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ISB No.: 2455

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON)
)
)
Plaintiff,)
)
)
v.)
)
CONTINENTAL CASUALTY COMPANY)
an Illinois corporation; CNA GROUP)
LIFE ASSURANCE COMPANY, a)
wholly owned subsidiary of Continental)
Casualty Company, RURAL)
TELEPHONE COMPANY, and Idaho)
corporation)
)
Defendants.)
_____)

Case No.: CV02-0507-S-LMB

AFFIDAVIT OF DAVID E. COMSTOCK

STATE OF IDAHO)
)
County of Ada)

I, David E. Comstock, being first duly sworn upon oath, depose and state as follows:

I am the attorney for the Plaintiff in the instant matter, and as such have personal

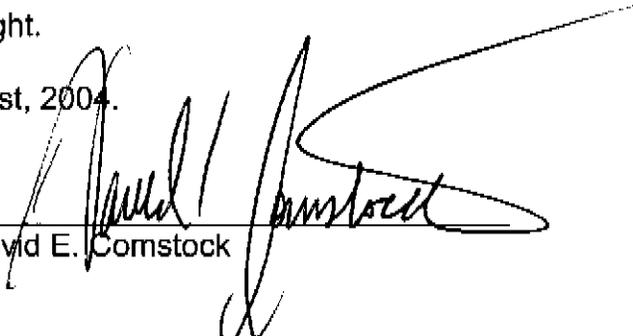
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knowledge of the facts set forth herein.

1. Attached hereto as **Exhibit A**, is a true and correct copy of the *Deposition Transcript of Brian Barnham in this matter.*

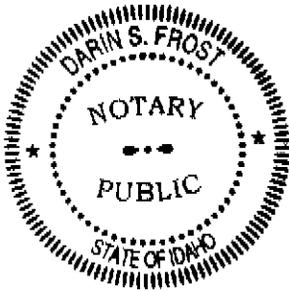
Further your Affiant saith naught.

Dated this 11 day of August, 2004.



David E. Comstock

SUBSCRIBED AND SWORN to before me this 11th day of August, 2004.





Notary Public for the State of
Idaho, residing at David E. Comstock
My Commission Expires: 5/26/06.

CERTIFICATE OF SERVICE

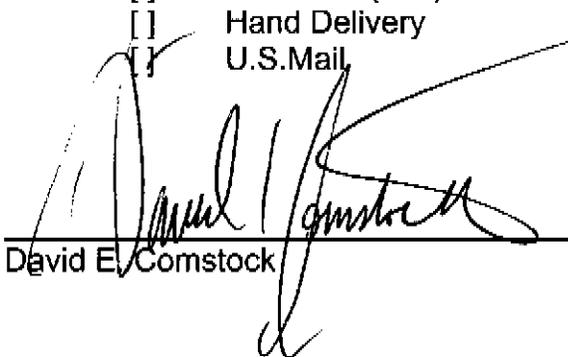
I hereby certify that on this 11 day of August, 2004, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

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ANDERSON JULIAN & HULL
250 S. 5th Street, Suite 700
PO Box 7426
Boise ID 83707-7426
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- Facsimile (208) 344-5510
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David E. Comstock

In The Matter Of:

*Chris Dennison v.
Continental Casualty Co., et al.*

*Brian Barnum
May 25, 2004*

*Jay E. Suddreth & Associates, Inc.
10104 W. 105th Street, Suite 100
Overland Park, KS USA 66212*

(913) 492-0111

*Original File 052504BB.TXT, 61 Pages
Min-U-Script® File ID: 1910324665*

Word Index included with this Min-U-Script®

EXHIBIT

A

[1] IN THE UNITED STATES DISTRICT COURT
 [2] FOR THE DISTRICT OF IDAHO
 [3] CHRIS DENNISON,)
 [4] Plaintiff,)
 [5] vs.)
 [6] CONTINENTAL CASUALTY COMPANY,) Case No. CIV 02-507-S-LMB
 an Illinois corporation; CNA)
 [7] GROUP LIFE ASSURANCE COMPANY,)
 a wholly owned subsidiary of)
 [8] Continental Casualty Company,)
 RURAL TELEPHONE COMPANY, an)
 [9] Idaho Corporation,)
 [10] Defendants.)

[11] TELEPHONIC DEPOSITION OF BRIAN BARNUM,

[13] produced, sworn, and examined on Tuesday, the 25th
 day of May, 2004, between the hours of 8:00 o'clock in
 [14] the forenoon and 6:00 o'clock in the afternoon of that
 day at 10104 West 105th Street, in the City of
 [15] Overland Park, County of Johnson, State of Kansas,
 before:

[16] AMANDA L. CULLEN, CSR
 [17] Certified Shorthand Reporter
 of
 [18] JAY E. SUDDRETH & ASSOCIATES, INC.
 Suite 100
 [19] 10104 West 105th Street
 Overland Park, Kansas 66212-5746

[20] a Certified Court Shorthand within and for the State of
 [21] Kansas.
 [22] Taken on behalf of Plaintiff pursuant to Notice to Take
 Deposition.

[23]
[24]
[25]

[1] APPEARANCES
 [2] For the Plaintiff:
 [3] LAW OFFICES OF COMSTOCK & BUSH
 Attorneys at Law
 [4] 199 North Capitol Boulevard, Suite 500
 P.O. Box 2774
 [5] Boise, ID, 83701-2774
 BY: MR. DAVID E. COMSTOCK (Via telephone)
 [6] For the Defendant, Continental Casualty Company and
 [7] CNA Group Life Assurance Company:
 [8] LAW OFFICE OF QUANE SMITH
 Attorneys at Law
 [9] 2325 West Broadway, Suite B
 Idaho Falls, ID 83402-2948
 [10] BY: MR. ROBERT D. WILLIAMS
 [11] For the Defendant, Rural Telephone Company:
 [12] ANDERSON, JULIAN & HULL, L.L.P.
 Attorneys at Law
 [13] 250 South 5th Street, Suite 700
 P.O. Box 7426
 [14] Boise, ID 83707-7426
 BY: MR. ROBERT A. ANDERSON (Via telephone)

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[1] BRIAN BARNUM,
[2] of lawful age, having been first duly sworn to tell the
[3] truth, the whole truth, and nothing but the truth,
[4] testified as follows:

[5] **EXAMINATION**
[6] **BY MR. COMSTOCK:**

[7] **Q:** Mr. Barnum, my name's Dave Comstock. I represent
[8] Chris Dennison in this litigation. I introduced myself
[9] informally before we started.

[10] Would you take a moment and please state your
[11] name for our record, spell your last name for the court
[12] reporter, and tell me what you are personally doing for
[13] a living.

[14] **A:** Brian Barnum, B-a-r-n-u-m. I'm currently a new
[15] business manager with Hartford Life Insurance.

[16] **Q:** I have been reviewing a resum for you,
[17] Mr. Barnum, which was faxed to me. It indicates on this
[18] resum that from 2001-2002, you worked for CNA as a long
[19] term disability benefit specialist; is that correct?

[20] **A:** Yes.

[21] **Q:** If I have your resum correct, it looks like you
[22] graduated from college around 1991; is that correct?

[23] **A:** Yes, sir.

[24] **Q:** From '91 until you went to work for CNA in 2001,
[25] it appears that you had several jobs in the insurance

[1] industry; correct?

[2] **A:** Yes.

[3] **Q:** Looking at your resum again underneath the
[4] category long term disability benefit specialist
[5] 2001-2002, it says responsible for long term disability,
[6] case load of 80-100 ongoing claims, as well as 30-40 new
[7] claims per month.

[8] Let me ask you a couple of questions about that.
[9] Was this typical during the time frame of 2001-2002 for
[10] you to be handling a case load of 80-100 ongoing claims
[11] at any one point in time?

[12] **A:** Probably more towards the end of that time frame.
[13] Because when we initially — When I initially began the
[14] job, all we were getting was new claims. 80-100 was
[15] probably towards the end when those new claims kind of
[16] transitioned over to longer term disability claims.

[17] **Q:** So when did you actually start for CNA in the
[18] year 2001?

[19] **A:** January.

[20] **Q:** So by the end of the year 2001, would you be up
[21] to 80-100 ongoing claims?

[22] **A:** Yes. That sounds about right.

[23] **Q:** In addition, it says here on your resum that you
[24] were handling 30-40 new claims per month.

[25] **A:** Yes.

[1] **Q:** Is that correct?

[2] **A:** Yes. That's an estimate. I couldn't give you
[3] the exact numbers.

[4] **Q:** Your resum goes on to state reviewed each claim
[5] for eligibility, medical, and technical issues. Can you
[6] just tell me what you understood your responsibility to
[7] be when a claim was presented to you.

[8] **A:** My responsibility was to take the contract and
[9] assess each claim against the actual contract that was
[10] written.

[11] **Q:** All the claims that you worked on during this
[12] particular period of time, 2001-2002, were all long term
[13] disability claims?

