

IN THE SUPREME COURT OF NEVADA

NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION, and)
NEVADA STAR CAB)
CORPORATION')

Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)

Respondents,)

and)

CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)
Real Parties in Interest.)

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PETITIONERS' REPLY APPENDIX - Volume I

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DEPOSITION OF KEITH SAKELHIDE.....PA0001-0373



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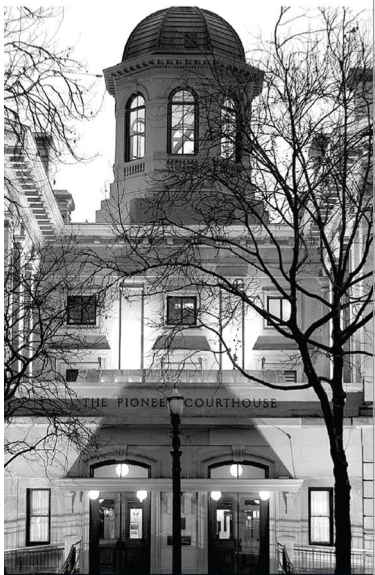
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DISTRICT COURT
CLARK COUNTY, NEVADA

CHRISTOPHER THOMAS, and
CHRISTOPHER CRAIG,
Individually and on
behalf of others
similarly situated,

Plaintiffs,

vs

NEVADA YELLOW CAB
CORPORATION, NEVADA
CHECKER CAB
CORPORATION, and NEVADA
STAR CAB CORPORATION,

Defendants.



Case No: A-12-661726-C

DEPOSITION OF

KEITH SAKELHIDE

TAKEN ON
WEDNESDAY, NOVEMBER 15, 2017
9:03 A.M.

SPRINGHILL SUITES - BOARDROOM
223 FEDERAL STREET
PITTSBURG, PENNSYLVANIA 15212

PA0001

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DEPOSITION OF
KEITH SAKELHIDE

TAKEN ON

WEDNESDAY, NOVEMBER 15, 2017

9:03 A.M.

THE VIDEOGRAPHER: We are on the record.

The date is Wednesday, November 15, 2017. The time is officially 9:03 a.m. Eastern Standard Time.

This is the beginning of the deposition of Keith Sakelhide. This is in the matter of Christopher Thomas and Christopher Craig versus Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation.

Deposition location is SpringHill Suites by Marriott, 223 Federal Street, Pittsburgh, PA 15212. This is recording on SD Media No. 1.

Will counsel please introduce yourselves and state whom you represent.

MR. BOTROS: Tamer Botros on behalf of Defendants, Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation.

MR. MOAS: Royi Moas on behalf of Plaintiffs and the Class.

1 **THE VIDEOGRAPHER:** The court reporter
2 will now swear in the witness.

3 **KEITH SAKELHIDE**, a witness herein, having been first
4 duly sworn, was examined and testified as follows:

5 **EXAMINATION**

6 **BY MR. BOTROS:**

7 **Q.** Good morning.

8 **A.** Good morning.

9 **Q.** Could you please state your full name for
10 the record?

11 **A.** Keith Sakelhide, S-A-K-E-L-H-I-D-E.

12 **Q.** Do you have a middle name?

13 **A.** Anthony.

14 **Q.** Can you spell that?

15 **A.** A-N-T-H-O-N-Y.

16 **Q.** Commissioner Sakelhide, have you ever had
17 your deposition taken before or testified in court?

18 **A.** I have never had a deposition taken.

19 **Q.** Okay. Since this is the first time that
20 you've ever had your deposition taken, Commissioner,
21 I would like to go through some ground rules for
22 today kind of to help educate you on the process so
23 we're all on the same page.

24 Is that okay?

25 **A.** I have taken depositions before.

1 Q. Oh, you have conducted them?

2 A. But I have never been subject to a
3 deposition.

4 Q. Excellent. We'll get into that in terms
5 of your career, but my question is not necessarily
6 conducting them but actually being subjected to
7 questions.

8 A. Of course.

9 Q. And answering those questions under oath
10 in front of a court reporter with another attorney
11 or other attorneys in the office.

12 A. Of course. Go right ahead.

13 Q. Commissioner Sakelhide, the oath you have
14 taken is the same one you would take in a court of
15 law in front of a judge. It basically means you
16 have to tell the truth under penalty of perjury.

17 Do you understand that?

18 A. Of course.

19 Q. The court reporter is taking down
20 everything that any of us says, and at some point in
21 the future you will have an opportunity to make any
22 changes to your deposition.

23 You need to be aware that if you make any
24 substantive or material changes versus something
25 grammatical or spelling error, that I will have an

1 opportunity to point that out at trial and it could
2 reflect on your credibility as a witness in this
3 case.

4 Do you understand that?

5 A. Yes, I do.

6 Q. It's similarly important that you speak
7 out loud in terms of your answers. A lot of times
8 when we have discussions, we, especially myself, we
9 tend to use non-verbal communications; hand
10 gestures, a nod of the head. It doesn't translate
11 well on the transcript.

12 So if from time to time I say, is that a
13 yes, is that a no, I'm not trying to be rude or
14 annoying in any way, Commissioner, it's basically to
15 establish a clean record so at trial we have your
16 testimony that is clear from that respect.

17 Do you understand that?

18 A. Yes, I do.

19 Q. At any time if you don't understand a
20 particular question that I ask, please ask that, you
21 know, for me to rephrase it so you do understand.

22 Do you understand that?

23 A. Yes, sir.

24 Q. If I ask you a question and you answer
25 that question, Commissioner, I will assume you

1 understood the question.

2 Do you understand that?

3 A. Yes, I do.

4 Q. If at any time you need to take a break, I
5 may also need to take a break or opposing counsel,
6 just ask that you go ahead and take that break, you
7 know, and we'll go ahead and go off the record and
8 take it.

9 I ask, Commissioner, that if I've asked
10 you a pending question, if there is a question
11 pending, that you answer that question before we
12 take a break.

13 Do you understand that?

14 A. Yes, I do.

15 Q. If any time opposing counsel objects to
16 any question I ask, please allow him to -- stop,
17 allow him to make objection on the record, and then
18 you may answer the question.

19 Do you understand that?

20 A. Yes, I do.

21 Q. Just because opposing counsel or even
22 myself, if he is questioning you, make an objection,
23 you still must answer each and every question in
24 this deposition.

25 Do you understand that?

1 A. Yes, I do.

2 Q. From time to time I may ask you about your
3 best estimate, your best recollection, again, about
4 things that happened in the past. I am entitled --
5 I don't want you to guess at this deposition,
6 Commissioner. However, I am entitled to your best
7 estimate.

8 Do you understand that?

9 A. Yes, I do.

10 Q. Okay. In terms of this deposition, I want
11 to know are you on any type of medication or are you
12 suffering from any condition that would make it
13 difficult for you to testify here today truthfully
14 in this proceeding?

15 A. No.

16 Q. I just want to get a little bit of
17 background before we get into some of the questions
18 substantively.

19 Where were you born?

20 A. I was born in Pittsburgh, Pennsylvania.

21 Q. Hometown?

22 A. Yes. That's right.

23 Q. Since we're here in Pittsburgh. Okay.
24 What is your date of birth?

25 A. 5/28/53.

1 Q. What is your current address?

2 A. 625 Stanwix Street, Pittsburgh,
3 Pennsylvania 15222.

4 Q. Within the next approximately six to seven
5 months, Commissioner, do you have any intention or
6 plans on moving from that particular address in
7 Pittsburgh, Pennsylvania?

8 A. My wife and I will probably be buying a
9 house in the spring.

10 Q. When you say "in the spring," are you
11 talking about 2018?

12 A. 2018, yes.

13 Q. And when you say "spring," approximately
14 what month are you talking about?

15 A. Probably April or May.

16 Q. April or May. And hence your address will
17 change?

18 A. Yes, it will.

19 Q. Which state?

20 A. It will still be in Pennsylvania.

21 Q. Pittsburgh?

22 A. Yes.

23 Q. This trial is scheduled to take place as
24 it stands right now in February, February 5, 2018.
25 Do you anticipate that around that timeframe that

1 **you will be moving to a different address?**

2 A. No. We will be at the same address.

3 **Q. Okay. If for some reason there is any**
4 **type of a continuance of trial or for whatever**
5 **reason it moves, I would like to maintain contact**
6 **with you in case you do move and we need to get a**
7 **hold of you for trial subpoena.**

8 **You understand that?**

9 A. Yes, I do.

10 **Q. Okay. Excellent. Where did you graduate**
11 **from high school?**

12 A. I graduated from Richland High School.

13 **Q. In Pittsburgh?**

14 A. Yes. In Gibsonia, Pennsylvania, just
15 north of Pittsburgh.

16 **Q. What year?**

17 A. 1972.

18 **Q. After graduating from high school, where**
19 **did you go to college?**

20 A. I started off at Duquesne University.

21 **Q. Where is that located?**

22 A. That's in Pittsburgh, Pennsylvania.

23 **Q. What was your undergrad?**

24 A. I received my undergraduate degree from
25 the City University of New York.

1 Q. Okay. What was the degree?

2 A. Oh, my degree was in government and public
3 administration.

4 Q. So you got your B.A. from City University
5 in New York?

6 A. Yes.

7 Q. Public?

8 A. Government and public administration.

9 Q. After you obtained that, did you go for
10 any other schooling, advanced degree education?

11 A. I received my law degree from Hofstra
12 University.

13 Q. Approximately when did you --

14 A. 1982.

15 Q. Thank you, Commissioner.

16 Did you obtain a law license in the State
17 of Pennsylvania?

18 A. Yes. State of Pennsylvania and the
19 District of Columbia.

20 Q. Did you practice law in the State of
21 Pennsylvania?

22 A. Yes, I did.

23 Q. How many years?

24 A. I practiced law in Pennsylvania for about
25 seven years.

1 Q. In what field?

2 A. I was a legal service attorney.

3 Q. What do you mean by that?

4 A. Well, I worked for Laurel Legal Services.

5 They provide legal services to low- income residents
6 in four counties in Western Pennsylvania.

7 Q. So it's a public interest --

8 A. Yes.

9 Q. -- type of a legal field?

10 A. Exactly.

11 Q. And you did that for, approximately, seven
12 years?

13 A. Approximately seven years.

14 Q. Here in Pennsylvania?

15 A. Yes.

16 Q. After those seven years, Commissioner,
17 what did you do in terms of your legal career?

18 A. Well, before I practiced law in
19 Pennsylvania, I practiced law in the District of
20 Columbia. I worked for the justice department for
21 just over a year, and then I worked on Capitol Hill
22 for just under six years.

23 Q. When you mean the justice department,
24 you're talking about the United States Department of
25 Justice; right?

1 A. Yes, I do.

2 Q. What division were you in?

3 A. I was in the Civil Division, Federal
4 programs branch.

5 Q. What was your primary duties in the Civil
6 Division of the U.S. Justice Department?

7 A. Actually, it was a clerkship right out of
8 law school. So, basically, it was a, it was to be a
9 two-year period. I left before the two-year period
10 was up. I was offered a position on Capitol Hill.

11 Q. In D.C.?

12 A. Yes, in D.C.

13 Q. What was that position you were offered in
14 Capitol Hill?

15 A. That was with the American Law Division of
16 the Congressional Research Service.

17 Q. Say that one more time.

18 A. The American Law Division of the
19 Congressional Research Service. The CRS is a
20 division of the Congress.

21 Q. What were your duties there on Capitol
22 Hill?

23 A. I was a legislative analyst primarily
24 assigned to work with the judiciary committees.

25 Q. So as a legislative analyst working with

1 the judiciary committees, and we'll get into that in
2 a little bit, explain to me what a legislative
3 analyst with your significant legal education and
4 background and training would do on Capitol Hill?

5 A. Well, several things. Primarily, we would
6 evaluate proposed legislation, and what we did was
7 provide non-partisan analysis of proposed
8 legislation. We would do compare and contrast with
9 either competing or similar proposed legislation or
10 prior legislation.

11 Q. So you would evaluate?

12 A. We would do an assessment analysis of any
13 proposed legislation within our subject area. My
14 subject area were primarily legislation that would
15 come before the judiciary committees.

16 Q. Did that -- was that limited to the United
17 States House or the Senate or both?

18 A. Both.

19 Q. Did that involve, and I might be incorrect
20 in terms of terminology, and, Commissioner, please
21 correct me, Constitutional interpretation?

22 A. In a limited sense, it would, with regard
23 to identifying any issues that may be inconsistent
24 with a Constitutional provision.

25 Q. Okay.

1 A. It would be rare that that would happen.

2 Q. What about statutory provisions where you
3 are, meaning proposed, looking at how it would be
4 interpreted subject to current laws?

5 A. We would do analysis of how it may have
6 been impacted by case law, if there was a staff --
7 if there was a -- very often a piece of proposed
8 legislation would be initiated because of an action
9 or decision by either the United States Supreme
10 Court or a Federal District Court.

11 So, again, that would be a part of, a
12 small part of the analysis that that was triggered
13 by the decision of --

14 Q. Your analysis, who would you give it to?

15 A. Well, our analyses were published in the
16 Congressional Record.

17 Q. Okay. The Federal Registry?

18 A. No, Congressional Record.

19 Q. Congressional Record, okay. And you would
20 also be working closely with the respective
21 judiciary committees, whether it's the House or the
22 Senate, pertaining to that analysis?

23 A. There would be times we would. Most of
24 the analysis we did was in isolation. There would
25 be times that we would be maybe detailed to work

1 more closely with a legislative committee.

2 **Q. Have you ever been asked to brief**
3 **congressional staff or Senate staffers on proposed**
4 **statutes for amendments being made on competing**
5 **legislation?**

6 A. Well, part of what we did for each
7 Congress, we would participate in a program that was
8 called emerging issues for the, whatever Congress,
9 and it was the responsibility periodically to
10 provide that sort of training for new congressmen or
11 new staff.

12 **Q. And who would you report to?**

13 A. It was internal -- we were part of
14 Congressional Research Service, and, again, we were
15 a division called the American Law Division, had a
16 managing attorney within that division that I
17 reported to.

18 **Q. Did your opinions and/or analysis in terms**
19 **of a report, did that ever get published in the**
20 **Congressional Record?**

21 A. They were all published in the
22 Congressional Record.

23 **Q. Under your name?**

24 A. No, under the American Law Division.

25 **Q. Okay.**

1 A. Nothing under our individual names.

2 Q. Okay. So when you say under American Law
3 Division, you were one of many or several --

4 A. One of about, in my section, one of twelve
5 attorneys.

6 Q. Okay.

7 A. There were probably 36 attorneys at the
8 time for the -- in the ALD.

9 Q. So there is not one particular person's
10 name on a particular report; it's just, basically,
11 the American Law Division based on the 12 attorneys
12 who worked at the particular time?

13 A. Yeah. It was just all that was published
14 was our analysis.

15 Q. And when you say "our," you're talking
16 about you as part of the American Law Division?

17 A. Exactly. Each of us had different subject
18 areas. And, again, when a bill was introduced, that
19 bill was published in the Congressional Record.
20 Sometime later the analysis, our analysis was
21 published. So there would be a timeframe from the
22 time the bill was introduced, a lag time of perhaps,
23 depending on the size of the piece of legislation,
24 several days, weeks or months later.

25 Q. Approximately how many years were you on

1 **Capitol Hill within the American Law Division?**

2 A. A little bit over five years.

3 **Q. What did you do after that? Where did you**
4 **go?**

5 A. I went to -- my wife and I moved to
6 California and I worked the Public Defender's
7 Office.

8 **Q. Where in California?**

9 A. Riverside County.

10 **Q. Did you get your California law license?**

11 A. No, I didn't. I was able to practice on
12 my D.C. and Pennsylvania license for the time I was
13 there. And I was only there a short time, for just
14 under two years, and then my wife and I moved back
15 to Pittsburgh and I took the position with the
16 Laurel Legal Services. I was only there a short
17 time.

18 **Q. Approximately how many years,**
19 **Commissioner?**

20 A. Just under two.

21 **Q. And then you moved back to Pittsburgh?**

22 A. Right. And that was the seven years I
23 spent with the Laurel Legal Services.

24 **Q. Okay. That makes sense. I was trying to**
25 **go chronologically.**

1 A. Back and forth across the country.

2 Q. That's okay.

3 So you worked the Public Defender's
4 Office. Just briefly, what was your major duties?

5 A. Basically representing injured indigent.
6 Again, since I was only there a short time, mostly
7 during the initial stages of what are referred to as
8 the arraignments, TRCs, trial readiness conferences,
9 things like that. I did motion practice on pretrial
10 motions, argued pretrial motions.

11 Q. After you were done with the Public
12 Defender's Office in Riverside County, California,
13 you moved back to Pittsburgh, is that when you did
14 the legal services?

15 A. Yes, it is.

16 Q. For the seven years?

17 A. Yes, just under seven years.

18 Q. Did you do anything else during those
19 seven years besides working for the legal services?

20 A. No. That was a full-time job.

21 Q. Okay. For the public?

22 A. Yes.

23 Q. Representing low-income individuals?

24 A. Right. Most of what I did would fall in
25 the family law arena; child custody cases, divorce

1 cases, child support.

2 Q. After --

3 A. Those types of things.

4 Q. Thank you, Commissioner Sakelhide.

5 A. That's okay.

6 Q. That makes sense because I wanted to just
7 get a background in terms of your career.

8 After those seven years at the legal
9 services in Pittsburgh, Pennsylvania, where did you
10 go after that?

11 A. My wife and I moved to Las Vegas.

12 Q. Okay. Approximately what year would that
13 have been?

14 A. That would have been 19, let's see, 96 --
15 '97.

16 Q. Okay. Why did you and your wife move in
17 1997 to Las Vegas, Nevada?

18 A. My wife, frankly, got tired of the snow.
19 And we did a lot of moving around for me. It was
20 time that I moved around for her. So --

21 Q. Okay. So all the moving around you did
22 prior to 1997 was for your career in terms of your
23 advancement and your --

24 A. My interests.

25 Q. Legal -- of course. Okay. However, in

1 1997, the move was, correct me if I'm wrong, was
2 motivated by her interests?

3 A. Yes, it was.

4 Q. To get out of Pittsburgh?

5 A. Exactly.

6 Q. Because of the snow?

7 A. Exactly.

8 Q. And the weather?

9 A. That's right.

10 Q. Okay. I just want to be clear.

11 What is your wife's name?

12 A. Jeanette.

13 Q. How did you spell that?

14 A. J-E-A-N-E-T-T-E.

15 Q. So when you first -- before you moved in
16 1997 to Las Vegas, Nevada, did you secure a job at
17 any type of employment in Las Vegas, Nevada?

18 A. No. I secured the job as I moved there.

19 Q. Okay. So you moved there and then you
20 secured -- what was the first job you obtained when
21 you moved in 1997 to Las Vegas?

22 A. A job with SIIS, State Industrial
23 Insurance Service.

24 Q. Say that again.

25 A. SIIS, State Industrial Insurance Service.

1 Q. Oh, okay.

2 A. And I was there during the transition from
3 SIIS to ICON.

4 Q. So what were you doing for the State
5 Industrial Insurance Services in the State of
6 Nevada?

7 A. In their legal department, primarily
8 writing briefs.

9 Q. About what?

10 A. Well, these were on workers' comp actions.

11 Q. Anything else besides writing briefs on
12 workers' comp actions?

13 A. Pretty much -- well, that, then when SIIS
14 privatized, because ICON Insurance, Employees
15 Insurance Company of Nevada, I was there with what
16 was referred to as a transition team, and,
17 basically, what we did at the transition team,
18 again, this was a fairly significant part of the
19 time I was there, basically trying to, I guess,
20 create what the new ICON would be as far as what
21 types of departments were necessary and not
22 necessary, again, with my involvement primarily on
23 the legal side.

24 ICON had hearing officers, hearing
25 advocates. They had approximately a dozen -- more

1 than a dozen attorneys. So, basically, what was
2 necessary with the transition from a state agency
3 into a private entity.

4 **Q. Did any of your briefs at that time with**
5 **SIIS, you know, during that transition, ever get**
6 **published or --**

7 A. They were not published under my name.

8 **Q. Again, under the legal department of SIIS?**

9 A. Right.

10 **Q. Very similar to American Law Division and**
11 **Capitol Hill?**

12 A. Yeah.

13 **Q. Approximately how many years were you at**
14 **the State Industrial Services?**

15 A. About two and a half years.

16 **Q. And where did you go after that?**

17 A. I went to the TSA, Transportation Services
18 Authority, as their administrative attorney.

19 **Q. What were you doing as -- at the TSA as**
20 **transportation services --**

21 A. Pretty much everything, Transportation
22 Services Authority. Again, it later became the
23 Nevada Transportation Authority. There were three
24 commissioners. I was -- at that time I was,
25 basically, the in-house attorney for the Commission.

1 **Q. What were you doing as their in-house**
2 **attorney?**

3 A. I would help the commissioners conduct
4 hearings. I would write all the orders. I
5 basically interacted with the industry on behalf of
6 the Commission.

7 **Q. When you say "industry," specifically what**
8 **industry are you referring to?**

9 A. That would be the transportation industry,
10 mostly. The Transportation Services Authority had
11 responsibility for most passenger transportation in
12 the State of Nevada, not including taxicabs.
13 Taxicabs in Clark County were regulated by the TA,
14 the Taxicab Authority, but all the other passenger
15 transportation, household good movers, tow trucks
16 were regulated by the TSA.

17 **Q. How many years were you doing the -- as**
18 **administrative attorney for the Transportation**
19 **Services Authority?**

20 A. About six years.

21 **Q. After that, what did -- where did you go?**

22 A. I went to the Labor Commission. I was a
23 deputy -- hired as a deputy Labor Commissioner.

24 **Q. Okay. When you say you were hired,**
25 **Commissioner Sakelhide, I just want to be very**

1 **clear, were you appointed to that position?**

2 A. No. That position is a hired position. I
3 was hired by the Labor Commissioner. That was Mike
4 Tanchek at the time.

5 Q. Okay. So this was -- I'm just
6 establishing a foundation because you're educating
7 me on certain things that I'm not aware of. So was
8 there a job opening that was made public or
9 otherwise where you actually complete an application
10 and went through the interview process?

11 A. Yes. Exactly. It was an opening. It was
12 published on the state website. I applied for the
13 position, went through the interview process with
14 Commissioner Tanchek and the staff members and was
15 offered the position and I accepted that.

16 Q. And what year were you hired by, at the
17 time, Commissioner Tanchek, Michael Tanchek, at the
18 office of Nevada Labor Commission?

19 A. Well, if I can look at -- what I'm looking
20 at is the deposition, or actually not the
21 deposition.

22 Q. We'll get into that and that's fine. That
23 segues me in terms of our first exhibit, but -- go
24 ahead.

25 A. This is an Affidavit I prepared just to

1 get the date. It was 2007. As I recall, it was
2 late April of 2007.

3 **Q. So late April of 2007 you would have been**
4 **hired by Commissioner Tanchek as the Deputy Labor**
5 **Commissioner in the State of Nevada?**

6 A. Yes.

7 **Q. When you were hired, I want to know what**
8 **were your duties as Deputy Labor Commissioner for**
9 **the Office of Nevada Labor Commissioner --**

10 A. Okay. Well, when I was hired --

11 **Q. In Nevada.**

12 A. In Nevada. When I was hired in 2007, what
13 Commissioner Tanchek asked me to do was primarily be
14 responsible for what is referred to as prevailing
15 wage matters. These are matters that involve
16 oversight over commissioners' oversight over
17 prevailing wage projects in the State of Nevada.

18 **Q. Were you responsible for any other tasks**
19 **besides just focusing on the prevailing wage as part**
20 **of your duties and responsibilities as Deputy Labor**
21 **Commissioner?**

22 A. Initially for the first two years, I was
23 focused on just that arena.

24 **Q. Okay.**

25 A. There would be times that Commissioner

1 Tanchek would bounce some things off of me. We
2 would have discussions about things if he wanted my
3 input or my take on it. As far as any sort of like
4 regular task responsibilities, they were focused
5 really on what we refer to as 338 matters,
6 prevailing wage matters.

7 Q. And you referenced -- Commissioner, you
8 referenced your Affidavit, and I'm going to go ahead
9 and -- this is the Affidavit of Keith Sakelhide --
10 I'm going to go ahead and make sure that the court
11 reporter marks it officially in the record at this
12 deposition as Exhibit No. 1 and then we'll go over
13 it.

14 A. Of course.

15 (Deposition Exhibit No. 1 was marked for
16 identification.)

17 BY MR. BOTROS:

18 Q. Commissioner Sakelhide, what's been marked
19 as Exhibit No. 1 in front of you, at the top it says
20 Affidavit of Keith Sakelhide. Do you see that?

21 A. Yes, I do.

22 Q. Now, I just want to turn over to the
23 second page just so we have a record. There's a
24 signature. It has a signature line of Keith
25 Sakelhide. Is that your signature?

1 A. Yes, it is.

2 Q. Okay. Do you recognize this document?

3 A. Yes, I do.

4 Q. And we'll go over it so we can discuss it
5 in more detail, your Affidavit. It says here, I,
6 Keith Sakelhide, being duly sworn, states, I am the
7 former Deputy Labor Commissioner for the State of
8 Nevada of the Labor Commissioner for the Las Vegas
9 office.

10 Do you see that?

11 A. Yes.

12 Q. I served as Deputy Labor Commissioner from
13 approximately 2007 to 2013. Do you see that?

14 A. Yes, I do.

15 Q. Okay. Approximately in 2013, when did you
16 end your tenure as the Deputy Labor Commissioner in
17 Nevada?

18 A. I believe it was in December of 2013.

19 Q. And where did you go work or what did --
20 yeah, where did you go work after that?

21 A. I was hired as the Administrative Law
22 Judge for the Department of Business and Industry.

23 Q. So you were an ALJ?

24 A. Yes.

25 Q. What it's referred to?

1 A. Exactly.

2 Q. For which now?

3 A. The Department of Business and Industry.

4 Q. Okay. Were you appointed?

5 A. No. I was hired by the director of B and

6 I.

7 Q. And who was that at the time?

8 A. That was Bruce Breslow.

9 Q. And what were your duties as an
10 Administrative Law Judge?

11 A. It would be conduct hearings for all the
12 different agencies within the department.

13 Q. So you would need to be sworn in for that
14 position; correct?

15 A. Yes, I was.

16 Q. To uphold all laws, and in terms of Nevada
17 Constitution as well as United States Constitution
18 and any and all laws; correct?

19 A. Correct.

20 Q. To the best of your ability?

21 A. Correct.

22 Q. In terms of conducting hearings, what were
23 you conducting hearings -- pertaining to what
24 matters?

25 A. These were administrative hearings. It

1 would be with regard to any of the B and I
2 departments; primarily financial institutions, so
3 that would be mortgage lending, related agencies to
4 that.

5 So -- a lot of the hearings I did were --
6 I continued to do hearings from the Labor
7 Commission, Labor Commissioner hearings. I continued
8 to do those, and probably the vast majority of the
9 other hearings I did were with the mortgage lending
10 department.

11 **Q. So explain for me that when you just**
12 **testified, and correct me if I'm wrong, that you**
13 **still conducted hearings for the Labor Commission,**
14 **what do you mean by -- explain it for me.**

15 A. Well, Labor Commission is still part of
16 Business and Industry.

17 **Q. Okay.**

18 A. It's one of the agencies within that
19 department. At the time, they did not, during this
20 period of time that I was an ALJ, they did not have
21 a deputy in the Las Vegas office.

22 **Q. To replace you?**

23 A. To replace me. They did replace my
24 position, but they kept that position during this
25 period of time in Carson City. So there was a need

1 for someone to continue to conduct the hearings with
2 Labor Commissioner, so I continued to hear those
3 matters.

4 **Q. Okay. So you would hear matters as an ALJ**
5 **with respect to the Labor Commission. What --**
6 **explain for me, Commissioner, what would those**
7 **matters be?**

8 A. Well, they would be either 608 claims,
9 these were claims that were filed under NRS Chapter
10 608, and also matters that were filed under 338, the
11 prevailing wage matters.

12 So I would conduct -- continue to conduct
13 those hearings.

14 **Q. And we'll get into the 608 in a second --**

15 A. Sure.

16 **Q. In terms of your time with respect to the**
17 **Affidavit that's Exhibit No. 1.**

18 A. Right.

19 **Q. But did you, at any time -- strike that.**

20 **How many years were you working as an**
21 **Administrative Law Judge?**

22 A. Well, actually, for a short period. Only
23 about six months.

24 **Q. From what year --**

25 A. That would be from December of -- December

1 of 2013 until, probably, April, end of April,
2 beginning of May of 2014, and that's when I was
3 appointed commissioner with the Nevada
4 Transportation Authority.

5 **Q. The NTA?**

6 A. Yes.

7 **Q. You were appointed by whom?**

8 A. By Governor Sandoval.

9 **Q. As a commissioner?**

10 A. Yes.

11 **Q. So this is, unlike your previous, and**
12 **correct me if I am wrong, Commissioner, unlike your**
13 **previous jobs prior to you being appointed as**
14 **Commissioner of the Nevada Transportation Authority,**
15 **you would apply, go through the application process,**
16 **go through the interview process and hence being**
17 **offered a position and accepting, whereas after**
18 **serving that period as Administrative Law Judge,**
19 **after May of 2014, you were now appointed by the**
20 **duly elected Governor of the State of Nevada;**
21 **correct?**

22 A. Yes, I was.

23 **Q. At that time it would have been Governor**
24 **Brian Sandoval?**

25 A. Yes.

1 Q. Did you put your name out there in terms
2 of you seeking this position?

3 A. No, not really.

4 Q. How did that come about? I'm just
5 curious.

6 A. It's kind of a strange story. We were, in
7 probably late March, beginning of April of 2014,
8 that's the point in time you begin working the --
9 begin the budget process, basically working with --
10 I was working with the B and I. As an
11 Administrative Law Judge, I was kind of a
12 standalone. I wasn't part of any B and I agency.
13 Myself and my staff were separated.

