



1 DEPOSITION OF DAVID DOURGARIAN, taken by  
 2 and on behalf of Plaintiffs, at 201 Ridgewood Avenue,  
 3 Minneapolis, MN 55403 on September 11, 2014,  
 4 commencing at 10:06 a.m., before Kristin Hoium,  
 5 Notary Public, State of Minnesota, County of  
 6 Hennepin.

\* \* \* \* \*

APPEARANCES

7 GEORGE E. ANTRIM, III, PLLC  
 8 BY: George E. Antrim, III, Esq.  
 9 201 Ridgewood Avenue  
 10 Minneapolis, Minnesota 55403  
 11 Appeared for Plaintiffs

12 TEMPWORKS MANAGEMENT  
 13 BY: John H. Reid, Esq.  
 14 3140 Neil Armstrong Boulevard  
 15 Suite 205  
 16 Eagan, Minnesota 55121  
 17 Appeared for Defendant

18 ALSO PRESENT: David Stemm

I N D E X

19	<u>EXAMINATION BY:</u>	<u>PAGE:</u>
20	Mr. Antrim	3
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26 \*\*\* READING AND SIGNING NOT WAIVED \*\*\*  
 27 \*\*\* ORIGINAL TRANSCRIPT IN POSSESSION  
 28 OF ATTORNEY GEORGE ANTRIM \*\*\*

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1                               DAVID DOURGARIAN,  
 2           a witness in the above-entitled action, having  
 3           been duly sworn, deposes and says as follows:  
 4                               EXAMINATION  
 5 BY MR. ANTRIM:  
 6 Q. Dourgarian, am I pronouncing that correctly?  
 7 A. Yes.  
 8 Q. Mr. Dourgarian, my name is George Antrim and I  
 9       represent David Stem and his LLC. As you know  
 10       we brought this case agent TempWorks for breach  
 11       of contract, among other things.  
 12                       Have you ever had your deposition taken  
 13       before?  
 14 A. Yes.  
 15 Q. How many times?  
 16 A. Quite a few.  
 17 Q. We will talk about some of the cases that  
 18       TempWorks has been involved in in the past. I  
 19       note there were some breach of contract actions  
 20       as well, right?  
 21 A. You have to ask him.  
 22 Q. Okay. Well, he is not under oath today. I will  
 23       be only asking you questions.  
 24                       But at any rate, I have some basic  
 25       rules for us to follow so that we can get a good  
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1       record here. You probably have heard similar  
 2       speeches like this.  
 3                       First of all, if you wait until I  
 4       finish my question, I will wait until you finish  
 5       your answer before I ask the next question.  
 6       Fair?  
 7 A. Yes.  
 8 Q. Second, if you continue to answer out loud that  
 9       would be helpful because she can't take down nods  
 10       of the head or the like. And then, finally,  
 11       sometimes I ask terrible questions. If I do,  
 12       please tell me. If you don't understand a  
 13       question I want you to tell me. All right?  
 14 A. Understood.  
 15 Q. And if you do answer my question I'm going to  
 16       assume that you understood it. All right?  
 17 A. Very well.  
 18 Q. Let's get a little background from you first.  
 19                       As I understand it is it your father  
 20       that started this company?  
 21 A. No.  
 22 Q. Who started TempWorks?  
 23 A. I did. The entity -- which TempWorks?  
 24 Q. Well, as I understand it it is TempWorks  
 25       Management Services that this case is about?  
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1       Does that sound right to you?  
 2 A. Yes.  
 3 Q. Who started TempWorks Management Services, Inc.?  
 4 A. I did.  
 5 Q. When did you start it?  
 6 A. 2011.  
 7 Q. Did it have a predecessor?  
 8 A. No.  
 9 Q. So TempWorks Management Services, Inc. didn't  
 10       exist before 2011?  
 11 A. No.  
 12 Q. You are agreeing with my statement or not?  
 13 A. Repeat the question?  
 14 Q. Did TempWorks Management Services, Inc. exist in  
 15       any form, predecessor, any way that it was doing  
 16       business, prior to 2011?  
 17 A. No.  
 18 Q. Do you have any partners?  
 19 A. No.  
 20 Q. You have been the sole owner all the time?  
 21 A. Yes.  
 22 Q. And it is a corporation?  
 23 A. I'm not certain.  
 24 Q. Was it incorporated in Minnesota?  
 25 A. Yes.  
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1 Q. Now, there was a related company called TempWorks  
 2       Staffing Software, is that right?  
 3 A. What's the question?  
 4 Q. I'm looking at your LinkedIn. And it says that  
 5       you were the president and CEO of TempWorks  
 6       Staffing Software from 2001 to the present. Is  
 7       it correct?  
 8 A. Yes.  
 9 Q. So for 13 years you were working with TempWorks  
 10       Staffing Software, is that correct?  
 11 A. Correct.  
 12 Q. But that's a different company.  
 13 A. Correct.  
 14 Q. And who started that company?  
 15 A. Greg Dourgarian.  
 16 Q. That's your father?  
 17 A. Yes.  
 18 Q. And he is an inventor of software?  
 19 A. Yes.  
 20 Q. And now he is working on another software project  
 21       as I understand it?  
 22 A. He still maintains his ownership in TempWorks  
 23       Software.  
 24 Q. And that's a separate company?  
 25 A. Yes.  
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1 Q. Can you tell me the relationship between  
 2 TempWorks Staffing Software and TempWorks  
 3 Management Services, Inc.?  
 4 A. TempWorks Management Services purchases staffing  
 5 software and payroll processing services from  
 6 TempWorks Software. We are a client.  
 7 Q. And would any product of TempWorks Staffing  
 8 Software be made available to Mr. Stemm or his  
 9 company had this contract been performed?  
 10 A. Yes.  
 11 Q. Tell me what parts would come from TempWorks  
 12 Staffing Software.  
 13 A. TempWorks Staffing Software licenses to TempWorks  
 14 Management Services a computer program called  
 15 Enterprise which functions as a staffing software  
 16 system producing payroll checks, invoices, it  
 17 functions as a tracking system as well.  
 18 Q. I'm sorry, I didn't understand that.  
 19 A. It functions as a customer relationship  
 20 management system as well. And a client of  
 21 TempWorks Management Services would typically  
 22 have access to TempWorks software Enterprise  
 23 vis-à-vis a contract with our company.  
 24 Q. Would you agree with me that that was a big part  
 25 of what Mr. Stemm and his company thought they

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1 were purchasing when they entered into the  
 2 agreement with TempWorks?  
 3 A. I couldn't tell you what he thought he was  
 4 purchasing.  
 5 Q. Well, what were you selling him?  
 6 A. I didn't sell him anything.  
 7 Q. Well, what did you hope to gain by entering into  
 8 a contract with Mr. Stemm?  
 9 A. I'm not certain. I'm not the one who entered  
 10 into the contract with him. I may have signed  
 11 the document but I know absolutely nothing about  
 12 Mr. Stemm or his business or his relationship  
 13 with my company predating this case.  
 14 Q. You had some interaction with him, didn't you?  
 15 A. Not that I can recall. Perhaps a very brief  
 16 phone call, but that would have been it.  
 17 Q. My LinkedIn also tells me that you were a  
 18 software developer for TempWorks?  
 19 A. I was.  
 20 Q. And that's 1995 to 2008?  
 21 A. Those dates sound off, but at one point I did  
 22 develop -- I did work for TempWorks Software,  
 23 Inc. as a software developer.  
 24 Q. And that goes back to 1995, does that sound  
 25 right?

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1 A. No.  
 2 Q. Well, it says 13 years, 1995 to 2008.  
 3 A. What says that?  
 4 Q. Your LinkedIn account.  
 5 A. Well, it is, like other things on the internet,  
 6 not entirely accurate.  
 7 Q. You are in charge of that, aren't you? You can  
 8 change your own account, right?  
 9 A. It is not something I pay very much attention to.  
 10 Q. And your schooling, tell me a little about your  
 11 -- first, did you graduate from high school?  
 12 A. No.  
 13 Q. Did you attend high school?  
 14 A. Briefly.  
 15 Q. Where?  
 16 A. St. Thomas Academy and later Eagan High School.  
 17 Q. And then you went on to college without  
 18 graduating from high school?  
 19 A. That's correct.  
 20 Q. My notes again indicate that you studied in  
 21 Amman, Jordan?  
 22 A. I did.  
 23 Q. For 2002, 2003?  
 24 A. Correct.  
 25 Q. And you also studied at the University of

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1 Minnesota in the twins cities?  
 2 A. I did.  
 3 Q. From 2001 to 2003, does that sound right?  
 4 A. Yes.  
 5 Q. And you studied at the Institut St. Jean in  
 6 Douai, France, is that right?  
 7 A. That is correct.  
 8 Q. That's a high school?  
 9 A. It is a high school and a junior college.  
 10 Q. And then the first college you attended was  
 11 University of California, Berkley?  
 12 A. It was not. I attended the University of  
 13 Minnesota and the University of Jordan prior to  
 14 my time at Berkley.  
 15 Q. Did you obtain degrees from any of the  
 16 institutions that we discussed?  
 17 A. No.  
 18 Q. Any reason why you never thought you wanted to  
 19 complete a degree?  
 20 A. No.  
 21 Q. Moving on to those lawsuits that we discussed.  
 22 MR. ANTRIM: Do you want to mark this?  
 23 I'm going out of order here. I apologize.  
 24 (Exhibit No. 5 was marked for  
 25 identification.)

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1 BY MR. ANTRIM:  
 2 Q. This is a printout that is available on the  
 3 internet as well. It is maintained by the state  
 4 of Minnesota. Do you recognize any of the cases  
 5 on Exhibit 5?  
 6 A. Yes.  
 7 Q. Which ones?  
 8 A. ALL with the exception of Cailin Hansen versus H.  
 9 Design Salon, Dourgarian Properties LLC vs. Kyra  
 10 Harmon.  
 11 Q. So those are the two that you don't recognize?  
 12 A. Yes.  
 13 Q. Some of these look like conciliation court cases,  
 14 is that right?  
 15 A. I'm not familiar with that term.  
 16 Q. Now, ARA, Inc. I think I saw something from Mr.  
 17 Reid about ARA, Inc. Is that another company you  
 18 have an interest in?  
 19 A. I do not have an interest in that company.  
 20 Q. Can you tell me about that ARA lawsuit that  
 21 appears on Exhibit 5?  
 22 A. Yes. ARA, Inc. versus 1 Call Staffing, Inc. and  
 23 Trae Brown.  
 24 Q. That's the one in the middle of the page?  
 25 A. Yes. ARA Staffing -- excuse me. Are you

1 else and didn't tell you?  
 2 A. I can't recall the specifics, but it is usually  
 3 some flavor of the scenario you are describing.  
 4 Q. And then the third one involving ARA is Paul  
 5 Phipps?  
 6 A. Yes.  
 7 Q. Tell me about that one.  
 8 A. Paul Phipps was an employee of TempWorks  
 9 Software, Incorporated and Mr. Phipps sued  
 10 TempWorks Software, Incorporated I believe  
 11 seeking a release from his agreement not to  
 12 compete with our company.  
 13 Q. What was the result?  
 14 A. I believe he abdicated his position and we parted  
 15 ways with the noncompete in place with no money  
 16 changing hands.  
 17 Q. Would you tell me is -- Paperless Staffing  
 18 appears to be a d/b/a, is that right?  
 19 A. Paperless Staffing is a d/b/a of ARA.  
 20 Q. Again on that factoring side.  
 21 A. Correct.  
 22 Q. Moving back up then. Penguin Services, can you  
 23 tell me about that one?  
 24 A. I believe TempWorks Software, Inc. sued Penguin  
 25 Services for failure to pay an outstanding bill

