

**JONATHAN FORMENTO**

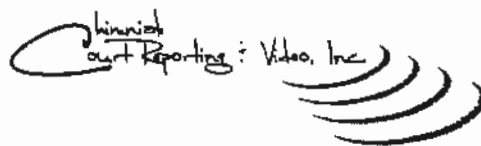
30(b)(6)  
OSI

**Date:** November 10, 2017

**Case:** KIMBERLEY D. BRANTLEY v. UPS GROUND FREIGHT

30(b)(6)-TRIAL  
DESIGNATIONS

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

KIMBERLEY D. BRANTLEY, )  
ADMINISTRATRIX OF THE )  
ESTATE OF BENJAMIN )  
BRANTLEY, DECEASED, )  
Plaintiffs, )

vs. )

UPS GROUND FREIGHT, INC.; ) Case  
OPTIMUM STAFFING, INC., ) No. 3:16-CV-00352  
d/b/a OPTIMUM LOGISTIC ) DPM/JJV  
SOLUTIONS; ROBERT L. )  
WOODALL and JOHN DOES )  
1-6, )  
Defendants. )

The deposition of JONATHAN FORMENTO,  
called by the Defendants for examination, taken  
pursuant to the Federal Rules of Civil Procedure  
of the United States District Courts pertaining to  
the taking of depositions, taken before ROBIN M.  
CHIMNIAK, CSR, RMR, CLNR, taken at 1801 North  
Napier Boulevard, DuPage Boardroom, Naperville,  
Illinois, on the 10th day of November, 2017, at  
the hour of 8:08 a.m.

ROBIN M. CHIMNIAK, Certified Shorthand Reporter  
State of Illinois, CSR License No. 084-001999

<p>2</p> <p>PRESENT:</p> <p>McDANIEL LAW FIRM, PLC BY: BOBBY McDANIEL, ESQ. 400 South Main Street Jonesboro, Arkansas 72401 870.336.4747 bobby@mcDanielLawyers.com Appeared on behalf of the Plaintiff;</p> <p>ANSA ASSUNCAO, LLP BY: ROMAN T. GALAS, ESQ. Four Penn Center, Suite 900 1600 JFK Boulevard Philadelphia, Pennsylvania 19103 267.528.0744 roman.galas@ansalaw.com</p> <p>-and-</p> <p>GLASSMAN, WYATT, TUTTLE &amp; COX, P.C. BY: ROBERT A. COX, ESQ. 26 North Second Street Memphis, Tennessee 38103 901.527.4673 rcox@gwtclaw.com Appeared on behalf of UPS Ground Freight, Inc.; FRIDAY, ELDREDGE &amp; CLARK, LLP BY: JAMES C. BAKER, JR. 400 West Capitol Avenue Suite 2000 Little Rock, Arkansas 72201-3522 501.370.1576 bakar@fridayfirm.com Appeared on behalf of Optimum Staffing, Inc.; d/b/a Optimum Logistic Solutions; and Robert L. Woodall.</p> <p>ALSO PRESENT:</p> <p>MARVIN OLTMAN, Legal Videographer</p>	<p>4</p> <p>THE VIDEOGRAPHER: We are now on the record in the matter of Kimberley D. Brantley, et al., versus UPS Ground Freight, Inc., et al., the United States District Court, Eastern District of Arkansas, Jonesboro Division. Case number is 3:16-CV-00352.</p> <p>The witness today is John Formento. Today's date is November 10th, 2017. The time is now 8:08 a.m. We are located at 1801 North Naper Boulevard, Naperville, Illinois 60563.</p> <p>My name is Marvin Oltman. I'm your legal videographer. Your court reporter today is Robin Chimniak. We are both in association with Chimniak Court Reporting &amp; Video, Inc.</p> <p>Will counsel please introduce themselves, starting with the party noticing this proceeding.</p> <p>MR. McDANIEL: Bobby McDaniel, attorney for the plaintiffs.</p> <p>MR. BAKER: J.C. Baker for OSI and Woodall.</p>																				
<p>3</p> <p>INDEX</p> <table> <tr> <th>WITNESS</th> <th>PAGE</th> </tr> <tr> <td>JONATHAN FORMENTO</td> <td></td> </tr> <tr> <td>Examination by Mr. McDaniel</td> <td>5</td> </tr> </table> <p>EXHIBITS</p> <table> <tr> <th>DEPOSITION NUMBER</th> <th>PAGE MARKED</th> </tr> <tr> <td>41</td> <td>6</td> </tr> <tr> <td>42</td> <td>17</td> </tr> </table> <p>PREVIOUS DEPOSITION</p> <table> <tr> <th>EXHIBIT NUMBERS</th> <th>PAGE REFERRED TO</th> </tr> <tr> <td>17</td> <td>26</td> </tr> <tr> <td>30</td> <td>138</td> </tr> <tr> <td>8</td> <td>144</td> </tr> </table>	WITNESS	PAGE	JONATHAN FORMENTO		Examination by Mr. McDaniel	5	DEPOSITION NUMBER	PAGE MARKED	41	6	42	17	EXHIBIT NUMBERS	PAGE REFERRED TO	17	26	30	138	8	144	<p>5</p> <p>MR. COX: Robert Cox on behalf of UPS Ground Freight.</p> <p>MR. GALAS: And Roman Galas on behalf of UPS Ground Freight as well.</p> <p>THE VIDEOGRAPHER: Will the court reporter please administer the oath so we can continue.</p> <p>(Witness sworn.)</p> <p>JONATHAN FORMENTO, called as a witness herein, having been first duly sworn, was examined and testified as follows:</p> <p>EXAMINATION</p> <p>BY MR. McDANIEL:</p> <p>Q. Good morning, Mr. Formento. I'm Bobby McDaniel. We were introduced before the start of the deposition.</p> <p>Would you state your name for the record, please?</p> <p>A. Jonathan Formento.</p> <p>Q. And, Mr. Formento, where do you reside: city, state?</p> <p>A. My personal residence?</p> <p>Q. Yes.</p> <p>A. Elmhurst, Illinois.</p>
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30	138																				
8	144																				

<p>6</p> <p>1 Q. Okay. And your business occupation?</p> <p>2 A. My business occupation is executive</p> <p>3 vice president of Optimum Logistics Solutions,</p> <p>4 d/b- -- or Optimum Staffing, Inc., d/b/a Optimum</p> <p>5 Logistics Solutions.</p> <p>6 Q. So if I use the word "Optimum," may we</p> <p>7 consider that inclusive? Would --</p> <p>8 A. That's fine.</p> <p>9 Q. It would be easier; right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And you have been designated as</p> <p>12 the 30(b)(6) witness or the person to speak on</p> <p>13 behalf of the corporation for the matters</p> <p>14 submitted on the notice?</p> <p>15 A. Yes.</p> <p>16 Q. Is that correct?</p> <p>17 A. That's correct.</p> <p>18 (Whereupon Deposition Exhibit</p> <p>19 No. 41 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. McDANIEL:</p> <p>22 Q. Okay. And I'm going to show you the</p> <p>23 notice, which is marked as Exhibit 41. You were</p> <p>24 provided a copy of that I take it?</p>	<p>8</p> <p>1 Q. What -- what handbooks did you review?</p> <p>2 A. I reviewed the TBI Nationwide safety</p> <p>3 handbook and the Federal Motor Carrier Safety</p> <p>4 Regulation Handbook.</p> <p>5 Q. And the Federal Motor Carrier Safety</p> <p>6 Handbook, is that just the one that has the regs</p> <p>7 in it, or also the explanatory notes underneath it?</p> <p>8 A. It is the -- just the regulations.</p> <p>9 Q. Okay. Okay, what is your position with</p> <p>10 Optimum?</p> <p>11 A. Executive vice president.</p> <p>12 Q. What do your duties entail?</p> <p>13 A. My duties entail covering operations,</p> <p>14 sales, administration, HR, finance. I think</p> <p>15 that's it.</p> <p>16 Q. Okay. Are you one of the owners of</p> <p>17 that corporation?</p> <p>18 A. I do not have direct shareholder</p> <p>19 ownership, no.</p> <p>20 Q. Okay. And I'm not familiar with</p> <p>21 Optimum. I've looked up a little bit of stuff,</p> <p>22 but tell me a little bit about Optimum in terms of</p> <p>23 size of a company. You know, approximately how</p> <p>24 many -- since you do HR, how many employees you</p>
<p>7</p> <p>1 A. Yes.</p> <p>2 Q. All right. And did you bring anything</p> <p>3 with you in response to that notice that counsel</p> <p>4 has not previously provided to me?</p> <p>5 A. No.</p> <p>6 Q. Okay. What have you reviewed to</p> <p>7 prepare you for today's deposition?</p> <p>8 A. I've reviewed the complaint, I've</p> <p>9 reviewed some internal Optimum documents, and</p> <p>10 anything else in the pleadings that have been</p> <p>11 submitted for legal filings.</p> <p>12 Q. Okay. Now, when you say you've</p> <p>13 reviewed some internal documents, what internal</p> <p>14 documents have you reviewed?</p> <p>15 A. I've reviewed some of our handbooks,</p> <p>16 I've reviewed the contract between the</p> <p>17 corporations and parties, and I've reviewed some</p> <p>18 of the Woodall personnel file.</p> <p>19 Q. Okay. Anything else?</p> <p>20 A. Other than the legal pro- -- documents,</p> <p>21 no.</p> <p>22 Q. When you say "handbooks," I heard that</p> <p>23 with an S; is that correct?</p> <p>24 A. Yes.</p>	<p>9</p> <p>1 have?</p> <p>2 A. Optimum is currently a temporary driver</p> <p>3 staffing company, and it has -- and it fluctuates</p> <p>4 depending on the time of year. Anywhere between</p> <p>5 five and seven hundred employees.</p> <p>6 Q. And those five to seven hundred</p> <p>7 employees, how many of those are temporary drivers</p> <p>8 that you supply to trucking firms?</p> <p>9 A. 90 percent or more.</p> <p>10 Q. Okay. And within Optimum there are</p> <p>11 certain corporate positions that people have</p> <p>12 different duties; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And who is the person that is in charge</p> <p>15 of training -- when I say "drivers," I'm speaking</p> <p>16 of CDL drivers, okay?</p> <p>17 A. No-umh.</p> <p>18 Q. Who is the person in charge of training</p> <p>19 CDL drivers?</p> <p>20 A. We don't train CDL drivers.</p> <p>21 Q. Okay. Do you have anyone in your</p> <p>22 corporation who reviews the training that CDL</p> <p>23 drivers that you're supplying to a company had</p> <p>24 received?</p>



<p style="text-align: right;">10</p> <p>1 A. We don't have anyone that reviews 2 training, no. 3 Q. Okay. And do you have anyone who 4 reviews the background status of the temporary 5 employees? 6 A. Can you define "the background status" 7 please? 8 Q. Yeah. Checking their -- the drivers' 9 background in terms of prior employment, drug 10 history, violations history. 11 A. I have a compliance department that 12 does review the personnel files of applicants. 13 Q. And the personnel file, we've been 14 provided a copy of the personnel file, and you're 15 familiar with what we've been provided I take it? 16 A. Yes. 17 Q. And is that the complete personnel 18 file? 19 A. Yes. 20 Q. Do you have any other personnel file by 21 whatever name that would apply to Robert Woodall? 22 A. Nothing that would apply to Robert 23 Woodall. 24 Q. Okay. Who is the person that does this</p>	<p style="text-align: right;">12</p> <p>1 employed with Optimum? 2 A. This will be my 14th year. 3 Q. All right. What was your prior employment? 4 A. I was employed by Transport Drivers, 5 Inc. Actually, they're all affiliated companies. 6 So I apologize. Let me explain. 7 So that they're multiple divisions we 8 have. I worked for Transport Drivers, Inc., and 9 Optimum Logistics. They're affiliated companies. 10 So that 14 years includes and encompasses all the 11 divisions that we operated. 12 Q. Okay. Before you became involved 13 with -- I'm going to call Optimum the umbrella. 14 They encompass everything. 15 Before you became involved with any 16 division of Optimum, where were you employed or 17 what did you do? 18 A. I was employed in the insurance industry. 19 Q. Okay. Have you ever held a CDL 20 yourself? 21 A. No. 22 Q. Have you ever undergone any training or 23 observed training for those getting a CDL? 24 A. Can you explain your question, please?</p>
<p style="text-align: right;">11</p> <p>1 screening or background compliance review? 2 A. We have a department. So there is a 3 few folks in that department. 4 Q. Who is head of that department? 5 A. That would be Kris Iwanaki, who is the 6 vice president of HR. 7 Q. Would you spell the last name slowly 8 for the court reporter? 9 A. Sure. I-v-a-n-a-k-i; the first name, 10 Kristina. 11 Q. And where does Kristina work? 12 A. She works at our corporate office in 13 Woodridge. 14 Q. And where do you work? 15 A. The corporate office in Woodridge. 16 Q. Is that Woodridge, Illinois, outside of 17 Chicago? 18 A. Correct. 19 Q. And give me the specific street address 20 for your corporate office, if you would, where you 21 work. 22 A. 3540 Seven Bridges Drive, that's 23 Suite 300, in Woodridge, Illinois 60517. 24 Q. All right. And how long have you been</p>	<p style="text-align: right;">13</p> <p>1 Q. Yes, sir. All right. 2 Have you ever undergone any CDL training? 3 A. No. 4 Q. Have you ever sat in on and watched or 5 attended classes drivers were being given to -- so 6 they could apply for a CDL or obtain a CDL? 7 A. No. 8 Q. Have you ever sat in on any training 9 meetings where drivers who already had a CDL were 10 given additional safety training? 11 A. Safety training from whom? 12 Q. From anybody. 13 A. Where the drivers were present or the 14 drivers were being taught? Is that your question? 15 Q. Okay. Yeah, where the drivers were 16 receiving the training, whether they were 17 in person, videoconference, telephone conference, 18 by whatever means? 19 A. Where drivers were present, no. 20 Q. And have you sat in on training where 21 drivers were attending by either telephone, 22 videoconference, or any other electronic means? 23 A. No. 24 Q. Okay. I may not be asking the question</p>

<p style="text-align: right;">14</p> <p>1 the right way because I got the idea from your</p> <p>2 answer that if I asked the question correctly, the</p> <p>3 answer would be yes about you having some</p> <p>4 involvement with -- with training or at least</p> <p>5 overhearing or seeing training.</p> <p>6 Have you had any involvement of any</p> <p>7 kind where drivers were being trained on safety?</p> <p>8 A. No. Not while drivers were present,</p> <p>9 no.</p> <p>10 Q. Okay. When drivers weren't present,</p> <p>11 have you been involved in any training about</p> <p>12 driver safety?</p> <p>13 A. Yes.</p> <p>14 Q. Tell me about that.</p> <p>15 A. I have sat in on some presentations and</p> <p>16 seminars where there were safety training items</p> <p>17 that were discussed. Those were at trade shows or</p> <p>18 break-out sessions at trade shows. So I've</p> <p>19 attended those sessions themselves, but there were</p> <p>20 not drivers present, at least that I was aware of.</p> <p>21 Q. Okay. And do you recall whether any of</p> <p>22 those sessions dealt with driving in adverse</p> <p>23 weather conditions?</p> <p>24 A. I don't recall the exact topics.</p>	<p style="text-align: right;">16</p> <p>1 Q. And when they reviewed the reports,</p> <p>2 were those safety managers or anyone else with</p> <p>3 Optimum involved with an evaluation of</p> <p>4 preventability?</p> <p>5 A. No, we don't decipher preventability.</p> <p>6 Q. And is it correct that Optimum does not</p> <p>7 now, nor has it ever, engaged in an analysis of</p> <p>8 crashes to determine if they were preventable?</p> <p>9 A. No, we don't get involved with</p> <p>10 discussion of preventability.</p> <p>11 Q. Okay. All right.</p> <p>12 Now, Optimum entered into a contract</p> <p>13 with UPS Ground Freight, correct, relevant to this</p> <p>14 case?</p> <p>15 A. Correct.</p> <p>16 Q. And I'm going to shorten it by using</p> <p>17 just UPS to cover UPS Ground Freight, Inc., or the</p> <p>18 entities with which you contracted with, okay?</p> <p>19 A. Okay.</p> <p>20 Q. Did you have anything to do with the</p> <p>21 drafting of that contract? I know the lawyers</p> <p>22 drafted it, but did you have any input in the</p> <p>23 drafting of the contract?</p> <p>24 A. Drafting, no.</p>
<p style="text-align: right;">15</p> <p>1 Q. Okay. Who -- as far as training, there</p> <p>2 was nobody at Optimum that did any driver</p> <p>3 training; correct?</p> <p>4 A. Explain "driver training."</p> <p>5 Q. Where drivers obtained training or</p> <p>6 instruction on safety and safe operation of a</p> <p>7 tractor-trailer.</p> <p>8 A. We have done training for some drivers</p> <p>9 when applicable.</p> <p>10 Q. And who would be the person that would</p> <p>11 do that?</p> <p>12 A. We had -- used to have multiple safety</p> <p>13 managers, but we do not any longer.</p> <p>14 Q. When did you stop having safety</p> <p>15 managers?</p> <p>16 A. I would suggest that would have been</p> <p>17 through the beginning of 2015.</p> <p>18 Q. Okay. And what were the duties of</p> <p>19 those safety managers when they were involved with</p> <p>20 the company?</p> <p>21 A. They would be contacted if there was an</p> <p>22 accident, incident, or injury; made aware of those</p> <p>23 situations; and were to review the reports that</p> <p>24 were submitted.</p>	<p style="text-align: right;">17</p> <p>1 Q. Okay.</p> <p>2 A. I was not in the drafting stage.</p> <p>3 Q. Okay. Were you involved in content,</p> <p>4 suggesting content for the contract?</p> <p>5 A. We would have negotiated with the</p> <p>6 customer on items when necessary.</p> <p>7 Q. Okay.</p> <p>8 (Whereupon Deposition Exhibit</p> <p>9 No. 42 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. McDANIEL:</p> <p>12 Q. And I have marked as Item No. 42 what's</p> <p>13 been provided to us as a copy of -- a complete</p> <p>14 copy of the contract that goes from Bates pages</p> <p>15 241 to 296. I want you to look and see if that</p> <p>16 appears to be the complete contract. It's got</p> <p>17 sections over here that are stapled together, if</p> <p>18 that will help you.</p> <p>19 MR. GALAS: Bobby, 290 --</p> <p>20 MR. McDANIEL: I'm sorry. What?</p> <p>21 MR. GALAS: 286 to '96 is a</p> <p>22 different --</p> <p>23 MR. McDANIEL: I can't hear you, Roman.</p> <p>24 MR. GALAS: 286 to '96 is a different</p>

<p style="text-align: right;">18</p> <p>1 contract.</p> <p>2 MR. McDANIEL: Yeah, okay.</p> <p>3 MR. GALAS: So what you're --</p> <p>4 MR. McDANIEL: So it would be 285.</p> <p>5 MR. GALAS: It would be 285, and then</p> <p>6 297 to 309. Our numbers got mixed up in</p> <p>7 forwarding production.</p> <p>8 MR. COX: And just so we're clear, 241</p> <p>9 to 285 is the first portion of the contract.</p> <p>10 MR. McDANIEL: Okay.</p> <p>11 (Phone rings.)</p> <p>12 (Discussion off the record.)</p> <p>13 MR. McDANIEL: That's not part of it.</p> <p>14 MR. BAKER: Okay. Is that the Penski</p> <p>15 stuff?</p> <p>16 MR. McDANIEL: That's the Penski stuff.</p> <p>17 MR. GALAS: 297 to 309 -- to 310 is the</p> <p>18 rest of it. I don't know if you've got it</p> <p>19 there.</p> <p>20 MR. McDANIEL: It's what?</p> <p>21 MR. GALAS: 297 to 310 is the rest of</p> <p>22 the contract. I don't know if you have it in</p> <p>23 your pile there.</p> <p>24 MR. McDANIEL: I don't know if I</p>	<p style="text-align: right;">20</p> <p>1 position with the company?</p> <p>2 A. He's president.</p> <p>3 Q. Okay. But you have reviewed that</p> <p>4 contract, and it is the contract between Optimum</p> <p>5 and UPS; correct?</p> <p>6 A. It appears to be the contract, yes.</p> <p>7 Q. Okay. Now let's get a little more</p> <p>8 background information, if we can.</p> <p>9 Tell me about the -- what the company</p> <p>10 called TDI Nationwide -- what is TDI Nationwide?</p> <p>11 A. TDI Nationwide was our marketing entity</p> <p>12 name that we use because we had multiple operating</p> <p>13 companies that were affiliated with each other.</p> <p>14 So we tried to simplify it and use one name for</p> <p>15 marketing purposes --</p> <p>16 Q. Thank you.</p> <p>17 A. [Continuing] -- for all of our materials.</p> <p>18 Q. So that's -- that's just a part of</p> <p>19 Optimum; is that correct?</p> <p>20 A. No. Optimum is its own company.</p> <p>21 Q. Okay. And so TDI Nationwide --</p> <p>22 Is separate.</p> <p>23 Q. [Continuing] -- is a company --</p> <p>24 A. Separate.</p>
<p style="text-align: right;">19</p> <p>1 brought that. I'll have to look and see.</p> <p>2 But we'll work with what we do have.</p> <p>3 I thought I had everything in one</p> <p>4 spot, but any rate, we'll go forward.</p> <p>5 BY MR. McDANIEL:</p> <p>6 Q. And I understand that you signed that</p> <p>7 contract on behalf of Optimum; correct?</p> <p>8 A. I -- you know, I had to look at the</p> <p>9 signature page.</p> <p>10 Q. Okay. If you'll look at --</p> <p>11 A. This one that you've got in front of</p> <p>12 me?</p> <p>13 Q. 257.</p> <p>14 A. This signature here is what you're</p> <p>15 referencing?</p> <p>16 Q. Yes, sir.</p> <p>17 A. That's not my signature.</p> <p>18 Q. If you -- where you have the name --</p> <p>19 A. That's right.</p> <p>20 Q. Is that Ronald?</p> <p>21 A. That's Ronald F. Formento, Jr.</p> <p>22 Q. Is that a brother or something?</p> <p>23 A. That is my brother.</p> <p>24 Q. Okay. All right. What was his</p>	<p style="text-align: right;">21</p> <p>1 Q. Separate entity?</p> <p>2 A. Yes.</p> <p>3 Q. But Optimum works with TDI Nationwide</p> <p>4 in terms of supplying qualified drivers; is that</p> <p>5 correct?</p> <p>6 A. Yes. They all work together, yes, when</p> <p>7 necessary.</p> <p>8 Q. Okay. Tell me what the role of TDI</p> <p>9 Nationwide is in reference to temporary drivers</p> <p>10 that you contract with a company like UPS. What</p> <p>11 role do they have with those individual drivers?</p> <p>12 A. TDI Nationwide is, again, a marketing</p> <p>13 entity that we use for simplification purposes</p> <p>14 across the country because we had multiple</p> <p>15 companies operating simultaneously.</p> <p>16 Q. Okay. And do you know the name of an</p> <p>17 entity that is responsible for actual training of</p> <p>18 any temporary drivers that Optimum supplies?</p> <p>19 A. Training? No.</p> <p>20 Q. Okay. Is there a company that</p> <p>21 evaluates the competence of a driver before</p> <p>22 Optimum supplies that driver to a customer such as</p> <p>23 UPS?</p> <p>24 A. Not that I'm aware of, no.</p>



<p style="text-align: right;">22</p> <p>1 Q. Is there an entity that you're aware of</p> <p>2 that evaluates prior work performance of a driver</p> <p>3 before Optimum supplies that driver to a company</p> <p>4 like UPS?</p> <p>5 A. Can you repeat the question?</p> <p>6 MR. McDANIEL: Read it back, if you</p> <p>7 will.</p> <p>8 THE COURT REPORTER: "Question: Is</p> <p>9 there an entity that you're aware of that</p> <p>10 evaluates prior work performance of a driver</p> <p>11 before Optimum supplies that driver to a</p> <p>12 company like UPS?"</p> <p>13 THE WITNESS: Evaluates prior work</p> <p>14 performance. Such as -- could you define</p> <p>15 "work performance"?</p> <p>16 BY MR. McDANIEL:</p> <p>17 Q. Work performance including any history</p> <p>18 of drug abuse, any history of driving citations,</p> <p>19 any history of truck crashes, any history of</p> <p>20 traffic citations. Any of those things.</p> <p>21 A. It reviews the work performance.</p> <p>22 Well, Optimum does have a compliance</p> <p>23 department, as I -- as I said, and our contract</p> <p>24 requires us to provide customers with qualified</p>	<p style="text-align: right;">24</p> <p>1 Optimum provide that to the drivers?</p> <p>2 A. Yes, it does.</p> <p>3 Q. And does Optimum expect the drivers to</p> <p>4 comport with and comply with the provisions of</p> <p>5 that handbook?</p> <p>6 A. We -- we ask the drivers to review the</p> <p>7 document at their leisure.</p> <p>8 Q. I'm sorry. Review the document what?</p> <p>9 A. At their leisure.</p> <p>10 Q. What?</p> <p>11 A. At their leisure. To review the</p> <p>12 handbook --</p> <p>13 Q. Oh, at their leisure.</p> <p>14 A. Yes, yes.</p> <p>15 Q. And, again, forgive me because of my</p> <p>16 hearing difficulty.</p> <p>17 To review it at their leisure.</p> <p>18 A. Correct.</p> <p>19 Q. Do you expect them to comply with the</p> <p>20 contents of the safety manual or safety handbook,</p> <p>21 as it's called?</p> <p>22 A. Comply as to what part?</p> <p>23 Q. Perform -- perform as the handbook,</p> <p>24 safety handbook recommends them to perform their</p>
<p style="text-align: right;">23</p> <p>1 CDL truckdrivers under the DOT regulations.</p> <p>2 Q. Okay. So then when you -- and it's in</p> <p>3 your contract, but when Optimum supplies a driver</p> <p>4 to UPS, you -- Optimum has the obligation of</p> <p>5 providing UPS with a driver that is qualified,</p> <p>6 well trained; correct?</p> <p>7 A. Qualified under the DOT regulations.</p> <p>8 Q. Okay. And then Optimum has, through</p> <p>9 Nationwide, a safety handbook; correct?</p> <p>10 A. Uses the same handbook, yes.</p> <p>11 Q. Okay. And when you spoke earlier about</p> <p>12 things you reviewed -- I think I mentioned to you</p> <p>13 I have significant hearing difficulty, so forgive</p> <p>14 me -- but I understood there was an S on handbooks</p> <p>15 that you had reviewed. And did I understand it to</p> <p>16 be the TDI Nationwide handbook and then the DOT</p> <p>17 regulation handbook? Are those the only two?</p> <p>18 A. I reviewed the Federal Motor Carrier</p> <p>19 Safety Regulations Handbook.</p> <p>20 Q. Okay. Did you review the CDL manual</p> <p>21 to -- that a driver uses to get a CDL?</p> <p>22 A. No.</p> <p>23 Q. Okay. All right.</p> <p>24 And the TDI safety handbook, does</p>	<p style="text-align: right;">25</p> <p>1 job duties.</p> <p>2 A. Well, it's a document that we ask them</p> <p>3 to review at their leisure. All of the drivers</p> <p>4 that we provide have been qualified under the DOT</p> <p>5 regulations, and so therefore we -- we hope that</p> <p>6 those documents would be reviewed after their --</p> <p>7 their first day of employment.</p> <p>8 Q. Is there anyone at Optimum that checks</p> <p>9 to see if the driver has, in fact, reviewed the</p> <p>10 safety handbook?</p> <p>11 A. Checks to see --</p> <p>12 Q. Yeah.</p> <p>13 A. [Continuing] -- if they reviewed?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. I'm going to give you a copy of it.</p> <p>17 It's previously been marked as an exhibit to</p> <p>18 another deposition.</p> <p>19 (Document tendered.)</p> <p>20 BY MR. McDANIEL:</p> <p>21 Q. Have you reviewed that document?</p> <p>22 A. I have.</p> <p>23 Q. All right. Now, in reviewing that</p> <p>24 document --</p>



<p style="text-align: right;">26</p> <p>1 MR. GALAS: Bobby, what's the Bates 2 number? 3 MR. COX: 152. 4 MR. GALAS: OSI? 5 MR. COX: Yeah, OSI. 6 MR. McDANIEL: OSI 152 through -- 7 MR. GALAS: 173? 8 MR. COX: Yeah. 9 MR. McDANIEL: 173. And there was a 10 page on the back that didn't need to be 11 there. 12 BY MR. McDANIEL: 13 Q. So that handbook is given to the 14 drivers, and that's been previously marked as 15 Exhibit No. 17 in a prior deposition. So I'm just 16 going to put Exhibit 17 so it will correspond with 17 what we've had before on that, and you may refer 18 to it at any time. 19 Have you read that safety handbook 20 cover to cover? 21 A. It's been years cover to cover, but I 22 have in the past. 23 Q. Okay. Have you reviewed it relative to 24 those portions of driver -- driving</p>	<p style="text-align: right;">28</p> <p>1 Q. It's what? 2 A. It's not a disqualifying factor for 3 hiring. 4 Q. Okay. So if a driver was given the 5 safety handbook -- that's Exhibit 17 -- and when 6 he was given that handbook said, "I'm not going to 7 read that," you would still hire him and supply 8 him to UPS, assuming he was otherwise qualified, 9 had a CDL? 10 A. Assuming that they met the minimum DOT 11 qualifications and mutually agreed-upon standards 12 between the companies, or any customer, yes. 13 Q. Okay. Does anybody at Optimum 14 evaluate, at any time, the driver's knowledge of 15 the contents of the safety handbook? 16 And when I say "safety handbook" from 17 now on, I'm obviously talking about the TDI safety 18 handbook, a copy of which is Exhibit 17. Agreed? 19 A. Yes. Agreed. 20 Q. Okay. Does anybody at any time, once 21 an employee is hired, evaluate whether that driver 22 has read the safety handbook or not? 23 A. I don't know if anybody does evaluate 24 that now.</p>
<p style="text-align: right;">27</p> <p>1 responsibilities recently, as in preparing for 2 this deposition? 3 A. I have reviewed certain sections of it. 4 Q. Okay. All right. We'll get to that in 5 a minute, then. 6 You -- I want to make sure I understand 7 correctly. Is it correct that there is no one at 8 Optimum that when you're supplying a temporary 9 driver, such as Woodall to UPS, who confirms that 10 Mr. Woodall has, in fact, read the safety 11 handbook? 12 A. We don't confirm, require them to read 13 the handbook. 14 Q. All right. You give them the copy, 15 tell them they're expected to read it, and that's 16 the extent of Optimum's involvement with the 17 handbook with the driver; correct? 18 A. We encourage -- we encourage them to 19 read it, yes. 20 Q. Okay. Is it a job requirement that 21 they read it or they -- if they say, "I'm not 22 going to read it," would you still hire them? 23 A. If they refuse to read it, that's not a 24 disqualifying factor for hiring.</p>	<p style="text-align: right;">29</p> <p>1 Q. All right. To your knowledge -- and 2 you're the corporate representative -- would it be 3 fair to say that nobody actually evaluates the 4 driver to determine that he has or has not 5 complied or read the handbook? 6 A. I can't say, on behalf of everybody in 7 the corporation, whether they talk about this 8 handbook or not, but it's not a requirement, no. 9 Q. All right. Who, if anyone, would be 10 more knowledgeable than you on behalf of the 11 corporation that could speak to whether drivers 12 are evaluated on their knowledge of the safety 13 handbook? Anyone? 14 A. I don't think so. 15 Q. Okay. As far as the handbook from TDI, 16 would it be correct that Optimum gives that to the 17 driver, expects the driver to read it, and expects 18 the driver to comport with the contents of the 19 handbook; is that correct? 20 A. We encourage all the employees to 21 review the handbook at their leisure, yes. 22 Q. All right. I want to make it very 23 specific. 24 There are recommendations for driver</p>

<p style="text-align: right;">30</p> <p>1 conduct in the safety handbook; correct?</p> <p>2 A. Off the top of my head, I don't know if</p> <p>3 the word "recommendation" is in there, but if it</p> <p>4 is, assuming it is, there is recommendations.</p> <p>5 Q. All right. I'll rephrase it a little</p> <p>6 differently.</p> <p>7 Does Optimum expect the driver, as part</p> <p>8 of his employment with Optimum, to comply with the</p> <p>9 safety handbook?</p> <p>10 A. It's not a requirement of their</p> <p>11 employment.</p> <p>12 Q. All right. So a driver could tell</p> <p>13 Optimum, "I'm not going to do what that safety</p> <p>14 handbook recommends," and you would still hire</p> <p>15 that driver or continue his employment?</p> <p>16 MR. BAKER: Object; hypothetical, calls</p> <p>17 for opinion.</p> <p>18 THE WITNESS: Are you asking me from my</p> <p>19 personal perspective, or --</p> <p>20 BY MR. McDANIEL:</p> <p>21 Q. No, on behalf of the corporation.</p> <p>22 You're here as the --</p> <p>23 A. It's not a requirement of their</p> <p>24 employment, for them to comply with any of this</p>	<p style="text-align: right;">32</p> <p>1 handbook? Yes or no?</p> <p>2 MR. BAKER: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: It's, again, encouraged</p> <p>5 for all employees to review the book after</p> <p>6 their first date of employment.</p> <p>7 BY MR. McDANIEL:</p> <p>8 Q. And do you know whether or not the</p> <p>9 handbook is given to the driver for the purpose of</p> <p>10 helping improve safety to the innocent motoring</p> <p>11 public?</p> <p>12 A. Can you repeat the question again? I'm</p> <p>13 sorry.</p> <p>14 THE COURT REPORTER: "Question: And do</p> <p>15 you know whether or not the handbook is given</p> <p>16 to the driver for the purpose of helping</p> <p>17 improve safety to the innocent motoring</p> <p>18 public?"</p> <p>19 MR. GALAS: Objection to form.</p> <p>20 THE WITNESS: It's not given to the</p> <p>21 driver for that purpose. It's given to them</p> <p>22 for review after their first day of</p> <p>23 employment.</p> <p>24</p>
<p style="text-align: right;">31</p> <p>1 document.</p> <p>2 Q. Okay. All right.</p> <p>3 And why does Optimum give the driver</p> <p>4 the safety handbook? What's the purpose of giving</p> <p>5 it to them?</p> <p>6 A. Again, this is a document we encourage</p> <p>7 them to review. We feel it has some pertinent</p> <p>8 information in it that they can look at and read</p> <p>9 at their leisure.</p> <p>10 Q. Pertinent information for what purpose?</p> <p>11 A. DOT compliance and DOT qualification.</p> <p>12 Q. Does the handbook contain</p> <p>13 recommendations or comments relating to driver</p> <p>14 safety? And we'll go through them one by one if</p> <p>15 we need to.</p> <p>16 A. I would suggest it does, since it's</p> <p>17 titled "safety handbook."</p> <p>18 Q. All right. So would it be a fair</p> <p>19 statement that Optimum expects the driver to have</p> <p>20 the integrity to read the book that you give them?</p> <p>21 A. It's, again, encouraged for all the</p> <p>22 employees to review it.</p> <p>23 Q. And is it also the position of Optimum</p> <p>24 that the driver should comply with the safety</p>	<p style="text-align: right;">33</p> <p>1 BY MR. McDANIEL:</p> <p>2 Q. Why does Optimum give it to the driver?</p> <p>3 What's Optimum trying to accomplish by giving the</p> <p>4 driver the safety handbook? What's -- what's the</p> <p>5 objective?</p> <p>6 A. Again, material that we think is -- got</p> <p>7 relevance to their position.</p> <p>8 Q. For what purpose? Relevant to</p> <p>9 accomplish what?</p> <p>10 A. Make sure that everybody is up to speed</p> <p>11 on any DOT regulation changes, if there are any in</p> <p>12 there that we have to change or adjust.</p> <p>13 Q. Okay. And the DOT manual or FMCSA</p> <p>14 manual that you reviewed, did you bring that with</p> <p>15 you?</p> <p>16 A. You know, I don't think I did, to be</p> <p>17 honest with you. I had pulled one out, and I</p> <p>18 didn't throw it in my bag. I'm sorry.</p> <p>19 Q. You have a briefcase with you today --</p> <p>20 A. Yes.</p> <p>21 Q. [Continuing] -- right?</p> <p>22 A. Mm-hmm.</p> <p>23 Q. Yes?</p> <p>24 A. Yes, I do.</p>

