

STATE OF MICHIGAN
IN THE COURT OF APPEALS

JOHN CARRUTHERS,

Plaintiff/Appellant

v.

ISRINGHAUSEN, INC.,

Defendant/Appellee.

COA No. 296250

Kalamazoo County Circuit Court
Case No. 09-0127-CZ

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APPELLEE ISRINGHAUSEN'S BRIEF ON APPEAL

EXHIBIT 3

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOHN CARRUTHERS, an individual,

Plaintiff,

Case No: A09 0127CZ

-vs-

Hon. Gary C. Giguere, Jr

ISRINGHAUSEN, INC., a Corporation,

Defendant.

-----/

DEPONENT: JOHN CARRUTHERS

DATE: Wednesday, July 8, 2009

TIME: 10:00 a.m.

LOCATION: 3275 Cooley Court, Suite 160

Portage, Michigan

REPORTER: Amy L. Hermen, CSR-7193

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Page 12

1 have a drinking problem and stuff like that.
 2 Q. When did you start going to AA?
 3 A. Three, four weeks ago -- Four weeks ago.
 4 Q. Did you have to wait any period of time before you could start
 5 taking these efforts to obtain your license back?
 6 A. I was trying to just wait it out. But I contacted a therapist
 7 that does the assessments and she says unless I do either of
 8 these things, that there was no way I was going to get my
 9 license back. So I'm doing both.
 10 Q. So your understanding is that unless you go to AA and get
 11 these --
 12 A. Either or.
 13 Q. And or get these statements, you might never get your driver's
 14 license back?
 15 A. Correct, not from the state of Michigan.
 16 Q. Were you told anything contrary to that at the time your
 17 license was taken from you?
 18 A. Well, I just thought that I had to go to those classes that the
 19 court ordered me to go to, and then a year after that I could
 20 file. And then I tried to file and it said that I need to take
 21 more classes. And I called around and got contrary opinions on
 22 what I should do. And one of them was just, well, you can just
 23 wait it out instead of going to all that stuff.
 24 Q. So you were given some various options you could take; one of
 25 which is you can wait it out. And that is what you tried to do

Page 14

1 I just kind of took a bathroom break at the same time as taking
 2 a cigarette break outside.
 3 Q. And that was found to have violated company policy or
 4 something?
 5 A. Correct.
 6 Q. How did it come to be known that you had done that?
 7 A. One of the team leaders reported it.
 8 Q. Who was that team leader? Do you remember?
 9 A. Brenda something or other
 10 Q. Female?
 11 A. Yes.
 12 Q. So you were discovered by a female urinating outside the
 13 workplace?
 14 A. Yes. Well, I don't know if I was discovered by her, but she
 15 was the one who reported it
 16 Q. Were there other females at the workplace as well?
 17 A. Oh, yes.
 18 Q. Do you remember approximately when your employment with Summit
 19 Polymers ended?
 20 A. It is in the notes.
 21 Q. In the interrogatory responses?
 22 A. Yes.
 23 Q. So from the time that you were at Summit Polymers through your
 24 last date of employment anywhere has your wife been bringing
 25 you to and from work?

Page 13

1 until recently?
 2 A. Right. Because waiting is just so ineffective now.
 3 Q. So where did you work or did you work at the time that you lost
 4 your license? Were you working at that time?
 5 A. Yes.
 6 Q. Where were you working at that time?
 7 A. At the time that I lost my license I was working at a place
 8 called Summit Polymers on Sprinkle.
 9 Q. Is that POLYMERS?
 10 A. Yes.
 11 Q. And SUMMIT?
 12 A. Correct.
 13 Q. And how far was that from your home at the time?
 14 A. Five miles.
 15 Q. How did you get to work?
 16 A. My wife drove me.
 17 Q. Where did you go to work -- At some point your employment at
 18 Summit ended?
 19 A. Correct.
 20 Q. How did it end?
 21 A. I was terminated.
 22 Q. Were you given a reason?
 23 A. Yes.
 24 Q. What was that reason?
 25 A. It is funny. I didn't get a whole lot of breaks and stuff, so

Page 15

1 A. Mostly.
 2 Q. Explain that.
 3 A. I have been driving without a license.
 4 Q. And how frequently would you say you drive?
 5 A. Only to and from work. And only when needed.
 6 Q. How long have you been doing that?
 7 A. Since I started working at Isringhausen.
 8 Q. Did anyone at Isringhausen -- Did you ever tell your supervisor
 9 or notify the company that you didn't have a license?
 10 A. Yes.
 11 Q. Who did you tell?
 12 A. Everybody knew.
 13 Q. You are talking about co-workers, things like that?
 14 A. Co-workers, managers -- Yeah, all of managers, all the office
 15 personnel, all the floor workers.
 16 Q. Can you give me specific names of people that knew?
 17 A. That knew knew?
 18 Q. Yes.
 19 A. Yeah. Joe Reinheimer knew that I did not have a license, Rick
 20 Short knew I didn't have a license, Ron Dickson knew I didn't
 21 have a license, Barb Vroman knew I didn't have a license. Who
 22 else would be important. Geoff Jones knew I didn't have a
 23 license.
 24 Q. And did you tell each of these people: is that how you know
 25 they knew?

6 (Pages 12 to 15)

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Page 20

1 Q. So that part of that statement also applied to you, correct?
 2 A. Yes.
 3 Q. Tell me again the offense for which you lost your license.
 4 A. For a DUI.
 5 Q. Was that categorized as a misdemeanor, felony, or is it
 6 categorized in that way or --
 7 A. A misdemeanor.
 8 Q. On the second page again, but looking at the employment
 9 section, up in the corner it says. Please give accurate,
 10 complete full and part-time employment records. Start with
 11 your present or most recent employer. Was Summit Polymers --
 12 There is a reference to Summit there. Is that Summit Polymers?
 13 A. Yes.
 14 Q. Was that your most recent employer?
 15 A. Previous, correct.
 16 Q. It was. Okay. What is the company listed after that?
 17 A. Eimo Americas.
 18 Q. Was that your next most recent employer?
 19 A. I'm pretty sure.
 20 Q. And then you have got Building Restoration, Inc.?
 21 A. Yes.
 22 Q. Is that where you worked just prior to working at Eimo?
 23 A. Yes. To my knowledge.
 24 Q. And R & L Carriers, is that where you worked immediately
 25 preceding your employment at Building Restoration?

Page 21

1 A. I don't believe it was immediately preceding, but there was
 2 only four spots to list anything in. I was going for the
 3 shipping and receiving clerk position when I got hired in and
 4 that would definitely help.
 5 Q. So you wanted to include R & L Carriers because of the type of
 6 work experience that you had there?
 7 A. Correct.
 8 Q. Have you ever worked for a company called Workforce Strategies
 9 or WSI?
 10 A. Yes.
 11 Q. When did you work for them?
 12 A. Yeah, that was the temporary agency that I worked for previous
 13 to working for Staffing Alliance.
 14 Q. So you worked for two temporary agencies?
 15 A. Yes. I didn't know that I was supposed to put temporary
 16 agencies as well.
 17 Q. Were you ever assigned anywhere for Work Force Strategies?
 18 A. Yes.
 19 Q. Where were you assigned to work?
 20 A. Kenco. It was a refrigerator warehouse.
 21 Q. Is that K E N C O?
 22 A. I believe so.
 23 Q. Was that the only place you were assigned to work for Work
 24 Force Strategies?
 25 A. Yes.

Page 22

1 Q. How long did you perform there?
 2 A. Maybe four months.
 3 Q. Do you know why -- At some point did your assignment end?
 4 A. Yes.
 5 Q. Do you know why?
 6 A. They terminated me.
 7 Q. And were you given a reason?
 8 A. Yes.
 9 Q. What was that reason?
 10 A. For destruction of Kenco property.
 11 Q. What property was at issue?
 12 A. A refrigerator.
 13 Q. What happened to it?
 14 A. I kicked it.
 15 Q. Why did you kick it?
 16 A. Because I got angry and I was dumb.
 17 Q. So you worked at Work Force Strategies immediately prior to
 18 working for the temporary agency that placed you at
 19 Isringhausen, correct?
 20 A. Yes.
 21 Q. Now, you have included Eimo on here which is E I M O, is that
 22 right?
 23 A. Yes.
 24 Q. And you indicated that you were terminated from Eimo. What was
 25 the reason given to you for your termination?

Page 23

1 A. The reason they gave me was that I threatened somebody, another
 2 employee.
 3 Q. Do you dispute that?
 4 A. No.
 5 Q. What happened?
 6 A. An employee made me mad and annoyed me and aggravated me on a
 7 regular daily basis and I threatened them.
 8 Q. How did you threaten them?
 9 A. I can't remember exactly.
 10 Q. Can you remember with any -- Even though it is not the exact
 11 words, can you give me any sense of what you mean when you say
 12 you threatened them?
 13 A. Some kind of act of violence upon them.
 14 Q. Was it a threat to kill them?
 15 A. Not that I remember.
 16 Q. In what context did this threat occur? Were you having a
 17 conversation with the person?
 18 A. We were at adjacent work stations and I turned around and
 19 pretty much yelled.
 20 Q. Have you ever threatened to slash tires if you got fired from a
 21 job?
 22 A. Yes.
 23 Q. Where did you do that?
 24 A. Summit.
 25 Q. Who did you threaten to slash tires?

8 (Pages 20 to 23)

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Page 24

1 A. The -- Brenda that reported me.
 2 Q. Did you do that to her face?
 3 A. Do what to her face?
 4 Q. Did you threaten to slash her tires to her face?
 5 A. Yes.
 6 Q. Where did this happen?
 7 A. I'm not 100 percent sure, but I think it was on the floor.
 8 Q. How did she respond?
 9 A. She was frightened.
 10 Q. What happened next after you made that statement?
 11 A. I think I was being walked out
 12 Q. Now, you have indicated Building Restoration, Inc.?
 13 A. Yes.
 14 Q. You have got it on your application that you think you worked
 15 there from May '01 through July of '02, although you do have a
 16 question mark there?
 17 A. Yes. That was to the best of my knowledge.
 18 Q. Do you have a recollection of being unemployed for about eight
 19 months around that time?
 20 A. I -- See, it was either -- Either I was unemployed or I had
 21 like a Burger King job or something like that.
 22 Q. Did you work at Burger King before?
 23 A. I have worked at Burger King a couple of times before.
 24 Q. So you might have been employed at Burger King between Building
 25 Restoration and Eimo?

Page 25

1 A. Correct.
 2 Q. Have you ever been terminated from Burger King?
 3 A. I don't believe so.
 4 Q. You indicate that you were terminated from Building
 5 Restoration, Inc. ?
 6 A. Yes.
 7 Q. What was the reason given to you?
 8 A. Failure to complete a task on a timely basis was the reason
 9 given to me.
 10 Q. What was the context?
 11 A. The context was that I failed to repoint a mortar system in a
 12 school housing within the time allotted.
 13 Q. How much time was allotted; do you remember?
 14 A. A day.
 15 Q. Had you had any prior discipline while working with Building
 16 Restoration?
 17 A. Not that I can remember.
 18 Q. Now, then you indicated R & L Carriers?
 19 A. Yes.
 20 Q. Not sure of the employment dates there. It looks like --
 21 A. Right. It was a while ago.
 22 Q. Was it after ITT; do you remember?
 23 A. During.
 24 Q. It was during ITT?
 25 A. During because I was driving from Grand Rapids to Battle Creek.