14 So I had to actively participate in the
15 budget process, proposing a budget for our little
16 group of people, myself and my two staff members.
17 When I did this, I, frankly, didn't think that the
18 position was justified.

19 Q. Which position?

20 A. My position.

21 Q. As Administrative Law --

22 A. As Administrative Law Judge. I didn't
23 have enough, frankly, enough work to keep me busy.

24 Q. What do you mean by that, you didn't have
25 enough work to keep you busy?

1 A. At that time -- well, to go back as to why
2 the Administrative Law Judge position was created,
3 it was created as a result of the foreclosure crisis
4 in Nevada. So there were monies available that was
5 targeted at reducing the backlog of cases that had
6 to do with foreclosure, mortgage lending problems,
7 all of those issues. So that's what created the
8 Administrative Law Judge position.

9 So there was a backlog of cases that
10 needed to be taken care of. The thought that there
11 would be about a two-year process in getting rid of
12 the backlog. Frankly, I was able to get rid of the
13 backlog in about three or four months.

14 Q. Wow.

15 A. Well, I don't know if there were -- just
16 once the process began, it went very quickly. A lot
17 of matters began settling once they knew that there
18 was going to be an end to the process. So a lot of
19 matters just began to settle.

20 So at that point, what I did was contacted
21 people in the Attorney General's office to get an
22 idea of how many cases I would be receiving a month
23 after the backlog was extinguished, and, frankly,
24 because those cases that were brought before me were
25 brought through the Attorney General's office, they

1 would be the one that would present the case for the
2 various agencies and B and I.

3 It looked like there would be no more than
4 three or four cases a month that would come before
5 me. I didn't think that justified a full-time
6 position.

7 So when we went to the budget meeting, I,
8 frankly, found a place for my two assistants that
9 were working with me to land in the next budget
10 cycle and suggested that they do away with the
11 position.

12 Once, again, some people found out that I
13 had done that, people were kind of surprised, they
14 were wondering if I was just bored with the job or
15 wanted something else, and I said, well, in all
16 honesty, I'm just being candid; unless you change
17 the law and give new responsibilities for the
18 Administrative Law Judge, again, through the
19 legislative process, I gave some suggestions on what
20 they could do with regard to reopening the consumer
21 affairs division, things like that, then it could be
22 a viable position, but until that's done, I didn't
23 think it was viable.

24 They did, ultimately, reintroduce some
25 legislation that in some way recreated the consumer

1 affairs division, but at that point I was asked what
2 I was interested in doing because they wanted to
3 keep me around.

4 And at that point, that's when the
5 Governor offered me the -- asked if I was interested
6 in the commissioner position with the NTA, and I was
7 -- I said I didn't know there was an opening and
8 they said, well, it was basically something that we
9 would like you to take if you're interested. So --

10 **Q. And you said yes --**

11 **A. I said that would be fine.**

12 **Q. Okay. Just a few things, and I appreciate**
13 **you explaining that significant history with respect**
14 **to your appointment as a commissioner, Commissioner**
15 **Sakelhide. When you are referring to B and I, I**
16 **just want to, for the record, you're referring to**
17 **the Department of Business and Industry; correct?**

18 **A. Yes.**

19 **Q. Could you please tell me what departments**
20 **fall under the umbrella of the Department of**
21 **Business and Industry?**

22 **A. Well, there are about a dozen agencies**
23 **that fall under --**

24 **Q. Would the Labor Commissioner?**

25 **A. The Labor Commissioner was one of the --**

1 Q. Okay.

2 A. That was probably the largest of the
3 divisions.

4 Q. When you say "the largest," how are you
5 quantifying that?

6 A. Well, staffing.

7 Q. Okay. The NTA, would that fall under the
8 Business and Industry Administration?

9 A. Yes, it would.

10 Q. Business and Industry Division? I just
11 want to be very accurate for the record, and you
12 correct me if I'm wrong, Nevada Department of
13 Business and Industry?

14 A. Yes.

15 Q. Is that the correct --

16 A. Yes.

17 Q. -- terminology when you're saying --

18 A. B and I.

19 Q. B and I?

20 A. Exactly.

21 Q. Okay. So you were appointed as the
22 commissioner of the Nevada Transportation Authority.
23 Approximately how many years were you commissioner
24 at the NTA?

25 A. I would say until I retired in December of

1 2016.

2 Q. Okay.

3 A. So approximately April of 2013.

4 Q. So approximately two years?

5 A. Yeah, a little bit over two and a half
6 years.

7 Q. Getting back to Exhibit No. 1, because I'm
8 going through this document, who drafted this
9 Affidavit; do you remember?

10 A. I drafted it with the assistance of the
11 attorney at the time for the Labor Commissioner.

12 Q. Do you remember who that would have been?

13 A. Let's see. I'm trying to remember. His
14 name escapes me for the moment. I'm sure it will
15 come back.

16 Q. That's fine. If it comes back, then just
17 let me know and I'll just make a question on the
18 record.

19 A. Of course.

20 Q. How did this -- I want to just get a
21 timeline, if you will, and background. I have here
22 it says it was notarized, meaning your signature, by
23 a Notary Public on October 1, 2015.

24 Do you see that?

25 A. Yes.

1 Q. I want to know what motivated, propelled
2 this Affidavit of you, Commissioner, regarding the
3 issues that are discussed in this Affidavit?

4 A. It was a request from an attorney that was
5 representing one of the taxicab companies.

6 Q. Okay. So do you know who that was?

7 A. I don't recall at the time.

8 Q. It wasn't me?

9 A. No, it wasn't you.

10 Q. Okay. I just wanted to make sure. So
11 you're saying that an attorney from one of the cab
12 companies, did they contact you directly or actually
13 the attorney for the Labor Commissioner?

14 A. No. It was the attorney for one of the
15 taxicab companies.

16 Q. Contacted you directly?

17 A. Yes.

18 Q. Seeking what?

19 A. Asking me what my involvement was with
20 regard to the interpretation of this statutory
21 provision that created exceptions to the minimum
22 wage requirement.

23 Q. Do you remember if that attorney was
24 seeking this Affidavit as part of a lawsuit in the
25 case?

1 A. I believe it was.

2 **Q. Okay.**

3 A. I really didn't get into too much detail
4 at the time as far as what I -- he just simply
5 wanted my -- what my involvement was.

6 **Q. Did you meet with this attorney?**

7 A. Yes, very briefly. During, you know, the
8 time that he made the request.

9 **Q. It was a he or a she?**

10 A. It was a he.

11 **Q. And was the meeting at your office?**

12 A. Yes, it was.

13 **Q. Las Vegas?**

14 A. Yes.

15 **Q. And approximately how many meetings did**
16 **you have with this particular attorney that is**
17 **representing one of the cab companies?**

18 A. With regard to this matter, that was the
19 extent of it.

20 **Q. Just one meeting?**

21 A. Just one meeting.

22 **Q. How many --**

23 A. Well, actually, probably two; one meeting
24 when he asked me and then one meeting when I
25 presented him with the document.

1 Q. And you presented him with this?

2 A. Yes.

3 Q. Okay. I just wanted to get a background.

4 A. Sure.

5 Q. So we look in your Affidavit Commissioner,
6 it says, No. 3, the position of Deputy Labor
7 Commissioner is subordinate to the Labor
8 Commissioner?

9 A. Yes.

10 Q. Meaning you report -- you would report to
11 the Labor Commissioner?

12 A. Of course.

13 Q. And he would have been appointed by the
14 director of Nevada Department of Business and
15 Industry; correct?

16 A. That's correct.

17 Q. Bruce Breslow?

18 A. No. At the time, Bruce Breslow was not
19 the director of B and I.

20 Q. Who was it?

21 A. I'm trying to remember who it was at that
22 time. This was during Governor Gibbons --

23 Q. Okay.

24 A. So there were --

25 Q. Different administration?

1 A. Actually, in like a short period of time
2 there were several B and I directors.

3 Q. But the B and I director, whoever he or
4 she is, is appointed by the governor?

5 A. Yes. And that was a position that was in
6 flux at the time. I think in a very short period of
7 time there were three different commissioners. So I
8 really don't recall which of them at the time,
9 whether it was -- well, again, I'm not sure.

10 Q. That's why I'm asking. Not a problem,
11 Commissioner.

12 So when you -- under your tenure, how many
13 commissioners did you serve under?

14 A. Two.

15 Q. Okay. So one of them is mentioned in this
16 Affidavit, Commissioner -- Labor Commissioner
17 Michael Tanchek. Who was the second one?

18 A. Thoran Towler.

19 Q. Could you spell that?

20 A. T-H-O-R-A-N, T-H-O-L-E-R (sic), I believe.

21 Q. Approximately how many years did you serve
22 under Commissioner Michael Tanchek?

23 A. The vast majority of the time. Just of
24 the six years I was there, five, about five years
25 under Commissioner Tanchek.

1 Q. And how many years under Commissioner
2 Towler?

3 A. Just over a year, probably a year and four
4 months.

5 Q. Okay. And was he still the Labor
6 Commissioner when you left that position?

7 A. Commissioner Towler, yes.

8 Q. The No. 4, this is on Exhibit No. 1, where
9 it says, during my time as Deputy Labor
10 Commissioner, I received a directive from Labor
11 Commissioner Mike Tanchek regarding minimum wage
12 claims concerning taxi and limousine drivers.

13 Do you see that?

14 A. Yes.

15 Q. Okay. And in the Affidavit when you
16 mentioned you received a directive, please explain
17 to me, first of all, what is a directive that would
18 come from the Labor Commissioner? What does it mean
19 when you, as Deputy Labor Commissioner, received a
20 directive from the Labor Commissioner?

21 A. It was simply when, basically, we were --
22 myself or any staff member was tasked to do
23 something.

24 Q. So that's a directive?

25 A. That's a directive.

1 Q. Okay.

2 A. It wasn't a formal written statement.

3 It's any -- basically, any time we are tasked to do
4 something or not to do something.

5 Q. From him?

6 A. From him.

7 Q. So I just want to know, and we'll get into
8 the Affidavit in much more detail --

9 A. Of course.

10 Q. But I want to know, would it be usual and
11 within your normal customary duties as Deputy Labor
12 Commissioner to receive directives from the Labor
13 Commissioner on what he wants to do or what he would
14 like?

15 A. It was. Well, I guess there are two
16 issues. One is with regard to 338 matters. There
17 were, frankly, very few directives from Commissioner
18 Tanchek. He kind of let me handle that area myself,
19 so there would be very little other than, do a good
20 job.

21 Q. In terms of 338?

22 A. 338.

23 Q. The prevailing wage?

24 A. Exactly.

25 Q. What about with respect to NRS 608.250,

1 Subsection 2, the exemptions; did he provide you,
2 Commissioner Tanchek, with any directives regarding
3 NRS 608.250, Subsection 2?

4 A. Okay. Again, probably the easiest thing
5 is for me to go through how we --

6 Q. Please. Absolutely, Commissioner.

7 A. That would be a lot quicker.

8 Q. Yes.

9 A. As I said, really, my first two years with
10 the office was really focused on doing 338 matters.
11 In addition to that, Commissioner Tanchek would
12 bounce things off of me.

13 At some point, approximately two years in,
14 again, I don't recall the exact month or date, but
15 he became aware of a -- the Bell Trans matter.

16 Q. Who is he?

17 A. Commissioner Tanchek became aware of that,
18 asked me if I knew anything about it. I said I
19 didn't, but I would -- you know, he asked me to get
20 whatever information I could gather on it. So I
21 did.

22 So I gathered, contacted an attorney I
23 knew with Bell Trans and he forwarded all the
24 documents that he had on that lawsuit.

25 Q. Not to interrupt you, Commissioner, just

1 that so we have a clear record, and I know you're
2 going through an explanation, and a very long
3 extensive one, when you talk about the Bell Trans
4 case, are you referring to what you have in your
5 Affidavit, the Lucas v. Bell Trans, United States
6 Federal District Court of Nevada case in 2009?

7 A. Exactly.

8 Q. Okay. Go ahead.

9 A. Right. So I received that and I simply
10 forwarded all of those, anything I had to
11 Commissioner Tanchek and to our AG at the time.
12 That was Dianna Hegeduis.

13 Q. I'm sorry?

14 A. Dianna Hegeduis.

15 Q. How do --

16 A. It's very difficult.

17 Q. As best you can.

18 A. H-E-G-I-D-I-U-S (sic).

19 Q. Would that be something that if I
20 researched on a database or maybe Googled her name,
21 she would pop up as the Attorney General who would
22 have been in Nevada at the time?

23 A. She was at the time.

24 Q. Okay.

25 A. And she was assigned to the office of

1 Labor Commissioner --

2 Q. So she was a Deputy Labor Commissioner --
3 I'm sorry, Deputy Attorney General?

4 A. Deputy Attorney General.

5 Q. So you had conversations with her
6 regarding this issue?

7 A. I forwarded the documents to her. We
8 really didn't have conversations about it. I simply
9 wanted to keep her in the loop.

10 Q. Okay.

11 A. As to things I was providing to
12 Commissioner Tanchek.

13 So he reviewed the documents, asked me if
14 I could --

15 Q. Who is he?

16 A. Commissioner Tanchek asked me if I could
17 keep him up-to-date as far as any new developments
18 in that case.

19 At one point there was a decision, an
20 interim order that was issued by, I believe, Judge
21 Jones on that case. I provided him, Commissioner
22 Tanchek and Dianna with a copy of that, and then
23 during Commissioner Tanchek's next visit down to Las
24 Vegas he and I had a discussion about the impact of
25 that interim order on what we should do.

1 Q. Approximately when did that discussion
2 take place with you and Commissioner Tanchek?

3 A. My guess would have been sometime in 2009.

4 Q. I don't want you to guess. Your best
5 estimate?

6 A. That's the closest I could get.

7 Q. What year?

8 A. I believe 2009, perhaps --

9 Q. Shortly after the order?

10 A. Yeah. It was very -- yeah. Within
11 probably a week or two of the order.

12 Q. When I'm talking about the order, you
13 understand it's regarding the Lucas v. Bell Trans
14 order?

15 A. Yes.

16 Q. From Judge Jones?

17 A. Exactly.

18 Q. Okay. So what did that discussion entail
19 between you and the Labor Commissioner, Commissioner
20 Tanchek, regarding the, at the time would have been
21 the recent ruling from Judge Jones, United States
22 Court Federal judge, pertaining to the Lucas v. Bell
23 Trans case?

24 A. Right. It really was a discussion about
25 that and what appeared to be an AGO opinion that I

1 believe was issued in 2015.

2 **Q. You mean 2005?**

3 A. Exactly. I'm sorry. 2005.

4 **Q. I just want to be clear.**

5 A. Thank you. 2005.

6 **Q. Look in your Affidavit because it's**
7 **referenced there.**

8 A. Yeah, 2005. And basically how those two
9 things appeared to be in conflict.

10 **Q. Okay. So was this a face-to-face meeting?**

11 A. Yes, it was. It was during one of his
12 visits down to Las Vegas. It was a face-to-face
13 meeting.

14 **Q. And was it specifically regarding this**
15 **issue pertaining to, as you refer, the conflict?**

16 A. It was what we should do as an agency to
17 deal with any wage claims that may come from a
18 taxicab driver. And, again, take a step back.
19 Before he came down for that visit, he did ask me to
20 identify any pending wage claims we would have from
21 any taxicab drivers in Clark County or in southern
22 Nevada that were somewhere in the pipeline.

23 **Q. And did you advise him of that?**

24 A. I did. I did. And I don't believe at
25 that time there were any, frankly.

1 Q. Okay. So he asked you for -- so I want to
2 be very clear. He asked you for any -- this would
3 have been around, approximately, 2009?

4 A. Uh-huh. (Witness nodded head
5 affirmatively.)

6 Q. He asked you for any pending claims in the
7 pipeline against taxicab companies pertaining to
8 this issue of minimum wage?

9 A. Exactly.

10 Q. In Nevada. And you advised him at the
11 time?

12 A. Yep.

13 Q. There weren't any?

14 A. I don't believe there were any. If there
15 was, it may have been one or two.

16 Q. Okay.

17 A. And then when he came down, I shared that
18 information with him, and then we talked about what
19 we should do as an agency to, in essence, protect
20 the rights of the taxicab drivers.

21 Q. Okay. And what did he tell you what you,
22 as an agency in terms of Labor Commissioner, Office
23 of Nevada Labor Commissioner, should do as an agency
24 to protect taxicab drivers?

25 A. Well, at the time he was down there we

1 were just discussing our options and various
2 options, one of which was simply to encourage
3 taxicab drivers to file wage claims with us, we
4 would provide them with an opportunity -- we would
5 provide the company with an opportunity to resolve
6 those matters if they chose not to. Then we would,
7 basically, hold those cases until there was more of
8 a final directive from a court of competent
9 jurisdiction.

10 **Q. Let's back up a little bit.**

11 **A. Go right ahead.**

12 **Q. Thank you, Commissioner. So --**

13 **A. And that's the option, again, that's the**
14 **option that later, a few days later he called down**
15 **and said, I think we're going to go with that**
16 **option.**

17 **Q. Meaning the option that you proposed?**

18 **A. The option that we discussed, yes.**

19 **Q. So was anything that you discussed with**
20 **Commissioner Tanchek in his visits to the Las Vegas**
21 **office of Nevada Labor Commissioner pertaining to**
22 **this minimum wage issue shortly after the Lucas v.**
23 **Bell decision in 2009 ever memorialized in writing?**

24 **A. I don't believe so.**

25 **Q. In an E-mail of some sort?**

1 A. I don't believe so.

2 Q. So this was a verbal directive from him as
3 the Labor Commissioner?

4 A. Right.

5 Q. To you on what should be done?

6 A. Right.

7 Q. As an agency, now that you had received an
8 order from the United States Federal District Court
9 judge in Nevada pertaining to Lucas v. Bell Trans
10 case?

11 A. That's correct. And what he asked me to
12 do in addition to that was to, basically, identify
13 one of our investigators to be the point person to
14 receive all of those claims.

15 So, basically, all wage claims that were
16 filed by any taxicab -- against any taxicab company
17 would go to one investigator rather than distribute
18 it among the, all --

19 Q. Who was that designated investigator?

20 A. I believe that was Lupe Martinez.

21 Q. Can you spell that?

22 A. Okay. L-U-P-E.

23 Q. L-U-P-E.

24 A. And Martinez, M-A-R-T --

25 Q. Oh, Lupe?

1 A. Lupe.

2 Q. Lupe, okay. Martinez?

3 A. Martinez, yes.

4 Q. Do you know if she's still --

5 A. I believe she's still there.

6 Q. -- at the Labor Commissioner's office?

7 A. Yes, I believe she's still there.

8 Q. Okay. And what was her position?

9 A. She was an investigator.

10 Q. Okay. For investigating allegations of
11 violations of labor laws?

12 A. Any wage claim that was filed would go to
13 an investigator who would investigate the wage
14 claim, receive all -- it may be helpful to go
15 through the process a little bit.

16 Q. Please. Please, Commissioner.

17 A. It might be helpful to everybody.

18 Q. It would be. And my apologies for at
19 times interjecting, if you will, because I just want
20 to make sure that we have established a clear record
21 because you provide an extensive history, but I do
22 apologize, I hope I'm not in any way interrupting
23 your flow.

24 A. Oh, no, not at all. Again, I just think
25 it may be helpful to both counsels to have an idea

1 as to what the process was.

2 **Q. Please explain that.**

3 A. And, again, our -- the Labor Commissioner
4 would respond to wage claims that were filed by any
5 employee. So wage claim would be filed with our
6 office, it would be initially reviewed by
7 administrative assistant, and their review would be
8 to make sure all the components were there, all the
9 boxes were checked, that that -- they would review
10 and perhaps check the math, to make sure that the
11 math added up with regard to the amount of the claim
12 that they believed they were due and wages based
13 upon, you know, what was on the wage claim form.

14 So wage claim would be filed, initial
15 review would be done by the administrative
16 assistant. Then that claim was assigned to one of
17 the investigators.

18 And, again, we had investigators in
19 northern Nevada, southern Nevada. So the -- so the
20 claims would be filed. Again, each investigator had
21 a number of Zip Codes that would fall -- basically,
22 these were the claims that if the employer was in
23 this Zip Code, they would be responsible for those
24 wage claims.

25 So the wage claim would then be assigned

1 to an investigator, they would do a very quick
2 review, see if there was anything in the wage claim
3 that would question jurisdiction from the Labor
4 Commissioner's office.

5 If not, they send out what we refer to as
6 a demand letter to the employer. So that demand
7 letter would identify, basically, a wage claim has
8 been filed by, you know, John Doe alleging that they
9 are owed X number of dollars in back wages. Please
10 respond to this wage claim within 30 days or
11 whatever period of time that would be or submit a
12 check in the amount of X number of dollars to
13 resolve the claim, and that would be what the
14 Claimant claimed they were due plus what we referred
15 to as ongoing wage penalties that we would include
16 in the initial demand letter.

17 Now, so what happened then is the
18 investigator would wait the period of time. If they
19 received any objection, question, documents
20 concerning that wage claim from the employer, then
21 they would begin their investigation.

22 Okay. As a result of their investigation,
23 they would issue what was referred to as a
24 determination letter assuming that they believed
25 that the claim had merit. So the determination

1 letter would be sent. They would -- the investigator
2 would say in the determination letter that, based
3 upon the evidence provided, we believe that the
4 claim has merit. As a result, you are owed X number
5 of dollars. And so that determination would be
6 issued.

7 The employer would have an opportunity to
8 object to that determination at that point. Then it
9 went into the hearing queue, for lack of a better
10 term.

11 Now, if, as a result of the investigation,
12 the investigator believed that either the claim had
13 no merit or the office lacked jurisdiction, then
14 they would simply send a letter out saying that your
15 claim has been closed.

16 So that's kind of how things flowed or
17 things got a certain way.

18 The investigator may find that the
19 employee was paid the proper amount of wages after
20 their investigation or they may find that we lacked
21 jurisdiction. An example of lack of jurisdiction
22 would be that, as a result of the investigation, the
23 investigator believed that there was not an
24 employee/employer relationship, but it was an
25 independent contractor.

1 Independent contractor relationships mean
2 that the Office of Labor Commissioner lacks
3 jurisdiction to hear those matters.

4 **Q. Okay.**

5 A. So that was kind of the flow of --

6 **Q. That was the process?**

7 A. Exactly.

8 **Q. Based on the -- during your tenure were**
9 **you familiar with the name Yellow Checker Star**
10 **Transportation?**

11 A. Yeah, I was familiar with them and
12 familiar with them from my earlier days with the
13 TSA.

14 **Q. Of course.**

15 A. At that time they were a licensed
16 limousine operator who was subject to our
17 jurisdiction. I think they sold that operation.

18 **Q. Correct.**

19 A. And at that point I don't think they had
20 any operations that were subject to the NTA during
21 the time I was Commissioner.

22 **Q. You mean the TSA?**

23 A. Well, we became the NTA.

24 **Q. Correct. Okay.**

25 A. It was a name change.

1 Q. Correct. I think it was 1999.

2 A. Right. It was during the time I left and
3 went over to the Labor Commissioner's office.

4 Q. Commissioner Sakelhide, and I appreciate
5 you going through the process, I wrote down some
6 notes, so you were familiar with my client, Yellow
7 Checker Star Transportation?

8 A. Yes, based upon my earlier dealings with
9 them when they were a limousine operator.

10 Q. During your tenure as Deputy Labor
11 Commissioner of the great State of Nevada, did you
12 or your office, from the time you were Deputy Labor
13 Commissioner, send out a demand letter to my client,
14 Yellow Checker Star Transportation, pertaining to
15 minimum wages?

16 A. I, in all honesty, I wouldn't know. I
17 wasn't in the loop at the time.

18 Q. Who would know?

19 A. Well, that would be the investigator who
20 had that area.

21 Q. Lupe Martinez?

22 A. It would be Lupe Martinez would know. One
23 of the issues that, again, I transitioned to when I
24 started doing 608 hearings, I cannot have
25 interaction with the investigators concerning any of

1 the pending matters.

2 So, again, there was that wall there
3 because I would hear the cases. So I really wanted
4 to be aware -- if you remember, I said there was, at
5 some point, a case may go into the hearing queue.

6 **Q. Correct.**

7 A. That would be the first time that I would
8 have any knowledge of the cases.

9 **Q. I understand. I appreciate that. I'm not**
10 **talking about the time when you're an ALJ.**

11 A. I'm talking about during the time I was
12 the Deputy Labor Commissioner. I also, one of my
13 responsibilities, again, as I said, the first two
14 years I focused on 338 matters. After that, then I
15 began doing 608 hearings. Last four years there I
16 did quite a number of 608 hearings.

17 **Q. At any of those 608 hearings did it**
18 **involve my client, Yellow Checker Star**
19 **Transportation?**

20 A. No, it didn't, but the reason for that is,
21 again, if you recall, I said that the claims filed
22 against taxicab companies were placed into -- were
23 basically held in abeyance --

24 **Q. Sure.**

25 A. -- until there was a final decision made.

1 There hadn't been a final decision made until after
2 I left the Labor Commissioner's office.

3 **Q. Understood.**

4 A. In fact, I was with the -- I was a
5 Commissioner with the Nevada Transportation
6 Authority at the time that came down.

7 **Q. I understand. Thank you for your**
8 **clarification.**

9 A. So nothing would have come to my
10 attention.

11 **Q. Sure. But I'm talking about before that**
12 **directive. Before you received that directive from**
13 **Commissioner Michael Tanchek, did you oversee any**
14 **Nevada Statute 608, and you know what I'm referring**
15 **to 608, again, I'm talking about 608.250, Subsection**
16 **2, the exemptions, and whether they apply or not and**
17 **the conflicts involved with the Minimum Wage**
18 **Amendment, did you, prior to that directive, oversee**
19 **any NRS 608 hearings against my client, Yellow**
20 **Checker Star Transportation?**

21 A. The answer is no, but I need to fill it
22 in.

23 **Q. Sure.**

24 A. One of the reasons why it may be no is I
25 was only doing 338 matters up until the time that

1 directive came down.

2 Q. Who would have been the one that was doing
3 the NRS 608 hearings?

4 A. Those hearings would have been conducted
5 by Commissioner Tanchek.

6 Q. Himself?

7 A. Himself.

8 Q. Okay. Excellent.

9 A. Right. I conducted all the 338 hearings,
10 and Commissioner Tanchek at the time, the first, at
11 least after I was there past year two and a half,
12 then there was a little bit of a change in
13 responsibility.

14 Q. Based on your knowledge and your
15 conversations with Commissioner Tanchek prior to his
16 directive to you shortly after the Lucas v. Bell
17 decision in 2009 that you were going to hold these
18 claims in abeyance until a court of competent
19 jurisdiction, meaning the Nevada Supreme Court, I
20 presume, to decide this matter, did you have any
21 knowledge, information that Commissioner Tanchek had
22 any hearings pertaining to my clients, Yellow
23 Checker Star Transportation?

24 A. No, not that I'm aware of.

25 Q. Okay. You talked about penalties in terms

1 of the process of the flow, I was just taking notes,
2 the penalties --

3 A. Right.

4 Q. The --

5 A. We referred to them as ongoing wage
6 penalties.

7 Q. Ongoing wage penalties.

8 Did your office levy or institute any type
9 of penalties at any time when you were Deputy Labor
10 Commissioner against my clients, Yellow Checker
11 Star?

12 A. I don't believe so, no.

13 Q. In terms of an investigation, you also
14 mentioned that your office at the time had the power
15 under law, Nevada law, to perform investigations
16 pertaining to employers regarding the allegations of
17 violations of minimum wage laws in Nevada.

18 Did, at any time when you were the Deputy
19 Labor Commissioner, you become aware that any
20 investigations were being conducted pertaining to my
21 client, Yellow Checker Star Transportation?

22 A. By the office of Labor Commissioner?

23 Q. Correct.

24 A. No.

25 Q. While you were the Deputy Labor

1 Commissioner, were you aware of any determination
2 letters, what you refer to as merit letters, being
3 sent to my client, Yellow Checker Star
4 Transportation?

5 A. Not that I was aware, but I wouldn't have
6 been in that loop.

7 Q. Who would have been?

8 A. That would have been whatever investigator
9 was assigned to that case.

10 Q. Lupe Martinez?

11 A. Well, at a certain point it was Lupe
12 Martinez. Prior to that is whoever would have had
13 that ZIP Code, frankly, or been assigned that area.

14 Q. The reason I mentioned her name is because
15 you testified about her name.

16 A. Exactly. At that point forward she would
17 have been the point person for any claim filed
18 against taxicab companies in Clark County.

19 Q. So, and I'm going to be jumping around
20 back and forth, if you don't mind.

21 A. No.

22 (Deposition Exhibit No. 2 was marked for
23 identification.)

24 BY MR. BOTROS:

25 Q. Commissioner Sakelhide, what has been

1 marked as Exhibit No. 2 in front of you is Statute
2 NRS 607.160. And I'll just give you just a brief
3 moment just to read it to yourself and I'll ask you
4 questions about it. It pertains to, obviously, the
5 Office of Nevada Labor Commissioner.

6 A. Okay.

7 Q. I just want -- for the record,
8 Commissioner Sakelhide, did you get a chance just to
9 review what's been marked as Exhibit No. 2 in front
10 of you, NRS 607.160?