[14] **A:** Probably more towards the end. Maybe in the
[15] beginning when we first got started, there may have been
[16] some short term disability claims in there as well. I
[17] think there was a change in process, and I was chosen to
[18] do more of the long term disability claims maybe, I'm
[19] guessing, summer or fall of 2001.

[20] **Q:** With respect to your duties to assess a claim for
[21] eligibility for long term disability, would part of that
[22] include understanding the medical problems as well as
[23] the difficulties the employec was having in the
[24] workplace because of the medical problems?

[25] **A:** Basically, we had a nurse case manager on staff

[1] that was in charge of reviewing the medical information
[2] that was submitted with each claim. I had a general
[3] knowledge, but I was not the main medical review person.
[4] That's what the nurse case manager was for.

[5] **Q:** Did you have a nurse case manager working on each
[6] and every disability claim that you were assessing?

[7] **A:** With work flow, they were needed — they were
[8] there if necessary. Like if a claim came in
[9] that — technical — they didn't meet necessary — they
[10] had technical issues, such as not meeting the waiting
[11] period, not being eligible for the insurance, then a
[12] nurse wouldn't even review the claim. We would just
[13] deny the claim up front. If there was an issue just
[14] based on eligibility, then the nurse would not review
[15] that particular claim.

[16] Once we verify that the claimant was eligible for
[17] the insurance, then basically that's when a nurse would
[18] then look at the medical, once we got past all the
[19] eligibility issues.

[20] **Q:** I want to get back to your — what you considered
[21] your obligations to be, relative to assessing whether or
[22] not an employec was eligible. Would you agree with me
[23] that part of your responsibility in terms of doing your
[24] assessment of the claim was developing an understanding
[25] of the medical issues that were causing problems for the

[1] employee?

[2] **A:** I'm sorry. I'm not quite sure what you're
[3] saying. Can you repeat that?

[4] **Q:** Would you agree with me that as part of your
[5] responsibilities in making an assessment or a
[6] determination with respect to a disability claim, part
[7] of your responsibility included developing and
[8] understanding of the medical problems that were causing
[9] the employee difficulty in the workplace?

[10] **A:** No. My responsibility was to look at the
[11] technical issues. I'd say more the nurse case manager's
[12] job would be to review the medical. I looked at the
[13] technical issues.

[14] **Q:** So you, as the long term disability specialist,
[15] did not look at the medical side of the at all?

[16] **A:** I may have reviewed it, but it was not my actual
[17] job duty, based on the work flow. It was really the
[18] nurse case manager's job to review and make a decision
[19] based on the information that was submitted.

[20] **Q:** So tell me how you communicate with the nurse
[21] case manager.

[22] **A:** Basically, once I assess the technical issues, I
[23] would take the claim file to their desk. And if need
[24] be, we would sit down and discuss the actual job duties
[25] of the claimant. Then basically, it was the nurse case

[1] manager's duty to review whatever medical was submitted.

[2] **Q:** Well, I take it that if a decision was made to
[3] deny the claim based upon the medical review and your
[4] assessment, is that decision made by the nurse case
[5] manager or by you?

[6] **A:** Basically, a combination. In regards to that,
[7] reviewing the medical information, that was completely
[8] the nurse case manager.

[9] **Q:** Getting back to your resum , it says in the same
[10] section "regularly worked with nurse case managers and
[11] vocational rehabilitation specialists to assess
[12] eligibility."

[13] Would you agree that that is something that you
[14] did regularly in assessing disability claims?

[15] **A:** Yes.

[16] **Q:** Vocational rehabilitation specialists help you
[17] assess disability claims how?

[18] **A:** They're more along the job specialists. They
[19] have a history — a good working knowledge of being able
[20] to look at a job and match up actual duties of the job.

[21] **Q:** You've already explained to you how you regularly
[22] worked with nurse case managers. Your resum goes on to
[23] say "correspondence with employers, physicians, and
[24] claimants to obtain additional information necessary for
[25] proper review of the claim file."

[1] Would you agree that a proper review of a claim
[2] file would include corresponding and/or conversing with
[3] the employer of the particular employee?

[4] **A:** Yes.

[5] **Q:** Would you agree with me that proper review of a
[6] claim file would include corresponding with and/or
[7] interviewing the physician who was writing about the
[8] particular employee?

[9] **A:** Not for every claim. If the situation arose
[10] where it was necessary, then we would pursue that.

[11] **Q:** If there were any question when reviewing a
[12] person's eligibility for disability based upon something
[13] the physician has written, would a proper review to
[14] resolve that question include either corresponding with
[15] the physician about that or speaking with the physician
[16] directly?

[17] **MR. WILLIAMS:** Object to the form. You can
[18] go ahead and answer.

[19] **A:** I'm sorry. Can you repeat that?

[20] **Q:** (By Mr. Comstock) I'm happy to. If there were
[21] any question that arose in either your mind or the nurse
[22] case manager's mind from the physician's records, would
[23] a proper review of the claim before deciding to either
[24] grant or deny the claim include either contacting the
[25] physician in writing to resolve the question or

[1] contacting the physician by phone to resolve the
[2] question?

[3] **A:** If necessary, it would be the nurse's duty if she
[4] had any question.

[5] **Q:** You would never do that yourself?

[6] **A:** Normally, the only thing I would do would be to
[7] request medical records for their medical information.
[8] I cannot recall ever calling up a physician personally
[9] and asking them specific questions about the medical
[10] that was received. That was more along the nurse's
[11] duties.

[12] **Q:** Well, your resum says that you regularly
[13] corresponded with employers and physicians.

[14] **A:** Yeah, to request medical records. That was my
[15] main correspondence with physicians.

[16] **Q:** So if there was a question in your mind relative
[17] to a person's eligibility for disability, you would not
[18] call the doctor?

[19] **A:** No. That's more along the nurse's guidelines.

[20] **Q:** Your resum also indicates that you corresponded
[21] regularly with claimants to obtain additional
[22] information necessary for proper review of the claim
[23] file. Would it be fair to say, Mr. Barnum, that if you
[24] had questions with respect to the information a claimant
[25] was providing, that a proper review of the claim file

[1] would include contacting that claimant to resolve your
[2] questions?

[3] **MR. WILLIAMS:** Object to the form.

[4] **A:** Yes, I would contact them.

[5] **Q:** (By Mr. Comstock) If a claimant was as part of
[6] their initial claim indicating that their medical issues
[7] caused them such pain that they could not work, would
[8] you contact the claimant to explore the nature of their
[9] pain and how it affected their ability to work?

[10] **A:** It depends on specific claims.

[11] **Q:** So that's something that you have done in the
[12] past?

[13] **A:** Depending on the claim, yes.

[14] **Q:** Certainly, it's within your authority, is it not,
[15] to directly contact the claimant to resolve any
[16] questions you may have?

[17] **A:** Yes.

[18] **Q:** It's also within your authority, is it not, to
[19] directly contact the physician to resolve any questions
[20] you may have?

[21] **A:** Again, that's something the nurse would do.

[22] **Q:** You didn't answer my question. There isn't any
[23] policy prohibiting you, is there, from contacting the
[24] physician to resolve questions you may have?

[25] **A:** Was that a question?

[1] **Q:** Correct.

[2] **A:** I'm sorry. You've lost me again.

[3] **Q:** Well, is there a policy that prohibits, you as
[4] the claims analyst, from contacting the physician
[5] directly?

[6] **A:** No. But based on experience, education, etc.,
[7] that would fall in the nurse guidelines, since they have
[8] a better knowledge of the medical information and their
[9] medical background.

[10] **Q:** Mr. Barnum, I'm sorry. You still didn't answer
[11] my question. Was there a policy in place that would
[12] prohibit you from contacting the physician if you had a
[13] question as the claims analyst?

[14] **MR. WILLIAMS:** Objection. Asked and
[15] answered. You can go ahead and answer it again.

[16] **A:** Policy in place, no.

[17] **Q:** (By Mr. Comstock) Certainly, you had authority
[18] to speak with and contact the employer if there were any
[19] questions relative to the assessment of the claim;
[20] correct?

[21] **A:** Yes, and mainly to determine job duties.

[22] **MR. ANDERSON:** You're breaking up a little
[23] bit. Could you please repeat that or have the court
[24] reporter read it back.

[25] **MR. WILLIAMS:** Do you want to repeat your

[1] answer?

[2] **MR. COMSTOCK:** I think it tailed off,

[3] Mr. Anderson. I think what I heard him say was
[4] something along the lines of "and to evaluate the job
[5] functions," or something like that.

[6] **A:** To determine job duties and job function, that's
[7] when the usual contact with the employer would be.

[8] **MR. ANDERSON:** Thank you.

[9] **Q:** (By Mr. Comstock) So did you make the decision,
[10] Mr. Barnum, to deny Mr. Dennison's benefits?

[11] **A:** Yes. After review with the nurse case manager,
[12] yes, I did.