Page 26

1 Q. So when you went to ITT, was that in Grand Rapids?
 2 A. Yes.
 3 Q. Were you living in Grand Rapids at the time?
 4 A. No.
 5 Q. So you were doing a big loop?
 6 A. Real big.
 7 Q. And did you leave there voluntarily?
 8 A. Yes.
 9 Q. And you have indicated here not enough hours?
 10 A. Correct. Like all trucking companies, their hours really,
 11 really, really dwindle around the winter seasons or whatever
 12 And you know, they couldn't provide me with enough hours to
 13 actually make a decent amount of money, so I did leave.
 14 Q. Have you ever been terminated from any other job besides the
 15 ones we have discussed?
 16 A. Not that I can remember.
 17 Q. Now, when you came in as a temporary employee at Isringhausen,
 18 did you work in a particular type of position?
 19 A. Yes.
 20 Q. What was your position?
 21 A. As a temp I was a dockworker.
 22 Q. Who did you report to?
 23 A. Geoff Jones.
 24 Q. What did you do as a dockworker?
 25 A. I loaded and unloaded trucks, banded skids, and helped verify

Page 27

1 the skid count on trucks.
 2 Q. How long did you work in that capacity?
 3 A. For a while. It was -- I'm not 100 percent sure, but it was
 4 until I went to the warehouse for the first time.
 5 Q. Did you change positions during the time that you were a
 6 temporary employee or did your position change when you became
 7 a direct employee at Isringhausen?
 8 A. I can't remember. It was really close to each other.
 9 Q. But your next position that you worked in was in the warehouse?
 10 A. Well, in the warehouse with supervision, yes. I was the line
 11 feeder.
 12 Q. What is a line feeder?
 13 A. It stocks the small parts like nuts and bolts and screws and
 14 slides and stuff like that to the lines from the warehouse.
 15 Q. Does that mean you would be like taking items from the
 16 warehouse and walking out to various parts on the lines and
 17 stocking the places that needed those parts?
 18 A. Essentially. But I would be driving a forklift to do it.
 19 Q. Did you undergo any form of training either -- First of all,
 20 did you undergo any form of training to do any parts of your
 21 job when you became a temporary employee at Isringhausen?
 22 A. Of the line feeder position?
 23 Q. Let's go back to the very beginning. Did they give you any
 24 type of training when you first came in and were assigned to
 25 Isringhausen?

9 (Pages 24 to 27)

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Page 48

1 A. Yes. In fact, I want to add I even caught one of the uprights
 2 for the racking things so it wouldn't hit him on the head.
 3 Because we removed the last horizontal and it was going to
 4 smash him.
 5 Q. So you didn't allow him to be --
 6 A. Smashed.
 7 Q. You didn't allow him to be smashed in the workplace?
 8 A. Right.
 9 Q. Which would be something that would be expected of anyone
 10 standing there, correct?
 11 A. Right. So we did amend things.
 12 Q. I'm going to have another document marked here.
 13 (Deposition Exhibit No. 9 marked for
 14 identification.)
 15 BY MS. SETTERINGTON:
 16 Q. I'm showing you yet another acknowledgement. It appears to be
 17 dated May 29th of '07 acknowledging that you received
 18 Isringhausen's workplace violence policy. Is that your
 19 signature on the document?
 20 A. Yes.
 21 Q. Do you remember receiving a copy of that policy?
 22 A. Yes.
 23 (Deposition Exhibit No. 10 marked for
 24 identification.)
 25

Page 49

1 BY MS. SETTERINGTON:
 2 Q. I'm going to show you what is marked as Exhibit 10. And that
 3 is a copy of the Workplace Threats and Violence Policy. Do you
 4 recognize that? You can go ahead and take a minute to read it
 5 if you would like.
 6 A. Yes.
 7 Q. In this policy, in the third paragraph, it talks about,
 8 Violence, threats, harassment, intimidation, and other
 9 disruptive behavior in our workplace will not be tolerated,
 10 correct?
 11 A. Yes.
 12 Q. And it describes that all reports of incidents will be taken
 13 seriously, dealt with in a timely and appropriate manner, and
 14 indicates in the following paragraph that, Employees
 15 experiencing or observing such behavior should report it
 16 immediately to the plant manager or finance manager, correct?
 17 A. Yes.
 18 Q. So this policy covers harassment, right?
 19 A. Yes.
 20 (Deposition Exhibit No. 11 marked for
 21 identification.)
 22 BY MS. SETTERINGTON:
 23 Q. Now, showing you what we have marked as Exhibit 11 to your
 24 deposition. You referenced a little while ago that one
 25 discipline you recall receiving is picking an incorrect

Page 50

1 headrest?
 2 A. Yes.
 3 Q. Is this the discipline that you were referencing?
 4 A. This is it.
 5 Q. So this happened in September of '07, correct?
 6 A. Yes.
 7 Q. And that is your signature on the document?
 8 A. Yes.
 9 Q. Do you dispute that you committed the infraction for which you
 10 were disciplined?
 11 A. No. Can I get a drink of water?
 12 MS. SETTERINGTON: Off the record.
 13 (A lunch break was had.)
 14 BY MS. SETTERINGTON:
 15 Q. Mr. Carruthers, before we went on lunch break we were just
 16 talking briefly about a discipline that you received for
 17 picking the wrong head rest or something like that. Do you
 18 recall that?
 19 A. Correct.
 20 Q. Do you recall not being eligible for receiving a bonus shortly
 21 thereafter as a result of that write up?
 22 A. Yes.
 23 Q. Do you have an understanding about Isringhausen's practice of
 24 conducting performance evaluations?
 25 MR. PIPER: Objection, vagueness.

Page 51

1 BY MS. SETTERINGTON:
 2 Q. Do you remember whether they performed performance evaluations
 3 on employees?
 4 A. Yes, infrequently.
 5 Q. You weren't aware of like a regular schedule by which those
 6 evaluations were conducted; at least on you?
 7 A. No.
 8 Q. Did you ever have a performance appraisal that you recall?
 9 A. Yes.
 10 Q. How many times?
 11 A. Not 100 percent sure, once or twice.
 12 (Deposition Exhibit No. 12 marked for
 13 identification.)
 14 BY MS. SETTERINGTON:
 15 Q. I will show you what we have marked as Exhibit 12 to your
 16 deposition, Mr. Carruthers. Do you recognize this document
 17 which is entitled Performance Appraisal?
 18 A. Yes.
 19 Q. What is it?
 20 A. This is the evaluation that Joe Reinheimer gave me for my
 21 performance.
 22 Q. Do you recall whether you ever received a performance
 23 evaluation before this?
 24 A. I'm pretty sure I never did.
 25 Q. All right. Does this look to be the complete document as you

15 (Pages 48 to 51)

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Page 52

1 recall it?
 2 A. I believe so.
 3 Q. Is there anything that you disputed about this performance
 4 evaluation?
 5 A. No.
 6 Q. At the time that this evaluation was completed, would you -- is
 7 it your recollection that Joe Reinheimer had not been your
 8 direct supervisor for very long?
 9 A. Correct.
 10 Q. Was it about a month or so?
 11 A. Yeah, a month or two, something like that.
 12 Q. And prior to Joe becoming your direct supervisor, was Geoff
 13 Jones your direct supervisor or no? I'm not trying to put
 14 words in your mouth.
 15 A. No, that is fine. I'm trying to remember, because I believe
 16 directly prior to this Bill and I were both material handlers.
 17 Q. Okay.
 18 A. Not absolutely certain about it. But it would have either been
 19 Geoff Jones or Bill King.
 20 Q. All right.
 21 A. Because there was a lot of stuff going on right then.
 22 Q. What do you mean by that?
 23 A. It is kind of hard to explain. I think Bill didn't want to be
 24 supervisor so Geoff Jones was both of our supervisors and --
 25 immediate supervisors. I think we were both on the same level.

Page 54

1 Exhibit 13 to your deposition. And that is a several-page
 2 document; the first page of which is an acknowledgement of a
 3 training session. Is that your signature on the document?
 4 A. Yes.
 5 Q. Does this acknowledgement confirm that you attended a training
 6 session on the topic of sexual harassment?
 7 A. Yes.
 8 Q. And you have that dated September 3rd, 2008, correct?
 9 A. Yes.
 10 Q. So is it fair to say that you completed the training before you
 11 completed this document?
 12 A. Yes.
 13 Q. And the following page looks like it is a quiz and it has your
 14 name written on the top?
 15 A. Yes.
 16 Q. Is this a quiz that you completed during the course of that
 17 training?
 18 A. Yes.
 19 Q. Tell me what you remember about what that training entailed.
 20 A. A movie and a brief discussion along with taking the quiz after
 21 the meeting.
 22 Q. How long did the training session last?
 23 A. About an hour, hour and a half, maybe two. It was pretty long.
 24 Q. Was there someone conducting the training: a person that was
 25 there conducting the training?

Page 53

1 Like I said, I can't remember exactly.
 2 Q. Now, prior to your employment with Isringhausen, had you ever
 3 received any training regarding sexual harassment or unlawful
 4 harassment at any other place of employment?
 5 A. Maybe at Eimo or Summit. Maybe.
 6 Q. You have some recollection of perhaps having training someplace
 7 previous?
 8 A. I know that they used to have weekly meetings at Summit
 9 Polymers and that may have arisen in one of those weekly
 10 meetings or something. But like for definite, no, I don't
 11 remember.
 12 Q. Did you have an understanding of what sexual harassment in the
 13 workplace meant before you were employed with Isringhausen?
 14 A. Yes.
 15 Q. Did you understand that this was the sort of thing that
 16 shouldn't be allowed in the workplace?
 17 A. Yes.
 18 Q. At some point in your employment with Isringhausen, you
 19 underwent training regarding sexual or unlawful harassment; is
 20 that correct?
 21 A. Yes.
 22 (Deposition Exhibit No. 13 marked for
 23 identification.)
 24 BY MS. SETTERINGTON:
 25 Q. Mr. Carruthers, I will show you what we have marked as

Page 55

1 A. Barb Vroman I believe was.
 2 Q. Did you have an opportunity to ask any questions?
 3 A. Yes.
 4 Q. How big of a group went through the training session that you
 5 underwent?
 6 A. If I remember correctly, everybody did.
 7 Q. All Isringhausen employees?
 8 A. Pretty sure.
 9 Q. Were temporary employees present as well?
 10 A. I don't think so.
 11 Q. Do you know whether there were any sessions offered other than
 12 the session that you attended?
 13 A. No.
 14 Q. You don't know one way or the other?
 15 A. I don't know if there were for sure.
 16 Q. So if every Isringhausen employee was there, would that be
 17 somewhere in the neighborhood of about -- did you say about 50
 18 or so people?
 19 A. Something like that.
 20 Q. Your recollection is that the room was about that full?
 21 A. Yeah. It was really full.
 22 Q. Now, prior to you having participated in that training, had you
 23 ever witnessed any sort of sexual joking or sexual conduct in
 24 the workplace at Isringhausen?
 25 A. Sure.

16 (Pages 52 to 55)

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Page 56

1 Q. Tell me about that.

2 A. Well, you got a workplace full of predominantly men. They tell

3 jokes or, you know, horse around and all that kind of stuff.

4 It was just like by the by.

5 Q. Do you recall any persons in particular that engaged in that

6 sort of behavior?

7 A. Pretty much everybody.

8 Q. Did you ever tell any sexual jokes in the workplace?

9 A. Probably.

10 Q. Anybody ever talk about their personal lives, sexual issues?

11 A. Not very many.

12 Q. No?

13 A. No.

14 Q. Sometimes?

15 A. Maybe on the fly somewhere.

16 Q. We are talking prior to you guys having the sexual harassment

17 training session.

18 A. Right. Yes.

19 Q. Anybody ever talk about their dates or anything like that, kind

20 of just sharing stories about those types of issues?