1 referring to Paul Phipps versus TempWorks  
 2 Software, Inc., ARA, Inc. d/b/a Paperless  
 3 Staffing?  
 4 Q. Why don't we start with the top one, ARA, Inc.  
 5 versus Monarch Consulting Group, LLC. Can you  
 6 tell me about that?  
 7 A. Yes. Mr. Lance stole a great deal of money from  
 8 ARA, Inc. and I sued him.  
 9 Q. So you do have an interest in ARA, Inc.?  
 10 A. I do not have an interest in the company. I do  
 11 not own any shares.  
 12 Q. But you have a relationship with them of some  
 13 kind?  
 14 A. ARA functions as the factoring arm of TempWorks  
 15 Software. It has no employees. Greg Dourgarian  
 16 owns the shares of that company.  
 17 Q. And the next ARA case is the one I believe you  
 18 mentioned. Trae Brown?  
 19 A. Yes.  
 20 Q. Tell me about that one.  
 21 A. Same situation.  
 22 Q. Trae Brown took some money from ARA?  
 23 A. Yes.  
 24 Q. Just because of the factoring relationship he  
 25 moved his receivables or something to somewhere

1 for software licensing.  
 2 Q. What was the outcome?  
 3 A. Penguin Services had a judgment entered against  
 4 it and we garnished their bank account and took  
 5 the money that they owed us.  
 6 Q. How much money are we talking about?  
 7 A. Between 10 and \$15,000.  
 8 Q. And then underneath that is Mickelberg. Tell me  
 9 about that lawsuit.  
 10 A. Mickelberg Event Group was hired by TempWorks  
 11 Software to host an event or to plan an event  
 12 involving our customers. And at the conclusion  
 13 of said event Mickelberg Event Group overbilled  
 14 TempWorks for the services it rendered.  
 15 TempWorks refused to pay said bill and Mickelberg  
 16 Event Group brought suit against TempWorks  
 17 Software.  
 18 Q. What was the outcome?  
 19 A. I believe that Mickelberg Event Group prevailed  
 20 in that lawsuit and TempWorks Software eventually  
 21 settled said judgement for 50 percent of its  
 22 value or something like that to spare Mickelberg  
 23 the stress of collecting.  
 24 Q. The next one is TempWorks Software, Inc. versus  
 25 Andre Hurtado and Avani Staffing Solutions.

15

1 A. Yes.

2 Q. Tell me about that one.

3 A. I'm not familiar with the name Andre Hurtado, but

4 Avani Staffing Solutions was a company in

5 California who signed a contract to purchase

6 software services from TempWorks and did not pay

7 us so we brought suit against them.

8 Q. What was the outcome?

9 A. They settled immediately.

10 Q. It looks like that was another conciliation court

11 matter?

12 A. That's what the paper says.

13 Q. Then it looks like the next one is National

14 Account Services suing you?

15 A. Yes.

16 Q. What is that?

17 A. I believe they were suing me to collect on a

18 judgment -- sorry -- to collect on an overdrawn

19 checking account balance from ten years prior to

20 the actual date on the document.

21 Q. What happened there?

22 A. I believe they surrendered.

23 Q. They dismissed the case?

24 A. They dismissed and no money changed hands.

25 Q. The next one is DDE, Inc. What relationship does

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1 DDE, Inc. have to TempWorks Management Services,

2 Inc.?

3 A. DDE, Inc. is an alter ego entity I own which owns

4 a van that is used by a TempWorks Management

5 Services client and also entered into a contract

6 to purchase the assets of a company owned by Roy

7 Abrego.

8 Q. And what happened? Why did you sue Mr. Abrego?

9 A. Because as part of the -- as part of the asset

10 purchase agreement executed with Mr. Abrego he

11 agreed not to engage in competition with the

12 staffing entity DDE, Inc. acquired and he did not

13 abide by that commitment.

14 Q. What was the result of that lawsuit?

15 A. I dismissed it and he corrected his behavior.

16 Q. So he still is associated with DDE, Inc.?

17 A. He is not associated with DDE, Inc.

18 Q. But you don't have any disputes with him

19 currently.

20 A. No.

21 Q. The next one is this lawsuit, David Stemm and his

22 wife, who has been dismissed at this point, and

23 their LLC versus TempWorks Management Services,

24 Inc. What do you understand about this lawsuit?

25 A. Well, it seems really, really dumb. It is kind

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1 of hard for me to fathom a wife who lets her

2 husband spend her salary suing somebody in

3 Minnesota for damages which don't exist. That's

4 the entirety of my understanding here.

5 Q. That's all you want to say about it.

6 A. Yes.

7 Q. There have also been some federal court actions

8 that TempWorks Management Services, Inc. has been

9 involved in?

10 A. Is that a question?

11 Q. Yes.

12 A. Are you asking me whether or not we have been

13 involved in federal court actions before?

14 Q. I'm asking you -- yes. That's fair.

15 A. Yes.

16 Q. How many?

17 A. I couldn't recall.

18 Q. Do you recall one called -- that involved

19 Avionte, LLC? A V I O N T E?

20 A. Yes.

21 Q. Tell me about that one.

22 A. I believe we sued Avionte for pirating source

23 code owned by TempWorks Software.

24 Q. What was the result of that?

25 A. The case was dismissed.

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1 Q. You sued Avionte and the case was dismissed?

2 A. Correct.

3 Q. Why?

4 A. I can't recall. It was a long time ago.

5 Q. Who were the attorneys that you used for that?

6 A. Dorsey Whitney.

7 Q. How long have you known Mr. Reid?

8 A. Since the commencement of his employment with

9 TempWorks in early 2011 I believe.

10 Q. Careers USA. Do you remember that lawsuit?

11 A. Yes.

12 Q. Tell me about it.

13 A. Careers USA entered into a contract to purchase

14 software services from TempWorks and then

15 repudiated that agreement after taking possession

16 of our intellectual property.

17 Q. What happened as a result of that lawsuit?

18 A. It is ongoing.

19 Q. So that one is still pending.

20 A. Correct.

21 Q. And who are you using to represent your company?

22 A. Mr. Reid.

23 Q. And the third one I have is Abacus Corp?

24 A. Yes.

25 Q. And that one I think was handled by the gentleman

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1 that I met down at his office on Monday when Mr.  
 2 Stemm's deposition was taken?  
 3 **A.** I'm not sure who that gentleman was.  
 4 **Q.** Craig?  
 5 **A.** Yes.  
 6 **Q.** Tell me about that lawsuit.  
 7 **A.** Abacus brought suit against TempWorks for  
 8 contract repudiation related to a software  
 9 licensing and implementation contract.  
 10 **Q.** What was the result?  
 11 **A.** Abacus dismissed that lawsuit.  
 12 **Q.** Are there any other lawsuits that you have been  
 13 involved in that you and I have not already  
 14 discussed?  
 15 **A.** I can't recall.  
 16 **Q.** Has TempWorks been involved in lawsuits outside  
 17 of the state of Minnesota?  
 18 **A.** Not that I can recall.  
 19 **Q.** It must have had some bad debt collection  
 20 somewhere else, didn't it?  
 21 **A.** Not that I can recall.  
 22 **Q.** If you recall during the course of your  
 23 deposition you will tell me?  
 24 **A.** I will.  
 25 **Q.** What is your current position at TempWorks  
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1 Management Services, Inc.?  
 2 **A.** I'm the owner.  
 3 **Q.** Do you hold an officer position for the  
 4 corporation?  
 5 **A.** I would assume, but I can't be certain.  
 6 **Q.** President, CEO, does anything like that ring a  
 7 bell?  
 8 **A.** I'm not certain. I don't identify myself as a --  
 9 I don't identify myself publicly as an employee  
 10 of TempWorks Management Services.  
 11 **Q.** What do you identify yourself publically as?  
 12 **A.** The chief executive officer of TempWorks  
 13 Software.  
 14 **Q.** What do you do on a day to day basis in  
 15 connection with any position that you hold at  
 16 TempWorks Management Services, Inc.?  
 17 **A.** The vast majority of my position there involves  
 18 monitoring credit.  
 19 **Q.** And that's because of the factoring relationship  
 20 again?  
 21 **A.** The relationship that TempWorks Management  
 22 Services has with its clients resembles a  
 23 factoring relationship though it is not papered  
 24 that way. Nonetheless I keep a careful eye on  
 25 the receivables that are generated by TempWorks  
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1 Management Services on behalf of its clients.  
 2 And that encompasses the majority of my role with  
 3 the company.  
 4 **Q.** And as I understand the relationship, TempWorks  
 5 Management Services, Inc. is paid a portion of  
 6 the collections by -- what do you call them, your  
 7 customers?  
 8 **A.** Our affiliates.  
 9 **Q.** Your agents, your affiliates? I think they are  
 10 called agents in your contract. Does that sound  
 11 right?  
 12 **A.** I'm not familiar with the minutiae of my  
 13 contract.  
 14 **Q.** And when there are lawsuits you are involved in  
 15 those as well?  
 16 **A.** If I have to be.  
 17 **Q.** I'm going to show you what has been what has been  
 18 marked as Exhibit 1. You are here pursuant to  
 19 this Notice of Taking your Deposition?  
 20 **A.** Yes I am.  
 21 **Q.** It was supposed to start at ten?  
 22 **A.** Yes.  
 23 **Q.** You were a little late?  
 24 **A.** Parking.  
 25 MR. REID: Objection, argumentative.  
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1 MR. ANTRIM: It is a fact, isn't it?  
 2 BY MR. ANTRIM:  
 3 **Q.** Showing you what has been marked Deposition  
 4 Exhibit No. 2. Do you recognize that document?  
 5 **A.** No.  
 6 **Q.** This is the Answer that you filed in connection  
 7 with this lawsuit. Have you seen it before?  
 8 **A.** No.  
 9 **Q.** Why don't I direct your attention all the way  
 10 back to page seven. And these are what we refer  
 11 to as affirmative defenses. Number two states  
 12 that plaintiffs' claims are barred in whole or  
 13 part by plaintiffs' own conduct.  
 14 What facts are you aware of which  
 15 support that claim?  
 16 **A.** I'm aware that during the course of Stemm's  
 17 relationship with TempWorks he reached out  
 18 against our direct instructions to a third party  
 19 supplier, Direct HR, the name Mike Sepsey I  
 20 believe, and damaged our relationship with Direct  
 21 HR.  
 22 **Q.** And how did he damage the relationship?  
 23 **A.** Direct HR agreed -- agreed to co-employ employees  
 24 of TempWorks Management Services. However, they  
 25 would not agree to co-employ employees of a  
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1 client's staffing -- an affiliate's staffing  
 2 company. And the description of the relationship  
 3 delivered to Direct HR by Stemm et al caused them  
 4 to sever their relationship with TempWorks.  
 5 Q. So was it your intention to hide your  
 6 relationship --  
 7 A. No.  
 8 Q. -- the relationship between TempWorks and Mr.  
 9 Stemm, from Mike Sepsey at Direct HR?  
 10 A. No. It was not my intention to hide it.  
 11 Q. Then what was the problem, if any, with Mr. Stemm  
 12 announcing his existence to Mr. Sepsey?  
 13 A. Mr. Stemm described the relationship as a multi  
 14 level staffing relationship. A multi level  
 15 staffing relationship is huge red flag for a  
 16 professional employer organization.  
 17 A multi level staffing relationship  
 18 consists of one staffing company hiring an  
 19 employee to put on another entity's payroll who  
 20 in turn puts the employee on a third entity's  
 21 payroll. This exposes in the professional  
 22 employment industry the PEO or the entity at the  
 23 top of the employment food chain to potentially  
 24 catastrophic workers' compensation claims.  
 25 And Mr. Stemm described the

