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AMERICAN ARBITRATION ASSOCIATION  
NO. 11 160 00355 11

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IN THE MATTER OF ARBITRATION  
BETWEEN:

JOSE IVAN VILCHES, FRANCIS	DEPOSITION OF:
X. SHEEHAN, JR., and JACK	
COSTEIRA on behalf of	JOSE IVAN VILCHES
themselves and all others	
similarly situated,	

Claimants,  
-and-  
THE TRAVELERS COMPANIES, INC.

Respondent.  
\_\_\_\_\_ /

B E F O R E:

JEANNE C. CREVINA, a Certified Court  
Reporter of the State of New Jersey, at the  
offices of LITTLER MENDELSON, P.C., One Newark  
Center, Newark, New Jersey, on Friday, March 23,  
2012, commencing at 10 a.m., pursuant to Notice.

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1 A P P E A R A N C E S:

2  
3 THE NIRENBERG LAW FIRM  
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5 BY: JONATHAN I. NIRENBERG, ESQ.  
Counsel for the Claimants

6 LITTLER MENDELSON, P.C.  
7 One Newark Center - 8th Floor  
Newark, New Jersey 07102-5311  
8 BY: WILLIAM P. McLANE, ESQ.  
Counsel for the Respondent

9  
10 ALSO PRESENT:

11 JAN ROSKER ANDERSON, Sr. Corporate Counsel  
12 Corporate Legal Services  
Travelers Companies, Inc.

13 FRANCIS X. SHEEHAN, JR.  
14 JACK COSTEIRA

## I N D E X

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(Exhibits retained by counsel.)

1 J O S E I V A N V I L C H E S, 627 Highland  
2 Avenue, Little Falls, New Jersey 07424. Sworn.

3 EXAMINATION BY MR. McLANE:

4 Q. Good morning, Mr. Vilches.

5 A. Good morning.

6 Q. My name is Bill McLane. I'm an  
7 attorney with the law firm of Littler Mendelson,  
8 and my firm and I represent Travelers in the  
9 arbitration action that you've instituted against  
10 them, and we're here today to ask you some  
11 questions to ascertain what facts if any you have  
12 to support the allegations you made against my  
13 client.

14 Have you ever been deposed before?

15 A. No.

16 Q. Okay. I'm sure your attorney has  
17 gone through the procedure with you, but just for  
18 the record so we're clear and on the same page,  
19 I'm going to run through some instructions to  
20 make sure you understand the process today.

21 The court reporter sitting to your right  
22 and to my left will be taking down all of my  
23 questions and all of your answers and placing  
24 them into a booklet form, a transcript. In order  
25 for that to read properly, we need a few things

1 to happen. All of your answers to my questions  
2 have to be verbal. The court reporter can't  
3 interpret a shrug of the shoulder or nod of the  
4 head. Do you understand that?

5 A. I do.

6 Q. You've just taken an oath to tell  
7 the truth today, and even though we're in a  
8 conference room at my office, do you understand  
9 that your testimony today has the same force and  
10 effect as if we were before the arbitrator in  
11 this matter?

12 A. I do.

13 Q. Is there any reason why you can't  
14 answer my questions truthfully today?

15 A. I don't believe so.

16 Q. In everyday conversation we often  
17 anticipate what the other person is going to say  
18 before they finish saying it and we kind of jump  
19 in with an answer. I would ask that you resist  
20 doing that today, again, for the court reporter's  
21 benefit, and I in turn will wait until you finish  
22 your answer before I ask a question.

23 Do we have an understanding on that?

24 A. I do.

25 Q. If you don't understand one of my

1 questions or you don't understand a word I use,  
2 please let me know and I'll try and rephrase it  
3 so you do understand it. Otherwise if you answer  
4 my questions we're going to assume you understood  
5 the question. Do you understand that?

6 A. Yes, I do.

7 Q. All right. What did you do to  
8 prepare for today's deposition?

9 A. Nothing.

10 Q. Did you talk to anyone other than  
11 your attorney with respect to today's deposition?

12 A. No.

13 Q. Did you talk to Mr. Costeira about  
14 today's deposition?

15 A. No.

16 Q. Did you talk to Mr. Sheehan?

17 A. Not about this, no.

18 Q. What did you talk to Mr. Sheehan  
19 about?

20 A. How his family was doing.

21 Q. Pardon me?

22 A. How his family was doing.

23 Q. And when did you have that  
24 conversation with him?

25 A. Monday? Monday afternoon? No,

1 Tuesday maybe. I'm sorry. Tuesday maybe.

2 Q. Have you ever talked to Mr. Sheehan  
3 about today's deposition?

4 A. No.

5 Q. Have you ever talked to Mr.  
6 Costeira about today's deposition?

7 A. No.

8 Q. And I'm sorry, have you reviewed  
9 any documents in preparation for today's  
10 deposition?

11 A. No.

12 Q. Okay. The deposition is not an  
13 endurance contest. If at any time you need to  
14 take a break for any reason, just let us know and  
15 we'll break. The only thing I ask is that if  
16 there's a question pending, that you answer it  
17 before we break. Is that all right?

18 A. Yes.

19 Q. Okay. You gave the court reporter  
20 an address of 627 Highland Avenue in Little  
21 Falls, New Jersey. Is that a home that you own?

22 MR. NIRENBERG: Objection. I can't  
23 imagine that that has anything to do with this  
24 case. You can answer.

25 MR. McLANE: Fair enough.



1           A.           Not yet.

2           Q.           Okay. So does anybody live with  
3 you at 627 Highland Avenue?

4           A.           Yes.

5           Q.           Who?

6           A.           My wife.

7           Q.           Anyone else?

8           A.           My daughter, my son-in-law, and a  
9 couple of dogs.

10          Q.           And what's your wife's name?

11          A.           Cecilia.

12          Q.           And your daughter's name?

13          A.           Jane.

14          Q.           Jane?

15          A.           Jane.

16          Q.           And what's Jane's last name?

17          A.           Now it's Vilar.

18          Q.           Can you spell that?

19          A.           V-i-l-a-r.

20          Q.           And your son-in-law's name?

21          A.           You know what? He goes by two  
22 names actually. Arnold.

23          Q.           Arnold Vilar?

24          A.           Yes.

25          Q.           What's the other name he goes by?

1 A. Well, that's a family thing.

2 Q. What is it?

3 A. I call him Dude.

4 Q. Dude?

5 A. Yes.

6 Q. Okay. Same last name, Dude Vilar  
7 or Arnold Vilar?

8 A. No, it's just Dude. Dude, that's  
9 all.

10 Q. And how long have you lived at 627  
11 Highland Avenue?

12 A. Since 2004.

13 Q. And since 2004 has your wife  
14 Cecilia and your daughter Jane and son-in-law  
15 Arnold lived with you the entire time?

16 A. Yes.

17 Q. Any other children?

18 A. Yes.

19 Q. Who?

20 A. Joshua.

21 Q. Vilches?

22 A. Yes.

23 Q. And where does Joshua live?

24 A. In Connecticut.

25 Q. Since 2004 at any time did Joshua

1 live at your home on 627 Highland Avenue?

2 A. Yes.

3 Q. And when did Joshua leave that  
4 address?

5 A. Maybe 2005. I'm not sure. I don't  
6 remember.

7 Q. When you worked for Travelers, what  
8 was your last position?

9 A. I was a senior appraiser.

10 Q. And how long were you a senior  
11 appraiser?

12 A. Since I came in. 2004?

13 Q. So you were hired as a senior  
14 appraiser?

15 A. That's correct.

16 Q. Did you receive any promotions  
17 while you were employed at Travelers?

18 A. No.

19 Q. And why is it that you no longer  
20 work with Travelers?

21 A. I was terminated.

22 Q. And was that in early 2009?

23 A. That's correct.

24 Q. Why are you suing my client?

25 MR. NIRENBERG: Objection to form.

1 You can answer.

2 MR. McLANE: What's wrong with the  
3 question?

4 MR. NIRENBERG: It's vague.

5 MR. McLANE: It's vague?

6 MR. NIRENBERG: Yes. It's calling  
7 for a legal conclusion. I'm not sure --

8 MR. McLANE: What's the legal  
9 conclusion? I want to know the basis for the  
10 suit. Why are you suing my client.

11 THE WITNESS: Do I have to answer  
12 that?

13 MR. NIRENBERG: You can answer  
14 that.

15 A. Uhm, I feel that they owe me for  
16 the overtime that I worked.

17 Q. How much overtime did you work that  
18 they owe you for?

19 A. Between 20 to 30 hours per week.

20 Q. For the entire -- well, when did  
21 you start at Travelers?

22 A. 2004.

23 Q. And it's your testimony that for  
24 every week between 2004 and your termination in  
25 early 2009 you worked between 20 and 30 hours

1 over time?

2 A. That is correct.

3 MR. McLANE: Would you mark this as  
4 Exhibit I guess we'll call it Vilches 1.

5 (Claimant Ivan Vilches' Response to  
6 Respondent's Interrogatories is received  
7 and marked Vilches 1 for identification.)

8 Q. Mr. Vilches, the court reporter has  
9 handed you what she's marked as Vilches 1, which  
10 is a copy of your responses to respondent's  
11 interrogatories. Would you turn to the last  
12 page, please.

13 A. Yes.

14 Q. Is that your signature that appears  
15 there?

16 A. Yes.

17 Q. And did you review these  
18 interrogatories prior to signing that page?

19 A. Yes, I did.

20 Q. Were they accurate and true, to the  
21 best of your knowledge?

22 A. Yes.

23 Q. Do me a favor and turn to page 6,  
24 please.

25 At the top of page 6 is the ending of an

1 answer to a question we asked that starts on the  
2 preceding page to identify your job duties and  
3 describe a typical day including the method used  
4 to report to work, and in response you said in  
5 the last sentence on page 6 of that response,  
6 "Respondent required claimant to report time  
7 worked on a computerized system provided by  
8 respondent."

9 Am I correct that Travelers had a policy  
10 that employees should record the amount of hours  
11 they worked each day?

12 A. Yes.

13 MR. NIRENBERG: Object to form.  
14 You can answer.

15 Q. And you were well aware of that  
16 policy. Correct?

17 A. Yes.

18 Q. In fact, you had seen numerous  
19 policy documents during your time at Travelers  
20 that indicated that you were required to record  
21 all your time. Correct?

22 A. Yes.

23 Q. And you also saw policy documents  
24 that required that you record your break time.  
25 Correct?

1           A.           Yes.

2           Q.           Okay. Did you record your time  
3 accurately?

4           A.           No.

5           Q.           If you look down further on page 6,  
6 we asked you a question asking you to state the  
7 number of hours that you worked each week, and in  
8 response to that answer, the last sentence on  
9 page 6 says, "Claimant further objects on the  
10 grounds that Respondents as employers are  
11 required by law to maintain accurate time records  
12 and are not permitted to shift their burden to  
13 the Plaintiffs as employees," and then there's  
14 some fancy legal cite there.

15           If you didn't record your time accurately,  
16 how could Travelers ensure that you were paid  
17 correctly?

18                       MR. NIRENBERG: Objection to form.  
19 Calls for speculation among other things. You  
20 can answer.

21           A.           I was threatened by my supervisor  
22 that if I didn't record those times I would be  
23 terminated.

24           Q.           And who was the supervisor that  
25 threatened you?

1 A. Bob DeStefano.

2 Q. And what was Mr. DeStefano's title?

3 A. I think it's unit manager. You  
4 know, they changed the names every so often.

5 Q. But you recall Mr. DeStefano being  
6 your unit manager?

7 A. Right. That's correct.

8 Q. Was he your immediate supervisor?

9 A. No.

10 Q. Who was your immediate supervisor?

11 A. Gary Marion.

12 Q. Did Mr. Marion report to Mr.  
13 DeStefano?

14 A. That's my understanding.

15 Q. Who did Mr. DeStefano report to?

16 A. I'm not sure.

17 Q. How many employees -- well, strike  
18 that.

19 Any idea how many employees Travelers has?

20 A. The website says 55,000.

21 Q. When did Mr. DeStefano threaten you  
22 with respect to recording your hours --

23 A. The second part of 2006, summer of  
24 2006.

25 Q. December of 2006?



1           A.           No, it was before that.

2                       MR. NIRENBERG: I think he said  
3 "summer."

4           Q.           I'm sorry. Summer?

5           A.           Summer.

6           Q.           And what, tell me exactly what Mr.  
7 DeStefano said to you in the summer of 2006  
8 regarding this threat?

9           A.           He said that the company didn't  
10 allow overtime on a regular basis and we had to  
11 make sure that the time was recorded between 8  
12 and 5 which is the core hours of Travelers.

13          Q.           What else did he say?

14          A.           That we needed to make sure that  
15 the time records show that 8 o'clock to 5.

16          Q.           What else did he say?

17          A.           With respect to that? Nothing.

18          Q.           That was the entirety of the  
19 conversation?

20          A.           At that time, yes.

21                       MR. McLANE: Can you read back my  
22 question two questions ago?

23                       (The reporter complies.)

24          Q.           And is the answer you gave me the  
25 full answer to that question?

1           A.           With that respect, yes.

2           Q.           What do you mean "with that  
3 respect"? I don't know what that means?

4           A.           I don't believe you were asking me  
5 if he threatened me physically or he said if you  
6 don't do that or you guys don't do that I'm going  
7 to fire you.

8           Q.           I didn't ask you anything about  
9 that. You said --

10          A.           That's why I didn't say anything  
11 about that.

12          Q.           I asked you why you didn't record  
13 your time accurately, and you said there was --

14          A.           And that was my answer.

15          Q.           Let me finish. (Continuing) -- and  
16 you said there was some threat from Mr.  
17 DeStefano, and I said when did this threat occur,  
18 and you said the summer of 2006, and I said,  
19 okay, what did he say with respect to the threat?  
20 Is that your full answer? Is that the threat,  
21 what you just told me?

22          A.           Yes.

23          Q.           And as a result of this threat --  
24 well, strike that.

25                 Who else was present during this

1 conversation?

2 A. In my group was Frank. I don't  
3 recall the other names.

4 Q. Who's Frank?

5 A. He's sitting to my left.

6 Q. Does Frank have a last name?

7 A. Sheehan.

8 Q. So is it your testimony that during  
9 this conversation it was Mr. DeStefano, you, and  
10 Frank Sheehan?

11 A. Among others.

12 Q. Okay. And you don't recall who the  
13 others were?

14 A. No.

15 Q. Were the others fellow senior auto  
16 appraisers?

17 A. Yes.

18 Q. Did the others include any other  
19 Travelers management?

20 A. Gary Marion, if you consider him a  
21 manager.

22 Q. Did you consider Gary a manager?

23 A. My supervisor.

24 Q. He was your boss. Right?

25 A. Yeah.

1           Q.           Where did this conversation take  
2 place in the summer of 2006?

3           A.           At Travelers' offices in Cedar  
4 Knolls.

5           Q.           Was this a meeting that Mr.  
6 DeStefano or someone else had called?

7           A.           It was one of the monthly meetings.

8           Q.           So at this monthly meeting in 2006,  
9 this was the first time that you were threatened  
10 with your job, I take it, if you recorded your  
11 overtime. Is that what you're telling me?

12          A.           It might have been before that, you  
13 know, but in different ways for other issues.

14          Q.           Well, I want to know about the  
15 issue of why you weren't recording your time  
16 accurately.

17          A.           Yeah. That would be -- yeah, that  
18 would be the first time.

19          Q.           That was the first time.

20                 Now, you told me that the company owed you  
21 overtime from the very first day you started  
22 working at Travelers in 2004. You said you  
23 weren't paid overtime for 20 to 30 hours every  
24 week you were there since the inception of your  
25 employment. If the threat, if this threat as you

1 describe it occurred in the summer of 2006, why  
2 weren't you recording your time accurately prior  
3 to that?

4 A. The system wasn't implemented yet,  
5 the computerized system.

6 Q. So prior to the implementation of  
7 the computerized system, how did you record your  
8 time?

9 A. We were given a piece of paper  
10 where you, you know, you had the Monday, Tuesday,  
11 you know, the day of the week, and we would put  
12 down times and we would hand that to the  
13 supervisor.

14 Q. Did you do that accurately?

15 A. No.

16 Q. Why didn't you do that accurately?

17 A. Because they would say we will pay  
18 you from 8 to 5.

19 Q. Who said that?

20 A. The supervisor.

21 Q. But there was no threat associated  
22 with that?

23 A. No.

24 Q. Okay. Now, when this threat  
25 occurred in the 2006 that you just described, who

1 did you report this threat to?

2 A. I didn't.

3 Q. Why not?

4 A. I wanted to keep my job.

5 Q. Well, what made you feel that if  
6 you reported this threat that you would lose your  
7 job?

8 A. Because I knew Bob from about 20  
9 years ago.

10 Q. How many years ago?

11 A. About 20 years, maybe 15 years.

12 Q. And what does that mean?

13 A. Uhm.... You can say he wasn't the  
14 nicest guy around.

15 Q. Did you know Mr. DeStefano prior to  
16 working at Travelers?

17 A. That's correct.

18 Q. Had you worked with him previously?

19 A. No.

20 Q. You knew him socially?

21 A. No.

22 Q. How did you know him for 15 years  
23 before you started working at Travelers?

24 A. He would come to the body shop that  
25 I was a manager at.

1           Q.           Give me the names of all the  
2 employees who were terminated from Travelers  
3 because they brought complaints about one of  
4 their supervisors.

5           A.           I don't know that.

6           Q.           You don't know?

7           A.           No.

8           Q.           Do you know of any?

9           A.           No.

10          Q.           So if you were unaware of anybody  
11 losing their job for bringing a complaint to  
12 Travelers, why did you have any fear that you  
13 would lose your job if you brought a complaint  
14 about this threat that Mr. DeStefano made in the  
15 summer of 2006?

16          A.           As you can tell, I have an accent  
17 and I have this complex of, you know, being  
18 afraid.

19          Q.           So you projected your complex and  
20 your fears because you have some sort of accent  
21 onto the entire Travelers Corporation. Is that  
22 correct?

23          A.           I wouldn't say that.

24          Q.           Of the 55,000 employees at  
25 Travelers, do you know how many have accents?

1           A.           I have no idea.

2           Q.           Are you the only one?

3           A.           I hope not.

4           Q.           So as a result of this meeting with  
5 Mr. DeStefano, you decided, based on your fears  
6 and complexes, that you would not record your  
7 time accurately. Is that what you're telling us?

8           A.           That's correct.

9           Q.           Okay. And how was Travelers to  
10 know that you were not recording your time  
11 accurately?

12                       MR. NIRENBERG: Objection to form.  
13 When you say "Travelers," who do you mean?

14                       MR. McLANE: I mean the company,  
15 the respondent, the people you've sued.

16                       MR. NIRENBERG: Does that include  
17 his immediate supervisor or --

18                       MR. McLANE: Yes, that includes the  
19 company.

20           Q.           If you weren't recording your time  
21 accurately and you're claiming that you weren't  
22 paid overtime, how is the company to know that  
23 they should have given you more money?

24           A.           My understanding is that the  
25 company had hired Mr. Bob DeStefano to be my



1 supervisor, and in that position he would be the  
2 one respecting what the company wanted from us.

3 Q. And Mr. DeStefano told you in a  
4 meeting in 2006 that there would be no more  
5 overtime on a regular basis and to make sure that  
6 you worked the core hours of 8 to 5. Correct?

7 A. He says that the company didn't  
8 want to pay overtime on a regular basis.

9 Q. Is there anything wrong with the  
10 company wanting to cut its overtime costs?

11 A. I don't know.

12 Q. Okay. But as a result of that  
13 meeting you decided that you were going to just  
14 put in hours for core hours regardless of whether  
15 you worked more or not?

16 A. I decided it was better for my  
17 career to do what Mr. DeStefano wanted me to do.

18 Q. Notwithstanding the fact that you  
19 knew of numerous policies at Travelers that  
20 required that everybody record their time  
21 accurately. Correct?

22 A. It was my understanding that Bob  
23 DeStefano had the power to fire me.

24 Q. Okay. And where did that  
25 understanding come from?

1           A.           From the manual. From Travelers  
2 manual.

3           Q.           Was it your understanding that  
4 there was somebody at Travelers among these  
5 55,000 people who might be able to terminate Mr.  
6 DeStefano?

7           A.           Yeah.

8           Q.           Okay. And Travelers has a Human  
9 Resources Department. Correct?

10          A.           Yes, they do.

11          Q.           And is it your testimony that as a  
12 result of this threat you did not report this to  
13 the Human Resources Department?

14          A.           I did.

15          Q.           Is this after you were terminated?

16          A.           I mention that to Human Resources  
17 about the work hours. This was earlier before --  
18 before the summer of 2006.

19          Q.           I'm talking about the threat.

20          A.           Oh, no, no, no.

21          Q.           Mr. DeStefano threatened you,  
22 according to you, based on that conversation you  
23 relayed, and you perceived it to be a threat, and  
24 as a result of that you never reported that  
25 threat to anybody at --

1           A.           No.

2           Q.           -- at Travelers although you knew  
3 they had a Human Resources Department. Correct?

4           A.           That's correct.

5           Q.           And you knew that you could utilize  
6 the Human Resources Department because you  
7 utilized it upon your termination. Correct?

8           A.           Yes.

9           Q.           Okay. Did Mr. DeStefano make any  
10 other threats to you during your employment at  
11 Travelers regarding accurately reporting your  
12 time?

13          A.           No.

14          Q.           Okay. Now, according to your  
15 testimony, you were working 20 to 30 hours a week  
16 overtime and I take it not getting paid for it in  
17 your mind. Did you start looking for another job  
18 to --

19          A.           No.

20          Q.           Why not?

21          A.           To me being at Travelers was the  
22 top of my career.

23          Q.           Even though, according to you, you  
24 weren't getting paid 20 to 30 hours per week?

25          A.           That is correct.

1           Q.           Now, your interrogatory answers  
2 also speak to this 20 to 30 hours per week on  
3 average I think you call it. During your time at  
4 Travelers did you receive paid time off? In  
5 other words, vacation time, sick time, personal  
6 days.

7           A.           Yes.

8           Q.           Did you ever use any of that time?

9           A.           Yes.

10          Q.           How much vacation time did you  
11 receive a year as a senior appraiser?

12          A.           I don't think it was called  
13 vacation. It was called PTO, paid time off.

14          Q.           And that encompassed like vacation  
15 time, sick days, personal time?

16          A.           That's correct.

17          Q.           Okay. And how many days of those  
18 were you allotted each year?

19          A.           I believe by 2008 it was 20 days.

20          Q.           Do you remember what it was in  
21 2007?

22          A.           No.

23          Q.           Do you remember when you started at  
24 Travelers, do you recall how much PTO you  
25 received per year?

1           A.           No.

2           Q.           Do you remember it being less than  
3 20 days and then increasing to 20 days during the  
4 course of your employment?