21 A. Not anything I can remember like off the top of my head.

22 Q. So what you can remember are things like sexual jokes?

23 A. Sure, yeah.

24 Q. Was that pretty common?

25 A. Yes.

Page 57

1 Q. Men ever tell sexual jokes in the presence of women?

2 MR. PIPER: Objection, vagueness.

3 BY MS. SETTERINGTON:

4 Q. If you are aware?

5 MR. PIPER: You mean at Isringhausen?

6 MS. SETTERINGTON: Yes, at Isringhausen.

7 MR. PIPER: Your question was basically the world.

8 THE WITNESS: It would be hard not to. It would be

9 hard not -- to not do it in front of women or whatever.

10 BY MS. SETTERINGTON:

11 Q. So that would be true with regard to sexual jokes that you told

12 as well, correct?

13 A. Probably, yeah.

14 Q. Did anyone ever tell you that they were offended by any joke or

15 comment that you made of a sexual nature?

16 A. Never.

17 Q. When did you first meet Tonya Colburn?

18 A. I believe it was her second day there because her first day I

19 was pretty swamped. Maybe it was her first day and Joe

20 Reinheimer came out and introduced her to all of us and stopped

21 us from what we were doing to introduce her.

22 Q. Did you talk to her personally the first time you guys met?

23 A. No.

24 Q. Tonya was a temporary employee?

25 A. Correct.

Page 58

1 Q. Do you know if she come through some temporary employee agency?

2 A. Manpower.

3 Q. You did not know her previously?

4 A. No.

5 Q. Where did she work when she was first placed at Isringhausen;

6 if you know?

7 A. She worked in ...

8 MR. PIPER: Objection, foundation.

9 BY MS. SETTERINGTON:

10 Q. If you know. You can still answer if you can.

11 A. Pretty sure she worked in receiving because at that time they

12 separated receiving and shipping

13 Q. Now, is this in approximately September of 2008?

14 A. Yes.

15 Q. Was it right around the time that you took this training course

16 in sexual harassment?

17 A. After

18 Q. How long after?

19 A. I can't remember.

20 Q. You first met Tonya Colburn after you took that training

21 session?

22 A. Yes.

23 Q. How often would you interact with her in the course of doing

24 your job?

25 A. Regularly

Page 59

1 Q. You were a material handler at the time?

2 A. Yes.

3 Q. And what types of duties or which of your duties would cause

4 you to interact with Ms. Colburn?

5 A. My experience in the warehouse and where things go and where

6 things should belong, and if you can put something other than

7 where it goes, where should she put it and stuff like that.

8 And I would also help her take care of the freight that came in

9 and all the other stuff.

10 Q. Was that part of your job to help her with the freight that

11 came in?

12 A. Pretty much.

13 Q. And as far as helping her find out where things go, is that

14 just because you had that knowledge of where things were kept

15 in the warehouse?

16 A. I think it was a combination of maybe Bill King not being

17 available and me being right there and it is just easier for

18 people to ask where things go.

19 Q. So she would just ask you a question and you would answer or

20 help her find where something would go?

21 A. Correct. Or she would ask me a question on how to receive a

22 packing list or something because, you know, I did it for a

23 while.

24 Q. Who else worked in the area where she was assigned? I think

25 you said it was receiving?

17 (Pages 56 to 59)

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Page 60

1 A. Uh-huh.
 2 Q. Who else worked in that area?
 3 A. It was -- Well, when freights come in service has to go over
 4 there and look through some of the freight to find their small
 5 parts and stuff like that, or, you know, some of the parts that
 6 they have to send out. I of course had to look for parts in
 7 there. Bill King had to look for parts and actually help train
 8 her. And Joe Reinheimer also helped out when he could to look
 9 for stuff over there.
 10 Q. Who were the people that worked in service at the time, if you
 11 remember?
 12 A. Marcus Dickson. I think he was the only one at that time.
 13 Q. So Marcus, you, Bill, and Joe Reinheimer, is that --
 14 A. And -- Sorry. Also Lloyd Palar. He was the line feeder at the
 15 time.
 16 Q. So Lloyd, Joe, Bill King, yourself, and Marcus Dickson were the
 17 people -- to your knowledge would interact with Ms. Colburn
 18 when she first came and was placed in the receiving area at
 19 Isringhausen?
 20 A. Those were the only people that had reason to go over into the
 21 receiving area. Maybe Lindsey Sikkema, but that was just to
 22 ask for something.
 23 Q. Who is Lindsey Sikkema?
 24 A. Lindsey Sikkema is in the materials department. She, like,
 25 called on stuff to our vendors if we needed them; if we were

Page 61

1 like running short on something.
 2 Q. Did you ever socialize outside of work with anyone that you
 3 worked with at Isringhausen?
 4 A. Bill King.
 5 Q. Anybody else?
 6 A. No.
 7 Q. Where did you take your lunch break?
 8 A. Usually at Subway.
 9 Q. Did you typically eat lunch with any of your co-workers?
 10 A. Never.
 11 Q. Never did?
 12 A. Not at Subway. Maybe if -- When I was smoking cigarettes,
 13 whoever was outside smoking, but, yeah, there wasn't a lot of
 14 times that I had a lot of time to take a break.
 15 Q. Do you have any knowledge where Tonya Colburn took her lunch
 16 breaks?
 17 A. If I remember correctly, it was mostly in the lunch area.
 18 Q. Did you observe her to spend her lunch break with any other
 19 employees in particular?
 20 A. I rarely ate in the lunchroom.
 21 Q. Well, at some point after you met Ms. Colburn you made a report
 22 about some comments that she had made to you. Tell me more
 23 about that; about when you first became concerned about any
 24 comments that Ms. Colburn was making to or in your presence.
 25 A. Okay. Within the first week she was talking about how she was

Page 62

1 getting neglected from her boyfriend or significant other --
 2 whether it be boyfriend or husband or whatever it was. And he
 3 would neglect her and not pay attention to her. And she
 4 literally stated that she could take off all her clothes and
 5 stand in front of him -- in between him and the television and
 6 say take me and he would say, Move, I'm watching TV. And that
 7 was kind of weird to just say in like one week's time.
 8 Q. Okay.
 9 A. And then she would say, Well I'm going out with a bunch of my
 10 friends over to such and such bowling alley. And she would
 11 state that she goes there every Friday or whatever day she
 12 said, and she does a bowling league or something like that.
 13 And she is getting totally hammered. And if her boyfriend
 14 doesn't take her sexually, then she is going to go out and find
 15 somebody else to do it and that kind of stuff. It started
 16 really fast.
 17 Q. Okay.
 18 A. And then that is when me and Mr. King wrote that letter to Barb
 19 stating that this is happening. We are not doing anything.
 20 This is not anything that we are provoking or encouraging
 21 whatsoever.
 22 Q. So basically she was talking about her boyfriend?
 23 A. She was implying that, you know, if you come down there ...
 24 Q. Did she ever tell you that if you came down there she would
 25 hook up with you or anything like that?

Page 63

1 A. She didn't say it exactly.
 2 Q. Do you remember where you were the first time that you had this
 3 sort of conversation where she made these comments?
 4 A. In my picking area.
 5 Q. Was it just you and she there?
 6 A. No. It was me, Mr. King, and Lloyd Palar.
 7 Q. Were you having a conversation prior to these comments coming
 8 out?
 9 A. Before she walked up, yes.
 10 Q. What were you guys talking about?
 11 A. I can't remember. It was probably irrelevant stuff to work --
 12 irrelevant to work.
 13 Q. So you were just having a personal conversation with these guys
 14 or a social conversation?
 15 A. Yeah.
 16 Q. You don't remember what the topic of it was?
 17 A. I have no idea.
 18 Q. So then she approached you all?
 19 A. She approached us all, yeah.
 20 Q. Was she trying to join in on the conversation as far as you
 21 could tell?
 22 MR. PIPER: Objection, foundation.
 23 BY MS. SETTERINGTON:
 24 Q. What was the first thing she said?
 25 A. I can't remember.

18 (Pages 60 to 63)

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Page 68

1 Geoff Jones.
 2 Q. Did you take it to --
 3 A. It was either Geoff or Joe. It was probably Joe.
 4 Q. So you took it to Barb Vroman. Was she up in her office?
 5 A. Uh-huh.
 6 Q. And she called -- Is it Geoff or Joe?
 7 A. I'm almost certain it was Joe. Because he would have been the
 8 supervisor of everybody.
 9 Q. Did you just hand her the statement or did you talk to her
 10 first?
 11 A. We talked to her and told her that the situation was making us
 12 very uncomfortable to be subjected to this on almost a daily
 13 basis. And, you know, in case she wanted to say that we were
 14 starting all this stuff and we were not, we made that. And she
 15 then told us to, you know, try to not get on that subject.
 16 And, you know, if that subject occurred, try to change the
 17 conversation, or, you know, walk away from it or anything like
 18 that. It was basically just, you know, don't encourage it and
 19 just ignore it, is what we got from her meeting.
 20 Q. Did she say those things to you after -- you believe it was
 21 Joe -- after Joe was in the room?
 22 A. Yes. Can I pee real quick?
 23 Q. That is fine. We can go off the record.
 24 (A short break was had.)
 25

Page 69

1 BY MS. SETTERINGTON.
 2 Q. I believe when we went off the record, Mr Carruthers, we were
 3 talking about your conversation with Barb Vroman?
 4 A. Uh-huh.
 5 Q. And you indicated that you went in to give her the statement
 6 and she called Joe Reinheimer, then you had some discussion
 7 about your concerns, correct?
 8 A. Yes.
 9 Q. Do you have any knowledge whether Tonya Colburn had undergone
 10 sexual harassment training with Isringhausen at that time?
 11 A. You know, after you asked me if she started before or after
 12 that training -- I can't remember if she was in that sexual
 13 harassment training.
 14 Q. You can't remember one way or the other?
 15 A. Yeah.
 16 Q. All right.
 17 A. Because -- She might have been.
 18 Q. And we were trying to pinpoint the date that you, No. 1, typed
 19 up this statement. And you indicated you thought it was maybe
 20 the same day or within a day or two after the second comment,
 21 correct?
 22 A. Yes.
 23 Q. And the statement itself was -- You signed it on September 10,
 24 correct?
 25 A. Yes.

Page 70

1 Q. Did Ms. Vroman thank you for bringing the issue to her
 2 attention?
 3 A. No. She felt appalled.
 4 Q. What do you mean?
 5 A. She looked appalled.
 6 Q. She didn't thank you for bringing that issue to her attention?
 7 A. No.
 8 Q. Did she tell you that she would address the unacceptable
 9 behavior?
 10 A. Yes. She said that she would talk to her.
 11 Q. What time of day did this -- did you bring the statement in to
 12 Ms. Vroman?
 13 A. I'm thinking it was in the afternoon.
 14 Q. Did you have just one conversation with Ms. Vroman or did you
 15 have more than one?
 16 A. We had another one after that.
 17 Q. Within the same span of a day or two or do you mean sometime
 18 later?
 19 A. Sometime later.
 20 Q. So when you first reported this incident, your recollection is
 21 there was more than one conversation with Ms. Vroman when you
 22 reported it; is that right?
 23 A. Yeah, to my recollection.
 24 Q. And was your primary concern at that point that you didn't want
 25 to be accused of sexual harassment at some later point?