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1 relationship between 180 and TempWorks Management  
 2 Services as a multi level co-employment  
 3 relationship when in fact that was a  
 4 mischaracterization of the relationship.  
 5 Q. So it is your testimony that Mr. Stemm  
 6 represented to Mr. Sepsey that they had a multi  
 7 level co-employment relationship.  
 8 A. That is correct.  
 9 Q. And what do you have in terms of proof of that  
 10 fact?  
 11 A. I believe Mr. Sepsey called us and made us aware  
 12 of the conversation and its consequences.  
 13 Q. So Mr. Sepsey used those words and said they were  
 14 Mr. Stemm's words?  
 15 A. I didn't speak with Mr. Sepsey directly but that  
 16 was the gist of it, yes.  
 17 Q. You have never spoken to Mr. Stemm directly that  
 18 you recall I believe you said at the beginning of  
 19 your deposition?  
 20 A. I didn't say that.  
 21 Q. You said you spoke to him once but you couldn't  
 22 remember, if I recall. We could have her go back  
 23 and look.  
 24 A. I recall having said that, yes.  
 25 Q. So you never heard Mr. Stemm use words like multi

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1 level staffing relationship.  
 2 A. No. Mr. Sepsey's conversations were with Bob  
 3 Pugliano and Bob Pugliano throughout his  
 4 employment with TempWorks acted as an  
 5 intermediary between individuals like Mr. Sepsey  
 6 and other suppliers TempWorks Management Services  
 7 had.  
 8 Q. When did Mr. Pugliano start with TempWorks?  
 9 A. Once again, Mr. Pugliano was never an employee of  
 10 TempWorks Management Services. He was an  
 11 independent contractor from October 1st until --  
 12 October 1st, 2012 to January 1st of 2013, give or  
 13 take, and thereafter spent 18 months as a  
 14 full-time employee of TempWorks Software.  
 15 Q. So the 18 months as a full-time employee happened  
 16 after January 12th of 2013?  
 17 A. Yes.  
 18 Q. Would you agree with me that the relevant time  
 19 frame that we are talking about is roughly the  
 20 summer of 2012 until -- actually, excuse me. Is  
 21 really the three or four months in the middle of  
 22 2013?  
 23 A. No. That's not my understanding.  
 24 Q. What's your understanding?  
 25 A. It's my understanding that the facts being

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1 litigated occurred at the very end of  
 2 September 2013, I believe and -- yeah. That's  
 3 the time frame that I have.  
 4 Q. I think we are roughly in agreement. So the  
 5 facts of this lawsuit occurred when Mr. Pugliano  
 6 was an employee.  
 7 A. That's correct.  
 8 Q. And what were Mr. Pugliano's reasons for leaving?  
 9 A. Mr. Pugliano leaving the employ of TempWorks  
 10 Software?  
 11 Q. Yes.  
 12 A. Mr. Pugliano's position was eliminated in circa  
 13 July 1st of this year. It was a layoff.  
 14 Q. Why was his position eliminated?  
 15 A. It had become redundant. He worked at TempWorks  
 16 primarily as a trainer, implementer of infra  
 17 structure to expand the operations of ARA, Inc.  
 18 and TempWorks Management Services and he largely  
 19 fulfilled that project during the time he was  
 20 there and there was no compelling reason for him  
 21 to stay beyond his fulfillment of those tasks.  
 22 Q. During the summer of 2013 what were Mr.  
 23 Pugliano's day to day activities?  
 24 A. Mr. Pugliano's day to day activities included  
 25 underwriting, sales, credit monitoring largely in

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1 conjunction with ARA and TempWorks Management  
 2 Services.  
 3 Q. Why was Mr. Pugliano dealing with Mr. Stemm?  
 4 A. Mr. Stemm was an owner of a client who was in the  
 5 process of negotiating a contract and being  
 6 onboarded. Mr. Pugliano at the time would have  
 7 been his primary point of contact.  
 8 Q. Why is that?  
 9 A. That was his role at the time.  
 10 Q. I'm sorry. Can you tell me what that role was?  
 11 A. Mr. Pugliano's responsibility was to implement  
 12 infra structure to expand the operations of ARA  
 13 and TempWorks Management Services. That meant  
 14 training salespeople as well as training the  
 15 underwriting and processing staff that make the  
 16 company function on a day to day basis.  
 17 So during that time frame he would have  
 18 been the primary point of contact for a brand new  
 19 client with an unconsummated business  
 20 relationship.  
 21 Q. Are you aware that one of the -- that the first  
 22 place Mr. Stemm intended to have his business do  
 23 business was in the state of Indiana?  
 24 A. I'm not familiar with the circumstances  
 25 surrounding Mr. Stemm's entrepreneurial

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1 endeavors.  
 2 Q. Does TempWorks Management Services, Inc. or any  
 3 of its related companies or affiliates have any  
 4 business presence in the state of Indiana?  
 5 A. Define business presence.  
 6 Q. Does it have any affiliates like Mr. Stemm in  
 7 Indiana?  
 8 A. No.  
 9 Q. Was Mr. Stemm going to be the first affiliate in  
 10 Indiana?  
 11 A. It is my recollection that Mr. Stemm is from  
 12 Florida.  
 13 Q. Well, I'm representing to you, and I'm sure the  
 14 documents we are going to be going through before  
 15 we finish today will indicate, that he was going  
 16 to start business in Indiana. Do you know  
 17 anything about that?  
 18 A. Not really.  
 19 Q. Do you know anything about Eric Pattison?  
 20 A. No.  
 21 Q. Do you know anything about the book of business  
 22 that Eric Pattison had already established in  
 23 Indiana?  
 24 A. No.  
 25 Q. Well, we will be getting into all those things.

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1 I'm just wondering what your basis is for your  
 2 opinion that this is a lawsuit that doesn't make  
 3 any sense and he hasn't sustained any damages?  
 4 A. Is that a question?  
 5 Q. It was, yes.  
 6 A. Can you repeat it?  
 7 MR. ANTRIM: Go ahead.  
 8 (At this time the requested portion of  
 9 the record was read back by the Court Reporter.)  
 10 THE WITNESS: The basis of that opinion  
 11 is that no contract existed between 180 Personnel  
 12 and any consumers of temporary staffing services  
 13 for the provision of services.  
 14 It is my -- another foundation of my  
 15 opinion is TempWorks Management Services had  
 16 never approved a single employee to be hired. We  
 17 never actually hired any employees sourced by 180  
 18 Personnel.  
 19 It is my belief that 180 Personnel  
 20 never billed a single dollar of revenue or  
 21 requested that we as its agent bill a single  
 22 dollar of revenue to anyone during the course of  
 23 our relationship.  
 24 So that's a -- that summarizes my  
 25 opinion that no damages were sustained.

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1 BY MR. ANTRIM:  
 2 Q. Do you know where Mr. Pugliano is now?  
 3 A. No.  
 4 Q. Do you know how to reach him?  
 5 A. I have a telephone number.  
 6 Q. I assume you don't have it off the top of your  
 7 head?  
 8 A. No.  
 9 MR. ANTRIM: Can you provide that,  
 10 Counsel?  
 11 MR. REID: Sure.  
 12 MR. ANTRIM: Thank you.  
 13 BY MR. ANTRIM:  
 14 Q. Plaintiffs' claims are barred in whole or in part  
 15 by plaintiffs' own conduct. You already  
 16 described for me the conduct that you believe  
 17 supports that allegation. Is there anything  
 18 else?  
 19 A. Yes.  
 20 Q. Please tell me.  
 21 A. The business in which 180 Personnel was going to  
 22 engage in, as I recall, was medical staffing.  
 23 Medical staffing while it can be profitable  
 24 presents certain problems for the factor or the  
 25 provider of the factoring like services. It is

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1 very difficult sometimes to collect accounts  
2 receivable from consumers of temporary medical  
3 employees.

4 It was reported to me, primarily by Mr.  
5 Pugliano, that Mr. Stemm and his partner had  
6 become rude, abrasive, the term loony was thrown  
7 around quite a bit. And I had a big problem  
8 entering into a credit risk on behalf of an  
9 intermediary who was described in that fashion by  
10 the staff that run the day to day of my business.

11 So in part the plaintiffs' conduct lead  
12 me to believe that it was very likely I would  
13 have a problem collecting the receivables issued  
14 on behalf of 180 Personnel.

15 As we discussed earlier, I have done a  
16 fair amount of litigation on this topic. And the  
17 plaintiffs in this lawsuit share certain  
18 characteristics with the other people that we  
19 have litigated against under these circumstances.

20 Q. What are those?

21 A. Unstable personalities.

22 Q. Have I given you a full opportunity to describe  
23 for me all of the conduct of Mr. Stemm which  
24 would lead you to believe he was unstable?

25 A. Yes.

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1 What facts do you have to support that  
2 claim?

3 A. I believe that it is a fairly obvious term  
4 included in the TempWorks Management Services  
5 contract.

6 Q. So if I can do my best to give you what I believe  
7 your argument is, and you correct me if I'm  
8 wrong, is that since TempWorks had no obligation  
9 to ever approve anything sent to it by the  
10 plaintiffs, they can't possibly have sustained  
11 any damages.

12 A. That is one of our arguments, yes.

13 Q. And I want to make sure while I have the thought  
14 in my little brain that I familiarize myself with  
15 your terminology.

16 As I understand it -- I have worked  
17 with search firms in the past and I'm trying to  
18 get over those definitions and use the ones that  
19 you use in your industry and in your clients.

20 When we are talking about the people  
21 who actually use the employees, you refer to them  
22 as customers, is that right?

23 A. I believe I was using the word consumer, but one  
24 could also refer to them as a customer.

25 Q. When we are talking about the employees

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1 Q. Nothing to add.

2 A. No.

3 Q. Which other of the lawsuits that we discussed  
4 involved unstable people in your opinion?

5 A. Roy Abrego, Paul Phipps, Trae Brown, Shannon  
6 Mickelberg, Andrew Lance.

7 Q. So anyone who you get into litigation with is  
8 loony?

9 MR. REID: Objection, mischaracterizes  
10 the testimony.

11 MR. ANTRIM: Argumentative probably  
12 would work. I will withdraw the question.

13 BY MR. ANTRIM:

14 Q. Affirmative defense number two goes on to say  
15 that the conduct of plaintiffs' agents or  
16 representatives should bar their recovery.

17 Have we already discussed all that or  
18 do you have something to add?

19 A. I have nothing to add.

20 Q. Number three, and this is all coming of course,  
21 as I hope you are tracking with me, on Exhibit  
22 No. 2.

23 Plaintiffs are not entitled to damages  
24 as Defendant could cancel the TMS Services  
25 Agreement without liability to Plaintiffs.

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1 themselves you use the term staff consultants?

2 A. Yes.

3 Q. And when we are talking about a customer's job  
4 you refer to them as assignments?

5 A. Correct.

6 Q. Thank you.

7 Is there anything else upon which you  
8 base your affirmative defense that defendant  
9 could cancel the contract at any time or choose  
10 not to approve anything sent to it by plaintiffs  
11 that we haven't already discussed?