5           A.           I believe so.

6           Q.           Okay. In 2008 did you use any of  
7 your PTO days?

8           A.           Yes.

9           Q.           Did you use all 20 of them?

10          A.           19 I believe.

11          Q.           Okay. And were any of those 19  
12 consecutive days? In other words, did you go on  
13 vacation in 2008?

14          A.           Five days I believe consecutive,  
15 yeah.

16          Q.           Is it fair to say during that week  
17 you didn't work any overtime?

18          A.           Yeah.

19          Q.           And in 2008 Travelers had paid  
20 holidays on top of the PTO. Correct?

21          A.           I'm sorry. 2008?

22          Q.           Sure.

23          A.           Yes.

24          Q.           You didn't work Christmas Day, did  
25 you?

1           A.           Christmas Day....

2                       MR. NIRENBERG:   Objection to form.  
3   Do we know if Christmas was a workday?

4           Q.           I'm asking him.   Did you work on  
5   Christmas Day 2008?

6           A.           I don't remember.

7           Q.           Did you ever work Christmas Day  
8   while you were at Travelers?

9           A.           Maybe an hour or so.

10          Q.           So over your five years of  
11   employment you maybe worked a total of one hour  
12   on Christmas Day?

13          A.           It's possible.

14          Q.           Did Travelers normally give the day  
15   after Christmas off as well?

16          A.           I believe that's correct.

17          Q.           Is it fair to say you would not  
18   have worked 20 to 30 hours a week during the week  
19   of Christmas on any particular year?

20          A.           That's not correct.

21          Q.           Why not?

22          A.           Because every day was a workday  
23   unless we were not working.

24          Q.           Well, that's what I'm saying.   If  
25   Christmas is on a Monday and the day after

1 Christmas is a Tuesday and those are both days  
2 off and you worked at most one hour, is it  
3 possible that you still worked 20 to 30 hours  
4 overtime in a shortened workweek?

5 A. Probably not.

6 Q. And would the same be true for  
7 Thanksgiving week? You didn't work Thanksgiving,  
8 did you?

9 A. Maybe an hour.

10 Q. And then did Travelers normally  
11 give the day after Thanksgiving as a paid day  
12 off?

13 A. I don't remember.

14 Q. Okay. Is it fair to say that you  
15 wouldn't have worked 20 to 30 hours a week  
16 overtime during Thanksgiving week?

17 A. That's fair.

18 Q. What about July 4th? Was that a  
19 holiday at the company?

20 A. I believe so, yes.

21 Q. Did you ever work July 4th that you  
22 can remember?

23 A. Maybe an hour.

24 Q. Over the entire length of your  
25 employment?

1           A.           No.

2           Q.           It would be fair to say that it's  
3 unlikely that you worked 20 to 30 hours a week  
4 overtime during the week in which July 4th fell?

5           A.           That's fair.

6           Q.           What about Labor Day, was that a  
7 paid day off at the company?

8           A.           I believe.

9           Q.           Is it fair to say you wouldn't have  
10 worked 20 to 30 hours a week overtime during the  
11 week that fell, that Labor Day fell on?

12          A.           That would be fair.

13          Q.           Is the same true for Memorial Day?

14          A.           Yes.

15          Q.           New Year's Day?

16          A.           Yes.

17          Q.           Pretty much true of any holiday  
18 that would be a day off at Travelers. Correct?

19          A.           That's correct.

20          Q.           Okay. Did you ever take any sick  
21 days as part of your PTO?

22          A.           Yes.

23          Q.           You couldn't work if you were sick,  
24 could you?

25          A.           Actually, I did.



1           Q.           So did you take the sick day or did  
2 you record your hours?

3           A.           Both.

4           Q.           Why did you do that?

5           A.           Because you have to prepare for the  
6 next day.

7           Q.           Did you record your time for that?

8           A.           I did not.

9           Q.           Okay. Because you were getting  
10 paid the sick day?

11          A.           No, because I was threatened.

12          Q.           Who threatened you?

13          A.           Bob DeStefano.

14          Q.           How did Bob DeStefano threaten you  
15 about working on your days that you were sick?

16          A.           Because the hours to be recorded  
17 were from 8 to 5 only.

18          Q.           I understand that. You wake up in  
19 the morning. You're not feeling well. It's a  
20 sick day. You call out of work and say I'm not  
21 coming in. Have you ever done that?

22          A.           No.

23          Q.           You never did that?

24          A.           No.

25          Q.           Okay. But you did use 19 PTO days

1 in 2008?

2 A. That's correct.

3 Q. Okay. Do you recall how many PTO  
4 days you used in 2007?

5 A. No.

6 Q. There would be a ledger or log or  
7 some recording of the time off that you took.  
8 Right?

9 A. I have to assume there is, yes.

10 Q. Okay. Do you recall how many PTO  
11 days you used in 2006?

12 A. No.

13 Q. Okay. So then you would agree with  
14 me, based on the discussion we just had, that not  
15 every week while you were at Travelers you  
16 worked, as you claim in your interrogatory  
17 answers, 20 to 30 hours per week overtime.  
18 Correct?

19 A. That would be correct.

20 Q. Okay.

21 MR. McLANE: Let's mark this as  
22 Vilches 2.

23 (Complaint and Jury Demand is  
24 received and marked Vilches 2 for  
25 identification.)

1           Q.           Before we get to Vilches 2, I just  
2 want to look back at Vilches 1 again, which is  
3 your Answers to Interrogatories, because I'm  
4 confused about something in your answers.

5           On page 4 of Vilches 1, Interrogatory  
6 Number 4, we ask you to state, "State whether you  
7 claim to have sought permission to work overtime  
8 and were refused."

9           If you turn to the next page where your  
10 answer appears --

11          A.           5?

12          Q.           Yes, page 5. Under "Answer," it's  
13 the very last sentence in that answer, you say  
14 simply "No." So am I correct that every time you  
15 sought permission to work overtime it was  
16 granted?

17                       MR. NIRENBERG: Objection to form.

18                       MR. McLANE: What's wrong with the  
19 question?

20                       MR. NIRENBERG: It presumes facts  
21 not in evidence.

22                       MR. McLANE: This is a deposition  
23 where we're trying to ascertain the facts. There  
24 are no facts in evidence yet. This is how we get  
25 facts into evidence.

1                   MR. NIRENBERG: I know, but you're  
2 asking a question about every time he did  
3 something without establishing whether or not he  
4 ever did, so I'm objecting.

5                   MR. McLANE: Well, I have a  
6 question here. It says, "State whether you claim  
7 to have sought permission to work overtime and  
8 were refused"? He says no. So I want to know  
9 does that mean that every time you sought  
10 permission to work overtime you were granted it?

11                  MR. NIRENBERG: Same objection.  
12 You can answer.

13                  THE WITNESS: I can answer?

14                  MR. NIRENBERG: Yes.

15           A.           Can you repeat that question?

16           Q.           Sure. The question is based on  
17 your answer to Interrogatory Number 4 which you  
18 signed under oath, does that mean that every time  
19 you sought permission to work overtime you were  
20 granted permission to work overtime?

21           A.           That's correct.

22           Q.           Okay. And you did seek permission  
23 to work overtime, didn't you?

24           A.           That's correct.

25           Q.           So square these two things for me.

1 You're saying that you were threatened not to  
2 work overtime, yet every time you asked to work  
3 overtime you were allowed to work overtime. Can  
4 you explain why that would be?

5 A. When I asked for overtime is  
6 because I needed to finish a claim, upload a  
7 photo, or finish an estimate at some customer's  
8 home, and we were not allowed to do anything  
9 after 5 or upload anything through the computer  
10 after 5 without permission.

11 Q. Okay. And every time, according to  
12 you, that you sought permission, it was granted.  
13 Correct?

14 A. Yes.

15 Q. Okay. And did you seek permission  
16 to work overtime every time you needed to work  
17 past 5 o'clock?

18 MR. NIRENBERG: Objection to form.  
19 Strike that. Withdrawn. Never mind.

20 A. Can you repeat that?

21 MR. McLANE: Sure. Can you read it  
22 back, please.

23 (The pending question is read by  
24 the Reporter.)

25 A. No.

1 Q. Okay. Why not?

2 A. Because I couldn't ask permission  
3 to work overtime while we were downloading  
4 assignments after 5.

5 Q. Why not?

6 A. Because Bob DeStefano said that we  
7 could not ask for that.

8 Q. Was that in the same conversation  
9 that you told us about earlier in the summer of  
10 2006?

11 A. That's correct.

12 Q. So when Bob DeStefano says that the  
13 company is cutting back on overtime on a regular  
14 basis and that you needed to work only between  
15 the core hours of 8 to 5, you understood him to  
16 say do not download files after 5 o'clock?

17 A. No.

18 Q. What did you understand him to say?

19 A. He said that we could not upload  
20 anything after 5 o'clock.

21 Q. Okay.

22 A. And he did not say that the company  
23 was cutting down on overtime.

24 Q. I thought that's what you said.

25 A. No.

1           Q.           So did you upload files after 5  
2 o'clock?

3           A.           Only if I had permission to do  
4 that.

5           Q.           Okay. That was my question. So  
6 anytime that you needed to do anything past 5  
7 o'clock, you sought permission to do it.  
8 Correct?

9           A.           No.

10          Q.           What am I missing?

11          A.           Anytime I have to upload to the  
12 company, I needed permission to do that.

13          Q.           Okay. And that's because Bob  
14 DeStefano told you you couldn't do that after 5  
15 o'clock unless you had permission. Correct?

16          A.           That is correct.

17          Q.           And every time you did that you  
18 sought permission. Correct?

19          A.           Yes.

20          Q.           Okay. You followed Bob  
21 DeStefano's --

22          A.           Instructions.

23          Q.           -- his admonition that you not work  
24 beyond the hours of 8 to 5. Correct? You  
25 followed his instruction not to do that.

1 Correct?

2 A. Can you rephrase that?

3 Q. Sure. What don't you understand  
4 about it?

5 A. Are you implying that he told me  
6 not to work overtime, or are you implying that he  
7 told me not to upload anything after 5?

8 Q. Well, I'm not implying anything.  
9 I'm just going based on what you told me.

10 I asked you whether or not you had ever  
11 been denied permission to work overtime, and I  
12 believe you said you never were. Correct?

13 A. You're confusing me now.

14 Q. Okay. I asked you every time you  
15 sought permission to work overtime it was  
16 granted, and I think you agreed with that.

17 A. If I have to upload, yes.

18 Q. Okay. And if you had to do  
19 something else, it wasn't granted, the permission  
20 wasn't granted?

21 A. That's correct.

22 Q. Okay. So every time you had to  
23 upload a file, you had to seek permission?

24 A. That's correct.

25 Q. What tasks did you do after 5



1 o'clock that you didn't seek permission for?

2 A. Download assignments.

3 Q. Okay. So the uploads we got  
4 permission for, but the downloads we didn't get  
5 permission for?

6 A. That's correct.

7 Q. Okay. And why the distinction? Do  
8 you know?

9 A. We were told the uploads would get  
10 recorded in the Travelers computer, and the  
11 downloads were not.

12 Q. And what's a download?

13 A. A download, we were given  
14 assignments. The assignments were sent to ADP,  
15 the company that provided the software to do the  
16 estimating, and we were required to download  
17 those assignments until 8 o'clock.

18 Q. 8 o'clock at night?

19 A. Yeah.

20 Q. And where did that requirement come  
21 from? What document do I look at to find that  
22 requirement?

23 MR. NIRENBERG: Objection to form.  
24 Can you just rephrase the question? You asked  
25 two questions. I'm not sure which question.

1           Can you read back the question so we can  
2 figure out what the actual question is.

3                   (The pending question is read by  
4 the Reporter.)

5           MR. NIRENBERG: So are you asking  
6 where did that requirement come from, or what  
7 document?

8           MR. McLANE: Both.

9           Q.       Where did the requirement come  
10 from? I'll break it down, make it easy.

11          A.       Bob DeStefano.

12          Q.       From where?

13          A.       Bob DeStefano.

14          Q.       And was there any Travelers  
15 document that said that you were not to seek  
16 permission to work overtime when you were  
17 downloading a file -- or sorry, did you say  
18 retrieving a file or downloading a file?

19          A.       It's the same.

20          Q.       Okay. And that was in the meeting  
21 that Bob DeStefano had with you in the summer of  
22 2006?

23          A.       No. That was the initial, you  
24 know, it was brought up many times.

25          Q.       What was the first time it was

1 brought up?

2 A. 2006?

3 Q. When?

4 A. Probably in the summer.

5 Q. But not at the same meeting where  
6 this threat occurred. Right?

7 A. That's correct.

8 Q. And tell me what happened when this  
9 issue was brought up in the summer of 2006?

10 A. We were told that the Travelers had  
11 instituted a new policy on overtime and we would  
12 work to input or access the system to enter the  
13 time that we have worked, and the core hours had  
14 to be between 8 and 5.

15 Q. Okay. Anything else?

16 A. No.

17 Q. And what was brought up regarding  
18 the retrieval of the files?

19 A. That in order to meet the claims  
20 unit requirement, we had to download the  
21 assignments, and we had one hour to download the  
22 assignments, and the assignments were being sent  
23 up to 7:30 at night, and that the assignments, it  
24 could take up to half an hour to be processed by  
25 ADP. There was no way of knowing when the

1 assignments were sent, what time, or how many.

2 Q. And so what did that mean for you?

3 A. It means that I have to, every 3 to  
4 5 minutes I have to make sure my computer was  
5 connected, I have to make sure that the software  
6 was running, and that the software was connected  
7 and downloading assignments.

8 Q. I'm sorry. Can you read that back,  
9 please.

10 (The Reporter reads the prior answer.)

11 Q. And is it your testimony that you  
12 had to do that in 2008?

13 A. Yes.

14 Q. In 2007?

15 A. Yes.

16 Q. Wasn't there a communication to the  
17 employees that it wasn't necessary for them to  
18 make sure their computers were on or up and  
19 running overnight in 2007, 2008?

20 A. Yeah.

21 Q. Okay. So if your computer didn't  
22 have to be up, why were you checking to make sure  
23 it was plugged in every 3 to 5 minutes?

24 MR. NIRENBERG: Objection to form.  
25 You can answer.

1           A.           To me night starts at probably  
2 9:30, maybe 10 o'clock at night when I go to bed.

3           Q.           So is it your testimony that you  
4 would wake yourself up every 3 to 5 minutes to  
5 check on your computer?

6           A.           If you mean I went to bed at 5  
7 o'clock in the afternoon, no. If you mean I went  
8 to bed at 10, no. My computer was off after 8  
9 o'clock at night.

10          Q.           Pardon me?

11          A.           My computer was shut off at 8  
12 o'clock at night.

13          Q.           And prior, is it your testimony  
14 that prior to 8 o'clock at night that every 3 to  
15 5 minutes you would check your computer to see  
16 that it was up and running even though you had  
17 been told that it was not necessary?

18                       MR. NIRENBERG: Objection to form.  
19 You can answer.

20          A.           Yes.

21          Q.           Let's look at Vilches 2. Do me a  
22 favor and turn to the bottom of page 3, and I  
23 want to look also at the top of page 4.

24                       In this paragraph you allege that Travelers  
25 provided you with multiple appraisal assignments

1 on a daily basis, and that you were required to  
2 follow a three-step process to complete the  
3 assignments, and under (a) you have, "Retrieve  
4 assignments on their laptop computers within a  
5 predetermined amount of time dictated by  
6 Defendants." And what was the time that was  
7 predetermined by Defendants?

8 A. Initially it was three hours.

9 Q. Initially, how do you define  
10 "initially"? What do you mean by "initially"?

11 A. 2006? I believe. Yeah, 2006.

12 Q. So in 2006 there was a requirement  
13 that assignments be retrieved within 3 hours of  
14 them arriving on your laptop computer?

15 A. No. Since the moment dispatch send  
16 it to us. Well, actually send it to ADP.

17 Q. And so dispatch would send the  
18 assignment to ADP?

19 A. That's correct.

20 Q. ADP would do something with it and  
21 then send it to the adjusters. Correct?

22 A. It would make it available to the  
23 appraisers.

24 Q. And generally, if you know, what  
25 was the time difference between the time ADP

1 received it from the dispatchers and the time it  
2 was available to the adjusters?

3 A. We notice at the beginning it could  
4 have been as much as two hours. It depends how  
5 busy they were.

6 Q. And then did it change?

7 A. It did.

8 Q. Did it get better or worse?

9 A. Worse.

10 Q. Okay. Now, I'm talking about the  
11 time that ADP, between dispatch getting it to ADP  
12 and ADP getting it to you. So you're telling me  
13 at first it was two hours --

14 A. Oh, ADP, it got better.

15 Q. So it was faster?

16 A. That's correct.

17 Q. ADP got better --

18 A. Absolutely.

19 Q. -- at getting it to the adjusters?

20 A. Yes.

21 Q. And then that was in 2006. What  
22 happened after those initial three hours? Did  
23 that time change?

24 A. That's correct.

25 Q. What was the new time that was

1 predetermined?

2 A. The requirement time?

3 Q. Yes.

4 A. One hour.

5 Q. So it was traveler's requirement  
6 that the adjusters retrieve assignments between  
7 one hour of them landing on your laptop.

8 Correct?

9 A. No.

10 Q. Okay. Tell me how it worked?

11 A. Dispatch will make an assignment to  
12 an appraiser. That assignment was sent to ADP.  
13 ADP will process that assignment, and they will  
14 make that assignment available to the appraiser.

15 Q. Right. And what was your  
16 obligation with respect to that process?

17 A. Making sure that I downloaded that  
18 assignment within one hour.

19 Q. And how would you know it was ready  
20 to be downloaded?

21 A. We didn't.

22 Q. Okay. Then how did you complete  
23 this process?

24 A. Every 3 to 4 minutes.

25 Q. Okay. So you would check your



1 computer every 3 to 4 minutes to see what?

2 A. If there was anything available.

3 Q. And how would you know if something  
4 was available?

5 A. You wait another minute and you  
6 will see the names come up on the screen.

7 Q. But what did you have to do  
8 physically? You go to your computer. Right?

9 A. Right.

10 Q. And an assignment has come in,  
11 dispatch has sent it to ADP, now ADP is sending  
12 it out to the adjusters. Correct?

13 A. Makes it available.

14 Q. Okay. How does ADP make it  
15 available to you?

16 A. I believe they have a -- I guess  
17 they put it on a computer and it's there.

18 Q. It's where? That's what I'm trying  
19 to find out.

20 A. Well, the best way I can explain is  
21 that it's like you email. When you turn your  
22 computer on, it logs into your email account, and  
23 whatever is there, it comes to you.

24 Q. Okay. So to know whether or not  
25 your attorney sends me an email, I go to my

1 computer, I go to my email box, and I see whether  
2 in my inbox there's an email from Mr. Nirenberg.

3 A. That's correct.

4 Q. And is that how you would find out  
5 whether or not there was a new assignment for  
6 you?

7 A. That's correct.

8 Q. Okay. And you had to then download  
9 that assignment within how much time after  
10 retrieving it, after it coming to your computer?

11 A. Once it come to my computer I'm  
12 done. Retrieving is the process of actually  
13 going there and getting it.

14 Q. Right. So that's what I'm trying  
15 to find out. I think we're dancing around here.

16 You get assignments. Correct?

17 A. The assignments -- I didn't get the  
18 assignment. The assignments were available at  
19 ADP.

20 Q. And how were the assignments then  
21 given to you? Who assigned you a particular  
22 claim?

23 A. My understanding was dispatch.

24 Q. Okay. So dispatch would assign a  
25 claim. A new claim comes in and we want Mr.

1 Vilches to work on it. Correct?

2 A. That's correct.

3 Q. And dispatch does that. They send  
4 it to ADP. ADP does something, and then after  
5 ADP does what it does, the assignment is then  
6 transmitted to you, posted somewhere where you  
7 can access it?

8 A. There you go, yes.

9 Q. Okay. And can you access that  
10 assignment prior to ADP doing whatever it does?

11 A. No.

12 Q. Okay. Do you even know there's an  
13 assignment prior to ADP doing whatever it does?

14 A. No.

15 Q. Okay. So at some point there's  
16 some flag, some alert, something happens on your  
17 laptop computer that let's you, Mr. Vilches, know  
18 that there's a new assignment waiting for you.  
19 Correct?

20 A. No.

21 Q. Okay. How does it work?

22 A. When you press a button and it goes  
23 to download assignments, you know, it has a thing  
24 there that says download assignments, so you  
25 press the button and it goes to, communicates,

1 you know, beep, beep, beep, and if something  
2 comes up in the computer --

3 Q. It's there?

4 A. Right.

5 Q. It's like opening up your inbox for  
6 email?

7 A. There you go. That's correct.

8 Q. All right. I think we were talking  
9 about the same thing the entire time.

10 All right. So what did it take for you to  
11 download the assignment? How much time did that  
12 actually take?

13 MR. NIRENBERG: Objection to form.

14 Do you mean his active time, or --

15 Q. Yes.

16 A. You mean the time from the moment I  
17 press that?

18 Q. Yes.

19 A. It could have been maybe..... Let  
20 me see if I understand. You say -- which time  
21 are you looking for? The time where I looked at  
22 the icon and then I see if the software is  
23 running and I press the button, or actually just  
24 pressing the button?

25 Q. Look at Vilches 2,(a). It said you

1 had to do a three-step process.

2 A. Right.

3 Q. The first step was retrieve  
4 assignments on your laptop computer within a  
5 predetermined amount of time dictated by  
6 Defendants. How long did it take you to retrieve  
7 an assignment on your laptop computer within that  
8 predetermined amount of time? How long did that  
9 take for you to do, (a)?

10 A. Maybe a minute and a half?

11 Q. And that retrieval is one claim?  
12 It's a new claim that comes in that's assigned to  
13 you. Correct?

14 A. Most of the time.

15 Q. Okay. What's the minority of the  
16 time? If it's not a new claim, what is it?

17 A. It could be two assignments.

18 Q. So two assignments would come  
19 together at once?

20 A. Sometimes.

21 Q. Okay. But most of the time it was  
22 just one assignment?

23 A. That's correct.

24 Q. Okay. And then once that  
25 assignment came, you would push a button and the

1 assignment would be downloaded to your laptop?

2 A. Right.

3 Q. Okay. The claim would be. Right?  
4 Did you have any other, other than downloading it  
5 to your computer, was there anything else you had  
6 to do with respect to (a)?

7 A. Yeah. I have to make sure the  
8 computer was connected. I had to make sure the  
9 software was running and that the software was  
10 connected to the wireless.