[13] **Q:** Before you made that decision, did you contact or
[14] attempt to contact Dr. Frizzell, who was a neurosurgeon
[15] that was providing years of care to this man?

[16] **MR. WILLIAMS:** Object to the form.

[17] **A:** I do not recall.

[18] **Q:** (By Mr. Comstock) If your claim file doesn't
[19] show anything in terms of a phone call to the doctor, is
[20] it fair to say it didn't happen?

[21] **A:** I have not reviewed the file completely. But if
[22] it's not the file, then basically it did not happen.

[23] **Q:** Before you made the decision to deny
[24] Mr. Dennison's benefits, did you contact him at all to
[25] further explore the nature and severity of his pain when

[1] he was either sitting or standing?

[2] **A:** I do not recall.

[3] **Q:** Again, if your file log of your file doesn't
[4] reflect such a call to Mr. Dennison, is it fair to say
[5] it didn't happen?

[6] **A:** Correct.

[7] **Q:** Who was the nurse case manager on this particular
[8] file?

[9] **A:** Lisa Scrogam.

[10] **Q:** Spell that last name for me, please.

[11] **A:** S-c-r-o-g-h-a-m.

[12] **Q:** In order to prepare yourself for this deposition
[13] today, Mr. Barnum, have you had a chance to look at the
[14] claim record?

[15] **A:** Briefly.

[16] (Whereupon, Barnum Deposition Exhibit A was
[17] marked for identification by the reporter.)

[18] **Q:** (By Mr. Comstock) I have marked previously the
[19] administrative claim file as Exhibit A to your
[20] deposition here today. Would you mind taking a look at
[21] that and tell me if that appears to be the claim file
[22] that you were working with.

[23] **A:** Yes.

[24] **Q:** Is your answer, yes, it does appear to be?

[25] **A:** Yes.

[1] Q: Would you please look at Page 24 and 25 of
[2] Exhibit A.

[3] A: Okay.

[4] Q: Those two pages appear to be the claim analysis
[5] record; correct?

[6] A: Yes.

[7] Q: As I look at Page 25, it would appear that this
[8] claim was assigned to you on or about February 28 of
[9] 2002; correct?

[10] A: Correct.

[11] Q: How did you receive it? In other words, did you
[12] receive it by mail from somebody, did somebody walk it
[13] in the door?

[14] A: Normally, the claim would come in. The set up
[15] person would then set the claim up in a file. Then
[16] basically, our supervisor would assign based on who was
[17] next in the order of receiving the claim.

[18] Q: Who was your supervisor at the time?

[19] A: Judy Marchock.

[20] Q: That's the person who signed the entry on the log
[21] on Page 25 of Exhibit A on February 28?

[22] A: Yes.

[23] Q: So is it fair to say that February 28 is the day
[24] the file landed on your desk, or is it fair to say that
[25] it arrived on your desk sometime later?

[1] A: It probably arrived in my mailbox February 28.

[2] Q: It would appear from this log that the first
[3] activity that you logged is on March 7 of 2002; correct?

[4] A: Correct.

[5] Q: Between February 28 and March 7 of 2002, if you
[6] had done anything on this file, would it have been
[7] logged?

[8] A: Yes.

[9] Q: So it's fair to say you started your work on
[10] March 7; correct?

[11] A: Correct.

[12] Q: I also see an entry on the log at Page 25 of
[13] Exhibit A for March 14 of 2002, and that appears to be
[14] an entry written by Lisa Scrogam; correct?

[15] A: Correct.

[16] Q: Is that the only entry by her with respect to
[17] this particular claim?

[18] A: It appears so.

[19] Q: Did you meet with Lisa Scrogam on March 14 of
[20] 2002 with respect to this claim?

[21] A: I do not recall.

[22] Q: Was the normal practice and procedure in the
[23] office at that time be for her to chart the day she met
[24] with you in terms of handling the claim?

[25] A: I do not recall. I do not know what her specific

[1] job duties would entail when she had to place
[2] information into a claim analysis record. We called it
[3] a CAR.

[4] Q: I know from this administrative record, which is
[5] Exhibit A, that the letter denying the claim offered by
[6] yourself was March 15 of 2002. What I'm wondering is if
[7] your conversation with the nurse case manager took place
[8] just the day before the denial letter.

[9] MR. WILLIAMS: Objection. Assumes facts not
[10] in evidence.

[11] A: I'm not sure of the fact day I met with her.

[12] Q: (By Mr. Comstock) You do have a recollection of
[13] meeting with her though; correct?

[14] A: I met with her on many cases and many different
[15] claims. I met with her all the way up through this year
[16] as well on many other claims. It was just part of the
[17] job, on ongoing part of the job. We had a good
[18] relationship together.

[19] Q: My question is with respect to Mr. Dennison's
[20] claim as you sit here today, do you have an independent
[21] recollection of actually meeting with Lisa Scrogam?

[22] A: No.

[23] Q: Do you know what information she was reviewing
[24] with respect to Mr. Dennison's claim before she made her
[25] chart entry of March 14, 2002?

[1] A: She would have had the entire claim file in front
[2] of her.

[3] Q: That would be the file that is as marked
[4] Exhibit A to your deposition?

[5] A: Yes.

[6] Q: So she would have had the letters from
[7] Dr. Frizzell; correct?

[8] A: Whatever information that was submitted up to
[9] that point in time when she was reviewing.

[10] Q: At any time prior to writing the denial letter of
[11] March 15 of 2002, did you review the medical information
[12] from Dr. Frizzell?

[13] A: No.

[14] Q: Is that a no?

[15] A: Let me take that back. I may have glanced at it.
[16] But again, it was not my job duty to review the medical
[17] and make a summation of the medical evidence. Again,
[18] that was the nurse case manager's role.

[19] Q: This may sound like a flippant question,
[20] Mr. Barnum, but I'm going to ask it anyway. Based on
[21] all your years of analyzing disability claims, you can't
[22] look at an MRI report or an x-ray report and determine
[23] the extent of pain someone is having, can you?

[24] A: No.

[25] Q: So to understand the nature of the pain that

[1] someone is experiencing that's interfering with their
[2] ability to work, you have to look elsewhere in the claim
[3] file and/or contact the claimant; correct?

[4] **A:** Again, I refer back to the actual policy and the
[5] way it's written. We're not — We are not necessarily
[6] looking for pain. We are looking to see whether or not
[7] the person's able to do substantial material duties of
[8] the job.

[9] **Q:** So in Mr. Dennison's case, the level of pain that
[10] he was experiencing from his back disorder was not
[11] considered by you?

[12] **A:** No.

[13] **Q:** With respect to Mr. Dennison's claim and prior to
[14] the time that you wrote the letter denying his claim,
[15] how did you determine that if he were allowed to sit or
[16] stand while he worked, he would be out of pain?

[17] **A:** It was not my — Again, I have to go back to the
[18] policy, whether or not he's able to do substantial
[19] material duties of his job is what my main determining
[20] factor is.

[21] **Q:** Well, if pain is the factor that keeps him from
[22] being able to do his job, what do you do as the claims
[23] analyst before applying the terms of the policy to make
[24] a decision?

[25] **A:** Refer to the nurse case manager who would review

[1] the medical information.

[2] **Q:** To your knowledge, did Lisa Scrogam contact
[3] either Dr. Frizzell or Mr. Dennison to determine the
[4] quality, nature, and extent of the pain that this man
[5] had while either sitting or standing?

[6] **A:** Based on the claim file, she did not.

[7] **Q:** Wouldn't a proper review of the claim file
[8] include assessing the quality of the pain that a man is
[9] having before denying the claim?

[10] **MR. WILLIAMS:** Object to the form.

[11] **A:** Again, in making a decision on the claim, it's
[12] the nurse case manager's duty to review whatever medical
[13] information is submitted. If she has enough medical
[14] information to make a decision, we make the decision.

[15] **Q:** (By Mr. Comstock) Let me look at this log for a
[16] moment to see what involvement you did have before you
[17] wrote the letter of March 15. Again, I'm referring to
[18] Page 24 and 25 of Exhibit A.

[19] I see that you log a telephone call to the
[20] employer on March 7 of 2002; correct?

[21] **A:** Correct.

[22] **Q:** If we look to the claims file at Page 38 and
[23] Page 54, is that documentation of the phone call made on
[24] March 7?

[25] **A:** 38, yes. 54 is a job activity statement, and

[1] also on Page 55. That usually was submitted with the
[2] actual claim by the employer.

[3] **Q:** So the phone call that you made on March 7 is
[4] documented by the material in the claim file at Page 38?

[5] **A:** Yes.

[6] **Q:** Apparently, you spoke to a Susan Case; is that
[7] correct?

[8] **A:** Based on the claim file, yes.

[9] **Q:** Question No. 8 — I'm assuming that you wrote
[10] these questions before you talked to her.

[11] **A:** Yes.

[12] **Q:** So by March 7, you had some specific questions in
[13] mind that you wanted to ask the employer?

[14] **A:** Yes.