12 A. No.

13 Q. Number four is improper venue. What is the basis  
14 of your claim that this matter is improperly  
15 venued?

16 A. You would have to ask my attorney.

17 Q. Waiver and estoppel. What is the basis for your  
18 affirmative defenses first of waiver?

19 A. You would have to ask my attorney.

20 Q. How about estoppel?

21 A. You would have to ask my attorney.

22 Q. The next affirmative defense, number six, is  
23 prevention of performance.

24 What facts do you have to share with me  
25 that support your affirmative defense of

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1 prevention of performance?  
 2 **A. You would have to ask my attorney.**  
 3 **Q.** Seven, the existence of a contract renders  
 4 Plaintiffs' claim for promissory estoppel moot.  
 5 What facts do you have to support that?  
 6 **A. What is promissory estoppel?**  
 7 **Q.** It is a legal claim.  
 8 **A. Can you describe it in detail, please?**  
 9 **Q.** Sure. It is a legal claim when somebody does not  
 10 have a contract but they are entitled to relief  
 11 because of their reliance upon having a contract.  
 12 Does that make sense to you?  
 13 **A. Not really. I would defer to my attorney on**  
 14 **that.**  
 15 **Q.** Let's explore this issue at least, because I'm  
 16 not certain what position you are taking in this  
 17 litigation.  
 18 Did you sign the contract in this case?  
 19 **A. I can't recall if my signature is on it. I'm**  
 20 **assuming nobody else did.**  
 21 **Q.** Do you have a copy? Because I asked Mr. Reid  
 22 that question on Monday and he said he couldn't  
 23 find a copy that had your signature on it.  
 24 **A. Once again I'm not certain.**  
 25 **Q.** Regardless of whether or not we can find a copy

1 BY MR. ANTRIM:  
 2 **Q.** Do you know what I mean when I say a start-up?  
 3 **A. Yes.**  
 4 **Q.** Tell me what you think a start-up is.  
 5 **A. A newly formed entity pre-revenue.**  
 6 **Q.** And based on what knowledge you have of  
 7 Mr. Stemm's company do you consider it a  
 8 start-up?  
 9 **A. Yes.**  
 10 **Q.** Now, asking you to assume that Eric Pattison had  
 11 a book of business with existing customers,  
 12 existing staff consultants and existing  
 13 assignments, all he had to do was just move them  
 14 across the street. Okay? I'm asking you to  
 15 assume that.  
 16 Do you still consider it a start-up?  
 17 **A. Yes.**  
 18 **Q.** We will take a look at Exhibit 3. Admit that 180  
 19 -- I'm on number one on page two. Admit that 180  
 20 Personnel was a start-up staffing agency. And  
 21 you deny on the basis that the phrase start-up is  
 22 vague and ambiguous and not subject to reasonable  
 23 interpretation.  
 24 Do you still stand by your answer in  
 25 this Request for Admissions or do you stand by

1 of your signature, is it your claim in this  
 2 litigation that there was a contract between you  
 3 and Mr. Stemm's company or not?  
 4 **A. Yes. There was a contract.**  
 5 **Q.** Then we don't need the claim for promissory  
 6 estoppel because there is a contract. Do you  
 7 understand that?  
 8 **A. No.**  
 9 **Q.** Your attorney can explain it to you.  
 10 The next affirmative defense is lack of  
 11 standing. What facts do you have to support that  
 12 affirmative defense?  
 13 **A. I'm uncertain.**  
 14 **Q.** If I may turn your attention to Exhibit 3. I  
 15 believe these are the Responses to the Requests  
 16 for Admissions. Have you seen these before?  
 17 **A. No.**  
 18 **Q.** Do you know who, if anyone, besides Mr. Reid took  
 19 a look at these before they went out?  
 20 **A. I'm not aware.**  
 21 **Q.** Directing your attention to page two.  
 22 MR. REID: Do you have copies of these,  
 23 George?  
 24 MR. ANTRIM: Of course I do. You have  
 25 them there in front of you.

1 your testimony that you just gave me?  
 2 **A. I stand by my answer.**  
 3 **Q.** Going down to number three. Admit that Ashlee  
 4 Brace told David Stemm that all necessary  
 5 paperwork requirements, computer requirements and  
 6 miscellaneous verifications to complete 180  
 7 Personnel status as a TMS client were done. Is  
 8 that true?  
 9 **A. No.**  
 10 **Q.** Tell me why not.  
 11 **A. Because after a reasonable inquiry I couldn't**  
 12 **possibly determine whether or not Ashlee Brace**  
 13 **informed David Stemm that every requirement or**  
 14 **verification had been completed.**  
 15 **Q.** Let me ask it to you this way.  
 16 Are you aware of anything that  
 17 Mr. Stemm and his start-up company had not  
 18 performed which was a prerequisite to starting  
 19 doing business with you?  
 20 **A. I don't believe he had submitted any employee**  
 21 **documentation upon which we could hire an**  
 22 **employee, I don't believe he submitted to us a**  
 23 **contract with any customers, to name a couple.**  
 24 **Q.** Let's start with the second one, because I know  
 25 that that's a claim that I see made often in this

1 lawsuit and that is with respect to Mr. Stemm's  
 2 new business having a contract requiring a  
 3 customer to do a certain amount of business. Did  
 4 I state that correctly?  
 5 **A.** Can you repeat?  
 6 **Q.** Let me try it again.  
 7 We know that Mr. Stemm is going to be  
 8 doing business with customers, right?  
 9 **A.** We assume.  
 10 **Q.** And the customers that we are talking about  
 11 are -- I have referred to them for many years as  
 12 employer clients. They are the people that are  
 13 employing the staff consultants?  
 14 **A.** Correct.  
 15 **Q.** And the issue that I'm trying to get at is  
 16 whether or not Mr. Stemm's start-up or a similar  
 17 business has any contracts, written contracts  
 18 even, with these customers with respect to a  
 19 minimum amount of business that they are going to  
 20 do with them. Do you follow me?  
 21 **A.** No. Can you repeat?  
 22 **Q.** When you said in your prior answer words to the  
 23 effect that Mr. Stemm's business didn't have any  
 24 contracts with customers with respect to how much  
 25 work they were going to provide?

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1 **A.** Correct.  
 2 **Q.** Is that normal in the industry to have those  
 3 types of contracts?  
 4 **A.** If you want to sue for damages under these  
 5 circumstances it needs to be.  
 6 **Q.** Well, that wasn't my question.  
 7 My question was is it common in the  
 8 industry for companies like Mr. Stemm's to have  
 9 written contracts with customers regarding how  
 10 much business they were going to do with the new  
 11 company?  
 12 **A.** Yes. It is common.  
 13 **Q.** That's what you are used to seeing?  
 14 **A.** Yes.  
 15 **Q.** That customers, the people that are going to be  
 16 the employer clients, the people that are going  
 17 to be employing the staff consultant, they enter  
 18 into written contracts with the staffing agency?  
 19 That's what you are used to?  
 20 **A.** Yes.  
 21 **Q.** Can you name me a start-up that has such a  
 22 contract?  
 23 **A.** Yes. We had one with a company in California  
 24 called Harbor Rails.  
 25 **Q.** And what were the basic terms of the Harbor Rails

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1 contract?  
 2 **A.** Harbor Rails commenced their contract with about  
 3 100 temporary staff consultants. And the  
 4 contract dictated the -- well, the contract didn't  
 5 dictate the pay rate for each staff consultant.  
 6 It dictated the markup. It dictated the markup  
 7 against the pay rate, which varied based on  
 8 location, and entitled the customer to discounts  
 9 based on increments in the number of employees.  
 10 **Q.** Anyone else that you remember besides Harbor  
 11 Rails?  
 12 **A.** No.  
 13 **Q.** That's not usual, is it?  
 14 **A.** It is common enough.  
 15 **Q.** Anything else that you believe Mr. Stemm had not  
 16 done with respect to paperwork requirements,  
 17 computer requirements, verifications, that he  
 18 needed to do before he could do business?  
 19 **A.** Not that I can think of.  
 20 **Q.** And as I understand it Mr. Stemm also entered  
 21 into a separate contract with the company that is  
 22 affiliated with TempWorks that provides web site  
 23 design?  
 24 **A.** Yes. I recall the agreement between 180  
 25 Personnel and TempWorks Software for the

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1 involvement of a custom web site.  
 2 **Q.** You understand 180 Personnel is just a d/b/a? It  
 3 is not an entity that can contract?  
 4 **A.** Yes. I understand that.  
 5 **Q.** And as I understand that web site is linked to  
 6 the software, the TempWorks software?  
 7 **A.** Not necessarily.  
 8 **Q.** Does Mr. Stemm have current access to the web  
 9 site that was designed for him?  
 10 **A.** I have no idea.  
 11 **Q.** He has been locked out of that, hasn't he?  
 12 **A.** I have no idea.  
 13 **Q.** He can't use it, can he?  
 14 MR. REID: Objection, asked and  
 15 answered.  
 16 MR. ANTRIM: I'm asking different  
 17 questions.  
 18 BY MR. ANTRIM:  
 19 **Q.** He can't use it, can he?  
 20 **A.** I have no idea.  
 21 **Q.** It doesn't have any value to him, does it?  
 22 MR. REID: Same objection.  
 23 THE WITNESS: I have no idea.  
 24 BY MR. ANTRIM:  
 25 **Q.** Let's talk a little about certificates of

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1 insurance. One of the attractive features for  
 2 affiliates seeking to do business with TempWorks  
 3 is the fact that TempWorks can provide workers'  
 4 compensation coverage, correct?  
 5 **A.** Yes.  
 6 **Q.** And a certificate of insurance is something that  
 7 proves to the customer that the staffing  
 8 consultant has workers' compensation insurance,  
 9 right?  
 10 **A.** Is covered under it, yes.  
 11 **Q.** And a lot of customers are nervous about making  
 12 sure that the staffing consultants that are  
 13 referred to them by the affiliate have workers'  
 14 compensation insurance, correct?  
 15 **A.** Yes.  
 16 **Q.** And that for obvious reasons they want to make  
 17 sure they are covered when these people are on  
 18 their premises working, correct?  
 19 **A.** Right.  
 20 **Q.** Was Mr. Stemm ever given a certificate of  
 21 insurance through TempWorks?  
 22 **A.** Because Mr. Stemm had never hired an employee, we  
 23 had never hired an employee on his behalf, no, he  
 24 would have never been given a certificate of  
 25 insurance.

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1 9:00 if you don't have a certificate of  
 2 insurance?  
 3 **A.** Would I let the employee go to work before 9:00  
 4 without a certificate of insurance. No. I would  
 5 not.  
 6 **Q.** So necessarily the certificate of insurance comes  
 7 before a customer is going to let a person start  
 8 work, right?  
 9 **A.** Not necessarily, no.  
 10 **Q.** Explain that to me.  
 11 **A.** Typically a customer is not going to ask for a  
 12 certificate of insurance until -- sorry.  
 13 Typically a customer is not going to ask for a  
 14 certificate of insurance until the employee is  
 15 confirmed working.  
 16 **Q.** Let's talk about this situation.  
 17 You're aware of the fact that Mr. Stemm  
 18 and Eric Pattison on behalf of the plaintiffs had  
 19 staff consultants ready to start work on Monday  
 20 morning, September 30, 2013.  
 21 **A.** I'm unfamiliar with any such staff consultants.  
 22 **Q.** You are saying you didn't know that Mr. Stemm had  
 23 people that were going to go to work on Monday  
 24 morning?  
 25 **A.** No I did not.

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1 **Q.** Do you know whether or not he ever asked for one?  
 2 **A.** I can't recall.  
 3 **Q.** Do you know whether or not any of his customers  
 4 required a certificate of insurance before they  
 5 would interview staffing consultants?  
 6 **A.** I can't recall.  
 7 **Q.** That wouldn't be unusual, would it?  
 8 **A.** Yeah. It would be highly unusual to demand a  
 9 certificate of insurance prior to the hire having  
 10 been made.  
 11 **Q.** Why is that?  
 12 **A.** Well, what potential liability exists before the  
 13 employee reports to work?  
 14 **Q.** Well, before the employee goes to work you have  
 15 to make sure they are covered, right?  
 16 **A.** Before the employee goes to work you have to make  
 17 sure they are covered. No. You have to make  
 18 sure they are covered while at work and at no  
 19 other time was workers' compensation coverage  
 20 required.  
 21 **Q.** Let's say it is 8:59 and you have got somebody  
 22 there ready to go to work at 9:00. Are you with  
 23 me?  
 24 **A.** Correct.  
 25 **Q.** Are you going to let that person go to work at

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1 **Q.** And are you aware that on Friday, September 27th  
 2 of 2013 your company informed Mr. Stemm that it  
 3 was not going to do business with him?  
 4 **A.** Yes.  
 5 **Q.** Looking at Exhibit 3, request number six on page  
 6 three. Admit Ashlee Brace told David Stemm via  
 7 email the good news I just received confirmation  
 8 that your codes are being bound today. And you  
 9 deny that?  
 10 **A.** Yes.  
 11 **Q.** On what basis do you deny that?  
 12 **A.** I have never seen such an email.  
 13 **Q.** All right. What does it mean when your company  
 14 receives confirmation that codes are being bound?  
 15 **A.** That would really depend on the circumstances in  
 16 which the statement was made.  
 17 **Q.** Well, these folks, these staffing consultants  
 18 that are being sent by your affiliate to the  
 19 customers, they work a certain job and that job  
 20 has a code, right?  
 21 **A.** That's correct.  
 22 **Q.** That's the codes that we are talking about here.  
 23 **A.** It would appear so.  
 24 **Q.** And what does it mean being bound? That means  
 25 that the insurer has said something about it,

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1 right?