<p style="text-align: right;">34</p> <p>1 Q. Okay. I'm sorry. We can't say mm-hmm 2 or uhn-uhn because it can be confusing in the 3 answer. Forgive me. 4 Would you tell me what's in your 5 briefcase that you brought with you today? 6 A. I brought some -- a pad of paper and a 7 pen, and I believe -- ah -- some other corporate 8 documents. 9 Q. You're welcome to open it and look, 10 tell me what it is. 11 A. I don't remember what I've got exactly 12 in here. (Examines briefcase.) 13 Some corporate file work, some old 14 paperwork. 15 MR. COX: And, Bobby, just for the 16 record, you're asking him for what's in there 17 related to the lawsuit or corporate. I mean, 18 I'm assuming if he's got something personal 19 in there -- 20 MR. McDANIEL: Well, if he's got a 21 lunch menu, I'm not interested in that. 22 MR. COX: All right. 23 BY MR. McDANIEL: 24 Q. What do you have in your briefcase that</p>	<p style="text-align: right;">36</p> <p>1 personnel file of Mr. Woodall. 2 Q. Okay. Did you bring those three things 3 with you today? 4 A. I think I have a copy of the safety 5 handbook. 6 Q. Okay. Do you have Mr. Woodall's 7 personnel file with you today? 8 A. I did not bring Mr. Per- -- Mr. 9 Woodall's personnel file, no. 10 Q. Did you bring the DOT reg book with you 11 today? 12 A. No, I didn't. I forgot to put it in my 13 bag. 14 Q. Okay. And do you know where Optimum 15 gets those? Are they supplied by J.J. Keller 16 or -- 17 A. "They" being? 18 Q. The DOT handbook that you make 19 reference to. 20 A. The Federal Motor Carrier Safety 21 Regulation Handbook, yes, we purchase those from 22 J.J. Keller. 23 Q. Okay. And what is your understanding 24 of J.J. Keller, probably the most commonly used</p>
<p style="text-align: right;">35</p> <p>1 has anything to do with Optimum Staffing 2 Solutions, UPS, and Robert Woodall. If you would 3 just pull them out, and get -- 4 MR. BAKER: Well, I object. We're not 5 doing an on-spot production of what he's got 6 in his bag. He has -- 7 MR. McDANIEL: Well, I'm entitled -- I 8 think I'm entitled to know what documents -- 9 MR. BAKER: I disagree. 10 MR. McDANIEL: [Continuing] -- he 11 reviewed, and he said he reviewed them. 12 MR. BAKER: Well, ask him what did he 13 review. 14 THE WITNESS: What did I review? 15 MR. BAKER: But you're not entitled to 16 rifle through his pockets and wallets and 17 personal belongings. That's highly 18 inappropriate. 19 BY MR. McDANIEL: 20 Q. Did you review the documents that are 21 in your briefcase that you brought today? 22 A. I might have looked at, again, the 23 safety handbook, the Federal Motor -- Federal 24 Motor Carrier Safety Regulation Handbook, and the</p>	<p style="text-align: right;">37</p> <p>1 reference source for the trucking industry? 2 A. That's exactly right. It is a 3 reference source for -- for materials in the 4 transportation industry. 5 Q. And to your knowledge, does Optimum 6 obtain or have any other documents, booklets, 7 pamphlets, videos, or material obtained from J.J. 8 Keller relating to the trucking industry? 9 A. We get other materials from other 10 sources as well. We do get a hazardous material 11 booklet as well. 12 Q. A what? 13 A. Hazardous material booklet as well. 14 Q. Okay. 15 A. And then the Federal Motor Carrier 16 Safety Regulations booklets. 17 Currently I believe that's all we get 18 from them, off the top of my head. 19 Q. All right. What other vendors do you 20 use to obtain material relating to the trucking 21 industry? Such as Smith Systems? Do you obtain 22 information from them? 23 A. We have a on-line training source that 24 we do have access to video libraries.</p>



<p style="text-align: right;">38</p> <p>1 Q. And who is the vendor for that?</p> <p>2 A. Infinity Training Solutions.</p> <p>3 Q. I'm sorry. I couldn't --</p> <p>4 A. Infinity Training Solutions.</p> <p>5 Q. Okay. And who is the person in charge</p> <p>6 of obtaining that information?</p> <p>7 A. Well, it's an on-line library that's</p> <p>8 available, so we -- we contract with that vendor</p> <p>9 for access to those, those videos.</p> <p>10 Q. And what do you do with those videos?</p> <p>11 A. Depends on what the video is for.</p> <p>12 Q. Well, are they shown to drivers, for</p> <p>13 example? Are there any videos that you get</p> <p>14 through Infinity Training Solutions that are</p> <p>15 provided for drivers to watch?</p> <p>16 A. Are they -- say the question again.</p> <p>17 I'm sorry.</p> <p>18 Q. Are there any video presentations that</p> <p>19 you obtain from Infinity Training Solutions that</p> <p>20 are provided for drivers to watch?</p> <p>21 A. Yes. There are videos related to</p> <p>22 drivers, and they can watch the videos if -- if</p> <p>23 they so desire.</p> <p>24 Q. And does Optimum require drivers to</p>	<p style="text-align: right;">40</p> <p>1 Q. Okay. And did you make a diligent</p> <p>2 inquiry to gather the information that's</p> <p>3 referenced in the notice for the deposition,</p> <p>4 Exhibit 41 to your deposition?</p> <p>5 A. Yes.</p> <p>6 Q. And after making diligent inquiry, you</p> <p>7 could not find any records of Mr. Woodall having</p> <p>8 watched any training videos; is that a fair</p> <p>9 statement?</p> <p>10 A. I could not find any evidence of that.</p> <p>11 Q. Okay. Could you find any evidence that</p> <p>12 Mr. Woodall had participated in any driver</p> <p>13 training programs of any kind, either</p> <p>14 documentation or video?</p> <p>15 A. Not that I'm aware of. No, I could not</p> <p>16 find any.</p> <p>17 Q. Okay. And if Mr. Woodall had taken any</p> <p>18 tests at the end of these training videos, that</p> <p>19 would have been in the HR department; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you checked and there were no such</p> <p>22 documents present; correct?</p> <p>23 A. I checked, and I did not see any, no.</p> <p>24 Q. Okay. What other vendors does Optimum</p>
<p style="text-align: right;">39</p> <p>1 watch any of the videos from Infinity Training</p> <p>2 Solutions?</p> <p>3 A. As a requirement? No. As a</p> <p>4 suggestion? Yes.</p> <p>5 Q. Does Optimum check to see whether a</p> <p>6 specific driver, such as Robert Woodall, has, in</p> <p>7 fact, observed any of the videos from Infinity</p> <p>8 Training Solution or any other source? Do you</p> <p>9 follow up to see if they actually did it?</p> <p>10 A. Yes, there would be a follow-up. And</p> <p>11 the follow-up would be in the form of a quiz at</p> <p>12 the end of any of the videos that would be taken,</p> <p>13 and the results would have been sent to, again, my</p> <p>14 HR vice president.</p> <p>15 Q. So would the company then have records</p> <p>16 if Robert Woodall had, in fact, watched any of</p> <p>17 these videos and taken the test? The company</p> <p>18 would have those records, would they not?</p> <p>19 A. If he did take the exam, yes.</p> <p>20 Q. And we had asked for all of the records</p> <p>21 from Mr. Woodall. Have you seen any records where</p> <p>22 Mr. Woodall watched any of the videos or took any</p> <p>23 of the tests?</p> <p>24 A. I have not.</p>	<p style="text-align: right;">41</p> <p>1 Solutions use, besides J.J. Keller and Infinity</p> <p>2 Training Solutions?</p> <p>3 A. We have many vendors.</p> <p>4 Q. I'll rephrase my question.</p> <p>5 What other vendors does Optimum use in</p> <p>6 relation to driver training or driver safety,</p> <p>7 besides J.J. Keller and Infinity Training Solutions?</p> <p>8 A. We have no other vendors that I'm aware</p> <p>9 of. The J.J. Keller, again, is for reference</p> <p>10 material, as we discussed earlier, and videos that</p> <p>11 are recommended for people to view again and</p> <p>12 suggested for people to view.</p> <p>13 So it's not a training situation, so to</p> <p>14 speak. It's more of a suggested reference</p> <p>15 material for people to review.</p> <p>16 Q. Okay. And J.J. Keller also has videos</p> <p>17 available for purchase, do they not?</p> <p>18 A. I assume so.</p> <p>19 Q. Okay. And you and your company</p> <p>20 consider J.J. Keller a reliable source of</p> <p>21 information for driver training and safety, I take</p> <p>22 it?</p> <p>23 A. Can you repeat the question again?</p> <p>24 THE COURT REPORTER: "Question: And</p>



<p style="text-align: right;">42</p> <p>1       you and your company consider J.J. Keller a</p> <p>2       reliable source of information for driver</p> <p>3       training and safety, I take it?"</p> <p>4       THE WITNESS: Training and safety? I</p> <p>5       don't know if I could identify reliable or</p> <p>6       not reliable. I can say that they do have</p> <p>7       reference materials that are relevant to the</p> <p>8       transportation industry.</p> <p>9       BY MR. McDANIEL:</p> <p>10      Q.   Okay. You have in front of you the</p> <p>11      notice for the deposition, do you not?</p> <p>12      A.   Yes.</p> <p>13      Q.   All right. What I want to do is first</p> <p>14      ask if you made a diligent inquiry to try to find</p> <p>15      all of the information that would be responsive</p> <p>16      and relevant to that notice.</p> <p>17      A.   Yes, I made a diligent inquiry.</p> <p>18      Q.   And -- and there is nothing you can</p> <p>19      provide us that hasn't already been provided; is</p> <p>20      that correct?</p> <p>21      A.   I've turned all of the information over</p> <p>22      to counsel.</p> <p>23      Q.   All right. Well, I'm looking for my</p> <p>24      other copy of the notice. Here we go.</p>	<p style="text-align: right;">44</p> <p>1       driver education, history, and background</p> <p>2       investigation), accident and/or safety violation</p> <p>3       investigation, any routine findings of use of any</p> <p>4       controlled substance and discipline."</p> <p>5       Have you told me everything that the</p> <p>6       corporation has or does in compliance with No. 3?</p> <p>7       A.   If you've asked me questions about it,</p> <p>8       I've given you all the information that I have at</p> <p>9       this time, yes.</p> <p>10      Q.   Okay. Well, I'm going to go through</p> <p>11      each one of them --</p> <p>12      A.   Sure.</p> <p>13      Q.   [Continuing] -- just to make sure I</p> <p>14      haven't overlooked something. Fair?</p> <p>15      A.   No problem.</p> <p>16      Q.   Number 4:</p> <p>17      "Corporate (and/or driver) warnings,</p> <p>18      citations, penalties, or records concerning safety</p> <p>19      violations within the" last "five (5) year period</p> <p>20      prior to the occurrence to present relating to</p> <p>21      Defendant, Robert Woodall."</p> <p>22      If there's anything that's not in his</p> <p>23      personnel file, would there be anything else?</p> <p>24      A.   From our standpoint, no. I don't -- I</p>
<p style="text-align: right;">43</p> <p>1       IF you will, look at Item No. 1. This</p> <p>2       asks you to testify on behalf of the corporation</p> <p>3       as to these subjects, and No. 1 was:</p> <p>4       "Policies, procedures, protocols, and</p> <p>5       practices concerning driver safety training,</p> <p>6       safety education, safety compliance, and safety</p> <p>7       monitoring."</p> <p>8       Did I read that correctly?</p> <p>9       A.   Yes.</p> <p>10      Q.   And have you told me everything that</p> <p>11      you know on behalf of the corporation in</p> <p>12      compliance with No. 1? Is there anything else</p> <p>13      about No. 1 that you've not told me?</p> <p>14      A.   Not that I can think of.</p> <p>15      Q.   Okay. Item No. 2:</p> <p>16      "Policies, procedures, protocols, and</p> <p>17      practices concerning confirming and maintaining</p> <p>18      driver qualifications."</p> <p>19      Have you told me everything you know on</p> <p>20      behalf of the corporation to comply with No. 2?</p> <p>21      A.   I believe I have.</p> <p>22      Q.   Number 3:</p> <p>23      "Policies, procedures, protocols, and</p> <p>24      practices concerning driver hiring (including</p>	<p style="text-align: right;">45</p> <p>1       only have however many years he's worked for the</p> <p>2       corporation. So I don't recall if it's five years</p> <p>3       or not.</p> <p>4       Q.   Whatever documents that would be</p> <p>5       responsive to No. 4, would they be or at least a</p> <p>6       copy of them in his personnel file?</p> <p>7       A.   Yes, they should be in his personnel</p> <p>8       file.</p> <p>9       Q.   All right. Item No. 5:</p> <p>10      "Identification of corporate personnel</p> <p>11      performing safety training and monitoring for</p> <p>12      drivers, including . . . Robert Woodall" in the</p> <p>13      five years "prior to the occurrence to present."</p> <p>14      And your response to that one?</p> <p>15      A.   I don't have corporate personnel that</p> <p>16      perform these safety functions in training that</p> <p>17      you've identified.</p> <p>18      Q.   Okay. Mr. Woodall had a -- a</p> <p>19      supervisor at Optimum?</p> <p>20      A.   Yes.</p> <p>21      Q.   And who was that?</p> <p>22      A.   At the time he was hired?</p> <p>23      Q.   Let's go both ways. At the time he was</p> <p>24      hired until the time -- is he still</p>

46

1 working -- strike that.

2 Is he still -- is Robert Woodall still

3 in the employ of Optimum?

4 A. I believe he is still an employee.

5 Q. Okay. And so at the time of the

6 occurrence, April 10, 2016, who was his

7 supervisor?

8 A. From Optimum? His name was Brian

9 Connors.

10 Q. All right. And what is Brian Connors'

11 position, title?

12 A. Today?

13 Q. At that time. I'm sorry.

14 A. Branch manager.

15 Q. All right. And was Brian Connors the

16 supervisor for Robert Woodall at the time of his

17 employ up through April 10 of 2016?

18 A. You know, I don't know the answer to

19 that because I can't recall.

20 Brian Connors has a different position

21 now. And we opened a new office, and Mr. Woodall,

22 I believe, reported to that office and had

23 transitioned from one office to another office.

24 Q. Okay. At the time of this occurrence,

47

1 though, Mr. Connors was his supervisor; correct?

2 A. Yes.

3 Q. And what were the duties of Mr. Connors

4 as the supervisor of Robert Woodall?

5 A. Day-to-day?

6 Q. Yeah.

7 A. It varies.

8 Q. Well, what did his supervisory role

9 encompass?

10 A. He would contact driver -- the driver,

11 Mr. Woodall, to see if they -- he had any issues

12 on a weekly basis. He would provide Mr. Woodall

13 with his assignments. He would identify and --

14 and let Mr. Woodall know if there were any of

15 his -- what we call expiring renewables that he

16 had to update, which would have been a driver's

17 license, physical, motor vehicle check, annual

18 report.

19 Q. Okay. Next?

20 A. And, again, it could vary day-to-day.

21 So those are, for the most part, operationally

22 what Mr. Connors would have done with Mr. Woodall.

23 Q. And Mr. Connors was a branch manager?

24 A. At the time that Mr. Woodall was hired,

48

1 up to a point. You'll have to excuse me. I don't

2 recall when Mr. Connors took his new position, but

3 he was the branch manager.

4 Q. And when you say "the branch manager,"

5 what branch and where was it located?

6 A. Mr. Connors worked out of our

7 Knoxville, Tennessee, office.

8 Q. Okay. And did he have a territory that

9 that included?

10 A. Yeah. There would have -- he would

11 have been in charge of Tennessee and probably the

12 surrounding states of Tennessee, if we had drivers

13 and/or customers in those locations.

14 Q. Okay. Mr. Woodall was working out of

15 Fulton, Mississippi. Were you aware of that?

16 A. For what assignment?

17 Q. At the time -- for UPS at the time of

18 this occurrence on April 10, 2016.

19 A. Yes. I knew he was working in

20 Mississippi. I didn't know it was Fulton. Excuse

21 me.

22 Q. All right. And when you say that

23 Mr. Connors was in charge of assignments,

24 providing assignments, tell me what you mean by

49

1 that phrase.

2 A. Because the needs and our contracts at

3 Optimum are as-use contracts, that if an

4 assignment ended for a customer, then Mr. Connors

5 would have found him, if possible, another

6 assignment.

7 Q. And the word "assignment," that's

8 providing him as a temporary driver to a trucking

9 company. And then if that ended for whatever

10 reason, try to find him another company that he

11 would service; is that correct?

12 A. It would have been a customer that we

13 had a contract with, yes, but that's correct.

14 Q. Okay. And, you know, I forgot a

15 preliminary question I should have asked you, and

16 that is you've done a very good job of being

17 responsive to my questions. But if I ask a

18 question, you don't understand it, will you let me

19 know?

20 A. Yes.

21 Q. Okay. And if you give an answer and I

22 think you've finished and I start with another

23 question, will you let me know and interrupt me?

24 Say, Wait a minute; I haven't finished my answer?

<p style="text-align: right;">50</p> <p>1 A. Sure. Yes.</p> <p>2 Q. And up to now have you understood all</p> <p>3 the questions I've asked you or asked them be</p> <p>4 clarified?</p> <p>5 A. Yes.</p> <p>6 Q. And up to now have I cut you off to</p> <p>7 prevent you from answering any questions</p> <p>8 completely, or you had a fair opportunity to</p> <p>9 answer the questions?</p> <p>10 A. No, I've had an opportunity to answer</p> <p>11 the questions.</p> <p>12 Q. Okay. And up to now are there any</p> <p>13 answers you've given me that you feel you need to</p> <p>14 go back and change or modify or supplement in any</p> <p>15 way?</p> <p>16 MR. BAKER: We'll -- we'll reserve the</p> <p>17 right to read and sign.</p> <p>18 But go ahead and answer the</p> <p>19 question.</p> <p>20 THE WITNESS: I believe that everything</p> <p>21 has been answered correctly.</p> <p>22 BY MR. McDANIEL:</p> <p>23 Q. Okay. And did Optimum provide other</p> <p>24 temporary drivers to UPS, besides Robert Woodall?</p>	<p style="text-align: right;">52</p> <p>1 Q. Okay. Have you talked to Mr. Connors</p> <p>2 about that event, where UPS notified Optimum they</p> <p>3 no longer needed the services of Mr. Woodall?</p> <p>4 A. No. I don't think I did talk to him</p> <p>5 about that.</p> <p>6 Q. Are you aware of any documents in the</p> <p>7 files of Optimum where it's documenting why UPS</p> <p>8 released him back to Optimum?</p> <p>9 A. No, I'm not aware of any documents.</p> <p>10 Q. Does Optimum maintain any records that</p> <p>11 shows when a driver is released back to Optimum</p> <p>12 from a continuing customer as to why that driver</p> <p>13 was released back to Optimum?</p> <p>14 A. There's no documentation because it's a</p> <p>15 use agreement, again. So the customers, all</p> <p>16 customers, will have a need for a period of time,</p> <p>17 and when they no longer have the need, they let us</p> <p>18 know.</p> <p>19 Q. And is there any effort for quality</p> <p>20 control or for whatever purpose of asking the</p> <p>21 company, such as UPS, Why are you releasing this</p> <p>22 man back to us? Is that part of Optimum's</p> <p>23 business model?</p> <p>24 A. Typically we would just reassign the</p>
<p style="text-align: right;">51</p> <p>1 A. For what location?</p> <p>2 Q. Any location.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And were they provided under the</p> <p>5 same contract that we've marked as Exhibit No. 42?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And UPS has responded to written</p> <p>8 discovery in this case and said that after this</p> <p>9 wreck on April 10, 2016, Robert Woodall was</p> <p>10 released to go back to Optimum. Were you aware of</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have any personal</p> <p>14 involvement with interaction, oral or written or</p> <p>15 email, by any means of communication, with UPS</p> <p>16 about UPS releasing Mr. Woodall to go back to</p> <p>17 Optimum and no longer work with UPS?</p> <p>18 A. No.</p> <p>19 Q. All right. Who would have been the</p> <p>20 person that would have interacted with UPS to get</p> <p>21 that information that UPS no longer needed</p> <p>22 Mr. Woodall's services?</p> <p>23 A. Mr. Connors would have been in contact</p> <p>24 with the customer.</p>	<p style="text-align: right;">53</p> <p>1 employee.</p> <p>2 Q. And not ask why he's being released</p> <p>3 back to Optimum?</p> <p>4 A. I don't think so, no. I think we would</p> <p>5 just reassign the employee.</p> <p>6 Q. Okay. Did you speak with anyone -- and</p> <p>7 when I say "speak with," I'm including in general</p> <p>8 verbal, in person, telephone, written</p> <p>9 communication of any kind, including electronic</p> <p>10 email or messages of any kind, with anyone at UPS</p> <p>11 concerning Mr. Woodall's release back to Optimum?</p> <p>12 A. No. I don't think I did, no.</p> <p>13 Q. Okay. Did you have any communication,</p> <p>14 by whatever form, with UPS about the wreck that</p> <p>15 Mr. Woodall was involved in on April 10, 2016?</p> <p>16 A. I didn't speak with UPS on behalf of</p> <p>17 this accident, no.</p> <p>18 Q. Okay. That sounded like a very</p> <p>19 carefully chosen phrase, so I want to make sure</p> <p>20 that I don't overlook it.</p> <p>21 Did you have any communication by</p> <p>22 whatever form with UPS or anyone related to UPS on</p> <p>23 Mr. Woodall's accident of April 10, 2016?</p> <p>24 A. I didn't speak with UPS about this</p>



<p style="text-align: right;">54</p> <p>1 accident.</p> <p>2 Q. Okay. Do you know if anyone from</p> <p>3 Optimum did any investigation into the accident</p> <p>4 itself?</p> <p>5 A. Can you define "investigation into the</p> <p>6 accident"?</p> <p>7 Q. Thank you for asking me to.</p> <p>8 First of all, when I say "the</p> <p>9 accident," I'm talking about the accident on</p> <p>10 April 10, 2016, in which the UPS driver was</p> <p>11 involved, Mr. Woodall was involved in a wreck</p> <p>12 involving a truck, among others, driven by</p> <p>13 Mr. Brantley, okay?</p> <p>14 MR. COX: Object to the form.</p> <p>15 BY MR. McDANIEL:</p> <p>16 Q. When I say "wreck" or "accident,"</p> <p>17 that's what I'm referring to, okay?</p> <p>18 A. Okay.</p> <p>19 Q. Now, is there any written communication</p> <p>20 or -- or investigation anywhere in Optimum's file</p> <p>21 as to that wreck?</p> <p>22 A. Yes. Our safety manager, Joe Hemphill,</p> <p>23 at that time took what we call a driver's</p> <p>24 statement as to what transpired, and at that point</p>	<p style="text-align: right;">56</p> <p>1 A. I believe that those -- those are the</p> <p>2 only two documents that we have in our possession.</p> <p>3 Q. Okay. To whom would Mr. Hemphill</p> <p>4 report anything about this accident?</p> <p>5 A. He would have reported that to our</p> <p>6 safety director.</p> <p>7 Q. Who is -- who was the safety director</p> <p>8 at that time?</p> <p>9 A. His name is Mark Orlich.</p> <p>10 Q. Spell that last name.</p> <p>11 A. O-r-i-c-h.</p> <p>12 Q. And his title is safety director at</p> <p>13 that time?</p> <p>14 A. Correct.</p> <p>15 Q. What were the duties of the safety</p> <p>16 director?</p> <p>17 A. He was to oversee the safety managers.</p> <p>18 Q. And did that include driver conduct?</p> <p>19 A. Explain "driver conduct," please.</p> <p>20 Q. How the driver drove the truck and</p> <p>21 whether the driver was at fault in causing an</p> <p>22 accident.</p> <p>23 A. No. He did not make those</p> <p>24 assertions. It was just to review the safety</p>
<p style="text-align: right;">55</p> <p>1 would have collected that report.</p> <p>2 Q. Okay. And Joe Hemphill's title, as I</p> <p>3 recall, was safety manager?</p> <p>4 A. Correct.</p> <p>5 Q. And what were the duties of the safety</p> <p>6 manager?</p> <p>7 A. They -- they had, you know, a variety</p> <p>8 of needs for a variety of customers. They would</p> <p>9 have reviewed accidents, incidents, injuries to</p> <p>10 see if there was anything that needed to be</p> <p>11 reported back to the corporate office for the</p> <p>12 employees assigned in the field.</p> <p>13 Q. And was anything reported to the</p> <p>14 corporate office by Mr. Hemphill related to this</p> <p>15 specific accident with Mr. Woodall?</p> <p>16 A. It was reported by Mr. Hemphill that</p> <p>17 there was an accident that Mr. Woodall was</p> <p>18 involved with, and that he was going to get the</p> <p>19 driver's statement, and -- and then advise what</p> <p>20 transpired, so...</p> <p>21 Q. Are there any documents in the files of</p> <p>22 Optimum about the accident of April 10th other</p> <p>23 than the driver's statement and the electronic</p> <p>24 reporting of the accident that's noted?</p>	<p style="text-align: right;">57</p> <p>1 managers, to make sure that the safety managers</p> <p>2 were following through on their duties.</p> <p>3 Q. And what duties did Mr. Hemphill have</p> <p>4 besides taking the driver's statement?</p> <p>5 A. They were to make sure that the</p> <p>6 employees were -- files were up to date as far as</p> <p>7 the -- again, expiring renewables that we</p> <p>8 discussed earlier, licenses, MVRs, and make sure</p> <p>9 if there was any kind of incident or injury.</p> <p>10 Obviously injury is a big component of our</p> <p>11 business, so that was something that we wanted</p> <p>12 them to investigate as well, if there was an</p> <p>13 injury, workers' compensation claim.</p> <p>14 Q. When you're talking about injury,</p> <p>15 you're talking about potential injury to</p> <p>16 Mr. Woodall for workers' comp purposes?</p> <p>17 A. Any employees.</p> <p>18 Q. Okay. Well, in this specific case,</p> <p>19 part of Mr. Connors' duties or Mr. Hemphill's</p> <p>20 duties would be to try to determine if Mr. Woodall</p> <p>21 was injured?</p> <p>22 A. We -- they would have asked him if</p> <p>23 he -- he had suffered any injuries.</p> <p>24 Q. All right. Do you know if Mr. Woodall</p>



<p style="text-align: right;">58</p> <p>1 ever filed a workers' compensation claim relating</p> <p>2 to this occurrence?</p> <p>3 A. I don't believe he did.</p> <p>4 Q. Any other duties of the safety director</p> <p>5 that you haven't told me about?</p> <p>6 A. No.</p> <p>7 Q. Where does the safety director work?</p> <p>8 Where is he situated?</p> <p>9 A. Well, he has passed away, but he used</p> <p>10 to be in our corporate office.</p> <p>11 Q. Corporate office where?</p> <p>12 A. Woodridge, Illinois.</p> <p>13 Q. So I don't believe we can depose</p> <p>14 Mr. Orlich then. Sorry that he passed.</p> <p>15 As far as Mr. Hemphill, is he still an</p> <p>16 employee of your company?</p> <p>17 A. No, he is not.</p> <p>18 Q. And do you know when he left the company?</p> <p>19 A. Don't know the exact date, but I think</p> <p>20 2016.</p> <p>21 Q. And do you know where Mr. Hemphill is</p> <p>22 now employed?</p> <p>23 A. I do not.</p> <p>24 Q. Do you know where he lives? What city</p>	<p style="text-align: right;">60</p> <p>1 Q. And how many branch offices does</p> <p>2 Optimum have across the country?</p> <p>3 A. Sixteen.</p> <p>4 Q. How many regional managers does Optimum</p> <p>5 have?</p> <p>6 A. Three.</p> <p>7 MR. McDANIEL: Okay. We've been at it</p> <p>8 a little over an hour, and we'll take a</p> <p>9 relatively short break, ten minutes max, and</p> <p>10 then we'll be back at it.</p> <p>11 THE VIDEOGRAPHER: We are now going off</p> <p>12 the record at 9:10 a.m.</p> <p>13 (Brief pause.)</p> <p>14 THE VIDEOGRAPHER: We are now going</p> <p>15 back on the record at 9:24 a.m.</p> <p>16 BY MR. McDANIEL:</p> <p>17 Q. Sir, are there any answers you've given</p> <p>18 me, now that we've had a break, that you need to</p> <p>19 go back and change or modify that come to mind?</p> <p>20 MR. BAKER: Subject to right to read</p> <p>21 and sign.</p> <p>22 THE WITNESS: None that come to mind.</p> <p>23 BY MR. McDANIEL:</p> <p>24 Q. All right. Well, let's work our way</p>
<p style="text-align: right;">59</p> <p>1 or state?</p> <p>2 A. I don't know where he lives right now.</p> <p>3 Q. Okay. All right.</p> <p>4 And Mr. Brian Connors, is he still in</p> <p>5 the employ of Optimum?</p> <p>6 A. Yes, he is.</p> <p>7 Q. And what is his current job title?</p> <p>8 A. Regional manager.</p> <p>9 Q. And where he was a branch manager, he's</p> <p>10 now a regional manager?</p> <p>11 A. Correct.</p> <p>12 Q. What are the difference in the duties</p> <p>13 between the regional manager and the branch</p> <p>14 manager?</p> <p>15 A. Regional manager oversees the branch</p> <p>16 managers in a specific regional area, offices that</p> <p>17 we've designated for that group.</p> <p>18 Q. And what would be Mr. Connors' current</p> <p>19 region or territory?</p> <p>20 A. I don't know if this is the exact</p> <p>21 terminology for geographic purposes, but the</p> <p>22 Mid-Atlantic region from basically Tennessee to</p> <p>23 the East Coast. He has five offices, I believe,</p> <p>24 under his region.</p>	<p style="text-align: right;">61</p> <p>1 through the rest of this deposition notice.</p> <p>2 Number 5:</p> <p>3 "Identification of corporate personnel</p> <p>4 performing safety training and monitoring for</p> <p>5 drivers, including Defendant, Robert Woodall, in</p> <p>6 the five (5) year period prior to the occurrence</p> <p>7 to present."</p> <p>8 Have you answered that question as</p> <p>9 thoroughly as you can?</p> <p>10 A. I believe I have.</p> <p>11 Q. Number 6:</p> <p>12 "Safety training, safety education,</p> <p>13 safety compliance, and safety monitoring by or on</p> <p>14 behalf of Optimum staffing, Inc., for Defendant,</p> <p>15 Robert Woodall."</p> <p>16 Have you answered that one as</p> <p>17 thoroughly as you can?</p> <p>18 A. I believe I have. I don't remember</p> <p>19 answering the question actually.</p> <p>20 Q. Okay. Well, let's try answering the</p> <p>21 question. Are you talking about No. 5 or are you</p> <p>22 talking about --</p> <p>23 A. Six.</p> <p>24 Q. Number 6. Okay. Well, what would be</p>