[15] **Q:** Question 8 says, "Would you be able to
[16] accommodate a sit and stand option." Why did you want
[17] to ask that on this first employer interview?

[18] **A:** In reviewing the limitations that were submitted
[19] with the claim, the physician states under physical
[20] limitations, no lifting, pushing, pulling over 5 pounds.
[21] No prolonged standing or sitting. Only occasional
[22] bending and twisting.

[23] **MR. ANDERSON:** Are you referring to a
[24] particular document? If so, could you identify it,
[25] please.

[1] **A:** Yes. Page 59, Question No. 4 under physical
[2] limitations on the attending physician's statement.

[3] **Q:** (By Mr. Comstock) So by that time, it's fair to
[4] say that you had read Dr. Frizzell's information that
[5] this man was disabled in Dr. Frizzell's opinion, had you
[6] not?

[7] **A:** Yes.

[8] **Q:** And yet you saw that there was some entry that
[9] with respect to sitting and standing, no prolonged
[10] sitting or standing; correct?

[11] **A:** That's what the information states.

[12] **Q:** So you knew the doctor felt this man was disabled
[13] from his pain, and you wanted to call the employer and
[14] ask them if they would accommodate a sit and stand
[15] option; correct?

[16] **MR. ANDERSON:** Object to the form.

[17] **MR. WILLIAMS:** I join that.

[18] **A:** Correct, yes.

[19] **Q:** (By Mr. Comstock) All right. You also
[20] understood by this time, did you not, that Mr. Dennison
[21] was basing his claim on the amount of pain that he was
[22] experiencing, which was interfering with his ability to
[23] work?

[24] **A:** That's irrelevant to me. I simply go back and
[25] review whether or not the person can perform the

[1] substantial material duties of the job.
 [2] **Q:** So the claimant's statement of the basis for his
 [3] claim for disability is irrelevant to you?
 [4] **MR. WILLIAMS:** Object to the form.
 [5] **A:** I administer the claim according to the policy.
 [6] **Q:** (By Mr. Comstock) I'm sorry. You didn't answer
 [7] my question. Is the claimant's statement that he's
 [8] unable to work because of pain irrelevant to you?
 [9] **A:** I review the claim based on the policy.
 [10] **Q:** Is the claimant's statement of pain relevant to
 [11] you at all?
 [12] **A:** That's my answer.
 [13] **Q:** Are you refusing to answer my question?
 [14] **A:** I am answering your question.
 [15] **Q:** No, you're just saying you apply the policy. I
 [16] want to know if in the application of the policy that's
 [17] done by you, if you consider the claimant's statement of
 [18] pain.
 [19] **A:** My answer to you is that I administer according
 [20] to the policy.
 [21] **Q:** Where in the policy does it say you're not to
 [22] consider the claimant's statement of pain?
 [23] **A:** I will refer to the policy under the definition
 [24] of disability under the occupational qualifier.
 [25] **Q:** Is there something in there that says you're not

[1] **A:** I received a claim — I received a number of
 [2] claims per week. My job duties were to administer the
 [3] claim based on the policy that was presented with each
 [4] particular claim.
 [5] **Q:** (By Mr. Comstock) Mr. Barnum, would you please
 [6] turn to Page 53.
 [7] **A:** Yes, sir.
 [8] **Q:** Would you agree that this page is part of
 [9] Mr. Dennison's claim?
 [10] **A:** Yes.
 [11] **Q:** Would you agree with me that it's your duty to
 [12] read this as part of your assessment of his claim?
 [13] **A:** Yes. But it probably would be — rest more,
 [14] since this medical information, with the nurse.
 [15] **Q:** I'm trying to get back to this question of what
 [16] you understood the claim to be based upon. Looking at
 [17] Page 53, wouldn't you agree that you understood this
 [18] man's claim to be based upon the degree of pain he was
 [19] suffering which was keeping him from working?
 [20] **A:** Again, I refer back to the contract. It appears
 [21] from this information that yes, he is claiming pain, as
 [22] the physician states as well. However, we have to go
 [23] back to the contract. We have to determine whether or
 [24] not he's able to do the substantial and material duties
 [25] of his occupation.

[1] to consider the amount of pain the claimant is
 [2] suffering?
 [3] **A:** Pain is very subjective. We have — I adhere and
 [4] interpret long term disability when reviewing policies
 [5] based on a definition of disability as stated under the
 [6] occupational qualifier, which reads "Disability means
 [7] that during the elimination period and the following
 [8] twenty-four months, injury or sickness causes physical
 [9] and mental impairment to such a degree of severity that
 [10] you're continuously unable to perform the material and
 [11] substantial duties of your regular occupation and not
 [12] working for wages in any occupation for which you are or
 [13] become qualified by education training or experience."
 [14] **MR. WILLIAMS:** For the record, witness is
 [15] reading from Page 69.
 [16] **Q:** (By Mr. Comstock) Are you saying to me that in
 [17] applying that language from the policy when you consider
 [18] a physical impairment, you do not at all consider the
 [19] degree of pain that a particular physical problem is
 [20] causing a patient?
 [21] **A:** It is not my role. That's what the nurse is for.
 [22] **Q:** But you understood, did you not, that
 [23] Mr. Dennison's claim was that he was in so much pain he
 [24] was unable to work?
 [25] **MR. WILLIAMS:** Object to the form.

[1] **Q:** So you also understood that this man's job
 [2] included working on average ninety hours a week;
 [3] correct?
 [4] **A:** Just reading from Page 53, it says sixty to
 [5] eighty hours a week.
 [6] **Q:** Well, if you look at Page 54, there's the average
 [7] number of hours worked there. Do you see that?
 [8] **A:** Ninety, okay.
 [9] **Q:** So you understood this guy was working ninety
 [10] hours a week at a computer; right?
 [11] **MR. WILLIAMS:** Object to the form.
 [12] **A:** If that's what the claim policy states, yes.
 [13] **Q:** (By Mr. Comstock) When you denied his claim, how
 [14] did you figure that this man was going to continue to
 [15] work ninety hours a week at a computer?
 [16] **MR. WILLIAMS:** Object to the form.
 [17] **A:** Again, when I denied the claim, I simply looked
 [18] at the policy language.
 [19] **Q:** (By Mr. Comstock) And in looking at the policy
 [20] language, it's fair to say you disregarded the
 [21] information from the claimant that he was in so much
 [22] pain he was unable to work his job, which involved
 [23] ninety hours per week pretty much sitting at a computer?
 [24] **MR. WILLIAMS:** Object to the form.
 [25] **A:** It's not my job. Again, I go back to determine

(1) whether or not they were able to perform the substantial
(2) and material duties of the job.

(3) Q: (By Mr. Comstock) Who's job was it to figure out
(4) whether or not the pain from his physical abnormalities
(5) was causing an impairment to his ability to work?

(6) A: Pain would fall under the nurse case manager.

(7) Q: Now, your log that you and I have referred to
(8) perviously on Page 24 and 25 doesn't indicate that you
(9) met with the nurse case manager, does it?

(10) A: It does not appear to.

(11) Q: As part of your responsibilities, you're to log
(12) your actions or activities with respect to handling the
(13) file; true?

(14) A: True.

(15) Q: If you met with the nurse case manager, which
(16) meeting in part forms the basis of a denial, that's
(17) something you would normally log; correct?

(18) A: Correct.

(19) Q: Can you explain to me if that did happen why
(20) that's not logged.

(21) A: I do not recall meeting with her.

(22) Q: Looking at your log again at Page 25 of
(23) Exhibit A after the phone call to the employer from
(24) March 7, it appears that your next activity that you
(25) logged was on March 12; is that correct?

(1) A: Yes.

(2) Q: That's a call to Mike Richmond according to the
(3) log; right?

(4) A: Yes.

(5) Q: Why were you calling Mr. Richmond?

(6) A: I do not recall. But based on the file, I was
(7) inquiring about possible accommodations.

(8) Q: If we look back at Page 38, the answer that you
(9) wrote down to your Question No. 8 when you were speaking
(10) with Susan Case indicates that Mike Richmond would be
(11) the person to talk to regarding accommodations; correct?

(12) A: Correct.

(13) Q: Why, again, was it important for you to speak to
(14) Mr. Richmond at that point?

(15) A: Based on the file, Page 38, it appears that I was
(16) referred to contact that person for accommodations,
(17) which is what I did on March 12.

(18) Q: So the purpose of that phone call is to determine
(19) whether or not the employer would be willing to
(20) accommodate to the claimant's physical impairments?

(21) A: Yes. The purpose was basically to finalize
(22) everything after, since Susan Cates was unable to on the
(23) previous phone call. She referred me to Mike Richmond.
(24) I made the follow-up phone call to Mike Richmond on the
(25) 12th.

(1) Q: By the time you talked to Mike Richmond on the
(2) 12th, had you made up your mind to deny this claim?

(3) A: I do not recall.

(4) Q: In any event, sometime between March 7 and
(5) March 15, you made up your mind?

(6) A: Based on when I wrote the letter, yes.