2 **A.** Yes.

3 **Q.** Tell me what it means when your codes are bound.

4 **A.** Considering the circumstances of the

5 relationship, I'm assuming that because it was

6 brought up or employees were actually going to be

7 co-employed by Direct HR who would have been

8 responsible for workers' comp insurance, I don't

9 understand what she would have meant by making

10 such a statement. Which we deny her having made.

11 **Q.** And you do agree with me that TempWorks made the

12 decision sometime on Friday, September 27th, 2013

13 that it was not going to go forward with

14 Mr. Stemm?

15 **A.** On or around Friday. I can't recall the exact

16 time.

17 **Q.** Who made the decision?

18 **A.** I did.

19 **Q.** And have you already had an opportunity to

20 express to me all of your reasons for making that

21 decision?

22 **A.** I will let you know if I think of more.

23 **Q.** But for right now as you sit there you have told

24 me everything you have got?

25 **A.** Yes.

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1 you are the person responsible for answering

2 these interrogatories, is that right?

3 **A.** Yes.

4 **Q.** And indeed if we go over to page nine, you have

5 signed a verification under oath that these

6 interrogatory answers are true, is that correct?

7 **A.** Yes.

8 **Q.** Then directing your attention to interrogatory

9 number three and its response, which if I can

10 paraphrase, talks about anyone who has

11 investigated or spoken to anyone about this

12 lawsuit and your answer as of that date was no.

13 **A.** Which interrogatory is this?

14 **Q.** Number three. Go ahead and take as long as you

15 need to read both the interrogatory and response

16 if you choose to do so.

17 **A.** I have read the interrogatory and response.

18 **Q.** As you know, I imagine given your experience,

19 this is the only time I get to talk to you. The

20 next time I see you you will be on the stand in

21 the courtroom presumably, right?

22 So what I'm trying to do is update this

23 information at least so I will know where we are

24 as of September 11th. As I hear that plane go

25 over it reminds me it is September 11th.

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1 **Q.** Now, would you agree with me that as of

2 Wednesday, September 25th, which is the time

3 frame suggested by request to admit number seven

4 of Exhibit 3, that TempWorks and Mr. Stemm's

5 company were still going to be doing business

6 together the following Monday?

7 **A.** I have no idea whether or not we were going to be

8 doing business on Monday. I don't believe an

9 employee had been hired and approved yet. I

10 don't believe a customer had been -- I don't

11 believe a customer location had been established

12 yet.

13 So no. I have no basis for knowing --

14 I would have had no basis or been involved on

15 Wednesday knowing that -- or to rely on a

16 temporary staff consultant having begun work on

17 Monday.

18 **Q.** Do you have any idea what Mike Sepsey was saying

19 to Mr. Stemm on Wednesday, September 25th?

20 **A.** I'm not familiar with the conversation.

21 **Q.** Let's take the next exhibit, No. 4, defendant's

22 Responses to Plaintiffs' First Set of

23 Interrogatories if you would be so kind.

24 Directing your attention to page two

25 and the response to interrogatory number one that

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1 What I'm asking you in connection with

2 interrogatory number three, to your knowledge

3 between the time that you verified that these

4 answers were true, which was on July 1st of 2014,

5 have you hired anyone to investigate anything

6 related to this lawsuit?

7 **A.** Have I hired anyone to investigate anything

8 involving this lawsuit.

9 **Q.** When I speak of you of course I'm speaking of the

10 defendant.

11 **A.** The defendant. To the best of my knowledge since

12 this interrogatory was responded to the answer to

13 your question is no. We have retained no

14 investigative assistance.

15 **Q.** Has anyone talked to Mr. Pugliano?

16 **A.** I believe that Mr. Reid and Mr. Pugliano spoke.

17 **Q.** And what do you know about that?

18 **A.** Nothing.

19 **Q.** How about Mr. Sepsey? It is my understanding

20 that Mr. Sepsey is no longer at Direct HR.

21 **A.** I have no idea where Mr. Sepsey is.

22 **Q.** Has the company spoken to Mr. Sepsey since

23 July 1st of 2014?

24 **A.** Not to my knowledge.

25 **Q.** The next question, number four, talks about

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1 experts. Has the defendant hired any experts  
 2 since July 1st of 2014?  
 3 THE WITNESS: Can we take a break?  
 4 MR. REID: After you answer question.  
 5 THE WITNESS: Not to my knowledge.  
 6 (At this time a recess was had.)  
 7 BY MR. ANTRIM:  
 8 Q. We were discussing Exhibit 4 and we were  
 9 discussing number four. And we finished when you  
 10 told me that you didn't have any experts or  
 11 anyone else that you were consulting about this  
 12 case.  
 13 A. Correct. We are back on the record?  
 14 Q. We are.  
 15 Number 5, statements. Are you aware of  
 16 any statements that you have taken since July 1st  
 17 of 2014?  
 18 A. No. I'm not familiar with any.  
 19 Q. Number six also talks about experts. But you  
 20 haven't consulted any, right?  
 21 A. Correct.  
 22 Q. Then go to page seven, please, interrogatory 13.  
 23 A. Yes.  
 24 Q. And looking at your answer, the second paragraph,  
 25 Defendant responds by saying that it decided not

1 to approve employee placements.  
 2 A. We are talking about interrogatory number 14?  
 3 Q. 13. The top of the page.  
 4 A. That is my response. Explain all reasons and  
 5 identify all documents relating to the decision  
 6 making process of Defendant with respect to its  
 7 decision not to sign the contract or do business  
 8 with Plaintiffs. This interrogatory is  
 9 argumentative.  
 10 Now that I have familiarized myself  
 11 with the response can you repeat your question,  
 12 please?  
 13 Q. Certainly. The second complete paragraph of your  
 14 response to interrogatory number 13, Exhibit 4.  
 15 Defendant responds by stating that it decided not  
 16 to approve employee placements, right?  
 17 A. Correct.  
 18 Q. My question is does that refer to the discussion  
 19 you and I have already had with respect to your  
 20 right that you perceive under the contract to  
 21 never approve any employee placements no matter  
 22 what?  
 23 A. Correct. I have a right under the contract to  
 24 never approve a single temporary staff  
 25 consultant.

1 Q. Have you ever exercised that right?  
 2 A. Yes.  
 3 Q. With whom?  
 4 A. Other clients.  
 5 Q. Name me a client that you have exercised it with.  
 6 A. Revival Staffing, New Jersey.  
 7 Q. How long had you worked with Revival Staffing  
 8 before you made this decision?  
 9 A. I had worked with them for about six months.  
 10 Q. And then you decided that you were going to  
 11 exercise what you perceive to be your right under  
 12 contract never to approve another employee  
 13 placement.  
 14 A. Correct.  
 15 Q. And as a result your business ceased with them.  
 16 A. I believe that we allowed the workers that had  
 17 already been approved to complete their  
 18 assignments, but yes. The end result of that  
 19 decision was that we ceased to do business with  
 20 them.  
 21 Q. What were your reasons for taking that action  
 22 against Revival Staffing?  
 23 A. It didn't seem like the owner of the client was  
 24 that into running his staffing agency. I had  
 25 heard a rumor that he had started a full-time job

1 elsewhere.  
 2 And because of the very risky nature of  
 3 the services that we provide one of the things  
 4 that I look for is a constant 40-hour a week  
 5 presence of the owner in the office where staff  
 6 consultants are being recruited. In this case he  
 7 planned to move on and wasn't giving his full  
 8 attention. I decided to yank the cord.  
 9 Q. It sounds like he was already kind of planning on  
 10 moving on. So my guess is there was no fall out  
 11 from that decision.  
 12 A. I can't say for certain whether he was planning  
 13 on moving on.  
 14 Q. At any rate there was no lawsuit between you two?  
 15 A. There was not.  
 16 Q. Anyone besides Revival Staffing?  
 17 A. Any time we discover that a temporary staffed  
 18 consultant has a criminal conviction or is unable  
 19 to provide us with the burden of proof necessary  
 20 to be legally allowed to work in the United  
 21 States we do not approve those staff consultants.  
 22 Q. Any other circumstances?  
 23 A. A myriad. The contract quite simply states that  
 24 I can use any reason I want to refuse the  
 25 employment of a staffed consultant. Our power

1 under that language is so broad that I don't  
 2 personally get involved in these decisions. It  
 3 is something that Mr. Pugliano would have handled  
 4 during this particular situation.  
 5 Q. Any other companies that you can recall utilizing  
 6 what you perceive to be the language in your  
 7 contract not to ever approve any employee  
 8 placements?  
 9 A. Yes. I sign a fair number of contracts with  
 10 companies that were simply never presented with  
 11 someone to employ. I mean, too many to count  
 12 almost. Nine out of ten agreements we sign with  
 13 customers do not result in the placement of a  
 14 staff consultant. That's the nature of working  
 15 with start-ups.  
 16 Q. So if I understand your testimony correctly, if  
 17 ten people enter into a contract, whether it was  
 18 a signed agreement or not with you, only one of  
 19 those ten will ever actually place anyone.  
 20 A. That is my experience.  
 21 Q. And you just thought that Mr. Stemm's company  
 22 would be one of those nine out of ten?  
 23 A. I can't recall what I thought at the time about  
 24 Mr. Stemm's company.  
 25 Q. The next phrase is declared an event of default.

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1 First of all, how did you declare an event of  
 2 default with Mr. Stemm's company?  
 3 A. Can you direct me to the page you are reading off  
 4 of? Is it still page number seven?  
 5 Q. We are right where we left off.  
 6 A. You are asking me how the event of default would  
 7 have been delivered to Mr. Stemm?  
 8 Q. Correct.  
 9 A. Typically John will send a letter.  
 10 Q. Do you know whether a letter was sent in this  
 11 case?  
 12 A. No. Actually I can't recall the exact nature in  
 13 which the -- sorry, the exact nature under which  
 14 the event of default was communicated to the  
 15 plaintiff.  
 16 Q. If I represented to you that I have never seen  
 17 either in writing or orally any event of default  
 18 declared would you disagree with me?  
 19 A. Yes. It is uncharacteristic for us to declare an  
 20 event of default without issuing a letter or a  
 21 verbal confirmation that an event of default is  
 22 being declared.  
 23 Q. Again, I'm going to represent to you that none  
 24 was done in this case and I'm going to ask you if  
 25 you know why.

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1 A. No.  
 2 Q. All right. Based upon the erratic behavior of  
 3 David Stemm. Again, have I given you every  
 4 opportunity to quantify, enumerate all of the  
 5 erratic behavior of David Stemm of which you are  
 6 aware of?  
 7 A. Not really. I can't recall you having asked me  
 8 to identify that.  
 9 Q. Then I will do it right now.  
 10 Please tell me every bit of erratic  
 11 behavior of David Stemm that you have in your  
 12 knowledge.  
 13 A. There was a crescendo that week of angry,  
 14 harassing and increasingly aggressive phone calls  
 15 made by David Stemm as well as Mr. Pattison to  
 16 various people at TempWorks demanding that  
 17 certain executives be interrupted just that  
 18 seemed off color the entire week. This  
 19 culminated on Friday with our decision to not  
 20 proceed.  
 21 Q. Anything else?  
 22 A. No.  
 23 Q. Now have I given you every opportunity to tell me  
 24 every bit of harassing behavior that you  
 25 witnessed from Mr. Stemm?