11 Q. So you had to make sure that your  
12 computer was plugged in or powered up?

13 A. That's correct.

14 Q. You had to make sure that the  
15 software that was in the computer was running?

16 A. That's correct.

17 Q. And you had to make sure -- what  
18 was the third thing?

19 A. The wireless.

20 Q. (Continuing) -- that the wireless  
21 router was operating?

22 A. Well, that the computer had a  
23 wireless connection.

24 Q. Were these really bad computers  
25 that they would shut down all the time?

1 A. At the time? Yeah.

2 Q. Did you ask for new ones?

3 A. We were promised new ones.

4 Q. Did you ever get them?

5 A. Yeah.

6 Q. Okay. When did that happen?

7 A. 2008? I'm not sure. It was late.

8 Q. So it's fair to say that in 2008  
9 this issue of this vigilance to make sure that  
10 the wireless connections were made ended?

11 A. No.

12 Q. Okay. Why not?

13 A. Because the wireless provider was  
14 not working with the software company, so there  
15 were issues.

16 Q. Now, weren't you told by Mr.  
17 DeStefano and Mr. Marion numerous times not to  
18 work beyond the core hours?

19 A. I was told not to upload.

20 Q. You were never told not to do any  
21 work from home?

22 A. If you talking about uploading?  
23 Yes, I was told not to do that.

24 Q. Weren't you written up for working  
25 and told that you shouldn't work, there was no

1 reason for you to do any work off the road?

2 A. I was told, yeah, I was written up  
3 because I was uploading pictures after 5 o'clock.

4 Q. Okay. And they didn't want you to  
5 do that. Right?

6 A. That's correct.

7 Q. And did they not want you to  
8 download as well?

9 MR. NIRENBERG: Objection to form.

10 Are you asking what they told him, or what  
11 they --

12 Q. I'm asking you whether or not --  
13 strike that.

14 Were you given a warning regarding your  
15 working outside the core hours?

16 MR. NIRENBERG: Objection to form.

17 Asked and answered. You can answer again.

18 A. I was written up for uploading.

19 Q. Okay. Now, with respect to (b)  
20 which starts at the top of page 4, it says,  
21 "Travel to the field to perform an inspection of  
22 the damaged vehicle within a predetermined amount  
23 of time dictated by Defendants."

24 What was the time that they dictated that  
25 you travel and perform the inspection?



1           A.           There was no time for travel.  
2           There was time to complete the assignment.

3           Q.           So when it says "a predetermined  
4           amount of time dictated by Defendant," that's not  
5           accurate?

6           A.           Yeah, it is.

7           Q.           Okay. So what was the time that  
8           was predetermined?

9           A.           It depended on the scheduled time  
10          the appointment was set up.

11          Q.           Why don't you do this -- strike  
12          that.

13          Am I right that you were expected to  
14          complete five vehicle inspections a day?

15          A.           That's correct.

16          Q.           Okay. And that would be, for the  
17          most part, five separate claims. Right? Five  
18          vehicles, five separate claims for the most part?

19          A.           It has to be.

20          Q.           How would you know where the  
21          vehicles were?

22          A.           The assignment would contain that  
23          information.

24          Q.           So when you get the assignment, it  
25          has information such as the claim number, the

1 name of the claimant, the type of vehicle. Does  
2 it have the location of the vehicle?

3 A. Absolutely.

4 Q. You get the assignment. Once you  
5 get the assignment, what's the first thing you  
6 have to do?

7 A. Call the person that has the  
8 vehicle and confirm the appointment.

9 Q. And the person that has the  
10 vehicle, could that be either the claimant or a  
11 body shop?

12 A. Yeah.

13 Q. And is that information contained  
14 on the claim form you receive?

15 A. That's correct.

16 Q. Okay. And then once you determine  
17 where the vehicle is, what do you do next?

18 A. Then I will set up my schedule and  
19 see what time it was. If there was no time, then  
20 I will input that on my map and I will see which  
21 would be the more efficient way of completing the  
22 five assignments during the day.

23 Q. Okay. Now, when would you -- when  
24 would you consult your map and make that  
25 determination?

1           A.           Early in the morning.

2           Q.           Early in the morning.   How early in  
3 the morning?

4           A.           Probably by 8:15.

5           Q.           8:15.   What time would you normally  
6 leave the house?

7           A.           7:30.

8           Q.           So by making this determination by  
9 8:15, you're doing this via your laptop while out  
10 on the road.   Correct?

11          A.           That's correct.

12          Q.           Now, when you left the house at  
13 7:30 in the morning, you generally were going  
14 where?   Not to a Travelers office, but to a site  
15 to inspect a vehicle.   Right?

16          A.           No.

17          Q.           Where would you go?

18          A.           7Eleven.

19          Q.           Pardon?

20          A.           7Eleven.

21          Q.           So on a typical day you leave the  
22 house at 7:30 a.m. and you would go to 7Eleven?

23          A.           That's correct.

24          Q.           What would you do there?

25          A.           I buy coffee.

1           Q.           And did you go to the same 7Eleven  
2 every day?

3           A.           For the most part.

4           Q.           And where was that 7Eleven?

5           A.           I don't know what the address is.  
6 Main Avenue in Little Falls?

7           Q.           And then from the 7Eleven, what  
8 would you do?

9           A.           I would turn the computer on.

10          Q.           In the parking lot?

11          A.           That's correct.

12          Q.           And why would you turn the computer  
13 on in the parking lot at the 7Eleven?

14          A.           Because it took awhile to boot up.

15          Q.           Was this the first time you would  
16 boot up your computer during the day?

17          A.           Yeah. That would be there, yes.

18          Q.           And this usually occurred I think  
19 you said by 8:15?

20          A.           No.

21          Q.           What time did this normally occur,  
22 this first boot-up?

23          A.           Probably about 7:32, 33, maybe.

24          Q.           So you leave the house at 7:30, and  
25 within 2 or 3 minutes you've gone to the 7Eleven,

1   gotten your coffee, go back to the car, and  
2   booted up the computer?

3           A.           No.

4           Q.           Okay. How did it work?

5           A.           I had it set up in my car, you know  
6   a little office, kind of comfortable, and when I  
7   go to the driver, open the door, put the  
8   computer, hook it up and boot it. Then I would  
9   get in the car and drive to 7Eleven.

10          Q.          So the boot-up occurred while you  
11   were still in the driveway in front of your  
12   house?

13          A.          No. Actually I was driving to  
14   7Eleven.

15          Q.          You were driving. Okay.

16          You get your coffee, go back to the car,  
17   and then you look at your laptop. Correct?

18          A.          That's correct.

19          Q.          And what are you doing then?

20          A.          If everything was working fine, I  
21   will open up the assignments.

22          Q.          And then what?

23          A.          I will check the address of the  
24   vehicle location and I will input that into the  
25   mapping software.

1           Q.           And when you were in the parking  
2 lot of the 7Eleven checking the address of the  
3 vehicle location from the assignment, was that  
4 the first time you would see the location of the  
5 car?

6           A.           The location, that's correct.

7           Q.           And then you would input that into  
8 your GPS or mapping system?

9           A.           The GPS started when I turn the  
10 computer on.

11          Q.           Okay. I understand. And this  
12 would be for your first assignment of the day?

13          A.           Yeah.

14          Q.           So what time are you leaving the  
15 7Eleven generally?

16          A.           It varies. It could have been ten  
17 to 8, five to 8? If there was a conference call,  
18 it would be 8:10, 8:15.

19          Q.           And how often would there be  
20 conference calls?

21          A.           Every time they changed something  
22 there was a conference call.

23          Q.           How often would that be generally?

24          A.           Maybe twice a month.

25          Q.           And those would start at 8 o'clock?

1           A.           Yeah.

2           Q.           There was a call-in number and all  
3 the adjusters would call in for the conference  
4 call?

5           A.           Sometimes.

6           Q.           Then you would leave the 7Eleven  
7 parking lot and go off to look at the first  
8 vehicle of the day. Correct?

9           A.           That is correct.

10          Q.           Okay. And what was your territory?

11          A.           It varied.

12          Q.           What was it in 2008?

13          A.           At some point it was Paterson,  
14 Clifton, Montclair, Verona, Bloomfield.  
15 Pinebrook maybe. We changed all the time.

16          Q.           North Jersey generally?

17          A.           Oh, absolutely.

18          Q.           Roughly, I mean geographically how  
19 big of an area did you cover?

20          A.           I don't know.

21          Q.           What was the furthest you ever went  
22 to inspect a vehicle?

23          A.           20 miles I think it was?

24          Q.           All right. So you would then leave  
25 the 7Eleven and go to your first vehicle of the

1 day. Correct?

2 A. That's correct.

3 Q. Okay. And it was in some 20-mile,  
4 at least no more than a 20-mile radius. Correct?

5 A. I believe so.

6 Q. When you got to the vehicle, what  
7 would you do?

8 A. Would confirm the vehicle VIN  
9 number, license plate, damage. If someone needed  
10 to be contacted, we will, if it was at a house,  
11 we would make sure that we spoke to the owner and  
12 tell them what was going to happen.

13 Q. What else would you do?

14 A. We wrote an estimate.

15 Q. And then what?

16 A. Then we took pictures.

17 Q. Took pictures of the VIN number,  
18 the damage, the license plate as well?

19 A. That is correct.

20 Q. With a digital camera?

21 A. That is correct.

22 Q. And then what would you do?

23 A. I will write the estimate on the  
24 laptop, put the pictures in, and upload. At the  
25 same time we would print an estimate, and it will



1 be given to the owner of the vehicle.

2 Q. Am I correct that you were required  
3 to do all of these tasks and duties onsite?

4 A. That is correct.

5 Q. And that is what you did. Correct?

6 A. Yes.

7 Q. On average, your average, not a  
8 totalled car, not a minor ding on a fender-  
9 bender, how long did this process take for the  
10 first car of the day?

11 A. From the moment we open an  
12 assignment --

13 Q. No, from the moment you arrived at  
14 the location where the car was until the time you  
15 uploaded the estimate and the pictures?

16 A. One hour.

17 Q. Then it was off to your next  
18 assignment?

19 A. That's correct.

20 Q. And how would you know where the  
21 next assignment was?

22 A. Because we had the assignment early  
23 in the morning, and I put them in my map.

24 Q. What do you mean you have the  
25 assignments early in the morning?

1           A.           When we open up the assignments in  
2 the morning, we knew what we had to do.

3           Q.           That's when you plug your computer  
4 into the car?

5           A.           Right.

6           Q.           At the 7Eleven?

7           A.           No. When I left home, in my  
8 driveway.

9           Q.           So while you were in your driveway  
10 you then know where you're going to go for the  
11 entire day?

12          A.           No.

13          Q.           Okay. But you do know where your  
14 first assignment is?

15          A.           No.

16          Q.           Okay. When do you know where your  
17 first assignment is?

18          A.           When I was at 7Eleven I open up the  
19 claims.

20          Q.           So is it fair to say that when  
21 you're in you're driveway at the house, you know  
22 how many assignments you have for the day?

23          A.           I knew the night before.

24          Q.           Okay. So what did you find out in  
25 your driveway?

1           A.           That the computer was still  
2 working.

3           Q.           So the driveway was just a check to  
4 make sure everything was up and running?

5           A.           Right.

6           Q.           Okay. So when you go to -- by the  
7 time you're leaving the 7Eleven and you're off to  
8 your first assignment, by that time you know what  
9 your day is going to look like for the rest of  
10 the day. Is that fair to say?

11          A.           Pretty much.

12          Q.           Okay. And then from -- so if you  
13 leave the 7Eleven at 7:55, 8 o'clock, is it fair  
14 to say you're done with your first assignment by  
15 9:15 or so?

16          A.           It's possible. It depends on the  
17 distance that I have to cover, or if the  
18 assignment, you know, it was set up for 9  
19 o'clock. It depends.

20          Q.           And then you would repeat that  
21 process? You would drive to the second location,  
22 whether it be a body shop or wherever the vehicle  
23 was located, and run through that same process  
24 again. Correct?

25          A.           Yes. Unless there were other

1 assignments that come in.

2 Q. In other words, other assignments  
3 that could come in that would change the arc of  
4 your day?

5 A. Absolutely.

6 Q. Why would that be? Why would one  
7 assignment bump another during the course of your  
8 day?

9 A. Because if dispatch was able to get  
10 an appointment for someone that particular day,  
11 they will find who was closest to that vehicle  
12 and they will be assigned to it.

13 Q. Okay. And then this was -- if you  
14 look at Vilches 2 again, page 4 of the Complaint,  
15 paragraph (c) at the top there, it says,  
16 "Complete the appraisal and upload the report  
17 within a predetermined amount of time dictated by  
18 Defendants." That's what you did when you  
19 uploaded the estimate --

20 A. That's correct.

21 Q. -- with the pictures? So at the  
22 time you leave your first visit of the day, those  
23 three steps that you outline in the complaint  
24 have been completed. Correct?

25 A. That's correct.

1           Q.           Okay. And then you go to the next  
2 site and you do it again. Is that correct?

3           A.           That's correct.

4           Q.           Approximately how many vehicles  
5 would you look at prior to taking lunch?

6           A.           If it was a total loss, could have  
7 been one-and-a-half.

8           Q.           Okay.

9           A.           Maybe two.

10          Q.           So the fewest would be  
11 one-and-a-half, and then the most would be what?

12          A.           Three?

13          Q.           Okay. And then what time did you  
14 generally try to take lunch?

15          A.           Actually, I didn't.

16          Q.           You didn't take lunch?

17          A.           I ate something, yeah.

18          Q.           Well, is that lunch?

19          A.           No.

20          Q.           So did you take lunch during the  
21 course of the day?

22                       MR. NIRENBERG: Objection to form.  
23 When you say "take lunch" --

24          Q.           Yes. Did you take a lunch break  
25 during the course of the day?

1           A.           No.

2           Q.           Why not?

3           A.           I didn't have enough time to do it.

4           Q.           What time would you generally  
5 finish your last field assignment?

6           A.           Sometimes it would be 4 o'clock,  
7 sometimes 4:30, 5.

8           Q.           And then after your last field  
9 assignment, you would return home?

10          A.           Sometimes.

11          Q.           Okay. And -- I'm sorry. I think I  
12 asked you this before. What was the requirement  
13 of how many vehicles you had to examine a day?

14          A.           The minimum was five.

15          Q.           What was the maximum?

16          A.           There was no maximum.

17          Q.           And then once you returned home,  
18 you had already completed A, B, and C. Correct?  
19 For the day.

20          A.           No.

21          Q.           What was left to be done? What was  
22 left to finish?

23          A.           Download the rest of the  
24 assignments.

25          Q.           How long would that take?

1           A.           Each assignment?

2           Q.           Yes.

3           A.           Four, five minutes.

4           Q.           Approximately how many assignments  
5 would you receive a day?

6           A.           Maybe seven, ten? You know, it  
7 depends. It varied.

8           Q.           And of the seven to ten, you had to  
9 complete five, correct, during the course of a  
10 day?

11          A.           No.

12          Q.           No? At least five. Correct?

13          A.           That would be correct.

14          Q.           Okay. Did you have to finish all  
15 seven to ten?

16          A.           Not necessarily.

17          Q.           Okay. And is it your testimony you  
18 would leave your computer running all night?

19          A.           No.

20          Q.           When would you shut it off?

21          A.           8 o'clock.

22          Q.           And then from 8 p.m. until the next  
23 morning you conducted, you did nothing with  
24 respect to Travelers. Correct?

25          A.           That is correct.

1           Q.           What time did you generally get up  
2 in the morning?

3           A.           If I had a bad night, maybe 6.

4           Q.           6 a.m.?

5           A.           Sometimes.

6           Q.           What was the first thing you would  
7 do when you get up in the morning?

8           A.           Stretch my leg.

9           Q.           And then what?

10          A.           Take a couple of pills maybe for  
11 pain.

12          Q.           Would you have breakfast?

13          A.           Yes. At 7Eleven.

14          Q.           Okay. That was your 7:30 breakfast  
15 run.

16          A.           That is correct.

17          Q.           Now, you shut your computer at 8  
18 o'clock every night. What time would you  
19 generally start it in the morning?

20          A.           7:30.

21          Q.           When you were in the driveway?

22          A.           Yes.

23          Q.           Okay. Now, did you receive  
24 assignments on the weekends?

25          A.           Yeah.



1           Q.           Did you complete the assignments on  
2 the weekends?

3           A.           No.

4           Q.           Why not?

5           A.           There were two appraisers that were  
6 doing that.

7           Q.           You weren't one of them?

8           A.           No.

9           Q.           Okay. So this process that you  
10 described to me of going out to a site to look at  
11 a car, check the VIN number and the license  
12 plate, take pictures, upload, do the estimate and  
13 then upload it, that did not occur on Saturdays  
14 and Sundays?

15          A.           No.

16          Q.           Okay. What work did you do -- now,  
17 according to your complaint, on page 4 you  
18 indicate that you worked from 7:30 a.m. to 3 p.m.  
19 on Saturday. What were you doing for those eight  
20 hours?

21          A.           1 or 2?

22          Q.           Number 2, page 4.

23          A.           Page 4.

24          Q.           You allege that you worked on  
25 Saturdays.

1           A.           Right.

2           Q.           You were required to work without  
3 pay between 7:30 a.m. and 3:30 p.m.?

4           A.           I'm sorry.

5           Q.           You allege that you were required  
6 to work without pay on Saturdays from 7:30 a.m.  
7 to 3:30 p.m. Tell me everything you did from  
8 7:30 a.m. to 3:30 p.m. on Saturdays regarding  
9 working?

10          A.           7:30 I would turn my computer on,  
11 make sure it was running; that the wireless was  
12 connected; that the software was running; and I  
13 will download assignments every 4, 5 minutes.

14          Q.           You said for 4 to 5 minutes you  
15 would download assignments. Is that what you're  
16 telling me?

17          A.           I'm sorry?

18          Q.           Every 4 to 5 minutes you would  
19 download assignments?

20          A.           I would press the key to download,  
21 yes.

22          Q.           So if you were getting seven to ten  
23 assignments per day, why are you checking the  
24 computer twelve times an hour?

25          A.           Because we were only given one hour

1 to download assignments.

2 Q. Even on Saturdays?

3 A. Oh, absolutely.

4 Q. And that's written in a policy  
5 somewhere?

6 A. I don't believe so.

7 Q. Who gave you that instruction?

8 A. Bob DeStefano.

9 Q. When did he do that?

10 A. Probably in summer of 2006.

11 Q. Tell me exactly what he said with  
12 respect to working on Saturdays?

13 A. We need to make sure that we get  
14 the assignments into the computers and stop the  
15 clock within one hour of being assigned by  
16 Travelers.

17 Q. What does it mean to "stop the  
18 clock"?

19 A. There was a clock that started when  
20 the assignment was sent to ADP.

21 Q. So the dispatchers and ADP were  
22 working on Saturdays?

23 A. I have to assume.

24 Q. Okay. And so the -- what you were  
25 doing then between 7:30 a.m. and 3:30 p.m. on

1 Saturdays was every 3 or 4 minutes going to your  
2 computer?

3 A. Part of it.

4 Q. Pardon me?

5 A. Part of.

6 Q. What was the other part?

7 A. You know, deleting pictures,  
8 cleaning the computer.

9 Q. What else? It's a long day, so  
10 there had to be a lot of stuff going on.

11 A. Yes, absolutely.

12 Q. What else?

13 A. Sometimes we would log into Impact.

14 Q. What's Impact?

15 A. Impact, it was the system set up by  
16 Travelers where you could look into the claims.

17 Q. And why would you do that?

18 A. To see what was going on.

19 Q. Just because you were nosy?

20 A. No. I would think concerned.

21 Q. What were you concerned about on  
22 Saturdays that made you look in Impact?

23 A. There were issues sometimes during  
24 the week as to whether something was completed,  
25 or an issue with a claim, you know, making sure

1 everything was fine.

2 Q. Give me an example of what you're  
3 talking about.

4 A. If somebody had concerns about the  
5 estimates that we have written, or we had a  
6 complaint because the vehicle was not looked at,  
7 or they thought that the estimate was too low,  
8 those, most times those notes will be on Impact.

9 Q. And why did you have to look at  
10 those on Saturdays?

11 A. I was concerned.

12 Q. Did anybody tell you that you had  
13 to check those on Saturdays?

14 A. No.

15 Q. And what was -- and why were you  
16 concerned?

17 A. Because I care for my job. I  
18 wanted to keep my job, so I was concerned with  
19 anything that could have been a threat to my job.

20 Q. How is that threatening your job?

21 A. Well, any issues were dealt with  
22 usually on Monday morning. So if I knew there  
23 was something coming, somehow I could research  
24 what happened and I would be prepared for Monday  
25 morning.

1           Q.           And what would happen on Monday  
2 mornings that these issues would be addressed?

3           A.           We will have -- I will get a phone  
4 call from Gary Marion about the --

5           Q.           Every Monday morning?

6           A.           Not every morning, no.

7           Q.           Which Mondays? Were these  
8 scheduled phone calls?

9           A.           No.

10          Q.           Is that the only time you would  
11 receive phone calls from Mr. Marion was Monday  
12 mornings?

13          A.           No.

14          Q.           What else did you do on Saturdays  
15 besides clean your computer and delete  
16 photographs?

17          A.           That's kind of personal, no?

18          Q.           Well, with respect to between these  
19 hours you claim to be working --

20          A.           Right.

21          Q.           -- if it's personal, it's not, has  
22 nothing to do with your work time. Right?

23          A.           Well, I took a break. I went to  
24 the bathroom. You know, I had coffee while I was  
25 looking at the computer if that's what you're

1 talking about.

2 Q. You didn't take a lunch I know  
3 Monday through Friday. Did you take a lunch on  
4 Saturday?

5 A. I ate a sandwich looking at that  
6 computer.

7 Q. That was every single Saturday.  
8 Right?

9 A. Except if it was a holiday.

10 Q. Like what?

11 A. Could have been Christmas maybe,  
12 New Year's? I don't know. Fourth of July?

13 Q. Where was your computer at home?

14 A. In my room.

15 Q. In your bedroom?

16 A. Yeah.

17 Q. And so is it your testimony that on  
18 every Saturday, unless it was Christmas, New  
19 Year's Day, or July 4th, you spent the entirety  
20 of the time between 7:30 a.m. and 3 o'clock p.m.  
21 in your bedroom unless you had to go to the  
22 bathroom? Is that what you're telling me?

23 A. That would be fair to say.

24 Q. You never went to a movie on a  
25 Saturday?

1           A.           Yeah. In the afternoon.

2           Q.           After 3:30?

3           A.           Yeah.

4           Q.           Never snuck out a little bit early  
5 on a Saturday?

6           A.           I don't remember.

7           Q.           Who is monitoring your time on  
8 Saturday to make sure that you were at your  
9 computer between 7:30 and 3:30 each and every  
10 Saturday?

11          A.           Nobody.

12          Q.           Did Mr. DeStefano tell you  
13 specifically you had to be at your computer  
14 between 7:30 a.m. and 3:30 p.m. on Saturdays?