(7) Q: According to your log, Mike Richmond informed you
(8) that they will make any reasonable accommodations to
(9) accommodate his physical condition; correct?

(10) A: Correct.

(11) Q: And sitting and standing is not a problem;
(12) correct?

(13) A: Yes.

(14) Q: Did Mike Richmond inform you at that time,
(15) Mr. Barnum, that Chris Dennison's employment had been
(16) terminated prior to that?

(17) A: I do not recall.

(18) Q: Did you write down the important features of your
(19) conversation with Mr. Richmond in your log?

(20) A: Yes.

(21) Q: There's nothing there indicating that
(22) Mr. Richmond -- rather that Mr. Dennison had already
(23) been terminated from his employment by the time you
(24) spoke to Mr. Richmond on March 12, is there?

(25) A: I do not recall. No, there's nothing wrote down

(1) here concerning employment.

(2) Q: If you had an employer who was telling you they
(3) would be willing to accommodate a particular employee's
(4) medical issues and then you find out that that employer
(5) in fact had already terminated that employee, wouldn't
(6) you question the employer's sincerity?

(7) MR. ANDERSON: Object to the form. Assumes
(8) facts not in evidence. Calls for speculation.

(9) A: So do I answer?

(10) Q: (By Mr. Comstock) Yes, you can answer.

(11) A: Can you repeat that again? I'm sorry.

(12) Q: Sure. If you had an employer tell you that they
(13) were willing to accommodate an employee who had already
(14) been terminated by that employer, wouldn't you question
(15) the employer's sincerity as to whether or not they're
(16) giving you accurate information?

(17) A: Sincerity? Basically -- It's basically not
(18) sincerity. The only thing I'm concerned about is the
(19) accommodations. Sincerity goes out the window. It's
(20) basically just what we see on the piece of paper in
(21) front of us.

(22) Q: Wouldn't that trouble you that the employer's
(23) telling you they're willing to take care of an employee
(24) they've already terminated?

(25) MR. ANDERSON: Object to the form.

(1) **A:** In reviewing a claim, all we're concerned about
(2) is the initial day of disability and their employment
(3) status at that time, whether or not they're an eligible
(4) employee.

(5) **Q:** (By Mr. Comstock) But in denying this claim,
(6) isn't it a fact that the willingness of this employer to
(7) accommodate Mr. Dennison was a factor that you relied
(8) upon?

(9) **A:** Correct.

(10) **Q:** Getting back to your determination as to whether
(11) there's a physical impairment, I take it that you in
(12) part rely upon the nurse case manager; right?

(13) **A:** Correct.

(14) **Q:** In doing that, explain to me what consideration,
(15) if any, is given to the claimant's statement of how much
(16) pain they have, as in this case, either sitting or
(17) standing.

(18) **MR. WILLIAMS:** Objection. Asked and
(19) answered.

(20) **A:** It's not my — It would fall under the role of
(21) the nurse case manager, since it's medical related.

(22) **Q:** In your denial letter dated March 15 —

(23) **A:** What page is that on?

(24) **Q:** It's Page 36 and 37.

(25) **A:** Thank you.

(1) **Q:** On Page 37, you indicate there's a lack of
(2) medical information to support a functional impairment
(3) which would preclude you from performing the material
(4) and substantial duties of your occupation as a
(5) controller. What medical information was lacking?

(6) **A:** You'd have to ask the nurse case manager.

(7) **Q:** Even though this letter goes out under your
(8) signature?

(9) **A:** Again, the file — The nurse entered her
(10) information on March 14, I simply used that information
(11) that she entered there in determining my denial letter.

(12) **Q:** So as you look at this log and as you look at
(13) this file, is it fair to say that you looked at the
(14) nurse's entry of March 14, incorporated that into your
(15) decision, and wrote the letter of March 15?

(16) **A:** Yes. Lisa —

(17) **Q:** Do you have any log of your actually meeting with
(18) the nurse practitioner? Is it fair to conclude that you
(19) never did meet with her to discuss this claim?

(20) **A:** No, it's not fair to conclude that. We may have
(21) talked in passing. I guess officially and reviewing the
(22) claim analysis record, since it's not there, it didn't
(23) happen.

(24) Lisa and her actual work environment — She sat
(25) right next to me at the time. I may have talked to her,

(1) I may not have. I do not recall. We handled several
(2) files together.

(3) **Q:** I understand. I understand also from your
(4) testimony that it's your obligation to log your meeting
(5) with her.

(6) **A:** Right. In this case, yes, since there's nothing
(7) in the file, there was no further meeting.

(8) **Q:** After writing the letter of March 15, did that
(9) end your responsibilities with respect to this claim?

(10) **A:** At some time in there, Tabatha Kirke and I
(11) switched roles. She came over to do the long term. I
(12) went over to do the short term.

(13) **Q:** Can explain that to me.

(14) **A:** Basically, it was a business decision. We
(15) switched roles.

(16) **Q:** So by switching roles, are you telling me that
(17) you then focused on short term disability issues?

(18) **A:** Yes. She took over my case load.

(19) **Q:** Okay. So your entire job structure changed, not
(20) just your responsibility on this file?

(21) **A:** Right. When we made the change, she would
(22) have — I'm not sure the exact date, but she would have
(23) taken over all my files.

(24) **Q:** Is that why she handled the reconsideration
(25) request?

(1) **A:** Yes.

(2) **Q:** Were you involved at all with Tabatha Kirke in
(3) resolving the reconsideration request?

(4) **A:** No, the reconsideration was purely hers. In
(5) reviewing the file, May 14, since my name and number was
(6) on the letter that was sent out to him, he may have
(7) contacted me. But I believe by that time, I was already
(8) in my short term role. I may have pulled the file from
(9) her desk or maybe requested the file from the file room.
(10) I'm not sure. Then I would have — I put that entry on
(11) May 14, and I probably would have forwarded it to her,
(12) since my whole case load was in her name.

(13) **Q:** At some point in time, did you advise the
(14) Dennisons that the file had left your hands as you were
(15) moving on to different duties and was now in the hands
(16) of Tabatha Kirke?

(17) **A:** I do not recall.

(18) **MR. COMSTOCK:** For our court reporter, Kirke
(19) is spelled K-i-r-k-e.

(20) **Q:** (By Mr. Comstock) Looking at the log at Page 24,
(21) it would appear because of the entry of March 14, 2002
(22) in your handwriting, that you had made the decision to
(23) deny this claim by March 14; correct?

(24) **A:** Correct.

(25) **Q:** Then you indicate in the log that the claim is

[1] being sent for team leader or supervisor sign off. Is
[2] that part of your policy and procedure?
[3] A: Yes. We always — In all initial long term
[4] disability initial decisions, we always have a
[5] supervisor and/or second set of eyes review the file.
[6] Q: That person in this case was your supervisor,
[7] Mr. Marchock?
[8] A: Ms. Judy Marchock.
[9] Q: Judy Marchock?
[10] MR. COMSTOCK: For our court reporter, I
[11] think that's M-a-r-c-h-o-c-k.
[12] Q: (By Mr. Comstock) Your last entry, if I read
[13] this log correctly, Mr. Barnum, was May 14 of 2002?
[14] A: Yes.
[15] Q: The person who would have handled the request
[16] for reconsideration by Mr. Dennison would have been
[17] Ms. Kirke?
[18] A: Yes.
[19] Q: As you recall it, you did not have any role with
[20] respect to that?
[21] A: Correct.
[22] Q: Were you informed by anyone during this time
[23] frame — I'm talking about the time frame from your
[24] denial to May 14, the denial of March 15 to May 14.
[25] Were you informed by anyone that the Dennisons, as part

[1] of their request for consideration, were raising the
[2] issue of what Mr. Richmond had told you?
[3] A: I do not recall.
[4] Q: Did anyone ever come to you and ask you, if you
[5] can remember, to explain in any more detail the
[6] conversation you had with Mr. Richmond?
[7] A: I do not recall.
[8] Q: If Ms. Kirke in the process of handling the
[9] reconsideration had involved you to enhance her
[10] information or clarify things, is that something she
[11] should have logged in the claim record?
[12] A: Yes. However, she did not, based on the claim
[13] record here, contact me. I do not recall her contacting
[14] me.
[15] Q: Where was her workstation in relation to yours?
[16] A: I'm trying to remember at the time where we sat.
[17] I believe she was either on an opposite floor from me,
[18] at least down towards the other side of the building
[19] from me at the time, or maybe just across the claims
[20] area. I do not recall sitting by her.
[21] Q: Was she one of your supervisors?
[22] A: No.
[23] Q: Was she supervised, if you know, by
[24] Judy Marchock?
[25] A: I believe at one time she was, I'm guessing at

[1] this time she would have fell under Judy Marchock's
[2] supervision. As a matter of fact, yes, I do recall
[3] her — I think we actually switched team leaders as well
[4] whenever we switched our roles.
[5] Yes, she would have been under Judy Marchock's
[6] supervision at the time of this request for
[7] reconsideration.
[8] Q: This Lisa Scrogam, who was the nurse case
[9] manager for this particular case, did she handle as many
[10] claims as you?
[11] A: I'm not sure of her exact number of claims that
[12] she handled.
[13] Q: She obviously was employed as well by CNA?
[14] A: Yes.
[15] Q: Was that yes?
[16] A: Yes.
[17] Q: During the entire period of time you were working
[18] in disability, was Lisa Scrogam an employee working in
[19] disability?
[20] A: Yes.
[21] Q: Can you tell me what percentage of claims you
[22] typically would deny.
[23] A: Five to ten percent. That wasn't only medical.
[24] That would be technical as well; eligibility issues,
[25] other exclusions.

