that
09:24:59 4 internally. We drive that out to the team to report that to
09:25:03 5 your manager, your supervisor, so that they know we want to
09:25:07 6 make certain that it doesn't happen again, or if there's a
09:25:11 7 medical necessity, you're taken care of.

09:25:14 8 With that said, supervision, management's put on
09:25:17 9 notice, there's an internal report that then is filled out, and
09:25:22 10 sent out through the company online. At that point I get an
09:25:28 11 email. It shows me, hey, we've got another -- a new incident
09:25:32 12 coming through, go out and take a look at it. And, actually,
09:25:37 13 it's right here in front of me. But it's illness/injury
09:25:42 14 report. And then I take information off of that, I'll read
09:25:45 15 through it. If I have questions, I'm calling whoever prepared
09:25:48 16 the report, which usually would be safety, the EHS manager,
09:25:53 17 would be management, maybe the supervisor. If I can't get
09:25:57 18 ahold of any of those, I'm trying anyone, 'cause I need to have
09:26:00 19 answers to my questions so that I can then put insurance on
09:26:06 20 notice 'cause they're going to have questions too.

09:26:11 21 You go -- we're a rural-based industry. An insurance
09:26:15 22 adjustor will come in and say, "I don't understand what you're
09:26:18 23 even talking about," so I have to make certain I understand
09:26:21 24 what they were doing and the process of how they got hurt and
09:26:24 25 explain that, in layman's terms, to, you know, an adjustor

09:26:28 1 that's just used to seeing an insurance claim come through, not
09:26:34 2 rail-based, from that rail industry. So that's where I'm
09:26:36 3 interacting with them pretty much as soon as I get that if I
09:26:40 4 have questions so that I can be informed as well.

09:26:42 5 Q. And does the company have a policy regarding light
09:26:47 6 duty?

09:26:50 7 A. We do. Work-related incidents, we try to accommodate
09:26:53 8 whatever we can. What -- when the question is posed to me,
09:26:58 9 "Can we accommodate light duty?" my response back, whether it
09:27:02 10 be to insurance, "It depends on what the restrictions are."

09:27:09 11 Q. And why does it depend on the restrictions?

09:27:12 12 A. Based -- because what we -- well, we're not going to
09:27:14 13 put a position -- or a team member out there that's going to
09:27:18 14 put themselves in harm's way, or another team member, that
09:27:23 15 would aggravate that injury or put someone else in harm's way
09:27:27 16 as well.

09:27:27 17 Q. And, ma'am, I think you said, I believe, those are
09:27:30 18 still up there from the prior witness, but do you have
09:27:32 19 Exhibit 415 in front of you?

09:27:35 20 A. Yeah.

09:27:35 21 Q. Is that the employee injury and illness form? If you'd
09:27:38 22 just keep it up there, that would be perfect. So I'm going to
09:27:42 23 show you -- the jury, rather, what's been previously admitted
09:27:45 24 as Defendant's Exhibit 415, and that's a document you have in
09:27:48 25 front of you; correct?

09:27:51 1

A. Yes.

09:27:53 2

Q. And what is this document?

09:27:56 3

**A. This, as I previously referenced, the employee illness/
injury report, the first report of incident that puts the
company on notice that, hey, something happened.**

09:27:59 4

09:28:03 5

09:28:05 6

Q. And can you tell in Exhibit 415 who prepared this?

09:28:09 7

A. Yes.

09:28:10 8

Q. And who was that?

09:28:14 9

**A. It is usually at the bottom of the page where it says
Preparer. Cliff Hogan in this instance.**

09:28:17 10

09:28:21 11

Q. And then what does it say as the date that it was
prepared at the bottom?

09:28:24 12

09:28:28 13

A. 3-20 --

09:28:33 14

Q. 3-20 something. It's a little hard to read on that
copy, but in 2013; correct?

09:28:37 15

09:28:39 16

A. Yeah, it was in 2013.

09:28:39 17

Q. And, again, what is the purpose of this injury report?

09:28:42 18

**A. To put us on notice that we've had a situation, an
incident, coming through that we need to look into and take
care of appropriately, depending on the circumstances of that
incident.**

09:28:47 19

09:28:50 20

09:28:54 21

09:28:55 22

Q. And does the company have any expectations regarding
the reporting of injuries?

09:28:59 23

09:29:00 24

A. They're supposed to report everything.

09:29:03 25

Q. And to your knowledge as a long-term employee of the

09:29:07 1 company, are there ramifications for employees who do not
09:29:10 2 report injuries?

09:29:12 3 **A. There have been. I know, like -- I don't want to say**
09:29:18 4 **there's been some disciplinary as to write-ups as to why -- and**
09:29:23 5 **we're questioning why did you not. And that, that's out of my**
09:29:27 6 **realm. That's more on the operations side and management and**
09:29:31 7 **how they deem it necessary to the situation.**

09:29:33 8 **Q. But certainly, as an employee, you understand there's a**
09:29:36 9 **policy of immediately reporting; is that fair?**

09:29:39 10 **A. Yes. Yes, we want them to report everything, if not**
09:29:42 11 **only for the injury itself but for, you know what, a near-miss**
09:29:46 12 **situation, to prevent, go forward, so that we don't have to do**
09:29:49 13 **this report or mitigate or -- you know, not mitigate but take**
09:29:54 14 **care of and turn in to insurance. If nothing else, it's going**
09:29:58 15 **to save money. If we spend a little bit on the forefront, we**
09:30:02 16 **will save tons on the back end, and human factor.**

09:30:04 17 **Q. And what is that human factor?**

09:30:06 18 **A. That human factor, if I can keep -- you know what, I've**
09:30:09 19 **told my team and the people that I work with, put me out of a**
09:30:12 20 **job. I would much rather not have a job than to have to work a**
09:30:17 21 **claim with one of when one of my team is injured.**

09:30:20 22 **Q. And why is that? Do you -- can you explain to the jury**
09:30:24 23 **why you have that philosophy?**

09:30:26 24 **A. I don't want to see anyone get hurt. If we can prevent**
09:30:29 25 **it, go forward, why would we not?**

09:30:32 1 Q. And I believe you testified a little bit. I want to
09:30:34 2 touch on a little bit more. Does the company study workers'
09:30:39 3 comp injury trends and near-misses?

09:30:41 4 **A. We do.**

09:30:42 5 Q. And can you explain to the jury what the purpose of
09:30:44 6 that is.

09:30:44 7 **A. Again, to -- it's preventative in nature. If we can**
09:30:47 8 **stop something from happening, if we see a company is trending**
09:30:51 9 **toward it, we may have several near-misses, potential injuries,**
09:30:57 10 **let's look at our safety processes and procedures and let's try**
09:31:00 11 **to fix, or drive out the information that, hey, pay attention,**
09:31:05 12 **let's refocus, retrain wherever we can, and prevent some of**
09:31:11 13 **these from even happening.**

09:31:12 14 Q. And according to Exhibit 415, what steps were taken
09:31:18 15 after Mr. Smith reported the fall in March of 2013?

09:31:22 16 **A. He reported it to his EHS manager, who reported it to**
09:31:28 17 **me. At that point he was taken to a medical provider, and it**
09:31:34 18 **was turned in to Travelers. We took care of the claim. If I**
09:31:41 19 **remember correctly, the notes from that initial visit were**
09:31:46 20 **"Ice, wear your braces from the previous personal health issue,**
09:31:50 21 **and then follow-up as needed, p.r.n., as necessary." (As**
09:31:55 22 **read.)**

09:31:55 23 Q. Okay. And there has been some testimony earlier, I
09:31:58 24 asked what p.r.n. means. And can you just explain.

09:32:01 25 **A. As medically necessary. Basically it's acronym for**

09:32:04 1 that, yeah.

09:32:04 2 Q. How does the company decide which medical professionals
09:32:08 3 to send employees to when they report an injury?

09:32:12 4 A. It is not a company choice, per se. We will work with
09:32:20 5 the insurance company. What we have tried -- if any of you
09:32:25 6 have health insurance and you may have a preferred provider
09:32:27 7 network, there are networks within the Travelers system as well
09:32:31 8 where doctors have been, hey, yeah, we'll take fee schedules.
09:32:34 9 It's kind of -- it is a way to save the company some money, but
09:32:38 10 it's also they have to pass certification issue --
09:32:42 11 classifications, and basically be medically certified in the
09:32:46 12 state that they're providing medical care in, so they go
09:32:49 13 through a rigorous -- I don't want to say "process" as well
09:32:56 14 before they're even admitted within that network.