Page 71

1 A. Well, it was kind of a double thing. It was that -- to notify
 2 that she was talking about sex and all this kind of stuff and
 3 that in itself is not very acceptable. And not to mention we
 4 were -- I don't know. In situations like this, it is likely
 5 for the guy to get blamed. So we didn't want that to happen.
 6 Q. So you didn't like the fact that the conversation or comment
 7 was happening in the first place?
 8 A. Correct.
 9 Q. And secondly you didn't want to be accused?
 10 A. We didn't want to get in trouble for, like, encouraging it or
 11 anything like that, you know, or starting the conversation.
 12 And it was just -- It was just a lose-lose situation if we
 13 didn't do it we figured.
 14 Q. Did you ever hear from anybody else that Ms. Colburn made those
 15 sorts of comments to people other than to you and Mr. King?
 16 A. Anthony Hickey.
 17 Q. Anybody else?
 18 A. Let's see. It was Anthony Hickey, Rick Short, Rodney Dickson.
 19 I think Terry Walbeck.
 20 Q. Who is Terry Walbeck?
 21 A. Terry Walbeck was a line worker.
 22 Q. All right.
 23 A. Mike Adams, Joe D'Water. A lot -- A lot of people. Almost
 24 everybody on the floor heard her talking about that stuff. And
 25 everybody that sat in the lunchroom with her -- She would talk

20 (Pages 68 to 71)

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Page 72

1 about it at lunch and that kind of stuff because I heard it
 2 from them quite a bit too.
 3 Q. So did it seem to be the case that it didn't matter who she was
 4 talking to, she just made these sorts of comments to everybody?
 5 A. Oh, yeah. She couldn't not talk about it in my opinion. I
 6 can't say that for sure. It sure did seem like it.
 7 Q. So there was nothing about her comments that indicated to you
 8 that she was targeting a particular person with this talk?
 9 A. Not at that point.
 10 Q. At the time that you made this report to Barb, at that time you
 11 didn't know about any supposed comments by Ms. Colburn to all
 12 these other people; did you?
 13 A. I don't believe so.
 14 Q. So at some point later you heard that that sort of thing maybe
 15 happened, but at the time you reported this to Barb, you were
 16 aware of the incidents that you had experienced?
 17 A. Correct.
 18 Q. Did you feel sexually harassed at the time that you made this
 19 report?
 20 A. That was the time that it was -- it felt like she was, you
 21 know, physically implying that, Hey, you should go down to the
 22 bowling alley or you should go out to this bar or whatever that
 23 she was already talking about she was going to get totally
 24 hammered or whatever.
 25 Q. Did you feel sexually harassed?

Page 74

1 over. So she still needed help. So Bill came, of course, had
 2 to show her how to do her job and stuff like that. She was
 3 still in training, you know. And she relayed to him that she
 4 didn't understand why this always happens to her and blah,
 5 blah, blah, blah. And evidently she also told him that that is
 6 what got her -- that is one of the things that got her
 7 terminated from her previous job.
 8 Q. Were you present?
 9 A. No.
 10 Q. So this is what Mr. King told you?
 11 A. Correct.
 12 Q. Did Mr. King tell you whether Ms. Colburn said that she had
 13 been talked to about sexual comments or did she relate what she
 14 had been counseled about?
 15 A. Yes. And she knew exactly who it was too, so I'm assuming that
 16 Barb --
 17 Q. Tell me --
 18 A. Because she was only mad at me and Mr. King.
 19 Q. Who was mad at you?
 20 A. Tonya.
 21 Q. How do you know that she was mad at you?
 22 A. She didn't even try to hide it. She hated us at that point
 23 right then.
 24 Q. Did Ms. Colburn ever tell you that she knew you had reported
 25 concerns about her?

Page 73

1 A. It definitely made me feel uncomfortable, yeah.
 2 Q. At this point you had not told Ms. Colburn to stop talking to
 3 you like that; had you?
 4 A. I can't determine when we told her to.
 5 Q. The two events that you have described to me that prompted your
 6 first report, you have indicated to me that after she made the
 7 comments there was silence and trying to change the subject?
 8 A. Right.
 9 Q. Is it fair to say you don't have any recollection of telling
 10 her to stop prior to making the report to Barb Vroman?
 11 A. Yes. It was one of those things where we didn't really know
 12 how to address that.
 13 Q. Did Ms. Vroman indicate to you and Mr. King to let her know if
 14 the behavior continued?
 15 A. Yes.
 16 Q. Do you know if Barb Vroman took any other steps to address this
 17 issue after she talked with you?
 18 A. Yes. She talked with -- Evidently she talked with Tonya about
 19 it.
 20 Q. How do you know that?
 21 A. The only reason why I know that is because Tonya came back
 22 from -- I'm assuming directly back from talking with Barb one
 23 day. I can't remember the exact day of course, but she was
 24 like totally in tears, mad at the world, you know. And of
 25 course she still needed to do her job because the day wasn't

Page 75

1 MR. PIPER: Objection, foundation.
 2 BY MS. SETTERINGTON:
 3 Q. You can still answer.
 4 A. What was the question?
 5 Q. Did she ever tell you that she knew you had reported concerns
 6 about her?
 7 A. Okay. She -- I'm trying to remember how she said it because
 8 she didn't say, I know you did it. But she said something
 9 along the lines of why did you do it or something like that.
 10 Or she didn't say, You did it, I know you did it. It was in a
 11 conversation that I had with her after that -- reporting her
 12 and after she came back and stuff like that that she relayed
 13 that she knew it was me and Mr. King.
 14 Q. Had you ever told her that you had reported any concerns about
 15 her?
 16 A. No.
 17 Q. Do you know whether Mr. King ever told her that you guys had
 18 reported any concerns about her?
 19 A. No.
 20 Q. You don't know?
 21 A. I don't believe he told her.
 22 Q. As far as you know he didn't tell her?
 23 A. As far as I know.
 24 Q. She never said anything to you that Barb Vroman had told her
 25 who reported her; is that fair?

21 (Pages 72 to 75)

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOHN CARRUTHERS, an individual,

Plaintiff,

Case No. A09 0127 CZ

v

Hon. Gary C. Giguere, Jr.

ISRINGHAUSEN, INC., a corporation,

Defendant.

DEPOSITION OF JOHN CARRUTHERS (VOLUME II)

DATE: Tuesday, July 28, 2009

TIME: 1:00 p.m.

LOCATION: William F. Piper, PLC

3275 Cooley Court, Suite 160

Portage, Michigan

REPORTER: Rebecca S. Grubba, CSR-1435

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Page 101

1 A. I think me and Bill were both talking about all of this stuff
 2 collectively.
 3 Q. At the time you were writing this out?
 4 A. Yes.
 5 Q. Okay. Is there material in this statement that is not within
 6 your own personal knowledge but is something that you relied
 7 on that you heard from Bill?
 8 A. No.
 9 Q. Okay. The second page, who drafted this page of notes?
 10 A. Myself.
 11 Q. Okay. Is this something that you drafted on your own or
 12 together with Bill King?
 13 A. Together with Bill.
 14 Q. Okay. Did he provide input as to the names that should be
 15 included?
 16 A. Essentially we both knew all of the names, but like right
 17 offhand within the -- I don't know -- 30 seconds maybe I wrote
 18 this down, these are the names that we both came up with.
 19 Q. Okay. This document identifies people that should get -- is
 20 that wrote up or written up?
 21 A. Yes.
 22 Q. For not keeping a forklift maintenance log. And you
 23 identified Randy Wicks?
 24 A. Yes.
 25 Q. What was Randy Wicks' position?

Page 102

1 A. Randy Wicks was a shipper at the time.
 2 Q. Did he operate a forklift in his job?
 3 A. Yes.
 4 Q. Why do you believe he should have been written up?
 5 A. Because he wasn't filling out the forklift maintenance log as
 6 well.
 7 Q. How do you know that?
 8 A. Because all of the pages in the forklift log were blank.
 9 Q. Did you ever ask Randy Wicks about his practices with respect
 10 to filling out the log?
 11 A. No.
 12 Q. Okay. Rick Short. What was his position at the time?
 13 A. He was kind of a floater guy. He was, like, head of
 14 maintenance and a few other things. He was, like, an
 15 all-around guy and he also dealt with sales, materials. He
 16 was just kind of an everything guy, I guess.
 17 Q. Why do you maintain that he should get written up?
 18 A. Because there would be times where he would jump on a forklift
 19 and go move some stuff for engineering, per se. And he would
 20 help the quality area out by moving stuff around for them
 21 and --
 22 Q. Okay. If I understand correctly, your position would be that
 23 because he was a floater and his job sometimes brought him
 24 into contact with using the forklift that he should be written
 25 up as well?

Page 103

1 A. That he was actually one of the people that would be unhooking
 2 the forklift.
 3 Q. Okay.
 4 A. And had within that time.
 5 Q. Okay. Was he part of the warehouse department formally or
 6 no?
 7 A. No.
 8 Q. Okay. How about Randy? Was he part of the warehouse
 9 department or was he part of shipping?
 10 A. Shipping.
 11 Q. Okay. Rodney Dickson. What was his position?
 12 A. Quality manager.
 13 Q. Was he part of the warehouse department?
 14 A. No.
 15 Q. Okay. And why do you believe he should have been written
 16 up?
 17 A. Because oftentimes he would unhook a forklift and take it off,
 18 too.
 19 Q. Elliott Brewer. What position was he in?
 20 A. Material handler.
 21 Q. Was he part of the warehouse department?
 22 A. Yes.
 23 Q. As of December of 2008 he was part of the warehouse
 24 department?
 25 A. Something like that.

Page 104

1 Q. At the time the forklift incident happened --
 2 A. Yes.
 3 Q. -- was he in the warehouse at that point?
 4 A. Yes.
 5 Q. Okay.
 6 A. If he wasn't, he was also a line worker that was allowed to
 7 jump on a forklift and move stuff around for himself as well.
 8 Q. Okay. So either he was a material handler in part of the
 9 warehouse department or he was a line worker who also on
 10 occasion would unhook a forklift and use it, correct?
 11 A. Yes.
 12 Q. Now, of course, we've got you on there. You were a material
 13 handler at the time, correct?
 14 A. Yes.
 15 Q. In the warehouse department, correct?
 16 A. Correct.
 17 Q. Okay. Gary Shaffmaster. What was his position?
 18 A. He was also in shipping and receiving.
 19 Q. Okay. So he was not part of the warehouse department?
 20 A. Correct.
 21 Q. And would your rationale for why he should be disciplined
 22 be the same as with respect to the other nonwarehouse
 23 employees?
 24 A. Correct.
 25 Q. He would use a forklift, unhook a forklift and use it from

6 (Pages 101 to 104)

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Page 105

1 time to time?
 2 A. He would unhook the forklift every day.
 3 Q. Okay. And Bill King at the time of this event, was he the
 4 warehouse supervisor?
 5 A. Like I said before, I don't understand -- I don't remember
 6 exactly when he got demoted or whatever.
 7 Q. Okay. Was he part of the warehouse department at that time?
 8 A. Yes.
 9 Q. Okay. Geoff Jones. His position at the time was what?
 10 A. Same as it is now. General manager, isn't it?
 11 Q. She can't help you, unfortunately. Just to the best of your
 12 recollection.
 13 A. Oh, okay. I think it's general manager, floor manager.
 14 Q. Okay. Was he part of the warehouse department?
 15 A. No.
 16 Q. Okay.
 17 A. Well, I think there were a few times that he was over the
 18 warehouse and the shipping and the floor.
 19 Q. So he oversaw warehouse, as well as other departments?
 20 A. Correct.
 21 Q. But he wasn't within the warehouse department?
 22 A. Correct.
 23 Q. Okay. And would your rationale for why he should have been
 24 written up the same?
 25 A. Yes.