[1] Q: Understood. There weren't any technical reasons
[2] for denying Mr. Dennison's claim, were there? In other
[3] words, he dotted his Is and crossed his Ts; correct.
[4] A: There was nothing technical.
[5] Q: Mr. Barnum, I think those are all the questions I
[6] have. Thank you for your patience today.
[7] BY MR. ANDERSON:
[8] Q: Mr. Barnum, why is it important to determine if
[9] accommodations are critical in a particular case that
[10] you're reviewing?
[11] A: In reviewing limitations and exclusions that the
[12] physician placed down, I believe we found it necessary
[13] to determine whether or not the claimant was actually
[14] able, as part of the job, doing the substantial material
[15] duties of the job to fit within those limitations.
[16] Q: You referred earlier to a document prepared by
[17] Dr. Frizzell. I believe it was Page 59 of the record
[18] Exhibit A; is that correct?
[19] A: Correct.
[20] Q: As I read it, I believe the line that you folks
[21] thought was no prolonged standing or sitting; is that
[22] correct?
[23] A: Correct. Because the job was sedentary in
[24] nature.
[25] Q: Thank you. As I further understand it, you did

[1] not contact Dr. Frizzell to determine what he meant by
[2] prolonged?
[3] A: Correct.
[4] Q: In other words, you had no time frame in mind as
[5] you read this particular line of Dr. Frizzell's report;
[6] is that true?
[7] A: Correct. But in looking at that, sit/stand
[8] option is what that — is how I read that.
[9] Q: Say that again, please.
[10] A: A sit/stand option or intermittent standing or
[11] having the ability to break from the actual prolonged.
[12] Q: So you wondered if he could take breaks from his
[13] computer in order to do what?
[14] A: I'm sorry?
[15] Q: What were you trying to determine that this
[16] accommodation would do?
[17] A: Just like my question on the sit and stand
[18] option.
[19] Q: But what was the end result of the sit/stand
[20] option, what were you trying to determine?
[21] A: Whether or not he could sit and stand at will.
[22] Say his back gave him pain or — Basically, just to
[23] determine the sit/stand option.
[24] Q: I take it that was relevant to you in terms of
[25] your particular focus on Mr. Dennison's claim?

[1] A: Yes.
[2] Q: Why?
[3] A: Because the doctor stated the physical limitation
[4] was no prolonged standing or sitting, so I asked the
[5] question would you be able to accommodate a sit/stand
[6] option.
[7] Q: Did you provide Mr. Richmond any documentation
[8] from Dr. Frizzell?
[9] A: No, it does not appear I did.
[10] Q: Did you provide Mr. Richmond any statements from
[11] Mr. Dennison regarding his particular complaints
[12] regarding why he was filing the disability claim?
[13] A: It does not appear I did.
[14] Q: Your notes do not reflect that you reviewed those
[15] materials with Mr. Richmond. Is that also an accurate
[16] assumption to make?
[17] A: Yes. Let me take that a little bit. We would
[18] be — That's probably a privacy issue with Mr. Dennison.
[19] Q: All right. In other words, you could not review
[20] with Mr. Richmond the specifics of Mr. Dennison's claim
[21] as submitted to CNA?
[22] A: Correct.
[23] Q: So you needed to talk to Mr. Richmond in a
[24] fairly general way or generic way about the job
[25] Mr. Dennison — or Mr. Dennison's ability to do a job?

[1] MR. WILLIAMS: Object to the form.
[2] Q: (By Mr. Anderson) Is that how you would approach
[3] it in order to avoid the privacy issues?
[4] A: It looks like I approached it whether or not — I
[5] just strictly asked would you be able to accommodate a
[6] sit/stand option.
[7] Q: You use the term would you. Is that how you
[8] remember you asked the question?
[9] A: I don't recall.
[10] Q: Did you write down verbatim what Mr. Richmond
[11] told you?
[12] A: As close to as possible, I would definitely say.
[13] I don't recall exactly how I wrote it down.
[14] Q: But you didn't write these notes contemporaneous
[15] with the conversation. You finished the conversation
[16] and then wrote them, didn't you?
[17] A: I don't recall.
[18] Q: Do you tape record the conversation?
[19] A: No.
[20] Q: Hello?
[21] A: No.
[22] Q: Did you review the insurance policy with
[23] Mr. Richmond?
[24] A: No.
[25] Q: Was the only accommodation you discussed with

[1] Mr. Richmond the possibility of a sit/stand option?
[2] A: Based on the questions on the claim record, yes.
[3] Q: Did you ask Mr. Richmond whether or not any
[4] requests for an accommodation of that nature had been
[5] received from Mr. Dennison?
[6] A: Based on the claim record, it does not appear I
[7] did.
[8] Q: Did you ask Mr. Richmond if such an accommodation
[9] had been attempted?
[10] A: I do not recall. Again, it refers to whatever's
[11] in the claim record.
[12] Q: Did you understand at the time you talked to
[13] Mr. Richmond that Mr. Dennison had not been at work for
[14] almost two weeks?
[15] A: If we look at the claim record, it appears that
[16] his last day worked — I'm not sure what page it's on.
[17] Let me find it here. Based on the information that was
[18] on hand if we go to — Let's see if I can find it. I'm
[19] looking for the last day worked.
[20] Q: Let me direct you to Page 39 of the record.
[21] A: Date employed, 7-1-97, Page 39. Date last worked
[22] prior to current disability 2-1-02.
[23] Q: Okay. If you go to Page 51, the document I
[24] believe filled out by Mr. Dennison, it's date when you
[25] last reported for work. It again says February 1, 2002.

[1] doesn't it?
 [2] **A:** Yes.
 [3] **Q:** Then it says date you return or expect to return
 [4] to work, it says N/A.
 [5] **A:** Okay.
 [6] **Q:** Did you inquire Mr. Dennison what that meant?
 [7] **A:** I do not recall.
 [8] **Q:** Is there a reasonable conclusion to draw from
 [9] that N/A that Mr. Dennison did not intend to return to
 [10] work?
 [11] **A:** No.
 [12] **Q:** What did you draw from it, if anything?
 [13] **A:** It had not been determined yet. That's how I
 [14] would interpret that. As of this February 7 date, it
 [15] had not been determined.
 [16] **Q:** Did you have every opportunity to discuss
 [17] whatever you needed with Mr. Richmond during your
 [18] conversation?
 [19] **A:** I believe so. Whatever was discussed was
 [20] documented.
 [21] **Q:** The focus was there a possibility of a sit/stand
 [22] accommodation?
 [23] **A:** It's all there in the March 12 entry.
 [24] **Q:** Did you inquire if Mr. Richmond — Strike that.
 [25] Did you inquire if Mr. Dennison was still employed at

[1] **A:** Yes. Last day work, 2-7. Date of loss 2-8.
 [2] **Q:** So your only focus is whether or not he was
 [3] employed on 2-8-02, and it didn't matter to you whether
 [4] or not he was employed on March 12, 2002?
 [5] **A:** Correct.
 [6] **Q:** Did you ask Mr. Richmond whether or not any type
 [7] of trial period of an accommodation could be undertaken
 [8] to see if it actually worked?
 [9] **A:** It does not appear I did.
 [10] **Q:** Is that something that CNA can do before it
 [11] denies a claim?
 [12] **A:** Please refer to March 12 for the entire
 [13] conversation.
 [14] **Q:** I'm moving a little bit beyond that.
 [15] **A:** Okay. What was the question?
 [16] **Q:** Your capacity as a claims analyst or a disability
 [17] specialist, do you have the ability to allow any type of
 [18] accommodation to be tried to determine whether or not it
 [19] is actually effective?
 [20] **A:** Bottom line, I referred to the actual limitations
 [21] stated by Dr. Frizzell. Based on the conversation of
 [22] March 12, the accommodations were met. So therefore,
 [23] the claimant was able to perform the substantial
 [24] material duties of the job.
 [25] **MR. ANDERSON:** Madame reporter, could I have

[1] the time?
 [2] **A:** I do not recall.
 [3] **Q:** Did it even matter to you whether he was employed
 [4] at the time?
 [5] **A:** No.
 [6] **Q:** Your focus is just on what the policy dictates in
 [7] terms of a definition of a long term disability, what
 [8] the medical records state, and your determination of
 [9] whether or not Mr. Dennison could fulfill the typical
 [10] duties of his occupation; is that correct?
 [11] **MR. WILLIAMS:** Object to the form.
 [12] **A:** My job duty is to determine whether or not the
 [13] employee's eligible for benefits. I do that by
 [14] reviewing whether or not the person is able to perform
 [15] the substantial material duties of the job.
 [16] **Q:** (By Mr. Anderson) It doesn't matter to you
 [17] whether or not he's working at the time or not?
 [18] **A:** When determining claims, our only — we need to
 [19] make sure that they meet the eligibility issues. That
 [20] includes working as of the date of loss.
 [21] **Q:** The date of loss was what under CNA's records?
 [22] **A:** I'm not sure where that exact — There's an
 [23] initial page that lists when that would be. I'm not
 [24] sure if I even documented it.
 [25] **Q:** Would it be Page 5 of Exhibit A?