09:32:59 15 I will talk with my account executive with Travelers
09:33:05 16 and/or adjustors, if necessary, to, "Hey, we're in a really
09:33:09 17 remote area. Help me find someone that is good," that is
09:33:14 18 maybe -- especially if we have to do follow-up with a
09:33:19 19 specialty, we're going to go try to find someone that has -- is
09:33:22 20 renowned for that specialty to, you know what, I'm not going to
09:33:27 21 send you, if you've had knee -- have knee issues, to a back
09:33:31 22 doctor, or, you know what, if your shoulder's hurting, you
09:33:34 23 know, I'm probably not going to send you to a neurosurgeon. I
09:33:38 24 mean, that would be overkill. But just saying, you know what,
09:33:41 25 we try to specialize. But it is a conglomerate. We work with

09:33:44 1 Travelers, our insurance carrier, to find a provider that's
09:33:48 2 close in proximity to our team member, 'cause I really don't
09:33:51 3 want them to have to drive across the state, although if that's
09:33:55 4 the only one available, we pay mileage, or we will take them to
09:34:02 5 that doctor as well.

09:34:03 6 Q. There's been some testimony that Neodesha's a small
09:34:06 7 town. In your experience, are there many medical doctors in
09:34:10 8 Neodesha?

09:34:10 9 A. No, there's not. And they come and go. We've had
09:34:14 10 providers that, 'cause it's so small, that have left, they've
09:34:19 11 gone on to the city or, you know what I mean, moved on to where
09:34:23 12 they could find more work or I don't know really why. I'm sure
09:34:27 13 it's just because of the small town.

09:34:30 14 Q. And do you establish relationships then with these
09:34:33 15 medical providers that are selected as being within a
09:34:36 16 specialty?

09:34:37 17 A. Sometimes.

09:34:37 18 Q. And what's --

09:34:38 19 A. The more local, like the first layer, the occupational
09:34:41 20 health clinics and that. Now, the specialty doctors not as
09:34:45 21 much because they -- they're a referral basis, so Travelers
09:34:50 22 will reach out to them to set up those appointments, but the
09:34:53 23 occupational health clinics, some of the -- just the local
09:35:00 24 providers, yes, I will, just to make certain that they'll
09:35:04 25 accept work comp, to get them set up so in the event that a

09:35:08 1 team member comes in needing medical care, it's an easy
09:35:12 2 transition, they're not sitting in a waiting room waiting for
09:35:14 3 me to say, yeah, hey, I'll take care of that or we're going to
09:35:18 4 pay that or, you know what I mean, it's already on file where
09:35:21 5 they can get them back in, get the medical they needed, and
09:35:24 6 then get -- be on their way.

09:35:27 7 Q. Can a Watco employee injured at work request a
09:35:30 8 different medical provider?

09:35:31 9 A. You can. There is a process. The state of Kansas, the
09:35:35 10 employer can direct care initially. A team member or an
09:35:42 11 injured employee, if you will -- we don't like using that E
09:35:47 12 word, employee; they're team members -- but they can request
09:35:50 13 through the division of work comp for a provider.

09:35:54 14 Q. Now, is your performance rating or your compensation
09:35:56 15 tied in any fashion to whether the company disputes workers'
09:36:00 16 compensation claims?

09:36:02 17 A. No, am I -- no, compensated? No, absolutely not.

09:36:05 18 Q. And have you ever been coached or reprimanded by the
09:36:09 19 company for not disputing a workers' compensation claim?

09:36:13 20 A. No.

09:36:14 21 Q. And does the company limit its relationship to only
09:36:18 22 those medical providers that tell Watco that employees are not
09:36:22 23 injured? Do you only go to the people who tell you, no, you're
09:36:27 24 not injured?

09:36:27 25 A. No. If that were the case, I wouldn't have 30 to 50

09:36:30 1 **claims open on my desk, approximately. But no, we don't.**

09:36:34 2 Q. And have you ever told a medical provider what medical
09:36:38 3 opinion he or she needs to render on behalf of the company?

09:36:41 4 **A. No.**

09:36:44 5 Q. Have you ever discontinued a relationship with a
09:36:47 6 medical provider on behalf of the company because that provider
09:36:50 7 did not provide the medical opinion you wanted to hear?

09:36:53 8 **A. No.**

09:36:53 9 Q. Now, you don't have a medical degree; correct?

09:36:56 10 **A. Correct.**

09:36:57 11 Q. Do you ever dispute the medical opinion of the
09:37:00 12 authorized medical providers?

09:37:01 13 **A. Absolutely not. I don't have the authority to do that.**

09:37:04 14 Q. So if you send an employee to a medical provider as
09:37:07 15 part of your job, will you defer to that medical provider's
09:37:12 16 opinion, regardless of what that opinion is?

09:37:14 17 **A. Defer it?**

09:37:15 18 Q. Correct. Will you rely on that medical provider's
09:37:18 19 opinion?

09:37:18 20 **A. Yes, yes, yes.**

09:37:20 21 Q. Do you have Exhibit 416 in front of you? I don't
09:37:25 22 believe we've gone over that today. I'll just go ahead and
09:37:28 23 bring it up. This has been preadmitted as Exhibit 416. If you
09:37:34 24 could acquaint yourself with that as I walk back to the
09:37:37 25 lectern.

09:37:37 1 **A. I know exactly what that is.**

09:37:42 2 Q. And what is Exhibit 416?

09:37:45 3 **A. This is, as I stated earlier, once I receive our**
09:37:50 4 **internal injury/illness report, this is the information I enter**
09:37:55 5 **into the Travelers reporting system, to put them on notice of a**
09:37:59 6 **claim.**

09:37:59 7 Q. So you generate this document; is that correct?

09:38:03 8 **A. I generate that, yep.**

09:38:05 9 Q. And did the company dispute that Mr. Smith actually
09:38:07 10 fell in March 2013, as he reported?

09:38:10 11 **A. No, there was no way to refute it.**

09:38:17 12 Q. At the end of that exhibit what is this document?

09:38:22 13 **A. That's the closing notice, once the claim was deemed**
09:38:29 14 **worthy of closing. I think this -- at this point he was no**
09:38:32 15 **longer seeking any further medical, and it had been -- it was**
09:38:38 16 **just closed out for inactivity.**

09:38:41 17 Q. And can you tell from this document when that closing
09:38:43 18 date is?

09:38:44 19 **A. 6-26-13.**

09:38:51 20 Q. Can a Watco employee seek additional treatment after
09:38:54 21 the initial referral to a workers' compensation doctor through
09:38:58 22 the workers' compensation system?

09:39:00 23 **A. Yes.**

09:39:00 24 Q. And between March 26, 2013, and June 26, 2013, before
09:39:06 25 this was closed out, did Mr. Smith request or seek any services

09:39:11 1 for treatment for that fall through workers' compensation after
09:39:15 2 he saw Dr. Amy Cunningham?

09:39:17 3 **A. No.**

09:39:18 4 Q. But I believe your testimony is he did have the right
09:39:21 5 to do that?

09:39:21 6 **A. He could have. We can open a claim at any given time.**
09:39:24 7 **Just because we received that closing notice, that means it's**
09:39:27 8 **closed at this time. As his last work status report came**
09:39:32 9 **through from the initial report from the doctor was that he was**
09:39:35 10 **return to work, no light duty status, ice, wear your braces,**
09:39:39 11 **but then follow up as necessary. There was no follow-up. So**
09:39:43 12 **45 to 60 days later, because of inactivity on the account, they**
09:39:48 13 **closed it out.**

09:39:49 14 **But if something should have changed with that, if he**
09:39:51 15 **would have gone to his supervisor, "Hey, I'm having issues, I'm**
09:39:55 16 **having" -- you know what, we'll reopen that back up, and send**
09:39:58 17 **him back to the treating physician, and reevaluate the**
09:40:01 18 **situation to see what's going on, and then proceed accordingly,**
09:40:05 19 **whatever, you know. If something has changed, we go from**
09:40:10 20 **there.**

09:40:10 21 Q. Do you recall that approximately a year after the fall
09:40:15 22 that you received a letter from a workers' comp attorney on
09:40:18 23 Mr. Smith's behalf?