Page 106

1 Q. That he would unhook and use forklifts on occasion?
 2 A. Yes.
 3 Q. Loyd Palar?
 4 A. Uh-huh.
 5 Q. What was his position?
 6 A. Material handler as well.
 7 Q. Was he within the warehouse department?
 8 A. Yes.
 9 Q. And he did get written up, isn't that correct?
 10 A. Yes.
 11 Q. And Bill King did as well, right?
 12 A. Yes.
 13 Q. As well as yourself?
 14 A. Correct.
 15 Q. And then Joe Reinheimer. What was his position at the time?
 16 A. Materials and oversaw warehouse.
 17 Q. Was there a materials department or --
 18 A. I think he was materials manager in the materials department,
 19 yeah.
 20 Q. And then did he also have responsibility over the warehouse
 21 department as well?
 22 A. Yes.
 23 Q. Okay. Was he --
 24 A. They were kind of both the same department.
 25 Q. All right.

Page 107

1 A. Because we always reported to him.
 2 Q. As a material handler, did you report directly to Joe
 3 Reinheimer?
 4 A. Oftentimes.
 5 Q. Okay. Did you have any reporting relationship to the
 6 warehouse supervisor?
 7 A. Generally, I would make a side comment about it, but I would
 8 just take it upon myself to go, and if there were any material
 9 shortages to report it to either Lindsay or Joe. And it just
 10 worked out a lot faster to get materials in that way.
 11 Q. There's a short period of time where you acted, you testified,
 12 as warehouse supervisor. Am I stating that accurately?
 13 A. Yes.
 14 Q. Was it your understanding that you had oversight
 15 responsibility over other warehouse employees or no?
 16 A. Yes.
 17 Q. Okay. Was the warehouse supervisor position kind of an
 18 intermediate level of supervision before you got up to the
 19 materials and warehouse manager position?
 20 A. I honestly don't know how that ladder worked.
 21 Q. Okay. What was your expectation when you were acting in that
 22 role? Did you view yourself as a level of supervision that
 23 came in between the material handlers and the warehouse
 24 materials manager or no?
 25 A. Quite honestly, I already had a lot of responsibility of

Page 108

1 planning out where people should go and what people should do
 2 in the warehouse anyway. It was just a title change and more
 3 money. But to answer your question, I would say probably.
 4 Q. You would say that the warehouse supervisor was kind of a
 5 level of supervision in between the material handlers and that
 6 management level position that Joe Reinheimer was in?
 7 A. That was my assumption, yes.
 8 Q. Okay. All right. Do you remember when you drafted this
 9 second page of handwritten notes about the people that should
 10 be written up?
 11 A. Maybe the day after or two days after we got written up for
 12 not logging.
 13 Q. Okay. Did you ever show this list to Barb Vroman?
 14 A. I can't recall.
 15 Q. Do you have any recollection of showing it to any member of
 16 management at (sringhausen)?
 17 A. No.
 18 Q. Okay. Looking at page 3, we've got another page of
 19 handwritten notes here.
 20 A. Uh-huh.
 21 Q. Are those your handwritten notes?
 22 A. Yes.
 23 Q. Okay. Did you prepare these independently or in conjunction
 24 with Bill King?
 25 A. Is this the same as page 1?

7 (Pages 105 to 108)

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Page 117

1 Q. This is about Bill King pretty much?
 2 A. Yep.
 3 Q. And the last paragraph on that page, that's about Bill King as
 4 well, correct?
 5 A. Yes.
 6 Q. Okay. So this last paragraph on this page here doesn't really
 7 pertain to any sexual harassment you believe you experienced
 8 at the hands of Tonya Colburn, correct?
 9 A. Correct.
 10 Q. Now, first paragraph on the next page, it says, "John
 11 Carruthers went back to Barb and discussed that Tonya has not
 12 let up on the sexual talk." Is that a paragraph that you
 13 drafted?
 14 A. Yes.
 15 Q. Looking at that, can you tell me what you were continuing to
 16 experience that prompted you to go back to Barb?
 17 A. Every time I had to work with her, she was always talking
 18 about either she was going to get rid of her boyfriend and go
 19 find another one. And she really, really, really needs some
 20 sex and all that kind of stuff.
 21 Q. Did you ever talk to the finance manager about the fact that
 22 this sexual harassment was continuing?
 23 A. Wasn't Barb the finance manager?
 24 Q. Was she? I'm asking you.
 25 A. Pretty sure.

Page 119

1 behavior change? Is that what I'm understanding you to say?
 2 A. I didn't see Tonya's behavior change and I didn't see Barb
 3 that day out on the floor. And I didn't hear her call Tonya
 4 in, either.
 5 Q. Are you saying that if Barb said that she spoke with Tonya
 6 about this that you would dispute that or are you saying you
 7 don't know one way or the other?
 8 A. I would say I wouldn't -- yeah, I would dispute that.
 9 Q. Because you didn't see Barb talk to Tonya that day?
 10 A. Because I didn't see Barb talking to her in any kind of a
 11 "Hey, you got to stop this" way.
 12 Q. Are you in a position to observe Tonya Colburn every minute of
 13 your workday?
 14 A. Not every minute of it, but a good portion of it.
 15 Q. Okay. Are you in a position to observe Barb Vroman in every
 16 minute of your workday?
 17 A. If she comes out onto the floor, yeah.
 18 Q. Okay. But is it possible that Barb Vroman can have a
 19 conversation that you're not aware of?
 20 A. Most definitely.
 21 Q. Okay. It would be possible that Barb Vroman could have a
 22 conversation with Tonya Colburn that you're not aware of.
 23 correct?
 24 A. It's possible.
 25 Q. Okay. Second paragraph on this page, which is seven. the

Page 118

1 Q. Did you ever talk to the general manager about the fact that
 2 this sexual harassment was continuing?
 3 A. As in Geoff Jones?
 4 Q. Did you?
 5 A. Not Geoff Jones. ✓
 6 Q. Okay. Did you ever talk to Mr. Slater about it, Gary
 7 Slater? ✓
 8 A. He didn't like talking to me.
 9 Q. My question is --
 10 A. No.
 11 Q. -- did you ever talk with him about the fact that this sexual
 12 harassment was continuing?
 13 A. No. ✓
 14 Q. Did you ever bring it to the attention of any member of
 15 management aside from Barb?
 16 A. And Joe Reinheimer. ✓
 17 Q. Okay. Do you know what, if any, action Barb Vroman took in
 18 response to the conversation you had with her on or about the
 19 17th of September?
 20 A. I don't believe she did anything.
 21 Q. Do you know whether she did anything or not?
 22 A. There was no -- what's the word? There was no obvious effects
 23 that she did anything.
 24 Q. So whether she did something or not is one question. Whether
 25 it was effective or not is another. You didn't see Tonya's

Page 120

1 second paragraph, that appears to be a paragraph relevant to
 2 Bill King. Am I correct about that?
 3 A. Yes.
 4 Q. Okay. This paragraph doesn't contain information that
 5 pertains to your allegations of sexual harassment against
 6 Tonya Colburn, correct?
 7 A. Correct.
 8 Q. All right. The third paragraph indicates Bill -- that Tonya
 9 continued to talk about sex on September 10th. This looks
 10 familiar. Okay. This is the date that you brought your --
 11 actually, I'm one page short.
 12 A. I was going to say.
 13 Q. Sorry about that. So the second paragraph on -- second
 14 paragraph on page 8, that pertains to Bill King and his
 15 interactions, correct?
 16 A. Correct.
 17 Q. That does not pertain to your allegations of sexual harassment
 18 against Tonya Colburn, correct?
 19 A. Correct.
 20 Q. You say on September 18th she's still trying to talk about
 21 sex. Can you remember anything specific about what she was
 22 saying on that date?
 23 A. Not specifically.
 24 Q. When was this paragraph drafted? Was this paragraph drafted
 25 on the 18th or sometime after?

10 (Pages 117 to 120)

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Page 125

1 A. Yes.
 2 Q. You were. Okay. Was there anybody else present?
 3 A. I believe Loyd Palar was, too.
 4 Q. There's an entry then that follows about November 20th. Were
 5 you present for this conversation that is referenced here
 6 between Tonya and Bill?
 7 A. Yes.
 8 Q. Okay. Tell me what you remember about it.
 9 A. Exactly what's there.
 10 Q. Where were you?
 11 A. I was looking for something out of the freight.
 12 Q. Who else was present?
 13 A. Of course, Bill King with her. I'm not a hundred percent sure
 14 if Cory Shepherd was there or Marcus was there.
 15 Q. What was your understanding of what Bill King and Tonya
 16 Colburn were doing there?
 17 A. I think he was trying to teach her how to do something on the
 18 computer, on the receiving computer. Can I take a break real
 19 quick?
 20 MS. SETTERINGTON: Sure. That's fine. Go ahead.
 21 (Recess taken.)
 22 BY MS. SETTERINGTON:
 23 Q. All right. So we just took a short break and we were talking
 24 about Exhibit 1. We were at the entry on page 1 -- on page 10
 25 of Exhibit 1, the entry for November 21st, 2008. Did we

Page 127

1 conversation?
 2 A. I have no idea.
 3 Q. So that first sentence on the November 21st entry, that
 4 doesn't relate to your allegations of sexual harassment by
 5 Tonya Colburn, correct?
 6 A. Correct.
 7 Q. Now, as far as the second sentence that begins with, "She
 8 later tells John Carruthers that she went to school with Joe's
 9 daughters," I take it that was a conversation that you were
 10 present for?
 11 A. Yes.
 12 (Short pause)
 13 BY MS. SETTERINGTON:
 14 Q. Okay. And this repeats some contents that was in your
 15 handwritten notes that we talked about earlier, is that
 16 correct?
 17 A. Yes.
 18 Q. Handwritten notes at -- maybe I'm wrong. Handwritten notes at
 19 the beginning of Exhibit 1, correct?
 20 A. Correct.
 21 Q. Okay. So that's kind of a duplicate entry?
 22 A. Uh-huh. Yes.
 23 Q. I presume that at some point after you made your handwritten
 24 notes you formalized that in this typewritten document?
 25 A. Yes.

Page 126

1 finish talking about the November 20th entry?
 2 A. Yes.
 3 Q. Okay. I think you were telling me that Bill King and Tonya
 4 Colburn were present. You couldn't recall whether anyone else
 5 was present for the November 20th entry?
 6 A. Correct.
 7 Q. And Bill King and Tonya Colburn were working there on the
 8 computer, is that correct?
 9 A. Uh-huh.
 10 Q. Do you remember how Bill King responded to her statement when
 11 she said that?
 12 A. Something like "That's nice" and "This is how you do this"
 13 Q. Did you respond in any way to the comment?
 14 A. No.
 15 Q. Was it made to you or was it made to Bill?
 16 A. No. It was made to Bill. I was just -- I was just looking
 17 for a part in the freight.
 18 Q. Okay. So this is a comment you overheard, but was not
 19 directed towards you?
 20 A. Correct.
 21 Q. All right. The November 21st, 2008 entry. Were you present
 22 for the conversation that is referenced in this paragraph?
 23 First sentence of that paragraph, I should say
 24 A. No.
 25 Q. All right. Do you know who was present for that

Page 128

1 Q. Let's go on to the next page, which is 11, I believe, of
 2 Exhibit 1. November 23, 2008. The entry at the top of the
 3 page, is that a conversation that you were present for?
 4 A. No, but she made that right in the middle -- she made that
 5 comment right in the middle of the lunch area. So a lot of
 6 people actually commented to me about that
 7 Q. Do you have any knowledge as to who was in the lunch area at
 8 that time?
 9 A. Anthony Hickey. Mike Adams. What is that dude's name? Dennis
 10 Price.
 11 Q. All right.
 12 A. A few more. I'm not a hundred percent sure who else it was.
 13 Q. Do you know whether there was anyone else present or not?
 14 A. I know I wasn't there.
 15 Q. Okay. So Mr. Hickey and Mr. Adams and Mr. Price told you they
 16 were there?
 17 A. Right. Along with King.
 18 Q. All right. So they told you about this comment, but you did
 19 not hear it yourself?
 20 A. Correct. I never ate with everybody.
 21 Q. Okay. So this is not a way in which you believe you were
 22 sexually harassed by Tonya Colburn, correct?
 23 A. Correct.
 24 Q. How about November 25th? Were you present for that
 25 conversation?