11 A. Yes. I quickly read through it.

12 Q. Okay. Does it refresh your recollection
13 of what the Office of Nevada Labor Commissioner is
14 tasked to do?

15 A. It confirmed what my understanding was.

16 Q. Of course. I just want to make sure we're
17 on the same page.

18 A. Of course.

19 Q. So it confirmed your understanding of what
20 the office was set up to do?

21 A. Exactly.

22 Q. And what its responsibilities and duties
23 and obligations under the law is?

24 A. Exactly.

25 Q. So having established a foundation in

1 that, when it says the Labor Commissioner,
2 Subsection (a), 1(a), shall enforce all labor laws
3 of the State of Nevada, to you at the time as Deputy
4 Labor Commissioner, what did that mean?

5 A. Oh. Basically, any law that fell within
6 the jurisdiction of the Labor Commissioner, we would
7 enforce.

8 Q. Would that mean minimum wage issues?

9 A. Yes. That was the primary responsibility
10 of the office of Labor Commissioner or the vast
11 majority of the matters that came before us dealt
12 with minimum wage laws.

13 Q. Subsection 2 of NRS 607.160 says if the
14 Labor Commissioner has reason to believe that a
15 person is violating or has violated a labor law or
16 regulation, the Labor Commissioner may take any
17 appropriate action against the person to enforce the
18 labor law or regulation, whether or not a claim or
19 complaint has been made to the Labor Commissioner
20 concerning the violation.

21 Do you see that?

22 A. Yes.

23 Q. Based on your reading of Subsection 2 of
24 NRS 607.160, what does that mean?

25 A. Well, basically, two things. One is --

1 well, simply in addition to responding to a wage
2 claim if you believe there was a violation by either
3 an employer or group of employers, we had authority
4 to, basically, investigate those matters even absent
5 a wage claim.

6 Q. Meaning there doesn't necessarily need to
7 be a wage claim made; you on your own initiative,
8 through your own investigatory enforcement powers,
9 had the power under Nevada law at the time as Deputy
10 Labor Commissioner to lawfully institute
11 investigations of any entity or person you suspect
12 of violating any labor laws in Nevada; correct?

13 A. That's true.

14 Q. In particular, that would mean that you
15 would have the power to investigate any person or
16 entity that you believe is violating minimum wage
17 laws in the State of Nevada?

18 A. That's correct.

19 Q. At any time from approximately 2007 to
20 2013 when you were Deputy Labor Commissioner, did
21 you have any reason to believe that my client,
22 Yellow Checker Star Transportation, was either
23 violating or had violated a labor law or regulation
24 pertaining to minimum wage in Nevada?

25 A. There was nothing -- nothing that would

1 have led us to believe that.

2 Q. Did you or anybody at your office, without
3 receiving any type of claim or Complaint on your own
4 initiative under NRS 607.160, Subsection 2, take any
5 action against my client, Yellow Checker Star
6 Transportation, to enforce any labor law or
7 regulation pertaining to minimum wage in Nevada
8 during your tenure as Deputy Labor Commissioner?

9 A. No.

10 Q. If you look in Subsection 7, it's an
11 interesting Subsection of NRS 607.160. Did you, as
12 Deputy Labor Commissioner from 2007 to 2013, or
13 anybody from your office, for that matter, present
14 any facts to the Attorney General or anybody in the
15 Office of Attorney General regarding my client
16 violating any labor laws pertaining to minimum wage
17 in the State of Nevada?

18 A. No, we didn't.

19 Q. Getting back to Exhibit 1, this would be
20 the Affidavit that you had completed, and where you
21 left off, we were talking about the directive in
22 2009 and him, meaning the Commissioner Tanchek,
23 telling you what will be the course of action that
24 would be taken when there's any claims or complaints
25 about, you know, this particular issue, the

1 conflict, and we'll get in now to the conflict
2 issue.

3 When you read -- foundation questions,
4 Commissioner Sakelhide -- did you read the decision,
5 the Lucas v. Bell decision, meaning Judge Jones'
6 order on that issue?

7 A. Yes, I did.

8 Q. Okay. Did you consult the Deputy Attorney
9 General at the time? I believe you said it was
10 Dianna Hegeduis?

11 A. Hegeduis.

12 Q. Hegeduis, I'm sorry. About that decision?

13 A. Did I consult with her, no. I provided
14 her with a copy of that, again, and also
15 Commissioner Tanchek.

16 Q. Did she provide any type of an opinion,
17 either in writing or verbally, about what you had
18 provided her, which was the order in Lucas v. Bell
19 Trans?

20 A. Not to me. I can't say what discussions
21 occurred between Dianna and Commissioner Tanchek.

22 Q. Okay. Do you know if discussions took
23 place separate and apart from you between just
24 herself and Commissioner Tanchek?

25 A. It would be speculation.

1 Q. Okay. And I don't want you to speculate.

2 A. Right.

3 Q. But correct me if I'm wrong, Commissioner,
4 it appears to me, and maybe I'm off base and please
5 set me straight.

6 A. Go ahead.

7 Q. That since you were tasked by the
8 Commissioner Tanchek to look into this issue and to
9 have some type of a proposed understanding and
10 working order of what to do moving forward after
11 that decision in 2009, Lucas v. Bell, it appears to
12 me that any type of decisions or discussions
13 pertaining to that issue, whether it's with the
14 Attorney General or the Commissioner or anybody
15 else, you would reasonably have to be included if
16 you are the one that carries out the directive from
17 the Commissioner; would you agree with me?

18 A. Well, again --

19 MR. MOAS: I'm sorry to interrupt. I'm
20 going to object to form. You can go ahead and
21 answer.

22 MR. BOTROS: Sure.

23 THE WITNESS: Again, I'm going to go back
24 a couple of steps.

25 BY MR. BOTROS:

1 Q. Sure.

2 A. Again, if you recall, what I was asked to
3 do was to gather the information and provide that to
4 Commissioner Tanchek, which I did. And, frankly, I
5 did, especially initially, without any commentary.

6 Q. Okay.

7 A. So I simply would receive an E-mail or
8 forward him a copy and, again, as a courtesy would
9 also provide that to Dianna as our -- as the
10 agency's Attorney General.

11 Q. Okay.

12 A. As things moved along, Commissioner
13 Tanchek and I would be engaged in more discussions.
14 Again, it was more of a give and take, and we would
15 then have discussions about things.

16 The decision with regard to what we did as
17 far as holding claims in abeyance was something we
18 came to together.

19 Q. You and him?

20 A. Yes, Commissioner Tanchek and I. It
21 wasn't my -- I don't recall, frankly, which one of
22 us came up with the idea. It would have been simply
23 sitting there brain-storming as we need to do
24 something to protect the taxicab drivers.

25 And the reason for that is there's a two-

1 year period with regard to wage claims filed with
2 our -- with the Labor Commissioner's office, and,
3 again, what can be read as a preclusion to go back
4 more than two years from the time a claim was filed,
5 so we really wanted to do everything we can to
6 preserve the rights of the taxicab driver should
7 they file a claim with us.

8 You know, the fact that the question as to
9 whether or not this was the exception survived the
10 Constitutional amendment or not is not something
11 that the taxicab driver should be punished for. So
12 we wanted to find a way to preserve their rights in
13 case a decision came down in their favor, then we
14 can say, okay, your rights were locked in. We can
15 look at the time you filed the wage claim, your
16 employer was placed on notice, we can go back the
17 two-year period and still recapture wages that may
18 have been due to you back two years from the time we
19 filed the claim.

20 Otherwise, there would be an argument that
21 could be made that those wages, again, there would
22 be a notice issue for the employer and we couldn't
23 capture those wages for the taxicab driver.

24 So we wanted to do everything we could to
25 protect the rights of the taxicab drivers, and

1 together we came up with this way that we thought
2 preserved the rights of the taxicab drivers,
3 provided the employer with adequate notice that a
4 wage claim was filed, gave them an opportunity to
5 resolve the wage claim if they wanted to, which
6 happened quite often where a employer, basically,
7 just to get rid of something would resolve the wage
8 claim with us for these drivers and then, basically,
9 they move forward.

10 **Q. Could you please explain to me, you**
11 **mentioned a two-year preclusion. What are you**
12 **referring to?**

13 A. There's a provision. Again, it's been a
14 long time since I was --

15 **Q. Are you talking --**

16 A. -- I did this.

17 **Q. -- about the Statute of Limitations?**

18 A. Yes. Again, well, it's not referred to as
19 Statute of Limitations. It's a provision that says
20 that, basically, there was a 24-month period in
21 which we could capture wage claims from the time
22 they were filed back. And, again, that's been
23 interpreted as precluding us, the office from going
24 back more than 24 months.

25 **Q. So you as an office, as a state agency**

1 that enforces minimum wage labor laws in the State
2 of Nevada, you, by law, are precluded from going
3 more than 24 months back in wages?

4 A. That's how that provision has been
5 interpreted, yes.

6 Q. By whom?

7 A. By all -- by Commissioner Tanchek and all
8 of the previous Labor Commissioners.

9 Q. You mentioned something about notice and
10 adequate notice. And I just want to ask you,
11 Commissioner Sakelhide, at any time as Deputy Labor
12 Commissioner for the Office of Nevada Labor
13 Commissioner, did you advise employers that they
14 cannot, can no longer follow NRS 608.250, Subsection
15 2E, the exemption to protect cab drivers, and they
16 are no longer to follow that, and they need to
17 follow what the Constitutional amendment had
18 prescribed, meaning the 2006 Nevada Constitutional
19 Minimum Wage Amendment?

20 A. No, I didn't. And for a simple -- well,
21 several reasons.

22 One is that provision was still on the
23 books. As an administrative agency, we lacked
24 authority to interpret a Constitutional amendment in
25 a way that would remove that existing provision from

1 the statute.

2 Again, what we would do is, and, again,
3 this is what I tasked, I did and tasked the
4 investigators to do whenever they had any contact
5 with the employers is to let them know that that was
6 an issue that was being litigated. And, again, we
7 weren't going to give them -- you know, we were
8 precluded from providing anyone with legal advice
9 one way or the other.

10 Our crystal ball, frankly, was a little
11 foggy as to what the Court would ultimately do.

12 **Q. Meaning the Nevada Supreme Court?**

13 A. Nevada Supreme Court. So we would -- so,
14 again, made anyone aware that there was a conflict,
15 that that conflict would be resolved by a court of
16 appropriate jurisdiction.

17 In the interim, this is what we wanted to
18 do to ensure that the rights of the drivers were
19 protected and that the companies were placed on
20 notice.

21 **Q. I want to introduce a couple of exhibits**
22 **so we can read them side by side and it will make**
23 **sense as opposed to just separate.**

24 A. Sure.

25 **Q. So this will be the NRS.608.250, the**

1 exemptions, as well as the -- and, actually, we can
2 attach them as the same exhibit. We'll see if,
3 Madame court reporter, it's easy to do that as
4 opposed to separate, and also the Minimum Wage
5 Amendment. That way when I'm asking you questions,
6 it makes sense.

7 MR. MOAS: Counsel, let me, while you're
8 doing that, let me lodge a blanket objection so I
9 don't have to interrupt to your, what I anticipate
10 are questions to call for a legal opinion. That way
11 you can go on with the questions and I don't have to
12 --

13 MR. BOTROS: You have a standing
14 objection, counsel, absolutely.

15 MR. MOAS: Thanks.

16 MR. BOTROS: I recognize it as an officer
17 of the Court. That's not a problem.

18 (Deposition Exhibit Nos. 3 and 4 were
19 marked for identification.)

20 BY MR. BOTROS:

21 Q. Commissioner Sakelhide, what's been marked
22 as Exhibit 3 is NRS 608.250, the exemptions, and
23 what's been marked as Exhibit 4 is the
24 Constitutional Minimum Wage Amendment back in 2006,
25 which is Section 16, Article 15.

1 Do you see that?

2 A. Yes.

3 Q. I would like to give you just a brief
4 moment to kind of peruse and kind of review to make
5 sure that we're on the same page and it is the same
6 law that we're talking about and the same
7 Constitutional amendment we're talking about so
8 there is no confusion. Okay?

9 A. Okay. Go right ahead.

10 Q. Did you get an opportunity, Commissioner
11 Sakelhide, to review -- to peruse Exhibit No. 3 and
12 Exhibit No. 4?

13 A. Yes, I did.

14 Q. And does it refresh your recollection in
15 terms of NRS 608.250, the list of exemptions?

16 A. Yes, it does.

17 Q. And does it refresh your recollection in
18 terms of Exhibit 4, the Constitutional Minimum Wage
19 Amendment, talking about the 2006 Nevada
20 Constitutional Minimum Wage Amendment?

21 A. Yes.

22 Q. With respect to Exhibit 3, Exhibit No. 3,
23 NRS 608.250, it had a list of provisions where
24 minimum wage, meaning Nevada minimum wage law, would
25 not apply to those particular categories; correct?

1 A. Yes.

2 Q. Is that what you understood it to be as
3 the Deputy Labor Commissioner enforcing Nevada labor
4 laws pertaining to minimum wage during your tenure?

5 A. Yes. This is part of the exceptions.
6 There was another provision, too.

7 Q. What was that?

8 A. Well, again, it's been a long time. I
9 believe it may have been 450 that identified some
10 additional things that may fall under an exception.

11 Q. But with respect to this case in terms of
12 taxicab drivers, because that's what this case is
13 about, we have NRS 608.250, which Exhibit No. 3
14 outlines, except as otherwise provided in this
15 section, the Labor Commissioner shall, in accordance
16 with Federal law, established by regulation, the
17 minimum wage, which may be paid to employees in
18 private employment within the State.

19 The Labor Commissioner shall prescribe
20 increases in the minimum wage in accordance with
21 those prescribed by Federal law unless the Labor
22 Commissioner determines that those increases are
23 contrary to the public interest.

24 Do you see that?

25 A. Yes.

1 Q. The provisions of Subsection 1, meaning
2 the stuff that I just read, do not apply to.

3 Do you see that?

4 A. Yes.

5 Q. Would you agree with me that what I'm
6 about to read, I'm going to read the list for the
7 record, those individuals who would be working in
8 those particular jobs would be, under Nevada law,
9 exempt from minimum wage?

10 A. That's correct.

11 Q. And is that what you understood and you
12 were interpreting Nevada law as Deputy Labor
13 Commissioner during your tenure in Nevada?

14 A. That is how we applied this provision.

15 Q. So, and when you say "applied," that means
16 enforced; correct?

17 A. Yes.

18 Q. First starts out with casual babysitters;
19 do you see that?

20 A. Yes.

21 Q. That would mean that under Nevada law,
22 casual babysitters would be exempt from minimum wage
23 laws and enforcement by your agency; correct?

24 A. That's correct.

25 Q. Subsection B where it has domestic service

1 employees who reside in the household where they
2 work; do you see that?

3 A. Yes.

4 Q. That means those individuals would be
5 exempt from minimum wage laws that your agency would
6 be enforcing; correct?

7 A. That's correct.

8 Q. Subsection C, outside salespersons whose
9 earnings are based on commissions; do you see that?

10 A. Yes.

11 Q. That would mean that those individuals
12 would be exempt from minimum wage laws being
13 enforced by your agency; correct?

14 A. That's correct.

15 Q. Subsection D, employees engaged in
16 agricultural pursuit for an employer who did not use
17 more than 500 days of agricultural labor any
18 calendar quarter of the preceding calendar year.

19 Do you see that?

20 A. Yes.

21 Q. That would mean that those individuals
22 under Nevada law would be exempt from minimum wage
23 laws enforced by your agency; correct?

24 A. That's correct.

25 Q. Subsection E, taxicab and limousine

1 drivers; do you see that?

2 A. Yes.

3 Q. That would mean that those individuals
4 such as taxicab drivers and limousine drivers would
5 be exempt from minimum wage --

6 A. That's correct.

7 Q. -- being enforced by your agency?

8 A. Yes.

9 Q. Subsection F, Subsection F, persons with
10 severe disabilities, whose disabilities have
11 diminished their productive capacity in a specific
12 job and who are specified in certificates issued by
13 the rehabilitation division of Department of
14 Employment Training and Rehabilitation; do you see
15 that?

16 A. Yes.

17 Q. That would mean that those persons would
18 be exempt from minimum wage under Nevada law being
19 enforced by your agency; is that correct?

20 A. That is correct.

21 Q. Commissioner Sakelhide, I know I mentioned
22 exempt, but when I say "exempt," what does that mean
23 to you?

24 A. Well, that would mean that if there was a
25 wage claim that was filed by somebody that fell into

1 one of those categories, that the minimum wage
2 provisions, we would not apply the minimum wage
3 provisions to those wage claims.

4 Q. Would that also mean that employers who
5 employ these individuals such as casual babysitters,
6 domestic service employees, outside salespersons,
7 agricultural workers, taxicab and limousine drivers,
8 and entities who employ persons with severe
9 disabilities, they would be compliant with Nevada
10 law if they do not pay minimum wage under Nevada
11 law?

12 A. Yeah, with regard to Nevada law, that
13 would be true.

14 Q. That's exactly what I'm asking.

15 A. Yes.

16 Q. At any time while you were Deputy Labor
17 Commissioner, did you ever receive any phone calls
18 from any workers that are listed in these lists of
19 exemptions, and what I mean by that, I'm talking
20 about people who called up your office such as, you
21 know, casual babysitters or domestic service
22 employees, outside salespeople, agricultural
23 workers, taxicab and limousine drivers, persons with
24 severe disabilities, and said, listen, I work as,
25 for example, as a taxicab driver, I want to know if

1 I am entitled or do I have a right under Nevada law
2 to get minimum wage from my employer; did you ever
3 receive anything in writing or a phone call or any
4 type of correspondence or communication by anybody
5 in that list?

6 A. Yeah, there would be times that I would
7 receive phone calls from pretty much all of these
8 areas.

9 Q. When you said "pretty much all of these
10 areas," please explain as best as you can remember
11 and recollect, from these areas, meaning the list of
12 exemptions, who would you receive phone calls from?

13 A. Well, both employers and employees.

14 Q. Okay. So when you say "employers," would,
15 in that sphere, would it also mean that, during your
16 time, and this is all prior to the 2014 Thomas
17 versus Nevada Yellow Cab, I just want to be clear
18 for the record, did you ever receive phone calls
19 from employers of taxicab companies calling your
20 office up and specifically asking to speak with you
21 about what the Nevada minimum wage law is and how it
22 applies to their industry?

23 A. Yes, I did.

24 Q. And just give me a background of how, what
25 happened when you received that phone call, if you

1 **remember the company, the date, who it was?**

2 A. I probably received several phone calls
3 and one or two office visits. I know Jay Nady came
4 by. I believe I received a call from Brent Bell.
5 I'm not sure if -- there may have been others. I do
6 specifically recall those two.

7 **Q. So Jay Nady?**

8 A. Yes.

9 **Q. And Brent Bell?**

10 A. Yes. These contacts were probably shortly
11 after Judge Jones issued the interim order.

12 **Q. Meaning the Lucas v. Bell Trans?**

13 A. Exactly.

14 **Q. United States Federal District Court in**
15 **Nevada?**

16 A. Right.

17 **Q. Okay. The phone calls from Jay Nady and**
18 **Brent Bell, what was the reason for them calling you**
19 **directly?**

20 A. They asked how that impacted how we would
21 handle wage claims that may be filed against their
22 companies.

23 **Q. And what did you tell them?**

24 A. I told them exactly what our process was,
25 that we understood Judge Jones had issued an order,

1 we didn't believe that that was a final order from a
2 court of competent jurisdiction that we could reject
3 wage claims filed, that we would continue the
4 process of accepting wage claims, holding those wage
5 claims in abeyance until there was a final issue
6 order -- order issued, and that they continue the
7 process of allowing them if they chose to to resolve
8 wage claims as they were filed.

9 **Q. In terms of the office visits, who came to**
10 **your office and visited you from the taxicab**
11 **industry, any companies?**

12 A. As I mentioned, Jay Nady and his counsel.

13 **Q. Okay.**

14 A. Those are the only direct visits I recall.

15 **Q. But the phone calls were Jay Nady and**
16 **Brent Bell?**

17 A. Well, Jay Nady and then he followed that
18 up with an in-person visit and then Brent Bell.
19 And, again, I simply conveyed that, what I just
20 said; that we would continue the process of holding
21 those cases, those claims in abeyance until there
22 was a final decision.

23 **Q. At that time was your office, either**
24 **somebody tasked by you or Commissioner Tanchek**
25 **tasking you, were you at all following the**

1 progression through the court system of Thomas
2 versus Nevada Yellow Cab?

3 A. I, frankly, wasn't aware of it at the
4 time.

5 Q. Okay. Meaning at the time you were giving
6 those directives, information, advising taxicab
7 companies?

8 A. Exactly.

9 Q. Representatives?

10 A. During this period of time we were talking
11 about.

12 Q. So you hadn't even heard of Thomas v.
13 Nevada Yellow Cab?

14 A. No. I'm, frankly, not sure when that was
15 even filed.

16 Q. Okay. So would it be fair and accurate to
17 say, correct me if I'm wrong, that the first time
18 you would have been made aware of Thomas versus
19 Nevada Yellow Cab, Nevada Supreme Court decision was
20 when the decision was rendered in 2014?

21 A. Yes. It was after that decision was
22 rendered there were a couple of people that sent me
23 a copy of that decision.

24 Q. But prior to that decision?

25 A. No.

1 Q. Did you know if, what stage of the process
2 the case was going through in terms of any motions
3 being filed, any briefs being filed with the Nevada
4 Supreme Court, anything of that nature?

5 A. No. I knew nothing about it. I don't
6 know if the Affidavit that I prepared was with
7 regard to that matter or something else. Frankly, I
8 didn't ask.

9 Q. I understand.

10 A. Because at that time I was no longer with
11 the Office of Labor Commissioner. I had other
12 responsibilities.

13 Q. Understood, Commissioner Sakelhide.

14 So we talked about when you were receiving
15 phone calls from employers with respect to taxicab
16 companies. Did you ever receive phone calls or
17 visits from families who would employ casual
18 babysitters?

19 A. I probably did on occasion. The process
20 in the office was that there would be an
21 investigator who was tasked with, basically, being
22 the call person of the day. So they would take the
23 vast majority of calls.

24 If they were out on a break or over at
25 lunch, I was, frankly, in the office all that time.

1 If that person wasn't available, then the folks at
2 the front would forward the calls to me.

3 So I probably received just -- you know, I
4 mean, what I did was basically receive an overflow
5 of calls. The contacts I received from Brent Bell,
6 Jay Nady was most likely because they knew me from
7 my past experience with the TSA.

8 **Q. Understood. During that process, whether**
9 **it's overflow or because you know certain**
10 **individuals or families or because of your**
11 **prominence and, you know, just you being in that**
12 **position, did you ever receive direct phone calls**
13 **from families who had employed or were employing**
14 **casual babysitters?**

15 A. I probably did.

16 **Q. What would you advise -- at the time, what**
17 **were you advising the families who would call you**
18 **regarding the Nevada minimum wage law?**

19 A. Oh, the same thing. Basically, it was an
20 area that was in flux. We were awaiting final, you
21 know, a final guidance from an appropriate Court,
22 that we really would not give advice as to whether
23 they should pay the full minimum wage or less than
24 the minimum wage. Basically, simply here is what
25 the process. If you don't, here is what can happen.

1 And that's it.

2 Q. Did you -- understood.

3 But you did not in any way advise those
4 families who would call you who had been employing
5 casual babysitters and inform them, oh, and by the
6 way, you are now violating Nevada minimum wage labor
7 law by not paying these casual babysitters minimum
8 wage?

9 A. That's correct, because we didn't know
10 what the status of the law was. We still had these
11 provisions that were still on the books and we
12 couldn't tell any -- it was our position that we
13 couldn't tell anyone to ignore existing provisions.

14 Q. When you say you couldn't tell anyone, and
15 -- they were on the books and you couldn't tell
16 anyone to ignore existing provisions, explain to me,
17 are you referring to Exhibit No. 3?

18 A. Yes. Well, among others, but yes,
19 including the 608.250 provision.

20 Q. So as far as you were concerned, as far as
21 your agency was concerned as Deputy Labor
22 Commissioner with respect to Exhibit No. 3, NRS
23 608.250, that was an existing and valid law in
24 Nevada at the time you received the Lucas versus
25 Bell decision; correct?

1 A. Well, it was an existing law that hadn't
2 been removed from the books. We were aware of the
3 position or argument that could be made that the
4 Constitutional provision took precedence over these
5 sections and that that decision -- that that
6 determination had yet to be made, even prior to the
7 Lucas versus Bell Trans decision.

8 So we were aware of it. Again, I wasn't
9 as actively involved in 608 provisions at the time
10 until, frankly, shortly before the decision was
11 issued by Judge Jones, but I still believe that it
12 was the position of our office that there was a
13 question as to whether the 250 provision survived
14 the Constitutional change.

15 **Q. But as Deputy Labor Commissioner, when you**
16 **just testified, Commissioner Sakelhide, and correct**
17 **me if I'm wrong, that to you, as your office, that**
18 **was an existing provision on the book?**

19 A. Right.

20 **Q. Would it be fair and accurate to say that**
21 **an existing provision on the book is a valid Nevada**
22 **law to be followed by employees and employers?**

23 A. Well, it was a valid law in the book until
24 such time that there was a decision that would be
25 rendered that -- by, again, a court of competent

1 jurisdiction that the provision was no longer valid
2 because it conflicted with the Section 16 of the
3 Constitution.

4 **Q. After the 2014 decision?**

5 A. Yes.

6 **Q. Okay. So prior to that decision, you were**
7 **not in any way advising or directing, either by**
8 **written opinion or a notice or verbally telling**
9 **employers as well as employees and families, hey,**
10 **with respect to NRS 608.250, go ahead and just cross**
11 **it out because it doesn't exist anymore?**

12 A. No. We made both employers and employees
13 aware of the conflict.

14 **Q. Okay. Now --**

15 A. That's as far as we would go. We were
16 very clear not to say one way or the other whether
17 the provision either would survive or wouldn't
18 survive or how it would impact the current wage
19 claim, which is why we held those wage claims in
20 abeyance until we received further guidance.

21 **Q. Explain to me, and thank you, Commissioner**
22 **Sakelhide, for mentioning it, when you say you were**
23 **advising employees, employers and families that**
24 **there was a conflict, explain to me in your own**
25 **words what you were describing and explaining and**

1 **informing these employers and employees and families**
2 **about the conflict that existed?**

3 A. Well, the conflict was there was a viable
4 reading of Section 16 of the Constitution that may
5 eliminate the existing exemptions and exceptions to
6 the minimum wage provision and that that was an
7 argument that was being made and was before the
8 Court.

9 **Q. Being made by whom?**

10 A. Again, at that time, we were looking at
11 the conflict between the AGO opinion and the Judge
12 Jones order in Lucas v. Bell.

13 **Q. And you testified that it may, it's a**
14 **viable claim that may be made in terms of Section**
15 **16, Article 15?**

16 A. Right.

17 **Q. But at the time, you, as Deputy Labor**
18 **Commissioner, apart from the Lucas v. Bell decision,**
19 **you did not have any directive or any opinions prior**
20 **to 2014 from the Nevada Supreme Court decision;**
21 **correct?**

22 A. Not that I'm aware of. But, again, I left
23 that office prior to 2014.

24 **Q. But in reading -- let me ask you this.**
25 **When you received that decision in 2014 of Thomas v.**

1 Nevada Yellow Cab case, did it appear to you that
2 there were other decisions prior to it, or it was
3 basically the first decision on this issue and it
4 was a landmark decision?

5 A. It appeared to be the first decision. I,
6 frankly, didn't know what happened after I left the
7 office with regard to the Lucas v. Bell case. I
8 don't know if that was settled or there was a final
9 order issued on that, so --

10 Q. And we're going to attach it as an
11 exhibit, the Lucas v. Bell decision, the order that
12 you have been referencing in your testimony here
13 today. Did you read -- during your tenure,
14 obviously, I'm talking about your tenure as Deputy
15 Labor Commissioner, Commissioner Sakelhide, did you
16 read the 2005 Attorney General at the time, Brian
17 Sandoval, opinion while you were Deputy Labor
18 Commissioner?

19 A. Yes, I did.

20 Q. And when you read it, did you read it side
21 by side to the order by Judge Jones or did you read
22 it separately?

23 A. Actually, both. I mean, prior to the
24 decision being issued I read it independently.

25 Q. Okay.

1 A. During the pendency of the Lucas hearing
2 before that Judge Jones order was issued, and then I
3 read it along with the Judge Jones decision just as
4 you said.

5 Q. Okay. I just wanted to --

6 A. But I did both.

7 (Deposition Exhibit No. 5 was marked for
8 identification.)

9 BY MR. BOTROS:

10 Q. Commissioner Sakelhide, what's been marked
11 as Exhibit No. 5 in front of you is the order that
12 you have been referencing throughout your deposition
13 here today, where it has United States District
14 Court, District of Nevada; do you see that at the
15 top?

16 A. Yes, I do.

17 Q. And it has order, and it has Anthony Lucas
18 and Gregory H. Castello, Lillian Melton, Leavon R.
19 Smith, Robert A. Greene, Plaintiffs, on behalf of
20 themselves and all others similarly situated, versus
21 Bell Trans, Nevada Corporation, Defendant.

22 Do you see that?

23 A. Yes, I do.

24 Q. I just want briefly for you, just like I
25 have been doing for all the other exhibits, just

1 peruse to make sure that it refreshes your
2 recollection. And as you see, I was trying to be
3 more friendly in terms of the environment a little
4 bit and they were kind of double-sided, but I just
5 want you to read or peruse through it to make sure
6 it refreshes your recollection of what you read at
7 the time as Deputy Labor Commissioner.