09:40:19 24 **A. That was the only notice after the closing date that I**
09:40:22 25 **had received on this claim.**

09:40:24 1 Q. Now, there's been some testimony that Mr. Smith was on
09:40:28 2 a final written for efficiency and a final written for
09:40:32 3 attendance. But whether an employee is on zero step of
09:40:38 4 discipline or the last step of discipline when that employee
09:40:41 5 files a workers' compensation claim, does that change your
09:40:43 6 processing of the claim in any fashion?

09:40:45 7 A. No. It's just mere information on how to may possibly
09:40:51 8 handle the interactions of -- with the team member or with the
09:40:56 9 management. It's just that is a question I may ask, "Hey, is
09:40:59 10 there anything I need to know as background information?
09:41:03 11 What's going on? How's the work with this team member?" you
09:41:06 12 know, situations like that. But does it actually come into
09:41:09 13 play whether we deny a claim or pay a claim? No. That comes
09:41:17 14 from the medical provider itself. If they deem it medically
09:41:21 15 necessary to -- further on it becomes a compensable claim, then
09:41:24 16 that's how it is. At that point then I go into case-management
09:41:30 17 mode, let's get the treatments authorized, let's keep them on
09:41:33 18 schedule, go to the physical therapy treatments, whatever's
09:41:36 19 deemed necessary by the providers in their opinions, and then
09:41:39 20 get the bills paid and closed out.

09:41:41 21 My goal at that point is get the team member to as
09:41:44 22 close to a hundred percent, to maximum medical improvement,
09:41:48 23 that we can get and get 'em back to work.

09:41:51 24 Q. Now, if an employee is no longer with Watco, can they
09:41:55 25 still pursue their workers' compensation claim?

09:41:57 1 **A. Absolutely.**

09:41:58 2 Q. And would the status of Mr. Smith's employment make a
09:42:01 3 difference either way in the handling of that claim, from your
09:42:05 4 perspective?

09:42:05 5 **A. No. I ask only to be in the know, if we should**
09:42:11 6 **terminate someone, when that date is, because that is just**
09:42:15 7 **something, that if it becomes a litigated matter, that I will**
09:42:17 8 **relay out to our attorney that can come into play during a**
09:42:22 9 **negotiation period, only -- that's it. That's just for**
09:42:25 10 **knowledge. It's not used for much of anything else.**

09:42:28 11 Q. And if -- in your experience, managing workers' comp
09:42:32 12 claims for the company, is it common for an employee to raise a
09:42:36 13 workers' compensation claim a year after the injury and nine
09:42:39 14 months after the claim was closed out?

09:42:40 15 **A. It's not common. It's not not ever happened but it's**
09:42:45 16 **not common, no.**

09:42:46 17 Q. Does that raise any red flags to you?

09:42:49 18 **A. Yes, it does.**

09:42:50 19 Q. And why is that?

09:42:51 20 **A. Well, that was my question then back to, "Hey, what's**
09:42:54 21 **going on? Is there any employment issues? What's bringing**
09:43:00 22 **this back up to the forefront?"**

09:43:02 23 **It's just information provided then to Travelers to go**
09:43:06 24 **after any information that if there's any medical, has he**
09:43:10 25 **treated as well, you know what, to make sure is there something**

09:43:13 1 that we didn't know about he sought on his own and relay
09:43:17 2 information to Travelers to case manage on their end, to go
09:43:20 3 after information that I may not be able to.

09:43:23 4 Q. So you testified earlier that the company did not
09:43:27 5 dispute that Mr. Smith reported that he fell in March 2013.
09:43:32 6 Did you dispute the notice of representation from his attorney
09:43:36 7 a year later?

09:43:37 8 A. I didn't dispute it. I forwarded it on to the powers
09:43:40 9 that needed to know, and then we postured it to handle
09:43:45 10 accordingly.

09:43:46 11 Q. And what steps were taken after you received that
09:43:49 12 letter from the attorney with respect to the processing of the
09:43:52 13 claim?

09:43:52 14 A. I sent it in and forwarded it to our insurance. And,
09:43:59 15 actually, at the time of the initial incident, this was a
09:44:01 16 medical-only claim, the 2013 claim. So we have -- in various
09:44:08 17 parts of the country we have certain adjustors that handle just
09:44:11 18 our claims, so I built up a rapport with several of them, and I
09:44:17 19 actually copied her on that, with the medical unit, and then
09:44:21 20 let her know that, hey, this is coming, you're going to -- it's
09:44:26 21 going to the next step at this point so that she would know
09:44:29 22 that, hey, and then read it and we'll assess what we need to
09:44:33 23 do, if we need to bring in an attorney or we need to, you know,
09:44:36 24 file appropriately, so . . .

09:44:38 25 Q. Now, there's been some testimony, in fact the jury

09:44:41 1 heard from Dr. Petie Schwerdtfegerer. Did you have any
09:44:46 2 involvement in the referral of Mr. Smith to Dr. Petie
09:44:51 3 Schwerdtfegerer?

09:44:51 4 **A. I did not.**

09:44:51 5 Q. How did that referral come about?

09:44:53 6 **A. That was through Travelers.**

09:44:55 7 Q. And is that common that the insurance company will send
09:44:57 8 someone to a provider, in your experience?

09:45:01 9 **A. Yes.**

09:45:01 10 Q. And do you have an understanding as to why Travelers
09:45:06 11 sends employees to medical providers?

09:45:08 12 **A. Well, they've already established -- especially if it's**
09:45:11 13 **from an existing claim and what we're going back in through and**
09:45:15 14 **reopening a claim, we'll send them back to the original**
09:45:17 15 **treating provider, if that's applicable, because they've**
09:45:21 16 **already got the baseline, let's see where they are, especially**
09:45:24 17 **with that amount of time that has elapsed, for us being put on**
09:45:28 18 **notice, you know. So at that point that was, I think, the**
09:45:31 19 **primary motivation to that.**

09:45:35 20 Q. Did you have any direct discussions with
09:45:38 21 Dr. Schwerdtfeger in an attempt to include or sway her medical
09:45:42 22 opinions that she rendered?

09:45:43 23 **A. No.**

09:45:47 24 Q. I'm going to approach you and show you what's been
09:45:50 25 preadmitted as Exhibit 424. If you can acquaint yourself with

09:45:55 1 that exhibit. Do you recognize Exhibit 424 as communications
09:46:04 2 that you received from Dr. Schwerdtfeger's office?

09:46:06 3 **A. Yes, it was actually from Nancy, which is the clerk or**
09:46:11 4 **the secretary at the clinic.**

09:46:16 5 Q. And did you have any type of rapport with Nancy?

09:46:19 6 **A. Of course. Yes, when I initially called to give our**
09:46:22 7 **insurance information, that's who I spoke with.**

09:46:24 8 Q. And do you have a general philosophy regarding your
09:46:29 9 relationships and rapport with the medical providers and their
09:46:32 10 staff?

09:46:33 11 **A. Be nice to them. I'm going to need information from**
09:46:36 12 **them, you know. Just be respectful. As I recall, she was**
09:46:40 13 **really nice and accommodating.**

09:46:43 14 Q. Now, as of March 24 -- or March 2014, had you had much
09:46:48 15 contact with Dr. Schwerdtfeger's office relating to other
09:46:51 16 workers' compensation matters?

09:46:53 17 **A. Not a lot, no. You know what, she was fairly -- they**
09:46:58 18 **were fairly new, I think, in the area and it was one of those**
09:47:01 19 **as an option, because of the remoteness of where our**
09:47:04 20 **location -- our shop was at.**

09:47:08 21 Q. Now, what steps were available to Mr. Smith through the
09:47:11 22 workers' compensation process after he was examined by
09:47:15 23 Dr. Schwerdtfeger?

09:47:17 24 **A. What was the process?**

09:47:18 25 Q. Sure. So after he received this examination by

09:47:21 1 Dr. Schwerdtfeger that was set up through Travelers, what
09:47:25 2 was -- did he have any next steps he could take in the workers'
09:47:28 3 compensation process himself, that he could initiate?