<p style="text-align: right;">62</p> <p>1 your answer on behalf of the corporation to Item</p> <p>2 No. 6 on the notice?</p> <p>3 A. We don't have the training -- we don't</p> <p>4 do the safety training for the employees, for</p> <p>5 Optimum drivers.</p> <p>6 Q. And who does?</p> <p>7 A. It's only relative to if a customer</p> <p>8 would like to do any sort of specific safety</p> <p>9 training.</p> <p>10 Q. All right. And so as far as training</p> <p>11 of the drivers, Optimum, nor any of the related</p> <p>12 companies, such as TDI, does actual training; is</p> <p>13 that correct?</p> <p>14 A. It depends for a customer.</p> <p>15 Q. Okay. For UPS --</p> <p>16 A. We do not --</p> <p>17 Q. [Continuing] -- in 2010.</p> <p>18 A. We do not do safety training for UPS, no.</p> <p>19 Q. Okay. So a driver that you would send</p> <p>20 to UPS, if he met driver qualification file</p> <p>21 criteria from DOT, you would send him to UPS, and</p> <p>22 the training, if any additional he got, would be</p> <p>23 from UPS?</p> <p>24 A. If there was any specific training</p>	<p style="text-align: right;">64</p> <p>1 complete that you haven't told me?</p> <p>2 MR. BAKER: 5 or 6.</p> <p>3 MR. McDANIEL: Then we'll go to No. 6.</p> <p>4 MR. BAKER: I thought we were on 6.</p> <p>5 MR. COX: We were on -- we were on 6.</p> <p>6 MR. McDANIEL: Well, we'll just make</p> <p>7 sure we get them both.</p> <p>8 BY MR. McDANIEL:</p> <p>9 Q. Anything else on No. 5 that you haven't</p> <p>10 told me?</p> <p>11 A. No.</p> <p>12 Q. All right. Anything else on No. 6 that</p> <p>13 you haven't told me?</p> <p>14 A. No.</p> <p>15 Q. Now No. 7:</p> <p>16 "Employment history and records</p> <p>17 (including, but not limited to, hiring,</p> <p>18 background/qualifications investigation, training,</p> <p>19 discipline, driving records, and discharge) for</p> <p>20 Defendant, Robert Woodall."</p> <p>21 Is any information that you have</p> <p>22 related to No. 7, would it be contained in</p> <p>23 Mr. Woodall's personnel file that has been given</p> <p>24 to us?</p>
<p style="text-align: right;">63</p> <p>1 required, it would not be done by us. It would be</p> <p>2 done by the carrier and, relative to this, it</p> <p>3 would have been UPS as the carrier.</p> <p>4 Q. Okay. To your knowledge, did UPS at</p> <p>5 any time ask any questions about the training</p> <p>6 or -- that had been given to Robert Woodall,</p> <p>7 either by your company or anyone else, to your</p> <p>8 knowledge?</p> <p>9 MR. COX: Object to the form and</p> <p>10 foundation.</p> <p>11 THE WITNESS: Can you -- can you repeat</p> <p>12 the question again? I'm sorry.</p> <p>13 THE COURT REPORTER: "Question: To</p> <p>14 your knowledge, did UPS at any time ask any</p> <p>15 questions about the training or -- that had</p> <p>16 been given to Robert Woodall, either by your</p> <p>17 company or anyone else, to your knowledge?"</p> <p>18 MR. COX: Same objection.</p> <p>19 THE WITNESS: Not that I'm aware of,</p> <p>20 they didn't ask questions.</p> <p>21 MR. McDANIEL: Okay.</p> <p>22 BY MR. McDANIEL:</p> <p>23 Q. Is there anything else that you can</p> <p>24 tell me about No. 5 that -- to make your answer</p>	<p style="text-align: right;">65</p> <p>1 A. Yes. The personnel file was given to</p> <p>2 my counsel, yes.</p> <p>3 Q. Would you have any other information</p> <p>4 relating to Item 7 that's not contained within</p> <p>5 Mr. Woodall's personnel file?</p> <p>6 A. Not that I'm aware of, no.</p> <p>7 Q. Okay. And -- well, you're the person</p> <p>8 from Optimum here to be responsive to this notice,</p> <p>9 so if you wouldn't know, it doesn't exist?</p> <p>10 A. No. There shouldn't be anything -- if</p> <p>11 I don't -- if I'm not aware of it from reviewing</p> <p>12 the file, if it's not in the file, we don't have</p> <p>13 it.</p> <p>14 Q. Okay. And you've checked your files to</p> <p>15 try to comply with all the items on this list;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Item No. 8:</p> <p>19 "Any investigation undertaken by</p> <p>20 Optimum Staffing, Inc.," relating "to this</p> <p>21 occurrence and/or Defendant, Robert Woodall, and</p> <p>22 the results thereof."</p> <p>23 And was there any such investigation</p> <p>24 undertaken?</p>

<p style="text-align: right;">66</p> <p>1 A. No investigation, but we did receive 2 the driver's statement, and I believe you have a 3 copy of. 4 Q. Right. And is that the extent of the 5 response to Item No. 8? 6 A. Yes. 7 Q. Number 9: 8 "All training records, materials, 9 topics, and training for all drivers including 10 Defendant, Robert Woodall." 11 Have you answered that as fully as you 12 can? 13 A. Yes. Anything that Mr. Woodall would 14 have done would be in his personnel file. 15 Q. Okay. And No. 10: 16 "Any driver safety tests or 17 examinations administered to Defendant, Robert 18 Woodall." 19 Have you answered that one as 20 completely as you can? 21 A. Yes. Anything that he would have done 22 would have been in his personnel file. 23 Q. And it — you've checked that personnel 24 file, and there are no such safety tests or</p>	<p style="text-align: right;">68</p> <p>1 Mr. Woodall, did TDI Nationwide have any 2 involvement? What -- what -- what was TDI 3 Nationwide's involvement with Mr. Woodall? 4 A. TDI Nationwide didn't have any 5 involvement. It was just a marketing arm for -- 6 for all the affiliated companies for simplicity 7 purposes. 8 Q. Okay. So as far as Mr. Woodall, to 9 your knowledge he never reported to the TDI 10 Nationwide facility; correct? 11 A. TDI Nationwide has no facility. 12 Q. Okay. Where does it exist? 13 A. It's located at the corporate office at 14 3540 Seven Bridges Drive. 15 Q. Same office as Optimum? 16 A. That's correct. 17 Q. Okay. So it's just offices within the 18 big office that does marketing? 19 A. It really is just, again, a marketing 20 logo for us that we do. It doesn't have any 21 employees. It's just a marketing logo that we use 22 for, again, simplicity purposes because we have 23 multiple entities. 24 Q. Okay. When you say it's a marketing</p>
<p style="text-align: right;">67</p> <p>1 examinations; correct? 2 A. I've reviewed the -- the -- the 3 personnel file, and I don't recall seeing anything 4 in there. 5 Q. Okay. Number 11: 6 "A copy of the contract with UPS Ground 7 Freight, Inc., and Optimum Staffing, Inc., 8 redacting any financial specifics." 9 We've been provided a copy of that, and 10 we've made a copy of it an exhibit; right? 11 A. Yes. 12 Q. Okay. And then Item No. 12: 13 "A copy of the contract with Optimum 14 Staffing, Inc., and TDI Nationwide, redacting any 15 financial specifics." 16 Did you bring such a contract, if one 17 exists? 18 A. There is no contract. 19 Q. Okay. Is there a payment arrangement 20 between Optimum Staffing and TDI Nationwide where 21 one entity is paying the other entity for its 22 services? 23 A. No. 24 Q. What exactly, in regards to</p>	<p style="text-align: right;">69</p> <p>1 logo, it's just a logo actually to do marketing 2 for Optimum; is that correct? 3 A. It's a marketing logo that we use for 4 all of our affiliated companies. 5 Q. And how many affiliated companies are 6 there with Optimum? 7 A. Today? 8 Q. Yeah. 9 A. None. There's only one company, and 10 it's Optimum. 11 Q. Okay. And how many Optimum-affiliated 12 companies in April 2016? How many affiliated 13 companies were there? 14 A. I believe there were the two companies 15 at that time affiliated with Optimum, including 16 TDI Nationwide. It's just a brand and a marketing 17 logo. 18 There was Optimum Staffing, Inc., d/b/a 19 Optimum Logistic Solutions, and there was 20 Transport Drivers, Inc. 21 Q. Okay. And so is TDI, is that Transport 22 Drivers, Inc.? 23 A. It is. 24 Q. Is that essentially just part of</p>

<p style="text-align: right;">70</p> <p>1 Optimum?</p> <p>2 A. No. It's a separate corporation.</p> <p>3 Q. Separate corporation, but in the same</p> <p>4 building in --</p> <p>5 A. Yes. They have -- they have an office</p> <p>6 space -- or they had office space. It's no longer</p> <p>7 operating.</p> <p>8 Q. Okay. All right.</p> <p>9 Who was the person in charge of TDI</p> <p>10 Nationwide in April of 2016?</p> <p>11 A. I was.</p> <p>12 Q. Okay. And who was the person in charge</p> <p>13 of Optimum Staffing, Inc., in April of 2016?</p> <p>14 A. My brother.</p> <p>15 Q. Okay. And did you work with or for</p> <p>16 Optimum Staffing, Inc., as an entity yourself in</p> <p>17 April of 2016?</p> <p>18 A. I -- I worked with Optimum, yes. I do</p> <p>19 have a position with Optimum as well.</p> <p>20 Q. Okay. Did you have a position with</p> <p>21 Optimum in April of 2016?</p> <p>22 A. You know, I don't know the answer to</p> <p>23 that question, quite honestly. I was employed by</p> <p>24 Transport Drivers, Inc., but was -- then take a</p>	<p style="text-align: right;">72</p> <p>1 Optimum has in that regard, to your knowledge?</p> <p>2 A. Yes. It's been produced to legal</p> <p>3 counsel.</p> <p>4 Q. Okay. Anything else you can tell me</p> <p>5 about the driver qualification file that you</p> <p>6 haven't told me, such as who compiles it? Who</p> <p>7 gathers that information for Woodall?</p> <p>8 A. What information?</p> <p>9 Q. Well, the contents of his personnel</p> <p>10 file. Somebody had to put paperwork in there,</p> <p>11 enter documents in there. Who does that? Who did</p> <p>12 it?</p> <p>13 A. There are multiple people that are</p> <p>14 involved with it.</p> <p>15 Q. Okay.</p> <p>16 A. Departments.</p> <p>17 Q. In other words, one person would do</p> <p>18 background check, and another person would check</p> <p>19 and make sure they got their CDL and their medical</p> <p>20 and that sort of thing?</p> <p>21 A. That's correct.</p> <p>22 Q. Number 14 -- first of all, anything</p> <p>23 else on 13 you haven't told me that you can think</p> <p>24 of?</p>
<p style="text-align: right;">71</p> <p>1 position with Optimum after Transport Drivers,</p> <p>2 Inc., shut down.</p> <p>3 Q. Okay. Did you have a position with</p> <p>4 Optimum in April of 2016?</p> <p>5 A. April of 2016? You know, I don't think</p> <p>6 I did have an official position, to be honest with</p> <p>7 you.</p> <p>8 Q. But there is no contract of obligations</p> <p>9 and undertakings with Optimum Staffing, Inc., and</p> <p>10 TDI Nationwide; correct?</p> <p>11 A. There is no contract.</p> <p>12 Q. And was not as of April of 2016;</p> <p>13 correct?</p> <p>14 A. Correct; no contract.</p> <p>15 Q. Okay. Anything else you can tell me</p> <p>16 about Item 12 we haven't discussed?</p> <p>17 A. No.</p> <p>18 Q. Item 13:</p> <p>19 "The complete driver qualification file</p> <p>20 of Defendant, Robert Woodall, as required by</p> <p>21 F.M.C.S.R., section 391.5, and any other driver</p> <p>22 qualification file maintained by Optimum Staffing,</p> <p>23 Inc., regarding Defendant, Robert Woodall."</p> <p>24 Have you provided everything that</p>	<p style="text-align: right;">73</p> <p>1 A. None that I can think of.</p> <p>2 Q. Okay. Item 14:</p> <p>3 "A complete copy of all documents</p> <p>4 relating to prior employment verification for</p> <p>5 Defendant, Robert Woodall."</p> <p>6 Is that information contained in his</p> <p>7 personnel file, to your knowledge?</p> <p>8 A. Yes. As far as the information that we</p> <p>9 collected on his past employment would have been</p> <p>10 included in his personnel file.</p> <p>11 Q. Okay. Do you have any other</p> <p>12 information responsive to Item 14?</p> <p>13 A. No.</p> <p>14 Q. Okay. Item 15:</p> <p>15 "Any documents relating to any</p> <p>16 substance abuse program and follow-up testing as</p> <p>17 part of any substance abuse program for Defendant,</p> <p>18 Robert Woodall, after his positive controlled</p> <p>19 substances test, while he was" an employee of --</p> <p>20 "while he was employed by Werner Transportation."</p> <p>21 A. I believe those documents are in his</p> <p>22 personnel file, which was provided to counsel.</p> <p>23 Q. Okay. To your knowledge, are there any</p> <p>24 other such documents?</p>



<p style="text-align: right;">74</p> <p>1 A. Not to my knowledge, no.</p> <p>2 Q. Number 16:</p> <p>3 "All documents relating to the</p> <p>4 suspension of Defendant, Robert Woodall's, CDL by</p> <p>5 the State of Tennessee."</p> <p>6 Would any information Optimum have be</p> <p>7 in his personnel file?</p> <p>8 A. Any information regarding that topic</p> <p>9 would be in his personnel file.</p> <p>10 Q. Anything else to add on No. 16?</p> <p>11 A. No.</p> <p>12 Q. Number 17:</p> <p>13 "All policies, procedures, protocols,</p> <p>14 and guidelines for hiring personnel."</p> <p>15 Your -- what does Optimum have in</p> <p>16 reference to Item No. 17?</p> <p>17 A. All policies, procedures, and protocols</p> <p>18 and guidelines for hiring personnel; I have</p> <p>19 different types of personnel, so there is a</p> <p>20 variance there.</p> <p>21 Q. Well, let's talk about for Robert</p> <p>22 Woodall -- a truckdriver, especially Robert</p> <p>23 Woodall, in response to Item No. 17. What would</p> <p>24 be the answer?</p>	<p style="text-align: right;">76</p> <p>1 Q. Okay. But to your knowledge -- do you</p> <p>2 know one way or another whether it's written?</p> <p>3 A. I don't recall if it's written or not,</p> <p>4 to be honest with you.</p> <p>5 Q. How about when we take our next break,</p> <p>6 if you would, I'm going to ask you to check?</p> <p>7 A. Sure.</p> <p>8 Q. I had asked you to bring those, and if</p> <p>9 it exists, maybe you could have somebody email it</p> <p>10 to you? Can you do that?</p> <p>11 A. If it exists. I'll ask.</p> <p>12 Q. Thank you.</p> <p>13 All right. Number 17 -- or No. 18:</p> <p>14 "Any and all records relating to any</p> <p>15 discipline or reprimands of Defendant, Robert</p> <p>16 Woodall."</p> <p>17 Anything responsive to that?</p> <p>18 A. No. Whatever is in his personnel file</p> <p>19 has been turned over.</p> <p>20 Q. Okay. Number 19:</p> <p>21 "Any and all driver handbooks, safety</p> <p>22 manuals, and training manuals (by whatever name)</p> <p>23 provided to Defendant, Robert Woodall, and/or</p> <p>24 other drivers employed as of April 10, 2016...."</p>
<p style="text-align: right;">75</p> <p>1 A. Well, we have an internal policy that</p> <p>2 all the managers abide by with regard to hiring</p> <p>3 policies and procedures and protocols.</p> <p>4 Q. Did you bring that with you?</p> <p>5 A. No, I did not.</p> <p>6 Q. Is there a policy specific to hiring</p> <p>7 truckdrivers?</p> <p>8 A. Meeting the minimum DOT qualifications</p> <p>9 is the standard.</p> <p>10 Q. Okay. So the policy for hiring a</p> <p>11 truckdriver to provide to a trucking company, that</p> <p>12 policy is the DOT qualification standard?</p> <p>13 A. Correct.</p> <p>14 Q. And then having the CDL and the current</p> <p>15 medical; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Anything else?</p> <p>18 A. No.</p> <p>19 Q. Is that a written policy that's</p> <p>20 published somewhere?</p> <p>21 A. Is it written? I don't know if it is</p> <p>22 or isn't, to be honest with you. I think that all</p> <p>23 of our managers know the minimum standards, so</p> <p>24 they hire based on those standards.</p>	<p style="text-align: right;">77</p> <p>1 A. Whatever is in Mr. Woodall's file has</p> <p>2 been turned over.</p> <p>3 Q. Okay. Plus the driver safety handbook?</p> <p>4 A. The -- the -- this --</p> <p>5 Q. Yeah?</p> <p>6 A. [Continuing] -- document? Yes, that</p> <p>7 document was turned over as well.</p> <p>8 Q. And when we're saying "this document,"</p> <p>9 we're talking about Exhibit 17?</p> <p>10 A. Yes. Sorry about that.</p> <p>11 Q. That's okay. All right. Item No. 20:</p> <p>12 "Any books, manuals, booklets, whether</p> <p>13 in print or electronic format for any industry</p> <p>14 standards relating to driver training and safety</p> <p>15 in the possession of Optimum Staffing, Inc., for</p> <p>16 the five (5) years prior to April 10, 2016."</p> <p>17 Anything responsive to No. 20, other</p> <p>18 than what you -- the drivers safety manual that</p> <p>19 we've referenced?</p> <p>20 A. Whatever we have has been turned over</p> <p>21 to counsel, as far as that's concerned.</p> <p>22 Q. All right.</p> <p>23 Now we'll go down to Item No. 1 below</p> <p>24 that:</p>

<p style="text-align: right;">78</p> <p>1 "Any document known to or in possession 2 of Optimum Staffing, Inc., referencing, pertaining 3 to, or otherwise containing information regarding 4 those matters set" up "above (and which have not 5 been previously provided" -- or "produced by 6 Optimum Staffing, Inc."</p> <p>7 In other words, we're asking, if you 8 haven't given us everything, is there any other 9 document on all those items that haven't been 10 provided to your lawyer and then provided to us?</p> <p>11 A. No.</p> <p>12 Q. Okay. Now, the -- I want to discuss a 13 little bit the contract with UPS. Do you know 14 about how long Optimum has been a provider of 15 temporary driver service to UPS?</p> <p>16 A. We're done with Exhibit 41?</p> <p>17 Q. Yes, sir.</p> <p>18 A. Okay.</p> <p>19 How long we've been providing temporary 20 drivers to UPS?</p> <p>21 Q. Yes, sir.</p> <p>22 A. I would suggest it's been approximately 23 eight years.</p> <p>24 Q. Okay. Okay, I want to talk a little</p>	<p style="text-align: right;">80</p> <p>1 the contract, and we're going to talk about -- and 2 it's Exhibit 42, and I'm going to refer to Bates 3 number pages on the lower right-hand corner. Do 4 you see those?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. On page 241, the master 7 temporary staffing services agreement, that's the 8 agreement between Optimum and UPS by whatever 9 names or labels are used; right?</p> <p>10 A. Yes.</p> <p>11 Q. And under the "WITNESSETH" clause, 12 second -- or the third whereas clause. Are you 13 with me?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. "Whereas, Provider is experienced in 16 obtaining, screening, managing and providing 17 experienced and competent employees and 18 subcontractors ('Provider Resources')," 19 When it says "Provider," that's 20 referring to Optimum; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And so Optimum was representing and 23 obligated by this contract to provide employees 24 who were screened, experienced, and competent;</p>
<p style="text-align: right;">79</p> <p>1 bit about the contract, and first of all, the 2 contract that was entered into with UPS had 3 obligations both for the provider, which was 4 Optimum, and UPS; correct? Each side had 5 responsibilities or obligations based on the 6 contract; correct?</p> <p>7 A. Yes. What's in the contract is the 8 contract obligations.</p> <p>9 Q. Okay. And as your understanding of the 10 contract, was Optimum expected to comply with the 11 mandates of the contract?</p> <p>12 A. Where applicable, yes, Optimum would 13 try to comply with all areas of the contract.</p> <p>14 Q. Okay. And did Optimum have an 15 understanding, or did you, on behalf of Optimum, 16 have an understanding of what the contract said, 17 what the obligations in the contract are? They're 18 pretty self-explanatory, aren't they?</p> <p>19 A. The contract is what's the contract. 20 The document speaks for itself, I believe.</p> <p>21 Q. Okay. And it's a contract that Optimum 22 agreed to; correct?</p> <p>23 A. It has agreed to by signature.</p> <p>24 Q. Okay. All right. Well, let's look at</p>	<p style="text-align: right;">81</p> <p>1 correct?</p> <p>2 A. That's what it says.</p> <p>3 Q. And that, in fact, was the duty of 4 Optimum, wasn't it?</p> <p>5 A. The duty of Optimum was to provide the 6 customer with qualified DOT drivers.</p> <p>7 Q. Okay. And in providing a qualified DOT 8 driver, the contract required Optimum to provide 9 experienced and competent -- and competent 10 drivers; correct?</p> <p>11 A. That's what the contract reads, yes.</p> <p>12 Q. Okay. Did, to your knowledge, UPS ever 13 ask for additional performance in reference to 14 paragraph 1.2 on page 241, where it indicates that 15 the provider will perform the services in 16 accordance with this agreement.</p> <p>17 It also goes on to say there can be 18 additional tasks not described.</p> <p>19 Are you aware of any additional tasks 20 that were not specifically described in the 21 contract with UPS?</p> <p>22 A. I am not aware of additional tasks.</p> <p>23 Q. Okay. And in providing the competent 24 employees that you make reference to earlier,</p>

<p style="text-align: right;">82</p> <p>1 that's employees who have passed the CDL test and 2 who comply with all FMCA DOT regs; right? 3 A. The employees that we provide under 4 this contract were qualified under the minimum 5 standards of the DOT and were submitted for 6 assignment with the customer. 7 Q. Okay. 8 A. And may I -- may I add that it's a 9 mutually agreed-upon set of criteria and 10 circumstances. 11 Q. Okay. And do you have any written 12 documentation from UPS as to what that specific 13 criteria of qualification or competence or 14 experience was that's not spelled out in the 15 contract? 16 A. That's not spelled out in the contract? 17 Q. Right. 18 A. Can you explain your question? 19 Q. Yeah. The contract -- I think you 20 said UPS had -- 21 MR. McDANIEL: I tell you what. Read 22 his last answer for me. Not the -- what was 23 the question. 24 THE COURT REPORTER: "Answer: And may</p>	<p style="text-align: right;">84</p> <p>1 What does that mean? 2 A. "Provider shall be the sole employer of 3 the Provider Resources." That the employees 4 assigned to the UPS account would be employees of 5 Optimum. 6 Q. Okay. Sorry. My allergies are killing 7 me. 8 "Provider shall recruit, interview, 9 test, select and hire...Provider Resources and 10 provide" preassigned "screening and drug testing 11 for all individuals who shall be assigned 12 hereunder in accordance with the applicable 13 Statement of Work if set forth therein, and" in 14 event in accordance -- "and in any event in 15 accordance with applicable law and industry 16 standards." 17 Did I read that correctly? 18 A. You did. 19 Q. All right. In terms of Robert Woodall, 20 was there an interview with Mr. Woodall? 21 A. With whom? 22 Q. Optimum. 23 A. I don't know the answer to that. I 24 wasn't there.</p>
<p style="text-align: right;">83</p> <p>1 I add that it's a mutually agreed-upon set of 2 criteria and circumstances." 3 BY MR. McDANIEL: 4 Q. What are the mutually agreed-upon 5 criteria and circumstances that you were making 6 reference to there? 7 A. If there was a specific endorsement 8 required on an employee's license, then that would 9 be something that may or may not be outlined in 10 the contract. 11 Q. Such as a hazmat or multiple trailer -- 12 A. Correct. 13 Q. Okay. Now if you'll turn to page 245. 14 MR. COX: Bates No. 245? Bates 15 No. 245? 16 MR. McDANIEL: 0245. 17 BY MR. McDANIEL: 18 Q. Item No. 5, "Provider Resources." I'll 19 read a sentence and we'll talk about it; then 20 we'll read another sentence and talk about it, 21 okay? 22 A. Okay. 23 Q. "Provider shall be the sole employer of 24 the Provider Resources."</p>	<p style="text-align: right;">85</p> <p>1 Q. Well, it indicates that Optimum will 2 recruit, interview, test, and select and hire the 3 resources. If Mr. Woodall was interviewed, would 4 there be an interview form or summary of the 5 interview in his personnel file? 6 A. No, there would not be an interview 7 form. 8 Q. Any documentation of an interview, if 9 one had been done of Mr. Woodall, where would that 10 documentation be? 11 A. There wouldn't be any documentation to 12 the interview. 13 Q. Who does the interview, if there is one 14 done for drivers; do you know? 15 A. Branch manager would. 16 Q. Okay. All right. 17 And when it says: 18 ...in any event "in accordance with 19 applicable law and industry standards." 20 Did I read that correctly, that part of it? 21 A. Yes. 22 Q. What are the industry standards that 23 are being referenced? Do you know? 24 A. I don't know off the top of my head.</p>

<p style="text-align: right;">86</p> <p>1 Q. Do you know what the industry standards 2 are in relation to providing a competent, 3 qualified, safe, and experienced driver? 4 A. We are providing the customers with the 5 DOT-qualified applicants. 6 Q. Are you equating industry standards to 7 be the same thing as DOT qualifications? 8 A. I am advising that Optimum provides 9 DOT-qualified employees. Whether that's an 10 industry standard or not, I can't speak on behalf 11 of an industry. 12 Q. Well, it indicates here that you've got 13 to provide -- when we say "a resource," that's a 14 person -- in accordance with law. That's DOT; 15 right? 16 A. Correct. 17 Q. And it says, "and industry standards." 18 That means there's two things: The law, DOT; and 19 industry standards. Correct? 20 A. Correct. 21 Q. Do you know or is there any 22 documentation anywhere at Optimum what the 23 "industry standards" for hiring drivers is or are? 24 A. Not that I'm aware of.</p>	<p style="text-align: right;">88</p> <p>1 A. I'd have to discuss it with the 2 customer to find out what their interpretation 3 was. 4 Q. Okay. "Industry standards" as defined 5 by the customer? 6 A. This is not my contract, so if -- if 7 there's a -- if there's a specific definition of 8 it, then they would, I would suggest, be able to 9 answer that question. 10 Q. Okay. Who would be better qualified 11 than you to explain Optimum's undertaking pursuant 12 to this contract and complying with "industry 13 standards"? 14 A. I don't think anybody in Optimum. 15 Q. Okay. In terms of reference checks on 16 Mr. Woodall, any documentation related to that, 17 would that be in his personnel file? 18 A. That's correct. 19 Q. Again, paragraph 5.2: 20 "Provider shall provide the Services on 21 a professional best efforts basis, in a 22 workmanlike and expeditious manner, and in 23 accordance with industry standards." 24 Correct?</p>
<p style="text-align: right;">87</p> <p>1 Q. Okay. And it says: 2 "Provider shall have sole 3 responsibility to manage, counsel, discipline, 4 review, evaluate," et cetera, the resource. 5 Anything done in regards to that 6 sentence? Would that be in his personnel file, if 7 it was done? 8 A. "He" being Robert Woodall -- 9 Q. Yes, sir. 10 A. Yes, it would have been in his 11 personnel file. 12 Q. Thank you for clarifying that. If I 13 say "him," I'm meaning Robert Woodall, unless I 14 tell you otherwise. Agreed? 15 A. Agreed. 16 Q. Okay. And, again, in the last part of 17 that paragraph, referring to undertakings: 18 "...and in any event in accordance with 19 applicable law and industry standards." 20 Do you have anything more you can add 21 to what is meant by "industry standards"? 22 A. No. 23 Q. If you wanted to determine industry 24 standards, where would you go to determine them?</p>	<p style="text-align: right;">89</p> <p>1 A. Correct. 2 Q. And again, industry standards, are you 3 interpreting that to mean what the customer is 4 requesting? 5 A. That definition would be theirs. 6 Q. Okay. 5.4: 7 "Provider shall . . . have 8 responsibility for training the Provider 9 Resources, including general safety training on 10 the proper handling of hazardous materials," et 11 cetera. 12 This contract says that you, Optimum, 13 shall have the responsibility for training of 14 drivers; correct? 15 MR. BAKER: Object, form. 16 THE WITNESS: Training? I would -- I 17 would suggest that that is a statement with 18 regard to the general handling or -- they 19 identify proper handling of hazardous 20 materials. 21 BY MR. McDANIEL: 22 Q. Okay. Did Optimum provide training for 23 drivers who were -- who would be using or hauling 24 hazardous materials?</p>



<p style="text-align: right;">90</p> <p>1 A. I don't know if we've provided UPS with 2 any hazardous materials drivers. 3 Q. Okay. With any hazardous materials 4 drivers, did Optimum provide any training to 5 hazmat drivers, other than checking, see they had 6 that hazmat endorsement on their CDL? 7 A. I don't know the answer to that. I 8 have many drivers and I had many contracts and 9 many customers. So I can't pinpoint to any 10 hazardous material training. 11 And if there was, there may have been a 12 fee for that training. 13 Q. Okay. Are you aware of any as you sit 14 here today? 15 A. We have had them in the past, and I 16 don't know if we have any currently, to be honest 17 with you. 18 Q. Okay. Item No. 5.6: 19 "Without limiting Provider's 20 obligations under a Statement of Work, all 21 Provider Resources supplied by Provider to operate 22 UPS owned or leased motor vehicles ('Drivers') 23 shall be competent and experienced and shall 24 possess such driver qualifications as may be</p>	<p style="text-align: right;">92</p> <p>1 If any such additional training was 2 done, would that be -- have been done and 3 documented in his personnel file? 4 A. Yes. 5 Q. Excuse me. I apologize. 6 Turn the page, please. Page 247. 7 Provider in this contract refers to 8 Optimum; correct? You're the provider of the 9 resources? 10 A. Yes. 11 Q. And "resources" means driver? 12 A. Yes, I believe that's correct. 13 Q. Okay. All right. In reference to 5.6 14 on page 247, last sentence: 15 "Notwithstanding the foregoing, 16 Provider shall remain responsible for the 17 performance of all such subcontractors." 18 What do you understand that to mean? 19 A. From a corporate standpoint? 20 Q. Yes, sir. 21 A. Okay. If we were to subcontract 22 something out, we would be responsible for that 23 performance or activity. 24 Q. And as far as the drivers are</p>
<p style="text-align: right;">91</p> <p>1 required by . . . DOT, Federal Highway 2 Administration, and any other applicable U.S. 3 federal or state regulatory agency." 4 Did I read that correctly? 5 A. Yes. 6 Q. Have you told me everything that 7 Optimum did in terms of complying with that 8 obligation relating to Mr. Woodall? 9 A. Yes. We provided the DOT 10 qualifications, or what we call driver 11 qualification file, so that the customer can see 12 that. 13 Q. Okay. And if UPS had requested 14 additional training for Mr. Woodall before you 15 sent him to their services, would that be 16 documented in his personnel file, or where would 17 that be documented, if at all? 18 A. If they requested it, it would -- would 19 have been put in his personnel file, and there 20 would have been a fee for extra services. 21 Q. Okay. The last sentence of 5.6: 22 "Provider shall also be responsible for 23 the initial training as required by UPS or its 24 Customer."</p>	<p style="text-align: right;">93</p> <p>1 concerned, is it your understanding that Optimum 2 is responsible for the conduct of the drivers in 3 terms of any negligence on the part of the 4 drivers? 5 A. Optimum was responsible for the drivers 6 when it comes to HR matters and making sure that 7 they're compliant with the DOT. 8 Q. If the driver that UPS -- I mean, that 9 is provided to UPS by Optimum is negligent and 10 causes a wreck, is it your understanding that 11 Optimum is responsible for that? 12 A. We don't make negligence ascertations. 13 We leave that up to the attorneys and judges. 14 Q. Okay. Well, we'll get back to that in 15 a minute. 5.9: 16 "The Provider Resources shall be 17 subject to the employment policies and procedures 18 of Provider and Provider shall supply such manuals 19 and handbooks, as it deems necessary to 20 communicate such information to the Provider 21 Resources." 22 Have you told me everything you know 23 about providing manuals and handbooks, policies 24 and procedures in relation to Mr. Woodall?</p>