8 Does that make sense?

9 A. Yes, it does.

10 MR. MOAS: Counsel, while you're doing
11 that, let me clarify, is this Exhibit 5?

12 MR. BOTROS: That is correct, counsel.

13 MR. MOAS: Okay. Thanks.

14 MR. BOTROS: Absolutely.

15 THE WITNESS: Okay.

16 BY MR. BOTROS:

17 Q. Commissioner Sakelhide, did you have an
18 opportunity to review what's been marked as Exhibit
19 No. 5, which is the order from United States Federal
20 District Court of Nevada, Judge Jones' order in
21 Lucas versus Bell Trans?

22 A. Yes, I did. I went through it quickly.

23 Q. Okay. Excellent. And we'll go,
24 obviously, in further detail, but would that refresh
25 your recollection in terms of Exhibit No. 5, what

1 you would have reviewed, read and sent to, at the
2 time, Commissioner Michael Tanchek and the Attorney
3 General Dianna, I'm going to mess up her last name?

4 A. Hegeduis.

5 Q. Hegeduis, thank you.

6 A. Yes, it is.

7 Q. Page 5 of 18 of that order, do you see
8 that?

9 A. Yes. I'm on Page 5.

10 Q. Excellent. This is where it points out
11 lines, particularly Lines 15 through 20, it starts
12 like the third sentence with, make sure we're on the
13 same page and line, if there is a violation; do you
14 see that?

15 A. Yes.

16 Q. If there is a violation of any of the
17 provisions falling within NRS 608.005 to 608.195,
18 then Labor Commission can direct the District
19 Attorney, Deputy Labor Commissioner, the Attorney
20 General, Special Counsel to prosecute the action for
21 enforcing according to law.

22 Do you see that?

23 A. Yes.

24 Q. Is that what you understood as the Deputy
25 Labor Commissioner in terms of you enforcing Nevada

1 **laws?**

2 A. Yes. That's part of the provisions, yes.

3 **Q. And, specifically, enforcing Nevada**

4 **minimum wage laws?**

5 A. Yes.

6 **Q. Okay. If you turn to Page 2, and I just**
7 **want to be very clear, as Deputy Labor Commissioner**
8 **in the State of Nevada, you didn't believe there was**
9 **another Office of Labor Commissioner above your**
10 **office that would enforce Nevada labor laws?**

11 A. No. We were the office tasked with
12 enforcing those provisions.

13 **Q. If you look to Page 8 of 18 of Exhibit No.**
14 **5 where it has, in sum, this is Line No. 9; do you**
15 **see it?**

16 A. Yes.

17 **Q. In sum, there is no general private right**
18 **of action for all of the provisions found in Chapter**
19 **608; do you see that?**

20 A. Yes.

21 **Q. What was your understanding when you**
22 **reviewed that?**

23 A. Again, this is a reference to the
24 Baldonado decision.

25 **Q. Correct, correct. But when it mentions**

1 all of the provisions of Chapter NRS 608, would you
2 agree with me that NRS 608.250, Subsection 2, would
3 fall into Chapter 608?

4 A. Yes.

5 Q. And in this order, and this judge, and
6 this case in terms of Lucas versus Bell Trans and
7 his order in 2009, he made a ruling; correct?

8 A. Yes, go ahead.

9 Q. That there is no general private right of
10 action for all of the provisions found in Chapter
11 608?

12 A. Yeah, in his reference to the Baldonado
13 decision, yes.

14 Q. Correct. But all of Chapter NRS 608 would
15 include NRS 608.250, Subsection 2; correct?

16 A. Yes, it would.

17 Q. Meaning he didn't say, well, all of NRS
18 Chapter 608 there is no private right of action
19 except for 608.250, you guys get -- you know, no,
20 you can have a right of action; he didn't put any
21 conditions?

22 A. I'm not sure what you mean.

23 Q. Sure.

24 A. By the judge imposing a condition.

25 Q. Sure. Meaning what did you understood

1 (sic) it when Judge Jones said there is no private
2 right of action for all provisions found in Chapter
3 608?

4 A. Okay. Well, quite simply, and again, I
5 more referenced the Baldonado decision and how we
6 interpreted private right of action.

7 Q. What does that mean to you?

8 A. Basically, there are specific provisions
9 under 608 that do reference private rights of
10 actions. There are -- absent that, the question is
11 whether or not there is a private right of action
12 that aren't specifically referenced.

13 Q. Okay.

14 A. Does that answer -- yeah.

15 Q. I'm heading into some --

16 A. Yeah.

17 Q. It's -- I'll go slower.

18 A. Yeah, I'm not sure that that was the
19 question you were asking.

20 Q. My question, I guess, Commissioner, did
21 you advise any of the taxicab drivers or babysitters
22 that called you, or domestic service employees,
23 outside salespersons, agricultural workers, persons
24 with severe disabilities, did you advise them, oh,
25 by the way, you have a private right of action under

1 **NRS 608?**

2 A. I don't believe I did. I don't know why I
3 would.

4 **Q. Okay.**

5 A. When we would receive calls, it was in
6 reference to what our agency was doing and what our
7 agency's jurisdiction was and what our processes
8 were.

9 **Q. Did any of them tell you, volunteer, oh,**
10 **and by the way, I am filing such and such with such**
11 **and such court regarding Nevada minimum wage laws?**

12 A. No. I don't recall ever having that
13 discussion.

14 **Q. If you look to Page 10 of 18 of Exhibit**
15 **No. 5, this is on Line 23, this is where Judge Jones**
16 **had reviewed and read the Nevada Attorney General's**
17 **opinion, 2005, by then Attorney General of Nevada,**
18 **Brian Sandoval, and was looking at whether that**
19 **forms a basis for the Plaintiffs' arguments**
20 **pertaining to minimum wage and whether the**
21 **Constitutional Minimum Wage Amendment basically**
22 **repeals NRS 608.250, Subsection 2E.**

23 A. I understand what you're saying.

24 **Q. Okay. And it says in Line 23, the Nevada**
25 **Attorney General's opinion does not necessarily**

1 carry weight with this Court.

2 Do you see that?

3 A. Yes, I do.

4 Q. By that time, approximately how many years
5 would you have been practicing law?

6 A. More than 20 years.

7 Q. And when there is not a Nevada or a State
8 Supreme Court decision on a particular issue, and
9 the Federal District Court is presented with an
10 issue of first impression in the state because of
11 jurisdictional issues and because it hadn't yet made
12 its way through the State Courts all the way to the
13 State Supreme Court, when you have a -- you're
14 familiar with an Article 3 judge?

15 A. Uh-huh, yes.

16 Q. Is that yes? Okay. I just wanted to be
17 clear. They are appointed for life?

18 A. Right.

19 Q. When you have a lawful order from a United
20 States Federal District Court judge that rules on an
21 issue that hasn't been decided at the time by the
22 Nevada Supreme Court, where he in his order states,
23 the Nevada Attorney General's opinion does not
24 necessarily carry weight with this Court, what did
25 that mean to you when you read that?

1 A. Well, quite simply, an AGO was an advisory
2 opinion.

3 Q. What does that mean by AGO is an advisory
4 opinion?

5 A. An Attorney General's opinion is an
6 advisory opinion. It's not one that binds a Court
7 to follow.

8 Q. When you read that at the time,
9 Commissioner Sakelhide, did you follow that opinion?

10 A. The -- which opinion, the AGO opinion or
11 the opinion of --

12 Q. The opinion of Judge Jones, basically that
13 he said -- you mentioned you read side by side the
14 Nevada Attorney General opinion of 2005 by then
15 Attorney General Brian Sandoval and then you read
16 the order from Judge Jones, United States Federal
17 District Court judge of Nevada in Lucas v. Bell
18 Trans of 2009, after you read them, the first AG
19 opinion in 2005 and then the 2009 order, whichever
20 order --

21 A. Of course.

22 Q. It is irrelevant to me for this line of
23 questioning, but when you read them side by side,
24 after you had read them, and as somebody at the time
25 who would have been practicing for over 20 years in

1 your position, in your capacity in terms of all the
2 extensive legal interpretations you've done starting
3 from first in your career on Capitol Hill, did you,
4 when you read that, did you follow that opinion of
5 Judge Jones, that he is ruling that the Nevada
6 Attorney General's opinion does not necessarily
7 carry weight with this Court? Did you follow that?

8 A. I understand your question. What I did
9 was have a discussion with Commissioner Tanchek and
10 strongly encouraged him to run both of these by our
11 AG to get directive as to what we should do, whether
12 we should continue the practice or make a decision
13 one way or the other as to whether this was a final
14 directive that we should -- that we would then take
15 a position that 250 clearly survive the
16 Constitutional amendment and, after having that
17 discussion with him, it was later, we were later or
18 I was later directed to continue the practice.

19 Q. The practice of?

20 A. Of taking the wage claims, holding those
21 in abeyance until they're -- until one of two things
22 happened, either any period of appeal of this
23 decision was exhausted or there was a final decision
24 that was rendered by the Nevada Supreme Court on the
25 matter.

1 I didn't know what the next step was going
2 to be, whether it would be appealed, whether the
3 Federal District Court would ask for the input of
4 the Nevada Supreme Court, which could happen. So I
5 wasn't really -- we weren't really sure what the
6 next step would be.

7 **Q. Okay.**

8 A. So, again, we simply continued the
9 process.

10 **Q. Understood, Commissioner. But you did**
11 **not, in any way, advise employers to follow, after**
12 **reading the Lucas v. Bell decision, after reading**
13 **where it says the Nevada Attorney General's opinion**
14 **does not necessarily carry weight with this Court,**
15 **on Page 10 of 18, Line 23, you didn't advise**
16 **employers to follow the 2005 Nevada Attorney**
17 **General's opinion?**

18 A. No. We continued in the same vein. We
19 didn't advise them to ignore the provisions or we
20 didn't tell them that Judge Jones' decision resulted
21 in 250 clearly surviving the Constitutional
22 amendment. We simply told people we were continuing
23 the same process and that there was still -- there
24 was still question as to what was going to happen
25 with regard to whether 250 survived Constitutional

1 muster.

2 **Q. Understood. And thank you, Commissioner**
3 **Sakelhide, for that.**

4 A. We were very cautious as to what we could
5 do.

6 **Q. It appears so.**

7 A. We were impacting a lot of lives with
8 regard to taxi drivers, limousine drivers. Again,
9 our office took our responsibility very seriously in
10 ensuring that those rights would be protected, and
11 so that's why we continued the process of allowing
12 or -- and encouraging drivers to file claims with us
13 and, again, explaining what that process was.

14 **Q. What about notice to employers; did you**
15 **provide any formal notices to employers about the**
16 **conflict that your agency was determining existed**
17 **with the Nevada minimum wage law?**

18 A. Did I, no.

19 **Q. No, no, no. Did anybody in your office?**

20 A. To be honest, I don't know. I don't
21 recall any. There may have been.

22 **Q. Who would have been --**

23 A. That, obviously, would have been
24 Commissioner Tanchek.

25 **Q. Okay. So he would have been the person**

1 that if I wanted to get an answer whether or not him
2 or his office, either at your direction or somebody
3 else, that he tasked, for example, saying, hey, I am
4 the Commissioner, Michael Tanchek, just using an
5 example, I am hereby directing you to advise all
6 employers, here is the notice to give to them, that
7 they are now to no longer follow NRS 608.250?

8 A. There's a formal process that, advisory
9 opinion of the Labor Commissioner to be issued. I
10 don't believe there was any formal advisory opinion
11 issued by Commissioner Tanchek on this matter.

12 Q. One way or the other?

13 A. One way or the other.

14 Q. Okay. So I understand one way or the
15 other. Was there any type, as far as you know, and
16 if you don't, that's understandable and you just let
17 me know who in your view would know, whether a
18 notice went out to employers from the Office of
19 Nevada Labor Commissioner indicating to them,
20 advising them, informing them, oh, by the way, there
21 is a conflict --

22 A. No. The only person --

23 Q. -- of the law of Nevada minimum wage, this
24 issue is in flux, we are waiting for a court of
25 competent jurisdiction to decide this matter?

1 A. I don't believe it was. The only person
2 that would be able to do that, given what
3 Commissioner Tanchek, Commissioner Towler's
4 management style was would be the Labor
5 Commissioner.

6 Q. Okay.

7 A. There would be nobody else that would have
8 that authority unless they were specifically
9 delegated by one of them to do. Very often I would
10 be delegated by one or the other to issue an
11 advisory opinion.

12 Q. Okay.

13 A. But, again, I would never take it upon
14 myself to issue anything under my signature that
15 wasn't specifically requested by one of -- by, you
16 know, one of the two Labor Commissioners I work for.

17 Q. Understood, Commissioner Sakelhide. Would
18 you agree with me that, since you were tasked with
19 this directive, that any notice that would be sent
20 out to employers, one way or the other, about
21 whether to continue following NRS 608.250 or not or,
22 oh, by the way, the current State of Nevada minimum
23 wage law is in conflict and in flux, and if you have
24 any questions, you know, please call so and so, that
25 if such notice were to be sent out, you would have

1 **been involved, not necessarily in just sending it**
2 **out, but in at least some type of a discussion**
3 **because of your position at the time as Deputy Labor**
4 **Commissioner?**

5 A. Well, again, from a certain point forward
6 that I was involved in 608 matters, I would say the
7 answer would be yes. There was a period of time
8 before that I was limited to really 338 matters. I
9 might not be. Or there was also a period of time
10 that was post the issue, post the Constitutional
11 amendment and my tenure that things may have gone
12 out.

13 **Q. Sure.**

14 A. So, again --

15 **Q. No, no. I'm talking about, specifically,**
16 **here's the time -- and I appreciate that.**

17 A. I just want to be specific as to the
18 timeframe.

19 **Q. And you are, and I'm going to be even more**
20 **specific.**

21 A. Go ahead.

22 **Q. Thank you, Commissioner. I'm talking**
23 **about in 2009 after you had presented Commissioner**
24 **Michael Tanchek as well as the Deputy Attorney**
25 **General Dianna Hegeduis, I mess up her name all the**

1 time, her, after -- would you agree with me that
2 that period of time, now that you have been tasked
3 with collecting information and disseminating it to
4 the Labor Commissioner Michael Tanchek as well as
5 the Deputy Attorney General, Dianna Hegeduis?

6 A. Hegeduis.

7 Q. Hegeduis. I'm going to get it right one
8 time. That you would have been, at the very least,
9 if such notices were to be sent out to employers
10 about the conflict of the Nevada minimum wage law,
11 the influx and how the Office of Labor Commissioners
12 are waiting on a court of competent jurisdiction to
13 fully and finally resolve this issue, that you would
14 have been the one who would have been involved and,
15 at the very least, discussions on what would be
16 contained in such a notice?

17 A. I would expect that I would have been.

18 Q. Okay. Fair enough.

19 On Page 11 of 18 of Exhibit No. 5, this is
20 Line 9 where, again, this is Judge Jones' order in
21 Lucas v. Bell, he goes on to rule, mentions in his
22 opinion, in his order, as to the Attorney General's
23 opinion on the amendment, the Attorney General's
24 reasoning seems to be inconsistent.

25 Do you see that?

1 A. Yes, I do.

2 Q. So apart from any other person, you would
3 be, and, again, correct me if I'm wrong, it seems to
4 be that this issue landed on the lap of the most
5 qualified Deputy Labor Commissioner Nevada would
6 ever have had at the time; would you agree with me
7 on that?

8 A. I don't know. I'm sorry. There are many
9 competent --

10 Q. Sure. Specifically, would you agree with
11 me that this was a complex issue of law?

12 A. It was, or it became.

13 Q. At the time?

14 A. Yes, it was.

15 Q. Meaning prior to the 2014 Thomas versus
16 Nevada Yellow Cab?

17 A. Right.

18 Q. Would you agree with me on that?

19 A. Yes, it was.

20 Q. And would you agree with me that the
21 reason being is because you had two laws on the
22 books?

23 A. Yes.

24 Q. At the same time; is that correct?

25 A. Yes.

1 Q. Dealing with the same issue, minimum wage
2 law?

3 A. Correct.

4 Q. One saying, NRS 608.250, Subsection 2E,
5 saying taxi cab drivers and limousine drivers, but
6 in my reference to that they were Yellow Checker
7 Star Transportation taxicab drivers, these
8 individuals are exempt from minimum wage under the
9 guidelines.

10 A. (Witness nodded head affirmatively.)

11 Q. The other provision still in the book at
12 the time, prior to 2014, was Section 16, Article 15,
13 of the Nevada 2006 Constitutional Minimum Wage
14 Amendment which says, minimum wage hereby now
15 applies to all individuals subject to a few certain
16 exceptions, which taxicab drivers are not included
17 in that; would you agree with me?

18 A. That is a reading that you have.

19 Q. Okay.

20 A. I don't think that's the only reading you
21 could have, but go ahead.

22 Q. Was that the reading that the Office of
23 Nevada Labor Commissioner had when they were
24 comparing and reviewing and reading NRS 608.250 side
25 by side to the Section 16, Article 15, of the Nevada

1 **Constitution Minimum Wage Amendment?**

2 A. Again, you would have to ask Commissioner
3 Tanchek that.

4 Q. Okay. And why do you say that? Is it
5 because you believe that he would know the answer to
6 that more than you or he would be in a more
7 appropriate position to answer that considering that
8 he is the one being appointed to make those
9 determinations?

10 A. Well, two factors. One is I would imagine
11 that there were discussions that he had with the
12 Attorney General that I, our Attorney General
13 Hegeduis, I wasn't privy to. There may have been
14 discussions that they had that would -- that, you
15 know, could have swayed me one way or the other.

16 The second thing is Commissioner Tanchek
17 had been -- was -- the Commissioner prior to being
18 Commissioner, he was a Deputy Commissioner, he had
19 much more involvement with the minimum wage language
20 than I had.

21 Q. Really?

22 A. Yes. I think he was -- may have been the
23 Deputy Labor Commissioner at the time that the --
24 and, again, I could be wrong with my timing, but he
25 was much more familiar with the drafting of Section

1 16, he was much more familiar with who drafted --
2 who, specifically, penned the language in Section 16
3 than I was.

4 So he would have been much more aware of
5 what the intent was in drafting that language than I
6 would have been.

7 And, again, given that unique perspective
8 that he had and I didn't, obviously, I would defer
9 to his knowledge.

10 Q. When you say you would defer to his
11 knowledge, I just want to be very clear, it's
12 pertaining to whether -- strike that.

13 When you go to Exhibit No. 1, this is of
14 your Affidavit, Commissioner Sakelhide, No. 6, it
15 says, upon information and belief, the Labor
16 Commission's director. You're talking about
17 Commissioner Michael Tanchek?

18 A. Yes.

19 Q. Correct?

20 A. Yes.

21 Q. Was based upon the divergent views
22 concerning the validity of exceptions to minimum
23 wage laws expressed in the Nevada Attorney General
24 opinion 2005-05, March 7, 2005, and Lucas v. Bell
25 Trans, 2009, WL 2424557, and in parentheses,

1 D.NEV.2009, in the Federal District Court of Nevada
2 2009?

3 A. Yes.

4 Q. What did you mean when you put in your
5 sworn Affidavit that, upon information and belief,
6 the Labor Commissioner's directive, meaning
7 Commissioner Michael Tanchek, Tanchek's directive
8 was based upon the divergent views concerning the
9 validity of exceptions to minimum wage laws
10 expressed in Nevada Attorney General's opinion?

11 A. Well, quite simply, if you read the AGO
12 and you read Judge Jones' decisions, they obviously
13 have different results than a conflict.

14 Q. But would you agree -- go ahead. I'm
15 sorry.

16 A. No. It's really that simple.

17 Q. So the conflict, I just want to be very
18 clear on the question. The conflict that you were
19 seeing was that you were getting an Attorney General
20 opinion at the State saying one thing?

21 A. Yes.

22 Q. And at the time, not the Nevada Supreme
23 Court, but the Federal District Court judge, in this
24 case Judge Jones, saying completely the opposite?

25 A. Exactly.

1 Q. Would that be fair and accurate?

2 A. Yes.

3 Q. Description of the current state of the
4 law at the time in 2009?

5 A. Right. The question was simply whether
6 250 survived, and obviously there were two different
7 opinions as to whether they survived.

8 Q. Now, based on your education and your
9 experience and your work at Capitol Hill as well as
10 legal services, Constitutional interpretation,
11 looking at certain proposed bills and amendments to
12 bills and legal drafting of proposed legislations,
13 when you have an Attorney General opinion on a
14 particular subject matter and at the same time --
15 saying one thing, and you have a Federal District
16 Court judge looking at the same facts, same issues,
17 same law, everything the same, nothing different at
18 all, and you have two competing -- they come to
19 different conclusions based on different things, as
20 someone who has significant legal background, when
21 you have an Attorney General opinion and a Federal
22 District Court opinion on the same issue, and the
23 Federal District Court says, judge, says that Nevada
24 Attorney General does not carry weight, as somebody
25 like yourself, who in your view carries precedence?

1 **MR. MOAS:** Object to the form.

2 **BY MR. BOTROS:**

3 **Q. Go ahead.**

4 A. Well, two things. It is -- the answer is
5 a pretty simple one; you would be a fool to ignore a
6 Federal District judge's order.

7 **Q. Why?**

8 A. Well, because it is the most compelling
9 take on the matter that's there.

10 **Q. Why is it most compelling?**

11 A. Well, because it is a Federal District
12 Court judge who is issuing an opinion on the matter
13 that's before you.

14 But on the other hand, you have an AGO
15 opinion, and when you're in a position that neither
16 Commissioner Tanchek and I are in or I was in when I
17 was Commissioner of the NTA, the body that
18 represents you if you're sued is the Attorney
19 General's office.

20 So that's the position you're in. And as a
21 result, what you do, again, the action we took was -
22 - I know I'm repeating myself -- was we continued
23 the process because we didn't know what the next
24 step in the Federal District Court was going to be,
25 whether or not that decision would be appealed, what

1 the result of that would be if it was appealed to
2 the next level, what a final order would look like
3 if issued.

4 So, again, we were still in a position
5 that we don't believe there was yet a final
6 decision, and we simply continued the same process
7 we would until we were comfortable that there was a
8 final order, okay, issued by a court of competent
9 jurisdiction.

10 And, again, at that point what I would do,
11 and I'm sure what Commissioner Tanchek would do and
12 probably did, was to rely on our counsel, which is
13 the Attorney General.

14 **Q. Did you at any time seek or discuss with**
15 **Commissioner Tanchek because of the political**
16 **implications, meaning that you're between a rock and**
17 **a hard place, so to speak, that you needed to have**
18 **an appointment of a special counsel independent and**
19 **separate from the Office of Labor Commissioner**
20 **because you had a competing opinion from the**
21 **attorney that represents the Office of Nevada Labor**
22 **Commission?**

23 A. Never had that discussion, and the reason
24 for it is I'm not sure it was ripe for that
25 discussion.

1 Q. Why?

2 A. Again, we wanted to see what was going to
3 happen --

4 Q. Okay.

5 A. -- with Judge Jones' decision, whether it
6 was going to be the final order, whether it was
7 going to be appealed, whatever the next step would
8 be, and we didn't want to jump the gun. We would
9 continue the same process we had been.

10 It continued to protect the rights of the
11 -- our process continued to protect the rights of
12 the taxicab drivers, continued to provide employers
13 with proper and adequate notice of any claims that
14 would be filed.

15 There was no downside at that point in
16 deviating from what we were doing. It protected
17 everybody's rights and it did allow for the
18 continued litigation that we assumed was going to go
19 on.

20 We didn't think that this would --
21 frankly, I didn't think that this would be the final
22 decision in the matter.

23 Q. Meaning Lucas v. Bell?

24 A. Exactly. And to do anything other than
25 that --

1 **MR. MOAS:** Sorry to interrupt, counsel.
2 You have been going about two and a half hours. Do
3 you mind if we take just a two-minute break?

4 **MR. BOTROS:** No, no, it's going to be a
5 ten-minute break. We'll go off the record for ten
6 minutes.

7 **THE VIDEOGRAPHER:** The time is now 11:32
8 a.m., Eastern Standard Time. We are off the record.

9 **(A brief recess was taken.)**

10 **THE VIDEOGRAPHER:** We are on the record.
11 The time is now 11:50 a.m., Eastern Standard Time.

12 **THE WITNESS:** If I may, there was a
13 question you asked earlier with regard to --

14 **BY MR. BOTROS:**

15 **Q. Sure.**

16 **A. --** who the Deputy Attorney General that I
17 was involved with when I drafted the Affidavit.
18 That was Scott Davis.

19 **Q. You mean Exhibit No. 1?**

20 **A. Exhibit No. 1. Again,** just for
21 clarification. The name escaped me. You mentioned
22 it.

23 **Q. Well, I just wanted to make sure, does**
24 **that refresh your recollection of who it would have**
25 **been at the time?**

1 A. Yeah, actually, it does, and it came back
2 to me during the break anyway. That was Scott
3 Davis. He was our Deputy Attorney General at the
4 time I left the Office of the Labor Commissioner.

5 Q. And apart from him drafting this
6 Affidavit, Exhibit No. 1 of your deposition,
7 Affidavit of Keith Sakelhide, did he draft any other
8 Affidavits or documents or anything pertaining to
9 this case?

10 A. No. And his drafting was, basically, just
11 simply reviewing what I drafted.

12 Q. Oh, so you drafted this?

13 A. I drafted the Affidavit.

14 Q. Oh, okay.

15 A. He reviewed it.

16 Q. Okay. So these are truly, Exhibit No. 1,
17 Affidavit of Keith Sakelhide, these are truly your
18 own words?

19 A. This is what I drafted and was reviewed by
20 the Attorney General. I just wanted to make sure
21 that there was nothing that would get our office
22 into trouble or his office in trouble. I always
23 rely on counsel if I can.

24 Q. Understood, Commissioner Sakelhide.
25 Understood.

1 Referencing, getting back to Exhibit --
2 now that you mention that, Exhibit No. 1 with the
3 Affidavit of Keith Sakelhide, if you look to No. 7;
4 do you see that?

5 A. Yes.

6 Q. It says, the aforementioned directive
7 coincided with the litigation before the U.S.
8 District Court in Lucas v. Bell Trans.

9 Do you see that?

10 A. Yes, I do.

11 Q. Now, I just want to be very clear. When
12 you say "the aforementioned directive," are you
13 talking about the directive that, at the time, Labor
14 Commissioner Michael Tanchek would have given to you
15 that, basically, you're holding everything in
16 abeyance in terms of any type of claims or
17 complaints until such time that a court of competent
18 jurisdiction issued a final ruling on Nevada minimum
19 wage law?

20 A. That's accurate, yes.

21 Q. And I know it's kind of a legal term, but
22 could you please explain what does abeyance mean?
23 What is that?

24 A. We simply set it aside.

25 Q. Until such time?

1 A. Until such time that a proper ruling could
2 be made.

3 Q. Okay. And No. 8, it says, I directed
4 staff in the Labor Commissioner's office -- Labor
5 Commissioner's Las Vegas office to follow the
6 aforementioned directive; do you see that?

7 A. Yes.

8 Q. How did you do that?

9 A. I had a -- I met with the entire
10 investigative staff and administrative staff,
11 directed them that this is how we would deal with
12 any complaint filed or phone call received from a
13 taxi or limousine driver with regard to claims filed
14 or any claim filed that may fall under the 250
15 exemption.

16 Q. So would that include Lupe Martinez?

17 A. Yes, it was, and then I specifically
18 identified her to the entire staff as the point
19 person to be assigned all those claims.

20 Q. So she was identified to the entire staff
21 by you as the point person on all such complaints or
22 claims regarding Nevada minimum wage law in terms of
23 the intake process including any phone calls on
24 questions?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. Okay. And you testified earlier, you
4 still believe she's still at the office?

5 A. Yes, I believe so.

6 Q. Of the Nevada Labor Commission?

7 A. She was still employed as an investigator
8 when I left Nevada employment back in December --
9 last December.

10 Q. Would she be the one that would have --
11 strike that. I want to back up a little bit.

12 Did you advise, Commissioner Sakelhide,
13 did you advise Lupe Martinez as the investigator to
14 keep a log or a track of all complaints or claims
15 being filed by individuals regarding Nevada minimum
16 wage law?

17 A. No, not regarding all Nevada minimum wage
18 laws because that would have covered all claims that
19 she touched.

20 Q. I'm talking about 608.

21 A. That's what I'm talking about.

22 Q. Oh, really. Okay. So no --

23 A. Yeah, the investigators, almost all of the
24 investigators' entire workload involved 608 claims.

25 Q. So --

1 A. So anything involving any non-payment,
2 underpayment of minimum wage would be -- those are
3 what all the -- each of the investigators worked on.

4 Q. Okay. But, specifically, after you
5 received the directive from Commissioner, at the
6 time, Commissioner Michael Tanchek, did you advise
7 Lupe Martinez or any other person under your
8 direction, under your supervision, to keep track of
9 claims that are being made, specifically with
10 respect to NRS 608.250 pertaining to the list of
11 exemptions?

12 A. Yes. She was asked to segregate those
13 claims and hold those claims in abeyance.

14 Q. Okay.

15 A. And process her other claims in the normal
16 process.

17 Q. So would you agree with me, because you
18 have instructed her to hold those claims pertaining
19 to NRS 608.250, Subsection 2, those exemption
20 claims, relative to the Constitutional Minimum Wage
21 Amendment, 2006 Constitutional Minimum Wage
22 Amendment because there was a conflict that there
23 would be, there should be records that would be
24 contained by the Nevada Office of Labor Commissioner
25 regarding those files that specifically you told

1 her, meaning Lupe Martinez, to hold in abeyance
2 until such time that a court of competent
3 jurisdiction issued a final ruling on the Nevada
4 minimum wage law?