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1 A. I consider the phone called to Sepsey to be  
 2 harassing to my company and disrupted the  
 3 business relationship with Direct HR.  
 4 Q. Anything else?  
 5 A. No.  
 6 Q. I think we covered this but just to be certain,  
 7 interrogatory number 14 talks about doing  
 8 business in the state of Indiana. And I don't  
 9 believe there is any answer. There is purely an  
 10 objection.  
 11 My question is have you ever had an  
 12 affiliate do business in Indiana?  
 13 A. Yes I have.  
 14 Q. Who?  
 15 A. Her name was Heather Gray.  
 16 Q. And when did this occur?  
 17 A. This occurred during the month of December 2012.  
 18 Q. So before your experience with Mr. Stemm.  
 19 A. Correct.  
 20 Q. Did she actually make a placement?  
 21 A. Yes.  
 22 Q. And how was the staffing consultant covered by  
 23 workers' compensation insurance?  
 24 A. It was provided by Direct HR.  
 25 Q. So Direct HR was familiar with how to get this

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1 done?

2 **A.** Yes. I believe her temporaries had different job

3 descriptions than the ones contemplated by

4 Mr. Stemm, or at least had different job

5 descriptions of what he said his temps might do.

6 But yes.

7 **Q.** With respect to the relationship that your

8 company had with Mr. Stemm, did you consider any

9 part of that improper with respect to getting

10 workers' compensation insurance from Direct HR?

11 **A.** No.

12 **Q.** Everything was aboveboard.

13 **A.** Yes.

14 **Q.** Then explain to me if you would why Mr. Sepsey

15 couldn't provide workers' compensation insurance

16 for Mr. Stemm's staffing consultants in Indiana.

17 **A.** I couldn't tell you why.

18 **Q.** Do you agree with me that Mr. Sepsey and his

19 company Direct HR was unable to provide Mr.

20 Stemm's company and its staffing employees with

21 workers' compensation insurance?

22 **A.** I can't say with any certainty. We never

23 attempted to cover an employee with workers'

24 compensation insurance provided by Direct HR.

25 **Q.** I thought you just explained to me this other

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1 **A.** I can't be certain of that.

2 **Q.** Number 15. I think I got an answer talking about

3 certificates of insurance related to workers'

4 compensation in the state of Indiana. Ms. Gray

5 would have been issued certificates of insurance

6 relating to workers' compensation in Indiana in

7 December of 2012, correct?

8 **A.** Not necessarily.

9 **Q.** Please explain your answer to me.

10 **A.** If she or the work site didn't ask for them we

11 wouldn't have provided them.

12 **Q.** I see. You had the ability to provide them.

13 **A.** Yes.

14 **Q.** And with the exception of Ms. Gray there is no

15 one else to your recollection, no other company

16 where you had an affiliate doing business in

17 Indiana, correct?

18 **A.** Correct.

19 **Q.** Are you still doing business with Ms. Gray?

20 **A.** No.

21 **Q.** Why not?

22 **A.** Ms. Gray elected to hire one of our competitors

23 to provide services for her.

24 **Q.** Which competitor?

25 **A.** Advanced Payroll Funding of Cleveland, Ohio.

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1 woman in December of 2012 where Mr. Sepsey's

2 company provided workers' compensation insurance

3 for the staffing consultant in the state of

4 Indiana.

5 **A.** Direct HR does not provide insurance. They

6 provide a co-employment service and they agreed

7 to co-employ all of Ms. Gray's staffed

8 consultants. And they informed us that they

9 would decline to assist us with any of 180

10 Personnel or David Stemm's consultants.

11 **Q.** Did Mr. Sepsey give you a reason why he declined?

12 **A.** Yes. He believed that it was a multi level

13 staffing -- I believe that the misunderstanding

14 developed based on the conversations that

15 Mr. Stemm had with Mike Sepsey in which the

16 relationship was described as a multi level

17 staffing operation, which made him shy away from

18 proceeding.

19 **Q.** But if Mr. Stemm made this misrepresentation with

20 respect to multi level staffing relationship or

21 multi level co-employment Mr. Stemm would have

22 been mistaken, right?

23 **A.** Yes he would have.

24 **Q.** So it wouldn't have gone to the substance of the

25 relationship, correct?

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1 **Q.** Thank you. That's it for Exhibit 4.

2 Now we are going to move on to a series

3 of documents which I'm not going to mark as

4 exhibits because Mr. Reid has very capably

5 affixed what we call Bates stamping to these.

6 Are you familiar with that?

7 **A.** Yes.

8 **Q.** And we will just refer to the Bates stamp

9 numbers. Is that agreeable gentlemen?

10 MR. REID: Sure.

11 THE WITNESS: Yes.

12 BY MR. ANTRIM:

13 **Q.** Let's take a look at -- these are all going to be

14 TMS 00 unless I give you another number. So for

15 shorthand I'm hoping I can refer to this as 834.

16 **A.** You can.

17 **Q.** Thank you. This is an email from Mr. Pugliano to

18 Mari Kautzman?

19 **A.** Yes.

20 **Q.** This is the day before the relationship between

21 the parties to this lawsuit came to an end, is

22 that right?

23 **A.** Yes.

24 **Q.** Now, Mr. Pugliano claims in this email, does he

25 not, that he solved the misunderstanding with

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1 Direct HR?

2 **A.** I have read the document. What is your question?

3 MR. ANTRIM: What was the question,

4 Kris?

5 (At this time the requested portion of

6 the record was read back by the Court Reporter.)

7 THE WITNESS: He does use the verbiage

8 I have solved this misunderstanding.

9 BY MR. ANTRIM:

10 **Q.** Do you know whether or not that's true or not?

11 **A.** It is my understanding that it is not.

12 **Q.** So Mr. Pugliano was in error?

13 **A.** I can't comment as to where Mr. Pugliano thought

14 he was at the time he sent this email.

15 **Q.** There is nothing in this email that mentions

16 anything about a multi level staffing

17 relationship or multi level co-employment, does

18 it?

19 **A.** 180 Personnel called Direct HR and made the

20 mistake of asking them about approving their

21 temps. Direct HR delivered this message to their

22 comp carrier who balked by saying they will not

23 approve comp for one staffing company's temps

24 being sent to another staffing company for

25 placement.

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1 I'm referring specifically to 920.

2 **A.** Yes. I see that. What is the question?

3 **Q.** The question is looking at the last sentence of

4 the first email, the first one in the chain here,

5 180 Personnel will have people out next week. Do

6 you see that?

7 **A.** I do.

8 **Q.** Did Mr. Pugliano know what he was talking about?

9 **A.** I can't claim to know his state of mind at the

10 time he wrote that email.

11 **Q.** Do you have any facts to share with me which

12 would indicate that Mr. Stemm's company was not

13 ready to send staff consultants out to customers

14 on Monday, September 30, 2012?

15 **A.** I'm unaware of any such staffed consultants.

16 **Q.** It looks like Bob Pugliano knew about it, doesn't

17 it?

18 **A.** Maybe you should depose him.

19 **Q.** I intend to talk to him. He is not around here.

20 I have already noticed his deposition I think or

21 at least we talked about it.

22 Is it fair for me to characterize the

23 emails on 920 and 921 as dealing with the issue

24 that you and I have been discussing about the

25 relationship with DHR it is referred to here?

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1 Yes. It does describe that behavior.

2 **Q.** Mr. Pugliano at least isn't attributing any words

3 like multi level anything to Mr. Stemm, is he?

4 **A.** This email wasn't sent to Mr. Stemm. So he is

5 not attributing anything to Mr. Stemm.

6 **Q.** He is attributing Mr. Stemm mistakenly saying his

7 temps, right? But there is nothing wrong in that

8 relationship, right, whether you call them his

9 temps or your temps or our temps or whatever?

10 **A.** It is very, very wrong. That is in essence a

11 multi level staffing scheme.

12 **Q.** But it wasn't a multi level staffing scheme,

13 correct?

14 **A.** It was not. It was just described that -- or Mr.

15 Pugliano just claims it was described that way

16 by --

17 **Q.** Mr. Pugliano says what he says in his email,

18 right?

19 **A.** Yes.

20 **Q.** I think I understand.

21 Let's go on to 920, 921, 922 and 923.

22 This is again dated the day before the

23 relationship between the parties to this lawsuit

24 was terminated, at least the first email from Bob

25 Pugliano to Mari Kautzman. Are you with me?

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1 **A.** Yes.

2 **Q.** And what needed to be done in connection with

3 making sure that the insurance company that DHR

4 was intending to have underwrite this affair

5 realized there was no multi level scheming going

6 on here?

7 **A.** Can you repeat your question, please?

8 MR. ANTRIM: Go ahead.

9 (At this time the requested portion of

10 the record was read back by the Court Reporter.)

11 MR. REID: Objection, form.

12 BY MR. ANTRIM:

13 **Q.** You can answer.

14 **A.** That is the subject of these emails.

15 **Q.** Thank you. It seemed to be kind of a paperwork

16 problem, kind of an email problem, is that a fair

17 characterization?

18 **A.** It was more than that.

19 **Q.** Well, your contract makes it very clear that

20 TempWorks is the employer of any people that

21 Mr. Stemm sends out, right?

22 **A.** That's correct.

23 **Q.** So, again, because of the nature of the

24 relationship in the contract itself there is no

25 multi level staffing or multi level co-employment

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1 going on, is there?

2 **A. There is not.**

3 **Q.** So what needs to be done is Direct HR needs to be

4 assured and it needs to assure its carriers that

5 none of that is going on, right?

6 **A. Direct HR could use, like TempWorks Management**

7 **Services, any reason it wanted to to reject a**

8 **staff consultant -- sorry, in terms of**

9 **co-employment.**

10 **Q.** Please go to 922. And this is an email at the

11 bottom of the page from Casey to Bob, that's

12 Casey Kraus to Bob Pugliano, talking about a

13 logistical nightmare to take over admin work. Do

14 you see that?

15 **A. I do.**

16 **Q.** What was he talking about?

17 **A. I have no idea.**

18 **Q.** Is he talking about the paperwork associated with

19 making sure that Direct HR knew that TempWorks

20 was really the employer?

21 MR. REID: Asked and answered.

22 THE WITNESS: Asked and answered.

23 BY MR. ANTRIM:

24 **Q.** Pardon?

25 **A. Asked and answered.**

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1 **Q.** So one of the facts upon which you base your

2 complaint with respect to Mr. Stemm and his

3 company and Mr. Stemm's behavior is that he

4 referred to the staff consultants he was

5 referring as his temps, is that right?

6 **A. That is correct.**

7 **Q.** Anything else?

8 **A. Anything else what?**

9 **Q.** Any other complaints about Mr. Stemm and his

10 behavior with respect to this issue?

11 **A. That statement represents my complaints about the**

12 **communication between your client and Direct HR**

13 **entirely.**

14 **Q.** We have talked about your complaints about

15 Mr. Stemm being loony already, right?

16 **A. We have.**

17 **Q.** And you don't have anything to add to that, do

18 you?

19 **A. No.**

20 **Q.** Then let's go to 118. This is Friday, the day

21 that the parties to this litigation, this

22 contract, their relationship was terminated.

23 Mr. Stemm is inquiring of Mr. Pugliano whether or

24 not the Direct HR issue has been resolved, right?

25 **A. I have read the email.**

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1 **Q.** And my question is to your knowledge was the

2 issue ever resolved between Mr. Stemm's company

3 and your company and Mr. Sepsey's company?

4 **A. I can't recall.**

5 **Q.** So it may have been, it may not have been, you

6 are not sure?

7 **A. I'm not sure.**

8 **Q.** Now, again asking you to assume that Mr. Stemm

9 and Mr. Pattison have got customers, they have

10 got staff consultants and they have got

11 assignments and everything is ready to go on

12 Monday.

13 When Mr. Stemm is trying to make sure

14 is that everything is set for these people that

15 are all set to go on Monday, is it understandable

16 that he was going to get a little upset to find

17 out that it wasn't going to happen?