15          A.           Yes.

16          Q.           And this was sometime in 2006?

17          A.           Yeah.

18          Q.           Who else did he tell that to, do  
19 you know?

20          A.           Everybody else.

21          Q.           This is in a general meeting?

22          A.           I don't know if it was everybody at  
23 the meeting, but everybody was supposed to  
24 download assignments within one hour.

25          Q.           Did Mr. DeStefano tell you that you



1 had to be at your computer in your room at your  
2 house between 7:30 a.m. and 3:30 p.m. on  
3 Saturdays?

4 MR. NIRENBERG: Objection to form.  
5 You can answer.

6 A. No.

7 Q. Okay. Did anybody ever tell you  
8 that you had to do that?

9 A. No.

10 Q. Okay. Did Gary Marion ever tell  
11 you that?

12 A. No.

13 Q. They did tell you, however, that  
14 you were not to work outside the core hours of 8  
15 a.m. to 5 p.m. Monday through Friday. Correct?

16 A. No.

17 Q. They never told you that? Is that  
18 what you're telling me? They never said that?

19 A. I was told not to upload anything.

20 Q. I gotcha.

21 MR. McLANE: Mark that as Vilches  
22 3.

23 (Email message dated December 21,  
24 2006 Bates numbered R-001050 is received  
25 and marked Vilches 3 for identification.)

1           Q.           The court reporter has handed you,  
2 Mr. Vilches, what she's marked as Exhibit V-3,  
3 which is a December 21st, 2006 email from Mr.  
4 DeStefano to, among others, you.

5                       MR. NIRENBERG: The email seems to  
6 be cut off in the middle.

7                       MR. McLANE: Yes, this is the first  
8 page.

9                       MR. NIRENBERG: Is there a reason  
10 why you're not using the full document?

11                      MR. McLANE: No.

12           Q.           With respect to -- well, have you  
13 seen this before?

14           A.           Yes.

15           Q.           What is this?

16           A.           This is one email that Bob  
17 DeStefano sent us.

18           Q.           Do you know what he's conveying  
19 here?

20           A.           Right.

21           Q.           What is he conveying?

22           A.           That we have to make sure that we  
23 enter the time into the computer between 8 and 5.

24           Q.           And where's the exception about  
25 allowed to do some things but not other things?

1           A.           I don't know. I don't see it.

2           Q.           Okay. This is an email to staff.  
3 Correct?

4           A.           Yes.

5           Q.           And he's letting people know that  
6 people -- he's reminding people that they are to  
7 adhere to the core hours of operation. Correct?

8                   MR. NIRENBERG: I'm going to object  
9 to the use of the utilization of a partial email.  
10 He can't testify about what is or isn't in an  
11 email when he only has part of it.

12          Q.           Well, let's talk about the portion  
13 that we're looking at.

14                   MR. NIRENBERG: I don't think  
15 that's a fair and appropriate question. You're  
16 giving him half of a document and asking for a  
17 full truth.

18                   MR. McLANE: All right. Let's take  
19 a break and I'll get the second page.

20                   MR. NIRENBERG: Thank you.

21                           (There is a brief recess.)

22                   MR. McLANE: All right. So let's  
23 take back Vilches 3.

24                   MR. NIRENBERG: Yes.

25                   MR. McLANE: And let's remark this

1 as Vilches 3.

2 (Three-page email string Bates  
3 numbered R-001050, 1051, and 1052 is  
4 received and marked Vilches 3 for  
5 identification. The prior document is  
6 withdrawn.)

7 MR. McLANE: Back on the record.

8 We've added the rest of the pages to this  
9 email, so it's now I believe complete.

10 Any reason that it's not on your end, Mr.  
11 Nirenberg?

12 MR. NIRENBERG: It looks complete.  
13 Thank you.

14 Q. And again, Mr. Vilches, this was an  
15 email that was sent to, among others, yourself,  
16 and do you recall receiving this email?

17 A. Yes.

18 Q. And can you just summarize, as far  
19 as you know, what this email is about?

20 A. It was a reminder that the time had  
21 to be entered between 8 and 5, and there was no  
22 allowance for any uploads after 5 o'clock unless  
23 they had a permission from the supervisor.

24 Q. And you see that in here where?

25 A. Where it says, "If you are unable

1 to adhere to these expectations, you are required  
2 to contact your unit manager and notify him as to  
3 why."

4 Q. And your understanding of what that  
5 expectation that you were supposed to adhere to  
6 is what?

7 A. Make sure that I have to input the  
8 end of the day at 5 o'clock, or if I had a  
9 pending upload, I have to get permission.

10 Q. Okay. And it also says there's no  
11 aspect of your job, including phone calls, that  
12 requires you to be at your desk during the core  
13 hours of operation. Correct?

14 A. Yeah.

15 Q. Now, is it your understanding from  
16 this reminder email that you were permitted to  
17 work outside the core hours of operation and not  
18 record that time?

19 A. I was required.

20 Q. You were required to work, based on  
21 this email -- where in this email would I see the  
22 requirement that you work outside the core  
23 hours --

24 A. It doesn't --

25 Q. Let me finish.

1           (Continuing) -- outside the core hours of  
2 operation and not record the time that you work  
3 outside the core hours of operation?

4           A.           Nowhere.

5           Q.           Okay.

6                       MR. McLANE: Mark that as Vilches  
7 4.

8                       (Two-page Travelers document  
9 entitled "Performance Warning - Verbal  
10 Documented" dated 1/2/07 Bates numbered  
11 R-001045 and 1046 is received and marked  
12 Vilches 4 for identification.)

13          Q.           Mr. Vilches, the court reporter has  
14 handed you what she's marked as Exhibit Vilches  
15 4. Are you familiar with this document?

16          A.           Yes.

17          Q.           What is this?

18          A.           Performance Warning - Verbal  
19 Documented.

20          Q.           And this is from Gary Marion, your  
21 unit manager. Correct?

22          A.           That's correct.

23          Q.           Does this document help you refresh  
24 your recollection about whether or not Mr. Marion  
25 was a Travelers manager?

1           A.           Gary Marion was my supervisor, yes.

2           Q.           All right. And is his title "unit  
3 manager" correct where it's stated at the top  
4 right of Vilches 4?

5           A.           I don't believe so.

6           Q.           Okay. You don't recall him being  
7 the unit manager?

8           A.           I don't know.

9           Q.           Okay. Did you ever -- as a matter  
10 of fact, did you ever have an understanding of  
11 what Mr. Marion's title was during your  
12 employment?

13          A.           Sure.

14          Q.           And what was your understanding of  
15 what his title was?

16          A.           He was my supervisor.

17          Q.           So in your -- am I correct then  
18 that you believe Mr. Marion's title was  
19 supervisor?

20          A.           Right.

21          Q.           Okay. Nothing else other than  
22 supervisor?

23          A.           I didn't worry about titles. I  
24 knew he was my boss or my supervisor.

25          Q.           Okay. Fair enough. Well, was he

1 your boss, or your supervisor, or both?

2 A. Where I come from, it's the same.

3 Q. Okay. And where do you come from?

4 A. Chili.

5 Q. If you look at -- well, strike  
6 that.

7 Do you know why you received this  
8 performance warning?

9 A. Yeah.

10 Q. Okay. Why?

11 A. There was some miscommunications as  
12 to what I was supposed to do and between what I  
13 did and between what they thought I did, and  
14 you're missing one page here.

15 Q. Which page am I missing?

16 A. The one that I signed and put the  
17 date on.

18 Q. Okay. But you recall receiving  
19 this evaluation?

20 A. That's correct.

21 Q. Okay. Was there anything in this  
22 evaluation that you disagreed with?

23 A. Yes.

24 Q. Which is what?

25 A. The date.



1 Q. The date?

2 A. Yes.

3 Q. What date are you talking about?

4 A. It happened a week after this.

5 This date on here.

6 Q. Which date are you referring to?

7 A. On the top, January 2, '07.

8 Q. Oh, 1/2/07?

9 A. Yes.

10 Q. Are you telling me that you  
11 received this a week after this is dated?

12 A. That is correct.

13 Q. But everything else in here you  
14 agreed with?

15 A. No.

16 Q. Okay. What else don't you agree  
17 with?

18 A. Some of the claim numbers are made  
19 up.

20 Q. Okay. Which ones are made up?

21 A. I don't remember.

22 Q. Okay. And why do you -- well,  
23 strike that.

24 Why do you say they were made up?

25 A. I don't know.

1           Q.           Okay. How do you know they were  
2 made up?

3           A.           Because I went home and checked.

4           Q.           And they didn't exist?

5           A.           That's correct.

6           Q.           Okay. Now, am I right that Mr.  
7 Marion is telling you that there's no aspect of  
8 your job that needs to occur while you're off the  
9 road?

10          A.           Can you rephrase that? I'm sorry.

11                       MR. McLANE: Sure. Can you read  
12 that back.

13                       (The pending question is read by  
14 the Reporter.)

15          A.           You're wrong.

16          Q.           Okay. How am I wrong?

17          A.           Because he expected us to download  
18 assignments after 5 o'clock.

19          Q.           Is that anywhere noted in here?

20          A.           No.

21          Q.           Where is that expectation -- strike  
22 that.

23                       When did he make that expectation known to  
24 you?

25          A.           He did not.

1 Q. Okay. Who did?

2 A. Bob DeStefano.

3 Q. In that meeting that you referred  
4 to earlier?

5 A. Yeah.

6 Q. Okay. Where Mr. Marion mentions in  
7 the second paragraph at the very top, it starts  
8 "On October 18th." Do you see that? Under  
9 "Completion of Assignment in the Field." Do you  
10 see where I'm referring to?

11 A. Yeah. I'm reading now.

12 Q. Okay. Do you recall having a  
13 meeting with Mr. Marion on October 18th where you  
14 reviewed Best Practices page by page along with  
15 Mr. DeStefano?

16 A. Yes.

17 Q. And what do you recall about that  
18 meeting?

19 A. You want the whole story, or --

20 Q. Yeah.

21 A. -- part of it?

22 Q. No, I want the whole thing.

23 A. Okay. I was told that the company  
24 had required us to do certain things after the  
25 time, and as a team player we were expected to do

1 that, and there were other things that we were  
2 expected to do, and if we didn't do it, we will  
3 be terminated.

4 Q. And this is a meeting that you had  
5 with -- well, strike that.

6 Who said that? Mr. DeStefano or Mr.  
7 Marion?

8 A. Mr. Bob DeStefano, yes.

9 Q. And who was at this meeting?

10 A. Gary Marion.

11 Q. And where did this meeting take  
12 place?

13 A. At the office.

14 Q. And the office is where?

15 A. Cedar Knolls?

16 Q. What's in Parsippany?

17 A. Oh, that's right. Parsippany and  
18 Cedar Knolls, I always confuse that.

19 Q. And where in the office in  
20 Parsippany? What particular room or area?

21 A. At the time it might have been  
22 Bob's office or an empty office. I don't recall.

23 Q. It was just the three of you.  
24 Right?

25 A. Yes.

1           Q.           Did you review Best Practices with  
2 Mr. DeStefano and Mr. Marion during that meeting?

3           A.           Yes.

4           Q.           "Yes"?

5           A.           Yes.

6           Q.           Okay. And what are Best Practices?

7           A.           Those are guidelines designed to  
8 outline the estimating process.

9           Q.           Anything else?

10          A.           That's what I recall.

11          Q.           Do you know if the Best Practices  
12 talked about the core business hours?

13          A.           I don't recall.

14          Q.           Okay. Can you read back the answer  
15 where he gave me the full story.

16                       (The reporter complies.)

17          Q.           Now, when you say there were  
18 certain things you were to do after the time,  
19 what are you referring to? What's "the time"?

20          A.           After 5 o'clock.

21          Q.           And what were you expected to do  
22 after 5 o'clock?

23          A.           Download assignments within an  
24 hour.

25          Q.           And this is what required you to be

1 at your computer every 3 to 4 minutes?

2 A. That's correct.

3 Q. Within an hour of what?

4 A. Of dispatch sending the assignment  
5 to ADP.

6 Q. And if ADP didn't send the  
7 assignment to you within the hour, what would  
8 happen?

9 A. I was screwed.

10 Q. How were you screwed?

11 A. Because at the time the clock was  
12 set up for 60-minute increments.

13 Q. Pardon me?

14 A. The time set up was a 60-minute  
15 increment.

16 Q. What does that mean?

17 A. It means that if I didn't get the  
18 assignment within the first 60 minutes, it would  
19 show as not complying with the requirement.

20 Q. But why were you screwed and not  
21 ADP for not getting it to you on time?

22 A. Because I would get a phone call  
23 from my supervisor.

24 Q. And how did that make you screwed?

25 A. I feel bad that I wasn't a team

1 player.

2 Q. So when you say you got screwed,  
3 what you mean is that you would have some  
4 internal feelings of unhappiness?

5 A. No. I said I think it will be, the  
6 best description would be I have bad luck.

7 Q. Bad luck. Okay. And that's what  
8 "screwed" means. Right? In your mind?

9 A. Yeah, I think for lack of a better  
10 word, yes.

11 Q. And what would -- what would happen  
12 to you? Well, strike that.

13 Would there be any discipline given to you  
14 with respect to not getting these files within an  
15 hour of dispatch sending them to ADP?

16 A. Yes.

17 Q. Okay. What would happen?

18 A. At the end of the month on my  
19 monthly review I had a talk with Gary Marion.

20 Q. How many such talks did you have  
21 with Gary Marion about this issue?

22 A. Every month.

23 Q. Did he ever write you up regarding  
24 that issue?

25 MR. NIRENBERG: Objection to form.

1 Do you mean --

2 Q. Well, strike that.

3 Did you ever receive a -- well, strike that  
4 as well.

5 Does the document that we've marked as  
6 Vilches 4, does it discuss that issue?

7 A. No.

8 Q. Are you aware of any written,  
9 documented performance warning that discusses  
10 that issue with you?

11 A. Not with me.

12 Q. Was that issue ever discussed with  
13 you in writing -- well, strike that.

14 Was that issue ever put in writing on one  
15 of your annual performance reviews?

16 A. Yes.

17 Q. Which one? Do you remember?

18 A. No.

19 Q. And do you recall what the issue  
20 was on the performance review with respect to ADP  
21 not getting you the document within an hour? I  
22 asked you what happened if ADP didn't get you a  
23 new assignment from dispatch within an hour, and  
24 you said you were screwed, and then you said you  
25 would be talked to about that. Do you recall



1 what was written in that performance review with  
2 respect to the issue of ADP not getting you  
3 assignments within an hour?

4 A. Right. The performance review  
5 included one column that would show how many  
6 claims or percentage I believe of claims were  
7 received within an hour.

8 Q. And what was your quota, if you  
9 will, for that? Was there a percentage that had  
10 to be received within an hour?

11 A. Yes, 100 percent.

12 Q. Now, did you discuss with Mr.  
13 Marion the fact that through no fault of your own  
14 you couldn't retrieve the file because ADP hadn't  
15 sent it to you in time?

16 A. Yes.

17 Q. And what did he say?

18 A. You want the specific?

19 Q. Yes.

20 A. In front of the ladies?

21 Q. Yeah. We're all adults here.

22 A. "I don't give a shit."

23 Q. And what did you say?

24 A. Okay.

25 Q. Do you recall when that happened?

1           A.           No.

2           Q.           Now, getting back to this meeting  
3 on October 18th with Mr. DeStefano and Mr. Marion  
4 where Mr. DeStefano tells you if you're not a  
5 team player, you're going to be fired. Is that  
6 what he said?

7           A.           Yeah.

8           Q.           Okay. Was that the first time he  
9 had ever used words like that to you?

10                   MR. NIRENBERG: Objection to form.  
11 What do you mean by "words like that"?

12                   MR. McLANE: Words like "if you're  
13 not a team player you're going to be fired."

14           A.           We were told, not specifically to  
15 me, but at the meeting we were told that we  
16 needed to be team players or we would be fired.  
17 That was in the summer of 2006.

18           Q.           So is that the first time you heard  
19 Mr. DeStefano say be a team player or be fired,  
20 in the summer of '06?

21           A.           Probably.

22           Q.           Okay. Was there anything said at  
23 that meeting on October 18th, 2006 where either  
24 Mr. DeStefano or Mr. Marion told you they  
25 expected you to work -- to not record the hours

1 that you were working?

2 A. No.

3 Q. Did anybody ever tell you that  
4 while you were at Travelers, not to record the  
5 hours you were working?

6 A. Yeah.

7 Q. Who?

8 A. Gary and Bob.

9 Q. When did Gary tell you that?

10 A. Summer of 2006?

11 Q. What did Gary say in the summer of  
12 2006 about not recording your time?

13 A. That the company expected to record  
14 the time between 8 and 5. There was not overtime  
15 to be paid on a regular basis.

16 Q. Is this a different meeting than  
17 the one you've described earlier this morning  
18 where Mr. DeStefano said that there's no longer  
19 overtime on a regular basis?

20 A. We had a monthly meeting, so I  
21 don't recall.

22 Q. So Mr. Marion said in one of these  
23 monthly meetings in the summer of 2006 that the  
24 company was no longer providing overtime on a  
25 regular basis. Correct?

1           A.           That's correct.

2           Q.           Okay. Did he tell you during that  
3 meeting that you were to work but not record your  
4 time?

5           A.           No.

6           Q.           Did he ever say that you should  
7 work and not record your time?

8           A.           No.

9           Q.           Did Mr. DeStefano ever say you  
10 should work and not record your time?

11          A.           No.

12          Q.           But according to you, you were  
13 working and not recording your time. Correct?

14          A.           That's correct.

15          Q.           And this is based on some fear you  
16 had from that meeting you described to us earlier  
17 with Mr. DeStefano. Correct?

18          A.           No.

19          Q.           What was it based on?

20          A.           Based on the requirements of  
21 downloading assignments within one hour and the  
22 assignments were being sent until 7:30 at night.

23          Q.           When you went to Mr. DeStefano and  
24 said I need to get paid for the time that I am at  
25 my computer every 3 to 4 minutes, what did he

1 say?

2 A. I didn't do that.

3 Q. Why not?

4 A. Because we were told that we were  
5 not allowed to enter that time into the system.

6 Q. That's what I just asked you. I  
7 asked you if anybody ever told you to work but  
8 not record your time, and you said no. So when  
9 did this conversation happen where they said we  
10 want you to work but not record your time?

11 MR. NIRENBERG: Objection to form.  
12 Argumentative.

13 A. If you're asking me if he told me  
14 to do it and not charge for it --

15 Q. Yes.

16 A. -- or not put -- I said no.

17 Q. Okay.

18 A. What he said is you have one hour  
19 to download assignments and the assignments is  
20 going to be sent until 7:30 at night.

21 Q. Okay. And did you ever say to him  
22 I'm putting in my time for that?

23 A. Every month.

24 Q. Okay. And what did he say?

25 A. Again, in front of the ladies?

1 Q. Yes.

2 A. "I don't give a shit."

3 Q. So did you ask him to be paid for  
4 the time that you spent sitting in front of your  
5 computer touching it every 3 to 4 minutes?

6 A. After that, no.

7 Q. This only happened once?

8 A. No. Maybe every other month.

9 Q. Well, you said after that no. I  
10 mean what are you referring to?

11 A. When I got my review every month,  
12 it will show that there were some claims that  
13 were not downloaded within one hour.

14 Q. Okay. And why weren't they  
15 downloaded within one hour? Why weren't you  
16 doing what apparently he told you you should be  
17 doing?

18 A. Because sometimes ADP will take  
19 more than an hour to process the assignment.

20 Q. So every time that happened it was  
21 ADP's fault. Right?

22 A. Uhm.... It might have been a  
23 couple of times where the computer froze or -- I  
24 really don't know.

25 Q. Okay. So I understand there's this

1 issue of you getting in trouble because you  
2 didn't download a file within an hour. I  
3 understand that. But I want to know separate and  
4 apart from that, when you entered your time every  
5 day, why didn't you enter that time?

6 A. I was told to do that.

7 Q. Told to do what?

8 A. In the email it says from 8 to 5.

9 Q. I understand. But who told you not  
10 to enter that time?

11 MR. NIRENBERG: Objection to form.

12 MR. McLANE: Strike that.

13 Q. Did you ask for overtime for that  
14 period of time?

15 A. Maybe once.

16 Q. Okay. When?

17 A. Before the meeting.

18 Q. Before what meeting?

19 A. Of summer of 2006.

20 Q. Okay. So tell me about the time  
21 you asked to be paid overtime for that time.

22 A. We -- there was a discussion with  
23 Bob about when did the actual time begin and when  
24 it ended.

25 Q. Who had this discussion?

1           A.           We did.

2           Q.           Who's "we"?

3           A.           Bob and I.

4           Q.           So you and Bob had a conversation  
5 in 2006 about when the time began and when it  
6 ended?

7           A.           That's correct.

8           Q.           What time are you talking about?

9           A.           Before the implementation of the  
10 electronic time card we could start anytime and  
11 we could finish anytime.

12          Q.           Start what at any time and finish  
13 what at any time?

14          A.           You could go on the road at 6  
15 o'clock if you wanted to and you can get off the  
16 road at 8 o'clock at night if you wanted to.

17          Q.           Would you be paid for that time?

18          A.           No.

19          Q.           Why not?

20          A.           It was not allowed.

21          Q.           So there was some policy at  
22 Travelers, notwithstanding everything that said  
23 you have to record all your time worked, that  
24 said we're not going to pay you for time you  
25 spend working. Is that what you're telling me?



1 A. No.

2 Q. Okay. What are you telling me?

3 A. I'm telling you that Bob DeStefano  
4 wanted the time to be recorded between 8 and 5.

5 Q. Okay. And what happened if you  
6 submitted time that went from 8 a.m. to 6 p.m.?

7 A. My understanding is that Gary  
8 Marion would get in trouble.

9 Q. Did you ever do that?

10 A. No.

11 Q. Did you ever ask permission to work  
12 overtime -- well, strike that.

13 Who told you Gary Marion would be in  
14 trouble?

15 A. Gary.

16 Q. And I think I'm correct from your  
17 earlier testimony that you never complained to  
18 anybody about this practice. Correct? Outside  
19 of Bob or Gary?

20 A. I did once.

21 Q. Okay. And to who?

22 A. Human Resources.

23 Q. When?

24 A. Sometime in 2006.

25 Q. Who did you complain to?

1 A. I don't remember the name.

2 Q. Male or female?

3 A. Female.

4 Q. Did you make this complaint in  
5 person? In writing? Verbally?

6 A. Verbal.

7 Q. Over the telephone?

8 A. No.

9 Q. In person?

10 A. Yes.

11 Q. At the Parsippany office?

12 A. Yeah.

13 Q. Tell me about that meeting?

14 A. I was selected by Travelers to  
15 participate in a.... What is the word? I forgot  
16 the word. You know, without a name, you can say  
17 private or -- confidential. Confidential. I was  
18 selected to participate in a confidential  
19 interview with Human Resources because Travelers  
20 wanted to know how the changes have been  
21 affecting the employees.