12 (Pages 125 to 128)

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Page 129

1 (Short pause)

2 A. That one I was.

3 Q. Okay. Tell me what you remember about that

4 A. I think Anthony Hickey was looking for something in the

5 warehouse and he had made a comment about her commenting about

6 legalizing prostitution. And she just basically reiterated

7 that, yeah, they should. There would be a lot less illegal

8 prostitution and all that kind of stuff and they would be

9 safer and all that nonsense.

10 Q. So she was kind of stating her political position on

11 legalization?

12 A. Exactly.

13 Q. On legalizing prostitution, correct?

14 A. Yes. Exactly.

15 Q. She wasn't suggesting anything -- specifically that she wanted

16 to be a prostitute or anything like that, correct?

17 A. I don't believe so.

18 Q. Okay. And did she make that comment in response to a question

19 about it by Anthony Hickey?

20 A. I'm pretty sure.

21 Q. A question to her?

22 A. Uh-huh. Yes.

23 Q. Did you question her at all about her views on legalizing

24 prostitution?

25 A. No. I tried not to talk to her.

Page 130

1 Q. Okay. Is this something that you rely upon as an event of

2 sexual harassment by Tonya Colburn?

3 A. That, no.

4 Q. Okay. The next entry is the December 1, 2008 entry. Were you

5 present for these events that are referenced about December 1,

6 2008?

7 A. Yes.

8 Q. Okay. You don't rely on these as evidence of your claim of

9 sexual harassment, do you?

10 A. No.

11 Q. The next entry, December 2, 2008. Were you present for this

12 referenced conversation between Bill, Barb, and Joe?

13 (Short pause)

14 A. No.

15 Q. Okay. That December 2 entry is not one that you rely on to

16 support a claim of sexual harassment?

17 A. Correct.

18 Q. Are there any of the claims that you've identified so far

19 where you said they don't relate to your claims of sexual

20 harassment where you would say they relate to any other claims

21 that you've asserted against Isringhausen?

22 A. Discrimination.

23 Q. Okay. I guess we better ask about that. Going back to the

24 beginning of that typewritten statement, the second page of

25 the typewritten statement, the October 6, 2008 entry, do you

Page 131

1 rely upon that to assert claims of discrimination against

2 you?

3 A. Kind of somewhat, yes.

4 Q. How is that?

5 A. Because if I was insubordinate and told Joe that I wasn't

6 going to do something, I would have been reprimanded on the

7 spot.

8 Q. Is that your speculation that that's the way it would happen

9 for you?

10 A. No. He was very angry all the time just about. And if you

11 actually told him or tried to argue with him, he would get

12 extremely loud and just eventually would be, "Just do it."

13 Q. Okay. Do you know what job tasks are referenced here in this

14 October 6 entry?

15 A. I did at the time.

16 Q. Okay. Did you have experience where you got an attitude when

17 you were asked to do those job tasks?

18 A. I generally didn't have a bad attitude about doing tasks,

19 no.

20 Q. So you believe that you would have been treated differently

21 than Tonya was treated?

22 A. Oh, yes.

23 Q. But you don't have a specifically comparable situation where

24 you did get an attitude about performing the kind of job tasks

25 that she was complaining about or having an attitude about in

Page 132

1 this paragraph?

2 A. Not off the top of my head.

3 Q. The October 9th entry, is this a paragraph that you would rely

4 on to assert any claims that you were treated unlawfully by

5 Isringhausen?

6 A. Yes, because every time I approached Joe about Tonya, he would

7 tell me to leave her alone as well.

8 Q. Okay. Did you document in this -- and we haven't gotten all

9 the way through it, but did you document those times when you

10 would approach Joe about Tonya and how he responded?

11 A. I don't believe so.

12 Q. Can you tell me why?

13 A. Because it was typical.

14 Q. So with respect to these other complaints, to the extent that

15 they say that Tonya wasn't doing her job well or was being

16 mouthy or had an attitude, you generally would assert that you

17 wouldn't have been given that kind of leeway?

18 A. Correct.

19 Q. Okay. The December 3rd, 2008 entry, back where we had left

20 off. do you find that?

21 A. Yes.

22 Q. Okay. Were you present for these conversations that are

23 referenced and these events that are referenced here?

24 A. The taking a break one I was.

25 Q. Okay. What do you mean? You were present to observe her not

No Com. 125

13 (Pages 129 to 132)

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Page 177

1 Q. After you got your write-up for the forklift log issue -- do
 2 you have a recollection of when that happened, by the way?
 3 A. It was in December.
 4 Q. Okay.
 5 A. Like December 18th.
 6 (Exhibit No. 18 marked for identification.)
 7 BY MS. SETTERINGTON:
 8 Q. Mr. Carruthers, I'm going to show you a document that we've
 9 marked as Exhibit 18 to your deposition. I'll ask you if you
 10 recognize that?
 11 A. Yes.
 12 Q. What is that?
 13 A. This is the write-up I got on December 18th for my forklift --
 14 yeah. Not filling out my forklift log.
 15 Q. Okay. Do you know who wrote this warning up or this
 16 disciplinary report up?
 17 (Short pause)
 18 A. I don't. I think it was -- it was either Barb or Joe.
 19 Q. The violation description states that "During an accident
 20 investigation, it was discovered that preinspections were not
 21 being performed by operator on a daily basis," right?
 22 A. Right.
 23 Q. And the other warehouse employees also received a disciplinary
 24 report for this offense, correct?
 25 A. Correct.

Page 179

1 A. I couldn't go very far from the bathroom.
 2 Q. You were sick?
 3 A. Yes.
 4 Q. Okay. And you were given an unexcused absence for that?
 5 A. Yes.
 6 Q. Now, previous in your employment, you had received excused
 7 absences, correct?
 8 A. Yes.
 9 Q. Even in October of 2008 you received an excused absence,
 10 correct?
 11 A. Most likely.
 12 Q. All right. Do you remember why you were excused on October 1,
 13 2008?
 14 A. I was sick as well.
 15 Q. What was your understanding of Isringhausen's rules regarding
 16 attendance?
 17 A. You can't call in a vacation day. So either you would call in
 18 and say that you were sick and provide actual proof the
 19 following day or whatever and then it would get an excused
 20 absence.
 21 Q. Okay.
 22 A. But you could not call in a vacation day under no
 23 circumstances.
 24 Q. When you came back after your absence on the 13th, did you
 25 bring in proof?

Page 178

1 Q. Your notes -- and then thereafter, did you have an attendance
 2 and unexcused attendance issue arise?
 3 A. Yes.
 4 Q. Do you remember when that happened?
 5 A. I'm pretty sure it was, like, a week before this.
 6 MS. SETTERINGTON: Okay. I'll ask you to mark this.
 7 (Exhibit No. 19 marked for identification.)
 8 BY MS. SETTERINGTON:
 9 Q. Okay. I'm going to show you now what we've marked as
 10 Exhibit 19. And at least looking at the first page of that
 11 document, can you tell me what that is?
 12 A. It's them stating that I have three unexcused absences in a
 13 12-month period.
 14 Q. Okay. Is this the attendance infraction that you were talking
 15 about?
 16 A. Yes.
 17 Q. That you got a --
 18 A. Written warning.
 19 Q. You got a warning about that, a written warning. Okay. And
 20 it looks like the date of absence that got you to this warning
 21 was January 13th, 2009, correct?
 22 A. Correct.
 23 Q. Do you remember why you were gone on the 13th?
 24 A. Yes.
 25 Q. Why were you gone?

Page 180

1 A. No, I did not.
 2 Q. Okay. Were you ever aware of whether there was any
 3 extraordinary circumstance in which someone could be given
 4 permission to use a vacation day?
 5 A. No.
 6 Q. Did you ever ask whether that might be possible?
 7 A. Yes.
 8 Q. When did you ask that?
 9 A. I asked that at the meeting when we were given the handbooks.
 10 I said, "So there's absolutely zero way that we can use a
 11 vacation on the same day that we are going to be absent?" The
 12 answer was no.
 13 Q. Did you have any understanding as to why that answer was no?
 14 A. Because they were completely removing any possibility of
 15 anybody calling in for a vacation day
 16 Q. So you got to your third unexcused absence with that
 17 January 13th, 2009 issue, correct?
 18 A. Correct.
 19 Q. And your notes on January 21st that are the first page of
 20 Exhibit 14, they appear -- do those pertain to a discussion
 21 you had with Joe Reinheimer and Barb Vroman about what penalty
 22 you would receive as a result of having that attendance
 23 discipline in --
 24 (Interruption in proceedings)
 25 A. Okay.

25 (Pages 177 to 180)

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Page 181

1 Q -- the attendance discipline and that forklift log discipline,
 2 is that correct?
 3 A I'm sorry. Say that again.
 4 Q These notes on the first page of Exhibit 14, are these a
 5 conversation that you were having with Joe Reinheimer and Barb
 6 Vroman about discipline you had received as a result of the
 7 attendance and forklift incident discipline?
 8 A Yes.
 9 Q Okay. And you had been under the impression that you would be
 10 at the point where you would get a three-day suspension,
 11 correct?
 12 A Correct.
 13 Q But instead you weren't given a three-day suspension,
 14 correct?
 15 A Correct.
 16 Q You were just given a warning?
 17 A Evidently.
 18 Q Okay. Do you think that your treatment with respect to the
 19 attendance issue was retaliation in any way?
 20 (Short pause)
 21 A According to the attendance thing, I thought that was kind of
 22 wrong for them not to let me use a vacation day.
 23 Q Why do you think that?
 24 A Now that they suddenly explained it to me where I could
 25 actually use the vacation day, when before they said that

Page 183

1 retaliation?
 2 A I remember some people actually getting a vacation day after
 3 the fact to use against their absence so they won't fall into
 4 that category.
 5 Q After the new handbook came out?
 6 A I'm pretty sure.
 7 Q Who?
 8 A I can't remember any names right now. Maybe Anthony Hickey
 9 and possibly Randy Wicks or Jim Dewater(ph). I'm not saying
 10 they did, but I'm saying those are the possibilities.
 11 Q Okay. So if attendance records show that after the new
 12 handbook came out this vacation issue that you referenced did
 13 not occur, would you still think that you were retaliated
 14 against in the way that you were treated in not being allowed
 15 to use a vacation day?
 16 A I don't think so, but I'm pretty sure that other people did
 17 this.
 18 Q Okay. So it's really a question of --
 19 A But I knew at that time people that did it and I knew their
 20 names and everything.
 21 Q After the new handbook came out?
 22 A I'm pretty sure.
 23 Q Okay. Can you remember any other specific names for me of
 24 people that you think were treated differently under the new
 25 handbook than you were treated with respect to attendance?