[1] that answer read back, please.
 [2] (The requested portion of the record was read by
 [3] the reporter.)
 [4] **A:** Substantial material duties of the job, he was
 [5] able to perform, based on our review.
 [6] **Q:** (By Mr. Anderson) Did Mr. Dennison ever submit
 [7] to you any information indicating that he had tried a
 [8] sit/stand option?
 [9] **A:** If it's not in the file, it didn't happen.
 [10] **Q:** If you happen to misunderstand someone you
 [11] interview in the course of making a determination
 [12] regarding a disability claim, do you have the option of
 [13] accumulating more information and changing your
 [14] position?
 [15] **A:** Yes. It's outlined in the denial letter. The
 [16] actual rights on Page 37, if you have additional medical
 [17] information not mentioned above or wish us to reconsider
 [18] our, it gives the rights of the claimant.
 [19] **Q:** All right. So if, for example, you made an error
 [20] in your interpretation of someone's comments and that
 [21] error was pointed out to you by the claimant, would it
 [22] be you that would go back and investigate further to
 [23] determine what actually might be the case, or is that
 [24] taken out of your hands and handled by someone else in
 [25] all cases?

[1] A: Basically, as outlined in the letter, the normal
 [2] process would be review the information. That appears
 [3] to be what Tabatha did. She stuck to the regular
 [4] decision. Then the fresh set of eyes on the appeals
 [5] committee would receive the file and review all the
 [6] information, and they made their determination.
 [7] Q: All right. So even if you made a mistake in
 [8] terms of interpreting what someone told you, there are
 [9] two additional levels of review within CNA at which time
 [10] that mistake could have been rectified and a different
 [11] decision reached regarding Mr. Dennison's claim?
 [12] A: Correct. Also at my level, again, the supervisor
 [13] would also review all the information before I was able
 [14] to release the denial letter or approval.
 [15] Q: At that point in time, the mistake wouldn't be
 [16] clear to your supervisor; correct?
 [17] A: Basically, she's putting her name on it, so she's
 [18] responsible for whatever information is in the file. So
 [19] yeah, there's a second set of eyes at the initial level
 [20] that would review all the information.
 [21] Q: What if an employer honestly believed or honestly
 [22] told you that they would make some sort of an
 [23] accommodation, but it didn't work for a particular
 [24] claimant? What do you do in that case?
 [25] A: I don't recall ever running across that

[1] A: Correct.
 [2] Q: It said no and asked him if he had a copy to fax
 [3] it. He agreed to do that per your request, is that
 [4] accurate?
 [5] A: Correct.
 [6] Q: What document indicates the faxing of the appeal
 [7] to CNA?
 [8] A: I'm not sure, but it looks like there's a cover
 [9] letter here from Chris Dennison, Page 29, dated May 14
 [10] at 3:50 p.m., where it appears he faxed over his letter
 [11] of May 2.
 [12] Q: Thank you. He faxed this to you; is that
 [13] correct?
 [14] A: Based on the file — I don't recall. Based on
 [15] the file, it looks like it was attentioned to me.
 [16] Q: In that letter, second photograph, Mr. Dennison
 [17] attached two letters from Mr. Richmond, one dated
 [18] March 8 and one dated March 29, both of which indicate
 [19] that his last day of employment at Rural Telephone was
 [20] March 6, 2002; correct?
 [21] A: Again, my handling of the file, I believe,
 [22] stopped May 14. So I believe you're talking to the
 [23] wrong person regarding this information.
 [24] Q: But you would have turned over the May 2 letter,
 [25] which we believe was faxed to you on May 14, 2002, to

[1] situation.
 [2] Q: So it's your experience that when accommodations
 [3] are made, the disability claim is denied?
 [4] A: Yes, in this particular case.
 [5] Q: In this particular case, Mr. Dennison reported to
 [6] CNA on May 2, if you turn to Page 28 of the file, that
 [7] he would like you to reconsider the long term disability
 [8] claim that had been rejected.
 [9] As I understand from your discussion with
 [10] Mr. Comstock, on May 2, 2002, you had a different
 [11] position within CNA.
 [12] A: I'm not sure the exact date we made the switch,
 [13] so I'm not sure if — From just looking at the
 [14] information I have in front of me, it looks like May 15
 [15] was when we received the request for reconsideration as
 [16] Tabatha received it. As of May 14, it did not appear,
 [17] based on the file, that the information had been
 [18] received.
 [19] Q: Are you referring to an e-mail for that
 [20] information?
 [21] A: No, I'm referring to the claim analysis record
 [22] on Page 24.
 [23] Q: That indicates on May 14, 2002, Mr. Dennison
 [24] called to check and see if his appeal had been received;
 [25] is that correct?

[1] Ms. Kirke?
 [2] A: Actually, a set-up person, if they were able to
 [3] get the information, would have looked on the system,
 [4] saw who the file was assigned to, and she probably would
 [5] have pulled up Tabatha's name and just forwarded and
 [6] placed the information in her mailbox.
 [7] Q: If we continue to look at Document No. 24 from
 [8] Exhibit A, Tabatha Kirke's handwriting appears on
 [9] May 15, and indicates that she received a copy of the
 [10] request for reconsideration on that date?
 [11] A: Correct.
 [12] Q: And turned it down on that date?
 [13] A: You'd have to ask her.
 [14] Q: All right. Let me check my notes here real
 [15] quick.
 [16] After May 14 when you received this request for
 [17] reconsideration, no one ever contacted you again on this
 [18] file until the litigation in this file?
 [19] A: Correct.
 [20] Q: After you have reviewed all these materials, did
 [21] it seem odd to you that no one asked you whether or not
 [22] you might have misunderstood what Mr. Richmond told you?
 [23] A: No.
 [24] Q: Did it seem odd to you that no one contacted
 [25] Mr. Richmond after this request for reconsideration came

[1] up to re-inquire about the issue that Mr. Dennison had
[2] brought up in his May 2, 2002 letter?

[3] **A:** Not part of my job duty.

[4] **Q:** Who would have been making the decisions to make
[5] those kinds of inquiries?

[6] **A:** I believe the appeals committee.

[7] **Q:** Did Tabatha Kirke have that kind of
[8] responsibility or authority to make inquiries regarding
[9] the request for reconsideration prior to denying it?

[10] **MR. WILLIAMS:** Object to the form.

[11] **A:** You would probably have to ask her.

[12] **Q:** (By Mr. Anderson) Well, wasn't she in the same
[13] position you were in?

[14] **A:** Yes.

[15] **Q:** Did you have that ability or authority to make
[16] additional inquiries if a request for reconsideration
[17] was submitted on a claim that you had rejected?

[18] **A:** Again, we would go through the same process. Any
[19] medical information would be reviewed by the nurse. Any
[20] other information would be reviewed by me.

[21] **Q:** If you had stayed on the case, would you have
[22] called somebody at Rural and said Mr. Dennison's telling
[23] us some stuff in his May 2, 2002 letter? What's the
[24] story?

[25] **A:** I do not know. I do not know how I would have

[1] handled the case.

[2] **Q:** Is there any set procedure for handling a request
[3] for reconsideration when the basis — one of the basis
[4] for the reconsideration is that perhaps a
[5] misunderstanding has occurred in terms of information
[6] you gathered originally?

[7] **A:** We review all information submitted. The nurse
[8] reviews the medical. The examiner reviews any
[9] additional information. The determination is made at
[10] that time.

[11] **Q:** Is Ms. Kirke a nurse case manager?

[12] **A:** I'm sorry?

[13] **Q:** Is Ms. Kirke a nurse?

[14] **A:** No. She was also a long term disability
[15] specialist.

[16] **Q:** Is the multi-tier review process within CNA once
[17] a claim has been denied designed to correct mistakes or
[18] misunderstandings so that an appropriate determination
[19] is made regarding a claim?

[20] **A:** Yes. I believe that's the reason for having so
[21] many eyes look at it and so many people review the
[22] information, just to make sure the correct decision has
[23] been made.