22 Q. What changes?

23 A. The time policies, the work  
24 schedule.

25 Q. When did the time policies and work

1 schedules change?

2 A. That we were required to input time  
3 between 8 and 5.

4 Q. In other words -- well, strike  
5 that.

6 What do you mean you were required to input  
7 time between 8 and 5?

8 A. The company had implemented the  
9 policy that nothing could be uploaded and no work  
10 was to be done after 5 o'clock unless it was  
11 authorized by a supervisor.

12 Q. Okay. And that was sometime in  
13 2006?

14 A. I believe so.

15 Q. Okay. That was the policy of the  
16 company. Right?

17 A. I -- yeah.

18 Q. And after 2006, did that policy  
19 ever change?

20 A. I don't believe so.

21 Q. Okay. So you're selected for this  
22 confidential interview with an H.R. person, and  
23 what happens?

24 A. I went to the confidential  
25 interview.

1 Q. Okay. And what happened?

2 A. Well, they asked me have you had  
3 any issues that I would like to brought to their  
4 attention? I said yes. You know, I needed an  
5 explanation as to what overtime meant, and, you  
6 know, why we were required to do this and not  
7 enter the time.

8 Q. And what didn't you understand  
9 about what overtime meant?

10 A. There was a.... How can I say?  
11 The idea was that because we were working for  
12 Travelers we had to do whatever Bob wanted as far  
13 as being on the road at 6 or 7 o'clock in the  
14 morning or do this or do that. In other words,  
15 the flexibility of the work schedule has been  
16 changed.

17 Q. Okay. So --

18 A. You have to enter your time between  
19 8 and 5 unless you were authorized by a  
20 supervisor.

21 Q. Okay. Now, when you say you had to  
22 enter your time between 8 and 5, weren't they  
23 saying that you're not supposed to work before 8  
24 or after 5?

25 A. No.

1           Q.           They were telling you -- you're  
2 telling me it was the policy of Travelers that  
3 you had to put in that you started your day at 8  
4 and ended at 5?

5           A.           That's correct.

6           Q.           Do you recall was that policy ever  
7 written down as far as you know?

8           A.           No. That was mentioned to us when  
9 we started doing the electronic recording.

10          Q.           Okay. So who mentioned that to  
11 you?

12          A.           Bob, Gary.

13          Q.           Did you ever see any policies at  
14 Travelers that contradicted that and said that  
15 you should only record -- you should record all  
16 the time that you're working?

17          A.           Sure.

18          Q.           Okay. And did that contradiction  
19 upset you? Well, strike that question.

20                 Did you try to seek clarity about that  
21 contradiction?

22          A.           Yeah.

23          Q.           Okay. And to whom -- with whom did  
24 you try to seek that clarity?

25          A.           At the meeting at H.R.

1 Q. At the confidential meeting?

2 A. That's correct.

3 Q. Okay. Had you not been selected  
4 for this confidential H.R. meeting, would you  
5 have raised this issue?

6 A. No.

7 Q. Why not?

8 A. Because I knew Bob from before  
9 going to work for Travelers.

10 Q. You mentioned this earlier that you  
11 knew Bob from before and he was you said a bad  
12 guy or a mean guy? If you weren't working for  
13 him -- well, strike that. How did you know he  
14 was not a good guy prior to working for  
15 Travelers?

16 A. I never said he wasn't a good guy.

17 Q. Okay. You said you had known him  
18 for 15 or 20 years.

19 A. That's correct.

20 Q. And did you say he was a mean guy?

21 A. No.

22 Q. Okay. So what about knowing Bob  
23 for a long time made you not go to H.R. to figure  
24 out this contradiction?

25 A. He had a strong personality.

1           Q.           You said, we found the word, you  
2 said he wasn't the nicest guy. That was the term  
3 you used.

4           A.           Maybe. He wasn't -- he had a  
5 strong personality.

6           Q.           What does that mean?

7           A.           It means that when he said  
8 something, you better do it.

9           Q.           Or what?

10          A.           Or he'll find a way of making it  
11 happen.

12          Q.           Give me an example of a way that he  
13 would make something happen when you didn't do  
14 it?

15          A.           This one, performance warning.

16          Q.           The performance warning that Gary  
17 Marion sent you?

18          A.           Yeah.

19          Q.           How did -- is it your testimony  
20 that Bob DeStefano made this happen?

21          A.           I don't know.

22          Q.           Okay. Then why are you referring  
23 to this performance warning as an example of Bob  
24 DeStefano making something happen?

25          A.           Because Gary was working for Bob

1 DeStefano.

2 Q. So you're just assuming that  
3 because Gary worked for Bob DeStefano, DeStefano  
4 would make things happen?

5 A. No.

6 Q. Okay. What are you assuming?

7 A. Because half of this is not true.

8 Q. Okay. And how do you know that --  
9 well, strike that.

10 So this is an example of finding a way to  
11 make things happen when Bob wanted them to  
12 happen. What was not happening -- what was not  
13 happening with you that Bob wanted to happen that  
14 led to this evaluation? Where were you crossing  
15 him, in other words?

16 THE WITNESS: Do I have to answer  
17 that?

18 MR. NIRENBERG: Yes.

19 A. We were committing fraud.

20 Q. Who was committing fraud?

21 A. All the appraisers.

22 Q. Why were you committing fraud?

23 A. Because we were underpaying the  
24 claims.

25 Q. And why were you doing that?



1           A.           Because the company wanted to  
2 get -- wanted to lower the payments to the  
3 insureds.

4           Q.           So is it your testimony that you  
5 were committing fraud but didn't want to commit  
6 fraud?

7           A.           That's correct.

8           Q.           And because you -- and who did you  
9 let know that you didn't want to commit fraud?

10          A.           I didn't.

11          Q.           Okay. So, again, what I'm trying  
12 to find out is how this Vilches 4 is an example  
13 of Bob getting you to do something that you  
14 didn't want to do.

15          A.           Because I was refusing to meet the  
16 monthly quotas.

17          Q.           Refusing to meet what monthly  
18 quotas?

19          A.           We were required to contribute to  
20 the company profits in certain amounts every  
21 month.

22          Q.           By inspecting damaged vehicles.  
23 Right?

24          A.           By underpaying the claims.

25          Q.           And so there was a policy that you

1 had to underpay the claims by a certain amount?

2 A. There was a quota. I don't know if  
3 you want to call it a policy.

4 Q. What was the quota?

5 A. 30 percent on parts? Yeah.

6 Q. What does that mean, 30 percent on  
7 parts?

8 A. It means that I would write an  
9 estimate, and I will, for instance, pay a  
10 thousand dollars in parts, and then I have to  
11 revise that estimate and take \$300 off.

12 Q. And where was the fraud?

13 A. In misleading the people.

14 Q. What people?

15 A. The customers.

16 Q. And the misleading the people was  
17 the original estimate of \$1,000?

18 A. No. It was a 700 estimate.

19 Q. That was the misleading part?

20 A. That is correct.

21 Q. And you were required to do that?

22 A. Yes.

23 Q. Okay. By the company?

24 A. Yeah.

25 Q. Okay. Was that in writing

1 somewhere?

2 A. Yeah.

3 Q. Okay. In what policy document?

4 A. There's two -- well, I don't know  
5 what documents you have.

6 Q. Don't worry about what I have.  
7 Just tell me where I can find --

8 A. The IVES report and the monthly  
9 reviews.

10 Q. What is a monthly review?

11 A. All appraisers were reviewed  
12 monthly where the quotas will show as a  
13 percentage whether we're complying or not against  
14 what the company wanted.

15 Q. So the company had guidelines or  
16 quotas about certain dollar amounts. Correct?

17 A. That's correct.

18 Q. Okay. But the IVES report doesn't  
19 say that you are to take a thousand dollar claim  
20 and only pay, only estimate it at \$700, did it?

21 A. It was a percentage.

22 Q. What was the percentage?

23 A. 30 percent on parts.

24 Q. So the IVES report said that all  
25 estimates had to be 30 percent less than what

1 they actually were?

2 A. You want to say that one more time?

3 MR. McLANE: Sure. Can you read it  
4 back.

5 (The pending question is read by  
6 the Reporter.)

7 A. On parts.

8 Q. Okay. So you were providing  
9 estimates that were not in compliance with that.  
10 Is that what you're telling me?

11 A. No.

12 Q. What are you telling me?

13 A. I'm telling you I was paying what  
14 it was correct.

15 Q. And you paying what was correct,  
16 was that in compliance with Travelers' policy?

17 A. No.

18 Q. So you weren't complying with  
19 Travelers' policy. Is that right?

20 A. It depends what you define as  
21 policy.

22 Q. Well, I don't know. I'm asking  
23 you. What I'm trying to find out is you're  
24 telling me that the reason why you were written  
25 up in this January 2007 report was because Bob

1 DeStefano wanted you to do something that you  
2 weren't doing. Right?

3 A. That's correct.

4 Q. Okay. And then you threw out the  
5 fact that you were all committing fraud. Right?

6 A. If you want to put it that way.

7 Q. That's the way you put it. I  
8 wasn't there. I only know what you're telling  
9 me. Am I right or wrong?

10 A. Did I say that?

11 Q. I think that's what you said.

12 A. Then why are you telling me?

13 Q. Because I want to be clear.

14 A. How clear do you want it? It's  
15 already there.

16 Q. I want to know if this is the  
17 truth. Is your testimony the reason you were  
18 written up here is because Bob DeStefano wanted  
19 you to commit fraud but you wouldn't do it?

20 A. That's correct.

21 Q. And when did Bob DeStefano tell you  
22 he wanted you to commit fraud?

23 A. When the policy was implemented  
24 that we were supposed to contribute to the  
25 company profits by 30 percent on parts.

1           Q.       Did Bob DeStefano ever say to you,  
2 "Jose Ivan Vilches, I want you to commit fraud"?

3           A.       Yes.

4           Q.       When did he say that?

5           A.       At the meeting.

6           Q.       Which meeting?

7           A.       That meeting of October --

8           Q.       October 18th?

9           A.       That's correct.

10          Q.       Okay. So October 18th you have a  
11 meeting with Gary, and I asked you about the  
12 meeting before but you didn't say anything about  
13 the fraud part, so this is new to me. So at the  
14 meeting on October 18th, besides telling you  
15 you're going to be fired if you enter time  
16 outside of 8 to 5, he also told you, "Ivan, I  
17 want you to commit fraud"?

18          A.       I wasn't meeting the quotas he  
19 said.

20          Q.       Let me try this one more time.

21          Did Bob DeStefano say to you, "Ivan, you're  
22 not meeting the quotas," or did he say something  
23 along the lines of, "Ivan, you're not committing  
24 fraud the way I want you to"?

25          A.       You're not meeting the quotas.

1           Q.           Okay. Did he ever use the word  
2 "fraud"?

3           A.           No.

4                       MR. NIRENBERG: Objection to form.

5           Q.           In your presence. In your  
6 presence.

7           A.           In my presence, no.

8           Q.           Did Bob DeStefano ever ask you to  
9 do anything that you're aware of that was  
10 illegal?

11          A.           Yes.

12          Q.           Okay. What was that?

13          A.           Underpay claims.

14          Q.           By meeting the quota?

15          A.           No, by -- as a way of meeting the  
16 quotas.

17          Q.           Did Bob DeStefano ever say to you,  
18 "Ivan, I want you to underpay the claims"? Did  
19 he ever use those words?

20          A.           No.

21          Q.           Did he use the words "I want you to  
22 meet the quotas"?

23          A.           Yes.

24          Q.           And it was your view that the  
25 quotas were unlawful?

1           A.           That's correct.

2           Q.           Okay. And it was your view that  
3 the quotas somehow constituted fraud?

4           A.           Yes.

5           Q.           Now, when you went to the police  
6 about this, what did they say?

7           A.           When I what?

8                       MR. NIRENBERG: Objection to form.

9           Q.           When you went to the police about  
10 this fraud, what did they say?

11                      MR. NIRENBERG: Objection to form.  
12 Argumentative. It's an inappropriate question,  
13 and you know it, and you're glaring at the  
14 witness.

15                      MR. McLANE: Why is it an  
16 inappropriate question?

17                      MR. NIRENBERG: Because you're  
18 intentionally assuming a fact that you don't  
19 believe to be true in your question.

20                      MR. McLANE: No, I'm not.

21                      MR. NIRENBERG: You're asking when  
22 he went to the police. You didn't ask him if he  
23 went to the police.

24           Q.           Okay. Did you go to the police  
25 about this fraud?



1 A. No.

2 Q. Did you go to anybody at Travelers  
3 about the fraud?

4 A. No.

5 Q. So just so I'm clear, at the  
6 October 18th meeting DeStefano never used the  
7 word "fraud"?

8 A. No.

9 Q. He just wanted you to comply with  
10 the quotas?

11 A. That's correct.

12 Q. Okay. And then you got written up  
13 a few months later by Mr. Marion?

14 A. That's correct.

15 Q. Okay. And in your mind there's a  
16 correlation between the two?

17 A. That's correct.

18 Q. But you don't have any evidence of  
19 that, of the fact that these two things are  
20 related other than fact that they both happened?

21 MR. NIRENBERG: Objection to form.

22 Q. You have no events that link these  
23 two. Correct?

24 MR. NIRENBERG: Objection to form.

25 A. The only reason that I have to

1 believe that is because half of this is not true.

2 Q. Okay. And when I asked you earlier  
3 which parts weren't true, you couldn't tell me  
4 other than some of the claim numbers were made  
5 up. Is that correct?

6 A. That's correct.

7 Q. But half of it is true?

8 A. Yeah.

9 Q. So why don't you tell me which half  
10 is true?

11 A. What's on the paper? Is true, some  
12 of it. At the time that I call or I didn't call  
13 some of the customers.

14 Q. Okay. On Vilches 4 when Mr. Marion  
15 indicates that there are hours of your day that  
16 aren't accounted for, what is he talking about?

17 A. On what? I'm sorry. Where?

18 Q. Sure. If you look at the next,  
19 about six lines up from the bottom of the page,  
20 the first page. 10:45. It says, "Taking out for  
21 lunch and travel time. There is a two-hour gap  
22 in your time worked for this day that cannot be  
23 accounted for." Do you see that?

24 A. Yeah.

25 Q. Is that part of the truth part or

1 the false part?

2 A. Why don't I tell you what happened  
3 and you make a decision as to --

4 Q. Why don't you answer my question.  
5 Was this part of the true part or the false part?

6 A. Because I can't.

7 Q. Why not?

8 A. Because the explanation is that I  
9 couldn't account because he didn't know that the  
10 people or the person that I was supposed to be  
11 looking at the vehicle in Totowa has decided to  
12 go to his mother's house in Wayne or the town  
13 over Wayne, and he was going to be available two  
14 hours later than we had scheduled for. So when I  
15 told him by the second time I got in touch with  
16 him, he said, "Can you please come to my mother's  
17 house," and he gave me the address, so I went  
18 there.

19 Q. Okay.

20 A. And that's the reason why there  
21 were two hours that he couldn't account for,  
22 because the scheduled time was changed by the  
23 owner of the vehicle.

24 Q. So where were you for that two-hour  
25 gap?

1           A.           Trying to call the client or the  
2 customer.

3           Q.           So where were you when you were  
4 making those phone calls?

5           A.           Somewhere in Totowa.

6           Q.           So you were on the road? Were you  
7 in a parking lot? At the McDonald's? Where were  
8 you?

9           A.           On a parking lot I would think. I  
10 don't remember really where I was.

11          Q.           So you were sitting in a parking  
12 lot?

13          A.           I was waiting for him.

14          Q.           So you were sitting in a parking  
15 lot dialing this guy for two hours?

16          A.           Right.

17          Q.           Okay. On the next page above where  
18 the bold 12/29/06 is he mentions that there's a 4  
19 minute gap between two supplements. Do you see  
20 that?

21          A.           Yes.

22          Q.           Do you see that?

23          A.           Yes.

24          Q.           And he seems to be telling you  
25 that, or assuming that these claims were taken

1 home to be completed. Correct?

2 A. Assuming. That's the word, yeah.

3 Q. Were you clear that they did not  
4 want you to take claims home?

5 A. Absolutely.

6 Q. Okay. Did you take claims home?

7 A. No.

8 Q. Okay. Did you adhere to the  
9 company's Best Practices?

10 A. Yes.

11 MR. McLANE: Let's mark this as  
12 Vilches 5.

13 (Document entitled "Supervisor's  
14 Conduct" Bates numbered P3 is received and  
15 marked Vilches 5 for identification.)

16 Q. Mr. Vilches, the court reporter has  
17 handed you what she's marked as Exhibit V-5,  
18 which is a document that was produced to us by  
19 your attorneys in this arbitration. What is V-5?

20 A. I'm sorry?

21 Q. What is this document?

22 A. This was a communication between me  
23 and my attorneys. Hmm?

24 MR. NIRENBERG: If that's the case,  
25 then it's a --

1                   MR. McLANE: It's an inadvertent  
2 production?

3                   MR. NIRENBERG: I presume so. I  
4 don't think I was personally involved in the  
5 production, my co-counsel was, so I would ask  
6 that it be withdrawn from the record.

7                   MR. McLANE: For the moment, unless  
8 you can confirm whether or not this was something  
9 else, we can deal with it. Okay?

10                  MR. NIRENBERG: Okay.

11                  MR. McLANE: Let's try V-6.

12                         (Document entitled "Overtime" with  
13 a Bates designation of P19 is received and  
14 marked Vilches 6 for identification.)

15                  THE WITNESS: That too.

16                  MR. NIRENBERG: This too?

17                  THE WITNESS: Yes.

18                  Q.        Mr. Vilches, the court reporter has  
19 handed you what she's marked as Exhibit V-6. Is  
20 V-6 like V-5, a document you created for your  
21 attorneys?

22                  A.        That's correct.

23                  MR. NIRENBERG: For the record,  
24 I'll make the request that all copies of these  
25 are returned. Obviously we may need to discuss

1 that further.

2 MR. McLANE: Right. I would just,  
3 for the record, and I think we did this already,  
4 just ask that you confirm that these are indeed  
5 privileged documents.

6 MR. NIRENBERG: Absolutely.  
7 Although my client, who just testified, is the  
8 one in the best position to confirm that.

9 MR. McLANE: Right. Can we mark  
10 this as V-7.

11 (Multi-page Application For  
12 Employment Bates numbered P43 through P48  
13 is received and marked Vilches 7 for  
14 identification.)

15 Q. Mr. Vilches, the court reporter has  
16 handed you what she's marked as Exhibit V-7,  
17 which is an application for employment. Can you  
18 just tell me whether this is the application for  
19 employment that you submitted at or near the time  
20 that you were hired by Travelers?

21 A. Yes.

22 Q. Okay. On the third and fourth  
23 pages you indicate your prior work history, and  
24 prior to working for Travelers you had worked in  
25 auto body collision repairs?

1           A.           That's correct.

2           Q.           And that's where you got your  
3 experience and knowledge that you used at  
4 Travelers?

5           A.           That is correct.

6           Q.           You indicate that you left Clifton  
7 Collision Center because of unprofessional  
8 working conditions?

9           A.           That's correct.

10          Q.           What were those conditions?

11          A.           The owner's son had very poor  
12 personal skills.

13          Q.           And you also left Nash Park Auto  
14 Body because of unprofessional working  
15 conditions. What were those working conditions?

16          A.           The owner had some personal issues  
17 that I couldn't -- I couldn't deal with.

18          Q.           In both these situations, were  
19 these personality conflicts you had with the  
20 owners?

21          A.           No.

22          Q.           Were the working conditions at  
23 Travelers professional?

24          A.           For the most part.

25          Q.           But there were parts that were



1 unprofessional?

2 A. As far as Bob DeStefano is  
3 concerned, yeah.

4 Q. Have you ever worked at a job where  
5 you didn't consider the employer to be  
6 unprofessional?

7 A. Absolutely.

8 Q. Which one?

9 A. First Trenton.

10 Q. Is that the only one?

11 A. There might have been -- no, I've  
12 been happy before.

13 MR. McLANE: Mark this as V-8.

14 (Document entitled "CD Log No. 241,  
15 Date 11/25/08, Schedule" Bates numbered P12  
16 is received and marked Vilches 8 for  
17 identification.)

18 Q. The court reporter has handed you  
19 what she's marked as Exhibit V-8. What is V-8?

20 A. This is an assignment.

21 Q. Pardon me?

22 A. An assignment.

23 Q. Okay. And this is a document that  
24 you produced to us.

25 A. That is correct.

1           Q.           Okay. Why did you have this  
2 document in your possession?

3           A.           I -- that was part of my daily work  
4 schedule.

5           Q.           What do you mean part of your daily  
6 work schedule?

7           A.           This was an assignment that I was  
8 to print, and this is what I use to record the  
9 type of damage and who I had spoken to, and it  
10 had all the information pertinent to a particular  
11 claim.

12          Q.           In your production to us, you  
13 produced numerous documents like this. Is there  
14 any reason why these weren't destroyed or  
15 returned to Travelers when you left their employ?

16          A.           No.

17          Q.           Were you asked to return such  
18 documents or such property?

19          A.           I wasn't asked.

20          Q.           Okay. Would it be your normal  
21 practice to print these documents out?

22          A.           Sure.

23          Q.           And what would you do with them  
24 once you printed them out?

25          A.           I would take the same piece of

1 paper and I would go to the vehicle and I would  
2 put the mileage of the vehicle, license plate, or  
3 any information or notes as damage, and anything  
4 that was pertinent to the particular claim.

5 Q. And is this, I think you testified  
6 earlier was this a document that you printed out  
7 while you were in your car in front of your  
8 house?

9 A. No. I did that at 8 o'clock. We  
10 couldn't do that before.

11 Q. Okay. You did that at 8 o'clock in  
12 the morning?

13 A. We have to.

14 Q. Okay. But you did it from your  
15 car?

16 A. Inside my car, sure.

17 Q. And why did you have to do it at 8  
18 o'clock? Do you know?

19 A. Because once you open this, the  
20 time would be stamped on the file.

21 Q. And the time would be stamped which  
22 meant that there was a certain time within which  
23 you had to complete the file?

24 A. No. It means that we couldn't do  
25 anything before 8 o'clock, and that would be

1 stamped.

2 Q. Why couldn't you have anything  
3 stamped before 8 o'clock?

4 A. Because the idea was to mark the  
5 time cards between 8 and 5. So if anything was  
6 done before 8 or after 5, it would be recorded  
7 and the supervisor would have a problem.

8 Q. Okay. So whenever we're dealing  
9 with -- strike that.

10 When you looked at these documents it would  
11 be stamped and recorded?

12 A. Yes.

13 Q. So it was your practice not to look  
14 at these documents before 8 a.m. or after 5 p.m.  
15 because that was not part of Best Practices?