09:47:30 4 **A. He -- well, at that point we were put on notice he had**
09:47:33 5 **an attorney, so his attorney could have went through the**
09:47:35 6 **division of work comp and sought additional medical care.**

09:47:40 7 **We had -- I think at that time we did have the**
09:47:44 8 **conflicting medical reports, one from a nontreating physician**
09:47:49 9 **that worked -- that Travelers was, like, "No, we will go back**
09:47:53 10 **to the treating physicians" and acknowledged that. So at that**
09:47:57 11 **point conflicting, they could have requested through the courts**
09:48:00 12 **the court-ordered IME, which is an independent medical**
09:48:03 13 **examination, for further evaluation, and let, you know, the**
09:48:08 14 **courts decide at that time.**

09:48:09 15 **Q. And I believe you said that Travelers said we needed to**
09:48:12 16 **go to an authorized physician. What do you mean by that?**

09:48:15 17 **A. Someone that we, as the employer, we are -- we can**
09:48:19 18 **authorize actually direct care in the state of Kansas. So the**
09:48:25 19 **authorized treating physician is established early on, which**
09:48:29 20 **means that the team member can't just go to any doctor, seeking**
09:48:34 21 **a certain diagnosis, per se.**

09:48:38 22 **Q. And can you use a nurse-practitioner for that**
09:48:43 23 **authorized physician?**

09:48:45 24 **A. They can as long as they're certified, as far as I'm --**
09:48:48 25 **to my knowledge.**

09:48:50 1 Q. Was Mr. Smith's workers' compensation claim closed
09:48:54 2 immediately after he was examined by Dr. Schwerdtfeger in March
09:48:58 3 of 2014?

09:48:59 4 **A. No, it was not.**

09:49:01 5 Q. And do you recall how long that claim remained open?

09:49:05 6 **A. We closed it in December of 2016.**

09:49:08 7 Q. So approximately 18 months it remained open?

09:49:10 8 **A. Uh-huh.**

09:49:11 9 Q. And why was it -- why was it ultimately closed?

09:49:14 10 **A. For inactivity. We had tried to reach out to the**
09:49:19 11 **claimant's attorney, work comp attorney, and did not receive**
09:49:24 12 **any response back.**

09:49:29 13 Q. During those 18 months, to your knowledge, did
09:49:32 14 Mr. Smith ever seek another opinion regarding his ability to
09:49:36 15 work?

09:49:36 16 **A. Not to my knowledge.**

09:49:38 17 Q. To your knowledge, had he ever requested a prehearing
09:49:41 18 conference through workers' compensation?

09:49:42 19 **A. Not to my knowledge.**

09:49:43 20 Q. To your knowledge, did he ever request that IME you
09:49:47 21 referred to?

09:49:47 22 **A. Not to my knowledge.**

09:49:48 23 Q. To your knowledge, did he ever have surgery on his
09:49:51 24 hands?

09:49:51 25 **A. No, not to my knowledge.**

09:50:12 1 Q. I'm going to show you what's been previously marked as
09:50:14 2 Exhibit 4 and admitted. And do you recognize Exhibit 4 as an
09:50:26 3 email chain to which you were a party?

09:50:30 4 **A. Yes.**

09:50:31 5 Q. And let's start at the bottom, the very first email.
09:50:36 6 What does this first mail -- it looks like it comes from
09:50:42 7 e-CARMA@Travelers.com. Can you explain to the jury what that
09:50:47 8 is.

09:50:47 9 **A. Yes, that is a notice that I received whenever they are**
09:50:51 10 **going to increase or change a reserve amount. A reserve amount**
09:50:59 11 **is based off of -- it's an equation within Travelers' system as**
09:51:04 12 **to what the anticipated cost of a claim will be, and that**
09:51:10 13 **they're -- they go into diagnoses, age. There's a lot of**
09:51:16 14 **factors involved that I'm not even privy to. So this**
09:51:19 15 **information is done internally with Travelers and their**
09:51:22 16 **experts, and this is what they anticipate the claim costing or**
09:51:27 17 **an increase in activity. So every time there's an increase in**
09:51:31 18 **that activity, or a decrease -- we see that every now and**
09:51:34 19 **again, not as often as we'd like but every now and again --**
09:51:37 20 **then we're notified that that's going to be coming through and**
09:51:41 21 **that will be then hitting the financials for that location.**

09:51:45 22 Q. And what does the 13,001 under Activity mean?

09:51:51 23 **A. That means that this claim is increasing by \$13,000.**

09:51:58 24 Q. You just testified that you forward this information
09:52:01 25 along to the business. Why do you forward that information

09:52:03 1 along to the business?

09:52:04 2 **A. 'Cause, again, that hits their financials for the**
09:52:08 3 **month. That's a rather large amount of money for that one**
09:52:12 4 **location, so I like to give their managers a heads up that,**
09:52:16 5 **"Hey, you're going to have questions. Upper management's going**
09:52:20 6 **to come and be asking you what's this about, and you can**
09:52:23 7 **explain it." So it's just kind of giving them a heads up that**
09:52:26 8 **"Hey, this is coming down." It's a courtesy. It's all it is.**

09:52:29 9 Q. Now, Mr. Harvey then sent you an email back. And if
09:52:40 10 you look at on April 1st, on page 5, and he says, "Can we
09:52:47 11 schedule a conference call on this? Do we need to bring him
09:52:49 12 back for light duty instead of having a revenue charge?"

09:52:52 13 Do you see that?

09:52:54 14 **A. Yes.**

09:52:57 15 Q. And what was your response? If you can just read that
09:53:03 16 for the jury.

09:53:04 17 **A. "At this time I really don't think that is necessary.**
09:53:07 18 **The revenue charges are not for TTD," which is temporary total**
09:53:12 19 **disability or lost wages. "They are for litigation expenses to**
09:53:16 20 **dispute this case." (As read.)**

09:53:17 21 Q. And when you say, "At this time I really don't think
09:53:20 22 that is necessary," what are you referring to for Mr. Harvey's
09:53:25 23 email, whether to have a conference call or whether to bring
09:53:27 24 him back light duty?

09:53:28 25 **A. No, basically it's not necessary. The revenue changes**

09:53:30 1 aren't going to -- it's not going to stop that 'cause it's
09:53:33 2 based on the litigation expense to dispute the case. So
09:53:36 3 regardless of whether he brought him back or not, that would
09:53:39 4 still have hit their financials.

09:53:41 5 Q. And as of April 1st, 2014, had a decision been made
09:53:46 6 whether or not to dispute the workers' comp claim?

09:53:51 7 A. It was based off the treating physician's work status
09:53:55 8 report back, Dr. -- I can't ever pronounce that last name, I'm
09:54:00 9 sorry. Petie Schwerdtfeger.

09:54:03 10 Q. Dr. Schwerdtfeger?

09:54:05 11 A. Yeah.

09:54:05 12 Q. Well, and I believe the records reflect that that
09:54:08 13 examination happened in March of 2014 and then she provided
09:54:14 14 information to you in early April. And so while you were still
09:54:18 15 waiting to hear from her, was it still a bit in question as to
09:54:22 16 what was going to be happening with the claim?

09:54:25 17 A. Well, yeah, we were waiting on that response. And
09:54:27 18 after -- I think after the fact that the reason for the delayed
09:54:31 19 work response from her was that she had requested additional
09:54:34 20 medical information at that point, if I -- but I think that's
09:54:41 21 what I remember, I recall.

09:54:43 22 Q. Who ultimately makes the decision as to whether or not
09:54:48 23 to dispute a workers' compensation claim? Is that your
09:54:52 24 decision? Is it a collaborative decision?

09:54:56 25 A. It is -- basically it's Travelers. Now, there are

09:55:00 1 certain situations where, depending on information, depending
09:55:05 2 on circumstances with -- on a comp claim or whether or not we
09:55:12 3 want to investigate further, I can't say, "No, we're going to
09:55:16 4 deny a claim," if that's what you're asking, no. It comes from
09:55:19 5 Travelers. Now, I can give them information to investigate and
09:55:23 6 they will -- they have a separate unit that will kick it up
09:55:27 7 into an investigative status that they will then go back after
09:55:31 8 previous medical histories or cases. They have the ability to
09:55:38 9 go out there and say, "Hey, there are four other work comp
09:55:41 10 cases in the state of Massachusetts or Oklahoma," or you know
09:55:46 11 what I mean? I don't really have that capability to go do that
09:55:49 12 readily. So it will come from them. But I will give them as
09:55:53 13 much information as I can, and then let them investigate
09:55:56 14 further.