5 A. Yeah, that was the status up until the
6 time I left. I left the office in -- again, I have
7 no idea what happened. Whether that responsibility
8 remained with her or was transferred to somebody
9 else, I have no idea.

10 Q. Right. But some type of a record, would
11 you agree with me, would exist that certain claims
12 or certain complaints were filed with your office at
13 that time under your guidance and under your
14 leadership as Deputy Labor Commissioner pertaining
15 to NRS 608.250?

16 A. Yes.

17 Q. Okay. And those would be housed and in
18 the custody, possession and/or control of the
19 custodian of records of the Office of Nevada Labor
20 Commissioner?

21 A. Of course they would be.

22 Q. Okay. I just want to make sure it's not
23 some other entity that had it.

24 A. No.

25 Q. When Lupe Martinez was the point contact

1 person in terms of these NRS 608.250 exemption
2 claims that are being filed with your office, were
3 you given any type of reports, either daily, weekly,
4 monthly, quarterly or yearly on the volume?

5 A. No, I wasn't. I asked that she keep
6 Commissioner Tanchek advised as to the status and
7 the number of claims.

8 Q. Directly?

9 A. Directly.

10 Q. Would she copy you on any communications?

11 A. No. I asked her not to.

12 Q. Why?

13 A. Well, because if there was -- since I
14 would be hearing claims filed by the -- in our
15 office, I wanted to keep that wall as clear as I
16 could. So there would be nothing -- so I wouldn't
17 have any involvement in any aspect of the
18 investigators' claim assessment or investigation.

19 So I did my -- you know, I was very
20 careful in not involving myself in any, as much as I
21 could in any direct involvement in their claim
22 evaluation.

23 Q. Because at the time during your role, you
24 had kind of a dual role in terms of the Deputy Labor
25 Commissioner, but at the same time you are the

1 **Administrative Law Judge that would hear evidence,**
2 **facts, testimony on these same exact issues?**

3 A. Yeah. At the time, the vast majority of
4 the claims that were filed in southern Nevada,
5 either 338 or 608 claims, I would hear.

6 So I would be --

7 **Q. In your role as Administrative Law Judge?**

8 A. Well, that was in my role both as Deputy
9 Labor Commissioner also. What happens, the hearings
10 held on wage claims are presided over by either the
11 Labor Commissioner or the Deputy Labor Commissioner.
12 The operation was when I became Administrative Law
13 Judge for B and I, in the absence of anyone in
14 southern Nevada to hear those, I heard them.

15 But all claims, all the hearings are
16 conducted by either the Commissioner or the Deputy
17 Commissioner.

18 So I would hear the vast majority of the
19 cases in southern Nevada on 608. I would hear most
20 of the claims across the state on 338. There were
21 certain matters that Commissioner Tanchek would
22 retain for himself if they were ones that he
23 believed that he was the more appropriate person to
24 hear the case.

25 For example, again, we referenced -- you

1 referenced earlier or was referenced earlier in
2 Judge Jones' decision was the Baldonado case, so it
3 was one that Judge -- Commissioner Tanchek elected
4 to hear himself rather than --

5 **Q. And decide?**

6 A. Yes, exactly. And he heard both Baldonado
7 1 and Baldonado 2.

8 **Q. In your time, in your tenure between**
9 **approximately 2007 and 2013, approximately, to the**
10 **best of your recollection, how many hearings did you**
11 **hear pertaining to NRS 608.250?**

12 A. Actually, there would be quite -- there
13 would be quite a few. Probably 15 or 20 that had
14 some aspect of 250 involvement.

15 **Q. What do you mean 15 or 20 that had some**
16 **aspect? What are you talking about?**

17 A. There were a lot of claims that involved
18 commission claims, and those were kind of unique
19 claims and often turned on kind of minutia details
20 with regard to whether they were paid commissions or
21 wages or a combination of the two and how we would
22 view those.

23 **Q. Okay.**

24 A. So, again, the vast majority of the ones
25 that I said, some have some aspect to 250 would be

1 the Commission claims. They were kind of unique.

2 **Q. When you say "they were kind of unique,"**
3 **what do you mean by that?**

4 A. Well, very often, employees -- those were
5 employees that have earnings based on commissions or
6 very often a combination of wages plus commission,
7 okay. So there would be a base salary plus
8 commission or there would be commission but
9 maintaining a certain base salary.

10 Those were kind of unique cases that, you
11 know, again, they touched the 250, but very often
12 had aspects of it that took them out of the
13 exception.

14 **Q. Okay. That because of whatever industry**
15 **they're in, the entity, they would not be**
16 **specifically under any of those categories?**

17 A. Exactly.

18 **Q. Okay.**

19 A. So there would be some unique aspect that
20 would take them out of what we considered the 250
21 exception, even if that exemption was retained we
22 continued to hear those cases because, frankly, the
23 vast majority of those cases could be resolved even
24 without the question as to whether, you know, 250,
25 2C, survived or didn't survive the Constitutional

1 challenge.

2 Q. 2C, you mean outside salesperson?

3 A. Exactly.

4 Q. So would that have occurred, presumably
5 based on your testimony, correct me if I'm wrong,
6 these 608.250 hearings would have presumably, based
7 on your testimony, correct me if I'm wrong, would
8 have occurred prior to the Judge Jones' decision?

9 A. No. They occurred both before and after.

10 Q. Okay.

11 A. Because there were provisions of it that
12 would take them out of 250 even if 250 survived.

13 Q. Such as?

14 A. Such as there would be a combination of --
15 that the employee was paid a combination of wages
16 and commissions or their contracts said they would
17 be paid commissions but with a base salary.

18 Q. Okay.

19 A. So the base salary often would exceed the
20 minimum wage; therefore, rather than wait, because
21 it would -- the decision would be the same whether
22 or not 250 survived or didn't survive, they would
23 still be subject to our jurisdiction, the employment
24 contract basically said here is what the wages would
25 be, but there was a minimum wage that was agreed

1 upon to be paid that was in excess, equal to or in
2 excess of the existing Nevada minimum wage, but in
3 spite of that contract, that person was still not
4 paid what they should have been.

5 Q. I see. Okay. Did any --

6 A. Does that make sense?

7 Q. It does, it does. And thank you for the
8 explanation.

9 A. And, again, the reason for that was we
10 wanted to process as many claims as we could that,
11 and only retain those that we felt like we couldn't
12 hear.

13 Q. I understand.

14 A. Way too much detail.

15 Q. No, no, no. I just want to make sure I
16 get the full answer, Commissioner Sakelhide, I know,
17 and that's fine. That's why I asked the question.

18 A. Okay.

19 Q. Before 2009, and specifically before the
20 Lucas v. Bell decision, before you received it,
21 before you reviewed it, before you sent it off to
22 Commissioner Michael Tanchek and the Deputy Attorney
23 General Dianna Hegeduis --

24 A. Hegeduis.

25 Q. Hegeduis. I'm sorry. Yeah, that's the

1 one. Did you oversee as an Administrative Law Judge
2 hearings pertaining to taxicab drivers and,
3 specifically, hearings pertaining to taxicab drivers
4 regarding NRS 608.250 with respect to my client,
5 Yellow Checker Star Transportation?

6 A. Yeah, prior to 2009 I wasn't conducting
7 any 608 hearings. I only conducted 338 hearings.

8 Q. Right. Okay. So the prevailing minimum
9 wage?

10 A. Exactly.

11 Q. Okay. So after -- so before, you've
12 established before 2009 Lucas v. Bell Trans, you
13 weren't even doing --

14 A. I wasn't even doing 608 hearings. It
15 wasn't until after that that I started doing 608.

16 Q. So you were focused specifically on 338,
17 prevailing minimum wage?

18 A. Exactly.

19 Q. After the Lucas v. Bell decision in 2009,
20 did you ever preside over any hearings pertaining to
21 taxicab drivers regarding NRS 608.250 specifically
22 dealing with Yellow Checker Star Transportation?

23 A. No. We were holding all of those claims,
24 again, in abeyance. So there were no -- we
25 conducted no hearings for either your client or any

1 other taxicab company in Clark County after 2009
2 because we were holding those claims in abeyance and
3 they didn't go to a hearing.

4 **Q. Okay. And they didn't go to a hearing?**

5 A. They did not go to a hearing.

6 **Q. After the Thomas versus Nevada Yellow Cab**
7 **decision in 2014, did you still maintain contact**
8 **with the office or staff of Nevada Labor**
9 **Commissioner?**

10 A. Other than socially, no. Socially, I did,
11 but not --

12 **Q. Not professionally?**

13 A. Not professionally.

14 **Q. But socially did you in any way obtain any**
15 **insight or information on what they were doing with**
16 **these claims that were, at the time prior to 2014**
17 **Thomas v. Nevada Yellow Cab decision, Nevada Supreme**
18 **Court decision were in abeyance?**

19 A. No, never had.

20 **Q. So once you left, that was it?**

21 A. Once I left, yeah, there were very few
22 matters that pertained to my old job that I
23 continued to have discussion. There were one or
24 two.

25 **Q. What were those?**

1 A. There was an action that was filed, it was
2 an action filed in Federal District Court against
3 several employees of the Labor Commissioner. That
4 was the Hays decision. That was dismissed by the
5 Federal Court about two months ago.

6 Q. But --

7 A. So that's the only, again --

8 Q. Just to be clear, this was an issue
9 separate from --

10 A. It had nothing to do with --

11 Q. What we're talking about?

12 A. It had nothing to do with 250 or a taxicab
13 company or anything else.

14 Q. That's why I wanted -- I don't want to
15 belabor the point. I'm just focused on what you
16 knew about after you left in terms of 250.

17 A. Nothing.

18 Q. Okay.

19 A. No discussion concerning 250 with --

20 Q. No communications?

21 A. No, not with anyone -- not with either
22 Commissioner Towler or any staff, no.

23 Q. But at the time you drafted this
24 Affidavit, you would have left the Office of Nevada
25 Labor Commissioner; correct?

1 A. Yes, I had left there. I was a
2 Commissioner with Nevada Transportation Authority at
3 the time I drafted that.

4 Q. Before drafting that, did you consult with
5 any existing or former Office of Nevada Labor
6 Commissioner staff or officials?

7 A. Other than the one case I mentioned, no.

8 Q. No, no. I'm just talking about
9 specifically --

10 A. About 250?

11 Q. Yes.

12 A. No discussion at all with regard to 250.
13 I had no idea whether they continued the practice
14 after I left or abandoned that practice or came up
15 with something else.

16 Q. Did you review anything, documents,
17 articles, any type of case law, anything prior to
18 you drafting the Affidavit of Keith Sakelhide in
19 this case?

20 A. No.

21 Q. So this is entirely based on your best
22 recollection and your memory and -- because you were
23 there at the time; correct?

24 A. Exactly, what occurred more than three
25 years ago.

1 Q. Did you have any communications with
2 Commissioner Michael Tanchek regarding your
3 Affidavit?

4 A. No. None at all.

5 Q. Did you have any communications with Labor
6 Commissioner Thoran Towler regarding your Affidavit?

7 A. Not at all.

8 Q. Did you have any communications with Labor
9 Commissioner Shannon Chambers regarding your
10 Affidavit?

11 A. Not at all.

12 Q. Do you know who I'm talking about?

13 A. Yes, I do.

14 Q. Shannon Chambers?

15 A. I know who she is.

16 Q. Who is she?

17 A. I believe she's now the current Labor
18 Commissioner. I knew her when she was working with
19 Business and Industry.

20 Q. As what?

21 A. She had several positions there, actually.
22 I know she was heavily involved in the budget thing.
23 When I referred to the budget discussion I had
24 before, that was Shannon that was leading that
25 discussion.

1 Q. Are you familiar with a publication that's
2 put out by the State of Nevada, Nevada Department of
3 Business and Industry called The Business Advocate?

4 A. I believe that started when I was with
5 Business and Industry.

6 Q. Okay. Even prior to you being with the
7 Labor Commissioner?

8 A. No, not --

9 Q. No, no, no. I'm saying did you know about
10 that there is such a thing as a publication that's
11 issued by the state called The Business Advocate?

12 A. No, I'm not.

13 Q. Oh, okay.

14 A. No. It's not something I have seen. I've
15 just heard about it, but I haven't seen it.

16 Q. Sure. But you've heard about it?

17 A. Yes.

18 Q. What did you hear about the publication
19 called The Business Advocate?

20 A. Just that it was something that the
21 department was doing, the beginning and end of what
22 I know about it.

23 Q. Meaning the Nevada Department of Business
24 and Industry?

25 A. Exactly.

1 Q. But you were not in any way involved in
2 providing any information to that publication?

3 A. No.

4 Q. At the time you were Deputy Labor
5 Commissioner?

6 A. No, not providing any information to the
7 publication. One of the things we would -- we did
8 on either a monthly or bi-monthly basis, depending
9 on who the B and I director was, was provide them
10 with kind of what we did during a one or two-month
11 period.

12 Again, I don't know if any of those were
13 then incorporated into a magazine. It's possible
14 that we would do a monthly or bi-monthly report.

15 Q. Okay.

16 (Deposition Exhibit No. 6 was marked for
17 identification.)

18 BY MR. BOTROS:

19 Q. Commissioner Sakelhide, what's been marked
20 as Exhibit No. 6 in front of you, at the top it says
21 The Business Advocate Winter 2014.

22 Do you see that?

23 A. Yes, I do.

24 Q. And I understand that you testified
25 earlier and it's in your Affidavit that you would

1 have left that office in 2013 before this
2 publication?

3 A. Yes. About a year before.

4 Q. And you see where it says The Business
5 Advocate, a publication of the Nevada Department of
6 Business and Industry?

7 A. Yes.

8 Q. Does that refresh your recollection on
9 what you heard about this magazine that got
10 published by the State of Nevada?

11 A. Well, really, not one way or the other. I
12 just knew that it was -- that they were going to be
13 publishing, basically, a -- something each month or
14 quarterly that talked about, basically, some
15 guidance for businesses.

16 Q. Okay. So let me ask you this. In
17 general, and we'll talk specifically about Exhibit
18 No. 6 in a second, but in general, when there is a
19 business article or some type of guidance being
20 issued by a state magazine -- what I mean by a state
21 magazine is something that is published on behalf of
22 the state agency in terms of a report or things for
23 employers as a guideline on how they should be
24 comporting themselves according to existing Nevada
25 law --

1 A. Okay.

2 Q. In your position at the time as Deputy
3 Labor Commissioner, what would that indicate to you
4 that there is something out there, by the state,
5 that collects your report as well as the others,
6 other departments under the Nevada Department of
7 Business and Industry, and they publish those
8 certain things to the public generally but mainly
9 focused to the employers in terms of guidance, what
10 does that mean to you --

11 MR. MOAS: Object to the form.

12 BY MR. BOTROS:

13 Q. -- when you have a publication that does
14 that, that is issued by the State of Nevada?

15 A. Okay. I'm not sure what you mean.

16 Q. Would that be something, for example,
17 would that be something that would be reasonably and
18 legitimately relied upon by employers if there is a
19 state magazine published by the Nevada Department of
20 Business and Industry, that they can be safe to
21 reasonably and legitimately rely upon in terms of
22 guidance, depending upon which topics they're
23 talking about, which month, which year, which season
24 and what happened?

25 A. I would think that that would be a

1 reasonable statement. I would assume that that's
2 why this publication was put out, so employers could
3 rely upon it.

4 Q. Is that your understanding?

5 A. Yes. That would be my hope.

6 Q. Well, would you agree with me that such a
7 document that has the seal of the state on it, where
8 it mentions a publication of Nevada Department of
9 Business and Industry, reasonably would lend
10 confidence at least to the employers that this is
11 something that is issued by the State of Nevada?

12 MR. MOAS: Same objection. Go ahead.

13 THE WITNESS: I would hope it would.

14 BY MR. BOTROS:

15 Q. Okay. But you have no reason to believe
16 that it would not?

17 A. Of course.

18 Q. Okay. Meaning you don't have any
19 documents, evidence or testimony that indicates, oh,
20 this Business Advocate magazine, publication of the
21 Nevada Department of Business and Industry, is
22 flawed?

23 A. No, no reason to believe that.

24 Q. Is inconsistent with anything that we
25 would do on a normal and regular basis in terms of

1 **our agency?**

2 A. No reason --

3 **MR. MOAS:** Same objection.

4 **THE WITNESS:** I have no reason to believe
5 that it would be flawed in any way.

6 **BY MR. BOTROS:**

7 **Q.** Okay.

8 A. I would hope that this was, again, the
9 aspects of this magazine that dealt with minimum
10 wage law would have been drafted by somebody, you
11 know, within the office of the Commission.

12 **Q.** Exactly. And that's why I wanted to ask
13 you, because it mentions a minimum wage guide for
14 Nevada employers on the first page of Exhibit No. 6.

15 Do you see that?

16 A. Yes, I do.

17 **Q.** Okay. Would you agree with me that, based
18 on the byline, if you will, or the title of this
19 article and the magazine that it's dealing with an
20 issue that would be in the realm of the Nevada
21 Office of Labor Commissioner?

22 A. No. That's what I would believe.

23 **Q.** Okay.

24 A. And, again, just to give you a little more
25 detail, with regard to the aspects of the minimum

1 wage, whether it's increased or decreased each year,
2 the Office of the Commissioner is required to put
3 out that public notice each year. In fact, it's the
4 definitive date and time that that has to be made
5 public.

6 So, again, my guess is that this is one of
7 the ways that that notice requirement was met.

8 In addition, we did publish the results of
9 the Labor Commissioner's analysis each year. It was
10 placed on our website and we would identify whether
11 there was any -- whether there were any changes to
12 Nevada's minimum wage law, either tier.

13 **Q. Okay. I'm glad you mentioned that,**
14 **Commissioner Sakelhide, because I was about to ask**
15 **you something pertaining to what you just mentioned,**
16 **and that is you reviewed the Attorney General**
17 **opinion in 2005; correct?**

18 A. I read it, yes. Not in 2005.

19 **Q. No, no, no.**

20 A. Many years later.

21 **Q. Meaning in 2009?**

22 A. Yeah.

23 **Q. About four years after?**

24 A. Right.

25 **Q. You read the Lucas v. Bell decision filed**

1 in the District Court by Judge Jones in 2009?

2 A. Yes, I did.

3 Q. You also read, obviously, after you left
4 the Thomas versus Yellow Cab decision?

5 A. Yes, I did.

6 Q. Who sent it to you or maybe it was
7 something you searched?

8 A. I have -- I received more than one copy of
9 --

10 Q. E-mailed or --

11 A. E-mailed to me by, frankly, I'm not sure
12 who -- I don't recall exactly who sent me.

13 Q. That's okay.

14 A. Sent it to me. Oh, gee. I really don't
15 remember.

16 Q. Not a problem. But you read it?

17 A. I read it.

18 Q. So you read these three documents. I know
19 at that time you would have been out of the Office
20 of Nevada Labor Commissioner, but you were there for
21 approximately six years?

22 A. Uh-huh.

23 Q. Did anything that you read in the Thomas
24 versus Nevada Yellow Cab decision, specifically the
25 2014 decision, talking about the landmark decision

1 where they mentioned that there was an implied
2 repeal of NRS 608.250, Subsection 2E, did anything
3 in that decision that you read either explicitly or
4 impliedly indicate to you that the Office of Labor
5 Commissioner has now been dissolved?

6 A. No.

7 Q. Did anything in that Thomas versus Nevada
8 Yellow Cab decision indicate to you that the Labor
9 Commissioner no longer adjusts or makes adjustments
10 yearly with respect to the minimum wage in Nevada?

11 A. No, nothing I can recall. Again --

12 Q. Sure.

13 A. I haven't read that decision in great
14 detail for years. I --

15 Q. Let me ask you this, Commissioner.

16 A. It's not something I would recall.

17 Q. And if something like that were to occur,
18 meaning if you would have read the Thomas decision
19 and it would have popped out at you either impliedly
20 or explicitly or implicitly that, oh, my goodness,
21 the Office of Labor Commissioner no longer exists
22 now that this decision has been rendered, that would
23 be something you would have remembered?

24 A. Yeah, it's something I would have
25 remembered and something that would have been an

1 interesting discussion for me to have with a lot of
2 people, I'm sure.

3 **Q. Why?**

4 A. Well, I was -- I worked in that office for
5 many years. It's something that the office or the
6 responsibilities of that office were done away with,
7 I'm sure there would be quite a few people that
8 would have picked up the phone and called me and
9 said, gee, what happened to your agency?

10 **Q. Okay. Now, you also read, I know it was**
11 **in 2009, you also read the Nevada Attorney General**
12 **opinion in 2005?**

13 A. Yes.

14 **Q. You read side by side, I understand, with**
15 **Lucas versus Bell Trans decision in 2009?**

16 A. Yes.

17 **Q. Did anything in the Attorney General**
18 **opinion indicate to you that employers were required**
19 **to post the entirety of the Nevada Attorney General**
20 **opinion of 2005 to all of its drivers?**

21 A. No. I don't recall that being part of
22 that AGO.

23 **Q. That part of AGO, did any of it indicate**
24 **to you that it was a requirement for all employers**
25 **in Nevada to now print out the Attorney General**

1 opinion and read it line by line, page by page to
2 all of its employees?

3 A. No, nothing.

4 Q. Did anything in the Nevada Attorney
5 General opinion, 2005 that you read, as best as you
6 can remember or recall, indicate to employers who
7 would fall under NRS 608.250, the list, that they
8 need to go to court and initiate lawsuits against
9 themselves and put money in escrow accounts based on
10 the Nevada Attorney General opinion of 2005?

11 A. No, nothing. No, nothing would have led
12 me to that conclusion.

13 Q. In reading the Minimum Wage Amendment, and
14 you have it in front of you here as the Exhibit No.
15 4?

16 A. Four.

17 Q. I printed it out, I know it's two pages,
18 and I want to focus on a few of the provisions in
19 there.

20 Do you see where it starts out, no CPI?
21 Do you see that? It's right in the middle?

22 A. Okay.

23 Q. I want to say about how many sentences --

24 A. Oh, I see it.

25 Q. I just want it for the record.

1 A. A little bit past half of the way down.

2 Q. Yeah, I just want it for the record,
3 though. About three sentences, they are longer
4 sentences, but would you agree with me it's
5 approximately three sentences from the top?

6 A. Three sentences from the top?

7 Q. Yes.

8 A. You mean three lines from the top?

9 Q. No, no, three sentences, meaning periods.

10 A. Okay. Beginning with what word?

11 Q. When you start out with each "employer,"
12 if you count down to where it has "no CPI,"
13 approximately how many sentences is that?

14 A. Oh, I don't know about sentences.

15 Q. Let me make it easier for you.

16 A. I see where it is. It would probably be
17 easier to count the lines down.

18 Q. Well, yeah, actually, that makes better
19 sense. Thank you, Commissioner. That is much
20 easier. One, two, three, four, five, six, seven,
21 eight, nine, ten, eleven, twelve, thirteen,
22 fourteen, fifteen. Did I count right?

23 A. Yes, I believe so.

24 Q. Fifteen lines from the top of where it has
25 "each employer" and down to where it starts "no

1 CPI"; do you see that?

2 A. Yes.

3 Q. It has, no CPI adjustment for any one-year
4 period made greater than three percent; do you see
5 that?

6 A. Yes, I do.

7 Q. The Governor or the state agency
8 designated by the Governor shall publish a bulletin
9 by April 1 of each year announcing the adjusted
10 rates which shall take effect the following July
11 1st.

12 Do you see that?

13 A. Yes, I do.

14 Q. When it's referencing in the
15 Constitutional Minimum Wage Amendment Section 16,
16 Article 15, Exhibit No. 4 in front of you, that the
17 Governor or the state agency designated by the
18 Governor shall publish a bulletin by April 1 of each
19 year announcing the adjusted rates shall take effect
20 the following July 1st, would it be fair and
21 accurate to say that in the Minimum Wage Amendment,
22 Section 16, Article 15, it's referencing in that
23 particular provision the Nevada Office of Labor
24 Commissioner?

25 A. Well, that's the agency that has

1 historically been designated by the Governor to do
2 that. I believe that process continued.

3 Q. Sure. But I'm talking about,
4 specifically, this is 2006 amendment.

5 A. Yes.

6 Q. It was passed and it was signed into law
7 on July 1, 2007?

8 A. Uh-huh.

9 Q. Correct?

10 A. Yes.

11 Q. My question to you is, that provision I
12 just read, would it be fair and accurate to state
13 that that provision where the Governor or the state
14 agency designated by the Governor shall publish a
15 bulletin by April 1 of each year announcing the
16 adjusted rates which shall take effect the following
17 year July 1, it's referencing there the Office of
18 Nevada Labor Commissioner?

19 A. I don't mean to be picky, but no, it
20 doesn't. The Governor can designate any agency he
21 likes to do it. I said historically it has been the
22 Office of Labor Commissioner, and after this
23 amendment that continued to be, but it doesn't
24 preclude the Governor --

25 Q. Sure.

1 A. -- from identifying a different agency to
2 issue the bulletin and do the assessment.

3 Q. And, Commissioner Sakelhide, you are not
4 being picky at all, I can assure you of that.

5 Would you also agree with me that there
6 has never been, apart from the Office of Nevada
7 Labor Commissioner, any other agency that any
8 Governor, based on your knowledge and experience,
9 has designated any other agency aside from the
10 Office of Nevada Labor Commissioner to, basically,
11 publish the bulletin announcing the adjusted rates
12 of minimum wage?

13 A. During my tenure it was always the Office
14 of Labor Commissioner. I wasn't aware of any other
15 agency that ever had that duty or responsibility.

16 Q. Thank you, Commissioner.

17 It goes on to mention, such bulletin will
18 be made available to all employers and to any other
19 person who has filed with the Governor or designated
20 agency a request to receive such notice.

21 Do you see that?

22 A. Yes, I do.

23 Q. What is that referencing about the notice?

24 A. Okay. Well, that that notice will be
25 provided to any employee who requested --

1 Q. Notice of what?

2 A. What the minimum wage would be effective
3 July 1st.

4 Q. Of each year?

5 A. Of each year. That bulletin had to be
6 issued by April 1st each year.

7 Q. At the time as you are Deputy Labor
8 Commissioner, that bulletin advising, giving a
9 notice to employers as well as employees of the, you
10 know, by July 1st of each year, of the minimum wage
11 adjusted rate for that particular year, who would be
12 the -- which agency would be in charge and
13 responsible for drafting such a bulletin?

14 A. The Office of Labor Commissioner.

15 Q. Which agency would be in charge to
16 disseminate and distribute and provide and circulate
17 either in hard copy or online or otherwise those
18 bulletins?

19 A. Office of Labor Commissioner.

20 Q. Which agency would be tasked with
21 enforcing, making sure that employees as well as
22 employers receive such a bulletin?

23 A. Well, that would be the Office of Labor
24 Commissioner. That goes to those who requested it
25 and also made available to any employer or employee

1 who requested a copy.

2 Q. Now, it mentions here such bulletin will
3 be made available to all employers. Was that the
4 practice under your leadership to provide that
5 bulletin each year, by July 1st of each year to all
6 employees and employers?

7 A. Yeah, it was always a practice of the
8 Office of Labor Commissioner.

9 Q. How would that be disseminated?

10 A. Well, it was generally a two to four-page
11 document, and we would have it available for the
12 public. We would post that on our web page and a
13 link to it on our web page. And then, again, those
14 who were on the list to receive it each year would
15 be, administrative staff would be responsible for
16 seeing that those businesses or individuals received
17 copies.

18 Q. Okay. So that Minimum Wage Amendment as
19 you are reading it, and I'm sure you read it before,
20 it's prescribing what the Labor Commissioner's
21 responsibilities and duties are with respect to
22 these adjusted rates, publishing the bulletins every
23 July 1st of the year; correct?

24 A. Yes.

25 Q. It goes on to say, such notice -- so,

1 yeah. Any other person who has filed with the
2 Governor or designated agency requests to receive
3 such notice.

4 Do you know who would file with the
5 Governor or your office a request to receive such a
6 notice?

7 A. There would be a list of employers that
8 were maintained by administrative staff.

9 Q. Who would maintain that list?

10 A. Administrative staff, whichever of our AAs
11 would be designated with responsibility of doing the
12 mailings for that time. That could change each
13 year.

14 Q. Okay.

15 A. Or there could be more than one involved.

16 Q. But lack of notice shall not excuse non-
17 compliance with this section; do you see that?

18 A. Yes.

19 Q. What does that mean to you?

20 A. It means that minimum wage is in effect
21 regardless of if you receive or didn't receive that
22 notice.

23 Q. Meaning the published notice --

24 A. Whatever the minimum wage would be
25 depending on the two-tiered system that is employers

1 responsible for paying those amounts to all
2 employees.

3 Q. But it doesn't reference any language in
4 that provision about NRS 608.250?

5 A. No.

6 Q. This is specifically on minimum wage
7 amount?

8 A. Exactly.

9 Q. It doesn't discuss anything about whether
10 somebody, in that specific provision, somebody is
11 either exempt or not exempt from minimum wage?

12 A. No.

13 Q. In that specific area, I'm talking about.

14 A. No.

15 Q. Then it goes on, an employer shall provide
16 written notification of the rate adjustments to each
17 of its employees to make the necessary payroll
18 adjustments by July 1st -- by July 1 following the
19 publication of the bulletin.

20 Do you see that?

21 A. Yes.

22 Q. What does that mean to you?

23 A. Basically, they had to make adjustments to
24 their payroll system so that beginning on July 1st
25 of each year they would pay that employee the

1 appropriate minimum wage depending upon which tier
2 they were in and, prior to that, provide them notice
3 as to what their wage would be. It would be
4 adjusted based upon the increase.