16 A. By looking, you mean opening the  
17 files?

18 Q. You tell me.

19 A. No, I couldn't open the file.

20 Q. Could you look at the file?

21 A. Only names.

22 Q. Okay. So when you look at this  
23 document and you printed it out in the morning  
24 generally?

25 A. Well, this was printed on November

1 25th of 2008 at 8:21 and 20 seconds.

2 Q. And I'm just trying to be clear  
3 here. Your testimony is that you never would  
4 have printed out or looked at one of these  
5 schedules prior to 8 a.m.?

6 A. The only -- no. I couldn't print  
7 it.

8 Q. Could you look at it prior to 8  
9 a.m.?

10 A. Only the name and location, I  
11 believe.

12 Q. So the entire document as we have  
13 it here today you would not be able to look at  
14 prior to 8 a.m. Correct?

15 A. Only a portion of it.

16 Q. Okay. And is that true after 5  
17 p.m.?

18 A. That's correct.

19 Q. Okay. But between 8 a.m. and 5  
20 p.m. you could look at the entire document as we  
21 look at it here?

22 A. We have to, sure.

23 Q. Okay. Who is Kathy Bellman?

24 A. I believe she was or is an H.R.  
25 employee or in that department?

1 MR. McLANE: Mark this as V-9.

2 (Email dated January 20, 2009 Bates  
3 numbered P25 is received and marked Vilches  
4 9 for identification.)

5 Q. The court reporter has handed you  
6 what she's marked as Exhibit V or Vilches 9,  
7 which is a January 20th, 2009 email from you to  
8 Ms. Bellman. Do you recall sending this?

9 A. Yes.

10 Q. Why did you send this?

11 A. Because I had concerns as to the  
12 reasons why I was terminated.

13 Q. And what were those concerns?

14 A. That it was unfair.

15 Q. And why was it unfair in your mind?

16 A. Because the accusations made to me  
17 were mostly false.

18 Q. I'm sorry. You said the  
19 accusations made to you?

20 A. That's correct.

21 Q. Are you referring to things that  
22 were like those that we talked about earlier in  
23 that warning?

24 A. Yes, yes.

25 Q. And what else?

1           A.           And the fact that if I was going to  
2 leave Travelers, then I needed to get my overtime  
3 paid.

4           Q.           And was this the first time you had  
5 notified Human Resources that you wanted to have  
6 your overtime paid?

7           A.           Yes.

8           Q.           Okay. You don't use the word  
9 "fraud" in this letter, do you?

10          A.           No.

11          Q.           You don't make any allegations of  
12 fraud in this letter, do you?

13          A.           No.

14          Q.           Now, you received a response to  
15 this?

16          A.           Yes, I did.

17                       MR. McLANE: Mark that as V-10.

18                       (Four-page letter dated June 4,  
19 2009 to Ivan Vilches from Cynthia M.  
20 Garten, V.P., Claims Human Resources for  
21 Travelers Bates numbered R 001399 through  
22 1402 is received and marked Vilches 10 for  
23 identification.)

24          Q.           The court reporter has handed you  
25 what she's marked as Exhibit V-10, which is a

1 June 4th, 2009 letter from Cynthia Garten at  
2 Travelers to you. Do you recall receiving this  
3 letter?

4 A. Yes.

5 Q. Okay. And this letter was a  
6 response to your January 20th email to Ms.  
7 Bellman?

8 A. That's correct.

9 Q. Were you satisfied with the  
10 Travelers response?

11 A. No.

12 Q. Why not?

13 A. Because they did not address the  
14 issues.

15 Q. Pardon me?

16 A. They didn't address the issues.

17 Q. Did you do a follow-up letter or  
18 email to this?

19 A. No.

20 Q. Why not?

21 A. Because I was disappointed.

22 Q. In the response?

23 A. No, in the time it took to get the  
24 response.

25 Q. So because they may have used that



1 time to do a thorough and complete investigation  
2 of the claims you made, you were disappointed?

3 A. No.

4 Q. Why were you disappointed?

5 A. Because Kathy Bellman told me that  
6 the process couldn't take more than 30 days as  
7 per company policy.

8 Q. Sure. And did you call Ms. Bellman  
9 after the 30 days to see where the response was?

10 A. I did not.

11 Q. In this letter it looks like Miss  
12 Garten takes your allegations that you made in  
13 your email and then addresses each one.

14 If you look at the first page, number one,  
15 where she quotes your October 20th email, you  
16 wrote, "On weekends we would complete supplements  
17 we picked up from shops during the week."

18 When I asked you what you did on Saturdays  
19 between 7:30 a.m. and 3:30 p.m. every single  
20 Saturday, you didn't mention anything about  
21 completing supplements.

22 A. No, I didn't.

23 Q. What's right? This letter, or your  
24 testimony?

25 A. Both.

1           Q.           And how is your testimony right if  
2 you never mentioned the supplements?

3           A.           Because the time schedule was  
4 implemented in 2006.

5           Q.           So you're referring to things that  
6 happened before 2006 here? From 2004 to 2006?

7           A.           That's what it says here, from 2004  
8 to 2006.

9           Q.           So after 2006 you never worked on  
10 supplements?

11          A.           We couldn't.

12          Q.           Okay. Because?

13          A.           Because we were told that we  
14 couldn't upload anything to the company that  
15 would reflect the time.

16          Q.           Okay. And is it your testimony  
17 that sitting at your computer for eight or nine  
18 hours on a Saturday and looking at it every,  
19 according to you, 3 or 4 minutes, that did not  
20 reflect any time?

21                       MR. NIRENBERG: Objection to form.

22          A.           I don't understand.

23          Q.           What do you mean by you couldn't  
24 upload it because that would reflect time?

25          A.           Because anything that went up to

1 the company, it will be stamped with the time.

2 Q. Okay.

3 A. And that was traceable, and in my  
4 case Gary Marion will get in trouble.

5 Q. I understand. So was it your  
6 understanding that when you were looking at your  
7 computer and checking it every three to four  
8 minutes, that if that were in some way stamped or  
9 in some way identifiable as you doing work, that  
10 that was okay?

11 MR. NIRENBERG: Objection to form.  
12 I don't understand the question.

13 MR. McLANE: It's a bad question.

14 Q. They didn't want to show that you  
15 had any time on Saturdays that could be stamped.  
16 Is that what you're telling me?

17 A. Right.

18 Q. Okay. Fair enough.

19 MR. NIRENBERG: When do you want to  
20 take a lunch break?

21 MR. McLANE: Whenever you want to.

22 (There is a discussion off the  
23 record, whereupon a lunch recess is taken.)

24 BY MR. McLANE:

25 Q. In 2008 you received overtime,

1 correct, for house that you requested?

2 MR. NIRENBERG: You mean overtime  
3 pay?

4 MR. McLANE: Overtime pay.

5 A. Probably two, three times. I'm not  
6 sure.

7 Q. Do you recall sending emails to  
8 Gary requesting to be paid for overtime that you  
9 worked?

10 A. No. I don't recall.

11 Q. Okay.

12 A. You know, I'm wrong on that.

13 Q. What are you wrong about?

14 A. Because when I called to finish a  
15 couple of things, he asked me how long would that  
16 be, and I would say probably a half hour or an  
17 hour. He had say, "Okay. Do it and email me  
18 tomorrow with the time."

19 Q. And you did that?

20 A. Sure.

21 Q. And when you did email him with the  
22 time, was it approved?

23 A. It had been approved already.

24 Q. And you put in for that overtime?

25 A. Absolutely.

1 Q. And it was paid to you?

2 A. That's correct.

3 Q. Do you recall any incidents where  
4 you asked for that overtime that it wasn't  
5 approved?

6 A. No.

7 Q. Okay. Were there times when you  
8 sought approval to complete supplements -- strike  
9 that.

10 Are there times when you sought overtime  
11 approval to complete supplements?

12 A. Maybe.

13 Q. Okay. Do you recall any times --  
14 strike that.

15 I think I recall from your testimony  
16 earlier today that you don't recall ever  
17 requesting overtime and having it denied.  
18 Correct?

19 A. After 2006, you're correct.

20 Q. Okay. Do you know why, if you  
21 know, do you know why certain overtime would be  
22 allowed and other overtime discouraged?

23 A. I have an idea.

24 Q. And what's the idea?

25 A. The company policy said that the

1 regular overtime would not be paid. It was not  
2 an acceptable circumstance I guess, or, you know,  
3 there was -- in their mind the work to be done  
4 could be completed within the time of the core  
5 hours.

6 Q. I understand. But is it your  
7 understanding that it was company policy not to  
8 pay -- strike that. Do you recall seeing policy  
9 documents that indicated that you would be paid  
10 for all the hours that you recorded?

11 A. Sure.

12 Q. Okay. And it's your recollection  
13 that when you did ask for overtime after 2006 it  
14 was granted?

15 A. Only occasionally.

16 Q. So just what I'm trying to nail  
17 down here is was it the times that you asked for  
18 overtime was occasional, or the granting was  
19 occasional, the approval was occasional?

20 A. Both.

21 Q. Do you recall ever receiving any  
22 emails from Gary where he denied your request for  
23 overtime?

24 A. I don't recall.

25 Q. Okay.

1           A.           No, probably not, no.

2           Q.           Probably not. Right? Because it's  
3 your understanding that when you did request that  
4 overtime, it was paid? Or was approved? I'm  
5 sorry.

6           A.           No, because the only way I could  
7 ask for overtime was to finish a claim or upload  
8 pictures.

9           Q.           Right.

10          A.           That was the only way we will be  
11 granted overtime.

12          Q.           Okay. And on those occasions where  
13 you asked for overtime to upload claims or to --  
14 to finish claims or upload pictures, it was  
15 granted? It was approved?

16          A.           Yes.

17          Q.           Okay. Now, other than your  
18 testimony, what else, what other evidence are you  
19 aware of that would show us that you worked the  
20 hours you claim you worked?

21          A.           The assignments.

22          Q.           What about the assignments would  
23 show me that you worked 20 to 30 hours overtime?

24          A.           Let me see. Do I have everything  
25 here? I thought we had an assignment here.

1 Q. Yes. I think it's the --

2 A. I'm sorry. I put it back here.

3 Q. It's V-8.

4 A. Yes. Here we go. Vilches 8. On  
5 the, I guess that would be the third line, the  
6 schedule date, that would be correct?

7 Q. Right.

8 A. That shows when that assignment was  
9 sent to ADP by Travelers.

10 Q. So the schedule date is November  
11 24th, '08, and the schedule time is --

12 A. 5:03.56.

13 Q. All right. So what does that tell  
14 me about whether or not you worked 20 to 30 hours  
15 a week of overtime?

16 A. It tells you that assignments were  
17 being sent to me after 5 o'clock.

18 Q. How do I know that you looked at  
19 that assignment after 5 o'clock on November 24th?

20 A. Because you're looking at the piece  
21 of paper with the date on it and the time.

22 Q. Pardon me?

23 A. You're looking at the piece of  
24 paper with a stamped date and time.

25 Q. But what is that stamp telling me?



1 Does that stamp tell me when you opened it?

2 A. No. Where it tells you when I  
3 opened it is on the bottom on the next day at  
4 8:21.

5 Q. Other than the fact that this 5:03  
6 p.m. time is on here, what indicates that you  
7 worked on this file between 5:03 p.m. on November  
8 24th and 8:21 a.m. on November 25th?

9 A. That indicates that that assignment  
10 was sent to me after 5 o'clock.

11 Q. I understand that.

12 A. Okay. So which part don't you  
13 understand?

14 Q. Well, what I'm trying to figure out  
15 is how do I know that you did any work on this  
16 file between 5:03 p.m. on November 24th and 8:21  
17 a.m. on November 25th?

18 A. I didn't work on it.

19 Q. Okay.

20 A. I only received the assignment.

21 Q. And when you say -- do you know  
22 whether or not this 5:03 p.m. stamp indicates the  
23 time that it was sent from ADP, the time that it  
24 landed in your computer, or the time that you did  
25 something to it?

1           A.           No, ADP didn't have a clock in it.

2           Q.           So the 5:03 p.m. means that this is  
3 when it landed in your computer?

4           A.           That's correct.

5           Q.           And is there anything on this  
6 document that I can look at to determine that you  
7 did anything on this file at all?

8           A.           Well, if --

9           Q.           At 5:03 p.m.?

10          A.           Well, the fact that you're looking  
11 at the piece of paper means that I had to  
12 download it.

13          Q.           I understand that. You told me  
14 that you would print these out --

15          A.           So what do you mean by "work" then?

16          Q.           Well, you're claiming that you  
17 worked 20 to 30 hours a week overtime.

18          A.           That's correct.

19          Q.           And I'm asking is there anything on  
20 this document that would indicate that you  
21 actually worked 20 to 30 hours a week overtime?

22          A.           Not on one document.

23          Q.           Okay. So let me get this straight  
24 just so I'm correct. This document lands in your  
25 computer at 5:03 p.m.?

1 MR. NIRENBERG: Objection to form.

2 MR. McLANE: What's wrong with the  
3 question.

4 MR. NIRENBERG: The word "lands"  
5 implies something inconsistent with his prior  
6 testimony.

7 Q. At 5:03 p.m. this document appears  
8 on your computer?

9 A. I downloaded it.

10 Q. So this stamp means that you  
11 actually did something, you downloaded it?

12 A. That's correct. That's when the  
13 clock was stamped.

14 Q. So then I would see, if I'm looking  
15 at all of these similar assignments, numerous  
16 downloads between 5 o'clock p.m. and 8 o'clock  
17 p.m.?

18 A. Yeah. There were, I think there's  
19 at least two that I sent that were 9 o'clock at  
20 night or something.

21 Q. And again, as I recall, it took you  
22 how long to download this?

23 A. That particular one, probably, I  
24 don't know, a minute, minute and a half. I don't  
25 know, something like that. It all depends.

1           Q.           And that was the average time it  
2 would take you to download a file. Correct?

3           A.           Well, unless the computer was  
4 locked or lost the connectivity, then you have to  
5 reboot, and that would be, I don't know, a 5,  
6 6-minute process.

7           Q.           And then the 8:21 a.m. time on the  
8 next day indicates you did what?

9           A.           I opened the file.

10          Q.           And when you opened the file, is it  
11 fair to say that's when you actually did some  
12 work on the file or began to do work on the file?

13          A.           No.

14          Q.           Okay. When you opened the file,  
15 that's when you determined where the vehicle was?

16          A.           Yeah. Then I would -- no. I would  
17 determine that -- at the assignment I believe it  
18 had the area or the place where the vehicle was.  
19 What I will know when I open the file is who I'm  
20 seeing, what kind of damage I was looking at.

21          Q.           Because we know from your earlier  
22 testimony between 5 o'clock p.m. and the next  
23 morning you couldn't review this entire document.  
24 Right?

25          A.           I couldn't open it.

1 Q. You couldn't open it.

2 A. That's correct.

3 Q. Even if you tried, you couldn't?

4 A. Of course I could.

5 Q. But you were instructed not to?

6 A. Not to.

7 Q. Okay. And you were instructed not  
8 to because they didn't want you to do any work on  
9 the files between --

10 A. No.

11 Q. Let me finish the question.

12 A. Okay.

13 Q. -- between 5 p.m. and 8 a.m. the  
14 next morning?

15 A. No.

16 Q. Okay. What's the answer?

17 A. The answer is that if I open it,  
18 the time will be stamped and that will be  
19 traceable.

20 Q. Well, it's traceable here.  
21 Correct?

22 A. That's correct.

23 Q. And did Gary get in trouble because  
24 you opened this at 5:03 p.m.?

25 A. That you have to ask Marion.

1           Q.           Okay. Does this document show  
2 anywhere at what time this claim was assigned to  
3 you?

4           A.           The assignment was 1903.

5           Q.           I thought that's when you  
6 downloaded it?

7           A.           Right. I download it, because  
8 that's when it gets stamped.

9           Q.           But does this document show you  
10 when this was assigned to you?

11          A.           If at the end of the month they  
12 didn't show it was done over an hour, then it  
13 means it was done probably by, I don't know,  
14 maybe 6?

15          Q.           Let me get this straight. The 5:03  
16 time that is on here under the schedule time,  
17 that time indicates the time that you downloaded  
18 this file. Correct?

19                   MR. NIRENBERG: Objection to form.  
20 He's now corrected that it was 1903 not 5:03.

21                   THE WITNESS: Yeah, I'm sorry.

22          Q.           That's 7:03. Right?

23                   MR. NIRENBERG: I believe so.

24          A.           Right.

25          Q.           All right. So the 7:03 time that's

1 on here, that indicates what time you downloaded  
2 the file. Correct?

3 A. Right.

4 Q. Okay. Is there anything on this  
5 document where I could determine what time this  
6 was assigned to you?

7 A. Not on this document.

8 Q. On what document?

9 A. That's in Impact.

10 Q. Pardon me?

11 A. Impact.

12 Q. And how would those documents be  
13 kept?

14 A. They're at Travelers.

15 Q. And you had one hour from what time  
16 to download this document? Did have you to  
17 download this document within one hour of  
18 receiving it?

19 A. That doesn't make sense.

20 Q. Okay. At 1903 you downloaded this  
21 document?

22 A. That's correct.

23 Q. What did that mean?

24 A. It means that the assignment was  
25 downloaded at that time.

1           Q.           And you had -- didn't you have to  
2 do something within an hour of receiving the  
3 assignment?

4           A.           Right.

5           Q.           What did you have to do?

6           A.           It means that whatever the time  
7 this was sent to me and processed by ADP, it has  
8 to be an hour.

9           Q.           But this document doesn't show us  
10 what that time is?

11          A.           No.

12          Q.           And how did you know what that time  
13 was?

14          A.           Because we know that it couldn't  
15 take more than an hour for ADP most of the time  
16 to process an assignment.

17          Q.           So you would just -- you were just  
18 making that assumption?

19          A.           No.

20          Q.           So if this is downloaded by you at  
21 7:03 p.m., when is it assigned?

22          A.           I don't know.

23                       MR. NIRENBERG: Objection to form.

24          Q.           What's the time frame in which it  
25 could have been assigned?



1           A.           Hopefully an hour.

2           Q.           Hopefully an hour?

3           A.           Yes.

4           Q.           So it could have been in your  
5 computer for an hour?

6           A.           No, it could have been in ADP for  
7 over an hour.

8           Q.           And then how long could it have  
9 been in your computer before you downloaded it?

10                       MR. NIRENBERG: Objection to form.

11           A.           That's automatic.

12           Q.           So what's automatic?

13           A.           Once I press the button to  
14 download, once it's downloaded it's automatically  
15 stamped with the time it was downloaded.

16           Q.           So tell me what buttons you hit on  
17 your computer to ascertain that a file is ready  
18 to be downloaded?

19           A.           I don't know what the key is. I  
20 don't recall the key. It could have been F2, F3.  
21 I don't remember.

22           Q.           So assuming it's F2, you go to your  
23 computer because you were doing this every 3 or 4  
24 minutes --

25           A.           Correct.

1           Q.           -- for years. You go to your  
2 computer and you hit F3?

3           A.           Right.

4           Q.           What happens on your screen when  
5 you hit F3?

6           A.           Then it will say connecting,  
7 processing, whatever, you know, finished, or  
8 assignment received, whatever, and then it goes  
9 back to the home screen, and whatever, if I had  
10 anything, it would be on the screen.

11          Q.           Okay. So you hit a button,  
12 whatever happens happens according to you?

13          A.           Right.

14          Q.           Words appear, and then if you have  
15 an assignment it appears, Ivan, you have an  
16 assignment?

17          A.           Yeah, like an email. Same way.

18          Q.           Right. And then once you see that,  
19 you do what? What button do you hit? What keys  
20 to you press?

21          A.           I would have pressed whatever, F2  
22 again.

23          Q.           And what does F2 do?

24          A.           It will download again.

25          Q.           So there are two keystrokes?

1           A.           No, one.

2           Q.           Well, the first one you have when  
3 you go to your computer. You hit F2, then  
4 whatever happens happens, and then it says Ivan,  
5 there's an assignment for you?

6           A.           Right.

7           Q.           You see that, and then you hit F2?

8           A.           Right.

9           Q.           And when you hit the second F2,  
10 that's what time stamps this --

11          A.           No. It restarts the whole process  
12 again.

13          Q.           You lost me.

14          A.           Yes. You lost me too.

15          Q.           Okay. ADP sends you an assignment.

16          A.           No.

17          Q.           All right. The dispatcher sends  
18 you an assignment?

19          A.           To ADP.

20          Q.           To ADP. Okay. And then when ADP  
21 gets the assignment, what happens to it?

22          A.           They process and they format in a  
23 way that their system can use it or something. I  
24 don't know. And they post it on my whatever,  
25 mailbox or something. I don't know.

1 Q. Okay. I don't know either.

2 So when they post it on your mailbox or  
3 whatever, is that when it appears in your  
4 computer?

5 A. No.

6 Q. When does it appear at your  
7 computer?

8 A. When I actually go and download  
9 that from their computer to mine.

10 Q. From whose computer?

11 A. ADP.

12 Q. Okay. So you extract it from ADP?

13 A. There you go.

14 Q. Okay. But in order for you to  
15 distract it, it has to be there. Correct?

16 A. Absolutely.

17 Q. But you don't know it's there until  
18 you actually hit a button on your computer?

19 A. That's correct.

20 Q. Okay. So you go to your computer,  
21 there's nothing on there. You hit a button, F2,  
22 and then all of a sudden an assignment appears?

23 A. Most of the time.

24 Q. Okay. The 7:03 p.m. time, what is  
25 that telling me? Is that when you hit the F2 to

1 show you that the assignment is there, or is that  
2 a subsequent key that you're hitting?

3 A. No. When the assignment was  
4 retrieved.

5 Q. So when you go to your computer and  
6 hit F2 and it shows you that Ivan has an  
7 assignment, is that the retrieval time?

8 A. Right.

9 Q. All right. So that means now it's  
10 on your computer?

11 A. That is correct.

12 Q. But you're not opening it?

13 A. I can't.

14 Q. Because you're told not to. Right?

15 A. That is correct.

16 Q. Now, what's the significance to you  
17 of having opened this at 7:03 p.m.? Did you meet  
18 some requirement that this be done by 7:03 p.m.?

19 A. Hopefully I downloaded that  
20 assignment within one hour from the time that  
21 Travelers send that to ADP.

22 Q. But since you don't know exactly  
23 when it goes to ADP, like you said, you're just  
24 hoping that you're doing it within an hour?

25 A. That is correct.

1           Q.           Okay. And then somewhere perhaps,  
2 not on this document, there may be something that  
3 shows us what time this file was actually sent?

4           A.           Absolutely.

5           Q.           Or sent by dispatch to ADP?

6           A.           That is correct.

7           Q.           And then it sits at ADP until you  
8 retrieve it?

9           A.           That is correct.

10          Q.           Okay. And then is it your  
11 testimony that on this particular day at 7:03 you  
12 went back to the computer and hit the button  
13 again?