09:55:57 15 Q. Now, at the top of this email Mr. Harvey says -- it's a
09:56:02 16 little bit difficult to see it's from him but I'll represent
09:56:04 17 it, that he says, "So do you think he'll file for TTD? He's
09:56:08 18 off work right now."

09:56:09 19 And your response on page 162, what did -- how did you
09:56:15 20 respond?

09:56:15 21 A. That he can. He can file all he wants, but if -- until
09:56:20 22 we have an authorized doctor address causation, which means
09:56:23 23 causally relate the injury that he's claiming to it being the
09:56:28 24 work status or work relatedness, that, you know, we're not on
09:56:32 25 the hook for that. So he can file. Until we have the actual

09:56:36 1 treating physician state, "Yep, this is a compensable claim,
09:56:41 2 this is because of his work, when he was at work," that's when
09:56:46 3 we would then be on the hook to pay him his temporary total
09:56:52 4 disability benefits while he cannot work, if he cannot work.

09:56:55 5 Q. And it appears from that email -- so that's on
09:56:59 6 April 1st saying, "Until we have an authorized doctor address
09:57:02 7 causation," so does that suggest to you you still hadn't heard
09:57:05 8 definitively from Dr. Schwerdtfeger?

09:57:07 9 A. Exactly.

09:57:08 10 Q. Okay. And what do you mean by the last sentence, "But
09:57:11 11 we are fighting and have a good case"?

09:57:14 12 A. Meaning that as of right now what -- because of the
09:57:17 13 time elapsed, the fact that it was a closed case, he had no
09:57:20 14 further treatment from the initial claim, that -- and at this
09:57:26 15 point we hadn't -- you know, I didn't have the full definitive
09:57:28 16 case from our treating physician, but everything looked good,
09:57:31 17 we had a good case.

09:57:32 18 But, again, my previous sentence there, I can't
09:57:36 19 guarantee that. Anything can come and change that status. And
09:57:39 20 it does on a regular basis. It can. So --

09:57:42 21 Q. Why did you end that email with a smiley face?

09:57:46 22 A. I'm a happy person. I don't know. It's one of those
09:57:49 23 it's just I like emoticons. What I deal in daily, it can be
09:57:54 24 very negative, and sometimes some of my abrasiveness and I'm
09:57:59 25 direct will come through, and I try to just temper that with,

09:58:03 1 "You know what? Hey, we got a good case," smiley face. It's
09:58:06 2 one of those to relieve some of the pressure on the other end.
09:58:08 3 Because they're stressing on their financials, they're
09:58:11 4 stressing on the fact that, you know what, we may have a team
09:58:14 5 member that's not working and their workload is being forced
09:58:17 6 over onto the crew that is there. So it's just trying to be
09:58:20 7 positive.

09:58:24 8 Q. Now, Mr. Harvey then again emails, "Okay, I just wasn't
09:58:28 9 sure if we should bring him back on light duty." You see that
09:58:31 10 on April 1st?

09:58:31 11 A. Uh-huh.

09:58:32 12 Q. I'm sorry, is that a "yes"?

09:58:33 13 A. Yes. Sorry.

09:58:34 14 Q. And your response at the bottom was, "At this time,
09:58:41 15 no!" and smiley face; correct?

09:58:44 16 A. We did not have response back from our doctor. Why
09:58:46 17 would we put ourself -- expose ourselves to the fact that maybe
09:58:49 18 he's not able to come back to work. We need to know
09:58:52 19 definitively. And we had previously talked of this and
09:58:55 20 explained this out to management, that we need to be very
09:59:00 21 careful how we proceed at this point. There's no point in
09:59:05 22 exposing ourselves to something or the team member, if he's not
09:59:07 23 ready to come back to work, then no. If he is, we need to know
09:59:11 24 definitively and at that point bring him back to work. So
09:59:14 25 right now it was lack of information.

09:59:17 1 Q. So as of April 1st, you're still in limbo waiting for
09:59:21 2 information from Dr. Schwerdtfeger; is that correct?

09:59:23 3 **A. At that --**

09:59:24 4 Q. Because you're saying "at this time"?

09:59:26 5 **A. -- time.**

09:59:30 6 Q. And in your role at the company, do you personally have
09:59:33 7 control over whether an employee is offered light duty? Is
09:59:37 8 that your decision?

09:59:37 9 **A. No, it's not my decision.**

09:59:38 10 Q. And -- but, again, regardless to your point, we don't
09:59:44 11 want to return an employee prematurely if it could cause harm
09:59:47 12 to themselves or others?

09:59:48 13 **A. That's exactly right.**

09:59:51 14 Q. Now, on April 8th you again corresponded with
09:59:55 15 Mr. Harvey and Mr. Baumgardner. And can you read that to the
10:00:01 16 jury, please.

10:00:03 17 **A. The "We are disputing the comp claim," is that the one?**

10:00:08 18 Q. Yes.

10:00:09 19 **A. "We are disputing the comp claim. The doctor that he
10:00:12 20 went to to get the light duty status was and is not the
10:00:15 21 authorized treating physician. Our doctor has stated that he
10:00:18 22 is capable of doing his job duties. Have we terminated him
10:00:21 23 yet? Or what are we doing? You either need to bring him back
10:00:25 24 to work or term. And I thought I explained this to Mark."**

10:00:31 25 **(As read.)**

10:00:32 1 Q. Now, when you say the "Doctor he went to to get the
10:00:34 2 light duty status was and is not an authorized treating
10:00:37 3 physician," again, what are you referring to in workers' comp
10:00:41 4 speech?

10:00:41 5 **A. That we, based on the initial treatment, that that was**
10:00:45 6 **not the recognized, authorized physician to see the team**
10:00:50 7 **member.**

10:00:53 8 Q. And you referred to "our doctor" in the possessive
10:00:58 9 term. Why did you use the possessive "our" when referring to
10:01:01 10 Dr. Schwerdtfeger?

10:01:05 11 **A. I have no idea in that respect. It was nothing**
10:01:08 12 **personal. It was just the fact that, hey, the authorized**
10:01:11 13 **doctor.**

10:01:13 14 Q. And do you exert any control over her?

10:01:17 15 **A. No, absolutely not.**

10:01:18 16 Q. And in your experience, a doctor --

10:01:21 17 **A. It could have been just the fact of, you know what, I'm**
10:01:25 18 **typing out an email to these guys and it was just something**
10:01:27 19 **that was an oversight on my part. There's no possessiveness**
10:01:31 20 **whatsoever with that doctor.**

10:01:32 21 Q. In your experience will a doctor risk his or her
10:01:35 22 medical license to provide an unsound or unsupported medical
10:01:41 23 opinion?

10:01:41 24 **A. No, no.**

10:01:42 25 Q. Why were you asking "Have we termed him yet"?

10:01:46 1 **A. I needed to know, based on the fact that this has**
10:01:50 2 **become a litigated matter, how we posture our case on the work**
10:01:54 3 **comp side. He still had an attorney. We still had an open**
10:01:59 4 **case. Even though we were disputing it, it's still there, per**
10:02:01 5 **litigation. So I need to -- that information to relay that**
10:02:05 6 **over to our work comp attorney so, again, that he's in the know**
10:02:10 7 **and can proceed accordingly.**

10:02:12 8 **Q. Did it make any difference in the processing of the**
10:02:15 9 **workers' comp claim whether Mr. Smith was brought back or**
10:02:19 10 **terminated, as you state in here? Is the answer going to make**
10:02:25 11 **any difference?**

10:02:25 12 **A. No.**

10:02:25 13 **Q. When you --**

10:02:26 14 **A. I just need to know. The only way it can make a**
10:02:29 15 **difference, if we would have entered into any type of**
10:02:32 16 **negotiations, if there were any remote settlement negotiations**
10:02:35 17 **opened up. Having a job, which we want, we want to keep our**
10:02:39 18 **team working, team member working and making their full wages.**
10:02:44 19 **If they're not working, then that just opens up doors to**
10:02:49 20 **vocational rehabilitations, and that is something then our**
10:02:53 21 **attorney needs to know as part of the negotiation process.**

10:02:58 22 **Q. And would the decision of bringing him back to work or**
10:03:01 23 **term, that doesn't impact your process either way, you're**
10:03:05 24 **just --**

10:03:05 25 **A. Me, no.**

10:03:06 1 Q. -- providing that information?