5 **Q. When you say where it says, employer shall**
6 **provide written notification, I just want to be very**
7 **clear, Commissioner Sakelhide, does that mean --**
8 **does that mean they have to print out the entire**
9 **amendment and hand-deliver it to each of their**
10 **employees at their place of residence?**

11 A. No. It just says the rate of adjustment.

12 **Q. Okay.**

13 A. So, no, it would not be -- there is no
14 requirement that they provide the employee with a
15 copy of the bulletin.

16 **Q. Right.**

17 A. Just what the appropriate wage rate would
18 be. Generally that was included with their notice
19 in their pay stub or whatever.

20 **Q. Let's say, for example -- well, strike**
21 **that.**

22 **Are you familiar with employers who hire,**
23 **or not hire -- strike that.**

24 **Are you familiar with employers who employ**
25 **more than 25, more than 50 employees within their**

1 company?

2 A. Of course.

3 Q. They have -- they are subject to certain
4 guidelines and provisions and rules that sole
5 proprietors who have no employees, they have to
6 abide by these certain guidelines because of their
7 size; correct?

8 A. Okay. Yes. There's some requirements,
9 yes.

10 Q. One of those requirements, and correct me
11 if I'm wrong, is to post certain state, federal
12 guidelines, laws pertaining to federal laws on wages
13 as well as safety with respect to OSHA, and other
14 provisions that an employer decides 50 or more is
15 required under not only state but federal law to
16 post?

17 A. Of course.

18 Q. Would any of your guidelines, your
19 provisions, meaning the bulletin, would that be
20 something -- I understand you testified earlier that
21 there was a list and you would send it out to that
22 list of employers that requested this or you post it
23 on a website or people can come and pick it up at
24 your office, what I'm saying is would that bulletin
25 that you would publish, would that be maintained on

1 one of those big size posters, if you will, and you
2 correct me if I'm wrong, that employers are required
3 to post at certain places within their establishment
4 and at a certain font size prescribed by federal and
5 state law?

6 A. Not that I'm aware of.

7 MR. MOAS: Object to the form.

8 BY MR. BOTROS:

9 Q. So when it's saying, for example, would
10 you -- you would not in any way be surprised if
11 there was a bulletin, state laws pertaining to the
12 United States law, that has the Constitutional
13 Minimum Wage Amendment on it?

14 A. It wouldn't surprise me.

15 Q. You wouldn't be also surprised if there
16 was the Office of Labor Commissioner's directives
17 bulletin within that poster?

18 A. There could be.

19 Q. Okay. What I'm asking you, based on that
20 provision where it says any -- I'm sorry -- an
21 employer shall provide written notification of the
22 rate adjustments to each of its employees and make
23 the necessary payroll adjustments by July 1, I'm
24 taking it, and correct me if I'm wrong, from your
25 testimony they just need to make sure that those

1 adjustments have been made by July 1st of that year
2 and inform that particular driver or employee of
3 that adjustment?

4 A. Yes.

5 Q. It does not indicate that they have to
6 provide the actual entirety of the 2006 Nevada
7 Constitutional Minimum Wage Amendment, Section 16,
8 Article 15, to each individual employee, meaning
9 print it out?

10 A. No, it doesn't say they are required to
11 provide them with the bulletin. It just says -- it
12 just provides them with notice.

13 Q. Well, it says written notification?

14 A. Written notification of, yeah. That
15 doesn't necessarily mean a copy of the bulletin.

16 Q. Okay. So to you it just means what?

17 A. It means, basically, each employee shall
18 be notified as to what the appropriate minimum wage
19 rate would be for the coming year prior to July 1st.

20 Q. In writing?

21 A. Yeah, in written form. Again, how that is
22 done, whether they are provided with a copy of the
23 bulletin or simply a letter saying two-tiered
24 minimum wage system are as follows.

25 Q. Right. So does it indicate either after

1 this provision or anywhere in the entirety of this
2 Constitutional Minimum Wage Amendment any penalties,
3 punishment by any employer that does not provide
4 written notification of the rate adjustments to each
5 of its employees?

6 A. I don't believe so.

7 Q. Does it mention anything that if an
8 employer does not provide a written notification of
9 the rate adjustments to each of its employees that
10 they waive any and all certain Constitutional
11 protections as an employer?

12 A. No, nothing is in there that would lead me
13 to believe that.

14 Q. Does it mention anything that if an
15 employer does not provide written notification of
16 the rate adjustment to each of its employees and
17 make the necessary adjustments by July 1 following
18 publication of the bulletin, that an employer cannot
19 rely on a Nevada Supreme Court opinion that
20 indicates that the Statute of Limitations for these
21 claims are two years?

22 A. No, nothing.

23 Q. Are you familiar with the Perry versus
24 Terrible Herbst case that was issued last year by
25 the Nevada Supreme Court?

1 A. No, I am not.

2 Q. Getting back to Exhibit No. 6 in front of
3 you, this is the Business Advocate we talked about;
4 do you see that?

5 A. Yes, I do.

6 Q. Where it has unique two-tiered system on
7 Page 1 of Exhibit No. 6; do you see that?

8 A. Yes. Yes, I do.

9 Q. It says, in 2006, Nevada orders gave final
10 approval for an amendment to the Nevada Constitution
11 which permitted employers to pay \$1 less than the
12 minimum wage index for inflation if they provided
13 qualified health insurance to their employees.

14 The result was a unique, two-tiered
15 minimum wage system.

16 Do you see that?

17 A. Yes.

18 Q. Is that at the time what you understood
19 when you were Deputy Labor Commissioner from 2007 to
20 2013 of how the Nevada unique two-tiered system
21 worked?

22 A. I would have worded it differently, to be
23 honest.

24 Q. Tell me how.

25 A. The language is offered, not provided.

1 Q. Correct. I understand. Go ahead and
2 explain.

3 A. It's a detail. There is a difference
4 between providing and offering. It was our position
5 that being offered a qualified health insurance
6 program meant that you met that requirement to
7 provide the lower tier, whether or not that employee
8 accepted or rejected the offer of insurance.

9 Q. Put another way, correct me if I'm wrong,
10 meaning that in order to take advantage of paying
11 the \$1 less, as an employer, you -- all you had to
12 do was offer that health care plan to the employee,
13 he or she could have either declined or accepted,
14 but, regardless, just the mere fact of you offering
15 it would satisfy and permit that employer to pay \$1
16 less?

17 A. That's correct, as long as that insurance
18 met the requirements.

19 Q. Which were?

20 A. Those are established under the
21 regulations that are promulgated by the Labor
22 Commissioner.

23 Q. NACs?

24 A. Yes.

25 Q. The next paragraph, it has, each year at

1 the direction of the Governor, Nevada's Labor
2 Commissioner conducts an annual review of the
3 minimum wage to determine if an increase is
4 required.

5 Do you see that?

6 A. Yes, I do.

7 Q. Is that correct?

8 A. Yes.

9 Q. The wage is adjusted by the amount of
10 increases -- now I'm going to the third column?

11 A. Yes. I see.

12 Q. -- is adjusted by the amount of increases
13 in the federal minimum wage or, if greater, by the
14 cumulative increase in the cost of living.

15 Do you see that?

16 A. Yes, I do.

17 Q. Is that correct?

18 A. Yes.

19 Q. A bulletin is published each year on April
20 1 outlining any changes to the minimum wage to be in
21 effect the following July.

22 Is that correct?

23 A. That's correct.

24 Q. This is talking about 2014 which, you
25 know, it obviously remains in effect today. It says,

1 the current minimum wage in Nevada which was put
2 into effect July 2010 is \$7.25 per hour if an
3 employer offers qualified health benefits, \$8.25 an
4 hour if they do not; is that correct?

5 A. I see that, yes.

6 Q. Minimum wage exclusions; do you see that
7 in bold?

8 A. Yes, I do.

9 Q. In addition to a two-tiered system, the
10 Constitutional amendment provided that individuals
11 under the age of 18, those employed by a non-profit
12 for after school or summer employment, and those
13 employed as trainees for a period of not more than
14 ninety days were not entitled to receive minimum
15 wage; do you see that?

16 A. Yes, I do.

17 Q. Is that correct within your reading of
18 Constitutional Minimum Wage Amendment?

19 A. Section 16, yes. That is pulled from
20 Section 16 of the Constitution.

21 Q. Now we get into the bottom paragraph at
22 the bottom of that first page of Exhibit 6.

23 A. Yes.

24 Q. Prior to the amendment, Nevada law
25 provided for other exemptions to the payment of

1 minimum wage. Specifically, NRS 608.250 exempted,
2 and it says continued, Page 7, so you if turn to
3 Page 7.

4 So where I left off where it says, prior
5 to the amendment, Nevada law provided for other
6 exemptions to the payment of minimum wage.
7 Specifically, NRS 608.250 exempted six categories of
8 individuals; do you see that?

9 A. Yes, I do.

10 Q. No. 1, casual babysitters; No. 2, domestic
11 service employees who reside in the households; No.
12 3, outside salespersons whose earnings are based on
13 commissions; No. 4, certain agricultural employees;
14 5, taxicab and limousine drivers; and 6, certain
15 persons with severe disabilities.

16 Do you see that?

17 A. Yes, I do.

18 Q. Is that correct?

19 A. Yes.

20 Q. Next paragraph, while the Constitutional
21 amendment did not directly conflict with the
22 exemptions outlined in NRS 608.250, its passage
23 created some uncertainty.

24 Do you see that?

25 A. Yes, I do.

1 Q. Is that correct?

2 A. That's what I believe and that's what we
3 believed at the time. There was uncertainty
4 created.

5 Q. Okay. So but here it's kind of worded,
6 and I will read it to you, and I will go step by
7 step, Commissioner Sakelhide.

8 A. Go ahead.

9 Q. I appreciate that, sir, and I appreciate
10 your time. It references, while the Constitutional
11 amendment, I'm taking that to mean the 2006 Nevada
12 Minimum Wage Constitutional Amendment.

13 A. Yes.

14 Q. Do you agree with me on that?

15 A. That's how I read it.

16 Q. And it goes on, did not directly conflict
17 with the exemptions outlined in NRS 608.250; do you
18 see that?

19 A. Yes, I do.

20 Q. Is that correct?

21 A. That would probably be subject to
22 interpretation.

23 Q. Okay. Now --

24 A. I mean, that was my take on it that I
25 didn't see a direct conflict. Whether or not the

1 provisions retained would be a different question.

2 In my eyes, they are two different questions.

3 Q. Let's split them up, and I appreciate
4 that, your honesty and candor. Your take at the
5 time was that the Constitutional amendment, meaning
6 the 2006 Nevada Constitutional Minimum Wage
7 Amendment, did not directly conflict with the
8 exemptions outlined in NRS 608.250?

9 A. Yes. While the language contained in the
10 Constitutional amendment didn't; that's how I would
11 probably more accurately phrase it.

12 Q. Say that one more time.

13 A. While the language contained in the
14 Constitutional amendment was not in direct conflict
15 with the provisions of 250.

16 Q. Did you at any time advise employers,
17 employees about your take, about your interpretation
18 of the Constitutional amendment?

19 A. Of course not.

20 Q. And how it interacted with NRS 608.250?

21 A. Of course not.

22 Q. Would it be fair and accurate to say that
23 today is the first time in a proceeding, in an
24 official proceeding that you have made your take,
25 your interpretation, your view known about how the

1 Constitutional Minimum Wage Amendment interacted at
2 the time, meaning prior to the Thomas versus Nevada
3 Yellow Cab decision in 2014 with NRS 608.250,
4 Subsection 2E?

5 MR. MOAS: Objection to form.

6 THE WITNESS: No, I -- again, I had
7 discussions with Commissioner Tanchek and we
8 discussed our take on it and how, basically, there
9 was, in our view or I'm talking about my view that
10 there was a question as to whether they were
11 retained or not.

12 And, again, the devil's in the detail and
13 a whole lot -- and, again, if I was to have been the
14 Hearing Officer and this case came before us, there
15 was a whole lot more information I would have needed
16 in addition to the language in the Section 16 for me
17 to make that decision as to whether or not it's
18 retained.

19 BY MR. BOTROS:

20 Q. But as you sit here today, I just want to
21 be very clear, when you say, my take on this is that
22 the Constitutional amendment did not directly
23 conflict with the exemption --

24 A. The language contained in --

25 Q. You're talking about the language

1 **specifically?**

2 A. Yes, I am.

3 **Q. Okay.**

4 A. I'm saying there is definitely an argument
5 that you could make or I could make very easily on
6 either side that the -- whether or not the 250 was
7 retained or not retained.

8 **Q. On either side?**

9 A. Of course, which is why there was -- why
10 we took the action we did because I believed there
11 was a viable argument to be made on either side of
12 the case. And, again, frankly, I would have enjoyed
13 hearing arguments by attorneys on both sides and me
14 asking questions that may have led me to one
15 decision or another.

16 **Q. But ultimately, I know, and I respect your**
17 **opinion and your testimony, Commissioner Sakelhide,**
18 **that there were --**

19 A. Arguments on both sides.

20 **Q. Arguments on both sides, but ultimately,**
21 **your take with respect to Commissioner Michael**
22 **Tancheek was that at the end of the day what you were**
23 **presenting to him and he was kind of presenting to**
24 **you as, you know, both of your takes, not just one?**

25 A. Yes.

1 Q. That both of you, meaning your both takes
2 on it, your interpretation of the situation was, and
3 that's what led to you putting all these cases in
4 abeyance, that the Constitutional amendment did not
5 directly conflict with the exemptions outlined in
6 NRS 608.250?

7 A. As I said, I would have --

8 MR. MOAS: Objection. I'm sorry. I want
9 to lodge an objection real quick. Just object that
10 it misstates the testimony.

11 You can still answer, sir.

12 BY MR. BOTROS:

13 Q. Go ahead.

14 A. And, again, if I had drafted this, I would
15 have drafted it differently.

16 Q. How?

17 A. I'm a nut on detail. I would have said,
18 while all the language contained in the
19 Constitutional amendment does not appear to be
20 directly in conflict with the exemptions provided by
21 250. And, again, it's a simple, you know, it's --

22 Q. Say that again.

23 A. While the language contained in the
24 Constitutional amendment does not appear to be in
25 direct conflict with or did not appear to be in

1 direct conflict with.

2 Q. Did not appear to be in direct -- this is
3 semantics?

4 A. It is.

5 Q. Would you agree with me?

6 A. Well, that's part of being an attorney for
7 --

8 Q. Absolutely.

9 A. -- for over 30 years.

10 Q. We have to be very careful. Okay. So
11 instead of putting, while the Constitutional
12 amendment did not directly conflict with the
13 exemptions outlined in NRS 608.250, you would have
14 changed that if you were there and --

15 A. If they had asked me -- if they had asked
16 me to review it --

17 Q. You would have said, while the
18 Constitutional amendment did not appear to be in
19 direct conflict?

20 A. Right.

21 Q. With the exemptions outlined in NRS
22 608.250, its passage created some uncertainty?

23 A. Exactly.

24 Q. Okay.

25 A. And, again, I'm getting to that the same

1 way. I had problems with the other language that
2 talked about providing qualified coverage rather
3 than offer qualified coverage. It's a distinction,
4 but it has a real difference.

5 **Q. It does?**

6 A. The difference is that's, frankly, not
7 accurate.

8 **Q. And you would see why litigation would**
9 **potentially ensue?**

10 A. Well, of course. We knew -- I mean, you
11 would have to be a fool not to predict that this
12 litigation would occur. I mean, it was happening at
13 the time. We were so cautious with what we would do
14 that we wanted to wait until that litigation -- that
15 litigation ran its full course.

16 You know, there was a legitimate question.
17 Again, I think most competent attorneys could make
18 an argument on either side of this depending upon
19 who was paying them at the time. The issue that
20 Commissioner Tanchek and I had, frankly, is we're
21 not being paid by either side. We're being paid to
22 do the best job we can to protect both employers and
23 employees.

24 That's why we saw that the argument could
25 be made. Each of us could make a strong argument on

1 either side of this. We wanted the Courts to decide
2 or there be appropriate litigation before us so we
3 could hear the arguments on both sides from people
4 that did have a real interest in it, the interest
5 being representing their client. And then we would,
6 at that point, if we were able to hear the case,
7 then we would make the decision.

8 The problem we had and, again, with any
9 type of claims filed by us, and to move this through
10 the process, it would have been unfair to the
11 employees, to taxicab drivers to put them in a
12 position of defending and making a Constitutional
13 argument because they may not be represented by
14 adequate counsel.

15 If there was counsel that would have been
16 available to them, it's a case that maybe
17 Commissioner Tanchek may have made a decision to
18 hear that case rather than wait for a decision and
19 render a decision on that that maybe, first of all,
20 argued that, you know, by adequate counsel on both
21 sides, and then have that matter be appealable to,
22 you know, through the appeals process to Nevada
23 District Court.

24 If that was available, if that option was
25 available to us, we may have taken that option, but

1 it didn't present itself.

2 Q. You never exercised the option under NRS
3 607.160, Subsection 7, where if after due inquiry
4 the Labor Commissioner believes that a person who is
5 financially unable to employ counsel has a valid and
6 enforceable claim for wages, commissions or other
7 demand, the Labor Commissioner may present the facts
8 to the Attorney General. The Attorney General shall
9 prosecute the claim if the Attorney General
10 determines that the claim is valid and enforceable.

11 Do you see that?

12 A. We did not elect that option.

13 Q. But you had that option?

14 A. We had that option. We were aware of the
15 option. We really wanted the matter to be
16 appropriately litigated by parties with their
17 represented counsels of interest.

18 Q. Did you at any time bring that provision,
19 NRS 607.160, Subsection 7, either to the Labor
20 Commissioner himself, Mr. Michael Tanchek, or the
21 Attorney General at the time or the Attorney
22 General's office regarding 608.250 claims?

23 A. I don't understand the question.

24 Q. Sure.

25 A. Could you rephrase it?

1 Q. Sure. Did you at any time advise the
2 Labor Commissioner at the time, Michael Tanchek, or
3 the Deputy Attorney General or Attorney General,
4 anybody at the Attorney General's office, of
5 exercising this option where, if your office
6 believes that a person who was financially unable to
7 employ counsel has a valid and enforceable claim for
8 wages, commissions or other demands, that your
9 office may present the facts to the Attorney
10 General, the Attorney General should prosecute the
11 claim if the Attorney General determines that the
12 claim is valid and enforceable?

13 A. Again, I -- if it happened, I wasn't an
14 active participant in that. It's something that
15 would have been -- something that would have been
16 initiated by the Labor Commissioner. But I wasn't
17 involved in any discussions where we specifically
18 talked about whether to exercise that option or not.

19 Q. But you were aware of that option?

20 A. I was aware of that option and I'm sure
21 that Commissioner Tanchek was. He probably wrote
22 that provision.

23 Q. It's not a provision; it's law.

24 A. I know. I mean, very possible that he
25 wrote that. He's been involved -- he was involved

1 with the Office of Labor Commissioner for many, many
2 years, wrote most of -- much of 608, wrote pretty
3 much all of that NAC 608, you know, during his
4 tenure as Deputy Labor Commissioner.

5 **Q. In Exhibit No. 6 where it says, where it**
6 **talks about the some uncertainty, I'll read it, you**
7 **know, just for clarification, while the**
8 **Constitutional amendment did not directly conflict**
9 **with the exemptions outlined in NRS 608.250, its**
10 **passage created some uncertainty.**

11 A. Yes.

12 **Q. Please explain to me, Commissioner**
13 **Sakelhide, what uncertainty was created by having**
14 **the Constitutional amendment and NRS 608.250**
15 **exemptions basically until 2014, Thomas' decision,**
16 **stand side by side?**

17 A. Okay. Well, the issue and the uncertainty
18 is also created by the AGO opinion.

19 **Q. Why do you say that?**

20 A. Okay. Because it seemed to take a
21 different opinion as to whether or not 250 provision
22 survived the Constitutional amendment.

23 **Q. Different from whom?**

24 A. Different from Judge Jones' opinion.

25 **Q. The Lucas v. Bell decision?**

1 A. Yes. And, frankly, again, I think it made
2 -- well, it just was obvious that there were two
3 clear meanings, either one of which was viable.

4 Q. A couple of sentences down -- well, I'll
5 just read it for the record -- it was this
6 uncertainty that the Nevada Supreme Court addressed
7 this past summer in Thomas versus Nevada Yellow Cab,
8 and it gives the citations of the case; do you see
9 that?

10 A. Yes, I do.

11 Q. In its opinion, the Nevada Supreme Court
12 found that exemptions outlined in the Nevada
13 Constitution supercede the exemptions previously
14 provided for in NRS 608.250.

15 Do you see that?

16 A. Yes, I do.

17 Q. Is that what you read Thomas versus Nevada
18 Yellow Cab would stand for?

19 A. Yeah, that's where I came out.

20 Q. I just wanted to make sure.

21 A. Yes.

22 Q. The only individuals who are exempt from
23 the payment of minimum wage according to Nevada
24 Supreme Court are those specifically outlined in the
25 Constitutional amendment.

1 Do you see that?

2 A. Yes, I do.

3 Q. Is that what you gleaned from and --

4 A. I believe that was the sum and substance
5 of that decision.

6 Q. Now, it goes on, what does this decision
7 mean for Nevada's employers, question mark. Do you
8 see that?

9 A. Yes, I do.

10 Q. It means that employers who have
11 previously relied on the exemptions outlined in NRS
12 608.250 will be mandated to pay minimum wage to
13 individuals not specifically exempted in the Nevada
14 Constitution.

15 Do you see that?

16 A. Yes, I do.

17 Q. Do you agree with that?

18 A. Yes.

19 Q. Would you word it a little differently?

20 A. Yes, I would have worded it differently.

21 Q. How would you word this a little
22 differently starting with, what does this decision
23 mean for Nevada employers; would you have worded
24 that differently?

25 A. No. I think that's a good general

1 statement. I have no problem with that.

2 **Q. So after it, how would you do it?**

3 A. Okay. Well, the -- I guess one of the
4 issues I have with how it's written was that there
5 seems to be an inference that that decision was
6 moving forward rather than retroactive. So --

7 **Q. And what's --**

8 A. Because what it means by, basically means
9 is a term of art that you forewarn and not
10 necessarily whether or not there was a retroactive
11 component to that decision.

12 **Q. What I want to know from you is, after you**
13 **read the decision, when you were E-mailed that**
14 **decision, did you believe, based on studying this**
15 **issue, and I know you weren't Deputy Commissioner no**
16 **longer, but at least you were at the time these**
17 **things were going down, meaning the 2009 decision of**
18 **the Lucas v. Bell?**

19 A. Right.

20 **Q. Did you believe in studying this issue and**
21 **reading the decision that the Thomas versus Nevada**
22 **Yellow Cab decision was a prospective decision?**

23 A. No. That wasn't my take on it.

24 **Q. You believed it was a retroactive**
25 **decision?**

1 A. Yes, which is -- I don't believe it was
2 anything there that precluded a retroactive reading
3 to that decision, which goes back to why we did --
4 conducted things in the way we did with regard to
5 encouraging drivers, you know, or anyone falling
6 under 250 to submit wage claims with us so that way
7 we could go back, be consistent with the Nevada
8 statutes as to what wages we could capture.

9 Q. Exactly. So my question to you,
10 Commissioner Sakelhide, anything in the decision,
11 either implicitly or explicitly, meaning the Thomas
12 versus Nevada Yellow Cab 2014 Supreme Court
13 decision, indicates that employees who were
14 previously exempted under NRS 608.250, meaning, as
15 well, taxicab drivers?

16 A. Right.

17 Q. As well as casual babysitters, domestic
18 service employees, outside salespersons, employees
19 engaged in agricultural work, persons with severe
20 disabilities, that they can now go back, all the way
21 to July 1, 2007, and make claims from July 1, 2007,
22 going forward?

23 A. Based upon the Nevada -- the statutes in
24 effect, I don't think that would be my reading.

25 Q. You don't think that would be your

1 **reading?**

2 A. No.

3 **Q. What would be your reading?**

4 A. They could go back two years from the date
5 filed, the date the wage claim was filed.

6 **Q. Meaning filed where?**

7 A. With the Office of Labor Commissioner.
8 You're talking about our jurisdiction, our authority
9 over at the -- there are limitations as to how far
10 back we could go with regard to any actions that
11 were filed, let's say, in 2009 by a taxicab driver
12 that we, basically, held in abeyance, we would go --
13 if I was still there with the office, it would have
14 meant that we would have gone back to 2007 to
15 capture wages due of 2007 through current.

16 **Q. Okay. Let's say --**

17 A. If somebody filed a wage claim in 2012, we
18 would go back to 2010 and capture wage claims from
19 2010 forward. If they filed a wage claim
20 immediately after the decision sometime in 2014,
21 we'd go back to 2012.

22 I think that would be what the Office of
23 Labor Commissioner would be limited to.

24 **Q. Okay. In terms of your understanding of**
25 **the Thomas versus Nevada Yellow Cab decision, if**

1 taxicab drivers filed a lawsuit in 2012 and it's a
2 class action lawsuit, based on the Thomas decision,
3 does it indicate anywhere in the decision, either
4 implicitly or explicitly, that those drivers can go
5 all the way back from 2012 to July 1, 2007, all the
6 way to October 27, 2015, and make claims of alleged
7 underpayment of minimum wages for approximately more
8 than eight years?

9 A. Okay. Again, I wouldn't know -- I would
10 have to see what that demand was based on and what
11 provision that was based on. If it was under a 608
12 claim, then we would -- then that wouldn't be an
13 accurate way of addressing it. We would only go
14 back the two years.

15 So a 2012 notice would go -- would mean we
16 would go back to 2010.

17 Q. What if they made their claim,
18 Commissioner Sakelhide, based upon, and they claimed
19 that it's based on the Constitutional Minimum Wage
20 Amendment which basically has no Statute of
21 Limitations?

22 A. Well, I would like to -- I would probably,
23 if I was the judge or ALJ, I would like to hear the
24 arguments of both sides. I don't see that reading.

25 Q. In where?

1 A. In the Constitution itself. I mean, the
2 fact, just because there is no Statute of
3 Limitations on that doesn't mean that that
4 eliminates the 608 limitations that existed --

5 **Q. Which is two years?**

6 A. -- at the time and still and, again, I
7 haven't been involved in this -- in this for close
8 to four years. Whether that provision still exists
9 or not, I don't know. But if it does, then I would
10 still have to apply that provision on any claim
11 filed with our office.

12 **Q. You mean the provision that says any**
13 **claims in Nevada law pertaining to minimum wage that**
14 **are filed are subject to a two-year Statute of**
15 **Limitations?**

16 A. (Witness nodded head affirmatively.)

17 **Q. Is that correct?**

18 A. Yeah.

19 **Q. As part of your duties as Deputy Labor**
20 **Commissioner, you would enforce the -- let me ask**
21 **you, would you enforce laws pertaining to what**
22 **employers, you know, how many years of records they**
23 **have to maintain within their possession, custody**
24 **and control involving wages?**

25 A. Yes, we do, obviously.

1 (Deposition Exhibit No. 7 was marked for
2 identification.)

3 BY MR. BOTROS:

4 Q. Commissioner Sakelhide, what's marked as
5 Exhibit 7 is NRS 608.115, which has records of
6 wages; do you see that?

7 A. Yes, sir.

8 Q. And before I get to the questioning, just
9 like I have been doing with everything, I would like
10 to give you an opportunity just to kind of peruse
11 it, review it just to make sure it refreshes your
12 recollection, and I will have some questions on it.

13 A. Go right ahead.

14 Q. Okay. Excellent. Did you have an
15 opportunity to review Exhibit No. 7, which is NRS
16 608.115?

17 A. Yes.

18 Q. Where it has records of wages?

19 A. Yes.

20 Q. What is your understanding of this?

21 A. This is a record retention requirement.
22 The employer is required to maintain those records
23 for a period of two years.

24 Q. They are required?

25 A. They are required.

1 **Q. Under Nevada law?**

2 A. Under Nevada law. There are different
3 requirements under federal law. Under Nevada law,
4 it's two years. This is one of the things that
5 triggered the two-year limitation that I referenced
6 before. It would be unfair for an employer to be
7 forced to go back beyond the time they are required
8 to retain or maintain records.

9 **Q. Why do you say it is unfair for an**
10 **employer to go beyond two years of maintaining**
11 **records?**

12 A. Well, especially dealing with wage and
13 hour issues, the issue goes to, specifically, how
14 many hours that employee worked during a week, what
15 they were paid during a week.

16 My experience with Labor Commissioners,
17 many of -- or a vast majority of those who file
18 claims with that office, with our office, their
19 amount of pay, number of hours worked, their rate of
20 pay changed frequently and was different from week
21 to week.

22 There was no way of identifying how many
23 hours that employee worked beyond the record
24 retention period of two years. If those records
25 weren't maintained, how would we know whether they,

1 in fact, were working 40 hours a week or four hours
2 a week, whether they were paid, you know, twice the
3 minimum wage for those 40 hours worked or a third of
4 the minimum wage for those 40 hours worked.

5 **Q. Would you punish an employer for not**
6 **keeping records -- records of wages, that is --**
7 **beyond two years?**

8 A. Oh, if it came up during the course of our
9 investigation that they failed to maintain records,
10 that is something that they could be fined for.