14          A.           That's probably correct.

15          Q.           So this document, if I look at all  
16 your documents, all of what we'll call them  
17 schedules, this would show me that you were  
18 working regularly between 5 p.m. and 8 p.m. in  
19 the evening?

20          A.           That is correct.

21          Q.           Okay. And then I would see the  
22 same thing on Saturdays?

23          A.           That is correct.

24          Q.           Okay. And am I correct that I  
25 would now -- you said earlier that you would

1 receive seven to ten assignments per day.

2 Correct?

3 A. Yeah.

4 Q. Okay. How many of those  
5 assignments generally would come to you between 8  
6 a.m. and 5 p.m.?

7 A. That varies. Could be one, two,  
8 three, four. It all depends.

9 Q. And then whatever didn't come to  
10 you -- well, say four came. The remaining seven  
11 to ten would come after 5 p.m.?

12 A. No.

13 Q. Okay. When would they come?

14 A. The following day or, you know,  
15 it's -- you never knew when the assignment was  
16 coming.

17 Q. Well, this one came at 7:03 p.m.  
18 Right?

19 A. Right.

20 Q. And I'm trying to figure out if  
21 there were seven to ten a day, I'm just trying to  
22 nail down how many on average came after 5 p.m.  
23 as opposed to between the core business hours.  
24 You can't guesstimate that for me?

25 A. No.

1           Q.           Other than this document and your  
2 testimony, any other evidence that we can look at  
3 to determine that you worked the hours you claim  
4 you worked?

5           A.           My understanding is you have 154 of  
6 these.

7           Q.           My question is other than these  
8 documents and your testimony, anything else that  
9 we can look at to determine the hours you worked?

10          A.           Yes.

11          Q.           What?

12          A.           You can look at the Impact, and  
13 every claim is documented as to who send the  
14 assignment and what time it was sent.

15          Q.           Impact will tell me who sent the  
16 assignment?

17          A.           Yeah.

18          Q.           Like what dispatcher sent it?

19          A.           Well, each claim has a log and the  
20 log will show who send the assignment and what  
21 time.

22          Q.           Okay. And what does that mean with  
23 respect to showing that you're working those  
24 hours?

25          A.           It means that if the company made



1 me responsible to receive an assignment within  
2 one hour, and if that assignment was sent to me  
3 at 6 or 7 o'clock at night, I only had one hour  
4 to receive that assignment and comply with their  
5 requirement.

6 Q. Did the company ever tell you that  
7 you should receive those assignments one hour  
8 during the core business hours, but anything  
9 after that can be reviewed at 8 o'clock in the  
10 morning?

11 A. No.

12 Q. Do you know what the "notice of  
13 loss" date is?

14 A. Yes.

15 Q. What is that?

16 A. My understanding is that's when the  
17 owner of the vehicle call the company to place  
18 the claim or to open the claim, if you will.

19 Q. And what's the "assigned date"? Do  
20 you know? Are you familiar with that term?

21 A. The date it was assigned to me I  
22 would think. Where are you looking at that?

23 Q. Don't worry about what I'm looking  
24 at. Do you know what --

25 A. I'm sorry. I thought you were

1 referring to the --

2 MR. NIRENBERG: I'll object to the  
3 extent that could mean different things in  
4 different contexts.

5 Q. Is the term "assigned date" a term  
6 of art with respect to Travelers? Does it mean  
7 anything to you?

8 A. Sure.

9 Q. What does it mean?

10 A. It means that's the date the  
11 assignment was sent to me, I was made responsible  
12 for it.

13 Q. Is that different from the 7:03  
14 time that we looked at earlier?

15 A. Probably not.

16 Q. Okay. Does the term "retrieval  
17 date" mean anything to you?

18 A. Yes.

19 Q. What does that mean?

20 A. It means that that is the date that  
21 I retrieved the assignment from ADP.

22 Q. And is that the 7:03 date we looked  
23 at earlier?

24 A. No, that's a time.

25 Q. Okay.

1           A.           The date is --

2           Q.           The time. I'm sorry. Gotcha.

3           And would there be something called a  
4 "retrieval time"? The retrieval time, is that  
5 the date that's stamped on the claim?

6           A.           That's correct, yes.

7           Q.           And then what's the upload date?

8           A.           When I inspected the vehicle, I did  
9 the estimate, and I closed everything and I  
10 uploaded the claim back to ADP.

11          Q.           And there's also an upload time,  
12 there's a time when you actually did that?

13          A.           Absolutely.

14          Q.           And then there's a supplemental  
15 time if you have to go back to a claim and do  
16 some changes?

17          A.           Sometimes.

18          Q.           Now, you were at your computer  
19 constantly, according to you, between 5 p.m. and  
20 8 p.m. every night because you wanted to ensure  
21 that you retrieved the assignments within one  
22 hour. Correct?

23          A.           That's correct.

24          Q.           And you did that as well on  
25 Saturdays. Is that correct?

1           A.           That is correct.

2           Q.           During the core business hours  
3 between 8 to 5, were you doing the same thing?

4           A.           No, because we were writing  
5 estimates, and then it would be probably an hour  
6 or more or whatever, you know, by the time you  
7 were working, and the computer didn't do two  
8 things at once, so --

9           Q.           But weren't you concerned during  
10 the core business hours when you were out doing  
11 estimates that you weren't retrieving the --

12          A.           Within an hour?

13          Q.           Let me finish.

14               (Continuing) -- retrieving the files within  
15 the time that was prescribed?

16          A.           No.

17          Q.           Why not?

18          A.           Because the time, it was already  
19 posted there.

20          Q.           You lost me.

21          A.           The only time that we were made  
22 responsible to receive that it was after 5. When  
23 we were working during the day, the computer was  
24 doing everything they were supposed to be doing.  
25 We have no control. If I'm doing an estimate,

1 I'm assuming the computer is going to do or  
2 download automatically or not automatically. I  
3 have no idea how it did it.

4 Q. I see. So according to you, this  
5 retrieving the file within an hour was not a  
6 requirement between 8 and 5, but only a  
7 requirement after 5 p.m.?

8 A. No, it was.

9 Q. Okay. So if it was a requirement,  
10 why weren't you hitting your computer every 3 or  
11 4 minutes during the day?

12 A. Because the software server was  
13 running.

14 Q. The software server wasn't running  
15 overnight?

16 A. It could crash, yes. It wasn't  
17 overnight. It was till 8 o'clock.

18 Q. So the downloads -- not the  
19 downloads. So the files would hit your computer  
20 during the day automatically without you having  
21 to go do anything?

22 A. As long as the software was running  
23 during the day and communication was effective,  
24 yes.

25 Q. And during the night if the

1 software was running and the server was  
2 effective, you had to do something manually  
3 yourself to make that operation occur?

4 A. I had to make sure the software was  
5 running and the communication was established,  
6 yes.

7 Q. If the software was running and the  
8 communication was established, would the system  
9 operate the same way as it did during the core  
10 business hours?

11 A. My understanding, it was 15  
12 minutes. My understanding. I don't recall the  
13 exact time.

14 Q. What do you mean by 15 minutes?

15 A. It means that the computer software  
16 was set up to download assignments about 15  
17 minutes, every 15 minutes.

18 Q. Okay. And that would happen if the  
19 computer software was functioning and the  
20 communications were on. Right?

21 A. That is correct.

22 Q. And so if that was all happening,  
23 there would have been no need for you to sit by  
24 your computer every 3 to 4 minutes just like  
25 there was no need for you to sit by your computer

1 3 to 4 minutes during the core business hours.

2 Is that correct?

3 A. That is correct.

4 Q. Any other things that we can look  
5 at to determine whether or not you were working  
6 as much as you claim to have been working other  
7 than what you've told us?

8 A. I don't think so.

9 Q. Now, you indicated that you never  
10 take lunch. As a matter of fact, you didn't  
11 take, according to you you didn't take lunch here  
12 today, you didn't need lunch, but yet you  
13 testified earlier that you would eat a sandwich  
14 during the day?

15 A. Yeah. A little bit of time, yes.  
16 Eventually I will get to it.

17 Q. Did you bring the sandwich from  
18 home?

19 A. No. That was the 7Eleven stop.

20 Q. So when would you stop at 7Eleven  
21 to pick up a sandwich?

22 A. Probably 7:40 maybe?

23 Q. So this is the same time that you  
24 picked up your coffee in the morning?

25 A. Right.

1           Q.           And I think you said that was a 2  
2 or 3-minute stop. So you would get your coffee  
3 and then get your sandwich for the day?

4           A.           Yes. I mean sometimes. It depends  
5 what I felt like.

6           Q.           And during the course of the day  
7 while you were on the road -- strike that.

8           Was it Travelers' policy that you take time  
9 for lunch?

10          A.           Yes.

11          Q.           Was it Travelers' policy that you  
12 record your -- that you punch out for lunch and  
13 punch back in when lunch was over?

14          A.           Yes.

15          Q.           And did you do that?

16          A.           Yes.

17          Q.           So there were days that you took  
18 lunch?

19          A.           No.

20          Q.           Did you punch out, in and out for  
21 lunch even though you weren't taking a lunch?

22          A.           That's right.

23          Q.           Why was that?

24          A.           Because I was told by Bob to do  
25 that.



1 Q. When did Bob tell you to do that?

2 A. It was 2006.

3 Q. Let me guess. In the summer of  
4 2006?

5 A. There you go. Yes.

6 Q. And what did Bob tell you about --  
7 well, strike that.

8 Did Bob tell you not to take a lunch?

9 A. No.

10 Q. What did Bob tell you about lunch?

11 A. Nothing.

12 Q. Did Bob tell you that he wanted you  
13 to punch in and out for lunch even if you didn't  
14 take one?

15 A. No.

16 Q. Did anybody ever tell you that?

17 A. No.

18 Q. Did you routinely put in an hour,  
19 punch out and punch back in an hour each day to  
20 indicate a lunch period?

21 A. We never had an hour.

22 Q. Did you routinely punch in and out  
23 for lunch every day regardless of whether you  
24 took one or not?

25 A. No, I did that once a week.

1 Q. Once a week you did what?

2 A. Entered the times in the computer.

3 Q. So at the end of each week you  
4 would enter your start time and your end time for  
5 the day as well as the time you would start lunch  
6 and end lunch?

7 A. Right.

8 Q. Okay. And you would enter that  
9 start -- that time to start lunch and end lunch  
10 regardless of whether or not you took a lunch?

11 A. Well, you have to.

12 Q. And what happens if you don't?

13 A. The system will not close, you  
14 know, the time entries, whatever. There were  
15 four numbers that had to go in in order for the  
16 time to be recorded. You couldn't skip one.

17 Q. So if you punched in in the morning  
18 at 8 o'clock or used the time entry system at 8  
19 o'clock, it wouldn't let you punch out at 5  
20 o'clock unless there was a lunch in between?

21 A. That is correct.

22 Q. What would happen if you went to  
23 punch out at 5 o'clock without entering the  
24 lunch? What would you see or what would happen?

25 A. Nothing would happen. It wouldn't

1 go through.

2 Q. Did you ever ask anybody to repair  
3 that or fix that anomaly?

4 A. No, I never thought there was  
5 something wrong with it.

6 Q. Were there any days during the  
7 course of your employment where you took a half  
8 hour for lunch?

9 A. I don't remember.

10 Q. Is it possible?

11 A. Everything is possible.

12 Q. What time did you generally get  
13 back to your house during the course of a day?

14 A. Sometimes 6, 5, 4:30, 6:30.

15 Q. What was the latest you recall  
16 getting back to your house from an assignment?

17 A. After 2006?

18 Q. Yes.

19 A. 6.

20 Q. Is it fair to say more often than  
21 not you were home by 4:30, 5 o'clock?

22 A. No.

23 Q. You were home later than that on  
24 average?

25 A. Mostly, yeah.

1           Q.           Did that comport with Best  
2 Practices?

3           A.           Best Practices doesn't say anything  
4 about what time you got to be home.

5           Q.           During the course -- well, strike  
6 that. You used your own car?

7           A.           Yes.

8           Q.           Were there times when you needed to  
9 submit reimbursement for expenses?

10          A.           Yes.

11          Q.           What type of expenses would you  
12 seek reimbursement for?

13          A.           That was basically mileage.

14          Q.           Anything else?

15          A.           No.

16          Q.           How often would you submit your  
17 mileage reports?

18          A.           I believe it was once a month.

19          Q.           And am I right from your earlier  
20 testimony that you generally stayed within a 20-  
21 mile radius of your home?

22          A.           Right.

23          Q.           When you recorded your times, your  
24 start time and ending time and lunch times, is  
25 that something you did from your home or from

1 when you were in the car?

2 A. I did it once a week at 7Eleven.

3 Q. So that would be in the mornings?

4 A. Right.

5 Q. And that once a week, would that be  
6 on a Monday, on a Friday? What was your routine  
7 with that?

8 A. I believe it was Thursdays.

9 Q. And so on Thursday mornings, were  
10 you entering your time from the following Friday  
11 to that Thursday?

12 A. From the previous.

13 Q. I understand. The previous Friday?

14 A. The previous days, yes.

15 Q. And then once you entered that  
16 time, how would you transmit it?

17 A. I didn't transmit that.

18 Q. How was that time reported, if you  
19 know, to Travelers?

20 A. We enter the Travelers website.

21 Q. Was there a requirement that that  
22 time be entered by a certain date?

23 A. That's correct.

24 Q. Do you recall seeing any policies  
25 where Travelers wanted you to enter your time on

1 a daily basis?

2 A. There was one, yes.

3 Q. There was one what?

4 A. Hmm?

5 Q. There was one what?

6 A. Yeah, the idea was to do it once a  
7 day.

8 Q. Why didn't you do it once a day?

9 A. Because Marion said -- I'm sorry.  
10 Gary Marion says that he needed by Friday so he  
11 can review the times, so we could do it on  
12 Thursday.

13 Q. So you could have done it every  
14 day, but you chose to do it on Thursdays?

15 A. Yes.

16 Q. And your view was as long as I got  
17 it done by Friday, that was fine?

18 A. That's what I was told, yes.

19 Q. Did you ever, other than entering  
20 your time on the Travelers website, did you keep  
21 any other records of the time you worked?

22 A. No.

23 Q. From 2006 to your last date of  
24 employment, other than your paid time off days,  
25 did you have anytime where you were off that was

1 not paid?

2 A. I don't remember if when I went to  
3 emergency I was paid. I don't remember that. I  
4 remember going about three times, so I really  
5 don't remember.

6 Q. Going to the emergency room three  
7 times?

8 A. Yes.

9 Q. Was that during the course of the  
10 workday?

11 A. Uhm, no. Actually, when I got up  
12 in the morning, yes.

13 Q. Okay. Do you recall seeing emails  
14 from Gary where he was seeking volunteers to work  
15 overtime on Saturdays?

16 A. Yeah.

17 Q. Do you recall seeing emails from  
18 Gary where he was seeking volunteers to work  
19 overtime on holidays?

20 A. Yes.

21 Q. Did you ever volunteer for those?

22 A. No.

23 Q. Why not?

24 A. Because there were two members of  
25 my team that had, you know, they ask us that they

1 will take that because they needed the money.

2 Q. Do you recall seeing emails --  
3 well, strike that.

4 Is it your testimony that each time that  
5 volunteers were sought to work overtime on  
6 holidays or weekends, it was just two people that  
7 were needed?

8 A. No.

9 Q. During the course of the time you  
10 were out on the road, did you ever do any  
11 personal errands?

12 A. No.

13 Q. Never? You never stopped by the  
14 pharmacy to pick up some meds?

15 A. No.

16 Q. Never dropped things off at the dry  
17 cleaners?

18 A. I don't use a dry cleaners.

19 Q. Did you ever stop to pick up a card  
20 or gift for your wife?

21 A. I'm not that good a husband.

22 Q. Is the answer no?

23 A. No.

24 Q. Did you ever take any time during  
25 your workday to go to a doctor's appointment?



1 A. Hmm.... No.

2 Q. Did you ever take any breaks during  
3 the day?

4 A. No.

5 Q. Not at all?

6 A. No.

7 Q. Let's take a look again at what  
8 we've marked as Vilches 1. If you look at page  
9 3, we asked you to name your supervisors during  
10 the time you were employed at Travelers, and you  
11 indicated Gary Marion. How long was Gary your  
12 supervisor?

13 A. I think he was started in 2006 I  
14 think.

15 Q. Who was your supervisor before  
16 Gary?

17 A. Uhm, John Marks.

18 Q. M-a-r-k-s?

19 A. Yes.

20 Q. Prior to Gary becoming your  
21 supervisor, did you know him?

22 A. No. I mean he was working at the  
23 same place, but I didn't know him personally.

24 Q. You knew who he was?

25 A. To be honest with you, I, you

1 know....

2 Q. Fair enough. Then you indicate Bob  
3 Stefano. Is it Bob Stefano, or is it Bob  
4 DeStefano?

5 A. I believe it's De, and it's not  
6 Bob, it's Robert.

7 Q. How long was Robert your  
8 supervisor?

9 A. I don't recall if it was at the end  
10 of 2005 or sometime in 2006. I don't recall.

11 Q. Was Robert your supervisor at a  
12 time prior to Gary becoming your direct  
13 supervisor? In other words, who came first as  
14 your boss, Gary or DeStefano?

15 A. No, because John Marks was the  
16 supervisor for everybody. Then when they had the  
17 new setup, Bob DeStefano became the supervisor  
18 for everybody, and I believe that's when Gary  
19 Marion, that's when they assigned groups.

20 Q. So Gary Marion was your direct  
21 supervisor for your group?

22 A. That is correct.

23 Q. How many appraisers were in your  
24 group?

25 A. I don't know. Six or seven maybe.

1           Q.           And prior to Gary there was no  
2 we'll call them group supervisor?

3           A.           No.

4           Q.           You reported directly to DeStefano?

5           A.           Well, it was --

6           Q.           Or to Marks.

7           A.           Right.

8           Q.           Who is Don Klein?

9           A.           Don Klein was the supervisor when I  
10 came in in 2004.

11          Q.           And who replaced him?

12          A.           John Marks, I believe he took his  
13 place.

14          Q.           And who's Malcolm Ginsberg?

15          A.           He was -- I don't know if he was  
16 like a unit manager. He was in charge of all the  
17 operations and the inside reps.

18          Q.           If you look at Interrogatory Number  
19 2, we ask you to identify current or former  
20 Travelers' employees who have information  
21 regarding the hours you worked, and in response  
22 you wrote, "Members of Respondent's supervisory,  
23 management, Human Resources, and executive  
24 personnel including the persons mentioned in  
25 Interrogatory 2 above," which were the names we

1 just went through.

2 Other than the people, the five people we  
3 just talked about, any other supervisory  
4 employees at Travelers who would have knowledge  
5 of the hours you worked?

6 A. I don't know.

7 Q. Do you know the names of any human  
8 resources personnel who would have knowledge of  
9 the hours you worked?

10 A. No.

11 Q. Would John Marks have knowledge of  
12 the fact -- strike that.

13 Would he have knowledge of whether or not  
14 you worked between 5 p.m. and 8 p.m. every day --  
15 every weekday between 2006 and the time of your  
16 termination? Would he know that?

17 A. Yes.

18 Q. How would he know that?

19 A. Because everybody was made  
20 responsible to receive the assignments, and part  
21 of his job was to make sure that everybody was  
22 getting the assignments within one hour, and he  
23 was a supervisor for one of the groups.

24 Q. Same question for Malcolm Ginsberg.  
25 What knowledge would he have --

1 A. No.

2 Q. -- that you worked 20 to 30 hours  
3 overtime a week?

4 A. After 2006, no.

5 Q. What about Don Klein?

6 A. No.

7 Q. Other than DeStefano, Marion, and  
8 Marks, any other current or former Travelers  
9 employees that you know of that knew you were  
10 working the hours you claim you worked?

11 A. Besides --

12 MR. McLANE: Guys, you're going to  
13 have to keep it down over there, if you don't  
14 mind.

15 A. I mean -- you mean in a management  
16 position?

17 Q. Anywhere.

18 A. Well --

19 Q. Strike that. Managers, any  
20 management folks.

21 A. Well, obviously the other 40 guys,  
22 but.... Russ Post would be one I guess if he's  
23 considered a manager.

24 Q. How do you spell his last name?

25 A. P-o-s-t.

1 Q. And what was his title?

2 A. He was a re-inspector I think it's  
3 called.

4 Q. And how would Russ Post know that  
5 you were working 20 to 30 hours a week overtime?

6 A. Because he was aware of what Bob  
7 DeStefano's requirements were.

8 Q. How do you know that?

9 A. Because we would talk about it.

10 Q. Who is "we"?

11 A. "We" being my fellow -- my  
12 colleagues at the time.

13 Q. Were you ever in any meetings where  
14 Bob DeStefano and Russ Post talked about the fact  
15 that you were working 20 to 30 hours a week  
16 overtime allegedly?

17 A. No.

18 Q. Did you ever talk to anybody who  
19 was in any meetings with DeStefano and Post where  
20 they discussed whether or not you were working 20  
21 to 30 hours a week overtime?

22 A. No.

23 Q. Now, you said, I think you said the  
24 40 other guys.

25 A. I think there were about 40

1 appraisers, yes.

2 Q. So how did the other appraisers  
3 know that you were working 20 to 30 hours a week  
4 overtime?

5 A. They didn't.

6 Q. Okay. So other than the people we  
7 just talked about, anybody else at Travelers know  
8 that or have any idea that you were working 20 to  
9 30 hours a week overtime a week --

10 MR. NIRENBERG: Objection.

11 MR. McLANE: Strike the question.

12 Q. Did anybody else have information  
13 that you're aware of to establish that you were  
14 working 20 to 30 hours a week overtime?

15 A. That I was working?

16 Q. Yes.

17 A. No, besides Gary Marion and Bob  
18 DeStefano or whoever had access to the  
19 information, you know, the IVES report and the  
20 monthly reviews.

21 Q. That would be it?

22 A. Yeah, I would think so.

23 Q. Your fellow adjusters would have no  
24 idea what you were doing between the hours of 5  
25 and 8 p.m. Correct?

1           A.           No, they have their own reviews, so  
2 they have their own compliance with that  
3 requirement.

4           Q.           So the answer is that they would  
5 have no idea of the hours you were working?

6           A.           They would have no idea whether I  
7 was doing that, that is correct.

8           Q.           Did you ever discuss with your  
9 co-workers at Travelers the fact that you were  
10 working overtime and not getting paid for it?