10:03:08 2 **A. No, not at all.**

10:03:08 3 Q. Now, you say, "I thought I explained this to Mark."

10:03:11 4 Did you instruct Mr. Baumgardner that the shop had to fire

10:03:14 5 Mr. Smith?

10:03:15 6 **A. No. It was the options. Any time I've interacted with**

10:03:19 7 **management, it's usually to give them the options, especially**

10:03:22 8 **on light-duty status, too. I will help consult with them, just**

10:03:27 9 **as a -- I've been doing this for a lot of years and we will**

10:03:32 10 **talk things through. But if they can accommodate there right**

10:03:37 11 **there on location, they know what they had as far as light-duty**

10:03:40 12 **work, they know what they can accommodate, and they will pay --**

10:03:44 13 **you know, I expect them to manage that and take ownership of**

10:03:48 14 **it, if they say, "Yes, we can bring this team member back,"**

10:03:52 15 **okay, make sure that he's working within those restrictions.**

10:03:54 16 **That's why there's an interaction there as well.**

10:03:56 17 Q. I'm going to approach and hand you what's been

10:03:59 18 premarked as Exhibit 425. And I believe that's just another

10:04:07 19 trail from that email chain. But do you recognize Exhibit 425?

10:04:17 20 **A. Yes. Well, it's -- yeah.**

10:04:21 21 Q. And at the top --

10:04:23 22 **A. It's the same.**

10:04:25 23 Q. -- on April 8th, Mr. Harvey is emailing you, saying, "I

10:04:31 24 guess I didn't realize we had a full release to come back."

10:04:34 25 And then is asking Mark, "Is there any reason we shouldn't

10:04:37 1 bring him back? We have not terminated him; correct?" (As
10:04:42 2 read.) Do you see that?

10:04:44 3 **A. Which page are you --**

10:04:45 4 Q. Sorry. It's at the very top of the email.

10:04:47 5 **A. Very top. So you're asking about --**

10:04:50 6 Q. You recall receiving that email where Mr. Harvey is
10:04:54 7 asking Mark is there any reason why not to bring him back? Do
10:04:58 8 you see that?

10:04:58 9 **A. I see that, yes.**

10:05:01 10 Q. Do you have any knowledge of any communications by
10:05:05 11 Mr. Baumgardner where he is identifying a reason not to bring
10:05:08 12 Mr. Smith back to work?

10:05:09 13 **A. No, no.**

10:05:11 14 Q. So two days later -- and the jury has seen this --
10:05:16 15 there was a letter that was sent out to Mr. Smith. I'll
10:05:23 16 approach with preadmitted Exhibit 427, ask if you've seen this
10:05:31 17 letter before.

10:05:34 18 **A. I have seen this letter, yes.**

10:05:37 19 Q. Did you have any consultation with Mr. Baumgardner
10:05:41 20 regarding this letter, or do you recall one way or another?

10:05:48 21 **A. I don't remember exactly. I have helped in dictating**
10:05:53 22 **some of the letters through the years. It's possible that we**
10:05:57 23 **have taken some of the formatting and tried to change it up as**
10:06:01 24 **applicable with the given situation at hand.**

10:06:04 25 **Now, did I write the letter for them? I don't remember**

10:06:07 1 **that, no, if that's what you're asking me. I remember seeing**
10:06:10 2 **it, but . . .**

10:06:11 3 Q. And you think you saw that around the time?

10:06:16 4 **A. I know that once they've established what they're going**
10:06:21 5 **to do, I request documentation just for the work comp**
10:06:24 6 **full-time, so that I can forward that over to our attorney on**
10:06:26 7 **that case as well, just as informational purposes.**

10:06:30 8 Q. Okay.

10:06:31 9 **A. So, yes, I have this in my comp file.**

10:06:33 10 Q. Did you have any discussions with Mr. Baumgardner as to
10:06:36 11 what the intent of this letter was?

10:06:44 12 **A. I don't understand what you mean.**

10:06:45 13 Q. Sure. Well, did you discuss with him "Why are we
10:06:48 14 sending this letter"?

10:06:49 15 **A. I don't recall that. I'm sorry.**

10:06:50 16 Q. That's okay. To your knowledge, did Mr. Smith ever
10:06:54 17 respond to this letter in any fashion? Did he ever communicate
10:06:57 18 with you?

10:06:57 19 **A. To my knowledge, no.**

10:07:01 20 Q. And to your knowledge, did he ever return to work?

10:07:04 21 **A. To my knowledge, no.**

10:07:06 22 Q. Did his failure to return to work have any impact on
10:07:08 23 his pending workers' comp claim?

10:07:10 24 **A. No.**

10:07:11 25 MS. BUNCK: I have nothing further for this

10:07:13 1 witness.

10:07:16 2 THE COURT: Cross-examination, Mr. McGivern?

10:07:20 3 CROSS-EXAMINATION

10:07:21 4 BY MR. MCGIVERN:

10:07:22 5 Q. Are you telling the jury that temporary total
10:07:26 6 disability benefits don't affect financial reserves on a claim?

10:07:28 7 **A. They can.**

10:07:29 8 Q. They can. That's right.

10:07:31 9 **A. Uh-huh.**

10:07:32 10 Q. So if an employee files for TTD, that does affect the
10:07:35 11 financial reserves; right?

10:07:37 12 **A. Not the ones at hand on that email. That was all
10:07:40 13 litigation.**

10:07:40 14 Q. Right. That's because you and Travelers were going to
10:07:43 15 fight that claim; right?

10:07:45 16 **A. Correct.**

10:07:46 17 Q. Okay. So I just want to make sure they understand. If
10:07:51 18 Danny Smith had received TTD benefits, which he didn't, that
10:07:56 19 would have made those reserves go up; right?

10:07:58 20 **A. I would have gotten another email stating as such. It
10:08:02 21 may not have been explained out, because you didn't see any
10:08:05 22 explanation in that email; correct? I would have called and
10:08:09 23 said, "Okay, hey, what's this for?" And then I would have
10:08:12 24 relayed the information, again, out to the operation side.**

10:08:16 25 Q. And that 13 grand would have gotten bigger; right?

10:08:19 1 **A. Possibly.**

10:08:19 2 Q. And that would have created more problems for
10:08:21 3 Mr. Baumgardner; right?

10:08:22 4 **A. Possibly. But can I say something real quick?**

10:08:25 5 Q. Sure.

10:08:25 6 **A. That could maybe not have because, you know what, if we**
10:08:28 7 **had received information that was a compensable claim, our**
10:08:31 8 **litigation expenses might go down. So no, it may not have**
10:08:34 9 **changed that. You could just readjust the reserves**
10:08:37 10 **accordingly.**

10:08:38 11 Q. March 25 -- March 26 of 2014, on that date you're
10:08:43 12 already talking about how good of a case you've got, aren't
10:08:48 13 you? Isn't that right?

10:08:52 14 **A. Is that the date? If that's what it says, that we had**
10:08:55 15 **a good case? Did I think? Yes.**

10:08:59 16 Q. Yeah. I mean, the day after Danny Smith sees this
10:09:03 17 Dr. Schwerdtfeger, and then for the next few days after that,
10:09:07 18 you're talking about how great of a case the company has?

10:09:09 19 **A. I'm being positive.**

10:09:11 20 Q. Is that how -- I mean, is that -- you mentioned team
10:09:16 21 member versus employee. Is that how the company talks about
10:09:19 22 the team members? Is that normal practice at Watco?

10:09:22 23 **A. No. But based on the information being provided, we**
10:09:26 24 **had a good case. I was being positive with my management, with**
10:09:30 25 **the --**

10:09:31 1 Q. But not with that team member?

10:09:32 2 **A. I had no interaction with the team member.**

10:09:34 3 Q. Right. And, in fact, until Danny Smith got that letter
10:09:37 4 on April 15, 2014, you didn't -- you never even told him he had
10:09:41 5 a release; right?