[24] **Q:** Even if an erroneous decision was made originally
[25] and you received notification that a mistake had been

[1] made, CNA has the opportunity, based upon the structure
[2] that it has internally, to correct that mistake and
[3] reach the correct result?

[4] **MR. WILLIAMS:** Object to the form.

[5] **A:** Basically, yes. I don't think there's
[6] necessarily a yes/no answer with that. That procedure
[7] and having the fresh set of eyes looking at it, it's
[8] kind of a check and balance system.

[9] **Q:** (By Mr. Anderson) Because sometimes you do make
[10] mistakes or disability specialists do misunderstand what
[11] people tell them; correct?

[12] **A:** Yes. Everybody is human.

[13] **Q:** Therefore, if a mistake or a misunderstanding
[14] occurred at the initial level of the handling of
[15] Mr. Dennison's claim, there were various levels after
[16] that at which that mistake could have been corrected and
[17] the proper result achieved; correct?

[18] **MR. WILLIAMS:** Object to the form. Asked
[19] and answered.

[20] **A:** I think we've covered that.

[21] **Q:** (By Mr. Anderson) The answer is yes?

[22] **A:** Whatever the record shows.

[23] **Q:** The record shows a question that's pending. Your
[24] counsel has objected, but he hasn't told you not to
[25] answer. So if you could accommodate me and the

[1] deposition, I would appreciate it.

[2] **A:** Accommodate to what?

[3] **Q:** Answer the question.

[4] **A:** What question?

[5] **Q:** The one you haven't answered.

[6] **A:** Which question is that? We've went on for five
[7] minutes here.

[8] **Q:** If you had misunderstood someone or made an error
[9] in your initial determination regarding whether or not
[10] to accept a claim, the various internal reviews after
[11] that initial rejection would permit CNA to reach the
[12] appropriate result; is that correct?

[13] **A:** Yes.

[14] **Q:** That's all I have. Thank you very much.

[15] **MR. WILLIAMS:** I have no questions.

[16] **BY MR. COMSTOCK:**

[17] **Q:** This is Dave Comstock again, Mr. Barnum. Some of
[18] the questions by Mr. Anderson have rekindled my interest
[19] in a couple of areas, so please bear with me.

[20] Mr. Anderson reviewed with you the reasons why
[21] you were speaking to the employer with respect to the
[22] stand/sit option. When you were doing that, was it your
[23] belief that being able to stand versus sitting from time
[24] to time would relieve this man's pain?

[25] **A:** Basically, I go back to the limitations that were

[1] placed in force by Dr. Frizzell. I was simply
[2] addressing those limitations per the contract language.
[3] Q: So it was your impression that if Mr. Dennison,
[4] who basically sat at a computer ninety or so hours a
[5] week, were allowed to stand from time to time, he
[6] wouldn't hurt?

[7] MR. WILLIAMS: Object to the form. Assumes
[8] facts not in evidence.

[9] A: Again, I go back to Dr. Frizzell. It says no
[10] prolonged standing or sitting. That's — I have to
[11] question about sit/stand option.

[12] Q: (By Mr. Comstock) Is it fair to say that you
[13] didn't have an understanding that if this man were able
[14] to stand up every five minutes or so, it would relieve
[15] his pain?

[16] A: Again, we have to look at him having the ability
[17] to perform substantial material duties of the job. It's
[18] strictly contract language.

[19] Q: I just want to know what your understanding was.

[20] A: My understanding is of the contract.

[21] Q: I appreciate that. You were trying to determine
[22] whether or not this guy could stand up from time to
[23] time. Was it your impression when you were doing that
[24] that would relieve his pain?

[25] A: I believe it's Dr. Frizzell's impression, no

[1] prolonged standing or sitting.

[2] Q: That's your interpretation of Dr. Frizzell's
[3] comment?

[4] A: Yes. Again, it was — Yes, that's my
[5] interpretation.

[6] Q: Okay. What about Dr. Frizzell's letters that
[7] this man's disabled from his pain, doesn't that create a
[8] conflict in your mind?

[9] MR. WILLIAMS: Object to the form.

[10] A: I'm simply going over the policy language and
[11] administering based on policy language.

[12] Q: (By Mr. Comstock) On one hand, Mr. Barnum, you
[13] just told me that it was your belief that if this guy
[14] could stand up from time to time, it would relieve his
[15] pain. But you also knew that there were letters in the
[16] file from Dr. Frizzell indicating that he was disabled
[17] from work of any kind.

[18] A: Okay.

[19] Q: Isn't that a conflict in the information?

[20] MR. WILLIAMS: Object to the form.

[21] Misinterprets and mischaracterizes the testimony today.

[22] Q: (By Mr. Comstock) Isn't that a conflict in the
[23] information?

[24] A: Okay. I'm not sure of the dates that those
[25] letters came in. Basically, I was looking at the

[1] limitations placed on the file by Dr. Frizzell. I was
[2] addressing the prolonged standing and sitting. That was
[3] a limitation placed there. That is the reason behind
[4] asking that question.

[5] Q: Well, let me just ask you a hypothetical. Bear
[6] with me.

[7] If the treating physician who's a neurosurgeon
[8] indicates that a claimant is disabled with or without
[9] accommodation and you read a chart note or another part
[10] of that physician's record indicating no prolonged
[11] sitting or standing, when you have a conflict like that
[12] before you deny the claim or accept the claim, should
[13] that conflict be resolved?

[14] A: That's what the nurse case manager is for.

[15] Q: So if the nurse case manager sees that kind of
[16] internal conflict, it's incumbent upon the nurse case
[17] manager to resolve that before a decision has been made
[18] to either accept or deny the claim?

[19] A: Hypothetically, it would fall under their
[20] guidelines, under the nurse case manager guidelines.

[21] Q: Were you aware of any conflict in the medical
[22] information in this file before you made the decision to
[23] deny the claim?

[24] MR. WILLIAMS: Object to the form.

[25] A: Again, that's the nurse case manager's — Medical

[1] is her background, and therefore, her area of expertise.

[2] Q: (By Mr. Comstock) My question was as to what you
[3] knew. Were you aware of any medical conflict?

[4] A: Not that I recall.

[5] Q: Is it the usual practice of CNA or was it back in
[6] the time frame when you were a disability claims
[7] specialist to deny a request for reconsideration on the
[8] same day that it is received?

[9] A: I don't recall.

[10] Q: Well, you yourself handled request for
[11] reconsideration when you were a disability analyst, did
[12] you not?

[13] A: I believe we tried to have a decision on those
[14] within two weeks, two weeks to four weeks. Again, it's
[15] changed. Two weeks to four weeks, we tried to be as
[16] timely as possible.

[17] Q: Right. Was it customary to deny them on the same
[18] day they're received?

[19] A: I think that's pretty timely service. If the
[20] proper review of the file is done, then I could see how
[21] that would play out.

[22] Q: I'm not asking you what you think. I want to
[23] know if it was customary, based on your working there in
[24] that capacity, to deny a request for reconsideration the
[25] same day it's received.

[1] A: I'm sure it happened.
 [2] Q: Those are all the follow-up questions I have.
 [3] Thank you.
 [4] MR. ANDERSON: Hold on one second. Nothing
 [5] further. Thank you.
 [6] MR. WILLIAMS: No questions.
 [7] MR. COMSTOCK: Okay. Do we want to go ahead
 [8] with Ms. Kirke, or do we want to take a break? What do
 [9] we want to do?
 [10] MR. WILLIAMS: Let's take a fifteen minute
 [11] break. Read and sign.
 [12] (Witness excused at 11:45 a.m.)

[1]
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 [5]
 [6] BRIAN BARNUM
 [7]
 [8]
 [9]
 [10] STATE OF)
 [11]) SS:
 [12] COUNTY OF)
 [13]
 [14] Subscribed and sworn to before me this
 [15] day of , 2004.
 [16]
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 [19]
 [20] NOTARY PUBLIC
 [21]
 [22] My Commission Expires:
 [23]
 [24] In re: CHRIS J. DENNISON vs. CONTINENTAL CASUALTY
 [25] COMPANY, et al.

[1] CERTIFICATE
 [2]
 [3] I, AMANDA L. CULLEN, Certified Shorthand Reporter
 [4] within and for the State of Kansas, hereby certify that
 [5] the within-named witness was first duly sworn to testify
 [6] the truth, and that the deposition by said witness was
 [7] given in response to the questions propounded, as herein
 [8] set forth, was first taken in machine shorthand by me
 [9] and afterwards reduced to writing under my direction and
 [10] supervision, and is a true and correct record of the
 [11] testimony given by the witness.
 [12] I further certify that I am not a relative or
 [13] employee or attorney or counsel of any of the parties,
 [14] or relative or employee of such attorneys or counsel, or
 [15] financially interested in the action.
 [16] WITNESS my hand and official seal at Overland
 [17] Park, Johnson County, Kansas, this 18th day of June,
 [18] 2004.
 [19]
 [20]
 [21]
 [22]
 [23] AMANDA L. CULLEN, CSR
 [24] Certified Shorthand Reporter
 [25]