Page 182

1 there was no way that I would be able to use a vacation day --
 2 Q Okay.
 3 A -- for being sick.
 4 Q You had been proceeding under that understanding from the
 5 beginning of your employment, correct? That you would not be
 6 able to use a vacation day for an absence, right?
 7 A Well, when the new handbook had come out, from then on.
 8 Q Okay. Prior to that, did you have the understanding that you
 9 could use a vacation day for an absence?
 10 A Yes.
 11 Q Okay. But you had absences previously that were treated the
 12 same way this one was treated, correct?
 13 A Yes.
 14 Q Okay. So you had absences. You had an absence in November
 15 that was treated the same way?
 16 A Uh-huh.
 17 Q Do you have any evidence or information that there was a
 18 general practice of allowing other people to use vacation days
 19 for absences similar to yours?
 20 A I don't remember anything that comes to my head right away.
 21 But Joe said that I probably should have used a vacation day
 22 and then I told him that we weren't able to anymore.
 23 Q Okay. So if other employees were treated the same way that
 24 you were treated about the use of vacation days, would you
 25 still think that that was an act of discrimination or

Page 184

1 A. Not off the top of my head.
 2 Q Okay. Going to the page in Exhibit 14, 8, this is the -- it
 3 should begin with an entry for December 4th, 2008. This is
 4 the document that duplicates the earlier e-mail and adds an
 5 entry for the 29th, correct?
 6 A Correct.
 7 Q Did you document what you felt was any act of harassment,
 8 sexual harassment, discrimination, or retaliation you felt you
 9 were experiencing in this document?
 10 A Yes.
 11 Q Okay. So to the extent there was any sexual harassment by
 12 Tonya Colburn, you would have documented it here, in addition
 13 to what we've already had gone over in Exhibit Number 1.
 14 correct?
 15 A Unless it was just, like, a passersby thing.
 16 Q Okay. But anything significant, you would have included it in
 17 this document or in Exhibit 1, correct?
 18 A Most likely.
 19 Q And the entry for January 21 on this document is at least
 20 partially duplicated by your handwritten notes, is that
 21 correct?
 22 A Yes.
 23 Q That are also in this exhibit?
 24 A Yes.
 25 Q Okay. With reference to Rick Short, if Isringhausen records

26 (Pages 181 to 184)

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1 Q. Any knowledge of any charges by any such individuals with
 2 MIOSHA?
 3 A. Not to my knowledge.
 4 Q. Any knowledge of any internal complaints of harassment or
 5 discrimination by any of those people?
 6 A. Not to my knowledge.
 7 Q. Okay. And as far as being overworked, how long did this go
 8 on?
 9 A. A really long time.
 10 Q. Okay. When did it start?
 11 A. I don't know. It just progressively got worse.
 12 Q. Okay. But you said it went on for a really long time. Was it
 13 that way when you were the warehouse supervisor?
 14 A. Oh, no.
 15 Q. Okay.
 16 A. No. I mean, kind of.
 17 Q. Kind of?
 18 A. Kind of.
 19 Q. Was it that -- let me just try to put this into some time
 20 frame. Was it that way when you first raised your concerns
 21 that Geoff Jones treated you unfairly?
 22 A. Yes.
 23 Q. So that was in the '07 time frame?
 24 A. Yeah.
 25 Q. Okay. And just to be clear, what did you feel Geoff Jones was

1 A. Yes.
 2 Q. Geoff got very angry and came up and got in your face about
 3 that sometime in the '07 time frame?
 4 A. Correct.
 5 Q. And within that time frame, you were already of -- it was your
 6 perception that Barb was already showing -- or there were
 7 certain people, including yourself, that were already being
 8 overworked and the favorites were not being overworked?
 9 A. Right.
 10 Q. Okay. And when I say the favorites, I'm talking about the
 11 people that you referenced earlier, Geoff Jones, Joe
 12 Reinheimer, Randy Wicks, Gary Shaffmaster, those folks?
 13 A. Gary wasn't even there yet, but, yeah.
 14 Q. Okay. And at that time you and the other people that you
 15 identified were among the people that were being overworked?
 16 A. Yes.
 17 Q. Okay. And that just continued?
 18 A. Yes.
 19 Q. Okay. Any other times that you complained to Barb that you
 20 felt you were being retaliated against?
 21 A. I wouldn't.
 22 Q. Okay. So you didn't?
 23 A. No.
 24 Q. Any other members of management that you went to to say you
 25 felt you were being retaliated against about anything?

1 treating you unfairly about?
 2 A. When he came over and caught me when I was alone in the
 3 warehouse and then he came over and got literally four inches
 4 away from my face and yelled in my face.
 5 Q. About what?
 6 A. About going over his head and talking to Barb about Geoff and
 7 that he is --
 8 Q. I'm sorry. About Geoff who?
 9 A. Geoff Jones.
 10 Q. So Geoff came and got in your face about going over his head
 11 and talking to Barb about him?
 12 A. Yes.
 13 Q. This was in the '07 time frame?
 14 A. Yes.
 15 Q. And what had you gone to Barb to talk about with respect to
 16 Geoff?
 17 A. Because he was not making sure that the lines were helping
 18 clean up and making sure -- the shipping and receiving guys
 19 didn't have as much to do as we did and he wasn't allowing
 20 them to help us in the warehouse when they had an extra hand
 21 or an extra second. Just basic petty stuff.
 22 Q. Okay. So you had gone to Barb initially to say, "Geoff is not
 23 making sure that people are helping each other out in the
 24 warehouse and he's letting some people do less work" and
 25 things like that?

1 A. Not really.
 2 Q. Okay.
 3 A. Not to my knowledge anyway. I mean, I may have said something
 4 to some other managers, but --
 5 Q. You don't have any specific recollection?
 6 A. Yeah. Exactly.
 7 Q. So you don't have any specific recollection of going to any
 8 other member of management to complain that you were being
 9 retaliated against?
 10 A. Correct.
 11 Q. Do you have any recollection of going to Barb or any other
 12 member of management to claim that you were being
 13 discriminated against?
 14 A. Kind of the same instance there.
 15 Q. The favorites, not favorites, sort of thing?
 16 A. Yeah.
 17 Q. You would call that a complaint of discrimination?
 18 A. Yes.
 19 Q. Okay. The favorites were males, right?
 20 A. Yes.
 21 Q. And the nonfavorites were males, right?
 22 A. Yes.
 23 Q. And this started --
 24 A. For the most part.
 25 Q. Okay. There were some females among the nonfavorites?

30 (Pages 197 to 200)

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Page 205

1 incident, correct?
 2 A. It's possible.
 3 Q. Okay. So it's not necessarily a result of any knowledge of
 4 any MIOSHA complaint?
 5 A. Right.
 6 Q. Okay. Did you express to Joe Reinheimer that you wanted to
 7 have your three-day suspension so you could look for another
 8 job?
 9 A. I told him that that's exactly what I would do on my three-day
 10 suspension if they were going to give me one.
 11 Q. Did you want to look for another job at that point?
 12 A. I was already looking for another job at that point. But, I
 13 mean, I wasn't really expecting to find one, either. But you
 14 always look for better.
 15 Q. Where were you looking?
 16 A. Just half-heartedly. Just wherever. If somebody asked me or
 17 told me that, "Hey, this is a really good place to work, see
 18 if you can get in there."
 19 Q. So maybe following up on some word of mouth --
 20 A. Sure.
 21 Q. -- information? Okay. Now, ultimately your employment with
 22 Isringhausen ended, correct?
 23 A. Yes.
 24 Q. Was that January 29th?
 25 A. Correct.

Page 207

1 A. I was really mad and that's about the only thing I could come
 2 up with.
 3 Q. Okay. At that point other people that were in the warehouse
 4 department included Bill King, right?
 5 A. Right.
 6 Q. Do you have any idea what Bill King's seniority is?
 7 A. Something like ten years.
 8 Q. Okay. Was there anybody else working in the warehouse at that
 9 time?
 10 A. No. Not at that moment in time.
 11 Q. Okay. What do you mean by that?
 12 A. I mean, Lloyd Palar was working in the warehouse up until less
 13 than a month ago, prior to that anyway, and he had just gotten
 14 terminated. So did Tonya Colburn. And immediately after I
 15 was terminated, they moved Elliott Brewer into the warehouse
 16 department from the production department.
 17 Q. Do you know if there was -- if Bill King moved out of the
 18 warehouse department at that same time?
 19 A. Not at that same time.
 20 Q. If company records show that it was the same time, would you
 21 have any reason to dispute that?
 22 A. No.
 23 Q. And do you have any information concerning Elliott Brewer's
 24 seniority?
 25 A. Yeah. He had almost none.

Page 206

1 Q. Who communicated that decision to you?
 2 A. Barb Vroman.
 3 Q. Was anybody else there?
 4 A. Joe Reinheimer.
 5 Q. What time of day did that happen?
 6 A. Towards the end.
 7 Q. Okay. Did they call you into Barb's office or something?
 8 A. Joe came and got me.
 9 Q. Okay. What happened?
 10 A. He came -- yeah, he came to me when I was loading a rack and
 11 he said, "Hey, I got to talk to you in Barb's office real
 12 quick." And I said, "Okay. Let me put this up real quick."
 13 And he was like, "No, it can wait." So then we went into
 14 Barb's office. And on the way there I told Joe, "I'm probably
 15 going to get fired, huh?" And he couldn't answer that because
 16 that's exactly the reason why I was getting walked in there
 17 And then Barb gave me my termination notice.
 18 Q. Okay. Did she say anything to you?
 19 A. Yes. She said, "Due to economic hardships, we have to lay
 20 someone off in every department." And that since I was now
 21 the lowest seniority in the warehousing department that it was
 22 me that got let go is what she said.
 23 Q. Okay. Did you respond in any way?
 24 A. I think I told her, "Thank you."
 25 Q. Why?

Page 208

1 Q. Okay. Do you know what year he started in or anything like
 2 that?
 3 A. I think he started in '08.
 4 Q. Okay. If company records showed that happened in late
 5 February of '09, would you have any reason to dispute that?
 6 A. What?
 7 MR. PIPER: Objection, vagueness.
 8 BY MS. SETTERINGTON:
 9 Q. If company records showed that Elliott Brewer's movement to a
 10 material handler position happened in late February of 2009,
 11 would you have any reason to dispute that?
 12 A. No.
 13 Q. Okay. Do you have any knowledge or information as to the
 14 reasons for any such move between Elliott Brewer and Bill
 15 King?
 16 A. Because Joe Reinheimer didn't mind the way Elliott put freight
 17 away and tagged things and that kind of stuff. And Bill King
 18 was posted -- Bill King signed the bid for the material
 19 handler/line feeder position.
 20 Q. Okay. So sometime after your termination occurred, Bill King
 21 moves out of the warehouse and Elliott Brewer moves in. But
 22 they didn't bring any new body in as a material handler, to
 23 your knowledge, correct?
 24 A. To my knowledge
 25 Q. Not to your knowledge?

32 (Pages 205 to 208)

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Page 209

1 A. Right.

2 Q. Okay. And that move resulted in part from Bill King posting

3 to a position for a line feeder position, right?

4 A. Right.

5 Q. Do you have any evidence or information that any other

6 employees were moved to other departments in order to avoid

7 having them be laid off in connection with the January 29th,

8 2009 reduction?

9 A. No, but I have seen them move people so they were saved.

10 Q. Did you see that in connection with the January 29th, 2009

11 layoff decision?

12 A. No.

13 Q. Okay. So you can't cite for me any example of somebody who

14 at the time that you were laid off was moved so that they

15 wouldn't have to be laid off?

16 A. No.

17 Q. Okay. And do you know whether anybody else besides yourself

18 was laid off on January 29th?

19 A. There were quite a few people.

20 Q. Okay. All right. So there were several others?

21 A. Yeah.

22 Q. Okay. From various departments?

23 A. Yes.

24 Q. Okay. Why do you think -- I take it you maintain that your

25 layoff was an act of discrimination or retaliation, is that

Page 210

1 correct?

2 A. Yes.

3 Q. Do you maintain that it was discriminatory?

4 A. Yes.

5 Q. On what basis?

6 A. On the basis that they really just wanted to get rid of me.

7 They had already laid people off more than enough to

8 compensate for their wages in the warehouse department

9 cut-back previous to my layoff or termination.