10:09:43 6 **A. Not him personally, no.**

10:09:44 7 Q. So he gets this letter in the mail saying he's got a
10:09:48 8 full release, he's got no idea what it's about. Is that how
10:09:51 9 Watco handles all these?

10:09:53 10 **A. No, but he would have received that himself in the**
10:09:56 11 **mail.**

10:09:57 12 Q. That letter?

10:09:57 13 **A. He went to -- the doctor would have left that -- he**
10:10:01 14 **should have left that with documentation or had it sent to him**
10:10:04 15 **appropriate, or his attorney, 'cause he was represented at that**
10:10:08 16 **time.**

10:10:08 17 Q. Have you heard any testimony from any person, are you
10:10:11 18 aware of any information, that Danny Smith was given a copy of
10:10:14 19 these restrictions?

10:10:15 20 **A. No, I have not.**

10:10:15 21 Q. Okay. And let's be clear. On March 26, 2014, you get
10:10:22 22 this report fax'd over from Schwerdtfeger; right?

10:10:27 23 **A. Correct. That's the date on the form. Whether that's**
10:10:30 24 **the date I received it, that doesn't necessarily mean so. But**
10:10:33 25 **that's the date that's on there, yes.**

10:10:35 1 Q. Do you have any dispute that you received this on
10:10:37 2 March 26 of '14?

10:10:38 3 **A. I have no recollection of exactly when I received that.**

10:10:41 4 Q. Okay. Well, this is important, so I want to make sure.
10:10:46 5 Pull up 424, please.

10:11:18 6 MR. MCGIVERN: May I approach, Your Honor?

10:11:20 7 THE COURT: Absolutely. Go ahead.

10:11:27 8 **A. Is that this?**

10:11:27 9 BY MR. MCGIVERN:

10:11:27 10 Q. The same thing.

10:11:29 11 **A. That's yes.**

10:11:29 12 Q. Take a look and I just want you --

10:11:32 13 **A. I see the date that you're talking about.**

10:11:33 14 Q. The same date I showed you a second ago?

10:11:35 15 **A. Right. That's the date it was fax'd over. That
10:11:38 16 doesn't mean that's the date it hit my desk per se.**

10:11:41 17 Q. It would have been within a couple days?

10:11:42 18 **A. Within a couple days. And then at that process it
10:11:46 19 would have been sent also to Travelers, and I would have been
10:11:47 20 waiting on their response appropriately, so if there was a
10:11:51 21 delay in time, we're waiting --**

10:11:53 22 Q. But Travelers got it, you would have got it; right?

10:11:56 23 **A. Yeah. Well, maybe, 'cause they would have, should
10:11:59 24 have, actually been on that as well. But anything I receive I
10:12:02 25 try to forward to Travelers just in case, 'cause if I can get**

10:12:06 1 **it quicker, then I will relay it over just to try to expedite**
10:12:10 2 **the process.**

10:12:12 3 Q. Look at this fax cover sheet, ma'am.

10:12:16 4 **A. Uh-huh.**

10:12:18 5 Q. Will you just admit that you received this on the 26th
10:12:21 6 of March of 2014?

10:12:22 7 **A. My fax received that on 3-26-14.**

10:12:38 8 Q. And on 3-26 of '14, you saw the assessment or, I'm
10:12:46 9 sorry, around that time after you got this paperwork and gave
10:12:49 10 it to the insurance company, you see "Hand pain, bilateral,
10:12:53 11 requested medical records from Jessica Evans and Dr. Bacani.
10:12:57 12 If EMG's unavailable from them, we'll try to obtain from the
10:13:00 13 two different neurologists." Right?

10:13:03 14 **A. Uh-huh.**

10:13:03 15 Q. But by April Fool's Day 2014, you're already talking
10:13:08 16 about how we got a great case and we're going to win and smiley
10:13:11 17 faces. I understand the smiley faces aren't about you're going
10:13:15 18 to win; they're just something you put on your emails. But
10:13:19 19 you're talking about winning this case and your doctor hasn't
10:13:27 20 even seen the EMG's yet. Is that right?

10:13:31 21 **A. That's, again, being positive with my team.**

10:13:35 22 Q. Okay. And these emails where we're talking about the
10:13:46 23 work comp reserves assigned to the claim said \$13,000, and I
10:13:55 24 understand that's to fight the team member; right? Correct?

10:13:59 25 **A. That is for litigation expenses.**

10:14:01 1 Q. Which is fighting; right? That's what we do?

10:14:06 2 **A. That's your words, okay.**

10:14:10 3 Q. And that email goes to Baumgardner; correct?

10:14:21 4 **A. Uh-huh.**

10:14:22 5 Q. And you said it's to keep Mr. Baumgardner in the loop
10:14:24 6 on what's going on; right?

10:14:27 7 **A. He was the manager at that time at that location. I**
10:14:30 8 **think the interim at that point, if I remember right.**

10:14:33 9 Q. I mean, whether that was \$10 or a million dollars, why
10:14:37 10 does Mr. Baumgardner need to know the reserve amount assigned
10:14:40 11 to the work comp claim?

10:14:42 12 **A. That, again, as I stated previously, those dollar**
10:14:47 13 **amounts hit their financials. There's a month delay. So when**
10:14:52 14 **I get this information out, that's me, as a courtesy, letting**
10:14:55 15 **the management know, 'cause you know what, several of his**
10:14:58 16 **higher-ups are also on that, to let them know, "Hey, this is a**
10:15:02 17 **big chunk of money that's coming in and that's going to hit**
10:15:05 18 **your financials," so they're apprised of that, they can explain**
10:15:08 19 **that out to the executives as necessary. It's just to let them**
10:15:12 20 **know hey, it's coming.**

10:15:13 21 Q. You're insured, though; right? It's not self-funded?

10:15:16 22 **A. Actually we are self-insured.**

10:15:16 23 Q. Self-funded.

10:15:18 24 **A. Thank you, yeah.**

10:15:19 25 Q. You are self-funded. Well, do you do this with health

10:15:22 1 insurance claims when somebody gets cancer, do you send out an
10:15:25 2 email?

10:15:25 3 **A. I don't receive those 'cause I don't handle our health**
10:15:29 4 **benefits but we're self-insured under that policy as well.**

10:15:32 5 Q. Do you have any reason to doubt it's any different?

10:15:35 6 **A. I can't state either way.**

10:15:37 7 MS. BUNCK: Objection. Foundation.

10:15:40 8 BY MR. MCGIVERN:

10:15:40 9 Q. Okay. You testified you have no control over light
10:15:44 10 duty. Sorry. But you're answering, "At this time, NO!!"
10:15:51 11 capital letters, double exclamation point, happy face; right?

10:15:55 12 **A. Uh-huh.**

10:15:55 13 Q. To me that looks like you do have some control over
10:16:00 14 that.

10:16:00 15 **A. No. Basically, until we receive further information --**
10:16:03 16 **I already explained too earlier -- that we're not going to**
10:16:08 17 **expose ourselves, the company, or the team member to further**
10:16:09 18 **hurting himself or another team member until we seek**
10:16:14 19 **clarification from the appropriate parties, whether that be our**
10:16:16 20 **insurance carrier, our attorney on file, whomever that may be.**
10:16:21 21 **No, do not do anything until you hear more.**

10:16:23 22 Q. Okay. So part of your job necessarily involves these
10:16:26 23 people being at work, off work, et cetera; right?

10:16:29 24 **A. Part of my job is case managing their claim. Whether**
10:16:33 25 **they're off work or on work is not up to me.**

10:16:36 1 Q. It's not up to you.

10:16:37 2 A. No, it's not. It's up to the doctors, if they allowed
10:16:41 3 them to come, and the experts on file, which would be the
10:16:45 4 adjustors with Travelers as well.

10:16:47 5 Q. It's not up to you.

10:16:48 6 A. Uh-huh.

10:16:49 7 Q. On April 25, 2014, you sent a letter, "Did we send the
10:16:53 8 letter to Danny?"

10:16:54 9 A. It's a question.

10:16:55 10 Q. Right. And then he says, "Yes, we did. Just like you
10:17:00 11 asked, stating if he didn't come back to work we consider it a
10:17:03 12 voluntary termination." (As read.)