<p style="text-align: right;">94</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Item No. 8.1 on page 249:</p> <p>3 "Each Party represents and covenants</p> <p>4 that it is, and shall remain, in full compliance</p> <p>5 with all applicable local, state and federal laws</p> <p>6 and regulations."</p> <p>7 Did I read it correctly?</p> <p>8 A. Yes.</p> <p>9 Q. And what do you understand that to</p> <p>10 mean?</p> <p>11 A. It means what it says. That --</p> <p>12 Q. All right. And that means your drivers</p> <p>13 will comply with DOT regulations?</p> <p>14 A. The employees are required to meet the</p> <p>15 minimum DOT qualification.</p> <p>16 Q. As far as their driving conduct and</p> <p>17 behavior, does Optimum expect the drivers to meet</p> <p>18 any standards of driving conduct?</p> <p>19 A. Again, anything that was meeting the</p> <p>20 DOT minimum standards and qualifications.</p> <p>21 Q. And I'm not talking about</p> <p>22 qualifications. I'm talking about driver</p> <p>23 behavior.</p> <p>24 Did Optimum have any expectation of the</p>	<p style="text-align: right;">96</p> <p>1 "Indemnification," requires, when it says:</p> <p>2 "Provider shall defend, indemnify, and</p> <p>3 hold harmless UPS and its Affiliated Companies and</p> <p>4 the directors, officers, employees, and agents of</p> <p>5 each of them, from and against" any "claims,</p> <p>6 losses, damages, suits, fees, judgements, costs</p> <p>7 and expenses (including attorneys' fees) which UPS</p> <p>8 may suffer or incur arising out" of -- "out or in</p> <p>9 connection with (a) Provider's performance or</p> <p>10 failure to perform its obligations under this</p> <p>11 Agreement; (b) failure to follow Prudent Industry</p> <p>12 Standards...."</p> <p>13 And then skipping down to (f):</p> <p>14 "...Provider's negligence, willful</p> <p>15 misconduct, or" any "breach of . . .</p> <p>16 Representation or warranty under this Agreement,</p> <p>17 except to the extent the third party claim is</p> <p>18 caused by UPS' negligent act or omissions in</p> <p>19 violation of this Agreement...."</p> <p>20 What do you understand that to mean?</p> <p>21 MR. BAKER: Let me object. It's</p> <p>22 outside of the --</p> <p>23 MR. McDANIEL: Go ahead and answer.</p> <p>24 MR. BAKER: [Continuing] -- 30(b) (6)</p>
<p style="text-align: right;">95</p> <p>1 drivers, that they would drive in accordance with</p> <p>2 DOT standards for driving?</p> <p>3 A. Optimum would require the employee to,</p> <p>4 again, drive in a professional manner and meet</p> <p>5 with the minimum standards of the DOT; yes.</p> <p>6 Q. All right. And each of those drivers</p> <p>7 would have a CDL; correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And you're familiar that there is a CDL</p> <p>10 manual that -- that drivers have to study to be</p> <p>11 able to take their CDL; right?</p> <p>12 A. I assume so. I haven't gone to driver</p> <p>13 training school.</p> <p>14 Q. So you don't know?</p> <p>15 A. No.</p> <p>16 Q. Okay. All right.</p> <p>17 Now let's flip over to 252. Under</p> <p>18 "Indemnification," 12.1.</p> <p>19 A. I'm sorry. Can you please tell me what</p> <p>20 page that is again?</p> <p>21 Q. Yes. 252, Item No. 12,</p> <p>22 "Indemnification."</p> <p>23 As the corporate representative, what</p> <p>24 is your understanding what 12.1,</p>	<p style="text-align: right;">97</p> <p>1 notice, calls for an opinion and a legal</p> <p>2 interpretation of the contract.</p> <p>3 But answer it if you can.</p> <p>4 MR. GALAS: Same objection.</p> <p>5 THE WITNESS: It means what it means.</p> <p>6 I'm not an attorney, so I can't speak on the</p> <p>7 legal aspect of it, and that's why we have</p> <p>8 attorneys.</p> <p>9 BY MR. McDANIEL:</p> <p>10 Q. Okay.</p> <p>11 A. So...</p> <p>12 Q. So it means what it says; right?</p> <p>13 A. Means what's written down there.</p> <p>14 Q. Okay. In the last sentence of that</p> <p>15 paragraph on page 252 of 12.1:</p> <p>16 "Prudent Industry Standards" means the</p> <p>17 optimum methods and/or practices used in the</p> <p>18 Provider's industry pertaining to the</p> <p>19 qualifications, screening, hiring, training,</p> <p>20 retention, safety and performance of the Provider</p> <p>21 Resources (including, without limitation,</p> <p>22 Drivers)."</p> <p>23 Did I read it correctly?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">98</p> <p>1 Q. And so when it mentioned "Prudent 2 Industry Standards," what it describes there is 3 what you understand industry standards are? 4 A. I mean -- 5 MR. GALAS: Objection to form. 6 BY MR. McDANIEL: 7 Q. Go ahead. 8 MR. GALAS: Misstates the language of 9 the contract. 10 THE WITNESS: Can you re- -- reread 11 your question? 12 MR. McDANIEL: Yes, sir. And the 13 objection will be continuing, noted. 14 BY MR. McDANIEL: 15 Q. You're the corporate 30(b)(6) 16 representative. Does that describe what you 17 understand the obligation of Optimum to be in 18 terms of complying with industry standards? 19 MR. COX: Same objection. 20 THE WITNESS: From Optimum's 21 perspective? 22 BY MR. McDANIEL: 23 Q. Yup. 24 A. It means whatever the contract says.</p>	<p style="text-align: right;">100</p> <p>1 accordance with distinct temporary or causal usage 2 needs of UPS, the ELCs" provision "labor on behalf 3 of UPS and UPS's customers." 4 Is that what Optimum undertook to do? 5 A. Optimum provided the customer with 6 minimum DOT-qualified drivers. 7 Q. Okay. In page 298, in the last 8 paragraph midway through is a sentence that says, 9 "In the event of..." Do you see where I am? 10 A. Yes. 11 Q. "In the event of any findings of fault" 12 by "the Provider's Staff, a UPS manager and 13 Provider's services manager shall be notified so 14 that the issue may be resolved between Provider 15 and UPS." 16 Do you know who would be the person on 17 behalf of Optimum that would have any involvement 18 in any such determination of fault? 19 A. It could vary. I don't know the answer 20 to that. Depends on the situation. 21 Q. As to a situation such as Robert 22 Woodall being involved in the wreck on April 10th, 23 who would be the person in that -- involved in a 24 determination of fault?</p>
<p style="text-align: right;">99</p> <p>1 Q. What does -- when it says "means the 2 optimum methods," what does "optimum methods" mean 3 to you? 4 A. Personally? 5 Q. Yes, sir. 6 A. Optimum method would be the best method. 7 Q. Okay. Now page 254, where there is 8 "Notices," it has, "Optimum Staffing, Inc. d/b/a 9 Optimum Logistic Solutions." 10 So is Optimum Staffing, Inc., and 11 Optimum Logistic Solutions essentially the same 12 thing? 13 A. Yes. The official company name is 14 Optimum Staffing, Inc. We do a d/b/a now. 15 Q. Okay. All right. Turn to page 297. 16 A. It's a different section? 17 Q. Yeah, it's in another section. 18 A. Okay. 19 Q. Item No. B, "Services," the first 20 sentence: 21 "The Provider must be experienced in 22 obtaining, screening, managing and providing 23 experienced and competent Department of 24 Transportation (DOT) classified drivers in</p>	<p style="text-align: right;">101</p> <p>1 A. Fault on behalf of what? 2 Q. Mr. Woodall, in causing the wreck and 3 the subsequent injuries. 4 A. We would not have made that 5 determination. We would have, again, taken a 6 driver's statement, which I believe you have a 7 copy of. 8 Q. Okay. Skip over another section or 9 two, we'll get to page 259, "Driver Eligibility 10 Requirements." Do you see that? 11 MR. COX: What page? 12 MR. BAKER: 259. 13 MR. McDANIEL: 259. Yes, sir. 14 BY MR. McDANIEL: 15 Q. In the "Driver Eligibility 16 Requirements," if you look at Item No. 5: 17 "Within 36 months of the date of the 18 MVR: 19 "No DUI/DWI and or chemical test 20 refusal." 21 Do you see that? 22 A. Yes. 23 Q. All right. Now, in terms of Optimum 24 Staffing Solutions' policy, if a driver had a</p>

<p style="text-align: right;">102</p> <p>1 controlled substances positive test, was there a</p> <p>2 time limit between that positive test before</p> <p>3 Optimum would consider them for employment, like</p> <p>4 have to have one year after a positive test,</p> <p>5 two years, three years, four years, five years</p> <p>6 after a positive test before Optimum would</p> <p>7 consider hiring the person?</p> <p>8 A. If the applicant met the minimum DOT</p> <p>9 standards of qualifications, then every applicant</p> <p>10 would be considered.</p> <p>11 Q. Okay. So if an applicant had a</p> <p>12 positive DOT test or -- strike that.</p> <p>13 If the applicant had a positive</p> <p>14 controlled substances test, and thereafter, within</p> <p>15 a month or six months, met DOT requirements for a</p> <p>16 CDL, would that person be eligible to hire, absent</p> <p>17 some other reason with Optimum?</p> <p>18 A. As long as they met the minimum</p> <p>19 standards of DOT compliance, yes --</p> <p>20 qualifications, excuse me.</p> <p>21 MR. McDANIEL: Okay.</p> <p>22 You know, I hate it to do this,</p> <p>23 but I'm going to have to have a break.</p> <p>24 MR. BAKER: You're fighting it pretty</p>	<p style="text-align: right;">104</p> <p>1 DOT requirements, he's eligible for hire; is that</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Do you know if there are any</p> <p>5 generally accepted standards within the industry</p> <p>6 that there should be a delay between hiring a</p> <p>7 driver with a positive drug test, even though they</p> <p>8 may have a valid CDL?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay.</p> <p>11 Now let's go to the safety manual,</p> <p>12 please. I think it's right here. And that's</p> <p>13 Exhibit 17.</p> <p>14 In terms of the -- and I just want -- I</p> <p>15 think we covered it, but I just want to be clear.</p> <p>16 In terms of what the CDL says a driver</p> <p>17 should do under certain condi- -- CDL manual --</p> <p>18 let me rephrase it.</p> <p>19 In terms of what the CDL manual</p> <p>20 describes as what a driver should do under certain</p> <p>21 circumstances, you can't comment on that because</p> <p>22 you don't know and you've never read the CDL</p> <p>23 manual; is that fair?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">103</p> <p>1 bad over there, aren't you?</p> <p>2 THE VIDEOGRAPHER: We're about to go</p> <p>3 off the record. So we're going off the</p> <p>4 record at 10:12 a.m.</p> <p>5 (Brief recess.)</p> <p>6 THE VIDEOGRAPHER: We are now going</p> <p>7 back on the record at 11:22 [sic] a.m.</p> <p>8 BY MR. McDANIEL:</p> <p>9 Q. Mr. Formento, any changes since our</p> <p>10 break that you would like to make in any of your</p> <p>11 prior testimony?</p> <p>12 A. No.</p> <p>13 Q. Okay. And is it Formento? Am I --</p> <p>14 A. Formento.</p> <p>15 Q. Formento. Okay. When you don't hear</p> <p>16 wall, you don't pronounce wall. Okay.</p> <p>17 We were looking at page 259 --</p> <p>18 A. Okay.</p> <p>19 Q. [Continuing] -- of the contract, the</p> <p>20 driver eligibility requirements.</p> <p>21 And so under the driver eligibility</p> <p>22 requirements for Optimum, regardless of any past</p> <p>23 history of any substance abuse or use, as long as</p> <p>24 at the time the driver applies he meets minimum</p>	<p style="text-align: right;">105</p> <p>1 Q. Okay. Now let's go to the safety</p> <p>2 handbook. And this is the handbook done by TDI,</p> <p>3 which, although it's a separate corporation, it's</p> <p>4 one of the affiliated companies of Optimum;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And Optimum relies upon TDI to have</p> <p>8 drivers qualified to some extent; is that right?</p> <p>9 A. Say those words again. I'm sorry.</p> <p>10 Q. Does Optimum rely upon TDI to see that</p> <p>11 the drivers are qualified --</p> <p>12 A. No --</p> <p>13 Q. [Continuing] -- or does Optimum make</p> <p>14 that choice?</p> <p>15 A. Optimum makes their hiring criteria</p> <p>16 decisions.</p> <p>17 Q. Okay. As far as the safety handbook is</p> <p>18 concerned that is provided by TDI, does Optimum</p> <p>19 have any input on the safety handbook, other than</p> <p>20 saying you expect the drivers to read it?</p> <p>21 A. The safety handbook was a collaboration</p> <p>22 of people and resources that put this together.</p> <p>23 So there were multiple people involved with</p> <p>24 putting this together.</p>



28 (Pages 106 to 109)

106	108
<p>1 Q. Were the people involved in putting the</p> <p>2 safety handbook together both employees of Optimum</p> <p>3 and TDI?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So TDI had input into the</p> <p>6 development of the safety handbook; is that</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. And Optimum expects the drivers to read</p> <p>10 the safety handbook; correct?</p> <p>11 A. They recommend that the drivers read</p> <p>12 the safety handbook; yes.</p> <p>13 Q. Okay. Is it a requirement that the</p> <p>14 driver read it?</p> <p>15 A. No.</p> <p>16 Q. Okay. All right. Well, it's been</p> <p>17 provided to us, an Exhibit 17, and we're going to</p> <p>18 go through some pages, and I'll ask you what you</p> <p>19 know about it.</p> <p>20 A. Okay.</p> <p>21 Q. And if you will, turn to page 155,</p> <p>22 "Mission Statement:"</p> <p>23 "TDI's" -- "TDI Nationwide's goal is to</p> <p>24 promote a safety culture and pro-active</p>	<p>1 Q. Okay. And when it says and all -- and</p> <p>2 local safety regulations as well as "latest</p> <p>3 professional practices," do you have any idea what</p> <p>4 "latest professional practices" is?</p> <p>5 A. It's a statement that's on the</p> <p>6 handbook.</p> <p>7 Q. Okay. All right.</p> <p>8 Optimum recognizes it has an obligation</p> <p>9 to have drivers to protect -- that would protect</p> <p>10 the innocent motoring public; right?</p> <p>11 A. Say that again. The obligation is</p> <p>12 what?</p> <p>13 Q. Okay. Would you agree that Optimum has</p> <p>14 an obligation to have drivers who are adequately</p> <p>15 trained to protect the innocent motoring public?</p> <p>16 A. No, I would -- I would indicate that</p> <p>17 Optimum has an obligation -- for this contract or</p> <p>18 are you talking about in general terms?</p> <p>19 Q. Let's do it both ways.</p> <p>20 A. Okay.</p> <p>21 Q. In general terms and in reference to</p> <p>22 the contract, does Optimum have an obligation that</p> <p>23 its drivers be qualified and drive in a manner to</p> <p>24 protect the innocent motoring public?</p>
107	109
<p>1 environment that will effectively identify and</p> <p>2 manage risk through recognition, evaluation, and</p> <p>3 education of our employees and clients in</p> <p>4 compliance with federal, state, and local safety</p> <p>5 regulations as well the latest professional</p> <p>6 practices to ensure the safety of our workers" --</p> <p>7 "workforce and those with whom we share the road."</p> <p>8 Did I read it correctly?</p> <p>9 A. Yes.</p> <p>10 Q. That is stated as the mission statement</p> <p>11 of TDI; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Is that also -- would that also apply</p> <p>14 to Optimum? Would Optimum have the same --</p> <p>15 A. Yes.</p> <p>16 Q. [Continuing] -- mission statement?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so when Optimum's goal is to</p> <p>19 promote a safety culture and to be proactive, what</p> <p>20 does "proactive" mean?</p> <p>21 A. Again, I would suggest that giving</p> <p>22 someone a reference material such as a safety</p> <p>23 handbook is a proactive approach when hiring</p> <p>24 applicants.</p>	<p>1 MR. BAKER: Object, calls for a legal</p> <p>2 conclusion.</p> <p>3 But answer it.</p> <p>4 THE WITNESS: I think that Optimum has</p> <p>5 a obligation to make sure that its employees</p> <p>6 and drivers, in particular, meet those</p> <p>7 minimum DOT qualification standards.</p> <p>8 MR. McDANIEL: Okay. And object to</p> <p>9 form is sufficient. Coaching.</p> <p>10 MR. BAKER: Ask your next question.</p> <p>11 MR. McDANIEL: Okay.</p> <p>12 MR. BAKER: I'll state my objections</p> <p>13 the way I want to.</p> <p>14 MR. McDANIEL: All right.</p> <p>15 BY MR. McDANIEL:</p> <p>16 Q. When it says in the first paragraph</p> <p>17 there at the end:</p> <p>18 "...latest professional practices to</p> <p>19 ensure the safety of our workforce and those with</p> <p>20 whom we share the road," what is it that Optimum</p> <p>21 does to try to ensure the safety of the innocent</p> <p>22 motoring public?</p> <p>23 A. That the drivers that we employ have</p> <p>24 those minimum DOT qualifying standards.</p>

<p style="text-align: right;">110</p> <p>1 Q. Okay. Safety policy. Will you read 2 that along with me, please: 3 "TDI Nationwide is committed to 4 creating and maintaining the safest possible work 5 environment for our employees, customers and the 6 general public." 7 Does that just mean what it says? 8 A. Yes. 9 Q. Okay. 10 "We define safety as the prevention of 11 harm or damage to people, property and the 12 environment." 13 That's a definition used by Optimum as 14 well? 15 A. Yes. 16 Q. "We will achieve this goal by 17 implementing, training and constantly reinforcing 18 the safety standards, values, and objectives we 19 have developed for virtually every work activity 20 and process of our operation." 21 Did I read that correctly? 22 A. Yes. 23 Q. What did Optimum, do since you said 24 they did not do any training, what did they do in</p>	<p style="text-align: right;">112</p> <p>1 such training, do you? 2 A. No, I do not, of -- 3 Q. Okay. 4 A. [Continuing] -- of specific training, 5 no. 6 Q. Where it says, also page 155, "Safety 7 is a Core Value," is that a core value of Optimum, 8 as well as TDI? 9 A. Yes. 10 Q. Next-to-the-last paragraph, it says: 11 "Keep in mind that the safety program 12 and this booklet merely compliment your employee 13 handbook and are to be used in conjunction with 14 the rules and guidelines prescribed in the 15 handbook." 16 Did I read that correctly? 17 A. Correct. 18 Q. This makes reference to two things: 19 Number 1, this booklet -- 20 A. Ma-hmm. 21 Q. [Continuing] -- which is the safety 22 handbook, Exhibit 17. And then it says: 23 "...and this booklet merely compliment 24 your employee handbook..."</p>
<p style="text-align: right;">111</p> <p>1 terms of "constantly reinforcing the safety 2 standards"? What did Optimum do in that regard in 3 reference to Mr. Woodall? 4 A. In reference to Mr. Woodall, they, 5 again, would have worked with the customer, see if 6 there was anything specific required for training 7 and, if not, then the minimum DOT qualifications 8 would have been -- had been applied for 9 Mr. Woodall. 10 Q. Did Optimum receive any information 11 that UPS, in fact, did require additional training 12 for Mr. Woodall, like watching videos? 13 A. I don't recall -- I don't recall if he 14 had any extra training. 15 Q. Okay. Is there anything -- we're going 16 to go through it in a minute, but I don't recall 17 anything in the personnel file noted that he did 18 anything safety training-wise with UPS. Is that 19 your understanding? 20 A. Yes. If it wasn't in the personnel 21 file, then -- then I don't have possession of 22 that. 23 Q. And from your review of the personnel 24 file, you have no recollection of ever seeing any</p>	<p style="text-align: right;">113</p> <p>1 What's an employee handbook? How is it 2 different than the safety handbook? 3 A. We used to have an employee handbook 4 that we used to give to employees, but it's no 5 longer an active document. 6 Q. And there was not one in Mr. Woodall's 7 file? 8 A. Not that I recall seeing, an employee 9 handbook either, no. 10 Q. Okay. Do you know when they 11 discontinued the employee handbook? 12 A. I don't -- I don't know off the top of 13 my head, no. 14 Q. If Mr. Woodall was given an employee 15 handbook, that would be documented in the 16 personnel file, wouldn't it? 17 A. It should be in his personnel file, 18 yes. 19 Q. This has a fellow by the name of John 20 Formento on page 155. Is that you? 21 A. That's me. 22 Q. Okay. 23 Now, were you one of the primary 24 authors of this safety handbook?</p>

<p style="text-align: right;">114</p> <p>1 A. Primary authors? No.</p> <p>2 Q. All right. Were you involved in the</p> <p>3 supervision or final product of this safety</p> <p>4 handbook?</p> <p>5 A. Supervision? Can you define</p> <p>6 "supervision"?</p> <p>7 Q. Okay. Let me rephrase it. Did you</p> <p>8 have any involvement at all in approving this</p> <p>9 safety handbook as the final product?</p> <p>10 A. Yes.</p> <p>11 Q. What was your role in that regard?</p> <p>12 A. Would have been in some of the</p> <p>13 discussions on certain topics and would have</p> <p>14 probably reviewed it after the final product was</p> <p>15 completed.</p> <p>16 Q. Okay. Now turn to the next page,</p> <p>17 please, 156. At the top of the page has</p> <p>18 reference -- has a heading to "Safety Meetings."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. It says:</p> <p>22 "Quarterly safety meetings will be held</p> <p>23 at each operation or terminal."</p> <p>24 Are those things that are expected by</p>	<p style="text-align: right;">116</p> <p>1 you know if he attended any quarterly meetings?</p> <p>2 A. I do not know, and if it wasn't in his</p> <p>3 personnel file, then there -- I would surmise that</p> <p>4 he didn't.</p> <p>5 Q. Okay. In the first bullet point is</p> <p>6 part of the quote:</p> <p>7 "The Regional Safety Manager or other</p> <p>8 members of our staff will conduct these meetings</p> <p>9 and they will utilize all or part of the following</p> <p>10 techniques during their presentation."</p> <p>11 To your knowledge, did the regional</p> <p>12 safety manager ever conduct a safety meeting</p> <p>13 involving Robert Woodall?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. All right. The first bullet point that</p> <p>16 the safety manager is to utilize:</p> <p>17 "Current statistical data concerning</p> <p>18 the overall vehicle collision and employee safety</p> <p>19 record on the operation and discussion of</p> <p>20 defensive driving and employee safety techniques</p> <p>21 which, if followed, could have prevented a vehicle</p> <p>22 collision or employee accident."</p> <p>23 Did I read it correctly?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">115</p> <p>1 Optimum to be done by the provid- -- or by the</p> <p>2 customer, UPS, for example?</p> <p>3 A. No.</p> <p>4 Q. Did Optimum hold quarterly safety</p> <p>5 meetings for its drivers?</p> <p>6 A. No.</p> <p>7 Q. When this says, Quarterly safety</p> <p>8 meetings will be held at each operation or</p> <p>9 terminal, who holds those safety meetings?</p> <p>10 A. It depends.</p> <p>11 Q. Well, let's talk about in Robert</p> <p>12 Woodall, UPS's case. Who would hold those</p> <p>13 meetings?</p> <p>14 MR. COX: Object to the form and</p> <p>15 foundation, to the extent you're asking him</p> <p>16 what UPS does.</p> <p>17 THE WITNESS: Depends. On</p> <p>18 Mr. Woodall's case, with regards to the</p> <p>19 assignment that he was on? I don't -- he had</p> <p>20 multiple assignments, so I don't know...</p> <p>21 BY MR. McDANIEL:</p> <p>22 Q. Mr. Woodall was in the service of UPS,</p> <p>23 which I think began in, like, November of 2015, or</p> <p>24 approximately then, and ended April 10, 2016. Do</p>	<p style="text-align: right;">117</p> <p>1 Q. Was anything done in regards to</p> <p>2 Mr. Woodall's accident in reference to that first</p> <p>3 bullet point?</p> <p>4 A. From Optimum's perspective?</p> <p>5 Q. Yes, sir.</p> <p>6 A. No. All we did was take the driver's</p> <p>7 statement.</p> <p>8 Q. Okay. And TDI would not have had</p> <p>9 anything to do with Mr. Woodall after he was given</p> <p>10 this handbook; correct?</p> <p>11 A. No. He was an employee of Optimum.</p> <p>12 Q. Okay. And then when it says another</p> <p>13 technique for the regional safety director is:</p> <p>14 "Use of films, statistics, and</p> <p>15 presentations by experts, etc."</p> <p>16 Again, if that existed or he'd been</p> <p>17 given that, it would have been in his personnel</p> <p>18 file; right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Let's go down to the next one,</p> <p>21 next heading:</p> <p>22 "Guidelines of Determining</p> <p>23 Preventability and Severity of Vehicle</p> <p>24 Collisions."</p>

<p style="text-align: right;">118</p> <p>1 Did I read that correctly?</p> <p>2 A. Correct.</p> <p>3 Q. On "Guidelines of Determining</p> <p>4 Preventability," what are the guidelines that</p> <p>5 Optimum uses for determining preventability?</p> <p>6 A. Optimum doesn't determine preventability.</p> <p>7 Q. All right. The next sentence says:</p> <p>8 "The guidelines used to determine</p> <p>9 preventability are the same used by the American</p> <p>10 Trucking Association and the National Safety</p> <p>11 Council. It simply states: '...was there any</p> <p>12 reasonable action a driver could have been</p> <p>13 expected to take or anticipate, which if taken or</p> <p>14 anticipated would have prevented the occurrence?'"</p> <p>15 Did I read it correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Was that, in fact, the policy of</p> <p>18 Optimum, as stated in the book?</p> <p>19 A. With regard to?</p> <p>20 Q. Determining preventability. This book.</p> <p>21 A. No.</p> <p>22 Q. Did Optimum ever make determinations of</p> <p>23 preventability of accidents?</p> <p>24 A. Not that I'm aware of, no.</p>	<p style="text-align: right;">120</p> <p>1 and -- at their own leisure.</p> <p>2 BY MR. McDANIEL:</p> <p>3 Q. Well, I'm asking whether or not what is</p> <p>4 in this handbook is --</p> <p>5 A. I don't know if it -- who it applies</p> <p>6 to. There is multiple companies here and multiple</p> <p>7 customers and multiple people involved with this</p> <p>8 book, so...</p> <p>9 Q. Do you remember when we first started</p> <p>10 talking about this book, you indicated that</p> <p>11 Optimum accepted this book?</p> <p>12 A. Accepted, yes.</p> <p>13 Q. Okay. And does Optimum expect the</p> <p>14 drivers to drive with a higher level of</p> <p>15 responsibility than those driving in ordinary</p> <p>16 passenger cars?</p> <p>17 A. They expect them to comply with the DOT</p> <p>18 rules and regulations.</p> <p>19 Q. Are there reasons that a</p> <p>20 tractor-trailer truckdriver should be more careful</p> <p>21 or drive to a higher standard of care than an</p> <p>22 ordinary passenger car, because of the size,</p> <p>23 weight, and potential harm that a tractor-trailer</p> <p>24 truck can cause versus that of a passenger car?</p>
<p style="text-align: right;">119</p> <p>1 Q. The next sentence says:</p> <p>2 "The professional driver is charged</p> <p>3 with a much higher responsibility, than the</p> <p>4 general motoring public, to avoid being involved</p> <p>5 in a vehicle collision."</p> <p>6 Did I read that correctly?</p> <p>7 A. Correct.</p> <p>8 Q. And does Optimum represent to its</p> <p>9 customers that their drivers are, in fact,</p> <p>10 professional drivers?</p> <p>11 A. They're professional and qualified</p> <p>12 under the DOT.</p> <p>13 Q. And do you expect the drivers -- does</p> <p>14 Optimum expect the drivers to comply with the</p> <p>15 sentence that I just read, that:</p> <p>16 "The professional driver is charged</p> <p>17 with a much higher responsibility, than the</p> <p>18 general motoring public, to avoid being involved</p> <p>19 in vehicle collisions"?</p> <p>20 Did Optimum expect that of the drivers?</p> <p>21 MR. GALAS: Objection, form. Calls for</p> <p>22 a legal conclusion.</p> <p>23 THE WITNESS: I think this is just,</p> <p>24 again, a reference for the employees to read</p>	<p style="text-align: right;">121</p> <p>1 MR. GALAS: Objection to form, calls</p> <p>2 for an opinion and legal conclusion.</p> <p>3 THE WITNESS: I believe that the</p> <p>4 drivers for Optimum, again, are qualified</p> <p>5 under the DOT. If there is any statements</p> <p>6 like you just mentioned, it would be in the</p> <p>7 CDL training school and manual.</p> <p>8 BY MR. McDANIEL:</p> <p>9 Q. Okay. All right.</p> <p>10 So Optimum would rely on the driver's</p> <p>11 training that he would get from the CDL school and</p> <p>12 the CDL manual to comply with whatever is expected</p> <p>13 of him; right?</p> <p>14 A. I would -- I would expect them to,</p> <p>15 again, uphold the minimum standards that are</p> <p>16 required for hiring with Optimum, yes.</p> <p>17 Q. And one of those standards is a CDL?</p> <p>18 A. Having a CDL is one of the standards.</p> <p>19 Q. Okay. The next one, quote in that same</p> <p>20 paragraph, last sentence:</p> <p>21 "However, if it is determined the</p> <p>22 professional driver should have anticipated the</p> <p>23 other party's actions, thusly avoiding the</p> <p>24 occurrence, that it could be determined to be a</p>



<p style="text-align: right;">122</p> <p>1 preventable vehicle collision."</p> <p>2 Did I read it correctly?</p> <p>3 A. Yes.</p> <p>4 Q. And, again, this just says what it says</p> <p>5 as to the expectations of Optimum and TDI; correct?</p> <p>6 A. Well, this is in reference to Optimum</p> <p>7 and TDI in situational circumstances, absolutely.</p> <p>8 Q. Okay. When this book makes several</p> <p>9 references to determination of preventable</p> <p>10 collisions, that there'll be a determination of</p> <p>11 whether the collision was preventable, can you</p> <p>12 tell me why Optimum did not make any such</p> <p>13 determinations of preventability in reference to</p> <p>14 accidents their drivers would be involved?</p> <p>15 A. Yes. Because that would have been an</p> <p>16 extra service that we would have charged for, if</p> <p>17 there were some requirement by a customer contract.</p> <p>18 Q. Okay. All right. So if UPS had</p> <p>19 required you to perform a preventability analysis,</p> <p>20 would Optimum have done so?</p> <p>21 A. If it made sense for the corporation</p> <p>22 and there was an agreed-upon fee and we had the</p> <p>23 resources to handle it, then we would -- we would</p> <p>24 have negotiated with the customer on that.</p>	<p style="text-align: right;">124</p> <p>1 Can you tell me why Optimum would not</p> <p>2 do that analysis that's stated that it shall be</p> <p>3 done?</p> <p>4 A. No. They wouldn't do that because they</p> <p>5 don't make that determination.</p> <p>6 Q. Okay. Who is it, making reference to</p> <p>7 in this handbook, that would make the</p> <p>8 preventability analysis?</p> <p>9 A. Again, this document was used by</p> <p>10 multiple of our companies.</p> <p>11 Q. Okay. So would that -- would Optimum</p> <p>12 be depending upon the customer to make the</p> <p>13 preventability analysis?</p> <p>14 A. Motor carrier --</p> <p>15 MR. COX: Object to the form and</p> <p>16 foundation.</p> <p>17 THE WITNESS: (Continuing) -- would</p> <p>18 probably be the one that would look into</p> <p>19 that. I can't speak on behalf of whether or</p> <p>20 not any accident was deemed preventable or</p> <p>21 not.</p> <p>22 THE COURT REPORTER: Excuse me. Excuse</p> <p>23 me. I couldn't hear that last objection.</p> <p>24 MR. COX: Object to the form and</p>
<p style="text-align: right;">123</p> <p>1 Q. Are you aware of any customers for whom</p> <p>2 Optimum performed preventability analysis for</p> <p>3 truckdrivers?</p> <p>4 A. No.</p> <p>5 Q. Okay. "Vehicle Collision Involvement";</p> <p>6 still page 156.</p> <p>7 On reporting, it says it should be</p> <p>8 reported to both TDI Nationwide and the customer;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. When Mr. Woodall called to report the</p> <p>12 accident, did he report to TDI or to Optimum?</p> <p>13 A. He is an employee of Optimum.</p> <p>14 Q. So he reported to Optimum?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know whether or not he contacted</p> <p>17 the customer?</p> <p>18 A. I don't know.</p> <p>19 Q. The next sentence, "Preventability:"</p> <p>20 "After notification, a complete</p> <p>21 investigation shall be conducted, and a prompt</p> <p>22 determination shall be reached with regard to each</p> <p>23 vehicle collision, i.e., preventable or</p> <p>24 non-preventable."</p>	<p style="text-align: right;">125</p> <p>1 foundation.</p> <p>2 THE COURT REPORTER: Thank you.</p> <p>3 MR. McDANIEL: Page 157. Move that</p> <p>4 away from -- that's a -- that's a Bluetooth</p> <p>5 microphone to come to my hearing aids. When</p> <p>6 papers ruffle --</p> <p>7 THE WITNESS: Sorry.</p> <p>8 MR. McDANIEL: That's okay. You didn't</p> <p>9 know.</p> <p>10 BY MR. McDANIEL:</p> <p>11 Q. Okay. Page 157, the title at the top</p> <p>12 is "Defensive Driving-Judging Preventability</p> <p>13 Collision/Incident." Okay? That's the topic</p> <p>14 we're talking about; right?</p> <p>15 A. That's what's on the document, yes.</p> <p>16 Q. Okay. The third paragraph says:</p> <p>17 "A decision on preventability will be</p> <p>18 made as soon as possible. The decision on</p> <p>19 preventability will be made by the Chairman of the</p> <p>20 Collision Review Committee after reviewing all the</p> <p>21 facts."</p> <p>22 Did I read it correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Did TDI have a collision review</p>

<p style="text-align: right;">126</p> <p>1 committee?</p> <p>2 A. Yes.</p> <p>3 Q. And who was the chairman of that</p> <p>4 collision review committee?</p> <p>5 A. The chairman of the TPI collision</p> <p>6 review committee was Mark Ozlich.</p> <p>7 Q. Okay. After he passed, who became the</p> <p>8 chairman of the collision review committee?</p> <p>9 A. After he passed, actually, the -- the</p> <p>10 committee disbanded and we -- we got rid of our</p> <p>11 safety department and had, unfortunately,</p> <p>12 downsized and -- and reduced our force.</p> <p>13 Q. Was the safe collision review committee</p> <p>14 in existence as of April 10, 2016?</p> <p>15 A. You know, I believe that was pretty</p> <p>16 close to Mark's passing, so, you know, I don't</p> <p>17 know the answer to that off the top of my head.</p> <p>18 Q. Are there records you could check to</p> <p>19 determine if it was --</p> <p>20 A. All I could do is go to the day that he</p> <p>21 passed away, and then back in from there.</p> <p>22 Q. Regardless of whether he passed away</p> <p>23 before or after April 10, 2016, do you have any</p> <p>24 records that document that a preventability</p>	<p style="text-align: right;">128</p> <p>1 vehicle operated by the employee, the driver, is</p> <p>2 struck from the rear; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. A front-end and rear-end</p> <p>5 collision, the first bullet point reads:</p> <p>6 "The professional driver can prevent</p> <p>7 front end collisions by maintaining a safe</p> <p>8 following distance at all times."</p> <p>9 Was that -- does that just mean what it</p> <p>10 says, as far as you know?</p> <p>11 A. Yes. It just means what's on the</p> <p>12 document.</p> <p>13 Q. Okay. And is that what Optimum</p> <p>14 expected of its drivers?</p> <p>15 A. Situationally, the driver has to make</p> <p>16 that determination of safe following distance.</p> <p>17 Q. But Optimum did expect its drivers to</p> <p>18 maintain a safe following distance; correct?</p> <p>19 A. Situationally, again, that would -- you</p> <p>20 know -- mean what it means. What's on the</p> <p>21 document.</p> <p>22 Q. Well, let me phrase it a little more</p> <p>23 simple.</p> <p>24 Would Optimum approve, under any</p>
<p style="text-align: right;">127</p> <p>1 analysis was done on the wreck on April 2016</p> <p>2 involving Robert Woodall?</p> <p>3 A. No, there was not.</p> <p>4 Q. Okay. And on "Determination</p> <p>5 Guidelines," do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. "The following collision situations and</p> <p>8 determinations are not meant to be all inclusive</p> <p>9 but rather a listing of common occurrences and the</p> <p>10 general principals associated with determining</p> <p>11 preventability."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Then it lists several types of</p> <p>15 accidents, including intersections, changing the</p> <p>16 lanes -- turning the page -- then you get to</p> <p>17 front-end and rear-end collisions. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. And the front-end collision that's</p> <p>21 being discussed there is when the front of the</p> <p>22 tractor hits something; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And a rear-end collision is when the</p>	<p style="text-align: right;">129</p> <p>1 circumstance, a driver following at a distance</p> <p>2 that was not safe?</p> <p>3 A. You'd have to define "not safe."</p> <p>4 Q. Dangerous to the innocent motoring</p> <p>5 public.</p> <p>6 A. Define "dangerous."</p> <p>7 Q. You know what "dangerous" means.</p> <p>8 MR. BAKER: Don't argue with the witness.</p> <p>9 BY MR. McDANIEL:</p> <p>10 Q. Tell me what dangerous means to you.</p> <p>11 MR. BAKER: I object to the question.</p> <p>12 It's argumentative. You're asking for</p> <p>13 opinions.</p> <p>14 THE WITNESS: Are you asking me for a</p> <p>15 personal opinion?</p> <p>16 BY MR. McDANIEL:</p> <p>17 Q. Well, we can do it both ways.</p> <p>18 MR. BAKER: And it's outside of the</p> <p>19 scope because you're asking for opinions.</p> <p>20 THE WITNESS: Dangerous could mean a</p> <p>21 lot of things, actually, depending on the</p> <p>22 situation.</p> <p>23 BY MR. McDANIEL:</p> <p>24 Q. Let me ask you this. This is part of</p>