11          A.           Yeah.

12          Q.           Who did you have those discussions  
13 with?

14          A.           I don't remember.

15          Q.           Did you ever have those discussions  
16 with Mr. Costeira?

17          A.           Maybe.

18          Q.           You don't remember?

19          A.           I don't remember.

20          Q.           How about Mr. Sheehan?

21          A.           Probably.

22          Q.           But you don't know for sure?

23          A.           I don't remember.

24          Q.           Do you know where you would --  
25 well, strike that. How often would you see



1 Mr. -- strike that.

2 How often would you see one of your fellow  
3 adjusters during the week?

4 A. I didn't.

5 Q. Pardon?

6 A. I didn't.

7 Q. How often would you communicate  
8 during the week with your fellow adjusters?

9 A. I didn't.

10 Q. Did you know any of your fellow  
11 adjusters?

12 A. Define "knowing."

13 Q. Did you know them by sight?

14 A. Yes.

15 Q. I take it you knew the names of the  
16 fellow adjusters because you'd all be on emails  
17 together?

18 A. Right. Yeah. I would recognize  
19 the names, yes.

20 Q. Were you ever in group, personal  
21 group meetings with your fellow adjusters? In  
22 other words, were you all in the office together?

23 A. Yeah, for business, yes.

24 Q. How often would that occur?

25 A. Initially it was maybe before 2006?

1 Maybe there were 14 or 20, and we would meet  
2 there. After that they make groups, so we would  
3 meet there once a month, only the group.

4 Q. Marion's group?

5 A. In my case, yes.

6 Q. And that was 6 to 8 people I think  
7 you said?

8 A. Yeah, 6, 7, you know.

9 Q. Do you recall any of your  
10 co-workers ever complaining to you that they were  
11 working overtime and not getting paid for it?

12 A. Yes.

13 Q. Who?

14 A. I don't recall.

15 Q. Do you recall how many times that  
16 occurred?

17 A. Within a year or within a month?

18 Or --

19 Q. Well, forever. How often would you  
20 hear this?

21 A. Quite a bit, you know, often or --  
22 I don't know, I mean I don't know how many times.  
23 I really don't know.

24 Q. Fair enough. When they would talk  
25 to you about this, was this in person, over the

1 telephone, through email?

2 A. No, there would be comments.

3 Q. Were the comments face-to-face  
4 comments? Were they emailed comments? Were they  
5 telephone comments?

6 A. Face-to-face.

7 Q. And I know from your testimony that  
8 once a month you were with your own group.  
9 Correct?

10 A. That is correct.

11 Q. Who were the members of your group?  
12 Do you remember some of the other adjusters?

13 A. I know Frank Sheehan was one. I  
14 don't recall the names. You know, faces, but not  
15 names.

16 Q. And you don't have any specific  
17 recollection -- strike that.

18 You don't have any -- you don't recollect  
19 any specific person talking to you about this  
20 issue?

21 A. They all did at some point or  
22 another.

23 Q. They all did?

24 A. Yes.

25 Q. All the people in your group?

1           A.           Yes.

2           Q.           If you take a look at -- well,  
3 strike that.

4           When was the first time you spoke to Mr.  
5 Costeira about the lawsuit that you and he  
6 brought against Travelers?

7                       MR. NIRENBERG: I just want to  
8 caution you can give a time, just don't discuss  
9 the substance of any conversations with counsel.

10          A.           Actually, I don't recall.

11          Q.           Are you friendly with Mr. Costeira  
12 outside of work?

13          A.           If by that, do you mean did I see  
14 him outside of work?

15          Q.           Did you socialize with Mr.  
16 Costeira?

17          A.           No.

18          Q.           Were you ever over to his house?  
19 Was he ever over to your house?

20          A.           No.

21          Q.           Did you contact Mr. Costeira about  
22 joining you in a lawsuit?

23          A.           I don't remember.

24          Q.           Do you recall whether or not he  
25 contacted you about joining him in a lawsuit?

1           A.           I know we talked one day, I don't  
2 know about what, and the subject came up, but I  
3 don't remember.

4           Q.           You talked to him about the subject  
5 once?

6           A.           Well, we were talking about  
7 something else, or towing, or something like that  
8 I think.

9           Q.           Was this while you were employed at  
10 Travelers?

11          A.           I'm sorry?

12          Q.           Is this while you were employed at  
13 Travelers?

14          A.           No.

15          Q.           This was after?

16          A.           Yeah.

17          Q.           When you had this conversation with  
18 Mr. Costeira, was he employed at Travelers at the  
19 time?

20          A.           I believe not.

21          Q.           Do you know how you came into  
22 contact with Mr. Costeira after your employment  
23 with Travelers ended?

24          A.           I think he called me something  
25 about a towing or some shop or towing or

1 something like that.

2 Q. You're talking about getting  
3 another job? Is that what you're referring to?

4 A. If I recall, I think he needed to  
5 do a towing for somebody or something like that.

6 Q. And he was looking for information  
7 from you?

8 A. About that person or the shop. I  
9 don't recall, to be honest with you.

10 Q. And is it your recollection that  
11 during that conversation you and he discussed a  
12 lawsuit against Travelers?

13 A. Yeah. We talked about what we were  
14 doing, you know, how are you doing, and I  
15 mentioned it, yeah.

16 Q. What did you mention?

17 A. You know, that I had an issue with  
18 the overtimes.

19 Q. And what did he say?

20 A. Hmm?

21 Q. What did he say?

22 A. I don't remember.

23 Q. Was this during the period of time  
24 you were waiting for the response from Travelers  
25 from your January 20 email?

1           A.           I don't remember.

2           Q.           When was the next time you spoke to  
3 Mr. Costeira about a lawsuit?

4                       MR. NIRENBERG: And you can give a  
5 date, but no substance of a conversation if any  
6 of your lawyers were involved.

7           A.           I don't remember.

8           Q.           Well, did you and Mr. Costeira ever  
9 discuss getting together and hiring a lawyer to  
10 sue Travelers?

11          A.           No.

12          Q.           Did you and Mr. Sheehan ever have  
13 that conversation?

14          A.           No.

15          Q.           Did Mr. Sheehan ever approach you  
16 about hiring a lawyer to sue Travelers?

17          A.           No.

18          Q.           Were you friends with Mr. Sheehan?

19          A.           Define "friendship."

20          Q.           Sure. Did you socialize outside of  
21 work?

22          A.           No.

23          Q.           Do you recall having a conversation  
24 with Mr. Sheehan where you and he discussed suing  
25 Travelers?

1           A.           I don't recall the conversation.

2           Q.           Do you ever recall having a  
3 conversation with Mr. Sheehan about a lawsuit  
4 against Travelers outside the presence of your  
5 attorney?

6           A.           No.

7           Q.           Did you ever meet with Mr. Sheehan  
8 and Mr. Costeira in person to discuss a lawsuit  
9 against Travelers?

10          A.           No.

11          Q.           Did you ask -- strike that.  
12 Did you try to recruit anybody else from  
13 Travelers to join the lawsuit?

14          A.           No.

15          Q.           Do you know whether or not Mr.  
16 Sheehan did?

17          A.           I have no idea.

18          Q.           Do you know whether or not Mr.  
19 Costeira did?

20          A.           I have no idea.

21          Q.           Other than Mr. Sheehan and Mr.  
22 Costeira, did you ever talk to any Travelers  
23 employees about your lawsuit against Travelers?

24          A.           No.

25          Q.           Did you ever talk to -- strike



1 that. Did you ever discuss with any former  
2 employees of Travelers your lawsuit with respect  
3 to Travelers?

4 A. No.

5 Q. Do you have any idea how many hours  
6 a week Mr. Sheehan worked?

7 A. No.

8 Q. Do you have any idea how many hours  
9 a week Mr. Costeira worked?

10 A. No.

11 Q. Other than Mr. Sheehan and Mr.  
12 Costeira, have you spoken to any other employee,  
13 current or former employee at Travelers regarding  
14 anything?

15 A. Yes.

16 Q. Who?

17 MR. NIRENBERG: I'm assuming your  
18 question is after he was terminated.

19 Q. After you were terminated. I'm  
20 sorry.

21 A. Yes.

22 Q. Other than Ms. Bellman, who?

23 A. Mr. Malcolm Ginsberg.

24 Q. What did you discuss with Mr.  
25 Ginsberg?

1           A.           You know, things that I had a  
2 problem with, the overtime and being terminated.

3           Q.           And when did this conversation with  
4 Mr. Ginsberg occur?

5           A.           2011 maybe?

6           Q.           Who initiated that conversation?  
7 Did you call him? Did he call you? Did you meet  
8 him?

9           A.           No, we meet at a body shop that I  
10 was working in.

11          Q.           You just ran into him?

12          A.           No.

13          Q.           Okay. You set up an appointment  
14 with him?

15          A.           No.

16          Q.           Okay. He came by and you happened  
17 to be working there?

18          A.           No. Actually, he came to help the  
19 owner of the body shop.

20          Q.           And you were there?

21          A.           Yeah.

22          Q.           Working?

23          A.           Yeah.

24          Q.           Okay. Is that where you work now?

25          A.           No.

1 Q. Why don't you work there anymore?

2 A. Uhm.... I had a better position I  
3 guess.

4 Q. Nothing to do with a personality  
5 conflict with your boss or the owners?

6 A. No.

7 Q. Anything to do with unprofessional  
8 conduct?

9 A. No. She was a nice lady.

10 Q. What was the better position?

11 A. Hmm?

12 Q. What was the better position?

13 A. Better hours.

14 Q. Where was it?

15 A. Where was it?

16 Q. You left where you met Mr.  
17 Ginsberg, you're no longer employed at that body  
18 shop?

19 A. That is correct.

20 Q. Where are you employed now?

21 A. In Paramus.

22 Q. Where?

23 A. Route 17 Auto Body.

24 Q. Was that the better position that  
25 you referred to?

1           A.           For me, yes.

2           Q.           Okay. What was the name of the  
3 body shop where you met Mr. Ginsberg?

4           A.           Budd's, B-u-d-d-'s, Auto Body.  
5 Budd's Auto Body.

6           Q.           So you were working at Budd's Auto  
7 Body, Mr. Ginsberg comes by, and you talked to  
8 him about issues that you had with overtime at  
9 Travelers?

10          A.           Yeah.

11          Q.           Tell me everything you remember  
12 about that conversation.

13          A.           We talked about, you know, how we  
14 were doing, you know, what he was doing at the  
15 time, and then I mentioned, you know, that I had  
16 this thing going on with Travelers and about  
17 getting paid for my overtime, and also about  
18 being terminated.

19          Q.           And by this time you had filed a  
20 complaint against them?

21          A.           Yes.

22          Q.           And was Mr. Ginsberg at the time,  
23 do you know, employed by Travelers?

24          A.           No.

25          Q.           And what did Mr. Ginsberg say?

1           A.           He said I know what you're talking  
2 about.

3           Q.           He said --

4           A.           I know what you are talking about.

5           Q.           Did you ask Mr. Ginsberg to support  
6 you in your lawsuit against Travelers?

7           A.           No.

8           Q.           Did you ask him to join your  
9 lawsuit?

10          A.           No.

11          Q.           And when he said he knew what you  
12 were talking about, what did you understand him  
13 to mean?

14          A.           That he knew Travelers, and he knew  
15 of the situation.

16          Q.           He knew of what situation?

17          A.           About the overtime and the things  
18 that we were being asked to do.

19          Q.           Did he tell you that specifically,  
20 or did he just say I know what you're going  
21 through?

22          A.           Yes, he was specific.

23          Q.           What did he say specifically?

24          A.           That he, prior to him leaving  
25 Travelers, he was asked the same.

1 Q. I'm sorry. He was asked what?

2 A. As far as, as far as underpaying  
3 claims.

4 Q. Do you know why Mr. Ginsberg left  
5 Travelers?

6 A. I believe -- well, what he told me  
7 is that he didn't have the need to do that and he  
8 opted for early retirement I guess.

9 Q. When you say he didn't have the  
10 need to do that, the need to do what?

11 A. Underpay claims.

12 Q. So unlike you, he left Travelers  
13 voluntarily?

14 A. I know he left Travelers.

15 Q. You were fired. Right?

16 A. Yeah.

17 Q. Ever been fired from any other  
18 jobs?

19 A. Maybe once or twice.

20 Q. Which ones?

21 MR. NIRENBERG: I'm going to  
22 object. If you can explain to me --

23 A. I don't remember.

24 MR. NIRENBERG: Don't answer. If  
25 you can explain how this has any possible

1 relevance to an overtime case.

2 MR. McLANE: Well, I'm not going to  
3 make any offers of proof. I don't think I have  
4 to, but can you answer the question?

5 MR. NIRENBERG: And I'm going to  
6 instruct him not to answer it.

7 MR. McLANE: Is there a privilege  
8 or a confidentiality I'm not aware of?

9 MR. NIRENBERG: No. We're in an  
10 arbitration. The rules don't strictly apply, and  
11 I think this is totally an inappropriate  
12 question.

13 MR. McLANE: We are not  
14 obligated -- we're not operating under the rules  
15 of, the federal rules of civil procedure here?

16 MR. NIRENBERG: I don't think we're  
17 strictly operating under them. If I'm mistaken,  
18 then I'm mistaken.

19 MR. McLANE: Since we're not  
20 strictly operating under them, can you answer the  
21 question.

22 MR. NIRENBERG: I'm not sure  
23 what --

24 MR. McLANE: Well, perhaps I want  
25 to know whether or not he has a history of making

1 complaints or false complaints about his former  
2 employers. I think it is relevant. If he's got  
3 a habit and practice of finding unprofessional  
4 activities wherever he works, that may be  
5 relevant.

6 MR. NIRENBERG: I don't see how  
7 that's potentially relevant. I also don't see  
8 how your question has anything to do with that.  
9 You asked him if he's ever been fired from  
10 another job, not if he's ever had a complaint  
11 about another job.

12 MR. McLANE: Well, I understand  
13 that you may not see it that way, but I don't  
14 think you're the person who gets to adjudicate  
15 that issue. I'm not going to be asking him a lot  
16 of detailed questions about his former  
17 employment. I just want to know whether or not  
18 he's been fired from other jobs. He seems to  
19 indicate he was, and I'd like to know the names  
20 of those places.

21 MR. NIRENBERG: I believe he's  
22 already answered that despite my instruction.

23 MR. McLANE: He gave the names?

24 MR. NIRENBERG: He answered the  
25 question.



1                   MR. McLANE: I want to know the  
2 names of the places he was fired from.

3                   MR. NIRENBERG: He can testify to  
4 it again, but he did answer that question. You  
5 can answer it.

6           A.        I don't recall being fired from  
7 anyplace.

8                   MR. McLANE: Can you read back --

9           A.        Oh, of course Travelers of course,  
10 if that counts. I don't know.

11          Q.        Well, you didn't leave there  
12 voluntarily, did you?

13          A.        No.

14                   MR. McLANE: Can you read back a  
15 few questions ago where I asked him if he's ever  
16 been fired.

17                   (The reporter reads the prior  
18 testimony requested.)

19          Q.        Other than Travelers, have you been  
20 fired from any jobs?

21          A.        I don't remember being fired. I  
22 remember leaving, yes.

23          Q.        Okay. Other than Travelers, have  
24 you ever sued any of your former employers?

25          A.        No.

1           Q.           Ever threaten to sue your former  
2 employers?

3           A.           No.

4           Q.           Other than -- did you have any  
5 other conversations with Mr. Ginsberg --

6           A.           No.

7           Q.           -- after your meeting with him at  
8 Budd's Auto Body?

9           A.           No.

10          Q.           Other than Mr. Ginsberg, Mr.  
11 Costeira, and Mr. Sheehan, any other former or  
12 current Travelers employees that you've discussed  
13 this action with?

14          A.           No.

15          Q.           Did you take any notes of any  
16 conversations you had with Mr. Sheehan or Mr.  
17 Costeira regarding this lawsuit?

18          A.           No.

19          Q.           When you started your employment  
20 with Travelers, did you receive any specific  
21 training related to your job as adjuster?

22          A.           Yes.

23          Q.           Did Travelers send you to someplace  
24 to be trained, or did you tag along with another  
25 adjuster to learn, or was there some other means

1 of training?

2 A. We went to ADP.

3 Q. And where is ADP?

4 A. I don't recall where it was.

5 Q. What does ADP stand for?

6 A. I think it's Automatic Data  
7 Processing?

8 Q. And was it at ADP where you  
9 received your training on how to be a Travelers  
10 claims adjuster?

11 A. No.

12 Q. Where did you receive that  
13 training?

14 A. For the software that we were going  
15 to use.

16 Q. That's why you went to ADP?

17 A. Right.

18 Q. That was for time recording, for  
19 timekeeping? What was the software at ADP that  
20 you were trained on?

21 A. PenPro, the estimating software.

22 Q. Other than going to ADP for the  
23 PenPro training, any other training while you  
24 were at Travelers?

25 A. We had I-Car.

1 Q. What is that?

2 A. There's a company that it will  
3 review procedures, how to do repairs the proper  
4 way.

5 Q. Was Travelers your first job as a  
6 claims adjuster?

7 A. As a claims adjuster? No.

8 Q. Where was that first job?

9 A. I worked about a month for I think  
10 it was Choice, the name of the private outfit.

11 Q. Was that directly before you were  
12 at Travelers?

13 A. No.

14 Q. Why were you only there a month?

15 A. Because I sold one of my inventions  
16 to a company in Minnesota, and I went to work for  
17 them.

18 Q. What was your rate of pay while you  
19 were at Travelers?

20 A. I think it was 53, 54,000 per year  
21 or something?

22 Q. Do you recall what it was when you  
23 started?

24 A. I think it was fifty.

25 Q. How often were you paid?

1           A.           I think it was every two weeks.

2           Q.           Did you get paid twice a month, do  
3 you recall?

4           A.           Right.

5           Q.           Would it be fair to say that if you  
6 were writing and receiving personal emails on  
7 your work computer between the hours of 5 and 8  
8 that you wouldn't be doing any work?

9                       MR. NIRENBERG:  Objection to form.  
10 You can answer.

11          A.           I never got personal emails.

12          Q.           Did you ever send any?

13          A.           No.

14                       MR. McLANE:  I want to mark this  
15 entire packet as Vilches 11.

16                       (A series of emails Bates numbered  
17 R-001306 through 1357 are received and  
18 marked Vilches 11 for identification.)

19          Q.           I'm going to hand you what the  
20 court reporter has marked as Vilches 11, which is  
21 a set of documents Bates stamped number R-00136  
22 through R-001357, and just ask you to take a look  
23 through those and let me know which one of  
24 those -- which of those emails are work related?

25          A.           Okay.

1           Q.           Are any of those work-related  
2 emails?

3           A.           Nope.

4           Q.           Take a look again -- well, strike  
5 that.

6           In looking at that, does that help refresh  
7 your recollection about whether or not you sent  
8 or received personal emails during, on your  
9 computer during the times between 5 p.m. and 8  
10 p.m. at night?

11          A.           Yeah. I guess. I mean all I can  
12 see here is sent, you know the time they were  
13 sent to me. You know, the one for Viagra, you  
14 know.

15          Q.           Who is Carol?

16          A.           That's my sister.

17          Q.           And who is Linda?

18          A.           Linda Carol, my sister.

19          Q.           Okay. If you look again at Exhibit  
20 Vilches 2, the complaint.

21          A.           Vilches 2.

22          Q.           Do you have that in front of you?

23          A.           Yes.

24          Q.           Before we get to that, while you  
25 were employed at Travelers, did you have any

1 other jobs with anyone?

2 A. No.

3 Q. Other than what's in -- well,  
4 strike that.

5 Did you have an opportunity to review that  
6 complaint prior to it being filed on your behalf?

7 A. This is 2009. I have to, yes, I  
8 would think.

9 Q. Other than what's in the complaint  
10 and other than what you've testified to here  
11 today, is there anything else that you believe  
12 Travelers did that was unlawful?

13 A. As far as the overtime is  
14 concerned?

15 Q. As far as anything. Other than  
16 what's in there and other than what you've  
17 testified about.

18 A. Oh, wait a minute. This talks  
19 about the overtime.

20 Q. I understand that. Other than  
21 what's in there and other than what you've  
22 testified about, anything else that you believe  
23 that Travelers did that was unlawful?

24 A. Yes.

25 Q. What?

1           A.           Underpaid claims.

2           Q.           The fraud?

3           A.           Yes.

4           Q.           But you talked about that already.  
5 Anything other than what you've testified about  
6 today and other than what's in the complaint,  
7 anything else that I should be aware of?

8           A.           No. I don't think so.

9           Q.           Okay.

10                   MR. McLANE: Why don't we take ten  
11 minutes.

12                   (There is a brief recess.)

13           Q.           What's a ride-along? Ride-along.

14           A.           What it was?

15           Q.           What is it, yes.

16           A.           That's when the supervisor will  
17 ride in your vehicle on one day.

18           Q.           And how often would that occur for  
19 you? Well, strike that.

20                   Do you know whether that was done on a  
21 monthly basis? On a quarterly basis? On an  
22 as-needed basis?

23           A.           I think it was once a month I  
24 think. I think. I don't know.

25           Q.           So you don't know whether or not



1 Mr. Marion rode once a month with each of the  
2 adjusters in his group?

3 A. No.

4 MR. McLANE: Thanks, Mr. Vilches.  
5 That's all I have for you.

6 MR. NIRENBERG: I have a couple of  
7 quick questions.

8 EXAMINATION BY MR. NIRENBERG:

9 Q. You have in front of you still  
10 Vilches 11. Can you just turn to page 1307, the  
11 second page. What's the date and time on that  
12 email?

13 A. January 8, 2009, 3:32.23 a.m.

14 Q. And do you claim that you were  
15 working or were you working at 3:32 a.m. on a  
16 Thursday?

17 A. No.

18 Q. Okay. And if you can turn to the  
19 very last email. What's the date and time on  
20 that email?

21 A. Friday, 9/8/2006 at 9:56.26 p.m.

22 Q. And were you working at 9:56 p.m.  
23 on a Friday ever for Travelers?

24 A. I hope not.

25 Q. And having gone through these

1 emails, did you see others that were on  
2 non-working times or days, like Sundays?

3 A. Probably, yeah. I notice some were  
4 for Viagra or something.

5 Q. And the ones for Viagra, did you  
6 send those emails?

7 A. No.

8 Q. Do you know what those emails are?

9 A. I think they call it spam or  
10 something. Isn't it spam or something?

11 Q. Okay. And I won't go through all  
12 these, I'll just leave those examples.

13 No further questions.

14 MR. McLANE: Okay. Thanks. Great.

15

16 (The deposition concludes at 3:08 p.m.)

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## C E R T I F I C A T I O N

I, JEANNE C. CREVINA, a Certified Court Reporter of the State of New Jersey, License No. 30XI00074800, do hereby certify that prior to the commencement of the examination the deponent was first duly sworn by me.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by me at the place, time, and date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative, nor employee, nor attorney, nor counsel to any of the parties involved; that I am neither related to nor employed by any attorney or counsel involved in the action; and that I am not financially interested in the action for which this deposition was taken.

*Jeanne C. Crevina*



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