10:17:05 13 So you told him that; right?

10:17:06 14 A. (Nods head.)

10:17:07 15 Q. Correct? True?

10:17:08 16 A. Okay. That was advice as to whichever way they chose,
10:17:12 17 if they were going to bring him back, as another email up here,
10:17:16 18 "Are you bringing him back to work? You either need to do so
10:17:18 19 or you need to send him a letter stating that, 'Hey, you need
10:17:21 20 to come back to work or you are basically voluntarily
10:17:25 21 terminating.'"

10:17:25 22 So he could have got that information from previous
10:17:29 23 emails.

10:17:29 24 Q. So you work at corporate headquarters of Watco; right?

10:17:33 25 A. That is correct.

10:17:35 1 Q. And you're technically in the legal department; right?

10:17:38 2 **A. I am part of the legal department. I am not the legal**
10:17:41 3 **department, believe me.**

10:17:42 4 Q. Right. But you answer to the lawyers, obviously, in
10:17:45 5 the legal department; right?

10:17:46 6 **A. Yes.**

10:17:46 7 Q. And you are -- I mean, whether you want to -- however
10:17:50 8 you want to characterize it, you are involved in these
10:17:53 9 employees either being at work or not? I mean, you said,
10:17:56 10 "light duty, no way"; right?

10:18:00 11 **A. In that email.**

10:18:01 12 Q. Correct.

10:18:01 13 **A. Yes.**

10:18:01 14 Q. I mean, in the email, but you said it, didn't you?

10:18:04 15 **A. Yes.**

10:18:04 16 Q. Okay. You told him how to author a letter to Danny,
10:18:09 17 telling him come back or it's a quit; right? You told him how
10:18:18 18 to do it, didn't you?

10:18:18 19 **A. If that's what you're saying. I didn't -- no, I did**
10:18:21 20 **not tell him how to do it. I give an opinion, my opinion, on**
10:18:26 21 **how you take that information and drive that out, either bring**
10:18:30 22 **him back to work or send a letter saying, "Hey, we need to**
10:18:34 23 **know, you're either coming back" -- reach out. All he had to**
10:18:37 24 **do was pick up the phone.**

10:18:38 25 Q. Who, Baumgardner?

10:18:39 1 **A. No, your client.**

10:18:41 2 Q. Okay. And as part of you handling whether or not we're
10:18:47 3 going to offer light duty so people can work or not or come
10:18:50 4 back to work, quit and be fired and all that business --

10:18:52 5 **A. I don't offer light duty. That's not my job. I send**
10:18:55 6 **the information out based on the restrictions from the doctor.**
10:18:58 7 **We discuss it, and if they can, the management can, accommodate**
10:19:03 8 **that reasonably and safely, we do it. And my opin- -- my**
10:19:08 9 **opinion is to let's do that.**

10:19:10 10 Q. Let's do this. This is an official company record of
10:19:16 11 Watco. Okay?

10:19:18 12 MS. BUNCK: Your Honor, this is beyond the scope.

10:19:21 13 THE COURT: No, it's not. Overruled.

10:19:25 14 BY MR. MCGIVERN:

10:19:25 15 Q. You've been doing this for a long, this work comp
10:19:27 16 stuff, haven't you?

10:19:28 17 **A. Uh-huh, yeah, this isn't work comp.**

10:19:31 18 Q. You've been doing work comp stuff for a long time,
10:19:33 19 haven't you?

10:19:34 20 **A. Yes.**

10:19:34 21 Q. And as part of that you necessarily understand that
10:19:37 22 people have to take medical leave, don't you?

10:19:39 23 **A. Yes.**

10:19:41 24 Q. What's your understanding of the Family Medical Leave
10:19:46 25 Act?

10:19:46 1 **A. It is a leave, a covered leave, I guess, without pay if**
10:19:52 2 **you qualify for that in the event that you have family members**
10:19:56 3 **or yourself that needs help or medical treatment that has to be**
10:20:01 4 **authorized by a physician.**

10:20:02 5 Q. Right.

10:20:03 6 **A. Uh-huh.**

10:20:04 7 Q. And it's -- I'm going to start doing this now. It's 12
10:20:09 8 weeks of unpaid leave up to; right?

10:20:11 9 **A. If they qualify.**

10:20:12 10 Q. And it doesn't depend on what Travelers Insurance tells
10:20:15 11 you; right?

10:20:16 12 **A. Absolutely not, no.**

10:20:17 13 Q. Okay. And when somebody's on FMLA, what does that mean
10:20:20 14 to you?

10:20:23 15 **A. They're on medical leave, or -- for them or for family.**
10:20:27 16 **They're on leave, basically.**

10:20:28 17 Q. It means we don't want 'em to come back and hurt
10:20:32 18 themselves at work when they're not able to do their job; right?

10:20:35 19 **A. Right.**

10:20:36 20 Q. Okay. And Watco's official company records show that
10:20:40 21 the date that you helped Mark Baumgardner write that letter,
10:20:43 22 Danny Smith was on FMLA leave; correct?

10:20:45 23 **A. Okay. This is the first time I've seen this. I'm**
10:20:49 24 **sorry. So, okay, yes.**

10:20:51 25 Q. Okay. The date that Danny Smith received that letter,

10:20:56 1 Watco said he was on FMLA; right? Meant he was unable to do
10:21:00 2 his job for medical reasons; right?

10:21:03 3 **A. Well, it just says FMLA. So if you're saying that,**
10:21:07 4 **yeah, okay.**

10:21:07 5 Q. I mean, what else would that mean?

10:21:09 6 **A. Oh, I'm just -- okay.**

10:21:11 7 Q. Okay. The date he was supposed to return to work,
10:21:17 8 Watco says he's on FMLA; right?

10:21:19 9 **A. Uh-huh.**

10:21:20 10 Q. And the date the company's records say he was
10:21:23 11 terminated say he was on FMLA; right? Correct?

10:21:27 12 **A. Yes.**

10:21:27 13 Q. And that directly contradicts what Dr. Schwerdtfeger
10:21:30 14 said; right? 'Cause she said he could come back to work?

10:21:33 15 **A. Correct.**

10:21:33 16 Q. But the company's own records say he couldn't; right?

10:21:38 17 **A. It says he's on FMLA. That's what that form says.**

10:21:41 18 Q. And would you agree with me it's wrong to terminate
10:21:44 19 somebody because they didn't come back to work when they're on
10:21:47 20 medical leave under FMLA?

10:21:48 21 **A. If the doctor said he was able to come back to work,**
10:21:50 22 **why didn't he come back to work? You just said that the doctor**
10:21:55 23 **said he was released, but he was still on FMLA, so we gave --**
10:22:00 24 **sent a letter out, asking, "Hey, reach out to us, let us know**
10:22:04 25 **what's going on." Why didn't he just call? If he's out on**

10:22:07 1 **FMLA, what was he doing? Why didn't he pick up the phone?**

10:22:09 2 Q. So it's your testimony that an employee has a legal
10:22:12 3 requirement to do things for the employer when they're out on
10:22:15 4 medical leave?

10:22:16 5 **A. Well, would you not want to communicate with him to**
10:22:20 6 **keep your job?**

10:22:21 7 Q. But if the company itself says he's unable to work
10:22:24 8 because of medical leave, why should he have to come to work?
10:22:27 9 Fair enough?

10:22:28 10 **A. Fair enough.**

10:22:28 11 Q. Okay. Would you agree with me that the company
10:22:31 12 violated its FMLA policy with Danny Smith by terminating him
10:22:34 13 because he didn't show up to work on the 16th of April?

10:22:39 14 **A. Yeah, if that's the case.**

10:22:40 15 MR. MCGIVERN: No further questions. Thank you.

16 (End of requested excerpt.)

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C E R T I F I C A T E

I, Johanna L. Wilkinson, United States Court Reporter in and for the District of Kansas, do hereby certify:

That the above and foregoing proceedings were taken by me at said time and place in stenotype;

That thereafter said proceedings were transcribed under my direction and supervision by means of computer-aided transcription, and that the above and foregoing constitutes a full, true and correct transcript of said proceedings;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I hereto set my hand on this the 21st day of June, 2017.

s/ Johanna L. Wilkinson
Johanna L. Wilkinson, CSR, CRR, RMR
United States Court Reporter