<p style="text-align: right;">130</p> <p>1 the Optimum program, the safety handbook; correct?</p> <p>2 A. <u>Some of it, yes, is applicable.</u></p> <p>3 Q. And part of the safety handbook says:</p> <p>4 "The professional driver can prevent</p> <p>5 front end collisions by maintaining a safe</p> <p>6 following distance at all times."</p> <p>7 Was that, in fact, the policy of</p> <p>8 Optimum?</p> <p>9 A. <u>Maintaining a safe following distance</u></p> <p>10 <u>in a situational set of circumstances, yes.</u></p> <p>11 Q. All right. The next sentence says:</p> <p>12 "'Tailgating' is one of the most</p> <p>13 frequent causes of accidents and can never be</p> <p>14 excused."</p> <p>15 Do you agree with that?</p> <p>16 A. <u>Correct.</u></p> <p>17 Q. Next sentence:</p> <p>18 "Regardless of abrupt or unexpected</p> <p>19 stops or actions of the driver ahead, the</p> <p>20 professional driver must be able to stop safely."</p> <p>21 Did I read it correctly?</p> <p>22 A. <u>Yes.</u></p> <p>23 Q. That's the statement policy of Optimum</p> <p>24 and TDI; correct?</p>	<p style="text-align: right;">132</p> <p>1 handbook applied to Optimum, and Optimum expected</p> <p>2 its drivers to follow it, to read it; right?</p> <p>3 A. <u>We did not expect them. We recommended</u></p> <p>4 <u>they review it.</u></p> <p>5 Q. Okay. And the handbook applied to</p> <p>6 Optimum, and Optimum helped generate and produce</p> <p>7 the safety handbook; correct?</p> <p>8 A. <u>Some of this handbook does apply to</u></p> <p>9 <u>Optimum, yes.</u></p> <p>10 Q. All right. The driving techniques,</p> <p>11 such as front-end and rear-end collisions, does</p> <p>12 that paragraph apply to Optimum? Yes or no?</p> <p>13 A. <u>Yes.</u></p> <p>14 Q. Okay. Now let's go to page 159.</p> <p>15 Again, an evaluation of vehicle collision</p> <p>16 involvement, where it says "Weather." Do you see</p> <p>17 that?</p> <p>18 A. <u>Yes.</u></p> <p>19 Q. "Weather. Rain, fog, snow, ice and</p> <p>20 sleet do not cause accidents. They are the</p> <p>21 environments in which the driver must adjust.</p> <p>22 Failure to properly adjust driving to the existing</p> <p>23 conditions or lying over when conditions are</p> <p>24 unsafe should be grounds for deciding the accident</p>
<p style="text-align: right;">131</p> <p>1 A. <u>I don't know that. There was a lot of</u></p> <p>2 <u>people that actually participated in this. So</u></p> <p>3 <u>they need to --</u></p> <p>4 Q. That's the policy in the book, though;</p> <p>5 right?</p> <p>6 A. <u>Yes, yes.</u></p> <p>7 Q. And it's the policy that Optimum uses</p> <p>8 and expects the drivers to read?</p> <p>9 A. <u>Some of this -- some of this is</u></p> <p>10 <u>applicable to Optimum. Not all of it.</u></p> <p>11 Q. Well. Is that sentence applicable to</p> <p>12 Optimum?</p> <p>13 A. <u>It's situational, so --</u></p> <p>14 Q. Does any part of the paragraph relating</p> <p>15 to front-end and rear-end collisions of the</p> <p>16 handbook, Exhibit 17, that Optimum had a role in</p> <p>17 generating and that Optimum accepts as its</p> <p>18 handbook, not apply to Optimum?</p> <p>19 A. <u>I don't know -- it was written a while</u></p> <p>20 <u>ago, so I don't know who wrote this actually,</u></p> <p>21 <u>these actual sentences.</u></p> <p>22 Q. Well, let's go back to the very start.</p> <p>23 A. <u>Mm-hmm.</u></p> <p>24 Q. You remember you agreed that the</p>	<p style="text-align: right;">133</p> <p>1 was preventable."</p> <p>2 Did I read it correctly?</p> <p>3 A. <u>Yes.</u></p> <p>4 Q. Fog can reduce visibility; correct?</p> <p>5 A. <u>In certain circumstances.</u></p> <p>6 Q. Okay. Dust storm can reduce</p> <p>7 visibility; correct?</p> <p>8 A. <u>Again, certain circumstances.</u></p> <p>9 Q. All right. And just as fog is stated</p> <p>10 here does not cause an accident, dust storms don't</p> <p>11 cause an accident. Drivers do, right?</p> <p>12 MR. COX: Objection to form and</p> <p>13 foundation.</p> <p>14 MR. BAKER: Objection to form. Yeah.</p> <p>15 BY MR. McDANIEL:</p> <p>16 Q. Go ahead. Go ahead and answer.</p> <p>17 A. <u>It -- again, situational.</u></p> <p>18 Q. All right. Does the comments related</p> <p>19 to weather that I read on page 159, does that</p> <p>20 apply to Optimum? Yes or no?</p> <p>21 A. <u>Yes.</u></p> <p>22 Q. Okay.</p> <p>23 A. <u>Oh, wait. I'm sorry. Let me rephrase.</u></p> <p>24 Q. Okay.</p>

<p style="text-align: right;">134</p> <p>1 A. No, it doesn't because it doesn't</p> <p>2 have -- it has a statement in there about</p> <p>3 preventable.</p> <p>4 Q. Okay.</p> <p>5 A. Optimum does not make decisions about</p> <p>6 preventability.</p> <p>7 Q. Okay. Other than the determination of</p> <p>8 preventability, does that paragraph apply to</p> <p>9 Optimum?</p> <p>10 A. Yes.</p> <p>11 Q. Over to page 160, where it has, "How to</p> <p>12 Take Photographs At the Scene of an Accident." Do</p> <p>13 you see that?</p> <p>14 A. Okay.</p> <p>15 Q. Are you aware that Mr. Woodall, instead</p> <p>16 of making still photographs, took video of the</p> <p>17 scene? Are you aware of that?</p> <p>18 A. Somebody mentioned that, but I don't</p> <p>19 know if I've ever seen it, to be honest with you.</p> <p>20 Q. Okay. All right.</p> <p>21 Have you seen in Mr. Woodall's file or</p> <p>22 any file by Optimum any still photographs made by</p> <p>23 Mr. Woodall?</p> <p>24 A. If it's not in the file, then no. I</p>	<p style="text-align: right;">136</p> <p>1 A. Yes, I've heard of the National Safety</p> <p>2 Council.</p> <p>3 Q. Does Optimum have in its library or</p> <p>4 resources any publications from the National</p> <p>5 Safety Council about defensive driving or how to</p> <p>6 avoid accidents?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Okay. Are you aware of any books,</p> <p>9 pamphlets, or other documents produced by a vendor</p> <p>10 that deal with training of a driver and safe</p> <p>11 driving techniques to avoid collisions in adverse</p> <p>12 weather conditions?</p> <p>13 A. In reference to what? You're asking me</p> <p>14 if I know of a vendor that provides those</p> <p>15 documents?</p> <p>16 Q. No. Let me rephrase it.</p> <p>17 Does Optimum have any books, pamphlets,</p> <p>18 videos, or documents of any kind that instruct a</p> <p>19 driver how to avoid a wreck in adverse weather</p> <p>20 conditions?</p> <p>21 A. I don't know the answer off the top of</p> <p>22 my head. I don't know all the videos that are</p> <p>23 contained on the video library that I've</p> <p>24 identified to you earlier.</p>
<p style="text-align: right;">135</p> <p>1 have not seen his -- if there were -- let me</p> <p>2 rephrase.</p> <p>3 There were no still photographs in his</p> <p>4 personnel file.</p> <p>5 Q. All right. Do you know if Optimum has</p> <p>6 an FMCSA compliance manual?</p> <p>7 A. We have the Federal Motor Carrier</p> <p>8 Safety Regulation Handbook. That's --</p> <p>9 Q. Do you have a -- a thick book, about</p> <p>10 four inches thick, Federal Motor Carrier Safety</p> <p>11 Administration Compliance Manual, How To Comply</p> <p>12 with DOT's Safety Regulations, promulgated by J.J.</p> <p>13 Keller. Does your company have that?</p> <p>14 A. I don't think we do, no.</p> <p>15 Q. Okay. Have you ever heard of the Salt</p> <p>16 Institute for "Accident Avoidance For the</p> <p>17 Professional Motor Carrier Operator"?</p> <p>18 A. No.</p> <p>19 Q. Does Optimum have the "Accident</p> <p>20 Avoidance For the Professional Motor Carrier</p> <p>21 Operator" book by the Salt Institute?</p> <p>22 A. Optimum does not, no.</p> <p>23 Q. All right. Are you familiar with</p> <p>24 the -- the National Safety Council?</p>	<p style="text-align: right;">137</p> <p>1 Q. Okay. Who would know what the titles</p> <p>2 were on those videos?</p> <p>3 A. I'm not sure if anybody has them</p> <p>4 memorized, to be honest with you.</p> <p>5 Q. Does anybody have copies of those</p> <p>6 videos?</p> <p>7 A. Well, you can go on-line. It's an</p> <p>8 on-line system. So you get to choose from a list</p> <p>9 of different videos.</p> <p>10 Q. Do you have any documentation of which</p> <p>11 videos Optimum actually accessed on-line?</p> <p>12 A. When?</p> <p>13 Q. Before Robert Woodall's wreck on</p> <p>14 April 10, 2016?</p> <p>15 A. I don't have any documentation of that,</p> <p>16 no.</p> <p>17 Q. We do know Robert Woodall is not -- you</p> <p>18 don't have any documentation of him accessing any</p> <p>19 adverse weather condition videos or training</p> <p>20 material on-line; correct?</p> <p>21 A. I don't have any documentation of that.</p> <p>22 Q. Okay. All right. Let's go to the</p> <p>23 personnel file. Have you got a copy of it?</p> <p>24 A. Not in front of me, no.</p>




<p style="text-align: right;">138</p> <p>1 Q. Hum?</p> <p>2 A. Not in front of me, no.</p> <p>3 Q. Okay. I'll give you a copy. It's been</p> <p>4 previously marked as Exhibit 30. And I'm showing</p> <p>5 that as OSI Bates number 0060 through 151. And</p> <p>6 that's Exhibit 30.</p> <p>7 That's the personnel file of Robert</p> <p>8 Woodall, and you have reviewed that; correct?</p> <p>9 A. This document you just gave to me, so</p> <p>10 if this is the same as the personnel file we</p> <p>11 provided to counsel, then yes.</p> <p>12 MR. McDANIEL: Counsel, can we</p> <p>13 stipulate that that's the personnel file you</p> <p>14 gave us? It's got your Bates numbers on it.</p> <p>15 MR. BAKER: Does it have our Bates</p> <p>16 numbers -- yeah. Yes.</p> <p>17 MR. McDANIEL: Okay.</p> <p>18 MR. BAKER: Well, I assume. I mean, I</p> <p>19 haven't looked at it. So you're asking me to</p> <p>20 stipulate -- what are you asking me to</p> <p>21 stipulate to?</p> <p>22 MR. McDANIEL: Well, that's the</p> <p>23 personnel file you provided to us from OSI.</p> <p>24 MR. BAKER: Well, that should be</p>	<p style="text-align: right;">140</p> <p>1 Nationwide." Is that the same personnel file used</p> <p>2 for Robert Woodall and Optimum?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 Turn to 067, which is a letter from a</p> <p>6 social worker about Mr. Woodall having had a</p> <p>7 positive marijuana drug screen on August 25, 2014;</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And then it shows the next page, where</p> <p>11 there was a certificate of completing a course</p> <p>12 relating to controlled substances; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the -- if you look at the letter</p> <p>15 down at the bottom of the paragraph, it says --</p> <p>16 and this is on page 67:</p> <p>17 "I recommend that Mr. Woodall be tested</p> <p>18 for alcohol and other drugs at least 12 times in</p> <p>19 the" next "12 months following his return to a</p> <p>20 safety-sensitive position."</p> <p>21 Does Optimum have any documentation</p> <p>22 that Mr. Woodall, in fact, had 12 random drug</p> <p>23 tests in the 12 months following his return to</p> <p>24 driving?</p>
<p style="text-align: right;">139</p> <p>1 sufficient.</p> <p>2 MR. McDANIEL: Hum?</p> <p>3 MR. BAKER: I mean....</p> <p>4 MR. McDANIEL: Okay.</p> <p>5 MR. BAKER: You're wanting me to agree</p> <p>6 that that's got every page of what we've</p> <p>7 produced. I'm not in a position to do that</p> <p>8 today.</p> <p>9 I'm sure it is --</p> <p>10 MR. McDANIEL: Okay. All right.</p> <p>11 MR. BAKER: [Continuing] -- but I</p> <p>12 didn't bring our production with us.</p> <p>13 MR. McDANIEL: Okay.</p> <p>14 BY MR. McDANIEL:</p> <p>15 Q. Would you -- we'll look through some</p> <p>16 specific pages, but you did review what was</p> <p>17 provided to your lawyer in terms of --</p> <p>18 A. Yes.</p> <p>19 Q. [Continuing] -- the personnel file; is</p> <p>20 that correct?</p> <p>21 A. Correct.</p> <p>22 Q. For Robert Woodall?</p> <p>23 A. Correct.</p> <p>24 Q. On 0060 at the top, it has "TDI</p>	<p style="text-align: right;">141</p> <p>1 A. There is no documentation that we have</p> <p>2 that -- his 12 times for 12 months, no.</p> <p>3 Q. And Optimum did check with his prior</p> <p>4 employers for background references; correct?</p> <p>5 A. The employment history?</p> <p>6 Q. Yes, sir.</p> <p>7 A. Yes.</p> <p>8 Q. And would you agree there's no</p> <p>9 documentation in the personnel file that there was</p> <p>10 any inquiry or any documents produced showing that</p> <p>11 he had, in fact, had those 12 random drug tests?</p> <p>12 A. Can you repeat the question? I'm</p> <p>13 sorry.</p> <p>14 Q. Yeah. Would you agree there's no</p> <p>15 documentation in your file that Robert Woodall had</p> <p>16 completed the 12 tests over a course of 12 months?</p> <p>17 A. That's correct. He did -- we have</p> <p>18 no -- no documentation that he completed 12.</p> <p>19 Q. Okay. And turn to page 80. That's</p> <p>20 some information on transportation employment</p> <p>21 history obtained from Werner Enterprises; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And it shows that Mr. Woodall had been</p> <p>24 an employee of Werner from January of 2012 to</p>

<p style="text-align: right;">142</p> <p>1 August of 2014; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And underneath that it says:</p> <p>4 "Eligible for rehire? No."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why he would not be</p> <p>8 eligible to rehire at Werner?</p> <p>9 MR. COX: Object to the form and</p> <p>10 foundation.</p> <p>11 THE WITNESS: From this document? No.</p> <p>12 BY MR. McDANIEL:</p> <p>13 Q. All right. From any source, do you</p> <p>14 know why he was not eligible to rehire?</p> <p>15 A. No. This just tells me if he's</p> <p>16 eligible or not.</p> <p>17 Q. Okay. Would you expect the drivers for</p> <p>18 Optimum to be as safe and as qualified as drivers</p> <p>19 for Werner Enterprise?</p> <p>20 A. I can't speak on behalf of Werner</p> <p>21 Enterprise. I can only tell you that Optimum</p> <p>22 hires drivers based off of the minimum DOT</p> <p>23 qualifications.</p> <p>24 Q. So Optimum is satisfied with drivers</p>	<p style="text-align: right;">144</p> <p>1 A. No.</p> <p>2 Q. Okay. I'm going to hand you a copy of</p> <p>3 that report, which has previously been marked in a</p> <p>4 prior deposition, and I'm going to ask you -- as</p> <p>5 Exhibit 8 -- do you know of anyone who did any</p> <p>6 follow-up of that driver's explanation for</p> <p>7 injury -- or for accident to determine</p> <p>8 preventability?</p> <p>9 MR. COX: Object to form. Asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: You said you were going</p> <p>12 to hand me another document?</p> <p>13 BY MR. McDANIEL:</p> <p>14 Q. Yeah. It's the one you have in front</p> <p>15 of you, Exhibit 8, which has Mr. Woodall's</p> <p>16 handwritten explanation for the wreck.</p> <p>17 A. Okay.</p> <p>18 Q. It's the same page as you're looking</p> <p>19 at --</p> <p>20 A. Okay.</p> <p>21 Q. [Continuing] -- of his personnel file.</p> <p>22 A. Okay.</p> <p>23 Q. And did anybody, to your knowledge,</p> <p>24 evaluate Mr. Woodall's explanation as to whether</p>
<p style="text-align: right;">143</p> <p>1 who meet the minimum DOT qualifications; is that</p> <p>2 correct?</p> <p>3 A. Applicants that -- that do meet those</p> <p>4 minimums, they -- they can be brought on as</p> <p>5 employees, yes.</p> <p>6 Q. Okay. And if you will turn to page 108</p> <p>7 and 109, is that the driver's written report</p> <p>8 relating to this collision?</p> <p>9 A. Yes.</p> <p>10 Q. I'm sorry. I should have had this</p> <p>11 tabbed, but I didn't get around to it.</p> <p>12 The handwritten portion is on page 109;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Have you reviewed that page previously?</p> <p>16 A. Briefly I probably looked at this.</p> <p>17 Q. Did you make any evaluation as to his</p> <p>18 explanation for how the wreck occurred, as to</p> <p>19 whether it was preventable or not?</p> <p>20 A. No.</p> <p>21 Q. Did you make any evaluation of his</p> <p>22 explanation of how it occurred as being in</p> <p>23 accordance with what you would expect of him as a</p> <p>24 driver?</p>	<p style="text-align: right;">145</p> <p>1 or not that would be an explanation consistent</p> <p>2 with what would be expected of a driver for</p> <p>3 Optimum?</p> <p>4 A. I don't know. Not to my knowledge.</p> <p>5 Q. And in terms of his explanation shown</p> <p>6 on page 109, did anybody from Optimum make a</p> <p>7 determination as to whether or not his explanation</p> <p>8 of what happened in the wreck would have been</p> <p>9 consistent with the driving standards or</p> <p>10 expectations of a professional driver with a CDL?</p> <p>11 A. I don't know if anybody ever did that,</p> <p>12 no.</p> <p>13 Q. Okay. Do you know who Robin Welford</p> <p>14 is?</p> <p>15 A. I don't know them personally, no, but</p> <p>16 I've -- I've seen the name.</p> <p>17 Q. Okay. Have you ever talked to Robin</p> <p>18 Welford?</p> <p>19 A. No.</p> <p>20 Q. Have you ever talked to Robert Woodall,</p> <p>21 to your knowledge?</p> <p>22 A. No.</p> <p>23 Q. Do you know anybody in your company who</p> <p>24 talked to Robert Woodall after this accident,</p>

<p style="text-align: right;">146</p> <p>1 other than Brian Connors?</p> <p>2 A. Jos Hemphill probably discussed it.</p> <p>3 Q. Have you talked with Mr. Hemphill --</p> <p>4 H-e-m-p-h-i-l-l; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Have you talked to Mr. Hemphill about</p> <p>7 his interaction with Mr. Woodall?</p> <p>8 A. No.</p> <p>9 Q. Did you see documentation made by</p> <p>10 Mr. Connors or Mr. Hemphill about Mr. Woodall's</p> <p>11 contact with them after the accident, other than</p> <p>12 the driver's report of injury --</p> <p>13 A. No.</p> <p>14 Q. [Continuing] -- or accident.</p> <p>15 A. No, I -- no.</p> <p>16 Q. Okay. In terms of the driver's conduct</p> <p>17 when he is driving for UPS, was it the position of</p> <p>18 Optimum that the driver should comply with the</p> <p>19 expectations of your customer in terms of driving</p> <p>20 manner and behavior?</p> <p>21 MR. COX: Object to form --</p> <p>22 MR. GALAS: Object to form.</p> <p>23 MR. COX: [Continuing] -- and</p> <p>24 foundation.</p>	<p style="text-align: right;">148</p> <p>1 BY MR. McDANIEL:</p> <p>2 Q. As expected by the customer?</p> <p>3 MR. COX: Same objection.</p> <p>4 THE WITNESS: I can't speak on what the</p> <p>5 expectation of the customer is on every</p> <p>6 single circumstance.</p> <p>7 BY MR. McDANIEL:</p> <p>8 Q. If UPS had printed guidelines of driver</p> <p>9 conduct, would you expect Mr. Woodall to conform</p> <p>10 with the printed guidelines of UPS?</p> <p>11 MR. COX: Object to the form and</p> <p>12 foundation, also outside the scope of the</p> <p>13 notice.</p> <p>14 THE WITNESS: The employee would,</p> <p>15 again, be required to perform their CDL</p> <p>16 truckdriving job. If there were specific</p> <p>17 needs or requirements by a customer, we would</p> <p>18 have identified that and mutually agreed upon</p> <p>19 what was necessary.</p> <p>20 BY MR. McDANIEL:</p> <p>21 Q. Okay. And, in fact, did the contract</p> <p>22 require that you provide drivers who would perform</p> <p>23 the services for UPS in accordance with UPS</p> <p>24 policies and procedures? Yes or no?</p>
<p style="text-align: right;">147</p> <p>1 THE WITNESS: Once the driver is given</p> <p>2 an assignment, the employee is under</p> <p>3 direction and control of the carrier at that</p> <p>4 point.</p> <p>5 BY MR. McDANIEL:</p> <p>6 Q. And does your company expect the driver</p> <p>7 to perform as the customer demands?</p> <p>8 A. If there's specific requirements</p> <p>9 outside of just having the minimum standards, the</p> <p>10 DOT standards, that would be something that -- if</p> <p>11 it's outside of our normal course and scope of</p> <p>12 business, then we would discuss it with the</p> <p>13 customer. But for the most part, they would be</p> <p>14 operating as a CDL truckdriver.</p> <p>15 Q. We can go back through the contract,</p> <p>16 but isn't Optimum providing an employee that will</p> <p>17 perform as expected by the customer and to comply</p> <p>18 with the customer's policies and procedures?</p> <p>19 A. Optimum --</p> <p>20 MR. COX: Object to the form and</p> <p>21 foundation.</p> <p>22 THE WITNESS: Optimum provides those</p> <p>23 qualified CDL drivers to the customer and</p> <p>24 perform their position as CDL driver.</p>	<p style="text-align: right;">149</p> <p>1 MR. COX: Same objection.</p> <p>2 THE WITNESS: It would have been</p> <p>3 mutually agreed upon if, in fact, that was</p> <p>4 the case.</p> <p>5 BY MR. McDANIEL:</p> <p>6 Q. All right. If that's in the contract,</p> <p>7 then that's in the contract; right?</p> <p>8 A. If it's outside of the normal course of</p> <p>9 a CDL truckdriver, it would have been mutually</p> <p>10 agreed upon.</p> <p>11 Q. The obligation then would be whatever</p> <p>12 the contract says in terms of the driver complying</p> <p>13 with UPS written policies and procedures?</p> <p>14 A. I would --</p> <p>15 MR. COX: Same objection.</p> <p>16 THE WITNESS: Again, I -- I would</p> <p>17 provide them with the qualification file, and</p> <p>18 if they mutually agreed upon bringing the</p> <p>19 employee on an assignment, then we would</p> <p>20 abide by what the assignment is.</p> <p>21 BY MR. McDANIEL:</p> <p>22 Q. Okay. Do you know whether or not a</p> <p>23 tractor-trailer truckdriver is required to follow</p> <p>24 the safety recommendations in the CDL manual? Do</p>

<p style="text-align: right;">150</p> <p>1 you know one way or another?</p> <p>2 A. I don't know the answer to that</p> <p>3 question. I've not read that manual, and each of</p> <p>4 those drivers have passed that testing, so...</p> <p>5 Q. Okay. To your -- to your knowledge,</p> <p>6 did Optimum or TDI provide any explanation to</p> <p>7 Mr. Woodall about how to drive in hazardous</p> <p>8 weather conditions?</p> <p>9 A. No.</p> <p>10 Q. Did -- to your knowledge, did Optimum</p> <p>11 or TDI provide Mr. Woodall with any explanation as</p> <p>12 to how to drive in hazardous conditions?</p> <p>13 A. No.</p> <p>14 Q. Did Optimum provide explanation to</p> <p>15 Mr. Woodall about what the term "extreme caution"</p> <p>16 means?</p> <p>17 A. No.</p> <p>18 Q. Can you, as the representative of</p> <p>19 Optimum, define what is meant by "industry</p> <p>20 standards" in the truckdriving field?</p> <p>21 A. I cannot define it.</p> <p>22 MR. GALAS: Objection to form and</p> <p>23 foundation.</p> <p>24</p>	<p style="text-align: right;">152</p> <p>1 Brian Connors or Joe Hemphill had created any</p> <p>2 documents relating to this occurrence, they would</p> <p>3 be in Mr. Woodall's personnel file, or you would</p> <p>4 have them?</p> <p>5 A. Correct.</p> <p>6 Q. And there are no such documents;</p> <p>7 correct?</p> <p>8 A. Not that I have seen, no.</p> <p>9 Q. There is an electronic report of the</p> <p>10 injury. Do you know who prepared that?</p> <p>11 A. Injury?</p> <p>12 Q. Correction. There is an electronic</p> <p>13 report of the accident, which is on pages 106 and</p> <p>14 107 of Exhibit Number 30.</p> <p>15 Do you know who inputted the data on</p> <p>16 that computer-generated document?</p> <p>17 A. If I can look at it, yes.</p> <p>18 Q. Yeah, sure.</p> <p>19 A. (Examines document.) A report</p> <p>20 completed by Robin Wulford.</p> <p>21 Q. Okay. Did -- did anybody at Optimum</p> <p>22 receive a copy of that document, to your</p> <p>23 knowledge? It's in your Optimum file?</p> <p>24 A. Yes, we did receive a copy of it.</p>
<p style="text-align: right;">151</p> <p>1 BY MR. McDANIEL:</p> <p>2 Q. Okay. I take it that you have no</p> <p>3 experience in driving a tractor-trailer truck,</p> <p>4 since you do not have and never have had a CDL;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you would not have any knowledge or</p> <p>8 expertise as to what driving would or would not be</p> <p>9 acceptable for a commercial truckdriver in certain</p> <p>10 scenarios or situations; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And it is also correct that Optimum or</p> <p>13 TDI did not provide specific training to Robert</p> <p>14 Woodall, or it would be documented in his file if</p> <p>15 you did, as to driving in adverse weather</p> <p>16 conditions; agreed?</p> <p>17 A. Correct.</p> <p>18 Q. Have you talked to Joe Hemphill about</p> <p>19 -- or Brian Connors about Robert Woodall at all to</p> <p>20 your knowledge?</p> <p>21 A. I talked to Brian Connors to advise him</p> <p>22 that I was having a deposition on this, but no, I</p> <p>23 have not talked to Joe Hemphill at all.</p> <p>24 Q. Okay. And it is correct that if either</p>	<p style="text-align: right;">153</p> <p>1 Q. All right. Did you or did anyone, to</p> <p>2 your knowledge, contact Mr. Wulford about that?</p> <p>3 A. About this report?</p> <p>4 Q. Yes, sir.</p> <p>5 A. I don't know the answer to that.</p> <p>6 Q. Is there any documentation that you've</p> <p>7 been able to find that anyone contacted Mr.</p> <p>8 Wulford about his report of the accident?</p> <p>9 A. I have no documentation for that.</p> <p>10 Q. Is there any documentation that you've</p> <p>11 seen with Optimum having any contact with UPS</p> <p>12 about this wreck?</p> <p>13 A. I don't have any documentation.</p> <p>14 Q. And is there any -- do you have any</p> <p>15 knowledge of anyone speaking with or conversing by</p> <p>16 any form with UPS about this wreck?</p> <p>17 A. No, I don't know if anyone had conversation.</p> <p>18 MR. McDANIEL: Okay. I think I'm about</p> <p>19 done.</p> <p>20 BY MR. McDANIEL:</p> <p>21 Q. Have you understood all of my questions</p> <p>22 or asked me to clarify them when you did not?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Is there anything, as we sit here now,</p>



<p style="text-align: right;">154</p> <p>1 that you would like to go back, change or modify?</p> <p>2 A. Not at this time, no.</p> <p>3 Q. And so just one last time to make sure</p> <p>4 I've got it clear, does Optimum expect the drivers</p> <p>5 to comply with the provisions of the commercial</p> <p>6 driver's license manual? That is, the booklet</p> <p>7 that they have to study to get their CDL? Do you</p> <p>8 expect the drivers to comply with that manual?</p> <p>9 A. I --</p> <p>10 MR. GALAS: Objection to form.</p> <p>11 THE WITNESS: I only expect the</p> <p>12 employees to, again, make sure that their CDL</p> <p>13 is active. So if they've -- I've never seen</p> <p>14 that document, so I don't know what it says.</p> <p>15 MR. McDANIEL: Good enough. No more</p> <p>16 questions.</p> <p>17 MR. GALAS: Nona.</p> <p>18 MR. BAKER: All right, we're good.</p> <p>19 We're done.</p> <p>20 THE WITNESS: Thank you.</p> <p>21 MR. BAKER: I may actually be able to</p> <p>22 make my flight.</p> <p>23 MR. McDANIEL: Thank you. Nice to have</p> <p>24 met you.</p>	<p style="text-align: right;">156</p> <p>1</p> <p>2 STATE OF ILLINOIS )</p> <p>3 ) SS:</p> <p>4 COUNTY OF DuPAGE )</p> <p>5</p> <p>6 I, ROBIN M. CHIMNIAK, a notary public</p> <p>7 within and for the County of DuPage and State of</p> <p>8 Illinois, do hereby certify that heretofore, to</p> <p>9 wit, on November 10, 2017, personally appeared</p> <p>10 before me JONATHAN FORMENTO, a witness in a</p> <p>11 certain cause now pending and undetermined in the</p> <p>12 United States District Court, Eastern District of</p> <p>13 Arkansas, Jonesboro Division, wherein Kimberley D.</p> <p>14 Brantley is the Plaintiff and UPS Ground Freight,</p> <p>15 Inc., are the Defendants.</p> <p>16 I further certify that the witness was by</p> <p>17 me first duly sworn to testify the truth, the</p> <p>18 whole truth and nothing but the truth in the cause</p> <p>19 aforesaid; that the testimony then given by the</p> <p>20 said witness was reported stenographically by me</p> <p>21 in the presence of said witness and was thereafter</p> <p>22 transcribed under my personal direction, and the</p> <p>23 foregoing is a true and complete transcript of the</p> <p>24 testimony so given by the said witness as</p> <p>aforesaid.</p> <p>The signature of the witness to the</p>
<p style="text-align: right;">155</p> <p>1 THE VIDEOGRAPHER: This concludes</p> <p>2 today's deposition. We're now going off the</p> <p>3 record at 11:23 a.m.</p> <p>4 (Whereupon the proceedings</p> <p>5 concluded at 11:23 a.m.)</p> <p>6 FURTHER DEPONENT SAYETH NAUGHT</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">157</p> <p>1 foregoing deposition was not waived.</p> <p>2 I further certify that the taking of this</p> <p>3 deposition was pursuant to notice and that there</p> <p>4 were present at the taking of said deposition the</p> <p>5 appearances as heretofore noted.</p> <p>6 I further certify that I am not a</p> <p>7 relative or employee or attorney or counsel, nor a</p> <p>8 relative or employee of such attorney or counsel</p> <p>9 for any of the parties hereto, nor interested</p> <p>10 directly or indirectly in the outcome of this</p> <p>11 action.</p> <p>12 IN TESTIMONY WHEREOF, I have hereunto set</p> <p>13 my hand and affixed my notarial seal on this 15th</p> <p>14 day of November, 2017.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>ROBIN M. CHIMNIAK, CSR</p> <p>License No. 084-001999</p> 