10 Q. So that's an act of discrimination. On what basis do you

11 think you were discriminated against?

12 A. I could do any other job out there, including shipping,

13 receiving, service, and the line feeder job and the warehouse

14 manager, or not manager, but warehouse supervisor and any job

15 in the warehouse. And they kept a person I trained in

16 service, a temp, that I trained in the shipping department.

17 Q. I want to make sure you're understanding my question, though.

18 Let me ask you, what do you mean when you say discriminate or

19 discriminated against?

20 A. They kept people above me. Not above me, of course. They

21 treated me worse than they treated others.

22 Q. Okay. So discrimination to you just means, "I was treated

23 worse than some other people"?

24 A. Well, not really that simply, but, yes.

25 Q. Well, I want to understand how you're using the word.

Page 211

1 A. Discriminating? I was wronged beyond what I should have been.

2 I mean, nobody should be treated like they're absolutely

3 worthless and they do a lot of work regardless of that.

4 And --

5 Q. Did you -- I'm sorry. Go ahead and finish your answer.

6 A. And they treated a lot of people a lot better.

7 Q. Okay. Have you ever heard the words at will employment?

8 A. Yes.

9 Q. Did you understand that your employment with Isringhausen was

10 at will?

11 A. Yes.

12 Q. Okay. Do you believe that you were treated worse than other

13 people because you are a man?

14 A. Not just because I was a man.

15 Q. Okay. I mean, do you believe that you were laid off because

16 of your gender?

17 A. No.

18 Q. All right. Do you believe that you were laid off or

19 discriminated against or treated unfairly because of your

20 age?

21 A. No.

22 Q. Okay. Do you have any understanding or belief as to why it

23 was that you were treated worse than other people? Was it the

24 favoritism?

25 A. A lot of it had to do with the favoritism, yes, because Geoff

Page 212

1 Jones didn't like me at all.

2 Q. Okay. So at least in part you believe that you were treated

3 unfairly because of the favoritism that we've discussed

4 earlier that you experienced from Geoff Jones and Barb Vroman

5 going back to 2007?

6 A. And Joe Reinheimer.

7 Q. Yes. Going back to 2007?

8 A. Well, he wasn't back then, but, yeah.

9 Q. When did you first start experiencing favoritism or the lack

10 of favoritism by Joe Reinheimer? Was that pretty soon after

11 he got there?

12 A. No. That was pretty soon after Tonya got there. Because

13 before that it was all buddy, buddy, nicey, nicey type thing.

14 Q. Okay. So we're trying to flesh out on what basis you believe

15 you were discriminated against, and you believe a lot of it

16 was you were discriminated against due to this favoritism.

17 Anything else in terms of being discriminated against?

18 A. Well, the sexual discrimination because of Joe Reinheimer.

19 Q. And explain to me what you mean by that.

20 A. When we went to him and told him that she was talking about

21 sex nonstop, constantly, he told us that we need to leave her

22 alone and that we were in the wrong and she was fine. "Just

23 don't talk to her about that kind of stuff and just do your

24 job and keep doing your job better than what you can."

25 Q. Okay. So you believe -- and do you believe that you were

33 (Pages 209 to 212)

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Page 213

1 treated that way because you were a man?

2 A. I think we were all treated that way because we were men and

3 she was a woman.

4 Q. Okay. So with respect to how everybody is supposed to respond

5 to Tonya Colburn, you think that you were discriminated

6 against because you were a man by Joe Reinheimer?

7 A. Yes.

8 Q. With respect to your layoff, though, you don't believe that

9 happened because you're a man?

10 A. I think a lot of the previous encounters with management and

11 the complaints and all that kind of stuff have a lot to do

12 with my termination.

13 Q. Okay. And I want to talk with you about that. The way that I

14 use these words -- I want to talk with you about retaliation.

15 And retaliation, as I'm going to use it when I'm talking with

16 you, is someone takes bad action against you because of prior

17 protected activity or complaints that you've made. That's

18 what I mean when I say retaliation. And I do want to talk to

19 you about that, but I want to first make sure I understand any

20 and all bases that you believe you were discriminated against,

21 which I use to mean you've been treated more poorly than

22 others on the basis of a protected characteristic, like your

23 race, your gender, your age, things like that. Okay?

24 A. Right.

25 Q. So we'll talk about retaliation. But have we talked about the

Page 214

1 discrimination that you felt you suffered? You felt that

2 the way you were told to respond to Tonya Colburn was

3 discriminatory against you?

4 A. Correct.

5 Q. Any other ways that you felt that you were discriminated

6 against on the basis of your gender?

7 A. Not against my gender.

8 Q. Okay. Now, I presume that you feel your layoff was

9 retaliatory?

10 A. Yes.

11 Q. Okay. What do you think you were being retaliated against

12 about?

13 A. First of all, retaliation against the MDCR letter and the

14 MIOSHA and the EEOC.

15 Q. Okay.

16 A. And also complaining about other management and, of course,

17 making a lot of hardships on management because I'm

18 complaining about management, of course. And it just stirs up

19 a lot of hostility when everybody in management is so close.

20 Q. Okay. So when you say complaining about other management, are

21 you talking about the favoritism issue that you've mentioned

22 earlier?

23 A. Yes.

24 Q. So there's the complaining about favoritism, which is a

25 long-standing issue, correct?

Page 215

1 A. Yes.

2 Q. And you think that played a part in the decision to let you

3 go?

4 A. Yes.

5 Q. But you also believe that your activities with the MDCR, with

6 the MIOSHA, and with the EEOC played a part in the decision to

7 lay you off?

8 A. Very much so, yes.

9 Q. Barb did not tell you that your layoff had anything to do with

10 any of those activities, correct?

11 A. No.

12 Q. She never told you that the company was taking any action

13 against you because of your activity with the MDCR, MIOSHA, or

14 the EEOC, correct?

15 A. Correct.

16 Q. Joe Reinheimer never told you that there was action being

17 taken against you because of that activity either, correct?

18 A. Correct.

19 Q. No member of management from Isringhausen ever told you that

20 you were receiving personnel action or being laid off because

21 of your activities with the MDCR or MIOSHA or EEOC, correct?

22 A. Correct.

23 Q. Bill King had also engaged in activities with the MDCR and

24 EEOC, correct?

25 A. Yes.

Page 216

1 Q. And he was not laid off, right?

2 A. Correct.

3 Q. There were other people that were laid off that, to your

4 knowledge -- well, do you know who else was laid off?

5 A. I know a good portion of them.

6 Q. Tell me who you know.

7 A. I know that Randy Wicks was eventually laid off. Tom Guerna.

8 Who else?

9 (Short pause)

10 The quality lady. I can't remember what her name

11 is. There were quite a few.

12 Q. Okay. Anybody that you're aware of among those that got laid

13 off that had previously filed an MDCR, EEOC, or MIOSHA

14 complaint besides yourself?

15 A. No. Not to my knowledge anyway.

16 Q. Okay. So based on your knowledge, there were other people

17 that received the same action you did even though they hadn't

18 engaged in protected activity, correct?

19 A. Correct.

20 MS. SETTERINGTON: Okay. Could I have you mark an

21 exhibit for me?

22 (Exhibit No. 23 marked for identification.)

23 BY MS. SETTERINGTON:

24 Q. Okay. Mr. Carruthers, I'm going to show you what we've marked

25 as Exhibit 23 to your deposition.

34 (Pages 213 to 216)

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1 Q. Now, you testified in your earlier deposition that you were a
 2 seat picker, and I just want to be clear that that was
 3 officially within the material handler job classification, is
 4 that right?
 5 A. Yes.
 6 Q. And going way back to your employment application that I asked
 7 you about last time, when you filled that out, did anyone give
 8 you any instructions for filling that out aside from having
 9 you read the application and complete it?
 10 A. I don't think so.
 11 Q. Do you know one way or the other whether your job title was
 12 ever formally changed to warehouse supervisor during that time
 13 that you filled that role when Bill King was transferred? Do
 14 you know whether there was a formal official job change for
 15 you or not?
 16 A. Yes.
 17 Q. Okay. There was an official change to your job title?
 18 A. There was.
 19 Q. Okay. Were you provided any documentation of that?
 20 A. Yes.
 21 Q. Okay. And I want to be clear. Not just talking about a pay
 22 increase, but an actual change in your job title?
 23 A. Yes.
 24 Q. After that period of time when you were the warehouse
 25 supervisor, you did receive some disciplinary action from

1 Q. Okay. Now, when you were in the meeting with Barb Vroman
 2 where she informed you that you were being laid off, she
 3 didn't say anything about that decision being based on
 4 qualifications, did she?
 5 A. No, she did not say.
 6 Q. She said it was based on your seniority within the warehouse
 7 department, correct?
 8 A. That's what she said.
 9 Q. Now, the practice was that it was the warehouse department's
 10 responsibility to fill out logs for the forklifts, is that
 11 correct?
 12 A. It was everybody's responsibility to fill out a forklift log
 13 that unhooked a forklift.
 14 Q. Was that instruction in any writing anywhere as far as you
 15 know?
 16 A. I'm pretty sure.
 17 Q. Where?
 18 A. I don't remember exactly where.
 19 Q. Do you remember how that was communicated to you, that it was
 20 everybody's responsibility who unhooked a forklift to fill out
 21 the log?
 22 A. I know that Barb was very, very adamant about it.
 23 Q. At what time was she very, very adamant about it?
 24 A. Once she finally figured out that we weren't actually filling
 25 out a forklift log.

1 Isringhausen, correct?
 2 A. Regarding?
 3 Q. You received a write-up for picking the wrong headrest or
 4 something like that, correct?
 5 A. Yes.
 6 Q. And some attendance discipline, correct?
 7 A. Possibly.
 8 Q. And the forklift log discipline came after that as well,
 9 correct?
 10 A. Yes.
 11 Q. Prior to working at Isringhausen, have you ever held any job
 12 where you worked in a managerial capacity?
 13 A. No.
 14 Q. Ever held a job as a supervisor before?
 15 A. No.
 16 Q. Okay. Mr. Palar and Mr. King were the other warehouse
 17 employees in December of 2008 aside from yourself, right?
 18 A. And Tonya Colburn.
 19 Q. And Tonya Colburn. Okay. But as of December 18 when you
 20 received the write-up for the forklift log, you and Mr. Palar
 21 and Mr. King were the warehouse employees, correct?
 22 A. Yeah.
 23 Q. And all three of you received the write-up regarding the logs,
 24 correct?
 25 A. Yes.

1 Q. What words did she use to communicate that to you, as best you
 2 can recall?
 3 A. As best as I can recall is, "If you unhook the forklift, you
 4 fill out the log in the morning."
 5 Q. Okay.
 6 A. "And you need to check it and inspect it and write down any
 7 notations that need to be made."
 8 Q. She said that to you?
 9 A. To everybody. I mean, to me specifically, yes, but she said
 10 it to Bill, to Loyd, to everybody.
 11 Q. Okay. So she said it to Bill, she said it to Loyd, she said
 12 it to you. Did you personally observe her say it to anybody
 13 else?
 14 A. I didn't personally observe her say it to anybody else.
 15 Q. Now, you never told anyone at Isringhausen or any manager at
 16 Isringhausen that you were driving in violation of your
 17 suspended license, did you?
 18 A. Did I what?
 19 Q. Did you tell anyone that you were driving in violation of your
 20 suspended license?
 21 MR. PIPER: Objection, asked and answered.
 22 THE WITNESS: Yeah.
 23 BY MS. SETTERINGTON:
 24 Q. You told people that you had a suspended license, but did you
 25 tell them that you were driving?

40 (Pages 237 to 240)

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