11 **Q. Sure. I'm talking about, it has here --**

12 A. Oh.

13 **Q. Subsection 3, records of wages must be**
14 **maintained for a two-year period following the entry**
15 **of information into the record.**

16 A. Right.

17 **Q. Let's say an employer has done it for a**
18 **two-year period but hasn't done it for seven years**
19 **or ten years or twelve years, do you under Nevada**
20 **law as the chief law enforcement officer in terms of**
21 **enforcing labor laws in the great State of Nevada**
22 **would subject that employer to penalties?**

23 A. No. There would be no provision under
24 which you could assess penalties beyond what's
25 required under the law. If it's a two-year

1 requirement, it's a two-year requirement. And it's
2 --

3 Q. Does anything in the Constitutional, and
4 I'm referring to the 2006 Constitutional Minimum
5 Wage Amendment, and you have it in front of you, I
6 believe it's Exhibit --

7 A. 4.

8 Q. -- 4, does anything in there, Commissioner
9 Sakelhide, state anything that if -- that provides
10 anything inconsistent with record of wages must be
11 maintained for a two-year period following the entry
12 of information into the record?

13 A. I don't see anything in there that
14 addresses that issue one way or the other.

15 Q. Okay. Because of the Constitutional
16 Minimum Wage Amendment, does that mean in your view
17 based on everything you reviewed as well as the
18 Thomas decision, Attorney General opinion, Judge
19 Jones' Lucas v. Bell, that because of the
20 Constitutional Minimum Wage Amendment and because of
21 the Thomas versus Nevada Yellow Cab 2014 decision,
22 that NRS 608.115 shall no longer be followed?

23 A. No. I see nothing. I think that the
24 Office of Labor Commissioner would be required to
25 enforce that provision as it stands. There's

1 nothing that would change that one way or another.
2 It still stands and it would still be a two-year
3 period. There's nothing in the Constitutional
4 amendment that changes that two-year period to
5 anything other than that.

6 **Q. With respect to NRS 608.115, is there a**
7 **private right of action for a private litigant not**
8 **connected with the state or agency or anything of**
9 **the such or enforcement mechanism, who files or**
10 **pursues something in court and says, you failed to**
11 **maintain it within the two years so, hence, I'm**
12 **going to file a private right of action in court?**

13 A. No, I don't see that falling under any
14 provision that establishes a prior right of action.

15 **Q. With respect to NRS --**

16 A. With respect to 115.

17 **Q. Specifically, Exhibit No. 7?**

18 A. Yes.

19 **Q. But your office at the time would enforce**
20 **this provision?**

21 A. Oh, yes. We did it often.

22 **Q. Really?**

23 A. Oh, it was -- yeah. I mean, it was -- I
24 mean, a very large percentage of claims filed were
25 violations of 115.

1 Q. Did you, at any time, say to any, or
2 advise any employers to keep records longer than two
3 years, which is prescribed under NRS 608.115?

4 A. I would tell them -- well, first of all,
5 any discussion I would have would be limited to
6 requirements under Nevada state law. It would always
7 reference what -- that there are different
8 requirements under federal law.

9 Q. I'm talking about state law.

10 A. I know, but it was part of my speech that
11 I would give.

12 Q. Okay. Yes.

13 A. Is that under -- again, I'm not going to
14 comment as to what the requirements under federal
15 law, requirements under Nevada state law retain
16 those records for two years.

17 Q. I am, specifically, asking because this
18 case is a Nevada state case.

19 A. I understand that, but, again, you asked
20 what my practice was.

21 Q. You're talking about --

22 A. And again my practice was to say --

23 Q. Federal and state?

24 A. -- under federal law, I'm not going to
25 comment. You have to follow whatever the federal

1 requirements are. They may be different than the
2 state requirements. The state requirements are that
3 you maintain those records for a period of two
4 years.

5 **Q. But you would never mention under state --**
6 **Nevada state law, Nevada state requirements, you**
7 **have to keep for the Constitutional Minimum Wage**
8 **Amendment, or anything else, that you have to keep**
9 **them longer than two years?**

10 A. I don't see anything under Section 16 in
11 the Constitution that I would have referenced to
12 make that point.

13 **Q. I understand that you testified earlier**
14 **that you would get phone calls from workers asking**
15 **about 608.250.**

16 A. Yes. As I said, I would receive kind of
17 the overflow of calls.

18 **Q. But you had staff that would be in the**
19 **office in case a particular employee wants to speak**
20 **to a live person in person?**

21 A. Yeah. There would be the investigator of
22 the day. They would generally receive the phone
23 calls to meet with.

24 **(Deposition Exhibit No. 8 was marked for**
25 **identification.)**

1 BY MR. BOTROS:

2 Q. Commission Sakelhide, what's been marked
3 as Exhibit 8 is some pages that I want to discuss
4 with you of the video deposition -- actually, it was
5 in person, but also just like this deposition it was
6 videotaped of one of the Plaintiffs in the case.

7 A. Okay.

8 Q. His name is Christopher Thomas. You see
9 the cover page, it says, Videotaped Deposition of
10 Christopher Thomas, he is one of the Plaintiffs; do
11 you see that?

12 A. Yes.

13 Q. Las Vegas, Nevada, Monday, October 9,
14 2017. Do you see that?

15 A. Yes, I do.

16 Q. If you flip over the page, it has Page 47
17 at the top right-hand corner.

18 Do you see that?

19 A. Yes, I do.

20 Q. So I'm sure through your vast career, sir,
21 you have read deposition transcripts?

22 A. Yes, I have.

23 Q. Where it has question/answer,
24 question/answer. In this particular deposition it
25 has my questions in black bold.

1 Do you see that?

2 A. Yes.

3 Q. And the answers are just regular text. Do
4 you see that?

5 A. Yes.

6 Q. So if you look to Page 47, and I'm looking
7 specifically at Line 15; do you see that?

8 A. Yes, I do.

9 Q. That would have been me questioning the
10 Plaintiff in this case, Mr. Christopher Thomas, and
11 him answering and with various objections from his
12 counsel.

13 Do you see that?

14 A. Yes.

15 Q. I just want to familiarize you with what
16 I'm --

17 A. Of course.

18 Q. So Line 15 of Page 47 I ask him, okay, and
19 what did you understand their position to be at the
20 Office of Nevada Labor Commissioner?

21 His counsel makes an objection.

22 I say, You can go ahead and answer.

23 Answer: They told me that cab drivers are
24 exempt from minimum wage.

25 Do you see that?

1 A. Yes, I do.

2 Q. Do you agree with that?

3 A. No, not at all.

4 Q. You would never tell -- you never told
5 them that they were exempt from minimum wage?

6 A. No.

7 Q. When a driver of a taxicab, prior to 2012,
8 this is prior to the -- I'm sorry, prior to 2014
9 Thomas versus Nevada Yellow Cab decision?

10 A. Uh-huh.

11 Q. When they would come in person and they
12 would ask, hey, I want to know what is the current
13 State of Nevada law pertaining to minimum wage, I'm
14 a taxicab driver, did you instruct any of your staff
15 to advise them and tell them cab drivers are exempt
16 from minimum wage?

17 A. No.

18 Q. Okay.

19 A. No, because this is in 2012.

20 Q. Correct.

21 A. 2012 we had the process of accepting wage
22 claim, in fact, encouraging drivers to file wage
23 claim with our office, advising them that there was
24 a conflict as to whether or not the provision, the
25 exceptions applied or didn't apply, and explain to

1 them that once we received the wage claim, we would
2 do the -- submit to the employer the demand letter,
3 give them an opportunity to resolve it, but if they
4 didn't resolve it and chose to rely on the 250
5 exceptions, that we would then hold those claims in
6 abeyance until there was a final decision reached by
7 the Court.

8 **Q. So you disagree with his testimony that,**
9 **where he testified under oath, they told me, meaning**
10 **the Office of Nevada Labor Commissioner, that cab**
11 **drivers are exempt from minimum wage?**

12 A. This is not what staff was directed to do.

13 **Q. Okay. So if you look to Page 49 of his**
14 **deposition transcript, and this starts out with Line**
15 **No. 5.**

16 A. Okay.

17 **Q. Do you see that?**

18 A. Yes, I do.

19 **Q. And this is my question. Sure, what did**
20 **you understand it to mean when the Nevada Labor**
21 **Commissioner's office, the two female**
22 **representatives, informed you, Mr. Thomas, back in**
23 **2012 that taxicab drivers are exempt from minimum**
24 **wage?**

25 Answer: They were exempt from minimum wage.

1 They were not eligible for minimum wage.

2 Question: And that's what you understood it to
3 be?

4 Answer: I'm not going to argue with a state
5 employee, yeah.

6 Question: No, no, no. I understand. Yeah.

7 He answers, yeah.

8 Question: But that's, what you understood what
9 they were telling you in plain English that you, at
10 the time in 2012 as a taxicab driver for YCS, were
11 ineligible for minimum wage in the State of Nevada;
12 correct?

13 His answer, correct.

14 Would you agree with Mr. Thomas'
15 description about him arriving at your office around
16 2012 and speaking to two female representatives and
17 him being informed that he is not eligible for
18 minimum wage?

19 A. Okay. Your question is --

20 **Q. Would that have been something that the**
21 **two female representatives would have informed him?**

22 A. I would hope not.

23 **Q. Because that was not the practice?**

24 A. That was not the practice. That is not
25 what the staff was clearly instructed to do.

1 Q. And I'm not meant to be in any way
2 generalization --

3 A. Sure.

4 Q. -- Commissioner Sakelhide, and please take
5 it I'm trying to be very respectful and polite and I
6 think -- I hope you get that sense.

7 A. Of course.

8 Q. Does it refresh your recollection of who
9 he possibly, Mr. Christopher Thomas, would be
10 referring to when he said two female representatives
11 back in 2012 that he went to and they would have
12 told him that drivers were exempt from minimum wage?

13 A. No. No. Again, we had administrative
14 staff that dealt with any walk-ins. There were
15 generally anywhere from four to six and they were
16 all female who would do the initial intake.

17 In addition, we did have one investigator
18 that was tasked with handling taxicab driver
19 matters, for lack of a better term, who, basically,
20 parroted the speech that I gave. And, again, all
21 the administrative staff was instructed to refer any
22 case, any claim or questions from a taxicab driver
23 or company to Ms. Martinez.

24 Q. Lupe Martinez?

25 A. Yes. So that would have -- it would -- I

1 would be very disappointed if that occurred.

2 **Q. If what Mr. Christopher Thomas testified**
3 **to actually occurred?**

4 A. Yes. I would be -- if that did occur, I
5 would be very disappointed with my staff.

6 **Q. Why?**

7 A. Because they weren't following very clear
8 instructions.

9 **Q. From you?**

10 A. From me and from Commissioner Tanchek
11 both. I mean, it was -- there was no ambiguity as
12 far as what needed to be done.

13 **Q. Meaning the directive that you and**
14 **Commissioner Tanchek would give to staff?**

15 A. Exactly.

16 (Deposition Exhibit No. 9 was marked for
17 identification.)

18 **BY MR. BOTROS:**

19 **Q. Commissioner Sakelhide, what's been marked**
20 **as Exhibit No. 9 in front of you is a deposition**
21 **transcript from -- videotaped. Again, I wasn't there**
22 **-- I was there in person, and it was also videotaped**
23 **of the other Plaintiff in the case, Christopher**
24 **Anthony Craig.**

25 Do you see that?

1 A. Yes, I do.

2 Q. It says Las Vegas, Nevada, Friday, October
3 20, 2017.

4 Do you see that?

5 A. Yes, I do.

6 Q. If you'll look to Page 132 of his
7 deposition transcript, I want to go over just
8 briefly a couple of things.

9 This is at the top of Page 132, Line No.
10 1.

11 Question: Okay. What was the response you
12 received from the Office of Nevada Labor
13 Commissioner when you asked them that question?

14 And just for background foundation, it was
15 the same question that Mr. Thomas had asked about
16 the minimum wage issue.

17 Answer: That, you know, we're not entitled to
18 minimum wage at that time.

19 Answer (sic): Okay. So you received an answer
20 from the Office of Nevada Labor Commissioner;
21 correct?

22 Answer: I believe so. Yeah.

23 Okay. And the answer you received from
24 the Office of Nevada Labor Commissioner was, no, you
25 as a taxicab driver, this was in 2012; correct?

1 Yes.

2 Question: You as a taxicab driver under Nevada
3 law are not entitled to minimum wage in Nevada;
4 correct?

5 There was an objection lodged by counsel
6 as to form.

7 I -- the question was; correct?

8 Answer: That's what they told me.

9 Again, I want to be very clear,
10 Commissioner Sakelhide. Would your answer be the
11 same that that was not the practice that you had
12 instructed your staff along with Commissioner
13 Michael Tanchek to do in terms of answering
14 questions to taxicab drivers?

15 A. That would be the same. I would be very
16 disappointed if that conversation occurred.

17 **Q. And if that conversation -- I know you**
18 **mentioned you would be disappointed, but**
19 **hypothetically, let's just, you know, play it out in**
20 **a sense.**

21 A. Go ahead.

22 **Q. If, in fact, it was determined through**
23 **testimony, evidence, documents, that, in fact,**
24 **administrative staff, in violation of your directive**
25 **as well as Commissioner Michael Tanchek, were giving**

1 these type of guidance, information, what have you,
2 to these taxicab drivers, what would be the
3 consequence of that?

4 A. Oh, I would talk to their supervisor. I
5 would have their supervisor counsel them and write
6 them up.

7 Q. Why?

8 A. Because they -- first of all, we had a
9 very clear practice. There was no ambiguity. They
10 were directed to do a very specific thing.

11 Second of all, something that acts on
12 people's lives, lack of clarity like that puts
13 somebody in a position where they are not receiving
14 compensation and they should be receiving, totally
15 inappropriate and just not what the office is about.

16 I have serious problems with that
17 employee.

18 Q. Does it, the fact that you -- instead of
19 just one person, the fact that you have two
20 Plaintiffs in this case saying similar things to
21 what they testified under oath, what they
22 experienced in terms of going to the, or contacting
23 the Office of Nevada Labor Commissioner, does it
24 raise concern for you that, of the likelihood that,
25 perhaps, administrative staff for whatever reason

1 would have violated your directive as well as
2 Commissioner Michael Tanchek?

3 MR. MOAS: Object to the form.

4 BY MR. BOTROS:

5 Q. Go ahead.

6 A. Okay. Again, one is I would be
7 disappointed. Also it would be an element of
8 surprise if that information was conveyed. I did
9 see interaction between our administrative staff and
10 individuals that would file wage claims, including
11 taxicab drivers, that would come in, and I always,
12 always saw them conveying the appropriate
13 information.

14 I always saw that they did give, you know,
15 conveyed to them, here is what the process is, here
16 is what we're doing.

17 Very often what they -- and, again, I did
18 observe this firsthand, very often the response from
19 the potential Claimant would be, well, if I did
20 this, you're saying there would be a demand letter
21 sent and the employer would receive it, and then
22 they would say, yes, of course, that's our process,
23 and they would have to receive a copy of the demand
24 letter notifying them that you filed a wage claim.

25 And then they would say, well, I don't

1 want to be fired, I don't feel comfortable doing
2 that now.

3 So, again, I don't -- that I did see and,
4 again, we're not going to be in a position where we
5 put a potential Claimant in a position where they
6 could lose their job, and if they chose not to, that
7 was their decision.

8 It was too important a decision for us to,
9 basically, argue with them or try to convince them
10 to do something that they weren't comfortable doing.
11 That I did witness.

12 I didn't -- I never witnessed, I don't
13 recall, saying I never witnessed a discussion like
14 that occurring, because if I did, I definitely would
15 have taken action against that employee.

16 **Q. Okay. I know you didn't witness it, but**
17 **have you heard of it happening prior to today?**

18 A. No.

19 **Q. Based on testimony from the Plaintiffs?**

20 A. No.

21 **Q. Is this the first time you have been made**
22 **aware that, potentially, again, I have to do some**
23 **discovery a little further, but potentially, there**
24 **may have been a situation or situations where, for**
25 **whatever reason, administrative staff at your**

1 office, at the time you were Deputy Labor
2 Commissioner, were giving inconsistent advice or
3 guidance to taxicab drivers that was inconsistent to
4 your directive as well as Commissioner Michael
5 Tanchek?

6 A. No, this is the first time I have become
7 aware of it. Again, it's something that both
8 Commissioner Tanchek and I would have been disturbed
9 to hear.

10 MR. MOAS: Counsel, I'm getting a lot of
11 feedback. I'm not sure if something has changed
12 there in the microphone.

13 MR. BOTROS: I will say this on the record
14 that the air conditioning, it has been kind of
15 stuffy and it's obviously automatic, it's not
16 because of me, I didn't play around with it, I can
17 represent to you that.

18 But all of a sudden as we are engaged in
19 the deposition, and correct me if I'm wrong,
20 Commissioner Sakelhide, it kicked, meaning it turned
21 on, and it's blowing some much needed air.

22 So --

23 MR. MOAS: I understand. No problem.
24 We'll work through it. You have been going for
25 about two hours, so I wanted to see, are you going

1 to take a lunch break? I know it's later there.

2 **MR. BOTROS:** No, no lunch break.

3 **THE WITNESS:** So are we getting close to
4 wrapping up?

5 **MR. BOTROS:** Yes, we are, from my end.
6 Could you hear me, counsel?

7 **MR. MOAS:** I'm fine, and I don't think I
8 will have more than 15 minutes.

9 **MR. BOTROS:** Okay. I would like, just for
10 the purposes and to be fair to you because it is
11 actually kicking up and I don't want any issues with
12 interference, if you don't mind, I would like to go
13 ahead and take a five to ten-minute break to have it
14 continue whatever it's doing with the blowing of the
15 air, which is much needed, quite frankly, and just
16 to have a quick break and then we can resume.

17 I don't foresee me taking longer than
18 approximately, at max, 30 minutes and then you will
19 have the floor, counsel, to question him, cross-
20 examine him.

21 And you indicated it will take,
22 approximately, from your end 15 minutes?

23 **MR. MOAS:** Yeah. That's right. I'm here.
24 Call me back.

25 **MR. BOTROS:** We're off the record.

1 **THE VIDEOGRAPHER:** The time is now 1:33
2 p.m., Eastern Standard Time. We are off the record.

3 **(A brief recess was taken.)**

4 **(Deposition Exhibit No. 10 was marked for**
5 **identification.)**

6 **THE VIDEOGRAPHER:** The time is 1:46 p.m.,
7 Eastern Standard Time. We are on the record.

8 **BY MR. BOTROS:**

9 **Q. Good afternoon, Commissioner Sakelhide.**

10 **A. Good afternoon.**

11 **Q. Are you ready to continue with your**
12 **deposition?**

13 **A. Go right ahead.**

14 **Q. Excellent. What has been marked as**
15 **Exhibit No. 10 in front of you is a deposition**
16 **transcript of Christopher Thomas. It's other pages**
17 **that I will be questioning you on, and I just want**
18 **to make sure, do you have that in front of you?**

19 **A. Yes, I do.**

20 **Q. It was the same deposition, just different**
21 **pages, and it is Las Vegas, Nevada, on the first**
22 **page, Monday, October 9, 2017. Okay?**

23 **A. Yes.**

24 **Q. If you look to Page 254, 2-5-4?**

25 **A. I have it.**

1 Q. And it starts with Line 14 where it says,
2 question.

3 Do you see that?

4 A. Yes, I do.

5 Q. So that is Page 24 -- I'm sorry, 254 of
6 Mr. Thomas' deposition transcript which was on
7 October 9, 2017, where I'm asking him, you know,
8 questions, and on Line 14, I asked him, if my
9 clients in good faith relied on the Nevada Office of
10 Labor Commissioner's directive that taxicab drivers
11 were exempt from minimum wage at the time you
12 visited them -- visited that office the first time,
13 do you believe my clients should be punished for
14 relying on the Office of Nevada Labor Commissioner's
15 directive that taxicab drivers were exempt at the
16 time?

17 There is an objection lodged by his
18 attorney at the time to form.

19 Question: Do you know what punished means?

20 Answer: Yes.

21 Okay. His answer, yes, I do believe that.

22 Do you see that on the next page?

23 A. Yes.

24 Q. Do you agree with his testimony,
25 Commissioner Sakelhide?

1 A. No, I don't.

2 **Q. Why not?**

3 A. For several reasons. One is --

4 **Q. Please, explain.**

5 A. Well, one is, I still have trouble
6 understanding that that was our directive to either
7 employers or employees that there would be a blanket
8 statement that they are exempt from -- drivers are
9 exempt from minimum wage.

10 Second of all --

11 **Q. You mean third of all?**

12 A. Yeah, and the last one is that, if a
13 mistake was made, I don't -- by our office, I don't
14 know why the employer should be punished.

15 **Q. So the next -- I understand your answer,**
16 **Commissioner Sakelhide.**

17 On Page 255, Line 3, it has -- this is my
18 question to Mr. Christopher Thomas.

19 Okay. Why do you believe that my clients
20 should be punished for following the Nevada Office
21 of Labor Commissioner's directive to you and
22 presumably to them that the taxicab drivers were
23 exempt from minimum wage under Nevada law?

24 His answer, because they should have did
25 more research.

1 Do you agree with that, Commissioner
2 Sakelhide, that employers should have done more
3 research on Nevada minimum wage law than originally

4 --

5 MR. MOAS: Objection.

6 THE WITNESS: Well, again, I don't know
7 what research was done or not done. I don't know how
8 research would have led the companies to believe one
9 way or the other.

10 Again, this was in 2012; correct?

11 BY MR. BOTROS:

12 Q. Correct. My question was specifically for
13 him when he went or when he questioned the office,
14 the representatives at the Office for Nevada Labor
15 Commissioner.

16 A. Okay. That we should have done, the
17 office should have done --

18 Q. No, that my clients should have done more
19 research based on his testimony.

20 A. Again, I don't know what research was done
21 or not done.

22 Q. Do you believe --

23 A. Right now, I mean, what was available out
24 there at that time and even, you know, up to two
25 years later, was at best there is an ambiguity. At

1 2012, I believe that was after Judge Jones' order.

2 **Q. Correct.**

3 A. Again, if that's the only -- that and the
4 AGO opinion are the only two things out there,
5 research would lead one to believe that that was
6 still a question yet to be finalized. That's the
7 best reading, again, on behalf of the taxicab
8 drivers that I could come up with that it was still
9 in flux.

10 I guess there could be an argument made
11 that Judge Jones' opinion was even more compelling
12 than the AGO opinion, in which case the taxicab
13 companies would have been comfortable in continuing
14 the practice of believing that 250 attempted -- was
15 exempt.

16 **(Deposition Exhibit No. 11 was marked for**
17 **identification.)**

18 **BY MR. BOTROS:**

19 **Q. If you look to Exhibit No. 11 in front of**
20 **you, Commissioner Sakelhide, that is the transcript**
21 **of the other Plaintiff, Christopher Anthony Craig,**
22 **Exhibit No. 11, this is the same deposition, you**
23 **know, in terms of questioning Mr. Craig, and it was**
24 **on a different date, obviously, and he's the other**
25 **Plaintiff in the case. This is conducted in Las**

1 **Vegas, Nevada, Friday, October 20, 2017.**

2 **Do you see that on the first page? I just**
3 **want to --**

4 A. Yes, I do. Top of the page, yes.

5 **Q. Exactly. If you look to Page 154 of Mr.**
6 **Christopher Anthony Craig's deposition transcript of**
7 **October 20, 2017, do you see Page 154?**

8 A. Yes, I do.

9 **Q. This is on Line No. 4 when I asked him,**
10 **Question: Let me ask you this, Mr. Craig. Do**
11 **you believe that my clients' alleged violation of**
12 **Article 15, Section 16 of the Nevada Constitution**
13 **involved malicious and/or dishonest and/or**
14 **oppressive conduct by the -- sufficient to award an**
15 **award to punish my clients?**

16 His attorney lodged an objection. The
17 witness testified, yes.

18 Do you agree, Commissioner Sakelhide, that
19 an alleged violation of Article 15, Section 16 of
20 the Nevada Constitution by my clients involved
21 malicious and/or dishonest and/or oppressive conduct
22 to warrant an award to punish my clients in this
23 case?

24 A. I would have to see evidence that --

25 **MR. MOAS:** Object to the form, lacks

1 foundation. Sorry. Go ahead.

2 **THE WITNESS:** I would have to see
3 evidence that would lead me to that conclusion.

4 **BY MR. BOTROS:**

5 **Q.** What evidence would you need, Commissioner
6 Sakelhide, to prove by clear and convincing evidence
7 that my clients' alleged violation of Article 15,
8 Section 16 of the Nevada Constitution prior to the
9 2014 decision of the Thomas versus Nevada Yellow Cab
10 case involved malicious, dishonest or oppressive
11 conduct sufficient to award an award to punish my
12 clients?

13 **A.** Well, in a case like this --

14 **MR. MOAS:** Sorry, objection. I will just
15 lodge an objection to form and reiterate the
16 standing objection.

17 **MR. BOTROS:** Duly noted, counsel, and you
18 have the standing objection on those lines of
19 questions.

20 **MR. MOAS:** All right. Go ahead.

21 **THE WITNESS:** Well, again, in a case like
22 this there would have to be evidence that the
23 employer had knowledge that the provisions of the
24 Constitutional amendment clearly did away with the
25 250 exceptions and simply disregarded those known

1 facts.

2 **BY MR. BOTROS:**

3 **Q. How would that possibly have been known to**
4 **my clients, Commissioner Sakelhide, when your office**
5 **in 2009, shortly after the Lucas versus Bell Trans,**
6 **had issued a directive along with Commissioner**
7 **Tancheek pursuant to Exhibit No. 1 of your Affidavit**
8 **that you were holding these cases in abeyance until**
9 **such time that a court of competent jurisdiction**
10 **issued a final ruling?**

11 **A. No. As I said, I don't see any evidence**
12 **of malicious conduct. I don't know of any -- I**
13 **don't know of any evidence that would lead me to**
14 **believe that that information was out there or that**
15 **they would have known what the 2014 decision was**
16 **going to be. Their personal knowledge would be much**
17 **better than mine.**

18 **Q. Do we under law, based on your**
19 **understanding of the law, hold employers to a**
20 **standard where they are supposed to predict with**
21 **absolute certainty what a court of --**

22 **(Discussion held off the record.)**

23 **MR. BOTROS:** Counsel, it's here, so I just
24 want to let you know for the record.

25 **MR. MOAS:** Got it. Thanks.

1 BY MR. BOTROS:

2 Q. -- competent jurisdiction would rule on an
3 issue where there are divergent views and
4 uncertainty as to the law?

5 A. No. Of course not.

6 Q. Why not?

7 A. Because until the -- until it's settled
8 law, how would an employer know what to follow?
9 There, again, are two possibilities here. It wasn't
10 until there was a final decision rendered by the
11 Nevada Supreme Court that that conflict was put to
12 rest.

13 Q. If you will look to Page No. 159 of Mr.
14 Christopher Craig's deposition of October 20, 2017.
15 Do you see Page 159?

16 A. Yes. Yes, I do.

17 Q. This starts with Line No. 7, my question
18 of Mr. Craig.

19 Do you see that?

20 A. Yes.

21 Q. This is where I question, I start, I don't
22 know why I always do this, but I always start with,
23 okay. Maybe it's a bad habit.

24 I say, okay. So in this case, if my
25 clients reasonably and legitimately relied on the

1 same information that you were given by the Office
2 of Nevada Labor Commissioner that taxicab drivers
3 are exempt from minimum wage, your allegation in
4 this case is my clients not only should be held
5 liable, but they should be punished for relying on
6 the directive of the Office of Nevada Labor
7 Commissioner that taxicab drivers are exempt from
8 the minimum wage back in 2012; correct?

9 An objection was lodged by his counsel.
10 Objection, calls for legal conclusion. Objection to
11 form, calls for evidence -- excuse me -- speculation
12 that the Defendants relied upon anything the Nevada
13 Labor Commissioner said.

14 BY MR. BOTROS: Okay.

15 I'm sorry, Question: You can go ahead and
16 answer.

17 Yes.

18 My question to you, and I understand from
19 counsel there is a standing objection on all my line
20 of this questioning, and it's a duly noted
21 objection, my question to you, Commissioner
22 Sakelhide, do you agree that my clients -- that if
23 my clients reasonably and legitimately relied on the
24 same information that Mr. Craig was given by the
25 Office of Nevada Labor Commissioner that taxicab

1 drivers are exempt from minimum wage, his allegation
2 that my clients' not only should be held liable but
3 also they should be punished for relying on the
4 directive of the Office of Nevada Labor
5 Commissioner, does that warrant my clients should be
6 held liable and punished in this case?

7 A. Again, I'm going to make the same two
8 points. One, I do question whether or not that
9 directive was given. If it was, it was contrary to
10 what Commissioner Tanchek and I directed staff to
11 say when they're working with Claimants that fall
12 under 250.

13 Second of all, the same reason I said
14 before, no, I don't believe that that would result
15 in any greater punishment for employers.

16 Q. If you look to Page 160 of Mr. Craig's
17 deposition --

18 A. Okay.

19 Q. -- of October 20, 2017; do you see that?

20 A. Yes.

21 Q. This is Line 7,

22 Question: Sure, I understand what you're
23 saying, but what if, like in this case, my clients
24 were relying upon the state agency in this case, the
25 Office of Nevada Labor Commissioner, do you

1 understand what relying means?

2 Yes.

3 What do you believe reliance, when I say
4 the word reliance, what do you believe that word to
5 mean?

6 Objection was lodged. Objection, calls
7 for a legal conclusion.

8 I say, question to him, go ahead.

9 That they depend upon them to be right.

10 Do you see that?

11 A. Yes.

12 **Q. If my clients, Commissioner Sakelhide,**
13 **were relying on your directive, and what I mean by**
14 **your directive is the one that you actually gave to**
15 **your administrative assistants, which was, as you**
16 **testified here today, that we are holding these**
17 **cases in abeyance until such time that a court of**
18 **competent jurisdiction issues a final ruling, if**
19 **they would have followed that directive, that**
20 **guidance from you, Commissioner Tanchek, as well as**
21 **your administrative staff, was that unreasonable for**
22 **them to rely on that guidance?**

23 A. No, I don't believe that would be
24 unreasonable for them to rely on the directive that
25 we gave, which was that the -- whether or not the

1 250 survived the Constitutional amendment or not was
2 still up for debate.