<b>A</b>	110:19	122:22	145:6,11,23	<b>arm</b> 68:5
<b>a.m</b> 1:21 4:10 60:12	<b>actual</b> 21:17 62:12	<b>agreement</b> 52:15	152:21	<b>arrangement</b> 67:19
60:15 103:4,7	131:21	80:7,8 81:16	<b>apologize</b> 12:6 92:5	<b>as-use</b> 49:3
155:3,5	<b>add</b> 74:10 82:8	96:11,16,19	<b>appearances</b> 157:5	<b>ascertations</b> 93:12
<b>abide</b> 75:2 149:20	83:1 87:20	<b>ah</b> 34:7	<b>appeared</b> 2:5,14,20	<b>asked</b> 14:2 39:20
<b>able</b> 88:8 95:11	<b>additional</b> 13:10	<b>ahead</b> 50:18 96:23	156:7	44:7 49:15 50:3,3
130:20 153:7	62:22 81:13,18,19	98:7 130:19	<b>appears</b> 17:16 20:6	57:22 76:8 144:9
154:21	81:22 91:14 92:1	133:16,16	<b>applicable</b> 15:9	153:22
<b>abrupt</b> 130:18	111:11	<b>aids</b> 125:5	79:12 84:12,15	<b>asking</b> 13:24 30:18
<b>absent</b> 102:16	<b>address</b> 11:19	<b>al</b> 4:3,4	85:19 87:19 91:2	34:16 52:20 54:7
<b>absolutely</b> 122:7	<b>adequately</b> 108:14	<b>alcohol</b> 140:18	94:5 130:2 131:10	78:7 115:15 120:3
<b>abuse</b> 22:18 73:16	<b>adjust</b> 33:12	<b>allergies</b> 84:6	131:11	129:12,14,19
73:17 103:23	132:21,22	<b>American</b> 118:9	<b>applicant</b> 102:8,9	136:13 138:19,20
<b>acceptable</b> 151:9	<b>administer</b> 5:6	<b>analysis</b> 16:7	102:11,13	<b>asks</b> 43:2
<b>accepted</b> 104:5	<b>administered</b> 66:17	122:19 123:2	<b>applicants</b> 10:12	<b>aspect</b> 97:7
120:11,12	<b>administration</b>	124:2,8,13 127:1	86:5 107:24 143:3	<b>assertations</b> 56:24
<b>accepts</b> 131:17	8:14 91:2 135:11	<b>and-</b> 2:10	<b>applied</b> 111:8	<b>assigned</b> 55:12 84:4
<b>access</b> 37:24 38:9	<b>ADMINISTRAT...</b>	<b>and/or</b> 44:2,17	132:1,5	84:11
<b>accessed</b> 137:11	1:3	48:13 65:21 76:23	<b>applies</b> 103:24	<b>assignment</b> 48:16
<b>accessing</b> 137:18	<b>adverse</b> 14:22	97:17	120:5	49:4,6,7 82:6
<b>accident</b> 15:22 44:2	136:11,19 137:19	<b>annual</b> 47:17	<b>apply</b> 10:21,22	115:19 147:2
53:17,23 54:1,3,6	151:15	<b>ANSA</b> 2:6	13:6 107:13	149:19,20
54:9,9,16 55:15	<b>advise</b> 55:19	<b>answer</b> 14:2,3 34:3	131:18 132:8,12	<b>assignments</b> 47:13
55:17,22,24 56:4	151:21	46:18 49:21,24	133:20 134:8	48:23,24 115:20
56:22 116:22	<b>advising</b> 86:8	50:9,10,18 62:1	<b>approach</b> 107:23	<b>associated</b> 127:10
117:2 123:12	<b>affiliated</b> 12:5,9	63:24 70:22 74:24	<b>approve</b> 128:24	<b>association</b> 4:16
124:20 132:24	20:13 68:6 69:4,5	82:22,24 84:23	<b>approving</b> 114:8	118:10
133:10,11 134:12	69:12,15 96:3	88:9 90:7 96:23	<b>approximately</b>	<b>assume</b> 41:18 95:12
135:16,19 144:7	105:4	97:3 100:19 109:3	8:23 78:22 115:24	138:18
145:24 146:11,14	<b>affixed</b> 157:13	126:17 133:16	<b>April</b> 46:6,17 48:18	<b>assuming</b> 28:8,10
152:13 153:8	<b>aforesaid</b> 156:17	136:21 150:2	51:9 53:15,23	30:4 34:18
<b>accidents</b> 55:9	156:23	153:5	54:10 55:22 69:12	<b>ASSUNCAO</b> 2:6
118:23 122:14	<b>agency</b> 91:3	<b>answered</b> 50:21	70:10,13,17,21	<b>attended</b> 13:5
127:15 130:13	<b>agents</b> 96:4	61:8,16 66:11,19	71:4,5,12 76:24	14:19 116:1
132:20 136:6	<b>ago</b> 131:20	144:10	77:16 100:22	<b>attending</b> 13:21
<b>accomplish</b> 33:3,9	<b>agree</b> 108:13	<b>answering</b> 50:7	115:24 126:14,23	<b>attorney</b> 4:21 97:6
<b>account</b> 84:4	130:15 139:5	61:19,20	127:1 137:14	157:7,8
<b>achieve</b> 110:16	141:8,14	<b>answers</b> 50:13	<b>area</b> 59:16	<b>attorneys</b> 93:13
<b>act</b> 96:18	<b>agreed</b> 28:18,19	60:17	<b>areas</b> 79:13	97:8
<b>action</b> 118:12	79:22,23 87:14,15	<b>anticipate</b> 118:13	<b>argue</b> 129:8	<b>attorneys'</b> 96:7
157:11	131:24 148:18	<b>anticipated</b> 118:14	<b>argumentative</b>	<b>August</b> 140:7 142:1
<b>actions</b> 121:23	149:3,10,18	121:22	129:12	<b>authors</b> 113:24
130:19	151:16	<b>anybody</b> 13:12	<b>arising</b> 96:8	114:1
<b>active</b> 113:5 154:13	<b>agreed-upon</b> 28:11	28:13,20,23 88:14	<b>Arkansas</b> 1:1 2:3	<b>available</b> 38:8
<b>activity</b> 92:23	82:9 83:1,4	137:3,5 144:23	2:18 4:5 156:11	41:17

<b>Avenue</b> 2:17	154:21	36:10 118:18,20	147:12	147:24 148:15
<b>avoid</b> 119:4,18	<b>baker@fridayfir...</b>	120:8,10,11 122:8		149:9,24 151:4
136:6,11,19	2:19	131:4 135:9,21	<b>C</b>	154:7,12
<b>Avoidance</b> 135:16	<b>based</b> 75:24 79:5	<b>booklet</b> 37:11,13	<b>C 2:16</b>	<b>Center</b> 2:7
135:20	142:22	112:12,19,23	<b>call</b> 12:13 47:15	<b>certain</b> 9:11 27:3
<b>avoiding</b> 121:23	<b>basically</b> 59:22	154:6	54:23 91:10	104:17,20 114:13
<b>aware</b> 14:20 15:22	<b>basis</b> 47:12 88:21	<b>booklets</b> 37:6,16	<b>called</b> 1:14 5:10	133:5,8 151:9
21:24 22:1,9	<b>Bates</b> 17:14 26:1	77:12	20:10 24:21	156:9
40:15 41:8 48:15	80:2 83:14,14	<b>books</b> 77:12 136:8	123:11	<b>certificate</b> 140:11
51:10 52:6,9	138:5,14,15	136:17	<b>calls</b> 30:16 97:1	<b>Certified</b> 1:23
63:19 65:6,11	<b>began</b> 115:23	<b>bottom</b> 140:15	109:1 119:21	<b>certify</b> 156:6,14
81:19,22 86:24	<b>beginning</b> 15:17	<b>Boulevard</b> 1:19 2:8	121:1	157:2,6
90:13 118:24	<b>behalf</b> 2:5,14,20	4:11	<b>Capitol</b> 2:17	<b>cetera</b> 87:4 89:11
123:1 134:15,17	5:1,3 6:13 19:7	<b>branch</b> 46:14 47:23	<b>car</b> 120:22,24	<b>chairman</b> 125:19
136:7,8	29:6,10 30:21	48:3,4,5 59:9,13	<b>care</b> 120:21	126:3,5,8
	43:2,11,20 53:16	59:15 60:1 85:15	<b>careful</b> 120:20	<b>change</b> 33:12 50:14
<b>B</b>	61:14 62:1 79:15	<b>brand</b> 69:16	<b>carefully</b> 53:19	60:19 154:1
<b>b 3:5</b> 96:11 99:19	86:10 100:2,17	<b>Brantley</b> 1:3,4 4:3	<b>carrier</b> 8:3,5 23:18	<b>changes</b> 33:11
<b>back</b> 22:6 26:10	101:1 124:19	54:13 156:12	35:24 36:20 37:15	103:9
50:14 51:10,16	142:20	<b>breach</b> 96:15	63:2,3 124:14	<b>changing</b> 127:15
52:8,11,13,22	<b>behavior</b> 94:17,23	<b>break</b> 60:9,18 76:5	135:7,10,17,20	<b>charge</b> 9:14,18 38:5
53:3,11 55:11	146:20	102:23 103:10	147:3	48:11,23 70:9,12
60:10,15,19 93:14	<b>believe</b> 34:7 37:17	<b>break-out</b> 14:18	<b>cars</b> 120:16	<b>charged</b> 119:2,16
103:7 126:21	43:21 46:4,22	<b>Brian</b> 46:8,10,15	<b>case</b> 1:7 4:6 16:14	122:16
131:22 147:15	50:20 56:1 58:3	46:20 59:4 146:1	51:8 57:18 115:12	<b>check</b> 39:5 47:17
154:1	58:13 59:23 61:10	151:19,21 152:1	115:18 149:4	72:18,18 76:6
<b>background</b> 10:4,6	61:18 66:2 69:14	<b>Bridges</b> 11:22	<b>causal</b> 100:1	126:18 141:3
10:9 11:1 20:8	73:21 79:20 92:12	68:14	<b>cause</b> 120:24	<b>checked</b> 40:21,23
44:1 72:18 141:4	101:6 121:3	<b>Brief</b> 60:13 103:5	132:20 133:10,11	65:14 66:23
<b>background/qual...</b>	126:15	<b>briefcase</b> 33:19	156:9,16	<b>checking</b> 10:8 90:5
64:18	<b>belongings</b> 35:17	34:5,12,24 35:21	<b>caused</b> 96:18	<b>checks</b> 25:8,11
<b>bad</b> 103:1	<b>BENJAMIN</b> 1:4	<b>Briefly</b> 143:16	<b>causes</b> 93:10	88:15
<b>bag</b> 33:18 35:6	<b>best</b> 88:21 99:6	<b>bring</b> 7:2 33:14	130:13	<b>chemical</b> 101:19
36:13	<b>better</b> 88:10	36:2,8,10 67:16	<b>causing</b> 56:21	<b>Chicago</b> 11:17
<b>Baker</b> 2:16 4:23,23	<b>big</b> 57:10 68:18	75:4 76:8 139:12	101:2	<b>Chimniak</b> 1:18,23
18:14 30:16 32:2	<b>bit</b> 8:21,22 78:13	<b>bringing</b> 149:18	<b>caution</b> 150:15	4:15,16 156:4
35:4,9,12,15	79:1	<b>brother</b> 19:22,23	<b>CDL</b> 9:16,19,20,22	157:18
50:16 60:20 64:2	<b>Bluetooth</b> 125:4	70:14	12:19,23 13:2,6,6	<b>choice</b> 105:14
64:4 89:15 96:21	<b>Boardroom</b> 1:19	<b>brought</b> 19:1 34:5	13:9 23:1,20,21	<b>choose</b> 137:8
96:24 101:12	<b>Bobby</b> 2:2 4:21	34:6 35:21 143:4	28:9 72:19 74:4	<b>chosen</b> 53:19
102:24 109:1,10	5:14 17:19 26:1	<b>building</b> 70:4	75:14 82:1 90:6	<b>circumstance</b> 129:1
109:12 129:8,11	34:15	<b>bullet</b> 116:5,15	95:7,9,11 102:16	148:6
129:18 133:14	<b>bobby@medanie...</b>	117:3 128:5	104:8,16,17,19,22	<b>circumstances</b>
138:15,18,24	2:4	<b>business</b> 6:1,2	121:7,11,12,17,18	82:10 83:2,5
139:3,5,11 154:18	<b>book</b> 31:20 32:5	52:23 57:11	145:10 147:14,23	104:21 122:7

130:10 133:5,8 citations 22:18,20 44:18 city 5:21 58:24 Civil 1:15 claim 57:13 58:1 96:17 claims 96:5 clarified 50:4 clarify 153:22 clarifying 87:12 CLARK 2:16 classes 13:5 classified 99:24 clause 80:11,12 clear 18:8 104:15 154:4 clients 107:3 CLNR 1:18 close 126:16 Coaching 109:9 Coast 59:23 collaboration 105:21 collected 55:1 73:9 collision 116:18,22 119:5 122:1,11 123:5,23 125:20 125:24 126:4,5,8 126:13 127:7,20 127:24 128:5 132:15 143:8 Collision/Incident 125:13 collisions 117:24 119:19 122:10 127:17 128:7 130:5 131:15 132:11 136:11 come 60:19,22 125:5 comes 93:6 comment 104:21 comments 31:13 133:18	commercial 151:9 154:5 committed 110:3 committee 125:20 126:1,4,6,8,10,13 common 127:9 commonly 36:24 communicate 93:20 communication 51:15 53:9,13,21 54:19 comp 57:16 companies 12:5,9 20:13 21:15 28:12 62:12 68:6 69:4,5 69:12,13,14 96:3 105:4 120:6 124:10 company 8:23 9:3 9:23 15:20 20:1,9 20:20,23 21:10,20 22:3,12 39:15,17 41:19 42:1 49:9 49:10 52:21 58:16 58:18 63:7,17 69:9 75:11 99:13 135:13 145:23 147:6 compensation 57:13 58:1 competence 21:21 82:13 competent 80:17,24 81:9,9,23 86:2 90:23 99:23 compiles 72:6 complaint 7:8 complete 10:17 17:13,16 64:1 71:19 73:3 123:20 156:21 completed 114:15 141:16,18 152:20 completely 50:8	66:20 completing 140:11 compliance 10:11 11:1 22:22 31:11 43:6,12 44:6 61:13 94:4 102:19 107:4 135:6,11 compliant 93:7 complied 29:5 compliment 112:12 112:23 comply 24:4,19,22 30:8,24 31:24 43:20 65:15 79:10 79:13 82:2 94:13 119:14 120:17 121:12 135:11 146:18 147:17 154:5,8 complying 88:12 91:7 98:18 149:12 component 57:10 comport 24:4 29:18 computer-genera... 152:16 concerned 77:21 93:1 105:18 concerning 43:5,17 43:24 44:18 53:11 116:17 concluded 155:5 concludes 155:1 conclusion 109:2 119:22 121:2 condi- 104:17 condition 137:19 conditions 14:23 132:23,23 136:12 136:20 150:8,12 151:16 conduct 30:1 56:18 56:19 93:2 94:16 94:18 116:8,12 146:16 148:9 conducted 123:21	conference 13:17 confirm 27:12 confirming 43:17 confirms 27:9 conform 148:9 confusing 34:2 conjunction 112:13 connection 96:9 Connors 46:9,15,20 47:1,3,22,23 48:2 48:6,23 49:4 51:23 52:1 59:4 146:1,10 151:19 151:21 152:1 Connors' 46:10 57:19 59:18 consider 6:7 41:20 42:1 102:3,7 considered 102:10 consistent 145:1,9 constantly 110:17 111:1 contact 47:10 51:23 146:11 153:2,11 contacted 15:21 123:16 153:7 contain 31:12 contained 64:22 65:4 73:6 136:23 containing 78:3 content 17:3,4 contents 24:20 28:15 29:18 72:9 continue 5:7 30:15 continuing 20:17 20:23 25:13 33:21 35:10 44:13 52:12 62:17 77:6 96:24 98:13 103:19 105:13 107:16 112:4,21 124:17 139:11,19 144:21 146:14,23 contract 7:16 16:12 16:21,23 17:4,14	17:16 18:1,9,22 19:7 20:4,4,6 21:10 22:23 23:3 38:8 49:13 51:5 67:6,13,16,18 71:8,11,14 78:13 79:1,2,6,7,8,10,11 79:13,16,17,19,19 79:21 80:1,23 81:8,11,21 82:4 82:15,16,19 83:10 88:6,12 89:12 92:7 97:2 98:9,24 103:19 108:17,22 122:17 147:15 148:21 149:6,7,12 contracted 16:18 contracts 49:2,3 90:8 control 52:20 147:3 controlled 44:4 73:18 102:1,14 140:12 conversation 153:17 conversing 153:15 copies 137:5 copy 6:24 10:14 17:13,14 25:16 27:14 28:18 36:4 42:24 45:6 66:3 67:6,9,10,13 73:3 101:7 137:23 138:3 144:2 152:22,24 core 112:7,7 corner 80:3 corporate 9:11 11:12,15,20 29:2 34:7,13,17 44:17 45:10,15 55:11,14 58:10,11 61:3 68:13 92:19 95:23 98:15 corporation 6:13
--	--	--	---	---



8:17 9:22 29:7,11 30:21 43:2,11,20 44:6 45:2 62:1 70:2,3 105:3 122:21 <b>corporations</b> 7:17 <b>correct</b> 6:16,17 7:23 9:12,13 11:18 15:3 16:6 16:13,15 19:7 20:5,19 21:5 23:6 23:9 24:18 27:7 27:17 29:16,19 30:1 40:19,20,22 42:20 47:1 49:11 49:13 55:4 56:14 59:11 62:13 65:16 67:1 68:10,16 69:2 71:10,13,14 72:21 75:13,15,16 79:4,6,22 80:20 81:1,10 83:12 86:16,19,20 88:18 88:24 89:1,14 92:8,12 95:7,8 104:2,3,24 105:5 105:6 106:4,7,8 106:10 107:11,12 112:17 117:10,19 118:2 119:7 122:5 123:9,10,15 127:22,23 128:2,3 128:18 130:1,16 130:24 132:7 133:4,7 137:20 138:8 139:20,21 139:23 140:8,9,12 140:13 141:4,17 141:21 142:1 143:2,13 146:4,5 151:5,6,10,11,12 151:17,24 152:5,7 <b>Correction</b> 152:12 <b>correctly</b> 14:2 27:7 43:8 50:21 84:17	85:20 91:4 94:7 97:23 107:8 110:21 112:16 116:23 118:1,15 119:6 122:2 125:22 127:12 130:21 133:2 <b>correspond</b> 26:16 <b>costs</b> 96:6 <b>Council</b> 118:11 135:24 136:2,5 <b>counsel</b> 4:18 7:3 42:22 65:2 72:3 73:22 77:21 87:3 138:11,12 157:7,8 <b>country</b> 21:14 60:2 <b>County</b> 156:2,5 <b>course</b> 140:11 141:16 147:11 149:8 <b>court</b> 1:1 4:5,14,16 5:5 11:8 22:8 32:14 41:24 63:13 82:24 124:22 125:2 156:10 <b>Courts</b> 1:16 <b>covenants</b> 94:3 <b>cover</b> 16:17 26:20 26:20,21,21 <b>covered</b> 104:15 <b>covering</b> 8:13 <b>Cox</b> 2:11,12 5:1,1 18:8 26:3,5,8 34:15,22 54:14 63:9,18 64:5 83:14 98:19 101:11 115:14 124:15,24 133:12 142:9 144:9 146:21,23 147:20 148:3,11 149:1,15 <b>crashes</b> 16:8 22:19 <b>created</b> 152:1 <b>creating</b> 110:4 <b>criteria</b> 62:21 82:9	82:13 83:2,5 105:15 <b>CSR</b> 1:18,24 157:18 <b>culture</b> 106:24 107:19 <b>current</b> 59:7,18 75:14 116:17 <b>currently</b> 9:2 37:17 90:16 <b>customer</b> 17:6 21:22 28:12 49:4 49:12 51:24 52:12 62:7,14 81:6 82:6 88:2,5 89:3 91:11 91:24 100:5 111:5 115:2 122:17,24 123:8,17 124:12 146:19 147:7,13 147:17,23 148:2,5 148:17 <b>customer's</b> 147:18 <b>customers</b> 22:24 48:13 52:15,16 55:8 86:4 90:9 100:3 110:5 119:9 120:7 123:1 <b>cut</b> 50:6  <b>D</b> <b>D</b> 1:3 3:1 4:2 156:11 <b>d/b-</b> 6:4 <b>d/b/a</b> 1:8 2:20 6:4 69:18 99:8,14 <b>damage</b> 110:11 <b>damages</b> 96:6 <b>dangerous</b> 129:4,6 129:7,10,20 <b>data</b> 116:17 152:15 <b>date</b> 4:9 32:6 57:6 58:19 101:17 <b>day</b> 1:20 25:7 32:22 126:20 157:14 <b>day-to-day</b> 47:5,20	<b>deal</b> 136:10 <b>dealt</b> 14:22 <b>DECEASED</b> 1:4 <b>deciding</b> 132:24 <b>decipher</b> 16:5 <b>decision</b> 125:17,18 <b>decisions</b> 105:16 134:5 <b>deemed</b> 124:20 <b>deems</b> 93:19 <b>defend</b> 96:2 <b>Defendant</b> 44:21 61:5,14 64:20 65:21 66:10,17 71:20,23 73:5,17 74:4 76:15,23 <b>Defendants</b> 1:11,14 156:13 <b>defensive</b> 116:20 125:12 136:5 <b>define</b> 10:6 22:14 54:5 110:10 114:5 129:3,6 150:19,21 <b>defined</b> 88:4 <b>definition</b> 88:7 89:5 110:13 <b>delay</b> 104:6 <b>demands</b> 147:7 <b>department</b> 10:11 11:2,3,4 22:23 40:19 99:23 126:11 <b>Departments</b> 72:16 <b>depending</b> 9:4 124:12 129:21 <b>depends</b> 38:11 62:14 100:20 115:10,17 <b>DEPONENT</b> 155:6 <b>depose</b> 58:13 <b>deposition</b> 1:13 3:6 3:9 5:16 6:18 7:7 17:8 25:18 26:15 27:2 40:3,4 42:11 61:1 144:4 151:22	155:2 157:1,3,4 <b>depositions</b> 1:17 <b>describe</b> 98:16 <b>described</b> 81:18,20 <b>describes</b> 98:2 104:20 <b>designated</b> 6:11 59:17 <b>desire</b> 38:23 <b>determination</b> 100:18,24 101:5 122:9,10 123:22 124:5 127:4 128:16 134:7 145:7 <b>determinations</b> 118:22 122:13 127:8 <b>determine</b> 16:8 29:4 57:20 87:23 87:24 118:6,8 126:19 144:7 <b>determined</b> 121:21 121:24 <b>determining</b> 117:22 118:3,5,20 127:10 <b>developed</b> 110:19 <b>development</b> 106:6 <b>difference</b> 59:12 <b>different</b> 9:12 17:22,24 46:20 74:19 99:16 113:2 137:9 <b>differently</b> 30:6 <b>difficulty</b> 23:13 24:16 <b>diligent</b> 40:1,6 42:14,17 <b>direct</b> 8:18 <b>direction</b> 147:3 156:20 <b>directly</b> 157:10 <b>director</b> 56:6,7,12 56:16 58:4,7
---	--	--	---	--

117:13 <b>directors</b> 96:4 <b>disagree</b> 35:9 <b>disbanded</b> 126:10 <b>discharge</b> 64:19 <b>discipline</b> 44:4 64:19 76:15 87:3 <b>discontinued</b> 113:11 <b>discovery</b> 51:8 <b>discuss</b> 78:12 88:1 147:12 <b>discussed</b> 14:17 41:10 57:8 71:16 127:21 146:2 <b>discussion</b> 16:10 18:12 116:19 <b>discussions</b> 114:13 <b>disqualifying</b> 27:24 28:2 <b>distance</b> 128:8,16 128:18 129:1 130:6,9 <b>distinct</b> 100:1 <b>District</b> 1:1,1,16 4:4,5 156:10,10 <b>division</b> 1:2 4:6 12:16 156:11 <b>divisions</b> 12:7,11 <b>document</b> 24:7,8 25:2,19,21,24 31:1,6 77:6,7,8 78:1,9 79:20 113:5 124:9 125:15 126:24 128:12,21 138:9 142:11 144:12 152:16,19,22 154:14 <b>documentation</b> 40:14 52:14 82:12 85:8,10,11 86:22 88:16 137:10,15 137:18,21 140:21 141:1,9,15,18	146:9 153:6,9,10 153:13 <b>documented</b> 91:16 91:17 92:3 113:15 151:14 <b>documenting</b> 52:7 <b>documents</b> 7:9,13 7:14,20 25:6 34:8 35:8,20 37:6 40:22 45:4 52:6,9 55:21 56:2 72:11 73:3,15,21,24 74:3 136:9,15,18 141:10 152:2,6 <b>doing</b> 35:5 <b>DOT</b> 23:1,7,16 25:4 28:10 31:11 31:11 33:11,13 36:10,18 62:21 75:8,12 81:6,7 82:2,5 86:7,14,18 91:1,9 93:7 94:13 94:15,20 95:2,5 99:24 102:8,12,15 102:19 104:1 109:7,24 111:7 119:12 120:17 121:5 142:22 143:1 147:10 <b>DOT's</b> 135:12 <b>DOT-qualified</b> 86:5,9 100:6 <b>downsized</b> 126:12 <b>DPM/JJV</b> 1:8 <b>drafted</b> 16:22 <b>drafting</b> 16:21,23 16:24 17:2 <b>drive</b> 11:22 68:14 95:1,4 108:23 120:14,21 150:7 150:12 <b>driven</b> 54:12 <b>driver</b> 9:2 14:12 15:2,4 21:21,22 22:2,3,10,11 23:3	23:5,21 25:9 26:24 27:9,17 28:4,21 29:4,17 29:17,18,24 30:7 30:12,15 31:3,13 31:19,24 32:9,16 32:21 33:2,4 39:6 40:12 41:6,6,21 42:2 43:5,18,24 44:1,17 47:10,10 49:8 52:11,12 54:10 56:18,19,20 56:21 62:19,20 66:16 71:19,21 72:5 76:21 77:3 77:14 78:15 81:8 86:3 90:24 91:10 92:11 93:8 94:22 95:12 101:9,15,24 103:20,21,24 104:7,16,20 106:14 118:12 119:2,16 121:22 128:1,6,15 129:1 130:4,19,20 132:21 136:10,19 143:24 145:2,10 146:18 147:1,6,24 148:8 149:12 <b>driver's</b> 28:14 47:16 54:23 55:19 55:23 57:4 66:2 101:6 117:6 121:10 143:7 144:6 146:12,16 154:6 <b>drivers</b> 9:7,15,16 9:19,20,23 12:4,8 13:5,9,13,14,15 13:19,21 14:7,8 14:10,20 15:5,8 21:4,9,11,18 24:1 24:3,6 25:3 26:14 29:11 38:12,15,20 38:22,24 45:12	48:12 50:24 61:5 62:5,11 66:9 69:20,22 70:24 71:1 76:24 77:18 78:20 81:6,10 85:14 86:23 89:14 89:23 90:2,4,5,8 92:24 93:2,4,5 94:12,17 95:1,6 95:10 97:22 99:24 100:6 105:8,11,20 106:9,11 108:9,14 108:23 109:6,23 115:5 119:9,10,13 119:14,20 120:14 121:4 122:14 128:14,17 131:8 132:2 133:11 142:17,18,22,24 147:23 148:22 150:4 154:4,8 <b>drivers'</b> 10:8 90:22 <b>driving</b> 14:22 22:18 26:24 64:19 94:16 94:18 95:2 116:20 120:15 132:10,22 136:5,11 140:24 145:9 146:17,19 151:3,8,15 <b>Driving-Judging</b> 125:12 <b>drove</b> 56:20 <b>drug</b> 10:9 22:18 84:10 104:7 140:7 140:22 141:11 <b>drugs</b> 140:18 <b>DUI/DWI</b> 101:19 <b>duly</b> 5:10 156:15 <b>DuPage</b> 1:19 156:2 156:5 <b>dust</b> 133:6,10 <b>duties</b> 8:12,13 9:12 15:18 25:1 47:3 55:5 56:15 57:2,3 57:19,20 58:4	59:12 <b>duty</b> 81:3,5 <hr/> <b>E</b> <hr/> <b>E</b> 3:1,5 <b>earlier</b> 23:11 41:10 57:8 81:24 136:24 <b>easier</b> 6:9 <b>East</b> 59:23 <b>Eastern</b> 1:1 4:5 156:10 <b>education</b> 43:6 44:1 61:12 107:3 <b>effectively</b> 107:1 <b>effort</b> 52:19 <b>efforts</b> 88:21 <b>eight</b> 78:23 <b>either</b> 13:21 40:13 63:7,16 113:9 151:24 <b>ELCs</b> 100:2 <b>ELDREDGE</b> 2:16 <b>electronic</b> 13:22 53:9 55:23 77:13 152:9,12 <b>eligibility</b> 101:9,15 103:20,21 <b>eligible</b> 102:16 104:1 142:4,8,14 142:16 <b>Elmburst</b> 5:24 <b>email</b> 51:15 53:10 76:9 <b>employ</b> 46:3,17 59:5 109:23 <b>employed</b> 12:1,4,16 12:18 58:22 70:23 73:20 76:24 <b>employee</b> 28:21 46:4 53:1,5 58:16 73:19 95:3 112:12 112:24 113:1,3,8 113:11,14 116:18 116:20,22 117:11 123:13 128:1
--	---	--	---	--

141:24 147:2,16 148:14 149:19 157:7,8 employee's 83:8 employees 8:24 9:5 9:7 10:5 29:20 31:22 32:5 55:12 57:6,17 62:4 68:21 80:17,23 81:24 82:1,3 84:3 84:4 86:9 94:14 96:4 106:2 107:3 109:5 110:5 113:4 119:24 143:5 154:12 employer 83:23 84:2 employers 141:4 employment 10:9 12:3 25:7 30:8,11 30:15,24 32:6,23 64:16 73:4,9 93:17 102:3 141:5 141:20 encompass 12:14 47:9 encompasses 12:10 encourage 27:18,18 29:20 31:6 encouraged 31:21 32:4 ended 49:4,9 115:24 endorsement 83:7 90:6 engaged 16:7 ensure 107:6 109:19,21 entail 8:12,13 enter 72:11 entered 16:12 79:2 Enterprise 142:19 142:21 Enterprises 141:21 entit- 35:7	entities 16:18 68:23 entitled 35:8,15 entity 20:11 21:1 21:13,17 22:1,9 67:21,21 70:16 environment 107:1 110:5,12 environments 132:21 equating 86:6 especially 74:22 ESQ 2:2,7,12 essentially 69:24 99:11 ESTATE 1:4 et 4:3,4 87:4 89:10 evaluate 28:14,21 28:23 87:4 144:24 evaluated 29:12 evaluates 21:21 22:2,10,13 29:3 evaluation 16:3 107:2 132:15 143:17,21 event 52:2 84:14,14 85:18 87:18 100:9 100:11 everybody 29:6 33:10 evidence 40:10,11 exact 14:24 58:19 59:20 exactly 34:11 37:2 67:24 exam 39:19 examination 1:14 3:3 5:12 examinations 66:17 67:1 examined 5:11 Examines 34:12 152:19 example 38:13 115:2 excuse 48:1,20 92:5	102:20 124:22,22 excused 130:14 executive 6:2 8:11 exhibit 3:10 6:18 6:23 17:8 25:17 26:15,16 28:5,18 40:4 51:5 67:10 77:9 78:16 80:2 104:13 106:17 112:22 131:16 138:4,6 144:5,15 152:14 exist 65:9 68:12 existed 117:16 existence 126:14 existing 132:22 exists 67:17 76:9,11 expect 24:3,19 30:7 94:17 105:20 119:13,14,20 120:13,17 121:14 128:17 132:3 142:17 143:23 147:6 148:9 154:4 154:8,11 expectation 94:24 148:5 expectations 122:5 145:10 146:19 expected 27:15 79:10 114:24 118:13 121:12 128:14 132:1 145:2 147:17 148:2 expects 29:17,17 31:19 106:9 131:8 expeditious 88:22 expenses 96:7 experience 82:14 151:3 experienced 80:15 80:17,24 81:9 86:3 90:23 99:21 99:23	expertise 151:8 experts 117:15 expiring 47:15 57:7 explain 12:6,24 15:4 56:19 82:18 88:11 explanation 143:18 143:22 144:6,16 144:24 145:1,5,7 150:6,11,14 explanatory 8:7 extent 27:16 66:4 96:17 105:8 115:15 extra 91:20 111:14 122:16 extreme 150:15  <b>F</b> f 96:13 F.M.C.S.R 71:21 facility 68:10,11 fact 25:9 27:10 39:7 39:16 81:3 111:11 118:17 119:9 130:7 140:22 141:11 148:21 149:3 factor 27:24 28:2 facts 125:21 failure 96:10,11 132:22 fair 29:3 31:18 40:8 44:14 50:8 104:23 familiar 8:20 10:15 95:9 135:23 far 15:1 29:15 57:6 58:15 62:10 68:8 73:8 77:21 92:24 94:16 105:17 128:10 fault 56:21 100:11 100:18,24 101:1 federal 1:15 8:3,5 23:18 35:23,23	36:20 37:15 91:1 91:3 94:5 107:4 135:7,10 fee 90:12 91:20 122:22 feel 31:7 50:13 fees 96:6,7 fellow 113:19 field 55:12 150:20 fighting 102:24 file 7:18 10:13,14 10:18,20 34:13 36:1,7,9 44:23 45:6,8 54:20 62:20 64:23 65:1 65:5,12,12 66:14 66:22,24 67:3 71:19,22 72:5,10 73:7,10,22 74:7,9 76:18 77:1 85:5 87:6,11 88:17 91:11,16,19 92:3 111:17,21,24 113:7,16,17 116:3 117:18 134:21,22 134:24 135:4 137:23 138:7,10 138:13,23 139:19 140:1 141:9,15 144:21 149:17 151:14 152:3,23 filed 58:1 files 10:12 52:7 55:21 57:6 65:14 filings 7:11 films 117:14 final 114:3,9,14 finance 8:14 financial 67:8,15 find 40:7,10,11,16 42:14 49:10 88:2 153:7 findings 44:3 100:11 fine 6:8
---	---	--	---	---