18 **A. You are asking me if it is understandable if**

19 **Mr. Stemm became upset if he found out it wasn't**

20 **going to happen.**

21 **Q.** I am.

22 **A. I'm a poor judge of human emotion. I have no**

23 **idea how he was supposed to feel.**

24 **Q.** Fair enough. 2480 is in front of you. Again,

25 this is Friday morning. Mr. Stemm is trying to

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1 figure out whether or not he has people going out

2 on Monday or not.

3 Did you ever give him an answer as to

4 whether or not he could have people going out on

5 Monday or not?

6 **A. Personally?**

7 **Q.** Anyone at your company.

8 **A. I can't recall.**

9 **Q.** Did anyone tell him why you were terminating the

10 relationship?

11 **A. I can't recall.**

12 **Q.** Here is 1119. And here is Mari Kautzman saying

13 that she is not going to talk to Mr. Stemm and

14 that he should be sent to her voice mail, is that

15 right?

16 **A. The email speaks for itself.**

17 **Q.** Thank you. Here's one from you where Mr. Stemm

18 is calling and harassing you. What was Mr. Stemm

19 doing?

20 **A. I have no idea. He wasn't -- I wasn't taking his**

21 **calls. But he left -- sorry. He left missed**

22 **calls for me three or four times that morning.**

23 **Q.** He had people going out Monday.

24 **A. I have no idea what he had. I didn't take any of**

25 **the calls.**

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1 Q. It didn't matter to you.  
 2 A. No.  
 3 Q. And showing you 1120. Do you know whether or not  
 4 Mr. Pugliano was the appointed agent to tell  
 5 Mr. Stemm that you weren't going to be going  
 6 forward with him?  
 7 A. I recall that he was.  
 8 Q. Did you have anything to do with that decision?  
 9 A. Yes. I instructed Mr. Pugliano to call Mr. Stemm  
 10 and let him know that it was over.  
 11 Q. Are those the words that you used to Mr.  
 12 Pugliano?  
 13 A. I can't recall the words I used.  
 14 Q. The words that Mr. Pugliano used according to  
 15 1120 is we would not be moving forward with his  
 16 company at this time. Is that fair?  
 17 A. Those don't appear to be Bob's words. They  
 18 appear to be the first line of the email from  
 19 Casey Kraus to Bob Pugliano.  
 20 Q. Well, I'm looking at the -- let's make sure we  
 21 are tracking.  
 22 I'm looking at 1120 and I'm looking at  
 23 the email from Bob Pugliano to Casey Kraus,  
 24 Ashlee Brace and Mari Kautzman. And he says I  
 25 did leave a message that we would not be moving

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1 forward with his company at this time. Do you  
 2 see that?  
 3 A. Yes.  
 4 Q. Were those words that you approved?  
 5 A. No, not verbatim.  
 6 Q. Your words were it is over.  
 7 A. I can't recall whether those were my words  
 8 either.  
 9 Q. Do you know whether or not Mr. Stemm was given  
 10 any explanation whatsoever from your company why  
 11 it was over?  
 12 A. I'm unfamiliar with whether that happened or not.  
 13 Q. Now, the part that you were referring to, the  
 14 bottom of 1120, that's Casey Kraus saying that  
 15 Mr. Stemm was mentally instable.  
 16 A. He gave us that impression.  
 17 Q. And you shared that impression.  
 18 A. Without a doubt.  
 19 Q. And Mr. Kraus seemed to be a little miffed  
 20 because he called Mr. Stemm and Mr. Stemm didn't  
 21 remember him? Is that part of it?  
 22 A. I can't recall.  
 23 Q. You don't know one way or another?  
 24 A. No.  
 25 Q. Showing you 2484. This is Mr. Stemm at 1:00 in

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1 the afternoon on Friday, September 27th, 2012  
 2 again requesting at this point of you and Mari  
 3 Kautzman what the circumstances were. Do you see  
 4 that?  
 5 A. Yes, I do see.  
 6 Q. Did anyone ever tell him what it was?  
 7 A. Probably not.  
 8 Q. Why not?  
 9 A. We were busy with other clients.  
 10 Q. Too busy for Mr. Stemm.  
 11 A. Yes.  
 12 Q. And showing you 2488. That kind of confirms what  
 13 you just testified to that you are not moving  
 14 forward with him. These are Pugliano's words.  
 15 And he says further that no email will be sent to  
 16 him. Let's just move on. Was that the company's  
 17 position?  
 18 A. Yes.  
 19 Q. Again, the company didn't think they owed him an  
 20 explanation.  
 21 A. No we didn't.  
 22 Q. Do you still think that?  
 23 A. Yes.  
 24 Q. That's because even though he had a contractual  
 25 relationship with you you didn't have any duty to

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1 ever allow him to do business according to that  
 2 contract, right?  
 3 A. Correct.  
 4 Q. This one we have to look a little harder. We  
 5 have to look up in the corner for the TMS. This  
 6 particular one is TMS 03823. I will represent to  
 7 you it is page 14 of your contract.  
 8 Directing your attention to section --  
 9 excuse me, article 4, TempWorks obligations,  
 10 section 4.1, employment administration. Do you  
 11 see that?  
 12 A. Yes.  
 13 Q. First of all, is it fair for me to say that  
 14 TempWorks doesn't have many obligations in this  
 15 contract, right?  
 16 A. It would be very fair to say that.  
 17 Q. Very fair to say that I think you said?  
 18 A. Yes.  
 19 Q. But one of those obligations is TempWorks will  
 20 maintain, administer and pay for workers'  
 21 compensation insurance in a policy which includes  
 22 employer insurance available to TempWorks, right?  
 23 A. Only to staff consultants who are engaged as  
 24 employees, which in this instance did not exist.  
 25 Q. And the problem in this case why Mr. Stemm

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1 couldn't place those folks on Monday was because  
 2 he couldn't get workers' compensation coverage,  
 3 at least --  
 4 **A.** No. We had already made the determination that  
 5 he was bat shit and didn't want to do business  
 6 with him on account of that and thus not employ  
 7 any of the staff consultants.  
 8 **Q.** That he was a bad shit?  
 9 **A.** Was bat shit. That he was bat shit crazy.  
 10 **Q.** I just want to make sure I have it right.  
 11 So that's your position. It didn't  
 12 have anything to do with whether or not he could  
 13 provide workers' compensation coverage. It was  
 14 because Mr. Stemm was bat shit.  
 15 **A.** Correct.  
 16 **Q.** And you don't have to work with any bit shit  
 17 people.  
 18 **A.** Not if I don't want to.  
 19 **Q.** I'm going to link these two. I'm linking up 3829  
 20 and 3830.  
 21 Showing you what have been marked 3829  
 22 and 3830. And I'm representing to you that these  
 23 are to the best of my knowledge true and correct  
 24 photocopies of your contract.  
 25 Would you agree with me -- is it fair  
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1 for me to say -- excuse me.  
 2 MR. ANTRIM: Off the record a second.  
 3 (At this time a recess was had.)  
 4 BY MR. ANTRIM:  
 5 **Q.** Showing you what has been marked 3829 and 3830.  
 6 Contained therein is section 11.3, termination by  
 7 TempWorks. TempWorks has a lot of reasons in its  
 8 contract to terminate the agreement, would you  
 9 agree with me?  
 10 **A.** Yes.  
 11 **Q.** 21, plus some general ones. What I'm asking you,  
 12 Mr. Dourgarian, if you would be so kind, is to  
 13 tell me which ones in your opinion were the basis  
 14 of the termination of the contract by TempWorks  
 15 of Mr. Stemm's company.  
 16 **A.** 13, operating in disregard of my financial or  
 17 legal interests by initiating contact with Mr.  
 18 Sepsey and describing the temporary employees as  
 19 his temps.  
 20 **Q.** Just a second. Hold that thought.  
 21 Are you saying that Mr. Stemm was not  
 22 to communicate under any circumstances with Mr.  
 23 Sepsey?  
 24 **A.** Not by phone, no.  
 25 **Q.** Only email.

1 **A.** I don't even think we wanted him doing that. I  
 2 just don't know that we said that explicitly.  
 3 **Q.** Anything besides number 13?  
 4 **A.** Give me some time, please. Number one, the  
 5 occurrence of any event or condition which alone  
 6 or when taken together with all other events or  
 7 conditions occurring or existing concurrently  
 8 therewith, TempWorks determines one, has or maybe  
 9 reasonably expected to have a material adverse  
 10 effect upon your business, operations, properties  
 11 and condition.  
 12 And what I refer to specifically is the  
 13 erratic nature of his behavior and the harassing  
 14 phone calls made during that final week of  
 15 September lead me to believe, as I mentioned  
 16 prior in my testimony, that such a person might  
 17 be inclined to contract with customer sites that  
 18 may have credit problems or may attempt to  
 19 intercept payment from those customer sites due  
 20 to TempWorks Management Services.  
 21 **Q.** With respect to those last two reasons, you  
 22 didn't have any evidence that Mr. Stemm would be  
 23 doing such a thing, did you?  
 24 **A.** I didn't need anything.  
 25 **Q.** You were just suspicious that he might because he  
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1 was bat shit.  
 2 **A.** This contract protects my suspicions.  
 3 **Q.** So all you need is a suspicion.  
 4 **A.** That is correct.  
 5 **Q.** Anything else? We have got one and we have got  
 6 13 so far.  
 7 **A.** What's the date on this, the original agreement?  
 8 **Q.** I think Mr. Stemm signed it on August 13th of  
 9 2012.  
 10 **A.** More than three days between August 13th and the  
 11 date in question?  
 12 **Q.** I don't answer questions.  
 13 **A.** Well, I will represent that there are more than  
 14 three business days between the date of Mr.  
 15 Stemm's signature and the end of September.  
 16 And as I recall at no point did a staff  
 17 consultant -- was a staff consultant hired, at no  
 18 point was a client billed. There are plenty --  
 19 in excess of three business days passed between  
 20 the execution of this agreement and the date on  
 21 which you cite breach on which no business was  
 22 done at all.  
 23 **Q.** Anything else?  
 24 **A.** No.  
 25 **Q.** With respect to number 13, disregard of TempWorks