3 Q. Based on what you just testified to,
4 Commissioner Sakelhide, do you believe my clients
5 should be held liable for, in terms of money
6 damages, for relying on your directive that you
7 would hold this issue in abeyance until such time
8 that a court of competent jurisdiction issued a
9 final ruling because there were divergent views
10 concerning the validity of exceptions and the
11 uncertainty as to the law?

12 A. Okay. Well, your client would still be
13 responsible for any legitimate back wages owed,
14 anything less than minimum wage that was due during
15 those periods of time.

16 Any penalties above and beyond that, I
17 don't believe any would likely have been imposed if
18 the decision was left up to either Commissioner
19 Tanchek or myself. But that doesn't eliminate your
20 obligation to pay the back wages that would be due.

21 Q. And when you say "back wages that would be
22 due," I just want to be very clear in your
23 testimony; you're talking about consistent with
24 Nevada law of the two years preclusion and which I
25 refer to as the Statute of Limitations under 608?

1 A. Right. I don't believe it's referred
2 specifically in any of the statutory Statute of
3 Limitations but, yeah, that two-year period during
4 which your employer is required to retain records
5 and put on notice.

6 Q. So meaning that, notwithstanding what Mr.
7 Thomas and Mr. Craig have testified to and what they
8 truly believe and they are alleging, you, as the
9 former Deputy Labor Commissioner from 2007 to 2013
10 in the great State of Nevada, you believe that post-
11 Thomas versus Nevada Yellow Cab, meaning 2014, that
12 if drivers filed lawsuits in State Court in 2012,
13 that based on Nevada law, based on your
14 understanding and your position as former Deputy
15 Labor Commissioner, that the maximum amount of years
16 that those particular drivers, whether it's
17 themselves or based on a class, are entitled to go
18 back to would be two years from the date of filing
19 that lawsuit; correct?

20 A. Or the date that they filed a claim with
21 our office, which may have been before 2012.

22 Some of the Claimants may have filed a
23 claim with our office in 2009, in which case we
24 would go back to 2007 for those Claimants that did
25 file actions with us prior to the 2012.

1 Q. What if they didn't file any actions at
2 all with your office and just instituted a state
3 action, meaning a private right of action seeking,
4 you know, alleged underpayment of minimum wage and
5 they filed that in 2012; would your answer be the
6 same that the maximum amount that they can go back
7 to would still be two years from the date of filing
8 a State Court lawsuit?

9 A. Under the provisions of 608, that's as far
10 back as we could go.

11 Q. Any type of provisions in the Nevada
12 Minimum Wage Amendment that indicates that my
13 clients or in the Thomas versus Nevada Yellow Cab
14 decision in 2014, that my clients are strictly
15 liable?

16 A. I, frankly, didn't see that from the
17 decision rendered, the Thomas decision I read. I am
18 not aware of any provision under 608 that would lead
19 me to that conclusion.

20 Q. Any provision under the Constitutional
21 Minimum Wage Amendment of 2006 that says that there
22 is strict liability pertaining to any claims made
23 under, specifically, Nevada Constitutional Minimum
24 Wage Amendment, Article 15, Section 16?

25 A. No, nothing under Section 16 that would

1 lead me to that conclusion.

2 Q. And anything under the Thomas versus
3 Nevada Yellow Cab 2014 decision indicates that my
4 clients are precluded and prevented from, at trial,
5 putting on a defense of any type of reliance,
6 directives or anything of the such in this case?

7 A. No. I didn't see anything in that
8 decision that would lead me to that belief.

9 Q. Anything in the Nevada Constitutional
10 Minimum Wage Amendment, Article 15, Section 16,
11 pertaining to the minimum wage amendment which
12 indicates that, at trial, my clients are not
13 permitted or allowed to put on a defense of any type
14 of detrimental reliance or reliance or legitimate
15 reason of reliance on any directives to defend these
16 allegations?

17 A. Nothing would lead me to that conclusion.

18 Q. Page No. 160?

19 A. Are we still under Exhibit 11?

20 Q. Correct. Correct.

21 A. Okay.

22 Q. This is where, at Line 20, Page 160 of the
23 deposition of Mr. Christopher Craig --

24 A. Go right ahead.

25 Q. So this is Line 20.

1 Question: Exactly. So depending on them to be
2 right. When you have an employer like my client
3 depending on a state agency to be right and they
4 follow that state agency, the directive from that
5 state agency, your allegation is they should have
6 ignored that directive; correct?

7 Turn to the next page, the attorney makes
8 an objection; assumes facts not in evidence.

9 My question is, go ahead.

10 His answer, yes.

11 My question to you, Commissioner
12 Sakelhide, do you agree that my clients should have
13 ignored the Office of Nevada Labor Commissioner's
14 directive in this case?

15 A. Okay. If you're referring to directive we
16 actually gave, which was just simply informing you
17 that the -- it continues to be unclear whether the
18 provisions of 250 survive the Constitutional
19 amendment, I would say the answer to that is no.

20 **Q. If you will look to Page 161.**

21 A. Okay.

22 **Q. Mr. Thomas -- Christopher Craig's**
23 **deposition; do you see that?**

24 A. Yes, 161?

25 **Q. Yes. This is Question No. 21 on Page 161.**

1 Question: Based on that token, do you also
2 believe if we take your -- the reasoning that you
3 just based with respect to my clients, do you also
4 believe that the Office of Nevada Labor Commissioner
5 is liable, not only liable, but should be punished
6 for giving directives, information and guidance to
7 drivers and companies in the State of Nevada that
8 taxi drivers are exempt from minimum wage under
9 Nevada law back in 2012?

10 His attorney lodges an objection;
11 objection, calls for a legal conclusion and assumes
12 facts not in evidence.

13 Line No. 7 by Mr. Botros, go ahead and
14 answer.

15 I believe, yes.

16 My question to you, Commissioner
17 Sakelhide, do you agree with Mr. Craig's testimony?

18 A. Well, once again, I know I'm repeating
19 myself, I question the premise that anyone was told
20 that the drivers are exempt. Again, that wasn't
21 directive that was given to staff.

22 As I mentioned before, this is the first
23 time I have become aware that there is a possibility
24 that they may have been given improper advice.

25 As I said, based on my experience, I saw

1 administrative staff providing the proper directives
2 that we gave and, again, encouraging drivers to file
3 wage claims with us to protect their rights.

4 Again, as I mentioned before, from time to
5 time, drivers would elect not to because they felt
6 as though it could put their employment at risk.

7 **Q. If it is established through evidence,**
8 **testimony or documents, just hypothetical --**

9 A. Go right ahead.

10 **Q. Commissioner Sakelhide, thank you -- that**
11 **administrative staff were not following your**
12 **directive or Labor Commissioner at the time Michael**
13 **Tancheek and were, in fact, given directives and**
14 **advice that taxicab drivers are exempt from minimum**
15 **wage under Nevada law back in 2012, would your**
16 **opinion be that the Office of Nevada Labor**
17 **Commissioner would potentially be liable in this**
18 **case?**

19 A. Again, that calls for assumptions I simply
20 can't make.

21 **Q. Sure. It's not --**

22 A. Again, I know I'm repeating myself over
23 and over again, but I would be surprised if staff
24 did give the improper advice.

25 **Q. You would be surprised but --**

1 A. If my staff gave improper advice and
2 direction to potential Claimants.

3 Q. But before today, you were never made
4 aware that there is the possibility, at least, based
5 on sworn deposition testimony, that your staff may
6 have done that; correct?

7 A. Correct.

8 Q. Meaning provided incorrect guidance that
9 was inconsistent with your directive?

10 A. Correct.

11 Q. Prior to today, you didn't know this;
12 correct?

13 A. No.

14 Q. No, as in what?

15 A. Pardon me? Oh, no, this is the first it
16 has come to my attention that there may have been,
17 again, improper advice given.

18 I still question whether that's true or
19 not.

20 Q. And I respect that. I understand that
21 fully and we'll develop that more. But if it comes
22 out that not only them, but other drivers, and there
23 is a consistent and a pattern of what they were
24 told, would you agree with me that now, I know you
25 are surprised and concerned, but now, would you

1 agree with me that your surprise and concern would
2 be at a high level if that were to come out?

3 A. It would.

4 MR. MOAS: Object to the form.

5 THE WITNESS: But, again, it would
6 surprise me that it happened. Again, I saw my staff
7 provide the appropriate advice time after time and
8 very consistently.

9 So, again, I would be surprised as to
10 whether there would be convincing evidence that
11 would show that there was that kind of pattern of
12 not following the directives.

13 BY MR. BOTROS:

14 Q. What about in this case where it's by the
15 preponderance of the evidence because it's a civil
16 case and it's determined based on the evidence that,
17 in fact, what they are testifying to in terms of
18 that specific, that they were given directives and
19 guidance by your administrative staff that, hey,
20 taxicab drivers are exempt from minimum wage back in
21 2012, would you agree with me that that puts in
22 play, or at least, potentially, the liability on the
23 Office of Nevada Labor Commissioner because they, at
24 least not Deputy Labor Commissioner and, certainly,
25 not the Labor Commissioner, but certainly the staff

1 **was giving inconsistent guidance to the drivers?**

2 **MR. MOAS:** Objection to form. Calls for
3 speculation. Assumes facts not in evidence and a
4 standing objection.

5 **THE WITNESS:** Yeah. Again, it's too
6 difficult a question, frankly, for me to ask.

7 **BY MR. BOTROS:**

8 **Q. Why?**

9 A. First of all, I don't know what the basis
10 of any action would be. I don't know what would be
11 relied upon for bringing an action against us. I
12 don't know what --

13 So, again, it calls for too many elements
14 of speculation that I'd feel comfortable answering
15 that question.

16 **Q. If you look to Page 162 of Mr. Craig's**
17 **deposition, Line No. 10; do you see that?**

18 A. Yes.

19 **Q. The question is, that was posed to Mr.**
20 **Craig at his deposition, so you believe they should**
21 **be held, the Nevada Office of Nevada Labor**
22 **Commissioner, should be held liable and punished for**
23 **their -- for the directive they gave you and my**
24 **clients; correct?**

25 **His attorney lodges an objection; same**

1 objection.

2 The witness, yes.

3 Do you agree with the testimony by Mr.
4 Craig where, in his view, based on his testimony, he
5 believes that the office that you once were in
6 should be held liable and punished for their
7 directives, meaning by the administrative staff they
8 gave to him and my clients?

9 A. Okay. If you're referring to incorrect
10 directives that may have been given --

11 Q. Correct.

12 A. I understand -- I do understand the point
13 he's making.

14 Q. What do you mean that you understand the
15 point he's making?

16 A. I understand that he believes that there
17 should be some element of responsibility and
18 liability, but, again, beyond that --

19 Q. Do you agree with that?

20 A. I understand what he's saying, yes.

21 Q. I know you're understanding what he's
22 saying, but do you agree -- I mean, there is a
23 difference between understanding, I understand, you
24 know, where you're coming from, I understand where
25 you're going in terms of the argument and developing

1 that, but would you agree with him that it certainly
2 puts the question of any type of contribution to
3 this litigation and the confusion that's surrounding
4 this litigation would lead, if, in fact, it is
5 proven beyond a preponderance of the evidence, and
6 there is evidence, testimony, documents that there
7 was a pattern that administrative assistants in
8 direct contravention and inconsistent with your
9 directive as Deputy Labor Commissioner at the time,
10 Commissioner Sakelhide, were giving incorrect,
11 inconsistent guidance to taxicab drivers?

12 A. Okay. Yeah, I do understand --

13 **MR. MOAS:** You understand the question.

14 Let me just lodge an objection here that it assumes
15 facts not in evidence, calls for a legal opinion,
16 and also calls for an opinion on behalf of a state
17 agency that is not a member of this case.

18 **THE WITNESS:** Exactly.

19 **MR. MOAS:** Or not a party to this case.

20 And on those objections, you can go ahead and answer
21 if you want to.

22 **THE WITNESS:** Again, based upon,
23 especially the last thing is the Office of Labor
24 Commissioner of the State of Nevada is not a party
25 to the case. You're asking questions that could

1 subject the Office of Labor Commissioner in the
2 State of Nevada to liability, I'm not comfortable
3 answering that -- any type of question along those
4 lines without proper counsel. And I would be a fool
5 if I did.

6 **BY MR. BOTROS:**

7 **Q. Understandable, Commissioner Sakelhide. I**
8 **am not in any way disagreeing or being upset.**

9 A. Sure.

10 **Q. I hope you know for the record.**

11 A. No, I understand the questions asked. I
12 trust that you understand --

13 **Q. I do.**

14 A. -- that that's a question that I would be
15 simply a fool to answer.

16 **Q. And I am not in any way -- even hint of**
17 **calling you that word at all.**

18 A. Yeah. If I was represented by counsel
19 from the State of Nevada here and they allowed that
20 question, then I would be happy to give my opinion.
21 But without that happening --

22 **Q. So let me ask you this: The parameter,**
23 **and this is important, and this may be an issue**
24 **where I have to come back where counsel is here or**
25 **on the phone or maybe we all are on the phone and**

1 you're here, but what I'm saying is, I want to know,
2 specifically, what question that you feel
3 uncomfortable to answer here today without proper
4 legal counsel from the Nevada Attorney General's
5 office?

6 A. Any question that would subject the State
7 of Nevada to liability for any misinformation that
8 may have been provided. Again, I question whether
9 that's true or not.

10 But, again, any line of questioning that
11 would touch upon that, I believe the State of Nevada
12 deserves representation at the table.

13 Q. Agreed. Agreed.

14 If, in fact, it becomes an issue where I
15 have to re-notice your deposition for the limited
16 purpose, very limited purpose, Commissioner
17 Sakelhide, about these aspects of questions where
18 you are provided counsel through the Nevada Attorney
19 General's office, would you make yourself available
20 to testify specifically and narrowly on these
21 issues?

22 A. I would be available to testimony if it's
23 requested by any party.

24 Q. Sure. With the proviso that you would
25 have legal counsel from the State of Nevada?

1 A. Of course. And without legal counsel for
2 the State of Nevada, I am not going to do anything
3 that would subject the state to liability. There is
4 no way any attorney would do that.

5 Q. And I wouldn't expect you to do otherwise,
6 Commissioner Sakelhide, and I respect that.

7 Do you understand that, based on testimony
8 of Mr. Craig, he has put in question at least the
9 potential, and now more likely the likelihood that,
10 depending on what the testimony is of administrative
11 assistants and documents and evidence, that the
12 State of Nevada could potentially be a party to this
13 case?

14 A. Again --

15 MR. MOAS: Object to the form. I'm sorry.
16 Let me go ahead and just lodge a few objections here
17 because I think this is -- I think it's getting on
18 the point where this is just ambush. I am going to
19 lodge an objection on the basis that it goes outside
20 the scope of the anticipated deposition testimony as
21 to the experience and outside the scope of the
22 witness' knowledge, calls for speculation and calls
23 for a legal opinion specifically as to topics
24 outside of this litigation.

25 With that caveat, you are free to answer

1 the question, sir.

2 **THE WITNESS:** And I'm also free not to
3 answer for the same reasons I gave before.

4 **BY MR. BOTROS:**

5 **Q. The potential legal liability for the**
6 **State of Nevada?**

7 A. Of course, and without being represented
8 by --

9 **Q. Meaning they do not have a seat at the**
10 **table at the moment?**

11 A. I am not represented by counsel. The State
12 of Nevada is not subject to this litigation. I
13 don't want -- and, again, obviously not going to do
14 anything to put the State of Nevada in a position
15 that any testimony I could give would subject them
16 to liability.

17 **MR. BOTROS:** Understood, Commissioner
18 Sakelhide.

19 I have no further questions for you at
20 this time. However, opposing counsel, Mr. Moas, has
21 some questions. And we have, counsel, we do have
22 the rules to be observed by employers and it's here.
23 And just for the record, I have, it's Bates Stamped,
24 there's two Bates Stamp numbers. There's Thomas
25 000090 and Thomas 000091.

1 **MR. MOAS:** Thank you. Can everyone hear
2 me all right?

3 **THE WITNESS:** Yes, I can.

4 **MR. BOTROS:** I can as well.

5 **MR. MOAS:** Madam Court Reporter, let's go
6 ahead and mark those two pages. I believe we're on
7 Exhibit 13 is; is that correct?

8 **MR. BOTROS:** 12. So it will be 12 and 13,
9 depending on which one you want first.

10 **MR. MOAS:** Let's just mark them as one
11 exhibit, the next exhibit in line. I thought that
12 one of the deposition transcripts was 12.

13 **(Discussion held off the record.)**

14 **EXAMINATION**

15 **BY MR. MOAS:**

16 **Q.** We can put that one aside for a second,
17 and let me just make a caveat. Obviously we have a
18 standing objection regarding the relevancy of your
19 testimony because it calls for a legal opinion and
20 it -- arguments that we would make is that it's not
21 relevant to whether or not the Defendants in this
22 case are liable for damages nor whether or not --
23 whether the Plaintiffs are, nonetheless, and to the
24 extent that the Judge disagrees with me, that I need
25 to make a clear record and ask these questions, and

1 I know you understand that as an attorney?

2 A. Of course.

3 Q. And so I will do that for that limited
4 purpose, with the underlying caveat that part of the
5 theme here has been to the extent that this might go
6 to punitive damages, you know, there might be some
7 relevancy. I guess that's a decision for the
8 attorneys to argue in front of Judge Israel.

9 In any event, I'm not -- in no way am I
10 trying for these questions to be a waiver of those
11 objections.

12 Do you understand that, Mr. Sakelhide?

13 A. Yes, I do.

14 Q. Okay. I want to just touch on some of the
15 issues that were raised. The first one was there is
16 a term that's being thrown around, directive,
17 directive from the Labor Commissioner's office.

18 And I want to make a hundred percent clear
19 that the -- to make sure we have a clear record,
20 when you are referring to the directive that was
21 given to staff, was that directive that taxicab
22 drivers are exempt from the Nevada Minimum Wage
23 Amendment?

24 A. No.

25 Q. In fact, it was the opposite in that there

1 was -- there was a lack of clarity and it's possible
2 that they would be or wouldn't be; is that correct?

3 A. That's true, that would not be the
4 opposite. The opposite would be that they would be
5 subject to minimum wage. What we made clear was
6 that there was -- that that was still a question as
7 to whether or not 250 survived the Constitutional
8 amendment.

9 Q. Prior to the decision in Lucas, all you
10 had to rely upon was the 2005 Attorney General
11 opinion that provided that taxicab drivers were not
12 exempt from the Minimum Wage Amendment, and -- is
13 that your understanding as well?

14 A. Well, I wasn't in the office from -- in
15 2005 through 2007, and my first involvement, as I
16 mentioned, with regard to 608 matters came with the
17 Bell Trans order in Lucas v. Bell Trans.

18 Q. I understand.

19 A. So, again, I -- between 2005 and 2009, I
20 don't know what the position of the Labor
21 Commissioner was with regard to addressing 250
22 issues. That's something you probably want to ask
23 Commissioner Tanchek.

24 Q. Okay. Let me skip over some of this. Was
25 there any type of instruction given to employers

1 regarding the Nevada Minimum Wage Amendment after
2 the Lucas decision that would imply to them one way
3 or the other whether or not Subsection 250 was
4 overturned as a result of the Nevada Minimum Wage
5 Amendment?

6 A. No. Any discussions or directives were
7 very clear as to what I said before, here is -- that
8 the -- one, that the issue as to whether or not 250
9 survived the Constitutional changes under Section 16
10 was still a matter that was in dispute and that
11 until such time as the court of competent
12 jurisdiction issued a final decision, our process
13 would be to accept wage claims filed, give employers
14 an opportunity to resolve those wage claims if they
15 chose to.

16 If not, if they based their objection on
17 the 250 exceptions, we would hold those in abeyance
18 until there was a final order issued by the Court.

19 Q. Got it. With regards to, I believe it's
20 Exhibit No. 1, your Affidavit that was marked at
21 today's deposition, did I get that exhibit number
22 correctly?

23 MR. BOTROS: That is correct, counsel.

24 BY MR. MOAS:

25 Q. With regard to Exhibit No. 1, who did you

1 **draft that for?**

2 A. I don't recall. It was an attorney that
3 was involved or said he may be involved in some
4 litigation and asked what the -- what I recall from
5 the -- how the Labor Commissioners were handling
6 these matters at the time.

7 I wish I could recall. If I did, I would
8 definitely let you know.

9 **Q. Does the name of the notary on the second**
10 **page in any way spark your recollection as to --**

11 A. Oh, no.

12 **Q. -- who that attorney was?**

13 A. No. She was an employee with my office,
14 the Nevada Transportation Authority.

15 **Q. And do you recall if it was an employee --**
16 **if it was an employer's attorney or employee's**
17 **attorney?**

18 A. I believe it was an employer attorney,
19 employer from one of the transportation companies in
20 Nevada.

21 **Q. Got it. And do you -- understanding you**
22 **don't recall the specific attorney, do you recall**
23 **anything else, do you recall the name of the**
24 **employer or the firm that the attorney was with?**

25 A. No, I don't. Again, it was a fairly

1 casual conversation that occurred after one of our
2 monthly agenda meetings and the attorney came back
3 and asked if I was aware of any pending litigation
4 involving the 250 claims. I said that I wasn't.

5 He said, well, would you mind doing an
6 Affidavit saying what the -- what the process the
7 Labor Commissioner's office had in handling those
8 types of claims. And I said I would.

9 **Q. After the 2009 Lucas opinion, I believe**
10 **you testified that you had discussions with**
11 **Commissioner Tanchek regarding -- your words -- what**
12 **we should do.**

13 **Do you recall that testimony?**

14 A. Yes, I do.

15 **Q. And do you recall what it was that you**
16 **discussed?**

17 A. Well, what we -- after that decision, we
18 saw that there was conflicting -- you know,
19 conflicting opinions as to how we should address
20 those matters and we wanted to make sure that
21 whatever action we took protected the employees'
22 rights.

23 So we tried to come up with a mechanism
24 that would, you know, secure their rights,
25 particularly with regard to the -- to your

1 restrictions that we had on -- that was imposed on
2 the Labor Commissioner for processing claims.

3 Q. I understand. I'll make a representation
4 to you that, in the past, I have worked with the
5 Labor Commissioner's office on a matter for an
6 employer that I represented, and one of the things
7 that I believe it was the investigator suggested was
8 for the parties to work it out, and under the guise
9 of erring on the side of caution, that -- those
10 terms stuck out to me in preparing for this
11 deposition.

12 And I am curious whether or not it was the
13 policy of your office when you were with the Labor
14 Commissioner to tell employers to err on the side of
15 caution with paying minimum wages?

16 A. I don't recall. It's not a phrase I
17 remember -- well, first of all, I don't recall ever
18 saying that. I don't recall hearing any of our
19 investigators conveying that to employers.

20 Q. Uh-huh.

21 A. That's not saying it didn't happen. Again,
22 as I mentioned earlier, with regard to 608 claims I
23 may have heard, I made a practice of not involving
24 myself in the investigative process.

25 Q. I believe you testified regarding the

1 **discussions you had with Jay --**

2 A. Jay Nady, I believe.

3 **Q. Nady and Brent Bell?**

4 A. Yes.

5 **Q. And that was after the Lucas decision; did**
6 **I get that correctly?**

7 A. I believe it was, yes.

8 **Q. Okay. And I believe your testimony was**
9 **that you advised them that you still believed that**
10 **there could be a conflict and a viable reading of**
11 **Section 16 in the Constitution that would eliminate**
12 **Subsection 250 of the statute; did I get that**
13 **correctly?**

14 A. Not quite. What I said was that the
15 office was continuing the practice of taking wage
16 claims, giving employers an opportunity to resolve
17 them and holding those claims in abeyance until
18 there was a final decision reached by a court of
19 competent jurisdiction.

20 And, again, I know it sounds ridiculous,
21 but I was very clear and I tried to make sure that
22 all of my staff was very clear in the language they
23 used to convey our practice so there would be
24 nothing inferred in that that we were providing
25 legal advice or, you know, making suggestions that

1 were not -- that were improper.

2 **Q. And did your office ever provide legal**
3 **advice to employers or employees?**

4 A. Other than, basically, identifying the
5 sections of the law that would apply and encourage
6 them to follow it.

7 **Q. In terms of opinions regarding the law,**
8 **there was a method for which employers would be able**
9 **to obtain opinions from your office; is that**
10 **correct?**

11 A. That's correct. Anyone could request an
12 advisory opinion be issued by the Labor
13 Commissioner.

14 **Q. And was it at the Labor Commissioner's**
15 **discretion, based on your understanding, whether or**
16 **not to accept the request and provide an advisory**
17 **opinion?**

18 A. That was the understanding of Commissioner
19 Tanchek, yes.

20 **Q. And do you know if the Defendants in this**
21 **case ever requested an advisory opinion, to your**
22 **knowledge?**

23 A. Not to my knowledge. Again, if they would
24 have, that request would have gone directly to the
25 Labor Commissioner.

1 Q. Sorry. I'm just getting through some of
2 my notes here.

3 You mentioned the name Lupe Martinez; did
4 I pronounce that correctly?

5 A. Yes, you did.

6 Q. Do you know if she had an official title
7 at the Labor Commissioner's office?

8 A. She was an investigator.

9 Q. Okay. Do you know if --

10 A. I believe the complete term was compliance
11 investigator.

12 Q. Thank you. Do you know, looking at The
13 Business Advocate magazine that was marked as
14 Exhibit No. 6, do you know if this is a formal
15 advisory opinion, to your knowledge?

16 A. I don't believe it is. Formal advisory
17 opinions are published on our website. So, again, I
18 -- this was in 2014. This was after I left, so it
19 doesn't appear to be in the format of advisory
20 opinions that either Commissioner Tanchek,
21 Commissioner Towler or I drafted. It was a very
22 different format whereby we would identify the
23 question posed and then provide real legal analysis,
24 more in the form of a legal memorandum than simply a
25 newspaper article.

1 Q. I see. If you look at Page No. 7 of that
2 exhibit, let me know when you have it in front of
3 you.

4 A. Okay. Go right ahead.

5 Q. On the left column, the last paragraph
6 there starts with, if an employer; do you see that?

7 A. Yes.

8 Q. And it provides that if an employer does
9 not offer a health insurance plan or the health
10 insurance plan is not available or not provided
11 within six months, then employee must be paid at
12 least minimum wage until the employee is eligible or
13 the plan becomes available.

14 Do you see that?

15 A. Yes, I do.

16 Q. My -- keeping that in the frame of
17 reference, there is a term we have been using in
18 this case, I will represent to you, as upper tier --
19 excuse me, lower tier minimum wage and higher tier
20 minimum wage, numbers at 8.25 and 7.25.

21 Have you heard those terms used before?

22 A. Yes, I have.

23 Q. Okay. And is it correct to read this to
24 say that if health insurance was not offered within
25 the six months, that the employee, depending on the

1 time period, would need to get paid \$8.25 as opposed
2 to \$7.25 per hour as a minimum?

3 A. Yes. Yes.

4 Q. Aside -- when you were looking at cases
5 where employees were not paid minimum wage, what
6 type of items would they be entitled to receive?
7 Was it just back pay as a strict calculation or were
8 there other items?

9 A. There was also what I referred to earlier
10 as ongoing wage penalties.

11 Q. What are those?

12 A. Basically, if an employee, and this is my
13 recall, some of the details may be a bit off, if an
14 employer failed to provide proper payment within
15 three days due, that back wages could be due for up
16 to 30 days of total wages.

17 So it's an additional amount due up to 30
18 days of unpaid wages on top of what they are already
19 owed.

20 Q. I'm having a hard time understanding that.
21 So maybe it will help if we use, let's say, an
22 example.

23 A. Okay.

24 Q. And I will set it up. The -- if someone
25 was underpaid for a whole year --

1 A. Yes.

2 Q. Let's say we calculated it to be \$1,000
3 total.

4 A. Right.

5 Q. And for simplicity purposes, say that it
6 was an easy straight across the board calculation.
7 Aside from that \$1,000, what other calculation would
8 there be?

9 A. We would take what their average hourly
10 rate was, pay rate was, and they would be due 30
11 days of additional wages on top of that, whatever,
12 \$1,000.

13 Q. Would it be one month of the underpayment
14 in addition --

15 A. No, one month of total wages.

16 Q. I understand.

17 A. Yeah.

18 Q. Were any other, I'll call them penalties,
19 aside from the 30 days that you just identified and
20 the back pay?

21 A. There were additional penalties. And,
22 again, just to make it clear for the record, ongoing
23 wage penalties went to the employee, went to the
24 Claimant.

25 Q. Right.

1 A. There could be additional penalties
2 assessed based upon other violations, and those are
3 statutory. Those could include -- very often an
4 employer, based on a wage claim filed, we would see
5 the employer failed to maintain the records for the
6 two-year period, we can assess an additional
7 penalty. And, again, there's statutory limitations
8 on what those penalties could be.

9 Q. I understand.

10 A. So for any additional violation.

11 Q. I appreciate that. Let's carve those out,
12 penalties that went to, let's say, as a fine to the
13 Labor Commissioner's office or to the state?

14 A. Right.

15 Q. And turn back to the employee. Would there
16 be other penalties that the employee could claim?

17 A. I don't believe so. The only things were
18 the wages and ongoing wage penalties.

19 Q. How about if an employee was terminated
20 prior to bringing the claim; would that change your
21 analysis just looking directly at this, obviously,
22 quick hypothetical?

23 A. Well, again, those are things that are
24 outside of the 608 provisions.

25 Q. I understand.