<b>finished</b> 49:22,24	147:20 148:11	98:5,8 119:21	16:16 25:16 26:16	131:16,18 132:1,5
<b>FIRM</b> 2:2	150:22 153:16	121:1 146:22	27:22 28:6 30:13	132:7,8 135:8
<b>firms</b> 9:8	154:10	150:22 154:10,17	44:10 55:18 60:11	<b>handbooks</b> 7:15,22
<b>first</b> 5:10 11:9 18:9	<b>format</b> 77:13	<b>gather</b> 40:2	60:14 76:6 80:1,2	8:1 23:14 76:21
25:7 32:6,22	<b>Formento</b> 1:13 3:3	<b>gathers</b> 72:7	102:23 103:3,6	93:19,23
42:13 54:8 72:22	4:9 5:9,14,19,20	<b>general</b> 53:7 89:9	106:17 111:15	<b>handle</b> 122:23
79:1 99:19 109:16	19:21 103:9,13,14	89:18 108:18,21	144:2,4,11 155:2	<b>handling</b> 89:10,18
116:5,15 117:2	103:15 113:20	110:6 119:4,18	<b>good</b> 5:14 49:16	89:19
120:9 128:5	156:8	127:10	154:15,18	<b>handwritten</b>
156:15	<b>forth</b> 84:13	<b>generally</b> 104:5	<b>Ground</b> 1:7 2:15	143:12 144:16
<b>five</b> 9:5,6 44:19	<b>forward</b> 19:4	<b>generate</b> 132:6	4:3 5:2,4 16:13,17	<b>happened</b> 145:8
45:2,13 59:23	<b>forwarding</b> 18:7	<b>generating</b> 131:17	67:6 156:12	<b>harm</b> 110:11
61:6 77:16 102:5	<b>found</b> 49:5	<b>geographic</b> 59:21	<b>grounds</b> 132:24	120:23
<b>flight</b> 154:22	<b>foundation</b> 63:10	<b>getting</b> 12:23	<b>group</b> 59:17	<b>harmless</b> 96:3
<b>flip</b> 95:17	115:15 124:16	<b>give</b> 11:19 25:16	<b>guidelines</b> 74:14,18	<b>hate</b> 102:22
<b>fluctuates</b> 9:3	125:1 133:13	27:14 31:3,20	112:14 117:22	<b>hauling</b> 89:23
<b>FMCA</b> 82:2	142:10 146:24	33:2 49:21 113:4	118:3,4,8 127:5	<b>hazardous</b> 37:10
<b>FMCSA</b> 33:13	147:21 148:12	138:3	148:8,10	37:13 89:10,19,24
135:6	150:23	<b>given</b> 13:5,10 26:13		90:2,3,10 150:7
<b>fog</b> 132:19 133:4,9	<b>four</b> 2:7 102:5	28:4,6 32:9,15,20	<b>H</b>	150:12
<b>folks</b> 11:3	135:10	32:21 44:8 50:13	<b>H</b> 3:5	<b>hazmat</b> 83:11 90:5
<b>follow</b> 39:9 96:11	<b>Freight</b> 1:7 2:15	60:17 63:6,16	<b>H-e-m-p-h-i-l-l</b>	90:6
132:2 149:23	4:3 5:2,4 16:13,17	64:23 65:1 78:8	146:4	<b>head</b> 11:4 30:2
<b>follow-up</b> 39:10,11	67:7 156:12	113:14 117:9,17	<b>hand</b> 144:2,12	37:18 85:24
73:16 144:6	<b>frequent</b> 130:13	147:1 156:17,22	157:13	113:13 126:17
<b>followed</b> 116:21	<b>FRIDAY</b> 2:16	<b>gives</b> 29:16	<b>handbook</b> 8:3,4,6	136:22
<b>following</b> 57:2	<b>front</b> 19:11 42:10	<b>giving</b> 31:4 33:3	23:9,10,16,17,19	<b>heading</b> 114:18
116:9 127:7 128:8	127:21 128:7	107:21	23:24 24:5,12,20	117:21
128:16,18 129:1	130:5 137:24	<b>GLASSMAN</b> 2:11	24:23,24 25:10	<b>hear</b> 17:23 103:15
130:6,9 140:19,23	138:2 144:14	<b>go</b> 19:4 31:14 42:24	26:13,19 27:11,13	124:23
<b>follows</b> 5:11	<b>front-end</b> 127:17	44:10 45:23 50:14	27:17 28:5,6,15	<b>heard</b> 7:22 135:15
<b>force</b> 126:12	127:20 128:4	50:18 51:10,16	28:16,18,22 29:5	136:1
<b>foregoing</b> 92:15	131:15 132:11	60:19 64:3 77:23	29:8,13,15,19,21	<b>hearing</b> 23:13
156:21 157:1	<b>full</b> 94:4	87:24 96:23 98:7	30:1,9,14 31:4,12	24:16 125:5
<b>forgive</b> 23:13 24:15	<b>fully</b> 66:11	103:2 104:11	31:17 32:1,9,15	<b>held</b> 12:19 114:22
34:3	<b>Fulton</b> 48:15,20	105:1 106:18	33:4 35:23,24	115:8
<b>forgot</b> 36:12 49:14	<b>functions</b> 45:16	111:16 117:20	36:5,18,21 77:3	<b>help</b> 17:18
<b>form</b> 32:2,19 39:11	<b>further</b> 155:6	126:20 131:22	105:2,2,17,19,21	<b>helped</b> 132:6
53:14,22 54:14	156:14 157:2,6	132:14 133:16,16	106:2,6,10,12	<b>helping</b> 32:10,16
63:9 85:4,7 89:15		137:7,22 147:15	107:23 108:6	<b>Hemphill</b> 54:22
98:5 109:9 115:14	<b>G</b>	154:1	112:13,15,22,24	55:14,16 56:3
119:21 121:1	<b>Galas</b> 2:7 5:3,3	<b>goal</b> 106:23 107:18	113:1,2,3,9,11,15	57:3 58:15,21
124:15,24 133:12	17:19,21,24 18:3	110:16	113:24 114:4,9	146:2,3,6,10
133:14 142:9	18:5,17,21 26:1,4	<b>goes</b> 17:14 81:17	117:10 120:4	151:18,23 152:1
144:9 146:21,22	26:7 32:19 97:4	<b>going</b> 6:22 12:13	124:7 130:1,3	<b>Hemphill's</b> 55:2



57:19	idea 14:1 108:3	87:19,21,23 88:4	97:2	J.C 4:23
hereto 157:9	identification 6:20	88:12,23 89:2	interpreting 89:3	J.J 36:15,22,24
heretofore 156:6	17:10 45:10 61:3	96:11 97:16,18	interrupt 49:23	37:7 41:1,7,9,16
157:5	identified 45:17	98:2,3,18 104:5	intersections	41:20 42:1 135:12
hereunder 84:12	136:24 148:18	150:19	127:15	JAMES 2:16
hereunto 157:12	identify 42:5 47:13	Infinity 38:2,4,14	interview 84:8,20	January 141:24
higher 119:3,17	89:19 107:1	38:19 39:1,7 41:1	85:2,4,5,6,8,12,13	JFK 2:8
120:14,21	Illinois 1:20,24	41:7	interviewed 85:3	job 25:1 27:20
highly 35:17	4:12 5:24 11:16	information 20:8	introduce 4:18	49:16 59:7 148:16
Highway 91:1	11:23 58:12 156:1	31:8,10 37:22	introduced 5:15	Joe 54:22 55:2
bire 27:22 28:7	156:6	38:6 40:2 41:21	investigate 57:12	146:2 151:18,23
30:14 75:24 84:9	implementing	42:2,15,21 44:8	investigation 44:2	152:1
85:2 102:16 104:1	110:17	51:21 64:21 65:3	44:3 54:3,5,20	John 1:9 4:8
hired 28:21 45:22	improve 32:10,17	72:7,8 73:6,8,12	64:18 65:19,23	113:19
45:24 47:24	inappropriate	74:6,8 78:3 93:20	66:1 123:21	Jonathan 1:13 3:3
hires 142:22	35:18	111:10 141:20	involved 12:12,15	5:9,19 156:8
hiring 27:24 28:3	inches 135:10	initial 91:23	14:11 15:19 16:3	Jonesboro 1:2 2:3
43:24 64:17 74:14	incident 15:22 57:9	injured 57:21	16:9 17:3 53:15	4:6 156:11
74:18 75:2,6,10	incidents 55:9	injuries 55:9 57:23	54:11,11 55:18	Jr 2:16 19:21
86:23 97:19 102:7	include 56:18	101:3	72:14 100:22,23	judgements 96:6
104:6 105:15	included 48:9	injury 15:22 57:9	105:23 106:1	judges 93:13
107:23 121:16	73:10	57:10,13,14,15	114:2 119:4,18	
history 10:10,10	includes 12:10	144:7 146:12	120:7 122:14	<b>K</b>
22:17,18,19,19	including 22:17	152:10,11	involvement 14:4,6	Keep 112:11
44:1 64:16 103:23	43:24 45:12 53:7	innocent 32:10,17	27:16 51:14 68:2	Keller 36:15,22,24
141:5,21	53:9 61:5 64:17	108:10,15,24	68:3,5 100:17	37:8 41:1,7,9,16
hits 127:22	66:9 69:15 89:9	109:21 129:4	114:8 123:5	41:20 42:1 135:13
hold 96:3 115:4,12	96:7 97:21 127:15	input 16:22 105:19	132:16	killing 84:6
holds 115:9	inclusive 6:7 127:8	106:5	involving 54:12	Kimberley 1:3 4:2
honest 33:17 71:6	incur 96:8	inputted 152:15	116:13 127:2	156:11
75:22 76:4 90:16	Indemnification	inquiry 40:2,6	issue 100:14	kind 14:7 40:13
134:19 137:4	95:18,22 96:1	42:14,17 141:10	issues 47:11	53:9,10 57:9
honestly 70:23	indemnify 96:2	Institute 135:16,21	Item 17:12 43:1,15	136:18
hope 25:5	indicate 108:16	instruct 136:18	45:9 62:1 65:4,18	knew 48:19
hour 1:21 60:8	indicated 120:10	instruction 15:6	66:5 67:12 71:16	know 8:23 16:21
HR 8:14,24 11:6	indicates 81:14	insurance 12:18	71:18 73:2,12,14	18:18,22,24 19:8
39:14 40:19 93:6	85:1 86:12	integrity 31:20	74:16,23 77:11,23	21:16 28:23 30:2
Hum 138:1 139:2	indirectly 157:10	interacted 51:20	83:18 90:18 94:2	32:8,15 33:16
hundred 9:5,6	individual 21:11	interaction 51:14	95:21 99:19	35:8 36:14 42:5
hypothetical 30:16	individuals 84:11	146:7	101:16	43:11,19 46:18,18
	industry 12:18 37:1	interested 34:21	items 14:16 17:6	47:14 48:20 49:14
	37:4,8,21 42:8	157:9	65:15 78:9	49:19,23 52:18
<b>I</b>	77:13 84:15 85:19	internal 7:9,13,13	Iwanski 11:5	54:2 55:7 57:24
I-w-a-n-s-k-i 11:9	85:22 86:1,6,10	75:1		58:18,19,21,24
ie 123:23	86:11,17,19,23	interpretation 88:2	<b>J</b>	59:2,20 65:9
ice 132:19				

70:22,22 71:5 75:21,23 76:2 78:13 84:23 85:14 85:23,24 86:1,21 90:1,7,16 93:22 95:14 100:16,19 102:22 104:4,9,22 106:19 113:10,12 115:20 116:1,2 120:5 123:16,18 125:9 126:15,16 126:17 128:10,20 129:7 131:1,19,20 134:19 135:5 136:14,21,22 137:1,17 142:7,14 144:5 145:4,11,13 145:15,23 149:22 150:1,2 152:10,15 153:5,17 154:14 <b>knowledge</b> 28:14 29:1,12 37:5 63:4 63:8,14,17 68:9 72:1 73:7,23 74:1 76:1 81:12 116:11 116:14 144:23 145:4,21 150:5,10 151:7,20 152:23 153:2,15 <b>knowledgeable</b> 29:10 <b>known</b> 78:1 <b>Knoxville</b> 48:7 <b>Kris</b> 11:5 <b>Kristina</b> 11:10,11	86:14,18 87:19 <b>laws</b> 94:5 <b>lawsuit</b> 34:17 <b>lawyer</b> 78:10 139:17 <b>lawyers</b> 16:21 <b>leased</b> 90:22 <b>leave</b> 93:13 <b>left</b> 58:18 <b>legal</b> 2:23 4:14 7:11 7:20 72:2 97:1,7 109:1 119:22 121:2 <b>leisure</b> 24:7,9,11,13 24:17 25:3 29:21 31:9 120:1 <b>let's</b> 20:7 45:23 60:24 61:20 74:21 79:24 95:17 104:11 105:1 108:19 115:11 117:20 131:22 132:14 137:22 <b>letter</b> 140:5,14 <b>level</b> 120:14 <b>libraries</b> 37:24 <b>library</b> 38:7 136:3 136:23 <b>license</b> 1:24 47:17 83:8 154:6 157:19 <b>licenses</b> 57:8 <b>limit</b> 102:2 <b>limitation</b> 97:21 <b>limited</b> 64:17 <b>limiting</b> 90:19 <b>list</b> 65:15 137:8 <b>listing</b> 127:9 <b>lists</b> 127:14 <b>little</b> 2:18 8:21,22 20:7 30:5 60:8 78:13,24 128:22 <b>lives</b> 58:24 59:2 <b>LLP</b> 2:6,16 <b>local</b> 94:5 107:4 108:2	<b>located</b> 4:11 48:5 68:13 <b>location</b> 51:1,2 <b>locations</b> 48:13 <b>Logistic</b> 1:8 2:21 69:19 99:9,11 <b>Logistics</b> 6:3,5 12:9 <b>logo</b> 68:20,21 69:1 69:1,3,17 <b>long</b> 11:24 78:14,19 102:18 103:23 <b>longer</b> 15:13 51:17 51:21 52:3,17 70:6 113:5 <b>look</b> 17:15 19:1,8 19:10 31:8 34:9 43:1 79:24 101:16 124:18 139:15 140:14 152:17 <b>looked</b> 8:21 35:22 138:19 143:16 <b>looking</b> 42:23 103:17 144:18 <b>losses</b> 96:6 <b>lot</b> 129:21 131:1 <b>lower</b> 80:3 <b>lunch</b> 34:21 <b>lying</b> 132:23	54:22 55:3,6 59:8 59:9,10,13,14,15 85:15 100:12,13 116:7,12,16 <b>managers</b> 15:13,15 15:19 16:2 56:17 57:1,1 59:16 60:4 75:2,23 <b>managing</b> 80:16 99:22 <b>mandates</b> 79:11 <b>manner</b> 88:22 95:4 108:23 146:20 <b>manual</b> 23:20 24:20 33:13,14 77:18 95:10 104:11,17,19,23 121:7,12 135:6,11 149:24 150:3 154:6,8 <b>manuals</b> 76:22,22 77:12 93:18,23 <b>marijuana</b> 140:7 <b>Mark</b> 56:9 126:6 <b>Mark's</b> 126:16 <b>marked</b> 3:6 6:19,23 17:9,12 25:17 26:14 51:5 138:4 144:3 <b>marketing</b> 20:11 20:15 21:12 68:5 68:18,19,21,24 69:1,3,16 <b>Marvin</b> 2:23 4:13 <b>master</b> 80:6 <b>material</b> 33:6 37:7 37:10,13,20 41:10 41:15 90:10 107:22 137:20 <b>materials</b> 20:17 37:3,9 42:7 66:8 89:10,20,24 90:2 90:3 <b>matter</b> 4:2 <b>matters</b> 6:13 78:4	93:6 <b>max</b> 60:9 <b>McDANIEL</b> 2:2,2 3:3 4:21,21 5:13 5:15 6:21 17:11 17:20,23 18:2,4 18:10,13,16,20,24 19:5 22:6,16 25:20 26:6,9,12 30:20 32:7 33:1 34:20,23 35:7,10 35:19 42:9 50:22 54:15 60:7,16,23 63:21,22 64:3,6,8 82:21 83:3,16,17 89:21 96:23 97:9 98:6,12,14,22 101:13,14 102:21 103:8 109:8,11,14 109:15 115:21 120:2 121:8 125:3 125:8,10 129:9,16 129:23 133:15 138:12,17,22 139:2,4,10,13,14 142:12 144:13 147:5 148:1,7,20 149:5,21 151:1 153:18,20 154:15 154:23 <b>mean</b> 34:17 48:24 84:1 89:3 92:18 93:8 94:10 96:20 98:4 99:2 107:20 110:7 128:9,20 129:20 138:18 139:3 <b>meaning</b> 87:13 <b>means</b> 13:18,22 51:15 86:18 92:11 94:11,12 97:5,5 97:12,13,16 98:24 99:1 128:11,20 129:7,10 150:16 <b>meant</b> 87:21 127:8
---	---	---	---	--

150:19	Mississippi 48:15	113:19 145:16	notarial 157:13	149:1,15 150:22
medical 72:19	48:20	names 80:9	notary 156:4	154:10
75:15	Misstates 98:8	Naper 1:19 4:11	noted 55:24 98:13	objections 109:12
meet 94:14,17 95:4	mixed 18:6	Naperville 1:19	111:17 157:5	objective 33:5
109:6 143:1,3	mm-hmm 9:17	4:12	notes 8:7	objectives 110:18
meeting 75:8 94:19	33:22 34:1 80:14	National 118:10	notice 6:14,23 7:3	obligated 80:23
116:12	112:20 131:23	135:24 136:1,4	40:3 42:11,16,24	obligation 23:4
meetings 13:9	model 52:23	Nationwide 8:2	61:1 62:2 65:8	91:8 98:17 108:8
114:18,22 115:5,8	modify 50:14 60:19	20:10,10,11,21	97:1 148:13 157:3	108:11,14,17,22
115:9,13 116:1,8	154:1	21:3,9,12 23:9,16	Notices 99:8	109:5 149:11
meets 103:24	monitoring 43:7	67:14,20 68:1,4	noticing 4:19	obligations 71:8
members 116:8	45:11 61:4,13	68:10,11 69:16	notification 123:20	79:3,5,8,17 90:20
memorized 137:4	month 102:15	70:10 71:10 110:3	notified 52:2	96:10
Memphis 2:13	months 101:17	123:8 140:1	100:13	observed 12:23
mentioned 23:12	102:15 140:19,23	Nationwide's 68:3	Notwithstanding	39:7
98:1 121:6 134:18	141:2,16	106:23	92:15	obtain 13:6 37:6,20
menu 34:21	morning 5:14	NAUGHT 155:6	November 1:20 4:9	37:21 38:19
merely 112:12,23	motor 8:3,5 23:18	necessary 17:6 21:7	115:23 156:7	obtained 15:5 37:7
messages 53:10	35:23,24 36:20	93:19 148:19	157:14	141:21
met 28:10 62:20	37:15 47:17 90:22	need 26:10 31:15	number 3:6 4:6	obtaining 38:6
102:8,15,18	124:14 135:7,10	50:13 52:16,17	26:2 43:22 44:16	80:16 99:22
154:24	135:17,20	60:18 131:3	61:2,11,24 66:7	obviously 28:17
method 99:6,6	motoring 32:10,17	needed 51:21 52:3	67:5 72:22 74:2	57:10
methods 97:17 99:2	108:10,15,24	55:10	74:12 76:13,20	occupation 6:1,2
99:2	109:22 119:4,18	needs 49:2 55:8	80:3 112:19 138:5	occurred 143:18,22
microphone 125:5	129:4	100:2 148:17	152:14	occurrence 44:20
Mid-Atlantic 59:22	Move 125:3	negligence 93:3,12	numbers 3:10 18:6	45:13 46:6,24
midway 100:8	multiple 12:7 15:12	96:14	138:14,16	48:18 58:2 61:6
mind 60:19,22	20:12 21:14 68:23	negligent 93:9		65:21 121:24
112:11	72:13 83:11	96:18	<b>O</b>	152:2
minimum 28:10	105:23 115:20	negotiated 17:5	O-r-i-e-h 56:11	occurrence?' 118:14
75:8,23 82:4	120:6,6,7 124:10	122:24	oath 5:6	occurrences 127:9
94:15,20 95:5	mutually 28:11	never 68:9 104:22	object 30:16 32:2	office 11:12,15,20
100:6 102:8,18	82:9 83:1,4	130:13 151:4	35:4 54:14 63:9	46:21,22,23,23
103:24 109:7,24	148:18 149:3,9,18	154:13	89:15 96:21 109:1	48:7 55:11,14
111:7 121:15	MVR 101:18	new 46:21 48:2	109:8 115:14	58:10,11 68:13,15
142:22 143:1	MVRs 57:8	Next-to-the-last	124:15,24 129:11	68:18 70:5,6
147:9		112:10	142:9 144:9	officers 96:4
minimums 143:4	<b>N</b>	Nice 154:23	146:21,22 147:20	offices 59:16,23
minute 27:5 49:24	N 3:1	non-preventable	148:11	60:1 68:17
93:15 111:16	name 4:13 5:17	123:24	objection 32:19	official 71:6 99:13
minutes 60:9	10:21 11:7,9	normal 147:11	63:18 97:4 98:5	Oh 24:13 133:23
misconduct 96:15	19:18 20:12,14	149:8	98:13,19 119:21	okay 6:1,11,22 7:6
mission 106:22	21:16 46:8 56:9	North 1:18 2:12	121:1 124:23	7:12,19 8:9,9,16
107:10,16	56:10 76:22 99:13	4:11	133:12,14 148:3	

8:20 9:10,16,21 10:3,24 12:12,19 13:15,24 14:10,21 15:1,18 16:11,18 16:19 17:1,3,7 18:2,10,14 19:10 19:24 20:3,7,21 21:8,16,20 23:2,8 23:11,20,23 26:23 27:4,20 28:4,13 28:20 29:15 31:2 33:13 34:1 36:2,6 36:14,23 37:14 38:5 40:1,11,17 40:24 41:16,19 42:10 43:15 44:10 45:18 46:5,24 47:19 48:8,14 49:14,21 50:12,23 51:4,7 52:1 53:6 53:13,18 54:2,13 54:17,18 55:2 56:3 57:18 59:3 60:7 61:20,24 62:15,19 63:4,21 65:7,14,18 66:15 67:5,12,19 68:8 68:12,17,24 69:11 69:21 70:8,12,15 70:20 71:3,15 72:4,15 73:2,11 73:14,23 75:10 76:1,20 77:3,11 78:12,18,24,24 79:9,14,21,24 80:6 81:7,12,23 82:7,11 83:13,21 83:22 84:6 85:16 87:1,16 88:4,10 88:15 89:6,22 90:3,13,18 91:13 91:21 92:13,21 93:14 94:2 95:16 97:10,14 99:7,15 99:18 100:7 101:8	102:11,21 103:13 103:15,16,18 104:4,10 105:1,17 106:5,13,16,20 107:18 108:1,7,13 108:20 109:8,11 110:1,9 111:15 112:3 113:10,22 114:7,16 116:5 117:8,12,20 120:13 121:9,19 122:8,18 123:5 124:6,11 125:8,11 125:13,16 126:7 127:4 128:4,13 132:5,14 133:6,22 133:24 134:4,7,14 134:20 135:15 136:8 137:1,22 138:3,17 139:4,10 139:13 140:4 141:19 142:17 143:6 144:2,17,20 144:22 145:13,17 146:16 148:21 149:22 150:5 151:2,24 152:21 153:18 old 34:13 Oltman 2:23 4:13 omissions 96:18 on-line 37:23 38:7 137:7,8,11,20 on-spot 35:5 once 28:20 147:1 open 34:9 opened 46:21 operate 90:21 operated 12:11 128:1 operating 20:12 21:15 70:7 147:14 operation 15:6 110:20 114:23 115:8 116:19	operationally 47:21 operations 8:13 Operator 135:17 135:21 opinion 30:17 97:1 121:2 129:15 opinions 129:13,19 opportunity 50:8 50:10 optimum 1:8,8 2:20 2:20 6:3,4,4,6 7:9 8:10,21,22 9:2,10 12:1,9,13,16 15:2 16:3,6,12 19:7 20:4,19,20 21:3 21:18,22 22:3,11 22:22 23:3,4,8 24:1,3 25:8 27:8 28:13 29:16 30:7 30:8,13 31:3,19 31:23 33:2,3 35:1 36:14 37:5 38:24 39:5 40:24 41:5 45:19 46:3,8 49:3 50:23 51:10,17 52:2,7,8,10,11,13 53:3,11 54:3 55:22 59:5 60:2,4 61:14 62:5,11 65:8,20 67:7,13 67:20 68:15 69:2 69:6,10,15,18,19 70:1,13,16,18,19 70:21 71:1,4,9,22 72:1 74:6,15 77:15 78:2,6,14 79:4,10,12,14,15 79:21 80:8,20,22 81:4,5,8 84:5,22 85:1 86:8,22 88:14 89:12,22 90:4 91:7 92:8 93:1,5,9,11 94:17 94:24 95:3 97:17 98:17 99:2,2,6,8,9	99:10,11,14 100:4 100:5,17 101:23 102:3,6,17 103:22 105:4,7,10,13,15 105:18 106:2,9 107:14,14 108:8 108:13,17,22 109:4,20 110:13 110:23 111:2,10 112:7 115:1,4 117:11 118:5,6,18 118:22 119:8,14 119:20 120:11,13 121:4,10,16 122:5 122:6,12,20 123:2 123:12,13,14 124:1,11 128:13 128:17,24 130:1,8 130:23 131:7,10 131:12,16,17,18 132:1,1,6,6,9,12 133:20 134:5,9,22 135:5,19,22 136:3 136:17 137:11 140:2,21 141:3 142:18,21,24 145:3,6 146:18 147:16,19,22 150:6,10,14,19 151:12 152:21,23 153:11 154:4 Optimum's 27:16 52:22 54:20 88:11 98:20 107:18 117:4 Optimum-affiliat... 69:11 oral 51:14 ordinary 120:15,22 Orlich 56:9 58:14 126:6 OSI 4:23 26:4,5,6 138:5,23 outcome 157:10 outlined 83:9	outside 11:16 96:22 129:18 147:9,11 148:12 149:8 overall 116:18 overhearing 14:5 overlook 53:20 overlooked 44:14 oversee 56:17 oversees 59:15 owned 90:22 owners 8:16 ownership 8:19  <hr/> <b>P</b> <hr/> P 19:21 P.C 2:11 pad 34:6 page 3:2,6,9 19:9 26:10 80:6 81:14 83:13 92:6,6,14 94:2 95:20 97:15 99:7,15 100:7 101:9,11 103:17 106:21 112:6 113:20 114:16,17 123:6 125:3,11 127:16 132:14 133:19 134:11 139:6 140:10,16 141:19 143:6,12 143:15 144:18 145:6 pages 17:14 80:3 106:18 139:16 152:13 pamphlets 37:7 136:9,17 paper 34:6 papers 125:6 paperwork 34:14 72:10 paragraph 81:14 87:17 88:19 97:15 100:8 109:16 112:10 121:20
---	---	--	---	--



125:16 131:14 132:12 134:8 140:15 <b>part</b> 18:13 20:18 24:22 30:7 47:21 52:22 57:19 69:24 73:17 85:20 87:16 93:3 116:6,9 129:24 130:3 131:14 147:13 <b>participated</b> 40:12 131:2 <b>particular</b> 109:6 <b>parties</b> 7:17 157:9 <b>party</b> 4:19 94:3 96:17 <b>party's</b> 121:23 <b>passed</b> 58:9,14 82:1 126:7,9,21,22 150:4 <b>passenger</b> 120:16 120:22,24 <b>passing</b> 126:16 <b>pause</b> 60:13 <b>paying</b> 67:21 <b>payment</b> 67:19 <b>pen</b> 34:7 <b>penalties</b> 44:18 <b>pending</b> 156:9 <b>Penn</b> 2:7 <b>Pennsylvania</b> 2:8 <b>Penski</b> 18:14,16 <b>people</b> 9:11 41:11 41:12,15 72:13 105:22,23 106:1 110:11 120:7 131:2 <b>Per-</b> 36:8 <b>percent</b> 9:9 <b>perform</b> 24:23,23 24:24 45:16 81:15 96:10 122:19 147:7,17,24 148:15,22 <b>performance</b> 22:2	22:10,14,15,17,21 81:13 92:17,23 96:9 97:20 <b>performed</b> 123:2 <b>performing</b> 45:11 61:4 <b>period</b> 44:19 52:16 61:6 <b>person</b> 6:12 9:14,18 10:24 13:17 15:10 38:5 51:20 53:8 65:7 70:9,12 72:17,18 86:14 100:16,23 102:7 102:16 <b>personal</b> 5:22 30:19 34:18 35:17 51:13 129:15 156:20 <b>personally</b> 99:4 145:15 156:7 <b>personnel</b> 7:18 10:12,13,14,17,20 36:1,7,9 44:23 45:6,7,10,15 61:3 64:23 65:1,5 66:14,22,23 67:3 72:9 73:7,10,22 74:7,9,14,18,19 76:18 85:5 87:6 87:11 88:17 91:16 91:19 92:3 111:17 111:20,23 113:16 113:17 116:3 117:17 135:4 137:23 138:7,10 138:13,23 139:19 140:1 141:9 144:21 152:3 <b>perspective</b> 30:19 98:21 117:4 <b>pertaining</b> 1:16 78:2 97:18 <b>pertinent</b> 31:7,10 <b>Philadelphia</b> 2:8	<b>Phone</b> 18:11 <b>photographs</b> 134:12,16,22 135:3 <b>phrase</b> 49:1 53:19 128:22 <b>physical</b> 47:17 <b>pile</b> 18:23 <b>pinpoint</b> 90:9 <b>Plaintiff</b> 2:5 156:12 <b>plaintiffs</b> 1:5 4:22 <b>PLC</b> 2:2 <b>pleadings</b> 7:10 <b>please</b> 4:18 5:6,18 10:7 12:24 56:19 92:6 95:19 104:12 110:2 114:17 <b>Plus</b> 77:3 <b>pockets</b> 35:16 <b>point</b> 48:1 54:24 116:5,15 117:3 128:5 147:4 <b>policies</b> 43:4,16,23 74:13,17 75:3 93:17,23 147:18 148:24 149:13 <b>policy</b> 75:1,6,10,12 75:19 101:24 110:1 118:17 130:7,23 131:4,7 <b>portion</b> 18:9 143:12 <b>portions</b> 26:24 <b>position</b> 8:9 20:1 31:23 33:7 46:11 46:20 48:2 70:19 70:20 71:1,3,6 139:7 140:20 146:17 147:24 <b>positions</b> 9:11 <b>positive</b> 73:18 102:1,2,4,6,12,13 104:7 140:7 <b>possess</b> 90:24 <b>possession</b> 56:2	77:15 78:1 111:21 <b>possible</b> 49:5 110:4 125:18 <b>potential</b> 57:15 120:23 <b>practices</b> 43:5,17 43:24 97:17 107:6 108:3,4 109:18 <b>preassigned</b> 84:10 <b>preliminary</b> 49:15 <b>prepare</b> 7:7 <b>prepared</b> 152:10 <b>preparing</b> 27:1 <b>prescribed</b> 112:14 <b>presence</b> 156:19 <b>present</b> 2:1,22 13:13,19 14:8,10 14:20 40:22 44:20 45:13 61:7 157:4 <b>presentation</b> 116:10 <b>presentations</b> 14:15 38:18 117:15 <b>president</b> 6:3 8:11 11:6 20:2 39:14 <b>pretty</b> 79:18 102:24 126:15 <b>prevent</b> 50:7 128:6 130:4 <b>preventability</b> 16:4 16:5,10 117:23 118:4,5,6,9,20,23 122:13,19 123:2 123:19 124:8,13 125:12,17,19 126:24 127:11 134:6,8 144:8 <b>preventable</b> 16:8 122:1,9,11 123:23 124:20 133:1 134:3 143:19 <b>prevented</b> 116:21 118:14 <b>prevention</b> 110:10	<b>PREVIOUS</b> 3:9 <b>previously</b> 7:4 25:17 26:14 78:5 138:4 143:15 144:3 <b>primary</b> 113:23 114:1 <b>principals</b> 127:10 <b>print</b> 77:13 <b>printed</b> 148:8,10 <b>prior</b> 10:9 12:3 22:2,10,13 26:15 44:20 45:13 61:6 73:4 77:16 103:11 141:3 144:4 <b>pro-</b> 7:20 <b>pro-active</b> 106:24 <b>proactive</b> 107:19 107:20,23 <b>probably</b> 36:24 48:11 114:14 124:18 143:16 146:2 <b>problem</b> 44:15 <b>Procedure</b> 1:15 <b>procedures</b> 43:4,16 43:23 74:13,17 75:3 93:17,24 147:18 148:24 149:13 <b>proceeding</b> 4:20 <b>proceedings</b> 155:4 <b>process</b> 110:20 <b>produce</b> 132:6 <b>produced</b> 72:2 78:5 136:9 139:7 141:10 <b>product</b> 114:3,9,14 <b>production</b> 18:7 35:5 139:12 <b>professional</b> 88:21 95:4 107:5 108:3 108:4 109:18 119:2,10,11,16 121:22 128:6
---	---	---	---	---