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1 financial or legal interests, what do you believe  
 2 that Mr. Stemm did which would indicate he was  
 3 disregarding TempWorks financial or legal  
 4 interests?  
 5 **A.** By misrepresenting the nature of his relationship  
 6 with the as yet unhired staff consultants to  
 7 Direct HR he caused our relationship with Direct  
 8 HR irrevocable harm. In fact Direct HR later  
 9 canceled its agreement with TempWorks in its  
 10 entirety, forcing me to go out and procure a  
 11 workers' compensation insurance policy which I  
 12 paid well over \$1 million for.  
 13 **Q.** So DHR canceled its relationship with TempWorks.  
 14 **A.** It did.  
 15 **Q.** And you attribute that to Mr. Stemm.  
 16 **A.** I do.  
 17 **Q.** Anything else?  
 18 **A.** No.  
 19 **Q.** Showing you 768. This is an email to you.  
 20 Contained within this chain is an email from  
 21 Ashlee Brace to Eric Pattison. You will need to  
 22 email them to Mike at Direct HR. Do you see  
 23 that?  
 24 **A.** I do.  
 25 **Q.** So Mr. Stemm was invited to email Mr. Sepsey, was  
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1 he not?  
 2 **A.** He was.  
 3 **Q.** Do you have any idea of the amount of business  
 4 that Mr. Stemm was prepared to do starting  
 5 immediately on September 30th of 2012?  
 6 **A.** That would be the Monday after this -- after the  
 7 events we have been discussing?  
 8 **Q.** After the Friday. Black Friday.  
 9 **A.** No.  
 10 **Q.** This is a Paperless form I believe, is that  
 11 right?  
 12 **A.** I see it.  
 13 **Q.** And if I represented to you that Mr. Stemm worked  
 14 with Mr. Pugliano with respect to completing this  
 15 document would you have any reason to disagree  
 16 with me?  
 17 **A.** No.  
 18 **Q.** If I represented to you that this was Mr. Stemm's  
 19 handwriting would you have any reason to disagree  
 20 with me?  
 21 **A.** No.  
 22 **Q.** His signature?  
 23 **A.** No.  
 24 **Q.** At this point in time Mr. Stemm is representing  
 25 to Paperless that his estimated payroll was  
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1 100,000 a year or 108,200 perhaps?  
 2 **A.** I believe that all of these questions reference  
 3 by the week. But go on.  
 4 **Q.** Well, it says estimated number of temps per week  
 5 five. Estimated payroll 108,200? Does that make  
 6 any sense?  
 7 **A.** Yes.  
 8 **Q.** And number of active customers zero? That makes  
 9 sense, right?  
 10 **A.** It does.  
 11 **Q.** But the estimated invoicing of 200,000, does that  
 12 make sense as well?  
 13 **A.** Yes.  
 14 **Q.** And based upon these numbers what would the  
 15 estimated TempWorks earnings be on its  
 16 relationship with Mr. Stemm on an annual basis?  
 17 **A.** Based on his estimates?  
 18 **Q.** Yes.  
 19 **A.** My earnings would have been zero.  
 20 **Q.** Why is that?  
 21 **A.** Because the estimated payroll and invoicing  
 22 compared to the number of temps per week suggests  
 23 a fictitious or fraudulent business relationship  
 24 that -- I mean, it bears one of the badges of  
 25 fraud. I say zero because if one of my clients  
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1 or somebody that I dealt with directly as opposed  
 2 to via the intermediary, Mr. Pugliano, told me  
 3 that they were going to pay five temps a combined  
 4 total of \$100,000 per week I would never allow  
 5 that transaction to proceed.  
 6 **Q.** So there might have been a mistake between Mr.  
 7 Pugliano and Mr. Stemm with respect to week or  
 8 annual.  
 9 **A.** Mr. Pugliano's handwriting doesn't appear to be  
 10 on this document.  
 11 **Q.** So it is all Mr. Stemm's fault.  
 12 **A.** Yes.  
 13 **Q.** And with respect to the estimated invoicing of  
 14 200,000, do you think that was a weekly or annual  
 15 basis?  
 16 **A.** It would appear to be weekly. Once again these  
 17 -- when the salesperson helps a customer fill out  
 18 this form they are told to give us the weekly  
 19 estimated invoicing. That's the defacto standard  
 20 for tracking sales in this industry. So, yes,  
 21 you would be billing \$200,000 per week for five  
 22 people and 40,000 per week per person. It makes  
 23 no sense.  
 24 **Q.** And if indeed you would have looked at this  
 25 document or someone at TempWorks that knew what  
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1 they were doing as of July 15, 2012 you could  
 2 have concluded that Mr. Stemm was bat shit.  
 3 **A.** Or had grossly over estimated his future  
 4 earnings.  
 5 (Exhibit No. 6 was marked for  
 6 identification.)  
 7 BY MR. ANTRIM:  
 8 **Q.** Have you seen the expert reports that Mr. Stemm  
 9 has procured in connection with this litigation?  
 10 **A.** I have.  
 11 **Q.** With respect first to Mr. Testy, I take it you  
 12 don't agree with his conclusions, is that a fair  
 13 statement?  
 14 **A.** Is this Mr. Testy's expert witness statement in  
 15 its entirety or am I looking at both expert  
 16 witness statements here?  
 17 **Q.** You are looking at Mr. Testy's and then his  
 18 signature page and then his addendum or his  
 19 exhibit to his report and then his resume which  
 20 is three pages and then Mr. Tuisl's three page  
 21 report. That's the full content of Exhibit 6.  
 22 **A.** It suffices to say that I disagree with both  
 23 expert witness opinions in their entirety.  
 24 **Q.** Let's take the first one. Tell me why you  
 25 disagree with Mr. Testy.

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1 Plus at the time that this -- at the time of the  
 2 formation of 180 Personnel was a national  
 3 staffing company having more than 70 offices with  
 4 sales in excess of \$300 million per year. And  
 5 180 Personnel to the best of my knowledge did not  
 6 have a single employee, a single contracted  
 7 customer. I'm not even certain whether an office  
 8 space had been procured.  
 9 So to describe -- to base an estimate  
 10 for one business' sales based off the success of  
 11 another business that could not be more distant  
 12 in its description of operations seems bogus to  
 13 me.  
 14 **Q.** Are you aware of any relationship that Mr. Stemm  
 15 had with Employment Plus? Excuse me. I always  
 16 say that wrong. Is it Employment Plus?  
 17 **A.** I believe he worked there.  
 18 **Q.** On two different occasions?  
 19 **A.** I wasn't aware of that.  
 20 **Q.** He was in at the very ground floor of it, helped  
 21 grow it, do you know any of that?  
 22 **A.** No.  
 23 **Q.** How about Mr. Pattison? Do you know that he also  
 24 worked for Employment Plus?  
 25 **A.** Yes.

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1 **A.** Well, I'm going to read from opinions on page  
 2 one. David Stemm and Eric Pattison had  
 3 demonstrated their ability to grow healthcare  
 4 staffing business in the Indianapolis market.  
 5 They had secured commitments from four of their  
 6 previous EP Healthcare clients to engage 180  
 7 Personnel to provide temporary staffing services,  
 8 Goodman Campbell Brain and Spine, Kevin Ward DDS,  
 9 Otolaryngology Associates and Podiatry  
 10 Associates. The gross profit dollars for those  
 11 four clients alone represent a lost opportunity  
 12 of \$70,541 per year. Further, I find it  
 13 reasonable that 180 Personnel would generate a  
 14 business volume similar to the level Employment  
 15 Plus Healthcare had produced under David Stemm  
 16 and Eric Pattison's direction, thereby increasing  
 17 the lost opportunity to \$140,647 gross profit  
 18 dollars per year.  
 19 Well, first, no written commitments  
 20 between Mr. Stemm or Mr. Pattison and any of  
 21 these businesses has been presented as evidence.  
 22 Second, 180 Personnel could not be more  
 23 thoroughly distant in description as a business  
 24 from Employment Plus.  
 25 Correct me if I'm wrong, but Employment

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1 **Q.** Are you aware that Mr. Stemm negotiated a release  
 2 of Mr. Pattison from his noncompete so that they  
 3 could immediately begin working with these  
 4 clients?  
 5 **A.** I have no proof of that.  
 6 **Q.** Do you know that Mr. Stemm was able to do that  
 7 because of his relationship with the founder of  
 8 Employment Plus over all of these years? I think  
 9 it is another Mike, isn't it?  
 10 **A.** Yes.  
 11 **Q.** Are you aware of any of that?  
 12 **A.** I'm not.  
 13 **Q.** Are you aware that Eric Pattison had this book of  
 14 business, the only thing that was changing was  
 15 Employment Plus to 180 Personnel?  
 16 **A.** That is a ridiculous statement.  
 17 **Q.** Why?  
 18 **A.** During the course of my career I have factored or  
 19 provided or executed affiliate contracts with  
 20 more than 200 staffing agencies. Virtually every  
 21 one of them comes to me with the same story.  
 22 They worked for a national staffing company.  
 23 They had a book of business supposedly. And they  
 24 wish to walk out the front door of their former  
 25 employer and establish themselves on their own

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1 and procure our services to help with that.  
2 As I mentioned previously in my  
3 testimony, while nearly every single one of my  
4 customers in the entire history of my business  
5 comes to me with such a story, I only end up with  
6 one in ten that go anywhere.

7 Thus, to state that because they were  
8 employees of Employment Plus and had working  
9 relationships with Employment Plus customers that  
10 those Employment Plus customers would follow them  
11 simply because they left Employment Plus is a  
12 ridiculous claim. If it weren't ridiculous it  
13 would be backed up by a signed contract of some  
14 kind.

15 Q. Anything else?

16 A. If I were to infer that this expert testimony  
17 actually fairly estimated the potential gross  
18 profit dollars of this venture, then given our  
19 current circumstances one would have to ask why  
20 did the failure of one affiliate relationship  
21 with TempWorks Management Services forever and  
22 irrevocably damage the relationship between  
23 Mr. Stemm and these businesses? Wouldn't he have  
24 opened up another staffing company the second  
25 week using one of my dozen competitors? One

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1 interest which will prevent Mr. Tuisl from ever  
2 appearing as a trial witness.

3 Q. Anything else?

4 A. No.

5 Q. That's all I have. Thank you.

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1 would think this would have happened at some  
2 point during the last year.

3 Q. Anything else?

4 A. No.

5 Q. So I have given you a full opportunity to recite  
6 for me your reasons why Mike Testy's expert  
7 report should not be relied upon.

8 A. That is correct.

9 Q. Moving then to Mr. Tuisl's report which is the  
10 last three pages of Exhibit 6, I'm going to ask  
11 you to first tell me whether or not you agree  
12 with his analysis.

13 A. Yes. I do disagree with his testimony. I find  
14 that Mr. Tuisl himself misunderstands the  
15 relationship that TempWorks Management Services  
16 has with its affiliates.

17 At no point do TempWorks Management  
18 Services staff consultants ever work for another  
19 staffing agency. They maybe recruited by  
20 employees of another staffing agency but no  
21 employment relationship exists between the  
22 affiliate agency and said employees. Thus it  
23 appears that Mr. Tuisl is basing all of his  
24 findings on a set of hypothetical circumstances  
25 which didn't exist and it is a major conflict of

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1 STATE OF MINNESOTA )  
 ) ss.

2 COUNTY OF HENNEPIN )

3 I, Kristin Hoium, a Notary Public in and for the  
4 County of Hennepin, in the State of Minnesota, do  
5 hereby certify:

6 That the witness in the foregoing deposition named  
7 was present at the time and place therein specified;

8 That the said proceeding was taken before me as a  
9 Notary Public at the said time and place and was  
10 taken down in shorthand writing by me;

11 That said proceeding was thereafter under my  
12 direction transcribed into computer-assisted  
13 transcription, and that the foregoing transcript  
14 constitutes a full, true and correct report of the  
15 proceedings which then and there took place;

16 That I am a disinterested third person to the said  
17 action.

18 IN WITNESS THEREOF, I have hereto subscribed my hand  
19 and affixed my official seal this 22nd day of  
20 September, 2014.

21 \_\_\_\_\_  
22 Kristin Hoium  
23 Court Reporter  
24  
25

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1 DEPOSITION CORRECTION PAGE

TITLE: Stemm vs. TempWorks

2 WITNESS: David Dourgarian

PAGE LINE DESIRED CHANGE/REASON FOR CHANGE

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17 -----  
18 Signature of Witness

19 Subscribed and sworn to before:

20 Notary Public \_\_\_\_\_ County of  
Minnesota, \_\_\_\_\_ 20\_\_\_\_

21  
22  
23  
24  
25

VERBATIM REPORTING (763) 493-4535

1 Kristin Hoium  
2 VERBATIM REPORTING  
3 8906 ASHLEY TERRACE, SUITE 100  
4 Minneapolis, MN 55443  
5 Telephone 763-493-4535  
6 Fax 763-493-4532

7  
8  
9 September 22, 2014

10  
11  
12 John Reid  
13 3140 Neil Armstrong Blvd., Suite 205  
14 Eagan, MN 55121

15 Re: Stemm vs. TempWorks

16 Dear Mr. Reid:

17 With regard to the above-entitled matter,  
18 enclosed please find the Reading and Signing  
19 Certificate and transcript for the deposition of  
20 David Dourgarian.

21 Please have him complete the Certificate, retain  
22 a copy for your transcript, and send the original to  
23 Mr. Antrim.

24 Thank you for your cooperation. Feel free to  
25 call me if you have any questions.

Sincerely,

Kristin Hoium

cc: George Antrim

21  
22  
23  
24  
25

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