130:4,20 135:17 135:20 145:10 <b>program</b> 73:16,17 112:11 130:1 <b>programs</b> 40:13 <b>promote</b> 106:24 107:19 <b>prompt</b> 123:21 <b>promulgated</b> 135:12 <b>pronounce</b> 103:16 <b>proper</b> 89:10,19 <b>properly</b> 132:22 <b>property</b> 110:11 <b>protect</b> 108:9,9,15 108:24 <b>protocols</b> 43:4,16 43:23 74:13,17 75:3 <b>provid-</b> 115:1 <b>provide</b> 22:24 24:1 25:4 42:19 47:12 50:23 75:11 80:23 81:5,8 82:3 84:10 86:13 88:20 89:22 90:4 148:22 149:17 150:6,11 150:14 151:13 <b>provided</b> 6:24 7:4 10:14,15 17:13 38:15,20 42:19 51:4 67:9 71:24 73:22 76:23 78:5 78:10,10 90:1 91:9 93:9 100:5 105:18 106:17 138:11,23 139:17 <b>provider</b> 78:14 79:3 80:15,18,19 81:15 83:18,23,24 84:2,3,8,9 87:2 88:20 89:7,8 90:21,21 91:22 92:7,8,16 93:16 93:18,18,20 96:2	97:20 99:21 100:14 <b>Provider's</b> 90:19 96:9,14 97:18 100:12,13 <b>provides</b> 86:8 136:14 147:22 <b>providing</b> 23:5 48:24 49:8 78:19 80:16 81:7,23 86:2,4 93:23 99:22 147:16 <b>provision</b> 100:2 <b>provisions</b> 24:4 154:5 <b>Prudent</b> 96:11 97:16 98:1 <b>public</b> 32:11,18 108:10,15,24 109:22 110:6 119:4,18 129:5 156:4 <b>publications</b> 136:4 <b>published</b> 75:20 <b>pull</b> 35:3 <b>pulled</b> 33:17 <b>purchase</b> 36:21 41:17 <b>purpose</b> 31:4,10 32:9,16,21 33:8 52:20 <b>purposes</b> 20:15 21:13 57:16 59:21 68:7,22 <b>pursuant</b> 1:15 88:11 157:3 <b>put</b> 26:16 36:12 72:10 91:19 105:22 <b>putting</b> 105:24 106:1  <b>Q</b> <b>qualification</b> 31:11 62:20 71:19,22	72:5 75:12 82:13 91:11 94:15 109:7 149:17 <b>qualifications</b> 28:11 43:18 75:8 86:7 90:24 91:10 94:20,22 97:19 102:9,20 111:7 142:23 143:1 <b>qualified</b> 21:4 22:24 23:5,7 25:4 28:8 81:6,7 82:4 86:3 88:10 105:8 105:11 108:23 119:11 121:4 142:18 147:23 <b>qualifying</b> 109:24 <b>quality</b> 52:19 <b>quarterly</b> 114:22 115:4,7 116:1 <b>question</b> 12:24 13:14,24 14:2 22:5,8 32:3,12,14 38:16 41:4,23,24 49:15,18,23 50:19 61:8,19,21 63:12 63:13 70:23 82:18 82:23 88:9 98:11 109:10 129:11 141:12 150:3 <b>questions</b> 44:7 49:17 50:3,7,9,11 63:5,15,20 153:21 154:16 <b>quite</b> 70:23 <b>quiz</b> 39:11 <b>quote</b> 116:6 121:19  <b>R</b> <b>Rain</b> 132:19 <b>random</b> 140:22 141:11 <b>rate</b> 19:4 <b>rcox@gwtclaw.c...</b> 2:14	<b>re-</b> 98:10 <b>reached</b> 123:22 <b>read</b> 22:6 26:19 27:10,12,15,19,21 27:22,23 28:7,22 29:5,17 31:8,20 43:8 50:17 60:20 82:21 83:19,20 84:17 85:20 91:4 94:7 97:23 104:22 105:20 106:9,11 106:14 107:8 110:1,21 112:16 116:23 118:1,15 119:6,15,24 122:2 125:22 127:12 130:21 131:8 132:2 133:2,19 150:3 <b>reads</b> 81:11 128:5 <b>really</b> 68:19 <b>rear</b> 128:2 <b>rear-end</b> 127:17,24 128:4 131:15 132:11 <b>reason</b> 49:10 102:17 <b>reasonable</b> 118:12 <b>reasons</b> 120:19 <b>reassign</b> 52:24 53:5 <b>recall</b> 14:21,24 45:2 46:19 48:2 55:3 67:3 76:3 111:13 111:13,16 113:8 <b>receive</b> 66:1 111:10 152:22,24 <b>received</b> 9:24 <b>receiving</b> 13:16 <b>recess</b> 103:5 <b>recognition</b> 107:2 <b>recognizes</b> 108:8 <b>recollection</b> 111:24 <b>recommend</b> 106:11 140:17 <b>recommendation</b>	30:3 <b>recommendations</b> 29:24 30:4 31:13 149:24 <b>recommended</b> 41:11 132:3 <b>recommends</b> 24:24 30:14 <b>record</b> 4:2 5:18 18:12 34:16 60:12 60:15 103:3,4,7 116:19 155:3 <b>records</b> 39:15,18 39:20,21 40:7 44:18 52:10 64:16 64:19 66:8 76:14 126:18,24 <b>recruit</b> 84:8 85:2 <b>redacting</b> 67:8,14 <b>reduce</b> 133:4,6 <b>reduced</b> 126:12 <b>refer</b> 26:17 80:2 <b>reference</b> 21:9 36:19 37:1,3 41:9 41:14 42:7 74:16 81:13,24 83:6 88:15 92:13 107:22 108:21 111:3,4 112:18 114:18 117:2 119:24 122:6,13 124:6 136:13 <b>referenced</b> 40:3 77:19 85:23 <b>references</b> 122:9 141:4 <b>referencing</b> 19:15 78:2 <b>REFERRED</b> 3:10 <b>referring</b> 54:17 80:20 87:17 <b>refers</b> 92:7 <b>refusal</b> 101:20 <b>refuse</b> 27:23 <b>reg</b> 36:10
--	--	---	---	--

<b>regard</b> 72:1 75:2 89:18 111:2 114:11 118:19 123:22 <b>regarding</b> 71:23 74:8 78:3 <b>regardless</b> 103:22 126:22 130:18 <b>regards</b> 67:24 87:5 115:18 117:1 <b>region</b> 59:19,22,24 <b>regional</b> 59:8,10,13 59:15,16 60:4 116:7,11 117:13 <b>regs</b> 8:6 82:2 <b>regulation</b> 8:4 23:17 33:11 35:24 36:21 135:8 <b>regulations</b> 8:8 23:1,7,19 25:5 37:16 94:6,13 107:5 108:2 120:18 135:12 <b>regulatory</b> 91:3 <b>rehire</b> 142:4,8,14 <b>reinforcing</b> 110:17 111:1 <b>related</b> 34:17 38:21 53:22 55:14 62:11 64:22 88:16 133:18 <b>relating</b> 31:13 37:8 37:20 44:20 58:1 65:4,20 73:4,15 74:3 76:14 77:14 91:8 131:14 140:12 143:8 152:2 <b>relation</b> 41:6 86:2 93:24 <b>relative</b> 26:23 62:7 63:2 157:7,8 <b>relatively</b> 60:9 <b>release</b> 53:11 <b>released</b> 51:10 52:8	52:11,13 53:2 <b>releasing</b> 51:16 52:21 <b>relevance</b> 33:7 <b>relevant</b> 16:13 33:8 42:7,16 <b>reliable</b> 41:20 42:2 42:5,6 <b>relies</b> 105:7 <b>rely</b> 105:10 121:10 <b>remain</b> 92:16 94:4 <b>remember</b> 34:11 61:18 120:9 131:24 <b>renewables</b> 47:15 57:7 <b>repeat</b> 22:5 32:12 41:23 63:11 141:12 <b>rephrase</b> 30:5 41:4 104:18 114:7 133:23 135:2 136:16 <b>report</b> 47:18 55:1 56:4 123:11,12 143:7 144:3 146:12 152:9,13 152:19 153:3,8 <b>reported</b> 46:22 55:11,13,16 56:5 68:9 123:8,14 156:18 <b>reporter</b> 1:23 4:14 5:6 11:8 22:8 32:14 41:24 63:13 82:24 124:22 125:2 <b>reporting</b> 4:16 55:24 123:7 <b>reports</b> 15:23 16:1 <b>represent</b> 119:8 <b>Representation</b> 96:16 <b>representative</b> 29:2 95:23 98:16	150:18 <b>representing</b> 80:22 <b>represents</b> 94:3 <b>reprimands</b> 76:15 <b>requested</b> 91:13,18 <b>requesting</b> 89:4 <b>require</b> 27:12 38:24 95:3 111:11 148:22 <b>required</b> 63:1 71:20 81:8 83:8 91:1,23 94:14 111:6 121:16 122:19 148:15 149:23 <b>requirement</b> 27:20 29:8 30:10,23 39:3 106:13 122:17 <b>requirements</b> 101:10,16 102:15 103:20,22 104:1 147:8 148:17 <b>requires</b> 22:24 96:1 <b>reread</b> 98:10 <b>reserve</b> 50:16 <b>reside</b> 5:20 <b>residence</b> 5:22 <b>resolved</b> 100:14 <b>resource</b> 86:13 87:4 <b>resources</b> 83:18,24 84:3,9 85:3 89:9 90:21 92:9,11 93:16,21 97:21 105:22 122:23 136:4 <b>Resources'</b> 80:18 <b>responded</b> 51:7 <b>response</b> 7:3 45:14 66:5 74:23 <b>responsibilities</b> 27:1 79:5 <b>responsibility</b> 87:3 89:8,13 119:3,17	120:15 <b>responsible</b> 21:17 91:22 92:16,22 93:2,5,11 <b>responsive</b> 42:15 45:5 49:17 65:8 73:12 76:17 77:17 <b>rest</b> 18:18,21 61:1 <b>results</b> 39:13 65:22 <b>retention</b> 97:20 <b>return</b> 140:19,23 <b>review</b> 8:1 10:12 11:1 15:23 23:20 24:6,8,11,17 25:3 29:21 31:7,22 32:5,22 35:13,14 35:20 41:15 56:24 87:4 111:23 125:20,24 126:4,6 126:8,13 132:4 139:16 <b>reviewed</b> 7:6,8,9,13 7:14,15,16,17 8:2 16:1 20:3 23:12 23:15,18 25:6,9 25:13,21 26:23 27:3 33:14 35:11 35:11 55:9 67:2 114:14 138:8 143:15 <b>reviewing</b> 25:23 65:11 125:20 <b>reviews</b> 9:22 10:1,4 22:21 <b>rid</b> 126:10 <b>rifle</b> 35:16 <b>right</b> 6:9 7:2 11:24 12:3 13:1 14:1 16:11 19:19,24 23:23 25:23 27:4 27:14 29:1,9,22 30:5,12 31:2,18 33:21 34:22 37:2 37:19 42:13,23 45:9 46:10,15	48:22 50:17 51:19 57:24 59:2,3 60:20,24 62:10 64:12 66:4 67:10 70:8 76:13 77:11 77:22 79:24 80:9 82:2,17 84:19 85:16 86:15 92:13 94:12 95:6,11,16 97:12 99:15 101:23 104:12 105:8 106:16 108:7,10 109:14 114:2 116:15 117:18 118:7 121:9,13 122:18 125:14 130:11 131:5 132:2,10 133:9,11,18 134:20 135:5,23 137:22 139:10 142:13 149:6,7 153:1 154:18 <b>right-hand</b> 80:3 <b>rings</b> 18:11 <b>risk</b> 107:2 <b>RMR</b> 1:18 <b>road</b> 107:7 109:20 <b>Robert</b> 1:9 2:12,21 5:1 10:21,22 35:2 39:6,16 44:21 45:12 46:2,16 47:4 50:24 51:9 61:5,15 63:6,16 64:20 65:21 66:10 66:17 71:20,23 73:5,18 74:4,21 74:22 76:15,23 84:19 87:8,13 100:21 115:11 116:13 127:2 137:13,17 138:7 139:22 140:2 141:15 145:20,24 151:13,19
--	---	---	---	---

<b>Robin</b> 1:17,23 4:15 145:13,17 152:20 156:4 157:18	77:14,18 89:9 97:20 104:11 105:1,17,19,21 106:2,6,10,12,24 107:4,6,19,22 108:2 109:19,21 110:1,10,18 111:1 111:18 112:6,11 112:21 113:2,24 114:3,9,18,22 115:4,7,9 116:7 116:12,12,16,18 116:20 117:13 118:10 126:11 130:1,3 132:7 135:8,10,12,24 136:1,5 149:24	147:11 148:12 <b>screen</b> 140:7 <b>screened</b> 80:24 <b>screening</b> 11:1 80:16 84:10 97:19 99:22 <b>seal</b> 157:13 <b>second</b> 2:12 80:12 <b>section</b> 71:21 99:16 99:17 101:8 <b>sections</b> 17:17 27:3 <b>see</b> 17:15 19:1 25:9 25:11 39:5,9 40:23 47:11 55:10 80:4 90:5 91:11 100:9 101:10,21 105:10 111:5 114:19 127:5,17 132:16 134:13 142:5 146:9 <b>seeing</b> 14:5 67:3 111:24 113:8 <b>seen</b> 39:21 134:19 134:21 135:1 145:16 152:8 153:11 154:13 <b>select</b> 84:9 85:2 <b>self-explanatory</b> 79:18 <b>seminars</b> 14:16 <b>send</b> 62:19,21 <b>sense</b> 122:21 <b>sent</b> 39:13 91:15 <b>sentence</b> 83:19,20 87:6 91:21 92:14 97:14 99:20 100:8 118:7 119:1,15 121:20 123:19 130:11,17 131:11 <b>sentences</b> 131:21 <b>separate</b> 20:22,24 21:1 70:2,3 105:3 <b>service</b> 49:11 78:15 115:22 122:16 <b>services</b> 51:22 52:3	67:22 80:7 81:15 88:20 91:15,20 99:19 100:13 148:23 <b>sessions</b> 14:18,19 14:22 <b>set</b> 78:4 82:9 83:1 84:13 130:10 157:12 <b>seven</b> 9:5,6 11:22 68:14 <b>Severity</b> 117:23 <b>share</b> 107:7 109:20 <b>shareholder</b> 8:18 <b>short</b> 60:9 <b>shorten</b> 16:16 <b>Shorthand</b> 1:23 <b>show</b> 6:22 <b>showing</b> 138:4 141:10 <b>shown</b> 38:12 145:5 <b>shows</b> 14:17,18 52:11 140:10 141:23 <b>shut</b> 71:2 <b>sic</b> 103:7 <b>side</b> 79:4 <b>sign</b> 50:17 60:21 <b>signature</b> 19:9,14 19:17 79:23 156:24 <b>signed</b> 19:6 <b>significant</b> 23:13 <b>simple</b> 128:23 <b>simplicity</b> 68:6,22 <b>simplification</b> 21:13 <b>simplify</b> 20:14 <b>simply</b> 118:11 <b>simultaneously</b> 21:15 <b>single</b> 148:6 <b>sir</b> 13:1 19:16 60:17 78:17,21 87:9 92:20 98:12 99:5	101:13 117:5 141:6 153:4,23 <b>sit</b> 90:13 153:24 <b>situated</b> 58:8 <b>situation</b> 41:13 100:20,21 129:22 <b>situational</b> 122:7 130:10 131:13 133:17 <b>Situationally</b> 128:15,19 <b>situations</b> 15:23 127:7 151:10 <b>six</b> 61:23 102:15 <b>Sixteen</b> 60:3 <b>size</b> 8:23 120:22 <b>Skip</b> 101:8 <b>skipping</b> 96:13 <b>sleet</b> 132:20 <b>slowly</b> 11:7 <b>Smith</b> 37:21 <b>snow</b> 132:19 <b>social</b> 140:6 <b>sole</b> 83:23 84:2 87:2 <b>Solution</b> 39:8 <b>Solutions</b> 1:9 2:21 6:3,5 35:2 38:2,4 38:14,19 39:2 41:1,2,7 69:19 99:9,11 <b>Solutions'</b> 101:24 <b>somebody</b> 72:10 76:9 134:18 <b>soon</b> 125:18 <b>sorry</b> 17:20 24:8 32:13 33:18 34:1 38:3,17 46:13 58:14 63:12 77:10 84:6 95:19 105:9 125:7 133:23 141:13 143:10 <b>sort</b> 62:8 72:20 <b>sounded</b> 53:18 <b>source</b> 37:1,3,23 39:8 41:20 42:2
<b>S</b>	<b>safety-sensitive</b> 140:20 <b>sales</b> 8:14 <b>Salt</b> 135:15,21 <b>sat</b> 13:4,8,20 14:15 <b>satisfied</b> 142:24 <b>SAYETH</b> 155:6 <b>saying</b> 77:8 105:20 <b>says</b> 80:19 81:2 85:17 86:17 87:1 89:12 94:11 96:1 97:12 98:24 99:1 100:8 104:16 108:1 109:16 110:7 112:6,10,22 114:21 115:7 117:12 118:7 119:1 122:4,4 123:7 125:16 128:10 130:3,11 132:16 140:15 142:3 149:12 154:14 <b>scenarios</b> 151:10 <b>scene</b> 134:12,17 <b>school</b> 95:13 121:7 121:11 <b>scope</b> 129:19			



142:13	89:2 94:18,20	storms 133:10	sure 11:9 27:6	67:14,20 68:1,2,4
sources 37:10	95:2,5 96:12 98:2	street 2:3,12 11:19	33:10 44:12,13	68:9,11 69:16,21
South 2:3	98:3,18 102:9,19	strike 46:1 102:12	50:1 53:19 57:1,5	70:9 71:10 105:2
space 70:6,6	104:5 109:7,24	struck 128:2	57:8 64:7 72:19	105:7,10,18 106:3
speak 6:12 29:11	110:18 111:2	study 95:10 154:7	76:7 93:6 109:5	106:5,23 107:11
41:14 53:6,7,16	121:15,17,18	stuff 8:21 18:15,16	137:3 139:9	110:3 112:8 117:8
53:24 86:10 97:6	145:9 147:9,10	subcontract 92:21	152:18 154:3,12	122:5,7 123:8,12
124:19 142:20	150:20	subcontractors	surmise 116:3	125:24 126:5
148:4	Standards' 97:16	80:18 92:17	surrounding 48:12	130:24 139:24
speaking 9:15	standpoint 44:24	subject 60:20 93:17	suspension 74:4	150:6,11 151:13
153:15	92:19	subjects 43:3	sworn 5:8,11	TDI's 106:23
speaks 79:20	stapled 17:17	submitted 6:14	156:15	technique 117:13
specific 11:19	start 5:15 49:22	7:11 15:24 82:5	system 137:8	techniques 116:10
29:23 39:6 55:15	131:22	subsequent 101:3	Systems 37:21	116:20 132:10
57:18 59:16 62:8	started 120:9	substance 44:4		136:11
62:24 75:6 82:12	starting 4:19	73:16,17 103:23	<b>T</b>	telephone 13:17,21
83:7 88:7 111:6	state 1:24 5:17,21	substances 73:19	T 2:7 3:5	53:8
112:4 139:16	59:1 74:5 91:3	102:1,14 140:12	tabbed 143:11	tell 8:22 14:14 20:9
147:8 148:16	94:5 107:4 109:12	suffer 96:8	Tailgating' 130:12	21:8 27:15 30:12
151:13	156:1,5	suffered 57:23	take 6:24 10:15	34:4,10 48:24
specifically 81:20	stated 107:10	sufficient 109:9	39:19 41:21 42:3	63:24 71:15 72:4
specifics 67:8,15	118:18 124:2	139:1	60:8 70:24 76:5	82:21 87:14 95:19
speed 33:10	133:9	suggest 15:16 31:16	95:11 117:6	122:12 124:1
spell 11:7 56:10	statement 31:19	78:22 88:8 89:17	118:13 134:12	129:10 142:21
spelled 82:14,16	40:9 54:24 55:19	107:21	151:2	tells 142:15
spoke 23:11	55:23 57:4 66:2	suggested 41:12,14	taken 1:14,17,18	temporary 9:2,7
spot 19:4	84:13 89:17 90:20	suggesting 17:4	39:12,17 40:17	10:4 21:9,18 27:8
SS 156:2	101:6 106:22	suggestion 39:4	101:5 118:13	49:8 50:24 78:15
staff 100:12 116:8	107:10,16 108:5	Suite 2:7,17 11:23	talk 29:7 52:4	78:19 80:7 100:1
staffing 1:8 2:20	117:7 130:23	suits 96:6	74:21 78:24 80:1	ten 60:9
6:4 9:3 35:1 61:14	134:2	summary 85:4	83:19,20 115:11	tendered 25:19
65:20 67:7,14,20	statements 121:5	supervision 114:3,5	talked 52:1 145:17	Tennessee 2:13
69:18 70:13,16	states 1:1,16 4:4	114:6	145:20,24 146:3,6	48:7,11,12 59:22
71:9,22 77:15	48:12 118:11	supervisor 45:19	151:18,21,23	74:5
78:2,6 80:7 99:8	156:10	46:7,16 47:1,4	talking 28:17 54:9	term 150:15
99:10,14 101:24	statistical 116:17	supervisory 47:8	57:14,15 61:21,22	terminal 114:23
stage 17:2	statistics 117:14	supplement 50:14	77:9 94:21,22	115:9
standard 75:9,12	status 10:4,6	supplied 36:15	108:18 120:10	terminology 59:21
86:10 120:21	stenographically	90:21	125:14	terms 8:22 10:9
standards 28:11	156:18	supplies 21:18,22	tasks 81:18,19,22	21:4 84:19 88:15
75:23,24 77:14	stipulate 138:13,20	22:3,11 23:3	taught 13:14	91:7 93:3 98:18
82:5 84:16 85:19	138:21	supply 9:8 28:7	TDI 8:2 20:10,10	101:23 104:14,16
85:22 86:1,6,17	stop 15:14 130:20	93:18	20:11,21 21:3,8	104:19 108:18,21
86:19,23 87:19,21	stops 130:19	supplying 9:23	21:12 23:16,24	111:1 139:17
87:24 88:4,13,23	storm 133:6	21:4 27:8	28:17 29:15 62:12	145:5 146:16,19

149:12	thusly 121:23	10:2 12:22,23	truckdriving	undertaking 88:11
territory 48:8	time 4:10 9:4 26:18	13:2,8,10,11,16	148:16 150:20	undertakings 71:9
59:19	28:14,20 44:9	13:20 14:4,5,11	trucking 9:8 37:1,8	87:17
test 39:17 73:19	45:22,23,24 46:5	14:16 15:1,3,4,5,8	37:20 49:8 75:11	undertook 100:4
82:1 84:9 85:2	46:13,16,24 47:24	21:17,19 37:23	118:10	undetermined
101:19 102:1,2,4	48:17,17 52:16	38:2,4,14,19 39:1	true 156:21	156:9
102:6,12,14 104:7	54:23 56:8,13	39:8 40:8,13,18	truth 156:15,16,16	unexpected 130:18
tested 140:17	63:5,14 69:15	41:2,6,7,13,21	try 42:14 49:10	unfortunately
testified 5:11	102:2 103:24	42:3,4 43:5 45:11	57:20 61:20 65:15	126:11
testify 43:2 156:15	154:2,3	45:16 61:4,12	79:13 109:21	United 1:1,16 4:4
testimony 103:11	times 128:8 130:6	62:3,4,9,10,12,18	trying 33:3	156:10
156:17,22 157:12	140:18 141:2	62:22,24 63:5,15	turn 83:13 92:6	unsafe 132:24
testing 73:16 84:10	title 46:11 55:2	64:18 66:8,9	99:15 106:21	update 47:16
150:4	56:12 59:7 125:11	76:22 77:14 89:8	114:16 140:5	uphold 121:15
tests 39:23 40:18	titled 31:17	89:9,13,16,22	141:19 143:6	UPS 1:7 2:15 4:3
66:16,24 140:23	titles 137:1	90:4,10,12 91:14	turned 42:21 76:19	5:1,4 16:13,17,17
141:11,16	today 4:8,15 33:19	91:23 92:1 95:13	77:2,7,20	20:5 21:10,23
Thank 20:16 54:7	34:5 35:21 36:3,7	97:19 110:17,24	turning 127:16	22:4,12 23:4,5
76:12 87:12 125:2	36:11 46:12 69:7	111:6,11,14 112:1	TUTTLE 2:11	27:9 28:8 35:2
154:20,23	90:14 139:8	112:4 121:7,11	two 23:17 56:2	48:17 50:24 51:7
theirs 89:5	today's 4:9 7:7	136:10 137:19	69:14 86:18 101:9	51:15,16,17,20,21
thereof 65:22	155:2	151:13	102:5 112:18	52:2,7,21 53:10
thick 135:9,10	told 43:10,13,19	training-wise	types 74:19 127:14	53:14,16,22,22,24
thing 72:20 86:7	44:5 58:5 64:1,10	111:18	Typically 52:24	54:10 62:15,18,20
99:12	64:13 72:6,23	transcribed 156:20		62:21,23 63:3,4
things 22:20 23:12	91:6 93:22	transcript 156:21	U	63:14 67:6 78:13
36:2 86:18 112:18	top 30:2 37:18	transitioned 46:23	U.S 91:2	78:15,20 79:2,4
114:24 129:21	85:24 113:12	transpired 54:24	uhn-ubn 34:2	80:8 81:12,21
think 8:14 23:12	114:17 125:11	55:20	umbrella 12:13	82:12,20 84:4
29:14 33:6,16	126:17 136:21	Transport 12:4,8	undergone 12:22	90:1,22 91:13,23
35:8 36:4 43:14	139:24	69:20,21 70:24	13:2	93:8,9 96:3,7
49:22 52:4 53:4,4	topic 74:8 125:13	71:1	underneath 8:7	100:2,3,12,15
53:12 58:19 71:5	topics 14:24 66:9	transportation	142:3	111:11,18 115:2
72:23 73:1 75:22	114:13	37:4 42:8 73:20	understand 19:6	115:16,22 122:18
82:19 88:14	tractor 127:22	99:24 141:20	23:15 27:6 49:18	146:17 148:8,10
104:12,15 109:4	tractor-trailer 15:7	tried 20:14	92:18 94:9 96:20	148:23,23 149:13
115:23 119:23	120:20,23 149:23	truck 22:19 54:12	98:3,17	153:11,16 156:12
135:14 153:18	151:3	56:20 120:24	understanding	UPS' 96:18
third 80:12 96:17	trade 14:17,18	151:3	36:23 79:9,15,16	UPS's 100:3 115:12
125:16	traffic 22:20	truckdriver 74:22	93:1,10 95:24	usage 100:1
thoroughly 61:9,17	trailer 83:11	75:11 120:20	111:19	use 6:6 20:12,14
thought 19:3 64:4	train 9:20	147:14 149:9,23	understood 23:14	21:13 37:20 41:1
three 36:2 60:6	trained 14:7 23:6	151:9	50:2 153:21	41:5 44:3 52:15
102:5	108:15	truckdrivers 23:1	undertaken 65:19	68:21 69:3 103:23
tbrow 33:18	training 9:15,18,22	75:7 123:3	65:24	117:14

uses 23:10,21 118:5 131:7 utilize 116:9,16	violations 10:10 44:19 virtually 110:19 visibility 133:4,7 vs 1:6	77:19 78:19 90:1 139:6 weather 14:23 132:16,19 133:19 136:12,19 137:19 150:8 151:15 weekly 47:12 weight 120:23 welcome 34:9 weren't 14:10 Werner 73:20 141:21,24 142:8 142:19,20 West 2:17 WHEREOF 157:12 willful 96:14 wit 156:7 witness 3:2 4:8 5:8 5:10 6:12 22:13 30:18 32:4,20 35:14 42:4 50:20 60:22 63:11,19 89:16 97:5 98:10 98:20 109:4 115:17 119:23 121:3 124:17 125:7 129:8,14,20 142:11 144:11 147:1,22 148:4,14 149:2,16 154:11 154:20 156:8,14 156:18,19,22,24 WITNESSETH 80:11 Wolford 145:13,18 152:20 153:2,8 Woodall 1:9 2:21 4:24 7:18 10:21 10:23 27:9,10 35:2 36:1 39:6,16 39:21,22 40:7,12 40:17 44:21 45:12 45:18 46:2,16,21 47:4,11,12,14,22	47:24 48:14 50:24 51:9,16 52:3 53:15 54:11 55:15 55:17 57:16,20,24 61:5,15 63:6,16 64:20 65:21 66:10 66:13,18 68:1,3,8 71:20,23 72:7 73:5,18 74:22,23 76:16,23 84:19,20 85:3,9 87:8,13 88:16 91:8,14 93:24 100:22 101:2 111:3,4,9 111:12 113:14 115:12,22 116:13 117:9 123:11 127:2 134:15,23 137:17 138:8 139:22 140:2,6,17 140:22 141:15,23 145:20,24 146:7 148:9 150:7,11,15 151:14,19 Woodall's 36:6,9 51:22 53:11,23 64:23 65:5 74:4 77:1 113:6 115:18 117:2 134:21 137:13 144:15,24 146:10 152:3 Woodridge 11:13 11:15,16,23 58:12 word 6:6 30:3 49:7 words 72:17 78:7 105:9 work 11:11,14,21 19:2 21:6 22:2,10 22:13,15,17,21 34:13 51:17 58:7 60:24 70:15 84:13 90:20 110:4,19 worked 12:8 45:1 48:6 70:18 111:5 worker 140:6	workers' 57:13,16 58:1 107:6 workforce 107:7 109:19 working 46:1 48:14 48:19 workmanlike 88:22 works 11:12 21:3 wouldn't 65:9 85:11 113:16 124:4 wreck 51:9 53:14 54:11,16,21 93:10 100:22 101:2 127:1 136:19 137:13 143:18 144:16 145:8 153:12,16 written 51:7,14 53:8 54:19 75:19 75:21 76:2,3 82:11 97:13 131:19 143:7 149:13 wrote 131:20 WYATT 2:11
valid 104:8 value 112:7,7 values 110:18 variance 74:20 varies 47:7 variety 55:7,8 vary 47:20 100:19 vehicle 47:17 116:18,21 117:23 119:5,19 122:1 123:5,23 128:1 132:15 vehicles 90:22 vendor 38:1,8 136:9,14 vendors 37:19 40:24 41:3,5,8 verbal 53:8 verification 73:4 versus 4:3 120:24 vice 6:3 8:11 11:6 39:14 video 4:17 37:24 38:11,18 40:14 134:16 136:23 videoconference 13:17,22 videographer 2:23 4:1,14 5:5 60:11 60:14 103:2,6 155:1 videos 37:7 38:9,10 38:13,21,22 39:1 39:7,12,17,22 40:8,18 41:10,16 111:12 136:18,22 137:2,6,9,11,19 view 41:11,12 violation 44:2 96:19	<b>V</b> wait 49:24 133:23 waived 157:1 wallets 35:16 want 17:15 27:6 29:22 42:13 53:19 78:12,24 104:14 104:15 109:13 wanted 57:11 87:23 wanting 139:5 warnings 44:17 warranty 96:16 wasn't 81:4 84:24 111:20 116:2 watch 38:15,20,22 39:1 watched 13:4 39:16 39:22 40:8 watching 111:12 way 14:1 50:15 60:24 76:2 109:13 150:1 ways 45:23 108:19 129:17 we'll 19:2,4 27:4 31:14 50:16,16 60:8,10 64:3,6 77:23 83:19,20 93:14 101:9 139:15 we're 18:8 35:4 77:8,9 78:7,16 80:1 103:2,3 106:17 111:15 125:14 154:18,19 155:2 we've 10:13,15 26:17 51:5 59:17 60:7,18 67:9,10	<b>W</b> 77:19 78:19 90:1 139:6 weather 14:23 132:16,19 133:19 136:12,19 137:19 150:8 151:15 weekly 47:12 weight 120:23 welcome 34:9 weren't 14:10 Werner 73:20 141:21,24 142:8 142:19,20 West 2:17 WHEREOF 157:12 willful 96:14 wit 156:7 witness 3:2 4:8 5:8 5:10 6:12 22:13 30:18 32:4,20 35:14 42:4 50:20 60:22 63:11,19 89:16 97:5 98:10 98:20 109:4 115:17 119:23 121:3 124:17 125:7 129:8,14,20 142:11 144:11 147:1,22 148:4,14 149:2,16 154:11 154:20 156:8,14 156:18,19,22,24 WITNESSETH 80:11 Wolford 145:13,18 152:20 153:2,8 Woodall 1:9 2:21 4:24 7:18 10:21 10:23 27:9,10 35:2 36:1 39:6,16 39:21,22 40:7,12 40:17 44:21 45:12 45:18 46:2,16,21 47:4,11,12,14,22	<b>X</b> X 3:1,5	<b>Y</b> yeah 10:8 13:15 18:2 25:12 26:5,8 47:6 48:10 69:8 77:5 82:19 99:17 133:14 138:16 141:14 144:14 152:18 year 9:4 12:2 44:19 61:6 102:4 years 12:10 26:21 45:1,2,13 77:16 78:23 102:5,5,5,5 Yup 98:23

<b>Z</b>	113:20	257 19:13	5.8 92:13
<b>0</b>	156 114:17 123:6	259 101:9,12,13	5.9 93:15
0060 138:5 139:24	157 125:3,11	103:17	501.370.1576 2:18
0245 83:16	159 132:14 133:19	26 2:12 3:11	<b>6</b>
067 140:5	15th 157:13	267.528.0744 2:9	63:8 61:11,24 62:2
084-001999 1:24	16 74:2,10	285 18:4,5,9	64:2,3,4,5,12
157:19	160 134:11	286 17:21,24	60517 11:23
<b>1</b>	1600 2:8	290 17:19	60563 4:12
1 43:1,3,12,13	173:8,11 26:15,16	296 17:15	67 140:16
77:23 112:19	28:5,18 74:12,16	297 18:6,17,21	<b>7</b>
1-6 1:10	74:23 76:13 77:9	99:15	7 64:15,22 65:4
1.2 81:14	104:13 106:17	298 100:7	72201-3522 2:18
10 46:6,17 48:18	112:22 131:16	<b>3</b>	72401 2:3
51:9 53:15,23	173 26:7,9	3 43:22 44:6	<b>8</b>
54:10 66:15 76:24	18 76:13	3:16-CV-00352 1:7	8 3:12 65:18 66:5
77:16 115:24	1801 1:18 4:11	4:7	144:5,15
126:14,23 137:14	19 76:20	30 3:11 138:4,6	8.1 94:2
156:7	19103 2:8	152:14	8:08 1:21 4:10
10:12 103:4	<b>2</b>	30(b)(6) 6:12 96:24	80 141:19
106 152:13	2 43:15,20	98:15	870.336.4747 2:4
107 152:14	20 77:11,17	300 11:23	<b>9</b>
108 143:6	2000 2:17	309 18:6,17	9 66:7
109 143:7,12 145:6	2010 62:17	310 18:17,21	9:10 60:12
10th 1:20 4:9 55:22	2012 141:24	3540 11:22 68:14	9:24 60:15
100:22	2014 140:7 142:1	36 101:17	90 9:9
11 67:5	2015 15:17 115:23	38103 2:13	900 2:7
11:22 103:7	2016 46:6,17 48:18	391.5 71:21	901.527.4673 2:13
11:23 155:3,5	51:9 53:15,23	<b>4</b>	96 17:21,24
12 67:12 71:16	54:10 58:20 69:12	4 44:16 45:5	
95:21 140:18,19	70:10,13,17,21	400 2:3,17	
140:22,23 141:2,2	71:4,5,12 76:24	41 3:8 6:19,23 40:4	
141:11,16,16,18	77:16 115:24	78:16	
12.1 95:18,24 97:15	126:14,23 127:1	42 3:8 17:9,12 51:5	
13 71:18 72:23	137:14	80:2	
138 3:11	2017 1:20 4:10	<b>5</b>	
14 12:10 72:22 73:2	156:7 157:14	5 3:3 44:19 45:9	
73:12	241 17:15 18:8 80:6	61:2,6,21 63:24	
144 3:12	81:14	64:2,9 77:16	
14th 12:2	245 83:13,14,15	83:18 101:16	
15 73:14	247 92:6,14	5.2 88:19	
151 138:5	249 94:2	5.4 89:6	
152 26:3,6	25 140:7	5.6 90:18 91:21	
155 106:21 112:6	252 95:17,21 97:15		
	254 99:7		